

# Solution to Improve the Efficiency of Protection Geographic Instructions of “Tan Cuong” Tea

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## Abstract:

"Tan Cuong" tea is one of the famous specialties of Thai Nguyen province and has been granted a geographical indication protection title by the Intellectual Property Office of Viet Nam since 2007. The product after being protected has created a active transformation of state agencies and the whole society in preserving and developing the traditional values of Thai Nguyen tea, improving the prestige, quality and competitiveness of products in the market in national and international. However, in the process of implementation, there are still many obstacles that make the protection of geographical indications of "Tan Cuong" tea difficult. The study has proposed two groups of solutions to enhance the effectiveness of the protection of geographical indications of "Tan Cuong" tea on the basis of assessing the situation and consulting with experts in the relevant field.

**Keywords** —Geographical indication, “Tan cuong” tea, solution, protection.

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## I. INTRODUCTION

Geographical indication (GI) is a useful tool to increase the value and prestige of products, attract customers, and sell better products with higher prices than same-type products that are not produced in that special geographical area. Tan Cuong tea is a famous domestic and foreign specialty of Thai Nguyen province, bringing a lot of economic value to the province. Thai Nguyen tea is consumed in many markets, in 2017, domestic consumption reached 38,200 tons of finished product accounting for over 90% of processed tea output, and export output was estimated at 3,800 tons [1].

Domestic market is the strength of Thai Nguyen tea, over 63 provinces and cities have products sold in different forms such as at shops, agents, markets,

and systems supermarkets.... The main export markets are Pakistan, Taiwan, Russia, USA, China, UK, Afghanistan, Indonesia, the United Arab Emirates... in which Pakistan holds a market share of up to 50 % of export tea output of Thai Nguyen [1].

The product has been granted a protection certificate for geographical indications since 2007, but up to the present time, the enforcement of geographical indication protection "Tan cuong" has not yet achieved high efficiency due to the many reasons. Therefore, it is urgent to study and assess the current situation and offer solutions to improve the effectiveness of the protection of GI for "Tan Cuong" tea.

## II. LEGAL BASIC FOR PROTECTION OF GEOGRAPHICAL INDICATION FOR “TAN CUONG” TEA

In Clause 22, Article 4 of the 2005 Intellectual Property Law, it is stated: “Geographical indication is a sign used to indicate a product originating from a particular region, locality, territory or country” [2]. The State adopts legal regulations to regulate the establishment of geographical indications (granting protection titles); recognition and exercise of rights to GI; protect the legitimate rights and interests of subjects against acts of infringing GI.

For tea product, the factors affecting the quality of tea will determine whether products are protected with geographical indications or not.

Tan Cuong tea has the many characteristics about morphology and quality such as: natural green and curly leaves; Water color is slightly yellowish green; Strong aroma, nutty smell and durable; Strong acid taste, harmony, sweetness, no bitterness [3]. Scientists have pointed out that the conditions that determine the quality of Tan Cuong tea include: Soil, cultivation practices, and climatic factors, heat radiation (In Tan Cuong, a total thermal radiation: 122.4 kcal/cm<sup>2</sup>/year, the effective radiation amount is 61.2kcal/cm<sup>2</sup>/year, which is lower than that of with other areas) [4]. This is the decisive factor to the quality of Tan Cuong tea. In addition, the careful cultivation and processing of products also creates the quality and distinctive characteristics of each tea product in different regions.

## III. METHODOLOGY

In this study, the authors used methods: analysis and evaluation of reported data; questionnaire and expert interview.

Data analysis is the process of examining, cleaning, and interpreting data with the goal of uncovering useful informations, drawing conclusions, and supporting decision-making.

The author uses the available data in previous studies and reports related to the research object; thereby having an overview of the object, to save research time.

