(Unofficial)

Act on Protection of Geographical Indication
BE 2546 (2003)

H.M. King Bhumibol Adulyadej
Given on the 20th Day of October BE 2546
Being the 58th Year of the Present Reign

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

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

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 Indication
BE 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 geographical origin and can identify the goods originating from such
géographical origin where the quality, reputation or other characteristic of the goods is
attributable to the geographical origin.

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

"Goods" means articles which can be traded, exchanged or transferred, whether they
are natural or agricultural products including handcrafted 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
"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 or alter the manner 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 consist 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 the application to determine whether it is in accordance with the rules prescribed in Sections 5, Sections 6, Sections 7, Sections 8, Sections 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 an explanation or furnish additional evidence to the competent official. Where it is necessary to have an opinion from 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 case that an application for registration is not in accordance with the rules prescribed in Sections 5, Sections 6, Sections 7, Sections 8, Sections 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 thirty 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. If a statement of opposition to the registration is in accordance with the rules prescribed in Section 3, Section 4, Section 7, Section 8, Section 9, and Section 10 and the Registrar considers that it is expedient to accept registration with or without conditions, the Registrar shall issue a notice 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 a 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 ninety 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 counter-statement 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 ninety 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 decision. If a decision 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 party 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 to 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 party 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 reasons under Section 22, 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 specified in accordance with the conditions prescribed by the registrar.

SECTION 26

In case that any person under Section 25 users 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 the decision of the Board is final.

Section 27. The following acts shall be 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 a geographical origin.
2. The use of a geographical indication in a manner which causes confusion or misunderstanding as to the geographical origin of the goods and the quality, reputation or other characteristics of the goods caused an adverse effect to other traders.

If the act under the first paragraph is done before the date of registration of the geographical indication, it shall be 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 a 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 lawful even if the user also indicates the true geographical origin of the goods or uses the wording or descriptive term to indicate the true geographical origin of the goods.

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

The act under the second paragraph shall not be unlawful if the use of the
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 geographical indication for those goods is filed, 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 not more than fourteen qualified persons in areas of law, political science, science, agriculture, economy, liberal arts, history, geography or archaeology, whom are appointed by the Cabinet, with at least six of whom appointed from the private sector and comprising qualified persons from organizations or agencies 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 assigned by the Minister.

(5) To consider the appointment of experts under Section 12.

(6) To perform any other acts 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 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 a fine committed by negligence or petty offense.

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 Members who are qualified persons while the Board Member previously appointed is still holding his position, such appointed persons 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 are
completed their term of office but the new Board Members are yet appointed, retiring Board Members shall continue to perform duties on an 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, then 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 an order in writing to summon any person or to give a statement or to furnish documents or anything to support consideration as necessary in accordance with the regulations periodically 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 punishment apart from the offender, 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 of Fees

(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 geographical indication 200 baht each
(5) Application for revocation of registration of geographical indication 200 baht each
(6) Other applications 200 baht each