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Part III. The Historical Element and its role in the future of the EU *sui generis* GI regime

Chapter 5. The suitability of history to constitute the basis of the origin link

1. Introduction

The previous chapter focused on the trends in the evolution of the EU quality schemes. It highlighted, among the other things, that, today, the historical element is the predominant linking factor in the EU *sui generis* GI regime. This has been defined in chapter 2 as the element that gathers all the different aspects of the history of a product, intended as the recount of the longstanding interaction between a community and a place that has led to the creation of the origin product.¹ Moreover, in order to provide a map of its complex structure, it has been suggested that this linking factor comprises three main components that are interrelated and that often blend creating different variants. These are: (1) the historical information available on the product; (2) the history and description of the traditional know-how involved in the production of the good; (3) the description of its longstanding socio-economic impact on its area of origin. Finally, chapter 2 emphasised the hybrid nature of this linking factor that appears very frequently in both PDO and PGI specifications. This occurs because in the two quality schemes the historical element performs a different function. In fact, in PGI, it proves the existence of the reputational link whereas, in PDO, it is an accessory element that can either establish the reputational link; describe the human component of *terroir* or both.

This book has also provided some possible explanations for the success of the historical element. First of all, because of its hybrid nature mentioned earlier, despite never being explicitly mentioned

¹ Chapter 2, sections 4.2, 4.3.

in Regulation 1151/2012,² the history of the product can be considered an inherent element of the origin link of both quality schemes. Second, its importance emerges more than once in the evolution of the European regimes for the protection of IGOs even before the introduction of the EU *sui generis* GI system in 1992.³ In addition, different provisions of EU Regulation 1151/2012 imply the importance of history, tradition and heritage. Finally, the relevance of history and tradition for defining an origin product and connecting it to a specific place has been recognised by leading scholars. In particular, this chapter will build upon the scholarship of Barjolle, Boisseux and Dufour⁴ as well as that of Bérard and Marchenay,⁵ just to mention some of them.

Based on this background, the present chapter will focus specifically on the concept of ‘history of the product’ in order to tackle the following fundamental question: ‘can it constitute a valid basis for the origin link’? This research will conclude that, generally speaking, this must be answered in the positive. Nevertheless, it will be argued that this element is delicate and, as some practical cases show, history cannot, on its own, constitute an adequate basis for an origin link in all scenarios. Finally, drawing upon the relevant results obtained by the present analysis, this chapter will suggest some policy prescriptions that can ensure a better functioning of the origin link in the EU GI regime. In particular, they are aimed at preserving the origin function of *sui generis* GIs that, as highlighted from the beginning of this book, is the feature that sets them apart from the general and broader category of quality labels.⁶

² Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2012] OJEU L343/1.

³ Chapter 4, Section 8.

⁴ See, in particular, Dominique Barjolle, Stéphane Boisseaux and Martine Dufour, ‘Le Lien Au Terroir: Bilan Des Travaux de Recherche’ (Institut d’économie rurale 1998) 14-18.

⁵ Laurence Bérard and Philippe Marchenay, ‘Prouver l’Origine’ in Laurence Bérard and Philippe Marchenay (eds.), *Les produits de terroir: entre cultures et règlements* (CNRS Editions (Open Edition) 2004); Laurence Bérard and others, ‘Les Facteurs Historiques, Culturels, Économiques et Environnementaux Dans La Délimitation Des Zones IGP’ in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The socio-economics of Origin Labelled Products in Agri-food Supply Chains: Spatial, Institutional, and Co-ordination Aspects* (Actes et Communications, 2000).

⁶ Elizabeth Barham, “‘Translating Terroir’ Revisited: The Global Challenge of French AOC Labeling’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016) 53-54; Elizabeth Barham, ‘Towards a Theory of Values-Based Labeling’ (2002) 19 *Agriculture and Human Values* 349.

2. Why history constitutes a valid basis for the origin link

2.1 History and *terroir* are related and operate in a similar way

The historical element, as reminded earlier, is an important component of both PDO and PGI specifications. Taking a step forward, it is now possible to show that from a substantive and theoretical perspective, *terroir* and history are often, in the last analysis, two sides of the same coin.

In this regard, the first remark that must be made is that the historical element has many features in common with the concept of *terroir* that, although not free from contradictions, is firmly established as an origin link in the EU *sui generis* GI system.⁷ Furthermore, as demonstrated in the previous chapter, evidence of qualitative/*terroir* link is often present also in the specifications of PGIs where it would be, strictly speaking, unnecessary.⁸ In general, *terroir* is considered a valid origin link because: (1) it can be proved with objective evidence; (2) it demonstrates the physical link between a geographical area and the product, creating a one-to-one correspondence between the two. Indeed, it can be shown that history operates in a similar way, only, instead of proving a physical interaction, it demonstrates the peculiar connection between a human community and a specific place. Before demonstrating this, however, some preliminary observations are useful.

First of all, it is important to remind that, in some cases, history is nothing but a component of *terroir*. In fact, as shown in chapter 1,⁹ although agronomy did little to develop the concept of *terroir* over the decades, and, often, still considers it an element related to pedology,¹⁰ as it was long ago,¹¹ other subjects have developed it considerably. For instance, already in the 1940s, the French historian

⁷ Chapter 1 is entirely dedicated to this concept.

