

Timeless Signs or Signs of the Times?

Tradition, Innovation and Geographical Indications

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1. Introduction

Like trade marks, geographical indications (GIs) are signs which convey information about products to consumers and can function as valuable brands. Article 22.1 of TRIPS describes them as ‘indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is *essentially attributable* to its geographical origin’ (emphasis added). Prominent examples include Rioja for wine, Café de Colombia for coffee, Darjeeling for tea, and Parma for ham. For such traditional regional products, the causal link between product and place depends on natural factors, human factors or frequently a combination of the two.¹ Human factors include the traditional skills and savoir faire involved in the method of production. These traditional production methods, which have evolved in response to local environmental and socio-economic conditions, are what set GIs apart and make them distinctive. Yet places, markets, tastes and environmental conditions are never static. Responding effectively to changes along these dimensions often calls for adaptive innovation, in order to keep GI products sustainable and competitive. This paper asks whether we can reconcile tradition with innovation in the context of registered GI protection.

The enquiry focuses primarily on the EU’s regime for agricultural products and foodstuffs, as set out in Regulation 1151/2012,² with references to the relevant international treaty architecture or comparative legal insights as required. The first task of this paper is to unpack the work that ‘tradition’ does in the context of GIs (**Section 2**). For an application to be successful, a completed product

¹ See for e.g. European Commission, *Guide to Applicants: How to Compile the Single Document* (22 June 2018), [5] (‘The link with the geographical area is the essential part of the [registration application for EU-wide protection]. It should demonstrate in what way the product’s characteristics are due to the geographical area and what the natural, human and other elements are which give its specificity to the product’); Art 2(1)(i), Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, 20 May 2015 (An appellation of origin consists of any denomination for a geographical area ‘where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation’). On the extent to which human factors are and should continue to be integrated within the EU regime, see A Zappalaglio, ‘The Debate Between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right’ [2019] IIC _ [Forthcoming].

² Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs.

specification, also known as a qualification document, *cahiers des charges* or code of practice must be submitted to the registrar. At the heart of this product specification is the elaboration of the link between product and place. Where human factors are included as part of this link, they relate to traditional methods of production. However the contemporary legal requirement for ‘authentic and unvarying’ (i.e. traditional methods) is derived from an older formulation of ‘local, loyal and constant’, developed in the influential French national precursor to the EU-wide regime. This French formulation refers to inductively or experimentally derived best practices, designed to enhance the ‘typicity’ or specificity of the product and which were collectively recognised by producers (i.e. legitimate by consensus). Appropriately enough, this historical insight permits time to permeate into tradition, since best practices can continue to evolve provided they are collectively endorsed.

Building on this more nuanced view of tradition, **Section 3** describes how GIs can change over time. It identifies the legal infrastructure which allows product specifications to be amended, drawing on recent research which shows that the amendment machinery is indeed being used in the EU to accommodate product evolution. It identifies some of the drivers of innovation, such as changing consumer tastes, a dwindling supply of raw materials or climate change. Regarding the types of innovation prompted by these changes, alongside innovations relating to the production process (technical innovation) we find innovations relating to the organisation and governance of the collective organisations which manage GI products, as well as the manner in which information flows within these producer networks and new learning diffuses (institutional innovation). For the purposes of this paper, a working definition of innovation is adaptations to overcome constraints on the supply or demand side for such traditional regional products, while working with the parameters of a GI product specification. This working definition is itself a variant of the broad definition adopted in the OECD Oslo Manual (2018) 4th ed and intended to signify both an activity (including those commercial activities which support producing and delivering products) as well as the outcome of that activity:

An innovation is a new or improved product or process (or combination thereof) that differs significantly from the unit’s previous products or processes and that has been made available to potential users (product) or brought into use by the unit (process).

Innovation activities include all developmental, financial and commercial activities undertaken by a firm that are intended to result in an innovation for the firm.

The reader is urged to abandon the more restrictive patent law approach to innovation for the purposes of this paper.

Having set out why and how change is possible within a regime protecting traditional products, (a very tentative) **Section 4** asks whether there are outer limits to innovation.

Section 4 identifies the factors to be considered when deciding whether an innovation is permissible. When assessing whether a proposed innovation is permissible, triangulation may be possible based on the following factors:

- How do producers themselves represent the tradition behind the product (internal consistency)?
- What motivates consumers to buy the product? For example, do they attribute authenticity to artisanal production and are they willing to pay a premium on this basis?
- Does the innovation undermine the distinctive link to the region, as ultimately determined by the producer collective which has stewardship over the link?

