

Controversies around geographical indications

Are democracy and representativeness the solution?

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Received 7 April 2019
Revised 2 July 2019
Accepted 14 August 2019

Abstract

Purpose – The purpose of this paper is to advance our understanding of the links between the representativeness of the local community by those drafting and elaborating the specification of the geographical indication (GI), the market access and the use of the GI.

Design/methodology/approach – The present study followed a comparative research design, building upon primary data from the field works dealing with the elaboration and development of GIs worldwide, from legislations on the protection of GIs and from secondary data, i.e. literature dealing with the elaboration of the GI specifications at case level or national/international level.

Findings – The GI is permeable to a multitude of objectives and the management of controversies represent the “price of participatory democracy”, which still needs to be under the umbrella of the justice of peace, the State authority. Representativeness does not necessarily conduct to equity and fairness. It depends on the heterogeneity of the value chain, which might lead to the dilution of the GI specificity. Mandatory membership might not be always the best option. Transparency to guarantee the producer’s group works for the common good is essential.

Originality/value – The controversies in the elaboration of the GI product specification are directly induced by the controversies in the management of the GI either by the collective organisation of producers or by the public authority. Issues such as representativeness, mandatory membership, transparency and heterogeneity of the value chain are deeply analysed to understand the functioning of GI producers associations and their limits. The state intervention as justice of the peace appears necessary.

Keywords Inclusiveness, Representativeness, Geographical indications, Producers group, Specification

Paper type Research paper

1. Introduction

A geographical indication (GI) identifies a good as originating in a region, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin. This definition by the World Trade Organisation Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement[1] recognises a very old concept: the existence of a link between a product and its place of origin. For centuries, geographical



place names have been a tool for competitive positioning and for signalling the reputation of origin products, such as Champagne, Parmigiano Reggiano, Darjeeling, Gayo Coffee, Kobe beef or Argane oil. Even if their impact varies with the context, GIs allow producer groups to face economic competition through economic recognition of the specific quality of their product on the market (FAO, 2018; Sylvander *et al.*, 2006; Török and Moir, 2018; Neilson *et al.*, 2018; Tregear *et al.*, 2007; Barjolle and Sylvander, 2002). In addition to concerns related to consumer and producer protection, GI protection supports territorial and rural development, biodiversity and traditional knowledge (FAO, 2009; Sylvander *et al.*, 2006).

The concept of a link between the product and its origin, *the terroir*, was born in Southern Europe, when the appellation of origin (AO) was introduced in the European Union (EU) in 1992, as “protected designation of origin” (PDO) which identifies a product whose “quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and the production steps of which all take place in the defined geographical area[2]”. In addition to this original concept, the EU has introduced the protected geographical indication (PGI), which designates a more distant link to the origin of the product, i.e. with the possibility of only one of the production steps taking place in the geographical area[3]. Since the worldwide institutionalisation of GIs following the TRIPS Agreement, many non-European countries have adopted proactive policies for the recognition of GIs to protect and enhance their agricultural, food and handicraft heritage, with, in 2018, an inventory accounting for 59,500 GIs, including GIs protected as trademarks and trade agreements in 82 countries (WIPO, 2018). Over 345 GIs have been registered in the ten ASEAN (Association of Southeast Asian Nations) countries, 73 in Japan[4], 343 in India[5], 7,500 in China, 63 in Brazil, 42 GIs in Morocco and 3 GIs in West Africa where a continental strategy is underway[6], reflecting the increasing interest of producers, consumers and public policy makers in this tool.

As GIs protect the reputation of a product based on the particular skills and know-how of a local community in a particular geographical area, such local communities are entitled to build their own rules (FAO, 2009; Quiñones-Ruiz *et al.*, 2016; Belmin *et al.*, 2018), which is quite unique compared to other certifications. GIs reflect a can-do spirit, with product quality being elaborated, managed and guaranteed by the producers themselves (Bérard and Marchenay, 1995), explaining their legal nature as a specific intellectual property right (Olszak, 2008). Therefore, each GI relies on a unique specification (also known as code of practices), which includes a description of the product, the production conditions and the delimitation of a geographical area, and there are as many specifications as there are GIs, although all respect the legal definition of GI in the country concerned. In this respect, GIs contrast with other types of labels (organic agriculture, fair trade, etc.) where the specifications are drawn up at national or even international level, with few references to territorial specificities. For example, organic agriculture certification in the EU is defined according to a single specification[7], even if some national adaptations are possible. For voluntary sustainability standards, specifications are often defined without taking local specificities into account, and including the producer is not the norm (Bennett, 2017).

As GIs represent a bottom-up collective approach, no single actor can define the content of the GI. The local community needs to agree on the practices and the geographical area to be respected to use the GI name. As those who do not comply with GI specifications will not be authorised to use the name, defining GI specification necessarily leads to conflicts, crystallising value cleavages. Quality can indeed be considered as “a property that is linked to a value judgment” (Allaire, 2012). The representativeness of those who take the decisions concerning the GI specification is crucial. The question is then how to ensure that the drafters and decision-makers of GI specifications represent the interests of all legitimate GI beneficiaries during the process of drawing up and reviewing the specifications?