⁸ This is because a PGI can be granted on the basis of evidence of the mere market reputation that associates the product with a specific place in the mind of consumers. Therefore, it would not be necessary to prove also the existence of a physical/natural link between the two. See, Chapter 4, Section 6.

⁹ Chapter 1, Section 3.2.

¹⁰ Pedology is the branch of soil science that studies soils in their natural environment.

¹¹ Jean-Pierre Deffontaines, 'The Terroir, a Concept with Multiple Meanings' in François Vardeaux and Philippe Marchenay (eds.), *Biodiversity and Local Ecological Knowledge in France* (Quae 2006) 38-39; Stéphane Hénin, 'Quelques Aspects de La Pédologie, L'évolution Du Concept de Sol et Ses Conséquences' (1957) *Cr Acad Agriculture de France*, 66.

Roger Dion argued that origin products, including wine, are the result of human will and that ‘the role of the land in the making of a grand cru scarcely goes beyond that of the material used in the making of a work of art.’¹² Today, the majority of anthropological and sociological studies describe *terroir* as a mix of natural and human factors, including social and cultural elements¹³ and EU *sui generis* GI Law has accepted this view.¹⁴ Other researchers go beyond and describe this link almost exclusively in terms of culture, traditional knowledge and heritage.¹⁵ *Terroir*, therefore, is not only the geographical space in which the production takes place, but the area in which a specific know-how is developed, often unintentionally and by trial-and-error, thus becoming related historically, socially and culturally to the place.¹⁶ Finally, the importance of the human factor grew considerably in the 1980s, when GIs began to be associated with the strategies for fostering rural development, that need an organized human activity to succeed,¹⁷ and with the Common Agricultural Policy.¹⁸

It is also expedient to remember that the reconceptualization of *terroir* as a predominantly social construct did not remain confined to the fields of anthropology, history and sociology. Indeed, it also influences the definitions enshrined in the legal texts currently in force. For instance, since the

¹² Roger Dion, *Le Paysage et La Vigne. Essais de Géographie Historique* (Bibliothèque Historique Payot 1990) 226, first published in Publications de la Société Géographique de Lille (1946); Laurence Bérard, ‘Terroir and the Sense of Place’ in Dev Gangjee (ed.), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub. 2016) 77.

¹³ FAO & Siner-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2nd edn, FAO 2010) 12; François Casabianca, Bertil Sylvander and Yves Noël, ‘Terroir et Typicité: Un Enjeu de Terminologie Pour Les Indications Géographiques’ in Claire Delfosse (ed.), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011); Bérard (n 12) 76-77; Claire Delfosse and Isabelle Lefort, ‘Le Terroir, Un Bel Objet Géographique’ in Claire Delfosse (ed.), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011) 34-35. Stéphane Cartier, ‘Terroirs En Nuances’ (2004) 11 *Strates*; Laurence Bérard and Philippe Marchenay, ‘From Localised Products to Geographical Indications: Awareness and Action’ (Centre national de la recherche scientifique 2008) 17; Katérina Stenou, ‘Les Terroirs Au Service Du Maintien de La Diversité Culturelle’ (2005) 23; Paul Péllissier, ‘The Terroir, a Tool for the Recognition of Farming Knowledge in Africa’ in François Vardeaux and Philippe Marchenay (eds.), *Biodiversity and Local Ecological Knowledge in France* (Quae 2006) 46.

¹⁴ See, Regulation 1151/2012, art 5(1)(b).

¹⁵ For details, see Chapter 1, Section 3.2.3. See also, UNESCO and Terroirs & Cultures, ‘Planète Terroirs’ <www.unesco.org>; Terroirs & Cultures and UNESCO, ‘Rencontres Internationales Planète Terroirs’ (UNESCO 2005) SC-2007/WS/41.

¹⁶ François Casabianca, Bertil Sylvander and Yves Noël (n 13) 104-106.

¹⁷ Deffontaines (n 11) 39-42; Delfosse and Lefort (n 13) 30-31; Isolina Boto and others, ‘The Geography of Food: Reconnecting with Origin in the Food System’ (2013) Section 3; Claire Delfosse, ‘La France et Ses Terroirs. Un Siècle de Débats Sur Les Produits et Leurs Liens À L’espace’ (2012) 215–216 *Pour*, 67-70.

¹⁸ This point was analysed in depth in chapter 3, see Chapter 3, Section 3.

introduction of the EU *sui generis* GI system, the relevant provisions stipulate that, in the case of PDO, the origin link consists in the relationship between the product and the environment, including both the natural and the human factors.¹⁹ Moreover, other influential institutions have explicitly endorsed this conceptualisation of *terroir*.²⁰

Finally, this evolution of the concept of *terroir* has, in turn, influenced the concept of origin product, that is of the object of *sui generis* GI protection, which is generally described as a social creation too. In particular, leading scholars have convincingly argued how an origin product is the result of a strategy of production, developed by local producers over the course of time, developed on the basis of the environmental conditions of a specific area and of the needs of a given community.²¹

In light of the above, it is therefore possible to conclude as follows. The human interaction with a geographical area deeply influences the *terroir* or, if it is not possible to affect the geographical environment to such an extent, develops practices and a know-how that are adapted to it. In turn, this generally lengthy process generates an origin product, which is the output of this evolution. In this context, history acquires a crucial importance as it clarifies the relationship between the designated area and the human communities that live there. Thus, as anticipated in the definition provided in the introduction, history is not an immaterial element but it is a concrete interaction that can be proved

¹⁹ Art 2 Regulation 2081/1992; cf art 5(1) Regulation 1151/2012.

