

**Creating Viable Markets through
Use of Geographical Indications:
What Can India Learn from Thailand?**

N. Lalitha



***Gujarat
Institute of
Development
Research***

Working Paper No. 238

**Creating Viable Markets through
Use of Geographical Indications:
What Can India Learn from Thailand?**

N. Lalitha

November 2016

Gujarat Institute of Development Research
Ahmedabad

Abstracts of all GIDR Working Papers are available on the Institute's website.
Working Paper No. 121 onwards can be downloaded from the site

All rights are reserved. This publication may be used with proper citation and due acknowledgement to the author(s) and the Gujarat Institute of Development Research, Ahmedabad.

© Gujarat Institute of Development Research

First Published	November 2016
ISBN	81-89023-98-5
Price	Rs. 100

Abstract

The focus of this paper is to compare the Geographical Indications systems in India and Thailand and to provide suggestions based on the strategies adopted in Thailand. India and Thailand adopt sui-generis system of protection and extend GI protection to agriculture, handicrafts, manufactured and natural products. While filing methods are almost similar for both the countries, Thailand differs from India in its strategic approach in promoting GI products. This includes the One Province One GI approach, creation of internal and external control system for the quality of the product and traceability of the GI product, accreditation of the quality control bodies, use of common logo and focused marketing efforts. In India though a number of products have already been registered with GI Registry, post-GI registration activity is yet to gain attention. India should also pay attention to quality aspects of GI products and strengthen marketing initiatives.

Key words: Intellectual property, Geographical Indications, India, Thailand, Market Access

JEL Classification : O34, O57, F19.

Acknowledgements

This paper is an outcome of the study visit to Bangkok facilitated by the Exchange of Scholars under the Indian Council of Social Science Research, New Delhi and the National Research Council of Thailand during January 2016. I am grateful to both the Councils for providing me this opportunity. Dr. Nongluksana Thapsawasdi, Director, India Studies Centre, Thammasat University and Ms. Ratchata Suramonthal, Post-Graduate Student of the International Studies Program at Thammasat University, deserve a very special mention. Both of them had very thoughtfully planned all the interviews with the relevant government officials and visits to the libraries which helped me to start the work from day one. I am thankful to Prof. Monthien Satimanon, Bachelor of Economics International Program, Thammasat University, for his comments on an earlier version of the paper which improved the clarity. My sincere thanks to the following officials from the GI Section, Department of Intellectual Property, Ministry of Commerce, Government of Thailand, Ms. Prapaporn Khumpiranont, Head GI group, Ms. Monchanok Tansanti, Trade Officer, Ms. Kitiyaporn Sathusen, Trade officer, Ms. Ranee Saisalee, Trade Officer and Ms. Pakkajin Tansirikongkol, Trade Officer. While discussions with Prof. Monthien and the officials with Department of Intellectual Property helped me to understand the Thai GI system, I am alone responsible for the discussions and inferences drawn in this paper. My sincere thanks to Dr. P K Viswanathan, Prof. Tara Nair and Dr. Itishree Pattnaik for their efforts to bring this paper as part of the GIDR working paper series.

Contents

Abstract	i
Acknowledgements	i
Contents	ii
1. Introduction	1
1.1 <i>Rationale and Focus of the Paper</i>	1
2. Theoretical Framework	3
2.1 <i>Rationale for Protection through GI</i>	3
2.2 <i>Salient Features of GI</i>	5
2.3 <i>GI as a Tool for Rural Development</i>	6
2.4 <i>Improved Market Access</i>	7
2.5 <i>GI as a Tool to Protect Traditional Knowledge</i>	7
2.6 <i>GI as a Tool of Protection of Biodiversity</i>	8
3. Filing GI applications in India and Thailand	8
3.1 <i>Geographical Indication Control System in Thailand</i>	11
3.2 <i>Infringement of GI</i>	13
3.3 <i>Prohibition of Registration of Certain GI</i>	13
3.4 <i>Application by Foreign Applicants</i>	14
3.5 <i>Safeguards in the Indian GI Act</i>	14
4. Status of Geographical Indications Protection in Thailand and India	14
4.1 <i>Status of GI in Thailand</i>	14
4.2 <i>Infringement of GI</i>	16
4.3 <i>Status of GI Applications in India</i>	17
5. Suggestions for the Replicability of Thai GI model in India	18
References	22

List of Figures

- | | |
|---|----|
| 1. Filing of GI Application in India | 10 |
| 2. Geographical Indication Control System of Thailand | 12 |

Appendix

- | | |
|---|----|
| Table 1. List of GI products registered in Thailand (2003-2012) | 20 |
|---|----|

Creating Viable Markets through Use of Geographical Indications: What Can India Learn from Thailand?

N. Lalitha

1. Introduction

Geographical Indications is one of the intellectual property rights tools (IPR) that convey the link between quality of a product and the place of origin. GIs are an important intellectual and economic assets of the region, which, by their highly distinguishable quality products offered to the consumers, have the potential to accrue specific benefits to localized producers, through enhanced economic returns and protection of traditional knowledge and resources used in the production.

The important characteristic of GIs include - collective monopoly (held collectively by all producers in the specific region and knowledge, thus, remains in public domain), perpetuity of rights as long as good-place-quality link is maintained (thereby ensuring intergenerational equity) and non-transferability (cannot be produced outside the demarcated regions), excludability (individuals from a specific location can be excluded from enjoying the benefits if specific standards are not adhered to) and non-rivalry (the enjoyment of GI protection by one does not diminish the benefits of protection for another).

While traditionally GIs are linked to agriculture based goods that owe their specialty to specific geographical and climatic conditions, with links to specific skills and traditions of manufacture yet, there are diversities in the category of goods protected across countries. A few World Trade Organization (WTO) members such as India and Thailand have included handicrafts and industrial goods under the scope of GI. In the case of European Community, GI is associated with agricultural products including food, wine and spirits. But some EC member states like France and Germany protect handicrafts also under GI.