There is quite a substantial literature on the conflicts that arise during the drawing up of the specifications. Indeed, the choices will depend on the objectives pursued, which can be

contradictory (De Sainte Marie and Agostini, 2003; FAO, 2009), between fighting misuse and fraud, improving product competitiveness and/or quality, including the food safety dimension, maintaining activity on a territory, preserving natural resources, biodiversity and traditional knowledge. The debates may concern the choice of plant varieties and animal breeds (for agro-food products), the nature and source of raw material (including for handicraft goods), the method of production, the delimited geographical area or the GI name. The result is a “negotiated order” (Compagnone, 2012).

The choices may favour some production and processing methods over other pre-existing ones (Delfosse, 2012; Mariani, 2018), leading to arbitrating between tradition and modernity, with traditional peasant farmers on one side and the industrial producers on the other. Indeed, in countries which pioneered GIs as well as in new countries that are protecting their GIs such as Vietnam and Indonesia, GIs have been used to modernise agriculture (Durand and Fournier, 2018). This polarisation depends on the product category and on the strengths and limitations of the different stakeholders (Pivot, 2000; Bérard and Marchenay, 1995). There is often a trade-off between inclusiveness and economic success linked to an “exclusive quality strategy” (FAO, 2018). The rules adopted will depend on the “balance in the bargaining power between different actors of the system” (Humbert, 2009). Asymmetrical power among actors in GI value chains can be decisive (Tregear *et al.*, 2007). Self-governance of GIs with interplay between local institutions qualified as “external actors” and internal actors will influence the success or failure of GIs, far beyond the mere process of registration (Kizos *et al.*, 2017). GIs are sometimes perceived as tools that support industrial agriculture and do not benefit smallholders (Mancini, 2013). Smallholders may indeed lack the capacity and resources to handle GI registration procedures and to participate in the debates (Galtier *et al.*, 2013). As highlighted by Allaire (2012), “there is necessarily an entry cost in a standardised framework, cost that is not only monetary but also symbolic”.

Conflicts appear not only when the GI specifications are being drafted but also when they are amended (Quiñones-Ruiz *et al.*, 2018), i.e. when GIs are being adapted to changing environmental conditions, new technologies, changing regulations, agricultural policies, fluctuating commodity prices, wage rates and changes in consumer preferences (Belletti *et al.*, 2015), or when the number of actors involved or their heterogeneity changes (Dentoni *et al.*, 2012; Belmin *et al.*, 2018).

However, while scholars agree that many controversies arise when decisions have to be made about the content of the GI specification, the link between the conflicts and the governance has not yet been investigated. The objective of this paper is thus to conduct a detailed investigation of the stakeholders involved in the drawing up and the management of the GI, in particular, by analysing how the representativeness criterion is accounted for, and hence the legitimacy and strategies of those who decide on the content of the rules in Europe, Asia and South America. In particular, the paper questions the legitimacy of the group of producers. The question we address is therefore how to ensure the GI process is representative of all the beneficiaries of the GI in order to solve the controversies over the content of the GI specification, market access and the use of GIs. We argue that the controversies depend on how the decisions were taken when the GI specifications were being drafted and to what extent the representativeness of the GI beneficiaries was taken into consideration at that point. We highlight the complexity of these questions and the fact there is no ideal governance model, how the heterogeneity of the value chain challenges the aim of achieving representativeness. This issue is critical at a time when GIs have been largely internationalised, and the way the collective organisation of producers should be structured to ensure its legitimacy and no unfair exclusion is the subject of debate.

This paper is based on a comparative case study analysis of particular GIs in different countries in Europe and in the South, using a qualitative approach and secondary data, and on

a comparative analysis of GI regulations at national level regarding the nature of the entities drafting the GI specification, in particular the functioning of the producers groups. The data are therefore originating from the desk study of legal texts, interviews with stakeholders involved in GIs cases and secondary data published in the scientific and grey literature.

In Section 2, we examine if and how the concept of representativeness of the local community and of those entitled to apply for the GI specification is enabled by the national legal frameworks on GIs in several countries. In Section 3, we present different case studies showing how governance at the level of each GI brought about the choices made in the GI specification and how these choices have influenced market access. In Section 4, we discuss the implications of these results and make some recommendations on how to improve the efficiency of the decision-making process, in particular the functioning of producer groups.

2. The concept of representativeness in some European, Asian and South American countries

When the GI specifications are being drawn up, the representativeness of the GI beneficiaries is defined by the GI applicant. As there are no provisions regarding the nature of the applicant in the TRIPs Agreement or in other international agreements such as the Lisbon agreement and its Geneva Act for the international protection of appellations of origin and GIs, the nature of the applicant varies across countries. We identified two systems. On the one hand, countries where only a group of producers can apply for a GI, and other countries where the applicant can also be a public authority.

2.1 The representativeness of the local community exclusively endorsed by a group of producers

2.1.1 In the European Union. In the EU, PDO/PGI applications may only be submitted by “groups who work with the products with the name to be registered[8]”. “Group” means “any association, irrespective of its legal form, mainly composed of producers or processors working with the same product[9]”. While no representativeness or legitimacy criterion is included in this definition of the applicant, the criterion of legitimate interest is imposed on the group requesting an amendment to a product specification[10].