²⁰ Significantly, the French INAO currently provides the following definition of *terroir* that seems to focus more on the human factor rather than on the mere physical one ‘A geographical area with defined boundaries where a human community generates and accumulates across its history a collectively developed knowledge of production based on a system of interactions between a physical and a biological environment.’ (*‘Un terroir est un espace géographique délimité, dans lequel une communauté humaine, construit, au cours de son histoire, un savoir collectif de production, fondé sur un système d’interactions entre un milieu physique et biologique, et un ensemble de facteurs humains.’*). See, INAO, ‘Guide Du Demandeur’ (November 2017) 26-27. For a collection and analysis of other doctrinal and legal definitions of *terroir*, see Casabianca, Sylvander and Noël (n 13).

²¹ Giovanni Belletti and Andrea Marescotti, ‘Origin Products, Geographical Indications and Rural Development’ in Elizabeth Barham and Bertil Sylvander (eds.), *Labels of origin for food: local development, global recognition* (CABI 2011) 78-81; Dominique Barjolle, Bertil Sylvander and Erik Thévenod-Mottet, ‘Public Policies and Geographical Indications’ in Elizabeth Barham and Bertil Sylvander (eds.), *Labels of origin for food: local development, global recognition* (CABI 2011) 92. See also, Filippo Arfini, Giovanni Belletti and Andrea Marescotti, *Prodotti Tipici e Denominazioni Geografiche: Strumenti Di Tutela e Valorizzazione* (Tellus 2010) 13-15.

and that, often, is only an element of a widely accepted linking factor, i.e. *terroir*. This point will be analysed better below.

2.2 History is the description of the interaction between a place and a human community

Quoting Bérard and Marchenay, it can be argued that history is ‘(...) a major distinguishing factor in a product’s relationship with a given place.’²² In practice, as it has been reminded various times throughout this book, this element consists in the description of a continuative relationship between different factors, such as human, environmental, physical and so on, that interact in a specific place.²³ Thus, history, just like *terroir*, proves and illustrates the origin of a product and of its method of production.²⁴ This interpretation of the historical element is also compatible with the modern concept of *terroir* according to which the environment in which a product is made encompasses both the natural and human factors.²⁵ Hence, geography, history and agronomy are linked and represent different faces of the same concept.

It follows that the existence of an historical evolution is essential to distinguish between the ‘provenance’ and the ‘origin’ of a product.²⁶ In fact, a product that ‘comes from’ an area does not necessarily ‘originate from’ there if it does not belong to the history of that place. Indeed, often, goods that are well known and highly reputed today, used to be unknown, domestically-made local goods.²⁷

²² Bérard and Marchenay, ‘From Localised Products to Geographical Indications’ (n 13) 21.

²³ Bérard and Marchenay, ‘From Localised Products to Geographical Indications’ (n 13) 21-23; Laurence Bérard and Philippe Marchenay, ‘Local Products and Geographical Indications: Taking Account of Local Knowledge and Biodiversity’ (UNESCO 2006) 109-110. Bérard and others (n 5) 164; Bertrand in Laurence Bérard, ‘Terroir and the Sense of Place’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016) 77; Javier Sanz Canada, ‘Introduction: Ancrage et Identité Territoriale Des Systèmes Agroalimentaires Localisés’ (2011) 322 *Economie rurale*, 6-9. See also, Cristina Papa, ‘The Social Construction of Umbrian Extravirgin Olive Oil’ in Cristina Papa, Giovanni Pizza and Filippo Zerilli (eds), *Incontri di Etnologia Europea - European Ethnology Meetings* (Edizioni Scientifiche Italiane 1998) 148-150.

²⁴ Laurence Bérard, Philippe Marchenay and Claire Delfosse, ‘Les “Produits de Terroir”: De La Recherche à l’expertise’ (2004) 34 *Ethnologie française*.

²⁵ Text to n 12.

²⁶ For this distinction, see Laurence Bérard and Philippe Marchenay, ‘Local Products and Geographical Indications’ (n 23) 110.

²⁷ Laurence Bérard and Philippe Marchenay, ‘Tradition, Regulation and Intellectual Property’ in Stephen B Brush and Doreen Stabinsky (eds), *Valuing Local Knowledge* (1996) 233-234.

It is their history that anchors them to a specific area by making them culturally unique.²⁸ This principle applies to all origin products and, especially, to non-*terroir* goods, such as handcrafts, but also bread, pasta etc... that, generally speaking, can be reproduced anywhere, not being linked to any specific *terroir*. We will return on this point in the next chapter.

In conclusion, history concerns specifically the evolution of the know-how developed by local communities over time and its relationship with a specific place.²⁹ It is not, therefore, a merely immaterial factor but, on the contrary, it is the description of a tangible interaction that can explain the origins of a product and prove it with concrete evidence. These points will be developed further in the next two sections.

3. History outlines the identity of a product: case studies

3.1 History and Appellation of Origin: the case of Gruyere cheese

The analysis of some selected case studies shows how history can describe the evolution of a product, explain the origin of its peculiar features and demonstrate why it is made following a specific recipe or process. This point was already highlighted by some researchers, especially Dominique Barjolle, who focused on the evolution of the know-how related to cheeses.³⁰ In particular, her case study on Gruyere cheese must be recounted.

