

Measures and Guidelines for Protection of Geographical
Indication of Agricultural Products in Chiang Rai *
มาตรการและแนวทางเพื่อได้รับการคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์
ของสินค้าเกษตรในจังหวัดเชียงราย

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Abstract

Chiang Rai has made progressive steps in using Geographic Indication (GI) in adding economic value to local products and expanding the market access of its agricultural products, including processed agricultural products to foreign markets. However, the use of GI as a tool to promote local development in Chiang Rai was not as successful as it should be. Therefore, this research article aims to investigate legal measures to protect agricultural products under GI regimes in Thailand and the EU, particularly on the major challenges in obtaining them and proposing possible guidelines. According to this study, it was found that major challenges include a lack of strong integration of people within a community, lack of sufficient knowledge and understanding about GI, lack of a clear and standardised control system to monitor and keep the quality consistent with the specifications, as well as lack of appropriate and adequate budget and experts in GI protection.

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Thus, to help promote GI protection of agricultural products in Chiang Rai, policy recommendations have been proposed as follows. Firstly, with the support from the government agencies, community leaders should be posted in order to promote local products with unique quality to be protected as GIs. Secondly, knowledge and understanding in GI, as well as its benefits should be sufficiently provided to all stakeholders, including producers, entrepreneurs, government officers, and consumers through collaboration from relevant agencies from both public and private sectors. Thirdly, the Thai Geographical Indication Protection Act B.E. 2546 (2003) should be amended to provide the control system that is consistent with the EU standard in order to certify the quality of Thai GI products. Lastly, sufficient budget and GI experts should be allocated for the government agencies involved, particularly the Department of Intellectual Property and the Provincial Commercial Affairs Office in order to enhance their operational efficiency.

Keywords: Geographical Indication, Intellectual Property, Agricultural Products

บทคัดย่อ

เขียนรายเป็นจังหวัดที่มีพัฒนาการที่ดีในการใช้สิ่งบ่งชี้ทางภูมิศาสตร์ (Geographical Indication: GI) เพื่อเพิ่มมูลค่าทางเศรษฐกิจให้กับผลิตภัณฑ์ท้องถิ่นและขยายการเข้าถึงตลาดของผลิตภัณฑ์ทางการเกษตร รวมถึงผลิตภัณฑ์เกษตรแปรรูปไปยังตลาดต่างประเทศ อย่างไรก็ตามพบว่าการใช้สิ่งบ่งชี้ทางภูมิศาสตร์เป็นเครื่องมือในการส่งเสริมการพัฒนาท้องถิ่นในจังหวัดเขียนรายนั้นยังไม่ประสบความสำเร็จเท่าที่ควร ดังนั้นบทความวิจัยนี้จึงมีวัตถุประสงค์เพื่อศึกษาถึงมาตรการทางกฎหมายในการให้ความคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ รวมถึงปัญหาและอุปสรรคต่าง ๆ ที่เกี่ยวข้อง เพื่อที่จะเสนอแนะมาตรการและแนวทางที่เหมาะสมในการส่งเสริมการคุ้มครองและการใช้ประโยชน์จากสิ่งบ่งชี้ทางภูมิศาสตร์ของจังหวัดเขียนราย โดยจากการศึกษาพบว่าความท้าทายที่สำคัญ ได้แก่ การขาดการรวมกลุ่มกันอย่างเข้มแข็งของชุมชน การขาดความรู้และความเข้าใจที่เพียงพอเกี่ยวกับสิ่งบ่งชี้ทางภูมิศาสตร์ ขาดระบบควบคุมตรวจสอบคุณภาพสินค้าสิ่งบ่งชี้ทางภูมิศาสตร์ที่ชัดเจนและได้มาตรฐานสากลในการตรวจสอบและรักษาคุณภาพให้สอดคล้องกับคุณสมบัติของสินค้าที่ได้รับการขึ้นทะเบียน ตลอดจนการขาดงบประมาณและบุคลากรที่เหมาะสมและเพียงพอ

ดังนั้นในการส่งเสริมและผลักดันให้สินค้าเกษตรของจังหวัดเขียนรายได้รับการคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ทั้งในประเทศไทยและในสหภาพยุโรปนั้น ผู้วิจัยมีข้อเสนอแนะในเชิงนโยบายดังต่อไปนี้ ประการแรก หน่วยงานภาครัฐควรสนับสนุนการสร้างแกนนำชุมชนเพื่อเป็นแกนนำในการผลักดันสินค้าที่มีเอกลักษณ์ของชุมชนให้ได้รับการคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ ประการที่สอง หน่วยงานที่เกี่ยวข้องทั้งจากภาครัฐและภาคเอกชนควรสร้างความรู้ความเข้าใจถึงความสำคัญ และประโยชน์ของการได้รับการคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ให้กับผู้ผลิตในชุมชน บุคลากรจากหน่วยงานของรัฐ และผู้บริโภค ประการที่สาม พระราชบัญญัติคุ้มครองสิ่งบ่งชี้ทางภูมิศาสตร์ พ.ศ. 2546 ควรได้รับการแก้ไขเพื่อจัดให้มีระบบควบคุมตรวจสอบที่สอดคล้องกับมาตรฐานของสหภาพยุโรปเพื่อรับรองคุณภาพสินค้าสิ่งบ่งชี้ทางภูมิศาสตร์ของประเทศไทย ประการสุดท้าย รัฐบาลควรจัดสรรงบประมาณและผู้เชี่ยวชาญด้านสิ่งบ่งชี้ทางภูมิศาสตร์ให้เพียงพอให้แก่หน่วยงานของรัฐที่เกี่ยวข้อง โดยเฉพาะอย่างยิ่งกรมทรัพย์สินทางปัญญาและสำนักงานพาณิชย์จังหวัดเพื่อเพิ่มประสิทธิภาพในการปฏิบัติงาน

