

Protection of Geographical Indications in Vietnam: towards Raising the Participation of Producers

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Abstract

This paper aims to review the current situation of the Vietnamese geographical indication (GI) system from both the legal and practical perspectives. It examines how the top-down approach influences the effectiveness and sustainability of the whole system. Further, the paper refers to the European Union (EU)'s experiences, particularly those of France - a representative of the bottom-up approach - to examine whether a shift to the producer-driven approach in GIs is workable in Vietnam. The paper argues that more active roles should be vested on producers represented by their associations during the course of establishment and management of GIs. Taking into account the capacity of producers and their associations in this current stage, the paper suggests a transition period before the producers assume the leading role in the whole system. During that period, it is recommended to endorse the producers' role through legal recognition of the producers' representative organizations, capacity building, and awareness-raising for producers and their associations to achieve desirable outcomes for GI development.

Keywords

Intellectual property rights, geographical indications, local products

Introduction

Geographical indication (GI) is a form of intellectual property rights (IPRs), and it specifically refers to the use of names associated with the geographic origin of a product. The legal protection of GIs is expected to keep such product names from misuse and counterfeiting, and assure consumers of reliable sources of origin, as well as provide evidence linking the product quality with the origin (WIPO, 2004). Due to differences in legal approaches for GI protection among countries throughout the world, GI governance rules vary significantly from jurisdiction to jurisdiction, with the

Received: October 21, 2020

Accepted: June 28, 2021

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leading role vested on the State or local producer community (Belletti *et al.*, 2017; Marie-Vivien & Biénabe, 2017).

Vietnam is a country with a high potential for GIs (Le Thi Thu Ha, 2011; Pick *et al.*, 2017). Notwithstanding, GI, in the legal perspective, is still a relatively new concept imported to Vietnam following its accession to the World Trade Organization (WTO). The *sui generis* GI legal regime was first introduced in Vietnam in 2005 under the auspice of the Intellectual Property Law (the IP Law). Since its first introduction into the Vietnamese legal system, GIs have proven their positive effect to national and local economies. In this regard, Pick *et al.* (2017) indicated GIs as “a promising tool for socio-economic development” in Vietnam. More specifically, by analyzing the case study of Cao Phong Oranges, Hoang *et al.* (2020) associated GIs with sustainable rural development, highlighted by their environmental and socio-cultural impacts on their place of origin. In the same vein, Hoang Giang & Nguyen T. Thuy (2020) put an accent on the GIs’ role as a policy tool to enhance local product quality. However, such a potential contribution of GIs is subject to various factors facilitating or constraining its realization during the GIs’ implementation, such as the marketing channel and negotiation skills (Pick *et al.*, 2017), the government’s support (Hoang Giang *et al.*, 2020), and the comprehensive framework of GI protection (Le Thi Thu Ha, 2011; Pick *et al.*, 2017).

The GI system in Vietnam is characterized by strong interventions of the State that leave private actors, especially producers, in a passive position. In other words, it follows the top-down model where the State assumes the pre-eminent role in the whole process related to GIs. In this aspect, a number of scholars have raised critical views on the State’s governance over specific GIs in Vietnam. Durand & Fournier (2017) attributed the ineffective function of the State to problems in the distribution of authority between the central and local governments in GI implementation. From a different angle, Hoang Giang & Nguyen T. Thuy (2020) pointed out the State’s mismanagement as the result of the lack of competence and expertise in the GI field. At

the macro level, Le Thi Thu Ha (2011) concluded that the shortcomings and inconsistencies of public policies substantially contribute to the ineffectiveness of GI governance in Vietnam. However, no related studies have yet thoroughly examined the impacts of the top-down approach on the system’s function from the producers’ perspective. This paper, therefore, aims to fill this gap.

To this end, the paper investigates whether and to what extent the top-down approach influences the effectiveness and sustainability of the whole system. Further, the paper refers to the European Union (EU)’s experiences, particularly those of France, – a representative of the bottom-up approach for GIs – to examine whether a shift to the producer-driven approach for GIs is workable in Vietnam. The paper argues that more active roles should be vested on producers represented by their associations during the establishment and management of GIs. Taking into account the capacity of producers and their associations in this current stage, the paper suggests a transition period before the producers may assume the leading role in the whole system. During this period, the paper suggests the endorsement of the producers’ role through legal recognition of the producers’ representative organizations, capacity building, and awareness-raising for producers and their associations to achieve desirable outcomes for GI development.

