

**STANDING COMMITTEE ON GEOGRAPHICAL INDICATIONS  
QUESTIONNAIRE TO NATIONAL GROUPS**

**Introduction**

1) The purpose of this questionnaire is to seek information from AIPPI's National and Regional Groups on developments in their respective countries in relation to geographical indications (**GIs**) and appellations of origin (**AOs**) and on the positions taken with regard to issues that have emerged from AO and GI legislation.

2) According to the TRIPs Agreement GIs are “indications which identify a good as originating in the territory of a [Country], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. A similar definition is adopted by the WIPO Geneva Act.

Under the WIPO Lisbon Agreement an AO is a “geographical denomination of a country, region or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”. A similar definition is adopted by the WIPO Geneva Act.

3) Therefore, the rationale for protection of AOs and GIs is to protect signs identifying the geographical origin of goods whose characteristics and/or reputation are linked to such origin.

4) At a worldwide level, many contrasts and divergences have emerged with regard to protection of AOs and GIs. Some countries have enacted specific legislation on AOs / GIs supporting broad protection (particularly in relation to their local typical products). Other countries, who do not tend to favour strong protection of AOs / GIs regulate them, if at all, within the framework of trademark legislation.

5) It is intended that the information obtained by means of this questionnaire will:

- enable AIPPI to further develop its position on issues relating to GIs and AOs, leading to a further Resolution aimed at harmonisation of national laws relating to GIs and AOs; and
- thereby assist in the advocacy of AIPPI's position on such issues to national and regional governments and in international forums.

**Previous work of AIPPI**

6) AIPPI's most recent study of issues relating to GIs and AOs was Q191 – "Relationship between trademarks and geographical indications". A Resolution on Q191 was adopted in Gothenburg, Sweden in 2006 (**Gothenburg Resolution**). The Gothenburg Resolution is available at: <http://aippi.org/wp-content/uploads/committees/191/RS191English.pdf>.

Further information on AOs and GIs, their legal regulation and the debate surrounding them can

be found in the Study Guidelines for Q191 available at:

<http://aippi.org/wp-content/uploads/committees/191/WG191English.pdf>

- 7) Other work of AIPPI prior to the Gothenburg Resolution is summarised in the Study Guidelines for Q191,  
<http://aippi.org/wp-content/uploads/committees/191/WG191English.pdf>

## Discussion

- 8) Set out below is a brief discussion on international legal frameworks for the protection of GIs and AOs, including developments that have taken place since the Gothenburg Resolution.
- 9) At an international level, the two multilateral treaties committing signatory States to protect GIs which have gained the broadest adhesion worldwide are the Paris Convention within the WIPO system and the TRIPs Agreement within the WTO system.
- 10) Article 1(2) of the Paris Convention states that the subject-matter of protection of industrial property is (among other things) "indications of source or appellations of origin". Article 10 of the Convention states that seizures and other remedies "shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant".
- 11) Article 22 of TRIPs requires the protection of "geographical indications". GIs are recognised by Article 1(2) of TRIPs as a category of intellectual property. Under the TRIPs Agreement, GIs are protected against uses misleading the public or constituting an act of unfair competition. Additional and stronger protection is only provided for GIs of wines and spirits. Discussions commenced under the Doha mandate on the question of increasing the level of protection of GIs under the TRIPs Agreement appear to have come to a deadlock.
- 12) Within the WIPO system further agreements concerning AOs and GIs have been adopted, generally providing for a high level of protection:
- a) the Lisbon Agreement of 1958 protects "appellations of origin" against any form of usurpation or imitation, whether or not this usurpation or imitation is misleading for the public. The Lisbon Agreement provides for the establishment of a system for the deposit of "appellations of origin" with the International Bureau operated by WIPO. Under the Lisbon Agreement, each signatory state is required to protect the appellations of origin registered by another state. A provision is inserted protecting AOs against becoming generic. The list of contracting parties to the Lisbon Agreement can be found at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=10](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10)
  - b) the Geneva Act of the Lisbon Agreement, adopted in 2015, protects both appellations of origin and geographical indications. Protection is given against various types of use, including uses liable to mislead consumers and/or "impair or dilute in an unfair manner, or take unfair advantage of" the reputation of a AO/GI. Further provisions of the Geneva Act protect AOs/GIs against becoming generic and regulate the relationship between AOs/GIs and trademarks. The list of countries that have signed the Geneva Act can be found at [http://www.wipo.int/treaties/en/ActResults.jsp?act\\_id=50](http://www.wipo.int/treaties/en/ActResults.jsp?act_id=50).
- 13) Within the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, there are discussions about the proposal by some delegations concerning the protection of GIs in the domain name system. This is particularly with regard to