คำสำคัญ: สิ่งบ่งชี้ทางภูมิศาสตร์, ทรัพย์สินทางปัญญา, สินค้าเกษตร

1. Introduction

Among the ASEAN members, Thailand is enthusiastic and places much emphasis on geographical indication (GI), and therefore is considered as the leader in this area. According to the ASEAN GI Database, Thailand has the highest number of GI registrations in the region.¹ At present, there are four GI products of Thailand that have been registered in the EU, namely Khao Hom Mali Thung Kula Rong Hai, Doi Chaang Coffee Doi Tung Coffee, and Sangyod Rice. Among these products, two of them, which are Doi Chaang Coffee and Doi Tung Coffee are GI products from Chiang Rai. This demonstrates a great improvement in using GI to increase economic value for local products and expand the market access of Chiang Rai GI products to foreign markets. In addition, the protection of GI for Doi Tung Coffee and Doi Chaang Coffee also shows the benefits of obtaining GI protection to local communities which can help enhance local development in a sustainable way. Allowing villagers to earn a living by growing coffee instead of opium cultivation can create jobs and generate income for the villagers, and thereby help the people in the community rely on themselves and make a sustainable alternative living. Therefore, Doi Tung Coffee and Doi Chaang Coffee can be considered as good examples that demonstrate the effective management of GI for sustainable development that leads to social and economic development of the community.

However, in addition to Doi Tung and Doi Chaang Coffee, those have been registered in the EU, Chiang Rai also has many agricultural products that have been registered for GIs in Thailand, namely Nang Lae Pineapple, Chiang Rai Phu Lae Pineapple, Chiang Rai tea, and Chiang Rai Khiaw Ngoo Sticky Rice. These products still need support from the government for obtaining GI protection in foreign countries in order to improve the quality level of Thai agricultural products to meet the international standards and expand the export market. Additionally, Chiang Rai also has other agricultural products that are qualified to represent the relationship between indigenous community and land, and therefore deserve to be protected as GIs both nationally and internationally.² As such, this article aims to study legal protection of GI in Thailand and in the EU, as well as problems and obstacles in obtaining

¹ Maslina Malik, "Updates on Geographical Indications in the ASEAN Region," (2 July 2019, Lisbon, Portugal) [online] Available from : https://www.wipo.int/edocs/mdocs/sct/en/wipo_geo_lis_19/wipo_geo_lis_19_6.pdf. [19 January 2021]

² National News Bureau of Thailand, "Department of Intellectual Property Continues to promote GI products to help increase local incomes and improve the economic foundation," (2019) [online] Available from : <http://thainews.prd.go.th/th/news/detail/TCATG190402101013376>. [3 February 2021]

this domestically and internationally in order to propose an appropriate measure and guideline that can help promote GI protection and thereby enable local products in Chiang Rai to effectively compete in domestic and foreign markets. This is also in line with the Thailand's 20-year Strategy (2018-2037) that aims to enhance the country's competitiveness through the commercialisation of intellectual property (IP) rights including GIs. The protection of GI is expected to play an important role in strengthening the community's production base and the competitiveness of the local community in a sustainable manner, which is considered as one of the most important foundations for driving social and economic development of the country. Therefore, this article aims to analyse problems, obstacles and solutions in obtaining GI protection for agricultural products, both in Thailand and in the EU in order to propose an appropriate measure and guideline for the promotion of GI protection in Chiang Rai, both domestically and internationally.

2. Research objectives

This research has three major objectives as follows:

- (1) To study legal measures for the protection of GI
- (2) To analyse major challenges in obtaining GI protection for agricultural products in Thailand and in the EU
- (3) To propose an appropriate measure and guideline for promoting GI protection of Agricultural products in Thailand and in the EU

3. Research methodology

This research was conducted using qualitative research methodology consisting of documentary research and in-depth interview to propose an appropriate measure and guideline for promoting GI protection for Thailand's agricultural products both domestically and internationally. A comparative approach was applied in order to investigate an appropriate measure and guideline for the protection of GI for agricultural products in Chiang Rai by comparing Thai law with EU law. The documentary research method was used based on study and analysis of legislation, research papers, theses, articles, monographs, a policy document from a government/organisation and information from various websites which relate to this issue. Moreover, the research has also collected data according to the process of qualitative research methods by in-depth interviewing, which is an open-ended interview.

Experts who have knowledge in the subject of research from both governmental and private agencies such as the Department of Intellectual Property, Chiang Rai Provincial Commercial Affairs Office, Doi Chang Coffee Original Company Limited, will provide information and practical facts relating to the registration of GI in Thailand and the EU, including success factors, as well as obstacles and solutions to resolve such problems.

4. Research outcome

To propose appropriate measures and guidelines in promoting GI protection for agricultural products in Chiang Rai, this study aims to investigate legal measures to protect agricultural products under GI regimes in Thailand and the EU and the major challenges in obtaining them both domestically and internationally. Therefore, the research outcome can be categorised as follows.

4.1 Legal measures to protect agricultural products under GI regimes in Thailand and the EU

GI is a type of an intellectual property (IP) right, an exclusive right that is granted to protect intellectual creativity.³ Compared with other types of IP rights, it is found that GI shares some similarities with trademarks. That said, it is the name, symbol, or anything else that enables identification of the product preventing confusion and misunderstanding amongst consumers. Therefore, similar to trademarks, GI can help prevent an unauthorised person from using such marks or confusingly similar ones. It also aims to protect consumers from confusion in the origin and quality of products that are protected by GIs.⁴ Nevertheless, there are some differences between trademarks and GIs. GIs are marks used for products that have a specific geographical origin and such products have special characteristics that are essentially attributable to their geographical area. Therefore, GI can indicate that the products from such geographical origins have unique features, quality and reputation representing the connection between nature and human beings. The people in the community rely on essential natural resources derived from specific areas such as raw materials, weather, as well as skills, expertise and wisdom of the community to produce local products. In other words, GI is the protection of product names for the community that can identify the product's

³ Chaiyos Hemarachata, *Characteristics of Intellectual Property Law: The Basic Knowledge of Copyright, Patent, Trademark, Trade secrets, Semiconductor, New Plant Variety*, (9th edition, Nititham Publishing House 2016), p.7.

