

The Legal Measures of Geographical Indication for Protection of Traditional Knowledge on Food Products in ASEAN Community: Lessons for Thailand*

Assoc.Prof. Dr. Tavephut Sirisakbanjong (LL.D.)¹

Assist.Prof. Pol.Maj. Dr. Choocheewan Tamisanont (Ph.D.)²

Abstract

As a member state of the Association of South East Asian Nations (ASEAN). Thailand has an obligation to implement its commitment set out in the AEC Blueprint and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thailand, therefore, has enacted the Geographical Indication Protection Act in 2003. This Act is to purpose the use of geographical indications in term of the commercially with the preservation of local knowledge. As a result, Thai communities earn better revenue. In addition, this integrates Thai economy with the global economy. However, Thailand and ASEAN are only compliances as we did not play a role in the conclusion the TRIPS. Agreement. Some provisions of Geographical Indications Protection Act B.E. 2546 (2003) are irrelevant with Thai naming of geographical indications and customary Thai food production. The law therefore should be amended with an application of experiences on GI laws among ASEAN countries together with consideration of TRIPS missions.

Keywords: ASEAN Community, Geographical Indication Act, Thai Food Products, Traditional Knowledge, TRIPS Agreement.

1. Introduction

The Association of Southeast Asian Nations, also known by the acronym ASEAN, was established by the integration of countries in the same region under the cooperation of three pillars: the ASEAN Political and Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC). [1] ASEAN aims to develop itself as an ASEAN market that is 8 percent of the world's population, with small and medium-sized enterprises in ASEAN member states playing an important role in driving the economy to achieve such goals. Therefore, Thailand needs to implement the ASEAN Economic Community (AEC Blueprint 2015) action plan while trying to take advantage of intellectual property laws, regardless of copyright law, patent, trademark, or geographical indication laws [2].

Thailand is a member of ASEAN. The Thai government aims to take advantage of the Geographical Indication Protection Act B.E. 2546 (2003) to raise standards and prices for Thai food and other community products while preserving the local wisdom of Thai food products. However, this law was not born out of Thailand's demands. This legislation is the product of the WTO's TRIPS Agreement obligations. This law has no direct effect on the preservation of local wisdom of Thai cuisine. Local wisdom of Thai food products is still a public event, and the use of this law also affects local wisdom of Thai food products when the wisdom of Thai food products must be developed into commodities. Manufacturers must meet the needs of the consumer market. Thai food products are no longer meeting the needs of family members.

From the background and statement of the study, the research article on The Legal Measures of Geographical Indication for Protection of Traditional Knowledge on Food Products in ASEAN Community: Lessons for Thailand was initiated. The researchers chose 4 examples of Thai food products: Tom Yum Kung, Massaman Curry, Muang Phet Khanom Moh Kaeng and Suphan Sali Dessert, The researchers aimed to seek geographical indication legal measures in line with the TRIPS Agreement and the ASEAN Economic Community Blueprint Action Plan 2015, and Thailand was able to protect trade interests along with the preservation of local wisdom of Thai food products.

2. Research Results

The researchers discovered that the ASEAN Community, including Thailand, applies geographical indication laws in order to protect commercial benefits in conjunction with the preservation of local wisdom and to comply with Article 22.1, the TRIPS

* This article is extracted from a research report titled "The Legal Measures of Geographical Indication for Protection of Traditional Knowledge on Food Products in ASEAN Community: Lessons for Thailand" funded by the Secretariat of the House of Representatives of Thailand.

¹ Deputy Dean, Graduate School Siam University, Thailand. (LL.D. from Thammasat University)

² Public Prosecutor, Office of the Attorney General, Thailand. (Ph.D.(law) from Saint Petersburg State University)

Agreement of the World Trade Organization [3] but with the TRIPS Agreement is not strict regulations, the ASEAN Community adopts three types of geographical indication laws:

- 1) Specific laws (sui generis) by countries that apply laws such as Thailand, Malaysia, and India that are the framework for cooperation between ASEAN and their negotiating partners, also known as ASEAN Plus Six (ASEAN+6), also known as ASEAN Regional Comprehensive Economic Partnership (RCEP), etc.
- 2) Trademark laws such as Government Regulation of The Republic of Indonesia Number 51 (year 2007) Regarding Geographical Indications or The GR No.51 Regulations of Indonesia 2007, etc.
- 3) Geo-Indication laws in mixed systems, the legislation is both a specific and trademark law, such as The Geographical Indications Bill 2014 or the acronym the GI Bill of Singapore, which is formed to protect geographical indications and support free trade policies and in line with the policy of being a global trade hub and in the ASEAN member states, etc [4].

