

INSTITUTE OF POLICY AND STRATEGY FOR AGRICULTURE AND RURAL  
DEVELOPMENT  
-MISPA PROJECT-

GEOGRAPHICAL INDICATION AND  
APPELLATION OF ORIGIN IN VIETNAM:  
REALITY, POLICY, AND PERSPECTIVE

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## PREFACE

Vietnamese agriculture faces with many challenges of international integration, especially at the entrance to WTO. Natural and human potentialities put Vietnamese agriculture in a position of strength, one of which is the strength of specialities. In such background, many ministries, branches, and locals are responsible for and aim at finding best solutions and strengthening the competitiveness for their agricultural products.

Developing geographical indication (GI) and appellation of origin (AO) for agricultural products is a popular trend all over the world. Particularly Europe uses them as effective tools to maximize the benefit of these products under the international pressure. This trend is highly appreciated by Vietnamese organizations.

The thesis “Geographical Indication in Vietnam: Reality, Policy, and Perspective:” is carried out with the purpose of giving propositions for speciality development under GI and AO and by a group of researchers of the Rural Development Center- Institute of Policy and Strategy for Agriculture and Rural Development<sup>1</sup>, including: PhD. Trong Binh VU, BA. Duc Huan DAO, Engr. Duc Chien DANG, Engr. Duy Khanh PHAM, Engr. Sy Dat NGO, Engr. Duc Tuan DINH.

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- Department of Intellectual Property - Ministry of Science and Technology
- French Economical Mission Bureau (Missions Économiques) in Hanoi
- People Committee of Son La province
- Department of Science and Technology of Son La province

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<sup>1</sup> This team moved from Vietnam Agriculture Science Institut

- Co Do Plantation- Moc Chau district- Son La province
- Moc Chau Tea Company - Moc Chau district- Son La province
- People Committee of Kien Giang province
- Department of Science and Technology of Kien Giang province
- Department of Aquaculture of Kien Giang province
- People Committee of Phu Quoc district- Kien Giang province
- Association of Phu Quoc fish sauce's producers - Kien Giang province
- Department of Science and Technology of Ho Chi Minh City
- Department of Agriculture and Rural Development of Ho Chi Minh City
- Ho Chi Minh Food Association
- Center on Agrarian Systems, Rural and Agricultural Development - Food Crop Research Institute - Vietnam Academy for Agricultural Science
- French National Institute for Agricultural Research (Institut National de la Recherche Agronomique- INRA)
- Center of International Cooperation in Agricultural Research for the Development (France) (Centre de Coopération Internationale en Recherche Agronomique pour le Développement- CIRAD)
- Peatland Ecology Research Group- PERG (France) (or Groupe de Reserche en Ecologie de Tourbière- GRET)

In addition, we also want to thank MA. Ngoc Anh NGUYEN for her editing and translating supports.

Due to the limited time and finance, we cannot mention all GI and AO development activities in this report. Furthermore, the results and propositions in this report base on the petitions of local organizations and on the consistence of the group. It is unavoidable to have shortcoming and limitations in this report. Therefore, all of your comments are highly appreciated.

**On be half of the group of researchers**

**PhD. VU Trong Binh**

# ABSTRACT

Developing appellation of origin (AO) and geographical indication (GI) for agricultural products has become a strategy oriented for the biological and traditional culture preservation as well as for the improvement of commercial competitiveness in international market. This is a favorite tool in the integration of global economy.

Agricultural products have to face with many challenges when some of Vietnamese agricultural products have been registered as AO products, when there is a trend in developing intellectual property, especially when Vietnam is going to become a WTO member. The first purpose of this study is to define difficulties in the maintenance and protection of the two-registered AO products (Phu Quoc fish sauce and Shan Tuyet tea). The second one is to propose solutions, strategies, and common development procedure to develop specialities under AO and GI.

The experiences of some countries as France, Thailand, India, and Indonesia show that it is necessary to create cooperation among the government, scientists, and stakeholders who directly get benefit from AO products during the development and perfection of legal frame on intellectual property. While the Vietnamese institutional frame, registration and protection procedure for AO and GI development are not completed and the roles of central and local organizations are not well regulated, it is unavoidable to have such difficulties as in the AO development of Phu Quoc fish sauce and Shan Tuyet tea from Moc Chau.

Deriving from the above difficulties, it is more inextricable to exploit the benefit of the two-registered products. As a result, the brand name of the specialities cannot uphold in the market. Apart from that, protecting the products in the market also get obstructions from conflict of those who are then able to get the right of AO use, from the delineation of origin and production, from the quality regulations, so on so forth...

By defining and analyzing all difficulties of two registered products, we can recommend some effective solutions to develop and exploit Vietnamese specialities in which the first and foremost is to complete institutional frame for intellectual property based on GI and

AO regulations of the European Union and the World Trade Organization. It is urgent to create a global strategy in order to make and access a database of local speciality information so that the localities and central government can make their own plans to support the registration procedure. Apart from that, the producers and all stakeholders taking part in the commodity chain plays the role of a lever promoting the registration and protection procedures for the above two registered products as well as the AO development of other agricultural products. Parrallely, we should separate clearly responsibilities and roles of administrative agency, competent organizations, and scientists in brand name construction based on GI development.

With the suggested solutions, we would like to contribute to the development of Vietnamese specialities in the international integration.

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## LIST OF ABBREVIATIONS

- MARD:** Ministry of Agriculture and Rural Development
- IPSARD:** Institute of Policy and Strategy for Agriculture and Rural Development
- RUDEC:** Rural Development Center
- VASI:** Vietnam Agricultural Science Institute
- AFTA:** ASEAN Free Trade Area
- EU:** European Union
- WTO:** World Trade Organization
- Trips:** Trade-Related Intellectual Property Rights
- INAO:** Institut National des Appellations d'Origine
- INRA:** Institut National de la Recherche Agronomique
- CIRAD:** Centre de Coopération Internationale en Recherche Agronomique pour le Développement
- VCCI:** Vietnam Chamber of Commerce and Industry
- AO:** Appellation d'Origine
- PDO:** Protected Designation of Origin
- PDI:** Protected Designation of Indication
- GI:** Geographical Indication
- PGI:** Protected Geographical Indication
- PAO:** Protected Appellation d'Origine

# SECTION I

## RATIONALE, OBJECTIVE AND METHODOLOGY

### **I.1. Appellation of origin development in Vietnam**

The development of appellation of origin began in Vietnam in 1998 thanks to the support of French government. As a result, Vietnam succeeded in building two first AO products : Phu Quoc fish sauce and Shan Tuyet tea. In fact, the French Ministry of Agriculture assigned the Cognac Inter-professional National Bureau (BNIC) to cooperate with the French Economical Mission Bureau in Hanoi supporting the Ministry of Aquaculture, the Ministry of Agriculture and Rural Development (MARD) and the Ministry of Science and Technology (MOST) in Vietnam in order to register the two above products. After that, the Vietnamese MARD officially proposed the French Ministry of Agriculture and Rural Development to assist and build appellation of origin for seven Vietnamese agricultural products.

It is said that thanks to the support of France, there was a movement in developing appellation of origin throughout Vietnam. We can name some activities concerning this as the followings:

- At the end of the year 2005, the Vietnam National Assembly approved the Intellectual Property Law, including geographical indication. Nevertheless, the legal issue did not clarify registration procedure, right of use, control, examination, supervision, anti-imitation, and roles of competent organizations related to appellation of origin.
- The Department of Intellectual Property- Ministry of Science and Technology is establishing registration procedure for AO products, together with Australian and Portuguese experts of ECAP II project. Furthermore, with the support of Switzerland, the Department of Intellectual Property has registered appellation of origin for Doan Hung grapefruit, Buon Ma Thuot coffee and going to register appellation of origin for Lang Son sanise. This is only legal approach, which means register appellation of origin and protecting the name, meanwhile issuing the right of use, creating quality management, building marketing strategy, etc. are on the move.
- The MARD has carried out a project on natural condition serving the purpose of delineation of origin and production in AO documents. However, the result of the study only focuses on soil and climate description. Moreover, it is not applied in the delineation of origin

of AO or GI products in real life. Then whether it is considered as compulsory scientific evidences or not, no one can confirm.

- Although not having protected in the market since the time registered, Phu Quoc fish sauce and Shan Tuyet tea indeed flare up a movement of GI and AO through out the country. Each province tries to build its own AO product. Nevertheless, many provinces have registered the brand name for their agricultural products. This can make difficult to register and protect AO and GI products after that.

- The group of researchers of Vietnam Agricultural Science Institute<sup>2</sup>, has moved to the Institute of Policy and Strategy for Agriculture and Rural Development (IPSARD), the first group implementing research activities developing GI and AO in Vietnam. Aware of the lack of professional organization in Vietnam, IPSARD has approached farmer associations to develop local institution, production, marketing strategy, quality management system, commodity chain, etc. before completing AO registration document. This approach allows a particular and well-managed distribution channel for the protected designation of origin products. As a result, we can immediately make use of their appellations of origin in production and in the market. This can be illustrated in the case of Hai Hau fragrant rice<sup>3</sup>. At this moment, the Department of Intellectual Property is judging its AO registration documents.

In such background, MISPA project has supported the study on evaluation of current situation of geographical indication and appellation of origin in Vietnam in order to develop a strategy for GI and AO in the coming period.

## **I.2. Objective**

### **I.2.1. General objective**

This study aims at finding solutions for the registration of appellation of origin then creating good condition to develop and increase the value of Vietnam agricultural products in the market.

### **I.2.2. Specific objective**

In order to achieve the above general objective, the study defines its specific as the following:

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<sup>2</sup> The Vietnam Agriculture and Science Institute (VASI) has dissolved and the group of researcher of AO and GI has moved to the Institute of Policy and Strategy for Agriculture and Rural Development

<sup>3</sup> In collaboration with CASARD of FCRI of VAAS

- ❖ Exploring some remarkable international experience on geographical indication and appellation of origin, for example:
  - Development of appellation of origin in the world, the appellation of origin value in the rural development, market, revenue, etc
  - Evaluating success and failure in the appellation of origin and geographical indication construction, reasons and solutions
  
- ❖ Defining all difficulties in the registration, using as well as in the AO and GI development of some registered specialities:
  - Analyzing institutional procedure at central and local levels that concerns the registration of AO products
  - Analyzing in detail the process of AO registration for Phu Quoc fish sauce and Shan Tuyet tea from Moc Chau, and the role of national agents in this process
  - Indicating potentiality of Phu Quoc fish sauce and Shan Tuyet Moc Chau tea after their AO registration
  
- ❖ Proposing solutions, strategies, policies and general development procedure for the AO and GI products
  - Indicating problems of AO development in Vietnam compared with Europe.
  - Suggesting common strategies and solutions motivating the registration of appellation of origin products in Vietnam

### **I.3. Content**

- ❖ *Experience of some countries in AO and GI construction:*

They must be AO and GI strategies of some countries in Asia and Europe, the purpose of which is to raise product value, motivate agriculture and rural development, and preserve biological diversity and local tradition as well. Moreover, other detail on building GI and AO includes:

- History of GI and AO development with specific purpose, based on the summary of studies on trademark and GI in some European countries, including theoretical and reality studies
- Regulations on institution, national policies in product development, analysing of delineation process, quality control, intellectual property, registration procedure...

- Summary of institutional regulation of France and Europe in GI and AO application, assessment and protection and comparing it with the situation in Vietnam as well as considering it as a base for the development strategies in Vietnam
- ❖ *Synthesizing all contents on institution, policies of Vietnam government on GI and AO*
- All written texts on national policies and their scope of effect on the development of GI and AO
  - Procedure of registration and protection application for the product: This study shows the reasonable and unreasonable matters in administrative regulation of the government as well as the compatibility of Vietnam regulations compared with international system.
  - Roles of central agents, national associations, and national strategies for the development of specialities and GI and AO promotion
  - Institution, local policies that affect positively and negatively GI and AO development, local point of view towards GI and AO development
- ❖ *Study on registered AO products in Vietnam:*
- Purpose of AO construction and the choice of products
  - Base of delineation of production region of the two AO products (Phu Quoc fish sauce and Shan Tuyet Moc Chau tea), from which defining difficulties in the reality, especially after the registration
    - Roles of technical procedure and the process of developing compulsory technical procedures (production, processing, packaging, etc...) and current contradiction in the development of internal and external quality management system for the product.
    - Roles of commodity organization for AO products, from production, processing to commercialization as well as the relationship between stakeholders in quality management, interest division and property
    - Process of distribution, marketing, advertisement of trademarks for GI and AO products
    - Properties in GI and AO, analyzing of contractions, conflict and cooperation of stakeholders in the process of GI and AO development and protection: This study is to point out the importance of professional organization and association without which GI and AO do not make any sense.

- Roles of national administrations, from central to local, in the GI and AO development and management, and the inadequacy in their functions
- Interest of producers, and stakeholders in the commodities and local authorities in the AO development for local products
- Preliminary assessment of the effect of GI and AO firm names in Hanoi market

❖ *Propositions and strategies in GI and AO development in Vietnam*

- Propositions to perfect legal regulations, roles of central and local institutional systems in GI and AO development and management
- Outlining orientation and propositions for commodity organization, quality management system, interest and property division, and advertisement of GI and AO commercial names, etc
- Propositions to increase additional value of GI and AO, roles of producers in the development, properties, advertisement and interest division, combination of GI and AO development with biological diversity, traditional technique, rural development and local agriculture
- Propositions for the strategies of study, establishment of consultant equip, and training on GI and AO

## **I.4. Methodology**

### **I.4.1. Approaches used in the study**

❖ *Theoretical and practical base on GI and AO :*

The research on theoretical groundwork of delineation, standardization the process of production-processing- commercialization, quality management, trademarks, so on so forth, allows to summarize international and national studies on GI and AO as well as pointing out the meaning of GI, especially the difference of trademark and origin indication.

❖ *Institutional analysis:*

This research authorizes the assessment of the institutions of trademark property, GI and AO; particularly clarify the complexity of property, protection approaches, internal and external controlling system. Apart from that, this research indicates both reasonable and unreasonable points of the registration process.

❖ *Commodity analysis:*

This approach highlights the coordination of stakeholders, from production, to distribution, in the GI and AO development, protection and trademark promotion. Moreover, we can analyze technological process, quality management system according to commodities of GI and AO products.

❖ Marketing analysis:

This methodology is to assess marketing approach used in advertisement campaigns for the trademark, GI and AO names of the products.

❖ Analysing of economical contracts:

This approach aims at evaluating the effect of difficulties on the coordination, ability, potentiality and prosperity of the development of economical contracts among stakeholders.

❖ Other approaches:

- Quality management system analyse is applied to value actual situation and difficulties in quality management.

- Analysing transaction cost and economical scale serves the purpose of defining economical difficulties of stakeholders in commodity chain.

#### **I.4.2. Studying steps**

In order to achieve the study objectives, we have applied the following steps:

❖ Step 1: Finding and collecting information in national and international documents.

We collected and analysed all documents concerning GI and AO, for example the history of AO and GI development, their objectives and construction process, rules, legal elements, quality management, etc that affect local development.

❖ Step 2: *Interviewing central organizations*

- Conducting interviews with governmental organizations, such as the Ministry of Agriculture and Rural Development, the Ministry of Science and Technology, the Ministry of Aquaculture, etc, especially interviewing all concerning trademark, GI and AO.

- Analysing strategic orientation of the government in terms of AO and GI development, roles of organizations and ways of implementation for each product

❖ Step 3: *Interviewing local organizations*

Interviewing local organizations, their roles in GI and AO development, particularly the point of view of local and competent authorities that directly manage and decide the registration as well as difficulties in AO and GI development and management

❖ *Step 4: Interviewing enterprises, and household that are direct producers or processors of products related to GI and AO.*

The choice of interviewees bases on the classification of stakeholders according to vertical and horizontal dimension of the commodity chain. This assures the variation in distribution channels of the products as well as diversified stakeholders participating in the stages of production, processing, and distribution. Furthermore, this investigation highlights internal mechanism of AO commodities vertically and horizontally. Hence, we classify stakeholders and distribution channels and choose stakeholders according to distribution channels to make surveys. All the questions in the survey are open questions because our intention is to exploit maximum idea of interviewees. However, the interviews are orienting exchanges, rather than surveys like those of statistic general department.

❖ *Step 5: Data analyse and information collection*

The data analyse firstly relies on qualitative approach to extract information, for example analysing institution, commodity, quality management system, area, property, and evaluating the customers. All these qualitative analyses can be illustrated by statistic when necessary. However, the mathematical model construction is less feasible due to the limitation of time, and because the matters in the study are so complex and put much emphasis on economic-institution, legal, and quality management.

Analysis and assessment of the establishment of AO products are quite new activities and sensitive. Therefore, we meet many difficulties in collecting information. Our research group tries to use information collected in reality in order to clarify the situation in detail and make proposition to develop AO and GI in Vietnam so that these propositions are suitable to the reality in Vietnam and international regulations at the highest level.

## **SECTION II**

### **RESULT OF THE STUDY**

#### **II.1. Geographical indication and appellation of origin development in the world**

##### **II.1.1. The history of appellation of origin development in Europe**

###### ***II.1.1.1. Development process***<sup>4</sup>

The fact shows that naming products based on their origin of production and processing appeared long long ago in the world. In Europe, the governments began to interfere in agricultural and rural development when the internal and external commercial developed rapidly at the end of 19<sup>th</sup> century, particularly when all grape farms were destroyed because of dry leaf bugs.

France is the pioneer in geographical indication and appellation of origin development in Europe. In 1905, the first law concerning this domain defined administrative regulations to localize agricultural production region having the right to use appellation of origin for their products. Nevertheless, this law could not solve the problem of agricultural crisis because there were not any regulation of technical process, and internal controlling system... especially in planting and processing grape wine.

In 1911 and 1913, the farmers planting grapes opposed this law. At this stage, it was necessary to have collective action of stakeholders concerning the appellation of origin development. Since this failure, France has issued many other laws to define the right of use, the practical element, and the stabilization of appellation of origin. Facing at the crisis in planting grape and processing grape wine in 1935, the House of Representative of France approved the first complete law on appellation of origin, concerning administration, legal procedure and professional association. This law allowed forming the Institute of National Appellation of Origin in France (INAO) as well as national committee of appellation of origin evaluation. Since 1990, the appellation of origin has developed widely, from dairy products to other food, such as cheese, jambon, and fruits...

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<sup>4</sup> - Genèse d'une convention de qualité: Cas de appellation d'origine fromagères. M.T Letablier et C. Delfosse, Page 97-118

- Signes d'identification de la qualité et de l'origine: la place des produits AOC et IGP . Louis Lagange (ENITAC), Bertil Sylvander (Inra), Christine Monticelli (Isara), Francois Roncin (INAO)

- Controverses et négociation en Europe et dans le monde. *Bertil Sylvander (Inra), Erik Thevenod-Mottet (SRVA, Suisse), Bernard Jullien et Andy Smith (sciences Politiques Bordeaux )*.

Together with France, other European countries as Italy, Portugal, Spanish, Greek, German, and Belgium also develop their appellation of origin products. Until August 2005, the European Union protected 694 products under appellation of origin and geographical indication, 57.8% of which are AO products.

**Table 1: Number of PAO and PGI products in Europe**

Year	Protected Appellation of Origin products (PAO)	Protected Geographical Indication products (PGI)	Total
8/2002	63	234	597
8/2005	401	293	694

*Source: European Union (Commission européenne<sup>5</sup>)*

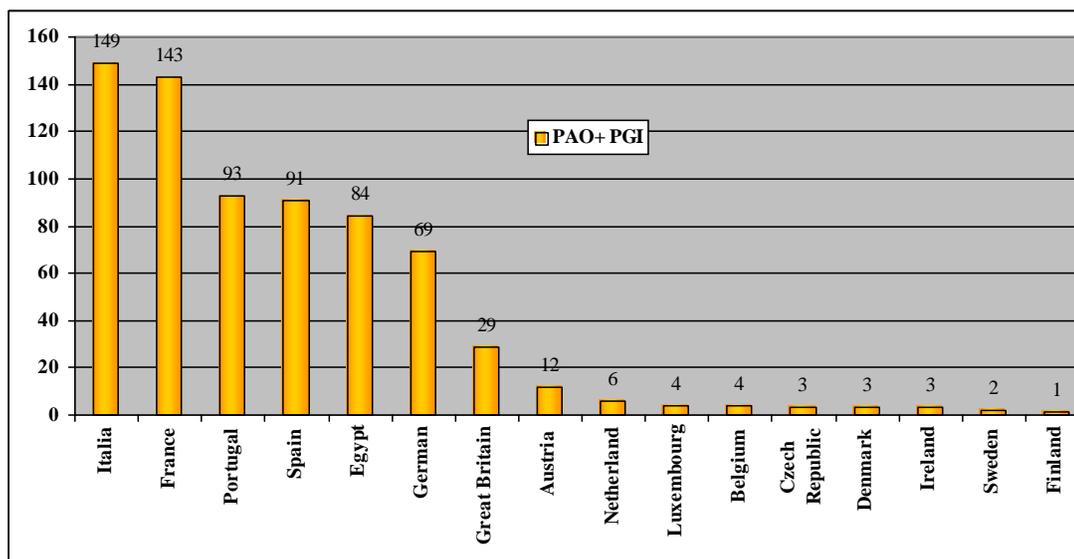
Protecting agricultural products under geographical indication and appellation of origin became popular and developed strongly in Europe. From 2002 to 2005, the number of products protected increase to 97 products, 38 of which were appellation of origin products. Among members of European Union, although France is the first country implementing this activity, Italy makes record with 149 protected products in August 2005. France went after with 143 products and Portugal 93 products (see in graphic 3)

Apart from protecting the products under PAO or PGI, the Europe also protected their alcoholic products in the manner of “Quality wine of determined regions- VQPRD<sup>6</sup>”. This could be considered as a protection of geographical origin for alcoholic product in particular. However, France and Italia were the two countries that have the most protected products in this field. While France had 470 protected products, Italia followed with 320 protected products. Statistically, there were totally 935 protected products in European market up to August 2005.

<sup>5</sup> I.Lagrange - UR TypicitÉ des produits alimentaires, B.Sylvander (INRA), F.Roncin (INAO), C.Monticelli (ISARA, Lyon) - Colloque international de restitution des travaux de recherche sur les indications et appellation d'origine GÉographique - Pari - 17/11/2005

<sup>6</sup> Vins de qualité, produits dans une région déterminée - VQPRD

**Graphic 1: Quantity of PAO and PGI products in Europe**

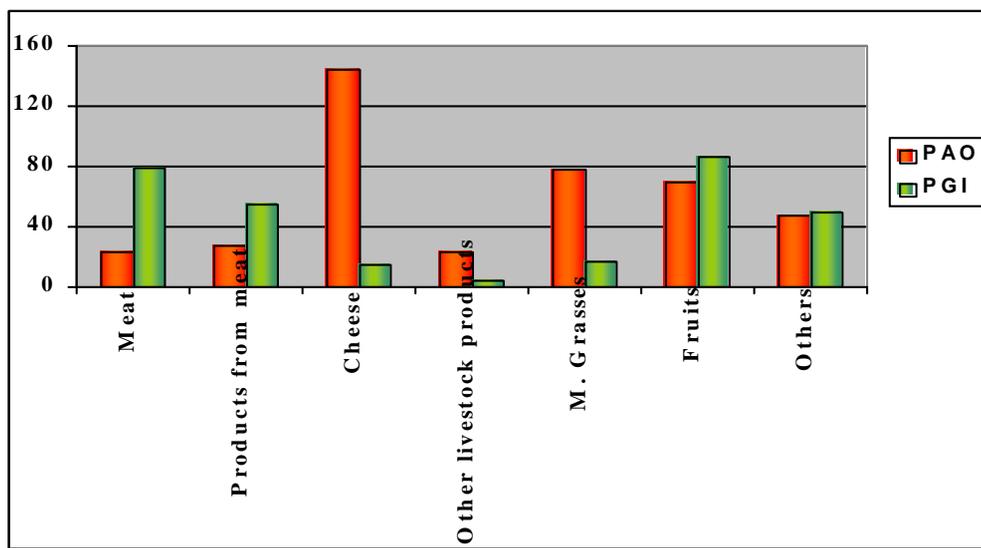


Source: Commission européenne, collecté par B. Sylvander (INRA), E. Thevenod-Mottet (SRVA), A. Smith, B. Jullien (Sciences Po Bordeaux)

The use of geographical indication and appellation of origin are quite different, depending on products' characteristics. The products protected under appellation of origin are products of higher demand in terms of typical characteristics and quality management. Thus, it is often used in meat processing products (for example cheese and products from M. Grasse) which make up approximately 54.1% of 401 European PAO products. Meanwhile fruits occupy 17.4%. However, there is a tendency of using geographical indication to protect fresh or live products. Particularly, unprocessed meat and fruits makes up 55.6% of the total number of PGI products in Europe.

It is very crucial to choose a suitable ways to protect a product. In fact it takes Europe 15 years (from 1970 to 1985) to find such a unified protected form for alcoholic products as the regulation VQPRD. In terms of France, it takes 80 years to complete institutional frame for protected appellation of origin (then becomes PAO of Europe) and protected geographical indication as well as to make a milestone for the regulation 2081/92 of the European Union.

**Graphic 2: Number of PAO and PGI products in Europe up to August 2005 according to groups of products**



Source: Commission européenne, collecté par B. Sylvander (INRA), E. Thevenod-Mottet (SRVA), A. Smith, B. Jullien (Sciences Po Bordeaux)

### **II.1.1.2. Regulation system of PAO and PGI in Europe <sup>7</sup>**

On July 14<sup>th</sup> 1992, the European Union issued a common regulation of appellation of origin in European territory, with two different concepts: protected appellation of origin (PAO) or protected geographical indication (PGI).

- Protected Appellation of Origin (or Protected Designation of Origin- PDO, or Appellation d'Origine Protégée or Contrôlée –AOP or AOC in French) indicates the name of a region, a restricted area or a country. It is geographical environment that makes the product typical or unique. These products are produced and processed in a particular geographical territory, which has already been fixed, or with a secret of traditional technology acknowledged by competent organizations.

- Protected Geographical Indication indicates the name of a region, a restricted area or a country. It also describes a product originated in this place with high quality and reputation that is made by geographical environment and its particular characteristic and/or human factors. The geographical factors have to appear and interfere at least once in the procedure of production, processing and preparation.

<sup>7</sup> - Reglement (cee) No 2081/92 du conseil demande d'enregistrement d'AOC

- Protected designations of origin and protected geographical indications in Europe: Regulation or Policy, recommendations. Dominique BARJOLLE\* and Bertil SYLVANDER\*\* \*SRVA, Lausanne, Suisse, \*\* INRA - UREQUA, Le Mans, France

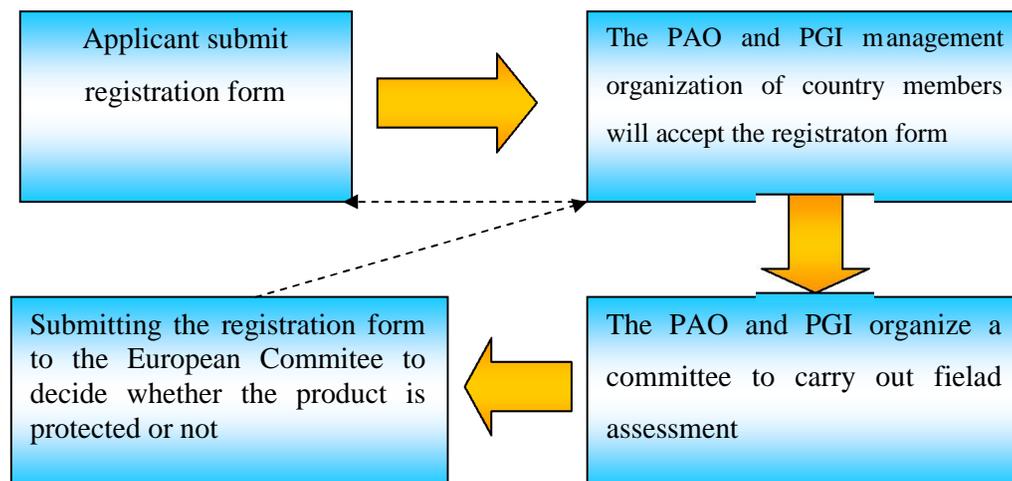
The regulation 2081/92 creates a good condition for commercial development of specialities because it bases on the need and the reality of its member countries :

- Diversifying agricultural products, developing those of specific quality and encouraging the preservation and the development of traditional production technique and practice of the local people
- Balancing the demand and supply on the market through the producer and consumer protection and the fight against unhealthy competitiveness , for example the abuse of reputation of prestigious products
- Bringing more profit for agricultural economy, especially remote area by increasing the value of the products and creating reasonable distribution mechanism for all the participants of a strict technical procedure
- Raising the income for farmers who keep traditional production secret and adapt to new production environment
- Maintaining the stability of rural population at difficult region by creating jobs for local people

The main contents concerning geographical indication and appellation of origin referred in the regulation 2081/92 include:

- The registration and protection procedures of geographical indication and appellation of origin certify that the member countries are supposed to define and prove the specific characteristic of their products, both by description and reality. Then, the documents will be submitted to the European Committee where the European Union will consider the documents and decide to protect the products submitted or not.

**Diagram 1: Basic step to protect PAO and PGI products in Europe**



- Who are eligible to submit protection documents for PAO and PGI products: it is clearly laid down that only organizations of producers, processors and traders can submit the documents for registration and protection of PAO or PGI products. The reason lies in the fact that they are representatives of all stakeholders of the commodity and they can build a reasonable management and utilization mechanism for PAO and PGI products as properties of the whole community.

- Regulations on GI and AO registration and protection documents: all the content concerning GI or AO products must be clarified in the documents, such as unique quality, production reality, technical procedure that affects the quality, production condition and delineation map which limits production region....

- The production procedures must include an investigation system. This is very important to create inquiry capacity of the products and at the same time to maintain the quality sustainability and stability. That is why it becomes the most difficult rule to implement since it lasts almost the entire product circle.

The appearance of the regulation promoted the development of GI and AO products. However, the Europe wanted to go further since the purpose of protection expansion became an important topic to discuss in the World Trade Organization (WTO) in 2004 and 2005. The Europe hopes that all of this regulation will be applied at global level through the WTO. Hence, this regulation becomes the topic of interest of not only the European countries but also of those who want to become WTO members now.

## **II.1.2. Experiences of developing and protecting Protected Geographical Indication and Protected Appellation of Origin in the world**

### ***II.1.2.1. Culture preservation, rural stabilization and development in Asia***

Thailand, Indonesia, and India are pioneers in developing and utilizing GI and AO for their agricultural products and food. Vietnam can draw out precious lessons from these countries, from strategy building for agriculture and rural development to detailed solutions to protect agricultural products under GI and AO.

❖ *Thailand and its process of applying regulations on GI*<sup>8</sup>

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<sup>8</sup> *Thailand's interest in the geographical indication protection*. Dr. Pakvipa AHVIPHAN Second Secretary, Ministry of Foreign Affairs, Bangkok, Thailand; Dr. Phuchphop MONGKOLNAVIN - First Secretary, Ministry of Foreign Affairs, Bangkok, Thai Land

The utilization of geographical indication to protect agricultural products and food in Thailand derives from the fact that Thailand runs the risk of losing their traditional product market, particularly Jasmine rice.

Jasmine rice from Thailand (later called Hom Mali) is a product well known in the national and international market in terms of label, form, and special taste. Every year, this product makes up a great proportion of exporting agricultural products in Thailand. Only in 2003, Thailand export more than 2.2 millions ton of Jasmine rice, which brings Thailand about 31,282 billions Baht. However, in September 1997, an American Company called RiceTec registered to protect the label of their product named "Jasmati". They advertised their product as a copy of Thai Jasmine rice. As a result, the Thai began to be afraid that the consumers would get confused and believe that both the two products (their Jasmine rice and Jasmati rice) were of the same quality and that this company would threaten their exporting rice market.

At that time, Thai government found a solution, that i.e. applying regulation of Trips decree into Thai situation. Nevertheless, difficulties rose because of two main reasons:

- The first one is that Jasmine was not a geographical name. Hence, it was necessary to make the consumer aware of the link between Jasmine rice and its geographical location - Hom Mali.
- Thai law did not indicate regulations concerning geographical indication. Accordingly, the geographical indication of this country cannot be protected abroad.

Therefore, a temporary solution was chosen, that i.e. the Thai government issued a standard for Jasmine rice, which allowed using the trademark of Hom Mali. This became a signal certifying the origin of Jasmine rice. Any one wanting to use Hom Mali trademark had to meet with the requirements of production and processing. This standard played the role as an important premise for the application of geographical and appellation of origin in Thailand later.

Parallelly, Thailand actively institutionalizes Trips regulations into their law. The parliament drafted a bill on geographical indication while the government created a program to apply these regulations.

- Thai government in 2002 discussed the bill on geographical indication but it was rejected 5 times. Furthermore, in March 2003, the bill was criticized sharply by the parliament because they stated that it was wrong to protect only local plant and breeder. Until March 2004 can this bill be approved. However, all the products of natural origin, agricultural, industrial and crafting products can be protected according to this law.

- Together with the effort of the parliament, Thai government conducted a program supporting local people to develop and commercialize those products basing on traditional skill and local knowledge. The government would give support in terms of technology and management techniques to help local people to commercialize their products by national and international consuming channels or by Internet. Apart from that, the government also assisted in training with new production technology, advertisement techniques as well as design of label and package. Thanks to this, the products satisfy all the requirements of global quality standard.

Within this program, there were more than 1000 products from 75 provinces that are produced and consumed through supporting channels of the government. Nevertheless, when the law in geographical indication was not approved by the parliament, there was already an abuse of trade name in the market, so more than 1000 products were at the risk of losing their advantages.

Another challenge was that since the validity of the law on geographical indication in April 2004, Thailand should find the way to make their products different in terms of quality as well as spread this law so that it was widely known and any violation would be supervised and solved. The best choice was using a taking note system, each locality and commercial company played the role as the supervisor of production process as well as of the quality stability. These stakeholders also supervised all violation in the market.

The law on geographical indication was then applied in reality and solved many difficulties concerning Thai specialities. This can be shown that since February 2004, there has not been any case that needs to be interfered by the court of law.