⁴ *ibid.* 352.

quality that is linked to its original place of production. In addition, GI is a sign that can be used on goods only, whereas trademarks can be used on both goods and services.⁵ Furthermore, unlike trademarks, GIs are community rights that are granted to all producers or entrepreneurs in such geographical area and cannot be sold or transferred to other parties.⁶

According to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the first multilateral instrument dealing with GI protection, every WTO member must provide a minimum standard of GI protection.⁷ However, the member states are given flexibility to decide an appropriate measure to protect their GIs. That said, GI can be protected through a sui generis⁸ GI regime or other legal forms, such as laws focusing on business practice and trademarks and sui generis systems.⁹ GI has been widely recognised as a tool for stimulating social and economic development of the country, especially in developing countries that are rich in biodiversity and local wisdom like Thailand. That said, IP rights, especially GI can be used as a tool to promote social and economic development of the country. GI can help stimulate local development and facilitate access to foreign markets for agricultural products, especially the markets in the EU. The consumers in the EU give much credibility to products that are affixed with the GI logo since it can represent a unique quality or characteristic that is linked to a specific geographical origin. Therefore, obtaining GI protection can add economic value to local products and increase international market access.¹⁰ Nevertheless, the use of GI as a tool for local development is not as successful as it should be, especially in developing countries. In order to obtain GI protection, especially in the foreign countries, it requires a lot of investment in product development and proper management for the products to successfully break into the international market.¹¹

⁵ Jakkrit Kuanpoth and Buntoon Srethasirote, **Geographical Indication, Intellectual Property, and Community rights**, (Nititham Publishing House 2013).

⁶ David R. Downes, "How Intellectual Property Could Be a Tool to Protect Traditional Knowledge," (2000) **25 Columbia Journal of Environmental Law** 253, p.269.

⁷ Daniel Gervais, **The TRIPS Agreement: Drafting History and Analysis**, (2nd edn, Sweet and Maxwell 2003)

⁸ According to Back's Law Dictionary, Sui geris is defined as "a regime designed to protect rights that fall outside the traditional patent, trademark, copyright, and trade-secret doctrines."

⁹ WTO, "Geographical Indications (2020)," [online] Available form : https://www.wto.org/english/tratop_e/trips_e/ta_docssec5_e.htm. [15 June 2020]

¹⁰ Bertil Sylvander and Elizabeth Barham, "Introduction" in Elizabeth Barham and Bertil Sylvander (eds), **Labels of Origin for Food: Local Development, Global Recognition**, (CABI 2011), p.xv.

¹¹ Tesager W. Dagne, **Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development**, (Routledge 2015), p.137.

Thailand is rich in biodiversity and traditional knowledge that has been transmitted for generations. The importance and benefits of GI has attracted attention from the government. Among the ASEAN members, Thailand can be considered the leading country in strengthening its GI protection. As the WTO members, Thailand is obliged to modify national IP law, including GI to make them consistent with the WTO minimum standards. Accordingly, a sui generis GI system was adopted through the enactment of the Protection of Geographical Indications Act B.E. 2546 (2003). According to Section 3 of this Act, goods that can obtain GI protection include agricultural products, industrial products, and handicrafts. The implementation of GI protection in Thailand is moving forward. Thai government aims to encourage all provinces in Thailand to have GI products. The Department of Intellectual Property has set a target to register at least 1 GI product per province in Thailand. As of April 2021, Thailand has a total of 137 GIs from 76 out of 77 provinces.¹² Among these provinces, Chiang Rai can be considered as one of the leaders in this area. Currently, Chiang Rai has 6 GIs products. These products are all agricultural products, including processed agricultural products, which are Doi Tung coffee, Doi Chaang coffee, Nang Lae Pineapple, Chiang Rai Phu Lae Pineapple, Chiang Rai tea, and Chiang Rai Khiaw Ngoo Sticky Rice. However, in addition to these products, Chiang Rai still has other agricultural products that have a high potential for obtaining GI protection. This is because Chiang Rai is located in an area that is rich in resources and local wisdom. There are many products that have unique characteristics and qualities that are linked to its geographical origin.

In order to obtain GI protection in Thailand, two conditions need to be satisfied in accordance with Section 3 of the Protection of Geographical Indications Act B.E. 2546 (2003). Firstly, GI must be a name, symbol or other things used to trade to indicate a geographical origin. Secondly, there shall be a relationship between a particular quality, reputation or other characteristic and such geographical origin.¹³ Furthermore, according to Section 7, both

¹² The Department of Intellectual Property, "GI Products in Region (2021)," [online] Available from : <https://www.ipthailand.go.th/th/gi-002.html>. [19 June 2021]

¹³ Section 3 of the Thai Geographical Indication Protection Act B.E. 2546, "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."

government institutions and private sectors can apply for GI protection.¹⁴ However, in practice, the applications majorly come from local authorities.¹⁵ When the protection is granted, a control system needs to be provided in order to maintain the quality of the GI product in accordance with the conditions prescribed by the registrar¹⁶. However, the Thai Geographical Indication Protection Act B.E. 2546 does not contain a specific provision relating to the quality control of products. According to Section 15, the registrar has an authority to accept GI registration absolutely or with subject to conditions.¹⁷ In practice, the registrar exercises discretion under Section 25 to require the implementation of the inspection and product quality control system as one of the condition that the producers or the entrepreneurs of such GI products must conform to.¹⁸ The inspection and product quality control system can be divided into three levels, namely self-control, internal control, and external control by a certified certification body.

Self-control is an initial step of the quality control system in order to maintain the GI product's quality in accordance with the producer's manual and control plan. Internal control is conducted by the GI provincial committee, including producers, entrepreneurs, and other GI stakeholders. At this level, the GI committee is responsible for monitoring the production process to examine whether it complies with the manual and control plan.