²⁸ Bérard, Marchenay and Delfosse (n 24) 593-594. See also, Andrea Zappalaglio, 'The Debate between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right' (2019) 50 *IIC* 595, 606-607; Dev Gangjee, *Relocating the Law of Geographical Indications* (CUP 2012) 141-142.

²⁹ Deffontaines (n 11) 41-42.

³⁰ Barjolle, Boisseaux and Dufour (n 4). A similar demonstration of the effectiveness of the reputational link, applied also to non-EU GI systems, can be found in Delphine 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, 202-203.

Gruyere is protected in Switzerland by Appellation of Origin³¹ and in France by PGI.³² This cheese is made in areas that were, and still are, difficult to cultivate but suited to dairy herds.³³ Since transporting the milk down from the mountains would have taken too long, the only way not to waste this good was to make cheese with it. The management of the production of the cheese was regulated by customary rules. In particular, one cheese maker was hired by all the breeders in order to make the product. The former, therefore, had at his disposal a huge quantity of milk. This is why, still today, the wheels of Gruyère are very large and heavy.³⁴ Another reason is that big wheels made during the summer meant a lot of food for the winter.³⁵ Finally, the name of the product refers to the ‘gruyers’, tax collectors that exacted dues on the fine wood logged in the area.³⁶

This example, one of the many,³⁷ shows that the history of a product, in this case the economic and cultural history, demonstrates why the product has been traditionally made in an area and why it has developed its characteristic features. Furthermore, it confirms that the good, by being made in compliance with this tradition, still represents this evolution and the identity of the makers. In the next section, the same methodology will be applied to PGI.

³¹ Switzerland has never registered any of its origin products in the EU register, however, the Swiss Appellation d’Origine Contrôlées is almost identical to the French one and, therefore, it corresponds to the European PDO. See, Interprofession du Gruyère, ‘Le Gruyère AOP’ <www.gruyere.com>.

³² Gruyère PGI [2010] OJEU C298/14.

³³ Barjolle, Boisseaux and Dufour (n 4) 16-17.

³⁴ *ibid.*

³⁵ Gruyère PGI (n 32) [5.1.2].

³⁶ *ibid.*

³⁷ Another interesting case on which the French literature has focused is that of the Carp of Dombes, in France. This fish has been bred in ponds since the Middle Ages, originally because the local population needed it in order to respect religious dietary prescriptions, i.e. the so called ‘lean’ days. This is another case in which the history of the product is necessary to understand why it is made and what relationship it has with its area of origin.

For more information, see Laurence Bérard and Philippe Marchenay, ‘Ressources Des Terroirs et Diversité Bio-Culturelle. Perspectives de Recherche’ (1994) 36 *Journal d’agriculture traditionnelle et de botanique appliquée*, 89; Laurence Bérard and Philippe Marchenay, ‘Productions Localisées et Indications Géographiques: Prendre En Compte Les Savoirs Locaux Et La Biodiversité’ [2006] *Revue internationale des sciences sociales*, 119.

3.2 History and PGI: selected case studies

The case of Gruyere showed the key function performed by history as basis of the origin link in the case of an AO product. Now the work will extend this analysis to PGI goods, specifically chosen among those that do not feature a *terroir* link and that, therefore, are related to their area of origin only by history, know-how and, in some cases, commercial practices.

In order to investigate how history constitutes the basis of the historical element in this scenario, three classes of products, characterised by a weak substantive connection with the environment where they are made, have been selected: (1) pasta; (2) baker's wares; (3) cured meat. For each class, two products will be taken as samples, one made in Italy, i.e. the leading southern country for number of GI registrations, and one made in a central/northern European country. It will be shown how history constitutes an essential element to link a product, and the know-how on which it is based, with a specific place, thus making it unique.

3.2.1. Product class 1: Pasta

Pizzoccheri della Valtellina PGI (Italy)

'Pizzoccheri della Valtellina' are a distinctive kind of pasta made from buckwheat flour in the province of Sondrio, a mountainous area in north Lombardy. In its specification, history links the product with the environmental and socio-economic features of its place of origin.³⁸ In particular, it stresses that the culture surrounding 'Pizzoccheri' derives from the historical presence and extensive use of buckwheat flour which, since it was widely grown and used in that area, was a basic ingredient of the local cuisine. Since this mountainous area was poor and disadvantaged, a resource like buckwheat was central to the local diet. This pasta, therefore, was, and still is, cooked together with highly energetic foods that can be found in the area, such as potatoes and cheese, because it was meant to feed communities of farmers and breeders who needed a large amount of calories to work.

³⁸ Pizzoccheri della Valtellina PGI [2009] OJEU C248/29, [5].

This factor led to the emergence of this localised speciality that started being mentioned in official documents since the 17th century. The specifications list the most notable of them. Interestingly, this product was considered so important to the local communities that it was even mentioned in wills. Finally, it is still entirely produced in the area, 90% by factories that follow traditional methods of production and 10% by local restaurants.

In this case, therefore, history links the product to a specific area by showing the reasons why it was made there, the presence of the raw materials and its social importance for the sustenance of the, traditionally poor, local communities.