2. Putting Tradition in its Place

2.1 Static Tradition?

It is often assumed that ‘at the conceptual core of GIs is a claim about authenticity and heritage’.³ Registration as a GI is supposed to guarantee traditional methods of production,⁴ whereupon such symbols ‘transmit and guarantee to the consumer the values concentrated therein, which may include up to hundreds of years of traditional artisan craftsmanship and the region’s particular natural and environmental characteristics, which are embedded into the specific product’.⁵ GI products are therefore expected to be made in accordance with traditional and often collectively developed production methods. A ‘GI product is the outcome of the traditions and know-how of many people in the [defined region] over a long period of time. It is tied to a community and has a heritage dimension’.⁶ Where human factors, in the form of a traditional production method, are a relevant aspect of the link between product and place, this needs to be indicated in the product specification.

There are four GI-related registration systems in the EU, distinguished on the basis of subject matter: (i) wines; (ii) aromatized wines, (iii) spirits and (iv) agricultural products as well as food stuffs.⁷ Principally the fourth regime, contained in Regulation 1151/2012, will be considered here, since it covers the broadest range of products. Applicant groups must submit detailed information relating to the product specification in accordance with Article 7 of Regulation 1151/2012. This includes:

- The *name or designation to be protected*, as it has been used in the language(s) historically used to describe the product (for e.g. Parmigiano Reggiano in Italian).
- A *product description*, covering ‘the raw materials, if appropriate, as well as the principal physical, chemical, microbiological or organoleptic characteristics of the product’.

³ K. Raustiala and S.R. Munzer, ‘The Global Struggle over Geographical Indications’ (2007) 18 *European Journal of International Law* 337, 346.

⁴ A. Jokuti, ‘Where is the What if the What is in Why? A Rough Guide to the Maze of Geographical Indications’ (2009) 31 *European Intellectual Property Review* 118, 120 (‘[GI protection helps preserve] local traditions and national culture [by] safeguarding and maintaining methods of production, processing or manufacturing that would otherwise be crowded out by mass production’).

⁵ P. Zylberg, ‘Geographical Indications v. Trade Marks: The Lisbon Agreement: A Violation of TRIPS?’ (2002–2003) 11 *University of Baltimore Intellectual Property Law Journal* 1, 3.

⁶ A. Lecoent, E. Vandecandelaere and J.-J. Cadilhon (eds), *Quality Linked to Geographical Origin and Geographical Indications – Lessons Learned from Six Case Studies in Asia* (FAO RAP Publication 2010/04) 181.

⁷ See respectively: (i) Council Regulation (EC) No 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products; (ii) Commission regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products; (iii) Regulation 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labeling and the protection of geographical indications of spirit drinks deals with the use of geographical names for spirits; and (iv) Regulation (EU) No. 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs.

- The *definition of the geographical area*, which is ‘linked’ to or causally determines the product’s quality or its reputation and evidence that the product originates in this specific place, region or (exceptionally) country.
- A description of *the method of obtaining the product* and ‘**where appropriate, the authentic and unvarying local methods**’ as well as information concerning [restrictions on] packaging’.
- Details on *the link* between the region of origin and its causal influence upon the product, for either of the two types of GIs protected in the EU – a product’s quality or characteristics for Protected Designations of Origin (PDO), defined in Article 5(1) (essentially perceived to be a stronger form of link); or its given quality, reputation or other characteristic for Protected Geographical Indications (PGIs), defined in Article 5(2) (perceived to be a weaker form of link). Further details on the link requirement are provided in an online guide to GI applicants (European Commission).
- Details of the *authorities verifying compliance* with the product specification
- Any specific labelling rule for the product in question

Therefore Art 7(1)(e) requires that the product specification must contain a method of obtaining the product and ‘where appropriate, the authentic and unvarying local methods’ for doing so. A similar requirement is found in the spirits regulation.⁸ This phrasing suggests that traditional production methods are immutable or static.

The ‘once and for all’ determination of geographical boundaries and fixing of production techniques at the time of registration – a frozen snapshot, which selects a particular focus – has drawn forth sustained criticisms that paint GIs as deeply problematic. Beebe suggests that through ‘the commodification of what are essentially forms of pre- or anti-modernity, traditional producers seek to sell the distinction of *terroir*, history, and legend to a world that has otherwise been deterritorialized, dehistoricized, and disenchanting’.⁹ More specifically, GIs require ‘the production of a highly constructed, deeply essentialized and static, conception of place’ that ‘denies the myriad ways in which both [place and its constituents] are every day remade through productive engagement with local and global communities’.¹⁰ Referring to the highly influential French wine appellation system, Barnea observes:

Because the [wine appellation] regime is founded on the geographical concept of *terroir* and values venerable (if questionably authentic) tradition over innovation, the regime is inflexible and does not lend itself to the legal challenge of adopting a broad spectrum approach to climate change adaptation... It need not be this way. Static legal approaches to viticulture might work if climate were static as well. However, when the climate changes, the *terroir*

⁸ Art 17(4)(d) of Regulation (EC) No 110/2008 (a description of the method for obtaining the spirit drink and, if appropriate, the authentic and unvarying local methods).

