



Promoting Intellectual
Property Rights in the
ASEAN Region

SEMINAR ON GEOGRAPHICAL INDICATIONS

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Brunei Darussalam | 18 September 2019



Funded by the European Union



This Project is funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

HISTORY AND OBJECTIVES OF THE PROTECTION OF GEOGRAPHICAL INDICATIONS

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- ❑ History of Geographical Indications
- ❑ Definition of GIs
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- ❑ Sui-generis GI system: objectives and benefits
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I.1 History of Geographical Indications

Origin products exist for long time

- Reputed origin products existed for a long time: since Antiquity, foodstuff, agricultural goods, handicraft –wines, marble, bronze, silk, incense were highly reputed thanks to their place of origin.
- Name of the place of origin protected as an appellation of origin or geographical indication.
- Legally recognised first in the EU and since TRIPs in all WTO members.



A need for market regulation at the origin of GIs (1/2)

- **French wine sector in the 19th century: “golden era”...**
 - improvement of transportation (railways)
 - local consumption and free trade agreements
 - Production: 1788 : 30 M hectoliters; 1875 : 85 M
- **... but not sustainable:**
 - strong focus on quantity not quality
 - crisis of severe grape disease (phylloxera) 1870-1900
 - **multiple frauds** : wine adulteration (water, sugar,...), misuse of origin, counterfeiting,...



A need for market regulation at the origin of GIs (2/2)

- **...with strong social consequences:**
 - low income for producers and poverty in rural areas
 - social unrest and demonstrations



*The government had to take action to **support producers / consumers** and to **restore trust in the value chain**.*

Appellation of Origin/GI to better control production

- **Definition of the product:** Griffe Law (1889) defining true/fake wine + following laws forbidding fraudulent practices
- **Invention of geographical indications:**
 - **Step 1 - Law of August 1, 1905 :** concept of “appellation of origin” (fraud control): link between a name and a geographical origin
 - **Step 2 - Law of July 30, 1935:** concept of **controlled** appellation of origin (AOC): link between a name and a geographical origin + specific characteristics

Progressive extension of the GI system in France

- **1935:** creation of a national institute in charge of GIs (**INAO**) – with a public/private governance
- **1974:** extension to **dairy products**
- Law of July 2, **1990:** extension of the concept of GIs to **all agricultural products**
- Law of March 17, 2014 + Decree of June 2, **2015:** extension of the concept of GIs **to non-agricultural products**



GI at international level

- **1958**: Extension of concept of **Appellation of Origin (AO)**:
 - **Lisbon Agreement, WIPO** (28 members)
- Since the **1990's** : new concept of **Geographical Indication**, with weaker link with the origin than for AO:
 - **EU** since 1992 (28 members): AO + GI
 - **TRIPs Agreement** in force in all WTO members, 1994 (164 members): GI
 - **Geneva Act of the Lisbon Agreement** (2015): GI + AO (15 members)

I.2 Definitions of Geographical Indications

WTO/ TRIPS Agreement (1994): Geographical Indications

- “ 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 “

(art. 22)

EU Regulation 1151/2012



PROTECTED DESIGNATION OF ORIGIN (PDO)



PROTECTED GEOGRAPHICAL INDICATION (PGI)



COMMON CHARACTERISTICS

- the **name of a region/specific place/country** used to **describe** an agricultural product or a foodstuff **originating** in that area

DIFFERENCE : THE LINK TO THE ORIGIN

- | | |
|---|--|
| ■ quality or characteristics essentially or exclusively due to a particular geographical environment with its inherent natural and human factors | ■ specific quality, reputation or other characteristics attributable to the geographical origin |
| ■ production, processing and preparation in the defined geographical area | ■ production and/or processing and/or preparation in the defined geographical area |

GI = right protecting the link between the product and its geographical origin

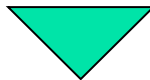
- Natural environment: **natural factors**
 - ✓ Biological resources: cultivated and processed
 - ✓ Climate, water of river, wood used for smoking...
- Ancient collective know-how: **human factors**
 - ✓ In using elements of the environment for producing the product
 - ✓ But also taken alone without natural factors
- Such **link is reflected in the GI specification:**
 - ✓ description of the product, method of production, geographical area
 - ✓ examined by public authority
 - ✓ usually high level of protection

GI: a link between place, people and a product

Natural environment
(topography, climate, soil,...)




