

Unofficial translation

Law

on

Geographical Indications



Translation provided by the FAO-AFD Project on the Promotion of Rural Development of Geographical Indications at Regional Level in Asia.

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Chapter 1

General Provision

Article 1: Purpose

The purpose of this law is to protect consumers and the intellectual property rights of producers and operators, in addition to preserving and strengthening the traditional know-how, national identity and to reduce poverty.

Article 2: Objective

The objective of this law is to manage, register, recognize and protect geographical indications in the Kingdom of Cambodia.

Article 3: Scope

Pursuant to the provisions of this law, agricultural goods, foodstuffs, handicraft goods or any other goods produced in the geographical area or transformed shall be under the scope of geographical indication registration and protection in the Kingdom of Cambodia.

Article 4: Definition

In this Law:

“Controls” refer to internal and external controls. Controls refer to the verification of the compliance of products with the book of specifications by the geographical indication association and certification body or designated authorities;

“Use of geographical indication” refers to offer for sale, production, sale, export or import of geographical indication goods;

“Evocation” refers to a situation where the term or sign used to designate a product incorporates into part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product of which the designation is protected;

“Reputation” refers to the product and its name that are widely known in the sector of production or trade or in the use of related goods;

“Comparable goods” refer to any goods which are connected by their nature, destination or similar use;

“Geographical Indication goods” refer to the registered geographical indication goods;

“Generic” refers to the name which is generally known as the designation of any kind of goods;

“Opposition” refers to opposition against the registration of a geographical indication by any interested person;

“Appeal” refers to an appeal against the final decision of the Ministry of Commerce or the Geographical Indication Board;

“Operator” refers to any person involved in the process of purchasing, transforming, trading or distributing geographical indication goods;

“Official Gazette” refers to the official gazette of the Ministry of Commerce;

“Mark” is any visible sign capable of distinguishing the goods or services of an enterprise;

“Geographical Indication” refers to a distinctive name, symbol and/or any other sign which is a name or represents a geographical origin and identifies the goods as originating in such geographical area where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin;

“Hearing” refers to a dispute resolution meeting of registrar before making decision on any opposition by opponent;

“Counter-statement” refers to a submission of any arguments and evidences of one party against another party’s statement;

“Book of Specifications” refers to a document, specifying the production geographical area, production conditions and the quality control process of geographical indication goods, which is compiled by the applicant;

“Certification Body” refers to a public institution or a private organization issuing a certificate of compliance with the book of specifications.

Chapter 2: Competent Authority

Article 5: Duties of the Ministry of Commerce

The Ministry of Commerce shall be entrusted with all functions such as the administration, maintenance and registration of geographical indications in the Kingdom of Cambodia.

Article 6: Geographical Indication Board

A Geographical Indication Board shall be established with the purpose of studying and promoting potential products eligible for geographical indication registration in the Kingdom of Cambodia and dealing with any appeal against the registration of a geographical indication.

The establishing and functioning of the Geographical Indication Board shall be determined by Sub-decree.

Chapter 3 Procedure for Geographical Indication Registration

Section I: Applicant and Filing Application

Article 7: Applicant

A Geographical Indication Association or producers group, producers and/or operators organization, which may benefit from the geographical indication, shall be entitled to file an application for registration.

Cambodian geographical indication registration shall be filed by a Geographical Indication Association. The applicant shall be the owner of the geographical indication after registration.

Producer groups, operators, institutions, and/or interested persons intending to apply for the registration of a Cambodian geographical indication shall form a Geographical Indication Association based on a geographical area and a specific type of goods and shall discharge their statutory responsibility to administer and function, on a non-profit basis. The Membership of a Geographical Indication Association shall be open. The Association shall be recognized by competent authorities. The statute of the Geographical Indication Association shall be deposited at the Ministry of Commerce. The Association shall ensure that its members comply with the book of specifications and other obligations designated by laws and regulations.

Article 8: Filing Applications

The application for geographical indication registration shall be filed with the Ministry of Commerce accompanied with the book of specifications and other related documents. The application form, book of specifications, sample and other related documents for registration shall be determined by Prakas (Ministerial Declaration) of the Minister of Commerce.