⁹ B. Beebe, ‘Intellectual Property and the Sumptuary Code’ (2010) 123 Harvard Law Review 809, 869.

¹⁰ B Parry, ‘Geographical Indications: Not all “Champagne and Roses”’ in L Bently, J Davis and J C Ginsburg, *Trade Marks and Brands: An Interdisciplinary critique* (CUP, 2008) 361, 364-365.

changes with it... A law founded on static definitions of *terroir* will become obsolete as wine output shifts from under the maps drawn by law.¹¹

[The] French appellation regime was originally adopted to suppress fraud but eventually focused on manufactured historical narratives of French regional identity. Such narratives relied on the myth of stable tradition for their legitimacy and are therefore anathema to change'¹²

Complaints about the restrictive nature of product specifications emerge from within appellation regimes, by those who are subject to them as well. Revealing the frustrations of wine producers who feel trapped by a restrictive and bureaucratic product specification, Hughes observes: 'To the degree that European-style appellations law is less prone to innovation and more prone to safeguarding the status quo, we need to recognize this is not a flaw in appellations law; it is a characteristic, if not the goal'.¹³ Assessing whether GIs can be used to protect traditional production techniques as an aspect of cultural heritage, Broude concludes, '[m]arket forces inevitably induce changes in local production methods and consumption preferences, in spite of the [GIs] that should, in theory, play a role in preserving them'.¹⁴ The static nature of GIs seemingly takes away the freedom to innovate: 'GIs that are premised on quality standards may be supported by checks on compliance with those standards. Deviation from such standards is discouraged even when the deviation is for innovative purposes... The clinging to tradition in the form of GIs is a static approach, which is also protectionist of the status quo. The nature of a GI is fixed'.¹⁵

If 'authentic and unvarying' is taken at face value, these are legitimate and devastating criticisms. But is a more progressive, nimble and normatively more desirable interpretation possible? This paper suggests that it is. Our starting point is the French text of Regulation 1151/2012, where Art 7(1)(e) refers to 'une description de la méthode d'obtention du produit et, le cas échéant, des méthodes locales, loyales et constantes'. 'Authentic and unvarying' is revealed to be a translation of 'local, loyal and constant', which is a formulation derived from French national appellation regime. The legislative experimentation which led up to this formulation reveals that it was designed to reconcile conflicting imperatives and achieve a purpose. Retrieving this history enables a more flexible, dynamic notion of tradition as it relates to methods of production.

2.2 (Potentially) Dynamic Tradition

In previous, historically-informed research I have argued that shifting understandings in the notion of *terroir* – a cypher for the causal influence of a region upon a distinctive product – led away from a deterministic notion of the influence of physical geography (aspects of the soil, climate, elevation,

¹¹ R. Barnea, 'Appellations and Adaptations: Geographical Indication, Viticulture, and Climate Change' (2017) 26(3) Washington International Law Journal 605, 607.

¹² Ibid, 608.

¹³ J. Hughes, 'Champagne, feta, and bourbon: The spirited debate about geographical indications' (2006) 58 Hastings LJ 299.

¹⁴ T. Broude, 'Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26 *University of Pennsylvania Journal of International Economic Law* 623, 678.

¹⁵ S Frankel, 'The mismatch of geographical indications and innovative traditional knowledge' (2011) 29.3 *Prometheus* 253, 261.

sunlight etc) and embraced a broader notion of the influence place, by recognising human factors.¹⁶ It is difficult to imagine a GI product where some idealised version of 'nature' is the sole author. This argument is developed by analysing transformations in the legal regulation of wine appellations in France across the nineteenth and twentieth centuries, since this regime has proved enormously influential over time. Early attempts to regulate false labelling of French wines were premised on ensuring the veracity of the place of origin. The initial *Appellation d'Origine* system developed around a notion of *terroir* that privileged physical geography – geological and climatic factors. It was thought that quality could be guaranteed and fraud prevented by merely ensuring that wines actually originated from the places indicated on their labels, since physical place (immovable and locally unique 'nature') was responsible for producing the grapes that led to this quality. However the very act of delineating such distinctive parcels of place proved economically, politically and even scientifically divisive, while the impact of human factors and production techniques on end quality came to be increasingly appreciated. Therefore the importance of locally specific *savoir faire*, including both technical and cultural components, came into focus. Technologies, product histories and associated cultures of production – usually designed around the particularities of local conditions and capabilities – took their place alongside natural factors in the *Appellation d'Origine Contrôlée* regime which followed.¹⁷ This called for a series of recalibrations in the articulation of the link between product, people and place, as *terroir* was broadened out.¹⁸ One important consequence of recognising the human dimension was the expansion of subject matter, whereby GI regimes could accommodate recipe-based products (e.g. charcuterie, cakes and pies)¹⁹ or even textiles and crafts.²⁰