possible modification of the WIPO UDRP in order to "permit complaints to be made concerning registration and use of domain names in violation of the protection of geographical indications".

- 14) Due to the above divergences, the WIPO Agreements have received limited support among WIPO Member States. Only a relatively small number of States have signed them. This debate emerged in particular during the negotiations leading to the adoption of the WIPO Geneva Act. Negotiations were characterized by a clash between countries pushing for a very high level of protection and other countries refuting the content of the Act and even the legitimacy of the negotiations.
- 15) In addition to the protection for GIs and AOs afforded by the international treaties described above, a high level of protection for GIs and AOs relating to agricultural products and foodstuffs is granted in the European Union under EU Regulation 1151/2012 and other regulations pertaining to specific products. EU Regulation 1151/2012 protects "designations of origin" and "geographical indications" against acts which are of a nature to mislead the public and/or to unduly exploit or freeride on the reputation of the GI/AO. The Regulation contains provisions protecting GIs and AOs against becoming generic and in general against a possible loss of rights, as well as regulating relationships between GIs/AOs and trademarks. The EU system is based on registration and EU case law restricts protection of GIs/AOs which are not registered at EU level.

The European Commission is currently investigating the possibility of expanding the protection of GIs and AOs to non-agricultural products.

- 16) Differences and disagreements which have emerged within the international framework regard several key points of legislation on GIs and AOs, such as the way of acquiring rights, the prerequisites for protection, the scope of protection, maintaining protection in the face of supervening circumstances and relationships with other IP rights. The questions below are intended to touch upon these issues.

**Questions**

Your Group is invited to submit a Report addressing the questions below. If your Group considers that the answer to a question has already been given in its report on Question Q191, and that nothing has changed since then, a cross-reference to the specific paragraph in your Group's report on Q191 is sufficient.

***In each case please specify whether your answer differs:***

- (a) as between GIs and AOs; and
- (b) depending on whether the GI or AO is foreign or domestic.

**I. Analysis of current legislation and case law**

- 1) Are GIs and/or AOs protected under your Group's current law?  
*Chỉ dẫn địa lý (GIs) và / hoặc Tên gọi xuất xứ (AOs) có được bảo hộ theo quy định của pháp luật hiện hành tại Quốc gia của bạn?*

**Answer:**

Yes, Geographic Indications are currently protected under the Intellectual Property Law of Viet Nam (IP Law) and relevant regulations under IP Law.

Please be noted that Viet Nam does not have a definition of AO and only protects GI as provided in the IP Law.

- 2) If yes, please briefly describe the following:  
*Nếu có, hãy mô tả ngắn gọn những điều sau đây:*
  - a) How AOs and GIs are defined and the prerequisites (in particular the type, nature and intensity of link with a territory).  
*Các AOs và GIs được định nghĩa như thế nào và các điều kiện tiên quyết cấu thành nên AOs và GIs (đặc biệt là phân loại, bản chất và mức độ gắn bó với khu vực lãnh thổ).*

**Answer:**

GIs is defined in the IP Law of Viet Nam as “*a sign which identifies a product as originating from a specific region, locality, territory or country*” (Article 4).

To be protected, a product bearing the GI has to:

- (i) originate from the area, locality, territory or country corresponding to such GIs; and
- (ii) have a reputation, quality or characteristics mainly attributable to GIs of the area, locality, territory or country corresponding to such GIs (Article 79). The GIs can either be natural or human factors, or a combination of both. The description of the product has to show how geographical conditions are linked with the peculiar characteristics of the product (with researches, surveys, technical explanations, etc.).

