

THAILAND'S GEOGRAPHICAL INDICATION ACT: A SUMMARY

By: [Vipa Chuenjaipanich](#) and [Edward J. Kelly](#)

Tilleke & Gibbins International Ltd.

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Introduction

Thailand has been preparing its own policy for the protection of geographical indications to prevent general public confusion or deception as to the geographic source of goods. The said policy is in compliance with Thailand's commitment under Articles 22-24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in the Annex on the Establishment of the World Trade Organization. As existing Thai legislation is not adequate to support such policy of protection and commitment, Thailand is in the process of enacting a new law that specially provides protection for geographical indications to ensure such protection and to comply with the TRIPs Agreement. The Department of Intellectual Property (DIP) has completed the draft Geographical Indication Act, which is now under the consideration of Parliament. The bill was passed by the House in September 2002 and by the Senate in November 2002. To become law, the bill requires Royal Assent which should occur in early 2003. To be completely effective and enforceable, the new Act will require Ministerial Regulations to implement the Act. The Ministerial Regulations will follow Royal Assent. There is no timetable for passage of Ministerial Regulations. This could either take months or more than a year. For example, the Plant Variety Protection Act was passed and approved into law more than a year ago, but to date, no Ministerial Regulations have been passed for implementation of the Act.

The bill is controversial in Thailand as some advocates contend that the law will not adequately protect what they consider indigenous products such as Thai rice varieties, food, silk, traditional medicine, and traditional massage.

Definition

"Geographical indication" means a name, symbol, or any other thing used to call or represent a geographic source, that identifies goods as originating from a geographic source where a quality, reputation, or specific characteristic of the goods is attributable to that geographic source.

Registrable Geographical Indications

To receive protection under the Act, a geographical indication must be registered with the DIP. A geographical indication must not be:

- ◆ a generic name for goods used with such geographical indication; or
- ◆ contrary to peace and order, good public morality, or national policy.

A geographical indication from another country, which is not protected under the law of that country or is no longer used in that country, is unregistrable under this Act.

Who Can Apply for Registration?

The following persons are entitled to apply for registration of a geographical indication.

- ◆ An ordinary person, a group of persons or juristic person whose business is in goods used with the geographical indication and domicile in the geographic source of such goods.
- ◆ A consumer group or consumer organization for goods used with the geographical indication.
- ◆ A government agency, state work unit, government enterprise, local government, or other state organization with juristic status in the geographic source of goods used with the geographical indication.

Any person who is not a Thai national wishing to apply for registration of a foreign geographical indication in Thailand must possess one of the following qualifications:

- ◆ He/she must be a national of a country which is a party to an international convention or treaty for the protection of geographical indications to which Thailand is also a party.
- ◆ He/she must be domiciled or have an actual operating business enterprise in Thailand or a country which is a party to an international convention or treaty for the protection of geographical indications to which Thailand is also a party.

Procedures

An application to register a geographical indication must at least contain details relating to the quality, reputation, or any characteristic of the said goods as prescribed in the Ministerial Regulations.

If an application for registration is not in accordance with the rules prescribed under the Act, the Registrar of the DIP will order dismissal of the application. The applicant is entitled to appeal to the Board of Geographical Indications within 90 days from receipt of the order. When the Board has ruled and the applicant is not satisfied with the decision, he is entitled to appeal to the Intellectual Property and International Trade court (IP/IT court) within 90 days from receipt of such decision. If legal proceedings are not instituted within the said period, the decision of the Board is final.

If the application is in accordance with the rules prescribed under the Act and the Registrar is of the opinion that the geographical indication is registrable, either with or without conditions, he will order the publication of acceptance for registration for opposition purposes. . Within 90 days after the publication date, any interested person may lodge an objection against the registration of the geographical indication. The applicant shall file a counterstatement within 90 days from the date of receipt of the objection, failing which the application shall be deemed abandoned. After the Registrar has issued a ruling, a notice of the order will be sent to both the applicant and the objector. Both parties are entitled to appeal to the Board against the Registrar 's order within 90 days from the date of receipt of the order. When the Board has made a decision and either party is dissatisfied with the decision, they are entitled to appeal to the IP/IT court within 90 days from receipt of the decision. If legal proceedings are not instituted within the said period, the Board's decision is final.

Term of Protection

Protection of a geographical indication becomes effective from the filing date of the application for registration..

Change or Cancellation of Registration

Any interested person or the competent official may request the Registrar to seek an order from the Board to change or cancel the registration of a geographical indication under the following circumstances:

- ◆ when after registration, there emerges reliable evidence showing that the application for registration or the registration had been wrongfully or covertly done or contained false information;
- ◆ when after registration, a change in circumstances takes place resulting in the geographical indication becoming a generic name or contrary to peace and order, good public morality or national policy, or the particulars related to the geographic source or other particulars changing from what had been registered earlier.

After the Board has made a decision to cancel or change the registration, any interested person dissatisfied with the Board's decision is entitled to appeal to the IP/IT Court within 90 days from receipt of the decision (this does not apply in the case of a registration being cancelled on the grounds that the geographical indication was contrary to peace and order, good public morality, or national policy). Legal proceedings must be instituted within the said period, otherwise the decision of the Board is final.

Use and Cancellation of Use of a Geographical Indication

Persons entitled to use a registered geographical indication shall be the manufacturers of the registered goods who are domiciled in the geographic source of the said goods, or entrepreneurs who engage in the trade of such goods.

Use of a registered geographical indication may be canceled when use is not in accordance with prescribed conditions and the Registrar has given notification but the person failed to comply within the prescribed period for no valid reason. The cancellation period will not exceed two years counting from the date of receipt of the notice.

The following acts are considered to be wrongful acts:

- Use of the registered geographical indication to mislead others into believing that goods not originating from the geographic source indicated in the application for registration, originate from the said geographic source; However, if the use as mentioned above has happened before the filing date of the application for registration, it is a faithful act.
- Use of the registered geographical indication to confuse or deceive others as to the geographic source of goods and their quality, reputation, or other characteristic in order to cause damage to another entrepreneur.
- Use of a geographical indication with goods listed as special goods in the Ministerial Regulations, whose geographic source is not the one indicated in the application for registration, even though the true geographic source of such goods has also been indicated. However, any person is entitled to use a geographical indication with special goods if he has been using it for a period of ten consecutive years before April 15, 1994, or has been using it in good faith before such date.

Penalties

◆ Any person who has committed a wrongful act as mentioned above, shall be liable to a fine not exceeding 200,000 Baht (about US\$4,878).