¹⁴ Section 7 of the Thai Geographical Indication Protection Act B.E. 2546, "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.

¹⁵ Denis Sautier, "Seminar on Geographical Indications" (promoting Intellectual Property Rights in ASEAN Region, Hanoi, 20 September 2019).

¹⁶ According to Section 3 of the Thai Geographical Indication Protection Act B.E. 2546, "Registrar" is "the Director-General or the person appointed by the Minister to be the Registrar for the purpose of performance under this Act."

¹⁷ Section 15 of the Thai Geographical Indication Protection Act B.E. 2546 (2003)

"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."

¹⁸ Section 25 of the Thai Geographical Indication Protection Act B.E. 2546 (2003)

"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."

The external control must be carried out by a certification body accredited for certifying GIs by an accreditation body. The responsible accreditation body is the Thai Industrial Standards Institute (TISI) and the National Bureau of Agricultural Commodity and Food Standard (ACFS).¹⁹ The control in this level is conducted on behalf of the Department of Intellectual property in order to build confidence to consumers that products are controlled and inspected from the beginning of the production process to the final stage of manufacturing cycle process. This would therefore help consumers get the products that meet their quality expectations. However, in practice, the external control is required particularly when such GI products are exported to the foreign countries where GI certification is required such as the EU.²⁰

In the EU, GI is considered as an economic asset regionally.²¹ The success in promoting GI protection has helped the EU to attract foreign markets that give value to food quality.²² Therefore, the EU has long been playing an active role in improving GI protection both domestically and internationally. As a member state of the WTO, the EU members are obliged to protect GI through legal measures not lower than the minimum standard provided in the TRIPs agreement which is the first multilateral treaty dealing with GI.²³ Furthermore, in order to ensure the free movement of goods within the internal market, a community system of GI protection coexists with national systems of the EU member states.²⁴ Therefore, at the national levels, some EU countries have adopted a sui generis system for GI protection, while others provide protection through trademarks.²⁵ At the community level, the Regulation (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs

¹⁹ Pajchima Tanasanti, "Geographical Indications: Where Do We Stand Today?," Department of Intellectual Property, Thailand [online] Available from : https://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bkk_13/wipo_geo_bkk_13_5.pdf. [19 June 2021]; Filippo Arfini, Valentin Bellassen, *Sustainability of European Food Quality Schemes: Multi-Performance, Structure, and Governance of PDO, PGI, and Organic Agri-Food Systems* (Springer Nature 2019) 99.

²⁰ Denis Sautier, "Sewinar on Geographical Indications"

²¹ European Commission, "New Search Database for Geographical Indications in the EU," (2020) [online] Available from : https://ec.europa.eu/info/news/new-search-database-geographical-indications-eu-2020-nov-25_en. [29 November 2020]

²² European Commission, "Geographical Indications in the EU," (28-19 March 2019, Lima) [online] Available from : https://ipkey.eu/sites/default/files/ipkey-docs/2019/IPKey-LA_Peru_March-2019_Geographical-Indications-in-the-EU_en.pdf. [6 December 2020]

²³ Cecilia Navarra and Elodie Thirion, **Geographical Indications for Non-agricultural products: Cost of Non-Europe Report**, (European Parliament 2019), p.1.

²⁴ Ibid.

²⁵ Favale, M. and Borghi, M., "Harmonization of Intellectual Property Rights within and beyond the European Union: The Acquis Communautaire in the Framework of the European Neighbourhood Policy, (2013) WP5/25 Search Working Paper, SEARCH Project," [online] Available from : <http://www.ub.edu/searchproject/wp-content/uploads/2013/09/WP05.25.pdf>. [10 July 2020]

was adopted to provide a harmonised GI protection for wines, spirits, aromatised wines and other agricultural products including foodstuffs. Under the community of GI system, one registration can be enforced in all member states of the EU. By having a separate system governing GI protection at the EU level, stronger and more effective protection to local products in the region can be provided.²⁶ This could therefore encourage investment in local products, which can promote local economic growth to the community.²⁷

In the EU, GI can be divided into Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). The major difference between these protections is the quantity of raw materials that originate in the geographical area and how much of the production process has to take place within that area.²⁸ However, in order to obtain PDO, the products must have the strongest link to the defined geographical area. All parts of the process, including production, processing, and preparation must take place in that area. Whilst in the case of PGI, at least one of the stages of production, processing, and preparation must take place in the particular area to obtain the protection.²⁹ In other words, PDO has more stringent requirements than PGI. Furthermore, only a group or, subject to certain conditions, a natural or legal person, can apply for GI registration.³⁰

²⁶ European Commission, “Green Paper on the protection of geographical indications for non-agricultural products – Frequently Asked Questions, MEMO/14/486, Brussels/Strasbourg” (2014), 2. [online] Available from : https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_486. [10 June 2020]

²⁷ Catherine Seville, **EU Intellectual Property Law and Policy**, (Edward Elgar Publishing 2009)

²⁸ European Commission, “Quality Schemes Explained” [online] Available from : https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en. [11 January 2021]

²⁹ Ibid.

³⁰ Article 49 (1) of the Regulation (EU) No. 1151/2012, “Applications for registration of names under the quality schemes referred to in Article 48 may only be submitted by groups who work with the products with the name to be registered. In the case of a ‘protected designations of origin’ or ‘protected geographical indications’ name that designates a trans-border geographical area or in the case of a ‘traditional specialties guaranteed’ name, several groups from different Member States or third countries may lodge a joint application for registration.

A single natural or legal person may be treated as a group where it is shown that both of the following conditions are fulfilled:

(a) the person concerned is the only producer willing to submit an application;

(b) with regard to protected designations of origin and protected geographical indications, the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product are different from those produced in neighbouring areas.”