Schwäbische Spätzle PGI (Germany)

‘Schwäbische Spätzle’ is a German egg-based pasta product made from fresh eggs in a home-made style.³⁹ In this case, just like the previous one, the historical description links the product to the socio-economic development of the area. In particular, it states that it was part of the diet of the poor farmers living in the region.⁴⁰ Another important element added by the specification is the fact that a specific machine for cutting this kind of pasta was patented at the beginning of the 20th century.⁴¹ This shows that this kind of food was so important for this area that it even fostered technological innovation.

3.2.2. Product class 2: Baker’s wares

Bremer Klaben PGI (Germany)

The ‘Bremer Klaben’ is a large yeast cake that contains candied fruit.⁴² In this case, history shows that the product is intimately linked to the economic and social history of Bremen. This city was an important trade port where colonial goods such as candied fruit and other essential raw materials arrived.⁴³ Furthermore, the sailors liked to take the cake with them on the ships as it kept for a long

³⁹ Schwäbische Spätzle PGI [2011] OJEU C191/22.

⁴⁰ *ibid*, [5.3].

⁴¹ *ibid*.

⁴² Bremer Klaben PGI [2009] OJEU C110/7.

⁴³ *ibid*, [4.6].

time.⁴⁴ This explains both the origin of the characteristic ingredients and of the popularity of the good in the past. Moreover, as occurs in a large majority of cases, the specification emphasises the link between the product and the city of Bremen by quoting official documents that demonstrate trade in it since the late 16th century, such as resolutions of the local city council. Then, it mentions that the product had become so important and sought-after, that the cake bakers of the city formed their own guild in 1637.⁴⁵ The historical element therefore explains and proves why and how the Klaben is originally linked to the city of Bremen and how it stimulated the socio-economic development of the area.

Panforte di Siena PGI (Italy)

The name ‘Panforte di Siena’ refers to a confectionery product obtained by kneading and baking a dough of flour, candied fruit, dried fruit and a mixture of sugar, honey and spices.⁴⁶ In this case, the specification links the origin of this product to the history of the city of Siena, which, from the 12th century onwards, rose as a wealthy trade city as well as a stop-over for pilgrims heading to Rome. This explains why, on the one hand, the product is made from ingredients that are easily found in the hinterland to the city, such as cereals and flour, dried fruit and honey; while on the other hand, it justifies the use of exotic spices that were available due to the importance of the city as a trade centre.⁴⁷ Finally, the specification mentions historical sources that show how, at least since the late 18th century, the importance of the production of this good led to the emergence of a professional figure, the *panfortaio* (the panforte-maker), who is peculiar to the area of Siena.⁴⁸ Finally in the 19th century, the name ‘panforte’ started being widely attested nationally to indicate the name of the product.⁴⁹ Once again, therefore, in this case, the historical analysis of the product shows its genesis,

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ Panforte di Siena PGI [2012] OJEU C231/6.

⁴⁷ *ibid.*, [5.1].

⁴⁸ *ibid.*

⁴⁹ *ibid.*, [5.3].

why it is made in a specific way and its unique link with its cultural and socio-economic specificities of area of origin.

3.2.3. Product class 3: Cured meat

Newmarket sausage PGI (UK)

‘Newmarket sausage’ is a pork sausage seasoned with a selection of herbs and spices typical of the city of Newmarket, Suffolk.⁵⁰ The origin of the product is linked to the fact that the area is famous for horse racing, and pigs were traditionally used to keep racing yards free from debris. Furthermore, the area has always enjoyed a longstanding reputation for the production of pork.⁵¹ Pork sausages therefore became a popular snack among the horseracing fraternity, which included members of the royal family. The specification states that the current recipe has remained unchanged since the Victorian age, starting a niche tradition that still exists today.⁵² This example is similar to many others where the origins of the product are linked to a social and cultural peculiarity of an area.⁵³ In this case this is represented by the tradition of horse riding. History, therefore, creates and justifies a link, alternative to the *terroir* one, between a localised custom - here, the horse races - and the product. Furthermore, it proves that the recipe has remained unaltered.

Salame Felino PGI (Italy)

‘Salame Felino’ is a cured sausage from the small town of Felino, near Parma.⁵⁴ The specification points out that this product is linked to the physical characteristics of the area but also to the presence of local salt mines. Both in Roman and medieval times this product was very precious and it allowed the preservation of meat in the form of hams and sausages.⁵⁵ The specification states that in the 13th century the product was even depicted in the Baptistery of Parma.⁵⁶ This demonstrates the longstanding importance and reputation of the product. Finally, as with all the other PGIs examined

⁵⁰ Newmarket Sausage PGI [2012] OJEU C69/15.

⁵¹ *ibid.*, [5.3].

⁵² *ibid.*, [5.1].

⁵³ For another notable example, see Karlovarské Oplatky PGI [2007] OJ C85/6, [4.6].

⁵⁴ Salame Felino PGI [2011] OJEU C19/15.

⁵⁵ *ibid.*, [5.1].

⁵⁶ *ibid.*

above, the specification makes reference to sources from the 18th century onwards that mention the product, such as newspapers and encyclopaedias,⁵⁷ thus establishing a link between the ancient origin of the Salame and the modern age in which sources are more certain and reliable.