Thailand has chosen specific laws, Geographical Indication Protection Act B.E. 2546 (2003), under the objective of protecting geographical indications and raising the quality and price of community products, as well as indirect benefits in preserving local wisdom [5]. Although Geographical Indication Protection Act B.E. 2546 (2003) has indirect benefits for conservation, local wisdom, local wisdom is preserved. The local wisdom must create a unique identity for the product, and the community has long used the name of geographical indications to the product until the consumer accepts it under Section 3, Geographical Indication Protection Act B.E. 2546 (2003).

However, the researchers found that geographical indication laws do not apply to all Types of Thai Food Products. This condition is reflected in the findings in four Thai food products, which Thailand provides geographical indications to a Muang Phet Khanom Moh Kaeng only, but 3 Thai food products are not protected by geographical indication laws, as shown in **Figure 1**.

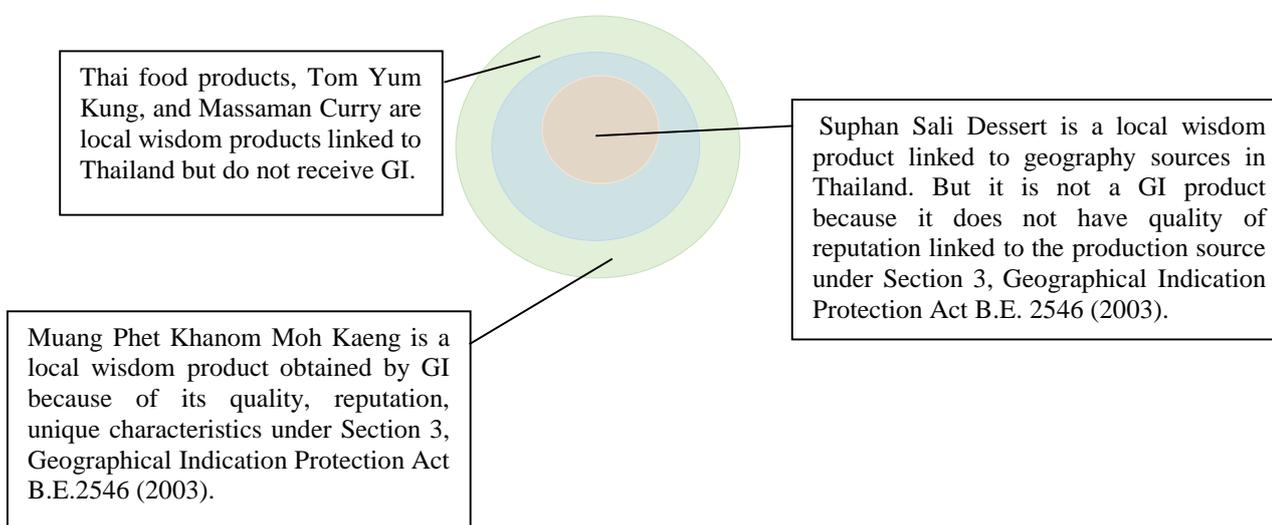


Figure 1: Products received and not protected by The Geographical Indications Laws of Thailand

In addition, the product of Muang Phet Khanom Moh Kaeng is a one-of-a-kind Thai food product, which has been branded a Thai geographical indication, registration no. 56100049, because the Phetchaburi community has used toned sugar in their province to produce Muang Phet Khanom Moh Kaeng until consumers recognize the quality, reputation. However, other local wisdom is used to produce sweets, pots, diamonds. When these local wisdom is not intertwined with the quality of products and geography sources in Phetchaburi province, these local wisdoms are not protected by law, such as the use of duck eggs, lotus tablets, concentrated coconut cream, etc.

The remaining 3 food items are Tom Yum Kung, Suphan Sali Dessert and Massaman Curry did not benefit from the use of Geographical Indication Protection Act B.E. 2546 (2003), because Massaman Curry is a local Thai wisdom but does not be linked to any geographical indications in Thailand. While Tom Yum Kung is a local wisdom, Tom Yum Kung is linked to the name of Thailand. However, Thailand's geography does not indicate that raw materials or production processes at one of Thailand's communities. These geographical sources have created a reputation for Tom Yum Kung. As a result, Tom Yum Kung is a product that is famous for Thailand. Tom Yum Kung cannot register geographical indications. Suphan Sali Dessert are also products that are linked to suphanburi geography sources, but with Suphan Sali Dessert, there is no quality from the use of raw materials in Suphan Buri province. Therefore, Suphan Sali Dessert is therefore ineligible as a product under Section 3, Geographical Indication Protection Act B.E.2546 (2003).

