



The protection of Geographical Indications in Vietnam: Opportunities and Challenges

Making Geographical Indications work for Rural Communities in selected Asian Countries

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Opportunities and Challenges



I. INTRODUCTION

Introduction

- Since Antiquity, foodstuff, agricultural goods, handicraft –wines, marble, bronze, silk, incense- were highly reputed thanks to their place of origin
- Those products were named with the geographical name of their place of production
- This name is then legally protected as a geographical indication
- In Vietnam, appellation of origin since 1995, and since membership of WTO in 2006 geographical indication

Legal framework in Vietnam

- **CODES, LAWS**
 - The Civil Code 2005
 - The IP Law 2005 (amended in 2009)
- **GOVERNMENTAL DECREES**
 - Decree No.103/2006/NĐ-CP on IP; revised by Decree No.122/2010/NĐ-CP
 - Decree No.105/2006/NĐ-CP on protection and management of IP revised by Decree No.119/2010/NĐ-CP
 - Decree No. 97/2010/NĐ-CP on handling administrative violations in the field of IP
- **Ministerial Circulars**
 - Circular No.01/2007/TT-BKHHCN (revised three times: Circular No. 13/2010/TT-BKHHCN; 18/2011/TT-BKHHCN; 05/2013/TT-BKHHCN)



2. THE PRODUCTS DESIGNATED WITH GI

Definition Geographical Indication

(art. 79/81/82)

1. The product originates from the area...
2. The product has
 - Reputation
 - quality or characteristics
 - essentially attributable to the geographical conditions of the area

Criteria for the link to the origin

(art. 79/81/82)

- **reputation:** determined on the basis of trust consumers through the extent of wideness to which it is known and selected by consumers
- **quality or characteristics:** defined by one or several qualitative, quantitative or physical, chemical, microbiological perceptible norms which shall be testable by technical means or experts with appropriate testing methods.
- **geographical conditions** of the area
 - shall include **natural factors:** climate, hydrograph, geology, terrain, ecological system and other natural conditions
 - **and human factors:** skills and expertise of producers, and such traditional production process of the locality

Requirements for GI application (art 106)

- Product description
- Ingredients and raw materials
- Description of production process
- Explanation of the relation between specific quality and geographical origin.
- Identification of the production zones
- Name of products and packaging regulations
- Planning control – monitoring systems: control measures, the self-control mechanism of the peculiar characteristics or quality

Geographical Indications

42 GIs VN

3 foreign GIs

November 2014

1. Phú Quốc (TGXXXHH) – fish sauce Nước mắm
2. Mộc Châu (TGXXXHH) - tea Chè Shan tuyết
3. Cognac (TGXXXHH) – spirit Rượu mạnh (Pháp)
4. Buôn Ma Thuột (TGXXXHH) – coffee Cà phê nhân
5. Đoan Hùng (TGXXXHH) - pomelo Bưởi quả
6. Bình Thuận (TGXXXHH) Dragon fruit Quả thanh long
7. Lạng Sơn (TGXXXHH) – star anise Hoa hồi
8. Pisco (TGXXXHH) – wine Rượu (CH Peru)
9. Phan Thiết (TGXXXHH) – fish sauce Nước mắm
10. Hải Hậu (TGXXXHH) – rice Gạo tám xoan
11. Thanh Hà (CĐĐL) – litchee Quả vải thiều
12. Vinh (CĐĐL) – orange Cam quả
13. Tân Cương (CĐĐL) – tea Chè
14. Hồng Dân (CĐĐL) – rice Gạo một bụi đỏ
15. Lục Ngạn (CĐĐL) - Quả vải thiều
16. Hòa Lộc (CĐĐL) – mango Xoài cát
17. Đại Hoàng (CĐĐL) – banana Chuối Ngự
18. Văn Yên (CĐĐL) – cinamom Quế vỏ
19. Hậu Lộc (CĐĐL) – shrimp paste Mắm tôm
20. Huế (CĐĐL) – conical hat Nón lá
21. Bắc Kạn – seedless persimon Hồng không hạt
22. Phúc Trạch (CĐĐL) - pomelo Quả bưởi
23. Scotch whisky (CĐĐL) – spirit Rượu mạnh
24. Tiên Lãng (CĐĐL) – tobacco Thuốc lá
25. Bẫy Núi (CĐĐL) – rice Gạo Nàng Nhen thơm
26. Trùng Khánh (CĐĐL) – Chesnut Hạt dẻ
27. Bà Đen (CĐĐL) – custard apple Mãng cầu
28. Nga Sơn (CĐĐL) – sedge Cói
29. Trà My (CĐĐL) – cinnamom Quế vỏ
30. Ninh Thuận (CĐĐL) – grapes Nho
31. Tân Triều (CĐĐL) – pomelo Bưởi
32. Bảo Lâm) - seedless persimon Hồng không hạt
33. Bắc Kạn (CĐĐL) – mandarin Quýt
34. Yên Châu (CĐĐL) – mango Xoài
35. Mèo Vạc (CĐĐL) – honey Mật ong bạc hà
36. Bình Minh (CĐĐL) – pomelo Bưởi năm roi
37. Hạ Long (CĐĐL) – fried calamari Chả mực
38. Bạc Liêu (CĐĐL) – salt Muối
39. Luận Văn (CĐĐL) – pomelo Bưởi
40. Yên Tử (– yellow abricot flower Hoa mai vàng
41. Quảng Ninh – austriella corrugate Con ngán
42. Isan Thái Lan – silk Tơ tằm truyền thống
43. Điện Biên (CĐĐL) – rice Gạo
44. Vĩnh Kim (CĐĐL) – milk Vú sữa
45. Quảng Trị (CĐĐL) – pepper Hạt tiêu

