

Geographical Indication Expert

Stephane Passeri (Consultant for the UN FAO Regional Office for the Asia and the Pacific, Bangkok, Thailand and Coordinator of the FAO-AFD Project for the Promotion of Rural Development through Development of Geographical Indication in Asia)

【Abstract】 The protection and development of Geographical Indications (GI) in the ASEAN and Asian region at large has witnessed impressive developments in the past 15 years with over 200 national GI currently registered in the ASEAN alone and already several thousand in Asia.

The successful development of a GI System and therefore GI products have to be considered as an Interlinked Process.

Building on the recent experiences in South East Asia countries, in particular through the implementation of the FAO-AFD Regional project for the Promotion of Rural Development through the Development of Geographical Indications at regional Level in Asia, this article aims to present on lessons learnt reflecting on the key elements to consider for the successful development of a Geographical Indication system and strategy. It also emphasize the crucial importance of public-private partnerships in order to optimize GI sustainable development and benefits for inclusive value-chains, rural development, trade but also tourism.

【Keywords】 Geographical Indications sustainable development Agriculture

1. Introduction

When the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entered into force on 1st January 1995 as a founding agreement of the World Trade Organization (WTO), it emphasized the importance of Intellectual Property Rights as key part of the modern international trading environment.

Geographical Indication (GI), as part of this intellectual property right environment, was still relatively obscure at the time, implemented and developed mostly in Europe where the legal protection of Geographical Indications emerged in France at the beginning of the 20th century, named at the time “Appellation d’Origine” then later “Appellation d’Origine Controlee” or A.O.C, term still visible today in the label of GI French wines.

In practice, the TRIPS Agreement, by specifically referring to the Geographical Indication as one the key intellectual property rights to be internationally protected under the Agreement, has given a higher exposure to the importance of Geographical Indications worldwide.

In addition, the Agreement provides an international definition¹ for GI as well as minimum standards for the protection and enforcement of GI for the benefit of all WTO member countries aiming to avoid misleading the public and to prevent unfair competition. As for all WTO rules, compliance by all members is compulsory and may be subject to complaints and sanctions if disregarded. As a result, all founding members of the WTO but also later on all new members needed to consider the protection of Geographical Indication in their agenda at one point.

But if 20 years ago, the need to comply with the Agreement was often the primary reason for countries to incorporate GI protective provisions in their legislation to become “TRIPS-compliant” countries have since understood that GI could become an interesting and innovative tool for development and trade. From India to China, Thailand to Vietnam, Cambodia to Japan or Indonesia to Afghanistan, countries engaged in developing Geographical Indications systems are gaining momentum and successes, ranking currently Asia as the most dynamic region of the world in term of GI registration after Europe and also paving the way for important GI development at regional and international levels.

Based on the experience of the FAO²-AFD³ regional Project for the promotion of Rural Development through the development of Geographical Indications at regional level in Asia implemented in the region since 2013, some lessons can be learnt and some elements be emphasized in analyzing the current dynamic of GI development in the region but, more importantly, in trying to perceive the possible way forward.

2. Geographical Indications, a link between sustainable rural development and trade issues

As the copyright, trademarks, or patents are generally associated to the protection, and therefore promotion of creativity, business and innovation, the Geographical Indication itself demonstrates also particular values in promoting sustainable rural development, preservation of bio-diversity and local wisdom. The GI instrument endeavors to ensure producers’ rights and obligations by defining reliable processes for the definition, control and protection of GI products. It also protects the rights of consumers by providing reliable and verifiable information on the specified attributes of the GI products, which can be linked and traced to a specific geographic location and certain other attributes.

Therefore the use of a GI may act as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin. This is the case in the region for example to Thung Kula Rong-Hai Hom Mali rice (Thailand), Kampot Pepper (Cambodia), Darjeeling Tea (India), Longjing Tea (China), Nuoc Mam Phu Quoc (Vietnam), Lamphun Brocade Thai silk (Thailand), etc.) Kobe beef (Japan) to give few examples.

