

## **Geographical Indications as a tool for providing common goods**

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### **Introduction**

The Geographical Indication (GI) is a category of intellectual property rights (IPRs) aiming at protecting denominations related to products that have a specific link to their geographical origin (Hermitte, 2001). A GI product originates from the historical and geographical context of a given territory where resources, know-how and reputation are usually shared among a group of producers. The collective dimension of GIs is based on shared cultural heritage and bio-physical conditions, materialized in a particular “origin product”, whose characteristics meet the common expectations of the consumers for that particular product. GIs are generally official names of places, regions, cities or countries, so the granting of a property right on these names is nothing but obvious, contrary to specific signs identifying an individual firm, individual artistic creations or inventions. Therefore a GI is a common good with distinctive material and immaterial features. However, the question of ownership is not easy to clarify when dealing with GIs, and is addressed in several ways by the national legislations: in some countries the owner of a GI as an IPR is identified as a private person, and in others ownership is attributed to the state. But, even more surprisingly, in many countries there is no clear identification of the owner.

Not only are GIs a highly disputed matter at the international level, their peculiar nature also raises a number of questions at the national level: Can we say that a GI is a common good for the producers? Then how can they coordinate? What room for consumers? Apart from the market mechanisms and associations of producers, should the state play any role?

Through a multidisciplinary approach (law, economics, geography, anthropology), this paper addresses the issue of governing GIs as commons through two interrelated dimensions. The first dimension focuses on legal and institutional tools to govern GIs as common goods. Pursuant to the article 15 of the Convention on Economical, Social and Cultural Rights, we explore international human rights law

including, with regard to the role of the State in the definition, recognition and protection of GIs. A thorough understanding of the conceptual range of GI is instrumental, in order to compare the characteristics of collective action within a GI framework and other collective projects for development (1). In this sense, the paper addresses issues related to the opportunities and possibilities of an international harmonizing of the GI designs. The second dimension focuses on the collective action of stakeholders for the recognition, management and promotion of a GI. We present and discuss some experiences of collective initiatives linked to GIs, with a particular stress on participatory approaches. We mobilize an analytical grid inspired by Ostrom's work, and adapted to the case of GIs, to see in what conditions these may be considered as commons. Collective action, governance arrangements and the relationship to particular resources appear as distinctive features. This grid is tested on three case studies of GIs in the South and North. On the basis of the analyses we conducted in these different regions, we conclude that GI laws alone are not a *panacea* for the preservation of bio-cultural heritage (i.e. interlinked biological and cultural heritage), but that institutional support and collective action are also needed to ensure that GIs preserve these commons, support people's well-being and respect the rights of local populations (2). The relations between these two dimensions are complementary. On the one hand, considering GIs as commons can be supported by the legal and institutional framework, and therefore influence the rules on GIs established at this level. On the other hand, a GI as a common can be elaborated in the dynamics of collective action, through the establishment of practices, objectives and local compromises that will guide the implementation of the rules defining a GI in a singular way. Furthermore, these two dimensions are not necessarily disconnected but can influence each other, with the GI institutional framework being likely to influence collective action and, conversely, the latter guiding the evolution of rules. These dynamic interactions emerge from contrasted cases presented hereafter.

## **1. What room for commons in legal GI protection tools?**

### **1.1 GIs as collective IPRs**

GIs have specific features that distinguish them from the main IPRs, trademarks and patents. While the legal globalization of GIs results from the WTO TRIPS Agreement, the collective dimension of GIs is not raised in the Agreement and is dealt with by national legislation or practices. As a matter of fact, most well-functioning GIs are managed by collective groups to the extent that national legislation is enacting this feature as a prerequisite for protection. Yet, the TRIPS provisions on GIs are silent about the way their implicit collective nature shall be dealt with. Moreover, the TRIPS Agreement of the WTO defines all IPRs as private rights. This provision gives the wrong impression that GIs may be appropriated by a private person. Indeed, examples of such appropriation are not rare. But unlike other IPRs, GIs do not define appropriation acts. Because the property is assigned to all producers of a region fulfilling the conditions of production, it cannot be a private right. The recognition of the GI is a decision of a public authority which gives producers a right to the GI, but not right on the GI (Tallon, 2016). This non-appropriation and its regulated use make GI a common good, even if its protection is legally ensured as IPR. Thus, it is worth recalling that GIs are intended to protect common goods. However, the concept of "common good" does

not have teeth or, at least, not yet. In this paper, we argue that GIs may be efficiently treated as common goods – or collective IPRs- thanks to international human rights law.