(Scôt - len)

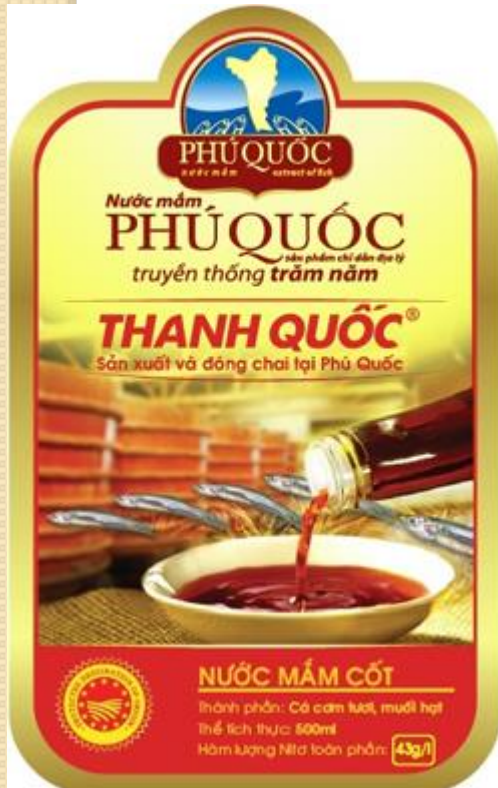
Type of Goods designated with GI

No.	Types of products	Quantity
1	Fruits/Flower/Vegetables	20
2	Rice	4
3	Processed foods	4
5	Handicrafts	1
6	Tea/coffee	3
7	spices	5
8	Seafood	2
9	Others	3
Total		42

Vietnam: coffee from Buon Ma Thuot



Vietnam: Nuoc Mam from Phú Quốc



Vietnam: Dragon fruit Binh Thuan



Vietnam: Star anis from Lạng Sơn



Vietnam: Fried calamari Ha Long



Vietnam: Banana Ngu from Đại Hoàng



Vietnam: conic hat from Hué



Certification/Collective TM (art 87) to indicate geographical origin

1. *Certification mark*: a mark licensed by its owner to other organizations, individuals to use for their goods in order to **certify origin**, materials, raw materials, methods of production, quality, accuracy, safety...
2. *Collective mark*: **distinguishes goods** or services of **members** from those of non-members of
 - An organization that is the owner of the mark,
 - According to rules on using collective mark.

Rule of use Certification/collective TM

Rules of use of collective/certification TM :

- can be very light compared to a GI specification
- not necessary to prove a qualitative link between product and the place
- but in Vietnam, rules of use are as detailed as for GIs specification

Collective/Certification TM Figures

- Collective Trade Mark comprising a geographical origin : 116 in May 2013
- Certification Trade Mark comprising a geographical origin : 72 in May 2013

Certification trademarks for geographical origin



Collective trademarks for geographical origin



Opportunities

- Any kind of products:
 - Agricultural goods
 - Foodstuff
 - Handicraft goods
- Sui generis GI system and collective/certification trademarks

Challenges

- Mainly raw material (80% of GIs)
- with little added value, sold at low price
- Very few handicraft products
- Mandatory combination of natural factors + human factors:
 - issue of sourcing raw material for processed goods (scarcity of raw material)
- Demanding proof of the link to the origin for GIs:
 - Many origin-linked products are protected under Collective or Certificate marks



3.THE DRAFTING OF THE GI CODE OF PRACTICES

Identification of GI products

Draft of the Code of practices

I. State's Programme 68:

- Main objective: to support SMEs in creating, protecting, using and exploiting IP assets: includes GI, collective/certification trademarks
- Identification by the Provinces of origin products
- Proposals by experts, research institutes (of Mard) for drafting the code of practices of GIs, rules of use of TM
- Supported more than half of the GIs registered

2. Provincial Programmes :

- Example of Quang Ninh Province

Right to register the GI (art 88)

- GIs belong to the State who is the only owner
- **Right to register the GI** = decides content of GI code of practices: belongs to the State who can delegate to
 - **Producers**: organizations and individuals
 - **collective organizations representing** individuals
 - or the **administrative authorities** of the locality
- In practice : application filed by the provincial departments of science and technology (Dost) or people committees (PC) of provinces, districts, cities

Right to register Collective/Certification TM

- Certification TM:
 - entity able to control and certify
- Collective TM:
 - association
- For local specialties (with geographical name) of Vietnam:
 - shall be permitted by a competent state agency

Opportunities and Challenges

- Opportunities

- Wide identification of origin based products all over Vietnam
- Involvement of experts from research institutes

- Challenges

- Risk that many localities select and register for GI protection for political reasons than economic ones
- Consistency between content of specification and reality of production:
 - Traditional method of production described but not anymore used



4. THE EXAMINATION OF GI

Examination by NOIP

- Formal examination followed by substantive examination
- Visit on the field of NOIP examiners
- NOIP is also examining the rule of use of the certification TM with visit on field (different from other countries)
- Challenge: improve collaboration with Ministry of Agriculture within a interministerial Committee?