GIs promote diverse agricultural, food and handicraft products anchored to a particular region from which they originate, which in many cases, can led to socio-economic well-being of these regions. The associated market linkages and definition of relevant standards enable producers and manufacturers to dedicate themselves to the commercialization of traditional products in response to the demands of quality-conscious consumers as well as promoting the development of these regions alike. Therefore, GIs can also contribute to the conservation of natural resources and the preservation of native traditions and cultural heritage often reaching back to distant ancestors, representing an important instrument for local wisdom preservation and tourism development in the modern trade environment.

An increasing number of quality-conscious customers are willing to pay a premium for such products for the reasons exposed above and the demand for such products is predicted to grow rapidly globally but in particular in the Asian region to accompany the rapid growth of local middle classes, tourists and expatriates which, once properly informed, have both the purchasing power and natural interest for these GI products being seen as products of quality and origin in comparison of other categories of products lacking such interest or trust.

We can already observe that some GI products in the region, also at an early stage of their protection and development and regardless of the level of economic development of their country of origin, have already managed to capture a niche in the international market

through a verifiable product differentiation ensuring high standards and quality products. This is for example the case of the Kampot pepper from Cambodia. Since its registration as first Cambodian Geographical Indication in 2010, it has gained international fame. The price of Kampot Pepper black pepper, at farm gate, originally at 4.5 USD/kg in 2009 was in 2016 of 15 USD/kg⁴. This success in capturing price premium has also been accompanied by an increase in production and investments in region, including through bio-tourism, attracting new farmers and producers⁵. From 2009 to 2016 the total area of cultivation of the GI Kampot pepper went from 9.45 to 184 hectares and the total quantity produced increased from 9.6 to 60 tonnes⁶ during the period.

The GI uniqueness and consumers recognition has also allowed GI stake-holders to resist better to commodity markets external shocks. In 2017, the global price of pepper has faced important challenges in the world market but the producers of Kampot pepper have been able to maintain high prices as demand for such trustful GI product continues to increase.

The Kampot Pepper Promotion Association which is the GI right-holder, representing the interests of GI value-chain from farmers to traders, is also a key reason of this success as we will further explain in this article, and is taken interesting actions to further protect and promote the GI in local, regional and international markets obtaining protection in the European Union as Protected Geographical Indication in 2016 as well as in neighboring countries, Vietnam (December 2016) and Thailand (March 2017) allowing Kampot Pepper stakeholders both to fight against unfair competitors and increase further GI product visibility.

In an increasing number of countries across the region, the development of GI products and the national GI system capacities are now considered critical for market access, improving product value chain efficiency and improving income to various participants in the product value chain, such as producers, processors and traders.

The GI system development also provides a good opportunity to improve regional and international exposure, establishing trading and product differentiation networks and access to technical knowhow and information in different markets. Experiences in GI legislation, policies, producer group formation, capacity development, product identification, control, quality assurance, verification and certification are all part of the GI system, which can benefit from experiences in other countries. Development of GI in a country has a significant potential to improve international trade and income, which could cover a large number of food and agricultural products, handicrafts and other types of products (i.e stones among others).

GI products are not new products, they have been often produced and traded for generations, carrying within themselves strong cultural messages and pride to which population are also attached and willing to be preserved for future generations should these productions remain economically viable. In addition to financial and economic benefits and significant poverty alleviation potential, the development of GI could also encourage bio tourism, which is a significant source of income as well as cultural exchange for communities.

The success of Kampot Pepper, as briefly presented above, has been made also possible due to the quality of the Cambodian GI legal system which was built taking in full consideration the Interlinked Process that GI is. It is important to fully consider the various key steps in establishing a GI system to overcome some challenges at institutional and operational levels which may otherwise limit countries and GI stake-holders in maximizing GI development and benefits.

3. Establishing a GI systems, an Interlinked Process

Establishing a national GI system takes time and resources, which maybe beyond the capacity of producers. At an early stage, it may not appear to be financially viable for the private sector, in particular in the

Figure 1 GI System, an Interlinked Process



agricultural sector to establish the required GI and bear relevant necessary costs. Reliable and verifiable identification, promotion and certification of GI products are costly and often require public sector support and intervention at the early stage of GI development to allow members of the value chains to be informed, structured, properly trained, to gain momentum and later become self-sustainable in managing such costs.