To conclude, this selection of examples shows in practice how history can be used to reconstruct the origins of a product and of its recipe, and to explain why it appeared in a specific area. This element does not rest solely on a generic recount of the past, however. Indeed, it can be proved with concrete evidence, as will be shown in the next section.

4. Evidence

4.1 The function of evidence

The historical link can be proved with evidence just like *terroir*. Indeed, the specifications must provide details of the physical relationship between the product and its place of origin.⁵⁸ In the case of PDOs and/or of PGIs embodying a qualitative/*terroir* link, these generally consist of data concerning the features of the soil, the weather, the climate and so on, which explain how the environment determines a specific characteristic of the product, e.g. taste, colour and other organoleptic features.⁵⁹ History performs the same function but requires a different kind of evidence. In particular, it must be able to link the product and its name to the society, culture and economy of a specific area, thus showing the existence of an historical reputation on which the current one is built. Moreover, it must demonstrate that there is a link between the ancient features of the product, or of its method of production, and the present ones, thus establishing a continuity between the identity of the old and of the present good.⁶⁰ This analysis must be conducted with a rigorous approach

⁵⁷ *ibid*, [5.3.].

⁵⁸ See, Regulation 1151/2012, art 7(1)(d), (f), art 8(1)(c)(ii). See also, INAO, 'Geographical Indication: Applicant's Guide' (2005) 18-19; INAO, 'Guide du Demandeur' (n 20) 32; Daniele Giovannucci and others, 'Guide to Geographical Indications' (International Trade Centre 2009) 80-81.

⁵⁹ Barjolle, Sylvander and Thévenod-Mottet (n 36) 96; Casabianca, Sylvander and Noël (n 13).

⁶⁰ Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture in the Asia-Pacific* (Cambridge University Press 2017) 56.

that takes into consideration the relevant socio-cultural and economic factors in order to develop a true and accurate picture of the past of the product and of its evolution.⁶¹ Hence, the work of historians and of scholars of ethnology is needed.⁶² Otherwise, the origin link will likely be based only on unpersuasive romantic reconstructions of the past of an area and of the communities that lived and live there.

Indeed, it is not uncommon to find specifications that trace the origin of a product back to ‘time immemorial’⁶³; or link it to ancestral customs⁶⁴; or make references to legends concerning very well-known historical characters⁶⁵ or surrounding ancient events.⁶⁶ These examples show how the historical analysis and the choice of the sources is not always adequate to establish an origin link but only to create an allure of folklore around the product. Furthermore, even if the references to ancient periods such as the Middle-Ages or Roman times are substantiated by evidence, they are too far distant in time to prove an actual origin link between the product and the place,⁶⁷ thus becoming little more than an exercise in marketing. For instance, Gougeon in an essay on ‘la pogne’, a typical French kind of bread, recounts that the producers were trying to pick selectively some parts of the history of the product in order to find an explanation of the etymology of the product’s name that could be appealing to both producers and consumers. According to the author, the producers declared ‘we want

⁶¹ Gangjee (n 60) 57; Laurence Bérard and Philippe Marchenay, ‘Lieux, Temps et Preuves: La Construction Sociale Des Produits de Terroir’ (1995) 24 *Terrain*, [32]-[35].

⁶² Bérard and Marchenay, ‘Prouver l’origine’ (n 5) [42].

⁶³ See, for instance, ‘Provolone del Monaco PDO’ [2009] OJEU C140/4, [4.6].

⁶⁴ The specification of the Portuguese sausage ‘Alheira de Vinhais’ makes reference to its archaic sculpturing in the shape of a pig, see ‘Alheira de Vinhais PGI’ [2007] OJEU C236/18, [4.6].

⁶⁵ For instance, the specification of the Brie de Meaux PDO states, without providing any specific proof, that this kind of cheese was enjoyed by Charlemagne, while the origin of the typical Czech dough ‘Štramberké uši PGI’ is traced back to some legendary events related to the invasion of the territory by the Mongols in the 13th century. See, respectively, ‘Brie de Meaux PDO’ (dossier n°6/FR/00110/94.01.24, 1995), [5(e)] and ‘Štramberké uši PGI’ [2006] OJEU C148/15, [4.6].

⁶⁶ Notable in this regard is the specification of the Portuguese potato ‘Batata Dolce de Aljezur’ that reads ‘The town of Aljezur was founded in the tenth century by Arabs and later seized from the Moors in 1249. According to legend (...), the Knights of the Order of St James of the Sword, (...), drank a potion made from sweet potato before every important battle. The force of the invasion and the speed with which they took the castle of Aljezur stunned the Moors, who were unable to react to such a sudden charge.’ See, ‘Batata Dolce de Aljezur PGI’ [2008] OJEU C324/32, [4.6].

⁶⁷ Bérard and Marchenay, ‘Prouver l’Origine’ (n 5) [18].

to do some history, but we want to sell our products too!’ (*‘On veut bien faire de l’historique, mais on veut aussi faire vendre nos produits’*).⁶⁸

Historical evidence can therefore establish an effective link between a product and a place but only if it is researched and analysed in an appropriate way, thus establishing a veritable origin link and not merely advertising legends and folklore unsupported by accurate references. Indeed, the latter conduct, although it could be profitable for the sake of marketing, leads to the creation of invented traditions. These, not only do not prove the origin of the product, but also harm the credibility of the *sui generis* GI system, as will be shown more fully at a later stage of the analysis.⁶⁹ There are some elements, however, that are generally accepted as valid sources in order to prove that the link between a product and a place exists. They are presented below.

