



Diffusion of Geographical Indication Law in Vietnam: “Journey To The West”

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Abstract For a long time, Vietnamese legislators and scholars did not discuss geographical indication (GI) law in depth despite its having been long established in the country. However, when Vietnam signed the EU-Vietnam Free Trade Agreement (EVFTA) in 2020, the tide turned: GIs now have a “VIP seat” in the treaty text. Without debating whether GIs have boosted local agriculture, this article discovers how and why the law has been transposed into Vietnamese law. To this end, we first accept Watson and Twining’s theories to presuppose legal transplant. Then, we employ five models surveyed by Morin and Gold to appraise how law-makers adopt rules that might not always benefit the adopting country. We conclude that the EVFTA is a key influencer in disseminating the relevant policy, but that enforcement is far from successful.

Keywords Vietnam · Geographical indication · Diffusion of law · EVFTA

1 Introduction

Like Peppa Pig for British children, “Journey to the West” (or *Tây Du Kí* in Vietnamese) formed part of many Vietnamese childhoods. This Chinese folktale follows Buddhist monk Xuanzang on a pilgrimage he made to India with four disciples on a search for holy books. They survived 81 adventures before returning to China with sacred scriptures. Like monk Xuanzang, Vietnam “travelled” to the

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West to learn how to protect agricultural products through geographical indications (GIs) – a Western-invented concept. Similarly, its legal voyage faced no fewer hurdles.

A GI is a product label, but a powerful one. It extends beyond the ordinary commercial label that gives basic information about a product: it unveils the product's geographical origin as well as the quality or reputation owing to that area. GI labels, such as Darjeeling tea, Parma ham, Scotch whisky, Champagne, and Cuban cigars, equate to a certificate that guarantees a product's authenticity and uniqueness. A GI label can persuade consumers to dip deep into their pockets. Not just that, a GI empowers its holder to prohibit other traders from misusing or imitating the product, reducing consumer search costs where product visuals might not appear different.

While many GIs are available worldwide, the European Union (EU) and the United States (US) are the largest markets,¹ each making significant profits from selling GI-protected commodities. Meanwhile, Vietnam gets little from GIs despite its famous gastronomy, an agricultural sector that forms the backbone of the economy, and the fact that the whole land is saturated with plantations of banana, coconut, and citrus trees, coffee and black peppers. While some studies have diagnosed why the country has failed to make the most of the GI scheme,² little is known about how and why the law has been brought into the region. With the first clue of diffusion of law, we uncover the mystery.

1.1 A Synopsis of the Diffusion of IP Law

Diffusion of law, defined by William Twining, refers to a process in which one legal order, system, or tradition *influences* another in some significant way.³ His theory is entwined with the concept of “legal transplant”, a term first coined by Alan Watson, which was later embraced by many scholars and anchored in comparative law.⁴ Legal transplant, a “conceptual tool”,⁵ describes the movement of laws from one country to another with no prior link between these laws (transplants) and society.⁶ Although Watson addressed “diffusion of law” in the second edition of his book,⁷ Twining has made himself known for advancing the diffusionism-based theory.⁸

¹ Giovannucci et al. (2009), p. 11.

² Pick et al. (2017), pp. 305–332; Pick (2018); Hoang and Nguyen (2019), pp. 513–522; Durand and Fournier (2017), pp. 93–104.

³ Twining (2004), p. 14.

⁴ Watson (1974).

⁵ Goldbach (2019), p. 583.

⁶ Watson (1974).

⁷ “The concept of ‘legal transplant’ has a naturalistic ring to it as though it occurs independent of any human agency. In point of fact, however, elites – legal and nonlegal – often act as ‘culture carriers’ or intermediaries between societies involved in a legal transplant. [...] Hence, it is a misnomer to describe and analyse the *diffusion of law* [emphasis added] as if it were devoid of human agency.” Watson (1993), p. 114.

⁸ Twining (2000), p. 144, where he mentioned that his view on the legal elites as the main receivers of law is only a moderated version of Watson's famous transplant thesis.

Nevertheless, there is a caveat. Neither Watson nor Twining's works gravitate towards specific geographical or legal areas.

In intellectual property (IP), law propagation happens in three phases. First, a handful of European powers transplanted IP systems onto their colonies' soil via colonial rules. For example, the British based the first Indian patent law (Act VI of 1856) on the British Patent Law Amendment Act of 1852. In 1809, the Portuguese Crown passed the first patent statute in Brazil. In 1893, the French applied its Patents Act of 1844 to the Indochinese colonies, including Cambodia, Laos, and Annam (Vietnam). The colonists did not pass those rules for the benefit of the locals but in order to transfer colonial capital through commercial monopolies.⁹

Then, the same European countries and the US sought to protect each other's IP rights under national law and to treat foreign and local right holders equally. To that end, they formed the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). This (second) phase witnessed those countries harmonising disparate IP norms. The colonies found themselves in those "IP clubs" without being asked, since the colonisers signed up on their behalf.¹⁰ As the adage goes, "the rich get richer": those Conventions amplify the power of the strong and the wealth of the rich.

Because the Paris and Berne Conventions did not have a system to ensure that rules were followed, the same group of countries were dissatisfied and cast around for another forum. They came up with the TRIPS Agreement, marking the third phase of law propagation. Global harmonisation, which had been germinated by Paris and Berne, culminated in TRIPS. Following TRIPS, IP rights mushroomed across the world.

But legal transplanting does not end there. The world has entered a new phase where the "new generation" of Free Trade Agreements (FTAs), with more rigid standards than required by TRIPS required, is blooming. Through those FTAs, developed countries (IP exporters) ship their IP models to developing countries (IP importers).

1.2 A Synopsis of Vietnam's GI Law

Mapping the epoch onto Vietnam's historical path, its IP journey began in the nineteenth century, when the French first set foot in the region. Not only did they bring with them coffee and baguettes (which the locals eventually transformed into outstanding cuisine), but they also injected French IP systems of copyright, patents, and trade marks.¹¹ Nevertheless, GIs, a derivative form of trade mark that originated in France in the late 1800s, were not transferred so early on.¹² However, as we shall

⁹ See Okediji (2003), p. 315 for more discussion on the historical relationship between international law, IP rights and the developing world.

¹⁰ See Upreti (2022), p. 220 for more discussion on third-world approaches to international law.

¹¹ Kien (2017), p. 539; Kien (2021), p. 122; Le (2022), p. 1048.

¹² Calboli (2017), p. 10.

see, the French played an influential role in bringing the GI legal framework to Vietnam and in building the country's registration system.