Lack of awareness among consumers in a number of markets/countries may also limit the demand for GI products and therefore the interest and engagement of the private sector.

Therefore public authorities, in partnership with development partners, often need to get involved to establish the system, provide training, expertise, public awareness activities, etc. and motivate the first GI national applications. Based on experiences in the region, 2 to 3 years in average are usually necessary for a GI application to be prepared and registered in the country of origin once the national legislation allows such the procedure to take place.

A well-built GI system can be associated to the

proper consideration of a list of interlinked processes incorporating a legal and institutional framework that jointly define, promote, protect and control a product's particular characteristics linked to a geographic location.

The GI system could therefore be summarized in the Figure 1 below, which highlights the various key elements and associated strategy to be considered based on the experiences gained from a number of countries, particularly in Europe and Asia.

3.1. Step 1 : Legal Framework

The preparation of a legal framework in compliance with the WTO-TRIPS agreements as well as national development priorities is the first necessary step for the development of a national GI system. At this stage it is important not to try to simply transpose GI related provisions of the TRIPS to the national legal framework but also analyze the particularities and benefits relevant sectors of the country's economy (i.e. agriculture, handicraft, bio-tourism) could take of such legislation on the national and foreign markets alike. For

example granting additional protection to wines and spirits as requested by TRIPS may need to be extended also to other categories products which also play an important role in each individual country economy (i.e. Silk and Rice in Thailand legislation) or simply apply to all type of products, this legislation becoming then “TRIPS-plus”.

In addition, certain rules and regulations may have to be further developed or clarified to facilitate implementation of the law and foresee its implementation therefore emphasizing the following :

- the national GI competent authorities and its attributions in regards to GI administration (i.e. considering practical issues related to the substantive examination for GI applications or control) ;
- the status of the GI applicant (the GI is a collective right) ;
- the importance of the control system and its administration ;
- the proper cohabitation/complementarity with others IP rights (i.e. trademarks or plant varieties) ;
- practical and deterrent provisions for enforcement.

3.2. Step 2 : GI administration: Institutional Arrangements and Capacity Development

When considering the administration of a GI system and subsequently necessary institutional arrangements and capacity building for GI administration two levels need to be considered :

- at public level ;
- at private sector level

Developing proper GI administration and management capacities at both public and private levels are at the heart of the GI system development and sustainability.

Public Institutions :

This relates to the roles and responsibilities of public institutions in assessing and preparing for GI applications, control procedures, monitoring and validating

system functionality and providing a trustworthy and verifiable accreditation and control system.

In this regard in each country key public institutions with relevant roles and responsibilities need to be rapidly identified.

In the region, the Ministerial responsibility for GI registration varied among countries. In the ASEAN countries, for examples, the responsible national agencies in charge of GI registration are the national Intellectual Property Offices, under the Ministries of Commerce in Cambodia or Thailand, of Ministries of Science and Technology in Lao PDR or Vietnam, or Ministry of Law and Human Rights for examples and apply to a broad category of GI products (from agriculture to handicraft and others). In Japan or China, competence for GI administration is given the Ministries of Agriculture which also implies that the categories of GI products protected may here be more limited as applying purely to their area of expertise.

As a result, it is important to identify the strengths and possible weaknesses that may appear in the implementation of national systems based on the selection of the competent Public Institution(s) in charge of GI administration. For example, an IP Office will have as strength the understanding of the IP environment in general, interaction with other IP rights, administrative, legal and judicial procedures attached but as a weakness will have limited capacity/technical expertise in specific products environments and associated skills linked to agriculture, food or handicrafts products by example. On the other hand, Ministries of agricultures, although fully competent in Agricultural linked problematic and technical capacity may also find some weaknesses when facing other type of products (i.e. handicrafts, industrial products) or when it refers to the IP general environment.