- b) Whether that protection is provided by sui generis laws; solely as aspects of other laws, such as by registration as collective or certification marks; or by other (and if so, what) means.

*Sự bảo hộ đó có được ghi nhận bởi các văn bản luật riêng; hay chỉ được ghi nhận như là một trong các khía cạnh của ngành luật khác, chẳng hạn như việc bằng đăng ký là nhãn hiệu tập thể hoặc chứng nhận; Hoặc bằng bất cứ cách thức khác (và nếu có thì như thế nào).*

**Answer:**

The IP Law of Viet Nam and decrees and circulars under this Law have Articles dedicated to GI.

On the other hand, geographical elements are also protected in the forms of collective mark as well as certification mark, with different technical requirements.

- c) If GIs and/or AOs are protected by sui generis laws, whether your Group's laws provide for a system of registration. If so, what are the steps of this procedure including the content of the application and the possibility of opposition by third parties.

*Nếu các GIs và / hoặc AOs được ghi nhận bởi các văn bản luật riêng, pháp luật của Nhóm quốc gia của bạn có quy định về một hệ thống đăng ký? Nếu có, các bước của quy trình này là như thế nào bao gồm nội dung đăng ký và khả năng tiến hành phản đối của bên thứ ba.*

**Answer:**

The sole owner of GIs in Viet Nam is the State. The State can either directly register and manage GIs or allow individuals, organizations producing the product in question, representative of the said individuals, organizations, and local administration to exercise the register and management rights of the GIs. This however does not transfer the ownership to the above entities, nor is it transferable to any other party.

The entity exercising the register right would have to turn in the application form along with other documents and evidence to the [National Office of Intellectual Property of Viet Nam](#) (NOIP), including:

- The name or sign being the GIs;
- The product bearing the GIs (each GIs can only be registered for one product only);
- The description for the peculiar characteristics, quality and/or reputation of the product bearing the GIs and the geographical conditions making up the said characteristics, quality and/or reputation, including:
  - o Product description, including the raw materials, physical, chemical, microbiological and organoleptic characteristics of the product;
  - o Method of identification of the geographical area bearing the geographical indication;
  - o Description of the local and stable production, processing methods the local;
  - o Evidence proving that the product originates from such geographical area;
  - o Information on relationship between the peculiar characteristics and quality, or reputation of the product and the geographical conditions;

and

- o Information on the mechanism of self-control of the peculiar characteristics or quality of the product.
- The map of the geographical area bearing the geographical indication; and
- Documents evidencing that the geographical indication is under protection in the country of origin in case of a foreign geographical origin;

The application shall be received by the NOIP. NOIP will conduct the formality examination within a month and publish the application two months after the formality examination if the application is considered valid. Then it is followed by a substantive examination for 6 months. If the application for registration does not fall into the case of refusal to grant protection titles and the applicant has fully paid the fees, NOIP shall decide to grant a protection title and enter it in the National Register of Industrial Property.

During the GI application examination, any third party can voice its opinion on the application by turning in a written opposition to the (NOIP).

- 3) If your country does not protect GIs and/or AOs, was this a deliberate decision and, if so, why?  
*Nếu quốc gia của bạn không bảo hộ GIs và / hoặc AOs, đây có phải là một chính sách có chủ ý và, nếu có, tại sao?*
- 4) What are the grounds of invalidity/loss of rights for GIs and/or AOs under your Group's law (e.g. becoming generic, lack of use, not paying fees) and where can such be invoked (which court, office etc.)? Please specify the applicable test, how such is proven (e.g. consumer surveys, expert advice, dictionaries, etc.) and who bears the burden of proof.  
*Căn cứ của việc chấm dứt hiệu lực Giấy chứng nhận đăng ký GIs và / hoặc AOs theo luật của quốc gia bạn là gì? (ví dụ như việc GIs hoặc AOs trở nên phổ biến, không sử dụng, không trả phí) và trong trường hợp nào có thể được viện dẫn đến các căn cứ trên (tòa án hoặc cơ quan chứng năng nào ...)? Vui lòng nêu rõ căn chứng minh những gì, giải thích cách thức chứng minh các yếu tố (ví dụ như khảo sát với người tiêu dùng, ý kiến chuyên gia, sử dụng từ điển ...) và ai sẽ là người có trách nhiệm chứng minh.*

**Answer:**

In Viet Nam, GIs are protected indefinitely (Article 93).