Producers
(tradition, know-how)



Specific product (quality, reputation)

I.3 Examples of successful cases in ASEAN and the EU

Globally: A trend towards origin products

- Globalization of industrial production
 - homogenized, standardized products
- 
- A large, blue, double-headed vertical arrow is positioned between the first and second bullet points, indicating a relationship or transition between the two concepts.
- Consumers show an increased interest in local, traditional, ecofriendly and reputed origin products: ready to pay a Premium
 - From “**commodities**” to “**products with a name**”: heritage, traceability, quality.

Michael Porter's paradox:

« In global economy, perennial competitive advantages
rely increasingly on local facts
- knowledge, relations, motivation –
which distant rivals cannot match »

Clusters and the new Economics of Competition, 1998



In Italy: Parmigiano Reggiano (Parmesan)



In France: ROQUEFORT



In France: CHAMPAGNE



In Colombia: Café de Colombia



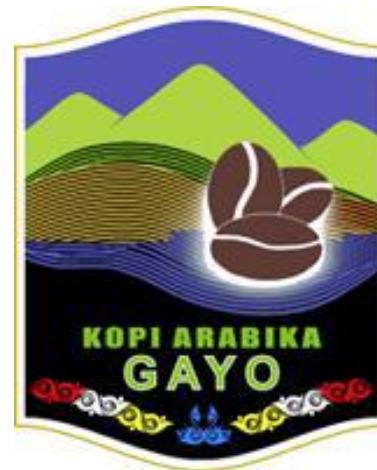
In India: Darjeeling tea



In Indonesia: coffee Kintamani



In Indonesia: Gayo arabica coffee



In Cambodia: Kampot Pepper



12/2009



4/2010



2016



Green pepper



Red pepper



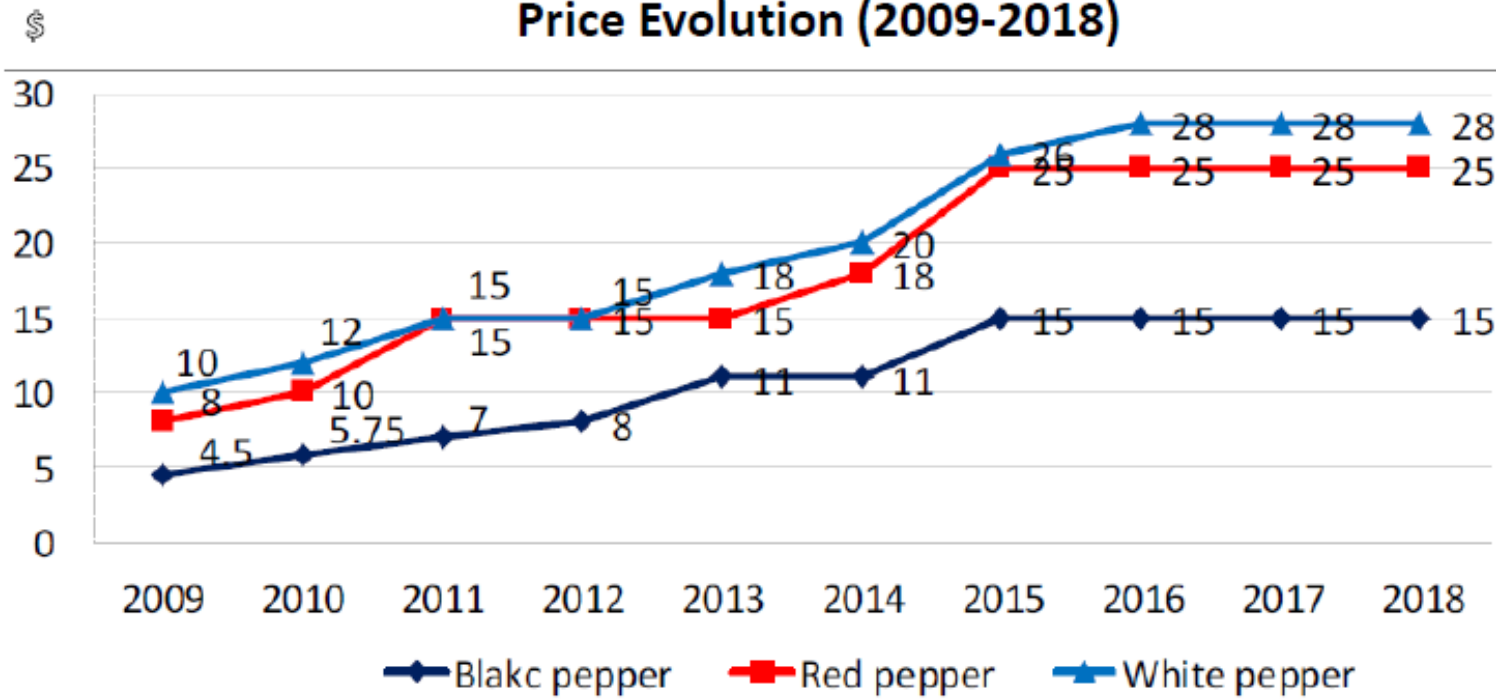
Black pepper



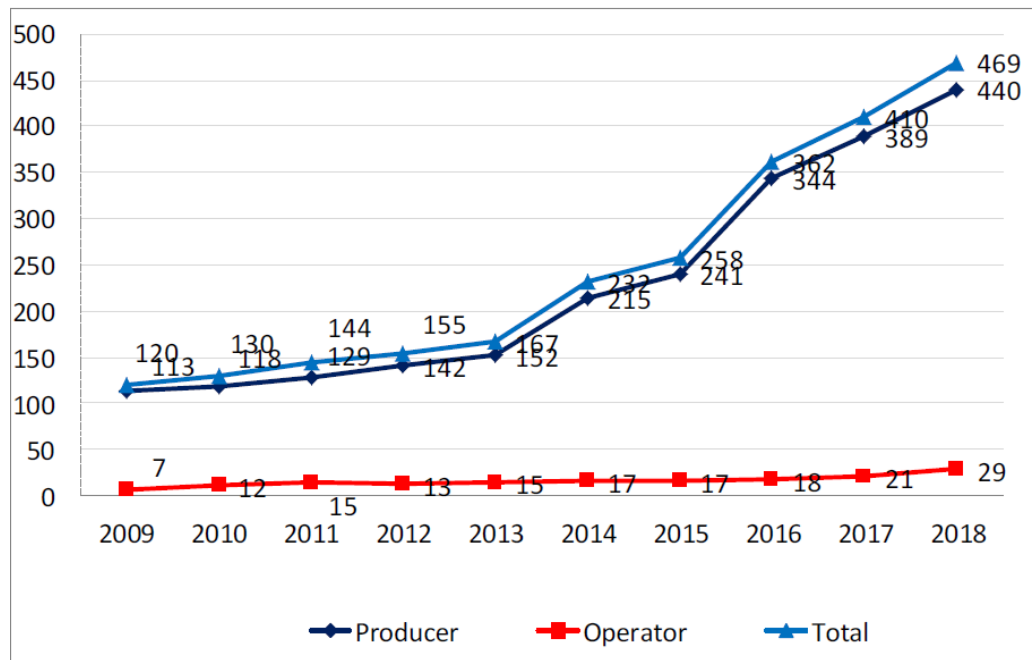
White pepper



Price Evolution (2009-2018)



Number of members of Association



សមាគមលើកកម្ពស់ព្រៃឈើ "ស.ល.ប.ក"
Kampot Pepper Promotion Association (KPPA)

Promotion and Communication



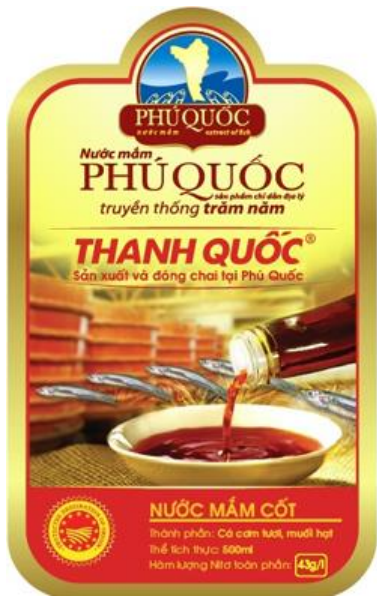
Promotional tools

- Leaflets
- Banners
- Videos
- ...etc.

