

GEOGRAPHICAL INDICATION PROTECTION ACT<sup>1</sup>

B.E. 2546 (2003)

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BHUMIBHOL ADULYADEJ, REX.

Given on the 20<sup>th</sup> Day of October B.E. 2546;

Being the 58<sup>th</sup> Year of the Present Reign

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

Whereas it is expedient to have the law on the Protection of Geographical Indication;

This Act contains certain provisions in relation to the restriction of rights and liberties of persons as permitted by virtue of the provisions of law under section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand;

Be it, therefore, enacted by 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”.

**Section 2.** This Act shall come into force after the expiration of a period of one hundred and eighty days from the date of its publication in the Government Gazette.<sup>2</sup>

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<sup>1</sup> Translated by Ms. Vipatboon Klaosontorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

<sup>2</sup> Published in the Government Gazette, Vol. 120, Part 108a, Page 3, dated 31<sup>st</sup> October B.E. 2546 (2003)

## CHAPTER I

### General Provisions

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#### **Section. 3** In this Act:

“Geographical Indication” means the name of, a symbol or any indication used in trade to identify or indicate a geographical origin and that can designate the goods originating from such a geographical origin where the given quality, reputation or other characteristic of the goods is attributable to the geographical origin.

“Geographical origin” means the area of a country, zone, region or locality, and such meaning shall include sea, lake, river, waterway, island, mountain or any other such similar area.

“Goods” means articles that can be traded, exchanged or transferred, including natural or agricultural products, handicrafts and industrial products.

“Generic name” means the name which is commonly known as the designation for any kind of goods.

“Board” means the Geographical Indications Board.

“Competent official” means the person appointed by the Director-General to perform under this Act.

“Registrar” means the Director-General or the person appointed by the Minister to be the Registrar to perform 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 the Ministerial Regulations, to fix the fees not exceeding the rates annexed hereto, to reduce or exempt the fees and to prescribe other matters for the execution of this Act.

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

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## CHAPTER II

### Registration of Geographical Indications

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**Section 5.** A geographical indication which is applied to be registered for any goods must not comprise any of the following features:

(1) being a generic name of the goods which are to use such a geographical indication;

(2) being a geographical indication which is contrary to public order or good morality or public policy.

**Section 6.** For a geographical indication of a foreign country to be protected under this Act, there must be explicit evidence that such geographical indication is protected under the law of such country and has been continuously used until the date of filing an application for its registration in Thailand.

**Section 7.** The persons who are entitled to apply register a geographical indication are the followings:

(1) any governmental agency, public body, state enterprise, local administration organization or any other state organization which is a juristic person having an area of responsibility covering the geographical origin of the goods;

(2) a natural person, group of persons or juristic person engaging in a trade which is related to the goods using a geographical indication and having a domicile in the geographical origin of the goods;

(3) a group of consumers or organization of consumers of the goods using a geographical indication.

**Section 8.** An applicant under section 7 who is not a Thai national and wishes to apply to register a geographical indication of a foreign country must also possess any of the following qualifications:

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(1) having a nationality of the country which is a party to the convention or the international agreement concerning the protection of geographical indications to which Thailand is also a party;

(2) having a domicile or having a real and pragmatic business office in Thailand or in a country which is a party to a convention or an international agreement concerning patent protection to which Thailand is a party.

**Section 9.** An application for registration of a geographical indication shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

**Section 10.** An application for registration of a geographical indication shall consist of details concerning the quality, reputation or other characteristics of the goods, geographical origin and other details as prescribed in the Ministerial Regulations.

**Section 11.** Upon receipt of an application for registration of a geographical indication, the competent official shall examine such application to determine whether or not it is in accordance with the rules prescribed in section 5, section 6, section 7, section 8, section 9 and section 10, and shall report the results of the 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 require an applicant or any person concerned to give explanations or provide additional evidence to the competent official. In the case where it is necessary to have the opinion of an expert in the field related to the matter under consideration, the Registrar shall send the matter to the expert for his consideration and opinion.