1.1 Rationale and Focus of the Paper

It is true that only a small percentage of registered IPRs are exploited to get economic returns to the innovator. But in the case of GI, there is more than one reason for higher utilization compared to other IPR tools. To elaborate, when a

N. Lalitha (lalithanarayanan@gmail.com) is Professor at the Gujarat Institute of Development Research, Ahmedabad.

product is marketed based on the qualities derived from its geographical location the benefits flow to develop the region by providing more livelihood opportunities to the producers.

GIs are considered particularly as a potential tool for the promotion of rural livelihood opportunities as most products that have been identified and protected under GI in many countries are produced in the rural areas using the natural resources and human skills in that region. Further, in the case of GIs the making of an industrial or a handicraft product is widely known to all the producers in that area. In the case of agricultural products, the region specific advantages are available to all the producers in that region. But except for a few products, which are known both in domestic and global market like Champagne or Darjeeling tea, many other GI products are relatively less known despite their unique features. It is also true that several countries face this situation, particularly, those which have entered the GI arena after signing the Trade Related Intellectual Property Rights (TRIPS) agreement of the WTO. Hence in order to understand the strategies of countries to promote GI and to look at the replicability of such models in India, it is essential that we look at comparable situations. Therefore, the broad objective of this paper is to examine the experience of Thailand in using and promoting GI and see whether such strategies could be replicated in India.

Thailand becomes an ideal country to compare with India¹ in the context of GI for the following reasons.

1. Thailand like India has adopted *sui generis* system in the field of GI since the year 2003.
2. Both the countries protect agricultural, industrial and handicraft products under GI.
3. Thailand like India has huge dependency on its primary sector. Particularly in the production of rice Thailand has global recognition. It has been one of the world's largest rice exporters for more than three decades and its market share accounted for more than 25 per cent in the global trade (Ngokkuen & Grote, 2012) .

¹ This paper is drawn from a larger report with the same title submitted to the Indian Council for Social Science Research, New Delhi and India Studies Centre, Thammasat University, Bangkok, under the ICSSR-NRCT exchange of scholars program, January 2016.

Including the brief introductory section, this paper consists of five sections. The second section presents the highlights of relevant literature on GI. The third section discusses the system of filing GI applications in India and Thailand. The fourth section provides the status of GI protection in India and Thailand. Section 5 provides suggestions for the replicability of Thai GI promotion model in India.

2. Theoretical Framework

In this section, a brief review of the relevant literature is provided to highlight the importance of GI protection.

2.1 Rationale for Protection through GI

The economic rationale for GIs is the correction of a market failure caused by:

(a) asymmetric information between sellers and buyers, where if the buyers are uncertain that the quality of product A is better than that of product B, buyers will not be willing to pay a higher price for product A; and (b) the nature of the good being a public good, it is liable to be misused for its reputation (Bellatti, et al., 2011). In other words, GI institutionalizes the reputation of a product, where due to information asymmetries free riding on reputation of a product happens. Thus it acts as both consumer and producer protection measure (Bramley, et al., 2011) and has the potential to improve rural livelihoods based on local resources. Bramley, et al. argue that both producers and consumers harness reputation as a coping device in the presence of asymmetry of information. Consumers revert to making repeat purchases, developing a strong sense of brand loyalty and a willingness to pay a premium for reputation. In response, producers adopt strategies for creating reputation in their products. These authors argue that reputation can improve market efficiency by avoiding the impact of information asymmetries, only if it is protected through a process of “institutionalization of reputation”. This institutionalization takes place by way of legal instruments (such as GIs) that formalize the nexus between a product’s attributes and its region of origin. Hence, the expectation by different stakeholders is that, whether the product attributes or the value addition in terms of reputation/speciality of the product results in adequate economic benefits for the producers. The legal recognition of geographical indications provide an institutional tool through which to address these problems and consequently provide rural communities with an opportunity to valorize their local production and extract rents based on local savoir faire. It is on this

premise that GIs are considered as a potential tool for rural development and as a tool for economic empowerment of women².

While there are potential benefits of GI being used as a tool for rural development, yet GI itself however does not automatically give rise to rural development dynamics. It depends on how this process is developed and on the effectiveness of the valorization strategies built upon it. Thus, though a number of countries have started protecting specific products through GI; very few countries however, have taken the right course of action to utilize the GI certification to reap benefits out of it. In the EU context, defining the code of practice (Vandecandelaere, et al., 2010) for the protected product plays an important role. Broad contents of code of practice include: (a) description of the product on features that can be easily monitored; (b) ingredients of raw material; (c) definition of the process; (d) demonstration of the specific qualities linked to GI; (e) definition of production area; (f) names of the product and labelling rules; and (g) control plan verification system.

But in reality, often the market does not necessarily reward the value added to these traditional products and when it does, the added value does not necessarily accrue to the producers. This is to a large extent due to a lack of a well-defined and recognized characterization of the product or lack of regulations and enforcement mechanisms. The legal recognition of geographical indications provide an institutional tool through which to address these problems and consequently provide rural communities with the opportunity to valorize their local production and extract rents based on local savoir faire (Vandecandelaere, et al., 2009-10).

Thus, based on this principle, different countries adopted the system of protecting their local products through GI. However, variations are observed in different countries' approach, as TRIPS is not prescriptive regarding GI and rather states that countries provide legal means which protects the public from misleading acts about the geographical origin of products which constitutes unfair competition. Thus, some countries adopted *sui generis* protection or the US style of protection through trademark laws and hence differences are observed in the level of government involvement, monitoring and enforcement.

Irrespective of the approach, the economic rationale of protecting a product through GI particularly for the developing countries is to (a) prevent

² <http://www.ip-watch.org/2013/06/04/protection-of-local-gi-products-can-benefit-women-speakers-say/> [Accessed 13 April 2015].

misappropriation and usurpation of products particularly in the export markets which prevents the local actors from benefitting from the traditional products and resources (2) preserve national property of traditional knowledge and cultural heritage, local resources and biodiversity and (3) improve market access, create newer markets and increase the income accrual from the traditional products.

