



# Can Geographical Indications (GIs) be Used as a Tool to Promote Economic Development in ASEAN?

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## บทคัดย่อ

ทรัพย์สินทางปัญญาเป็นเครื่องมือสำคัญที่อาเซียนใช้ในการส่งเสริมการพัฒนาทางสังคม และเศรษฐกิจในภูมิภาคอาเซียน สิ่งบ่งชี้ทางภูมิศาสตร์เป็นรูปแบบหนึ่งของทรัพย์สินทางปัญญาที่ได้รับความสนใจมากขึ้นเรื่อยๆ เนื่องจากอาเซียนเป็นชุมชนที่อุดมไปด้วยความหลากหลายทางชีวภาพและความรู้แบบตั้งเดิมที่ถ่ายทอดกันมาหลายช่วงอายุคน มีการกล่าวว่าสิ่งบ่งชี้ทางภูมิศาสตร์สามารถสร้างประโยชน์หลายประการให้แก่ประเทศกำลังพัฒนา โดยสามารถใช้เป็นเครื่องมือในการสร้างมูลค่าเพิ่มให้กับผลิตภัณฑ์ในท้องถิ่น เพิ่มโอกาสในการนำสินค้าท้องถิ่นเข้าสู่ตลาดต่างประเทศ อีกทั้งยังช่วยส่งเสริมการพัฒนาชนบท ผลลัพธ์เหล่านี้ย่อมส่งผลดีต่อการพัฒนาสังคมและเศรษฐกิจของเหล่าประเทศกำลังพัฒนา แต่อย่างไรก็ตามผลกระทบทางเศรษฐกิจจากการให้ความคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ต่อกลุ่มประเทศกำลังพัฒนาอย่างคงเป็นที่ถกเถียงกัน โดยมีการโต้แย้งว่า ยังไม่มีหลักฐานเพียงพอที่จะสามารถสรุปได้ว่าการให้ความคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์นั้นให้ประโยชน์ต่อประเทศกำลังพัฒนา ดังนั้นบทความนี้จึงมีวัตถุประสงค์เพื่อทำให้เกิดความชัดเจน

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ยิ่งขึ้นว่าสิ่งบ่งชี้ทางภูมิศาสตร์สามารถใช้เป็นเครื่องมือในการส่งเสริมการพัฒนาทางเศรษฐกิจในกลุ่มประเทศอาเซียนได้หรือไม่

จากการศึกษาพบว่าประเทศสมาชิกอาเซียนได้ตระหนักถึงประโยชน์ที่สามารถได้รับจากการให้ความคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ แต่อย่างไรก็ตามเนื่องจากระบบการคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ของประเทศสมาชิกอาเซียนโดยเฉพาะอย่างยิ่งในประเทศที่พัฒนาน้อยที่สุดยังคงอยู่ในระยะเริ่มต้น จึงทำให้ไม่สามารถใช้ประโยชน์จากสิ่งบ่งชี้ทางภูมิศาสตร์ในการพัฒนาเศรษฐกิจของประเทศได้อย่างเต็มที่ ดังนั้นเพื่อให้ประเทศสมาชิกอาเซียนสามารถใช้ประโยชน์จากสิ่งบ่งชี้ทางภูมิศาสตร์ได้อย่างสูงสุด ประเทศสมาชิกจำเป็นต้องมีการดำเนินการดังต่อไปนี้ ประการแรก ควรมีการจัดตั้งระบบการคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ที่เพียงพอและมีประสิทธิภาพในทุกประเทศสมาชิกอาเซียน ประการที่สอง ควรพิจารณาถึงความเป็นไปได้ในการขยายความคุ้มครองระดับพิเศษสู่สิ่งบ่งชี้ทางภูมิศาสตร์ทุกประเภท และประการสุดท้าย ควรมีการพัฒนาระบบกฎหมายความคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ในระดับภูมิภาคอาเซียนเพื่อส่งเสริมการใช้ประโยชน์จากสิ่งบ่งชี้ทางภูมิศาสตร์ในเชิงพาณิชย์

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## Abstract

Intellectual property (IP) has been used as a tool to promote social and economic development in ASEAN. Among all areas of IP rights, geographical indications (GIs) are becoming more important in ASEAN, a community of largely developing economies that are rich in biodiversity and traditional knowledge, transmitted over generations. It is claimed that the protection of GIs provides various benefits for developing countries, the potential to add value to local products, enhance international market access, and promote rural development. These outcomes would therefore contribute to social and economic development. However, this issue is still debatable. Some argue that there is not sufficient evidence on the economic impact of GIs on developing countries. Therefore, this article seeks to establish some clarity whether GIs can really be used as a tool to promote economic development in ASEAN.

It has been found that ASEAN countries have generally recognised the potential benefits that they could derive from strengthening their GIs protection. However, since GI regimes in ASEAN member countries, particularly in the ASEAN



least developed countries, are still at an early stage of development, all the benefits of GIs that can contribute to economic development would not be immediately obtained. In order to enable ASEAN to fully reap the benefits of GIs, further action is needed. Firstly, an adequate and effective GI regime should be firmly established in all ASEAN member countries. Secondly, the possibility of extending a higher level of GI protection to all GI products should be seriously addressed. Lastly, an ASEAN-wide GI regime should be incrementally developed so as to promote the commercialisation of GIs.

**Keywords:** intellectual property, geographical indication, economic development, ASEAN

## Introduction

Intellectual property (IP) is one of the most important tools in stimulating social and economic development in ASEAN at both national and regional levels.<sup>1</sup> Strengthening IP cooperation is clearly stated as one of the ASEAN's prioritised tasks. Among all areas of IP rights, geographical indications (GIs) are becoming more important in ASEAN, the region that is rich in natural resources and traditional knowledge transmitted from generation to generation. Therefore, the protection of GIs is seen as a tool that has potential to provide economic value to communities and promote economic development of countries. However, in order to obtain the benefits of GIs, an adequate and effective GI protection in all the member states is required.