### *II.1.2.2 India and the protection of Darjeeling<sup>9</sup> tea as a GI product*

India is a nation, which contributes much to commercial regulations and law, including intellectual property. As a founder of WTO, India makes much contribution to make WTO protect GI products at higher level, aside from products of “wines and spirits”. This is still being discussed by the Trips committee.

There is a great potentiality for geographical indication due to the traditional development of agriculture, systemized cultivation and the rich of local specialities. It is said that Darjeeling tea is the first Indian product developed and protected under geographical indication. We can learn much in the experience of choosing a particular product, and completing documents to protect it.

#### *➤ Product value and problems in the market*

Darjeeling is called “tea champion” and widely known all over Europe. The export of Darjeeling tea brings India about 30 million dollar every year. The tea is planted in high mountain of 700- 2000m, particularly at the peak of Kanchanjunga mountain, which is covered with snow and has typical climate. These make up a typical quality for Darjeeling tea.

- *Abuse and unhealthy competitiveness:* There is a serious abuse of Darjeeling reputation the market. It is estimated that the quantity of false Darjeeling tea is 4 times real Darjeeling tea. In other words, 80% of Darjeeling tea all over the world is imitation. Almost these kinds of tea come from Kenya, Srilanka and Nepal. Some even say that tea is exported from Nepal to India and consumed as Darjeeling tea.

- *The value of Darjeeling tea is abused:* The commercial activities of Darjeeling tea is totally controlled by the English. At this moment, its distribution channels are managed by various foreign companies whose function is to mix, package and commercialize tea. Consequently, the product is abused by dominated companies that have strong financial potential. In fact, the price of Darjeeling tea in international market is many times higher than domestic market, about 5 to 10 times higher or even 50 times higher than domestic price.

- *Market changes:* The collapse of socialist republic has destroyed the biggest market of Darjeeling tea. Accordingly, there are changes in tea style and the demand of tea packet or cold tea increases. Furthermore, the active participation in exporting market of such countries

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<sup>9</sup> Geographical indications: The experience of Indian tea producers- Protection of Darjeeling tea. Paper prepared for the Worldwide Symposium on GIs, 9 – 11 July 2003, San Francisco. *Mr. Naba Kumar Das, Chairman, Tea Board India*

as Kenia, Malawi in the decade of 90 influenced passively on Darjeeling tea. The imitation of Darjeeling tea became so popular that the price of this tea fluctuates strongly. Hence, it was urgent to find out the original value of the product. In other words, the situation of Darjeeling tea forces India Tea Committee and government to regain both reputation and value for this famous tea.

➤ Main goal of product protection

How to protect Darjeeling tea in global market so that the Darjeeling farmers can stabilize their production: this is the main goal that the Indian Tea Committee and government aim at . We can clarify final objective of the Indian Tea Committee and government as the following:

- Against the abuse of Darjeeling name committed by unclear original tea, or tea mixture in worldwide market
- Bringing real Darjeeling tea to consumers
- Creating equality for profit division in terms of tea commercialization, and assuring that the industry of processing, packaging and commercializing tea and the producer can make much profit from the reputation of this product
- Building a production and production management system , administering Darjeeling label as other famous GI and AO products from Europe, for example Champagne or Scotch Whisky.

In order to reach the above objectives, the most important factors are to choose a way to protect the product. The Indian Tea Committee and the responsible are then put in difficult situation.

➤ Choice of form to protect products

At that time, there were two law systems for commercial protection that can applied in Darjeeling tea situation in the world. They are:

- Firstly, the popular law system is always ready to protect the product without registration. This system bases on the capacity of use and reputation of the product. For instance, Britain, United Nations, India, Canada and Australia applied regulations to certify commercial label and collective label. These are laid down in Trips agreement (WTO regulations) in which India is one of the founders.

- Another system is civil law system in which the product has to be registered in order to be protected, for instance in France, Morocco and Russia by geographical indication or appellation of origin.

To make the matter complicated, the protection of tea products in worldwide market under agreements met many difficulties. India had signed Paris agreement on industrial property protection but not Lisbon agreement on GI and AO protection with other 23 members. India had not either signed Madrid agreement or Madrid decree on management of label registration.

It was difficult for Indian government to choose a protection form; especially the protection by commercial certification law was not accepted in many countries like France or some other European countries. Meanwhile, if geographical indication was chosen to protect Darjeeling tea, India would have to apply regulation 2081/92 of European Union, but the most difficult is to define the direct link between product and its original location. After many negotiations and discussion with other countries, there were two parties: one supported geographical indication and the other did not.

In order to solve the problems and to protect Darjeeling tea in those countries consuming this tea, the Indian Tea Committee made the following decisions:

- Using the law to protect and certify their commercial label in order to register Darjeeling tea in the countries that did not support geographical indication, such as Britain, United State, Canada, Japan and Egypt. In 1996, the logo of Darjeeling tea was created and successfully registered.

- In 1998, the Indian Tea Committee followed to protect Darjeeling tea under geographical indication in other countries.

- In domestic market, due to the inexistence of law on geographical indication, the Indian Tea Committee got much support to register the tea's logo under certificate of commercial label.

- In February 2000, Indian Tea Committee took an important step to develop a compulsory legal system to certify the reality of Darjeeling tea. Accordingly, the regulations are put in articles of federation law. All the tea distributors have to furnish information of production, processing and commercialization. From this, Indian Tea Committee would make a summary of information and then can manage the quantity of tea sold in the market. When

this law began to be applied, 171 companies producing and commercializing tea) register to implement with Indian Tea Committee. A tea inspection system was created. All databases concerning tea were supervised and extracted from the bills of tea garden, which then became the database for mandators of tea export to certify the origin. Each batch of products would be inspected according to inspection rules and be certified in terms of origin. Only products inspected could be given a license to export as Darjeeling tea.

- Indian Tea Committee was trying to get support of importing market and pointed out the advantages when supporting the inspection rules. These markets should ask for certificate of origin when importing Darjeeling tea.

- In the next step, Indian Tea Committee registered the name Darjeeling in those countries accepting its logo. On August 3<sup>rd</sup> 2001, the United Kingdom and North of Ireland accept the application of Indian Tea Committee, and in October 2002 so do the United States. Among 15 nations that Indian apply to register Darjeeling tea, there were some more countries like Japan, Srilanka and Russia accepted while three countries did not and other seven countries is still taking consideration.

- In September 2003, the law on geographical indication was born in India. This indicated that it was compulsory to register for geographical indication and any GI products that had not registered would not be protected within India. This is a reasonable change to meet with the demand of the European Union regulation 2081/92.

- After the appearance of the law on geographical indication, Indian Tea Committee encouraged to register and protect products under geographical indication according to European Union regulations. The development of geographical indication for Darjeeling tea in 2004 succeeded in taking back product's value and increasing the price of Darjeeling tea four times higher than normal tea.

The process of protecting Darjeeling tea in India is a precious lesson for us in choosing a suitable form to protect local products in accordance with national and international law. Besides, we should pay much attention on the roles of producers' organizations in protecting the right of all stakeholders of the commodity chain.

### *II.1.2.3. Experience in developing GI for coffee in Indonesia*<sup>10</sup>

Indonesia is rather similar to Vietnam in terms of agricultural production . This island country has great potential to develop their products with traditional, geographical and typical characteristics, for example coffee, nutmeg, cocoa, white peppercorn, etc.

Indonesian government considered the protection of their agricultural products and food under geographical indication as an excellent solution to connect their famous products of quality to consumers.

The process applying geographical indication in Indonesia is like Vietnamese one, that i.e. uncompleted institutional environment. Regulations on geographical indication are mentioned in the law of labeling no. 15 in 2001 but there is not any detail indicating the step of GI development. Although until now it has not been very efficient in apply GI in Indonesian situation, Vietnam can learn much from this country.

- Researching activities play an important role to develop institution for geographical indication, particularly the issue of decree guiding the implementation of law on labeling no. 15. Since 2002, Indonesia has got much support from French researching organizations, for instance CIRAD, and INAO<sup>11</sup>. The result of these researches has help Indonesia bodies draft regulations on geographical indication. After the appearance of the draft, many discussions took place with the participation of competent organizations as Indonesian Ministry of Research and Technology , Ministry of Agriculture, Ministry of Police, Ministry of Commerce, universities and non-governmental organizations with the purpose of receiving more agreements of competent organizations as well as encouraging them to take part in the development of geographical indication for their products, from production, commercialization to market protection.
- The first product chosen to develop geographical indication in Indonesia is coffee Bali Kintamani. The steps of this GI development can be illustrated as the followings :
  - *Giving power to farmers' organizations*

Almost all farmers cultivating coffee in Bali are organized in a traditional farmers' organization that not only plays an important role in production but also in religious activities.

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<sup>10</sup> S. Mawardi (ICCRI), J.Avelino, B.Salee, J.J Perriot, D.Sautier, C.Lelong, M.Jacquet, F.Ribbeyer (Cirad), V.Keller (INAO), GI development in Indonesia: Arabica Bali Kintamani coffee is the first case. Presentation of the conference: "Geographical Indication: land for opportunities" in Hanoi on November 15th, 16th 2005

<sup>11</sup> CIRAD: Centre de cooperation internationale en recherche agronomique pour le developpement

INAO: Institut National des Appellations d'Origine

At the place developing geographical indication, there are up to 58 organizations of farmers that operate according to a democratic and unified principle. For this reason, these organizations are so important to the GI development.

The authorities in Bali and the Indonesian Research Institute of Coffee and Cacao, supported by CIRAD and INAO has conducted many training activities for these farmers' organizations in order to improve farmers' capacity in terms of processing techniques, coffee quality management, and tasting techniques, etc.

*- Implementing a unified procedure and improving products' quality*

The production procedure in Bali is pretty unified. Accordingly, coffee is cultivated in organic manner, that i.e. fertilizing coffee with self-produced organic fertilizer, not using pesticide. Coffee is inserted with orange and mandarin trees so that not only the production value increases but also the coffee has special taste and smell. Another activity to raise the quality of the product is changing processing techniques to produce product of quality, fragrant, and at higher acid level.

The local authority supported each organization of farmers a machine peeling coffee skin to apply a new processing procedure whose result brought much efficiency in terms of Bali coffee's quality.

*- Advertisement and promotion*

Indonesian Coffee and Cocoa Research Institute connected coffee producers with a company exporting coffee with the purpose of establishing a world wide and efficient advertisement and promotion system. Accordingly, Indonesian Coffee and Cocoa Research Institute was an intermediate promoting such activities of cooperation as assuring that the exporting company would consume all the products that the farmers produced in a common production procedure; on the contrary the farmers were responsible to supply coffee at reasonable price for the company as indicated in their contract.

The result of this cooperation was that in the year 2004 and 2005, the price of coffee produced according to new procedure doubled, compared with the old procedure.

*- Defining the particularity of the product*

The purpose of this activity is to meet with the demand of the document applying for protection. This can be done in two ways: biological and chemical analysis (assisted by the center of analysis of CIRAD), and perceptible evaluation (done by experts of CIRAD and Indonesian Coffee and Cocoa Research Institute).

Right after the quality of the product is defined, localizing production zone follows. This includes varieties, geography, height, hydrographic system, etc. The information of agricultural planning map is the milestone to choose sample for study. Then the result of sample studying clarifies the relation between product, its height and covering density of shading trees.

*- Training on geographical indication*

To popularize knowledge of geographical indication, Indonesia conducted many training course to furnish non-governmental organizations, lecturers of universities, research institutes, farmers and leaders of farmers with protection system of geographical indication, and approach of evaluating the quality by sense of organ. This would help the foundation and development of geographical indication later.

*- Creating groups and association managing geographical indication*

Organizations of producers, processors, or traders (groups or association) have responsibility of managing GI products. These organizations are assisted by the government in terms institutional frame, by local authorities in terms of finance, advertisement and promotion, and by other organizations in terms of implementing inspection system.

*- Completing registration document*

A registration document that bases on scientific foundation includes:

- Description of product that indicates the name of product, compulsory procedure of production in the farm and post harvest processing procedure, etc.
- Procedure of production and processing
- Map of production (delineation of production zone) including natural and human factors
- Capacity of enquiry: tools to inspect and supervise and document following the product

- Linkage among typical characteristics such as geographical, historical, quality, traditional, and organizational characteristics
- Internal and external inspection mechanism

The result of study and implementation of geographical indication of Bali coffee got precious achievements, that i.e. it was accepted with by global environment, especially with higher price compared with normal coffee. Furthermore, the roles of producers' organization in terms of production management, geographical indication and the roles of local authorities in terms of advertisement and promotion were well indicated.

However, the lack of understanding on geographical indication and appellation of origin still existed in citizens and governmental bodies. GI products had to face with challenges in advertisement and promotion to reach reasonable value, to improve their quality and enquiry ability as well as to operate management system.

Vietnam still leaves its institutional environment open due to the fact that there are not yet regulations on label for the law number 15. What is more, the consumers do not have idea of geographical indication. These make it difficult to treat violation.

#### ***II.1.2.4. Experience of Europe in the development of appellation of origin and geographical indication <sup>12</sup>***

It takes Europe about 100 years to make geographical indication and appellation of origin a tool to protect products in the market. This process includes many different stages, however, in general all the countries like France, Italia, and Switzerland experience the following four periods:

- Period against unhealthy competition of the market: This is the most important stage whose goal is to motivate the construction of institution to protect products in order to reach final objective of creating healthy market. In France, this period occurred from 1905 to 1970 while it took place in Italia from 1716 to 1962 and in Switzerland from 1890 to 1981.

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<sup>12</sup> - *Ana Soerio*, Case studies of geographical indication with Oeste Rocha pear and Alcobaca apple; Experience of Spain. Presentation of the conference "Geographical Indication: land for opportunities" in Hanoi on November 15th, 16th 2005

- *Maria de Jesus Ceia*, History, quality and inquiry capacity: tools to reach the futur. An example of the role of a production corporation. Presentation of the conference "Geographical Indication: land for opportunities" in Hanoi on November 15th, 16th 2005

- *Charle Goemaere (C.I.V.C-V'n phβng li'n ngunh vÒ r- ìu champagne)*. Geographical indication: key factor in rural development. Roles of commodity organizations in supervision system. Presentation of the conference "Geographical Indication: land for opportunities" in Hanoi on November 15th, 16th 2005

- Period regulating market: The purpose of this period is to promote the development and stabilization of the products after being protected. All the policies and solutions of these countries concentrated on stabilize the market and widen the sphere of protection. This period happened from 1970 to 1985 in France and from 1963 to 1992 in Italia, etc.
- Period of rural development: This period proceeded from 1985 to 2000 in France while it began in 1997 in Switzerland. The main function of this period is to make rural development stable, which was a very crucial objective for local and national sustainable development.
- Period acknowledging products in terms of heritage: This stage includes negotiations to make typical products of a country become heritage of the human. This period have just taken place in France since 2000 through the fact that the French government and INAO conducted international negotiation to acknowledge all products of PAO and PGI the international heritage.

The period that makes deep impression to Vietnam is the stage forming regulation 2081/ 92 that was taken the initiative by France. We can summarize some failures and success of this period as the followings:

+ The system protecting geographical indication and appellation of origin in France was established in 1905 in which the government was responsible to define geographical area to protect these appellations. However, the market encountered many problems because of the unapplication of traditional technical procedure and the unsolved pressures and crisis. That was why in 1913 and 1915, there were many demonstrations of grape- fruit producers. This required changes in institutional frame to make the system more reasonable.

+ As a result, a new law was issued in 1919 in which indicated that the court was responsible to determine geographical zone as well as to use geographical indication and appellation of origin. Nevertheless, this law was not so efficient to solve all problems of crisis of using appellations and equality amongst single producers, and the homogene of quality and label as well. This means there should be organizations of stakeholders participating in producing, processing and commercializing the products. This period marked a complete failure of the application of new law .

+ In 1935, the third law came into existence to replace the law of the year 1919 with the participation of judiciary in solving all complanation. The Council and INAO

(defining geographical area, right and regulations of using GI and AO) as well as organizations of producers together organize production and manage geographical indication and appellation of origin. All French regulations became common regulations on geographical indication and appellation of origin of the whole Europe in 1992.

There are precious experiences for Vietnam to perfect its legal frame, especially better the roles and function of governmental bodies and organizations in the process of setting up the right of register the products, supervising and having right reactions towards complain and unexpected problems.

Up to now, all European countries have to obey the rules of the regulation 2081/92 in order to protect their products under geographical indication and appellation of origin. Hence, in the application in Vietnam, we would like to mention only necessary stages to register products as GI or AO products in these countries.

#### ❖ *Role of organizations of producers*

The importance of organizations of producers can be illustrated by the organizations of the producers of Oeste Rocha pear from Portugal. Oeste Rocha pear appeared in 1836. This kind of pear is superior to other pears in terms of form and quality. That was why it became a very favorite fruit and their appellation became popular. However, like other famous products, there was an abuse of the name Oeste Rocha pear. The trader used it to call other pears in the same region, or from other regions. Consequently, the consumers were confused and lose confidence on this kind of pear. Its price reduced, its value degraded. Nevertheless, none of the producers represented to protect the pear as well as their interest because they thought the benefit of this is not only for their sake, but also for every one.

Facing these problems, after the issue of regulation 2081/92, fifty Oeste Rocha pear producers and packagers gathered to protect their common interest in 1992. The association of producer of Oeste Rocha pear then appeared with the main functions as the followings:

- Sharing the same will and point of view towards such activities as providing technical support to improve the quality and homogeneity of the product, using the same standard for commerce and label
- Building together a commercial system with the coherence of traders, developing commercial promotion and widening their market, etc

- Obeying the same production procedure in order to decrease the production cost, stabilizing price in the market and creating reputation for the association it self as well as for the products

Together with above activities is a series of common activities, for example: applying to protect Oeste Rocha pear as an appellation of origin product as indicated the European regulation; managing and preparing to use the appellation of origin; conducting strategy of commercial promotion; maintaining the same channels, enlarging the market to oversea; protecting the right of using appellation of origin in the market against abuse, etc.

With such activities, the Association of Oeste Rocha pear producers was very successful in stabilizing the market, meeting with the demand of customers, and at the same time making an emphasis on the role and responsibility of an organization who protected common interest for its members.

❖ *Building controlling system for GI and AO products*

Building a controlling system for GI and AO products is a compulsory requirement as indicated the regulation 2081/92. In fact, this is a process inspecting and supervising the operation of compulsory production procedure, which emphasizes on the roles of specific characteristics that make deep influence on the quality of the GI or AO products. In this section, we would like to mention to the formation and operation of the controlling system for a very famous French product, that i.e. champagne.

This system includes two levels :

- (i) Internal controlling system: The Bureau of Interprofessional Champagne (including two professional commercial associations) controls the activities of production, processing, and commercialization of all members participating in the association.
- (ii) External controlling system: managed by INAO, the Ministry of Economics (through custom house and anti-fraud- market management department)

In terms of internal controlling system, the Bureau of Interprofessional Champagne includes members sharing the same purpose of taking advantages of the product' s reputation. They are producers, processors and traders. The function of this Bureau is to:

- Managing production like following and taking note production activities of its members; improving the quality and homogeneity of the products, updating the members with information related to production, for instance market and other factors
- Managing market by defining annual productivity, managing packaging activity and the use of label as well as the quantity of the products sold in domestic and foreign markets, moreover, asking its members adjust the label to meet with the demand of the expanding market
- Controlling the quality of the product by using and circulating tools to analyze the quality of the products, all the products are inspected before bottling and named Champagne...
- Protecting the appellation of the product and widening the market: The Bureau can represent its members to complain or protect their right against the abuse of the appellation in the market, and at the same time improving the protection activity through out the world by opening representative offices in other countries.

In terms of external controlling system, it is laid down by law that, the Bureau is the following functions and responsibilities:

- INAO plays the roles as an organization certifying and giving the right of AO use to organizations. It is also competent in evaluating professional organizations whether they are able to use appellation of origin or not thanks to their report and suggestions of other organizations of the same system and the users themselves.
- The Custom House control the quantity of product using appellation of origin and contribution to the government, for example tax, as well as inspecting the reality of the product.
- The anti-commercial fraud has the function of checking the origin of the product in case of suspicion, as well as examining the production procedure and the use of label registered.

Every year, the Custom House, the anti-commercial fraud and the Bureau of Interprofessional Champagne make report of situation of production, of the use of appellation of origin, controlling activities and violations for INAO. Then the committee of appellation of origin considers whether the competent organizations can be able to continue to use the appellation of origin or not.

❖ *Collective brand name and reputation protection*

The main activity of GI and AO organizations is using collective trademark and protecting reputation of the products. As the two products mentioned above, the association of producers of Alcobaca apple serve the purpose of the apple's producers, one of which is carrying out commercial promotions and advertising the apple with common label and trademark, for example:

- The association design flyers, pano, and affiches introducing the products with main feature, quality, label and other activities concerning the products in the market.

- The association lays out common requirements in packaging the products, such as material of the box, style of the box, arrangement of information in the package for all the products using the trademark Alcobaca apple.



*Photo 1: Brand name of a PGI jambon product of Bologna - Italia*

All requirements of content and information orders are in unification. In addition, the unification in using label will closely attach to the protection of reputation, advertisement, and providing information and sign of AO products to the consumers.

## II. 2. Vietnamese institution and policy for GI and AO

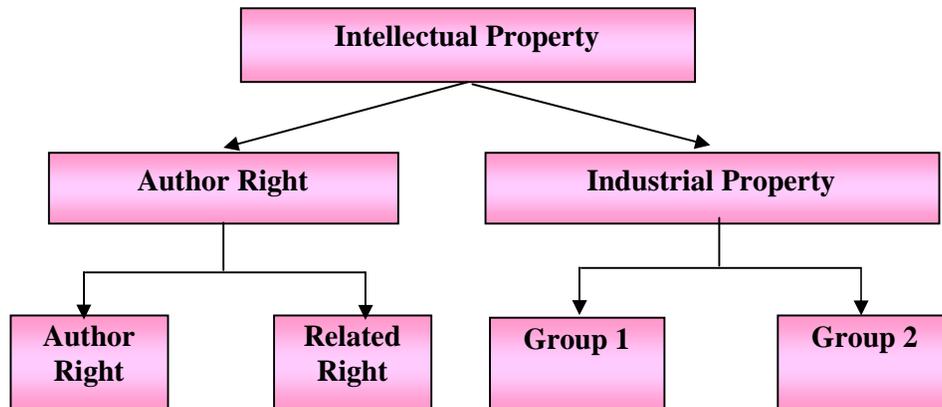
### II.2.1. GI and AO in regulations of institution in Vietnam

#### *II.2.1.1. GI and AO in the intellectual property system*

Intellectual property protection is an activity that stimulates the creation, the innovation of production technique, and encourages a healthy competitiveness among subjects of every economical component, supports effectively other activities as the studies, and the implementation of production and distribution of goods at national level. Then what does it mean by intellectual property? Which object is mentioned in Vietnamese regulations on intellectual property?

Intellectual property is the right to the works that human creates during creation activities and that kinds of works are called intellectual assets<sup>13</sup>. There are two types of intellectual properties: industrial property and author right.

**Diagram 2: Objects of intellectual property that are protected in Vietnam**



1<sup>st</sup> group includes: *Plant varieties*

2<sup>nd</sup> groups includes: *Design of transitory electrostatic circuit, creation, useful solution, industrial design, product label, trademarks, business secret, geographical indication, appellation of origin and right against unhealthy competitiveness.*

The management of protection activities for the above items is the responsible of the professional and competent ministries, such as<sup>14</sup>:

- Author right is protected at the Department of Author Right- Ministry of Culture and Information

<sup>13</sup> Department of Intellectual Property

<sup>14</sup> This was also laid down in the Law of Intellectual property on November 29th 2005.

- Plant varieties (group 1) are protected at the Office of new plant varieties - Department of Science, Technology and Product Quality - Ministry of Agriculture and Rural Development
- The items of the second group are protected at the office of Department of Intellectual Property- Ministry of Science and Technology.

This means geographical indication and appellation of origin belong to group, which is protected as industrial property, and the competent organization issuing protection certificate is the Department of Intellectual Property- Ministry of Science and Technology. All contents concerning geographical indication and appellation of origin were mentioned in 1995. Since then, there have not been many legal documents indicating them in detail. We can name them here easily:

- Civil law of the Socialist Republic of Vietnam on October 28<sup>th</sup> 1995: referring concept of industrial property including creation, label of product, industrial design, useful solution, appellation of origin.

- Decree 63/CP of the Prime Minister issued on October 24<sup>th</sup> 1996, changed and supplemented according to the Decree 06/2001/ND-CP on February 1<sup>st</sup> 2001: prescribing the objects of intellectual property, industrial design, label of product, appellation of origin as well as setting up intellectual property for them.

- Circular 3055/TT-SHCN on December 31<sup>st</sup> 1996 of the Ministry of Science and Technology guided how to implement the Decree 63/CP of the Prime Minister in setting up industrial property.

- Decree 54/2000/ND-CP on October 3<sup>rd</sup> 2006 of the government: indicating the protection of industrial property in terms of business secret, geographical indication, commercial name and protection of the right against unhealthy competitiveness.

- Circular 132/2004/TT-BTC on December 30<sup>th</sup> 2004 of the Ministry of Finance: guiding the receipts, submission, management and the use of fees for industrial property

- Law of Intellectual Property was approved by the eleventh National Assembly of Socialist Republic of Vietnam in November 29<sup>th</sup> 2005<sup>15</sup>.

Geographical indication and appellation of origin are closely attached in terms of industrial property. Their existence cannot separate the existence of a particular geography. In legal documents of Vietnam, they are defined as<sup>16</sup>:

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<sup>15</sup> Due to the fact that this study finished in December 2005 (before the validity of the Law on Intellectual Property), the regulations of the law could not be the base of evaluation and comparison.

<sup>16</sup> According to the Law of Intellectual Property, Appellation of Origin does not belong to the item that should be adjusted by law. The law only expresses the concept of geographical indication, that i.e. "Geographical

"Protected geographical indication is information of geographical origin of the products that meet with the following demand<sup>17</sup>:

- Expressing under a word, a sign, a symbol, or an image to indicate a nation, a geographical zone, or a locality of a country
- Expressing on goods, package of goods, or in transaction papers concerning the selling and buying of goods in order to indicate that those products originate from a country, an area, or a province and their typical quality, prestige and reputation and others are created by geographical origin."

"Appellation of origin is a geographical name of a nation, a locality which indicates the origin of goods (nation or province) in the condition that these goods have typical and specific features, quality based on its unique and prominent geographical condition, including natural and/or human factors.<sup>18</sup>"

In addition, the Decree 54/2000/ND-CP also points out that: if a geographical indication is an appellation of origin, the protection will apply current law on appellation of origin. Thus, according to Vietnamese law, appellation of origin is a special case of geographical indication and requirements of geographical indication for a particular product are supposed to relate to the followings:

- Geographical name of a nation or a locality
- The goods must be produced in the locality
- The goods must have typical features and quality
- The features and quality of the goods are determined by natural, and socio-economical factors of its locality<sup>19</sup>

In such circumstance, it will be difficult to develop geographical indication or appellation of origin without scientific analysis and judgment. A product chosen to develop appellation of origin

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indication is a sign indicating the origin of the product which may be a particular zone, a locality, an area or a country."

<sup>17</sup> Article 10, Decree 54/2000/NĐ-CP on October 3rd 2000 of the government

<sup>18</sup> Civil law of the Socialist Republic of Vietnam on October 28<sup>th</sup> 1995

<sup>19</sup> According to the Law of Intellectual Property, this is considered as a condition to evaluate a geographical indication. It is clearly laid down in the law that geographical features relating to such natural factors as climate, hydrography, geology, topography, ecology and other factors, as well as human factors, for example techniques, skills, traditional production process of the locality decide reputation, quality and particularities of the product. However, there is a difference in the previous regulation (on appellation of origin) and the new one (on geographical indication), that i.e. "particular quality". This notion is referred in article 93, item 2 of the Law of Intellectual Property. Therefore, the lack of "product of particular quality" makes appellation of origin nonexistent in the law. That is why the regulations concerning this should be implemented with legal documents because protection products under appellation of origin are much more efficient than geographical indication.

must have difference, compared with its similar products, and must be produced in a place with special natural and human factor. This makes enterprises, producers, and individual difficult to create an appropriate strategy to develop and protect their trade- mark.

### ***II.2.1.2. Developing geographical indication, appellation of origin and problems of trade- mark***

Developing trademarks for rural products is a terminology commonly used in local development strategy orientation. However, in order understand trade- mark and its value in doing business is not easy. The concept of trademark is not defined in Vietnamese legal document. Some understand it as a label. Others think that it is the name of an enterprise closely attached with its products. In brief, trademark can be defined as the following: Trademark is the value that is mortified systematically from the development of an enterprise in order to create prestige, confidence and habit for customers to use their products and service<sup>20</sup>.

To facilitate this concept, the American Marketing Association gave a very simple definition for trademark: "Trademark is a name, a phrase, a sign, a symbol, an image, a design, or a group of above factors that define, and differentiate a goods, or service of a particular individual or group with those of their rivals."<sup>21</sup>

Then, trademark can be understood as a sign that closely attaches to the product in order to identify it among others

- In the development of market, the changes in trademark move towards continuously in order to create a stronger trademark, with better competitiveness in the market.
- All individuals, enterprises, and association that produces and do business with GI and AO products must obey common regulations of label, and logo of GI or AO. Hence, whenever geographical indication or appellation of origin is acknowledged and protected, they will have a linkage with labels of PGI or PAO. Thanks to this, GI and AO will create the so-call *collective brand name*, which is the property of the community in that area, and cannot be sold or bought like trademark.

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<sup>20</sup> Differentiating label, brand name and trademark. MA. NGUYEN Phuoc Quy Tuong, expert of Technology office- Department of Science and Technology. Kien Giang province

<sup>21</sup> Knowledge and development, 2004/No. 49/Integration and Development – Policies of Industrial Development, No. 10/2004

- Organizations and individual that have the right to use the logo of appellation of origin or geographical indication must decide to use or not to use it. They are forbidden to forward it to others.

The development and establishment of GI and AO is not simple the development or construction of an enterprise or an organization, but it is the development of commodity chain, quality of product and brand name for the whole locality and country. In case of success, it does not belong to a particular individual or organization, but to the community.

Appellation of origin is the way to express the excellent quality and specific characteristic of a product by geographical name of a locality and country. It has a link with the difference in terms of quality, which create a confidence for customers.

The choice of geographical indication and appellation of origin is an efficient strategy to develop and protect trademark for enterprises and association of producers that makes it exclusive in the market in terms of products that closely attach with the name of a locality or a country.

## **II.2. Process of GI and AO establishment**

### **II.2.1. Right of property and using GI and AO**

As indicated in the right of intellectual property, the right of property is a concept that has a linkage with a particular object. Those who have the property right have the right to ask others not to use their property because their property is protected by law. For geographical and appellation of origin, there is still a debate in terms of the owners of GI or AO. For some people, it is the property right of local authority. However, according to the definition of appellation of origin, none of particular individual or organization has the right to own it, but it is the property of the community, of the whole producers, and executives, at local area. Accordingly, one characteristic of AO product is that it belongs to the community, all have the right and responsibility to protect appellation of origin. Those respect regulation of protected geographical indication and protected appellation of origin and have the right to use them are permitted to make use of appellation of origin for their commercial activities.

It is laid down by law that those who have the property right of industrial property is the applicant and representative in protection document. For appellation of origin, "all individuals and

organizations executing their business activities in correspondent locality, and administrative bodies of the locality of appellation of origin are legal to submit the application to register geographical indication.<sup>22</sup>"

The problem is that appellation of origin has to attach to particular product and we have to prove its origin from production to final product. However, if the administrative body of the territory is legal to register the product, they cannot meet with requirement of producing product. This is the unreasonable aspect of the Vietnamese regulation in geographical indication and appellation of origin.

Following regulations, there are two levels of protection in terms of PAO products: the decision of registration and certificate of right of using appellation of origin. The decision of registration is issued when an individual or an organization applies to protect AO product and that document meet with the demand of an AO product. In addition, the certificate of using appellation of origin takes after the registration for:

- Individual, legal person or other applicant carrying production and business activities of products that have particular feature and specific quality at the locality or country whose geographical name meets with regulations on appellation of origin are allowed to apply for the right of using appellation of origin.
- Individual or legal person in foreign countries that have the certificates protecting appellation of origin issued by those countries is legal to apply for the certificate of the right of AO use in Vietnamese market.

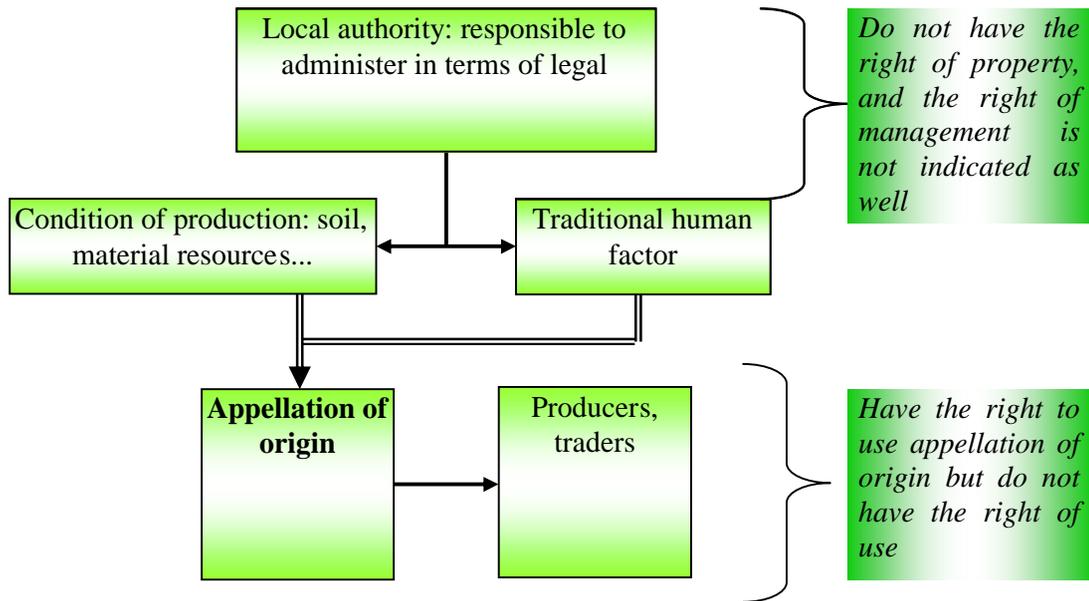
Hence, all individuals, legal persons, producers, executives of AO product have the right to use appellation of origin. Nevertheless, it is not indicated that after the registration which procedure need to be applied for the use of appellation of origin. It is compulsory to prove the origin of the product. All AO products must have a linkage with the natural condition of their localities. So, whether the management of appellation of origin is attached to the management of production condition? This is not referred in Vietnamese regulations. The right of property, management and the right of use still make obstruct for management bodies of intellectual property, administrative bodies at central and local levels, organizations and individuals that desire to use appellation of origin<sup>23</sup>.