Methodologies

Research for this paper was performed substantially through a library-based review of theoretical concepts and implementation of GI regimes in Vietnam and the EU (particularly France). Adopting this methodology, the paper was completed by analyzing relevant literature, including academic and scientific research, texts of international agreements, and national legislation. The review was intended to explore the GI regimes from both the theoretical perspective and practical contexts, thereby assessing the characteristics of the top-down and bottom-up approaches to find the optimal one.

Recognizing the insufficiency of the literature in reflecting the whole picture of

practical implementation of the GI regimes, the study also adopted some sociological methods. Since the GI is distinct from commonplace brand names, a survey by questionnaires was not considered an appropriate tool. Rather, the authors conducted in-depth interviews with those directly involved in GIs and those taking part in the state management over GIs. Specifically, three interviewees representing different types of state actors (a state authority responsible for GI registration in the National Office of Intellectual Property (NOIP), and two staff of the provincial people's committee and district people's committee) were selected for in-depth interviews to ascertain the actual happenings of GI implementation. In addition, to achieve the objectives of the paper, the authors conducted interviews with a small group of producers (4-5 people for each GI) and leaders of producers' associations of three GIs in Vietnam, namely Ha Long Squid Balls (*Chả mực Hạ Long*), Hung Yen Longan (*Nhãn lồng Hưng Yên*), and Luc Ngan Thieu Litchi (*Vải thiều Lục Ngạn*). The three GIs represented both processed products (Ha Long Squid Balls) and raw products (Hung Yen Longan and Luc Ngan Thieu Litchi). The selection also took into account the time of establishment of the representative organizations either before (as with the case of Hung Yen Longan) or after (as with the cases of the two other GIs) the GI registration. The aim of these interviews was to find out the level of participation of producers in GIs individually and the extent to which the producers' associations function to engage producers with GI development, and to achieve producers' collective interests in relation to the GIs.

Results and Discussion

GIs – related basic concepts

GIs are officially defined in Article 22.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation, or other characteristics of the good is essentially attributable to its geographical

origin”. Accordingly, the three following conditions must be definitely met for a product to qualify for GI protection: first, the GI of the product must be a sign identifying a good; second, the geographical origin of the product must be determined as from the territory, or its region or locality, of a TRIPS's member; and third, there must be a direct linkage between such a geographical origin and the qualities, reputation, and/or other characteristics of the product.

Due to significant divergence during TRIPS negotiations that involved both developed and developing countries, which is considered “the reflection of different cultural settings, legal traditions, economic value attached to GIs and trademarks, implications of GIs for the protection of the local economy and trade interests including imports and exports opportunities” (Eugui & Spennemann, 2006), GI protection has taken place with varying models and levels on the global scale, mainly through either legislation specifically dedicated to GI protection (*sui generis* system) as applied in Japan, the European Union (EU), etc., or trademark laws (with specific reference to collective and certification marks bearing geographical names) as applied in the US and Australia, etc. (WIPO, 2004). Vietnam adopted both approaches for GI protection, demonstrating its harmonization in bilateral trade relations with the US and EU (Le Thi Thu Ha, 2011). This paper, however, specifically deals with the first one, a *sui generis* framework for GI protection, since it represents an effective way to protect local products with a long historical tradition of production.

GIs – as a collective asset – reflect a complex relationship between public and private sectors, or more specifically, between the State and private stakeholders of GIs, namely producers, processors, or traders (Calboli & Marie-Vivien, 2018). In terms of GI governance in the domestic frameworks of those countries adopting *sui generis* systems for GIs, each type of actor assumes different roles in each stage of the GI-related processes. The level at which the State and private stakeholders are involved in such processes varies considerably across countries.

The bottom-up or producer-driven model enshrines the pre-eminent role of producers (represented by their associations) who take GI initiatives and directly design and implement all GI processes. In this model, the State is just in the position to supervise and guarantee due process. By contrast, the top-down or state-driven model is characterized by the active role of the State in almost all the processes related to GIs, including identifying and registering GIs, authorizing the use of GIs to producers, and substantially assuming GI management over the lifetime of GIs (Marie-Vivien & Biénabe, 2017; Calboli & Marie-Vivien, 2018).