However, if the geographical conditions decisive to reputation, quality or special characteristics of products bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of products, then the protection for GIs shall be terminated (Article 95).

Besides, Article 96 of IP Law also provides a certificate of GIs registration may be cancelled by any third party's request, in the following cases:

- (i) The application for registration neither has right to registration; or
- (ii) The GIs under the certificate does not meet the protection criteria as stipulated.

- 5) What is the scope of protection of GIs/AOs under your Group's current law?  
*Phạm vi bảo vệ GI / AO theo những quy định hiện hành tại quốc gia bạn là gì?*

**Answer:**

The scope of protection of GI includes GI, the product which the GI is registered for, its peculiar quality and characteristics, geographical conditions, the geographical area.

- 6) Against what kind of conduct are GIs/AOs protected? For example, against use misleading consumers, parasitism and free riding.

*Những hành vi nào liên quan đến GIs/AOs không được bảo hộ? Ví dụ như: cố ý gây hiểu lầm cho người tiêu dùng, lợi dụng danh tiếng, sử dụng mà không xin phép*

**Answer:**

The acts which are considered infringements of the rights to protected GIs are provided in Art. 129 of Intellectual Property Law of Viet Nam. Infringements of the rights to protected GIs are provided more specifically in Art. 12 of Decree No.105/2006/ND-CP as well as Art. 13 of Decree No. 106/2006/ND-CP.

- 7) Who has legal standing to protect a GI/AO. For example, individual producers, consortiums and associations, public bodies.

*Chủ thể nào có tư cách pháp lý để chịu trách nhiệm quản lý một GI / AO. Ví dụ, các nhà sản xuất riêng lẻ, hiệp hội hay các cơ quan công quyền.*

**Answer:**

Under the current law, the State of Viet Nam is the sole owner of all Vietnamese GIs. The State shall grant the right to use geographical indications to organizations or individuals that turn out products bearing such geographical indications in relevant localities and put such products on the market. The State shall directly exercise the right to manage geographical indications or grant that right to organizations representing the interests of all organizations or individuals granted with the right to use geographical indications (Art. 121 of Vietnam IP Law).

- 8) What remedies are available in the case of violation of rights in a GI/AO?

*Những biện pháp nào được sử dụng để chống lại hành vi xâm phạm quyền đối với GI / AO?*

**Answer:**

Vietnamese legal system provides three different types of remedy in the case of violation of rights in a GI. These are administration measures, civil remedies, and criminal measures.

- 9) How does your Group's law regulate the conflict between a GI/AO and a prior trademark? Does the GI/AO or the trademark prevail or do they coexist? Under what conditions?

*Luật của quốc gia bạn quy định như thế nào khi có sự xung đột giữa một GI/AO và một nhãn hiệu đã được bảo hộ trước đó? Như vậy, GI/AO hay nhãn hiệu có hiệu lực cao hơn hay chúng sẽ cùng tồn tại? Trong trường hợp đó thì sẽ phải tuân theo những điều kiện nào?*

**Answer:**

Art. 80 and Art. 125 of Intellectual Property Law of Viet Nam provide for the mean of regulating the conflict between GI and a prior trademark.

In practice, if the prior trademark is well-known, then the GI in question will be examined extensively, with the possibility of being rejected. In case the prior mark is not well-known however, the GI should be allowed to co-exist with that mark.

- 10) Is there any specific provision or practice concerning the inclusion of a GI/AO in a domain name?  
*Có điều khoản hoặc thực tiễn cụ thể nào liên quan đến việc sử dụng một GI / AO trong một tên miền Internet?*

**Answer:**

Yes. There are the Article 130 IP law and [Joint circular no. 14/2016/TTLT-BTTTT-BKHCN](#).