The economics of geographical indications in developing countries is rather more complicated and more multifaceted than is usually appreciated. The reasons for this are: (1) the fact that the geographical indication concept is rather foreign and new to many developing countries; (2) the institutional and legal systems are not necessarily in place to ensure sufficient domestic and international protection; (3) the economic benefits of a geographical indication system often have more of an international and market access dimension; (4) the majority of the population is rather poor and will not normally respond to the niche market concept of geographical indications, so domestic willingness-to-pay studies will not necessarily be appropriate (Bramley, 2011).

2.2 Salient Features of GI

While traditionally GIs are linked to agriculture based goods that owe their specialty to specific geographical and climatic conditions, yet GIs may also be linked to specific skills and traditions of manufacture that are due to the human factors involved in the production of the product. Based on this argument, a few WTO members such as India, Thailand, Russia and Georgia have included handicrafts and industrial goods under the scope of GI. One of the arguments for inclusion of handicrafts is to protect the traditional knowledge that is involved in the GI. However, there is no uniformity in the category of goods that are covered under GI by different countries. For example, in the case of EU, GI is associated with agricultural products including food, wine and spirits. But some EU member states like France and Germany protect handicrafts also under GI. Though, majority of countries protect only different categories of goods under GI, taking advantage of the fact that the term goods is not defined in the TRIPS Agreement on GIs, a few countries like Singapore, Bahrain, Moldova, Jamaica, Croatia, Switzerland, Peru, and Korea protect the services under GI. The justification comes from the fact that some of the healing methods and health services are dependent on human skills (Kireeva & O'Connor, 2010). While linking the GI with the specific region is a norm for most countries, Malaysia and Jordan, do not require an explanation of the link between the qualities or other characteristics of the goods and the place of origin (Kireeva and O'Connor, 2010).

2.3 GI as a Tool for Rural Development

GI status helps in cluster and rural development programs as most often GI products are produced by a small community in a village or town and have the prospect of promoting agro tourism as well (Das, 2009). The last aspect has been discussed in the case of promotion of Boseong green tea in South Korea³, has become a centre of tourist attraction. Bramley (2011) also notes that in the context of EU where more than 70 % of all registered GIs in the EU are linked with economically lagging regions GIs are likely to support rural development in regions that are in most need of it. By enabling communities to continue producing their traditional products instead of finding alternative means for survival outside their traditional activities, GIs contribute to the preservation of cultural heritage, a factor which strengthens regional identity and again reinforces the inter linkages in support of rural development.

Mere registration of GI by itself does not automatically give rise to rural development dynamics. It depends on how this process is developed and on the effectiveness of the valorization strategies built upon it (Sylvander, 2004). This is reflected in the Indian context.

In the context of the products that have been granted GI status in India Das (2009) point out that, they can be potentially groomed as IP clusters, showcasing the heritage and traditional knowledge and, thus, have tremendous scope for rural development. However, the value chain of those products is at potential risk due to the middlemen who act as links between the communities and the external market. Involvement of middlemen also has the potential to exploit the artisans who may not reap the economic advantage of the GI status as is evident in the case of Pochampalli prints. The difference in the price paid to the artisans and the final market value of the product disappoints the artisans and discourages the younger generation in pursuing the craft (Gopalakrishnan, et al., 2007). In the context of non-agricultural GI products in EU member states, China, Russia, India, Switzerland and Brazil it is observed that: (1) the GI enterprises were basically micro, small and medium enterprises; (2) provided employment in the defined areas; (3) had limited volume of production with high export rates; and (4) remain as a strong economic asset of the region (Thualetal, 2009).

³ http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_9.pdf [Accessed 1 June 2014].

2.4 Improved Market Access

A collective mark such as GI, as one of the important intellectual property tools assures the consumers quality and distinctiveness of the product because: (a) GI products are created with raw materials that are associated/unique with that place; (b) artisans who make that products are located in that region; and (c) in some cases the art of making the product is known only to those people/community in the region, to mention a few. Thus GI creates an 'attribute of the place' to the product and creates segment in the product categories and establishes 'entry barriers' for others outside the region. Thus, Bramley (2011) notes that GIs impose a monopolistic market structure with respect to those producers that fall outside the demarcated region or who do not comply with the product specification. It is a monopoly which has its foundations in the causal link between a product and its origin which results in a proprietary right for those entitled to use it and which is not unlike the monopoly creation permitted under trade mark laws.

Importantly, a product that has got the GI status has to seek recognition in other geographical territories through registration of its logo or trademark. For example, Darjeeling Tea which got the GI registration in India sought registration of its logo under trademark and collective mark protection and copyright protection in different countries because of the effective intervention of the Tea Board of India and (Das, 2009; Rao, 2005) so as to prevent others from using this famous mark. However, maintaining the GI in foreign markets, popularizing the GI among consumers and monitoring and enforcement of GI in different markets is expensive and thus could be a hindrance for artisans, where the niche market for the GI certified product is limited.

2.5 GI as a Tool to Protect Traditional Knowledge

GI also works as a tool to protect the traditional knowledge (TK) and skilled labor of a particular region, because most often GI is associated with the products that are available in a particular region as well as human resources which knows the knowhow of such products. But to protect the TK in GI: (a) the product should be in tangible form; (b) the knowledge available should be associated with a particular area; and (c) the product must enjoy commercial reputation (Shivani, 2008).

GI may not be a sufficient tool to protect the TK that is already in the public domain, but known to a limited members of the community or craftsmen (Mir & Ain, 2010). In case where the knowledge is limited to a particular community or

an association of producers, in the event that the association of producers falls apart, the associated TK could be at the risk of getting disclosed to outsiders.

But it may also be a concern in the case of a few crafts, where sustainability of these crafts is an important concern for the government authorities due to factors such as: (a) knowhow of the craft is limited to a small community (Mir & Ain, 2010); (b) the younger generation is not interested in pursuing the craft due to the unviable market (Gopalakrishnan, et al., 2007); (c) natural resources that were used in the process of production are no more available or available in limited quantities forcing the artisans to shift to substitutes which are not comparable in quality.

An important issue to be noted is that GI does not protect the knowledge per se, but protects against the misrepresentation and unfair capitalization. Also, for members who have adopted the GI in lines with the indicative clauses mentioned in TRIPS, an important challenge would be that the additional protection under TRIPS is available only for wines and spirits.