It is undeniable that the level of social and economic development of the member states is interrelated with their interests in setting up IP policy. ASEAN consists of 10 member states, which are differently categorised as developed, developing, and least developed countries. The majority of the member states are countries in the developing world. Among the 10 ASEAN countries, Singapore is the only country that is categorised as developed country. Meanwhile, Thailand, Malaysia, Indonesia, Philippines, Brunei Darussalam and Vietnam are all categorised as developing countries. Cambodia, Lao PDR and Myanmar are still grouped as the least developed countries. Among the member states, it seems likely that Brunei Darussalam has nearly earned 'developed country' status. According to the 2016 Human Development Report, Brunei Darussalam and Singapore were both categorised as having 'very high human development'.<sup>2</sup> Additionally, like Singapore, Brunei Darussalam was classified as 'high income economies' by the World Bank, whereas the other ASEAN developing countries were 'upper middle income' or 'lower middle income' countries per the World Bank.<sup>3</sup> However, according to the 2017 IMF's World Economic Outlook Database, Brunei Darussalam was still classified

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<sup>1</sup>ASEAN, *ASEAN Economic Community Blueprint 2025* (ASEAN Secretariat 2015) 14.

<sup>2</sup>UNDP, *Human Development Report 2016: Human Development for Everyone* (UNDP 2016) 198.

<sup>3</sup>The World Bank, 'World Bank Country and Lending Groups' <<https://datahelpdesk.worldbank.org/knowledgebase/articles/906519>> accessed 4 July 2017.



as an ‘emerging market and developing economy’.<sup>4</sup> This demonstrates that though similarly classified as ‘developing countries’, there are still disparities in social and economic development between the ASEAN members.

Due to the difference in the level of development between the member states, the level of IP protection and enforcement between them are quite diverse. A more developed country tends to use IP as a tool in promoting economic growth, and thereby providing high level of IP protection and enforcement, whereas a less developed country usually has weak IP standards in order to facilitate imitation. Noteworthy examples can be found in Singapore and Myanmar. That said, Singapore is widely accepted as one of the countries that has the best IP regime in the world, whereas IP laws in Myanmar are still under developed and fall below international standards. However, the disparity is decreasing. As WTO members, all ASEAN countries are obliged to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which provides an international minimum IP standard, covering all major areas of IP rights, including GIs. This has helped in bringing the protection of GIs in ASEAN countries, particularly developing and the least developed closer towards international IP standards.

Nevertheless, while they are still struggling to comply with TRIPs, there are continuous attempts by developed countries to pressure them into adopting IP standards beyond TRIPs or TRIPs-plus in exchange for expanded market access and tariffs elimination. Developed countries have pursued these actions through various negotiations, particularly negotiations on bilateral and regional trade agreements. TRIPs-plus requirements are often opposed by developing countries. Too stringent IP protection in some areas of IP such as pharmaceutical patents can adversely affect the public health interests of less developed countries. This could therefore provide a negative rather than a positive outcome. However, unlike other areas of IP rights, extending protection of GIs beyond TRIPs standards has been supported mainly by developing countries, particularly those that have domestic GIs as their export products.<sup>5</sup> Thailand is also one of the strong supporters. GI was claimed to

<sup>4</sup>IMF, ‘Emerging Market and Developing Economy’ <<https://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weoselco.aspx?g=2505&sg>All+countries%2f+Emerging+market+and+developing+economies%2f+Emerging+and+developing+Asia>> accessed 4 July 2017.

<sup>5</sup>Michael Handler, ‘Rethinking GI Extension’ in Dev S. Gangjee, *Research Handbook on*

be the best legal measure that developing countries can utilise to protect their local products in foreign markets.<sup>6</sup> Therefore, increased protection for GIs can help foster economic development in developing economies. However, some argue that there is no evidence showing that an enhanced level of GI protection can help provide additional economic benefits for developing countries.<sup>7</sup> Since it is still debatable whether GI is truly beneficial for developing economies, this article aims to establish some clarity over whether GIs can really be used as a tool to promote economic development in ASEAN.

## The General Concept of GIs

The protection of GIs has long existed in Europe,<sup>8</sup> the region that is rich in products based on traditional knowledge transmitted over generations from a particular geographical location.<sup>9</sup> Well-known GI products from European countries are, for example ‘Bordeaux wine’ from the Bordeaux region of France, ‘Parma Ham’ from the Parma region of Italy, ‘Champagne’ from the Champagne region of France and ‘Feta Cheese’ from Greece. GI refers to a sign associated with a product that can reflect the link between the quality and/or reputation of a product and its geographical origin.<sup>10</sup> The existence of GI protection can help prevent unauthorised persons from misusing GIs and avoid consumer confusion as to the origin and quality of a product. GIs have been considered a special form of IP rights.<sup>11</sup> They

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*Intellectual Property and Geographical Indications* (Edward Elgar Publishing) 150.

<sup>6</sup>Kaitlin Mara, ‘Advocates Say Geographic Indications Will Benefit Developing Nations’ (2008) <Intellectual Property Watch <http://www.ip-watch.org/2008/07/11/advocates-say-geographical-indications-will-benefit-developing-nations/>> accessed 15 April 2017.

<sup>7</sup>Alejandro Jara and David Spencer, ‘No evidence yet that developing countries need more protection for geographical names’ <[http://www.ft.com/cms/s/0/73ec31a2-cfb3-11d8-b4ce-00000e2511c8.html?ft\\_site=falcon&desktop=true#axzz4cn6T85m7](http://www.ft.com/cms/s/0/73ec31a2-cfb3-11d8-b4ce-00000e2511c8.html?ft_site=falcon&desktop=true#axzz4cn6T85m7)> accessed 16 April 2017.