All the findings are consistent with the 2010 Adding value to traditional products of regional origin report, which the United Nations Industrial Development Organization researched on the relationship between local wisdom and geographical indications. [6]

Under the above findings, the researchers therefore proposed that while ASEAN implemented different geographical indication laws, Thailand should use the Geographical Indication Protection Act B.E. 2546 (2003) because specific laws provide better protection than trademark and mixed system laws. The comments are in line with Indonesian jurist Almusawir Nansa, who says Indonesia should change the use of the GR No.51 trademark law to specific laws to enhance the protection of geographical indications and use prototypes from Thailand and Malaysia. [7]

3. Conclusions

Although Thailand should continue to use Geographical Indication Protection Act B.E. 2546 (2003), this law should amend its contents as follows:

1. Addition of the term definition of 'geographical indication' in Section 3, Geographical Indication Protection Act B.E. 2546 (2003) by using prototypes under Section 1 (3) (e) The Geographical Indications of Goods (Registration and Protection) Act 1999 of India. Therefore, Thailand should add a text at the end of Section 3, Geographical Indication Protection Act B.E. 2546 (2003), that geographical indications are manufactured only one step in the area, or that the goods are produced at certain stages in the area, or that the goods are prepared in the area where the activity area is located, where the area is in the region or local area.

2. Amendments to the Definition of Product Terms under Section 3, Geographical Indication Protection Act B.E. 2546 (2003) to the Registrar of the Department of Intellectual Property, Ministry of Commerce have the power to exercise discretion to classify new products. This amendment is based on the subcontracted principles of the rule of law that 'there is no law, no power and does not exceed the law of authority' and is in line with the guidelines of the Department of Intellectual Property, Ministry of Commerce, which the Department of Intellectual Property, Ministry of Commerce currently classifies the goods into seven categories, and this amendment is the same as the Laws of Malaysia Act 602 Geographical Indications Act 2000 of Malaysia. Therefore, Thailand should add the text at the end of the definition of Section 3, Geographical Indication Protection Act B.E. 2546 (2003) as 'Other goods as specified by the Registrar'.

3. Amendments to the Geographical Source Definition Section 3, Geographical Indication Protection Act B.E. 2546 (2003) to support the use of Thai geographical indication names because the definition of geographical sources according to such sections is located the concept of western mapping. Geographical sources are therefore like mapping, where the doer has to draw long lines continuously through various terrain, whether mountains, rivers, to show the boundaries of the community, but this condition is inconsistent with Thai geographical sources. [8]

Meanwhile, the Thai community uses symbols or landmark names to indicate where they sell products. This place may not be a product producer, and symbols indicating the place may not be in western maps, but they are community locations such as markets, neighborhoods, nearby names, etc. Thailand should therefore add a text to the end of the geographical source definition of 'symbol or anything else used to call or replace the local area' in accordance with the tradition of using Thai geographical sources.

Bibliography

- [1] The World Trade Organization (WTO), (2017). "Members and Observers" Retrieved from https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm [30 June 2021]
- [2] Department of Intellectual Property. (2021). ASEAN's intellectual property work joins hands to develop plans for 2016 – 2025. Retrieved from <http://www.ipthailand.go.th/> [30 June 2021]
- [3] Department of Intellectual Property, Ministry of Commerce. Geographical Indications (GIs) in the ASEAN Framework. Intellectual Property Journal, 21, pp.18-26.
- [4] Lee & Lee Advocates & Solicitors Trade Mark & Patent Agents Singapore. (2014). Singapore Legislation Update - Proposed Amendments to the Geographical Indications Protection Regime. Singapore : SG: Singapore Land Tower.
- [5] Department of Intellectual Property, Ministry of Commerce. Registered geographical indications. Retrieved from http://www.ipthailand.go.th/ipthailand/index.php?option=com_docman&task=cat_view&gid=1074&Itemid=859. [27 June 2021]
- [6] United Nations Industrial Development Organization. (2010). Adding value to traditional products of regional origin. Vienna, AT : United Nations Industrial Development Organization Investment and Technology Services Branch.
- [7] Bangun, J.A. (2011). Legal Protection of Geographical Indication in Indonesia. IP Theses IP Community, 14
- [8] Phra Nakhon Si Ayutthaya Rajabhat University. (2021). Chinese in the Ayutthaya period. Retrieved from <http://www.ayutthayastudies.aru.ac.th/content/view/156/32/> [21 November 2021]