## 1.2 Legalize GIs as commons: reconsidering human rights

International human rights law grants human rights status to intellectual property rights within article 15.1 c) of the Convention on economic, social and cultural rights: “1. *The States Parties to the present Covenant recognize the right of everyone: [...] (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*”<sup>1</sup> This recognition of IPRs as a human right is instructive for the questions raised in this paper i.e the ownership of GIs, the sharing of the good with the consumers/public and the role of the State. Indeed, the long-standing dispute on the international legal protection of GIs, at the WTO and WIPO (the World Intellectual Property Organisation), seems to be rooted in a major divergence about on the one hand, the availability of “common names”, and on the other hand, the legitimacy and necessity of state involvement in the management of such a collective immaterial good.

The beneficiaries of article 15.1 c) of the above-mentioned convention enjoy a “*moral right*” of paternity and integrity of their productions, according to article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works. If, under human rights law, the beneficiaries shall also enjoy “*material rights*”, it is an indication that GIs are owned by those exploiting the sign in the course of trade. At the same time, article 15.1 a) recognizes the right “*to take part in cultural life*”. This human right implies the availability and accessibility of intellectual goods<sup>2</sup>. However, the Committee on Economic, Social and Cultural rights<sup>3</sup> acknowledges that the right to take part to cultural life may be subject to limitations. In particular, the Committee underlines the importance of acceptability and adequacy of policies based on the right to take part in cultural life<sup>4</sup>. Applying limitations may be necessary where this right infringes upon other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society. Hence, while GIs may be a common good, it is legitimate to restrict their use to economic actors directly associated with the resource who have developed the ‘know-how’. The connection to the human rights regime also justifies a certain implication of the State. International human rights law imposes to the State three categories of obligations towards established rights: the obligation to protect them, to respect and to enforce the rights at issue. These core obligations are likely to give directions on the scope of protection for GIs and the level of state interventionism.

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<sup>1</sup> General Assembly of the United Nations, International Covenant on Economic, Social and Cultural Rights, 16 December 1966

<sup>2</sup> Committee on Economic, Social and Cultural Rights, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 2–20 November 2009, General comment No. 21, p. 4 and 5

<sup>3</sup> The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

<sup>4</sup> Ibid, p. 5 and 6.

The human rights-based approach to GIs as common goods may be promising considering the fact that 164 States are members of the Convention on Economical, Social and Cultural Rights. Therefore, international human rights law is an asset to “*hit two birds with one stone*”: to delineate the role of the state towards GIs and the allocation of rights between the GI holders and the public. The UN Declaration on the Rights of Indigenous Peoples, adopted by 144 states in 2007, further reinforces IPRs as human rights. Article 31 establishes that indigenous peoples ‘have the right to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge, and traditional cultural expressions’. Although UNDRIPs is not legally binding, its adoption signals formal support and intention to implement.