Although Vietnam has been a member of the Paris Convention – the first international agreement regulating GIs – since 1949, the government only enacted a GI-like scheme in 1989 through the Ordinance on the Protection of Industrial Property Rights. However, this scheme remained in hibernation until 2001, when the first two GI products – Phu Quoc Fish sauce and Shan Tuyet tea from Moc Chau – were registered. Paradoxically, the registration would have been impossible had it not been for technical assistance received from France.¹³

Since then, Vietnam's GI applications have been few and far between (See Fig. 1). Once a peripheral topic on Vietnamese policymakers' radar, GIs came to the forefront when the EU-Vietnam Free Trade Agreement (EVFTA) entered into force in August 2020. The EU is the most vocal proponent of GI protection because of the economic value originating from its GI products. For example, the EU's total sales of GI products in 2017 were estimated at 74.8 billion euros, of which wines accounted for 51%.¹⁴ As a result, GIs carry enormous weight in EU trade talks. The EU would not action any FTA unless an "appropriate" chapter on GIs were included.¹⁵ A specific GI section is a "must-have".¹⁶

For this reason, the EVFTA differs from other FTAs in which Vietnam has participated, such as the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership)¹⁷ or the RCEP (Regional Comprehensive Economic Partnership)¹⁸ because of its explicit commitments on GIs. The EVFTA contains an annex that lists the GIs to be protected in the partner countries as part of the trade deal. Even the Working Group's name reflects this particular interest of the EU: "Working Group on Intellectual Property Rights, including Geographical Indications".¹⁹

This paper focuses on the EVFTA as a case study of legal transplantation between two distinct legal systems: the EU and Vietnam. The former is a political and economic union of 27 European Member States. Since the Maastricht Treaty, the EU has claimed to be not only an economic community but also a community of values founded *inter alia* on democracy. Vietnam, on the other hand, is a socialist country with a political system based on Marxist-Leninist ideology,²⁰ the

¹³ Vu and Dao (2006).

¹⁴ European Commission (2021).

¹⁵ Dao (2016), p. 12.

¹⁶ Huysmans (2022), pp. 979–983; Giovannucci et al. (2009), p. 63.

¹⁷ The CPTPP was signed on 8 March 2018, having emerged from the Trans-Pacific Partnership (TPP), which never came into effect owing to the United States' withdrawal from it in January 2017. President Trump backed out of the agreement on his first day in office. See the announcement by the United States Trade Representative (USTR) at <https://ustr.gov/sites/default/files/files/Press/Releases/1-30-17%20USTR%20Letter%20to%20TPP%20Depositary.pdf>. Accessed 11 February 2022.

¹⁸ The RCEP was signed on 15 November 2020 and came into force on 1 January 2022. It is an FTA among 15 Asia-Pacific nations. Ten countries are members of the Association of Southeast Asian Nations (ASEAN), and the other five are Australia, China, Japan, New Zealand and the Republic of Korea.

¹⁹ Article 12.63, EVFTA.

²⁰ Article 4.2, Vietnam's Constitution of 2013.

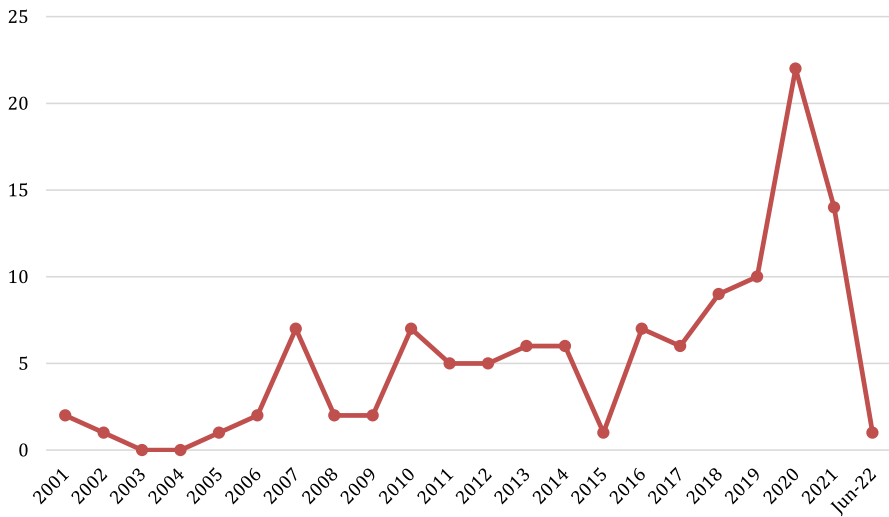


Fig. 1 GIs Granted from 2001 to June 2022 (The authors compiled this chart using the data of the list of protected geographical indications in Vietnam, *id*)

controversial socialist legal theory that many scholars refuse to recognise as a form of authentic Marxism.²¹ While the single market, “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured”, is the economic engine of the EU,²² Vietnam has followed what is known as a socialist-market oriented economy – a transition to socialism.

With this background in mind, the rest of this paper proceeds as follows. Part 2 will reveal why a country accepts foreign IP rules, even when those rules might not always benefit it. Part 3 will sketch out GI provisions in international law, and Part 4 will scrutinise Vietnam’s relevant policy as a mix of legal transplants.

Part 5 concludes that the differences between the EU and Vietnam do not obstruct the process of transplanting GIs. Their link to agriculture – the sector that plays a distinctive role in Vietnam’s economy and people’s daily lives – has resulted in vertical downward diffusion, the process by which international GI law is met with less resistance from relevant stakeholders. Alas, the journey to the West does not guarantee successful enforcement.

2 Why a Country Accepts Foreign IP Rules

As much as Watson’s work on “legal transplant” in 1974 was hailed as a “landmark book”²³ that has left “an indelible imprint on comparative law

²¹ Collins (1988), p. 2.

²² Article 26 (ex Art. 14 TEC), Consolidated version of the Treaty on the Functioning of the European Union – Part Three: Union Policies and Internal Actions – Title I: The Internal Market.

²³ Foster (2010), pp. 602–608.

scholarship”,²⁴ it has also garnered criticism. One of Watson’s fiercest critics, Legrand, claimed that the term “transplant” conjured up images of displacement.²⁵ Only when law is devoid of “historical, epistemological, or cultural baggage” can it cross frontiers.²⁶ Because the law is designed to appeal to a particular culture, language, society, and ideology, as Montesquieu claimed, “it is a great chance if those of one nation suit another”.²⁷ Legal transfer, therefore, cannot happen.²⁸

Later, Twining extends Watson’s idea by proposing the concept of “diffusion of law” to present some models for how the law of one region might diffuse into another.²⁹ While the works of Watson and Twining portray the migration of law, the latter has theorised a discourse on export-import between countries. He rejected a single model in which one country imported a law or a legal doctrine from another that has remained static ever since. Twining instead offered twelve different diffusionist models.³⁰ As he argued, in some cases, a diffuser and a receiver interact on different levels.

This article will first embrace Watson and Twining’s ideas and then describe five mechanisms surveyed by Morin and Gold on how a country adopts IP rules.³¹ These are emulation, coercion, contractualisation, regulatory competition and socialisation.

