

Group A: Pending Issues Concerning the Procedures in Respect of Applications and International Registration

1. Implementation Aspects of Article 1(xiv)

Thailand's national legislation does not contain any reference to intergovernmental organizations. The application for national registration has to be filed by the beneficiaries or government on behalf of the beneficiaries as defined by Articles 7 and 8 of Geographical Indications Protection Act B.E. 2546 (2003).

2. The issue as to whether Rule 5(3) should be optional or mandatory

Thailand believes that Rule 5(3) should be mandatory to facilitate the international registration at the national level. The information about the link between a product and its geographical origin is a unique feature of a registered appellation of origin or a registered geographical indication and crucial to justify the grant of exclusive rights.

3. The issue of the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in

respect of a registered appellation of origin or a registered geographical indication

Thailand is of the view that a declaration of intention to use is not necessary for a registered appellation of origin or a registered geographical indication given the fact that, in most if not all cases, before seeking registration, an AO or a GI already exists and belongs to a group of well-organised producers with established reputation built on traditional production methods passed on to the present.

4. The issue of promoting transparency under Rule 5(5)(ii)

The protection can be in whole or in part. Rule 5(5) should remain optional. Decision should be left to the Contracting Party of Origin to indicate in the application form whether or not protection was not claimed for certain elements of the appellation of origin or the geographical indication.

Group B: Pending Issues Concerning the Scope of Protection

5. The various options in respect of Article 11(1)(a) and Article 11(3)

The term “evocation” is unfamiliar to law makers and enforcement agencies in Thailand. Adoption of this term can create legal uncertainty. Thailand is in favour of deletion of the term from the New Act.

Broadly speaking, Thailand’s GI law provides protection to registered geographical indications in a similar fashion as Option B of Article 11(1)(a) for example. Nevertheless, we feel that the proposed Options for Article 11(1)(a) and 11(3) are detailed and prescriptive -- making it difficult for a country that has not yet established jurisprudence in the area of enforcement to commit a specific formula.

6. The content of Article 12 concerning protection against acquiring a generic character

Thailand supports the removal of brackets around the phrase “be considered to have” and the deletion of the square bracketed phrase “and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met” from Article 12.

7. The content of Article 13(1) concerning safeguards in respect of prior trademark rights

Thailand supports Option A regarding coexistence of a later claimed geographical indication with earlier trademark rights.

Group C: Pending Issues Concerning Other Provisions Related to the Legal Effects of International Registrations

8. The content of Article 16(2) concerning negotiations following a refusal

Based on the understanding that nothing prevents Contracting Parties from initiating consultations with respect to the withdrawal of a refusal in the absence of Article 16(2) under the current Lisbon Agreement, Thailand would like to suggest deletion of Article 16(2).

9. The issue as to whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation

Thailand supports Option B with the addition of “*inter alia*” at the end of the first paragraph. The sentence therefore would read:

“The grounds on the basis of which a Contracting Party may pronounce invalidation, in part or in whole, of the effects of an

international registration in its territory shall include *inter alia*:
...”