The introduction of the requirement, that legal recognition for an appellation depends on whether it accords with local, loyal and constant practices must be seen against this backdrop. French wine legislation arose in the context of Fraud prevention after the phylloxera epidemic of the late 19th century decimated French vineyards. A central task for this legislation was to set out a means for distinguishing between authentic and misleading wines. Prior to 1935, legislation based on guaranteeing geographical origin alone to consumers had proved insufficient as a guarantee of quality. The focus has been on identifying the geographical region with precision, with production methods being an optional object of regulation. With the focus shifting to production methods, debates around the interpretation of 'local, loyal and constant' crystallised after the Law of 1935 was introduced in France. Since the aim was to guarantee quality, decisions under the Law of 1919 were superseded by

¹⁶ D. Gangjee, 'Geographical Indications and Cultural Heritage' (2012) 4 *WIPO Journal* 92; D. Gangjee, *Relocating the Law of Geographical Indications* (CUP, Cambridge 2012) 77–126; See also E Barham, 'Translating terroir revisited: the global challenge of French AOC labeling' in D Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar, 2016) 46; Genevieve Teil, 'Protecting Appellations of Origin: One Hundred Years of Efforts and Debates' in W van Caenegem and J Cleary (eds) *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Springer, 2017) 148.

¹⁷ The matter is debated in Parry (n 10) and and D. Gangjee, '(Re)Locating Geographical Indications: A Response to Bronwyn Parry' in L. Bently, J.C. Ginsburg and J. Davis (eds), *Trade Marks and Brands: An Interdisciplinary Critique* (CUP, Cambridge 2008) 381.

¹⁸ Several contributions on the theme of 'Rethinking Terroir' can be found in R.E. Black and R.E. Ulin (eds), *Wine and Culture: Vineyard to Glass* (Bloomsbury 2013). See also ***

¹⁹ D. Gangjee, 'Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection' (2006) *Intellectual Property Quarterly* 291.

²⁰ D. Marie Vivien, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (2013) 4 *WIPO Journal* 191;

product-specific decrees under the new law and a revised understanding of 'local, loyal and constant' was central to the transition. The goal was to identify established methods for obtaining the product, rather than recognition based on historic usage of the designation alone. Marie-Vivien interprets these criteria as follows: local in contrast to individual, suggesting a collective interest; loyal is honest as opposed to questionable or fraudulent practices; and constant implies consistent, tried and tested techniques.²¹ Ladas suggests that the 'basic condition for the recognition of such human factors... is that they represent local usages lawfully and constantly practiced for a sufficiently long period as to have become traditional in reflecting definite qualities and characteristics of the products concerned'.²² Erica Farmer suggests the following interpretation:

The concept of *usages locaux, loyaux, et constants* (local, loyal, and constant usages) is at the heart of the *appellation d'origine contrôlée* system. Serving as both a legal balancing test and an approximation of untranslated sociocultural values and *je ne sais quoi*, this set of linked factors serves to connect geography, notoriety, and tradition within Bordeaux wine culture in fundamental ways, while simultaneously creating an enforceable legal framework that allows for the interpretation of culturally based evidence.²³

The legislative formulation acts as a marker for a variety of factors about place, history, heritage, and the construction thereof. The first prong, *usages locaux*, creates a link to a particular, definable locality. The second, *usages loyaux*, requires recognizable connections between the wine and the defined locality, recognizable not only by insiders, but neighbours and outsiders as well. Finally, *usages constants* asserts the time-honored nature of wines already defined as unique, recognizable, and attached to local practices. Through the combination between these elements the juridical test stands in for a set of qualitative values about what differentiates an AOC wine from a particular place from that of its neighbors and others available for sale in the wider market, simultaneously allowing for a degree of predictability and an intense connection with sociocultural practice within the region.²⁴

French courts had already begun to incorporate such production practices into their decisions, even prior to the Law of 1935. According to one interpretation, longstanding but individual practices were not sufficient and the practice needed to have been collectively adopted in the region.²⁵ On the other hand, if the same conditions of production, including vines and soil types established by customary use, were satisfied, the use of the appellation could extend beyond the named area.²⁶ Particular modes of manufacture also formed the basis for identifying a practice, leading one court to recognise that it was customary to manufacture lace in the Haute-Loire region by hand, excluding mechanically

²¹ G. Lagarde, 'Place of Origin: France' in H. L. Pinner (ed) *World Unfair Competition Law: An Encyclopaedia* Vol II (Sijthoff Leyden, Holland 1965) 636, 637.

²² S.P. Ladas, *Patents, Trademarks and Related Rights: National and International Protection* Vol III (Harvard University Press, Cambridge MA 1975) 1577.

²³ E Farmer, "'Local, Loyal and Constant": The Legal Construction of Wine in Bordeaux' in RE Black and R Ulin (eds), *Wine and culture: vineyard to glass* (Bloomsbury, 2013) 145, 145.

²⁴ *Ibid*, 146.