Emulation means “lesson-drawing”³² or “cost-saving transplants”.³³ When faced with a problem, lawmakers actively seek out solutions implemented by their counterparts elsewhere.³⁴ Vietnam’s first patent law – Ordinance 31-CP (1981) – is a fine example. When faced with the question of how to stimulate industrial growth without awarding inventors patent titles, communist legislators copied the Soviet model – the inventor’s certificate, which merely recognised the inventor’s name.³⁵

Coercion arises when a state uses material power, whether military or economic, to promote its rules.³⁶ As we noted at the outset, France directly imposed its IP system on Vietnam via colonial rules. Another notorious example of economic

²⁴ Foster (2010), pp. 602–608.

²⁵ Legrand (1997), pp. 111–114.

²⁶ Legrand (1997), pp. 111–114.

²⁷ Montesquieu (1748).

²⁸ Legrand (1997), p. 111.

²⁹ Twining (2004), p. 14.

³⁰ Twining (2004), p. 27.

³¹ Morin and Gold (2014), p. 782. Although their work examined state-to-state legal transplantations, their model can be applied in the case of the EU, as the EU has some state-like features.

³² Rose (1991), p. 3.

³³ Miller (2003), p. 839.

³⁴ Rose (1991), pp. 3–4.

³⁵ Điều lệ về cải tiến kỹ thuật hợp lý hóa sản xuất và sáng chế [Decree on The Regulations on Technical Innovation, Production Rationalisations and Invention], 23 January 1981; Van Anh Le, “Soviet Legacy of Vietnam’s IP law: Big Brother is (no longer) watching you” (unpublished manuscript, on file with the authors).

³⁶ Morin and Gold (2014), p. 782.

coercion is US Special 301, a statutory means for the US to levy trade sanctions on foreign countries that do not adequately protect IP rights for US industry.³⁷ To avoid US trade sanctions, many countries have had to amend their IP laws.³⁸

Contractualisation occurs during trade negotiations when one party uses its rules as a baseline to discuss a specific area.³⁹ In exchange for acceptance by other parties, it offers benefits in other areas. However, such concessions are dictated by the power imbalance between the parties involved. TRIPS serves as a “poster child” for this inequality in bargaining power. When the global South agreed to extend patent protection to medicines, the global North reciprocated by giving those countries market access to high-income economies as well as transitional periods to transpose TRIPS. In some ways, contractualisation mutates into a form of “soft” coercion.

Regulatory competition happens when lawmakers assume that implementing foreign rules will improve their country’s competitiveness.⁴⁰ A state might choose between two contrasting philosophies when enacting a new law: “race to the bottom” and “race to the top”.⁴¹ While the former indicates the “floor” of minimum standards, the latter describes a country’s “ceiling approach” to embrace the highest. Vietnamese lawmakers follow the “race to the bottom” tactic by limiting the duration of copyright protection to 50 years *post mortem auctoris*⁴² – the minimum standard set by Art. 12 TRIPS.

Socialisation describes a process by which society absorbs foreign laws because they “resonate with established social norms and fit with the collective identity of the adopter country”.⁴³ The key spreaders of this model are non-governmental organisation activists, academic scholars, and businesses. Of all the IP rights imposed by the French, only the system of *droit d’auteur* (the author’s right) has taken root in Vietnam’s legal system. The country’s society, heavily influenced by Confucianism due to the suzerainty of Chinese dynasties for nearly a millennium, has always had a soft spot for literary works. The public has absorbed the concept of *droit d’auteur* to the extent that the term, when translated into Vietnamese as “*Quyền tác giả*” (the author’s right), has expanded its traditional meaning to embrace two sets of rights: economic rights and moral rights. In a high-profile case of “*Thần đồng đất Việt*” (Vietnamese prodigy), the local court overprotected the author’s moral rights by suspending the owner’s economic right to derivative works.⁴⁴ The public expressed its unwavering support for the original work in this case by boycotting the movie adapted from it, because the production company had

³⁷ The “Special 301” Report is an annual review of the global state of IP protection and enforcement. The USTR conducts this review pursuant to Sec. 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act.

³⁸ Le (2021), pp. 26–30.

³⁹ Morin and Gold (2014), p. 782.

⁴⁰ Morin and Gold (2014), p. 783.

⁴¹ Morin and Gold (2014), p. 783.

⁴² Article 27, Vietnam’s IP Law of 2005 (as amended in 2022).

⁴³ Morin and Gold (2014), p. 783.

⁴⁴ Vietnamese Court judgment 774/2019/DSPT.

signed a contract with the copyright owner without consulting the author. Another example of socialisation happens in GI law, where scholars and private practitioners advocate for this concept to be widely implemented, as we will demonstrate in this article.

Following the preceding discussion, we assert that GI law has infiltrated Vietnam in many ways other than coercion. We have found studying legal transplantation difficult because Vietnam's law-making process is less transparent and inclusive than many countries. "Lesson-learning" and social acceptance remain particularly challenging because very few key stakeholders are invited to participate in the process. The public has no idea who was asked, what they contributed and what underlying theory or legislative model was proposed. However, the French effect on Vietnam's GI regime remains profound and well documented, as the two governments have collaborated to recognise each other's GI products. Before discussing how Vietnam has received GI law, we will outline international regulations, since they set the stage on which the relevant policy has emerged.

3 A "Global Mess" of GIs

Beneath the simple concept of the GI lies a "multiple personality disorder"⁴⁵ with many identities: indication of source, appellation of origin (AO), the French *Appellation d'Origine Controlée*, the EU *sui generis* system of Protected Designation of Origin and Protected Geographical Indication. Since there is no universal method of protecting GIs, national laws vary.⁴⁶

Four international treaties simultaneously govern GIs: the Paris Convention for the Protection of Industrial Property of 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958, and the TRIPS Agreement of 1994.

The Paris Convention was first to address GIs but did not use the term explicitly. Instead it employed other terms – "indications of source" and "appellations of origin" – as key attributes of all agricultural, manufactured and industrial property.⁴⁷ But Paris does not define either term because its aim was not to regulate the general use of GIs, but to prevent goods from bearing false indications of source or to prevent producers' identities from being imported into a member state.⁴⁸

The Madrid Agreement is no more than an upgraded version of the Paris Convention. It merely extends the latter's scope from "false indications of source" to include a broader term of "deceptive indications of source".

⁴⁵ Upreti (2019), p. 241.

⁴⁶ See WTO (2001).

⁴⁷ Article 1(2) Paris Convention.

⁴⁸ Article 10, Paris Convention.