2.6 GI as a Tool of Protection of Biodiversity

GIs do not directly give rise to positive environmental dynamics such as protection of biodiversity and its impact could vary from case to case (Bramley, 2011). Because of the reputation of a natural resource coming from a particular region, there is the possibility of increased commercialization of a GI product, which could increase the harvest value of a product and thereby increased income to the farmers. Where the resources concerning the GI product come from an ecologically fragile region, there are chances of two extreme behaviors by agents who exploit such resources is likely. On the one hand, there is the possibility of rational land use and rational resource use taking in to account the fragile nature of the natural resources. On the other hand, this could also lead to the situation of 'tragedy of commons' and result in the pressure on the resource.

3. Filing GI Applications in India and Thailand

India and Thailand follow similar procedures in filing GI applications⁴. The following are the various steps to be followed in seeking registration of a product with the GI registry.

⁴ The relevant materials have been obtained from www.ipindianic.in and Geographical Indications Protection Act B E 2546 (2003) and Ministerial Regulation, published by Department of Intellectual Property, Thailand, referred to as Government of Thailand 2003 in the text.

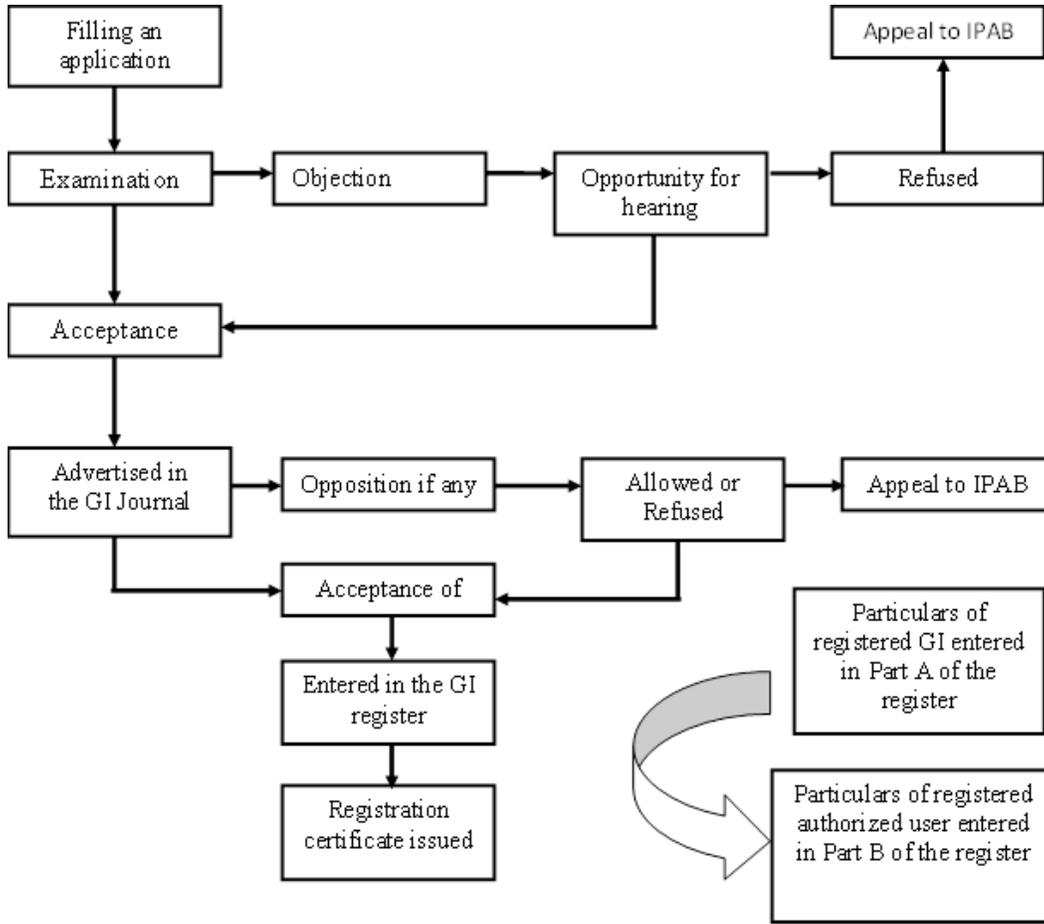
According to Section 3 of the GI Act of Thailand, GI means a name, symbol or any other thing used for calling or representing a geographical origin and capable of identifying that the goods originating in that geographical origin are of particular quality, reputation or characteristic which is attributable to such geographical origin; Geographical Origin means an area of a country, territory, region and locality thereof and shall also include the sea, lake, river, watercourse, island, mountain or any other area of a similar nature; goods means chattels susceptible of sale, exchange or transfer, whether they exist naturally or become agricultural produce, and also include handicraft and industrial products.

In India, an association of persons or producers or any organization or authority, which represents the interest of producers of the concerned goods, has to file an affidavit as how the applicant claims to represent the producers' interest. As for the Government of Thailand (2003), the regulation states that any level of government agency, or public body of a status of a juristic person whose area of responsibility embraces the geographical origin of the goods, a natural person, a group of persons or a juristic person who engages in trade in connection with the goods for which a GI is used and has a residence in the GI of the goods or a group or organization of consumers consuming the goods for which a GI is used can file the GI application.

The rules of foreign applications are the same in both the countries regarding the regulation of address and registration in the origin. Similarly, any person aggrieved by an order or decision may prefer an appeal to the intellectual property appellate board (IPAB)/Thailand authorities within three months.

Both in India and Thailand, a factual study on history, linkages and unique characteristics are to be established to file the GI application. Further in Thailand, production standards, geographical boundaries and verifications are required for registering the product.

Figure 1: Filing of GI Application in India



Source: <http://ipindia.nic.in/girindia/>

In the case of Thailand, after registering the product, the producers apply for the use of logo, which makes them the users of the GI tag⁵. The Department of Intellectual Property (DIP) formally allows the producers of the GI product that is residing in the geographical area and the traders related to the GI product to use the Thai GI logo. The logo is meant to protect the consumer and the public from the goods that confuse or misled the consumer about the geographical origin. Persons who are eligible to use Thai GI logo shall be producers or traders

⁵ Text regarding the logo has been obtained from the GI Thailand, Vol 6, 2015, p. 9.

of GI products who comply with the working manual, internal control plan and other criteria established for the product.