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<sup>22</sup> Item 3, article 14, Decree 63/CP of the Government

<sup>23</sup> According to article 121 of Intellectual Property Law 2006, the owner of geographical indication is the state of Vietnam:

**Diagram 3: Right of property, management and use of appellation of origin in Vietna m24**



A difficulty for those who want to use appellation of origin is the linkage between using appellation of origin and production activities. This means that those having the right of using production condition as land, maritime area... and currently produce their product in that condition can be legal to apply for the use of appellation of origin. Evidently, according to current regulations, the right of applying for the registration of AO product and the right of using appellation of origin are now applied for different objects. For example, those only having business activity or function of managing the territory can also apply for the registration, but not the use of appellation of origin.

### **II.2.2. Regulation of document applying to protect AO product**

In order to be permitted to use appellation of origin, the applicants have to apply to protect their AO product to the Department of Intellectual Property. According to Vietnamese law, a document used to apply to protect AO product should include <sup>25</sup>:

- Application form for the certificate of using appellation of origin

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The State give the right of use geographical indication to organizations and individuals that produce GI product at the locality and sell it to the market.

The State can directly manage geographical indication or can give the power to organizations that represent the interest of organization or individuals who have the right to use geographical indication

<sup>24</sup> According to article 121 of Intellectual Property Law 2006, the State is the owner, and manager of geographical indication, or it can give this power to the representative of GI user. But it is not laid down by law in detail the role of the government, ministries, and people committee. This should be clarified in documents issued after the law. The diagram showing the right of property, managing and using geographical indication as indicated by law will be clarified in annex 10.

<sup>25</sup> Circular 3055/TT-SHCN guiding the implementation of regulations on procedure defining the right of industrial property as indicated in the decree 63/CP on October 24th 1996

- Copies of legal business license
- Description of exclusive quality of AO product which is certified by competent bodies (the body managing quality of product at central or local level)
- Certification of competent bodies indicating that the product of applicant has specific and typical feature, and quality and that it is produced in the local corresponding to its appellation of origin
- Map illustrating the correspondent area of the appellation of origin, which indicates place of production and business of the applicant.
- Authorizing paper (if necessary)
- Receipt of submitting application documents and application fee

According to this regulation, in order to complete application document to protect AO product, each body has its own role:

- The State bodies are competent<sup>26</sup> in certifying typical quality of the product, the applicant producing the product with specific characteristics at exact locality as indicated in the document. Then these contents should be proved whether they are true or false in reality.
- Administrative bodies at localities, especially the People Committee, are not clear in responsibilities and rights in defining and certifying application form for protection
- Applicants should have legal business license. In fact, with agricultural product, the production scale of household is very small. Their products can be sold directly to customers without processing, for example fruits. Then whether households of small scale are permitted to apply for the protection of their products or not? Furthermore, whether the professional association that does not have business license but have collective action in terms of production, processing and commercializing and protect the right of producers, can apply to protect AO product? All these matters are not mentioned carefully in current regulations, which show that the roles of civil organizations as association, and trade union are not respected. Meanwhile these organizations are so important, they have decided the success of geographical and appellation of origin in other countries.
- In terms of regulation on the area of geographical indication and appellation of origin, it is not laid down that it is the geographical map of the locality of AO product, or the map restricting the area of production and material for production. In case it is the map

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<sup>26</sup> The Circular 3055/TT-SHCN does not indicate that which is competent body.

of production area, which is the rule for it; which is the council verifying it, whether the competent bodies have to certify it or not?

- At this moment, in regulations on geographical indication and appellation of origin, there is not any document on defining the origin of the products, for instance how is it produced? How to control it so that the consumers believe that it is produced exactly at the protected area?

In such circumstance, the unprotection of registered AO or GI products originates from the lack of legal regulations in order to control them. It is laid down by regulation that a register product must meet with all requirements in terms of document. This means that the first applicant will have the right of use. However, it is over 4 years now since the time Shan Tuyet tea from Moc Chau and Phu Quoc fish sauce was register, none of applicant has the right to use appellation of origin. One reason that can explain this is the inexistence of regulation on controlling the quality of the product. Now there is not any applicant satisfying the French and European standard of quality controlling procedure.<sup>27</sup>

### **II.2.3. Procedure of AO registration and protection**

After the registration of Shan Tuyet tea from Moc Chau district and Phu Quoc fish sauce, there had not been any products registered for 5 years until 2005. However, in 2006, Doan Hung pomalo and Buon Ma Thuot coffee were registered as AO product. Although at this moment, many products are on the way of consideration for AO products at the Department of Intellectual Property, for instance Cho Dao fragrant rice and Hoa Loc mango, etc, it is difficult to register these products. To explain, institution and policy applying for the use of appellation of origin are imperfect. Regulation on delineation of production area, technical procedure and quality management system are compulsory but they seem not to be well referred. That is why there is not any legal base to examine, verify and control all the content of the application documents for AO product.

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<sup>27</sup> These are mentioned and clarified in detail by the Law of Intellectual Property. There are two additional requirements in the article 106:

- The description of specific characteristics: describing corresponding product, including raw material, and physical, chemical, microbiological and perceptible aspects of the product.
- The map illustrating correspondent geographical territory: defining the correspondent area

Some new regulations include:

- + Proof of exclusive quality made by natural condition of that geographic al territory
- + Description of methods of production, processing that have local features and the stability
- + Relation of excellent quality or reputation and typical characteristics of the product
- + Mechanism self- evaluating the specific features, and quality of the product

Now, according to regulations, in order to register and protect appellation of origin, we have to follow six steps:

- Applying document for appellation of origin : It is laid down by regulations that the applicant must submit the document to the Department of Intellectual Property or that the reception office created by the Department of Intellectual Property
- Receiving application document: When the document is submitted, the Department of Intellectual Property examines and considers it according to regulations. If the document is complete, it will be admitted.
- Dealing with the document: After admitting the document, the Department of Intellectual Property makes a copy of application document and verifies it.
- Verifying the content of the document based on the form of application document: The contents verified include the use of language, compulsory information, information of applicant and product, the person applying for the protection, etc. If the information in the document is uncompleted or irregular, the Department of Intellectual Property will announce the applicant within 2 months. The applicant is allowed to justify and supplement more information as required. At that time, can the document considered as valid.
- Verifying the content of the application document based on the study in reality: The purpose of this step is to evaluate the ability to protect the product described in the documents, to define the correspondent area and quantity of the product. In parallel to the verification in reality, the Department of Intellectual Property has the right if held a referendum with the participation of competent bodies and experts that are responsible for their judgment and statement.
- After the investigation of the content of application document in reality, the Department of Intellectual Property issues decision certifying the registration of the product, which indicates clearly:
  - Name and address of legal person asking to protect the product under appellation of origin
  - Number of application document
  - Date submitting the document
  - Name of the representative for industrial property
  - Appellation of origin
  - Correspondent area of the product
  - List of product applying for appellation of origin

- Summary of typical quality of the product
- List of organizations and individuals able to use that appellation of origin (including name and address)
- Registration number of that appellation of origin

Whenever the product is registered as appellation of origin product, that product will be protected forever since the time it is registered by the Department of Intellectual Property. In addition, if the registration procedure is complete, the applicant will be issued certificate of the right of use of appellation of origin, but the applicant must belong to the list of organizations and individual who have the right to use that appellation of origin as indicated in the registration decision. However, although it is laid down that the appellation of origin product will be protected forever, in case typical characteristics change because of geographical factors that decide specific characteristics of the product, the registration decision will become invalid. Apart from that, during that appellation of origin is being in use, the users will be forbidden to use it in the following cases:

- The users do not use appellation of origin continuously in 5 years, or the users does not exist anymore without legal inheritor.
- The typical and specific quality and characteristics of the product are not assured as indicated in application document
- Don't meet with all requirements or don't pay the way for competent bodies evaluating and examining the quality of the product and surveying the specific quality of the product if necessary.

The registration and protection procedures of appellation of origin seem very concrete in Vietnamese regulations. However, it only meets with requirements in terms of general criteria, not in detail. For example, many other contents should be prescribed in regulation as the content that should be experimented or that should be discussed in the conferendum, the scientific base for the test, the way to test and evaluate the quality of the product, as well as the person that conduct the test of the product, etc.

#### **II.2.4. Problems in institution and policies**

At the international conference on geographical indication and appellation of origin organized in Paris<sup>28</sup> in 2005, one of discussing matters was the success of study that motivated the development in terms of institution and policies for geographical indication and a pellation of origin. The most important was that the role of research study and development activities should be clarified. The development of geographical indication and appellation of origin are based on the result of scientific study. In order to build geographical indication and appellation of origin, it is necessary to study scientifically institution, management, market as well as the step to develop geographical indication or ap pellation of origin for a product. To deal with this matter in France, Italia, Switzerland and Spain, scientific result became the base for the development and consolidation institutional and policy system for the management of appellation of origin and geographical indication.

Meanwhile, looking back the development of geographical indication and appellation of origin in Vietnam for 5 years, we can highlight some followings difficulties in policy and institution: There is not really a link between geographical indication and appellation of origin. In fact, appellation of origin is just a special case of geographical indication. Nevertheless, almost all Vietnamese regulations such as Civil Law, Decree 63/CP, and Circular 3055/TT-SHCN only mention appellation of origin, not geographical indication. To be honest geographical indication is just referred to in the Decree 54/2000/ND -CP. That is why almost special products at localities are oriented to develop as appellation of origin. In addition, geographical indication is simply understood as the development of brand name, not the preservation and development of production activities as well as does not bring any benefit to the province. Even before the appearance of Intellectual Property Law, all competent ministries had not oriented to develop product as geographical indication product<sup>29</sup>.

- The institution and policies established do not base on the result of scientific study. In fact, the development takes place before the study activities. That is why it is difficult to apply appellation of origin in reality and to solve problems r elated to appellation of origin.

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<sup>28</sup> Colloque international de restitution des travaux de recherche sur les Indications et Appellations d'origine GĐographiques, Paris 16-17/11/2005

<sup>29</sup> Appellation of origin is not mentioned in the new Law of Intellectual Propety, but geogra phical indication is. However, geographical indication indicated in this law has many similarities with the definition of appellation of origin in Civil Law in 2003, for example typical feature made by natural and human factors. Production procedure is localized and stable... Thus, it is necessary to make clear between geographical indication and appellation of origin by legal documents.

- The content of regulation is inadequate, and unclear. It does not express the role and responsibility of the State (through competent management bodies), and locality in managing territory, administration as well as the role of scientific consultant in the development of appellation of origin, does not separate the right of property, management and the right of use and does not indicate either procedure of protection and solving violation.
- The Law of Intellectual Property in 2005 has many changes now compared with the old one. However, appellation of origin are not mentioned by law while regulations on geographical indication such as application form, protection are similar to regulation on appellation of origin (before the appearance of this law<sup>30</sup>), and to European regulation. It is necessary to make it clearer in order to apply it to reality easily

### **II.3. Institution, policies and point of view of localities**

#### **II.3.1. Role of localities in the activities of industrial property**

The bodies managing industrial property at locality plays a very crucial role in managing and supporting the development of brand name for organizations and individuals in that locality. Being a body of the Department of Science and Technology, the agents of industrial property at the locality have following main functions:

- Guiding stakeholders registering and protecting those of industrial property like brand name, industrial styles, creation and efficient solution, appellation of origin, etc
- Popularizing knowledge and legal documents relating to geographical indication and appellation of origin
- Examining, inspecting and solving violation of intellectual property
- Solving contradiction and complain related to intellectual property
- Studying and proposing solutions to support the development and protection of trademark for enterprises and those of intellectual property

The first and foremost role, also the important role of localities is to popularize and support others in obeying regulation of industrial property as indicated by law. In the current situation, this function just deals with business organizations in terms of supporting them in registering brand name, creation and efficient solutions... The supporting activities for geographical indication and appellation of origin are very limited. The function of solving violation in industrial property does not mention geographical indication and appellation of origin.

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<sup>30</sup> For more detail, please see annex 11

In the development of appellation of origin, for instance Shan Tuyet tea from Moc Chau district and Phu Quoc fish sauce, there is participation of the Department of Agriculture and Rural Development, and the Department of Aquaculture in terms of technique and organizing production.

When exchanging with the Departments of Science and Technology in Kien Giang province, Ho Chi Minh City and Son La province, these competent organizations expressed that it was so difficult in establishing appellation of origin for a product that they want to have support in the content as well as approach to implement.

### **II.3.2. Strategy for development and ways to build brand name**

In April 2005, the government issued decision announcing the program no. 68, which supported enterprises in developing intellectual property, including reforming, maintaining and developing agricultural products of geographical indication. Accordingly, all the provinces through out the country developed their own program of intellectual property, for example Hai Duong province with the program for Thanh Ha litchi, Hung Yen province with Hung Yen longan, Nghe An province with Vinh orange, Vinh Phuc province with Doan Hung grapefruit, Long An province with Cho Dao fragrant rice, and so on so forth...

Although the government and localities invested much for the development of GI products, none of provinces in the country has succeeded in protecting their products under geographical indication. The difficulties that the localities have met with was not only legal frame but also the supporting activities of competent administrative and professional bodies of the government, as well as the lack of civil organization of producers, processors and traders. Procedure of supporting activities was different in each province. Some even did not obey regulations and nature of appellation of origin and geographical indication, for example:

- Assigning business companies to develop geographical indication and appellation of origin: This is very common in provinces. Normally the development of geographical indication and appellation of origin is very expensive and durable, that is why the companies cannot afford to do it, as well as do not have enough personnel to take care of this. On the other hand, the benefit of geographical indication and appellation of origin is for the whole community. Hence, the activities of geographical indication and appellation of origin used to be changed to serve the purpose of the companies, rather than the community.

- The role of producers and farmers was very weak because in some provinces, there were not any association of farmers and processors, if yes; their activities were not efficient enough. The representative of farmers did not use to take part in the construction and development of geographical indication and appellation of origin while they would process and decide production system. The reason for this was that their interest was not focused on. Almost all products that are on the way developing geographical indication and appellation of origin such as Shan Tuyet tea and Vinh orange, etc. did not derive from any organization of producers. If there was an association of producers, it would be administrative and managed by administrative bodies, for instance Long longan from Hung Yen, Phu Quoc fish sauce, etc.
- In terms of registering brand name for the products: Most of the products on the way developing geographical indication and appellation of origin have been registered as collective brand name. If this is not well managed, the development and exploiting of geographical indication and appellation of origin will meet many difficulties after that.

In order to promote the process of establishing and development geographical and appellation of origin, it is necessary to make a procedure in detail for each content. On the contrary, it is also essential to create guiding manual for consulting agents in assisting the implementation and development of appellation of origin and geographical indication.

## SECTION III

### AO DEVELOPMENT IN VIETNAM

#### III.1. AO development and registration procedures of Phu Quoc fish sauce (Nuoc mam Phu quoc)

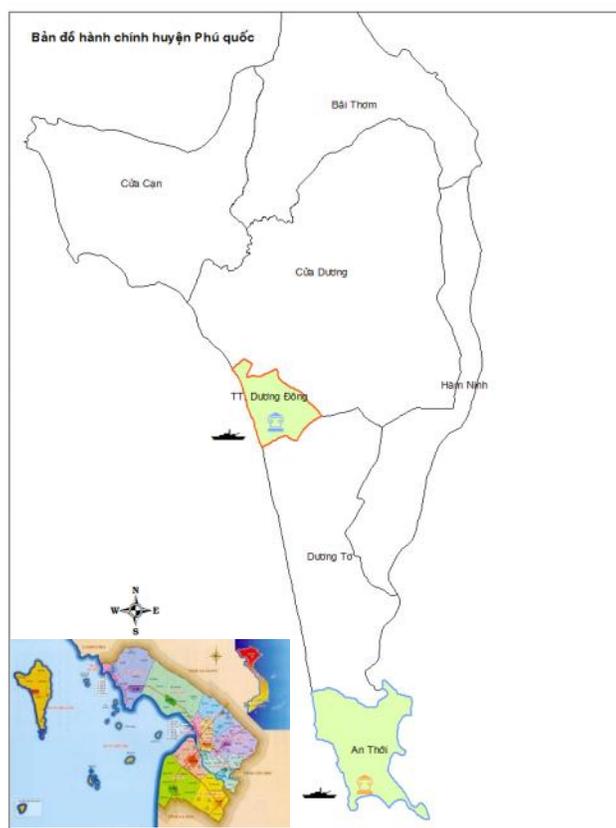
##### III.1.1. Natural, social- economical condition in Phu Quoc

Phu Quoc is the biggest Pacific island of Vietnam. It is situated at  $103^{\circ}29'$  -  $104^{\circ}09'$  of West longitude and  $9^{\circ}48'$ - $10^{\circ}26'$  of North latitude. It belongs to Thailand bay, Kien Giang province with an area of  $593\text{km}^2$ . It includes Phu Quoc Island, An Thoi archipelago and Tho Chau Island. In fact, the island is located at the land border with Cambodia, Thailand and the Thailand territorial water that facilitate economical exchange with other provinces and countries in the same area, specially Cambodia.

Apart from the advantageous geographical location, Phu Quoc is in favor of good climate: the annual average temperature is of  $27.5^{\circ}\text{C}$ , warm all the year round; the average moisture is about 73-88%; the annual rainfall is high, approximately 2000mm. In addition, the province is less affected by typhoon or natural calamity.

In addition, being an island in the middle of Eastern Sea, Phu Quoc has a very rich fishery. The annual productivity of

seafood estimated is 0.5 million ton, including precious and high economical value seafood livelong-jawed anchovy, codfish, tunny, holothurian, etc.



Furthermore, maritime condition, forest resources and tradition of Phu Quoc make it an attracting tourist destination. At this moment, the government is scheming and investing in Phu Quoc to make it a fascinating ecological tourist island.

With the density of 143.7 habitants/km<sup>2</sup>, there are now more than 85 thousands of habitants living in Phu Quoc, including the following ethnicity Kinh, Hoa and Kho-me, among which the Kinh minority occupies up to 97% of the habitants.

Economical activities of the island are very variable but one of the traditional and key activities is aquaculture, which creates profit for the habitants in particular, and the whole district in general. The revenue from aquaculture occupied 30.15% of GDP in 2004. In the tendency of the district development, industrial and tourist service will become key economical activities of the province in 2010.

**Table 2: Production value according to economical branches of Phu Quoc district, (unit %)**

	2000	2001	2002	2003	2004	2005*
<i>Aquaculture</i>	35.92	36.15	31.25	28.22	30.15	27.61
<i>Industry</i>	22.94	22.91	25.49	25.58	25.06	24.01
<i>Agriculture and forestry</i>	20.88	17.98	15.65	15.50	11.00	9.80
<i>Capital construction</i>	3.00	3.58	6.82	7.60	5.30	6.01
<i>Commerce- Material</i>	5.01	5.49	6.34	6.99	8.42	9.55
<i>Other branches</i>	12.25	13.89	14.45	16.11	20.07	23.02
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Statistic bureau, Phu Quoc district, (\*) – estimated data

Fish catching and seafood processing are traditional professions of local habitant. At this moment, there are 1749 ships all over the district. Thanks to annual seafood processing industry, Phu Quoc has created jobs for more than 13625 people that make up 30.25% of the habitants at labor age).

For Phu Quoc habitants, fish sauce and peppercorn are two traditional specialities that attract tourists and on which many local household live their livings.

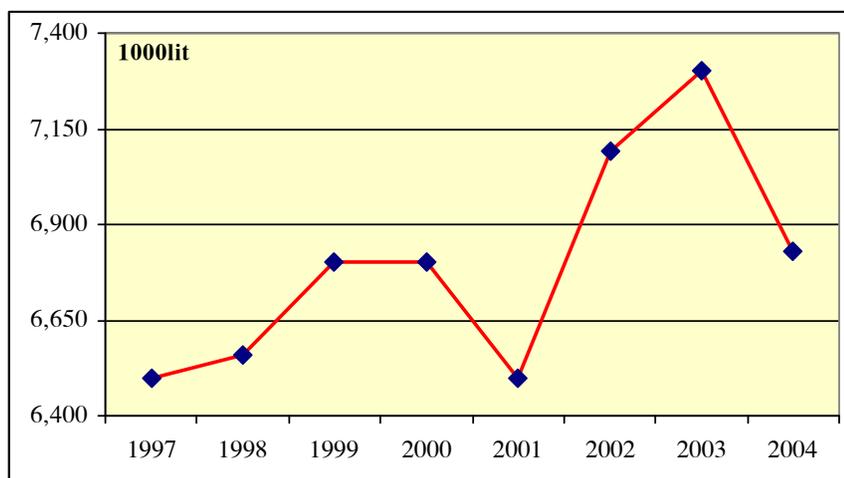
### **III.1.2. Fish sauce production system in Phu Quoc**

Producing fish sauce has been a traditional occupation of the coastal habitants in Vietnam. Further more, fish sauce has long time been considered as a traditional and cultural product. From the point of view of Prof. Huard in the book entitled “Connaissance du Vietnam” which was published 50 years ago , fish sauce is defined as a salty liquid of protein deriving from the disintegration procedure of fish meat. This kind of product is produced in different manners following the situation and custom of different provinces . As a result, the tastes and the protein levels of these products are also different. In Phu Quoc Island, the rich source of anchovy is condition to produce fish sauce of excellent quality, particularly protein level<sup>31</sup>.

#### *❖ Characteristics of fish sauce production in Phu Quoc island*

According to the habitants, fish sauce production has been a traditional activity of Phu Quoc island for hundreds of years now. Many households in this island have been famous for their fish sauce, for example Hung Thanh, Hong Dai, Hong Hanh, etc. Although there was changes in fish sauce production activity due to the difficulty in input material, the productivity of fish sauce increased from 2001 and 2003. Nevertheless, this number reduced from 2003 to 2004. Every year, this island provides domestic and exporting markets with approximately 7 millions litre of fish sauce.

**Graphic 3: Fish sauce productivity of Phu Quoc district**



Source: Statistic Bureau of Phu Quoc district

<sup>31</sup> The protein level of Phu Quoc fish sauce in the market changes from 20<sup>0</sup> to 60<sup>0</sup>, the natural protein level after soaking is up to 36-40<sup>0</sup>. Meanwhile, the protein level of other fish sauces produced in such provinces as Cat Hai, Nha Trang is only under 30<sup>0</sup> (According to result of the survey on fish sauce consumption system in Ho Chi Minh city which was conducted by the Vietnam Institute of Agricultural Science and Technology in September 2005

At this moment, the fish sauce production system in Phu Quoc can be characterized as the followings:

- The total number of fish sauce production stations is 85, which can be classified into two kinds: members of the Association of Phu Quoc fish sauce producers and those who are not members of the Association. This association was founded during the time developing appellation of origin for the fish sauce. Now the Association has 76 members in principle but in fact, only one third of them takes part in the activities of the Association.
- Almost of fish-sauce producing households register to become limited companies. This is compulsory so that the administration can manage in terms of tax, environmental sanitation, etc. In addition, at the same time this facilitates household in such activities as collection and selling products.
- The scales of these producing stations are much different from each other. While some households have only from two to five barrels to soak and keep fish sauce, others may have over 100 barrels. The difference in scale shows economical potential as well as their impact on both material market and market for consumption. The scales of fish sauce producing households and the percentage of households according to their scale can be illustrated in the following table:

**Table 3: Proportion of producing establishments according to production scale**

	<i>Unit</i>	<i>Quantity</i>	<i>Household scale (containers/ household)</i>
Total of households	Household	55	23,7
<i>In which:</i>			
Households of small scale	%	76,7	<30
Households of medium scale	%	16,3	30-50
Households of large scale	%	7	>50

Source: Survey of VASI, 2005

- Many fish sauce companies have recently changed producing activities due to the professionalization in production. The number of establishments that directly fish decreases now. Instead, there is a particular fishing system and collecting materials.

**Table 4: Percentage of households according to their function**

<i>Types of household</i>	<i>Function</i>	<i>Percentage (%)</i>
1 <sup>st</sup> type	Fishing+ buying material- soaking- bottling- selling in their own label	9.1
2 <sup>nd</sup> type	Fishing+ buying material- soaking- selling in can	12.7
3 <sup>rd</sup> type	Buying material- soaking - bottling – consuming + selling in can	27.3
4 <sup>th</sup> type	Buying material- soaking – selling in can	50.9

Source: VASI survey, 2005

These types of households are different in terms of activities and their effect on Phu Quoc fish sauce market. The first type of households plays a very important role because their economical competent is great and their trademark is well known in the market. Thus, their opinion is considerably valuable in the fish sauce production system now. We can make a brief of their activities as the followings:

<b>No.</b>	<b>Types of household</b>	<b>Activities</b>
1	1 <sup>st</sup> type	<ul style="list-style-type: none"> <li>- Active in input material, potential in capital-&gt; governing the fishing system of input material by fishers' credit</li> <li>- Using their own label, having a high position in domestic and export to international market, being consumers of the rest of households</li> <li>- Being able to control household of small scale in terms of the price of input material</li> </ul>
2	2 <sup>nd</sup> type	<ul style="list-style-type: none"> <li>- Almost of them does not have their own fishing system and 100% of their fish sauce is sold under material fish sauce (in can without label)</li> <li>- Activities in doing business because they have good relation with companies in Ho Chi Minh City, rather big scale of production, providing stable productivity frequently, their activities less depend</li> </ul>

		on the 1 <sup>st</sup> type of households
3	3 <sup>rd</sup> type	<ul style="list-style-type: none"> <li>- Do not have ship for fishing, buying input material to process, and average scale of production (more or less 30 containers / household). Therefore, they can be very active in their business and relation with companies in Ho Chi Minh City.</li> <li>- Their fish sauce is consumed under two kinds: 10 - 15% of their fish sauce is bottled by hand, with their own label, mostly for tourist on the island; the rest is sold as material fish sauce</li> </ul>
4	4 <sup>th</sup> type	<ul style="list-style-type: none"> <li>- Small scale, all their activities depend on material market and fish sauce market.</li> <li>- Do not have their own trademark, using the trademark of other producers.</li> </ul>

According to a study on production activities of Phu Quoc fish sauce, although most of producers register as enterprises, these installations has many characteristics of a producing family. With households of small scale (about 30 containers/ household), it is difficult to make their own trade-mark and be self- control in the market, especially they are located in an island far from main land. Creating an association of producer is the desire of almost these households, local authorities and other branches. This is also a solution to develop appellation of origin.

### **III.1.3. Registration procedure, production and consumption of Phu Quoc fish sauce**

#### ***III.1.3.1. Registration procedures of Phu Quoc fish sauce***

Fish sauce is a traditional product of the Vietnamese. Being a country with long costal beach and rich in sea product, Vietnam has many famous fish sauce, such as Phu Quoc fish sauce from Kien Giang province, Nha Trang fish sauce from Khanh Hoa province, Cat Hai fish sauce from Hai Phon province, etc. Phu Quoc fish sauce was developed as AO product since 1998, when the Vietnam and French governments signed a memorandum of understanding on opposing the imitations and protecting AO products in Hanoi. In other words, the two governments made agreement to protect their products together. Accordingly, Vietnam would protect French AO products like cognac. On the contrary, France would help Vietnam to construct appellation of origin. Up to now, Vietnam has protected Cognac product

for France, but its AO products as Phu Quoc fish sauce and Shan Tuyet tea have been only registered, but not protected in Vietnam, France or Europe yet

After this Agreement, the French Economic Mission Bureau in Hanoi has supported the Ministry of Aquiculture of Vietnam to complete the protection form for Phu Quoc fish sauce.

This procedure can be highlighted as the following:

- On September 21<sup>st</sup> 1998, a group assisting the AO procedure for Phu Quoc fish sauce in Kien Giang was founded according to the decision of Ministry of aquiculture, number 550/Q -BTS. Its function is to support Kien Giang province and Phu Quoc district in completing protection document for Phu Quoc fish sauce, apart from that to popularize the benefit of appellation of origin, the rights and responsibilities of the users of AO products. However, this group ceased to work after the registration of Phu Quoc fish sauce. That is why the advertisement of the product, the support for the Association of Phu Quoc fish sauce's Producers in operating, developing commodity chain of appellation of origin and applying for the right of use, etc. met so much difficulties and no direct support. In addition, the Gouvernement was not yet established any administrative bodies managing and consulting geographical indication and appellation of origin at central and local levels.
- On October 4<sup>th</sup> 2000, the Association of Phu Quoc fish sauce's Producers was founded, representing for all Phu Quoc fish sauce producers. Allowed by the People Committee of Phu Quoc, this association was responsible to protect their common right and comply with all the necessary formalities to apply Phu Quoc fish sauce for an AO product. Although having operated, the association did not receive its decision of foundation from the People Committee of Kien giang province as cited in the legal decree (decree 88/2003 of the government) until October 2005. Actually, it is essential to supplement the capacity of legal person for the association.
- From August to September 2000, there were many workshops on appellat ion of origin with the participation of French experts (Interprofessional Bureau of Cognac, French Embassy in Hanoi), French Economic Mission, Department of Industrial Property, Ministry of Aquiculture and local bodies and producers that oriented the devel opment of appellation of origin for Phu Quoc fish sauce.
- On 11/05/2001, the association of Phu Quoc fish sauce submitted their application for AO registration. In this document, the Association mentioned all aspect of specific quality, production condition as material, area providing material, etc. At this moment,

the Association of Phu Quoc fish sauce's Producers still did not receive the decision of foundation of Kien Giang province according to the decree 88 of the government but only the decision that acknowledge its executive board from the People Committee of Phu Quoc district.

- On June 1<sup>st</sup> 2002, that means after only 20 days from the time submitting the application form, the Department of Intellectual Property made decision accepting the AO registration of Phu Quoc fish sauce. Since then, Phu Quoc fish sauce has been protected exclusively in Vietnamese territory.
- Since the time registering Phu Quoc fish sauce as an AO product, the Association of Phu Quoc fish sauce's producers and producing installations in Phu Quoc district and Ho Chi Minh City have made great effort to increasing their efficiency in production and business. For instance:
  - The enterprises producing fish sauce in Phu Quoc register their own label name.
  - The Association has guided its members in using such sign as AO (Appellation d'Origine).
  - The Ministry of Aquaculture has created regulations controlling and certifying appellation of origin for Phu Quoc fish sauce, including the clause indicating that only the fish sauce that is bottled in Phu Quoc district can be name Phu Quoc fish sauce.

There was limitation in preparing to be issued the certificate of using appellation of origin inside the association and its members. Thus, there has been not any production unit receiving the certificate for the right of AO use. One of the reasons lies in the fact that no detail related to the right of AO use has been referred in the legal document in Vietnam. This explains why the Association of Phu Quoc fish sauce's Producers do not know how to do in order to have the right to use AO as a tool to protect their products in the market.

- In order to solve these difficulties, in May 16<sup>th</sup> 2005, the Ministry of Aquaculture issued temporary regulations to control and certify Phu Quoc fish sauce as an AO product. However, it was very difficult to implement the regulations due the fact that even the Association of Phu Quoc fish sauce's Producers and the Kien Giang Department of Aquaculture did not know how to deploy these regulations. Until now, all organizations at the national and local

levels are making great effort to find solutions for efficient use of such AO product as Phu Quoc fish sauce.

### ***III.1.3.2. Organization and activities of Phu Quoc Fish sauce's Producers***

#### ***Association***

The association of Phu Quoc fish sauce' producers was founded thanks to assistance of experts on appellation of origin of the Ministry of Aquaculture . The purpose of this association is to apply to protect fish sauce and manage appellation of origin for Phu Quoc fish sauce. The regulations and directions of operation specify the role of the association towards its members as the followings:

- Exchanging experience and supporting members in production and business activities
- Protecting the right of its members
- Popularizing regulations of the government and consulting its members in terms of fish sauce production
- Guiding its members to follow technical procedures and regulations laid down by competent ministries and branches
- Stabilizing input material and price of the product

At the very beginning period, the association had 76 members that produce and make business with fish sauce. Since 2001 and 2002, the association has conducted many supporting activities for its members, for example:

- Providing them with market information, and circulating legal documents and policies of the government
- Completing application document to protect Phu Quoc fish sauce under appellation of origin and succeeding in registering it at the Department of Intellectual Property
- Assisting and guiding 20 households registering their brand name and issuing regulations of common label and design

However, since 202, the association has met many difficulties. The points of view of members in the association have not been consensus. The members have not supported each other. This leads to contradictions inside the association.

**Table 5: Proportion of production households giving idea about the activities of the Association of Phu Quoc Fish sauce' Producers**

No.	Types of idea	Proportion of investigated households
1	Do not know that "I am a member of the association"	3.3
2	Do not understand the purpose of participating in the association	13.3
3	Do not believe in the association's activities	56.7
4	Supporting the association's activities	26.7

*Source: Results of VASI survey, 2005*

Households that support activities of the association focus on medium enterprises that are independent, and self- control and those that can sell their products to Quoc Duong Company<sup>32</sup> at fixed price according to different period. Meanwhile other prices must base on the price of Quoc Duong Company to buy fish sauce. Thus, Quoc Duong Company (whose director is the president of the association ) contradicts with other large enterprises that have their own trademark in the market, for instance: Hung Thanh, Hanh Phuc, etc.

These contradictions can be summarized as the following (as explained the opponents of Quoc Duong Company)

- The activities of the association are not open and efficient because the association only focuses on developing reputation and benefit for Knorr products while other trademarks of enterprises in Phu Quoc are not paid much attention. The management is not consensus and approved by its members. The cost of operation is not either public. The Vice- president who manages An Thoi area complains: “After one year operating, I am not allowed to discuss all the matters in the association and don't know financial situation as well as direction board of the association”.