The Lisbon Agreement established an international system to register and protect appellations of origin.⁴⁹ However, only 30 countries joined Lisbon, with no common-law members.⁵⁰ For the first time, Lisbon defined the term “appellation of origin” as “the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.⁵¹ Compared with the term “indication of source” used in Paris, “appellation of origin” in Lisbon has a higher threshold because the product bearing the GI label must demonstrate an exclusive or essential link between the qualities of the product and the geographical area.⁵²

It was not until 1995 that TRIPS formally defined GIs 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 characteristic of the good is essentially attributable to its geographical origin”.⁵³ Although TRIPS has progressed in providing general protection for all goods⁵⁴ and an additional layer for wines and spirits,⁵⁵ it does not mandate member states to form a specific framework. Consequently, many countries protect GIs via trade marks or other legal means.

We maintain that countries have greater legislative freedom in the GI domain than in other IP areas. However, paradoxically, one can have too much of a good thing. Because GI standards are among the least harmonised IP rights, they can be protected either by *sui generis* systems such as in the EU, India and Switzerland, or by collective marks and certification marks under trade mark law, such as in the US, Australia, Canada and China. GIs may be protected by certain laws that focus on business practices, such as unfair competition, consumer protection laws or product labelling, as in Australia, the Czech Republic, and Finland.⁵⁶ Although these laws do not confer individual IP rights over GIs, they do protect them indirectly by prohibiting certain acts involving unauthorised use.

GIs represent one of the few IP areas where there is intra-North conflict, between the EU and the US. While the EU persists in its *sui generis* system, the US simply protects GIs under trade mark law. As nicely captured by Calboli, “a discussion over GIs generally brings about images of European wines, beers, and cheeses and the

⁴⁹ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (adopted 31 October 1958, entered into force 25 September 1966, as revised at Stockholm on 14 July 1967 and as amended on 28 September 1979) 923 UNTS 205 (Lisbon Agreement).

⁵⁰ The list of the Lisbon Agreement’s members is available at https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=10. Accessed 25 May 2022.

⁵¹ Article 2(1), Lisbon Agreement.

⁵² Upreti (2019), p. 241.

⁵³ Article 22(1), TRIPS.

⁵⁴ Article 22(2)–(4) TRIPS.

⁵⁵ Article 23, TRIPS.

⁵⁶ See WTO (2001).

decade-long controversy over the names of these products between European and New World producers, primary producers of European immigrant origins”.⁵⁷

Caught in the legal quagmire and at odds with two major trading partners (the EU and the US), late members of the “global IP club” such as it is are genuinely puzzled about how to please two masters. In 2014, when Vietnam’s National IP Office (the NOIP) published a list of European GIs proposed for protection (including Feta, Asiago, Fontina, and Gorgonzola), an alliance representing US consumers, farmers, food producers, and retailers sent a letter strongly opposing such potential protection.⁵⁸ Coincidentally, Vietnam was negotiating two major trade deals at the same time: the TPP (the forerunner of the CPTPP), in which the US took the lead, and the EVFTA with the EU. Vietnam, for one, did not want to pick a side. Moreover, not only did the US and the EU have an interest, but so did Australia and New Zealand: we should not forget that it was Australia who submitted a text on GIs during the TRIPS negotiations.⁵⁹ The NOIP, with its manoeuvring skills, struck a deal, suggesting that GI protection over those names would not bar anyone in Vietnam from using them in good faith before 1 January 2017.⁶⁰ The middle-ground tactic was accepted by all parties and finally found its way into the EVFTA treaty text in the form of exceptions.⁶¹

4 GI Protection in Vietnam

To study Vietnam’s GI framework and adherence to key international agreements, one must first grasp the country’s history, since it addresses several problems that would otherwise be difficult to understand.

Vietnam, being a French colony, joined the Madrid Agreement and Paris Convention in 1939 and 1949, respectively, following France’s admission. In 1949, France signed a treaty with Bao Dai (Vietnam’s last king) to restore the country’s independence, and formed the State of Vietnam (the predecessor of South Vietnam).⁶² Although the State claimed authority over Vietnam, large parts of its territory were controlled by the Democratic Republic of Vietnam (North).

In 1954, the Geneva Accords temporarily partitioned the country along the Seventeenth Parallel.⁶³ The Democratic Republic of Vietnam retained control of the North, placing it under the communist regime, while the South became the American-backed Republic of Vietnam. A nationwide election to unify the country

⁵⁷ Calboli (2017), p. 9; See further Goldberg (2001), p. 107 and p. 120.

⁵⁸ The letter is on file with the authors.

⁵⁹ Le (2021), p. 29.

⁶⁰ The NOIP’s response is on file with the authors.

⁶¹ Article 12.28, EVFTA.

⁶² Kien (2021), p. 145.

⁶³ Geneva Accords collection of documents relating to Indochina, issuing from the Geneva Conference of 26 April–21 July 1954, which was attended by representatives of Cambodia, the People’s Republic of China, France, Laos, the UK, the US, the Soviet Union, the Vietminh (i.e. the North Vietnamese), and the State of Vietnam (i.e. the South Vietnamese).

under international supervision was scheduled in 1956 but never happened. The Vietnam War erupted, and continued until 1975, when the Communists seized control of Saigon – the South’s capital. One year later, the country was renamed the Socialist Republic of Vietnam.

During the partition, South Vietnam inherited the State of Vietnam’s membership of Madrid and Paris. In 1981, a united Vietnam chose to maintain its international commitment. WIPO retrospectively acknowledged the country’s accession as of 2 July 1976, when the Socialist Republic of Vietnam was born.⁶⁴ In 2007, the country joined the TRIPS Agreement, signalling its entry into world trade.

The only international treaty governing GIs that Vietnam has not ratified is Lisbon, indicating that the country does not find this necessary. Nonetheless, owing to French influence, Vietnam’s GI rules are remarkably similar to this Agreement in terms of language. While Vietnam’s accession to Madrid and Paris resulted from direct legal transplanting by France, and the government has subsequently preserved the *status quo*, joining TRIPs stemmed from internal demand, as we shall see.

4.1 The 1980s – 2005: Lost in the Global Mess

A patchwork of international GI law has hampered Vietnam’s efforts to create its own legal structure. Until the country passed the first IP Law in 2005, the GI domestic system was intertwined with the appellation of origin (AO) concept.

Even though the trade mark law imposed by France during colonisation survived two Indochina Wars (1946–1954 and 1954–1975),⁶⁵ Vietnam did not enact the Ordinance on the Protection of Industrial Property Rights, which addressed GIs, until 1989. And the Ordinance did not use the title “GI”, but rather the term AO or, in Vietnamese: *Tên gọi xuất xứ hàng hoá*.⁶⁶ The Ordinance defined the AO as follows: “the geographical name 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”.⁶⁷

As mentioned above, although Vietnam has never signed the Lisbon Agreement, this clause embodied its spirit by underpinning the exclusive and essential link between a product and its geographical environment, a concept known as *terroir*. Only the French influence may account for such similarities, since *terroir* originated in France and was later embedded in international regimes.⁶⁸ France’s imprint on Lisbon is evident, as it is one of the founding members and, contrary to common

⁶⁴ Vietnam’s Resolution of National Assembly dated 2 July 1976 on the country name, national flag, national symbol, capital, national anthem; information about Vietnam is available on the WIPO website https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=A&act_id=18. Accessed 2 January 2023.