GIs in Vietnam

Legislation

In 2005, Vietnam adopted the IP Law in its accession to the WTO. In this new law, the concept of geographical indication (GI) was introduced in replacement of the appellation of origin (AO) introduced under the Civil Code of 1995. According to Article 4(22) of this law, GI means “the sign used to identify a product as originating from a specific region, locality, territory, or country”. To be eligible for protection, a GI must satisfy the following conditions: (1) The product bearing the GI originates from the area, locality, territory, or country corresponding to such geographical indication; and (2) The product bearing the GI has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory, or country corresponding to such GI (Article 79 – the IP Law). “Geographical conditions” are specified as natural factors (climatic, hydrological, geological, topographical and ecological factors, and other natural conditions) and human factors (skills and expertise of producers, and traditional production processes of localities) conducive to the reputation, quality, and characteristics of the products bearing such GIs (Article 82 – the IP Law).

Besides GIs, collective marks and certification marks may also bear geographical names pursuant to Article 80(3) of the IP Law. Accordingly, for those localities wishing to affix geographical names to their local products, they

may choose one of two options: GIs or collective/certification marks, noting that the latter is eased from the burden of proving the tie between the product’s quality and the territory where it is produced.

According to the IP Law, all GIs belong to the State, which acts as the sole owner of the GIs (Article 121(4) – IP Law). The GIs’ ownership is therefore non-transferable. It results in the absolute authority of the State to register and manage GIs throughout their lifetime. Such authority may be delegated to organizations and individuals producing products bearing GIs, collective organizations representing such organizations or individuals, and administrative bodies of localities to which such GIs pertain (Article 88 and Article 121(4) – the IP Law). Regarding the use of GIs, the State grants the right to use GIs to organizations or individuals who manufacture products bearing such GIs in relevant localities and put such products on the market (Article 123(1)). These organizations and individuals are therefore entitled to affix GIs on their products and prevent others from illegally using such GIs (Article 123(2)). Regarding management, the State may directly manage the GIs or delegate that authority to organizations representing the interests of all GI users (Article 121(4) – the IP Law). However, neither the law nor regulations specify the mechanism for management of GIs, and the way to control the quality of the GIs.

As described through legislation, the GI system in Vietnam follows the top-down model where the State plays the dominant role throughout the lifetime of the GIs. Despite there being an authorization mechanism under the law allowing active participation of producers and their representative organizations on the behalf of the State, no regulations specify the procedures and scope of authorization.

Distribution of the roles between the State and producers in actual implementation

The roles of the State

Actual implementation has witnessed the overwhelming role of the State from the outset of a GI. The State’s intervention begins by the identification of local products to be nominated

for IP protection. Interestingly, according to the NOIP (2019a), of all the registered products bearing geographical names, GIs are outnumbered by collective/certification marks (70 GIs versus 1,241 collective/certification marks as of October 2019). Previous studies asserted that this fact occurred as a consequence following the orientation of public policies which advertently led to the restriction of the number of GIs. Such was, *inter alia*, the localities' preference for the registration of collective/certification marks instead of GIs due to the former's looser and more flexible conditions compared to those applying to the latter (Le Thi Thu Ha, 2011; Pick *et al.*, 2017). Findings in the literature also revealed that, in some practical cases where a GI register was considered infeasible due to a lack of financial and technical resources from local governments, the localities tended to opt for a collective/certification mark despite the existence of a probable link between the product's quality and its geographical origin (Le Thi Thu Ha, 2011; Marie-Vivien & Pick, 2015). Besides, as some authors denoted, the choice of collective/certification marks instead of GIs is sometimes attributable to the quota system which set up a fixed number of products within a locality to be registered as collective/certification marks or GIs (Marie-Vivien & Pick, 2015; Pick *et al.*, 2017). Given the advantages of GIs over trademarks for local specialties, the "surrender" of GIs to trademarks would amount to renouncing the chance for local products to enhance their reputation associated with their origins and local traditions.