Promotion activities

- Website
(www.kampotpepper.biz)
- radio, TV, magazines
- Fairs in Cambodia and abroad

Viet Nam: Nước Mắm Phú Quốc



In Japan: Kobé beef



In Thailand: Khao Hom Mali Thung Kula Rong Hai (Rice)



In Thailand: Lamphun Brocade Silk



In Laos:

- Khao Kay Noi (small chicken rice)



- Registered: November 2018

In Indonesia: Tenun Ikat Sikka (Sikka Weaving)



- Sikka ikat weaving traditional cloth from Sikka District, East Nusa Tenggara

1st ikat cloth in Indonesia to obtain a Geographical Indication certificate.

DGIPR, March 8, 2017

In Brunei: Jong Sarat



Source: <http://www.bruneiresources.com/bruneitenunan.html>

- Tenunan art of weaving precious gold and silver thread within the finest cotton or silk
- Jong Sarat is the most famous design and popularly worn at ceremonies
- National pride handicraft

Wild honey: Malaysia



bombasticborneo.com

- Madu Kelulut Lundu (wild honey from stingless bees)
- **GI Registered 15/09/ 2016** Right holder: Pertebuhan Peladang Kawasan Sri Gading Lundu



- 400 g pot = RM 100
= US\$ 24,00
(<https://produksarawak.com>)



- 230 g pot = RM 50
= US\$ 12
(<https://shopee.com.my/>)
\$ 52 /KG !

madukelulutlundu.blogspot.com

Wild honey: Brunei ?



- Madu Kelulut Lundu (wild honey from stingless bees)

- Market ?
- Consumers ?
- Story telling ?
- Price ?



Essential oils (Indonesia)

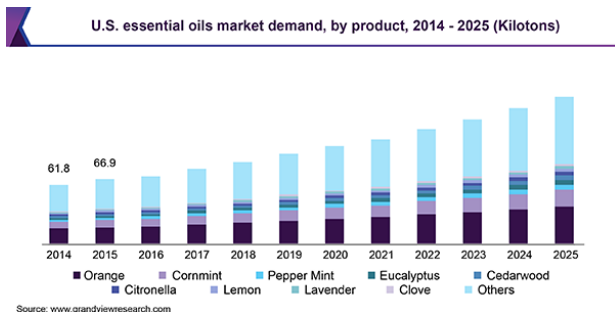


Essential oils and cosmetics



- **Indonesia: Minyak Nilam Aceh (Aceh Patchouli Oil)**
- GI registered in 10/09/2013
- Right holder: Forum Masyarakat Perlindungan Nilam Aceh (FMPNA)/ [Community Forum Nilam Aceh Protection (FMPNA)]

- Patchouli oil needs of the world reaches 1,500 tons. 70% supported by Indonesia.
- 80% of Indonesian patchouli oil production comes from the Special Region of Aceh, Sumatra



- Vibrant market for essential oils
- Pharmaceutical, medicinal, cosmetics use: Agarwood and others

I.4 Sui generis system: Objectives and benefits

Sui Generis System for GI Protection

- Objectives: Specific system that protects GIs as such, through a proper law and registration.
- Advantages:
 - Strong protection of the name, whether used in evocation, translation, “style”, etc.
 - Implies a certain involvement of public action in enforcement and controls.
 - Generally based on compulsory registration.
 - Legal protection is based on an act of public law (law, decree (ex: France), ordinance (Switzerland)...) adopted at the conclusion of an administrative procedure involving representatives of the producers concerned and the government administration.

Benefits of a Sui Generis System

Emphasis on Geographical Indication And Reputation

Highlights the link between geographical origin and the quality and/or reputation of the product, which is basis for premium price.

Enhanced Protection against misuse

- Protected even when the indication is used with a mention of the true origin or with delocalizing expressions.
- Also protected against imitation and evocation.

Potential to foster stimulation among producers

GIs have potential to stimulate emulation, strengthen producers keen to differentiate their goods through quality.