Section II: Procedure for Examination

Article 9: Application Check

The Ministry of Commerce shall check the application and notify within forty five days from the filing date of the application.

When the application duly fulfills the requirements, the Ministry of Commerce shall officially issue an acknowledgement of application.

In case the application does not fulfill the requirements, the Ministry of Commerce shall issue a letter to the applicant specifying the points to be added or adjusted. The applicant may add or adjust the application within six (6) months from the date of the notification. The application shall be deemed to have been abandoned if there is no addition or adjustment or response or positive explanation within the aforesaid period. At the reasonable request of the applicant, the Ministry of Commerce may provide an extension for another six (6) months.

The Ministry of Commerce shall check the added or adjusted documents and respond within forty five days from the date of receiving those documents.

Article 10: Geographical Indication Unable to be Registered

A geographical indication cannot be validly registered:

- a. If it is contrary to laws and regulations, morality, religion, good custom or public order;
- b. If it is likely to mislead or confuse the public with respect to the characteristics, the nature, the quality, the place of origin, the production process of the goods and/or its use;
- c. If it is used as a name of a plant variety or animal breed;
- d. If it is a generic term;

Article 11: Substantive Examination of Application

The Ministry of Commerce shall conduct a substantive examination of the application as follows:

1. The accuracy of the detailed information in the application defined in the Article 7 and Article 8 of this law;
2. Any points prescribed in the definition of geographical indications in Article 4 and Article 10 of this law;
3. The actual production site for Cambodian geographical indications;
4. In the case of homonymous geographical indications, in compliance with the conditions set by the Ministry of Commerce.

In the course of the substantive examination of an application, the Ministry of Commerce may invite the applicant or any interested person to provide additional explanation or evidence. The Ministry of Commerce may seek advice from experts in related fields and if needed take this advice into consideration when making its decision.

Article 12: Registration and Publication in the Official Gazette

The Ministry of Commerce shall register and issue a certificate to the applicant, following the examination of an application which has fulfilled the requirements of this Law;

After it is registered, the Ministry of Commerce shall publish the geographical indication registration in the Official Gazette in order for any interested person to be able to oppose the registration.

Article 13: Correction of the Record

Pursuant to this law or regulations, the Ministry of Commerce may correct any mistakes in the record.

Article 14: National Logo for Certifying Geographical Indication Goods

The Ministry of Commerce shall constitute a National Logo to certify all registered geographical indication goods in the Kingdom of Cambodia.

Section III: Opposition

Article 15: Duration of Opposition

Within 90 (ninety) days from the publication date of the registration as provided in Article 12 of this law, any interested person may oppose the geographical indication registration to the Ministry of Commerce.

Article 16: Opposition Conditions

The grounds for opposition against the geographical indication registration are:

- a. Non-compliance with the definitions relating to geographical indication within Article 4 of this law.
- b. That the registered geographical indication is not able to be registered as a geographical indication as stated in Article 10 of this law and regulations.

Article 17: Opposition Procedure

The Ministry of Commerce shall notify the applicant of the opposition in writing. The applicant shall submit a counter-statement within 45 days from the notification date. At the request of applicant, the Ministry of Commerce may provide an extension for another 45 days;

The Ministry of Commerce shall notify its decision and the reason for its decision to the applicant and the opponent;

The decision of the Ministry of Commerce can be the subject of appeal by applicant and/or opponent according to Article 18 of this law;

If needed or at the request of any party, the Ministry of Commerce shall organize a hearing of the opposition.

The decision relating to the opposition shall be published in the Official Gazette.

The detail of opposition procedures shall be determined by Prakas of Minister of Commerce.

Chapter 4

Appeal

Article 18: Rights and Duration of Appeal

Any interested person may appeal to the Geographical Indication Board or to the competent courts against the decision of the Ministry of Commerce;

Any interested person may appeal to the competent courts against the decision of the Geographical Indication Board;

The appeal shall be lodged within 90 (ninety) days from the date of receiving notification of the decision;

The appeal decision of the Geographical Indication Board shall be published in the Official Gazette and publicized.