The EU regulation described all the roles of the groups for the first time in 2012[11], underlining their importance in the GI scheme. A group is entitled to contribute to ensuring that the quality, reputation and authenticity of its products are guaranteed on the market by monitoring the use of the PDO/PGI name in trade; taking action to ensure adequate legal protection of the PDO/PGI, developing information and promotion activities aiming at communicating the value-adding attributes of the product to consumers; developing activities related to ensuring compliance of a product with its specifications; taking action to improve the performance of the PDO/PGI scheme, including developing economic expertise, carrying out economic analyses, disseminating economic information on the scheme and providing advice to producers; taking measures to enhance the value of products and, where necessary, steps to prevent or counter any measures which are, or risk being, detrimental to the image of those products. The EU encourages Member States to support the formation and operation of groups on their territories by administrative means.

However, for GIs submitted by countries who are not members of the EU, the nature of the applicant is interpreted in a much broader way, with, for example, the Tea Board of India, a government organisation, being considered as a legitimate applicant.

2.1.2 In France. Only a producer group can apply for a PDO or PGI. Since 2006, producers groups shall be recognised as an Organisation for the Defence and Management of the PDO/PGI[12]. This Organisation shall guarantee the representativeness of producers/processors (operators) and a balanced representation of different kinds of operators

(primary producers, processors, etc.)[13]. Only one Organisation is entitled to manage the GI whereas previously several groups could do it concurrently within one area. Another novelty is that all the producers/processors are required to be members of the Organisation and to pay a membership fee to be entitled to use a PDO/PGI[14].

The argument lodged by some producers' associations that it represents an obstacle to the common rules of freedom of association could not be judged by the *Conseild'Etat* (France's highest administrative court), the only body competent to decide on the legality of the Regulation itself independently of the content. As stated in the guidelines published by the French national institution for the recognition of PDO/PGI (Institut National de l'Origine et de la Qualité (INAO)), the representativeness of the operators aims at ensuring the democratic functioning of the collective organisation and fair representation of the interests of the different actors, with a view to avoiding privatisation of local resources by non-legitimate groups. Excluded actors can assert their rights through legal actions. However, there are no guidelines on how to interpret this concept. The diversity of the statutes of the PDO/PGI Organisation, particularly regarding the sharing of the rights of votes, reveals its complexity.

2.1.3 In Switzerland. Only a producers' group can apply for a PDO/PGI. Since 2007, the law provides for the representativeness of the producers group which is defined in detail: for each kind of producer, the members of the group produce, process or elaborate at least half the volume of the product; and at least 60 per cent of the producers, 60 per cent of the processors and 60 per cent of the elaborators shall be members of the group. The group shall demonstrate that it operates according to democratic principles[15].

In Switzerland, representativeness is a central element to avoid the possibility of a minority imposing its method of production, and to avoid large numbers of oppositions. Producers who use the name or are somehow connected to the same name which designates a similar product are taken into consideration for the calculation of the percentage. To this end, the producers' group shall provide economic data on the sector, in particular: the number of producers, processors, members of the group and non-members who use the name, the total production of members and non-members as well as the statutes of the producers' group[16]. In an opposition case, the Federal Office for Agriculture decided that the interprofessional body applying for a PDO on Bündner Bergkäse had not provided sufficient proof of its representativeness, either in terms of the quantity of cheese produced or the number of cheese dairies involved[17].

Democratic functioning means that the structure is accessible to any interested operator, with no dissuasive or discriminatory conditions, such as the ability to be elected to the various bodies of the producers' group and vote, either directly or through a delegate. The PDO/PGI application must therefore be accompanied by a report of the general meetings.

In contrast to France, membership of the producers' group to be able to use the GI is not mandatory, but whoever uses an AO or a GI shall be controlled by the control body in charge of inspecting whether the product complies with the specification[18]. Yet for many GIs, traceability stickers must be purchased by GI users from the GI producers' organisation[19].

2.1.4 In Cambodia. In Cambodia, the applicant shall be an association or producers' group, producers and/or operators' organisation, legally formed, comprising producers, operators, institutions and/or interested persons. The association shall function on a non-profit basis, be recognised by competent authorities. Membership shall be open; members shall comply with specifications[20].

The roles of the Association are described in detail in the law and are very similar to the European rationale. The association shall provide the information to assess the representativeness of the producers/operators and the balanced nature of the representation of different categories of operators for the product in question. The operators should not face obstacles to participation in the Association that are discriminatory or otherwise not objectively founded[21].

2.1.5 *In Japan.* In 2006, the Japan Patent Office introduced the “Regional Collective Trademark System” and specified that these trademarks can be registered by different kinds of associations (Business cooperatives and Commerce and industrial associations, Chambers of commerce and Incorporated non-profit organisations). Then, in 2015, the Ministry of Agriculture, Forestry and Fisheries created a new *sui generis* system, in which the nature of the applicant was specified. The associative dimension remains, as it is clearly stated that the applicant should be a group of producers. Like in France, all the producers who wish to use the GI have to be members of this group, and only one producers’ group manages the GI[22].

