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Geographical Indications in the turf wars of international trade agreements. A comparative and historical perspective

Armelle Mazé, Philippe Mongondry¹

Abstract – Over the last decades, the legal protection of Geographical Indications (GIs) as a distinct formal sui generis Intellectual Property regime (IPR) have been subject to sharp trade disputes and opposition between the USA and the EU at the international level. Our study provides a detailed analysis of the discursive strategies and the policy and theoretical arguments on GIs in the international negotiations on trade agreements and the global economy.

Keywords – GIs, international trade agreements, multilateralism, agricultural exceptionalism.

INTRODUCTION

Over the last decades, the legal protection of Geographical Indications as formal Intellectual Property Rights have been subject to a number of sharp economic and political debates and negotiations at the international level, especially between the US and the EU (Chen, 1997; Lorvellec, 1997; Josling, 2006; Barham and Sylvander, 2011; Arfini et al. 2016). These debates first involved leading international organizations, such as the WTO, WIPO, FAO acting as a form of international polycentric governance, as key institutional drivers of the diffusion of geographical indications worldwide, but also more recently through the form both bilateral trade agreements, such as TTIP between the US/EU or the CETA between Canada and the EU, among others.

In this communication, we provide a detailed analysis of the different lines of policy debates and theoretical arguments, as well as to the related discursive strategies, surrounding the specific place of geographical indications (here after GIs) in the negotiation of international trade agreements, with a specific focus on the opposition between the EU and the USA.

We use the IAD framework as a benchmark analytical model for policy analysis (Ostrom 2011, Heikkila and Andersson (2018), with a specific focus on standard setting activities surrounding the legal protection of GIs at the international level. In the recent literature on standard setting activities, a number of studies have made the parallel between the Ostrom's analysis of collective action, and especially its IAD framework, and standard setting activities (Simcoe, 2014, Mazé 2015, 2017). We apply this IAD framework in the context of the policy debates and trade disputes surrounding GIs at the international level

ANALYTICAL FRAMEWORK

Standard-setting activities play a key role in the development of economic exchanges and the building of efficient market infrastructure. From a New Institutional Economics (NIE) perspective, standards help economic actors to determine what is exchanged and to reduce the level of measurement and transaction costs (Allen2011; Barzel 1982; North 2005). Acting as cognitive artefacts and mental constructs used as reference points (Ostrom, 2005; North 2005), standard-setting activities provide a relevant institutional research area on integrating dispersed knowledge throughout society with regards to sustainability.

Using the IAD framework for policy analysis and design provides additional insights to analyse the "action arena" supporting standard setting activities, by characterizing key exogenous variables (physical world, community, rules), the specific patterns of interaction attached to the action arena and their outcomes (Figure 1).

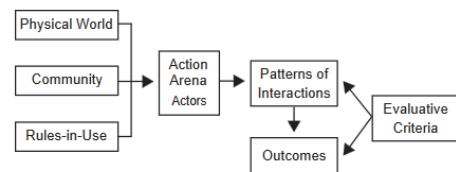


Figure 1. IAD framework (adapted from Ostrom 2011).

While the literature on standards and technological innovations highlighted the role of path dependencies and lock-in induced by initial learning costs, institutional endowment and capability-building are also central to the institutional framing of standard-setting activities (Mazé 2017).

In the case of GIs, the physical world is closely related to biophysical factors combined with the cultural dimension associated with the "terroir" e.g. "a specific geographical area where production takes its *originality directly from the specific nature of its production area*. *Terroir is based on a system of interactions between physical and biological environments, and a set of human factors within a space that a human community built during its history with a collective productive knowledge*. There are elements of originality and typicality of the product" (OIV). As suggested by Mazé (2015), GIs can thus be analysed as "knowledge commons" supported by collective action (Hess and Ostrom 2007, Hess 2012, Frischman et al 2014)).

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Collective action is a key feature of GIs, acting as a shared common umbrella territorial trademark, patterns of collective action which need to be better characterized in relation to the specific rules-in-use, and their regulation designed to solve social dilemma. At the international level, the development of GIs remained highly controversial, and a major source of friction between the USA and the EU.

DATA AND METHODOLOGY

Empirical data are based on an extensive survey of past and current academic literature on Geographical Indications, and a detailed analysis of current negotiations surrounding GIs in the current TTIP (Transatlantic Trade and Investment Partnership) negotiations between the EU and the US, as well as the CETA between the Canada and the EU. These debates first involved leading international organizations, such as the WTO, WIPO, FAO acting as a form of international polycentric governance, as key institutional drivers of the diffusion of geographical indications worldwide, but also more recently through the form of bilateral trade agreements, such as TTIP between the US/EU or the CETA between Canada and the EU.

RESULTS

Over the last three decades, our analysis shows that the policy debates within international trade arena has strongly evolved through three main steps. First a polarisation of the policy debates at the WTO (TRIPPS agreement Art 22 & 23) questioning the scientific evidence-based foundations of the norms and standards supporting GIs and the so-called "war on terroir" (Chen, 1996, Lorvellec 1996, Josling 2006). Second, acknowledging the stalled WTO negotiation and the opposition of the USA, a change of EU strategy occurred prioritizing the GIs protection through bilateral trade agreement, and a specific focus on preventing European GIs being considered as "generic names" (Arfini et al. 2016), as well as the adoption of unified registration systems and the rules of enforcement (O'Connor, 2004). Third, a growing adoption worldwide of GIs protection and regulation, as a response to a number of highly publicized legal cases of undue private registration under the trademark law of geographical names, the protection of traditional knowledge and biodiversity, or as a mean of value creation and territorial development for place-based production (Dagne 2014). Our analysis also shows that, beside the apparent success story, the role played by the legal protection of GIs in recent bilateral trade agreements also illustrates the declining of exceptionalism of agriculture in international trade policy (Trebilcock and Pue 2015; Thies 2015). Our findings provide evidences about a possible shift in interpretation and open new spaces for the GI's recognition at the international level, but also highlight the current economic and social dilemma surrounding their protection under dedicated IPR regime. It also provides interesting insights for further researches in transaction costs politics and coalition formations to address the complex geopolitics attached to the polycentric governance of global standard setting activities.

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