²⁵ *Veuve Rodiès v. Société Civile d'Yquem et Autres* [1931] *Propriété Industrielle* 230 (Cour de Cassation, 4-6 June 1931) ; *Bravay et Autres v. Syndicat des Propriétaires Viticulteurs de Châteauneuf-du-Pape et Autres* [1935] *Propriété Industrielle* 76 (Cour de Cassation, 21 November 1933).

²⁶ *Syndicat Viticole de Sauternes et de Barsac v. Chaumel et Autres* [1935] *Propriété Industrielle* 76 (Bordeaux Court of Appeal, 19 February 1934).

made lace from the use of the appellation.²⁷ Jacques Audier concludes that, in light of the overall goal of promoting quality, the requirement could be summarised as ‘stable customs voluntarily respected in a defined area’.²⁸

When it comes to pinpointing local and constant practices (*des usages locaux et constants*), Roubier suggests that consensus was often difficult to reach and fixation ultimately depended on a variety of evidentiary sources – old advertisements, opinions from local Chambers of Commerce, old technical volumes, records of individual traders from the region, viticultural expert opinion, old invoices and records of local trade bodies minutes etc. Decision makers would also require the production practices to be established as long-standing (often several decades) and sufficiently widespread across a group of producers in order to have stabilised.²⁹ These are supplemented by the recognition of oral history as valid evidence of production methods.³⁰ Amongst others, anthropologists have begun to explore how this technical culture evolved, is shared and also transmitted between generations, thereby creating spaces for innovation and improvement. Local producer groups need not legally claim internalised origins for all these innovations but they do put them to work. Authenticity is then seen as the by-product of collective experimentation over time but is still by no means an unproblematic concept. As part of this registration process, a number of actors including producers, consumers, local groups and political institutions come together to assemble the relevant tradition and reify the norms of good practice. The process is recursive, since the product specifications are usually contested and revised. On occasion, tensions arise between traditional approaches and the need for innovation, such as disputes over raw materials or methods of production.³¹ This is not restricted to the French AOC system and will occur wherever there are choices to be made in defining the authentic. Based on extensive fieldwork while researching the newly created GI for Feni in Goa, Dwijen Rangnekar writes of the ‘politics in place’ surrounding the drafting of its product specifications. Feni is distilled liquor, conventionally made from cashew or coconut.³² Historically it was triple distilled, but in recent years double distillation has become the norm. This is less time consuming, while the end result is less alcoholic and therefore more palatable to a wider market – this is the published norm in the final specification. The GI specification has also edited out the coconut variety and claimed the Feni GI for cashew liquor alone. Other new materials and techniques include the mechanised crushing of the cashew apples, which has largely replaced the more traditional foot crushing method and developments in cooling methods, to prevent the distillation vessel from cracking. The specification is also silent with regard to the provenance of the cashew apples, since a significant quantity is imported from the states adjacent to Goa i.e. outside the designated region. Many of these changes give producers desirable flexibility and the ability to scale up production, but it also favours certain (capital

²⁷ *Chambre Syndicale des Fabricants de Dentelles et Passementeries de la Haute-Loire*. Gouteyron et Jérôme [1931] *Propriété Industrielle* 188 (Le Puy-en-Velay Civil Court, 19 February 1931).

²⁸ J. Audier, ‘Local, Honest and Constant Uses – Summary Contribution to a Definition’ (1996) 6 *AIDV Bulletin* 5, 7.

²⁹ P. Roubier, *Le Droit de la Propriété Industrielle* Vol 2 (Editions du Recueil Sirey, Paris 1954) 761 at FN1.

³⁰ L. Bérard and P. Marchenay, ‘Localized products in France: Definition, Protection and Value-Adding’ (2007) *Anthropology of food* S2 At: <http://aof.revues.org/index415.html>

³¹ L. Bérard and P. Marchenay ‘A Market Culture: *Produits de Terroir* or the Selling of Culture’ in S. Blowen et al (eds) *Recollections of France: Memories, Identities and Heritage in Contemporary France* (Berghahn Books, New York 2000) 154, 163.

³² D. Rangnekar ‘Re-Making Place: The Social Construction of Geographical Indications for Feni’ (2011) 49(3) *Environment and Planning A* 2043; D. Rangnekar *Geographical Indications and Localisation: A Case Study of Feni* (ESRC Report 2009).

intensive) production techniques. The extent to which local hierarchies and entrenched interests are reinforced in the construction of the 'authentic process' calls for a reflective engagement with such processes.

Any process that seeks to engage with and identify collectively recognised best practices will inevitably encounter these tensions. Yet when '*usages locaux, loyaux et constants*' is unpacked, it is not as simplistic or flat footed as it is made out to be. Human skill and know how associated with traditional products is neither timeless, nor self-contained. Instead this *savoir faire* was the result of collective effort, based on much experimentation with empirically tested methods and tied to local geographical and socio-economic conditions. Place thus becomes the catchment area for production techniques and not necessarily the fount. If 'local, loyal and constant' alludes to a tradition, it is a tradition or continuity of localised experimentation that have been consensually vetted and adopted. It is a tradition of incremental innovation.

