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The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review

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Summary. — Geographical indications (GIs) serve to designate goods with a quality, characteristics, or reputation attributed to its geographical origin. They are increasingly protected in many countries of the South as a tool for economic, social, territorial, and ecological development. Implemented in the wake of the weakly prescriptive WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs) of 1995, the choice of the institutional framework for protecting GIs nationally as well as associated public support infrastructure was left open. This led to divergences in overarching approaches and to GI institutionalization that differs remarkably across countries. Twenty years after TRIPs, the purpose of both this paper and of the special issue is to advance our understanding of the institutionalization of GIs, as an IPR, a quality standard, and a policy instrument in harnessing all of the expected benefits of GI protection.

Building upon the contributions to this special issue, we use an original multilevel governance framework to analyze all the multifaceted roles of the state, in different empirical situations worldwide. This reflects the experiences of countries that have only recently implemented GI protection, such as Brazil, Colombia, India, Indonesia, Vietnam, South Africa, Kenya, and West African countries, as well as of regions with a long history of GI protection, including the EU and the US.

Based on an analysis of the complexity and diversity of all state, we show that global harmonization is underway with a convergence toward a prominent role of the state in GI regulation, in particular for defining GI content, which is specific for GIs when compared to other IPRs or quality standards. We suggest that the intervention of the state is supported by a universal desire to guard against unfair exclusion, and to protect a common heritage.

Key words — geographical indications, state, trade, exclusion, standard, Intellectual Property Right

1. INTRODUCTION: SOUTHERN COUNTRIES AND THE DEVELOPMENT OF GEOGRAPHICAL INDICATIONS

For centuries, place names have played a significant role in trade as a tool for competitive positioning and as a signal of the origin-based reputation of a product. Place names identify a wide range of products worldwide: food products including wines and liqueurs (e.g., Napa Valley, Champagne, Scotch Whiskey), fruits (e.g., Chios mandarins), cheese (e.g., Roquefort), tea (e.g., Darjeeling), coffee (e.g., Colombian coffee) or aromatic rice (e.g., Basmati) as well as non-food products such as handicrafts (e.g., Pashmina shawls from Kashmir, Murano glass). Growing concerns over fraud concerning origins and public health gave rise to a movement that began in Southern Europe at the end of the 19th century, to institutionalize the reputational link between a product and its origin by protecting a place name as an "appellation of origin" and later as a "geographical indication" (GI) (Allaire, Thevenod-Mottet, & Mottet, 2011). In 1994, GIs were introduced in the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the World Trade Organization (WTO). With WTO comprising 160 members, TRIPs marked the international institutionalization of the concept, leading to the protection of possibly 9,000 to 10,000 GIs worldwide (O'Connor, 2007) beyond the European Union where in 2012, appellation of origin and GIs covered 1,181 agricultural products and foodstuffs, and 1,757 wines and spirits with a sales value of €54.3 billion. [1]

TRIPs Agreement confers exclusive rights to any indication that identifies a good as originating in a particular place, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. [2] The Agreement provides minimum protection against misleading practices or acts of unfair competition to GIs designating any product, and "absolute protection", i.e., even without proof of confusion, to GIs designating wines and spirits. [3] Being weakly prescriptive, the TRIPS Agreement left open the institutional framework and procedure for protecting GIs nationally as well as possible associated public support, leading to controversy and to GI institutionalization that differs remarkably across countries. As proposed by Niederle and Gelain (Niederle & Gelain, 2013) with reference to Hodgson (Hodgson, 2006), GI institutionalization in our article refers to the establishment of social rules that structure social interactions, "*defining who has the right to participate in the market, what goods are part of transactions, how exchanges should unfold, and what the rights and obligations of each economic agent are*". It builds on the conception of institutions as prerequisites to the functioning of markets, with market institutions consisting in property rights, structures of governance, conceptions of control, or models of competition/cooperation, and rules of exchange and with the state being instrumental in setting and enforcing these institutions (Allaire, 2010; Fligstein, 1996). Differences in GI institutionalization are reflected in the broadly emphasized divide between Old World countries led by the European Union (EU), which follow a

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prescriptive approach to GI protection embodied in a *sui generis* system, i.e., a system dedicated to protecting GIs, and New World countries led by the United States (US), whose approach is more permissive (Cortés_Martin, 2004; Gangjee, 2007; Hughes, 2006; Le_Goffic, 2009; Lorvellec, 1997). The divide is justified by different conceptions of the role of the state in institutionalizing GIs.

Indeed, even if TRIPS defines GIs as a specific Intellectual Property Right (IPR) in a specific section, GIs can be protected through trademarks, another IPR in the same category of distinctive signs, which are a self-regulated system of private law, whereas *sui generis* systems are based on stronger state intervention to tie the protection of the GI to a verified link between the product and its geographical origin.