According to the Regulation (EU) No. 1151/2012, in order to obtain GI protection in the EU, an inspection and control system is one of the most important conditions. The products must be certified by a competent authority and control body in order to certify the quality of the product. In addition, if the products of origin are from a third country that is not a member of the EU, such products must be certified by a certification body qualified by ISO 17065. The inspection and control system can be divided into 3 levels namely, self-control, internal control, and external control.³¹ Self-control is an initial step carried out by the producers or the entrepreneurs in order to inspect and control the production process in accordance with the applications. Internal control is conducted by a group of the producers in order to inspect and control the quality and standard of raw material, production, packaging, and marketing, as well as the determination of the minimum price of the product. Regarding the external control, it will be conducted by an external organisation, a third-party certification body that is accredited with ISO 17065. The certification body can either from public or private organisations. However, the organisation must have qualifications as follows. Firstly, it must be independent, neutral, and fair. Secondly, it must have qualified employees. Finally, it must have necessary resources and tools available to perform its tasks.³² Additionally, traceability³³ is also required in order to identify a clear path between the area of production and the final product on the market.³⁴ This would help consumers have confidence that the products are genuine and have been produced in line with the detailed specification.

Despite the high level of harmonisation in GI protection for agricultural products, wines, spirits, and foodstuffs, there is still an area that remains fragmented. However, up to now, there are no harmonised laws provided for non-agricultural products at the EU level.³⁵

³¹ Aitor Pomares, "Controls of Geographical Indications (EU System)" (EUIPO 2020) [online] Available from : https://ipkey.eu/sites/default/files/ipkey-docs/2020/IPKey_SEA_aug_2020_%20AitorPomares_Control_of_GIs_presentation.pdf. [3 January 2021]; Verena Preusse, "Control Systems for Geographical Indications in the EU and Thailand: Do the EU's Standard Travel Abroad?" (MSc Thesis, Wageningen University and Research 2019) 21.

³² International Organization for Standardization (ISO), "ISO/IEC 17065:2012(en) Conformity assessment — Requirements for bodies certifying products, processes and services," [online] Available from : <https://www.iso.org/obp/ui/#iso:std:iso-iec:17065:ed-1:v1:en>. [15 March 2021]

³³ According to the International Organization for Standardization (ISO) traceability is defined as "the ability to trace the history, application or location of that which is under consideration."

³⁴ Alessandro Francesco Sciarra and Louise Gellman, "Geographical indications: why traceability systems matter and how they add to brand value," (2012) 7 *Journal of Intellectual Property Law & Practice* 264, p.265.

³⁵ European Commission, "Geographical Indications for non-agricultural products," [online] Available from : https://ec.europa.eu/growth/industry/policy/intellectual-property/geographical-indications/non-agricultural-products_en. [11 January 2021]

Therefore, GI protection for these products is subject to the national law of each member state which may vary from country to country. The EU is now in the process of exploring the possibility of extending GI protection to non-agricultural products at EU-level. If this can be achieved, the fragmentation in this area would be removed, and thereby positively affect the well-functioning of the internal market.

A comparison between Thai and the EU GI law reveals some similarities and variations. That said, both Thailand and the EU have adopted a sui generis system in protecting GI. This highlights the importance of GI in these countries, which have rich historical and cultural heritage, as well as biodiversity resources that can be turned into unique products. However, there are differences in some key areas. For instance, in terms of the scope of protection, agricultural products, industrial products, and handicrafts are all eligible for GI protection under Thai law. Whereas, there is currently no EU-wide GI protection for non-agricultural products. Additionally, unlike the EU, Thailand's government institutions can actively engage with the GI registration application. This demonstrates a significant role of the government in promoting GI protection in Thailand. Furthermore, although the GI control system in Thailand and the EU is similar in practice, with three levels of control, namely self-control, internal control, and external control, the Thai Geographical Indication Protection Act B.E. 2546 does not contain a specific provision governing product quality control. As a result, the conditions for developing a quality control and inspection system would be at discretion of the registrar. In contrast, the requirements relating to this issue are clearly stated in Regulation (EU) No. 1151/2012. The implementation of controls systems is a prerequisite for registering GI protection as PDO or PGI. This can provide more certainty to stakeholders, and it emphasises the necessity of the control system as a prerequisite for GI registration in the EU.

4.2 Problems and obstacles for protecting agricultural products under GI regime

GI has been widely recognised in that it can be used as a tool for stimulating social and economic development of the country³⁶, especially in developing countries that are rich in biodiversity and local wisdom like Thailand. In this regard, Doi Tung coffee and

³⁶ Bramley, C, Bienabe, E and Kirsten, JF, "The Economics of Geographical Indications: Towards A Conceptual Framework for Geographical Indication Research in developing countries" in WIPO (ed), **The economics of intellectual property: Suggestions for further research in developing countries and countries with economies in transition**, (WIPO World Intellectual Property Organisation Geneva 2009), p.110.

Doi Chaang coffee can be considered as the reference point of success in obtaining GI protection for agricultural products domestically and internationally. These products can be considered as the examples of successful GI products from Chiang Rai that have been granted GI protection both in Thailand and the EU. It was found that the major factors that make these Chiang Rai's GI products successful in obtaining GI protection in both Thailand and the EU are a strong community integration, sufficient knowledge and understanding about GI within the community, as well as sufficient support from the government sectors. Furthermore, one of the important conditions for products from third countries in applying for GI protection in the EU is that such products must be protected as GI in the country of origin initially³⁷. Therefore, in order to stimulate GI products of Chiang Rai to be protected in the EU, it is necessary to promote the protection of GI in Thailand first. Nevertheless, despite having other agricultural products that are unique and have quality that represents the connection between the products and the geographical area that should be pushed to obtain GI protection, the use of GI as a tool for local development is not as successful as it should be due to major problems and obstacles as follows:

4.2.1 A lack of strong community integration

GI is different from other types of IP since GI is a community right which affects local producers and their wider communities. Therefore, the strength of the community is one of the important factors for the success in registering GIs both in Thailand and in the EU. That said, the initiative for registering GI should mainly come from people in the community.³⁸ The government sector should only act as supporters. This is because people in the community are important stakeholders. They are the one who knows the history of the product, as well as production process from upstream to downstream processes. Therefore, people in the community should play a major role in pushing local products that have quality or unique characteristics in their communities to be protected by GIs.³⁹ The remarkable success can be found in the case of Doi Tung Coffee and Doi Chaang Coffee, which has strong community integration. Furthermore, both of them also have strong community leaders who truly recognised the importance of GIs and can therefore disseminate the

³⁷ Article 24 Regulation (EU) No 1151/2012.