The picture of implementation also portrays the State as the primary player in the registration process. Statistics show that state agencies (provincial people's committees and departments of science and technology) acted as applicants in 90% of the cases (NOIP, 2019b). These state agencies are also primarily responsible for drafting the codes of practice of GIs and compiling documents for the registration stage (Pick & Marie-Vivien, 2021). In the management stage, 65.7% of GIs have been managed by departments of science and technology, while the remainder fall within the management of district

people's committees and representative associations (NOIP, 2019a). Concerning quality control, the responsible state agencies, namely the Departments of Standards Metrology and Quality at the provincial or district levels, are vested with the role of external control alongside internal control conducted by representative associations (if any). Especially, as for GI products without associations representing their producers, such as Tien Lang Rustic Tobacco (*Thuốc Lào Tiên Lãng*), the said state agencies assume the entire responsibility of quality control, giving rise to a purely "administrative" mechanism for GIs. However, practice indicates that the active role of state actors is brought into play only in the pre-registration process. After obtaining GI protection, very limited resources are invested in managing and developing GIs as compared with earlier stages (NOIP, 2019a).

The roles of producers

The roles of producers can be judged from individual and institutional levels. They may contribute individually or through their representative associations which, in theory and practice, are expected to gather producers together and rally their collective efforts for the development and sustainability of the GIs (Reviron & Chappuis, 2011; Quinones-Ruiz *et al.*, 2016).

** At the individual level*

Contrary to the dominant position of the State is the passive role of individual producers in almost all processes. The only stage where the participation of producers, represented by a group selected by competent authorities, is found is in the pre-registration process in which they work together with responsible experts and staff to determine GI specifications and conclude the codes of practice. As informed through the interviews, consultations of selected producers and other stakeholders were conducted indirectly through questionnaires, and directly through meetings. This process involved different actors, generally including representatives of departments of sciences and technologies, NOIP, experts of research institutes, and nominated local stakeholders. However, the interviewed producers who had engaged in the process

revealed that they had acted as “information providers” with little voice in the decision-making process. After legal protection for GIs is obtained, GI users just exercise their rights to affix GIs to their products and prevent non-users from illegally using the GIs in question, without any rights and responsibilities in management and sustainability of the GIs. Therefore, the producers’ participation has been found ineffective and unsystematic in spite of their historical contribution to the reputation of the products and their know-how as the human factors featuring the specificity of the products.

** At the institutional level*

It is worth recalling that the IP Law and its guiding documents do not specify the kind of organizations eligible for “representing all GI users”, nor do they clarify the rights and responsibilities accorded to them. Noteworthy, NOIP published a guidebook referring to the establishment of the representative organization as a necessary step to build and operate a GI, but such a recommendation is non-binding (NOIP, 2012). It has therefore resulted in differences and asymmetry in the operation of representative organizations in practice, illustrated through the associations that we interviewed. It has also led to a faint level of participation of producers as observed in those cases.

Since membership in the representative organization is non-compulsory by law for producers, motives for participation differed among the interviewed associations. For example, in the case of Ha Long Squid Balls, only members of the Association of Manufacturing and Trading Ha Long Squid Balls are vested with the right to use the GI, which provides the very reason for producers to participate, noting that the price for GI labeled products is considerably higher than ordinary ones. This sharply contrasts with other cases where the right to use the GI may be granted to non-members, and benefits from the membership status are not significant enough to attract participation. For instance, members of the Production and Consumption Association of Luc Ngan Thieu Litchi may find membership as a chance to seek contractual relations with

supermarkets and export companies, thereby realizing their ambition to access lucrative and credible markets that they cannot achieve if acting individually. However, in the eyes of non-members that account for the vast majority of producers, pursuing such a chance amounts to taking risks that do not always pay off. To enter into those aforesaid contracts, they have to invest to get certified for VietGAP or GlobalGAP, which costs them considerably despite support from the state and local policies. Furthermore, those certifications are not a guarantee for desired outcomes because of market instability and the rigorous criteria from foreign markets. As such, farmers find it easier to directly sell products to collectors and traders due to smoother transactions and looser standards, especially in the peak harvest season.