In India, GI application is divided into two parts called Part A and Part B. Part A relates to the registration of the GI. The particulars relating to the registration of the authorized users are incorporated in Part B of the register.

Any person, claiming to be the producer of the goods⁶ in respect of which a GI has been registered may apply in writing for registering him/her as an authorized user of such GI. An authorized user is defined as one who is the producer of the goods in respect of which a GI has been registered. The term producer is applicable to persons dealing with three categories of goods, *viz.*, (i) agricultural goods (production, processing, trading or dealing); (ii) natural goods (exploiting, trading or dealing); and (iii) handicrafts or manufactured goods (making, manufacturing, trading or dealing)⁷.

The registration of a GI shall be for a period of 10 years, but may be renewed from time to time. The registration of an authorized user shall also be for a period of ten years or for the period till the date on which the registration of the GI expires, whichever is earlier.

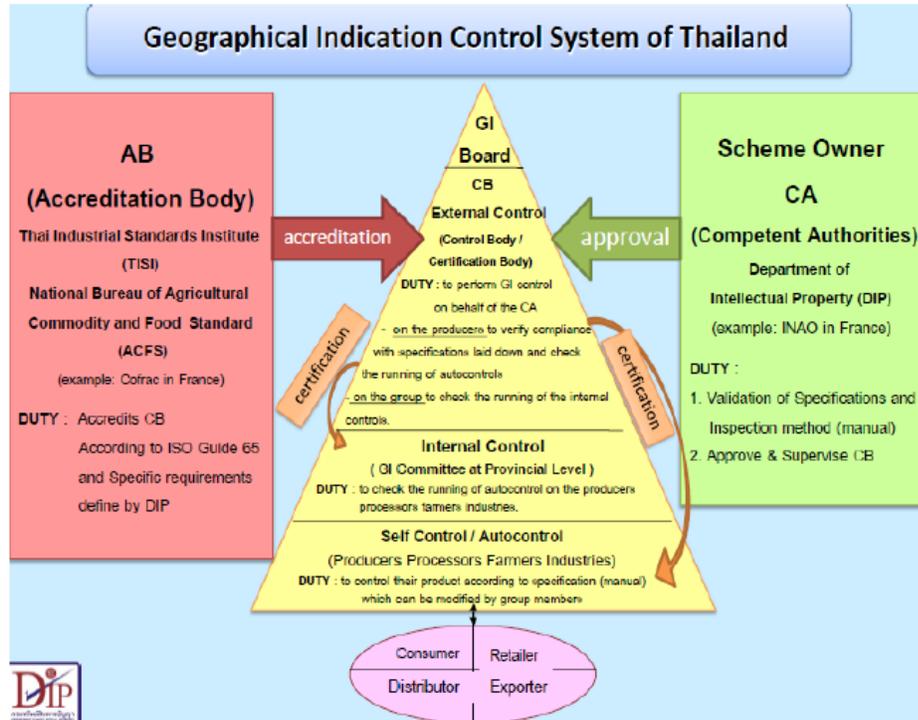
3.1 Geographical Indication Control System in Thailand

The case where Thailand appears to differ from India is in the establishment of: (1) control mechanisms for traceability; and (2) certification from the accreditation bodies for the GI product. For each product, a manual is developed for production and the method for tracing the origins. The DIP has a memorandum of understanding (MOU) with the Department of Thai Industrial Standard Institute (TISI) and National Bureau of Agriculture Commodity and Food Standard (ACFS). The MOU means that these agencies work for the development of control systems in Thailand. Once the systems are developed, DIP validates the specifications and inspection methods.

⁶ The producer needs to specify in the application, the class in which his product could be classified under. These are categorized in to 34 goods classes and are available on the GI registry website.

⁷ <http://ipindia.nic.in/Niipm/index.htm>

Figure 2: Geographical Indication Control System of Thailand



Source: Tanasanti (2014), WIPO/GEO/BKK/13/INF/4, p.18

TISI and ACFS accredit the control body that comprises of both internal and external control.

“Internal control relates to the control within the border of the country concerned. It involves the control of all GI producers, processors and other GI stakeholders by local and national governmental bodies, which are usually represented by a GI committee at the provincial level. External control is also carried out by the accreditation body which has the responsibility to provide accreditation for the certification body. The responsible accreditation bodies in Thailand are: the Thai Industrial Standards Institute (TISI) and the National Bureau of Agricultural Commodity and Food Standard (ACFS)” (Ngokkuen & Grote, 2012: p.107). On top of the control body is the GI Board. This means that producers will follow the specification that had been registered and approved by the GI Board.

These mechanisms ensure that the GI products of Thailand are quality products and traceability can be ensured. In India, the GI applicant will have to mention in the application about the type of quality control mechanism and the inspection body that would implement the same. However, the applications do not mention anything about the accreditation of the inspection mechanism.

3.2 Infringement of GI

The following are the acts of infringement in the case of India and Thailand

A registered GI is infringed by a person who not being an authorized user: (a) uses such GI by any means that indicates or suggests that such goods originate in a geographical area other than the true place of origin which misleads the persons as to the geographical origin of such goods; (b) uses any GI in such manner, which constitutes an act of unfair competition including passing off in respect of registered GI; and (c) uses another GI to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered GI relates.

Regarding unregistered GIs, the Indian Act states that no person shall be entitled to institute any proceeding to prevent, or to recover damages for the infringement.

3.3 Prohibition of Registration of Certain GI

According to the Indian and the Thailand GI Act, a GI, the use of which: (a) would be likely to deceive or cause confusion; or (b) would be contrary to any law for the time being in force; or (c) comprises or contains scandalous or obscene matter; or (d) comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or (e) would otherwise be disentitled to protection in a court; or (f) are determined to be generic names or indications of goods and are therefore not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or (g) although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality shall not be registered as a GI.