In practice, as there are often not a perfect ad hoc institution available to cover GI alone, the solution may result in implementing inter-ministerial coordination with the capacities of various institutions being shared on a non-permanent basis (i.e. experts provided by

technical ministries to IP offices when proceeding the GI application substantive examination), or more permanently through the possible creation of a “GI board” (as foreseen per example in the Cambodian legislation), allowed to contribute to substantive (examination, in particular) issues related to GI administration.

Relevant capacities building and training capacities will have then to encompass the elements presented above but also to cover both central administration and local/provincial offices which should play also the role of both public awareness office and first technical support to help local GI applicants in their process of national GI applications.

Private Institutions :

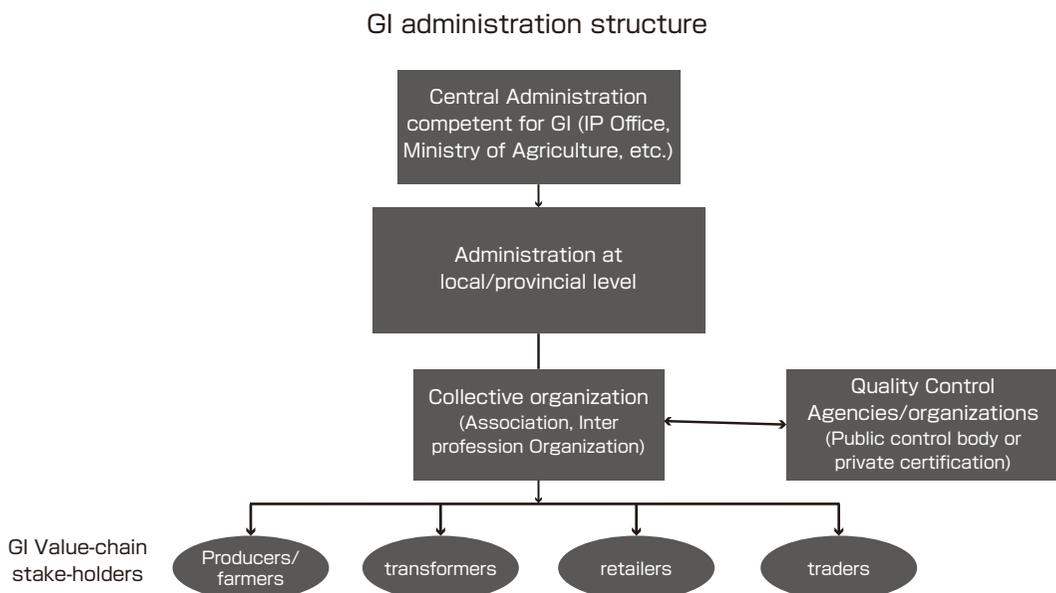
If the Public sector play the essential role of launching and administrating the GI system it should not be the case of the GI products themselves. An organization representing the all GI value chain should be ideally created and be the one initiating the GI application process and managing the GI in the long run on a sustainable way.

The private GI stakeholder institutions are referred

to as the “GI Inter-professional organizations”. GI inter-professional organizations regroup the members of the GI product value chain (from farmers to traders) willing to participate to the GI and therefore committed to fulfill GI specifications and management rules, including related to control and promotion.

Capacity development for the GI inter-professional organizations is crucial if the GI system is to function effectively and sustainably. These include appropriate definition of GI products, production according to specifications, packaging and labelling according to market needs, internal control mechanisms, and legal support for registration and protection of rights and obligations as well as marketing support. Such capacity development efforts are best considered as part of the private sector sustainable institutional development efforts at national and sub-national levels as part of the GI system development. Only with the full involvement of the GI value-chains through such structure can the GI products may reach their full potential and self-sustainability.

Figure 2 GI administration



3.3. Step 3 : Control capacities

This refers to the control, verification and certification functions as part of quality assurance in line with the quality and origin claim of the registered GI product. This capacity may be developed at both the public and private sectors to ensure the availability of adequate and timely service provision.

The figure 3 below describes the GI control system or “GI control Scheme” available in Thailand.