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<sup>32</sup> Quoc Duong Company signs a contract of bottling products for Knorr Company. Its directrice is also the presiden of the Association of Phu Quoc fis h sauce's producers

- Quoc Duong Company signs a contract indicating that it will buy products of the members of the association but it breaks the contract. The collecting price of this company is from 100 to 200 VND/ litre higher than normal market. In fact, the company can only produce 2000 litres of fish sauce per years (compared with 6.8 millions of litres/ year of Phu Quoc island). That is why many enterprises consider this as breaking the market and destroying other enterprises. Quoc Duong Company forms a system of small enterprises selling their product to the company and these enterprises become nuclear of the operation of the association. This makes the contradiction between Quoc Duong Company and other enterprises in the association more serious. Hence, in fact, this can be understood as the contradiction of interest between big enterprises in Phu Quoc Island.

We cannot deny the role of Quoc Duong Company in creating equality for small enterprises in the fish sauce market when its price is the base for these small enterprises selling their products. Almost all producers want to sell their fish sauce to Quoc Duong but the Company cannot afford to buy all.

**Point of view of the president of the Association of Phu Quoc fish sauce' producers, Mrs. NGUYEN Thi Tinh:**

- The producers are not well aware of appellation of origin but they still support to protect it. I would like get support from the government in order to operate the association efficiently.
- At first the association did not understand the importance of appellation of origin development, moreover, the registration and protection procedure for fish sauce was extremely slow. In addition, the association was late in issuing documents related to fish sauce (for example did not create standard for Phu Quoc fish sauce) and there was not any guidance to implement these documents in reality.
- The association does not make producers aware of the benefit and the importance of protecting Phu Quoc fish sauce as an appellation of origin product.
- The association does not know how to protect the product and how to let its members to use the appellation of origin from the time registering it. When there is new regulations, the association meet many difficulties in implement them in terms of finance and human resources. The protection has not brought legitimate benefit for its members, that is why the members donot much support it.
- I would like a competent body support us in building appellation of origin for Phu Quoc fish sauce, from the organization of the association, carrying out regulations, advertising the product and commerlizing it with market promotion.

*(Ideas quoted at the conference " Prosperity to develop appellation of origin for Phu Quoc fish sauce " on 25th August 2006 at Phu Quoc district; Kien Giang province)*

However, considering the role of the association as a representative of producer, the Association of Phu Quoc fish sauce's producers has many limitation, especially in protecting

the benefit for its members. During 4 years operating, the biggest role that the association did is to informing 73.3% of its members with legal documents. However, the association did not guide them to follow instructions of these documents.

**Table 6: Members' opinions on supporting activities of the Phu Quoc Fish sauce Producer Association (unit: %)**

No.	Supporting activities	Percentage of households (%)*
1	Facilitating the commercialization through Quoc Duong company	13.33
2	Assisting manufacturing technique	0
3	Assisting the development of monopole trade mark	42.22
4	Diffusing legal document to establishments	73.33
5	Doing nothing	17.78
6	Do not protecting the members' interest when Quoc Duong company breaks the contract	54.37

Source: Results of VASI survey, 2005, (\*) Proportion of investigated households according to main content

In the coming period, the association determines to consolidate the organization and roles of the association in order to fulfill the task of a representative of the producers. 64.4% of the members still want the association exist. This is very good to develop and make condition for the use of appellation of origin

❖ *Production system of Phu Quoc fish sauce in other provinces*

Apart from Phu Quoc district, other province also produce fish sauce called Phu Quoc, for example Rach Gia town- Kien Giang province and Ho Chi Minh City. The producers of these provinces have different scales and features:

- Most of producers and processors of Phu Quoc fish sauce concentrate s in Phu Quoc district and Ho Chi Minh City. Nevertheless, Ho Chi Minh City provides the market with the biggest quantity of fish sauce: 10 millions of litres per year.

**Table 7: Fish sauce production system under the name of Phu Quoc**

No.	Location	Number of establishment	Productivity (million of litres)	Source of material
1	Phu Quoc district	86	6.83	Producing at the island district
2	Rach Gia town-Kien Giang province	9	4.7	Producing at the locality
3	Ho Chi Minh City	155	10	Phu Quoc: 55% Phan Thiet, Nha Trang, Rach Gia: 45%

Source: Department of Aquaculture of Kien Giang province, Department of Agriculture and Rural Development of Ho Chi Minh City. Statistic of 2005

The productivity is converted to 30<sup>0</sup>protein. There are 25 millions of litres of fish sauce at the level of 12<sup>0</sup>protein which are sold in the market including seft produced fish sauce and those from other province )

- In Rach Gia town, Kien Giang province, there are 9 fish sauce producers that use the name of Phu Quoc now. These producers take raw material from Kien Giang sea (including Phu Quoc Sea), then soak, and process fish sauce. The majority of Phu Quoc fish sauce's productivity comes from Kien Giang fish sa uce Stock Company (2 million litres/ year) while the rest of producers are enterprises created by families (average productivity is about 330 thousand litres/ year and the level of protein is about 30<sup>0</sup> ). The markets consumed their products include Mekong Delta provinces and Ho Chi Minh City. At this moment, in Rach Gia town, 20 agents mix, process, bottle and sell fish sauce in their own brand name.
- There is a diversification in the function of producers in Ho Chi Minh City, however, their main function is to mix, process, bottle and sell the product. The fish sauce material comes from many different sources, but the majority of the final product takes after the name of Phu Quoc and some other provinces. We can classify these producers as the followings:
  - Big producers with their own trademark: They are mainly big enterprises in Phu Quoc Island. In fact, they create their branch in big city to reduce the cost of bottling and transportation. These include such companies as Hong Hanh, Hanh Phuc, Hung Thanh, etc.

At this moment, there are about 20 big producers like this with their own trademark, label and package.



*Photo 2: Label of Phong Hung Company - a fish sauce producing installation in Phu Quoc and Ho Chi Minh City*

- Small producers have diversified products. However, they only mix and process fish sauce and then sell directly to the consumers. These producers do not have either their trademark in the market nor their private label and package. Among 155 producers in Ho Chi Minh City, most of them are small producers.

### ***III.1.3.3. Consuming channels***

Due to different producing scale of households, there are particular traits of Phu Quoc fish sauce consumption, representing the level of market penetration of different households. The distribution system of Phu Quoc fish sauce can be described by three main channels:

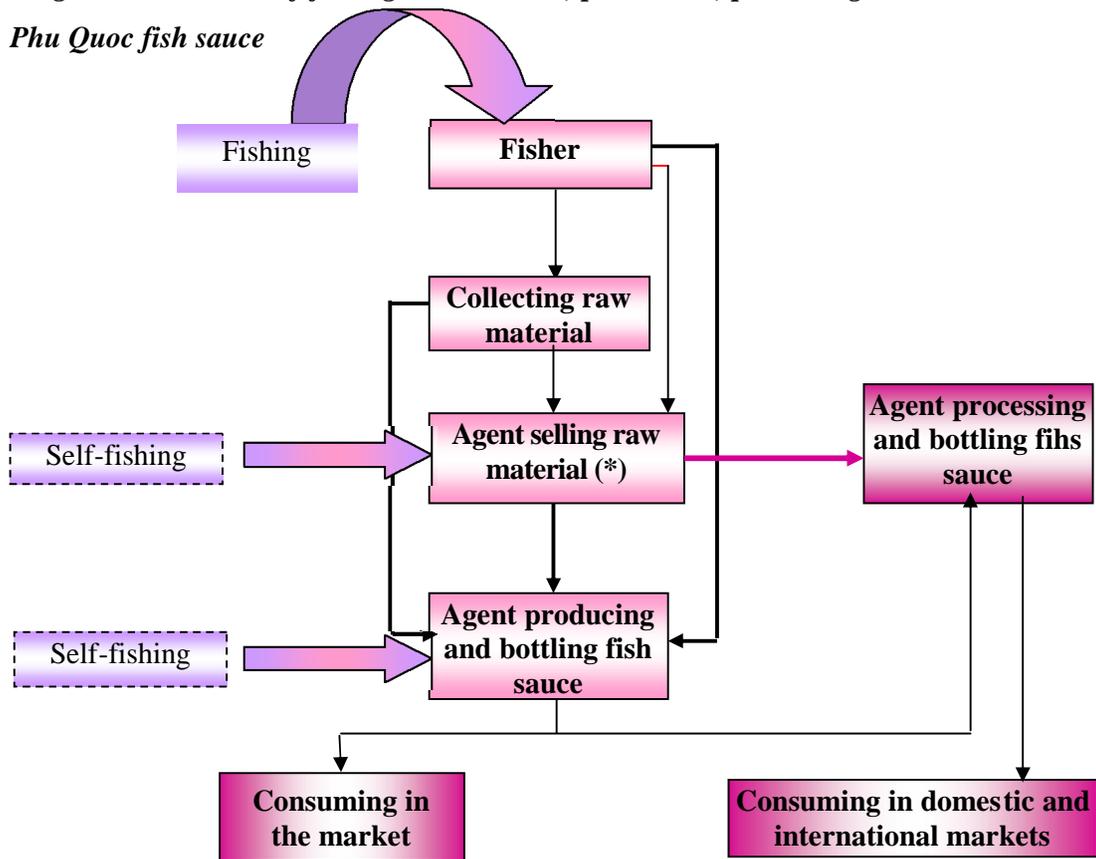
➤ *Selling directly to consumers:* The households bottle fish sauce themselves and retail the product or sell them to tourists. Each household use their own label and they have their own brand name in the market. This kind of selling focus on the first and third types of households as indicated in the section II.1.2.1. The productivity of fish sauce sold in this way only represents 1-2% of the total Phu Quoc district' fish sauce productivity.

➤ *Selling to bigger producers*: The fish sauce is sold to such great producers as Quoc Duong- Knorr, Hong Hanh, Hong Dai and Hung Thanh.... that have installations of processing and commercializing in Ho Chi Minh City. The biggest company is Quoc Duong- Knorr enterprise that has automatic bottling chain and has 17 producers of average scale who share action in the company and usually provide the company with 50% of their fish sauce. After that, these producers will make up, bottle, and sell to the mainland. This is the way conducted by households of small scale. Frequently they sell in the cans of 20 liters. These households do not have their private brand name, so they have to rely on others to maintain their production. About 18% of Phu Quoc fish sauce productivity sold in this way.

➤ *Selling to enterprises in Ho Chi Minh City*: This is the main distribution channel of Phu Quoc fish sauce, which occupies 80% of Phu Quoc fish sauce productivity. About 155 enterprises in Ho Chi Minh City buy fish sauce from Phu Quoc to make up, bottle, and sell them under their own trade name. However, these enterprises not only buy fish sauce from Phu Quoc district but also from Phan Thiet and Nha Trang province. Therefore, Phu Quoc households do not have their own trade name and depend totally on the operation of Ho Chi Minh enterprises. At this moment, about 10 big enterprises in Ho Chi Minh City originate from Phu Quoc province among the 20 enterprises using appellation of Phu Quoc for their products.

With the above kind of selling, the consuming channels of Phu Quoc fish sauce can be illustrated in the following diagram:

**Diagram 4: Channel of fishing raw material, production, processing and commercializing Phu Quoc fish sauce**



(\*) – The function of this agent is soaking fish sauce, then sells to other agent to process, mix and to bottle the fish sauce

Commercial system of Phu Quoc fish sauce develops considerably and varies all over the country. However, it meets a number of difficulties because it does not define its orientation and strategy to build appellation of origin for fish sauce. To specify:

- Quality controlling procedure according to channels of products: The quality controlling procedure encounters much difficulty in case that 80% of the product is bottled in Ho Chi Minh City and from 85% to 90% of the product is not directly made up by its original producer. Thus, fish sauce producers donot play any role and donot have any responsibilities if a problem is found. Dealing with such reality, it is so crucial to group all producers, especially small produce rs, to make a common quality controlling system to in order to protect the origin of the product. However, they cannot do this by their own since they can control only one part of the commodity. Hence, the cooperation with such companies as distribution an d bottling is essential.
- The diversification and inunification in terms of protein level, bottle capacity, as well as fish sauce material shows that there is a need of strict regulations for quality gam of

Phu Quoc fish sauce as an AO product. According to the survey of supermarkets in Ho Chi Minh City, each company produce many kinds of product, some product is only at 20<sup>0</sup> of protein level, but others exceed normal protein level, for instance Hanh Phuc and Trung Vi companies. This derives from the fact that these companies condense their fish sauce from natural fish sauce.

**Table 8: Some characteristics of fish sauce products in Ho Chi Minh supermarket**

<b>Company</b>	<b>Types of products according to protein level (types)</b>	<b>Types of bottles according to bottle capacity (types)</b>	<b>Minimum protein (..<sup>0</sup>N)</b>	<b>Maximum protein (..<sup>0</sup>N)</b>
Lien Thanh	5	5	20	40
Thuan Phat	1	1	40	40
Nha Trang APT	2	5	25	40
Knorr	3	3	25	38
Mavi	1	1	40	40
Hanh Phuc	2	4	50	60
Hong Hanh	4	2	25	40
Thanh Ha	1	2	40	40
Hung Thinh	2	2	35	40
Phu Gia	1	1	35	35
Trung Vi	1	1	60	60
Tuong Lai	2	1	30	40

SASCO	2	2	38	40
Viet Hung Hai	3	3	30	38
Duong Dong	3	2	30	35

*Source: Result of VASI survey, 2005 – Products in Ho Chi Minh super market*

Actually, no enterprise has the right to use appellation of origin of Phu Quoc fish sauce. As a result there is not any common sign to recognize Phu Quoc fish sauce.

- A very common problem that the producers encounter when selling their fish sauce in the can of 20 litres is their capacity of negotiation and decision in commercial transaction. According to the survey, 100% of producers selling their fish sauce in can to city enterprises claim that they are in a disadvantage compared with companies in the city since the fish sauce undergoes quite a loss (1 can of 20 litres loose from 1 to 1.5 litres, which means the can of 20 litres becomes 21 to 21.5 litres). However, these companies said that the way measuring fish sauce of Quoc Duong Company could solve this problem because they use a measuring machine like the machine selling petrol. Besides, when the producers telephone the companies in the city to tell that they would like to sell their products to them, the entire requirements on quality and way of payment is negotiated on telephone. After that, the products are transported to Ho Chi Minh City. The control of protein level and selling price are taken place in Ho Chi Minh City without the participation of producers. This decreases their capacity of negotiation. According to the producers, the buyers often inform them that their protein level is lower than reality. Thus, the two partners lose confidence in each other. Consequently, commercial transaction becomes more and more risky and it is difficult to create sustainable relation as well. The protein level in fish sauce plays important role in deciding the price of the products. If the protein level is under 35N, the price decreases 500 VND/litres. Accordingly, it reduces 400 VND/litres if the protein level is from 30 to 35N and 250 VND/litres if the protein level is from 25N to 30N.

- The enterprises processing the products can use many ways to change protein level of the products, for example using big pressure cookers to force water out so that the protein level is higher or put more water to reduce protein level. This means after

#### **POINT OF VIEW OF PRIVATE ENTERPRISE THANH VY**

Directrice: PHAN Thi Tuyet Mai  
Address: An Thoi town- Phus Quoc district

The private enterprise Thanh Vy is one of small fish sauce producers in Phu Quoc district. The enterprise has 28 containers of average scale (10ton/ container), but it provides the market with annual productivity of 15 containers of fish sauce, that i.e. about 93,000 litre at the protein level of 25- 38<sup>o</sup>N because it rotates the containers all the year round. This enterprise does not have its own fishing ship. Frenquently it buy raw material from others to keep, soak and make up and then sell the fish sauce.

*Consuming the products:* This enterprise applies three consuming channels: selling to Knorr Company, selling to companies in Ho Chi Minh City or bottling and selling by itself. Previously the quantity of fish sauce sold to Knorr Company made up 45% of its total productivity, but it has reduced recently to 13- 15% because Knorr Company has changed its policy of buying and collecting fish sauce. Accordingly, the company signs a contract with producing enterprises without indicating any kind of punishment if finally it decides not to buy the fish sauce. On the contrary, these producing enterprises will be fined if they donot provide Knorr with enough quantity as indicated in the contract. This inequality makes producing enterprises unsatisfied and donot want to sell their products to Knorr Company. Moreover, the time for payment is always late. The second consuming channel of Thanh Vy enterprise is self –bottling and selling directly to consumers. However, this quantity is rather small (about 500 litres/ year). The main purpose of this consuming channel is introducing their fish sauce to tourists and non-residents. The main conuming channel of this enterprise is selling fish sauce in cans to companies in Ho Chi Minh City so that these companies can mix, make up and bottle the fish sauce. The quantity of fish sauce being sold in this channel occupies 85% of the total productivity. This is also the most popular consuming channels of small producers and producing enterprise in Phu Quoc: selling without their private trademarks.

*Source: VASI survey, 2005*

leaving producing enterprise in Phu Quoc Island, the quality of fish sauce does not remain as its authentic and original quality.

Currently the complexity of distribution channels of Phu Quoc fish sauce show that the construction of quality management and quality controlling system as well as the right of using appellation of origin need to be taken into consideration to serve common interest of the community. This complexity has been acknowledged by the authorities of Kien Giang province and Ho Chi Minh City, Ministry of Aquaculture and even National Assembly.

#### ***III.1.3.4. Employing AO and benefit after the registration***

The appearance of appellation of origin is an important solution to increase the value of products in the market. In addition, it can help recovering and developing specialities at the risk of disappearance in production system. For Phu Quoc fish sauce, which benefit that the construction

of appellation of origin and registration of the fish sauce can bring to Vietnamese producers, traders and consumers? This is mentioned in some following contents:

➤ *Limited information of Phu Quoc fish sauce of appellation of origin in the market*

Information of the products is a factor stimulating the level of consumption. For Phu Quoc fish sauce, it is already known as a speciality of Phu Quoc Island. However, there is still limitation in enlarging the market for this product. The market survey taken in Hanoi and Ho Chi Minh City, the two biggest cities in Vietnam, show that:

- In each place, we inspected 10 supermarkets where there are many kinds of Phu Quoc fish sauce. In terms of Ho Chi Minh market, the label of Phu Quoc fish sauce produced from anchovy is very popular. Each supermarket consumes products of 8-15 enterprises. Meanwhile, in Hanoi market, there is less kinds of Phu Quoc fish sauce. Only Knorr products are popular in this market. Especially, Phu Quoc fish sauce that is produced from white butterfish occupies this market. These products should be verified to check whether it originates from Phu Quoc Island or not.

**Table 9: Phu Quoc fish sauce products in the markets of big cities**

Market	Number of supermarkets selling Phu Quoc fish sauce products/ Total investigated markets	Number of brand names in supermarkets
Hanoi	9/10	2-4
Ho Chi Minh City	10/10	8-15

*Source: Result of VASI survey, 2005*

- In terms of retailing system of Phu Quoc fish sauce in Hanoi there does not exist authentic Phu Quoc fish sauce because when we track the address of some agents<sup>33</sup> of some producing enterprises in Phu Quoc Island, they are all virtual and unclear. Therefore, there is a limitation in the use of Phu Quoc fish sauce in Hanoi. The consumers that we had surveyed in Hanoi said that they donot use Phu Quoc fish sauce because they donot have enough information

<sup>33</sup> The addresses of these agents are provided by producers in Phu Quoc island.

of this product as well as they are not sure whether the products in the supermarket is true or not. In case they have acknowledged Phu Quoc fish sauce, they donot know where to buy the true one.

- The consumers in Ho Chi Minh City have their own choice. Normally they choose Phu Quoc fish sauce according to the name of producer, not care for the fact that the product is produced in Phu Quoc Island or not. The consumers questioned did not understand the sign of AO in the label of the product and they only choose the products of enterprises that they have used for years.

Evidently, the consumers have acknowledged Phu Quoc fish sauce but this product hasnot occupied the market as well as created confidence in their consumers, especially in Hanoi market. The occupation of Phu Quoc fish sauce in Ho Chi Minh market doesnt result from the registration of appellation of origin but is due to the capacity of trademarks of different producing and processing enterprises. We should make an advertisement after t he registration of appellation of origin and after issuing the right of AO use for stakeholders in this commodity so that it is well known all over the country, particularly in order that the consumers in the North believe in the origin of the product.

➤ *The price of the product doesnt increase :*

Since 2001, the price of the product has tended to increase, especially for 3 years now. However, according to producer, and enterprises, the increase of the product is due to the raising production cost. On the other hand, the benefit of producers remains unchanged. Besides, since no enterprise is allowed to use appellation of origin, we cannot measure the impact of appellation of origin on business efficiency of the enterprises. According to our survey, 100% of producers in Phu Quoc said that the price of the product increase a little bit, but it is influenced by the price of raw material and production cost, for example: the labor cost increase from 30 to 50%, and the price of input material raise accordingly.

**Table 10: Changes in material price and Phu Quoc fish sauce price**

	Fish material (VND/kg)	Percentage of price raising (%)	Selling price, protein level of 38 <sup>0</sup> (VND/litre)	Percentage of price raising (%)
<b>1999</b>	2,100-2,200	-	7,000-7,250	

<b>2000</b>	2,200-2,300	4.50		
<b>2001</b>	2,300-2,400	4.34		
<b>2002</b>	2,300-2,400	0		
<b>2003</b>	2,600-2,700	12.70	8,850-9,000	24.60
<b>2004</b>	2,900-3,600	22.60	11,000-11,500	26.70
<b>2005</b>	3,800-3,900	18.50	12,000-12,500	8.90

*Source: Result of VASI survey, 2005 – The price of Phu Quoc fish sauce in the period of 2003- 2005 augment from 10 to 15%*

In terms of enterprises in Ho Chi Minh City, all the five enterprises participating in our survey explain the changes of the price result from increasing production cost. Each enterprise has its own technique to reduce production cost. However, although the price of raw material for producing fish sauce raises considerably (like indicated in the above table), the price of final products in the market increase s lightly from 10 to 15%.

Economical interest resulting from the registration and protection of appellation of origin Phu Quoc is very limited In such circumstance, it is necessary to make a strategy benefiting from the name of an appellation of origin product.

➤ *Rules in labeling and packaging*

The use of appellation of origin for Phu Quoc fish sauce require s common rules in labeling and packaging (which can be made by the Association of Phu Quoc fish sauce’s producers) so that the image of appellation of origin product can be created in the market. This help developing common brand name of Phu Quoc fish sauce as well.

The Association of Phu Quoc fish sauce’s producer has found solutions to unify the style of the label and package for the products but it hasnot yet succeeded in apply them in real life.



*Photo 3: Two types of products of two production installations have different labels and packing*

- Unclear purpose of using the sign of appellation of origin on the labels of the products

Using a sign of appellation of origin on label and package of the product can make the consumers recognize AO product. The Association of Phu Quoc fish sauce's producer has guided its members to use the sign of appellation of origin by printing "AO" sign in the label. Nevertheless, up to now there is only two enterprises use this sign in their labels, that i.e. Hong Hanh and Quoc Hai companies. Paradoxically the consumers themselves don't understand the meaning of this sign because there is no explanation for this. Consequently they don't know this abbreviation.

*Photo 4: The use of label of different companies*



*Label of Knorr Company*



*Label using AO sign*

Another problem that we would like to mention is that the products of Knorr Company don't use the sign of appellation of origin. More especially, like other labels, the name of the company is bigger and clearer than the name of product, which is "Phu Quoc fish sauce".

How can we explain this? To deal with this, we had exchanged with the Department of Intellectual Property, and acknowledged that even with Phu Quoc appellation of origin, no stakeholders had license to use it. That is why it is quite right when the enterprise, like Knur Company donot use the sign of AO on their labels. Only when there is regulation on labeling for appellation of origin products, can it be compulsory to use appellation of origin sign in the label of the product. This is a very complex process because the regulations for the label of appellation of origin products and the right of AO use touch many enterprises. Therefore, this should be clear and public.

**III.1.4. Typical characteristic of Phu Quoc fish sauce should be more clarified**

It is compulsory that an AO product must have specific characteristics. Phu Quoc fish sauce has impressed feature and it was registered as AO product in 2001, but we should furnish more information in terms of its typical characteristics.

***III.1.4.1. Typical characteristic of Phu Quoc fish sauce***

The description in terms of quality of Phu Quoc fish sauce conducted by the Southern center of aqua- cultural quality and hygiene inspection is not much different from the habitants’ description.

***Table 11: Typical quality characteristics of Phu Quoc fish sauce***

	<b>Specific characteristic basing on the description (1)</b>	<b>Specific characteristic basing on habitants’ experience (2)</b>
Color	Red brown	Red brown
Smell	Soft smell, not fishy and no ammoniac smell	Soft smell
Taste	Salty, sweet	Salty when tasting, but after that sweet and fat of protein
Protein level	Minimum: 20 <sup>0</sup> protein	Minimum: 25 <sup>0</sup> protein
	Maximum: 43 <sup>0</sup> protein	Maximum: 40 <sup>0</sup> protein

Source: (1) - Description of Phu Quoc fish sauce quality in the registration form, (2) - Information investigated, VASI, 2005

- Almost all producers are embarrassed in identifying the specific characteristic of their products compared with other fish sauce, based on their sense organs as well as chemical and biological components. This means they are not highly aware of the typical characteristic of their products in the comparison with other fish sauces.
- The protein level is a priority of Phu Quoc fish sauce, but many Phu Quoc fish sauce products has lower protein levels compared with the those of other provinces. For example, while the fish sauce of Lien Thanh Company (Phu Quoc) has the protein level of 20<sup>0</sup>N, the protein level of the same product coming from Nha Trang is from 25 to 27<sup>0</sup>N. The fact shows that the protein level of many products is at 60<sup>0</sup>N because the producer uses their own technique to make up fish sauce, and their protein level is much higher than Phu Quoc's maximum protein level. A question is raised: whether the protein condensing technology affects the quality of fish sauce or not. This must be proved scientifically.
- It is necessary to compare the perceptible quality and the quality based on chemical and biological components of Phu Quoc fish sauce and other fish sauces coming from Ha Trang, Cat Hai - Hai Phong, especially from Rach Gia - Kien Giang so that the special characteristic of Phu Quoc fish sauce is proved scientifically. However, nobody up to now has done this.

The proofs of specific quality of Phu Quoc fish sauce must be convincing, especially compared with other fish sauce so that we can build a system of criteria of Phu Quoc fish sauce, which differentiates it with other kinds of products coming from other provinces. This is particularly valuable to fight against imitations. Moreover, it is difficult to evaluate fish sauce perceptibly. That is why creating a mechanism of perceptible evaluation based on experts' experiences is considered as a very important task, but we should clarify criteria for this mechanism.

#### ***III.1.4.2. Natural production condition***

The natural condition is the first and foremost factor that decides the quality of the product as well as the stability of appellation of origin. The following decisive natural factors are indicated in the application form of appellation of origin:

- Characteristic of raw sauces: anchovy sources including Than, Do, Soc Tieu, Phan Chi living in the maritime area of Ca Mau and Kien Giang provinces
- Climate and weather: situated in the main land of Phu Quoc island district

However, this is only the description of the Association of Phu Quoc fish sauce based on the support of AOC group from the Ministry of Aquaculture and production experience of the habitants, not based on survey of comparing products of different regions. Until now, there has been not any scientific research that can prove that the above factors have a great impact on the quality of the fish sauce.

During our investigation and survey of the role of natural factors influencing the quality of Phu Quoc fish sauce, we have exchanged and collected much precious information from producers, who have much experience in producing Phu Quoc fish sauce. The result is described as the followings:

- In fact, the fish sauce producers in Rach Gia town use the same raw material as in Phu Quoc district. This raised a question that whether it is convincing enough to use raw material as a specific characteristic of Phu Quoc fish sauce. This may be one of the factors that makes Phu Quoc fish sauce particular and typical, but only this factors cannot prove the special characteristic of Phu Quoc fish sauce. The truth also shows that fish sauce produced in Cat Hai, Hai Phong province is made by anchovy as well. Furthermore, there is not study indicating that other sources brought to Phu Quoc to soak can make an outstanding quality compared with the sources of Kien Giang Sea. The second problem is that the sources coming from Kien Giang cannot be mentioned in appellation of origin document because it is not the particular characteristic of Phu Quoc fish sauce. So can we say that the quality of fish sauce is affected by the procedure and condition of production? This should be studied scientifically so that we can make a production procedure which is easy to control and which base on the science.
- Climate and weather: All the persons questioned said that the climate and weather of Phu Quoc Island was very special which affects the material disintegration while being soaked. Nevertheless, the application document of appellation of origin for Phu Quoc fish sauce did not point out exactly which factors: temperature, moisture or amplitude, etc. In addition, like material sources, we should conduct a study to evaluate and compare the quality of Phu

Quoc fish sauce and other fish sauces in the same condition of material and production procedure but in different climate and weather conditions.

- Water to keep and soak Phu Quoc fish sauce: this was orally referred to as a natural factor that makes Phu Quoc fish sauce typical, not in AO document. This should also be proved clearly in terms of science.

In reality, we still lack of convincing proof showing the typical characteristic of Phu Quoc fish sauce. Consequently, we encounter many problems on defining criteria to control and build a controlling system of Phu Quoc fish sauce. That is why it is necessary to conduct immediately scientific study to clarify measurable criteria from the products, from their labels and packages to differentiate Phu Quoc fish sauce with other kinds of fish sauce. This is also important to against imitation. On the other hand, it is essential to define key stages of production procedure that affect specific quality of the product so that when controlling the quality of the product, we can focus on these key stages.

#### ***III.1.4.3. Controlled AO technical procedure in production (traditional features)***

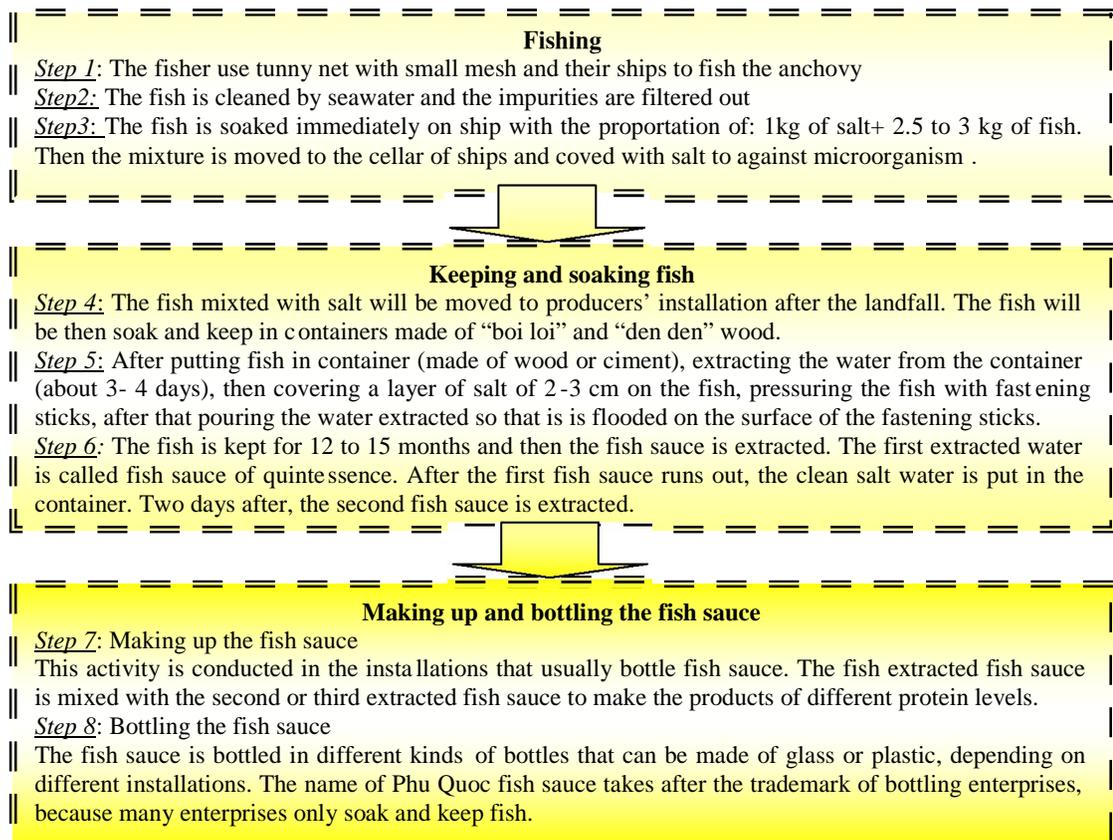
A controlling technical procedure is a set of factors indicated in regulations of an appellation of origin product. These factors can be assessed in two levels:

- Traditional practice technique of the habitants: The habitants have used this entire practical production procedure during the development of the product. There can be changes in quality of containers for soaking or types of salt to keep fish, etc. in the production procedure.
- Compulsory controlling technical procedure of an appellation of origin product: This is compulsory for all kinds of AO products because if we change any factor in this procedure, the quality of the product will changed accordingly. Then its quality becomes different to those of the requirement of protection stage. In the description of production procedure of Phu Quoc fish sauce that affect directly and decide the quality of the products, we see that:
  - Fishing net: This is tunny net used for traditional fishing, not using the light.

- Salt: The salt used to keep fish is produced in Ba Ria, Vung Tau and Phan Thiet. In addition, it is used to keep fish only when it has been reserved for 60 days.
- Proportion of mixture is 2.5-3kg of fish/1kg of salt, mixing evenly and the mixture is kept in the cellar of the ship and covered with 5cm of salt.
- Not using any adjuvant or preservation substances during the stages of fishing and preservation
- Soaking containers is made of “boi loi” or sandal wood which is taken from Phu Quoc Island.
- Time for keeping and soaking fish: 12 months for minimum and 15 months for maximum

In fact, the technical production procedure of the habitant is important base to make a standard technical procedure for an appellation of origin product. This following procedure is used for Phu Quoc fish sauce:

**Diagram 5: Practical production procedure of fish sauce producers in Phu Quoc**



There is compulsory procedure of using for appellation of origin for Phu Quoc fish sauce. This is the procedure basing on production experience. However, no one knows for sure that it really affect the quality of the fish sauce. Comparing the technical procedure of protected appellation of origin and the traditional practical procedure, there is not any difference. **Therefore, the controlling indicators are unclear and we are not sure of their influences on the product quality.** Nevertheless, we should conduct experiments and scientific study to make the traditionally practical procedure a controlling procedure. This is the key point that raises many problems in new regulations issued by the Ministry of Aquaculture. This will be analyzed in detail in the following section.