The divergent views of GI institutionalization have their roots in different interpretations of the multifaceted nature of GIs. In the context of increasing globalization, deregulation of agricultural trade and growing demand for quality worldwide, the ability of GIs to differentiate products as origin-based quality standards is increasingly emphasized. The potential of origin-based branding for value addition is at the heart of the rationale behind GI development (Babcock, 2003). It is seen as a way to foster trade for the benefit of producers (Barham & Sylvander, 2011; Crespi & Marette, 2003; Rangnekar, 2004), while informing consumers about the geographical origin of a product and its specific attributes. However, points of view differ on whether the geographical origin constitutes *per se* "a given quality" of the good (Sylvander & Allaire, 2007), which is linked to different perceptions of the role of GIs as quality standards. GIs also convey the cultural identity of a place, being the result of the skills and know-how of local people in producing the good (Bérard & Marchenay, 2008; Gangjee, 2012a,b; Kamperman_Sanders, 2010). Furthermore, the policy objectives embedded in using GIs as tools for development have become more multidimensional with recent GI institutionalization worldwide, progressively incorporating territorial and rural development objectives as well as biodiversity and traditional knowledge conservation (Sylvander et al., 2006). Drawing largely on the European experience, the potential of GIs to alleviate poverty, and help create employment, sustainable production systems and trade dynamism, and their ability to drive more inclusive economic development is increasingly stressed (Barham, 2003; Barjolle & Sylvander, 2002; Bowen & Zapata, 2009; Bramley & Bienabe, 2012; Coombe & Aylwin, 2010; Evans & Blakeney, 2006; Rangnekar, 2011). Indeed, the literature extensively refers to GIs as marketing tools accessible to resource-poor farmers and processors, with potential for increased or more secure incomes (Josling, 2006; Rangnekar, 2004; Raustiala & Munzer, 2007; Van_de_Kop & Sautier, 2004), for promoting socially and environmentally sustainable production practices (Vandecandelaere, Sautier, Belletti, & Marescotti, 2009), and for strengthening local dynamics and governance (Barham & Sylvander, 2011; Bowen, 2010a,b). These arguments have provided key drivers for the active national GI law making and implementation observed in the last decade in developing countries (Audier, 2008; Blakeney, 2012; Boisvert, 2005; Giovannucci, Josling, Kerr, O'Connor, & Yeung, 2009; O'Connor, 2004). GIs are receiving increasing support from a broad range of stakeholders, not only national states and international funding agencies, but also local territorial authorities, trade unions and NGOs with GI-related policy agendas. Therefore, given their potential ability to fulfill numerous public objectives, GIs are not only considered as an IPR but also as a policy instrument (Herrmann & Teuber, 2011; Ilbert & Petit, 2009).

Despite the increasing sophistication of national GI frameworks in developing countries and the variety of the associated development objectives, analyses have long been predominantly centered on the respective merits of the US versus EU approach, notably due to their implications for transatlantic trade (Addor & Grazzioli, 2002; Evans & Blakeney, 2006; Goldberg, 2001; Josling, 2006). Countries like the US fear that GIs could be used as non-tariff trade barriers (Herrmann & Teuber, 2011), sometimes depicted as disguised protectionism, as GIs would confer an unjustified advantage to national products. This is currently embodied in the Transatlantic Trade and Investment Partnership negotiations in which GIs are at the heart of a clash. Despite being widely investigated, no internationally agreed upon solution has been found for international harmonization to date. In addition to the literature on GI protection at international level, other strands of the GI literature build on detailed studies of specific GI products at country level to assess the many facets of GIs. These include studies exploring coordination and cooperation mechanisms between stakeholders for the negotiation of GI specifications (Bowen, 2010; Dentoni, Menozzi, & Capelli, 2012; Mancini, 2013; Quiñones-Ruiz et al., 2016; Tregaer, Arfini, & Marescotti, 2007), and studies assessing the economic, social and environmental impacts of GIs, e.g., (Belletti, Marescotti, Sanz-Cañada, & Vakoufaris, 2015; Jena & Grote, 2012). They also include studies focused on consumer and market considerations, i.e., consumer acceptance and willingness to pay, e.g., (Bonnet & Simioni, 2001; Menapace & Moschini, 2012), hedonic price analyses, e.g., (Deselnicu, Costanigro, Souza-Monteiro, & McFadden, 2013), that are complemented by a theoretical literature on the efficiency of GIs as quality signals (Desquilbet & Monier-Dilhan, 2014; Menapace & Moschini, 2012; Mérel & Sexton, 2012; Winfree & McCluskey, 2005). However, these different literatures do not provide adequate empirical and conceptual grounds to understand the variety and peculiarities of GI institutional dynamics at national level, especially in Southern countries.

The main purpose of the special issue—and of this introductory article in particular—is to advance our understanding of the institutionalization of GIs and therefore of the role of the state in harnessing GI potential as a tool for development. The insights from the special issue could help smooth international and domestic debates about GI governance, more than twenty years after the TRIPs Agreement and at a time when, to achieve all the expected benefits of GIs, their implementation needs to be properly understood in emerging and developing countries. More generally, the special issue aims to contribute to the wider debate on state-based trade regulation and development. To this end, the special issue combines a variety of disciplinary perspectives and both theoretical and empirical analyses.

Building upon the contributions of the different articles of the special issue to understand the role of the State in GIs, this introduction proposes by itself a detailed analysis of both the rationales behind state intervention and of its manifestation through a variety of means worldwide. To this end, it draws more specifically on an institutional economics and a law perspectives. We consider the state as a compulsory political organization with a centralized government that maintains the monopoly on violence within a given territory and includes a broad range of administrative institutions in the legislative, executive, and judicial powers (Montesquieu, 1748; Weber, 1919). We approach the state in its different functions of elaboration, implementation, and sanctioning of rules and consider the variety of public authorities and instruments