For evidence of this incremental innovation, one need only recall the gradual evolution of arguably the most famous GI of all – Champagne.³³ Notwithstanding the prominence of the phrase 'la méthode traditionnelle', associated with the double fermentation Champagne is reputed for, many familiar aspects of this wine are derived from sources of innovation that originated beyond the region. For example, the airtight cork which allows the effervescence to be contained within the bottle is attributed to an encounter between the Dom Perignon, the famous seventeenth century French Benedictine monk responsible for many improvements to Champagne, and two Spanish monks on a religious pilgrimage who were carrying water skins that were stoppered with cork bark. It has also been suggested that the thickened glass bottles which are capable of withstanding the (potentially explosive) build up of carbon dioxide, can be attributed to innovations in England. The use of sea-coal in furnaces led to higher temperatures which produced thicker glass. This technology found its way back to France and the reinforced bottles reduced the danger of exploding bottles, injury and waste.

3. Negotiating Innovation within Tradition

Section 2 suggests that traditional methods should be interpreted as production techniques which are derived from (i) experimental best-practices , (ii) responding to the geographic and socio-economic conditions of the region, (iii) that have been collectively adopted by producers over time or around which there is consensus. However as circumstances change, there is the ever present risk that best practices will become outdated. Therefore GI registration systems contain at least two possible 'breathing spaces' which allow for a certain degree of flexibility and adaptation.

3.1 Spaces and Silences within the Specification

The first of these is strategic and selective ambiguity within the product specification itself. In previous research,³⁴ I have investigated the extent to which flexibility exists within the code of practice. Thus

³³ See generally, Parry (n 10) 368-369; K. M. Guy, *When Champagne Became French: Wine and the Making of a National Identity* (Johns Hopkins University Press, Baltimore 2003); Gérard Liger-Belair, Hervé This, *Uncorked: The Science of Champagne* (Princeton University Press, 2013).

³⁴ D S Gangjee, 'Proving Provenance? Geographical Indications Certification and its Ambiguities' (2017) 98 World Development 12.

for some products a number of variants exists, which share a broad “family resemblance”. In such situations an overly restrictive or tightly defined specification could serve to inhibit the historic diversity of production practices. Using the example of the Chevrotin PDO for goat’s cheese, Bérard & Marchenay refer to the possibility of an umbrella GI specification, which is suitably abstract and can accommodate variations in the size of the cheese, the extent to which high-pasture goat’s milk is used, the process of maturing and the colour of the rind etc.³⁵ In other instances, the product specification lacks detail only for specific stages of the production process, where agreement may not have been possible.³⁶ Alternatively, a conscious decision may have been taken to leave individual producers the room to manoeuvre (for e.g. only setting a minimum meat content requirement for a pork pie but not an upper limit), so that they can continue to competitively distinguish themselves within the broader group.³⁷ An example drawn from French cheese illustrates some of the choices to be made:

Within the family of AO cheeses, and even within certain designations, several types of production coexist. Some use pasteurized or microfiltered milk, which must have industrial fermenting agents added to it. The producers thus work ‘dead milk’, and can standardize certain components of this milk by separating them... According to those in favour of raw milk, the link between the cheese and its geographical origin is down to the farmhouse style of production, in which the key stages are as authentic as possible, and to the proximity with breeders required by this process. In fact, the AOC is a reference framework that makes it essential to decide which innovations are acceptable, and which are not, and even to reconsider previous technical choices.’³⁸

3.2 Amending the Specification

Then there is the possibility to explicitly amend a product specification, in order to accommodate innovations and improvements. Amendment of a product specification by a group having a legitimate interest is possible under Art 53 of Regulation 1151/2012.³⁹ Important new research by Quinones Ruiz and others has analysed amendment applications files under Regulation 1151/2012.⁴⁰ Since a GI protects the reputation or ‘brand value’ of the traditional regional product, ongoing innovation helps to sustain and improve this shared image and reputation. This research drew on all amendment applications available on the European Commissions’ DOOR Database.⁴¹ As of 30 October 2016, of the 1,276 GIs on the database there were 251 non-minor amendments (likely to affect the essential

³⁵ Bérard, L., & Marchenay, P. (2008). *From localized products to geographical indications. Awareness and Action* (Ressources des Terroirs-CNRS, 2008) 28-29.

³⁶ Rangnekar ‘Re-Making Place’ (n 32); MC Mancini, ‘Localised Agro-Food Systems and Geographical Indications in the Face of Globalisation: The Case of *Queso Chontaleño*’ (2013) 53(2) *Sociologia Ruralis* 180.