Benefits of a Sui Generis System

Supports Development of Export Potential

- Competitive advantage for labour-intensive sectors: agriculture, handicrafts.
- Producers can grow into exporters of high-quality foodstuff and handicraft.

Promotes Income Distribution

- Right to use belongs not to a single company, but to all producers respecting specifications in a given area.
- High potential for income distribution.

Fosters Developing Economies of Scale

- A collective approach among producers and others in value chain is needed to create and develop a GI.
- Generates economies of scale, esp. for small organizations.

Benefits of GI Protection

PRODUCERS

- Market visibility
- Higher demand
- Product's name exclusive right of complying group
- Competitive pricing

SOCIETY

- Employment
- Rural development
- Heritage
- Tourism
- Biodiversity

CONSUMERS

- Assurance of product quality
- Source is guaranteed

- Based on Public Law approach : Authorities enact specific legislation
- GI is granted the status of a public quality seal, often with official GI logo. Registered GIs are protected ex officio
- Administrative procedure to apply for geographical indication/
decree establishing origin: The application includes a “book of specifications” or “description document” comprising the descriptions of the product, geographical area, method of production, and of the link between the product and its geographical origin.
- Opposition procedure.



Débuter avec Firefox

<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification>

impression écran



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EUROPEAN COMMISSION

eAmbrosia – the EU geographical indications register

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[Wine Register](#)

[Spirit drinks](#)

1989 Records

Product Type	Country	Type	File number	Name	Product Category	Status	Date	
Spirit drink	France	Geographical indication (GI)	PGI-FR-01870	Absinthe de Pontarlier	47. Other spirit drinks	Registered	19/08/2019	i
Wine	Spain	Protected Designation of Origin (PDO)	PDO-ES-N1634	El Vicario	Wine	Registered	06/08/2019	i
Wine	Italia	Protected Designation of Origin (PDO)	PDO-IT-A0517-AM03	Venezia	Wine	Applied	02/08/2019	i
Wine	Italia	Protected Designation of Origin (PDO)	PDO-IT-A0742-AM04	Terre Tollesi / Tullum	Wine	Applied	29/07/2019	i
Wine	Hungary	Protected Designation of Origin (PDO)	PDO-HU-A1341-AM02	Izsáki Arany Sárfehér	Wine	Published	26/07/2019	i

I.5 How to protect GI in the ASEAN region and in the EU via different routes

Different routes for GI Protection at home

- Geographical indications (sui generis system)



- Trademarks (collective / certification marks)



- Administrative systems (labelling, etc.)

- Legislation on unfair competition

3 routes for GI registration in foreign markets

– Individual registration in each country of export

- Direct application by the GI producers association

– Bilateral/pluri-lateral trade agreement

- Two or more States or trading partners agree to protect each other's GIs (standard of protection + often a GI list) *FTA*

– Multilateral agreements

Trips agreement (WTO)

Protection of GIs

Madrid protocol/ agreement (WIPO)

Registration of trademarks

Lisbon system and Geneva Act (WIPO)