Chapter 5

Registration of Foreign Geographical Indication

Article 19: Requirements of Foreign Geographical Indication Registration

A foreign geographical indication shall be registered as long as the foreign geographical indication is registered in accordance with the local provision in its country of origin;

The Ministry of Commerce shall not allow the registration of a foreign geographical indication which is not or has ceased to be protected in its country of origin or which has fallen into disuse in that country;

The Ministry of Commerce may register a foreign geographical indication only if the application is made by legal agent, administrative representative or foreign representative as defined in Chapter 11 of this law.

Article 20: Procedure for Foreign Geographical Indication Registration

The application for a foreign geographical indication registration shall be filed with the Ministry of Commerce;

Provisions defined in Article 7, Article 8, Article 9, Article 10, Article 11, Article 12 and Article 13 of this law shall be applied to the foreign geographical indication registration procedure.

After an application has been filed, the Ministry of Commerce shall order an applicant to submit any subsequent foreign registration information which may affect the registration in the Kingdom of Cambodia.

Article 21: Opposition and Appeal of Foreign Geographical Indication

The provisions concerning the duration, conditions and procedures of opposition and appeal contained within this Law shall apply to foreign geographical indications.

Chapter 6: Effect of Registration

Article 22: Rights Conferred

When a geographical indication is registered at the Ministry of Commerce, in accordance with the provisions of this Law, members of Geographical Indications Association, producers and/or operators, who comply with the book of specifications, are authorized to use the registered geographical indication. These rights shall not be transferable.

The owner of a geographical indication shall have the right to institute a complaint to the competent courts either against any person who used its geographical indication without authorization or against any member of Geographical Indication Association who infringed a geographical indication as provided for in Article 23 of this law.

The rights conferred by registration of a geographical indication shall not extend to acts in respect of goods which have been put on the market in the Kingdom of Cambodia by the registered owner or with his consent.

Article 23: Protection of Cambodian and Foreign Geographical Indication

The Cambodian and foreign geographical indications registered in the Kingdom of Cambodia shall be protected against any:

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

Article 24: Duration of Protection

The registration of geographical indication shall be valid from the date of the filing of the application provided that its registration is not cancelled or invalidated according to this Law.

Article 25: Acknowledgment of Registration

The geographical indication duly registered prior to this Law coming into force shall be valid.

Chapter 7

Control Compliance of Book of Specifications in Geographical Indication Registration

Article 26: Compliance Control

The applicant may select a certification body or control body which is legally registered in the Kingdom of Cambodia and approved by the Ministry of Commerce. The certification body or control body is a competent and impartial public or private certification body both accredited according to the International Standard Organization or any organization which has reliable control system.

To verify the effective compliance after registration, the Ministry of Commerce may invite the owner or interested person to provide additional explanation or evidence. The Ministry of

Commerce may request advice from experts in related fields in order to consider and reach a decision if needed.

The certification body or control body shall ensure the verification of the compliance of goods with the book of specifications. The certification body or control body shall send an annual report to the Department of Intellectual Property Rights every year including a list of certified producers, operators, products, quantities and measures taken if any. The Ministry of Commerce shall determine the date of the report based on the harvest season or the end of calendar year. Any documents other than Khmer language shall be translated into Khmer with the confirmation of the correct translation.

In the case of non-compliance with the book of specifications by any producers or operators, the certification body or the control body shall report to the Ministry of Commerce appropriate measures and sanctions as follows:

- 1)- Remarks and advice;
- 2)- Warning;
- 3)- Disqualify operator or producer for any lot of his products;
- 4)- Temporary revocation of the operator or producer rights from using the geographical indication;
- 5)- Definitive revocation of the operator or producer rights from using the geographical indication.

The Geographical Indication Association shall comply with the decision of the Ministry of Commerce.

The Geographical Indication Association shall report to the Ministry of Commerce on the implementation of the measures.