**Section 13.** In the case where 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 issue an order to withdraw such application within thirty days

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from the date of receiving a examination report and shall notify the applicant of such order together with reasons in writing within fifteen days from the date of issuing the order.

The applicant shall be entitled to file an appeal against the order of the Registration to the Board within ninety days from the date of receiving the notification of such order. The appeal shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

**Section 14.** When the Board has made a decision concerning the appeal of an applicant, the Board shall notify the applicant of its decision together with reasons in writing within fifteen days from the date of issuing the decision.

When the Board has already notified the applicant of its decision, if the applicant does not agree with the decision of the Board, the applicant shall be entitled to bring a case before court within ninety days from the date of receiving the notification of the decision. If no legal action is taken within such period of time, the decision of the Board shall be deemed final.

**Section 15.** In the case where an application for 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 the registration with or without any condition, the Registrar shall issue an order for publication of the acceptance of such registration in accordance with the procedures prescribed in the Ministerial Regulations.

**Section 16.** Within ninety days from the date of publication under Section 15, any interested person may file an opposition against the registration of the geographical indication.

The filing of an opposition under the first paragraph shall be in accordance with the rules and procedures prescribed in the 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.

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

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

**Section 18.** When the Registrar has already made a decision concerning the opposition and counter-statement, the Registrar shall notify the applicant and the opposer of the decision, together with reasons in writing within fifteen days from the date of issuing the decision.

The applicant and the opposer shall be entitled to file an appeal against the decision of the Registrar to the Board within ninety days from the date of receiving the notification of the decision.

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

When the Board has already made a decision, if either party does not agree with the decision of the Board, such party shall be entitled to bring a case before court within ninety days from the date of receiving the notification of the decision. If no legal action is taken within such period of time, the decision of the Board shall be deemed final.

**Section 19.** In the case where there is no opposition under section 16, or where 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 within fifteen days from the day following the last date of the 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 the Ministerial Regulations.

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**Section 20.** When the Registrar has already registered a geographical indication under section 15 or section 19, the protection of such a geographical indication shall take effect from the date of filing an application for registration.

### CHAPTER III

#### Rectification and Revocation of Registration of Geographical Indications

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**Section 21.** If there is any minor error or inaccuracy in the particulars of the registration when the registered proprietor files an application or when such minor error or inaccuracy appears in front of the Registrar, the Registrar may issue an order to correct such minor error or inaccuracy.

**Section 22.** When the Registrar has already accepted the registration of a geographical indication under section 19, if it appears that any evidence at a later time that the application for registration or the registration itself was unlawful or deceptive or consisted of particulars deviating from the facts at the time of acceptance for registration, any interested person or the competent official may make a request to the Registrar to submit the matter to the Board for a decision to rectify or revoke the registration. The rectification or revocation shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

When the Board has already made a decision to rectify or to revoke the registration of a geographical indication under the first paragraph, the Board shall notify the applicant of the rectification or revocation of registration, together with reasons in writing within fifteen days from the date on which the Board has made such a decision and shall publish the rectification or revocation in accordance with the procedures prescribed in the Ministerial Regulations.

**Section 23.** In the case where it appears that the situation has changed after registration under section 19 and that such a change has caused the geographical indication to consist of any prohibited feature stated under section 5 or has caused the

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particulars concerning its geographical origin or other particulars to vary from the registered particulars, any interested person or the competent official may request the Registrar to submit the matter to the Board for a decision to rectify or to 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 reasons under section 5(2), when the Board has issued a decision to rectify 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 be entitled to bring a case before the court within ninety days from the date of receiving the notification of the decision. If no legal action is taken within such period of time, the decision of the Board shall be deemed final.

#### CHAPTER IV

#### Use and Order for Suspension of Use of Geographical Indications

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**Section 25.** When there has already been a registration of a geographical indication 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 entitled to use the registered geographical indication with the goods as indicated in accordance with the conditions prescribed by the Registrar.

