

Guideline for Improving Thai Geographical Indication for Entering ASEAN Economic Community

Thepparat Phimolsathien

Business School, King Mongkut's Institute of Technology Ladkrabang, Thailand

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Abstract:

Under the framework of the ASEAN Community Cooperation (ASEAN), Thailand and members of the ASEAN community have focused on the protection of geographical indication in which the Department of Intellectual Property, Ministry of Commerce of Thailand has joined other ASEAN member countries to establish the ASEAN Working Group on Intellectual Property (AWGIPC), which has conducted activities on geographical indication in promoting the status of Thailand as a leader in geographical indication protection in Southeast Asia. This is also in line with the action plan “ASEAN Intellectual Property Portfolios”, however, it should be noted that ten ASEAN countries have different ways to approach geographical indication protection as indicated in their organic law. For example, products those are protected under the Geographical Indication are also different and the protection system requires either registration or protected automatically. These conditions can obstruct the protection of GI products and services of Thailand and other ASEAN member countries. In this study, we recognized the limitation of the enforcement of geographical indication law in Thailand in the context of multiculturalism in ASEAN Community. This research aims to study the problems and obstacles of Thai Geographical Indication Protection Act 2003 in the ASEAN context, along with a comparative study of the geographical indication of ASEAN member states to present guidelines for improving the geographical indication law of Thailand.

Keywords: *Geographical Indication, ASEAN Economic Community, Intellectual Property Rights*

BACKGROUND AND SIGNIFICANT OF THE PROBLEM

Geographical Indication is one type of intellectual property protection which show the name, symbol, or other things that indicate the location of the product by being able to communicate to consumers that the product comes from particular location which reflect to the quality, production process, or special feature that are different from the product produced from other places and also promote knowledge protection in the form of production process. In the context of geographical indication, the right to use geographic name for the product is a community right or the right of a group of people in the locality or geographic area that produces the product. It can be said that people in the community can rely on the characteristics that exist in the natural geographic area, skills, expertise, and wisdom of the people who live in that geographic area for the production of their local products. At present, there are a total of 75 products registered as geographical indication (Geographical Indication: GI) in Thailand. In order to obtain a geographical indication, a community or a group must study the feasibility and collect all information considering the reputation of the product quality, certain characteristics, production methods, product links to geographic locations to request for the GI protection. When considering mentioned requirements, a draft registration request (Form Sor Nor Sor 01) and a manual of practice form must be drafted, then the Department of Intellectual Property will inspect and grant the registration in accordance with the Geographical

Indication Act 2003. Under such conditions and requirements, there are limitations can be found such as, there are many Thai products have not been registered Geographical Indication because of its name and if any member countries in the ASEAN have begun to register geographical indication, then the registration of food product in one country may have an impact on other countries because the cultures of ASEAN countries are similar and overlay. This can be seen that products in ASEAN country can be considered as products of multiculturalism. From this situation and above problems, this research foresees the implication of the enforcement of geographical indication law in Thailand in the context of multiculturalism and ASEAN Cooperation. This research aims to study the problems and obstacles of the Geographical Indication Protection Act 2003 in the ASEAN context along with a comparative study of the geographical indication among ASEAN member states in order to introduce guidelines for improvement the geographical indication laws of Thailand. The objectives of this research are (1) to study the problems and obstacles of Thailand's geographical indication law in the ASEAN region (2) to study and compare the geographical indication laws of ASEAN Member States (3) to propose guidelines for the improvement of geographical indication law in Thailand to promote the protection of intellectual property rights among the ASEAN community.

RESEARCH METHODOLOGY

This research focuses on how to improve Thai geographical indication law as a member of ASEAN Community. This research is a qualitative research using documentary research by associating the content systematically with various concepts. This research will be conducted under the scope of the geographical indication and related laws, namely the Geographical Indication Protection Act, 2003, Intellectual Property Action Plan of the Working Group on Comprehensive ASEAN intellectual property law, the geographical indication laws of ASEAN Member States. The findings of this research are (1) be able to identify the problems and obstacles of the geographical indication law of ASEAN countries (2) be able to identify the information and issues of the differences in geographical indication of ASEAN Member States (3) be able to introduce the guidelines for improving the geographical indication of Thailand to promote the protection of intellectual property rights among the ASEAN community.