Consumer trust and the capability of a value chain to command such trust is a major part of sustainable marketing system, which is vital for a GI product to be recognized and generate the expected price premium. Therefore, quality assurance, traceability to origin, certification and verification of GI products (in short control) is vital for the development and success of the GI system. Based on the level of development of each country, the control system may be done by national or international entities, public control and/or private certification. The choice would also depend on costs, type

of product, destination market and the type of control and analysis the system is expected to provide. In some cases for example, when the targeted market consumers are highly health and quality conscience, a more reliable and internationally recognized certification process may be necessary. Nevertheless, national capacities development in control, verification and certification is vital for the development and sustainability of the GI system.

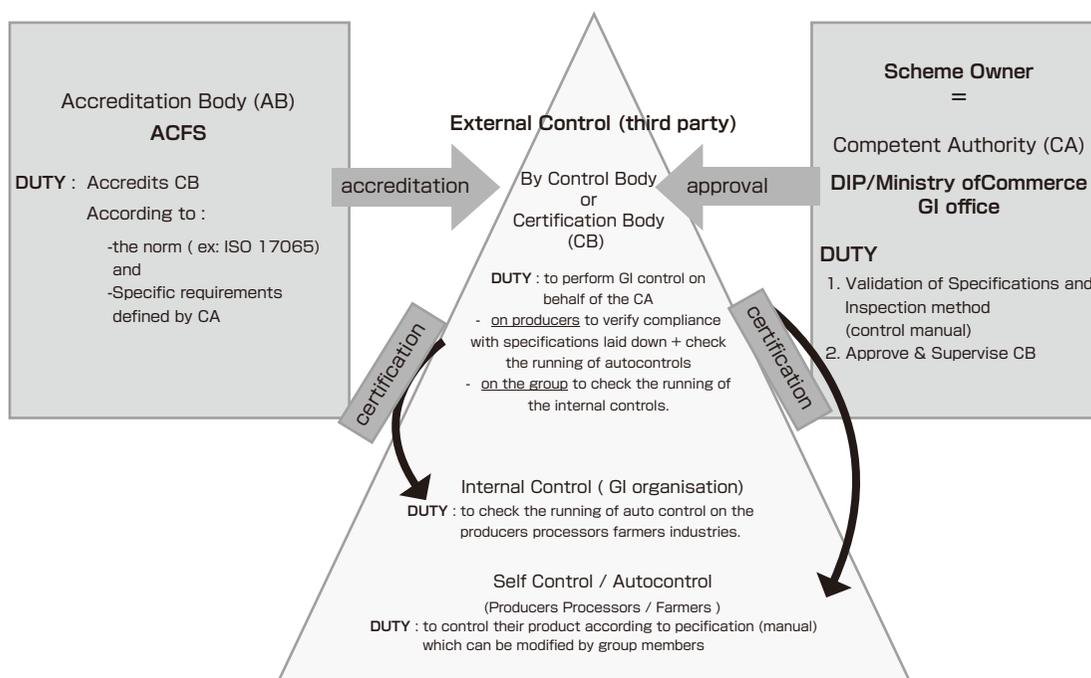
Market requirements for standards, specifications and other aspects should be carefully considered when drafting GI product applications. The control, verification and certification process should be an integral part of the product definition. These consideration would also play a major role in defining a product as GI.

3.4. Step 4 : GI Product Registration in the country of origin and in foreign markets.

Following the identification, specification and establishment of an effective and credible control system,

Figure 3

Geographical Indication Control System (Thailand)



the GI product needs to be registered, initially at the country of origin and subsequently in the relevant foreign markets. Without registration, protection of the GI product may not legally available. The registration allows the rights and obligations of the stakeholders (those involved in the production-marketing chain) to be legally binding wherever the product is registered.

Registration/recognition of GI in other countries could be through direct application, mutual recognition or activation of international/multilateral agreements.