4.2 Types of acceptable evidence

Different sorts of sources are commonly used to show the link between a product and a place, as well as its social and cultural importance in that area. The specifications, after their introductory part, almost always mention written sources, generally dating back from the 18th century onwards, that emphasise not only the geographical link but also the social, cultural and economic importance of the good. Indeed, this is not surprising as the major applicants’ guides encourage the use of bibliographic sources.⁷⁰ Other recurring kinds of proofs can be identified, both through the analysis of the GI specifications and on the basis of the key literature on this point. Some examples will be provided below to show how history can be proved by concrete documentary evidence.

⁶⁸ Béatrice Gougeon, *La Pogne: Essai Sur Une Spécialité Locale* (Lyon: Université Lumière-Lyon 2, 1992) 10.

⁶⁹ See, Section 6.

⁷⁰ See, European Commission, ‘Guide to Applicants: How to Compile the Single Document’ (2018) Section 5. <https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/food_safety_and_quality/documents/guide-to-applicants-of-single-document_en.pdf>; INAO, ‘Guide du Demandeur’ (n 20) 25-26.

4.2.1. Official and public documents

First of all, this evidence can consist in archival sources such as official or personal documents.⁷¹ For instance, the specification of the ‘Pizzoccheri della Valtellina’ puts in evidence that the product was mentioned even in wills,⁷² while the case of the Bremer Klaben, documents such as resolutions of the city council and the statute of the guild of bakers, dating back to 1637, are mentioned.⁷³

4.2.2. Newspapers, magazines and other

Other types of sources that are often used to prove the origin link are newspaper, magazine and journal articles and guides.⁷⁴ For instance, Salame Felino appeared in 19th and early 20th century newspapers and encyclopaedias.⁷⁵ Recipes are also often used in order to show the existence of the product and the fact that it was similar to its present version, as in the case of the Newmarket sausage.⁷⁶ All literary sources are acceptable, however, including historiography.⁷⁷ For instance, the specification of the prestigious Italian Ham ‘Culatello di Zibello’ states that at least two historians mentioned the product in the 16th and in the 18th century while describing the territory and the economy of the Dukedom of Parma.⁷⁸ In this case, this is, indeed, an important source as it demonstrates the impact of the product on the economy and society of the area.

4.2.3. Oral sources

Finally, oral accounts can also be used.⁷⁹ Since the majority of origin products have, for most of their history, been niche, homemade goods, written evidence may often be lacking. Sociological investigations can be conducted, however, such as interviews and so on. There are only few examples of this kind of research that emerge from the EU GI register. One of the most instructive is embodied in the specification of the Slovenian sausage Šebreljski želodec:

⁷¹ Bérard and Marchenay, ‘From Localised Products to Geographical Indications’ (n 13) 24-25.

⁷² Text to n 38.

⁷³ Text to n 44.

⁷⁴ Bérard and Marchenay, ‘From Localised Products to Geographical Indications’ (n 13) 24-25.

⁷⁵ Text to n 56.

⁷⁶ Text to n 51.

⁷⁷ Bérard and Marchenay, ‘Lieux, Temps et Preuves’ (n 61) [35].

⁷⁸ ‘Culatello di Zibello DOP’ (dossier n° VI B14RT/01492/, 1994) [5(d)].

⁷⁹ Bérard and Marchenay, ‘From Localised Products to Geographical Indications’ (n 13) 23-24. See also, Gangjee (n 60) 56-57.

Šebreljski želodec has been produced for many years in the Idrijsko-Cerkljansko area, but there are few written records to prove this. A survey of the older population was carried out in the geographical area, which confirmed the long tradition of producing 'Šebreljski želodec' in the Idrijsko-Cerkljansko area. It was found that, since olden times, only high-quality ingredients had been used to make želodec, that the product had always been matured in the traditional manner and that its characteristic shape, taste and aroma formed part of its reputation.⁸⁰

In conclusion, the two previous sections have demonstrated that history can be an appropriate element to establish an origin link because: (1) it consists in the concrete interaction between a place and the activity of the human community that makes the product; (2) it can be proved with objective evidence. This link has also its limits, however, and, sometimes, cannot be considered enough on its own. These complications will be addressed below.

5. The limits of history as basis of the origin link

There are some limitations regarding the possibility of establishing an origin link exclusively through history. This work will focus on two of them. First, it must be proved that the history attributed to the product truly exists. Indeed, history can be mystified, invented and/or reconstructed selectively, thus creating a local tradition that never actually existed in reality. Second, if the history does exist, it must be ensured that the present version of the product is still truly connected to its historical version. In fact, as reminded above,⁸¹ there is a difference between origin and mere provenance. Hence, a product that is made in a specific place without any true connection to the local tradition and identity should not be considered an origin product.⁸² A different conclusion would jeopardise the origin function of *sui generis* GIs – that is their very core - and allow history to be used purely for marketing goals and

⁸⁰ 'Šebreljski želodec PGI' [2011] OJEU C45/25, [4.6].

⁸¹ Text to n 26.

⁸² Barjolle, Boisseaux and Dufour (n 4) 15-17.

not to establish an origin link. Both these issues will be analysed below. Then, some relevant case studies will be presented in order to show the undesirable effects of a distorted use of the historical element.