RESEARCH RESULTS

Geographical Indication is an important intellectual property protection that identifies the name, symbol, or other things that indicate the source/ location of the product by being able to communicate to consumers the origin of the product. There are qualities or special features that are different from the products produced from other sources. However, it can be said that GI can be used to promote and to conserve of knowledge of the product in the area. At present, many communities in Thailand have registered GI product which can be classified into 3 types: (1) agricultural product (2) handicraft product and (3) industrial product (Processed agricultural products). In order to be registered as a GI product, there must be a study of the feasibility and collect information to request for a protection by considering the product links to geographic locations, reputation of the product, quality, characteristics, production methods. When considering such qualifications, a request (Form Sor Nor Sor 01) and a manual of practice must be drafted. The Department of Intellectual Property will inspect and grant the GI certificate and logo. Under the Act, it was found that there are some limitations for example, many Thai food/ agriculture products have not been registered in the Thai Geographical Indication System because of these Thai food/ agriculture products cannot find any qualifications associated with the geographic location that identify the product's quality, reputation, and product characteristics. As a result, food/ agriculture products those are unique and publicly available are not protected under the Geographical Indication Protection Act BE 2546. Whilst the cultures of ASEAN countries are similar, various products in ASEAN country are products of multiculturalism. Since members of the ASEAN have begun to encourage their people/ communities to register GI product in their home country system, as a result, the registration of food/ agriculture products in one country of ASEAN community may duplicate with the other countries when all countries are trying to register their food products in the geographical indication system.

Problems and obstacles of Thailand's geographical indication law in the ASEAN region

1). Problem of defining “geographical indication” in Thailand

Some products of Thailand do not refer to the venue of the product such as Civet Coffee. The name of Civet coffee cannot qualify to register under Article 3 of Geographical Indication Act, BE 2546 (2003) because it does not indicate the location of the product. As a result, Civet Coffee cannot register as a GI product under Thailand Geographical Indication Protection Act 2003, even it is in accordance with TRIPS agreement. It was found that the deficiencies in the definition of the product which cannot identify the venue/ origin of the product even though there are specific characteristics of products in each area.

2). Problems in registration of geographical indication

In the registration process on the subject of those who have the right to apply for registration, under article 7 of Geographical Indication Act, BE 2546 (2003), the person entitled to apply for registration of geographical indication must be caused by a person, agency or juristic person. For government agencies, state enterprises, local government organizations or other juristic person of government organization is responsible in the area covering the GI product. The government agency that is entitled to register the geographical indication must be in an area covering the geographic area of products. The government agency which is called the Department but not a juristic person by law is not eligible for registration. However, there is no clear cut of authority which indicate agency who shall be the applicant to file for registration, this may cause duplication of agencies to exercise the right to register. Therefore, in this case, there are two questions those need to be addressed, first, government department, by law, that is not a juristic person is eligible to register GI or not and second question is whether which agency have better rights in the registration of geographical indication. In addition, the problem can arise when the agency that requests to register first cannot clearly show the connection between the product and the geographic source/ venue, compare with the agency requesting to register later. In such cases, the registrar shall have the right to use the discretion to register for the agency who request to register the second one or not. In addition, the law does allow individual or consumer group outside GI area to register for GI product to protect the right of consumer, however, individual or consumer group outside the GI area is rarely be able to know how to produce products compare to producer or local people, so registration process has become a burden for the registrar to consider the application because the important principle of GI come from those who have knowledge in the production process as well as the quality or characteristics of the product in the area. Therefore, there is a question whether an individual, a group of individuals, or juristic persons engaged in business related to the GI products should live or locate in the geographic area of the product in order to maintain and

closely participate the production method, quality, and characteristics of the product.