Protection and registration of AOs and GIs under the Geneva Act

1. Individually registered GIs (examples)

ASEAN GIs registered in the EU market

2012

Vietnam



Nuoc Mam
Phu Quoc

2013

Thailand



Khao Hom
Mali Thung
Kula Rong
Hai

2015

Thailand



Kafee
Doi Chaang



Kafee
Doi Tung

2016

Thailand



Khao
sangyod
Muang
Phatthalung

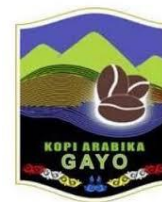
Cambodia



Kampot
pepper

2017

Indonesia



Kopi
Arabica
Gayo

2019

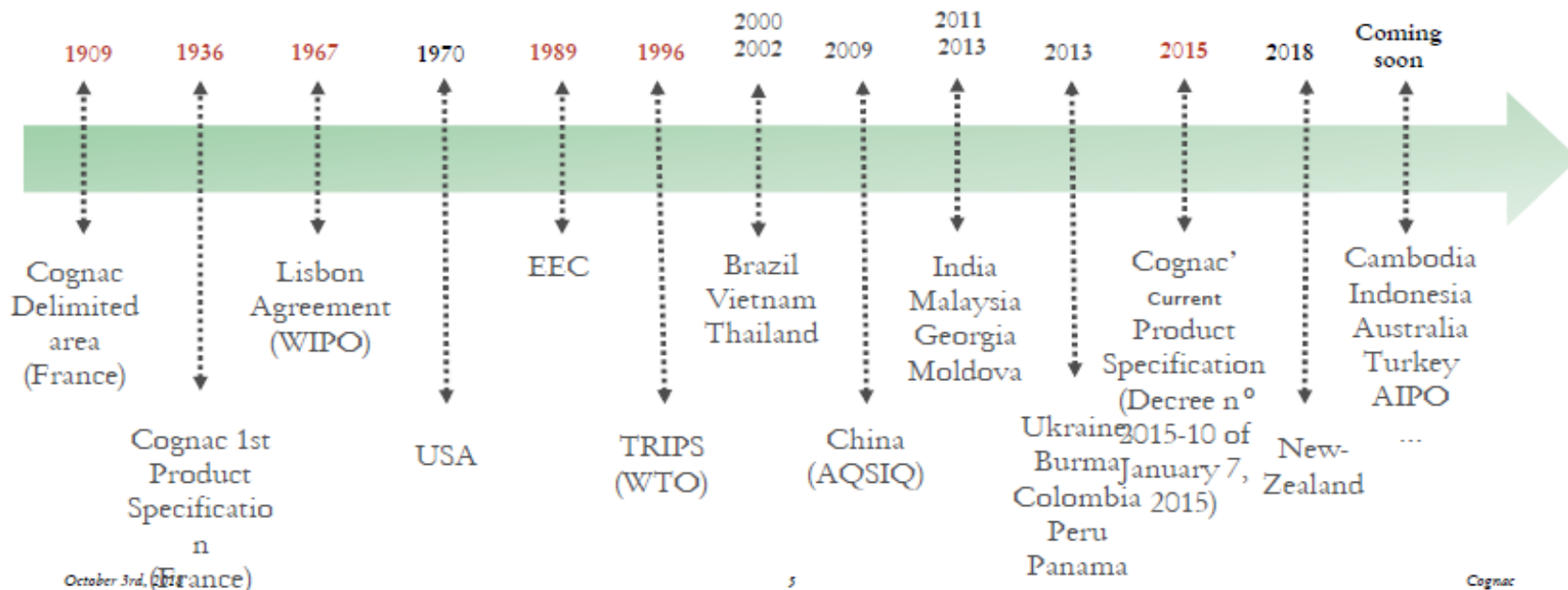
Cambodia



Skor Thnot
Kampong
Speu PGI

- Lamphun Brocade Thai Silk
 - In Indonesia
 - In India
- Doi Tung Coffee, Thailand
 - EU
 - Cambodia
- Isan Thai Lan silk
 - In Vietnam
 - In Malaysia
- etc.

Cognac GI registration worldwide



Prosciutto di Parma (Parma Ham) Italy

- DOUBLE REGISTRATION/PROTECTION:
- GI product **logo** : Trademarks (owned and enforced by GI Association)