Interviewing by questionnaire is a written interview method, which is conducted for the subjects who are production households, business establishments, and processing tea in the tea area protected by GI. Respondents answered their opinions by ticking the corresponding boxes. The questionnaire consists of two parts, the first part is the information of the respondents about the type of business, number of employees and specific production address. The second part is about the respondents' perception about the importance of GI, their understanding and compliance with intellectual property laws, their satisfaction and trust to state agencies in the protection of GI. In fact, the protected area of GI "Tan Cuong" has more than 7400 households, cooperatives and production establishments, with an area of 4.861 ha [3]. Using Solvin's formula to calculate sample size, after calculation, the authors conducted a survey with 380 subjects by random selection technique. Statistical data are calculated by points collected and expressed as a percentage.

Expert interviewing aims to collect different opinions of experts who are state managers of intellectual property, experts in law, market management to have an objective view and to make effective proposals to improve the effectiveness of GI protection for "Tan Cuong" tea.

## IV. STATUS OF PROTECTION OF GEOGRAPHICAL OF “TAN CUONG” IN VIETNAM

The research team conducted a survey of 380 samples in the communes protected by GIs "Tan Cuong" and obtained the results as shown in Table 1.

TABLE 1. Survey results about geographical indication “Tan Cuong” tea (%)

Criteria	Tan Cuong Commune	Phuc Xuan Commune	Phuc Tru Commune	Thinh Duc Commune	Quyêt Thang Commune	Phuc Ha Commune	Average
<b>Interest in geographical indication</b>							
Heard and understood	81,32	72,63	69,47	46,32	49,74	47,37	61,14
Heard and	16,32	18,95	17,37	39,74	41,58	39,21	28,86

didn't understand							
Do not care	2,37	8,42	13,16	13,95	8,68	13,42	10,0
<b>Awareness of the importance of geographical indications to production and business</b>							
Very important	78,42	67,37	69,21	45,79	42,63	43,42	57,81
Important	17,11	22,11	20,00	42,63	45,79	42,63	31,71
Not Important	4,47	10,53	10,79	11,58	11,58	13,95	10,48
<b>Consciousness of compliance with the law on intellectual property of producers and traders (growing, processing, and packaging)</b>							
Compliance	85,26	73,42	71,32	55,26	46,05	40,53	61,97
Partial compliance	12,37	21,84	17,89	36,58	47,89	45,26	30,31
Do not care	2,37	4,74	10,79	8,16	6,05	14,21	7,72
<b>Awareness of the status of violations of the law on protection of geographical indication</b>							
Very high	86,84	87,11	86,58	79,47	79,74	81,32	83,51
High	12,37	10,53	12,63	17,89	13,68	14,47	13,6
Low	0,79	2,37	0,79	2,62	6,58	4,21	2,89
<b>Causes of violations of the law on protection of geographical indication</b>							
The law is not strict	25,53	30,53	27,37	31,32	22,63	23,95	26,89
the citizen and law enforcement officers	78,95	64,74	70,00	62,89	63,95	62,89	65,57

Currently, the statistical work on the infringement of geographical indications has not been officially carried out by state management agencies. However, from the fact that intellectual property rights infringement cases for geographical indications, it can be seen that infringement of rights to geographical indications is quite common and increasingly sophisticated..

The investigation shows that the awareness of producers, processors and traders of products bearing the "Tan Cuong" geographical indication in protecting intellectual property rights is low. Most of the respondents said that GI play an important role in production and business (very important: 57.81%, important: 31.71%, besides the number of people who rate GIs as not important that is still

high at 10.48%). However, when asked about the perception of the violation of GIs in "Tan Cuong", the majority of the respondents rated the violation as common (high: 13.6%; very high: 83.51%). ). But when asked further, most of subjects have not exercised the right to self-protection, have not paid attention to requesting enforcement agencies to handle infringements of intellectual property rights, they all said that the detected and handled under the authority of state agencies.