⁶⁵ Kien (2021), pp. 122 and 130.

⁶⁶ Vietnam’s Ordinance 13-LCT/HDNN8 on the Protection of Industrial Property Rights adopted in 1989 (hereinafter referred to as the 1989 Ordinance).

⁶⁷ Vietnam’s Ordinance 13-LCT/HDNN8 of 1989, Art. 4.5.

⁶⁸ Barnea (2017), pp. 605–606.

practice, the sole official version of Lisbon is the French one.⁶⁹ Only by understanding Vietnam's historical ties to France can such a paradox be resolved.

Indeed, apart from the colonial connection, the fact that France is well known for its AO system might have encouraged Vietnamese legislators to follow it, because the country has always sought best practices.⁷⁰ However, the colonial legacy remains surprisingly strong. Even though Vietnam's civil codes arose under the aegis of Soviet law, a century of French colonisation left an indelible mark on its legal system.⁷¹ As a result, when creating IP law as a component of civil law, drafters may have been inclined toward the French system.⁷²

The 1989 Ordinance provided little detail for regulating AOs compared with other industrial property rights such as patents and industrial designs. Other than allowing the owner the right to use an AO but not the right to transfer it, the law provided no more help. For this reason, we consider GIs/AOs of this time to be a split personality of "indication of source". Crucially, Vietnam passed the 1989 Ordinance not to prohibit fraudulent or misleading indications of origin but to signal its economic openness after 15 years of trade isolation since 1975. The law formed part of a reform package in 1986 termed *Đổi Mới* ("Renovation" in English), which attempted to lead the country away from a centrally planned model toward a market economy.

Although legal and economic changes attracted foreign capital influx, Vietnam needed to do more to become more appealing to Western investment. IP protection surfaced as one of the pressing concerns.⁷³ From 1986, WIPO and other organisations have conducted several training projects and policy advocacy for Vietnam's officials.⁷⁴ Following *Đổi Mới*, the ruling Communist Party abandoned the Soviet-style IP laws in favour of global standards to compete with China.⁷⁵ However, no one could envisage how GIs would benefit the country. This explains why no producer registered GIs after the 1989 Ordinance was issued.

In 1995, Vietnam ratified the first Civil Code in order to prepare for global trade and respond to the opening of its market. The Civil Code superseded the 1989 Ordinance and devoted one chapter to IP rights. In a society where IP existed as an alien, both literally and metaphorically, recognising IP rights as civil rights

⁶⁹ Art 17(1)(a), Lisbon Agreement.

⁷⁰ Vietnam's IP system is described as "a mixed product", "learn[ing] from other IP law systems" and "extract[ing] the best from the best and form[ing] our own system". See Reiffenstein and Nguyen (2011), pp. 462–470.

⁷¹ Cuong (2016).

⁷² When drafting the 1995 Civil Code, Vietnamese legislators reviewed relevant laws in France, Germany, Thailand, Japan, China, Canada, the Russian Federation, and Poland. Such experiential learning was mentioned in the government's report on the draft Civil Code for the Socialist Republic of Vietnam at the Fifth session of Legislature IX of the National Assembly, 7 June 1994 (Tờ trình của Chính phủ về dự án bộ luật Dân sự năm 1995 của nước cộng hòa xã hội chủ nghĩa Việt Nam tại kì họp thứ 5, Quốc hội khoá IX, ngày 7/6/1994).

⁷³ This view is based on the second author's discussion with a former director of Vietnam's NOIP during her research trip to Vietnam in June 2022.

⁷⁴ Mai et al. (2007).

⁷⁵ Damond (2013).

represented a momentous change. Indeed, the Civil Code manifested the 1992 Constitution, which proclaimed to protect authors' rights and industrial property rights.⁷⁶

The Civil Code still used "appellation of origin of goods" (in Vietnamese: *Tên gọi xuất xứ hàng hoá*) to denote GIs. However, the law employed "wordplay" by using "persons entitled to the lawful use of the AO" instead of the more explicit "owners". We can only speculate that drafters did not want to associate GIs with private ownership since they regarded GIs as public assets. This clarifies why "owners" subsisted in IP rights other than GIs, such as patents, designs, or trade marks.⁷⁷

As part of socialist law, the 1995 Civil Code needed by-laws to function. In 1996, Vietnam issued Decree 63-CP, which details the regulations on industrial property, to give further guidance on implementing IP provisions in the Civil Code. However, Decree 63-CP took a step backwards and complicated the legal structure. On the one hand, it treated GIs as if they were trade marks, with Art. 9 granting GIs a ten-year term that could be renewed indefinitely. On the other hand, specific GI rules were maintained. Goods bearing the GI marking must be linked to the name of the geographical location where they were produced and demonstrate particular characters and quality determined by corresponding geographical factors (natural and human).⁷⁸ If two or more applications for the same GI were received, competent authorities would grant the GI to all applicants as long as they conducted genuine business.⁷⁹ The corollary is that many people could register and own a GI separately, rendering it a "quasi-private" property shared by many. This serves as a symbol of collective ownership – a key feature of Marxist thought, the political doctrine at its peak in Vietnam at the time.⁸⁰

Despite the flexible procedures for obtaining a GI/AO, no one expressed interest until the French awoke the sleeping system. In 1998, France's Ministry of Agriculture assigned the *Bureau National Interprofessionnel du Cognac* [Cognac National Interprofessional Bureau] to liaise with the French Economic Mission Bureau in Hanoi to assist Vietnam in raising awareness with the Vietnamese authorities about the necessity of protecting GIs.⁸¹ They held several seminars to assist Vietnam in identifying the specific quality and characteristics of candidate products and developing application and registration documents.⁸² Thanks to French technical support, in 2001, Phu Quoc fish sauce and Moc Chau Shan Tuyet tea were granted national GI status.⁸³ To reciprocate, Vietnam recognised Cognac – a French

⁷⁶ Article 60, Vietnam's Constitution of 1992.

⁷⁷ Article 795, Vietnam's Civil Code of 1995.

⁷⁸ Article 14(3), Vietnam's Decree 63-CP of 1996.

⁷⁹ Article 16(5), Vietnam's Decree 63-CP of 1996.

⁸⁰ Marx (1932).

⁸¹ Pick (2018), citing Dao (2011), p. 6.

⁸² Pick (2018), citing Dao (2011), p. 51.

⁸³ Vu and Dao (2006), p. 14.