2.1.6 *In Brazil.* In the Brazilian legislation – like in the EU – there are two categories of GIs – Indications of Provenance and Denominations of Origin. According to the recent Brazilian Normative Instruction (IN 095/2018), the applicant is a group of producers or processors representative of the legitimate collectivity. The organisation must be made up of a majority of participants from the value chain of the product or service (Art 5). A guide for users outlines the expected functions of this collective organisation, which is responsible for defending the product with GI as well as for representing the producers and processors involved in production, and defining the product specifications. After registration, the collective organisation is responsible for monitoring the product complies with its specifications and with the traceability system. It contributes to the protection of GIs by informing the authorities of any unlawful use of the GI. Unlike in France, the use of the GI does not depend on membership of the collective organisation[23]. However, this provision is often considered as a problem by the members of the collective organisation who look on producers who use the GI without being affiliated with the organisation as free riders or opportunists. This has created conflicts among local communities (Cerdan *et al.*, 2009).

2.2 *The representativeness of the local community endorsed by a producer’s group and/or public authorities of the government*

Interestingly, producer groups are not always considered to be the only legitimate body to apply for a GI. Many countries have hybrid systems with a provision that government authorities or organisations can be the legal applicant, reflecting the high level of engagement of the State in protecting GIs (Marie-Vivien and Biénabe, 2018).

2.2.1 *In India, Indonesia, Thailand and Vietnam.* In India, the applicant may include any association of persons or producers or any authority established by or under any law representing the interests of the producers of the goods concerned by the GI[24]. The representativeness criterion is essential under Indian law and government authorities, who are the applicant in around 70 per cent of the GIs, have been considered as the best fit to fulfil this criterion (Marie-Vivien, 2010).

In Indonesia, GI applicants are organisations which represent the communities in the production areas or the local government at provincial, district or city level. Typical representative organisations are producers’ associations, cooperatives and “communities for the protection of GIs”, with only one GI (Muntok White Pepper) directly filed by a government agency. Belonging to the collective organisation is mandatory to be able to use the GI, but is cost free. In Indonesia, membership of the GI collective Organisation for Bali Kintamani Coffee is cost free, but the cost of controls shall be borne by each GI user.

In Thailand, the GI applicant can either be a private entity (an individual person or a company), a group of producers/processors (association, cooperative or non-formalised group), a group of consumers or a public authority (such as Provincial Authorities, the Rice Department, the Queen Sirikit Department of Sericulture), and in practice very few GIs are registered by producers’ groups (Marie-Vivien and Vagneron, 2018).

In Vietnam, the right to register a GI belongs to the State which can delegate it to organisations and individuals who produce the product bearing the GI, collective organisations or the administrative authorities of the locality to which the GI pertains. In practice, applications are always filed by public authorities (except for the Nuoc Mam from Phu Quoc), usually by the provincial Department of Science and Technology, the Peoples' Committees of the province/district, or the Department of Agriculture and Rural Development of the province/district (Dang Duc and Marie-Vivien, 2018; Durand and Fournier, 2018; Pick *et al.*, 2015).

2.2.2 In Morocco. In Morocco, producers and/or processors organised in an association, cooperative or any other professional group, or the local authorities or public institutions concerned can apply for a GI. Any other natural or legal person interested in the GI or AO may join the submitted request. The GI is available to all operators who respect the specifications. Membership of the GI management body is not mandatory (Mariani, 2018).

3. The consequences of the representativeness for the GI specifications and trade: cases studies

In this section, a variety of case studies help to understand the governance by the GI applicant of the drafting of the GI specifications and hence the representativeness of the local community and how this has influenced the content of the specifications in different countries and for different kinds of products. This section also describes how such governance has influenced market access. In Europe, this issue seems particularly sensitive in GIs for cheese.

3.1 Governance that threatens the specifications

3.1.1 Cases where the choices led to the inclusion of modernised practices. Tomme des Pyrénées (France)[25]. Artisanal production of cheese called “Tomme des Pyrénées” started in the twelfth century. This raw milk cheese gained a certain reputation, winning national competitions in the late nineteenth century. Artisanal production is largely based on production by a “dairy association (*fruitières*)” of breeders and processors (with distribution of the profits). The “*fruitières*” disappeared in this area in the first half of the twentieth century and were replaced by local agro-industrial production of pasteurised cow's milk cheese, also called “*Tomme des Pyrénées*”. However, artisanal production continued in many farms, using raw cow, goat and sheep milk. In 1996, the “Red Label” (a French official quality sign) obtained 15 years previously by the industrial cheese was transformed into PGI, and the Association of Pyrenean Cheese Makers (French acronym AFP), comprising three industrial processors, became the organisation for the management and defense of the GI. Artisanal cheese makers could no longer use the name “*Tomme des Pyrénées*”. A few years later, the Association of Pyrenean Farmers and Artisanal Cheese Makers (AFFAP) was created to request modification of the PGI specifications to include cheeses made from raw cow, goat and sheep milk. The AFP was initially totally opposed to this amendment (Moity-Maïzi and Muchnik, 2005) but after 10 years of negotiations, it was accepted and in 2010, INAO studied the feasibility of the amendment, which is complex due to the heterogeneity of the products and producers. In 2015, the PGI specifications were amended, almost 20 years after the registration of the original PGI.