Through inspection results of inter-sectoral inspectors (Inspector of Department of Science and Technology, Sub-Department of Market Management, Department of Public Security, Department of Agriculture and Rural Development) and reports of outside control agencies, the inside control agency, intellectual property violations for products bearing the geographical indication of "Tan Cuong" tea occurred in all stages from production, processing, preservation to circulation products on the market [5]. Violations are located in many localities both inside and outside Thai Nguyen province. Violations are mainly about goods labels and products that do not guarantee quality.

According to the Tan Cuong Tea Geographical Indication Development Association, acts of infringing GI on "Tan Cuong" tea products mainly include violations in the following areas:

*Technical process of planting and caring for tea*

The geographical indication area includes 6 communes with more than 7400 households, but currently only 87 households, 4 cooperatives, 3 enterprises are members of the "Geographic Indication Development Association of Tan Cuong" licensed use GI for their products. Therefore, only 94/7400 households comply with the promulgated technical procedures for tea care and collection. The rest have not been controlled over the execution of the engineering process.

*Technical process of product processing*

Tea products bearing the geographical indication "Tan Cuong" are mainly processed by manual methods at production households.

In Thai Nguyen province, there are 49 enterprises and cooperatives involved in processing and trading tea products. Among them, 07 enterprises are members of the "Association for the Development of Geographical Indications of Tan Cuong Tea" and are granted the right to use GIs on their products by the owner. The remaining 42 establishments and enterprises, there are 3 establishments that purchase tea materials and process them into tea products with the brand "Tan Cuong" but have not been granted the right to use and do not comply with the approved processing process.

*Using stamps and labels*

This is the most common and most common violation. In Thai Nguyen province, as well as some provinces, there are shops selling tea products named "Tan Cuong", but in fact this product does not originate from the protected area. This phenomenon is common, but in reality, no agency has come forward to solve it.

In the protected geographical indication area, only 87/7400 production households are granted the right to use the geographical indication, but in reality the remaining households sell raw materials to processing facilities or make their own products and self-print the label "Tan Cuong" attached to the product

In the field of implementing intellectual property rights for tea products bearing the "Tan Cuong" GI there is still many difficulties.

Objects involved in the production of products are very large, understanding about GI is still small, leading to many violations. Up to 38.86% of respondents have an attitude of disinterest or have heard but do not understand about GI. Not only that, the number of people who have a sense of compliance with IP laws in tea production and business activities is still not high; up to 30.31% of respondents answered that they only partially comply with the procedures prescribed by the law, the average proportion of those who did not care accounted for 7.72%.

The capacity of subjects and enforcement agencies is limited. The intellectual property rights enforcement agencies in the province do not have a

specialized department, and there is a shortage of specialized staff in this field. Especially, the facilities have not met the minimum requirements: lack of facilities, testing tools, analysis and data retrieval. The legal document system is also incomplete. The coordination between sectors and levels has not yet been detailed and suitable for local condition.

The development of GI for "Tan Cuong" tea is still faced with many difficulties because of the limitations of organization, control and commercial development of farmer organizations and smallholder households, the level of participation there are not many businesses, most of them are small households. On a national scale, "Tan Cuong" tea are sold at many points, in which many products do not originate from Xinjiang, but there are no handling measures when there is a violation. In the Thai Nguyen market, counterfeit goods and poor quality goods bearing the geographical indication "Tan Cuong" have been detected quite a lot, infringing mainly on trademarks and unsatisfactory quality as registered [3].

The GI of tea "Tan Cuong" has been officially protected since 2007, but since then, Tan Cuong tea products have been violated by many establishments inside and outside the province of industrial property rights to this GI. Violations occurred in many areas and in all stages from production, processing to consumption and trading of tea products. In the two years 2018-2019, the management agency has carried out a survey on the actual situation of production and trading of tea products bearing geographical indications within and outside the province, the results show that there are many establishments although has not been granted the right to use geographical indications but still freely uses the title "Tan Cuong". In Thai Nguyen, the Department of Science and Technology checked the use of GI "Tan Cuong" at 5 establishments (2 households and 3 cooperatives) with production and business activities tea products in Tan Cuong commune, Phuc Triu commune, Thai Nguyen city, all of these establishments have not been granted a Certificate but are using signs

related to the geographical indication "Tan Cuong" on product packaging, signboards, transaction papers, advertising means ... The problem here is that the owners of these establishments do not know that they are infringing on intellectual property rights to the geographical indication "Tan" Cuong", because the use of the trademark "Tan Cuong" for their tea products has been around for many years.