The practice also showed weak collaboration dynamics within associations, resulting in a lack of congruence between the producers’ individual interests and the GI common values. Paradoxically, high motivation for being a member, as seen in the case of Ha Long Squid Balls, does not necessarily lead to a sense of collectivity. Since producers of Ha Long Squid Balls hold their own brand names besides the GI, they tend to act individually to enhance their own business’s reputation. In other interviewed associations, efforts have been made collectively, with support from the local and central governments, to find reliable and profitable marketing channels, including opportunities to access foreign markets like Japan, Singapore, the United States, etc. However, the final outcomes were in fact not the result from full participation of members, but mainly from the collaboration between the association’s board of managers and state competent authorities. In other words, collective bargaining with external actors does not take place with voices from all members of the association, which illustrates the failure of the association to engage members with collective actions directly determining their interests. The “relatedness” and “common values” within associations are therefore translated to merely social bonds between members without reference to the GI values.

In theory, representative organizations are also expected to assume internal control – one tier of the GI quality management, in collaboration with external control to guarantee the quality of the GI products. From the producers' perspective, this contributes to raising the producers' commitment to prescribed standards. As seen in the case of the Phu Quoc Fish Sauce (*Nước mắm Phú Quốc*), quality control bodies are structured into different tiers as follows: (1) internal control at the individual-level and association level; and (2) external control is conducted by the Control Board consisting of experts from relevant state agencies (People's Committee of Kien Giang Province, 2014). In such a case, while the internal control functions in self-governing rules to ensure and sustain the reputation of products bearing the GI, the external control independently inspects the quality of the products. A number of research articles published recently confirmed the adherence of the Phu Quoc Fish Sauce Association and their members to the rules in practice (Kousonsavath *et al.*, 2018; Hoang Viet & Nguyen An, 2019). Nonetheless, according to NOIP's authorities, Phu Quoc Fish Sauce is one among a very small number of cases in Vietnam where the representative associations may realize their function of internal control. However, all of the associations we interviewed revealed insurmountable difficulties impeding the implementation of that function. In the case of Ha Long Squid Balls, it was argued that the members aspire to sustain their credibility, inferring a guarantee for compliance with the quality requirements without a need for internal control. Furthermore, each producer makes "differentiation" for his/her products by creating a distinctive additional flavor, therefore, it may raise a sensitive consideration regarding secret recipes during the control process. In a different context where all the producers enjoy the same reputation attributable to the GI, as in the case of Hung Yen Longan, the internal control is still hardly implemented due to a lack of human resources and expertise. The same claim came from the Production and Consumption Association of Luc Ngan Thieu Litchi in which almost all the members in managerial positions

concurrently work in other organizations, and therefore cannot fully be dedicated to the assigned responsibilities. Additionally, a common problem detected in all the interviewed associations was the lack of a financial capacity to operate on their own, because membership fees were not collected in fact or if collected, they were only enough to cater to the personal welfare of members to reinforce their social bonds. The problem arose from a concern that the cost of participation may raise an unbearable burden on members who are almost all resource poor farmers.

The aforesaid facts reflect different ways the State and producers get involved in the GI-related processes. It could be inferred from the practice that the over-dependency of the GI scheme on the State may result in negative outcomes for the GIs. Moreover, the over-active engagement of the State from the outset of GI-related processes leaves very little room for producers to participate. In the pre-registration process, producers hardly have their voices reflected in the GI's specifications and codes of practice. After GI registration, they just passively follow the prescribed standards without any rights and responsibilities for the sustainability and development of the GIs.

The asymmetry in the distribution of power between the state and producers is further exacerbated by numerous hurdles, either subjective or objective, preventing the active participation of producers. Representative organizations, which are expected to facilitate the producers' participation to achieve the optimal outcome for GIs and serve as a platform for the exchange of information, technical knowledge, and good practices among producers, fail to fulfill their roles. The first reason emanates from the silence of the law to require producers to unite within a single association. In the absence of compulsory membership by the law, motives driving producers' participation in associations is first and foremost the economic benefits gained from such participation, but the misalignment between producers' individual interests and GI common values tend to discourage producers from active participation. Furthermore, an associations'

limited resources and equipment, lack of institutional capacity, weak linkages between members, and so on are other contributing factors to the malfunction of associations, and more broadly, of the whole system.