Section 25 of the GI Act in India also prohibits registration of GI as trade mark. It states that the Registrar of Trade marks shall refuse or invalidate the registration of a trade mark, which contains or consists of a geographical indication with respect to the goods not originating in the territory of a country or locality in that

territory which such GI indicates, if use of such GI is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods.

In India, the registration of a GI is not compulsory. At the same time, the Act states that registration affords better legal protection, in particular, to the registered proprietor and the authorized users as they can initiate infringement actions; the authorized users can exercise the exclusive right to use the GI. For instance Singapore, Jordan and Sri Lanka, do not require registration despite having introduced special laws on their protection.

3.4. Application by Foreign Applicants

All the WTO members allow foreign GIs to be registered in their territory, provided such GIs have already been registered in their place of origin and on the basis of participation in international agreements. Countries that are not part of WTO cannot protect their products in India. Further, in compliance with Article 24.9 of the TRIPS Agreement, Section 9.F of the GI Act prohibits the registration of GIs which are not already protected in their country of origin. Also, the foreign applicants have to produce a certificate from the registry or GI office of their country of origin that the product is already registered in their country.

3.5 Safeguards in the Indian GI Act

The GI Act protects homonymous geographical indications (HGI) under Section 10 of the GI Act. By providing this, the GI Act of India has gone further than what is provided in TRIPS Articles, as the TRIPS Articles 22.4 and 23.3 provide protection to wines and spirits only, whereas the Indian Act does not restrict the protection of HGI to these two products alone. Similar safeguards are observed in the case of Thailand GI Act.

4. Status of Geographical Indications Protection in Thailand and India

4.1 Status of GI in Thailand⁸

The Government of Thailand has been promoting GI through its catchy slogan “One GI One Province” with the idea that each of its 76 provinces has filed at

⁸ Discussion in this section draws from the literature and the interviews that the researcher conducted with the different key persons concerned with GI and the paper by Tanasanti (2014).

least one GI. With this purpose in mind, DIP undertakes to disseminate information on GI law and registration system to local community in every province, through organizing exhibitions and distributing booklets on GI and identifies potential GI products.

One of the novel processes adopted by DIP is to collaborate with the Biodiversity Based Economy Development Office (BEDO) to work with communities to promote their local wisdom based GIs. BEDO is engaged in building business opportunities for the local communities of Thailand. It promotes sustainable biodiversity-based economy together with effective measures of species conservation. The entire process of GI filing starts as a community development program and a public hearing is conducted to bring the producers on a consensus whether they wanted to protect their product with GI. This process of 'public hearing' is conducted with the community and local authorities and conducted by experts with scientific knowledge, DIP officials and local government authorities. Most often the local authorities or communities or researchers working in the area identify the eligible product to file a GI application. The second stage is to prepare the GI application. The third significant step is to create the internal control system (ICS) which is the quality standards prescribed by the experts.

The BEDO officials had worked with the communities in SakhonNakhon and Nam Dok Mai Bang Kachao provinces to get GI for natural indigo dyed fabric and mango. According to the BEDO officials, in the case of both mango and indigo, since the producers and the traders are one and the same, there has been no place for grey sales and the producers realized the high value of the crop. BEDO is also working /proposed to work with the universities to file GI applications and provide scientific knowledge support. In all these products, the strategy adopted by BEDO has been to work with the communities and local government. In the case of Doi Chang coffee, price of coffee cherries increased from 4.50 baht/kg to 15 baht/kg around ten years ago to 28-32 baht /kg in 2014 after GI due to adoption of ICS. For Chiang Rai Phulae pineapple, the farm price has increased from 8 baht /kg to 23 baht/kg. In 2014 they were sold at 50 baht/kg and moving towards 60 baht/kg (Tanasanti, 2014: p.19). Adhering strictly with the (ICS) has resulted in increasing the price of the mango from 80 Baht a kilo to 200 Baht a kilo. Regarding the feasibility of GI products, one of the respondents remarked that a few of the GI coffee and tea are able to realize very high value for their product, by projecting the niche value of their products. For instance, the tea producers from Chiang Rai province created high value tea by marketing the first flush of the hand crafted tea. Some other high value teas/coffees sold in Thailand with uniqueness are the Doi Chang coffee, white tree tea and single estate tea and coffee. It was also learnt from the officials that

producers with GI also distinguish their products with appropriate trademark as well.

As mentioned elsewhere, Thailand is a major rice trader in the international market and has a number of varieties of rice protected by GI. In the case of Thai Hom Mali Rice (jasmine rice), GI was obtained in 2008. By 2008/09, 1,131 Thai jasmine rice farmers, 13 exporters and 4 processors were certified as GI operators for Thung Kula Rong-Hai rice (Ngokkuen and Grote, 2012). According to these researchers, the GI law of Thailand, protection of aroma genes in Jasmine rice by patents and the filing of GI application for Thai Hom Mali rice are the responses to the American researchers filing the patent application for Jasmati (a combination of Jasmine rice from Thailand and Basmati rice from the Indian sub-continent).

According to the DIP officials, out of its 76 provinces in Thailand, 63 applications have been registered, but 16 provinces do not have any applications so far. Thailand has so far protected 74 products, out of which 63 are products of Thailand and 11 are international products. 129 applications seeking GI are pending of which 113 are products of Thailand and 16 are international products. Majority of the products protected fall in the category of agricultural products, but also include agricultural, handicrafts and industrial products. The agricultural products protected so far include varieties of rice, pineapple, pomelo, sweet tamarind; handicrafts include Chiangmai Celadon, Lamphun Brocade Thai Silk, Mae Jaem Teen Jok Fabric, BanChiang pottery, Borsang umbrella; industrial products include DoiChaang Coffee, Doi Tung Coffee, Chaiya Salted eggs and so on.

Appendix Table 1 provides the details of the applications filed from 2003-2012.