On December 29, 2020, the Environmental Police Department coordinated with the Thach Ha District Police to discover in the house of Duong Duy Hong (1971, Tan Tien village, Tan Lam Huong commune, Thach Ha district, Ha Tinh province) is committing acts of counterfeiting tea with the brand "Tan Cuong Thai Nguyen green tea", seizing nearly 600kg of tea without origin [6]. Through the struggle, Hong confessed that he had bought green tea from households in the North, then brought it back and packed it into small packages branded Tan Cuong Thai Nguyen Green Tea and then sold it in Ha Tinh to make a profit.

Discovering that many production and business establishments outside the province violate the use of geographical indications "Tan Cuong", provincial authorities have coordinated with the provincial Sub-Department of Standards Metrology and Quality to prepare the dossier and request the Inspectors of the Departments of Science and Technology of the above localities to proceed handling infringements. However, the handling of IP rights infringement on GI is still a new field; the way to understand the problem is still different, the way to apply the normative document in practice to handle it is also not consistent, so the result is that the above violations have not been sanctioned, but only stopped at reminding and guiding the implementation of the provisions of the law on intellectual property.

In addition, the infringement of rights is much frequent because the GI Control System "Tan Cuong" is still lax, there are no specific regulations on the control of "Tan Cuong" GI, not yet detailed control plan for each control level is built. This has contributed to the increasing infringement of intellectual property rights for the "Tan Cuong" GI

in terms of both nature and scale; The capacity and professional experience of officials performing management duties for the "Tan Cuong" GI is still limited [1]. IPR enforcement and commercialization activities for "Tan Cuong" GI are still limited has not been given due attention. This has reduced the competitiveness of products bearing the "Tan Cuong" GI in the market.

## **V. SOLUTIONS FOR IMPROVE EFFECTIVENESS PROTECTION FOR "TAN CUONG" GEOGRAPHIC INSTRUCTIONS**

On the basis of analysis, assessment of the current situation, analysis and data processing from in-depth interviews and expert interviews, the authors would like to propose two groups of solutions as follows:

### **A. Group of solutions to complete the law**

*Firstly*, it is necessary to give the right to manage GI to the collective management organization about GI instead of the current provincial People's Committee. This is the organization representing the rights and interests of those who produce and trade in products bearing GI produced by themselves. Therefore, they can ensure effective management and reduce the workload of the government. However, in order for this model to work effectively, it is necessary to build organizations with management qualifications and the ability to control the use of GI. To do so, the law needs to supplement regulations on operating principles as well as functions, duties and powers of the organization managing the GI in the legal

system such as the right to inspect and supervise monitor the use of GI; the right to request handling of acts of GI infringement; the right to take measures to develop the reputation, reputation and value of products bearing GI. At the same time, this organization must issue a Regulation on the management and use of GI and approved by NOIP. This is a GI management model that has been successful in many countries around the world and the application of this model in Vietnam at this time is relatively appropriate.

*Secondly*, localities need to review specialties to carry out GI registration procedures, and at the same time need to strengthen the prevention and control of production and trading of counterfeit GI goods in the locality in order to protect the reputation and prestige of products bearing GI. This can be more effective if they are simultaneously protected by trademark law, anti-unfair competition law such as detailed regulations and instructions on registration of certification marks receiver and collective mark.

*Third*, the State needs to perfect the legal system on registration, management, use and protection of GI in the direction: concretizing the contents related to the management and use of GI; clearly define ownership, management and use rights of GI. At the same time, there is an open mechanism to facilitate and encourage the

establishment of industry associations producing and trading products bearing GI.