³⁸ Interview with Hathaichanok Pisailert, Executive at Doi Chaang Coffee Original Company Limited (March 8, 2019).

³⁹ Giang Hoang et al., *The Impact of Geographical Indications on Sustainable Rural Development: A Case Study of the Vietnamese Cao Phong Orange*, (2020) MDPI, p.1, p.10.

knowledge to the people in the community. This makes the communities have confidence in their capabilities and ready to move towards their common goals. However, it was found that one of the major obstacles to obtain GI protection in other communities is that people in the community are unable to unite and lack a shared vision.⁴⁰ This may be due to the lack of strong community leaders who have to play an important role in enabling people in the community to come together and have the same goal.⁴¹ That said, it is necessary to enable people in the community to learn, operate and resolve various problems that occur together.

4.2.2 A lack of sufficient knowledge and understanding about GI

It is undeniable that the concept of GI is still new for developing countries, including Thailand.⁴² However, stakeholders and those involved, namely producers, entrepreneurs, government agencies, as well as consumers are still lacking sufficient knowledge regarding GI, particularly the importance and benefits of GI that can contribute to social and economic development of the country.⁴³ This perception is different from the EU, where the protection of GI has long existed. All stakeholders, including producers, entrepreneurs, government agencies involved, as well as consumers, have sufficient knowledge and recognise the benefits of GI.⁴⁴ Therefore, the lack of knowledge and understanding in GI can be considered as a major obstacle in pushing agricultural products in Chiang Rai to be granted GI protection at both national and international levels. That said, when the stakeholders do not have sufficient knowledge and understanding, there will be no awareness concerning the importance and benefits that people and community can receive from GI.⁴⁵ Furthermore, if the government officials involved who have to act as major supporters in promoting GI protection still lack sufficient expertise in this area, this would prevent them playing an active role in giving advice, knowledge and understanding about GI protection to applicants and

⁴⁰ Interview with Jetsadawat Visetkongpetch, Administrative Officer at Mae Fah Luang Intellectual Property Management and Innovation Division (February 17 2019).

⁴¹ Ibid.

⁴² Cerkia Bramley et al. "The Economics of Geographical Indications: Towards A Conceptual Framework for Geographical Indication Research in Developing Countries," in WIPO (ed), **The Economic of Intellectual Property**, (WIPO, Geneva 2009), p.130.

⁴³ Tavephut Sirisakbanjong et al., **Research on Legal Measures of Geographical Indication to Protect Traditional Knowledge in Food in the ASEAN Community: Lessons for Thailand**, (The Secretariat of the House of Representatives 2015), p.21.

⁴⁴ Bernard O'Connor, *The Law of Geographical Indications* (Cameron May 2004), p.21.

⁴⁵ Interview with Jetsadawat Visetkongpetch.

other interested persons. Thus, if this problem still persists, the goal of using GI as a tool to strengthen the local community which can therefore lead to social and economic development of the country would not be achievable.

4.2.3 A lack of a clear and standardised control system to monitor and keep the quality consistent with the specifications

Having a control system of GI products is an important factor in obtaining the protection of GI in Thailand and in the EU.⁴⁶ Fundamentally, the control system can help inspecting and ensuring that GI products have quality and standard consistently, as well as maintaining the local wisdom in the community.⁴⁷ However, although in practice, the control system in Thailand and the EU is similar, in having three levels, namely, self-control, internal control and external control. However, the Thai Geographical Indication Protection Act B.E. 2546 does not contain a specific provision relating to the quality control of products in order to register GI in Thailand.⁴⁸ In practice, the registrar will exercise discretion under Section 25 of the Thai Geographical Indication Protection Act B.E. 2546 (2003) in setting conditions for providing a control system, and thus the producers or the entrepreneurs of such GI products must comply with the conditions set forth in.⁴⁹

Whereas according to the Regulation (EU) No. 1151/2012, it is clearly defined that an applicant who applies for GI protection must have a control system and the certification body accredited by the ISO 17065 standard⁵⁰ to inspect the quality of the products at the level of external control.⁵¹ In addition, the EU also gives emphasis on a traceability system, which allows consumers to determine all the sources of the product from its point of origin to a retail location where it is purchased by consumers. In other words, the traceability system is a key element that adds value to the product.⁵² This can build trust and confidence

⁴⁶ Verena Preusse, **Control Systems for Geographical Indications in the EU and Thailand: Do the EU's Standard Travel Abroad?**, (MSc Thesis, Wageningen University and Research 2019), p.14-21.

⁴⁷ Ibid.

⁴⁸ Ibid 19-21.

⁴⁹ Section 15 of the Thai Geographical Indication Protection Act B.E. 2546 (2003)

"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."

⁵⁰ See <https://www.iso.org/standard/46568.html>.

⁵¹ Verena Preusse, **Control Systems for Geographical Indications in the EU and Thailand: Do the EU's Standard Travel Abroad?**, p.14-16.

⁵² UNCTAD, **Why Geographical Indications for Least Developed Countries (LDCs)?**, (2015), p.46.

in the quality and source of product within consumers. Therefore, it can be seen that the control system to monitor the quality of GI products in Thailand is only at the discretion of the registrar. There is no compulsory measure for producers or entrepreneurs to have a system to control product quality at all levels, namely self-control, internal control, external control, as well as product traceability. For this reason, the quality control system for monitoring GI products in Thailand is flawed as it still lacks certainty. That said, it only serves as a guideline that depends on the discretion of the registrar, which lacks definite clarity and does not comply with the EU's standard. This can therefore be a major obstacle in obtaining GI protection in the EU.