## 2. GIs’ as a tool for collective initiatives

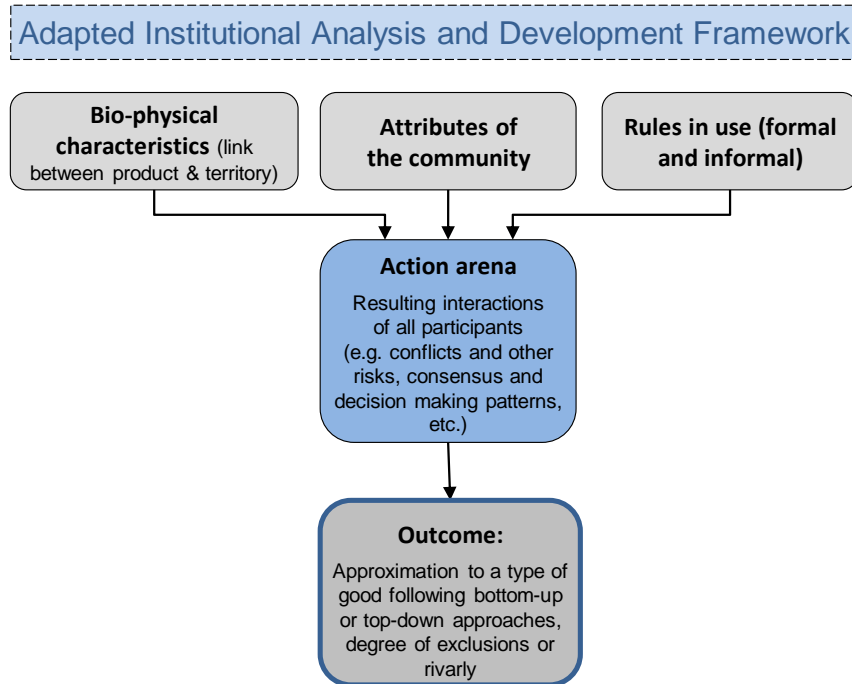
### 2.1 Analytical framework

We have taken as a starting point the idea that a GI is a collective IPR and that, as such, the GI product is the materialization of a common good.

*Public good: in economics, a **public good** is a good that is both non-excludable and non-rivalrous in that individuals cannot be effectively excluded from use and where use by one individual does not reduce availability to others (Gravelle & Rees)*

*Common good: the **common good** is a term of art, referring to either what is shared and beneficial for all or most members of a given community, or alternatively, what is achieved by citizenship, collective action, and active participation in the realm of politics and public service. Elinor Ostrom's study of schemes for the regulation of common property resources resulted in the discovery of mechanisms for overcoming the “tragedy of the commons”.*

To understand and analyze the GI product as a common good, we have adapted some categories of the Institutional Analysis and Development (IAD) Framework – designed by Elinor Ostrom, who focused on studying the institutions for collective action (for the management of common-pool resources) – to develop a grid for analyzing GI protection and management in selected cases (Figure 1). In the discussion following the case studies, we use the grid to establish how GI products correspond to characteristics that define the common good. The grid enables exploration of the GI as property of a community, shared by and benefiting its members. We also use the grid to evaluate the related processes of community collective action.



*Source: Adapted from Ostrom, 2011 and Quiñones-Ruiz et al., 2016a*

Based on Quiñones Ruiz et al., 2016a, the units of analysis are: i) the link of the product to the territory (analogue to bio-physical characteristics, culture, know-how); ii) the attributes of the community of producers and other actors involved in the GI registration and management process; iii) the rules of use (formal, e.g. GI law and informal rules i.e. non-written or local modes of collaboration or norms); iv) the ‘action situation’, which is defined as the social place where actors interact, make decisions, solve problems or fight and also present the motives for the GI registration; and v) the outcome of the GI process (in our cases this should define the GI protection and management from a common, public, club or even private good perspective based on the collective-choice arrangements and also on the degree of exclusion and rivalry/subtractability).

The link to the terroir is a founding element of whether or not the common good. Indeed, this relationship reflects the unique characteristics related to the origin of the product due to natural and human factors (Casabianca et al., 2008). This translates into an established reputation among consumers. These links between the product and its territory are the result of a social quality building process that reflects the cumulative efforts of the community around the product in a set of knowledge, customs and practices that are shared by several producers in the territory (Bérard et Marchenay, 2004, 2005). In this sense, the link to the terroir, when well established, strongly anchored heritage, collective, shared production within the product's community. This product is the materialization of sharing knowledge built step by step in the long time (Champredonde & Muchnik, 2012; Marie-Vivien et al., 2015; Tregear et al., 2007; Barham, 2003).