5. THE MANGEMENT AND USE OF THE GI

Right to manage/use the GI (art 88)

1. The **right to manage** the GI : Belongs to the State who can delegate to
 - People's Committee of the province or city
 - Agency or organisation assigned by People's Committee of provinces and cities if it represents all organisations and individuals using such GIs.
2. The **right to use** the GI is given by the holder of the right to manage the GI to
 - Producers: organizations and individuals

Right to Manage/Use the Collective/Certification TM (art 87)

- **Collective TM**
 - Management by owner of the TM, the collective organizations located **in the locality**
- **Certification TM**
 - Management by the owner who is an organization **with the function to control and certify**, not engaged in the production or trade of such goods

Practice : right to manage GI

- Usually the GI manager is the provincial Dost or PC of provinces, district, cities
 - same as the one registering the GIs
- Right to manage GIs also given to associations
- No collective organizations for half of GIs
- Certification TM:
 - many local authorities owner
- Collective TM:
 - many associations owner of collective TM are created by the local authorities

Practice: use of GIs

- Very few authorised users, lack of use of stamps, labels, packaging with the GIs
- If there is GI use, lack of collective use
 - Single company is granted with the right of use

Challenges for use of GIs

Collective organizations

- Management capacity of collective organizations is limited and lacks funds for functioning
- Producers are not willing to join collective organizations due to their lack of knowledge and awareness on GIs and their benefits
- The management by public authorities might conduct to producers acting passively

Involve more producers in managing the GI!

Challenges for use of GIs

On raw material

- Many GIs on raw materials:
 - Lang Son star aniseed, Van Yen cinnamon...
- small producers/enterprises sell without packaging and labelling which are too costly
- Traders/exporters do not want to use GI but keep with their own trademarks already known while the concept of GI is new

Challenge for use of GIs

Little awareness of consumers

- Awareness of Vietnamese consumers on GIs is very limited; they can not recognize the differences between products bearing GIs with other products of the same types;



6. THE CONTROL OF GI

The compliance of product with the code of practices

Control (Art 106)

- Planning control – monitoring systems: control measures, the self-control mechanism of the peculiar characteristics or quality

Control in Practice

- Controls are ruled by the Management body
- 3 levels:
 - Self control: by producers, individual households;
 - Internal control: periodically by collective organizations (producer associations, cooperatives,..)
 - External control:
 - By local departments of standards, metrology and quality (STAMEQ- Dost)
 - by external control boards comprising STAMEQ – Dost) + provincial departments of agriculture and rural development, local departments of quality control of aqua-forestry products.
- In practice: little implemented

Control - Challenges

- Need to describe each step of production in order to be control
- Need to better define the external control
 - No State agencies have specific functions of GI control
 - No private accreditation bodies certifying the products bearing Gis
- No common logo for all protected GIs in Viet Nam

Control - Challenges

- Many producers were using the name protected as a GI before the GIs was registered
- Takes time to enforce GI and explain the concept to all producers
 - The problem is to explain to certain producers not to use the name anymore if they were not authorised



7. THE FIGHT AGAINST USURPATIONS OF GI

GIs: Prohibited uses (art 129) :

- Prohibited to use the GI for products from the GI area if product do not satisfy the characteristics of the GI
- Prohibition to use the GI for similar products for the purpose of taking advantage of GI
- Prohibition to use GI or a similar sign for products not coming from the GI area and *therefore* causing consumers mislead:
- Absolute protection for wines and spirits

Right to fight against infringement (art 21)

The **right to fight against infringement** is given to :

- Producers: organizations and individuals
- Holder of the right to manage
- The State, owner of GI

3 actions against infringement of GIs by Local authorities in 2013 with total fines of VND 5,000,000.

Fight against chinese TM comprising GI Buon Ma Thuot Coffee



- GI registered in Vietnam in 2005
- China: figurative and nominale trademarks registered in 2010
- Complaint from Dak Lak Province
- March 2014: chinese TM Office chinois cancelled the TM





8. CONCLUSION

Conclusions

- Positive **dynamic** of protection of GIs: 4/5 per year
- Up to now registration, issuance of management documents
 - not yet a the stage of use in practice
 - Control activities : the most difficult tasks in GIs management
- A **public top-down governance**
 - Even when an association is created for the management of GI
 - Also for certification and collective TM
- **Future:**
 - Development of a number of key GIs to get the "national brand" such as "Rice of Vietnam"
 - FTA with EU: all VN GIs protected in the EU
 - Project on GIs funded by Afd/Fao to improve GI system in Vietnam/Laos/Cambodia/Thailand



Thank you

***Xin Cảm
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