Camembert de Normandie (France)[26]. The recent modification of the product specifications of the AO *Camembert de Normandie* is the direct consequence of changes in the value chain. In 2012, the Organisation for the Management and Defense of the PDO *Camembert de Normandie*, which requires 50 per cent raw milk from Norman cows in a defined geographical area, sued the industrial companies for not complying with the PDO but using the label “Made in Normandie”. In total, 70,000 tons of this industrial pasteurised milk cheese were being produced compared with 5,600 tons of PDO cheese. After changes in

the ownership of dairies that belonged to the PDO Organisation purchased by industrial companies, the strategy changed with the launching of negotiations for a new PDO specification authorising the pasteurisation of the milk. After lengthy negotiations, the parties agreed that Camembert PDO can be made with pasteurised milk, but at least 30 per cent must come from Norman cows in their herds, and with mandatory outdoor grazing in Normandy by the cows. Regarding the governance of the producer's organisation, according to its president Patrick Mercier, milk producers and cheese makers will have the same power, and inside each chamber, raw milk and pasteurised milk producers and raw milk and pasteurised milk cheese makers also have same power. And as the case for all PDOs, the same dairy group cannot hold more than 33 per cent of the voting power, including Lactalis, which represents about 50 per cent of the volumes[27].

Hatcho miso (Japan)[28]. In the case of the *Hatcho miso* in Aichi Prefecture, two competing GI projects were submitted for registration to the Japanese Government services: one with specifications respecting traditional production methods and area applied by the Hatcho Miso Cooperative Association, the second, by the Aichi Prefecture Miso and Soy Sauce Industrial Cooperative with broader specifications notably allowing industrial methods of miso production, in a larger area. Finally, after the initial rejection of both projects, the second project was registered, but under the name of a new association, "Aichi Miso Tamari Shoyu Cooperative Society" probably to enable the producers of the "Hatcho Miso Cooperative Association" to join the new association and therefore use the GI. For the preparation of this fermented soybean paste, the book of specifications allows the use of metal tanks and modern fermentation processes. As the artisanal miso breweries, which use cedar wooden vats surrounded by bamboo and natural fermentation processes over 18 months, will be marketed under the same GI name and in the absence of differentiation, competing with the industrial product will be very difficult. The only solution for producers who wish to continue to use traditional methods is to differentiate their products using other certification (Sekine and Bonanno, 2016; Sekine, 2018).

3.1.2 Cases where the choices led to the exclusion of modernised practices. Phu Quoc fish fermented fish sauce (Vietnam)[29]. Fermented fish sauce (*nước mắm*) is a Vietnamese delicacy and has long been a local specialty in Phú Quốc Island in Vietnam. The applicant, the Fish Sauce Producing Association, which groups processing companies, was founded in 2000, but does not include the suppliers of the raw material, the fisherman. In 2001, the product became the first registered GI in Vietnam. In 2011, it also became the first Vietnamese product recognized by the EU as a third-country GI. Because GI registration in Vietnam is a state-driven process, the specifications, management and control rules of Phu Quoc fish sauce were set up under strict State supervision. During this process, several controversies arose (Cerdan and Sautier, 2017), in particular, the definition of the processing and bottling area. Traditionally, the sauce was processed on the island, then sent in barrels and bottled on the mainland. Mixing with fish sauce from other origins was thus easily possible. With the GI registration, processing and bottling on the island became mandatory in order to ensure traceability and consistent quality. However, as a result, smaller companies with excellent processing know-how but which do not own, or cannot afford, bottling facilities or capital, tend to be excluded from the GI. Other rules were introduced through the influence of ministries with the consent of only few enterprises, that turned out to be unattainable and unenforceable, causing conflict and leading companies to negotiate them. For example, the obligation to make the fish sauce from 90 per cent anchovies was not compatible with existing fish resources. Through the Association, the percentage of anchovy was eventually lowered to 80 per cent.

Basmati rice (India)[30]. Basmati rice illustrates the conflict over the nature of the applicant. In 2004, an NGO, "The Heritage", applied a GI for Basmati, which was rejected after several

examinations by the GI registry as not properly representing the interests of the producers, as the NGO only comprised people from Karnal District in Haryana State whereas Basmati is produced in at least six Indian States. Concerns over the financial capacity of the applicant were also mentioned. Eventually a government organisation agricultural and processed products export development authority (APEDA) applied for the GI in 2008, but nine opponents argued that APEDA also failed to meet the criterion of producer representativeness. The specification drafted by APEDA corresponds to the traditional area of cultivation of the Basmati Rice defined in several official documents of Ministry of Commerce and Ministry of Agriculture (Marie-Vivien, 2008), whereas the opponents wanted to include the State of Madhya Pradesh. In an Order issued on 31 December 2013, the GI registry rejected this argument on the grounds that APEDA is a non-trading body that falls under the category of the “authority established by the law”, one of the categories of applicant defined in the GI Act (Biénabe and Marie-Vivien, 2018).