Article 27: Efficiency of the Certification Body

The Ministry of Commerce shall verify the efficiency of the certification body or control body. In case of inefficiency, the Ministry of Commerce is authorized to deny the certification of body or control body by outlining the evidence in writing and may order the applicant to select a new certification body or control body.

If necessary, the Ministry of Commerce shall define additional regulations for controls after geographical indication registration.

Chapter 8

Amendment, Invalidation and Cancellation of Geographical Indication Registration

Article 28: Amendment

After registration, the owner may request for the book of specifications to be amended, particularly the elements related to the development of technologies and sciences and the delimitation of the geographical area.

Any interested person may request the Ministry of Commerce to amend the registration and/or book of specifications;

The amendment of the book of specifications shall be made if it does not vitally affect the decision of geographical indication registration.

Article 29: Grounds for Invalidation and Cancellation of Geographical Indication Registration

Any interested person may transmit his/her observation to the Ministry of Commerce to advise the geographical indication association.

Any interested person may request the Ministry of Commerce to invalidate or cancel the geographical indication registration.

The Ministry of Commerce shall invalidate the registration if:

1. any condition of Article 4 of geographical indication definition, Article 7 and Article 10 of this law is not fulfilled;
2. it is convinced upon the evidence that the owner of the registered geographical indication is not the legitimate owner;

The Ministry of Commerce shall cancel the registered geographical indication if:

1. the owner of the registered geographical indication requests cancellation;
2. the goods of registered geographical indication lose their special characteristic as geographical indication goods;
3. the owner does not respect and fails to follow the requirements in the application;
4. foreign geographical indication which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country;
5. The address for service in the Kingdom of Cambodia for the owner cannot be contacted at least 3 times by all means within 3 months;
6. The owner of the registered geographical indication has not complied with the requirements of the supporting documents as prescribed in Article 17 of this law,
7. The owner acts against the law and regulations related to geographical indication.

Article 30: Effect of Invalidation and Cancellation of Registration

The Ministry of Commerce shall examine the observation for invalidation or cancellation by verifying the facts and evaluate the same in order to make a decision to confirm, amend or cancel the geographical indication based on this law and regulations.

The procedure on confirmation, amendment or cancellation of geographical indication shall be defined by the Prakas of the Minister of Commerce.

The invalidation of geographical indication registration shall be deemed to have been effective from the date of registration.

The cancellation of geographical indication registration shall be deemed to have been effective from the date of the decision.

All invalidations and cancellations of geographical indication registration shall be recorded and published in the Official Gazette and be publicized immediately.

Chapter 9

Geographical Indication and Recognition or Rejection of Mark

Article 31: Geographical Indication and Mark

The Ministry of Commerce shall refuse any application for registration of a mark which is identical with or confusingly similar to a geographical indication which applied before the filing date of application for mark registration as defined in the Article 23 of this law;

Where a geographical indication is definitely registered in accordance with this law, the application for registration of a mark corresponding to one of the situations defined in Article 23 and relating to the same type of goods shall be refused;

The Ministry of Commerce shall refuse any application for renewal of a mark if it contradicts the provision under Article 23 of this law. The decision of refusal shall be initially taken by the Ministry of Commerce or at the request of any interested person;

The use of a mark corresponding to one of the situations defined in Article 23, and which has been registered, in good faith, before either the date of protection of the geographical indication or the filing date of the application for geographical indication registration in the Kingdom of Cambodia, the mark may continue to be used if there are no grounds for invalidation.

Chapter 10

Provisional Measures and Border Measures

Article 32: Implementation of the Provisional Measures and Border Measures

The provisions of the provisional measures and border measures as prescribed in the “Law on Marks, Trade Names, and Acts of Unfair Competition”, and any regulations related to the provisional measures and the border measures shall be also applied for geographical indications.

Chapter 11

Agent

Article 33: Agent

Where an applicant’s permanent residence or principal place of business is outside the Kingdom of Cambodia, the applicant shall be represented by an agent residing and practicing his business in the Kingdom of Cambodia.