How it is incorporated and operates the GI producers community informed on the commonality of the GI product; and the terms of this governance around the IG demonstrate the depth of the truly collective character or not of the common good (Barjolle & Sylvander 2002; Barjolle et al. 2007; Belletti et al. 2014; Reviron et al. 2009). Indeed, ownership of a GI product in favor of a small number of producers is an

indication that the property, even if it has the attributes of a common good such as its link with the terroir, few producers and excludable property rules, induces a loss in identity of the common good due to the size and conditions of its management, more akin to a club good (Torre, 2002).

The formal or informal rules around the use of the GI as intellectual property determine to what extent the community has found a stable agreement, and is able to enforce it collectively with fair means, i.e. that do not unfairly penalize some users. In this sense, the phenomenon of exclusion that are sometimes reported in the functioning of GIs can be seen as a symptom of alienation of the common nature of the GI product (Bowen 2010; Mancini 2013; Quiñones et al. 2014). Therefore, these rules are very important to consider in the analysis grid.

The arena of collective action, which is the way and the "place" (even if not physical) where the actors interact, resolve their conflicts and find agreements, is also a fundamental dimension to observe in order to understand if the GI product and its functioning have or not a common good character. Indeed, a unified chain of command (e.g. managed by a private company) characterizes a private good, in contrast to an area of confrontation and consensus (i.e. polycentric governance) that characterizes a common good. In this sense, the decision making process around GIs must be examined carefully. Although the capital of a private company or the shares of a cooperative – which can be the main actors of the GI product chain – can partly be held by members of the community, it is important to analyze the mechanisms that bind all capital holders (or those parts) with the GI as a common good. If the benefits of the use of the GI's name, as an IPR, escape the community members who carry the GI product as common good, then the virtuous mechanisms of collective management (Vandecastelaere et al., 2009) are lost, since they engender risk of a tragedy of the commons (Ostrom, 1990).

Indeed, profits and ownership are decoupled, and producers become rivals in the property use, with high fraud risk (usurpation of the name by the producers themselves, for goods whose characteristics are different GI products that comply with local, trustworthy and established practice). Downstream of the process of decision making, results of the past agreements can be observed within the community that is to say the group of producers of the GI. Depending on circumstances, it brings together the manufacturers of the final product, but it can also involve farmers producing raw materials and downstream players in charge of GI's processing. These results show how the agreements concern the product but also its use, or the use of resources shared by the community to provide the GI product: for example the use of pastoral resources by the community in the case of manufacturing of Alpine cheeses.

## **2.2 Methods**

For this paper a comparative case study approach was used to understand the institutions involved in the registration and management of protected GIs. The case studies served to gain detailed and context specific knowledge (Yin, 2009). Case studies are an option when cross-case data is limited and/or where fieldwork is required to gather case-specific insights (Poteete et al., 2010). We selected cases located in developing and post-industrialized countries, with diverse institutional settings and long and short value chains. The selected cases are: Darjeeling tea (India), cheese Tête de Moine (Switzerland), and Mostviertel perry (Austria). The source of data collection is mainly based on literature review and previous authors' experiences in the field.

## 2.3 Results

### 2.3.1. Case 1: Tête de Moine cheese<sup>5</sup>

*Link between product and territory.* Tête de Moine cheese dates back to 1,190 years, when the use of this cheese by the monks of Bellelay monastery is attested as currency. The name "Tête de Moine" appears in the 1790s; today this cheese has a consumption peak around the end of the year holidays. It is a semi-hard cheese produced from raw cow's milk, whose taste varies depending on its maturation (2.5 to 4 months). This cheese is traditionally scraped with a blade to be eaten fresh. In 1981 "the Girolle", used to scrape and produce rosettes typical of this cheese, was invented, accentuating its character and reputation. The terroir is an area of the Bernese Jura in Switzerland, with altitude ranges between 800m to 1,250m with homogeneous soil and climatic conditions.

*Attributes of the community.* An inter-professional organization (IP) co-managed by a panel of producers and other actors (cheese makers and refiners) manages the Tête de Moine value chain. This sector has about 270 producers, nine dairies and two refiners. Eight dairies produce different types of cheese, while the Tête de Moine accounts for approximately 40% of the milk in the geographical area. Part of the product is aged by age cheese factories (the part sold by direct sales), but most is aged by two refiners for sale in supermarkets and export. The IP can implement its decisions if validated by all colleges, and the majority within each college, thanks to the Swiss Ordinance on IPs and producer groups.