Pampa Gaucho Goethe Meat (Brazil). The association of breeders of Pampa Gaucho Goethe Meat had 60 members, who were supported by the State, the small enterprise development agency and a University to develop the GI specification. But the issue of the cattle breeds was hardly discussed in the producers’ group even though it represents a divide among them. Indeed, the original breeds were British (Angus and Hereford), but are now much more diverse. Agricultural modernisation has also led to the introduction of new plant species in the grasslands. But only the original breeds were kept in the specifications, and the practices require grass feeding, which are the practices of the small group of 12 breeders of the working group in charge of drawing up the GI specifications, and thanks to a restricted definition wished to access the export market. This has led to the exclusion of a large number of breeders in the region.

3.2 Governance which threatens market access

3.2.1 *Kampot pepper*. The case of *Kampot* pepper in Cambodia illustrates how the lack of transparency among the members of the producers group can lead to the inequitable distribution of the GI benefits[31]. The Association for the Promotion of *Kampot* Pepper, created in 2008, comprises 440 members in the farmers’ chamber and 29 members in the operators’ chamber involved in the processing of pepper (sorting, drying and packaging) and can also have their own plot. Among the operators is the Kampot Pepper Agricultural Cooperative (KAMPACO), of which 239 small producers are members. The president of the Kampot Pepper Promotion Association has also been the president of KAMPACO since its inception, due to his long experience in pepper cultivation and his role in local politics. His double role as president of the association and of the cooperative has raised questions among the other members of the association, who complain about confusion of roles for the buyers. When the buyers contact the association for information about where to buy the pepper, only the cooperative is informed. The same risk of confusion may occur with any member of any GI association who has become president, but the collective nature of the cooperative implies an additional risk of confusion. The issue in this case is therefore the transparency of the GI association, which is not an economic actor in the sector but is the collective management organisation of the GI. The same situation is found in Indonesia where many GI associations in the coffee sector play a marketing role for small producer members, with the result that the biggest operators are troubled by the economic role of the association and consequently the GI approach, and do not wish to join the association[32]. Similarly, in Vietnam, for the GI Hai Hau rice, the obligation to sell their rice yield to the GI association complicated the visibility and the collective role of the association and eventually led to lack of interest by GI producers who had their own marketing channels and did not want to join the association[33].

3.3 Governance which threatens GI use

In many countries, particularly in Asia, the fact the State applies for the GI leads to under-use of the GI by stakeholders of the value chain who are not aware of GIs registered on their product, are not associated with the GI process and do not know their “representatives”. Such GIs are thus registered but not used by the beneficiaries (Dang Duc and Marie-Vivien, 2018).

4. Discussion

The question addressed in the paper is how to ensure the GI process is representative of all the beneficiaries of the GI in order to solve the conflicts over the content of the GI specification, market access and the use of GIs. In the light of the case studies presented in the previous section and of the description of the legal framework, showing if and how representativeness is accounted for in the national regulations, we can see that representativeness and self-management by a producers’ group is not the ideal solution. Irrespective of whether the stakeholder in charge of drafting the GI is a producers’ group or public authorities, controversies may arise. Below we make some recommendations to improve the governance of GIs.

4.1 Heterogeneity in the value chain challenges fair representativeness

In many countries, representativeness is a key criterion to ensuring the legitimacy of GI specifications. But it is striking that representativeness can reproduce inequalities and heterogeneity in a group of producers/processors. It is known that group heterogeneity has an effect on the level of cooperation within an organisation (Ostrom, 1990), as stressed in the EU in comparison with Colombia (Quiñones-Ruiz *et al.*, 2016) but we show that the concept of representativeness does not compensate for the heterogeneity of the value chain. On the contrary, the need to represent all stakeholders as soon as they use the name or an indication similar to the name or if they are in or closed to the area concerned, may lead to too lax specifications that undermine the development of the GI and encourage the industrial model, as shown in the case studies Hatcho Miso, Tomme des Pyrénées and Camembert de Normandie. The new paradigm concerning the economic value of stakeholders currently dominates debates and conflicts. For example, today in France, INAO requests a full economic analysis of the value chain to decide on the content of the GI specifications[34]. This is justified by the objective of achieving a fair balance between maintaining the specificity of the product justifying the registration of a GI and the need not to restrict the use of the name to too few actors. But increasingly, solving the conflicts between heterogeneous actors is achieved by allowing a wide range of practices applied in a relatively large geographical area. In some respects, this sharing of the resource could be an advantage in terms of social justice and at least in terms of conflict avoidance.

But this inclusive strategy is also problematic. First, it may lead to competition between different products, both artisanal and industrial, designated under the same name, which may be detrimental to the artisanal products. This is what happened in the Hatcho Miso GI, for example. Second, the wide range of techniques allowed may put off some consumers who know and enjoy traditional products, as is the case with *Camembert de Normandie*. In the cheese sector, an option has been to introduce specific mention “traditional” or “authentic” to differentiate the traditional product made of raw milk from the industrial ones, as in the case of Cantal, Salers or Parmi Parmigiano Reggiano (Sidali *et al.*, 2014), but in that case, what is the rationale of the PDO/PGI?

Finally, this overly broad specification does not create the conditions for cooperation between producers and territorial governance of the GI (Allaire and Sylvander, 1997) and thus does not allow good management of the “common territorial resource” that is the reputation of the GI product (Fournier *et al.*, 2018). Indeed, the implementation of a

collaborative strategy requires producers to perceive the value, interest and uniqueness of the resource. The more specific the characteristics of the product, the more this product will benefit from a dedicated market and the more producers will understand the need to protect their reputation against free-riding behaviour.