4.2 Infringement of GI

The DIP officials mentioned about the litchie fruit from Nakhonphanom province that has been filed for GI. In 2014, due to climate change none of the trees in the designated area bore fruits. But in the same year, several roadside shops were selling 'litchie fruit from Nakhonphanom region', on the road leading to Nakhonphanom. So the producers from Nakhonphanom instead of suing the shops, only put up big labels stating that particular year they did not have any supply due to lack of production. But GI enforcement is an issue for the Thai authorities. For instance, the misuse of the Rai Pulae pineapple GI by other pineapple producers could not be prevented (Tanasanti, 2014).

Regarding the GI filing by individuals, the DIP officials said that for some GI products there is only one producer at the time of GI publication. But after the certification, more people joined the applicant and started producing along with him.

DIP has been taking consistent efforts to promote GI. Besides the awareness program, DIP has also been organizing GI market event in Bangkok. This event which has been going on for several years provides an opportunity for the producers with GI to market their products. Earlier DIP was providing the producers with travel assistance to take part in the event. However, from February 2016 DIP has decided to provide only space for the producers to spread their wares and not provide any travel support.

In the trade fair that was organized by the Department of Tourism, Government of Thailand between 13th and 19th January 2016 in Bangkok, participation by a few GI producers were seen. Notable feature was that in every stall a brief of the product in both Thai and English languages was displayed prominently and the region was clearly mentioned with photograph. The stall owners were also displaying their GI certificate prominently. Yet another attractive feature noted was the importance given to packaging by the seller, which mattered a lot to the buyers particularly the tourists.

In a bid to promote Thai GI in overseas markets, Thailand follows a new strategy. As per this marketing strategy, French Champagne producers will use Lamphun silk brocade for silk ties to give their valued customers on special occasions. Overseas GI exhibitions were also organized in Japan, Vietnam and Hong Kong (Tanasanti, 2014: p. 18).

4.3 Status of GI Applications in India

As of January 2017, there were 295 registered GIs (including logos), 271 pending applications, 2 abandoned and 5 withdrawn applications⁹. Though compared to the cultural and agricultural diversity of India, the number of products filed for GI is relatively less, yet it needs to be recognized that filing GI involves both human efforts and economic resources. The number of GI applications in the field of handicrafts (includes textiles and fabrics) and agriculture is more than the manufactured and natural products in India (Lalitha & Vinayan, forthcoming). Further, while the Southern states, Uttar Pradesh and Odisha have filed a number of GI applications, the initiative is not widespread across the different

⁹ <http://164.100.176.36/GirPublic/DetailsGIR.aspx> [Accessed 21 January 2016].

states. Though India has set up the GI registry as a quasi-judicial body, a separate body to take care of GI related developmental issues either at the central level or at the state government level has not been established yet. Most applicants have not followed up with applying for registration of 'authorized user' which gives the right to use the GI certification only to identified users and hence useful in checking infringement. While producers file the logo for the individual products, there is no common logo to create an identity and recognition among the consumers. Lack of frequent awareness programs and absence of logo have created limited awareness regarding GI filing. Hence, there is a considerable involvement of the government and its agencies in filing the GI applications (Lalitha & Vinayan, forthcoming); Delphine, 2015). Each GI applicant is also expected to create an inspection body that would be responsible for the quality of the GI product. But in most applications cases, the role of the inspection body remains very broad and the actual role played has to be ascertained with case studies. "At the state government level, no specific department/body has been given the responsibility of dealing with GIs. Hence, although various state government agencies are found to be actively engaged in the exercise, there is no homogeneity among these initiatives and involvements across states. In fact, be it at the public, quasi-public or private level, diverse institutional arrangements are found to be emerging all across India to facilitate GIs" (Das, 2009: p.157). Another issue is regarding setting up the code of practices that need to be followed by any certified user of the GI product which is yet to gain popularity among the registered users. A major concern regarding GI filing is that the post-GI registration activity is by and large absent both from the applicants as well as from the government (Lalitha, 2014; Lalitha & Vinayan, forthcoming).

5. Suggestions for the Replicability of Thai GI model in India

The foregoing analyses show that Thailand and India have almost started off on a comparable note in the area of GI protection. Both adopt *sui generis* system keeping in mind the rich cultural heritage that the countries have and extend GI protection to agricultural products, handicrafts and industrial products. The purpose is to protect both the region based products and the traditional knowledge associated with those products. Hence, there are similarities in the approach to GI and in the framing of the GI Act.

The producers of GI products in Thai use the logo to impress upon the consumers that the consumers are buying a unique product. In India common logo for GI is yet to evolve. Similarly, the internal and external control system in the case of GI, that includes traceability in the case of agricultural products that is practiced in Thailand, is an aspect that needs to be replicated in the Indian context to create a niche market for GI products. Coordination with different

ministries for evolving production standards would be essential. The National Biodiversity Board could also be consulted in identifying potential Agri GI products of India from different regions. The limited probe of couple of Thai GIs, informed us that quality and traceability are well maintained because the producer is also the trader. However, Thailand also faces GI implementation issues with similar products from different provinces. In the case of India, the mere vastness and the close similarity in the GI products and the vast value chain make traceability a challenging issue. However, along with the awareness creation programs, marketing strategies like information about the importance of the product in local and English language would create more interest among consumers that they are buying a product that is part of the national heritage and pride. Importance to packaging in lines of Thai would also help in marketing particularly when the products are sold at the place where they are being made. Also GI events both in the places of tourist importance in India and potential foreign markets would create awareness. Such concentrated and sustained efforts will lead to wider market destination for GI products in India.