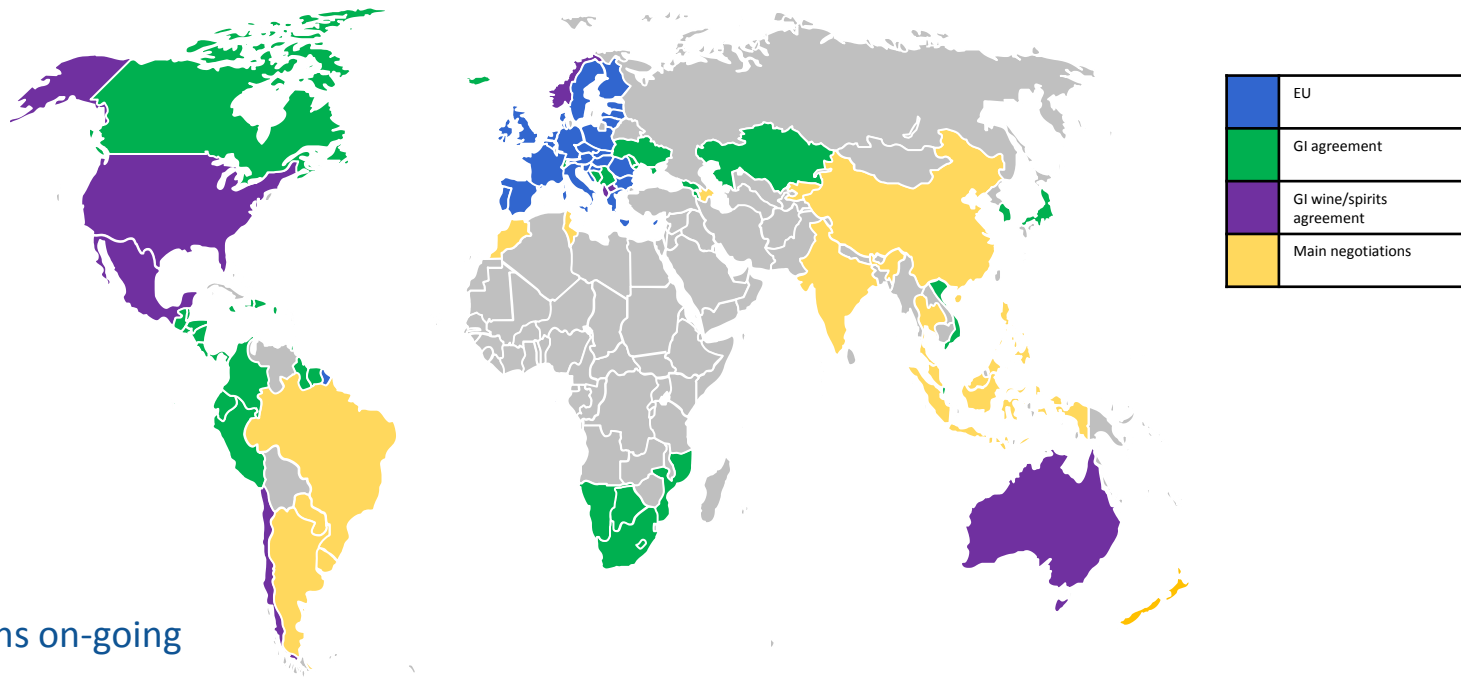
Prosciutto di Parma certification TM +
collective trademark of the Consorzio



- GI (with **enforcement** by administrative bodies + GI Association)



2.Foreign GIs registration in EU through FTA



16 negotiations on-going

34 agreements concluded or in force

Protection «Prosciutto di Parma» in Canada with FTA



- CETA (Comprehensive Economic and Trade Agreement) with Canada, 2017
- Enables co-existence between prosciutto di Parma PDO and pre-existing Canadian TM used for ham processed in Canada
- Before, not possible for PDO producers in Italy to export to Canada !

FTA for protection in the EU of Asian GIs

- 2007: EU and ASEAN launched negotiations
 - Lack of progress: pursue FTA negotiations in a bilateral format with countries of ASEAN.
- Bilateral: started
 - 2010: with Singapore (**concluded 2018**), Malaysia
 - 2012: with Vietnam (**concluded 2019: 39 Vietnam GIs registered**)
 - 2013: with Thailand
 - 2015: with Philippines
 - 2016: with Indonesia, 8th round of negotiations (June 2019)

3. Multilateral agreements

- **Madrid System**
- **Lisbon Agreement and Geneva Act**

How the Madrid system works

The International Trademark Registration Process



<https://www.wipo.int/madrid/en.html>

CTM / Coll-TM

- Rule 9(4)(x) of the Common Regulations expressly provides for registration of **collective** or **certification marks**

