

Act on Protection of Geographical Indication B.E.2546 (2003)

Translation

H.M. KING BHUMIBHOL ADULYADEJ

Given on the 20th Day of October B.E.2546;

Being the 58th Year of the Present Reign.

His Majesty King Bhumibhol Adulyadej is graciously pleased to proclaim that:

Where as it is expedient to enact the law on Protection of Geographical Indication;

Being aware that this Act contains certain provisions restricting the rights and liberties of persons, in respect of which Section 29, in conjunction with Section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of The National Assembly, as follows:

Section 1

This Act is called the "Act on Protection of Geographical Indications B.E.2546 (2003)".

Section 2

This Act shall come into force after a period of one hundred and eighty days from the date of its publication in the Government Gazette.

Chapter I

General Provisions

Section 3

In this Act:

"Geographical Indication" means name, symbol or any other thing which is used for calling or representing a geographical origin and can identify the goods originating from such geographical origin where the quality, reputation or other characteristic of the goods is attributable to the geographical origin.

"Geographical origin" means area of country, zone, region and locality, and shall mean to include sea, lake, river, waterway, island, mountain or any other similar area.

"Goods" means articles which can be traded, exchanged or transferred, whether they are natural or are agricultural produces, including handicraft and industrial products.

"Generic name" means name which is generally known as the designation of any kind of goods.

"Board" means the Geographical Indications Board.

"Competent official" means the person appointed by the Director-General for the purpose of performance under this Act.

"Registrar" means the Director-General or the person appointed by the Minister to be the Registrar for the purpose of performance under this Act.

"Director-General" means the Director-General of the Department of Intellectual Property.

"Minister" means the Minister having charge and control under this Act.

Section 4

The Minister of Commerce shall have charge and control of the execution of this Act and shall have the power to appoint the Registrar, to issue Ministerial Regulations, to fix the fees not exceeding the rates annexed hereto, to reduce or exempt the fees and to prescribe other business for the carrying out of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Chapter II

Registration of Geographical Indications

Section 5

A geographical indication which may be applied to register for any goods must not be composed of any of the following prohibited features:

- (1) Being a generic name of the goods that are to use such geographical indication.
- (2) Being a geographical indication which is contrary to public order or good morals or public policy.

Section 6

For a geographical indication of foreign country to enjoy the protection under this Act, there must be explicit evidence that such geographical indication is protected under the law of such country and has been used continuously until the date of filing an application for registration in Thailand.

Section 7

The following persons shall be eligible to apply for registration of a geographical indication:

- (1) Government agency, public body, state enterprise, local administration organization or other state organization which is a juristic person having area of responsibility covering the geographical origin of the goods.
- (2) Natural person, group of persons or juristic person engaging in trade which is related to the goods using geographical indication and domiciled in the geographical origin of the goods.
- (3) Group of consumers or organization of consumers of the goods using geographical indication.

Section 8

An applicant under Section 7 who is not a Thai national and wishes to apply for registration of a geographical indication of foreign country must also possess any of the following qualifications:

- (1) Having nationality of the country that is a member to the convention or the agreement among countries concerning protection of geographical indications to which Thailand is also a member.
- (2) Having domicile or actual business office in Thailand or in the country that is a member to the convention or the agreement among countries concerning protection of geographical indications to which Thailand is also a member.

Section 9

Application for registration of geographical indication shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

Section 10

An application for registration of geographical indication must consist of details concerning quality, reputation or other characteristic of the goods, geographical origin and other details as prescribed in Ministerial Regulations.

Section 11

When an application for registration of geographical indication is received, the competent official shall examine such application to determine whether it is in accordance with the rules prescribed in Section 5, Section 6, Section 7, Section 8, Section 8, Section 9 and Section 10 or not, and shall report the results of examination and propose his opinion to the Registrar within one hundred and twenty days from the date of receiving the application.

