

PLANT VARIETY PROTECTION IN THAILAND

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It has long been a tradition of the Thais to collect propagation material, especially seeds, from one cropping season for use as stock to grow the next season's crops. Exchanging of seeds between families and between communities has long been practiced in farming communities, creating an ideal gene bank and leading to the production of new breeds of crops, which farmers can utilize freely.

With the introduction of intellectual property rights protection, a challenge to this tradition has arisen, as rights in new plant varieties are protected. As a member of the World Trade Organization, Thailand is bound to comply with the standards of protection under the Agreement

on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which requires signatory parties to provide protection for plant varieties. Consequently, Thailand enacted the Plant Varieties Protection Act of 1999 (the Act).

The Act gives the rights-holder of a new plant variety the sole right to produce, sell or distribute, import, export, or possess it for the aforementioned purposes. Consequently, free utilization of registered new plant varieties is no longer possible and the tradition of freely exchanging seeds or propagation material could very well be a thing of the past.

Foreign applicants are eligible to apply for registration of protection of

a plant variety under any of the following conditions:

- Applicant is a national of a country which allows Thai nationals or juristic persons with head offices in Thailand to apply for protection in that country.
- Applicant is a national of a country which is a party to an international convention or agreement on the protection of plant varieties to which Thailand is also a party.

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- Applicant is domiciled or conducts a real and effective industry or business in Thailand or in a country which is a party to an international convention or agreement on the protection of plant varieties to which Thailand is also a party.

However, the Plant Variety Protection Office requires the applicant to actually grow the subject plant variety in Thailand for the purpose of examination. In this regard, the foreign applicant will face difficulty in importing the seeds because not only must the subject plant fulfill the requirements under the Act in order to be granted protection, but for a foreign applicant developing or breeding the variety outside Thailand, the subject variety must also meet the requirements of the Plant Variety Act and the Plant Quarantine Act.

The Plant Variety Act lists restricted plant varieties which cannot be imported or exported except for research and development purposes. Imported seeds will also be subject to quarantine under the Plant Quarantine Act. Unfortunately, the importation of seeds for the purpose of registration of a new plant variety is not regarded as research and development. Therefore, a permit is required to bring in the seeds for the growth test and examination. Because of the lack of close cooperation between the authorities concerned and the

responsible departments, obtaining the permit will be a major obstacle for the applicant.

Under the Act, the rights-holder of a new plant variety has the exclusive right to produce, sell or distribute in any manner, import, export, or possess for the purpose of any of the said acts, the propagation material of the plant variety except in the following circumstances:

1. An act relating to a protected new plant variety without any intention to use it as propagation material.

2. Education, study, experimentation, or research relating to a protected new plant variety for the purpose of breeding or developing plant varieties.

3. An act relating to a protected new plant variety committed in good faith.

4. The cultivation or propagation by a farmer of a protected new plant variety from propagation material he has made, provided that if it is published as a promoted plant variety, its cultivation or propagation may be made in a quantity not exceeding three times the quantity obtained.

5. An act relating to a protected new plant variety for non-commercial purposes.

6. The sale or distribution by any means, importation or exportation of, or having in possession for the purpose of any of the aforesaid activities, the propagation material of the protected new plant variety which has been distributed by the rights-holder or with the rights-holder's consent.

Of utmost concern to the rights-holder would probably be Item 4. Under this item, the farmer has the right to cultivate or propagate the new plant variety from the propagation material which he has made. Consequently, unless the propagation material, especially seed, is sterile or prone to mutation resulting in crops with undesirable characteristics, the farmer can continue to use such propagation material for as long as he likes. In the event of a promoted plant variety, the cultivation and propagation by the farmer does not constitute a violation of the breeder's right as long as the amount he produces does not exceed three times the quantity obtained. In that case, the farmer's right is actually prioritized over the breeder's right. In addition, the law is silent with respect to the criteria by which the Minister considers one plant variety as a promoted variety, as well as the criteria for approval of the Plant Variety Protection Commission and whether the breeder would have any participation in such process.

Thailand has so far signed Free Trade Agreements (FTAs) with Bahrain, China, India, and Australia and is in the process of negotiating with Japan and the U.S.A., its two largest trading partners. The FTAs, especially the proposed Thai-US version, contain detailed provisions on substance and enforcement of IPR protection which may force Thailand to step up its level of IPR protection. In doing so, Thailand must accede to a number of

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international agreements, including the International Convention for the Protection of New Varieties of Plants, or the UPOV Convention, of which Thailand is not currently a member. It will be interesting to see whether the Thai farmer will

actually benefit from the protection provided by the FTA due to its strict protection and enforcement requirements.

The plant variety protection system in Thailand is still in its early stages. Only a small number of applications have been submitted, with none granted protection as yet. As such, there is no record of

enforcement of rights in plant varieties and the effectiveness of the system cannot be fully evaluated. It will be interesting to see the developments in the area--how the new system under the FTA regime would benefit the applicant, foreign and local alike, and how the system as a whole will affect the livelihood of farmers around the country. ❖