The bottom-up approach in the EU

Despite its roots in local practices and traditional know-how, GIs – from the legal perspective - are virtually an alien concept imported to Vietnam in the wake of WTO membership. In the absence of a uniformed international framework for GI protection, lessons should be learned from other countries with advanced GI legislation to find practical solutions. This paper refers to the EU's experience by virtue of its long history with well-known GIs. Additionally, the same legal standpoint in GI protection has been shared between Vietnam and the EU, illustrated by the policy option to establish a *sui generis* framework for GIs. Moreover, the EU - Vietnam Free Trade Agreement (EVFTA), with an important part dedicated to GI protection, is a keynote underpinning the necessity to refer to the EU's experience in the course of Vietnam's legal reforms for GI protection. As a deeper analysis of GI experiences at the national level, the paper focuses on the GI system in France – the country significantly influencing the EU's framework on GIs - with a particular target on the approach in which GIs are established and governed.

General policies in the EU

A unified framework on GIs applying to the EU community started in 1992 following the enactment of the European Regulation 2081/92 of July 14, 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (the EU Regulation 1992). That regulation was superseded by Regulation 516/2006 of March 20, 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuff. The latest amendment was introduced in Regulation 1151/2012 of November 21, 2012 on quality schemes for agricultural products and foodstuffs. With such a common framework for GIs

applying to all of the EU's members, registration of GIs takes place at two levels, namely the national and EU levels. Only a group of producers whose legal form is decided by legislation of the respective member state is entitled to apply for registration and subsequently manage the registered GI. Concerning quality control, the unified scheme provides for control at two levels: (1) the *macroscopic level*, or the overall control of the whole system, officially taken by the competent authorities of the member states; and (2) the *microscopic level*, which monitors compliance with the specifications for each GI, taken by competent authorities of the member states and/or by a product certification body – an independent third party, accredited in accordance with ISO/IEC 17065:2012.

France's experience

The national framework in France dates back to 1905 with the incorporation of the EU's common schemes (Marie-Vivien *et al.*, 2017). Accordingly, the system displays two core features: the leading role of the private sector (represented by groups of producers) and a unified quality control system.

Since 2006, France requires the formation of an organization representing all producers and other stakeholders of a GI, officially called the Organization for Defense and Management for each GI (hereinafter referred to as the producers' organization). Participation in this type of organization is mandatory for all producers and processors that satisfy the conditions and desire to use GIs. It is also the only entity conferred with the right to register and manage GIs, as well as represent all members in GI-related legal relations. This regulation is dedicated to the uniform management of GIs, and ensures that all GI users equally participate in and contribute to the establishment and management of GIs (Bérard & Marchenay, 2008; Marie-Vivien *et al.*, 2017; Marie-Vivien & Vagneron, 2017).

Regarding the control system, France designates the National Institute of Origin and Quality (*Institut national de l'origine et de la qualité* (INAO)) as the competent agency responsible for the *macroscopic level* of control.

To serve this purpose, INAO set up an approval and control board with the authority to define the control principles to be applied to all GIs, approve certification bodies, and approve the control plan for each GI. The *microscopic level* is held by an independent certification body accredited by INAO. Such a certification body collaborates with the producers' organization to formulate a plan for the control of the GI, which includes self-control undertaken by the producers themselves, internal control by the producers' organization, and external control by the certification body, and then submits the plan to INAO for approval. After being approved, that control scheme serves as the basis for inspections carried out by the certification body, and thereby, how decisions on granting, maintaining, and extending the certification for each GI user will be made. Any decision of the certification body resulting in users losing the right to use the GIs must be informed to INAO. Costs of certification and control are paid for by the GI users to reduce the burden on the state budget (Bérard & Marchenay, 2008; Marie-Vivien *et al.*, 2017; Marie-Vivien & Vagneron, 2017).

With those changes, the French GI system made a radical shift from the past (before 2006). Specifically, the State's intervention shifted from direct involvement (directly getting involved in drafting GI specifications in the registration process, granting the right to use GIs to producers, taking charge of control tasks, etc.) to macro supervision (supervising and guaranteeing due process in GI-related issues). The existing model in France, therefore, exhibits the very nature of the bottom-up approach where the state leaves room for active roles of producers in GI-related processes (Marie-Vivien *et al.*, 2017).

Implications for Vietnam in the reform for GIs

Revisiting the role of the State in the GI system

France's reforms in the GI system, as mentioned, took place with explicit intention to reduce the State's intervention. Accordingly, the State manages GIs at the macro level, enabling producers and their representative organizations to directly implement GIs in a way consistent

with the codes of practice. The independence of producers and their representative organizations is reflected in both the operational and financial aspects, which aim to enhance the activeness of producers, as well as to ease the burden on the State.