Article 34: Qualification

The agent acting as representative of the applicant in the application for a geographical indication registration in the Kingdom of Cambodia shall fulfill sufficient qualification as specified in the

Declaration on Trademark Legal Agent (Prakas) of the Ministry of Commerce in the Kingdom of Cambodia.

Chapter 12

Regulations and Administrative Instructions

Article 35: Regulations for Implementation

The Minister of Commerce shall define the detail of necessary regulations to implement this Law.

The applicant for geographical indication shall pay the administration fee for geographical indication registration and related fees which shall be defined by the joined Prakas of the Minister of Economic and Finance and the Minister of Commerce.

Chapter 13

Application of International Treaties and Interpretation

Article 36: Application

The provisions of any international treaties in respect of the geographical indications, to which the Kingdom of Cambodia is a party, shall apply to matters dealt with by this Law.

In case of conflict with provisions of this Law, the provisions of any international treaties shall be considered as principal provisions.

Chapter 14

Detention and Confiscation

Article 37: Detention and Confiscation

The competent courts shall have the authority to order the detention of the goods if there is suspicion that the goods are infringing the rights of the owner.

The provision of the first paragraph shall also apply to the materials and core equipment if there is any suspicion they are used in the production of goods to infringe the rights of the owner.

The infringing goods which are imported, exported, sold or offered for sale shall be confiscated by the competent authorities through the courts' decision whether or not anyone has been convicted of the offence.

Chapter 15

Penalties

Article 38: Offences of Counterfeiting Geographical Indication

Offenders shall be liable to imprisonment from one to five years and to a fine of two million to twenty million Riels for the following offences:

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

Article 39: Criminal Responsibilities of a Legal Entity

Any legal entity shall be declared for criminal responsibilities as described in Article 42 (Criminal Responsibilities of a Legal Entity) of the Criminal Code for the offence defined in Article 38 (Offenses of Counterfeiting Geographical Indication) above.

A legal entity shall be fined from twenty million to fifty million Riels and additionally may be subjected to one or more of the following penalties:

1. The dissolution defined in the Article 170 (Dissolution and Liquidation of Legal Entities) of the criminal code.
2. Placement under the Court Surveillance defined in the Article 171 (Placement under the Court Surveillance) of the criminal code.
3. One or more of the prohibitions against pursuing Activities defined in the Article 172 (Prohibition against Pursuing Activities) of the criminal code.
4. Expulsions from Public Market Places defined in the Article 173 (Expulsion from Public Market Places) of the criminal code.
5. Confiscation of objects or funds which are the subject of the offence defined in the Article 178 (Confiscation of Ownership, Selling and Destroying Confiscated Objects) and Article 179 (Confiscation and the Rights of the Third Party) of the criminal code.
6. Confiscation of revenue or assets resulting from the offence defined in the Article 178 (Confiscation of Ownership, Selling and Destroying Confiscated Objects) and Article 179 (Confiscation and the Rights of the Third Party) of the criminal code.
7. Posting the decision of the penalties defined in the Article 180 (Posting the Decisions) of the criminal code.
8. Broadcasting of the decision of the penalties in the press or other publication defined in the Article 181 (Broadcasting of Decision by means of Audio-Visual Communications) of the criminal code.

Chapter 16 Transitional Provision

Article 40: Transitional Provision

The regulations which are in force shall be in effect until the replacement by new regulations.

Chapter 17

Final Provision

Article 41: Null and Void

Upon this law coming into force, any provision of other laws in effect which are in contradiction to any provision of this law shall be considered as null and void only within the scope of the contradiction of this law from the date of promulgating this law.

Done at the Royal Palace, January 20, 2014

Royal Signature and Preah Reach Stamp
NORODOM SIHAMONI

Has informed to
His Majesty the King for Royal Signature
Prime Minister
Signature
Samdech Akak Mohasena Decho HUN SEN

Has informed to
Samdech Akak Mohasena Decho HUN SEN, Prime Minister
Senior Minister, Minister of Commerce
Signature
SUN CHANTHOL