**Section 26.** In the case where any person under section 25 has used the geographical indication without complying with the conditions as registered, the Registrar shall send a written notice requiring such person to comply with the conditions within a period of time prescribed by the Registrar. If such a person still fails to comply with the conditions without any proper reason within such a 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 the suspension of the use of the geographical indication under the first paragraph may file an appeal against the order of the Registrar to

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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 the Ministerial Regulations.

When the Board has already made a decision, if such a person does not agree with the decision of the Board, he shall be entitled to bring a case before the court within ninety days from the date of receiving the notification of the decision. If no legal action is taken within such period of time, the decision of the Board shall be deemed final.

**Section 27.** The following acts shall be deemed unlawful:

(1) the use of a geographical indication to show or mislead other persons into believing 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, the reputation or any other characteristic of the goods so as to cause damage to other traders.

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

## CHAPTER V

### Protection of Geographical Indications for Specific Goods

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**Section 28.** The Minister may announce any types of goods as specific goods by prescribing them in the Ministerial Regulations.

Subject to the fourth paragraph, when there is an announcement of any type 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.

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An 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 together 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 geographical indication in good faith before that date.

**Section 29.** In the case where the specific goods prescribed in the Ministerial Regulations have the same or a homonymous geographical indication but different geographical origin, when the geographical indication for those goods has been registered, the use of geographical indication in this case shall be in accordance with the rules and procedures prescribed in the Ministerial Regulations.

## CHAPTER VI

### Geographical Indication Board

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**Section 30.** There shall be a committee called the “Geographical Indications Board”, comprising the Permanent Secretary for Commerce as Chairman, the Permanent Secretary for Agriculture and Cooperatives, the Secretary-General of the Office of the Council of State, the Attorney-General, the representative of the Lawyers’ Council and no more than fourteen qualified persons in the areas of law, political science, science, agriculture, economy, liberal arts, history, geography or archeology as appointed by the Council of Ministers to be Board Members, where at least six are from the private sector and are qualified persons from organizations or agencies related to consumer protection.

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

The Board may appoint any person to act as Assistant Secretary.

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**Section 31.** The Board shall have the following powers and duties:

- (1) to give recommendations or advice to the Minister in the issuance of the Ministerial Regulations under this Act;
- (2) to consider and decide the appeals under this Act;
- (3) to order the rectification or revocation of a 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 persons shall hold office for a term of four years at a time. A Member who vacates office may be reappointed, but for no more than two consecutive terms.

**Section 33.** In addition to the vacation of office 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) bankruptcy;
- (5) incompetence or quasi-incompetence;
- (6) having been sentenced to imprisonment by a final judgment unless it was a sentence for an offence committed by negligence or for 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 the case of appointment of an additional Board Member who is a qualified person while the Board Member previously appointed is still holding their position, such

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appointed person shall be in office for a period equal to the remaining term of the Board Member previously appointed.

**Section 35.** In the case where 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 based on a simple majority. 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 shall have the power to appoint sub-committees to make consideration or perform acts as assigned by the Board. The provisions in section 36 shall apply to meetings of the sub-committees *mutatis mutandis*.

**Section 38.** In performing duties, the Board or the sub-committees shall have the power to issue order in writing to summon any persons concerned to give statement or submit other documents or anything to support consideration as necessary in accordance with the regulations prescribed by the Board.

## CHAPTER VII

### Penalties

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**Section 39.** Any person who commits any act under section 27 shall be liable to a fine not exceeding two hundred thousand Baht.

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**Section 40.** Any person who commits any act under section 28 paragraph two shall be liable to a fine not exceeding two hundred thousand Baht.

**Section 41.** Any person who fails to give statement or submit documents or anything to the Board or the sub-committees under section 38 shall be liable to a fine not exceeding five thousand Baht.

**Section 42.** In the case where 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 be liable to a penalty as prescribed for such offence, unless they can prove that the juristic person has committed the offence without their knowledge or consent.

**Section 43.** The Director-General shall have the power 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.

Countersigned by

Police Lieutenant Colonel Thaksin Shinawatra

Prime Minister

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### Rates of the fees

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

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