Section 12

In examining the application under Section 11, the competent official may call an applicant or any person concerned to give explanation or furnish additional evidence to the competent official. Where it is necessary to have opinion of an expert in the field related to matter under consideration, the Registrar shall send the matter to the expert for his consideration and opinion.

Section 13

In case that an application for registration is not in accordance with the rules prescribed in Section 5, Section 6, Section 7, Section 8, Section 9 or Section 10, the Registrar shall have an order to deny such application within thirty days from the date of receiving a report of examination and send a written notice of such order, together with reasons, to the applicant within fifteen days from the date of the order.

The applicant shall have the right to appeal against an order of the Registrar to the Board within ninety days from the date of receiving a notice of such order. The appeal shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

Section 14

When the Board has a decision concerning the appeal of an applicant, the Board shall send a written notice of such decision, together with reasons, to the applicant within fifteen days from the date of the decision.

When the Board has a decision, if the applicant does not agree with the decision of the Board, the applicant shall have the right to bring an action in court within ninety days from the date of receiving the notice of decision. If no action is brought within such period of time, it shall be deemed that the decision of the Board is final.

Section 15

In case that an application for the registration is in accordance with the rules prescribed in Section 5, Section 6, Section 7, Section 8, Section 9 and Section 10 and the Registrar considers it expedient to accept registration with or without condition, the Registrar shall issue an order for publication of the acceptance for registration in accordance with the procedures prescribed in Ministerial Regulations.

Section 16

Within ninety days from the date of publication under Section 15, an interested person may file an opposition against the registration of geographical indication applied to register.

Filing of an opposition under the first paragraph shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

Section 17

When there is an opposition under Section 16, a copy of the opposition shall be sent to the applicant within fifteen days from the date of the opposition.

The applicant shall file a counter-statement within ninety days from the date of receiving a copy of the opposition, and the competent official shall send a copy of such counterstatement to the opposer. In case that the applicant fails to file a counter-statement, it shall be deemed that the applicant abandons his application.

Section 12 shall apply to the consideration and decision of opposition and counter statement *mutatis mutandis*.

Section 18

When the Registrar has decided the opposition and counter-statement, the Registrar shall send written notice of decision, together with reasons, to the applicant and the opposer within fifteen days from the date of the decision.

The applicant and the opposer shall have the right to appeal against the decision of the Registrar to the Board within ninety days from the date of receiving a notice of such decision.

The appeal shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

When the Board has a decision, if either party does not agree with the decision of the Board, such party shall have the right to bring an action in court within ninety days from the date of receiving the notice of decision. If no action is brought within such period of time, it shall be deemed that the decision of the Board is final.

Section 19

In the event there is no opposition under Section 16, or there has been an opposition but the Registrar or the Board or the Court, as the case may be, has a final decision under Section 18 or a final judgment to dismiss the opposition, the Registrar shall register the geographical indication applied for registration within fifteen days from the day following the last date of period specified in the first paragraph of Section 16, or the date on which the Registrar receives such decision or judgment, in accordance with the rules and procedures prescribed in Ministerial Regulations.

Section 20

When the Registrar registers a geographical indication under Section 15 or Section 19, the protection of such geographical indication shall take effect as from the date of filing an application for registration.

Chapter III

Amendment and Revocation of Registration of Geographical Indications

Section 21

If there is any minor mistake or inaccuracy in the particulars of registration, when the applicant files an application or such minor mistake or inaccuracy appears to the Registrar, the Registrar may have an order to amend such minor mistake or inaccuracy.

Section 22

When the Registrar has accepted registration of a geographical indication under Section 19, if there appears evidence at a later time that the application for registration or the registration was unlawful or fictitious or consisted of particulars deviating from the facts at the time of acceptance for registration, the interested person or competent official may request the Registrar to submit the matter to the Board for a decision to amend or revoke the registration. The amendment or revocation shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

When the Board has a decision to amend or revoke the registration of a geographical indication under the first paragraph, the Board shall send written notice of the amendment or revocation of registration, together with reasons, to the applicant within fifteen days from the date on which the Board has such a decision and shall publish such amendment or revocation in accordance with the procedures prescribed in Ministerial Regulations.