<sup>8</sup>Bernard O’Connor, *The Law of Geographical Indications* (Cameron May Ltd 2004) 21.

<sup>9</sup>European Commission, ‘Making the most of Europe’s traditional know-how: Commission launches public consultation on the protection of geographical indications for non-agricultural products’ <[http://europa.eu/rapid/press-release\\_IP-14-832\\_en.htm](http://europa.eu/rapid/press-release_IP-14-832_en.htm)> accessed 17 April 2017.

<sup>10</sup>See WIPO, ‘Geographical Indications’ <[http://www.wipo.int/geo\\_indications/en/](http://www.wipo.int/geo_indications/en/)> accessed 13 April 2017.

<sup>11</sup>Teshager W. Dagne, *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (Routledge 2015).



have unique characteristics that distinguish them from other IP rights, for instance, unlike trademarks, GIs are community rights that cannot be sold or transferred to other parties.<sup>12</sup> Exclusive rights are granted to all producers in specific areas represented by names or signs indicating that the products possess certain qualities. This demonstrates that GIs emphasise the relationship between human effort, culture, and their local land and environment.<sup>13</sup> Moreover, unlike most forms of IP rights, the term of protection of GIs is unlimited, lasting for as long as the rights holders maintain the collective tradition.<sup>14</sup> This can therefore allow the producers to prevent others from ‘freeriding’ on the reputation of their GI products.

## The Protection of GIs in Post-TRIPs Era

Once TRIPs came into existence, GI acquired global recognition.<sup>15</sup> According to TRIPs, which can be considered as the first multilateral instrument dealing with GIs<sup>16</sup>, the minimum standard of GI protection that every WTO member must follow are provided. TRIPs leaves discretion to the member states to determine the legal means for GI protection. In practice, GIs can be protected through various legal forms, including laws focusing on business practice, as well as trademarks and *sui generis*<sup>17</sup> systems.<sup>18</sup> Under TRIPs, a minimum standard of protection is provided for all products in accordance with Article 22. Meanwhile, wines and spirits are granted a higher level of protection under Article 23, and this can provide more advantages to right holders. There is no need to show that the public is misled or that using a certain GI constitutes an act of unfair competition. The use of the GI sign

<sup>12</sup>Chuthaporn Ngokkuen and Ulrike Grote, ‘Challenges and Opportunities for Protecting Geographical Indications in Thailand’ (2012) 19 Asia-Pacific Development Journal 93, 99.

<sup>13</sup>David R. Downes, ‘How Intellectual Property Could Be a Tool to Protect Traditional Knowledge’ (2000) 25 Colum J Envtl L 253, 269.

<sup>14</sup>ibid 269.

<sup>15</sup>Daniela Benavente, *The Economics of Geographical Indications* (Graduate Institute Publications, 2013).

<sup>16</sup>Daniel J. Gervais, *The TRIPS Agreement: Drafting History and Analysis* (2nd edn, Sweet and Maxwell 2003) 188.

<sup>17</sup>According to Black’s Law Dictionary, ‘sui generis’ is used to describe a regime designated to protect IP rights that fall outside the traditional IP protection.

<sup>18</sup>WTO, ‘Geographical Indications’ [https://www.wto.org/english/tratop\\_e/trips\\_e/ta\\_docssec5\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/ta_docssec5_e.htm) accessed 10 April 2017.

accompanied by expressions such as ‘kind’, ‘style’, ‘type’ or ‘imitation’ is prohibited. This can therefore prevent other competitors from using the indication although the true geographical origin of the good in question is clearly provided.<sup>19</sup>

Extending the additional protection for wine and spirits under Article 23 to other GI products such as handicrafts, agricultural products and other beverages was controversial, and thereby divided WTO members into two groups, ‘Old World’ and ‘New World’ countries. The split of these countries is not related to a development issue. In addition to strong support from the old world developed countries in the EU, expanding the higher level of protection beyond wines and spirits has been supported by many developing countries that are rich in biodiversity, as well as traditional and cultural heritage, such as Thailand, India and Kenya.<sup>20</sup> This demonstrates that unlike other areas of IP rights, the desired level of GI protection is not interrelated with a country’s level of development. On the contrary, the US, together with countries such as Australia, Canada and Chile have strongly opposed the attempt to increase GI protection.<sup>21</sup> From these new world countries’ perspective, it was argued that this expansion is not fair treatment<sup>22</sup>, constituting barriers to trade.<sup>23</sup> That said, giving a higher level of GI protection to all products would prevent the use of GIs, and therefore be a disadvantage to their local manufacturers. The reasoning behind this is that these countries have migrating communities that have carried the processes and formulations of GI products, as well as cultures and traditions, with them. The migrations produced

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<sup>19</sup>Dagne (n 11) 151.

<sup>20</sup>Ngokkuen and Grote (n 12) 94.

<sup>21</sup>Cerkia Bramley and Estelle Bienabe, ‘Why the Need to Consider GIs in the South?’ in Cerkia Bramley, Estelle Bienabe, Johann Kirsten (eds), *Developing Geographical Indications in the South: The Southern African Experience* (Springer 2013) 4; Denis Sautier, Estelle Bienabe and Claire Cerdé, ‘Geographical Indications in Developing Countries’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011) 140; Kal Raustiala and Stephen R. Munzer, ‘The Global Struggle over Geographic Indications’ (2007) 18 Eur J Int Law 337, 351.

<sup>22</sup>See Molly Torsen, ‘Apples and Oranges (and Wine): Why the International Conversation regarding Geographic Indications is at a Standstill’ (2005) 81 J of the Patent and Trademark Soc 31, 52.