<https://www.wipo.int/madrid/en.html>

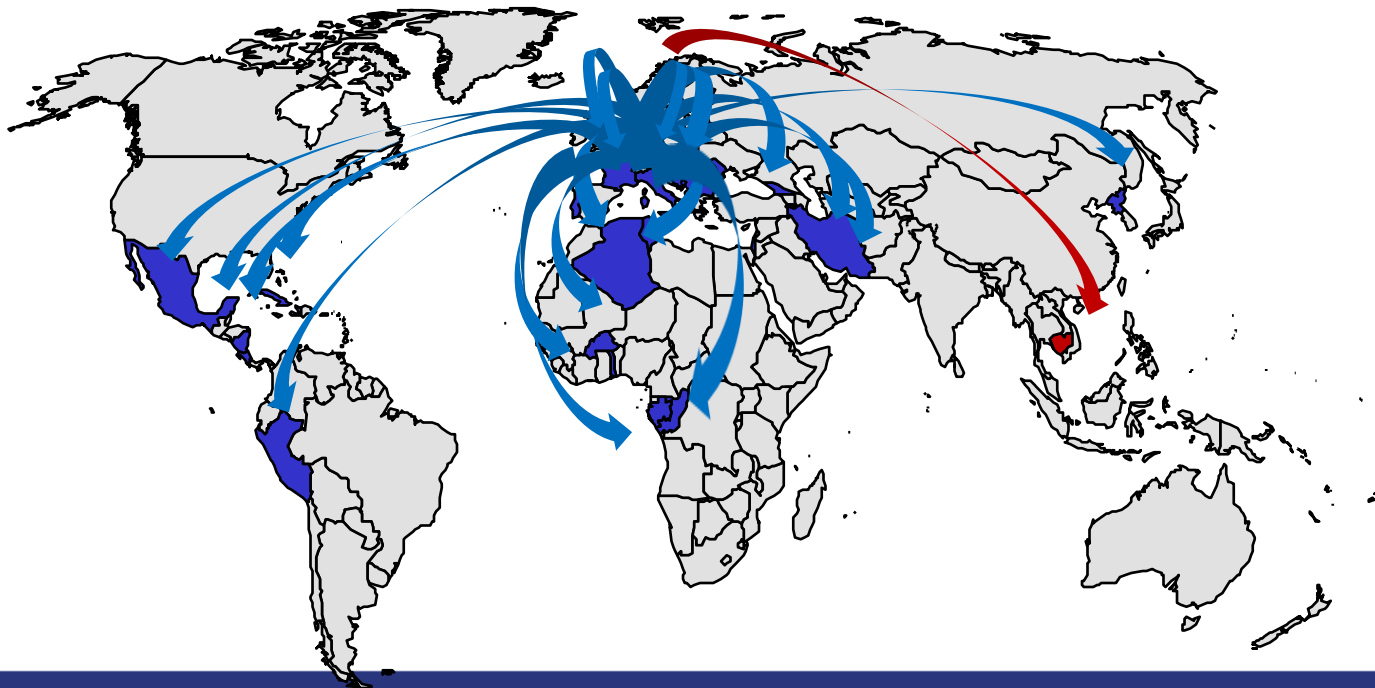
- **Lisbon Agreement of 1958 – 28 countries**
- To facilitate the international protection of appellations of origin (AOs) through a single registration procedure
 - administered by WIPO: International Register of appellations of origin
- **Geneva Act of 2015**
 - To make the Lisbon System more attractive
 - Accession of Cambodia on March 9, 2018

Main Advantages of the Lisbon System

- Protects all categories of products (*food, beverages, natural products, handicrafts,...*)
- One application provide protection in all Contracting Parties
- Applicant: competent authority or beneficiaries or natural or legal entity
- Indefinite protection, no need for renewal of registration
 - exception: refusal, invalidation, enunciation of protection, and as long as the AO/GI is protected in country of Origin
- High level protection of the registered AOs/GIs: against any usurpation or imitation, against becoming generic
- Provides standing for taking legal action

Geographical Coverage:

Single application= protection in 28 (+1) Countries



I.4 Conclusions

Possible risks of *not protecting* brands of origin products

- ❑ Producers outside the zone may use it and benefit from the reputation of the origin product (“free-riders”)
- ❑ Third parties may register the denomination as trademarks and prevent the later protection of the GI
- ❑ The name of the origin products might be transformed into generic terms (common name given to a given kind of product)

Conclusions

- ❑ Protection starts at home.
- ❑ Trademark, collective marks and certification marks insure protection of geographical names based on private initiative. Does not prevent translation or evocation.
- ❑ Sui generis system: Public law. Offers a large scope of protection: against direct use of GI name, and indirect (“type”, “style”, etc.). Most countries require registration and make provisions for an official control. Enforcement can be ex officio (in EU) and/or ex parte.
- ❑ GI: interesting tool to **protect origin products in a global world.**



Thank you for your attention

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THANK YOU



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This Project is funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)