Section 23

If it shall appear that the situation has changed after the registration under Section 19 and such change has caused the geographical indication consist of any prohibited feature under Section 5 or has caused the particulars concerning geographical origin or other particulars to vary from the registered particulars, the interested person or competent official may request the Registrar to submit the matter to the Board for a decision to amend or revoke the registration and the provisions in the second paragraph of Section 22 shall apply *mutatis mutandis*.

Section 24

Except for the revocation of registration due to reason under Section 5 (2), when the Board has a decision to amend or revoke the registration under Section 22 or Section 23, if the interested person does not agree with the decision of the Board, he shall have the right to bring an action in court within ninety days from the date of receiving the notice of decision. If no action is brought within such period of time, it shall be deemed that the decision of the Board is final.

Chapter IV

Use and Order for Suspension of Use of Geographical Indications

Section 25

When registration of geographical indication has been effected for any goods, the manufacturers of the goods in the geographical origin of the goods or persons engaging in trade related to the goods shall be eligible to use the registered geographical indication with the goods as specified in accordance with the conditions prescribed by the registrar.

Section 26

In case that any person under Section 25 uses the geographical indication without complying with the conditions as registered, the Registrar shall send written notice requiring such person to comply with the conditions within a period of time prescribed by the Registrar. If that person still fails to comply with the conditions without proper reason within such period of time, the Registrar may issue an order in writing to suspend the use of the geographical indication by such person for a period not exceeding two years from the date of receiving the order.

The person who is subject to suspension of the use of geographical indication under the first paragraph may appeal against an order of the Registrar to the Board within ninety days from the date of receiving the order. The appeal shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

When the Board has a decision, if such person does not agree with the decision of the Board, such person shall have the right to bring an action in court within ninety days from the date of receiving the notice of decision. If no action is brought within such period of time, it shall be deemed that decision of the Board is final.

Section 27

The following acts shall be deemed unlawful:

- (1) The use of a geographical indication to show or mislead other persons that the goods not originating from the geographical origin specified in an application for registration are goods originating from that geographical origin.

- (2) The use of a geographical indication in any manner which causes confusion or misunderstanding as to the geographical origin of the goods and the quality, reputation or any other characteristic of the goods so as to cause damage to other traders.

If the act under the first paragraph is done before the date of registration of the geographical indication, it shall be deemed lawful.

Chapter V

Protection to Geographical Indications for Specific Goods

Section 28

The Minister may announce any types of goods as specific goods by prescribing them in Ministerial Regulations.

Subject to the fourth paragraph, when there is announcement of any types of goods as specific goods according to the first paragraph, the use of the geographical indication with the goods not originating from the geographical origin specified in the application for registration shall be unlawful even if the user also indicates the true geographical origin of the goods or uses the wording or does any act to indicate the true geographical origin of the goods.

Indication of the true geographical origin of the goods under the second paragraph shall include the use of the expressions "kind", "type", "Style" including any similar expression or the like in conjunction with the geographical indication used with the goods.

The act under the second paragraph shall not be deemed unlawful if the user of the geographical indication has used such geographical indication for a continuous period of ten years before April 15, 1994, or has used the same in good faith before that date.

Section 29

In case that the specific goods prescribed in Ministerial Regulations have the same or homonymous geographical indication but different geographical origin, when registration of a geographical indication for those goods is effected, the use of geographical indication in this case shall be in accordance with the rules and procedures prescribed in Ministerial Regulations.

Chapter VI

Geographical Indication Board

Section 30

There shall be a committee called the "Geographical Indications Board" , composed of the Permanent Secretary for Commerce as the Board Chairman, Permanent Secretary for Agriculture and Cooperatives, Secretary-General of the Juridical Council, Attorney-General, representative of the Lawyers' Society and no more than fourteen qualified persons in area of law, political science, science, agriculture, economy, liberal arts, history, geography or archeology whom are appointed by the Cabinet with at least six of whom appointed from those in private sector and comprising qualified persons from organization or agency related to consumer protection, as Board Members.