<sup>23</sup>Bernard O’ Connor and Giulia de Bosio, ‘The Global Struggle between Europe and United States over Geographical Indications in South Korea and in the TPP Economics’ in William van Caenegem and Jen Cleary (eds), *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Springer 2017) 48.



their own products in the new world countries and used names originally taken from places in the old world countries.<sup>24</sup> This practice should therefore not be prohibited. Moreover, it was further argued that strong GI protection would also lead to higher prices for food and to extending monopoly rights of certain manufacturers, and thereby stifle competition.<sup>25</sup>

Extending Article 23 of TRIPs to cover other products was proposed in the Doha round. However, no consensus has yet been reached. All proposals regarding this issue have failed.<sup>26</sup> Consequently, bilateral and regional free trade agreements (FTA) have been used as alternative instruments for countries to pursue TRIPs-plus GI protections. This demonstrates a shift from multilateral to regional and bilateral regimes. The EU is very active in seeking a higher level *sui generis* GI system, whereas the US opposes TRIPs-plus protection in this area.<sup>27</sup> The different approaches adopted by the EU and US are due to their divergent economic interests.<sup>28</sup> In the EU, GI products are significant to its economy. There have been cases where their GI products with high economic value have suffered from abuse of a GI reputation due to the current level of the protection provided by TRIPs.<sup>29</sup> Meanwhile, the US has argued that trademark protection is sufficient to protect GIs.<sup>30</sup> Since the US is a country founded upon immigration, it was viewed that there

<sup>24</sup>Dianne Daley, 'Canada's Treatment of Geographical Indications: Compliant or Defiant? An International Perspective' in Ysolde Gendreau (ed), *An Emerging Intellectual Property Paradigm: Perspective from Canada* (Edward Elgar Publishing) 37; Lina Monten, 'Geographical Indications of Origin: Should They Be Protected and Why? An Analysis of the Issue om the U.S. and EU Perspectives' (2005) 22 Santa Clara High Tech. L.J. 315, 366; Tim Jay and Madeline Taylor, 'A Case of Champagne: A Study of Geographical Indications' (2013) Corporate Governance eJournal Paper 29.

<sup>25</sup>Malobika Banerji, 'Geographical Indications: Which Way Should ASEAN Go?' (2012) Boston College Intellectual Property & Technology Forum <[http://bcipft.org/wp-content/uploads/2012/06/Geographical\\_Indications.pdf](http://bcipft.org/wp-content/uploads/2012/06/Geographical_Indications.pdf)> accessed 20 April 2017.

<sup>26</sup>World Trade Organization, Ministerial Declaration of 14November 2001, ¶ 18, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2001).

<sup>27</sup>David Vivas-Eugui and Christoph Spennemann, 'The Evolving Regime for Geographical Indications in WTO and in Free Trade Agreements' in Carlos M. Correa and Abdulqawi A. Yusuf (eds), *Intellectual Property and International Trade: The TRIPs Agreement* (Kluwer Law International 2008) 212.

<sup>28</sup>ibid 213.

<sup>29</sup>O' Connor and de Bosio (n 23) 49.

<sup>30</sup>Graham Dutfield and Uma Suthersanen, *Global Intellectual Property Law* (Edward Elgar Publishing 2008) 195.

is nothing wrong with selling locally made products under the name taken from the producer's hometown in the old world.<sup>31</sup> It is interesting that the EU's approach has been supported by many developing countries, where GI is seen as a means to protect their local products and gain access to international markets.<sup>32</sup> GI protection can help differentiate their products, which have unique qualities, from other standard products.<sup>33</sup> This implies that the desired level of GI protection is interrelated with the economic interests of countries rather than the level of economic development. However, compared to other areas of IP rights, the concept of GIs is quite new to countries in the developing world.<sup>34</sup> Although the value of GIs is recognised, many developing and least developed countries are still struggling in making use of GIs to protect and promote their products. Therefore, the benefits of GIs in less developed countries is still debatable.<sup>35</sup>

## The Development of GI Protection in ASEAN

Due to the wide disparity in the level of development, particularly concerning ASEAN members, IP laws in ASEAN countries are diversely developed. At the early stage, the member states' IP laws were developed based on their colonial histories and backgrounds. IP laws of all the ASEAN members, except for Thailand, which was never colonised, were modelled on their mother country. When the TRIPs Agreement was adopted, as WTO members, all ASEAN countries were obliged to comply with TRIPs obligations, which provides an international minimum IP standard, covering all major areas of IP rights, including GIs. However, although TRIPs obliges the member states to provide protection for GIs, it leaves the member states discretion to determine an appropriate method of protection. Furthermore, due to a lack of sufficient IP administrative capacity and infrastructure,

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<sup>31</sup>ibid.

<sup>32</sup>Elizabeth Barham and Bertil Sylvander, 'Introduction' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011) xv.

<sup>33</sup>ibid.

<sup>34</sup>Cerkia Bramley, Estelle Bienabe, Johann Kirsten, 'The Economics of Geographical Indications: Towards A Conceptual Framework for Geographical Indication Research in Developing Countries' in WIPO (ed), *The Economic of Intellectual Property* (WIPO, Geneva 2009).

<sup>35</sup>Fadilah H. Arief, 'Indonesian Crafts: The Overlooked Potential of Geographical Indication' (2016) 2 International Journal of Culture and History 87, 90.



less developed members such as Myanmar, Lao PDR, and Cambodia are still struggling to comply with TRIPs. Therefore, there are still disparities in GI protection between the member states.