- 11) Is there anybody that administers GIs/AOs in your country and/or is responsible for the verification of compliance of goods bearing a GI/AO? Please briefly describe the relevant processes, e.g. the process by which compliance with product specifications is verified before such goods are put on the market and/or the subsequent market controls on such goods?  
*Cơ quan nào có trách nhiệm quản lý GI / AO ở nước bạn và / hoặc có trách nhiệm giám sát quy trình tuân thủ đối với những hàng hoá mang GI / AO không? Vui lòng mô tả ngắn gọn các quy trình có liên quan, ví dụ: Quy trình tuân thủ đối với việc xác minh các yêu cầu kỹ thuật của hàng hóa trước khi nó được đưa ra thị trường và / hoặc các biện pháp kiểm soát đối với hàng hoá đó sau khi được lưu thông trên thị trường?*

**Answer:**

In Viet Nam, the authority responsible for examining and registering GIs is the NOIP. The local authorities, association shall assume the control of their respective GIs.

- 12) Please describe any other developments in your country in relation to GIs or AOs which you consider relevant, including any proposals for reform. For example, to the extent that your country has been involved in any negotiations or discussions regarding the protection of GIs and AOs in any fora, such as multilateral, regional or bilateral agreements, please specify whether your country is negotiating or has signed any agreement with other countries that includes provisions on AOs/GIs and whether it was necessary to amend domestic legislation as a result of such agreements.  
*Vui lòng cho biết bất kỳ điểm mới nào tại quốc gia của bạn liên quan đến GIs hoặc AOs mà bạn cho là đang được tiến hành bao gồm bất kỳ đề xuất cải cách nào. Ví dụ: trong trường hợp quốc gia của bạn hiện đang tham gia bất kỳ cuộc đàm phán hoặc thảo luận nào về việc bảo hộ GI và AO qua bất kỳ kênh nào, ví dụ như các thỏa thuận đa phương, khu vực hoặc song phương, vui lòng nêu rõ quốc gia của bạn hiện đang đàm phán hay đã ký kết bất kỳ thỏa thuận nào với các quốc gia khác mà trong đó ghi nhận các điều khoản về AOs / GIs và liệu rằng có cần thiết phải sửa đổi hệ thống luật trong nước để phù hợp với các hiệp định như vậy.*

**Answer:**

Viet Nam is currently under the process of amending the IP Law. Regarding GI regulations, there are a few aspects that are considered for amendment, including the conditions for a GI to be protected, regulations on GI management and control, requirements of the GI application (including the description, the map of the area, etc.), and the time limit for GI examination.

Regarding international agreements which include GI protection, Viet Nam is engaging in several FTA negotiations. However, none of which is in effect at the moment.



## II. Proposals for improvements and for harmonisation/ Đề xuất cải tiến và hài hoà

- 13) Should there be harmonised definitions of AOs and GIs? If so, please propose appropriate definitions and prerequisites.  
*Nên hay không có một định nghĩa hài hoà về AOs và GIs? Nếu có, xin vui lòng đề xuất các định nghĩa và các điều kiện tiên quyết phù hợp.*

### Answer:

Viet Nam does not have a definition of AO and only protects GI as provided in the Intellectual Property Law. Therefore we do not have any recommendation regarding a harmonised definition of AOs and GIs.

- 14) Should there be a registration procedure for AOs and GIs? If so, what should its key features be? For example, content of the application; examination by competent bodies; possibility of opposition by third parties.  
*Có cần thiết phải quy định về thủ tục đăng ký đối với AOs và GIs? Nếu có, những nội dung chính nào cần phải quy định? Ví dụ, nội dung của đơn đăng ký; quá trình thẩm định của các cơ quan có thẩm quyền; khả năng phản đối của bên thứ ba.*

### Answer:

Viet Nam does not have an AO registration procedure. For GI registration, the procedure is provided Art. 108 to Art. 119 of the Intellectual Property Law. This procedure is further detailed in Section 6 of Circular no. 01/2007/TT-BKHCN.