GI – as the first foreign AO in the country.⁸⁴ Following such a fruitful collaboration, Vietnam formally sought France’s help in developing AOs for seven local products.⁸⁵

In 2000, the term “GI” was ultimately established in Decree 54, defining a GI as a trade dress element for any geographical sign that might enhance a product’s quality, characteristics, or reputation.⁸⁶ As long as it were done in good faith, any merchant might brand a good with a GI label without applying. Awkwardly, Decree 54 did not preclude a producer from requesting a separate AO.⁸⁷ We surmise that legislators might have applied “trial and error” before adopting the moniker “GI” in the 2005 IP Law, which we shall turn to in the next section.

To summarise, until 2005, Vietnam’s GI rules remained perplexing and dysfunctional despite its language being comparable to that of international principles. Legal transplanting might have been done in good faith. However, lawmakers lacked an in-depth understanding of GIs and, most crucially, many Vietnamese farmers were (and continue to be) peasants who did not grasp the foreign concept of GIs and were thus unprepared to navigate the serpentine process. Officials mistakenly believed that installing a GI scheme would improve the market value of Vietnam’s agricultural products. Unfortunately, because the law was not derived from actual demand, it fell short of expectations. The difficulty was further exacerbated by the cohabitation of many GI names in international treaties. The country appeared to be at sea in the face of differing legal terms.

4.2 From 2005 Onwards: Joining Global Trade

To become a WTO member, Vietnam realised the need to revamp its rudimentary IP system to live up to TRIPS. In 2005, it passed the first-ever IP Law. Before that, all it had had was a section in the Civil Code and two by-laws – one for copyright and another for industrial property.⁸⁸ The term “GI” outlived “AO”, as TRIPS prescribes the former. Vietnam’s 12-year quest to join the WTO, starting in 1995, culminated with its admission in January 2007.⁸⁹ For the first time, Vietnam had a specialised law on IP rights, and the law, an all-in-one approach, once again followed the French model.⁹⁰

The new IP law defines the GI “as a sign which identifies a product as originating from a specific region, locality, territory or country”,⁹¹ with “a *reputation* [emphasis

⁸⁴ The list of protected geographical indications in Vietnam is available at the NOIP’s website <https://ipvietnam.gov.vn/danh-sach-cac-chi-dan-ia-ly-uoc-bao-ho-tai-viet-nam>. Accessed 8 September 2022.

⁸⁵ Vu and Dao (2006), p. 14.

⁸⁶ Article 10.1, Vietnam’s Decree 54/2000/ND-CP on the Protection of Industrial Property Rights to Trade Secrets, Geographical Indications, Trade Names and Unfair Competition.

⁸⁷ Article 5 and 10.2, Vietnam’s Decree 54/2000/ND-CP.

⁸⁸ Vietnam’s Ordinance 38-L/CTN on the Protection of Copyright of 1994 and Ordinance 13-LCT/HDNN8 on the Protection of Industrial Property Rights of 1989.

⁸⁹ Vietnam and the WTO information is available on the WTO website at https://www.wto.org/english/thewto_e/countries_e/vietnam_e.htm. Accessed 8 September 2022.

⁹⁰ Very few countries have one IP Code to regulate all IP rights. France is one of them.

⁹¹ Article 4.22, Vietnam’s IP Law of 2005 (as amended in 2022).

added], quality or characteristics mainly attributable” to such geographical conditions.⁹² The law goes even further by requiring “geographical conditions” to include both “natural and human factors”.⁹³ Because the state owns GIs, they cannot be transferred. The term of protection remains unlimited, and foreign GIs are not protected if their registration in their country of origin has been cancelled.

According to the law, a GI’s application must contain a product specification, including a product description. The description must provide information about raw materials, and the physical, chemical, microbiological and organoleptic characteristics of the product; the method of identifying the corresponding geographical area; evidence proving that the product originates from that region; and the relationship between the quality or characteristics of the product and the geographical conditions.⁹⁴ These provisions are comparable to those of EU Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs.⁹⁵

As such, Vietnam’s GI system has not only been upgraded in accordance with TRIPS but also “gets closer to the concept of *terroir* as encompassed in the French *Appellation d’Origine Contrôlée* and European Protected Designation of Origin with the additional mention of the reputation criterion”.⁹⁶

Nevertheless, reality has exposed flaws. Many, if not all, Vietnamese GIs are funded by the state budget and determined by officials.⁹⁷ Out of the 102 GIs registered by August 2022, only six belonged to non-state bodies, primarily collective organisations. Nam Roi grapefruit is an outlier because it was registered by a private grower in Binh Minh district, Vinh Long province.⁹⁸ Government policies rather than producer desires drive Vietnam’s GIs, leading to poor marketing performance. In an interview, the Director of NOIP revealed that after being protected, prices of some GI products increased by 30% to 50%.⁹⁹ However, we should take this good news with a pinch of salt because no study has demonstrated a causal link between GI and market value increase.

Many applicants file the same place name for collective or certification marks and GIs. The reason for such duplicity is twofold. First, the GI procedure takes a long time because demonstrating a geographical link is a rigid process. A GI can take one to four years to be granted, not including the time spent on preliminary work. Some GIs, such as Hoa Loc mango and Vinh Kim star apple, have taken six years to be registered. Second, while the GI process is arduous, the outcome is unpredictable. Collective or certification marks, on the other hand, guarantee more certain results.

⁹² Article 79.2, Vietnam’s IP Law of 2005(as amended in 2022).

⁹³ Article 82.1 and 82.3, Vietnam’s IP Law of 2005 (as amended in 2022).

⁹⁴ Article 106, Vietnam’s IP Law of 2005(as amended in 2022).

⁹⁵ Articles 7 and 8, Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

⁹⁶ Pick (2018), p. 84.

⁹⁷ Pick et al. (2017), pp. 316–317.

⁹⁸ The list of protected geographical indications in Vietnam, *id.*, No.36.

⁹⁹ Vietnam’s NOIP (2018).

The graph above unveils the unusual picture of Vietnam's GIs. Over the course of almost two decades, between 2001 and 2017, only 60 GIs were granted. However, a steady increase occurred in 2018 and 2019, coinciding with the completion of key milestones of the EVFTA.¹⁰⁰ Then, suddenly, 2020 witnessed a sharp spike, followed by a slight fall in 2021. From 2018 to 2022, Vietnam issued 55 GIs in four years, nearly equalling what had been granted in the preceding 17 years. Surprisingly, many GIs had a fast-track process, with registration taking just six to eight months.¹⁰¹ We cannot conceive of any rationale other than the EVFTA: applicants might have rushed to file GIs with the hope of gaining automatic protection under this trade deal.

On 28 October 2022, the NOIP unveiled, for the first time, Vietnam's GI logo although the system had been in existence for decades.¹⁰² This constitutes an essential step for producers to facilitate and enforce their GIs. The label will likely increase the commercial value of Vietnam's GIs in foreign markets such as the EU, as it communicates to consumers the authenticity of the products. It is astonishing that Vietnam had to wait so long for this step. Undoubtedly, the new-generation FTAs, including the EVFTA, have accelerated the process of modernising the country's GI scheme.