According to TRIPs, 7 out of 10 member countries, namely Singapore, Thailand, Indonesia, Malaysia, Vietnam, Lao PDR, and Cambodia protect their GIs through a *sui generis* system.<sup>36</sup> Meanwhile, Brunei Darussalam, Philippines, and Myanmar chose to protect GIs under trademark regimes.<sup>37</sup> This demonstrates that ASEAN countries do see the value of GI protection, even if different methods and levels of protection are provided. Among all member states, Myanmar seems to have made the least progress in this area, with no specific legislation dealing with GIs. GIs can be protected based on prior use in Myanmar or through recordation procedure with the Registry of Deeds and Assurance. This demonstrates that Myanmar is still in the early stages of developing GI protection, despite currently being in the process of drafting new IP laws in many areas, including GIs. The protection of GIs was included as one chapter in the draft trademark law.<sup>38</sup> When this new legislation comes into force, GIs can be protected through trademark protection.

There is also a trend in seeking TRIPs-plus standards pursued by the old world countries, particularly the EU through regional and bilateral trade agreements. There are various ongoing trade negotiations between the EU and ASEAN countries that include TRIPs-plus obligations for GIs. For instance, according to EU-Singapore Free Trade Agreement (FTA), the first deal between the EU and an ASEAN country, the enhanced level of GI protection for wines and spirits will be extended to all products.<sup>39</sup> This means that GI labels cannot be used by unauthorised producers even if consumers are not misled as to the true origin of the products. Moreover, the new registration system for GIs will be established since the present system

<sup>36</sup>Le Thi Thu Ha, 'Facilitating the Protection of Geographical Indications in ASEAN' (2017) SECO/WTI Academic Cooperation Project Working Paper No. 01/2017, 17-18.

<sup>37</sup>ibid.

<sup>38</sup>Moe Moe Thwe, 'Current Situation in Myanmar concerning Geographical Indications' (2014) <[http://unctad.org/meetings/en/Presentation/aldc2014-12-11\\_Myanmar.pdf](http://unctad.org/meetings/en/Presentation/aldc2014-12-11_Myanmar.pdf)> accessed 17 April 2017.

<sup>39</sup>Law Gazette, 'An Enhanced Regime for the Protection of Geographical Indications in Singapore' <<http://www.lawgazette.com.sg/2014-07/1085.htm>> accessed 19 April 2017.

does not require GIs to be registered in order to obtain protection.<sup>40</sup> However, the ratification of the EU-Singapore FTA has been delayed due to the European Commission's request for the Court of Justice of the European Union (CJEU)'s opinion regarding its competence to sign and conclude the FTA.<sup>41</sup> Moreover, under the EU-Vietnam FTA, the second agreement in the ASEAN region after Singapore, contracting parties are required to maintain a GI registration system. Extensive lists of GIs that are required to receive automatic protection as GIs are provided. That said, 169 of the EU's GIs will be protected in Vietnam and 39 of Vietnam's GIs will be protected in the EU once the EU-Vietnam FTA comes into effect,<sup>42</sup> which is expected to be in early 2018. This can help promote market access whilst increasing the recognition of domestic GIs products in foreign markets. The key amendments required under both FTAs reflect the EU's success in promoting its TRIPs-plus approach in GIs in the ASEAN countries. If these FTAs come into force, a higher level of GI protection as already exists in the EU will be ensured in Singapore and Vietnam. This also represents a stepping stone towards greater engagement between the EU and the ASEAN region. Furthermore, these FTAs can be used as a model for trade negotiations between the EU and other ASEAN countries. Given the majority of the ASEAN members are non-wine producers, extending a higher level of protection to other products would be beneficial to them.<sup>43</sup>

Thailand is also the leading ASEAN country that is enthusiastic in protecting GIs, and among all ASEAN countries, Thailand is considered the champion country for GIs.<sup>44</sup> Thailand started to develop GI regime in 2003. According to the Protection of Geographical Indications Act B.E. 2546 (2003) of Thailand, a *sui generis* system for protecting GIs was established. From 2003-2015, 61 Thai GIs and 8 Foreign GIs have

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<sup>40</sup>ibid.

<sup>41</sup>Ministry of Trade and Industry Singapore, 'The European Union-Singapore Free Trade Agreement (EUSFTA)' <<https://www.mti.gov.sg/MTIInsights/Pages/EUSFTA.aspx>> accessed 19 April 2017.

<sup>42</sup>European Commission, 'EU-Vietnam Free Trade Agreement' <[https://ec.europa.eu/agriculture/newsroom/243\\_en](https://ec.europa.eu/agriculture/newsroom/243_en)> accessed 19 April 2017.

<sup>43</sup>Thi Thu Ha (n 36) 30-31.

<sup>44</sup>See Nisachol Sasanon, 'Geographical Indications (GIs) in the Implementation of Public Policies: Best Practices and the Socio-Economic Dimension of GIs', (6 – 8 May 2013, Cairo, Egypt).



been registered.<sup>45</sup> Continuously increasing the registered numbers of GIs, particularly Thai GI products, reflects a success. Moreover, there are GI products namely Thung Kula Rong-Hai Thai Hom Mali Rice, Doi Chang coffee, Doi Tung coffee, and Sangyod Muang Phattalung rice that have been granted protection in the EU.<sup>46</sup> This can be considered significant achievements in using GIs to add economic value to local products and enhance international market access.