- 15) What should the grounds of invalidity/loss of rights for GIs and/or AOs be? For example, becoming generic, lack of use, not paying fees. Please specify what the applicable test should be, how such should be proven and who should bear the burden of proof.  
*Căn cứ của việc chấm dứt hiệu lực Giấy chứng nhận đăng ký GIs và / hoặc AOs theo luật của quốc gia bạn là gì? (ví dụ như việc GIs hoặc AOs trở nên phổ biến, không sử dụng, không trả phí). Vui lòng nêu rõ cần chứng minh những gì, cách thức chứng minh và ai sẽ là người có trách nhiệm chứng minh.*

### Answer:

Under Article 93.7 of IP Law, a certificate of GIs registration shall have indefinite validity from the granting date.

However, a certificate of GIs registration may be cancelled by any third party's request, in the following cases:

- (i) The application for registration neither has right to registration; or
- (ii) The geographical indication under the certificate does not meet the protection criteria as stipulated.

The validity of the certificate of geographical indication registration may be also suspended on the grounds that the geographical conditions attributable to the reputation, quality or characteristics of the product bearing a geographical indication have changed resulting in a loss of the reputation, quality or characteristics of the product (Article 95.1.g of IP Law).

- 16) How should conflicts between GIs/AOs and prior trademark rights be regulated?  
*Việc xung đột giữa GIs / AOs và quyền đối với nhãn hiệu đã được bảo hộ trước đó nên được quy định*

như thế nào?

**Answer:**

Art. 80 and Art. 125 of Intellectual Property Law of Viet Nam provide for the mean of regulating the conflict between GIs and a prior trademark.

In practice, if the prior trademark is well-known, then the GIs in question will be examined extensively, with the possibility of being rejected. In case the prior mark is not well-known however, the GIs should be allowed to co-exist with that mark.

- 17) What scope of protection should GIs/AOs have and should it matter if these are domestic or foreign? Against which conduct by third parties should they be protected?  
*Phạm vi bảo vệ của GIs / AOs nên được quy định như thế nào và liệu có khác biệt giữa GIs / AOs trong nước và nước ngoài? Những hành vi nào của bên thứ ba không nên được bảo hộ*

**Answer:**

The scope of protection of GIs includes the sign of the GIs, the product which the GI is registered for, its peculiar quality and characteristics, geographical conditions , the geographical area.

There is not a difference between domestic and foreign GIs regarding technical requirements in Viet Nam legal system. The Intellectual Property Law of Viet Nam does not discriminate domestic and foreign GIs, and only require foreign GIs be protected in its original country or region in addition to the requirements.

- 18) Who should have legal standing to protect a GI/AO and which remedies are appropriate?  
*Chủ thể nào có tư cách pháp lý để chịu trách nhiệm quản lý một GI / AO và những biện pháp quản lý nào là phù hợp?*

**Answer:**

At the moment, the responsibility of managing GI falls to the local authority respective of that GI. However, as Viet Nam is under the process of amending the Intellectual Property Law, it is suggested that this responsibility should be allowed to be assigned to the association or group of the producers of the product in question.

- 19) Should there by a specific provision or practice concerning the inclusion of a GI/AO in a domain name?  
*Nên có một quy định hoặc thực tiễn cụ thể nào liên quan đến việc sử dụng một GI/AO trong một tên miền?*

**Answer:**

A misuse of a domain name including a GI would be likely to cause confusion or deception for the customer, and would damage the prestige, reputation or property of the owner of a GI. In Viet Nam, registering or possessing the right to use or using domain names identical with, or confusingly similar to geographical indications without having the right to use, for the purpose of possessing domain names, benefiting from or prejudicing reputation and popularity of respective marks, trade names or geographical indications is considered an act of unfair competition (Art. 130) and is prohibited. Joint circular no. 14/2016/TTLT-BTTTT-BKHHCN provides the remedies for infringements of GI rights on a domain name and/or in the content of the website. The remedies include forcible change of information, forcible return and revocation of domain names “.vn”.