³⁷ M J Rippon, ‘Traditional foods, territorial boundaries and the TRIPS agreement: The case of the melton mowbray pork pie’ (2013) 16(5-6) *Journal of World Intellectual Property* 262, 278.

³⁸ C de Sainte Marie & L Bérard, ‘Taking Local Knowledge into Account in the AOC System’ in L. Bérard et al, *Biodiversity and Local Ecological Knowledge in France* (INRA-CIRAD 2005) 181, 184-185.

³⁹ Further details concerning amendment procedure are found in Art 6 of Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 and Art 10 of Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014.

⁴⁰ XF Quinones Ruiz et al, ‘How are food Geographical Indications evolving? – An analysis of EU GI amendments’ (2018) 120 *British Food Journal* 1876.

⁴¹ Available at: <http://ec.europa.eu/agriculture/quality/door/list.html>. DOOR will shortly be replaced in 2019 by a single consolidated database for all EU GIs, including wines and spirits: <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>

characteristics of the product or its link to the region) and 94 minor ones, resulting in 219 GIs (i.e. 17% of all registered GIs) with at least one non-minor amendment. Several interesting results arise from this research. Taking just one illustrative example, cheese is the product class which is most frequently amended (69), followed by 'fruits, vegetables and cereals' (59) and meat products (31) in third place. It is also interesting that 78% of the modifications related to the method of production. One of the consistent themes to emerge from individual (qualitatively analysed) case studies is that the amendments allow for greater internal variation within the product 'family'. For e.g. the 'Pecorino Toscano amendment (sheep milk) flexibilises the rules and allows producers a greater product differentiation (e.g. use of vegetal rennet, permitting diverse shapes at the prepacking stage); likewise, producers are now allowed to use traditional maturing methods. The Bitto PDO amendment loosens mandatory product characteristics and introduces new opportunities in the production process aimed at stabilising quality'.⁴²

Reasons identified for adaptations include changes in market conditions (increased demand or a new export market), increasing the supply of raw materials and responding to changing consumer tastes (a preference for a less sweet or less alcoholic version of the product), as well as the imposition of modern sanitation norms (e.g. pasteurization of milk).⁴³ The implications of climate change for viticulture is an emerging theme which has foregrounded the question of adaptive innovations.⁴⁴

As Quinones Ruiz et al summarise it:

Protected GIs endeavour to tackle external changes and need to adapt their product specifications due to changing environmental conditions, new technologies, the evolution of regulations concerning food safety, agricultural policies, fluctuating commodity prices, wage rates as well as evolving preferences of customers and final consumers... Additionally, producers are modifying the product specifications due to the evolution of factors that are internal to the GI system, such as the number of actors involved, their heterogeneity, the vertical structure of and horizontal relationships in the supply chain that affect the power distribution and communication structures... Therefore, GI systems are under continuous adaptation pressure, which can result in conflicts or frictions regarding the rules of the product specification.⁴⁵

An example is provided by the internal tensions within the Italian *Consorzio* responsible for the Prosciutto di Parma GI.⁴⁶ Data collected from 94 members of the producers' consortium members

⁴² Quinones Ruiz et al (n 40) 1881.

⁴³ BF Bromberger, 'Aged, but not old: Local identities, market forces, and the invention of "traditional" European cheeses' in R. Hosking (Ed.), *Authenticity in the Kitchen: Proceedings of the Oxford Symposium on Food and Cookery* (Oxford Symposium 2006) 89; Rangnekar (n 32); S Bowen & K De Master 'New rural livelihoods or museums of production? Quality food initiatives in practice' (2011) 27(1) *Journal of Rural Studies* 73.

⁴⁴ See MR Mozelle & L Thach, 'The impact of climate change on the global wine industry: Challenges and solutions' (2014) 3(2) *Wine Economics and Policy* 81; L Clark and W Kerr, 'Climate change and terroir: The challenge of adapting geographical indications' (2017) 20 *JWIP* 88; Barnea, 'Appellations and Adaptations' (n); J Moat et al, 'Resilience potential of the Ethiopian coffee sector under climate change' (2017) 3 *Nature Plants* 17081.

⁴⁵ Quinones Ruiz (n 40) 1877.

⁴⁶ Dentoni D, Menozzi D and Capelli MG (2012) Group heterogeneity and cooperation on the geographical indication regulation: The case of the "Prosciutto di Parma" Consortium. *Food Policy* 37: 207

have highly and increasingly heterogeneous characteristics, assets and strategies and that this heterogeneity negatively affects members' agreement on the future level of restrictiveness of "Prosciutto di Parma" PDO as GI and therefore the effectiveness of the collective action. Some of these tensions have been precipitated by technical innovation over the past few decades.

