

Geographical Indications in Laos: A Boon for Local Producers and Investors?

Dino Santaniello
Consultant
dino.s@tilleke.com

The Ministry of Science and Technology (MOST) in Laos has, at long last, issued a decision on the Implementation of Geographical Indications under the Law on Intellectual Property No. 1119/MOST, dated October 25, 2016. The decision allows both local and foreign geographical indications (GIs) to be registered in Laos, and it outlines a number of matters concerning GIs that had not previously been included in the Law on Intellectual Property No. 01/MOST of 2011, such as registration processes and remedies.

Background

A GI is a sign used on a product that has a specific geographical origin and quality, or a reputation derived from that origin. The Food and Agriculture Organization of the United Nations (FAO) and the Agence Française de Développement (AFD), both of which are international organizations focused on alleviating poverty, are assisting Laos to implement a legal framework for GIs.

The FAO and the AFD were closely involved in drafting the decision, and in shaping guidelines used to prepare a book of specifications which sets out standards to efficiently implement a GI framework and guarantee that products under a GI certification meet sufficiently high standards of quality in order to be compliant with global GI standards.

The Asian Development Bank (ADB) has also contributed to Laos' GI framework. The ADB has conducted a study on the feasibility of GIs in Laos and has advocated the benefits that GIs have on local communities. The ADB's support has been welcomed as a part of a larger scheme to help and support the development of SMEs in the country through programs such as the Support for Post-Private Sector and the Small and Medium-Sized Enterprises Development Program Partnership Framework. Accordingly, the ADB has provided technical assistance to enhance and support the national SME strategy and has helped train GI experts.

In a country where economic growth is highly dependent on natural resources, Laos is looking to diversify. The Lao government has recognized GIs as a way to promote local products with a certification trusted worldwide, and thus bolster exports and fuel economic growth.

Requirements to Register GIs

Under Articles 6 and 7 of MOST's decision, "producer groups, operators, institutions, and/or interested persons" that want to apply to register a GI must establish a GI association. The association is responsible for ensuring that all of its members follow and comply with the book of specifications. In addition, the association has to inform the Lao Department of Intellectual Property (DIP) of any change in the list of producers/operators of the GIs, protect and valorize GIs, and implement any regulation relating to GIs. The DIP has the authority to examine and approve the registration of GIs.

The decision also allows a single producer/operator, either an individual or a legal entity, to register its product(s) and receive a GI certification after going through the application process. The decision states, however, that this represents only a very few "exceptional cases."

Article 10 of the decision sets out a list of documents and other requirements that must be provided and fulfilled in order to register a GI with the DIP. The requirements are as follows:

- Geographical indication application form;
- Name of the geographical indication;
- Name and address of the applicant;
- Name and address of the representative and a power of attorney, if the application is filed through a representative;
- Type of goods covered by the geographical indication application;
- Book of specifications;
- Summary of the book of specifications;
- Receipt of payment of fee and service fee;
- Any other relevant documents in relation to the geographical indication application.

In the case of registering a foreign GI, the applicant has to substantiate and verify that the foreign GI is currently protected in its country of origin. The term of protection for GIs is unlimited and commences from the filing date, which is determined as the date of submission of the complete set of documents above, and when payment of the fee and service fee is completed.

Once the application has been submitted, the DIP will conduct a preliminary examination of the application within 60 days of the filing date. If the application fulfills all of the requirements, the DIP will issue an acknowledgment to the applicant. If not all of the requirements have been fulfilled, the DIP will notify the applicant through a letter, detailing any points that need to be corrected.

After preliminary examination, substantive examination may take place. This includes, among other things, extensive research on the product's origin and particulars, its reputation, whether any other existing GIs can be identified, or whether there are similarities to prior-registered trademarks.

If the DIP deems that the application complies with all of the requirements, the DIP will proceed to the next step of registering the GI. If the substantive examination requirements have not been met, a notification will be sent to the applicant, who will have 90 days to respond to the DIP's request for further clarification or modification.

Amendments to an application may be allowed during the application period. It is possible to make these amendments without incurring a fee if the amendments are minor. Under Article 17 of the decision, minor amendments do not include:

- Introducing new goods to the application;
- Changes that relate to the essential characteristics or nature of the product;
- Altering the "link" referred to in the book of specifications (i.e., any "details establishing the link between a given quality, the reputation or other characteristic of the product and the geographical origin");
- Changes to the name, or to any part of the name, of the product;
- Changes that affect the defined geographical area; or
- Changes that increase restrictions on trade in the product or its raw materials.

The application can be made with English-language documents. However, these documents will need to be translated within 90 days of the date of the submission of the application. Therefore, applicants should bear in mind additional cost incurred by said translation.

When the registration process is complete, the GI will be registered and published in the *Industrial Property Gazette*, and a certificate will be issued to the applicant—all in this order.

For local GIs, it may take 12 to 18 months from the filing date to the issuance of the GI certificate. For foreign GIs, this duration may differ, depending on whether the GI has been previously registered in a country with which Laos has signed a Memorandum of Understanding in order to specifically ease and speed up the examination process.

To date, Laos has signed a Memorandum of Understanding with Cambodia, Vietnam, Japan, and Singapore. If an applicant has proof that its GI has been registered in one of these countries, a certificate may be issued in a shorter amount of time—possibly one to three months.

Looking Forward

Laos has developed a strategic plan in support of GIs, which sets out objectives until the year 2025. The plan aims to: (1) develop a more affluent socioeconomic middle-class populace; (2) uplift rural areas that do not yet take part in or benefit enough from the country's current inflow of foreign direct investment; and (3) foster a more sustainable economy.

Laos is currently carrying out surveys to identify local products that could be suitable for GI certification and facilitating easier access to credit, in order to allow local producers to register their local GIs abroad. This process is in its very early stages and the government has

yet to provide further clarification, but it appears to be a step in the right direction in terms of positioning Lao products in the international market and supporting local producers.

The Lao government has demonstrated its commitment to protecting and promoting IP assets not only through GIs, but also through international commitments like the Madrid Protocol, which entered into force in Laos on March 7, 2016. This has sent a positive signal to investors, which has bolstered Laos' reputation as an attractive destination for investment. It may take some time, however, before local producers become aware of the potential boon that GIs offer.

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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