Nevertheless, local producers are conspicuously absent in most GI discussions and processes. State ownership makes GIs practically a non-private area. Producers, who should be in the driver's seat, show the least interest. Despite minimal involvement from domestic manufacturers, Vietnam's government has been eager to set up the GI system to meet international obligations in TRIPS. In a similar fashion, the EVFTA is a contract through which the EU's GI policy has diffused into Vietnam. As we shall see, Vietnam's negotiation on GIs needed to give way to other areas, such as market access to EU members.

5 GIs in the EVFTA

5.1 The EU's Strategy with ASEAN: A Region-to-Region Approach

The EU and ASEAN have one thing in common: they are both regional organisations with legal personalities. Since 2013 the EU has praised ASEAN as its "natural partner because both players share 'a common DNA'" as the world's two biggest regional integration initiatives.¹⁰³

ASEAN is Brussels' "third-largest trading partner outside Europe", trailing only behind the United States and China,¹⁰⁴ while the EU is ASEAN's second most important trading partner.¹⁰⁵ Although FTA negotiations between the EU and

¹⁰⁰ World Bank (2020), p. 20.

¹⁰¹ The list of protected geographical indications in Vietnam, *id.*

¹⁰² Vietnam's NOIP (2022).

¹⁰³ European Union-ASEAN (2013).

¹⁰⁴ Hsieh (2021), p. 102.

¹⁰⁵ European Union-ASEAN (2013).

Table 1 State of play of EU FTAs with ASEAN (European Commission, DG Trade 2020)

EU-ASEAN	Negotiations suspended (2009)
EU-Singapore	FTA started in 2010 and entered into force in 2019
EU-Vietnam	FTA started in 2012 entered into force in 2020
EU-Indonesia	Negotiations ongoing (started 2016)
EU-Thailand	Negotiations on hold (started 2013)
EU-Malaysia	Negotiations on hold (started 2010)
EU-Philippines	Negotiations on hold (started 2015)

ASEAN have been on hold since 2009, Singapore and Vietnam have fulfilled their goals, with their respective agreements coming into force in 2019 and 2020 – as per Table 1 below.

The EU views these two FTAs as “pathfinders” towards ASEAN trade integration.¹⁰⁶ They constitute a stepping stone toward the EU’s longer-term goal of negotiating a trade deal between the EU and South East Asia. Furthermore, FTAs with Singapore and Vietnam serve as legal templates for future trade treaties between the EU or the post-Brexit United Kingdom (UK) and Asian countries.¹⁰⁷ For example, the UK-Vietnam FTA was signed almost simultaneously with the EVFTA in December 2020 and took effect on 1 January 2021.¹⁰⁸

5.2 The EU’s Approach Towards GIs

Throughout the TRIPS negotiations, the EU has maintained a firm stance on GIs,¹⁰⁹ adopting an aggressive approach to prevent certain wines and spirits from becoming generic names. Meanwhile, the US has supported the existing trade mark system to protect such products from imitation or misuse.¹¹⁰ While TRIPS has been characterised as a North-South conflict, GIs have shifted the debate to the Old World versus the New.¹¹¹

¹⁰⁶ European Parliament (2003), para. D.

¹⁰⁷ Hsieh (2021), p. 103.

¹⁰⁸ Hsieh (2021), p. 103.

¹⁰⁹ Guidelines and Objectives Proposed by the European Community for the Negotiations on Trade Related Aspects of Substantive Standards of Intellectual Property Rights, MTN.GNG/NG11/W/26.

¹¹⁰ European Commission (2016).

¹¹¹ See Carl (2015), pp. 116–117.

As a result, TRIPS adopted only three GI articles, indicating a compromise between the European and US approaches. The concept of *terroir* – an essential link between a product’s characteristics and the place it was made¹¹² – is central to the EU’s GI system,¹¹³ as defined in Art. 22 TRIPS. This Article establishes a level of protection based on consumer perception. Article 23 TRIPS goes much further, creating a more stringent safeguard for wines and spirits. This approach reflects European standards.¹¹⁴ The US exerted its influence in Art. 24 TRIPS, which allows a WTO member to reject a GI if its use is “customary in common language as the common name for such goods or services in that Member’s territory”.¹¹⁵

Although GIs are not limited to agricultural products, it is the most common field for GI applications. Of 4,800 GIs registered in the European Communities, 4,200 are for wines and spirits.¹¹⁶ GIs provide a primary source of income for 138,000 (mostly smaller) French farms and 300,000 Italian employees.¹¹⁷ The GI sector employs 21% of all French farmers.¹¹⁸ In the EU, GIs are more than labels: they are “quality schemes” that guarantee not only indications of origin but also fulfil other social goals, including fostering rural development.¹¹⁹ According to an EU study, a GI-protected product is worth 2.23 times the price of an equivalent.¹²⁰

Consequently, the EU seeks to ensure that manufacturers in other countries do not mimic wines and spirits, as well as cheeses, cereals and teas, merely by saying “made in USA” or “style of Roquefort”.¹²¹ They have heavily invested in exporting their *sui generis* GI scheme to other countries through FTAs,¹²² signifying a surge of bilateral and multilateral agreements containing TRIPS-plus provisions, particularly GIs.

5.3 The EVFTA: A Key Diffuser of GIs

In 2019, Vietnam was the largest ASEAN exporter to the EU.¹²³ Between 2007 and 2013, it received 304 million euros from the EU, making it the second biggest beneficiary after Indonesia.¹²⁴ The EU-Vietnam FTA, branded “the most

¹¹² According to the Oxford Dictionary, *terroir* is a French concept referring to the complete natural environment in which a particular wine is produced, including factors such as the soil, topography and climate.

¹¹³ Gangjee (2017), pp. 47–51.

¹¹⁴ Goldberg (2001), pp. 120–121.

¹¹⁵ Watson (2016).

¹¹⁶ European Commission (2003).

¹¹⁷ European Commission (2003).

¹¹⁸ Berger (2007).

¹¹⁹ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, Recital 4, first sentence.

¹²⁰ European Commission (2003).

¹²¹ European Commission (2003).

¹²² Frankel (2017), pp. 153–158.

¹²³ European Parliament (2020).

¹²⁴ European Union-ASEAN (2013).

comprehensive trade agreement” between the EU and a developing country, goes above and beyond a typical FTA by advancing the EU-Vietnam Comprehensive Partnership and Cooperation’s goal of “early recognition of Vietnam’s market economy status.”¹²⁵ With eighteen chapters addressing various problems, including tariffs and non-tariff barriers, services, IP rights, and regulatory cooperation, the EVFTA demonstrates both parties’ ambitious goals. Owing to the EVFTA, Vietnam amended its 2005 IP Law for the third time in June 2022.