### **III.1.5. Difficulties in setting up the right of AO use**

#### ***III.1.5.1. Roles, capacity, independence of applicant***

According to Vietnamese legislation, any administrative bodies of the governments such as the People Committee and the Department of Aquaculture of the provinces, districts, communes or producers or any professional organization like organization of producers can play the role of applicant for an appellation of origin product. For Phu Quoc fish sauce, this is the role of the Association of fish sauce producers. However, this association encountered so many problems in completing its roles and responsibilities in organizing the production activities as in managing appellation of origin. We can specify here:

- The weakness of collective action in organizing production, processing and commercial activities: The contradictions between members of the Association of Phu Quoc fish sauce's producers and its management board is the main reason of the failure of collective action. The final products are not well controlled. There is not any supervising document for production procedures of each producer. Each producer has its own label and products. These make it difficult to control Phu Quoc fish sauce production procedure for the Association. Besides, it is difficult to apply regulations on appellation of origin as well.
- Knowledge on appellation of origin: The leaders of the Association as well as its members know little about regulations of appellation of origin. This makes collective action get obstruct in applying regulation of appellation of origin. Although the goal of Phu Quoc fish sauce is being protected in Vietnam and Europe, there has not yet a requirement in terms of quality, internal and external controlling system since the time it was registered as an AO product. This can be explained by the lack of support from

scientist, manager and competent bodies. It is necessary to study the procedure of building appellation of origin in Vietnam in the circumstance of not having any detailed regulations of appellation of origin.

- Ability of AO management: The Association of Phu Quoc fish sauce meets many difficulties in deciding and coordinating collective actions of producers, as well as it cannot collect all the needs and ideas of its members. This means we should improve capacity for the Association and those manage and use Phu Quoc appellation of origin. However, this raises two problems. The first one is how to build an internal controlling system that has collective characteristic of the Association during production stage. The second is that if allowing each producer to use appellation of origin, the producers of small scale will not build their own bottling system and approach the market by itself because of its small scale and financial ability. In case the product is passed to another organization, we donot know whether it still takes after the appellation of origin or not. If yes, how can we control this? Moreover, we donot know either whether the benefit of poor households and producers of small scale is assured.
- Effect of local authorities: The local authorities and the Ministry of Aquaculture are much interested in the appellation of origin of Phu Quoc fish sauce because this is the first product, which is assisted to develop as an appellation of origin product by the Ministry of Agriculture and Fishery of France. However, it is also because of this interest, the problems of Phu Quoc fish sauce become more and more complex. For example, the appellation of origin of Phu Quoc fish sauce is politicalized and seems so important. This becomes a debate among delegates of the National Assembly, and the authorities of Kien Giang and Ho Chi Minh City . The minister of the Ministry of Aquaculture has been questioned many times about this at the National Assembly .

According to our survey, the over-intervention of local authorities led to the worse situation of the Association of Phu Quoc fish sauce's producers , for instance, the Association loses systematically its self- control and its members lose their right to make decision. In the workshop on August 15<sup>th</sup> 2005, the president of the People Committee of Phu Quoc district still kept his point of view, that i.e. this People Committee managed in order to consolidate the management board of the Association. This means if the Association is the manager of appellation of origin, actually the People Committee of Phu Quoc district administers it, not an organization of producers. Furthermore, this makes members of the Association becomes

passive as well as reduce the prestige of Association leaders, which is the reason why association of farmers in Vietnam is not active. It is really a hard work to overcome this problem.

The analysis above raises a question that how can we manage the appellation of origin of Phu Quoc fish sauce? Continuing to let the Association of Phu Quoc fish sauce manage the appellation of origin or finding another solution? This is out of the control of appellation of origin because it concerns the relation between the government and civil society. This can be sold only when all the competent organizations (Ministry of Aquaculture, the People Committee of Kien Giang province, and the Department of Intellectual Property ) agree on orientation for the establishment of the right of protection for Phu Quoc fish sauce.

#### ***III.1.5.2. Difficulties in implementing the regulations on fish sauce quality controlling system of the Ministry of Aquaculture***

After four years of registration of Phu Quoc fish sauce as an appellation of origin product, there is not any organization or individual have the right to use it. This is a debating problem for fish sauce producers as well as the authorities at local and central levels. One of the reasons is the inexistence of a quality controlling and management system in appellation of origin (interior and exterior). In order to protect the fish sauce gradually, on May 16<sup>th</sup> 2005, the Ministry of Aquaculture issued decision no. 19/2005/Q§-BTS on temporary regulations on controlling and certifying Phu Quoc fish sauce appellation of origin, enclosed was temporary regulations on fish sauce production.

Two matters were referred in this section; one is the application of regulations of fish sauce production as a compulsory procedure to control the quality of the fish sauce. The other is the application of fish sauce quality controlling system.

##### ***➤ Regulations on Phu Quoc fish sauce production***

The regulations on Phu Quoc fish sauce production is based on the experience of practical production and the comments of authorities of Kien Giang province and Ho Chi Minh City. These regulations passed the following steps:

- The Department of Science and Technology - Ministry of Aquaculture conducted a survey of the production practice of the habitants to make regulations for Phu Quoc fish sauce production, and then it proposed regulations on fish sauce'quality management.

- The regulations were then forwarded to the Association of Phu Quoc fish sauce's producer and the Association of Food in Ho Chi Minh for comments.
- Such professional bodies as the Bureau of Industrial Property - Department of Science and Technology, and the Department of Aquaculture of these provinces.. took part in making comments for the regulations.
- The regulations were issued with the content of quality controlling system and certificate for the product of appellation of origin.

With these regulations, the supervision and control of production activities would base on the control of technical procedure, which is illustrated in the following table:

**Table 12: Regulation of fish sauce production and problems that should be solved**

<i>Content</i>	<i>New regulation (*)</i>	<i>Reality of production</i>	<i>Problems</i>
Source of material	Maritime area of Kien Giang province	The fishing area stretches to Thailand bay, and Cambodia. Many fishing ship conduct their activities 125 km far from the island while its territorial waters of the district is restricted within 15 km.	Does Kien Giang maritime area mark the geographical limit of Phu Quoc fish sauce or not? The number of fishing ship is so big since there are up to 1500 ships. However, the producers rarely fish for input material. Then how can the input material production be controlled?
Rules to bottle fish sauce	It is allowed to bottle fish sauce in Phu Quoc and 3 years from now on in Ho Chi Minh city (up to 2008)	70-80% of fish sauce is bottled outside Phu Quoc district	Whether these rules suitable to the law or not? Whether it is valuable, only when Phu Quoc fish sauce is protected and its stakeholders have the right to use its name? This belong to compulsory technical procedure of an AO product Whether the product bottled in Ho Chi Minh City has appellation of origin? Whether the product can still be called appellation of origin if they are bottled in Ho Chi Minh City within three years. In case “no”, how the interest of producers become and in case “yes” whether it is suitable to regulations on appellation of origin indicated in the Law of Intellectual Property?

Source of salt	The salt used here come from Ba Ria, Vung Tau and Phan Thiet provinces. It is preserved at least 60 days before being in use	The salt mainly used come from Ba Ria, Vung Tau and India	<p>Whether salt suppliers are controlled and how can they be controlled?</p> <p>The fish keepers use salt to preserve fish far away from the sea, so how can we control the source of salt as well as the proportion of mixture?</p> <p>The fish keepers are in favor of using other salt, especially imported salt, because for them, imported salt is more hygienic. Then whether salt affect the quality or not? This should be proved scientifically.</p>
Container for soaking and keeping fish	Made in wood (like boi loi, den den, chay, ho phat) which come from Phu Quoc island	Using wooden or cement containers, but traditionally wooden container	<p>The use of cement containers does not fit with traditional procedure. Nevertheless, there is not evidence showing that cement containers decrease the quality of wooden container.</p> <p>At this moment, Phu Quoc forbids to exploit forest, so where the wood source come from in case of extending production.</p>
Reserving fish	Reserving fish on ship right after fishing	Reserving fish on ship right after fishing	Who are responsible to control the activities of reserving fish? This is an important stage affecting the quality of the product.
Soaking fish	Soaking fish on Phu Quoc island during 10- 12 months	Soaking fish in Phu Quoc, Ho Chi Minh City and Rach Gia Traditionally the time for soaking	<p>Whether shortening the soaking time makes an influence on the quality of fish sauce or not?</p> <p>Whether soaking fish sauce in only Phu Quoc can assure the</p>

		fish is from 10 to 12 months, but many fish sauce producer only soak fish in 6- 10 months	excellent quality of Phu Quoc fish sauce?
Blending fish sauce	At the stage of blending, we can use seasoning powder to make it sweet	Do not use seasoning powder when bottling in Phu Quoc, Quoc Duong use the technique of heat treatment	Whether this rule matches with traditional instruction or lose typical quality? Because one of the characteristic that makes Phu Quoc fish sauce excellent is the high level of protein. This makes Phu Quoc fish sauce sweet. A question is that in case using seasoning powder, the quality of fish sauce will change or not?

*(\*)- Temporary regulations for the production of Phu Quoc fish sauce as an AO product, issued in attachment with the Decision no. 19/2005/Q§-BTS on May 16<sup>th</sup> 2005 of the Ministry of Aquaculture*

- *Some topics that should be discussed concerning the issue of quality controlling regulations*
- In recent regulations of intellectual property on geographical indication in Vietnam, as well as previous regulations of appellation of origin, the roles and responsibilities in managing quality of an appellation of origin product of ministries and branches are not indicated clearly. That is why in some cases, for example, Phu Quoc fish sauce and Shan Tuyet tea from Moc Chau, such professional ministries as the Ministry of Aquaculture, the Ministry of Agriculture and Rural Development take part in building appellation of origin. Meanwhile dealing with later appellations of origin, the roles of these organizations dim gradually. In fact, the Ministry of Agriculture and Rural Development as well as the Ministry of Aquaculture are in charge of all aspects of appellation of origin, for instance those related to rural and aquaculture planification, technical procedure, intellectual property for varieties of plants and animals, the admission of appellation of origin, etc. If the roles of these ministries are not clear, the development and management of quality of appellation of origin product will become very difficult and ununified.
  - Although the product is registered as an AO product, the tardy construction of controlling technical procedure make the use of this appellation of origin get obstacle, in other words, none of organizations and individual has the right to use this appellation of origin. According the Ministry of Aquaculture, during the time applying AO regulations in real life, we have met many difficulties as indicated in the above table.
  - The source of anchovy in the island district is now very scarce. Fishing ships have to move to other regions of other countries to find new source. Furthermore, now they use the light to fish and the quality of the fish sauce decrease because of so many impurities of other fish. The numbers of producers increases, which makes fish sauce become exhausted and the quality of input material will then reduce. The increasing price forces small producers getting rid of doing their work.
  - The roles of enterprises in Ho Chi Minh City are mentioned in the development of appellation of origin and fish sauce commodity chain, but

these companies did not participate in the activities of appellation of origin right at the beginning stage. The contradiction between the interests of the producers and distribution companies that held market shares made it difficult to control the quality of the product.

- The producers of small scale earn their living by depending on business activities of the enterprises in Ho Chi Minh City. If the bottling activities are permitted within only 3 years now in Ho Chi Minh City, according the regulations of the Ministry of Aquaculture, how can we control the quality of the product? However, after three years then, if no producers in Phu Quoc has the right to use the appellation of origin of Phu Quoc fish sauce in order to bottle the fish sauce in Phu Quoc island, or in case only a little number of producers has the right to use this appellation of origin, the interest of fish sauce producers in Phu Quoc will be affected. The reason lies in the fact that up to 80% of Phu Quoc fish sauce is consumed through enterprises in Ho Chi Minh City. When we complete this report, the period of three years is nearly over, but there has not any clear implementation in bottling in reality.
- The diversity in fishing system, production and consuming channels will become one of the biggest problems to control production system of the fish sauce of appellation of origin. That is why the technical procedure should only focus in some key points in order to assure the quality and the origin of the product. In addition, the controlling system should make an internal system first, then external system.

➤ *Applying regulations on quality control and issuing certificate*

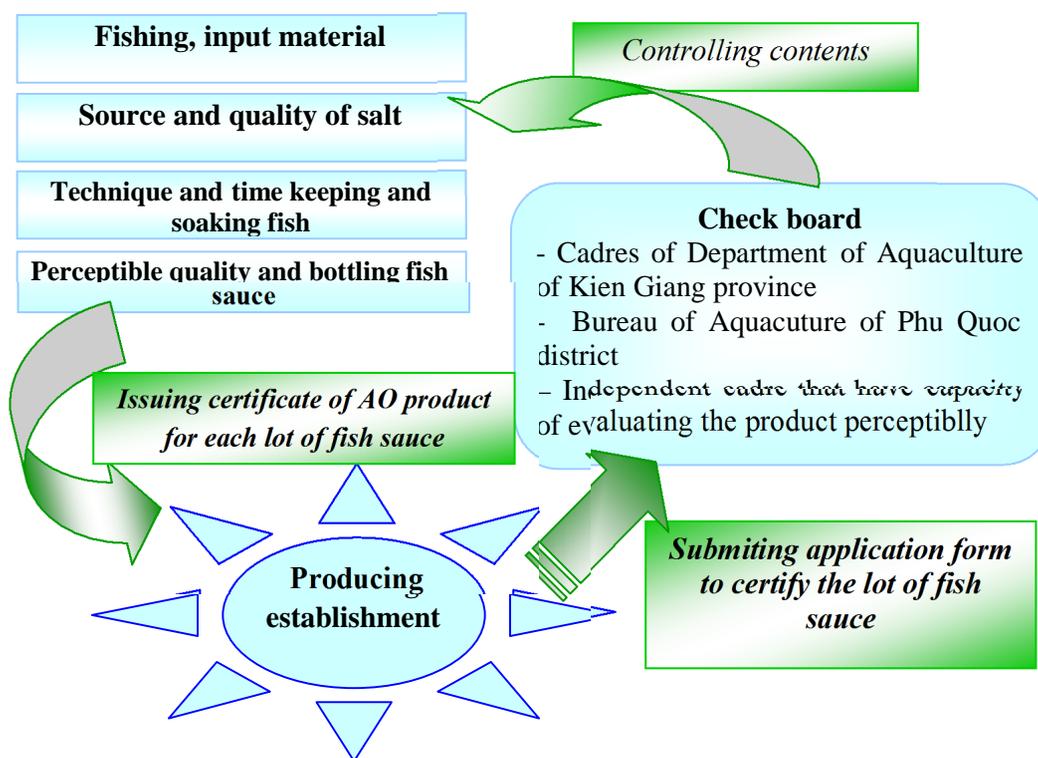
The most difficulty of Phu Quoc fish sauce is how to implement quality-controlling system. Then the appearance of regulations of quality control and issuing certificate can be considered as temporary solution during the period of perfecting institution and appellation of origin. With the purpose of independent organization, the quality controlling board has the function of:

- Examining and defining the right of applying for appellation of origin
- Evaluating perceptibly the quality of each lot of quality

- The controlling board has its own stamp and account. It is a non-profit organization. All the receipts of control and investigation as well as fee in issuing certificate follow regulations of the Ministry of Finance.

In order to carry out this function, a controlling board, including members who works for the Ministry of Aquaculture, Bureau of Aquaculture and some independent members elected by the Association of Phu Quoc fish sauce, should be founded together with the decision of the People Committee of the province. The Association of Phu Quoc fish sauce is responsible to supervise activities and to pave the way for the activities of this controlling board. To illustrate the organization of such system, please see the diagram below:

**Diagram 6: System of controlling and issuing AO certificate**



Up to the time of investigation (September 2005), that means after 5 months of appearance, this regulations remained unimplemented. Many problems emerged from the process of establishing the controlling board to the reflexion of producers; especially of the Association of Phu Quoc fish sauce's producers. In fact, at that time it was difficult for the controlling board to implement these regulations due to the following reasons:

- The Association of Phu Quoc fish sauce's producers who play the main role in do not know how to apply these regulations. In addition, it is so difficult to choose members who have experience in fish sauce production and are capable to evaluate the quality perceptibly but not concern the production activities. Meanwhile, according to Mrs. President of the Association, the Association itself cannot afford to pay for the activities of these members.
- There is not any document of competent organization guiding how to implement this regulation. Therefore, the Department of Aquaculture, the Bureau of Aquaculture and the Association of Phu Quoc fish sauce do not have an orientation for the activities of this controlling board.
- The establishment of the controlling board according to the above decision was not supported at local level. Almost of producers (occupying up to 80% of the total number of producers) did not agree on regulation of supervision due to the complexity of this regulations. Furthermore, they doubted the enthusiasm and equality of this controlling board. According to some opinions, they thought that the regulations of supervision are too complex that they are even agreed not to use the appellation of origin. Based on the evaluation of national regulations and European institution on appellation of origin, these regulations should be taken into consideration in terms of appearance and implementation.
- In addition, no one knew for sure which the legal base for this regulation is. The legal procedure of building appellation of origin in Vietnam does not define which bodies are competent in laying down regulation, verifying technical procedure of protection appellation of origin. Principally, when appellation of origin is protected, it has already a compulsory and controlling system. In other terms, we have protected a product when it did not have regulations on controlling the quality and quality controlling system. We doubt whether it is right when the Ministry of Aquaculture made this decision, or it might be the responsibility of the Ministry of Science and Technology. This should be clarified more in legal regulations on appellation of origin.
- If considering the controlling system of the Association of Phu Quoc fish sauce based on European and French regulation, we find that it is not clear at all. The confusing problem of internal controlling system (of the Association of Phu Quoc

fish sauce) and the external one (of governmental administration and competent organizations) put this Association in a difficulty.

- At the time of our survey, the Association of Phu Quoc fish sauce still did not have decision acknowledging its foundation by the Kien Giang People Committee. The Association needs to perfect its legal person according to the decree number 88 of the Prime Minister.

- The Association of Phu Quoc fish sauce is a civil organization of fish sauce producers. Then, it plays the roles as being investigated by the competent bodies of the State or it represents the State to manage controlling system of its members? At that time, whether this Association still plays the role of protecting its members' interest? The Association serves the State or its members?

- Then who finance those activities of the Association, the State or its members?

- The production cost of the habitant in Phu Quoc would increase since they have to pay for the quality control. In addition, if there were not any support in terms of advertisement, quality management and building market channel, the price of the product would remain unchanged. This means, the appellation of origin doesnot bring them more economical benefit, but even makes it decrease Besides, the Association of Phu Quoc fish sauce does not pay much attention to advertisement of appellation of origin, and building distribution channels and the Ministry of Aquaculture doesnot support it either.
- In fact, we should clarify who is capable to issue certificate of appellation of origin, the Department of Intellectual Property, the Ministry of Aquaculture or the Department of Aquaculture of Kien Giang province? In addition, we should make it clear that the appellation of origin is only valid during production circle of a lot of products, or anything else?
- A problem is that how can the leaders of the Association of Phu Quoc fish sauce control the appellation of origin when they play two roles at the same time: producers and supervisors who control all the stages of fish sauce production and issue the certificate of appellation of origin . This makes its members doubt the explicit of controlling board. The objective of controlling system and issue of

certificate lost its objective because of internal and external controlling system of competent bodies.

- The lack of documents following lots of products and production practice make it difficult in defining the origin of products and production procedure of each lot.
- Another problem is that how can the controlling board with only 6 members control such a big production system, and such a huge material fishing system? Moreover, the producers doubt the enthusiasm of these members as well as their motivation towards their mission. On the other hand, there are not any tools to supervise or control.
- From our point of view, the Department of Intellectual Property did not participate in the establishment of this controlling board, or the issue of certificate of appellation of origin. In fact, it is this organization, which is capable to make regulations and decide the right of use of stakeholders of the commodity.

However, according to the president of Phu Quoc People Committee, we still implement the regulations concerning appellation of origin although they are not perfect. This is also the aspiration of Phu Quoc habitants and authorities. Despite difficulties, we should try our best to protect the fish sauce in the market under appellation of origin.

### ***III.1.5.3. Problems of Phu Quoc fish sauce***

During four years, there still exist debating problems among stakeholders of Phu Quoc fish sauce commodity chain: from the procedures of processing, bottling, distributing, etc to the administrative stakeholders as professional agent and local authorities:

- The first stage of the development of appellation of origin for Phu Quoc fish sauce is pretty good. However, what a pity that the supporting is not continuous and durable! Furthermore, the development of appellation of origin in Vietnam touch so many basic social and economical problems, for example civil institution, commodity organization, national institution and policies, property law, planification. Nevertheless, we should acknowledge that the procedure of appellation of origin has been founded and completed for hundreds of years in France, while we are only at the beginning. Meanwhile, the experience of the France, especially of Cognac Corporation is very precious but it exceeds application ability of a country where the

appellation of origin develops in the situation of under-developed economy and civil society.

- After the registration, supporting activities on fieldwork ceased to be implemented; the consultancy of building appellation of origin separated to the organization of commodity, vertical and horizontal organizations among stakeholders. These problems have not been solved yet and the appellation of origin does not make any progress. That is why the producers lose their confidence in this work, especially the benefit from appellation of origin. Although the Association of Phu Quoc fish sauce has been assisted to found, the stakeholders do not pay much attention on organization of producers, collective technical procedure, collective actions among producers in the Association, and between the Association and output stakeholders. In fact, we focus much on legal document, rather than organizing producers to develop appellation of origin together as well as developing the commodity of fish sauce of appellation of origin in the market. After six years now, we are only successful in registering Phu Quoc fish sauce as an appellation of origin product. The approaches of Phu Quoc fish sauce's development are rather good in terms of law, but lack of consultancy of experts on organizations of farmers, commodity, and marketing and production planification. Thus, the main stakeholders of fish sauce commodity still do not consider fish sauce commodity as their mission. As a result they do not participate in this activity enthusiastically and actively.
- The Vietnamese legal system on geographical indication, appellation of origin, and the right to found association and civil organization has not been completed yet, especially administrative procedure at local and central level which is related to the completion of document, verification, registration, issue of the right of use, control after granting to use appellation of origin, etc. That is why there is not any unification in issuing the right of use, quality management procedure, defining the roles of ministries and branches and at local and central levels. These shortcomings of legal system have been basically solved in terms of formality of application, issue of the right of use as indicated in the Law of Intellectual Property, which was approved, by the National Assembly in 2005.

- The lack of professional civil organizations in production, and distribution of the commodity of food and foodstuff in Vietnam (associations, trade union of producers, processors, etc.) causes an obstruction in the construction and development of quality management, label control, and in the promotion of cooperation among stakeholders in building appellation of origin. Therefore, we should support this with such activities as grouping producers and organizing the commodity, etc. Our fish sauce producers are those of small scale. That is why they need to be supported in order to link together and take part in the market. In addition, we should find solution for the fact that the Association of Phu Quoc fish sauce, producers, and distributors gain little knowledge concerning appellation of origin and that there is not enough support from scientific organizations, State administration on intellectual property. The purpose of this is to make these stakeholders become active in the exploitation and protection of appellation of origin.
- We should conduct pilot activities to compare the criteria defining the difference of Phu Quoc fish sauce with other kinds of fish sauce, from which we can specify its particular characteristic as well as complete documents of appellation of origin. On the other hand, these criteria are very important in determining criteria for production procedure as well as for the supervision of quality to against imitation.
- The regulations do not make clear in terms of internal and external quality controlling systems. To make it worse, the roles and functions of stakeholders are not clear either, in terms of exploitation and control of activities concerning the management of quality, package, label, and commerce for Phu Quoc fish sauce as an appellation of origin product.
- Phu Quoc district has not localized production and bottling area for producers coming from Ho Chi Minh City. That is why these producers do not know what and how to do in order to be able to use Phu Quoc appellation of origin. On the other hand, if the fish sauce distributors in Ho Chi Minh City return to Phu Quoc, they will participate in producing fish sauce. Then the demand of raw material will increase considerably. As a result, the anchovy sources will soon become exhausted. The traditional producers of small scale are afraid of this because the material will become expensive and they cannot

compete with companies coming from Ho Chi Minh City. Therefore, we should allow companies in Ho Chi Minh City to bottle fish sauce, not producing it in order to protect producers of Phu Quoc Island and to avoid exhausted material. We should establish joint companies that link companies in Ho Chi Minh Cities and enterprises in Phu Quoc so that they cooperate to bottle fish sauce, or to make contract, which is the base for the issue of AO license.

- The habitants in Phu Quoc island donot want to enlarge production system, in other words, increasing the number of producers, since this can affect their production activity. But according to compulsory regulation on bottling Phu Quoc fish sauce, if we donot open agents bottling fish sauce in Phu Quoc island, when applying Phu Quoc appellation of origin, 80% of the products will not be able to take after this appellation because they are bottled in Ho Chi Minh City.
- In deed, the Phu Quoc appellation of origin has not created additional value for the product as well as increase producers' profit. If this is not well managed in the future, it cannot bring direct benefit for small producers who make up 60% of the total Phu Quoc fish sauce's producers because these producers depend on distribution channel of the big ones. Meanwhile, the appearance of the regulations on controlling fish sauce and issuing certificate of appellation of origin is the basis to bring these stakeholders more benefit.
- The dependence of Phu Quoc appellation of origin on Knorr Company, a multi-national company: This should be considered prudently and carefully. Almost of the member of Association of Phu Quoc fish sauce' producers would like to clarify this relation.

### **III.2. Shan Tuyet Moc Chau tea and its appellation of origin**

Tea is a seasoned industrial plant mainly distributed in the midland and mountainous areas in the North of the country (covering 79.8% of this area<sup>34</sup>). Locating in tropical area, Vietnam is considered as a potential country for producing and processing tea. Now it is the 7<sup>th</sup> in the total of 30 countries producing tea at largest scale all over the world. Many

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<sup>34</sup> Data of General Department, 2004

tea products of this province have been well known in the market, namely Ta Sua, Shan Tuyet, Tan Cuong, and Suoi Giang.

Shan Tuyet tea from Moc Chau district belong to the list of products that need to be developed as appellation of origin one in the scope of a program developing appellation of origin for Vietnamese specialities that was conducted by the Ministry of Agriculture and Rural Development in 1998.

### **III.2.1. General overview of Moc Chau district - Son La province**

#### ***III.2.1.1. Natural and social- economical condition***

Moc Chau is a district situated in the West of Son La province, at the height of 1050m compared with sea level. This northwestern highland has an area of 2,025 km<sup>2</sup>. The average density of the district is 69 persons/ km<sup>2</sup>, mostly Thai, Muong, H'Mong, Dao minorities and Kinh majority.

Its annual temperature is 18.5<sup>o</sup>C. There are two seasons: rainy season (April to October) and dry season (November to March). A part from that, Moc Chau is in favor of rural development thanks to its agriculture soil, mostly feralit.

Moc Chau is now the second economical center of the province, after Son La town. According to the social-economical orientation of Son La province, in the next 5 years, Moc Chau will become the economical and developed center for agricultural products that closely link with industry, for instance tea, milk cow and it will develop ecological tourism services as well.

The fact show that agricultural production is always at the 1<sup>st</sup> rank compared with other districts and towns in the province thanks to the development of such short- time plants as maize, rice, fruit tree, and industrial trees like tea, mulberry, and milk cow raising in particular.

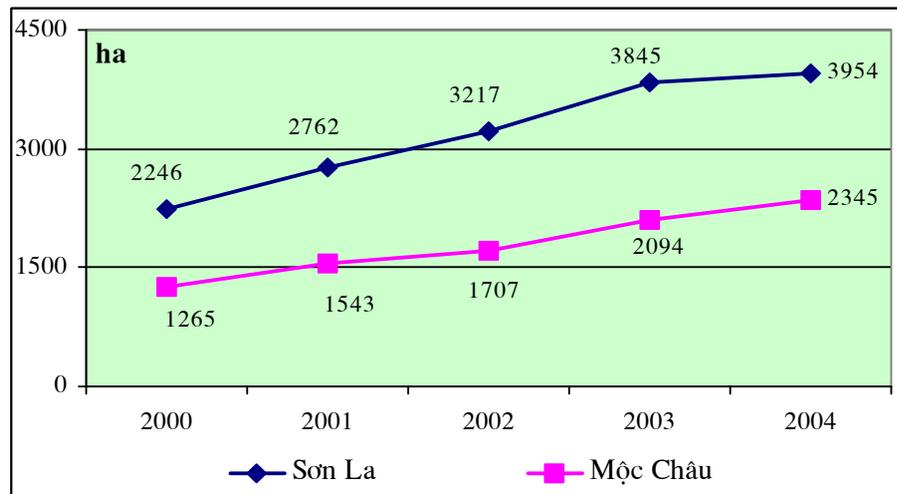
The system of public plantation played a very crucial role in the development of social economic of Moc Chau district. This is a special characteristic of this area. In fact, this land becomes the home of many soldiers after the war and becomes the motherland for King ethnic that moved from lowland during the years of 1950 - 1960. These people have

laid foundation for manufacturing and trading companies like Moc Chau tea Company, Moc Chau Milk Cow Company, Co Do Plantation...

### III.2.1.2. Tea production in Moc Chau

Shan Tuyet tea is the main plant in the rural development of Son La province. The area cultivating tea occupies about 60% of the whole tea area of the province in 2004, focusing in such district as Moc Chau, Mai Son, and Phu Yen. In the previous year, the area cultivating tea havenot ceased to increase due to policies encouraging tea production in ethnic area and in the resettlement area of Son La hydroelectric riverbed. In 2004, the tea area of Son La province was 1.97 times more than the year 1993 and the increasing area focused in Moc Chau district, which was considered to have a very advantageous climate to develop Shan Tuyet tea. Moreover, the area cultivating tea occupies up to 59.3% of the whole tea area of the province in 2004.

**Graphic 4: Tea area of Son La province and Moc Chau district**



Source: Statistic yearbook of Son La province, 2004

Being the main district developing tea in the province, the area cultivating tea in Moc Chau district raised dramatically. In 2004, the tea area here made up 59.3% of the total tea area in Son La. However, 3 years recently, the province has issued policies indicating that tea would be developed in resettlement area. That is why many tea areas are on the ways of basic construction. As a result, Moc Chau tea productivity of tends to lessen in the scope of the whole province but still occupies up to 76% of the total tea area of the province.

**Table 13: Area and tea productivity of Moc Chau district, compare with the whole province**

	Area (ha)		Productivity (ton)	
	Son La province	In which Moc Chau occupies (%)	Son La province	In which Moc Chau occupies (%)
2000	2,246	56.32	10,758	81.05
2001	2,762	55.87	11,936	80.07
2002	3,217	53.06	13,499	76.75
2003	3,845	54.46	13,056	78.46
2004	3,954	59.31	16,407	76.15

*Source: Statistic yearbook of Son La province, 2004*

Shan Tuyet tea began to be grown and enlarged in the years of 19 58-1965 when Moc Chau plantation was founded. Its origin comes from Cho Long village and Ban On mountain village that are now under the control of Co Do plantation. At this period, tea developed mainly within the area of the plantation and the labor includes personnel of the plantation (primarily Kinh majority)

After many times separating and merging, at this moment there are followings tea producers in Moc Chau:

- i) Moc Chau Tea Company with an area of 597 ha – directly managed by the Vietnam General Tea Company. Moc Chau Tea Company belongs to the Vietnam National Tea Corporation.
- ii) Co Do National Plantation with an area of 500ha and other plantations as Chieng Ve, Phieng Luong, managed by Son La People Committee
- iii) Ligarden Limited Company – 100% foreign capital investment- with an area of 100 ha
- iv) In addition, Shan Tuyet tea is also cultivated in the area of the habitant in communes within programs of the resettlement of hydroelectric riverbed.

Tea production in Moc Chau district can be characterized by two features:

- The first one is that the production and commercialization of Shan tea is mainly conducted by national institutions and households, in which Moc Chau Tea Company is the most concentrated and professional. In 2004, Shan tea production of the company made up 24.5% of the total tea productivity of the company and 16% of Shan tea productivity of the whole district. The main market of Shan tea is Pakistan, Afghanistan and some Western European countries.
- The limited company LIGARDEN Vietnam is the main company producing Taiwan and Japanese tea with the area of more than 100 ha<sup>(35)</sup>. Apart from that, other production institutions in the district also begin or enlarge to produce this kind of tea, for example Moc Chau Tea Company (36ha), Co Do Plantation (100ha). This tea is usually exported to China, Taiwan, Hong Kong and Japan.

Defining the two above features, we can understand the role of tea production for economical life of the habitants in particular and the strategy of social - economical development of the whole district in general. At this moment, about 800 workers of Moc Chau Tea Company, 1730 households of Co Do plantation and thousands of habitants live on tea in Moc Chau.

### **III.2.2. AO registration and protection for Shan Tuyet Moc Chau tea**

#### ***III.2.2.1. Registration procedure***

Thanks to the support of French Ministry of Agriculture and Fishery and French Commission, Vietnam Ministry of Agriculture and Rural Development chose Shan Tuyet tea from Moc Chau as a typical and specific product in terms of natural character and quality. Since 1998, this kind of tea has become one of the two products in Vietnam that was supported to develop as appellation of origin products.

The subject chosen to make documents to apply for the use of appellation of origin of Shan Tuyet tea is Moc Chau Tea Company, a branch of Vietnam Tea Corporation. Nevertheless, KCS Tea Center of this corporation is responsible to build and perfect the documents. That means this center will cooperate and support Moc Chau Tea Company in completing necessary document.

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<sup>35</sup> All data quoted in this section are extracted from report and figures of the meeting with the leaders of all organizations that we have worked

On November 13<sup>th</sup> 2000, Vietnam Tea Association submitted the application of appellation of origin for Shan Tuyet tea to Vietnam Department of Industrial Property<sup>36</sup>. On April 10<sup>th</sup> 2001, Moc Chau Tea Company submitted a complementary document to register Shan Tuyet tea with two types: green tea and black tea. Therefore, there are two organizations apply to protect Shan Tuyet tea: Moc Chau Tea Company and Vietnam Tea Association.