The Director-General of the Department of Intellectual Property shall be the Board Member and Secretary.

The Board may appoint any person to be the Assistant Secretary.

Section 31

The Board shall have the following powers and duties:

- (1) To give recommendations or advice to the Minister in the issuance of Ministerial Regulations under this Act.
- (2) To consider and decide the appeals under this Act.
- (3) To order the amendment or revocation of geographical indication registration under this Act.
- (4) To consider other matters related to geographical indications as assigned by the Minister.
- (5) To consider the appointment of experts under Section 12.
- (6) To perform any other act as prescribed in this Act.

Section 32

The Board Members who are qualified person shall hold office for a term of four years at a time. A retiring Member may be reappointed, but for no more than two consecutive terms.

Section 33

Apart from retirement upon expiration of their term, the Board Members who are qualified persons shall cease to hold their positions upon:

- (1) Death.
- (2) Resignation.
- (3) Removal by the Cabinet.
- (4) Being bankrupt
- (5) Being incompetent or quasi-incompetent.
- (6) Being sentenced to a term of imprisonment by a final judgment, except for offence committed by negligence or a petty offence.

Section 34

In the event of appointment of a Board Member who is a qualified person in place of a Board Member who leaves his office before the expiration of his term, or in case of appointment of additional Board Member who is a qualified person while the Board Member previously appointed are still holding their positions, such appointed person shall be in office for a period equal to the remaining term of the Board Member previously appointed.

Section 35

In the event that the Board Members who are qualified persons have completed their term of office but the new Board Members are not yet appointed, retiring Board Members shall continue to perform duties on a temporary basis until the new Board Members are appointed.

Section 36

Meetings of the Board must be attended by not less than one half of the total number of Board Members in order to constitute a quorum. If the Chairman of the Board is not present at a meeting or is unable to perform duties, the meeting shall select a Board Member to preside over the meeting.

Decisions of the meeting shall be carried by a majority vote. Each Board Member shall have one vote. In the event of a tie, the Chairman of the meeting shall have an additional casting vote.

Section 37

The Board is empowered to appoint subcommittees to make consideration or perform any act as assigned by the Board. The provisions in Section 36 shall apply to meetings of the subcommittees *mutatis mutandis*.

Section 38

In performing duties, the Board or the subcommittees shall have the power to issue order in writing to summon any persons concerned to give statement or furnish documents or anything to support consideration as necessary in accordance with the regulations prescribed by the Board.

Chapter VII

Penalties

Section 39

Any person who commits any act under Section 27 shall be punished with a fine not exceeding two hundred thousand Baht.

Section 40

Any person who commits any act under Section 28, paragraph two shall be punished with a fine not exceeding two hundred thousand Baht.

Section 41

Any person who fails to give statement or furnish documents or anything to the Board or the subcommittees under Section 38 shall be punished with a fine not exceeding five thousand Baht.

Section 42

In case that a person who commits an offence punishable under this Act is a juristic person, the managing director, manager or representative of such juristic person shall also receive a punishment as prescribed for such offence, unless it can be proven that such persons were not cognizant of nor consented to the commission of such offence of the juristic person.

Section 43

The Director-General shall be empowered to compound the offence under this Act. When an alleged offender has paid a fine so compounded, the case shall be settled in accordance with the Criminal Procedure Code.

Rates

- (1) Application for registration of geographical indication = 1,000 Baht each
- (2) Opposition to registration of geographical indication = 1,000 Baht each
- (3) Appeal against order or decision of the Registrar = 1,000 Baht each
- (4) Application for amendment of registration of 200 Baht each geographical indication
- (5) Application for revocation of registration of 200 Baht each geographical indication
- (6) Other applications = 200 Baht each

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