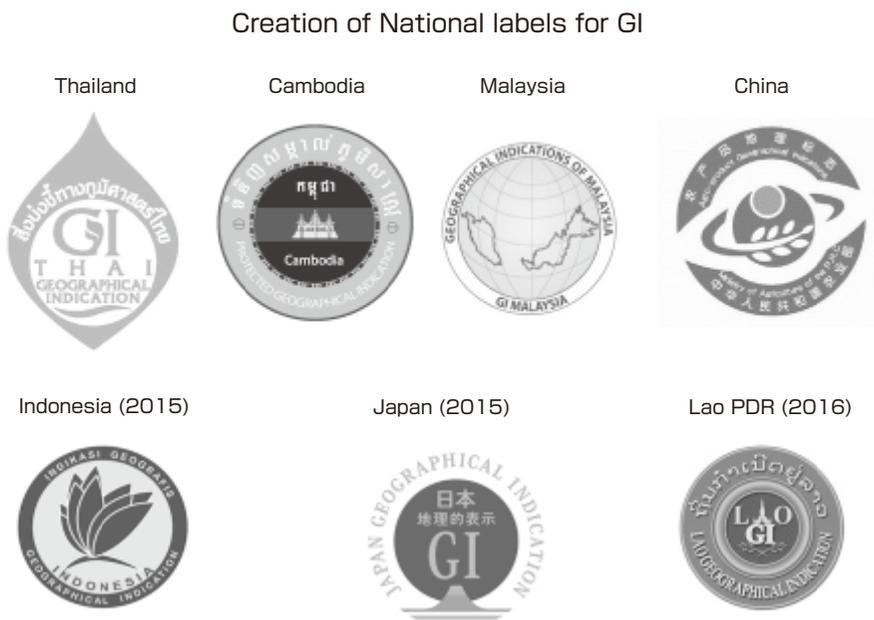
Institutional capacity development in registration of GI products within the country and abroad is an important endeavor in the development of GI system. The registration will also allow the enforcement of rights and obligations of stakeholders for registered products. These activities also give the opportunity for capacity development and relevant guidelines, could play a catalytic role in the development of Intellectually Property practitioners involvement in GI development and protection in international markets.

3.5. Step 5 : Promotion

Prior to any promotional endeavors, a product needs to go through the various stages of quality assurance-definition of the product attributes, traceability, verification and credible certification. Product promotion following a credible quality assurance is necessary to introduce and generate demand for a product that can establish a reputation and true to its attributes. It is therefore advisable not to engage in promotion activities before prior to the preceding four steps. However, other aspects of the GI system promotion to attract political support and necessary investment are necessary and may begin in parallel with the GI system development process.

GI promotional initiatives, as demonstrated in the region, have already shown GI singularity and public-private partnerships potential. Public authorities, in an increasing number of countries in the region, have created National GI label allowing to collectively promote national GI products nationally but also internationally (bilingual labels). A sample of these national labels is presented in Figure 4 below.

Figure 4 Development of National GI labels in Asia



These GI national labels demonstrate the growing importance of GI products for the visibility and perception of the countries involved, including through potential tourism implications, but it also create an higher responsibility for the authorities to ensure that these flagship products remain a symbol of excellence through proper control and enforcement of the GI.

In addition, at GI stake-holders level, the higher exposure given to GI products and the increase in the products premium allow also to generate more interest and resources in developing more creative packaging and individual branding strategy to target specific customers and markets.

3.6. Step 6: Enforcement

Geographical Indication, as it is the case of other intellectual property rights, if appropriately implemented and enforced, can protect consumers from counterfeit products, protects the rights of legitimate producers, avoid unfair competition and hold producers accountable to the standards and product specifications. Such rights and obligations can only be defended if they are appropriately attributed, owned and internalized as part of a system. Therefore, GI product definition, specification, registration and control mechanism (i.e. Steps 1-4) are necessary before rights and obligations can be enforced. The expenditure on promotion, Step 5, without registration may trigger illegitimate claims, free riding and not yield any benefits to the actual owners.

Capacity development of relevant national private and public institutions such as enforcement agencies, GI professional entities, IP practitioners and private sector companies among others are necessary to ensure a credible and effective enforcement mechanism.

Enforcement activities have to cover both national and foreign GI protected.