In Vietnam, by contrast, the State's roles dominate in almost all related stages, from registration to the management of GIs. This has inevitably restricted the active engagement of producers and their representative organizations. It raises the question of whether Vietnam's GI system should be reformed following France's experiences? Obviously, the State's deep intervention as existing in Vietnam drives the system to highly bureaucratic and inept directions. However, a paradigm shift to the bottom-up approach, in our views, is not considered the optimal solution, justified in the following aspects:

First, in the legal perspective, as presented, GI products in Vietnam own their specificity to two elements: natural factors (locally specific resources) and human factors (local know-how). Natural factors are brought about by natural conditions, including soil, water, plant genetic resources, etc. Under Vietnamese laws, natural resources belong to the entire people, with the State acting as the owner's representative (Article 53 of the 2013 Constitution). Driven by this fact, the State's involvement in GI-related processes, at least in the Vietnamese context, is undoubtedly essential to exercise sovereignty rights over natural resources, and direct the use of such resources in a sustainable manner. Such missions have been transformed into the State's actions to, *inter alia*, prevent excessive exploitation of natural resources associated with a number of GIs, especially those in the form of raw products such as Quang Ninh Corrugate Lucines (*Con ngán Quảng Ninh*), Van Don Peanut Worms (*Sá sùng Vân Đồn*), and Yen Tu Golden Apricots (*Hoa mai vàng Yên Tử*). Moreover, while some GIs can bring visible economic benefits to producers, thereby attracting their active participation, as in the case

of Ha Long Squid Balls, some others are mere "symbols" for the local identity with little economic value, as is the case with Yen Tu Golden Apricots, for which a "subsidy" from the State is inevitable to ensure the GIs' existence. Furthermore, the State's involvement, especially in developing countries, can be justified by the linkage between GIs' initiatives and macro policies on poverty reduction and rural development (Bowen, 2010; Gangjee, 2012; Hoang Giang *et al.*, 2020). In Vietnam, this involves the allocation of the state budget, and aid from donors under developmental programs, to optimize development, and thus priority must be scrutinized for certain products potentially contributing to local socio-economies. In this sense, the State acts to achieve sustainable protection of public interests on behalf of the whole society, not producers alone.

Second, since almost all GIs originate from rural, mountainous, and remote areas, the lack of financial and technical capacities are frequently identified as common problems to producers and their representative associations. Specifically, all associations in our survey found financial and technical support from the State in the registration process as the utmost condition for the establishment of GIs. Furthermore, collected membership fees, if existing, hardly cover the functioning costs with regards to the GIs, as shown in the operation of those associations. This suggests continuing and providing even further support from the State. In this regard, rather than acting in defense of public interests, the State plays the role of "the representative of producers" (Marie-Vivien, 2020).

However, the extent to which the State engages in GIs should be defined, given the necessity to promote the active role of producers and their representative associations. To this end, we advocate a level of the State's intervention in-between the top-down and bottom-up approaches. That is, the State would play the role of supporting the technical and financial conditions and raising capacity at the initial stage before "stepping down" to give full autonomy to producers.

Empowerment of producers

As mentioned, the current GI system in Vietnam places producers in a passive position. For the sake of the GIs' development, promotion of the producers' role is of necessity, demonstrated in both the theoretical and practical perspectives.

In the purview of IP to which GI is a part, IP rights reward investments in innovation – a driving force for creativity and development in society as a whole (WIPO, 2004). In the term of GIs, hence, it is the producers who deserve rewards for their investing labor and intellectual efforts in building the quality and reputation of GI products throughout a long history. On that account, higher than merely as GI users, they should be recognized as a joint owners of the collective asset – the GI. Besides, during the registration and post-registration processes, it is also the producers who, by their know-how and experience, substantially contribute to the codes of practice, maintain the GI quality as specified in the specifications, and allow the evolvement of the GI for generations. For these reasons, they should assume the leading role throughout the lifetime of GIs.