At the same time, the Ministry of Agriculture and Rural Development also provided financial support to make a map restricting the area of Shan Tuyet tea as well as to build a quality management system. All the supports are invested through KCCS Tea Center. All the procedures are conducted with the support of French experts, which is directly carried out by Cognac Corporation.

After two months considering application document, on June 1<sup>st</sup> 2001, the Director of Vietnam Department of Industrial Property issued decision certifying the registration of Shan Tuyet tea from Moc Chau as an appellation of origin with two types of products: green tea and black tea. The decision indicates clearly that Shan Tuyet tea is permanently protected through out Vietnam territory since the time being registered.

Nevertheless, Shan Tuyet tea has not been used as an appellation of origin since the time it was registered because of the following reasons:

- According to the Department of Intellectual Property, Moc Chau Tea Company has not met with compulsory requirements of appellation of origin due to the lack of quality management system, which is so important to point out the origin as well as to define the quality of the product. To make the matter worse, this is not indicated in detail in legal documents of the government. That is why Moc Chau Tea Company and Vietnam Tea Corporation are both confused in implementing regulations.
- Although the Ministry of Agriculture and Rural Development has supported financially for Moc Chau Tea Company to create a quality controlling system, the Company still did not implement this. They explained that their consuming market

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<sup>36</sup> Now is the Vietnam Department of Intellectual Property

were stable. What is more, the production cost would increase if they operate the quality controlling system.

- During the same period, KCS Tea Center was drafting regulations on quality and quality controlling system for Shan Tuyet tea. However, the Ministry of Agriculture and Rural Development has not approved this.

For the above reasons, nobody is allowed to use Shan Tuyet tea as an AO product. Furthermore, Moc Chau Tea Company itself has not made a strategy to clarify all the signs of appellation of origin in the labels of their products.

#### ***III.2.2.2. Role and opinion of different subjects in AO registration for Shan Tuyet Moc Chau tea***

In order to register and protect a product under appellation of origin, there must include the interference of many management bodies, for example the Ministry of Agriculture and Rural Development, Vietnam Tea Corporation, the Tea Association, the Department of Intellectual Property, and applicant, etc.

##### ***➤ Role of the Ministry of Agriculture and Rural Development***

For Shan Tuyet tea, the Ministry of Agriculture and Rural Development is the competent management body, which manage not only the production activities but also business activities of Vietnam Tea Corporation, including Moc Chau Tea Company. Thus, the choice and support to develop a particular product as an appellation of origin in the scope of Vietnamese specificity development is quite relevant. That is why right at the beginning, the Ministry of Agriculture and Rural Development supported much for the development of Shan Tuyet tea, for instance, financing the construction of technical procedure and controlling system, as well as creating a program on localizing appellation of origin, so on so forth.

The Ministry of Agriculture and Rural Development is very active in providing technical support, but not institution, production organization and commodity development. On the other hand, there is not an agent professional in appellation of origin and geographical indication inside the Ministry due to the lack of cadres. This lowers the roles of the Ministry on supporting the appellation of origin for Shan Tuyet tea from Moc Chau and other specialities. In fact, protecting appellation of origin also concern other fields covered

by the Ministry of Agriculture and Rural Development, such as the protection of breeding, of local production procedure, rural planning, rural development. Nevertheless, because of the inexistence of a competent body in the Ministry of Agriculture and Rural Development, the capacity to participate in the development of appellation of origin and geographical indication of the Ministry is reduced. This responsibility is currently assigned to the Department of Science and Technology of the Ministry. Nevertheless, this is only an additional responsibility. This Department itself does not enough staff to take care of this matter. It only plays the role as in an initial scientific organization that starts appellation of origin or geographical indication at the locality. In a long-term, it is necessary to have an independent organization that receive the application document for appellation of origin and geographical indication, manage them, and evaluate them inside a department of the Ministry.

➤ *Department of Intellectual Property*

The Department of Intellectual Property is the organization that manages and decides to issue protection certificate for appellation of origin. It is not clear that the Ministry of Agriculture and Rural Development, or Ministry of Science and Technology whose representative is the Department of Intellectual Property is responsible to conduct scientific test and investigation in reality like localizing production area, traditional technical procedure, and quality controlling system. At the first time, the Ministry of Agriculture and Rural Development and the Ministry of Aquaculture cooperated in developing geographical indication. As a result, the Department of Intellectual Property was not very active during this period. In addition, the Department has less information of the two appellations of origin, that i.e. Shan Tuyet tea from Moc Chau and Phu Quoc fish sauce. After the registration of these two products, the Ministry of Industrial classified geographical indication and appellation of origin as activities of intellectual property. Hence, this ministry is the clue for all activities on geographical indication and appellation of origin in Vietnam.

➤ *Department of Science and Technology and Department of Agriculture and Rural Development in Son La province*

It is not laid down in regulations of geographical indication and appellation of origin the role of local departments and branches, but at this moment all the activities related to these is conducted by the Department of Science and Technology, the Department of Agriculture

and Rural Development and the Department of Aquaculture of Son La province. Mr. HOANG Trong Tuan- Vice Director of the Department of Science and Technology in Son La province- who is responsible for intellectual property - stated that the role of the Department of Science and Technology of Son La province should be emphasized in the procedure of registration and protection. From the point of view of local authorities, the development of appellation of origin must have a link with the benefit of the local producer and there should be equality in using appellation of origin. However, the production area of Shan Tuyet tea was only localized within the area of Moc Chau Tea Company (according to application document), and therefore it brought this company much benefit. This destroyed the benefit of other producers at the same time. In fact, these producers would have the right to use appellation of origin for their Shan Tuyet tea as well, for example Co Do Plantation, Chieng Ve Plantation, etc.

➤ *Vietnam Tea Corporation (KCS Tea Center) and Moc Chau Tea Company*

It is very clear in terms of the role of Vietnam Tea Corporations and Moc Chau Tea Company in completing application document to apply Shan Tuyet tea as an appellation of origin product. KCS Tea Center is responsible to make regulations for production while Moc Chau Tea Company is only an executive.

During the time working with the leaders of Moc Chau Tea Company, none of the leaders understands well geographical indication and appellation of origin except the director. Despite of this, the office of quality controlling system conducts a very good procedure to manage and evaluate the quality of the product. However, to tell the truth, this procedure cannot still meet with requirements of regulations on appellation of origin. This is quite understandable because Moc Chau Tea Company has not had the right to use appellation of origin for Shan Tuyet tea yet. That is why they have not obeyed regulations on appellation of origin strictly.

➤ *Other tea producers and traders in Moc Chau district*

Due to the limitation of time and finance, we cannot work with all tea producers and traders in Moc Chau district. But when working with Co Do Plantation, a traditional producers of Shan Tuyet tea that possesses many traditional technique of Thai ethnicity in producing Shan Tuyet tea, we found that they were very disappointed that if Shan Tuyet tea would be protected because this can break the benefit of tea producers seriously. When

localizing the area of appellation of origin for Shan Tuyet tea, the area of this plantation is out of the area restricted. Paradoxically the area of Co Do Plantation is the origin of Shan Tuyet tea and they are more traditional in producing this kind of product. That is why the plantation sends their appeal to the Department of Intellectual Property.

The development of appellation of origin for Shan Tuyet tea from Moc Chau has raised so many problems in national institution in the management of geographical indication and appellation of origin, in the role and responsibilities of government bodies in this development as well as in specifying the benefit that appellation of origin can bring to local stakeholders.

### ***III.2.2.3. Shan Tuyet Moc Chau tea hasnot been protected in the market***

Since Shan Tuyet tea was registered as an AO product by the Department of Industrial Property, there have been many ways to understand the matter of protection of the product in the market or not. Most of the persons said that it has been protected exclusively in Vietnam. Nevertheless, when we worked with the Department of Intellectual Property, we acknowledged the fact that there hasnot yet any organization and individual having the right to use the appellation of origin of Shan Tuyet tea from Moc Chau . This means this products hasnot been protected in the market.

Because the zone of appellation of origin of Shan Tuyet tea from Moc Chau is located in the area of Moc Chau Tea Company, only this company has the right to use this appellation of origin. If this exists, problems will raise because it is not equal with other plantations and producing households. In other words, this will become the property of the enterprise if only this company has the right to use the appellation of origin. Moreover, in the tendency of changing the company into joint stock company, the appellation of origin will be transfered (or be sell and bought) according to the shares of the company as well. At that time, the appellation of origin can be exchanged as a holding?

It is not clear between the stage of registration and protection, compared with the common procedure in Europe and in France<sup>37</sup>. That is why the decision of registration mentions exclusive protection but this can be understood as this tea is allowed to have appellation of

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<sup>37</sup> We will mention this more clearly in the following section

origin. The protection of this product can only boot in case an organization or individual has the right to use this appellation of origin. To conclude, Shan Tuyet tea from Moc Chau, which is produced by Moc Chau Tea Company, has not been protected in the market and other organizations might have the right to use this appellation of origin for their Shan Tuyet tea.

### **III.2.3. Traditional and typical characteristics of Shan Tuyet Moc Chau tea**

Shan Tuyet tea from Moc Chau can be registered as an AO product if it meets with the following requirements: “Shan Tuyet tea from Moc Chau is the product which is made of tea browse of Shan tea tree which is planted and processed according to traditional technology procedure of 10TCN 510-2002, criteria of production procedure of Shan Tuyet tea from Moc Chau”<sup>38</sup>. This regulation, together with the definition of appellation of origin were laid down in civil law in 1995 and will become the base for our evaluation of specific characteristic of Shan Tuyet tea which is registered.

#### ***III.2.3.1. Typical characteristics in terms of quality***

The quality of Shan Tuyet tea is recognized and evaluated in three main aspects: figure and colors, colors of final product (tea liquid), and taste. Basing on these three criteria, KCS Tea Center makes a description and evaluation of tea quality concerning green and black tea. For Shan Tuyet tea, the quality description results in the study of black tea as OP, FBOP, P, PS, BPS, F, and D. From the judgment, KCS Tea Center concludes that Shan Tuyet tea has different and superior figure, smell and taste compared with same products of other area<sup>39</sup>. This makes a milestone for the Department of Intellectual Property to register the product as an appellation of origin.

From the point of view of many households and producer in Moc Chau, the quality of tea produced by Moc Chau tea Company is quite different to theirs in terms of manufacturing, processing, and final product. As for Co Do Plantation, their tea is even much better than the one of the Moc Chau Tea Company because they hold original tea tree and their region

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<sup>38</sup> First draft of temporary regulations on controlling and certifying appellation of origin product for Shan Tuyet tea from Moc Chau district.

<sup>39</sup> Result of the quality investigation of black tea named Shan Tuyet produced in Moc Chau district in 2000 (quoted in the annex)



does not belong to the area of appellation of origin makes local habitants and authorities dissatisfied.

The condition of climate, weather, soil, terrain and hydrography play important role in deciding the specific characteristic of the product. In the draft of decree on quality control of appellation of origin for Shan Tuyet tea, and in the report of production procedure of Moc Chau Tea Company which is submitted to the Department of Industrial Property, the area of Shan Tuyet tea production is limited within the area of Moc Chau Tea Company, particularly the area that is able to plant tea is 722.8 ha and 525.623 of which already grows tea.

Accordingly, all the production area of Shan Tuyet tea of appellation of origin is located in the area of Moc Chau Tea Company. However, there is not any differences in terms of climate between the area of this company and with its surrounding area. On the other hand, the area that represents the most particular climate of Moc Chau district is Co Do Plantation. Furthermore, Moc Chau Tea Company began to plant tea in the sixties of 20<sup>th</sup> century and it not applies Chinese and Taiwan technology. Meanwhile Co Do Plantation is the traditional tea area, but it does not belong to protected area. This is so unreasonable that it should be justify in order to protect the interest of other producer as well as to preserve traditional factors of appellation of origin for Shan Tuyet tea from Moc Chau.

### ***III.2.3.3. Typical characteristic in terms of botanical and biological feature***

Biological and botanical factors are not mentioned in the description of specific and typical characteristics as well as production procedure of Shan Tuyet tea from Moc Chau, except one phrase indicating, “The tea variety planted is called Shan Tuyet, of which the scientific name is *Camellia sinesis* var *Shan*. It can grow by seed or by branch (1 internode 2 leaves) raising in the bag PE. When the branch grows as a small tree, the trunk (near the foot) of which is about 4- 6 cm wide, it can be planted. We can plant it in Spring (January-February) and Autumn (August- September)<sup>41</sup>.

Biologically, the above description only shows the scientifically name of the tea, not its origin, nor its development attaching with particular ecology in the area. At this moment,

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<sup>41</sup> Trích trong bản báo cáo sản xuất chè Shan tuyết Mộc châu của Công ty chè Mộc châu, bản đệ trình trong hồ sơ tên gọi xuất xứ.

the most ancient tree was planted in 1958 and derived from ancient trees of Cho Long and On villages, that is directed by Co Do Plantation and the age of which is hundreds of years. Both the leaders of Moc Chau Tea Company and Co Do Plantation confirm that tea gardens of the company were multiplied and developed from ancient tea gardens of Co Do Plantation.



*Photo 5: Ancient tea garden of Cho Long village with the inspection group and authorities of Co Do Plantation- Moc Chau district- Son La province on September 17<sup>th</sup> 2005*

Another characteristic is that tea was multiplied and planted at the same time in both the area of Moc Chau Tea Company and Co Do Plantation<sup>42</sup>(before 1987) with technical procedure of Moc Chau Plantation (the old plantation which includes Moc Chau Tea Company and Co Do Plantation). This means there is not any difference in terms of biology and botany because they share the same origin. In addition, the area that traditionally produces tea, which is under the control of Co Do Plantation, does not belong to the area of protected geographical indication.

#### ***III.2.3.4. Typical characteristics in terms of organization and production of Moc Chau Tea Company***

##### ***➤ Characteristic of production and organization of Moc Chau Tea Company***

Moc Chau Plantation was founded in 1960. This is the organization planting and managing the production of agricultural products, such as tea and milk in Moc Chau . In 1987, it divided into 3 units: Co Do Plantation (under the control of Son La's People Committee), Moc Chau Milk Cow Company and Moc Chau Tea Company (under the

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<sup>42</sup> Mr. Ngo Thanh Ky's statement – Director of Co Do Plantation – Moc Chau district- Son La province

control of Vietnam Tea Corporation). Among these units, only Moc Chau Tea Company is members of Vietnam Tea Association. The area of Moc Chau Plantation was also divided into two parts and under the control of Co Do Plantation and Moc Chau Tea Company. The authorities in Son La gave Moc Chau Tea Company the right to control an area of 1287.3 ha in which 597 ha had already planted tea. With the model of mother and children companies, we find that the commerce of Moc Chau Tea Company depends totally on Vietnam Tea Corporation.

The manufacturing and processing activities of the company can be described as the following:

- The State delegates power of land use to the company. Then the company entrusts households with cultivating area under fixed-price contract indicating that they will take care and sell products to the company for 50 years. As for the company, they are responsible for technical management and product consumption.
- The households are responsible to attend to, harvest, and sell tea material to the company and the company has the right to withdraw the land if these households do not obey their technical instructions or do not sell their products to the company. The Company controls households through production equip, each of which contains a subcommittee including a leader, an accountant and a technician. This committee has a function of managing and supervising production procedure of household according to the rules of the Company.

In order to stabilize the productivity and the quality of the product, the Company controls the quantity and the use of pesticide and fertilizer annually. Accordingly, the Company provides pesticide and guides to use it through a group named pesticide group. This is the way the Company manages, and follows the time for isolation before harvesting. The same way with fertilizer, households must buy fertilizer from the company and follow its instruction. The cost for fertilizer is fixed by the Company, which is correspondent to 22% of the total income from tea production of each household.

Dealing with collecting tea for the Company, each production equip has one person who often collect tea from the farm to the factory. The tea seller (workers) and the tea collector

of the Company negotiate to classify tea right at the farm. After that, the factory producing tea, the office of quality control and the collectors classify one again before processing. However, during the collection, the tea is not supervised according to lot of tea garden and according to households, hardly can we inquire the origin of the product when there is any problem concerning the quality or the rest of pesticide in the product. Thus, the company can only evaluate the quality according to production equipments.

The processing procedure applied two technologies: green tea technology imported from the Soviet Union and tea technology imported from Taiwan (replacing black tea technology, which was not used since 1999). The management procedure and processing system operation are carried out by the company according to its own quality management system (referred in the annex). The processing procedure of the Company applies two technologies: green tea technology imported from Soviet Union and tea technology imported from Taiwan (replacing black tea technology, which has not been used since 1999). The Company uses its own quality controlling system assuring the management and operation of processing system (referring in the annex).

The matter is that how to apply a production procedure to meet with requirements of appellation of origin.

- *The difference in production organization between Moc Chau Tea Company and Co Do Plantation*

**Table 16: Some features of tea production and consumption condition of different producers**

	<b>Co Do Plantation- Moc Chau district</b>	<b>Moc Chau Tea Company</b>
<b>Ancient tea garden</b>	200 <sup>43</sup> years	47 years

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<sup>43</sup> According to Mr. Vi Van Vui, 73 years old, Thai ethnicity, who is taking care of ancient tea garden in On village

<b>Time beginning to grow commercial tea</b>	1958	1958
<b>Right of land use</b>	Co Do Plantation	Moc Chau Tea Company
<b>Total area of merchandising tea (in 2005)</b>	370 ha	- 597 ha within the area of the company. - 740 ha outside the AO delineated zone and of the area that the Company sign contract with farming households
<b>Ethnicities of farming households that take part in tea production</b>	Worker households accept the fixed rate: H'mong, Thai, Dao, Muong (native ethnic Kinh (form Red River delta)	100% of workers making promise with the company belongs to Kinh majority, and comes from Red River Delta. They sign production contract according to their fixed area
<b>Processed tea</b>	Green and black tea	Green and dried tea
<b>Main consumption market</b>	Pakistan	Pakistan, Afghanistan
<b>Types of consumption</b>	- Confiding export: 98% - Selling in domestic countries: 2%	- Export thorough the Head of Company: 90%. - Sold to domestic market: 10%
<b>Export tea productivity per year</b>	200	2000

Source: Investigated data, 09/2005

### **III.2.4. Using AO for the Shan Tuyet Moc Chau tea**

#### ***III.2.4.1. Utilizing label of Shan Tuyet Moc Chau tea***

The appellation of origin of Shan Tuyet tea has been registered and protected for more than 5 years, symboling the cooperation of France and Vietnam in intellectual property, but the appellation has not been taken in use, especially in commercializing the product.

- Since the time registering and protecting Shan Tuyet tea under appellation of origin, Moc Chau Tea Company still cannot use its appellation. There are many reasons for that. We can count them here:
  - It is compulsory to package AO product right that the place of production and it is forbidden to change the style and label of AO product from packagers to consumers. However, in fact, Moc Chau Tea Company export 90-% of their tea in the sack of 35kg, and the sack only indicate the sign “MC”, representing for Moc Chau. The importers then retail the product or pack it again by their own package and label. After that, they sell them to consumers. The consumers see not benefit in using such kind of product. Moreover, the tea produced by Moc Chau Tea Company is mixed with the one of others before being exported by Vietnam Tea Corporation.
  - The rest products sold in domestic market through distribution channel of Moc Chau Tea Company and Vietnam Tea Corporation have different label and brand name, some are called Shan Tuyet tea from Moc Chau district, others are Vinatea, etc. This makes it difficult to build a trademark and commercial promotion. On the other hand, these producers do not have their own strategy to use appellation of origin in the label of the product.

***Photo 6: One of Moc Chau tea Company under the label of Vinatea***

*Taken in September 20<sup>th</sup> 2005*



- When conducting a survey on using label and package of Co Do Plantation that carries out production activities at the same area with Moc Chau Tea Company, we found that although Co Do Plantation did not belong to the zone of appellation of origin, the plantation was highly aware of the image of appellation of origin. The label and brand name using for the Shan tea products of Co Do Plantation have many meaning in expressing the traditional factors of that speciality. The brand name “Shan Tuyet Cho Long tea” is used to convey the meaning that the product is made in Cho Long, a mountainous village of the Thai ethnic where grows ancient tea trees). The fact shows that traditional value and culture have been taken in use in Moc Chau district.



*Photo 7: One of Co Do Plantation’s products that uses the label: “Shan Tuyet Cho Long tea” Taken in September 20<sup>th</sup> 2005.*

#### ***III.2.4.2. AO production procedure***

- ❖ *Lack of specific characteristics in the standard technical procedure*

A production procedure must include two sections:

- Compulsory production procedure: during the production procedure, there are some stages that we have to conduct, otherwise the typical characteristic of the appellation of origin product will be affected. All these characteristics and impact of production procedure must be proved scientifically and this becomes the base for the construction of quality management system of AO product.
- Guiding production procedure: showing main technical solutions that influence on productivity and economical efficiency of the producers. This procedure is not

compulsory but it is the base that orients compulsory production procedure towards the typical characteristics of the product. In addition, this guiding procedure also helps producers orient their technique to produce product.

Accordingly, it is clear that the manufacturing procedure of Shan Tuyet tea produced by Moc Chau Tea Company does not express which specific characteristics of the product are. Other productions requirements of the company is quite similar to the other production units, for example, picking and collecting tea leaves, cutting trees, using pesticides, and time from using pesticides to harvesting, etc. Meanwhile these are content that decide the safety of the product and for the consumers.

In terms of processing, the registration form of the product indicates that: “Shan Tuyet Moc Chau tea can be processed by different technology, depending on the tastes of consumers”<sup>44</sup>. Then, whether there is a contradictory between compulsory technical rules with AO rules or not? According to this, the processing procedure is not clear and does not have any link with traditional processing technique that differentiate AO product with others. It is evident that all tea producers all over the country can apply the same processing procedure if traditional factors are not emphasized. Paradoxically, manual processing procedures of Thai ethnic are not studied to apply together with modern technology. Thus, the risk of disappearance of these traditional procedures is increasing.

#### ***III.2.4.3. Changes of value and consumption channel of Shan Tuyet Moc Chau tea after the registration***

After the registration, the value of the product and the consuming channels of the Company remain unchanged. Please go further in detail as the followings:

Exporting channels of the Company still package tea without label. The quantity of tea labeled under the trademark of the Company in domestic market is so small; moreover, there is not any sign of appellation of origin in their labels. Almost all products of the Company are sold in Afghanistan and Pakistan without label (packed in the bag of 30kg). To make the matter worse, these two countries donot have great demand of consuming products of high quality and AO products. In other words, they are markets of low quality

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<sup>44</sup> Report on production procedure of Shan Tuyet tea from Moc Chau in the AO document od Shan Tuyet tea

products. Even if the product is sold under the name of appellation of origin, hardly can the price of the product can compensate the management cost for AO product. This means that we have to find other markets to sell the product at higher price.

In terms of other producer in Moc Chau province, such as Co Do Plantation , although they do not have appellation of origin, they can still sell their products to these markets with higher price compared with Moc Chau Tea Company . In fact, the tea price of Co Do Plantation is 0.5USD/kg higher than the one of Moc Chau Tea Company . Hence, it is no hesitation to say that appellation of origin does not have positive effect in developing the market for Moc Chau Tea Company.

**Table 17: Price of final product and price of tea material of different organizations**

	<b>Price of exported green tea (USD/kg)(*)</b>	<b>Price of tea material of the first class (VND/kg) (**)</b>
<b>Moc Chau Tea Company</b>	1.5	2,200
<b>Co Do Plantation</b>	1.55	-
<b>Private organizations</b>	-	2,400-2,700

*Source: Survey, 09/2005; (\*) Exporting price at the time conducting the survey; (\*\*) Price of tea material is determined at a particular time in the year to illustrate the gap of the buying price of the company and of outsider.*

Appellation of origin is created in order to change the price of output , and then change the price of collection for farming households. However, in reality, the price of input material of Moc Chau Tea Company is not higher than those of other producers. What is more, it is even lower than the price of individual producers in the locality, and the Company has to ask the local authority to interfere, that i.e. prohibiting these producers to work so that the Company can buy input material from farming household. In fact, the Company is always anxious that the farming households will sell their tea material to individuals since the Company buy tea material at the lower price compared with these individual producers, from 200 to 500 dong/kg lower.

To conclude, since the time being register, the appellation of origin has not brought much value for Shan Tuyet tea, as well as for the production system and consuming channels of the Company.

#### ***III.2.4.4. Completing procedure to make Shan Tuyet tea protected***

Why hasnot Moc Chau Tea Company been issued a certificate of the right of AO use with Shan Tuyet tea product although it had completed all document required by Vietnamese regulations (Decree 63/CP on February 01<sup>st</sup> 2002 and the Civil Law in 1995) in terms of appellation of origin. The Department of Intellectual Property of the Ministry of Agriculture and Rural Development explains that because it has not had a quality control system. However, the fact is that which is the foundation for the company to build a quality control system while there is not al all any rules for this. The competent bodies of Vietnam government themselves still meet many difficulties in realizing this. Thus, Moc Chau Tea Company and KCS Tea Center has created their rules to control the quality of the products, but if this is applied, it can be only considered as internal controlling system because Vietnam Tea Corporation and Moc Chau Tea Company belong to the same organization. Then which organization is competent and responsible to create an external controlling system for tea products? The Ministry of Agriculture and Rural Development, the Department of Science and Technology of Son La province or the Department of Intellectual Property? In addition, is isnot either clear that if the external controlling system is applied, the Ministry of Agriculture and Rural Development or the Ministry of Science and Technology will check and issue the license. This makes the issue of certificate of the right of use for Shan Tuyet tea obstructs.

Until this moment, all the content mentioned above and analyzed in this report bases on two legal draft: one is the temporary regulations on controlling the quality of Shan Tuyet tea, which certifies Shan Tuyet tea from Moc Chau as an AO product and which is issued by the Ministry of Agriculture and Rural Development; the other one is the draft of the Decree on controlling the appellation of origin for Shan Tuyet tea from Moc Chau , which is issued by the Prime Minister.

#### ***➤ Quality management system of Shan Tuyet tea***

In the draft of temporary regulations for checking the quality of the products, it is not clear whether it is internal of external quality management system. It is laid down in the

regulations that the Office no.10 of Agricultural Experiment has a function of checking and issuing certificate of AO product. Nevertheless, the way controlling and the content for checking are under the control of Moc Chau Tea Company (sample of product produced by group of workers or households, quantity, types of tea...). Apart from that, this checking office is responsible to obey regulations set by Vietnam Tea Corporation and the Ministry of Agriculture and Rural Development.

In other terms, the regulations of quality management system are only for Shan Tuyet tea, but the function of this system is not clear. It is not quite right if we consider it as internal controlling system because it is independent and non-profit. Then if it is recognized as external quality management system, it is not subjective. Moreover, it is not in accordance with regulation of controlling the quality of AO products in Europe and in other countries. The function of quality control is misunderstood into the content of quality management of Moc Chau Tea Company. In addition, compared with the development of appellation of origin for Doan Hung grapefruit that the Department of Intellectual Property conducted in 2006, we can find that the roles of both the Ministry of Agriculture and Rural Development and the Ministry of Science and Technology in issuing legal document for quality management system are not clear

➤ *Who is responsible to control? What should be controlled and how to control?*

An appellation of origin always has a typical and specific quality. With Shan Tuyet tea, it is compulsory to evaluate its quality perceptibly. However, the rules of quality management for Shan Tuyet tea do not indicate which organization is responsible to check its quality?; who is competent to taste the product?; and whether those people have certificate showing that they are capable to taste and evaluate the quality of this product. This means the controlling activity is not subjective and convincing. According to the function of the Office no. 10 of Agricultural Experiment, there is not such kind of function. Then, which can be controlled by the Checking board?

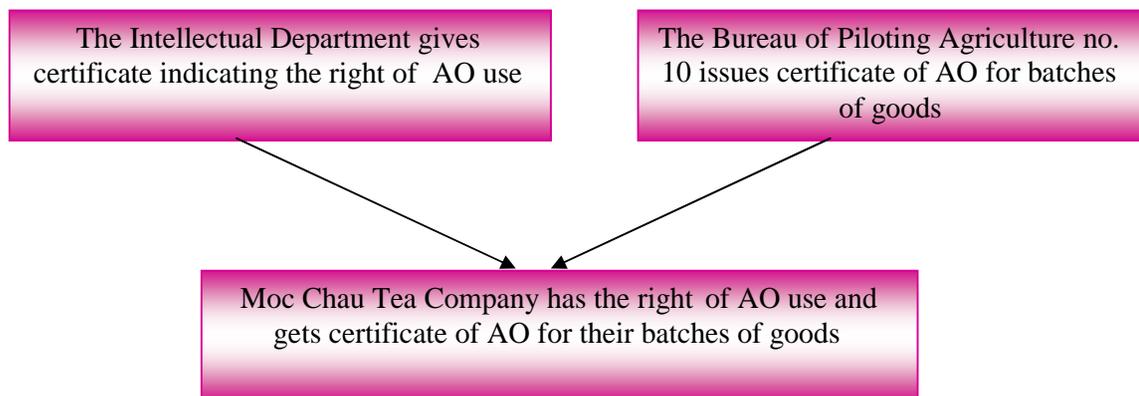
There are many problems when operating this system. Please go in detail:

- The first question is that: Is this a quality management system or just a system checking the documents of Moc Chau Tea Company? What is more, it is not clear in the function of this checking board in terms of internal and external controlling

systems; thus, many functions of this board become formal administrative procedures.

- The second question is that: The function of this quality management system is checking appellation of origin or just checking processing activities of the Company?
- Finally yet importantly, in order to conduct this quality management system, Moc Chau Tea Company has to take two steps: This first is to apply for certificate of the right of using appellation of origin at the Department of Intellectual Property. The second is to apply for certificate for the lot of products at the Office no. 10 of Agricultural Experiment. In other words, the Department of Intellectual Property is responsible for licensing the right of AO use while the Office of Agricultural Experiment is responsible for managing appellation of origin. This means that Moc Chau Tea Company can use appellation of origin continuously without afraid of taking back the right of AO use since it belongs to Vietnam Tea Corporation while other producers have less privilege. Furthermore, in case Moc Chau Tea Company applies appellation of origin for only 1% of its tea productivity, how can the quality management activity be carried out and what is the financement for this activity?

***Diagram 7: Estimated description of the procedure authorizing the right of AO use in the draft of Moc Chau tea***



This is a difficulty for not only Shan Tuyet tea because the right of management and the right of using appellation of origin are separated. To explain, if Moc Chau Tea Company has the right to use appellation origin, they must be responsible to produce Shan Tuyet tea in the area that they have applied for this kind of tea. In case of violation, their right will be

taken away. This procedure is conducted by the external controlling system. In brief, we should pave the way for Moc Chau Tea Company to manage appellation of origin.

**Table 18: Regulations on examining and certifying Shan Tuyet Moc Chau tea as an AO products**

<b>Criteria</b>	<b>Controlled content according to regulations</b>	<b>Exchanges</b>
<b>Applied object</b>	Shan Tuyet Moc Chau Tea Company	
<b>Scope</b>	Collecting, processing, packaging, wholesaling and retailing	The procedures of planting and fertilizing, etc... is now well controlled at this moment
<b>Batches of goods</b>	The same type, same form, same time of production, same type of packaging, same kinds of transportation and same time of checking upon delivery	The product lose their origin of production, that means we donot know which household produce it. Then the tea should be controlled according to household or terrace-field?
<b>Content of declaration</b>	<ul style="list-style-type: none"> <li>- Raw material: Enumerated according to sample or household</li> <li>- Declaring the quantity of material, final tea product and those that have been sold</li> </ul> Products that have been packaged and sold	In fact, we can only manage tea of each group of producers since the tea is then mixed.
<b>Procedures certifying AO batch of goods</b>	<ul style="list-style-type: none"> <li>- The office no. 10 for agricultural experiment receives the document enumerating products.</li> <li>- Assigning a person responsible for checking the number of tea package,</li> </ul>	<ul style="list-style-type: none"> <li>- All the products are controlled in terms of quality and quantity. However, how to evaluate susceptible criteria, and who is capable to judge this is not well referred. On the other hand, how to get a sample of the rest of insecticide</li> </ul>

	<p>keeping a sample of tea checked in terms of susceptible and physicochemical criteria of the lot of products</p>	<p>and other dangerous subsistence on final product, how frequent this should be done, who is responsible to extract and analyze the sample, etc are not mentioned either. If the Company does these stages itself, it is only considered as internal controlling system of inside the Company.</p> <p>- Or if we only check the final product (that means after packaging), it is risky to have heavy administrative procedure?</p>
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Source: Draft of temporary regulations of AO investigation and certification for Shan Tuyet tea from Moc Chau

### III.2.5. Benefit in registering Shan Tuyet Moc Chau as an AO product

When a product is chosen to develop as an AO product, this means it bring social-economical advantages for the community, which is allowed to use it after that. Based on the result of investigation, we can list here all advantages that Shan Tuyet tea has brought to Moc Chau district since the time being registered.

#### ➤ *Defining orientation of agricultural specialities in Vietnam*

The initial success of appellation of origin for Shan Tuyet tea from Moc Chau district motivate local stakeholders and localities in preparing to develop appellation of origin or geographical indication for some certain agricultural products. This movement is considered as a motivation for agriculture and a method to develop Vietnamese specialities. In the other hand, it is appellation of origin of Shan Tuyet tea from Moc Chau that stimulates stakeholders of tea commodity chain to pay more attention to quality, property and geographical factors.

#### ➤ *Founding legal frame for appellation of origin*

The AO development of Shan Tuyet tea from Moc Chau helps the Ministry of Agriculture and Rural development defining their strategy in appellation of origin. Gradually, all the issues related to this are institutionalized at local and central level. The success in legal success is quite respectable. Although it is still not perfect, but only some years making such legal base for appellation of origin worth to be called as success. We should acknowledge that it takes developed countries hundreds of years to build a legal frame for appellation of origin while Vietnam is just at the beginning step. The Ministry of Agriculture and Rural Development should bring into play this success. Furthermore, the Ministry should form a competent institution to manage AO and GI products, institutionalize procedures of technical control and consulting appellation of origin at local level.

➤ *Motivating intellectual property and anti-imitation*

The appearance of such AO product as Shan Tuyet tea from Moc Chau district raises the importance of community property which was not been paid much attention by both the stage, government and local habitants. Accordingly, the anti-fake is not a responsibility of only enterprises but also of the whole community. This means that the social pressure on anti- fake will be greater than now.