The EVFTA has more rigorous rules on GIs than copyright; it recognises Vietnam’s development stage by not asking the country to extend the copyright term to 70 years from its current duration of 50 years. As Hsieh commented, “[a]s a game-changer to ASEAN’s IP systems, the strengthened protection of GIs illustrates the exogenous influences of EU FTAs on new Asian regionalism”.¹²⁶ Because of vital commercial interests involving European food and beverages, such as France’s Brie de Meaux and Swedish Vodka, the European Commission has pushed new-generation FTAs to broaden protected GIs and enforce the rules.¹²⁷ Meanwhile, despite its culinary prowess, Vietnam does not invest much in the GI scheme. The number of GIs recognised by each side in the EVFTA exemplifies this disparity. While Vietnam protects 169 European GIs, the EU reciprocates by safeguarding 39 Vietnamese GIs.¹²⁸ To an optimist, such a deal is not too bad for Vietnam’s artisanal agricultural sector, which sees the EVFTA as a passport to the single market.

Vietnam’s updated IP Law makes no critical substantive changes to GIs, instead focusing on streamlining the registration and enforcement processes. Article 22a of the new law protects homonymous GIs if they can be distinguished in the market.¹²⁹ This newly inserted provision follows Art. 12.27.3 EVFTA, which ensures equitable treatment for producers. Vietnam had no equivalent rules in effect before 2022.

The following points illustrate that Vietnam’s GI provisions post-EVFTA lie in enforcement rather than in the law itself.

First, Art. 12.23 EVFTA obliges the contracting parties to recognise and protect “geographical indications for *wines, spirits, agricultural products, and foodstuffs* [emphasis added]” if such protection exists in the country of origin. Until now, all four products have been protected under EU law.¹³⁰ Such geographical indications are similar to those in the EU-South Korea Free Trade Agreement (ESKFTA)¹³¹ and

¹²⁵ EU-Vietnam Framework Agreement on Comprehensive Partnership and Cooperation (2012) (PCA), Annex: Joint Declaration on Market Economy Status.

¹²⁶ Hsieh (2021), p. 140.

¹²⁷ Hsieh (2021), p. 141.

¹²⁸ In the FTA between the EU and Singapore, the latter recognised 139 GIs of the former, whereas none of the latter are recognised by the former.

¹²⁹ Article 22a, Vietnam’s IP Law of 2005 (as amended in 2022).

¹³⁰ Regulation (EU) No.1151/2012 on quality schemes for agricultural products and foodstuffs (Reg. 1151/2012); Regulation (EU) No.1308/2013 establishing a common organisation of the markets in agricultural products (Reg.1308/2013).

¹³¹ Article 10.18 – Sub-section C, ESKFTA.

EU-Singapore FTA (ESFTA),¹³² but broader than those in the EU-Canada FTA (CETA), which does not protect “wines” and “spirits”.¹³³

Second, Art. 12.23 has a more limited scope than Vietnam’s law. Article 79 of Vietnam’s IP Law offers GIs to all goods, including agricultural and non-agricultural products. The country has a few GIs dedicated to handicrafts, such as Hue cajuput oil, Hue conifer cone, Nga Son sedge, and Vinh Bao pipe tobacco. On the other hand, as the EU has no scheme of *sui generis* protection for non-agricultural GIs, it cannot offer any protection in this respect. The European Commission proposed a Regulation on GI protection for such products to fill this gap.¹³⁴ Excluding non-agricultural GIs represents a small cloud on the horizon for Vietnam in trade negotiations, as the EVFTA was finalised along the lines of least resistance for the EU. The EVFTA input was modelled on the EU system; Vietnam’s contribution does not feature substantially. Law, in this case, can only go in one direction.

Third, Art. 12.27 exceeds TRIPS minimum standards by extending to agricultural products and foodstuffs the ban on using GI labels with phrases such as “kind”, “style”, “imitation” or the like that was previously confined to wines and spirits under Art. 23.1 TRIPS.

Finally, the EVFTA offers exemptions because of Vietnam’s compromise, as we revealed at the end of Part 3.¹³⁵ For Asiago, Fontina, Gorgonzola, and Feta, the EVFTA permits sellers to continue using the GI names if they make “actual commercial use in good faith” of them before 1 January 2017. The name Champagne can be used for wine products for a ten-year transitional period after the EVFTA enters into force (1 August 2020). However, we reckon that Champagne producers have a lot of work to do since the Vietnamese public has long believed Champagne to be a sort of white wine and seldom links it to the Champagne region.

Indeed, the Champagne moniker has long been a topic of controversy.¹³⁶ The most recent dispute emerged in 2021, when Russia enacted a new law forbidding all foreign producers from using the label “shampanskoye” – Russian for Champagne.¹³⁷ In Vietnam, France endeavoured to market Champagne under a GI in earnest in the early 2000s. It initially proposed that Champagne be registered as Vietnam’s first foreign GI, but Vietnam politely declined since its people perceived Champagne as a generic term.¹³⁸ Therefore, France replaced Champagne with Cognac. Given that Vietnam now has 39 GIs protected in the EU, we sympathise

¹³² Article 11.16 – Sub-section C, ESFTA.

¹³³ See Art. 7.1 – Chap. 22, The scope of application in the CETA is limited to GIs for agricultural products and foodstuff only.

¹³⁴ European Commission, Proposal for a regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754.

¹³⁵ Article 12.28, EVFTA.

¹³⁶ Jay and Taylor (2013), pp. 1–31.

¹³⁷ Bloomberg (2022).

¹³⁸ This view is based on the second author’s discussion with a former director of Vietnam’s NOIP during her research trip to Vietnam in June 2022.

with the Vietnamese negotiators' compromise on Champagne in the EVFTA, even if the popular view of Champagne has not changed much over the last two decades.

6 Conclusion

In this article, we have tracked the historical paths of GIs to illustrate how and why the law was transported to Vietnam. Although the legal framework has existed in the country since 1989, it frequently remained an afterthought compared to the IP trio of patents, copyright, and trade marks. Vietnam first embraced GIs by emulating the French term GI/AO to signal economic openness and attract foreign investment. From 1989 to 2022, the country undertook many legislative changes. This period witnessed different ways in which GI laws were transplanted, including lessons learned from other countries, international trade agreements, regulators seeking to boost the country's competitiveness, and public acceptance. These processes occurred simultaneously rather than linearly as a new layer interwove with the old one. Despite these efforts, GI rules remained merely cosmetic, since no GIs were actually granted until 2001, then owing to French support.

When Vietnam entered the global playing field, it had no choice but to demolish and rebuild its existing legal system. Regrettably, leaders' enthusiasm for supporting GIs has not been matched by that of local producers – the key stakeholders in a GI scheme. The EVFTA, which holds GIs close to its heart, is helping to turn the tide. The treaty, acting as the central diffuser of the EU's GI strategy, has attracted public attention. However, the fact that Vietnam requested foreign support to develop its GI system reminds us of a bitter truth: the transplant took place, but only time will tell whether it blossoms.

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