Nevertheless, GI laws of some member states, particularly the ASEAN least developed members are still falling below TRIPs standards due to the lack of sufficient and effective IP administration capacity and infrastructure. Therefore, cooperation between the ASEAN members themselves and external cooperation with external partners in providing an adequate and effective GI protection has been established. An initial step of ASEAN in strengthening IP cooperation at regional level began in 1995 when a Framework Agreement on Intellectual Property Cooperation (Framework Agreement) was adopted.<sup>47</sup> One of the major objectives of the Framework Agreement includes promoting cooperation in GI. To build on regional IP cooperation, various ASEAN Intellectual Property Rights (IPR) Action Plans have been adopted, and improving protection of GIs in the ASEAN member states has always been included as one of the ASEAN's tasks. For instance, according to the 2011-2015 ASEAN IPR Action Plan, Thailand and Vietnam are appointed as the leaders in conducting cooperation in the protection of GIs. Furthermore, promoting the commercialisation of GIs is included as one of the initiatives under the new ASEAN IPR Action Plan 2016-2025,<sup>48</sup> which is expected to be published in 2017.<sup>49</sup> This is in accordance with one of the AEC's goal under the 2025 AEC Blueprint in

<sup>45</sup>Department of Intellectual Property of Thailand, 'Institutional Aspects of Geographical Indications Administration in Thailand' (2015) <[http://www.wipo.int/edocs/mdocs/geoind/en/wipo\\_geo\\_bud\\_15/wipo\\_geo\\_bud\\_15\\_7.pdf](http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bud_15/wipo_geo_bud_15_7.pdf)> accessed 20 April 2017.

<sup>46</sup>European Commission, 'Agricultural and Rural Development: Door ' <<http://ec.europa.eu/agriculture/quality/door/list.html>> accessed 4 July 2017.

<sup>47</sup>Elizabeth Siew-Kuan Ng, 'ASEAN IP Harmonization: Striking the Delicate Balance' (2013) 25 Pace Int'l L Rev 129, 137.

<sup>48</sup>ASEAN IPA, 'The ASEAN Intellectual Property Rights Action Plan 2016-2025' (ASEAN IPA Annual Meeting & Conference, Kuala Lumpur, Malaysia, 4-6 March 2016) <<http://www.aseanipa.org/attachments/article/653/01.%20AWGIPC-ASEAN%20IP%20Plan.pdf>> accessed 18 April 2017.

<sup>49</sup>ASEAN Intellectual Property Portal, 'ASEAN IPR Action Plan 2016' <<https://www.aseanip.org/Statistics-Resources/ASEAN-IPR-Action-Plan-2016>> accessed 22 April 2017.

strengthening IP cooperation through enhancing regional mechanisms to promote asset creation and commercialisation. To achieve this goal, adequate and effective GI protection, as well as sufficient capacity of the productive sector are required.<sup>50</sup> This clearly demonstrates ASEAN is fully aware of GIs' potentiality.

## The Role of GIs for Economic Development in ASEAN

Given the majority of the ASEAN members are countries in the developing world that are rich in traditional knowledge and indigenous resources, the protection of GIs would offer advantages to ASEAN. It is claimed that the implementation of GI protection can generate economic benefits through increased product prices, and reduction in costs of production.<sup>51</sup> According to a study conducted by the United Nations Conference on Trade and Development (UNCTAD), it was evidenced that after products were protected by GIs, their prices were increased by 10 to 15 percent for agricultural products and 5 to 10 percent for non-agricultural products.<sup>52</sup> This demonstrates that consumers are willing to pay higher prices for origin-guaranteed products.<sup>53</sup> In other words, GI protections can add premium value to products. Regarding reducing production costs, GI products are usually produced through traditional methods in a particular place rather than via modern industrial methods.<sup>54</sup> This clearly shows that GI can be used as a tool to preserve traditional production, beneficial to countries in the developing world, particularly those that lack the capacity to develop or adopt advanced technology.

However, there has long been a debate regarding the economic benefits of GIs for developing countries. On the one hand, it is argued that there is not sufficient evidence showing that the producers in the developing world can obtain

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<sup>50</sup>ASEAN (n 1) 15-16.

<sup>51</sup>Dagne (n 11) 136-137.

<sup>52</sup>Abhijit Das, 'Geographical indications: UNCTAD's initiative in India' (Presentation at UNDP RCC, UNDP Cambodia and Economic Institute of Cambodia, Phnom Penh, September 4 2008).

<sup>53</sup>The Energy and Resources Institute, 'Briefing Paper: The Protection of Geographical Indications in India: Issues and Challenges' (2013), 1 <[http://www.teriin.org/div/briefing\\_paper\\_GI.pdf](http://www.teriin.org/div/briefing_paper_GI.pdf)> accessed 17 April 2017.

<sup>54</sup>Dagne (n 11) 136.



the benefits of GIs.<sup>55</sup> It was opined that the protection of GIs are ‘exclusively of European origin’.<sup>56</sup> Agricultural and food markets are controlled by the EU GI producers.<sup>57</sup> That said, most of the GI products that are well-established in the world market are owned by the EU producers. Consequently, it requires a lot of investment in product development and advertising for producers from the developing world to break into the foreign market.<sup>58</sup> Consequently, the costs of adopting GI regimes in developing countries may outweigh the benefits. On the other hand, it is argued that GI protection can provide benefits to all countries, particularly developing and the least developed countries that are rich in biodiversity, handicrafts and traditional knowledge. GIs represent a good opportunity for these countries to add economic value to their products and promote them in overseas markets.<sup>59</sup> This viewpoint has been supported by many scholars, particularly those in the EU,<sup>60</sup> where GI regimes are advanced and well-developed. In the EU, GI protections make an outstanding contribution to sustainable development in rural areas.<sup>61</sup> It allows local producers to ‘give signals’ to consumers regarding the exact value and quality of their products.<sup>62</sup> It was evidenced that on average the price of GI products were sold 2.23 times higher than non-GI products.<sup>63</sup> This can help ensure that the producers can reap the

<sup>55</sup>Pradyot R. Jena and Ulrike Grote, ‘Changing Institutions to Protect Regional Heritage: A Case for Geographical Indications in the Indian Agrifood Sector’ (2010) 28 Development Policy Review 217, 217.