*Rules in use.* This IP controls product quality as well as the quantities sold. Indeed, although the Swiss contracting normally leaves the terms of price and delivery of milk to the discretion of the producer and the processor, the IP oversees the annual breakdown of PDO volumes, leaving processors only control of the monthly distribution of these quantities.

*Action arena.* The IP is active in product qualification (definition of specifications for the PDO), but also in its promotion which is largely paid for by all stakeholders and subsidized by the State. The IP is managing product quality with strict scheduled payment for milk and cheese. Besides, it has also fixed production volumes by dairy, and this leads to an indirect price regulation by the IP, to ensure resilience of the price even during periods of volatile markets.

*Outcome.* With PDO recognition, the IP strengthened the positioning of this cheese in a luxury and niche market, that of festive and special event consumption. This choice has subsequently been the source of the dynamic sales trend for the product in Switzerland and abroad, with a shift from 200 to 2,000 tons produced each year between 1971 and 2005. Concerning the share of added value, milk producers receive a price significantly higher to milk producers in the same region which are not for delivery of Tête de Moine cheese. Average prices for milk are € 71.30 / kg for Tête de Moine milk compared to € 67.17 / kg for standard milk. Indirect impacts on local tourism and employment in farms and dairies are considered significant by the heads of local authorities.

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<sup>5</sup> based on Magnan A., Barjolle D., Trouvé A. (2016) **La Politique agricole Suisse et son système d'AOP comme facteur de résilience à la libéralisation des marchés laitiers : le cas du Tête de Moine AOP**, colloque SFER Libéralisation des marchés laitiers, Clermont-Ferrand, 9 et 10 juin 2016

### 2.3.2. Case 2: Darjeeling Tea

*Link between product and territory.* The Darjeeling tea has an area of production of about 17,820 hectares in the lower Himalayas in India (see Figure 1), at an altitude of 600 to 2,250m, on fairly steep slopes of 60 to 70°, creating a spectacular and very typical landscape. The traditional and specific know-how about picking Darjeeling tea and also the delicate transformation contribute to its typical character and unique flavor of muscatel. The variety of tea grown in Darjeeling district in the State of West Bengal, is the *Camellia sinensis* var, which differs from other varieties due to its small leaves. The Darjeeling tea yield is very low compared to the national average - between 400 and 450 kg / ha compared to 1,800 kg/ha, given the characteristics of its leaves and having two leaves and a bud.

*Attributes of the community.* The GI value chain is organized into 87 large plantations (between 50-550 ha on average). These plantations are publicly owned, as they belong to the State of West Bengal and their exploitation is entrusted by renewable leases of 30 years. 72 plantations have a drying and packaging unit. About 70,000 permanent workers are employed in large plantations, where they are housed and fed and receive low wages that do not allow them to capitalize. 15,000 seasonal workers join for the harvest between March and November. To this very poor community are added 15,000 producers on tiny plots (less than 1 ha) that many NGOs support in their structuring. These producers do not have access to GI and sell wholesale tea to intermediaries selling in the Indian market.

*Rules in use.* The teas grown in India, including Darjeeling, are supervised by the Tea Board of India. This is the entity that develops and implements all the laws and regulations for the sector, of very high importance for rural areas' economy. Quality, research, promotion, sales management and export of tea are its exclusive jurisdiction. In 1958, the Tea Board recorded a special logo for Darjeeling tea, which was introduced in the international market. The GI Act was passed in 1999 (and GI Regulations were adopted in 2002) in India, and Darjeeling tea was the first registered GI. In 2011, the Darjeeling tea got a PGI in the EU. GI specifications rule all stages of cultivation and processing of tea. The Darjeeling Tea Association (DTA) brings together all the official players in the sector: gardens (producers and processors), intermediaries and exporters, but not tea pickers. It is responsible for collecting the quantity harvested, processing and shipping, and informing the India Tea Board to issue the certificate of origin. It has also supported the establishment of a traceability system for the GI, whose control is entrusted to an affiliated organization dedicated to this task. The value chain is actively engaged in obtaining other certifications such as compliance with organic farming or private fair trade labels.