Conversely, the case studies show that the absence of representativeness and therefore of failing to account for the diversity of producers can lead to specifications which exclude a considerable proportion of producers, as shown in the case of beef in Brazil or the Phu Quoc fish sauce in Vietnam. In the latter case, State involvement resulted in emphasis on implementing traceability through bottling. It also shows that the presence of a representative body helps build more realistic and enforceable rules and reach an acceptable compromise between tradition and modernity.

4.2 How can the criteria of representativeness be improved to ensure equity and fairness?

4.2.1 Which members of the GI producers' group? The GI producers' group shall represent the beneficiaries of the GIs, but who are they? Given the multiple objectives of the GI, are the beneficiaries only the producers and processors of the product? Or the consumers? Or the territory? As a consequence, who should be a member of the collective organisation, and what rights of vote should they have? In the EU regulation, the producers' groups shall be composed mainly but not exclusively of producers/processors, yet in France, only producers and processors are members. Indeed, the beneficiaries can support the GI producers' group without being members: support from the local authority in drafting the GI specification, validation of the geographical area by the local authority, as provided in Indonesia and Vietnam. Traders and consumers can help define the specific quality of the product, etc.

4.2.2 Should membership of the producers' group be mandatory to use the GI? In France, all the operators concerned are required to be members of the GI collective management organisation. Does this imply strengthening of the representativeness criteria? Membership is rendered mandatory to allow the organisation to be run in a more democratic way and to ensure that all the stakeholders are involved in the development of the GI specification. But this could also happen in the absence of an obligation to be a member of the organisation and, in any case, not all producers are actively involved in drafting the GI specifications. Moreover, according to the EU Regulation, operators willing to adhere to the rules of a PDO/PGI should be able to do so and should not face obstacles to participation that are discriminatory or otherwise not objectively founded[35]. This principle is also laid down in the Free Trade Agreements negotiated by the EU and third countries that include requirements concerning GIs. Is mandatory membership discriminatory? Discrimination would be clear in the case of exorbitant membership fees, or difficulties in understanding the principles of an association, but in France, membership fees are low, the highest being the contribution per volume of production to finance the cost of controls (usually 1 per cent) and since the 1901 Law on Associations, the general principles governing associations are widely known. Yet, Switzerland respects the principle of freedom of choice to join an association. And what about the situation in other countries? For example, in Laos, which has the same system as Cambodia for use of the name Kao Kay Noi to label a glutinous aromatic rice from the highlands, becoming a member of the producers' association is perceived as a burden by small rice growers, in a country where, due to the political system, there is very little understanding of what is an association or a producers' group. In such countries, as in Switzerland, one option would be to distinguish between those who are involved in drafting the GI specification and its amendments and those who just want to use the GI. So do these GI users need to be registered? If the answer is yes, who should they be registered with? The GI association? The national authority in charge of registering GIs, like in India? The authority in charge of controlling GIs like in Switzerland?

On the other hand, one may consider that mandatory membership is important for success. Creating a clear boundary between legitimate users (members of the association) and those who are not is important for collective action (Ostrom, 1990). Knowing who the members of the association are and therefore the GI users, meeting them regularly at general assemblies and other meetings can eventually build trust-based relationships between these members.

4.2.3 The producer's group uses its monopoly to amend the specifications. For decades in France, only the recognised PDO/PGI management organization had the right to ask for amendments to specifications, in contradiction with the EU regulation which states that any interested party may do so. Consequently, interested parties excluded by the GI specification and who are thus not members of the Organisation of producers could not ask for a change without the approval by the GI organisation itself! This explains why the *Tomme des Pyrénées* PGI took so long to be amended. Things changed very recently, with the case of Reblochon and INAO now scrutinising requests to amend GI specifications issued by municipalities or producers not included in the GI specification. The principle of request for modifications by any interested party should be safeguarded in all GI legislations that confer the exclusive right of filing GI applications to the producers' group to avoid any unfair exclusion.

4.2.4 Transparency of the producers' group. Beyond representativeness, there is an issue of transparency of the producers' group in charge of managing the GI to ensure its democratic functioning. In particular, the involvement of the association in trading the GI product creates serious risks of non-transparency. But how many legislations have provisions safeguarding the role of public interest of the association and thus the prohibition to trade the product? It is highly recommended to explicitly include such a principle.

4.3 The need to negotiate compromises under a justice of the peace

To overcome controversies, compromises must be negotiated. Compromise includes both processes (negotiations, mediation and even arbitration), and the substantive agreement itself (Menkel-Meadow, 2016). It is a question of seeking a common good that goes beyond individual justifications through mutual concessions and a cooperative attitude (Boltanski and Thévenot, 1991; Ricoeur, 1991). A justice of the peace might be needed to solve the conflicts and controversies over GI management and GI product specifications. Such a justice of the peace is embodied in the public authority in charge of recognising or registering GIs.