<sup>56</sup> Dagne (n 11) 137.

<sup>57</sup>ibid.

<sup>58</sup>ibid.

<sup>59</sup>See UNCTAD, ‘Myanmar’s unique products to benefit from ‘geographical indication’ promotion and protection, UNCTAD workshop in Yangon told’ <<http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=985>> accessed 18 April 2017.

<sup>60</sup>Cerkia Bramley, ‘A review of the socio-economic impact of geographical indications: considerations for the developing world’ (Paper prepared for presentation at the WIPO Worldwide Symposium on Geographical Indications June 22 – 24 2011, Lima, Peru) 1, <[http://www.wipo.int/edocs/mdocs/geoind/en/wipo\\_geo\\_lim\\_11/wipo\\_geo\\_lim\\_11\\_9.pdf](http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_9.pdf)> accessed 20 April 2017

<sup>61</sup>World Intellectual Property Organization, ‘European Union Policy for High Quality Agricultural Products’ (WIPO/GEO/BEI/07/8, International Symposium on Geographical Indications, Beijing, 2007) 10.

<sup>62</sup>Carina Folkeson, ‘Geographical Indications and Rural Development in the EU’ (School of Economics and Management, Lund University 2005) 89.

<sup>63</sup>Stephane Passeri, ‘Geographical Indications, a new strategy for products valorization and international promotion’ (International Seminar on Consumer Preferences in Rice, 17 February 2015).

benefits from their investments in GI products.<sup>64</sup> Moreover, since it creates a link between product and its geographical origin, more income and jobs could be generated.<sup>65</sup>

Both points of view may be correct. All the benefits of GIs cannot be automatically guaranteed. However, it is true to say that the protection of GIs can provide benefits, particularly in rural development. A noteworthy example is a Thai GI product, ‘Doi Tung coffee’. Doi Tung was a rural area in northern Thailand inhabited by ethnic minorities. Most of the people in this area earned a living by opium cultivation. The development of Doi Tung coffee was supported by Mae Fah Luang Foundation under Royal Patronage in order to resolve the problem of poverty and the opium trade.<sup>66</sup> Due to the continued strong support, opium growing has been replaced by the plantations of Arabica Coffee, providing jobs and boosting income to the local people in the community.<sup>67</sup> This can help improve the quality of life and provide sustainable and legitimate livelihoods. Having been registered as a GI product, the use of the ‘Doi Tung coffee’ brand name is secured and preserved for future local generations.<sup>68</sup> Moreover, by attaining GI protection in the EU, this has contributed to improved international market access and increased recognition of a Thai GI product by EU consumers.<sup>69</sup> This ‘higher value added product’ can create more employment and generate higher income distribution to the local producers.<sup>70</sup> Doi Tung development project is therefore considered as a

<sup>64</sup>Folkeson (n 62) 89.

<sup>65</sup>ibid.

<sup>66</sup>DoiTung, ‘DoiTung Coffee’ <[http://www.doitung.org/cafe\\_journey.php](http://www.doitung.org/cafe_journey.php)> accessed 4 July 2017.

<sup>67</sup>Food and Agriculture Organization of the United Nations (FAO), European Commission (EC), and Department of Intellectual Property (DIP), ‘Rural Development and Agrifood Product Quality Linked to Geographical Origin in Asia’ (Proceedings from the Technical Consultation, 8-10 June 2009, Bangkok) 11 <<http://www.fao.org/fileadmin/templates/olq/documents/Bangkok/ProceedingsQualityoriginAsiaFinal.pdf>> accessed 16 April 2017.

<sup>68</sup>DoiTung, ‘Coffee’ <[http://www.doitung.org/sald\\_economic\\_coffee.php](http://www.doitung.org/sald_economic_coffee.php)> accessed 4 July 2017.

<sup>69</sup>See Christopher Heath, ‘How Would Geographical Indications from Asia Fare in Europe?’ in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 186.

<sup>70</sup>See Food and Agriculture Organization of the United Nations (FAO), European Commission (EC), and Department of Intellectual Property (DIP) (n 67) 11; Wassana Suwanvijit and Sompong Promsasad ‘Adding Value to Thailand Robusta Coffee through Geographical Indication’ (The IAFOR International Conference on the Social Sciences, 5-7 January 2017, Hawaii).



model for sustainable development and has been adopted by other countries such as Myanmar, Afghanistan, and Indonesia.<sup>71</sup> It clearly demonstrates the role of GI as a rural development mechanism.

However, its benefits as a tool for enhancing market access might not be instantaneous. Significant amounts of investment from developing countries' producers are required in order to break into the international market that is controlled by EU producers. Thailand, though, is enthusiastic in using GIs to make its products recognised in the EU market. It was opined that although GIs were admitted by the EU consumers to be a differentiation tool, more awareness of Thai GI products is deemed necessary for the success in the EU market. Since EU consumers are not familiar with Thai GI products, it might be the case that GI cannot add value to Thai GI products because of insufficient knowledge held by consumers.<sup>72</sup> Consumers cannot differentiate Thai GI products from other similar products in terms of taste and quality.<sup>73</sup> Therefore, the GI product alone cannot contribute to the success, and sufficient information, traceability systems and marketing strategies are essential for Thai GI products in the EU market.<sup>74</sup> This demonstrates that the protection of GIs can provide opportunity for the producers from the countries in the developing world to enter the international market. However, the benefits from enhanced market access and a wider consumer base might not be immediately obtained. Successfully obtaining GI protection in foreign countries, particularly in the EU, is considered as the beginning step rather than the final point of utilising the international market access opportunities. More action is yet required.