*Outcome.* The price of Darjeeling tea is higher than its substitutes, twice the Assam and Dooar tea price.



Its specific quality and mountainous conditions of its production (as opposed to easier terms in plain) are well differentiated and protected by trademark, logo and sui generis GI (2004), recognized in the European Union since 2011. The condition of workers is a critical point often denounced by NGOs. Since 2004, this aspect is improving, and the Labour Law of 1951 is better applied resulting in an increase

stable employment by a third. The GI has largely benefited plantation owners, while benefits for tea pickers have been minimal (Pant, 2015)<sup>6</sup>.

### 2.3.3. Case 3: Mostviertel perry<sup>7</sup>

*Link between product and territory.* The name “Mostviertel” (Perry-Quarter) is a geographical and administrative term for the south-eastern part of the province of Lower Austria. The first perry denomination can be traced back to 1240. Perry lost its reputation after World War II being replaced by beer and wine, however a perry revival was observed after 1990. Nowadays, besides on-farm sales, perry is promoted in several culinary and touristic events. The perry specification is defined as of fruity and pure taste linked to climate, soil, special variety of pears and the expertise of predominately small producers. Perry is produced by cask fermentation of pear juice obtained from pressing. Approximately 20% of the perry production is graded as high quality and obtains premium prices.

*Attributes of the community.* At present, approximately 250 farmers produce two million liters must per year. However, they commercialize their perry through individual brands and marketing strategies, 150 farmers are gathered under the Association of Fruit Producers from Mostviertel. The farmers cultivate, harvest, process and market the perry; 90% are directly sold to consumers within a distance of max. 40 km. There are two types of producers, namely the small producers and the specialized, high quality producers.

*Rules in use.* Formal rules: At the moment of the GI registration process, the perry production was regulated by quality standards of the Austrian Wine Law. Thus, in order to apply for the GI regulation in the European Union (EC Regulation 510/2006) producers adapted already existing quality regulations and hired an expert to scientifically analyze the pears. Informal rules: Despite the association and common marketing initiatives, horizontal integration of producers is weak. Additionally, producers individually sell their perry with their own brands.

*Action arena.* Protection was motivated because a German company was using the name “Mostviertler Birnmost” on its website. Thus, producers decided to protect the name. Furthermore, producers aimed to design a common marketing strategy to also differentiate their perry from Upper Austrian producers. The GI initiative was started and driven by the Regional Management Mostviertel Association after a consultation with the Patent Office. In a board meeting in 2000, the fruit producer association agreed to initiate the GI registration. However, there was little collective action among producers during the process. The approximately 55 members of the Association of Fruit Producers from Mostviertel were not actively involved in the debate but were informed about the board’s decision to apply for a GI. After the national registration in Austria in 2003, the application was submitted to the EU and the Protected Geographical Indication (PGI) was obtained in 2011. The submitted Product Specification needed to be adjusted before obtaining the registration.

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<sup>6</sup> Ruchi Pant (2015). Protecting and promoting traditional knowledge in India: what role for geographical indications? <http://pubs.iied.org/16576IIED>

<sup>7</sup> based on Quiñones-Ruiz et al., 2016ab

*Outcome.* The perry case can be considered a type of “failure” case because after the PGI registration producers decided to withdraw the PGI registration. Producers –particularly those with farm sales – did not agree on choosing a control body and on accepting additional controls and costs. In a meeting in 2014, the board of the Association of Fruit Producers from Mostviertel decided not to use the PGI and started the process to withdraw the GI protection. Producers understood the essence of the GI protection after registration as a debate about the need, benefits and costs of the GI protection did not truly take place. The GI registration process followed a top-down approach that did not take into account producers after registration. Therefore, in this case the GI protection cannot be approximated or modeled to a specific type of good as the protection was afterwards rejected. Nonetheless, after the PGI process some other collective marketing strategies, such as *Genussregion* (delicacy region), were successfully developed in the region without additional controlling costs. Producers continue selling their perry predominantly with their own individual brands as before.