In defense of the empowerment of the producers, we also advocate the mechanisms for collective representation of producers as applied in France. Since the know-how from which a GI is derived is based upon collective traditions and a collective decision-making process (WIPO, 2004; Gangjee, 2012; Quinones-Ruiz *et al.*, 2016), GI production should take place in the sense of a community, giving rise to the need of a collective group uniting all stakeholders for the sake of the GIs' common values, as well as of the stakeholders' interests in terms of both economic and social benefits that they could not achieve individually (Reviron & Chappuis, 2011). As a lesson from France, such a group will build GI standards in a collective manner and ensure its uniform application among producers and other operators. It is also expected to facilitate the coordination and transfer of knowledge throughout the entire value chain. Particularly, it provides a unique mechanism for the management and guarantee of the quality of products with separation between internal and

external controls to enhance the transparency and efficiency of the quality guarantee system, thereby raising the reputation and reinforcing public trust in the products. Nonetheless, it is worth reiterating the argument of Bramley & Bienabe (2012) on weak collective action dynamics in developing countries whose industries “do not necessarily have any history of cooperation”, taking into account the finding of Marie-Vivien *et al.* (2019) that poor farmers in developing countries perceive participation in producers’ associations as a burden. Those points found in the literature were also more or less mirrored in GI cases during our survey. Yet, considering the collective nature of the GI as stressed, and rationales for the existence of representative organizations as a pivotal component of GI governance, a platform for concerted action of producers to take place, and the intermediary between the State and producers, the future system should consolidate the decisive role of representative organizations in GIs, while gradually removing related hurdles as per specific contexts.

In fact, as mentioned, representative organizations have been in existence in Vietnam, notwithstanding their ambiguous legal status under the law. The previous section referred to the lack of financial capacity as an impediment for their independent functioning, signifying a "transition" period for those organizations before undertaking their missions independently, during which support from the State is still necessary. Additionally, our survey found differences among representative organizations in terms of membership status, functions, and enforcement of internal rules. It is therefore recommended to formalize representative organizations by laws. Accordingly, the laws should specify the legal status of the representative organization, its functions and position in the system of GI governance, and the legal rights of members associated with the GIs in distinction from those of non-members. Under this circumstance, the change of law promotes uniformity in the functioning of representative organizations and provides the very reasons for producers’ participation and avoidance of free-riding. Most notably, involvement of producers in GIs

through their representative organizations is legally enshrined via a formal system.

Yet, it should be borne in mind that compulsory membership and visible benefits of being members do not automatically result in active participation of members within the association, as seen in the case of Ha Long Squid Balls. Moreover, a lack of cohesion, collective bargaining power, and governance, as happened in all the interviewed cases, almost reflects each association’s internal matters associated with their capacity. Therefore, as Bramley & Bienabe (2012) noted, legal arrangements alone cannot “bring about the desired effects”. In this regard, legal reform and capacity building for associations should be pursued simultaneously in order to enhance their ability to organize collective actions, and effectively fulfill their functions as expected. Besides, the cases of Hung Yen and Luc Ngan raise another issue regarding producers’ awareness of GIs and their sustainability in the face of increasing requirements from markets, especially those related to food safety. Additional requirements of food safety or other procedures to guarantee compliance with the required standards were largely considered by farmers as discouraging factors for participation. Hence, this fact alerts the necessity of awareness-raising for producers on GI values and their adherence to strict criteria set by domestic or foreign markets as an inevitable trend.

Conclusions

Despite its high potential of GI products in domestic and foreign markets, Vietnam has struggled to find an appropriate model to govern GIs. The top-down approach is being applied in Vietnam, and, as outlined in this paper, exhibits its shortcomings in practice, illustrated by over intervention of the State in GIs and less active involvement of producers during GI-related processes, resulting in less effective functioning of the whole system. Although the mechanism for authorization is mentioned in the law, the lack of specification on this provision leaves it poorly implemented in practice.

The paper referred to experiences from the EU with a particular focus on those of France. The system is marked by the producer-driven approach with active roles of producers represented by their association and the unique model of management in the spirit of collectivity. The approach places the State in the position to supervise and guarantee due process and GI quality.

By analyzing the current situation of the GI system in Vietnam and lessons from France, the paper suggests the empowerment of producers as an inevitable trend of GI development, but a paradigm shift to the bottom-up approach is not a recommendable step in this stage. It needs a “transition” process to strengthen the capacity of producers and their associations before autonomy is fully granted by the State. In this process, an overall solution should bring together legal reforms on the formal status of representative organizations, capacity building, and awareness-raising for producers and their representative organizations.

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