Proper enforcement of GI allows GI stake-holders to reduce unfair competition, maintain the quality of products available in the market and maintain the operators and consumers' trust, guarantee of a sustainable

growth in products perception and valorization. For the country of origin of the GI products, it may also contribute to its reputation as origin of quality and unique products which may act as Ambassadors of excellence for the category of products involved (food, agriculture, handicraft, etc.) reaching beyond the GI itself.

The importance to consider the GI system through this Interlinked Process presented here allow for the consumers to have access and interest on these products which is the pre-condition for sustainability and other implied benefits.

4. The way forward

As mentioned earlier, the development of GI legislations and GI products is growing in the region. In the ASEAN, after Malaysia, Indonesia, Cambodia, Lao PDR, Thailand, Singapore and Vietnam, it should be soon the turn of Myanmar and the Philippines to consider GI protection and development in the coming years. In other parts of Asia, Bhutan, Sri Lanka and Nepal have shown interest in considering the benefits of GI development joining on this way China, India, Japan, Mongolia and Afghanistan already actively involved in GI developments. GI registrations (both nationals and foreigners) in the region are in the rise and expected to rise further through direct registration or FTAs and bilateral exchanges of GI lists. Intra-regional registrations of Geographical Indications is also a relatively new trend but accelerating with the registration of the Vietnamese GI Buon Ma Thuot Coffee in Thailand in September 2014, the Cambodian GIs Kampot pepper and Kampong Speu plam Sugar registered in Vietnam in December 2016 and in Thailand in March 2017, the Vietnamese Shan Tuyet Moc Chau and Van Yen Cinnamon awaiting final registration in Thailand. As for handicrafts, Thai Lamphun Brocade Silk became in February 2016 the first handicraft GI obtaining GI registration in another country than its country of origin in February 2016 when obtaining GI registration in Indonesia and is currently awaiting for final registra-

tion in India.

The current increased registration of GI across the region, the improving knowledge of operators and consumers alike as well as increased insertion of GI into national products promotion and rural development strategies at national but also sub regional⁷ and regional level⁸ demonstrates of the current dynamic. In addition, the rapid increase of purchasing power through a growing middle class in the region the middle classes but also intra-regional tourism and exchanges offers to GI a perfect opportunity to find their market answering to the increasing demand of more quality and origin aware consumers who want to be able to trace where products come from for safety issues but also personal values reason (i.e fair trade, sustainable development, protection of local wisdom, bio diversity, etc.).

For policy makers, the GI products could here offer a perfect “low hanging fruit” opportunity to experiment strategies of rural development, including through increased public private partnerships. Additional capacity building and joint public private in control and promotional activities should provide what both producers and consumers are requesting together with additional benefits associated to the GI concept.

The development of intra-regional GI registrations among ASEAN countries, the current costs associated for comprehensive intra-region registrations coupled with the implication of public authorities into supporting GI developments should rapidly provide a good op-

portunity for further develop regional cooperation and exchanges at various levels including mutual recognition procedures. Further harmonization of legislations and procedures should then also emerge to facilitate the examination and mutual recognition of examination and grant report of geographical indications in the region. At a later stage, the first basis of regional registration GI systems, also concurring to the increased visibility of ASEAN and the ASEAN Economy Community visibility within and outside its borders, could start to be considered together with a regional promotion strategy of regional ASEAN GIS, including potential regional GI label as it is currently in place in the European Union.

NOTE

- 1 Ref. WTO TRIPS Agreement-art.22: *“Geographical indications are, for the purposes of this Agreement, 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 characteristic of the good is essentially attributable to its geographical origin”*.
- 2 FAO: Food and Agriculture Organization of the United Nations.
- 3 AFD: Agence Française du Developpement/French Development Agency.
- 4 Source: Kampot Pepper Promotion Association 2016.
- 5 Source: Kampot Pepper Promotion Association 2016.
- 6 Source: Kampot Pepper Promotion Association 2016.
- 7 Ref. Promoting Safe and Environment-Friendly Agro-based value-chains in the Greater Mekong Sub region-Strategy and Action Plan 2018-2022; Greater Mekong Sub region Core Agriculture Support Programme; July 2017.
- 8 <http://www.asean-gidatabase.org>, ASEAN Secretariat online regional GI database.