It can be seen that GIs may be used as a tool to promote economic development in the developing world. However, all the positive impact of utilising GI protection are not automatic. In order to fully reap the benefits of GI protection, a well-developed GI regime is necessary. Since some ASEAN members, particularly

<sup>71</sup>The Government Public Relations Department, 'Doi Tung Development Project: A Model for Sustainable Development' <[http://thailand.prd.go.th/ewt\\_news.php?nid=2753&filename=index](http://thailand.prd.go.th/ewt_news.php?nid=2753&filename=index)> accessed 18 April 2017.

<sup>72</sup>Rungsaran Wongprawmas and others, 'Gatekeepers' Perceptions of Thai Geographical Indication Products in Europe' (2012) 24 Journal of International Food & Agribusiness Marketing 185, 191.

<sup>73</sup>ibid 192.

<sup>74</sup>ibid.

Myanmar are still at the early stages in developing their GI protection, it would take some time before the benefits of the commercialisation of GIs will be apparent. Therefore, ASEAN's priority task should be ensuring that all the member states have an appropriate GI protection. To achieve this goal, there are major factors that should be considered as follows:

Firstly, it should be ensured that all of the ASEAN members can comply with TRIPs obligations. Fully complying would help approximate national IP laws of the ASEAN members with international standards, and thereby ensuring adequate and effective GI protection. However, due to the lack of sufficient IP administrative capacity and infrastructure in some member states, particularly the ASEAN least developed members, complying with TRIPs obligations could be burdensome. Therefore, more assistance from other ASEAN members and external partners would be necessary. Regarding internal cooperation, Thailand and Vietnam, as the highly experienced countries in GIs, should act as an internal assistant in accordance with ASEAN-help-ASEAN approach. Their experiences and success in developing GI regimes and registering GI products internationally can be considered as a point of reference and incentive for other ASEAN countries to follow. Concerning cooperation between ASEAN members and external partners, the EU can be considered as the most committed partner in this area. Significant achievements on IP cooperation have been made through the ECAP project, which continues to provide strong support to ASEAN, enhancing IP protection and harmonisation in many areas, including GIs. With assistance from the EU, IP laws in the ASEAN members, particularly least developed members will become more in line with international standards. This will also contribute to an enhancement of IP administrative capacity and infrastructure. By having continuous assistance from the external partners, particularly the EU, ASEAN countries would obtain benefits through transfer of knowledge and expertise in GI protections, resulting in enhancement of GI protections.

Secondly, an appropriate level of GI protection should be pursued. Unlike other areas of IP rights, TRIPs-plus protection in the area of GIs has the potential to provide a positive impact on the economic development of developing countries. In most cases, implementing TRIPs-plus standards in IP systems of the ASEAN members, particularly developing and least developed countries while they still



struggle to comply with TRIPs, tends to provide drawbacks rather than benefits. Nevertheless, GI protection could be an exception. Given most of the ASEAN countries are not wine and spirit producing countries, extending a higher level of GI protection under TRIPs to other GI products would be more beneficial to them. Since the majority of ASEAN countries are agro-based economies, most of their GIs are related to agricultural and food products, as well as handicrafts. Extending the level of GI protection beyond TRIPs would therefore enhance the opportunities to utilise GI as a tool to promote economic development.

Lastly, a regional GI system with unitary effect should be developed. Since most of the ASEAN countries are rich in natural resources and traditional knowledge that can be transformed into products with distinctive quality, the creation of a regional GI system should be developed in order to promote the commercialisation of GIs. Having an effective regional GI system would add economic value to local products and open international markets to them. By having the unitary GI system operating alongside national GI systems, it can provide alternatives to the applicants who would like to obtain GI protections in all ASEAN countries through the filing of a single application. This could help applicants save both costs and time in filing separate applications in each member state. Therefore, an ASEAN-wide GI system would be a good alternative for business owners, who would like operate their business at regional level. Moreover, by establishing a centralised regional GI registration system, which provides harmonised rules governing both the granting and enforcement of rights, it could provide more legal certainty and predictability to both applicants and right holders. An application would be examined and decided based on the centralised procedures and criteria, and the rights granted would be enforceable throughout the ASEAN. However, given the disparity in socio-economic development and IP protection between the member states, harmonising IP laws and creating a regional IP system is not an easy task. Although it is desirable, it cannot be achieved within a short period of time. Consequently, a regional GI system should be incrementally developed by taking into account readiness and capacity of the member states, as well as its overall impact.<sup>75</sup>

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<sup>75</sup>See Archariya Wongburanavart, 'A Harmonisation of Intellectual Property in EU and ASEAN' (PhD Thesis, Durham University 2016).

## Conclusion

There are possible economic benefits, particularly for the countries in the developing world, emerging from the protection of GIs. It has been proven that this can be used as a tool to promote economic development through its role in supporting rural development and enhancing access to international markets. Given the majority of ASEAN countries are developing countries that are rich in biodiversity and traditional knowledge generated and transmitted from generation to generation, GI represents an excellent opportunity for ASEAN to promote their products in the international market. However, the benefits of GIs, particularly those that contribute to economic development cannot be immediately obtained. Since GI regimes of some ASEAN countries, particularly the least developed countries, are still at an early development stage, it would take more time before the benefits will arise. Therefore, to fully reap the benefits, an adequate and effective GI regime is deemed necessary. To achieve this goal, more intense cooperation between the member states, and that between the member states and external partners, is required. Furthermore, since the majority of ASEAN countries are agro-based economies, the possibility of extending a higher level of protection, as accorded to wine and spirits, to other products, should be seriously addressed. The prospect of using this as a request under trade negotiations at bilateral, regional and multilateral levels should be explored. Lastly, in order to promote the commercialisation of GIs, a regional GI system with unitary effect should be incrementally developed by taking into account all relevant circumstances. Without these actions, the benefit of using GI as a tool to promote economic development in ASEAN may not be fully attainable.