3). Providing protection for Geographical Indication

For Thailand, the duration of the protection of geographical indication indicates has not limit the number of year and no renewal of registration is needed because the government has given the importance of GI registration and grant protection until the revocation of registration in order to encourage entrepreneurs or agencies in both public and private sectors to receive GI protection. However, given the indefinite duration of protection, the quality of the product cannot be rechecked after registered. In addition, the government does not have suffice unit to reinspect and maintain a quality of geographical indication products. In addition, the Geographical Indication Protection Act is not in line with the TRIPS Agreement. This can be seen from article 28, paragraph two of Thailand Geographical Indication Protection Act 2003, is a provision for the protection of specific products that have been specified only for the use of geographical indication but not in the case of other manners which may cause the public to confuse or misunderstood whereas the TRIPs protect the public confusion.

Comparison of Geographical Indication Laws of ASEAN Member States

1). Background: Geographical Indication Law

The geographical indication of the ASEAN member countries as presented below can be seen that ASEAN countries have some similarities in determining Geographical Indication product which come directly from being a member of World Trade Organization (WTO) under the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs), the Paris Convention for the Protection of Industrial Property (Paris Property), commonly known as the Paris Convention, Madrid (Madrid Agreement and the Lisbon Agreement for the protection of various types of intellectual property and the Marrakesh Agreement (1994, Marrakesh) and World Intellectual Property Organization (WIPO) shows that Geographical Indication is commonly and universally recognized, which has a history in determining geographical indication from international agreements arising from the WTO member states.

2). Protection of geographical indication

From the study, it was found that there are differences of level of protection between the countries. Thailand, Vietnam, and Indonesia have the same protection system, which provide indefinite protection after registration of geographical indication without having to renew the registration. Whereas, Singapore, Malaysia, and the Philippines have duration of protection and must renew it at certain period. Considering the differences between these two groups, it represents the importance of the geographical indication of these countries: Thailand, Vietnam, and Indonesia. They have been considered as a group of

countries that are outstanding in terms of GI products. Thailand has unique geographical in each region. Vietnam has joined as a party to many conventions or agreements that arise in both international trade and intellectual property protection. Indonesia has a gush in knowledge, culture, and a complete geographic diversification in many products which has a competitive advantage. From these reasons, these three countries have a system that provides indefinite period of protection and does not require to renew the registration of protection. However, giving importance and considering of the quality of the product and the production process of the product shall maintain and remain as indicate in the registration form.

3). Laws applicable to geographical indication

The registration of geographical indication or the requirement of geographical indication of each country must be in accordance with the law which includes international laws that are mutually agreed by member countries. At the international level, the agreement must be based on international agreements including Paris Convention for the Industrial Property commonly known as the Paris Convention, the Madrid Agreement, the Lisbon Agreement for protection of various types of intellectual property and the Marrakesh Agreement of 1994. Usually, the countries those register geographical indication are members of the World Trade Organization, which also signed aforementioned international agreements. Therefore, the standards or criteria in the registration of geographical indication are already and mutually agreed. At the national level, each country has its own legal practice. From the study, it was found that, in the matter of laws that apply to the geographical indication of all ASEAN Member States, there are organic laws that use to define the details, regulations and conditions in relation to geographical indication which shows that many countries see the importance of promoting the registration of geographical indication within the country.

4). Registration system and responsible agencies

The registration of geographical indication must go through the registration system process. From the study, it was found that there are similar procedures for registration of geographical indication in ASEAN countries. For example, registration request, product details in accordance with the registration conditions including the description of the use of trademark, color, name by specifying the differences and the color as well description of images used in the brand. With regarding to registration process, many countries have the same steps, however, the difference would be the responsible agency because in each country, there are different administrative systems and administrative structures that have different administrative ministries or government agencies. The agency responsible for intellectual property, including geographical indication can be summarized as follows:

Table 1 Comparison of Geographical Indication Laws of ASEAN Member States

Country	Background	Protection Period	Governing law	Registration system and the responsible department
Thailand	- WTO Member - Marakesh Agreement	No Period Limit	Geographical Indication Act 2003	- In accordance with legal process - Department of Intellectual Property, Ministry of Commerce
Singapore	- WTO Member - Paris Convention	10 years but renewable	the Geographical Indication Act 1999	- In accordance with legal process - Intellectual Property Office of Singapore (IPOS)
Vietnam	- WTO Member - Paris Convention - Madrid Convention - TRIPs Agreement	No Period Limit	Geographical Indication and Appellations of Origin under the Intellectual Property law 2005	- In accordance with legal process - The National Office of Industrial Property under Ministry of Science, Technology and Environment
Indonesia	- WTO Member - Berne Convention for the Protection of Literary and Artistic Works - Hague Agreement Concerning the International Registration of Industrial Designs) - WIPO Performances and Phonograms Treaty (WPPT)	No Period Limit	Government Regulation of The Republic of Indonesia Number 51 Year 2007 regarding Geographical Indication which derived from (Trademark Law 2001	- In accordance with legal process - Directorate General of Intellectual Property (DGIP), the General Directorate of Law and Constitutions
Malaysia	- WTO Member	10 years but renew every year after 10 year	Sui Generis Laws of Malaysia Act 602 Geographical Indication Act 2000 (Incorporating all amendments up to 1 January 2006)	- In accordance with legal process - Intellectual Property Corporation of Malaysia
Philippines	- WTO Member - Marrakesh Agreement	10 years but renew every 10 years	The Intellectual Property Rights Code of the Philippines (Act No. 8293) The laws and rules and regulations on trademarks, service marks, trade names and market and stamped containers, September 1998	- - In accordance with legal process - Intellectual Property Office of the Philippines

DISCUSSION AND CONCLUSION

Guidelines for improving the geographical indication laws of Thailand

1). Identification of agency that have the authority to register geographical indication: From the registration issue which does not clearly specify which agency in the area will be the applicant for GI registration in order to prevent any

duplication of registration between agency, then there should be more clarity in identifying specific qualifications or requirements which agency should be the applicant for GI registration and should create the same standards in all geographies in order to achieve the same direction.

2). Establishing agencies at the provincial or regional level: The government sector does not have a special/ sub-unit to look after geographical indication in each region/ area, and there is no government agency to educate local authorities on the registration of geographical indication which cause some areas have not registered their products. Therefore, it should establish agency at the local level to give the duty to educate GI product in each area and facilitate the registration of geographical indication for individuals, agencies, or juristic persons in each area and should develop the online registration system to increase channel to register and facilitate the people.

3). Amendment of the protection of geographical indication: Since the duration of the protection of registered geographical indication will be indefinitely protected unless the registration is revoked, then the law make it difficult for the registrar to check the quality and maintain the quality of the product after registration. Therefore, there should be a check by government agency or assigned authority to check the quality of GI product as scheduled after registration, such as every 5 years or every 10 years, etc.

4). There should be a consideration of the meaning of geographical indication to cover agricultural products that cannot trace the origin of product as well as processed food products from certain areas to be able to register geographical indication because we share spatial culture of agriculture and processed products in ASEAN region. Therefore, the Department of Intellectual Property should consider the scope of products that can be registered as geographical indication.

5). It should be considered to revise article 7 of GI Act with regards to the qualification of the person who has the right to register the geographical indication because there may be limitations in practice. A person or legal entity who live outside GI area under Section 7 may not suitable to register GI product because registrar needs to attentively consider application that which agency has the right to register when GI product is own by the community, the confusion in the application registration process, and ability to be eye and ear of local community to maintain the production method as well as the quality or characteristics of the product in the area. Individual or consumer group outside area may find it difficult to look after GI product because of proximity and they rarely know how to produce products compare to producer or local people, so registration process has become a burden for the registrar to consider the application. It should be noted that the important principle of GI come from those who have knowledge in the production process as well as the quality or characteristics of the product in the area.

6). The Department of Intellectual Property should assign or transfer duties to local authorities to facilitate various operations including geographical indication protection and knowledge transfer. There should be local government

agency to play a role in the registration process and educating geographical indication law to allow people to understand the meaning and characteristics of geographical indication as well as being able to understand and differentiate local product and product from the same or nearby areas and be able to describe the quality or reputation or characteristics of their product.

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