### **3. Discussion**

First, we will check if the product qualified by the GI truly has a common good character, discussing the degree of ownership and sharing of institutional arrangements in their collective dimension.

In all studied cases the link to the territory is strong and fits into a tradition of centuries, making GI a component of territorial heritage. Specificity is first linked to specific soil and climatic conditions, combined with specific varieties (Darjeeling tea and Mostviertel perry) or specific know-how (especially Tête-de-Moine and Mostviertel perry). In addition, all cases refer to different levels of quality in terms of specific practices (maturation period or fermentation type, for example). The cultural dimension of the products, however, draws differentiated paths. For instance, the success of Darjeeling tea shows an important and regular consumption in India as well for export markets, associated with consumer recognition of its specific features. For Tête de Moine cheese technical innovation, linked to the introduction of Girolle, was a turning point for strengthening the character and reputation of a festive consumer product with a seasonal peak. In the case of Mostviertel perry disaffection for the product during forty years after the Second World War has requested a special work for revaluation of its cultural dimension, and re-appropriation by consumers and producers as territorial heritage. It is a kind of niche product broadcasted on a local market.

The modalities of community involvement seem to have a decisive impact on the functioning of the GI as a common. In all three studies, the role of the association is central as it settles the organizational arrangements of the community. The organization in charge of managing the GI Tête de Moine has the distinction of being an IP bringing together dairy farmers, cheese makers and refiners, that is to say the different stakeholders, organized into professional colleges inside the IP. Its legitimacy for the implementation of decisions made by each category of the IP, rests on national legislation on IP and producer groups, and is an important component of the success of the GI. This emphasizes the multi-level character of GI governance device, articulating the internal rules and more general forms of regulation and legislation.

Although the producers of Mostviertel perry are also grouped in an association, this is not able to ensure the most effective coordination; and rather than a collective approach around the construction, protection and enhancement of a common, it is a fragmented strategy which characterizes this GI. Only a part of the producers are members, and they also prefer to market the product under their own brand that using the GI label. In addition, each supporting all stages from production to marketing, the need for coordination within the sector is low. The level of integration is limited to marketing collective actions. Conversely, the producer-consumer link appears less anonymous, because they sell mainly through direct sales in a very small area.

The Darjeeling tea community is also segmented, defining highly differentiated statutes that are associated to rights and distinct benefits on the GI. State ownership of plantations assigns a mere role of managers to the actors in charge of production, processing and marketing of tea. The use of abundant labor, low paid and predominantly seasonal limits the distribution of benefits to contributors to the GI, as well as the low interest of the state to help small land owners. In other words, the GI is appropriated by the public authorities without creating a real common.

The three case studies are characterized by high level coordination rules but follow distinct arrangements. The current system of rules for cheese Tête de Moine defines a collective regulation entrusted to the IP, which leaves a low degree of freedom to each processor, reduced to the allocation of production volumes between different months of the year. This high level of control largely constrains individual strategies considered as components of a collective strategy on the quality control, sold quantities and the annual distribution of volumes between cheese processors - especially through strict specifications - with indirect impact on market price regulation.

In the case of Darjeeling tea, the rule system was built on a strong institutional investment combining the strategy of the West Bengal state to protect and enhance this tea in international markets, and the Indian state apparatus, which created a Board of Tea to regulate this crucial production for the development of rural areas. The association in charge of the GI established a precise specification for growing and processing. It thus settles a top-down governance also covering the quantities produced and processed, as well as the export conditions under the state authority agreement. The various stakeholders are brought to contribute to this highly institutionalized collective strategy, which was a step for other collective approaches of voluntary certification for Darjeeling tea, as a pioneering device for the distribution of GIs in India.