4.2.4 A lack of adequate financial and human resources

In order to promote local products to be protected by GIs at both the national and international levels, support from government agencies, especially the Department of Intellectual Property and the Provincial Commercial Affairs Office is inevitably necessary. The registration of GI in each product, particularly at international level requires both financial and human resources from relevant government agencies that have expertise in this area.⁵³ According to past experience, the Department of Intellectual Property has provided major support both in terms of financial and human resources in processing applications for GI registration, developing the quality control system, as well as promoting GI products both in domestic and international markets after granting protection.⁵⁴ Therefore, it is necessary for the Department of Intellectual Property and the Provincial Commercial Affairs Office to receive sufficient resource allocation in order to achieve maximum efficiency in promoting the protection of GI.

However, it was found that at present, the Department of Intellectual Property and the Provincial Commercial Affairs Office still lacks adequate budget and staffing. This is therefore likely to cause a delay to the work completion and limit the role of the Provincial Commercial Affairs Office. Although the Provincial Commercial Affairs Office is closer to the community, in fact they do not have as much of a role as they should in helping local community to obtain GI protection, particularly, the applications for GI protection in foreign countries. The recommendation and guideline on this issue depends majorly on assistance

⁵³ Interview with Monchanok Thanasanti, Trade Officer at Department of Intellectual Property, Minister of Commerce, (January 18 2019).

⁵⁴ Ibid.

from the Department of Intellectual Property, the unit of the central government that is located in Bangkok.⁵⁵ Thus, it is highly likely that Chiang Rai Commercial Office can only serve as the coordinator between the Department of Intellectual Property located in Bangkok and the local producers or entrepreneurs in the local community.

4.3 Measures and guidelines for promoting GI protection for agricultural product

According to this study, it was found that the success factors include strong community integration, sufficient knowledge and understanding about GIs of the community, alongside sufficient support from the government sectors. Whereas the factors that can be considered as a major obstruction to success are the lack of strong community integration, insufficient knowledge and understanding about GI, the lack of a clear and standardised control system to monitor and keep the quality consistent with the specifications, as well as inadequate financial and human resources. Therefore, in order to promote and stimulate Chiang Rai's agricultural products to be protected under GI regimes both in Thailand and the EU, policy recommendations have been proposed as follows.

4.3.1 Community integration and participation

GIs are community rights that can be held in perpetuity as long as the community can maintain the distinctive quality of the products. Therefore, the participation of people in the community is one of the most important factors of success. Ideally, the desire to obtain GI protection should be initiated from the community, whereas the government agencies should only act as supporters.

Operation guidelines

1. The relevant government agencies, especially the Department of Intellectual Property and the Provincial Commercial Affairs Office should closely engage with the community in finding and creating the right and appropriate community leaders. The community leaders would therefore be the ones who play an important role in promoting and stimulating the local products that have unique characteristics and quality to be protected by GI.

⁵⁵ Interview with Lalida Jiamsukhum, Trade Officer at Chiang Rai Commercial Affairs Office, (February 4 2019).

2. The government agencies should organise training programs relating to the protection of GI for potential leaders of communities in order to provide knowledge and understanding about the importance and benefits of obtaining GIs both at domestic and international levels. This would help establish closer cooperation between communities and government agencies. Furthermore, by having a community leader who has sufficient knowledge and understanding in GIs, it would help pass on the knowledge to the people in the community and promote community's participation. This could therefore enable the people to share the same vision throughout the community. Increasing community integration would finally lead to a stronger community that is more self-reliant.

3. The community should strengthen cooperation with the Community Organisation Development Institute (CODI), the public organisation established to support the development of a strong community. This would serve as an important foundation for the country's development planning. That said, the community and the CODI should work closely together in order to stimulate the community in Chiang Rai that has potential agricultural products to apply for GI protection and thereby using it as a tool for local development. This should be clearly stated as one of the goals of the community in their development plans. Furthermore, by having a clear and actionable goal, it would create a shared vision and encourage community engagement. The more connected to a community people feel, the more likely they would take responsibility and experience a sense of commitment.

4.3.2 Knowledge and understanding of GI

Although the related government agencies, particularly the Ministry of Commerce, has been playing an active role in promoting GI protection in Thailand, it is undeniable that the concept of GIs is still a new matter for Thai society. The general public, manufacturers, entrepreneurs, as well as government officials in various departments in the relevant government sector still lack sufficient knowledge and understanding of GIs. Advantages and benefits potentially attached to GI in both domestic and international perspectives should be provided to the people in the community, related government officials, as well as consumers.

Operation guidelines

1. The producers and entrepreneurs in the community should be gathered together to study the possibility of applying GI protection. In addition, they should jointly prepare for an application for registration of GIs, by establishing product quality control system to

maintain the distinctive quality. Unlike other IP rights, GIs belong to the local community and can thereby help to add value to local products, as well as generate income for people in the community. To accomplish these goals, the government agencies at provincial level, particularly the Provincial Commercial Affairs Office should collaborate closely with the community stakeholders. In addition, if the government want to stimulate Thai GIs to be protected in the EU, a deeper understanding of the registration of GIs under the EU law is also required. That said, in order to prevent infringement of IP rights in foreign countries, which may adversely affect the image of Thai GI products and may result in losing shares in the EU market, it is necessary to provide knowledge and understanding about the GI protection in the EU to local producers and entrepreneurs that are interested to apply for GI protection in the EU. This will help expand the market of the Thai GIs products internationally.

2. Training programs should be organised to create awareness and understanding of GI protection for both central and regional authorities, especially the officials in charge at the Office of Provincial Commercial Affairs. This can promote awareness of the importance and benefits of GI among the relevant government agencies and officials to have sufficient knowledge and understanding in the EU GI system. The regional government agencies should play an important role in providing advice to the local producers and entrepreneurs in the community since they are closer than the central government agencies.