4.3.1 A justice of the peace to help reach a compromise on the technical content. In France, compromises are reached with the intermediation of the national commissions of INAO (Marie-Vivien *et al.*, 2018). This involves an arbitrator who guarantees the legitimacy of the GI application. In the EU, the same principle of compromise governs conflicts with examination by the EU Commission, who also handles the opposition procedure. But is the State always a justice of the peace? As we have seen, its frequent strategy of inclusion to avoid conflicts may create other problems.

4.3.2 Compromises on the governance of GIs. More interesting is the role of the GI authority in mediating the conflicts concerning governance of the GI. In France, since 2006, INAO shall verify and examine the statutes of the Organisation as a condition for recognition of the PDO or PGI and INAO is invited to participate in all general assemblies of the Organisations. In India, the applicant shall also demonstrate how it represents the interest of the producers/processors. However, it appears that such examination is not as deep as the examination of the technical content of the specification. It does not even exist in the EU Regulation, which puts more emphasis on the control body than on who is the applicant...the name of the applicant is not even published in the *EU Official Journal*, and no criteria of representativeness exist!

5. Conclusion

The GI is permeable to a multitude of objectives and the management of controversies is the “price of participatory democracy”, a participatory democracy which still needs to be under the umbrella of a justice of the peace, i.e. the State authority. Indeed, representativeness does not necessarily lead to equity and fairness, including when the applicant is a producers’ group. At the level of a producers’ group, it depends on who is a member of the producers’ group and on the rights of vote. Mandatory membership might not be always the best way to ensure the participation of all beneficiaries of the GI in the process. Like any collective action, transparency is essential to guarantee the producers’ group works for the common good and not for the private interests of some members. Producers’ collective action does not solve the problems that arise in the presence of strong heterogeneity of the value chain, where representativeness reproduces the inequalities. In that case, to solve the conflicts, inclusiveness replaces representativeness, with the risk of losing the specificity of the product. One way to overcome the challenge of heterogeneity is embedded in the rules of the specification itself, which can be drafted in a way that avoids too much contrast between the stakeholders, for example, by restricting the distance between the milk collection and cheese making units. Indeed, homogeneity appears to a key factor of GIs, as “there is no super-rule for resolving conflicts, but conflicts are solved within a homogeneous order in which people recognize themselves” (Ricoeur, 1991).

Notes

1. See Art. 22.1 of the TRIPs Agreement, 1995.
2. See Art. 5.1 of EU Regulation 1151/2012.
3. See Art.5.2 of EU Regulation 1151/2012. For the PGI, the raw materials may come from a geographical area other than the place of processing.
4. www.maff.go.jp/e/policies/intel/gi_act/register.html
5. http://ipindia.nic.in/writereaddata/Portal/Images/pdf/Registered_GI_01_04_19.pdf
6. <https://africa-gi.com/en/pan-african-gi/strategy>
7. EU Regulation No 848/2018.
8. Article 49 of EU Regulation 1151/12.
9. Article 3.2 of EU Regulation 1151/12.
10. Article 53 of EU Regulation 1151/12.
11. Article 45 of EU Regulation 1151/12.
12. Article L. 642-17 of the rural and maritime fishery code.
13. Article L. 642-18the rural and maritime fishery code.
14. Art. L642-21 of the Code Rural.
15. Article 5 of the Order concerning the protection of appellations of origin and geographical indications of agricultural products, processed agricultural products, forestry products and processed silvicultural products, 28 May 1997.
16. Guidelines of the Federal Office for Agriculture, OFAG.
17. www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-49656.html
18. Article 18 of the Ordinance.
19. Information provided by Erik Thevenod-Mottet, Swiss intellectual property Institute.
20. Article 7 of the Law on Geographical Indications, 20 January 2014.

21. Article 5 of the Ministerial Regulation (Prakas) on the Procedure for the Registration and Protection of Geographical Indications, 29 December 2016.
22. Act on Protection of the Names of Specific Agricultural, Forestry and Fishery Products and Foodstuffs (Act No. 84 of June 25, 2014).
23. (Art. 6- IN 95/2018).
24. GI Act, 1999.
25. The data were collected during a field survey in 2005 and updated in 2019. The GI specification is available at: <https://extranet.inao.gov.fr/fichier/PNOCDCTommedesPyrenees.pdf>; <https://info.agriculture.gouv.fr/gedei/site/bo-agri/document.../telechargement>; www.tup31.com/etre-accompagne/la-tomme-des-pyrenees-se-decline-au-pluriel/; www.entreprises-occitanie.com/agroalimentaire-un-igp-pour-la-tomme-des-pyrenees-aux-laits-crus; www.leguiedufromage.com/tomme-des-pyrenees-io341.html
26. The data are sourced from secondary data.
27. www.reussir.fr/lait/laop-camembert-elargie-va-nous-donner-des-moyens
28. The data were collected in 2019 from interviews and are also sources from secondary data.
29. The data were collected during a field survey in 2016.
30. The data were collected during a field work in 2006 and regularly updated until 2018.
31. Personal interviews, May 2017 and May 2018.
32. Personal interviews, March 2019.
33. Personal interviews, March 2015.
34. www.inao.gov.fr/Espace-professionnel-et-outils/Produire-sous-signes-de-qualite-comment-faire/Guides-pratiques
35. Article 46 of EU Regulation.

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