➤ *Preservation of biological diversity*

Moc Chau Tea Company tends to preserve the gene of Shan Tuyet tea by preserving their areas cultivating this kind of tea. However, preserving ancient tea garden beyond their delineation tea area is the responsibility of others. Statically, the areas that have just used to cultivate Shan Tuyet tea in Moc Chau district and in other provinces is rather big (thousands of ha). In other words, it is not an alert to protect the gene of Shan Tuyet tea. Nevertheless, the areas of ancient Shan Tuyet tea at risk of disappearance are not preserved carefully, for example Co Do Plantation. In this plantation, the ancient tea trees are not well taken care. Hundreds of ancient tea trees die in the past of ten years. This means that the registration and protection of Shan Tuyet tea in Moc Chau district are not efficient in the preservation of ancient tea trees.

Although in reality, there is a limitation in applying appellation of origin for Shan Tuyet tea, the preservation of biological diversity by appellation of origin and geographical indication is well acknowledged by not only governmental bodies and international

organizations, but also many localities and stakeholders of the commodity chain. This changes basically the approaches of preservation in terms of biological diversity in Vietnam, where only the preservation of gene bank was paid much attention before.

➤ *Economical efficiency from appellation of origin for producers*

Up to now, the appellation of origin of Shan Tuyet tea has not brought additional economical advantage, then does not contribute to the agricultural and rural development in Son La province. A hypothesis is that is the appellation of origin brings much economical benefit, whether the habitants in this area can benefit from this or not. According to us, it is difficult for the local habitants to make profit from their AO product if we donot adjust the delineation area of Shan Tuyet tea. Firstly, now the area of appellation of origin is only limited within Moc Chau Tea Company's area . In other words, if Shan Tuyet tea is protected, other producers will not be allowed to use this name any more. Consequently, this will affect their market and the local producers' income. Secondly, the households signing written promise with the Company are not farmers, but workers. They donot have the right to decide the contract as well as negotiate the benefit with the Company. What is more, tea produced by Moc Chau Tea Company is then mixed with the one of other provinces by the Vietnam Tea Corporation. This cannot assure the benefit from appellation of origin for Moc Chau Tea Company itself.

➤ *Improving quality in order the make the product more competitive in the market?*

Once the AO products are well managed in terms of processing and production, the final products will be homogenous in terms of appearance and quality, as a result increase the competitive capacity in the market. Apart from that, technical factor can improve the quality of the products. Nevertheless, Shan Tuyet tea produced by Moc Chau Tea Company did not have any changes in quality thanks to AO product's quality management. This can be explained like that: the changes in processing technology from black tea to dehydrating tea contributed to meet with new demand of the market as well as increase the competency of the products. However, this changes only served the purpose of adapting to new market, not meet with the strict requirements of Appellation of Origin. On the other hand, we should note that in 1999, in order to meet with the market's demand, Moc Chau Tea Company ceased to produce black tea, one of the two products described in the application form of AO products. Instead, the Company applied a new technology to produce dehydrating tea, which exclude in the list of products applied to become AO

products. Then it is ridiculous that an inexisted product (black tea) was still listed as a product needs to be preserved and got registration certificate of an AO product?!

### ***III.2.2.6. Issues of Shan Tuyet Moc Chau tea that should be discussed***

After many years of AO development, there are still many existent problems to solve in order that this product can be actually protected in the market. Then, we should concentrate in the following points:

#### ***➤ Point of view and objective of AO development***

The professional ministries have oriented localities to develop the appellation of origin for their own product. According to the orientation of development of the Ministry of Agriculture and Rural Development,<sup>45</sup> the Ministry only supports the development of appellation of origin, not the geographical indication. Following this idea, each province and administrative body should choose to develop its products under the appellation of origin in order to get the support from the ministry. This means that geographical indication was not encouraged. However, thanks to the changes in the Vietnam Law of Intellectual Property, the Ministry of Agriculture and Rural Development changed their opinion and began to support geographical indication development as well. It is more difficult to develop appellation of origin because of strict requirements in terms of typical characteristics of the products concerning their social- economical and geographical features. This can explain why both geographical indication and appellation of origin are widely developed together through out the world.

#### ***➤ Problems of institution and policy***

Now, the state has created a legal frame for geographical indication and appellation of origin. Nevertheless, there remain many restraints in the implementation. The procedure of AO development for Shan Tuyet tea is not unified due to unclear division between responsibilities of ministries, at central and local level, and among civil organizations of producers and of commodity chain. For example, it not well defined the responsibilities in terms of technique, technology, and quality management (often the competent ministries are in charge), in terms of legality and protection (the Ministry of Science and Technology

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<sup>45</sup> When we conduct this study, the Law on Intellectual Property had not been approved. The law of 2006 indicates only geographical indication, not appellation of origin. However, at this moment the Ministry of Agriculture and Rural Development has changed its opinion and supported both the two.

is more competent) and in terms of commercial promotion (responsibility of the Vietnam Chamber of Commerce and Industry), especially after Shan Tuyet Moc Chau tea was registered. Moreover, the Son La authorities themselves get confused in realizing this. When Shan Tuyet tea from Moc Chau was protected, it is not clear either which body can issue regulations on inspection (particularly external inspection system), and which body is capable to inspect. This can explain why there was not good cooperation among central administration and local organizations of Son La province , among ministries, among local producers and Vietnam Tea Corporation.

➤ *The ways building appellation of origin product and the roles of organizations*

There was not enough discussion on building appellation of origin documents for Shan Tuyet tea from Moc Chau among its producers (individual and organizations). As a consequent, many individuals and organizations did not take part in the AO development. To make the matter worse, when we conducted our survey, they shew us their dissatisfaction.

➤ *Conflict in localizing the protection zone*

The delineation of Shan Tuyet Moc Chau tea protection zone is located within the area of a joint stock company. Consequently, it is risky that the appellation of origin of Shan Tuyet tea can be no more a property of the community, but the property of an enterprise. What is more, the areas that traditionally produce Shan Tuyet tea have not been paid much attention. This is the reason why Co Do Plantation sent their opposal of the AO registration for Shan Tuyet tea to the Department of Intellectual Property and would like to delocalize the production area of this kind of tea.

➤ *Technical procedure*

It should be clarify which Shan Tuyet tea can be acknowledged as an AO product. Besides, it should have procedure producing tea varieties for new tea terraced- fields. In addition, we should indicate which care and processing techniques are allowed . The fact shows that what describes in the application document is different to what happens in reality . This is the reason why until now Moc Chau Tea Company does not have the right of using appellation of origin for their Shan Tuyet tea. On the other hand, the traditional factors of tea production need to be exploited as well since they are very vague now.

➤ *The quality management system needs to be bettered*

Building a quality management system of appellation of origin for Shan Tuyet tea is now an urgent. This includes geographical location, roles of stakeholders in quality management system, document of quality management, criteria of supervision and inspection, internal and external inspection system, and cost of quality management. All these contents should obey the regulations of controlling system in terms of origin and authentic quality of AO products. On the other hand, we should pay more attention to the roles of administrative body in assessing, supporting, supervising and administering the implementation of this system. In fact, the quality management system of Moc Chau Tea Company and Tea Corporation is only implemented within the company itself. Moreover, this system has not followed the regulations of appellation of origin and food safety and hygiene. The establishment a quality management system, with clear information of each tea garden, each producing household, each processing lot and each tea package become so important. In addition, the packaging activity should be conducted in Moc Chau Tea Company so that the product can be called appellation of origin product. Then who will supervise and inspect the implementation of regulations on appellation of origin? The Department of Science and Technology of Son La province or the Ministry of Science and Technology? At this moment, it is not clear that who is responsible for what, especially after the products of appellation of origin or geographical indication are acknowledged and recognized.

➤ *Market and commodity chain*

Facing such current tea market, it is difficult for Moc Chau Tea Company to apply the rules to manage appellation of origin since it is not high-grade market. As a result, the tea price in the market is not high. It is even lower than the non - appellation of origin tea in domestic and exporting markets. That is why the creation of more grams of products of high quality is vital to discover new market, with higher price in order to compensate the management cost of appellation of origin. Not only the tea of quality, but also safe tea and its advertisement play an important role in the strategy of occupying high-grade market. Apart from that, it is also necessary to better the channel of this commodity chain, which is well controlled from production, processing to consumption, of course with label.

➤ *License ( the right of use )*

Shan Tuyet Moc Chau tea has been registered and protected but none of organization has had the right of use. This is the reason why there is not hesitation to say that the appellation of origin has not been applied to the reality. The competent administration should rapidly concretize policies and regulations to support and approve for the right of AO use for affordable organizations. Alternatively, it is also essential to take in to consideration all regulations related to supervision, and inspection as well as confiscate the license of using appellation of origin in case of violation.

➤ *Roles of the Ministry of Agriculture and Rural Development*

The Ministry of Agriculture and Rural Development should hand over the function of supporting and administering appellation of origin for agricultural products and products of small-scale industry to its competent branches that are responsible to developing strategies and policies supporting the development and assessment of technical procedure, rural scheming concerning appellation of origin. At this moment the Department of Science and Technology is assigned to support the piloting project on geographical indication and appellation of origin. However, the Ministry of Agriculture and Rural Development has not indicated both the GI and AO support, assessment and management in any legal document.

➤ *Development potentiality of Shan Tuyet Moc Chau tea commodity*

Moc Chau Tea Company imports a number of new varieties and there is a mixture in processing. These new varieties produce tea of more productivity and quality compared with Shan Tuyet tea. Now there are many tea joint-venture companies with Taiwan and planting joint-venture tea can make more profit than Shan Tuyet tea. This is a threat to Shan Tuyet tea in Moc Chau district.

### **III.3. Comparison of AO regulation in Vietnam and Europe**

#### **III.3.1. Registration and protection procedures**

Developing geographical indication and appellation of origin has become a very important tool to improve the competitiveness of agricultural products in the market. Thailand, Indonesia, India and other Asian countries are successful in reducing the abuse of label and name of products of corporation and multinational countries. For European countries as France, and Portugal... the use of geographical indication and appellation of origin has developed since 1990s of the 19<sup>th</sup> century. Apart from maintaining the reputation of products, the main purpose of appellation of origin also includes:

- Fighting against the imitation and abuse of products that have a strong attachment with a particular geographical name
- Fighting against the violation and unhealthy competitiveness in the market
- Improving the value for products in the market and stimulating the agricultural and rural development

Actually, the main objective of developing geographical indication and appellation of origin in Europe is that:

- The producers participate actively in the brand name and trademark development, protection, advertisement and exploitation.

- The foundation and development of geographical origin products must closely link with community property, and we should take advantage of typical characteristics of the products based on their geography.

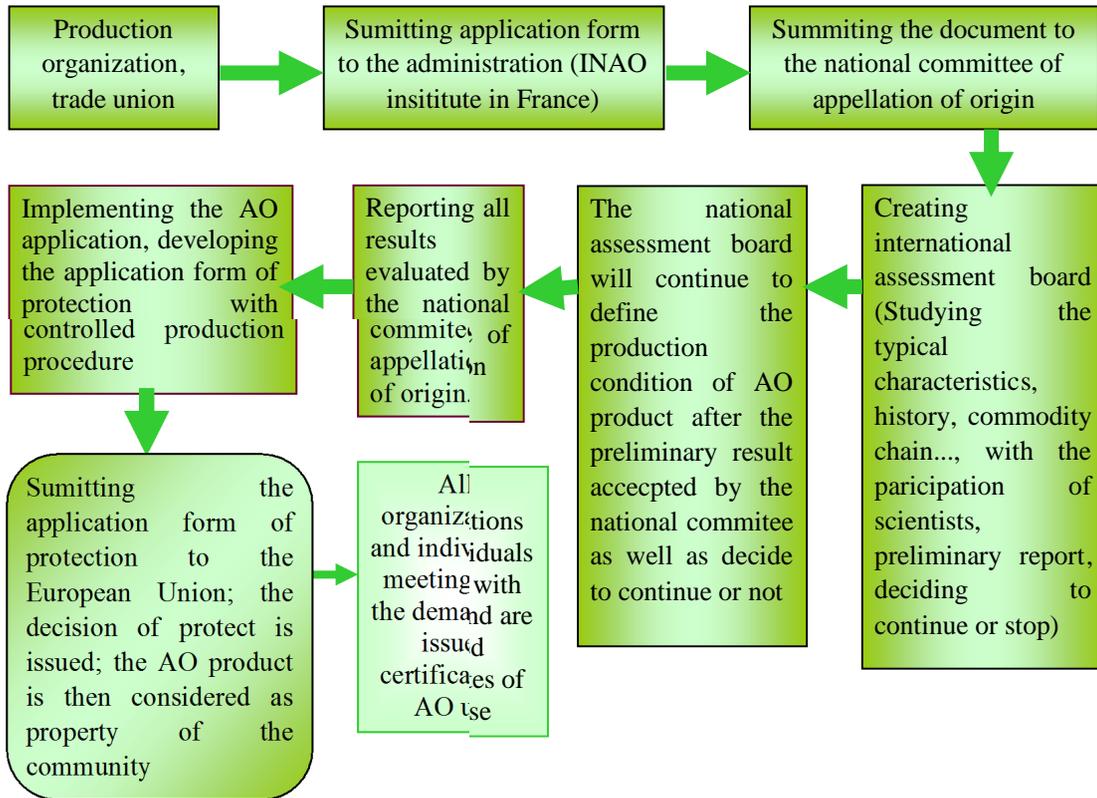
- The name derived from geographical origin is a motivation to increase farmers' income and motivate the development of agriculture and rural area.

- Improving the inquiry ability of products' origin for the customers through the inspection system, then gradually make them believe in AO products

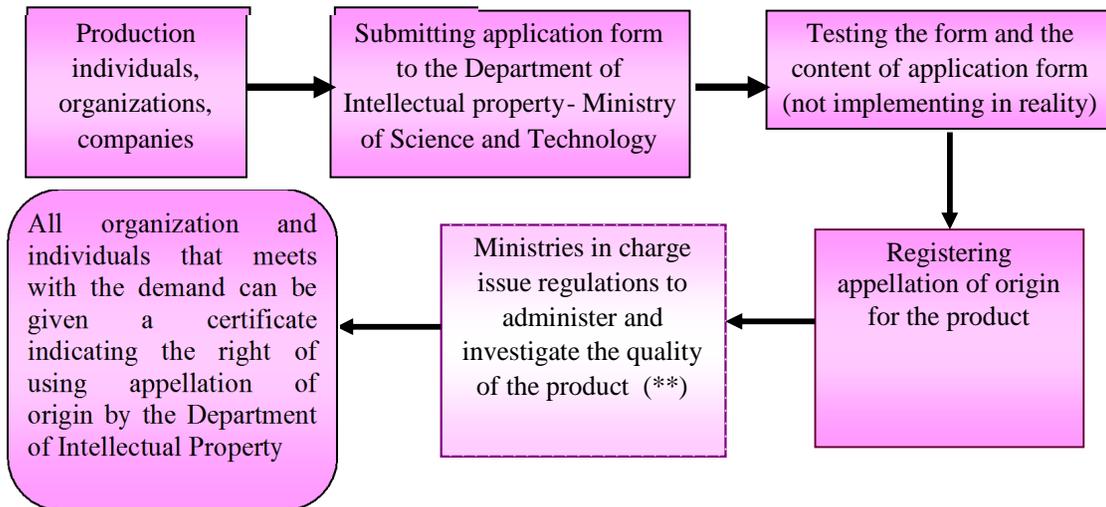
With such objectives, the protection of a GI or AO product is so important that it decide the success or failure of the production and commercial system. Geographical indication and appellation of origin have been one of discussing topics in the European Union and there is a common regulation to determine the right of protection for such kind of product in Europe.

The procedure to register and protect a GI or AO product in Europe and Vietnam can be illustrated in the following diagram:

**Diagram 8: Procedures of AO registration and protection in France**



**Diagram 9: Procedures of AO registration and protection in Vietnam**



(\*\*) Until now, Vietnam is only at the stage preparing regulation for Shan tea and issue regulation for Phu Quoc fish sauce, not implementing them in reality.

With the purpose of setting up the right of using appellation of origin for a product in Europe, it is compulsory to follow such instructions as:

- A professional administrative organization is a must. This is the administration that receives the demand of producers through the application form for registration. This organization also assesses typical and specific characteristics of the product as well as the reasonability of the description in the documents.
- There must be the participation of scientists who define the authenticity and the reality of the product's specific characteristics.
- After the assessment, could the product be acknowledged and registered.
- The procedure of completing application form for the protection goes after the stage registering the product. This is based on the implementation of a controlled production procedure. Then the decision of protection is issued.

Comparing Vietnamese regulation with the European ones, we can find some following differences:

- The applicant should be an organization of the producers. However, in Vietnam this can be local authority or any individual, any organization that participate in producing the products.
- The evaluation in terms of content is taken in reality. All specific descriptions are proved scientifically. In fact, it is laid down in Vietnam that there should be an evaluation in terms of content but not clarifying that the investigation must be taken in the field, the reality and that the scientific proofs are compulsory.

The establishment of protection right for two Vietnamese products has skipped an important stage, that i.e. scientific assessment of typical characteristics of the products. That is why the application form for protection cannot apply controlled technical procedure.

The second difficulties of Phu Quoc fish sauce is (Shan Tuyet tea has not had an investigation regulations): In order to build a protection application according to European regulation, the producers have to create a quality management procedure including requirements of infrastructure for production, applying compulsory production procedure, and taking note of production procedure. Any organization meets with the requirements will have the right of use. According to the new issued regulations, the investigation

system of Phu Quoc fish sauce will be implemented according to each consignment and the issue of the right of use does not base on the whole activity of the installation but only one part of their activity, concentrating on the preparation of raw material and soaking the fish sauce.

### **III.3.2. Procedure setting AO protection right**

#### ***III.3.2.1. Regulation on registration documents***

The application form for AO and GI products is crucial base for national administration to access and give the right of GI and AO protection. In Vietnam, the application form to protect AO and GI products is defined by the circular letter no. 3055/TT -SHCN issued on December 31<sup>st</sup> 1996 and considered as a guide to implement the decree 63/CP is sued on October 24<sup>th</sup> 1996 (this decree was adjusted in 2001). In Europe, this is mentioned in the agreement CEE no. 2081/92 issued in 1992.

Based on these regulations and the practice in two different situations, the following differences can be seen:

***Table 19: Comparison of registration regulations on appellation of origin in Vietnam and Europe***

<b>Requirements</b>	<b>Vietnam</b>	<b>Europe</b>
Applicant	Every organization or individual	Organizations of farmers, producers or processors
Type of product: define clearly groups of product and its particular characteristics	x	x
The name of the product is AO product	x	x
Situation of production and commerce: situation and stakeholders of commodity chain, potentiality to develop production, features of households, professional level..., current of price, price in transaction procedure, condition of label use	Not indicated	x

Relation between natural condition as well as practice and product quality	Unclear	x
Allocating geographical zone of origin and processing of product	Unclear	x
Production condition, description of production procedure and decisive stages that determine production procedure under control	Not indicated	x
System of production control and quality management	Not indicated	x

- Vietnamese regulations have not mentioned the reality of production and commodity chain. However, in fact, this is the condition to evaluate the ability to improve the value and competitiveness of the products in the market.

- The description of compulsory techniques and stages in the production is the most important factors in European regulation. This should be assessed by persuasive scientific proofs in terms of the quality. Meanwhile this is not a compulsory requirement in Vietnamese regulations.

- The capacity of enquiring the origin of the products belongs to the production investigation and quality management systems. This is the first and foremost purpose to protect geographical indication and appellation of origin in the market. Nevertheless, this is very contrary in Vietnam situation. In other words, it is not referred in any legal document. At the time conducting this study, this content has not been implemented with Phu Quoc fish sauce.

### ***III.3.2.2. Organization of producers in the setting of protection right***

According to the regulation CEE no. 2081/92 of the European Union, the associations of producers, processors and traders play a crucial role as the subject using and administering GI and AO products. This expressed in three main contents:

- The association of producers and processors (or this can be separated associations) is unique organization that can apply for AO and GI products.

- This organization must show that it can represent for all the commodity and express the participatory capacity of other producers and processors who do not take part in this

submission if they have satisfy all the requirements of geographical indication and appellation of origin. Thus, the subject must be open organization, which provides opportunities for all the producers, processors and traders in the deli neation zone. In the appellation origination development of Shan Tuyet tea , the fact that the subject or applicant is a company and the production region is localized within company's area has made other individuals and organizations loose chances to use appellation of origin. However, this also resulted in the shortcoming of the localization of geographical and production region .

- The organization of the producers is responsible to submit registration forms, supervise production procedure, and develop strategy to protect appellation of origin in case of violation.

Institutional environment is decisive factors of the success or failure of AO implementation in reality. The comparison between Vietnamese regulations, especially on the roles of production installations, professional organizations, competent administration organizations of the State in developing appellation of origin and European regulations allow us to give statements conveying the difference in regulation of Vietnam and Europe . This makes it difficult to protect Vietnamese products in European Union and WTO if the European Union is successful in applying their regulations in the ones of WTO.

*Table 20: Comparison of responsibilities of competent organizations in AO development in Vietnam and France*

<b>European regulation</b>	<b>Vietnamese regulation</b>	<b>Activities implemented in Vietnam</b>
<ul style="list-style-type: none"> <li>- The State is responsible to control and create a foundation for scientific proof</li> <li>- Conducting field investigation of all factors based on traditional experience scientifically.</li> <li>- Localizing the geographical region based on all concerning factors</li> </ul>	<p>There is not yet any detail regulation to define typical characteristics and geographical delineation of the production in Vietnam.</p>	<p>Synthesizing all typical characteristics based on experience of producers, not including scientific investigation</p> <p>There is not any unified idea in terms of factors that decide typical characteristics</p>
<ul style="list-style-type: none"> <li>- The association or trade union will summarize and develop technical procedure and submit the description of this procedure to competent organizations.</li> <li>- The competent organization will judge and evaluate the procedure.</li> <li>- Whenever the technical procedure is approved, it will become standard technical procedure for the production of the AO products.</li> </ul>	<p>It is not yet laid down in Vietnamese regulation the development and submission of general technical procedure.</p>	<p>When registering, the technical procedure is not submitted.</p> <p>In 2005, the Ministry of Aquaculture issued regulations, which indicate compulsory technical procedure for the production.</p>
<p>The association or trade union will be responsible to manage AO in the scope of their members' activities.</p>	<p>Individual, legal entity and applicants who apply for AO protection will be responsible</p>	<p>Phu Quoc fish sauce is founding an investigation board to administer appellation of origin of all individuals, and legal entities.</p>

	for their own production.	
<ul style="list-style-type: none"> <li>- Internal controlling system is created and implemented by the association and trade union before submitting the registration documents. The competent organizations will investigate the reality of this system.</li> <li>- External controlling system is managed by the state. The state will issue regulation to supervise and investigate all the activities of the association, trade union and other members to implement compulsory technical procedure.</li> </ul>	There is no regulation on developing internal and external quality management system.	<p>There is not yet an internal quality management system of producers and those of competent organizations who administer appellation of origin.</p> <p>On May 16<sup>th</sup> 2005, the Ministry of Aquaculture issue regulations on quality management system. This system is evaluated by the People Committee of Kien Giang province that has the right to issue the certificate of the right of AO use.</p>
<ul style="list-style-type: none"> <li>- The certificate of the right of use is issued to association of producers to simplify AO management system.</li> <li>- General regulation on label indicating appellation of origin</li> <li>- The organizations and trade union of producers and processors protect appellation of origin in case of violation</li> <li>- The State supports the anticounterfeit...</li> </ul>	Affordable individual, organization and economical subject	<ul style="list-style-type: none"> <li>- Issue certificate of the right of use to all affordable individuals</li> <li>- It is only laid down labels with requirements of information content.</li> <li>- It is now clear that who will be responsible to protect the appellation of origin.</li> <li>- Difficult for small producing installation to advertise their trademarks and they will not much benefit from the appellation of origin.</li> </ul>

In sum, European regulations clarify evidently the roles and responsibilities of the trade union, technical and administrative organizations (representing the national roles). On the other hand, it is very easy to notice the overlapping and unclear responsibilities in Vietnamese regulations. Thus, it is unavoidable to have inadequacy in AO development of Phu Quoc fish sauce and Shan Tuyet Moc Chau tea .

### ***III.3.2.3. Detailed requirements in quality management system***

Following the European regulation 2081/92, the purpose of checking activities is to solve the problems of:

- Inquiry capacity of the product
- Making sure of geographical origin and border
- Ensuring typical characteristic of the products by quality
- Criteria, secret or methods of typical production and processing
- The particular characteristic express by variety of plant or breeding animal
- Typical taste, smell, form, size or weight of the products
- Rules of labeling or presentation on label that creates general feature of the product

Hence, to supervise strictly the above problems in Vietnam , the quality management system must be set up based on two levels: internal and external level. What is more, the system must assume responsibility for:

- The quality management which is quite distinct and avoids the misunderstanding with the mechanism of administrative controlling systems of other competent organizations, for example: the Department of Agriculture and Rural Development, Veterinary, social welfare, food processing establishments, food traders, hygiene rules for slaughter houses, for transportation, food processing and disposal, adjuvant and for the water quality<sup>46</sup>...

- Competent organization conducting inspection should see to unprejudiced and equality with all producers and processors under supervision as well as should have adequate and qualified cadres to fulfill their missions successfully.

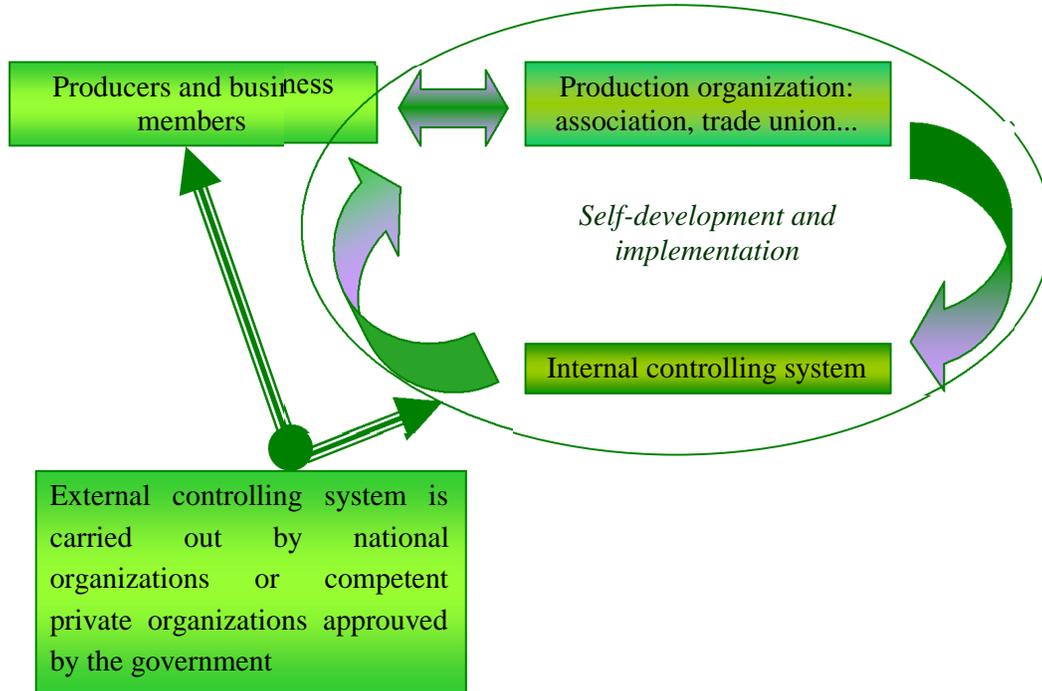
- The inspection content should only include typical aspect or decisive factors of the products' quality

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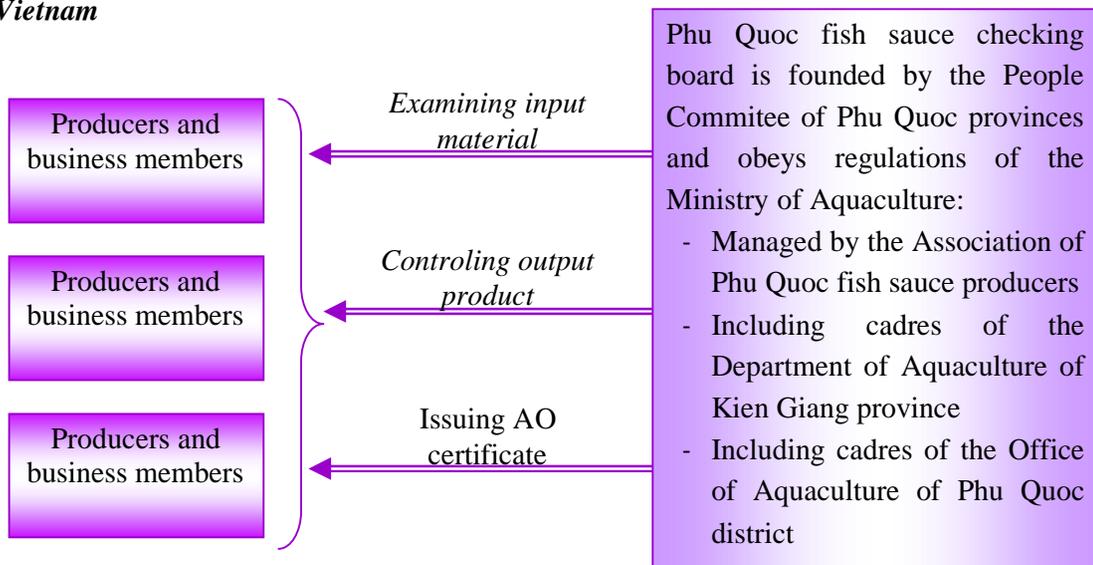
<sup>46</sup> GI inspection system, Ana Soeiro, 16/11/2005 (Presentation of conference on GI in Vietnam)s

With such objectives and requirements, the difference in AO and GI quality management systems in Vietnam and Europe can be illustrated in the following diagram:

**Diagram 10: European production and quality management system**



**Diagram 11: Production and quality management system of Phu Quoc fish sauce in Vietnam**



Up to now, only Phu Quoc fish sauce has created a checking system. Nevertheless, if we compare this with the one in Europe, there are still inadequate problems, such as:

- This checking system is not clear whether it is internal or external system.

- The checking board has two functions at the same time: controlling Phu Quoc fish sauce and issuing AO certificate. On the contrary, in Europe, the competent organization issuing AO certificate is approved by the government and this organization will receive reports from checking system to have overall assessment.

- There is not enough independence and equality for all members of the system because the members of checking board are promoted by the leaders of the Association. Meanwhile the Association itself encounters so many problems in terms of organizations and internal democracy.

The regulation controlling Phu Quoc fish sauce was born in difficult institutional condition. That is why it helps orienting the development of Phu Quoc fish sauce and the need of building an AO controlling system. However, in order that this controlling system works well and match with European regulation and that Vietnamese products can be protected in European market, the complement of regulations is highly appreciated, particularly rules of operation system.

# SECTION IV

## CONCLUSION AND PROPOSITION

### IV.1. Conclusion

#### VI.1.1. Trend of GI and AO development

- GI and AO development are important solutions to protect and preserve traditional culture, to improve product quality, to augment the competitiveness and to protect the products in the market against the abuse of the fame under the forms of fakes.

- Many countries of rather common conditions with Vietnam as Indonesia, India, and Thailand are making great effort to apply regulations of GI and protect their agricultural products, and the regulation 2081/92 is the legal base for these countries to perfect their institutional system.

- PGI and PAO will soon become regulations for countries all over the world, especially members of WTO since EU is on the way negotiating to apply the regulation 2081/92 into those of this organization.

#### IV.1.2. Institution on AO and GI in Vietnam

##### *IV.1.2.1. Positive characteristic in institutional development in Vietnam*

###### *➤ GI and AO are in the scope of legal documents*

The experiences in India and Thailand show that it is difficult to operate GI building system without intellectual property law. For example, which law should be applied to protect the products? Which protection form should be taken in use?

Although there are many difficulties, Vietnam legal frame on GI and AO shows its positive aspects:

- The law on GI and AO has assisted each other to form regulations for both GI and AO products.

- The legal document has put forward concepts of GI and AO as well as main step to build GI and AO product, such as applicant, requirements of registration form, etc.

###### *➤ Support of organizations*

GI and AO activities are well supported by many organizations. We can name them here:

- The Department of Intellectual Property: has supported in document evaluation, prepared contents of exchange so that products will be protected in the market and that these content can be discussed in such international organizations as AFTA, WTO...

- The ministries and organizations related have given material support and facilitated necessary procedure for the registration and after registration.

➤ *The appearance of the Intellectual Property Law promotes to development of GI and AO*

In November 29<sup>th</sup> 2005, the Intellectual Property Law was approved by the National assembly, which shows the common trends in perfecting institutional frame at national level. The appearance of the law has solved such problems as:

- Laying down the rights of GI property, use and management
- Apart from geographical factors, human factors are also appreciated among which are the roles of local people' skills, and the stability of local production process.

- All contents of GI and AO documents, for example quality description, relation between quality and factors of production, the map of geographical zone of product's origin and processing, etc. must be proved in scientific fashion.

***IV.1.2.2. Limitations in AO and GI development in Vietnam***

AO and GI development has taken place since 1998 in Vietnam. However, it has not been successful yet:

- We meet many difficulties because of the imperfection of legal frame, and the lack of detailed regulations for GI.

- The regulations are unclear in terms of content and methodologies. In fact, the ways implementing, the completion of documents, the description of product, and the evaluation of the content, etc have been conducted in the wrong way. That is why the application of institution into real life overlaps and is hardly implemented.

- The roles of organizations and individuals are not clarified, especially the roles and functions of national organizations in applying GI and AO procedure.

- The national regulations do not pay much attention to organizations of producers and stakeholders of commodity chain. Besides, the studies of AO and GI procedures do not meet with requirements of the provinces.

- Vietnam is not aware of GI and AO deeply. Although GI and AO bring the same advantages, almost ministries and branches related are often much interested in AO, but not GI. On the contrary, the Intellectual Property Law focuses only on GI.
- There is not any program of propaganda on GI and AO. As a result, the consumers do not understand their meaning and values.