The system of rules put in place for the recognition of Mostviertel perry as a GI was originally linked to a defensive strategy against loss of product reputation and the usurpation of the name by a foreign company. The definition of quality standards was rather easy to establish because of their pre-existence required by the compliance with the Austrian regulation on wine products. However, the low involvement of producers - including small ones - in this initiative eventually led to a rejection of the use of the GI, even if the will to achieve national and European protection level had required an adjustment of the production and processing of the product to fight against usurpation risk.

Beyond the collective management of the GI product, a second level of common goods production can be considered. It results from externalities that can positively contribute to the development of the territory and beyond the maintenance of cultural and natural heritage. Indeed, the common resources used for the production of the GI product are potential carriers of additional common goods whose emergence is favored by the existence of institutions around the GI. These second level effects, are subsequent to the establishment of a collective management of the GI product as common good. Economic impact for GI producers is a major aspect, but it also particularly takes the form of increased interest by tourist in the territory of the GI, as it has already been shown, for example in France for the area of several PDO like Beaufort cheese (Durrande-Moreau, 2015), Noyons olive oil or Laguiole cheese (Roux et al., 2006).

In our case studies, the effects of the recognition of the products as GIs are clearly different. In other words, they do not result in similar levels of ownership and profits of the common. For Tete de Moine cheese, recognition as a GI enabled the IP to enter the luxury and festive events market. The consequences have been very positive in terms of increase of sale volumes on home market and abroad, and in price (above average) received by dairy producers. In addition, the benefits have spread in the territory, with significant impacts for tourism and employment. In this sense, one can truly evoke a common dimension for this GI.

The situation is more nuanced for Darjeeling tea as if recognition as GI is an undeniable economic success and is effective as a product protection device, the effects are less shared as evidenced by the difficult conditions of employment complained by NGOs, despite an improvement in the last ten years, and the non-authorization for small producers to use the GI label. In this case, the GI is therefore akin more to a club good than to a common good, recognizing the right of everyone to contribute to economic creation, social and cultural life of the region. However, the share of tourism in revenue, induced by the recognition of the GI, plays a growing role in the economic development of the territory. This positive second level effect is enlarging the population that benefits of the success of Darjeeling tea.

The decision made by the community of producers to remove the GI protection for Mostviertel perry is a testimony of the failure of an approach, which governance process was inadequate. Imposed in a top-down rationale, the GI initiative did not associate producers (especially the smaller ones), which did not appropriate the rights or obligations inherent in the IPR, resulting in a rejection of rules and management costs. The hierarchical nature of the GI process driven by the IP proved counterproductive, leading to the definition of GI as an inappropriate public good, much more than to a common in which producers could recognize themselves as GI stakeholders and truly engage in the initiative.

## **Conclusion**

In the different case studies analyzed the GI cannot be considered a common good directly built by a coordinated collective action between producers and consumers. Instead, it is more through market relations and the success of the demand for these products, that recognition of the quality and specificity of products by consumers is established.

At the producer level, the coordination is rather more explicit, taking the form of interprofessional associations whose mission is generally managing the GI. However, the types of intervention and involvement of stakeholders differ markedly depending on the case, with an impact on the effectiveness of the IG device management, involvement of producers and processing, as well as the real use of the GI as a regulatory tool. The role of the state is also different in each case. If in most studied situations it has duties on GI recognition and specifications, as well as a guarantor of the entire certification and control system, in some cases its role is expanded to a direct involvement in the management of the GI system or production land ownership.

The Convention on Economic, Social and Cultural Rights establishes the right of everyone to the protection of their moral and material interest related to their original production as an author, as well as the opportunity to contribute to the cultural life, albeit with limitations for GIs may be associated with rights to use the name. This agreement determines the holders of the paternity of the name. Due to the indivisibility of human rights, the use of this Convention is a way to incorporate respect of other fundamental rights protecting GIs. Finally, as it is the human rights system, the role of the State is essential in the implementation of this article. The latter has the obligation to protect, respect and implement these rights without hindering the moral and material interests of the real "authors". In the studied cases, the definition of a GI use rights sets exclusion and club phenomenon in the situation of Darjeeling tea, at the expense of small landowners and in favor of the State who is the owner of the land where the use of the GI is allowed.

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