*Fourth*, it is necessary to promote the registration of GI protection abroad for agricultural products that have been registered for protection in the country, especially in potential markets. Vietnam has been a member of the World Trade Organization (WTO) since 2007, whereby Vietnam's GIs enjoy protection in other WTO member countries. However, up to now, the number of products with GI of Vietnam protected in the world is not much. "Tan Cuong" tea is one of the first 39 products protected by GI in the European market. In the context of international economic integration, the registration of GI protection helps protect the reputation and reputation and helps prevent the possibility of appropriating GI.

***B. Group of specific solutions to improve the effectiveness of protection GI of "Tan Cuong" tea***

*Firstly*, training and improving professional qualifications for officials in charge of IPR enforcement for GI. Managers are those who directly manage the enforcement of IP rights for GI in the province. Only when the enforcers are properly aware and have high professional competence in their fields of management, the law will be implemented effective exam. Therefore, it is necessary to improve enforcement capacity for officials in the field of IPR by administrative, civil and criminal measures, to ensure that violations are detected and handled promptly. The training

content includes the handling of IP rights infringement on GI such as skills in identifying law violations, inspection and handling of IP rights infringement on GI, order and procedures for handling such acts.

*Second*, training is needed to raise the awareness of the subjects to use the "Tan Cuong" GI. Through the team's investigation, there are many subjects who do not have experience in rights enforcement activities, the enforcement of rights is still confusing, most of them do not understand the implementation process, have not identified has been responsible for its own protection of IP rights for their products, but considers this to be the duty of state enforcement agencies and has not actively requested enforcement agencies to handle violations. Only when the subjects are aware of the value that the brand brings, and they understand the process of exercising their rights, will they have a sense of actively protecting and exercising their right to use with products bearing GI that they produce.

*Third*, local state management agencies need to promote their role in proactively supporting and guiding to raise awareness of industrial property rights for GI of enterprises and producers tea in the area of communes bearing the "Tan Cuong" GI. In order for subjects understand that GI are valuable assets, which must be effectively managed and exploited to serve their own interests;

since then they clearly understand the rights, responsibilities and process of handling IP rights violations for "Tan Cuong" GI, consciously preserving and developing the trademark.

*Fourth*, organizing propaganda, disseminating, and guiding on law enforcement, raising the society's awareness of the importance of GI. Stepping up activities to promote products, propagate and prevent violations on websites, newspapers and local television stations to consumers, and at the same time introducing Tan Cuong tea products; introducing organizational structure, competence and operation of the system of IPR enforcement agencies in Thai Nguyen province, the process of handling IP rights infringement petitions in the locality, exploiting the GI system on IP to share sharing information sources, developing information systems, identifying counterfeit goods.

Printing informational publications to propagate, disseminate knowledge about the meaning and importance on legal and economic aspects of protecting "Tan Cuong" GI. It is necessary to speed up the compilation of the document "Handbook for handling IP violations for Tan Cuong GI" to raise people's awareness about the enforcement of GI rights and introduce Tan Cuong tea products with consumers, affirming the protected brand value.

## **VI. CONCLUSIONS**

Protection of GI is an indispensable need because when the law stipulates the rights of producers and traders to products bearing GI, that right must also be protected by law from acts of infringement infringing from other subjects in a timely and accurate manner. Tea is one of the strong plants bringing high economic efficiency to Thai Nguyen province; Protection of GI of "Tan Cuong" tea is not only the responsibility of competent state agencies but also the responsibility of households, production facilities using the indication and the whole society. However, in the process of implementation, there are still many problems to be overcome, the research has pointed out solutions to enhance the effectiveness of the protection of "Tan Cuong" GI. The study contributes a part of voice in process comments on the bill of IP law that will be considered and approved by the National Assembly in the near future. In the future, the authors will continue to

study specific programs to raise awareness of subjects in the area of Tan Cuong tea about the importance of the GI.

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