The processing methods, first artisanal and linked to rural traditions, changed dramatically during the '70s with the introduction of the refrigerated holds and new skilled workers, like salters. The technical development involved also mechanical firms inside the Parma territory that designed new machineries for the curing industry. The "pre-sliced in a tray" PDO hams represent the more recent innovation.⁴⁷

3.3 Business Process and Institutional Innovation

[This sub-section will be developed further in the presentation]

Besides technical innovation relating to production process as set out in the product specification, there are other dimensions of innovation to consider within the collective organisation of producers. An emerging strand of literature considers **marketing innovation** strategies, whereby GI product are incorporated as 'premium' ingredients within other products and the attendant risks.⁴⁸ Others have approached certain segments of the French wine industry through the **open innovation** lens, whereby open innovation, which follows after a period of closed (individual producer) innovation, is seen to confer 'normative and cognitive' legitimacy as a source of competitive advantage. Collective contributions towards developing the product specification – to the benefit of all producers who use it – are considered to bestow regulatory legitimacy (by using collectively pooled know-how to develop a quality signal which the world beyond recognises and respects).⁴⁹ But perhaps most interestingly, researchers with an interest in the emergence of industrial districts or clusters, understood as spatial agglomerations of businesses (producers and related services), which lead to enhance competitiveness based on knowledge sharing, have begun to take an interest in GIs. Innovation is viewed as an interactive process and individual firms or producers are conceptualised as learning organisations. Rethinking the constitutional design and operation of the GI collective or group – which may be termed **institutional innovation** – is now on the research agenda. For example, contemporary 'economic, sociological and management studies on French agricultural cooperatives... [in the context of studying innovation] suggest that technical or organizational changes in the cooperatives mostly depend on their ability to develop learning processes and relevant networks at both local and sectorial levels'.⁵⁰ Thus the majority of wine producer co-operatives located around the city of Beziers, previously known as a region for producing non-GI table wine, were found to be engaging in "innovation trajectories" which consist of a large diversity of combinations of new activities (along the processing chain but also in tourism and local development), new wines ("appellation wines" or

⁴⁷ Ibid, 208.

⁴⁸ Mancini, Maria Cecilia, and Claudio Consiglieri. "Innovation and marketing strategies for PDO products: the case of "Parmigiano Reggiano" as an ingredient." *Bio-based and Applied Economics* 5.2 (2016): 153-174.

⁴⁹ Castellano, Sylvaine, and Insaf Khelladi. "How French wine producers use open innovation to gain and manage their legitimacy." *Journal of the Knowledge Economy* 7.1 (2016): 155.

⁵⁰ Y Chiffolleau et al 'Networks, innovation and performance: Evidence from a Cluster of Wine Cooperatives (Languedoc, South of France)' in K Karantininis and J Nilsson (eds), *Vertical markets and cooperative hierarchies* (Springer, 2007) 35, 36.

“cultivar wines”), new internal rules and marketing alliances’.⁵¹ An in-depth case study of the Sierra Mágina PDO for Andalusian olive oil concluded that effective co-ordination within the collective organisation led to the diffusion of technology, knowledge and know-how, including environmental aspects.⁵² The extent to which producer networks facilitate the exchange of innovations is an area with considerable research potential.⁵³

4. Innovation or Distortion?

[This concluding sub-section will be developed further in the presentation]

Having established that adaptation and change are possible for GIs – albeit not without attendant hard choices – this final and speculative section concludes that innovation (1) which threatens the distinctive regionally-anchored identity of the product ought not to be permitted, but (2) this is ultimately a decision for the collective organization of producers. ‘Thus, the GI system requires adaptation, which – in contrast to transformation – is defined as the reorganisation of a system, without losing its main identity, functions, structures and feedback processes’.⁵⁴

Two case studies – one relating to a traditional handicraft from India⁵⁵ and one relating to a traditional Polish cheese⁵⁶ – will be used to assess whether the following three guidelines can assist in separating permissible innovations from typicity-threatening distortions of the GI.

- How do producers themselves represent the tradition behind the product (internal consistency)?
- What motivates consumers to buy the product? For example, do they attribute authenticity to artisanal production and are they willing to pay a premium on this basis?
- Does the innovation undermine the distinctive link to the region, as ultimately determined by the producer collective which has stewardship over the link?

⁵¹ Ibid, 40.

⁵² Canada, J. S., & Vazquez, A. M. (2005). Quality certification, institutions and innovation in local agro-food systems: Protected designations of origin of olive oil in Spain. *Journal of Rural Studies*, 21, 475.

⁵³ See Touzard, Jean-Marc. "Innovation systems and the competition between regional vineyards." *ISDA 2010*. Cirad-Inra-SupAgro, 2010; Rebelo, João, and José Caldas. "The Douro wine region: a cluster approach." *Journal of wine research* 24.1 (2013): 19

⁵⁴ Quinones Ruiz (n 40), 1877

⁵⁵ Amit Basole, ‘Authenticity, Innovation, and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari’ (2015) 18 *JWIP* 127.

⁵⁶ Bowen and de Master (n 43).