Appendix Table 1: List of GI products registered in Thailand (2003-2012)

1	Panasnikom Handicrafts	Handicrafts	26 August 2005
2	Bor Sang Umbrella	Handicrafts	1 June 2006
3	Chiang Mai Celadon	Handicrafts	31 August 2007
4	Yok Blabri Nan	Handicrafts	23 December 2010
5	Trang Roasted Pork	Food	18 April 2006
6	Surat Thani Oyster	Food - Seafood	23 June 2006
7	Prosciutto Di Parma	Food - ham	21 July 2006
8	Chaiya Salted Eggds	Food - eggs	27 September 2007
9	Doi Tung Coffee	Coffee	18 April 2006
10	Doi Chaang Coffee	Coffee	27 September 2007
11	Phurua Plateau Wine	Wine	18 April 2006
12	Brunello Di Montalcino	Wine	27 September 2007
13	Napa alley	Wine	18 April 2006
14	Cognac	Spirits	27 September 2007
15	Pisco	Spirits	30 September 2007
16	Tequila	Spirits	15 August 2008
17	Champagne	Sparkling wine	15 December 2007
18	Scotch Whisky	Whisky	13 July 2007
19	Chainat Khaotangkwa Pomelo	Horticultural Product	23 June 2006
20	Sriracha Pineapple	Horticultural Product	23 June 2006
21	Chiangrai Phulae Pineapple	Horticultural Product	15 December 2006
22	Nanglae Pineapple	Horticultural Product	15 December 2006
23	Nakomchaisri Pomelo	Horticultural Product	30 September 2007
24	Petchabun Sweet Tamarind	Horticultural Product	30 September 2007
25	Phuket Pineapple	Horticultural Product	26 October 2007
26	Samutsongkhram Kom Lychee	Horticultural Product	10 March 2008
27	Phet Rose Apple	Horticultural Product	17 April 2008
28	Glauy Hin Bannang Sata	Horticultural Product	8 June 2009
29	Som-O-Khaw Yai Samutsonkram	Horticultural Product	19 March 2010
30	Kathon Hor Bangkrang	Horticultural Product	11 May 2010
31	Nont Durian	Horticultural Product	11 May 2010
32	Pakpanangn Tabtimsiam Pomelo	Horticultural Product	13 September 2010

33	Sangyod Muang Phatthalung Rice	Rice	23 June 2006
34	Hang-Hom-Thong- Sakon-Tawapee Rice	Rice - brown rice	15 December 2006
35	Kaowong Kalasin Sticky Rice	Rice - sticky rice	16 May 2007
36	Tung Kula Rong-Hai Thai Hom Mali Rice	Rice - Jasmine Rice	27 September 2007
37	Surin Hom Mali Rice	Rice - Jasmine Rice	26 February 2008
38	Khao Kum Lanna	Rice	17 September 2008
39	Jek Chuey Sao Hai Rice	Rice	30 December 2008
40	Leuang Pratew Chumporn Rice	Rice	30 December 2008
41	Ban Chiang Pottery	Pottery	10 August 2007
42	Kohkret Pottery	Pottery	11 May 2010
43	Mae Jam Tin Jok Woven Cloth	Textiles and textile goods	27 September 2007
44	Lamphun Brocade Thai Silk	Silk	27 September 2007
45	Praewa Kalasin Thai Silk	Silk	27 September 2007
46	Chonnabot Mudmee Thai Silk	Silk	14 January 2009

Source: Ngokkuen and Grote (2012: 122-123).

References:

Bellatti, G., Marescotti, A., Paus, M. & Deppler, A., 2011. *The Effects of Protecting Geographical Indications: Ways and Means of their Evaluations*, Bern: Swiss Federal Institute of Intellectual Property.

Bramley, C., 2011. *A Review of the Socio-economic Impact of Geographical Indications: Considerations for the Developing World*, Lima, s.n.

Bramley, C., Estelle, B. & Kirsten, J., 2011. *www.wipo.int*. Available at: http://www.wipo.int/export/sites/www/ip-development/en/economics/pdf/wo_1012_e.pdf#page=121 [Accessed 20 April 2014].

Das, K., 2009. *Socio Economic Implications of Protecting Geographical Indications in India*, New Delhi: Centre for WTO Studies.

Gopalakrishnan, N.S., Nair, P. & Babu, Aravind K., 2007. *Exploring the Relationship between Geographical Indications and Traditional Knowledge - An Analysis of the Legal Tools for the Protection of Geographical Indications in Asia*, Switzerland: International Centre for Trade and Sustainable Development.

Kireeva, I. & O'Connor, B., 2010. Geographical Indications and the TRIPS Agreement: What Protection is Provided to GI in WTO Members. *The Journal of World Intellectual Property*, 13(2), pp. 275-303.

Lalitha, N., 2014. *Socio Economic Implications of Protecting Handicrafts through Geographical Indications in India - A Case Study of Select Handicraft Products from Southern States of India*, New Delhi: s.n.

Lalitha, N. & Vinayan, S., Forthcoming. *Regional Products and Rural Livelihoods: A Study of Geographical Indications in India*, s.l.:s.n.

Marie-Vivien, Delphine, 2015. *The Protection of Geographical Indications in India: A New Perspective on the French and European Experience*, New Delhi: Sage Publications.

Mir, F. A. & Ain, F., 2010. Legal Protection of Geographical Indications in Jammu and Kashmir: A Case Study of Kashmiri Handicrafts. *Journal of Intellectual Property Rights*, 15(3), pp. 220-27.

Ngokkuen, C. & Grote, U., 2012. Challenges and Opportunities for Protecting Geographical Indications in Thailand. *Asia Pacific Development Journal*, 19(2), pp. 93-123.

Rao, N., 2005. Protection of Geographical Indications in the Indian Context-A Case Study of Darjeeling Tea. *Economic and Political Weekly*, 40(42), pp. 4545-4550.

Shivani, S., 2008. Geographical Indications and Traditional Knowledge. *Journal of Intellectual Property Law and Practice*, 3(11), pp. 732-738.

Sylvander, B., 2004. Development of Origin Labelled Products: Humanity, Innovation and Sustainability (DOLPHINS). Final Report. Synthesis & Recommendations, s.l.: s.n.

Tanasanti, P., 2014. *Geographical Indications: Where Do We Stand Today*. Bangkok, World Intellectual Property Organization.

Thualetal, D., 2009. Study on the Protection of Geographical Indications for Products Other than Wines, Spirits, Agricultural Products or Foodstuffs, Directorate General for Trade of the European Commission, s.l.

Vandecandelaere, E., Arfini, F., Belletti, G. & Marescotti, A., 2010. *Linking people places and products - A guide for promoting quality linked to geographical origin and sustainable geographical indications*, Rome: Food and Agriculture Organization.