#### ***IV.1.2.3. Accordance in methodologies implemented in Vietnam and Europe***

- It is necessary to apply regulations 2081/92 of the European Union so that Vietnamese products can be protected in Europe and other countries without any difficulty. However, the GI and AO implementation in Vietnam in the past 5 years was not suitable with regulations, from protection steps, documents' requirement, to descriptions of product quality and production conditions.
- Thanks to European experience, we find that it is very important to protect agricultural products under "Protected Appellation of Origin" or "Protected Geographical Indication", advertise the products, stabilize their quality, promote the commerce, and approach the market. This is not only solution in the process of integration but also for the protection of trademark in the market.

### **IV.1.3. Procedure of building two AO products in Vietnam**

#### ***IV.1.3.1. Success in building two AO products in Vietnam***

##### ***➤ Success in bringing AO and GI in Vietnam***

AO and GI are well known only for overseas students in France, but not in Vietnam . The Economical Mission Bureau of French Embassy in Hanoi, Ministry of Agriculture, and Rural Development, Ministry of Aquaculture are pioneers in developing GI and AO in Vietnam. They have cooperated together to provide training programs on GI and AO, to perfect legal frame and to pilot two AO products (Shan Tuyet tea and Phu Quoc fish sauce). These successes not only express in institutional aspect, but also create social motivation to develop GI and AO.

##### ***➤ Orientation in agricultural and rural development***

Bringing AO and GI to Vietnam has aroused many provinces and stakeholders with their potentiality and with the development of specialties. At this moment, many provinces

orient themselves to develop their agriculture products under PGI and PAO in order to advertise their local trademark, to motivate households and to develop rural area. Many of them are aware of the priorities in competitiveness when producing AO products, not only the benefit of direct sale but also of other advantages that AO products bring to their province.

➤ *Legal base for AO and GI*

The co-operated program on GI and AO between France and Vietnam has made legal foundation for the development of GI and AO in Vietnam. This is a very important success since it takes other countries hundreds of year to build a legal frame for GI and AO product while Vietnam has just begun to conduct it. This success has been concretized in the Law of Intellectual Property, approved by the National Assembly.

➤ *Encouraging intellectual property and anti - imitation*

Successful in making two AO products – Shan Tuyet tea and Phu Quoc fish sauce-, Vietnam has to face with many problems, including the intellectual property of traditional values, and the fact of how to make these values protected and used by their creators. On the other hand, anti-imitation now concern not only the producers but also all the community. Consequently, the social pressure becomes much higher.

➤ *Experience in piloting two AO products*

While GI and AO are unclear in legal documents, the Vietnam - France cooperation program on GI and AO conducted by the French Economical Commission Bureau, the Ministry of Agriculture and Rural Development, and the Ministry of Aquaculture is considered as milestones for the development of AO and GI products. The reason lies in the fact that their steps in developing an AO product are very professional. However, due to the imperfection of institution, the limitation of AO and GI knowledge, as well as the lack of civilian organizations, the procedures of GI and AO development meets many difficulties. In fact, these limitations are inevitable because of internal factors of AO and GI aspect itself and external factors like the role of community and civilian organizations, the coordination between ministries, branches at central and local levels.... In fact, the two AO products allow us to have general image of methodologies implemented, problems, and solutions. All problems on GI and AO that we have raised are drawn out from the study of these two products. Without these two AO models, we cannot understand the way

of AO and GI development. As a result, the success of these two AO products expresses not only in their commercial value but also in the experience of policy development, strategy, legal institution, point of view, and solutions.

#### ***IV.1.3.1. Limitation of the construction of two AO products***

##### ***➤ In terms of building procedures***

The two Vietnamese products- Phu Quoc fish sauce and Shan Tuyet tea- are reasonable choices for the application of AO and GI. They become AO products in the imperfect institutional context, without scientific evidences. That is why we can find many limitations in the AO application for these two products:

- The individuals and organizations participating in AO procedure have not been aware of their interest in building AO products as well as afraid of the risks in AO products investment.
- AO development activities have not mobilized the investment of community, of civilian organizations, and of local enterprises.
- There are limitations in the evaluation process for two AO products that leads to unclear specific characteristics and the lack of commodity chain assessment, and inexact geographical zones of origin and processing (Shan Tuyet tea in particular).
- The implementation of AO procedure meets many difficulties due to the lack of institutional frame in detail. That is why Vietnam regulations are applied in registration procedure while European regulations are used in quality management procedure.

##### ***➤ In terms of the content of AO registration form***

- The content of registration form for these two products do not have clear evidence of particular characteristics, relation between factors such as natural factor, human factor, etc...
- Geographical description has not been completed. In fact, it is only the description of the condition of applicant, excluding the comparison of neighboring organizations. Hence, the map of geographical zone of origin and processing is not persuasive and invaluable for AO management later.
- The role of producer in organizing and managing AO is not emphasized. Frequently, the direction is applied from central to local with only little exchange with local people.

- The application form does not show the production's capacity as well as potential market, therefore we cannot create an advertisement campaign to take advantages of AO products.

➤ *In terms of organization profiting AO name*

- Building regulations on quality management is really a hard work because of the missing of legal frame and regulations in roles of organizations. Meanwhile the regulations of quality management do not accord with organization form and implementing approach.

- We have not made emphasis on the study of commodity chain, communication strategies, and commercial promotion. As a matter of fact, the product value remains unchanged and we do not have enough support of those who benefit from this activity.

- The applicant is not interested in stimulating following contents to give producers or traders the right of use in terms of AO. Then this role belongs to the state. We do not bring into play the roles of civilian organization and organizations of the government are not afforded to take care of this stage because their human resource and finance are limited. All piloting implementation of the Department of Science - Ministry of Agriculture and Rural Development and the Ministry of Aquaculture should step to another stage of institutional and policy formation to support and administer this aspect. That is why it is necessary to create regulations and encourage civilian organizations as well as individuals entrusted by the government developing AO.

- The organizations have opportunity to use AO, but they do not specify strategies of using and exploiting it. Thus, the advantages of the registration for these two products have not been shown. As a result, their values in the market are not increased. Furthermore, the traditional values have not been focused on. To make it worse, these values disappear step by step in Moc Chau.

- There is not any AO communication activity for producers or those who have opportunities to use it. Hence, this leads to the misunderstanding of AO, such as using technological priorities monopoly.

## **IV.2.Proposition**

### **IV.2.1. Perfecting legal frame on geographical indication**

We have had so many difficulties in the application of AO and GI in Vietnam for five years now due to imperfect legal system. As a result, it is vital to better it so that Vietnamese products can be protected in the worldwide market.

- Applying regulations of Europe and other economical organizations as AFTA, WTO on intellectual property, especially the regulation 2081/92 of the European Union in order to build Vietnamese regulations.

- It is very good to publish the law of Intellectual Property since it can form a new legal frame for the GI procedure in Vietnam. However, it is necessary to provide supplementary regulations during the application, for example:

- + AO should be defined in the institutional frame under documents concerning law because it is a very popular and effective in Europe.

- + Establishing a general GI management system for all products under the control of a specific competent organization

- + Giving the rules for property, management of rights as the right of use by defining the roles of organizations representing the State, local government, ministries and branches

- + Prescribing the procedure of preparing documents and steps necessary to establish the right to GI products

- + Stipulating methodologies of delineation, quality description, and particular production process with the justifications and confirmation of competent organizations (management or science organizations, central or local).

- + Defining clearly the roles and responsibilities of the state, competent organizations as ministries, market management organizations, local government, and other organizations and individual in GI development

- + All the rules of traditional production process, control system, and the description of production situation and market... should be verified by competent organizations.

### **IV. 2.2. Propositions of developing specialties under GI and AO**

Vietnam is rich in specialties because of its favorable nature, diversified ethnicities, and cultivating customs. The matter is how to preserve and develop the biological diversity in Vietnam? Here we make some following suggestions to deal with this matter:

- Defining special products to preserve and develop is responsible of the state, local authority and all community. There are two ways of preservation: j) ecological preservation for those of low value that is difficult to improve their value; and jj) preservation of special products that have market potentiality and with these cases we should develop the trading of products of high economical value under AO or GI.

- The State should build institution and policies to support the development of special products, as well as national strategies to preserve and commercialize these products and to improve their competitiveness of each province in Vietnam.

- Promoting professional civilian organizations of farmers and stakeholders of commodity chain in agriculture that will assist the development of special product based on collective association.

- Each province should carry a survey of production and commercial situation of their so-called specialties, and then define the potentiality of these products. After that, the specific ministries create a database and maps of potential special products in Vietnam to make a plan for the preservation and development.

- Based on evaluation results, the provinces should give recommendations through specific ministries to choose appropriate products and solutions to develop them. Then these ministries have a list of potential product and support certain products.

- Developing specialties means protecting natural condition of the specialties. In other words, it is the ecological preservation or the protection of traditional techniques in parallel with modern ones; making a link between development of specialties and production area restricted so that not only local government but also inhabitants are aware of the importance of preservation and protection

- Making a connection between the development of specialties and tourism and local culture

- Developing specialties in AO and GI is appropriate solution to preserve traditional value and community benefit. At the same time, this is also a solution for public trademark development, linked with the territory, and for using commerce as an effective tool to bring the benefit to community, individuals and organization concerning the agricultural and rural development.

#### **IV.3.3. Perfecting and exploiting two registered products**

❖ *Perfecting registration form and right of use*

- It is necessary to add more contents for AO registration and protection, based on European regulations:

+ Defining specific characteristic of the product basing on scientific assessment and traditional value, for example, the feature expressing the difference in quality of Shan Tuyet tea between the Tea Company and neighboring producers, and the difference in quality between Phu Quoc fish sauce and the one produced in Kien Giang and Ho Chi Minh city.

+ Organizing groups of expert to specify again the geographical zone of origin and production in the case of Shan Tuyet tea as well as reconsidering the appropriation of the geographical zone of origin and territorial waters in the case of Phu Quoc fish sauce.

+ Conducting a survey of the practice of producers to unify technical procedure, to assure traditional factors, and to fix compulsory technical procedure

This lays a foundation to build a quality management system for AO products.

+ Building internal and external control systems according to European methodology, among these system, the role of producers organizations is extremely emphasized, for instance the Association of Phu Quoc fish sauce producers, the Association of Moc Chau tea producers

+ Evaluating the market to recommend solutions for the production scheme, commercial promotion, and market supervision

- Completing application documents to give the right of use to stake holders, and preparing documents to register Phu Quoc fish sauce and Shan Tuyet tea in the European market

❖ *Improving organization of producers, commodity chain of AO product*

• Improving and raising the important role of the Association of Phu Quoc fish sauce's Producers, the democracy and agreement of members in the association; reducing the participation of the local authority; as well as defining exactly the function of this association, for example production management, use and label management in product commercialization.

• Allowing other producers of Shan Tuyet in Moc Chau participating in the process of building AO; establishing association of tea producers in Moc Chau so that there is a consensus procedure and protection right in terms of AO product.

- In order to develop a material system for a closed chain including producing, processing, packaging, and distributing; it is vital to have the support of the government and all stakeholders of commodity chain, then improving the ability of small producers. In addition, we should pay much attention to their interest, and protect fish material source and control producers in the case of Phu Quoc fish sauce.

- It is necessary to have a control system of hygiene and safety for all AO products like tea or fish sauce. The forms of food quality and safety management are encourage to apply into AO system, for example HACCP, GAP, ... and international quality management companies should be linked together to form effective systems of product quality management.

- Popularizing AO knowledge for producers and all stakeholders of the production so that they are aware of their responsibilities, rights and their tasks in order to have the right of protection

- The government should conduct a propaganda program for AO and GI on public media so that all people (consumers and producers, even producers of substitute) understand these concepts.

- Central and local government should support financially and technically to develop a communication system to promote the brand and trademark for the AO products in the market, especially for Shan Tuyet tea.

- Making tour with enterprises profiting AO name in order to advertise the products, sell them, and improve the prestige of AO products.

#### **IV.3.4. Other propositions**

- It is essential to study and pilot AO and GI for concrete products and in real condition so that we can propose efficient method that is suitable for Vietnam situation, for EU and WTO.

- Regulations on roles of ministries and professional organization in supporting the development of AO and GI products should be clarified.

- It is necessary to develop strategies at national level to choose products for GI and AO development. We should not focus mainly on GI or only on AO.

- Organizing training course of AO and GI for organizations from central to local, from institutes to organizations of producers

- The Ministry of Agriculture and Rural Development and other ministries as Ministry of Science and Technology, the Ministry of Agriculture and Rural Development, the Ministry of Aquaculture, the Ministry of Police, the Ministry of Commerce, etc. should together build up a national board on GI and AO. This body includes centers of research and development capable in GI and AO whose function is to consult and serve the board of assessment in terms of institution and technique. On the other hand, this council regulate all the concerning matters.

- Coordinating ministries, separating the roles of each ministry, for example the Ministry of Science and Technology, the Ministry of Agriculture and Rural Development, the Ministry of Aquaculture, the Ministry of Police, the Ministry of Commerce, etc. in developing intellectual property, GI and AO as well as forming administrative procedure to facilitate the registration and protection activities.

- Mobilizing local enterprises, farmers, and processors to develop and make advantages of GI and AO, encouraging the coordination of stakeholders of the same commodity chain.

## APPENDICES

### *Appendix 1: Summary of promise between the company and household*

#### ***Fixed- price contract:***

Moc Chau Tea Company entrusts workers of fixed - price contract with tea cultivated land for 20 years at the price of 10 millions dong/1ha/1year (the workers pay within 20 years). This amount of money will be deducted in the sum of tea sold. On the contrary, the workers have to use the land assigned with right purpose, that i.e. they should sell their Shan tea to the company and they are not allowed to sell tea to others, even when they are offered with a higher price. In case of breach of contract, the company will warn them the first time, apply disciplinary measures the second time and take the land back the last time. Annually, the agriculture bureau of the company is responsible to guide workers with technical procedure of Shan Tuyet tea production such as cultivating, cutting branches, using flora protection medicine, picking technique and pressing tea after picking. All the rules in the contract are supervised by the bureau of agriculture . Apart from that, the company signs a sub- contract with workers to fix the price of tea in the next year, annual support of fertilizer and flora protection medicine.

#### ***Reality of implementing the fixed- price contract:***

The company only focuses on material collection. After harvesting tea, the workers can be given in advance concerning fertilizer and flora protection if required. However, technical training activities and production supervision are not emphasized. For example, there is not any supervision in using fertilizer, picking tealeaves, trimming branches. To make the matter worse, the analyze of the quantity of pesticide in tealeaves is only carried out once a year by taking a contingent model of tealeaves of one contracted household. The undisciplined management of the company leads to the fact that some households have sold tea to other trade men and companies because their buying price is from 200 to 500VND/kg higher than the price of Moc Chau Tea Company.

*Source: The information investigated on September 16<sup>th</sup> 2005*

***Appendix 2: Information from the village patriarch of Thai mountain village - Cho Long village***

**- Origin feature**

- No one knows exactly the age of the most ancient Shan tea tree, but it is 200 years old at least.
- In terms of origin: according to him, the origin of Shan Tuyet tea tree derived from Nghia Lo (now is Yen Bai).
- At this moment, the number of ancient tea trees is from 200 to 300, mainly focus in Cho Long and On villages.
- Origin of the name “Tuyet”; after drying, the tea looks snowy. That is why people call it Shan Tuyet. (In Vietnamese, Tuyet means Snow).

**- Cultivating process**

- Breed: Tea seed is dried, kept, and dipped in 30 days to sprout.
- Digging hole: holes for seed is 20cm deep, the distance between holes is 2 meters . After putting the seed into the holes, these holes will be covered with soil. When the seeds rebound from the ground, muck is put into roots once until harvesting.
- After 3 years from the time growing seeds, we can harvest tea. Then each year we can pick tea leaves four times.
- Trimming branches: after one year harvested, we should trim their branches so that it can blossom out the next year. The time for trimming branches is in November.

**- Tradition production process**

The local households in Co Do plantation describe: They pick tealeaves from ancient trees, and then put them into neohouzeaua pipes that are hung in their kitchens. After a number of weeks, the tea can be used to drink.

*Smell of Lam tea:* dark red, sweet smelling, bitter and acrid taste but sweet after that.

**- Current manufacturing process**

- Drying tea in the pan: After picking, tender tea leaves are manually dried and prayed in cast-iron pan under the heat of charcoal
- Making tea curly: Laying dried tealeaves in sieves and make them curly by hand. Each batch is 30 minutes long.

- Drying under the sun: after making curly, the tealeaves are dried under the sun: Then they are ready to serve.

*Tea smell:*

Type 1 (now is green tea): green and yellow, natural smell, bitter when drinking but sweet after that.

Type 2: (now is black tea): pretty dark yellow, less sweet smell than green tea, bitter when drinking but sweet after that.

**Source:** *Information investigated on September 17<sup>th</sup> 2005*

*Appendix 3: Quality testing result of Shan Tuyet black tea from Moc Chau*

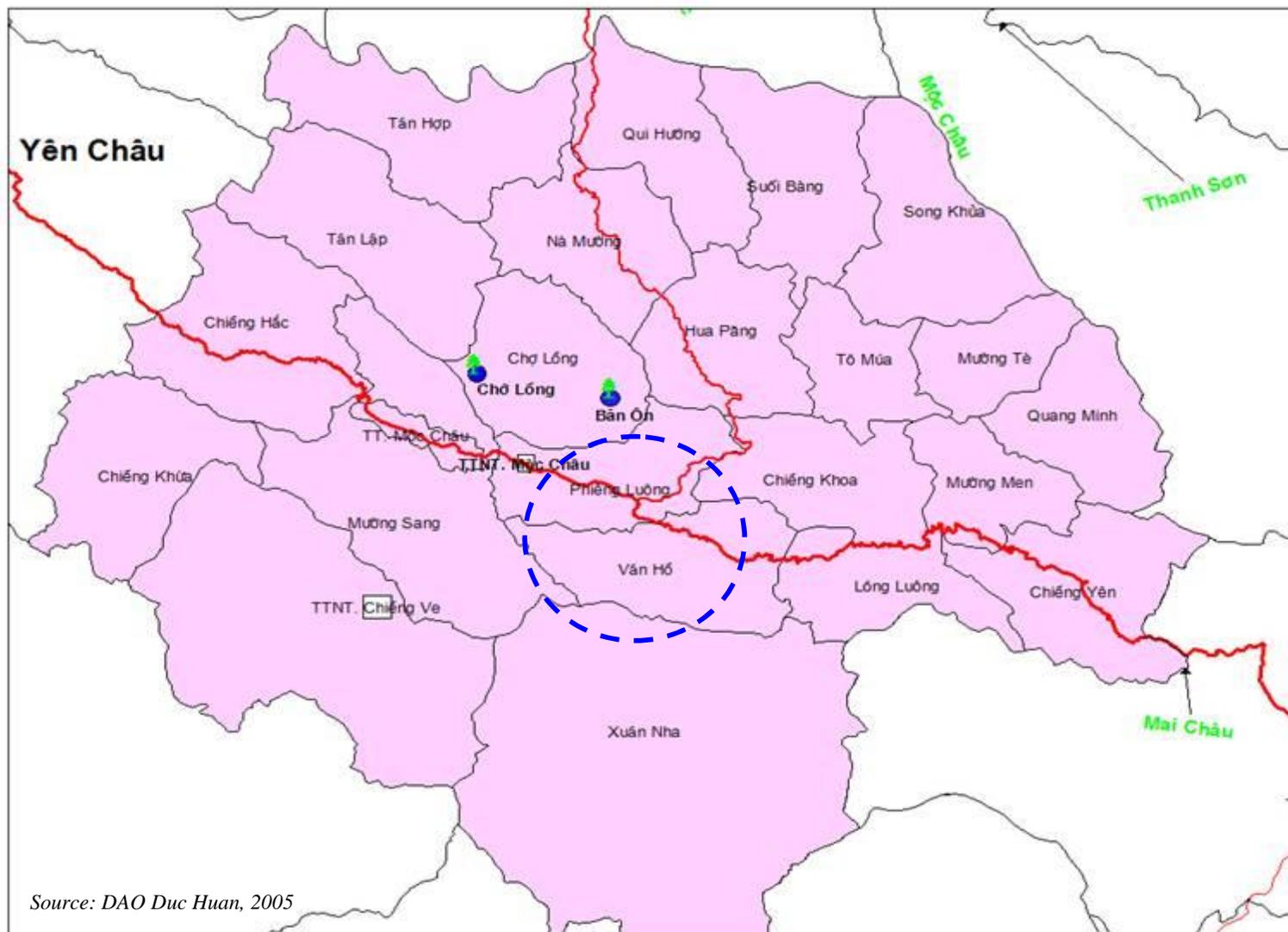
No.	Name of product	Feature	Tea drinking color	Smell	Tastes
1	OP	Dark brown, pretty silvery, curly, rather homogeneous, snowy (or a little bit yellow)	Red and brown, bright, viscid, yellow hem	Special sweet smell	Strong, agreeable, not bitter, acrid, sweet after that
2	FBOP	Brown, pretty silvery, curly, firm, a little bit small, rather homogeneous	Rather dark red and brown, viscid, yellow hem	Strongly sweet smell	Strong, agreeable, not bitter, not acrid after that
3	P	Dark brown, pretty silvery, rather curly, the leaf is shorter than OP, rather snowy	Light red and brown, yellow hem	Strongly sweet smell	Strong, agreeable, not acrid, not bitter
4	SP	Dark brown, pretty silvery, rather homogenous, a little bit hardened, some brown tea leaves appearing	Red and brown, yellow hem	Moderately and specific fragrant	Moderately strong, not bitter, not acrid
5	BPS	Dark brown, pretty silvery, short and thin, rather homogenous (smaller than PS).	Rather dark red and brown	Light fragrant, special	Less strong
6	F	Black, pretty silvery, small, rather	Dark red and brown	Less fragrant	Strong, rather acrid

		homogenous			
7	D	A little bit black, pretty silvery, small, smooth, rather homogenous	Red and Brown, rather dark	Less fragrant	Strong, acrid

**Result:** *Feature, smell, and taste are different to the same products of other provinces*

This result have been confirmed by KCS Center - Vietnam Tea Corporation

*Appendix 4:  
Map of  
delineation  
of tea  
production  
of Moc  
Chau Tea  
Company  
and ancient  
tea garden  
of Co Do  
Plantation*



*Appendix 5: Production activities of households*

	<b>Co Do Plantation- Moc Chau district</b>	<b>Moc Chau Tea Company (AO delineation)</b>
<b>Time of growing original tree</b>	Since 1958	Since 1958
<b>Density</b>	Tree to tree: 25-30cm Row to row: 1.7m	Tree to tree: 30-50cm Row to row: 1.2-1.3m
<b>Fertilizer and flora protection medicine</b>	Nitrogenous fertilizer General phosphate NPK) Kali Pesticide	Muck Nitrogenous fertilizer phosphate Kali Pesticide
<b>Trimming branches</b>	In November- December	In December- January
<b>Harvesting</b>	Harvesting tender tea leaves: a bud with two young and tender leaves or three young and tender leaves Number of picking times/ month: 2 times	Harvesting tender tea leaves: a bud with 1 t«m 2 or three young and tender leaves Number of picking times/ month: 4 times
<b>Consuming product</b>	Selling tea to the plantation	Selling tea to the company

*Source: Investigated information in December 2005*

***Appendix 6: Managing interior processing procedure in the company: Manufacturing procedure of dehydrating tea Shan Tuyet Moc Chau***

The tea processing is under the control of a production manager and a group of three technical supervisors:

**i) Checking material (tea tender leaves picked):**

- Checking takes place at processing factory and at the farms .
- Applying standard T/C 1053/71, including such criteria as: feeling tealeaves to make sure they are in good quality, picking tealeaves and use visual method to classify tealeaves.
  - If the sample tested is 0-10% of middle leaves- not young, not old- (there is fiber while tearing), then it is classified in the first class.
  - If the sample tested is 10-20 % middle leaves- not young, not old- (there is fiber while tearing), then it is classified in the second class.
  - If the sample tested is 20-30 % middle leaves- not young, not old- (there is fiber while tearing), then it is classified in the third class.

Ninety eight percent of tealeaves that the Company buys are of the second class.

- After the classification, the equip of technicians mix the first and the second class together. The third class is separated to control production procedure. All the materials are kept on unit of dry measure for 6 to 8 hours before processed.

**ii) Checking the procedure of drying tealeaves:**

- After preservation, the tealeaves are then dried in the temperature of 300- 320<sup>0</sup>C of coal. Each time dry 13 kg tea leaves.

**iii) Crumpling tea leave:**

- When the tealeaves become withered, they are crumbled in the mortar in 30 minutes.

There are two kinds of mortar , one can contain 45kg tealeaves and the other can contain 55kg.

**iv) Checking the breaking proportion of the tealeaves**

➤ What is the standard of crumpling tea leave? This can be defined by the KCS examiners thanks to the checking of breaking proportion of the tealeaves. According to regulations, after crumpling tea, there must be from 66% to 68% of leaves breaking.

- Method of breaking tea:

+ Taking 60- 70 buds as tea samples

+ Standardizing chemical substance of phemangannat kali and pure water

+ Preparing tray for experiment

+ Putting each tea buds into the liquid, and then laying it on the tray for supervision. If it breaks, it will be dark gray.

Checking breaking bud then concluding the percentage of breaking sample

#### **v) Drying and scattering tealeaves:**

➤ After being rubbed, the tealeaves are then dried and scattered. At this time, the tealeaves are spreaded on grill; normally the thickness of tea is 0.8- 1cm, and 1.5- 1.6 cm with the tea at last time of the crop. Later the tea is dried in the temperature of 190 – 200<sup>0</sup>C.

➤ Checking the proportion of water in the tea after drying, it is allowed to have 31- 32% of water. If the proportion of water is under or over this, it is considered unqualified.

#### **vi) Drying by rolling tea:**

➤ After the stage of drying and scattering, the tea is then dried by rolling in cast iron cage in 90 to 95 minutes. This is the most important stage of the processing process. With small machine, each batch can roll and dry from 70 to 75 kg of tea, and 90- 100 kg with bigger machine.

➤ The tea must be dried gradually, not heat pirate.

➤ After rolling, the tea is spreaded on the ground in 30 minutes. Then, KSC group check its feature, curly and coarse degree, stem, and later classify the tea.

➤ Rolling the tea in cast iron cage until it becomes dry, and then the water proportion is from 4 to 4.5%.

➤ After classification, the storekeepers arrange tea according to their classes.

➤ The first class is to make special green tea.

➤ The tea for export is made from 30% of the first class tea and 70% of the second-class tea.

#### **vii) Packaging:**

- After subject tea to premelimiray treatment, put the tea into screening machine to classify small and big tea.
  - Big tea: screening manually; picking out coarse, stem, and alloy; and then packaging.
  - Small tea: ventilating to the separate light leaves and using machine to put out stem. Then mixing big and small tea and put them into a ventilator machine to blow out light leave, and dust. After that packaging tea (1/3 of the sack) as defined by regulation, KCS group check the tea.
  - KCS check the firm, curly and homogenous degree. The proportion of stem allowed is 0.5 to 0.7%. In fact, KCS group laid tea sample on a tray and count stem, and then they can define the percentage of stem in that sample.

- **Producing AB tea**

Including: 30% first class tea + 70% second-class tea

Packaging in a sack of 35 kg to export

- **Producing special green tea**

Both the two stages of ventilating and separating coarse, stem and dust for small and big tea are done by hand.

- KCS check the firm and homogenous degree. It is allowed to have from 0.5 to 0.7% of coarse and not allowed to have alloy. Finally, there is a stage of making tea to check the tea once again before packaging.
- The tea is packaged (100% of the first class)
- KCS check the label and using period.

**viii) General manufacturing process of tea in sack**

- This process applies Taiwan technology.
- The processing is similar to those of dehydrate tea, but there is some in difference:
  - The tea in sack is dried twice by gas while dehydrate tea is dried once by coal.
  - The proportion of water after drying is 16- 18%. The tea then is spreaded on bamboo sieve with the thickness of 8- 10 cm.
  - The second round of drying: at the temperature of 115 – 120<sup>0</sup>C and with the thickness of 2cm

The water proportion at this time is 4- 4,5%

- The rest steps are made manually
- Then those of best quality and the snowiest are used to make Shan Tuyet tea.
- The second class is used to make blue dragon and conifer of longevity tea.

*Appendix 7: Image  
of VINATEA on  
the labels of the  
products made by  
Moc Chau Tea  
Company*

Source: DAO Duc  
Huan, 2005

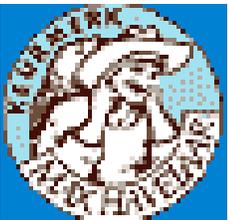


*Appendix 8: Image of labels of the products made by Co Do Plantation*

Source: DAO Duc Huan, 2005

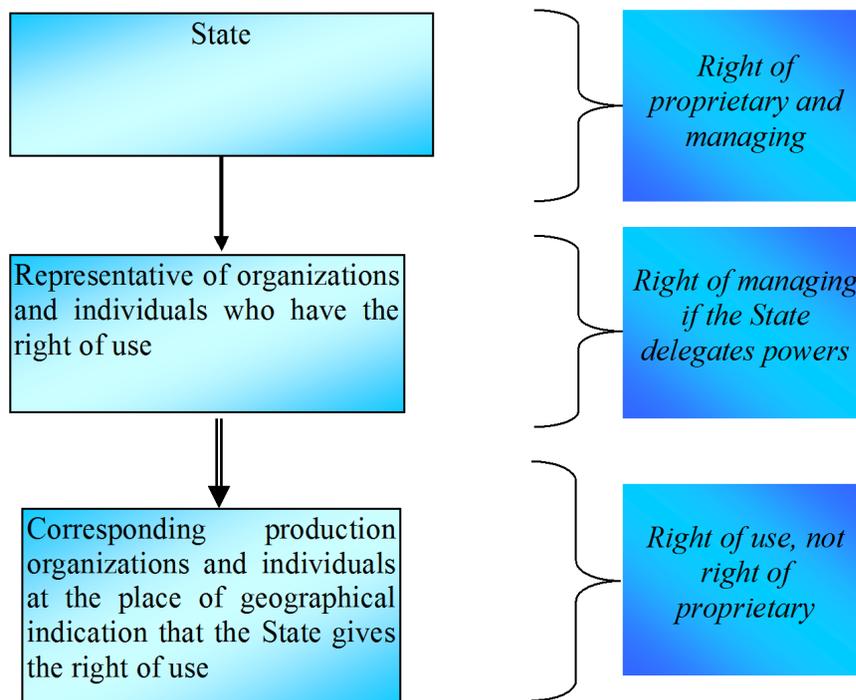


*Appendix 9: Types of protection in France and Europe*

French System		European System	
	Protected Appellation of Origin		Protected Appellation of Origin
	Red Label		Protected Geographical Indication
	Biological Agriculture		Organic Farming
	Highland products		Traditional speciality guaranteed
	Equitable Commerce		Products from Savoie region

	Traditional Speciality		Products from Auvergne Region
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*Appendix 10: Right of proprietary, managing and using according to the Intellectual Law*



*Appendix 11: Compare regulation on geographical indication and designation of origin in Vietnam before and after the Intellectual Law in 2005*

<b>Content</b>	<b>Before the appearance of the Intellectual Property Law</b>	<b>After the appearance of the Intellectual Property Law</b>
<b>GEOGRAPHICAL INDICATION</b>		
<i>Definition</i>	<p>Protected geographical Indication is geographical information of goods that meet with the following requirements:</p> <ul style="list-style-type: none"> <li>- Expressing in the form of a word, a sign, a symbol, or an image to indicate a county, a region or a province of a particular country</li> <li>- Expressing on goods, package, or transactional papers related to selling and buying to indicate that the origin of the goods is from a particular country or locality; and it is the geographical origin, which creates their typical quality, prestige, and other characteristics.</li> </ul>	<p>Geographical Indication is a sign indicating the origin of the goods. It may be a region, a locality, an area or a country.</p> <p>Condition to be protected:</p> <ul style="list-style-type: none"> <li>- The geographical indication originates from a region, a locality, an area or a country corresponding to its geographical indication.</li> <li>- It is the geographical condition of the region, the locality, the area or the country that play the role as decisive factor of the fame, the quality and the typical characteristic of the geographical indication products.</li> </ul>
<i>Requirements in terms of registration form</i>		<ol style="list-style-type: none"> <li>1. The name or the sign of the product is geographical indication.</li> <li>2. The product possesses a geographical indication.</li> <li>3. The description of nature,</li> </ol>

	<p>typical quality, and the reputation of the geographical indication product and particular natural factors that make it natural, typical and famous</p> <p>4. The geographical map corresponding to the geographical indication</p> <p>5. Evidence showing that the geographical indication is being protected at the country of that geographical indication in case of foreign geographical indication.</p> <p><i>In which:</i> The description of typical characteristic should contain the following main content:</p> <p>a) Description of corresponding products, including raw material, physicochemical, chemical and micro organic particularities as well as its perceptible sense of the product.</p> <p>b) Method identifying geographical area corresponding with geographical indication</p> <p>c) Evidence of product whose origin derives from corresponding area</p>
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		<p>d) Description of traditional, local and stable manufacturing and processing methods</p> <p>e) Information of relationship between nature and typical quality of the product or between the fame and geographical indication according to the regulations</p> <p>f) Information of self inspected mechanism of the nature and typical quality of the product</p>
<p><b>APPELLATION OF ORIGIN</b></p>		
	<ol style="list-style-type: none"> <li>1. Application form for the right of use certificate of designation of origin name (model)</li> <li>2. Copies of document certifying the legal right in doing business</li> <li>3. Description and evidence of typical quality of the AO product in which there is the confirmation of the competent government agency</li> <li>4. The competent government agency certifies that the product, applied for AOC product by the applicant who produces or makes business of it, has typical characteristic and quality and it is produced in corresponding area of its appellation of origin.</li> <li>5. Copies of AO certificates of the</li> </ol>	<p>Not mentioned in the law</p>

	<p>product that the origin country issued or copies of the certificate of the right of AO use that the applicant got (in case AO product is from other countries)</p> <p>6. The description of delineation of origin corresponding to the appellation of origin of the product applied in which indicate production and business place of the applicant.</p> <p>7. Commission paper (if necessary)</p> <p>8. Receipt of application fee</p>	
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