3. The cooperation with the Ministry of Education should be strengthened to provide more courses of study to promote knowledge and awareness about basic IP rights, including GI for students. IP education should not only be available in law school at university level. Education about IP should be included in school curricular from elementary levels. This is because everyday people mostly come into contact with products that have IP protection. Therefore, IP education should be provided to all students, not only limited to law students. This would help people in the country to have a better understanding of IP Including GI, and enable them to further develop IP products from what is available in the community.

4.3.3 Control system and inspection of standards for GI products

The quality control and inspection system for GI products is one of the important conditions for the protection of GI in both Thailand and the EU. This is to ensure that GI products can maintain their identity and quality, as well as meet the specified standards. Therefore, the development of a quality control and inspection system for Thai GI products to meet international standards is necessary. If the product meets the standards of the

quality control as specified, it would lead to the upgrading of local products, and thereby increasing market access in the EU and the price of the products.

Operating guidelines

1. The amendment of the Thai Geographical Indication Protection Act B.E. 2546 is required. The provisions relating to the quality control and inspection system of GIs products should be clearly provided. The amended provisions should be clear and cover every step in the control and inspection systems at all levels, including, internal and external controls, as well as a traceability system. It should also require that GI products must be certified by certification bodies that comply with ISO 17065, the same standard as applied in the EU. This is because if the Thai GI products have the same production and quality standards as provided in the EU laws, it would make the Thai GI products meet the standards that are acceptable in the EU, thereby increasing the opportunity to access the premium market internationally. In addition, by having a specific provision dealing with the product quality control and inspection system, it can make the conditions in establishing the quality control and inspection system enforceable. It would not merely be just a guideline at the discretion of the registrar as existed in the current law.

2. There should be a project to develop capacity of certification bodies from both public and private sectors that can operate in accordance with the international standard, ISO 10765. This would help raise the standard of certification bodies in Thailand to be in the same standards as adopted in the EU.

4.3.4 Budget and human resources

Sufficient allocation of budget and human resources to the government agencies involved in the protection of GI, particularly the Department of Intellectual Property and the Provincial Commercial Affairs Office is essential. These organisations are directly responsible for promoting and stimulating local products to obtain GIs domestically and internationally. Therefore, sufficient allocation of both financial and human resources to these organisations is extremely important. This would help improve the organisation's effectiveness, and thereby positively affect the local community.

Operating guidelines

1. Due to the increased missions and responsibilities, the budget should be increasingly allocated in order to support the Thai GI products to be protected in the EU.

However, it seems like the situation is getting better since the Department of Intellectual Property decided to raise the status of the Working group on Geographical Indication to become the Geographical Indication Office, which has equivalent status as the Copyright Office, Trademark Office, and Patent Office. This change would be in line with the government policy that gives much importance to GI in order to add value to the local products and promote community development sustainably.

2. There should be sufficient government officials who have expertise in GI to perform their duties at the Provincial Commercial Affairs Office in order to help and provide knowledge, as well as recommendations for obtaining GI protection at both the national and international levels. However, due to the closeness of the regional government agencies to the local community, the Provincial Commercial Affairs Office should therefore have an important role in promoting the protection of GIs.

3. There should be a development program to promote expertise in GI protection for the involved government authorities. This would help these agencies and officials to perform their duties efficiently and on time. Moreover, the government should collaborate with foreign specialised agencies such as the European Intellectual Property Office (EUIPO) to arrange a training course for the relevant government officials, especially those from the Department of Intellectual Property and the Provincial Commercial Affairs Office.

4. There should be a GI Committee in every province. The appointed GI provincial committee should be the main working group that works closely with the community to promote and facilitate potential local products in obtaining GIs protection. This is in accordance with the Cabinet's resolution on 18th February 2019, which has assigned every province to appoint a provincial committee in supporting the promotion and protection of GIs. Therefore, the Provincial Geographical Indication Committee should play a major role in cooperating with communities to seek for potential agricultural products that can obtain GI protection. To improve operational efficiency, the structure of the committee should consist of members from many sectors, including the private sector, and especially representatives from communities in geographical areas that have potential agricultural products.

5. The government should establish a center that can assist and provide consultation with regards to GI protection at every Provincial Commercial Affairs Office in order to provide a comprehensive service for local producers and entrepreneurs that are interested in applying for GI protection both in Thailand and overseas. This center should be able to give

a clear advice and provide guidelines for those who would like to obtain GI protection. This is because the Provincial Commercial Affairs Office is a regional organisation that is closer to the community than the Department of Intellectual Property that is located in Bangkok. This will emphasise an important role of the Provincial Commercial Affairs Office in working closely with the community in order to promote local products that can be protected as GIs at both national and international level.

5. Conclusions

The benefits of GI as a tool for stimulating social and economic development of the country has been recognised in Thailand. However, despite various agricultural products that have distinctive quality and characteristics linked to its geographical origins, there are only few products that can obtain GI protection at both national and international levels. Chiang Rai's agricultural products, particularly Dai Tung and Doi Chaang Coffee can be considered as remarkable examples of Thailand's agricultural products that can successfully enter into both domestic and international markets by obtaining GI protection in Thailand and the EU. This demonstrates a progressive step in using GI to increase economic value for local products and expands the market access of Chiang Rai GI products to foreign markets. It has been found that the success factors of these GIs include a strong community integration, sufficient knowledge and understanding about GIs of the community, and sufficient support from the government sectors. Whereas the factors that can be considered as major challenges for other agricultural products in obtaining GI both domestically and internationally are a lack of strong community integration, insufficient knowledge and understanding about GI, a lack of clear and standardised control system to monitor and keep the quality consistent with the specifications, and inadequate financial and human resources. Summarising, if these challenges can be overcome, it would help to extend opportunities for other agricultural products in Thailand to be protected under GI scheme in both Thailand and the EU, and thereby move towards the country's goal in using GI as a tool for stimulating social and economic development of the local community in a sustainable way.