5.1 The history and the tradition of the product can be invented or mystified

The debate on what tradition is and how it can be invented and romanticised has ancient roots, and its discussion in connection with GIs is always lively.⁸³ Here the work will discuss an article by Tomer Broude,⁸⁴ published in 2005, which paved the way to other well-known works that have forcefully criticised the relationship between GIs, on one side, and history and tradition, on the other.⁸⁵ In this influential contribution, Broude argued that GIs often promote ‘invented traditions’ and ‘invented communities’, providing protection to names and symbols embellished in order to appear to be expressions of traditional know-how.⁸⁶ According to the author, this strategy cannot be prevented by the law and, indeed, is often supported by the states that are glad to emphasise what makes their territory allegedly special and attractive to tourists.⁸⁷ There is, therefore, no way to prevent GI from becoming instruments for promoting ‘Disneyfied’ traditions, with the ultimate result of leaving consumers confused and suspicious. Furthermore, Broude argues that modern GI products have few elements in common with their traditional precedents, hence talking about the traditional character of them is, at least, misleading.⁸⁸ Both these objections must be analysed before proceeding in the discussion.

⁸³ For a very recent example, see Grégoire Croidieu and Walter W Powell, ‘Inventing Tradition: From Cru to Classe in Bordeaux Wine’ (EPIP Conference, Bordeaux, 4-6 September 2017).

⁸⁴ Tomer 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.

⁸⁵ For instance, Justin Hughes based on Broude’s argument some sections of a famous article in which he claimed that the only true goal of EU GIs is to create a monopoly over the marketing allure and the evocative power of geographical names. Thus, the preservation of the myths surrounding highly reputed products would only be a commercial operation. See, Justin Hughes, ‘Champagne, Feta and Bourbon: The Spirited Debate About Geographical Indications’ (2006) 58 *Hastings Law Journal* 299.

More recently, Hughes stated that some producers believe in GIs as if they were magical tools. See, Justin Hughes, ‘The Limited Promise of Geographical Indications for Farmers in Developing Countries’ in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017).

⁸⁶ Broude (n 84) 674-678.

⁸⁷ *ibid.*

⁸⁸ Broude (n 84) 677.

5.1.1. *Objection 1: tradition is an invention*

In his argument, Broude expressly applies to GIs the famous theories of Hobsbawm who, in his work ‘The Invention of Tradition’, argues that tradition is an invention aimed at creating symbols that inculcate values and social codes by implying a continuity with the past that is often largely fictitious.⁸⁹ This discussion belongs to a broad and complex debate about the meaning of tradition and authenticity that will not be reviewed here, as it would exceed the purpose of the present work.⁹⁰ In fact, this research submits that arguing that the roots of origin products rest solely on invention is excessive since the foundations of the historical element can be supported by practical evidence.⁹¹ Furthermore, anthropology itself admits that ‘invented’ traditions can indeed be distinguished from those that are established as ‘real’.⁹² Finally, as shown above, the products’ history not only explains the origin of its peculiar characteristics but also the influence that they have on the local economy, landscape and identity.

This point is confirmed at an international level too. For example, the ‘Champagne hillsides, houses and cellars’ are protected by UNESCO because they testimony a ‘(...) development of a very specialized artisan activity that has become an agro-industrial enterprise⁹³’ dating back to the 17th century. A similar example is represented by the ‘Vineyard Landscape of Piedmont’ where, according to UNESCO, the cultivation of wine has been playing an essential role in shaping the landscape and

⁸⁹ EJ Hobsbawm and TO Ranger (eds), *The Invention of Tradition* (Cambridge University Press 2012); Broude (n 84) fn 154.

⁹⁰ Ulin provides an excellent resume of the debate on this issue, see Robert C Ulin, ‘Invention and Representation as Cultural Capital: Southwest French Winegrowing History’ (1995) 97 *American Anthropologist* 519. For additional readings, see Jocelyn Linnekin, ‘Defining Tradition: Variations on the Hawaiian Identity’ (1983) 10 *American Ethnologist*; Jocelyn Linnekin, ‘Cultural Invention and the Dilemma of Authenticity’ 93 *American Anthropologist* 446; Jocelyn Linnekin and Richard Handler, ‘Tradition, Genuine or Spurious’ (1984) 97 *Journal of American Folklore*; Allan Hanson, ‘Reply to Langdon, Levine and Linnekin’ (1991) 93 *American Anthropologist*; Allan Hanson, ‘The Making of the Maori: Culture Invention and Its Logic’ (1989) 91 *American Anthropologist*.

⁹¹ See, Section 4.2.

⁹² Edward Shils, *Tradition* (University of Chicago Press 1981). For more sources, see Ulin, ‘Invention and Representation as Cultural Capital’ (n 90) 519.

⁹³ UNESCO - World Heritage List, ‘Champagne Hillsides, Houses and Cellars’ <<http://whc.unesco.org/en/list/1465>>.

the local culture for centuries.⁹⁴ The creation of a symbolism related to the product and its evolution over time is therefore perfectly natural and acceptable,⁹⁵ unless it is fictitious and/or completely unsupported by tangible evidence.

5.1.2. *Objection 2: the traditional version of the product is a mere marketing tool*

Broude criticises the use of tradition in *sui generis* GIs also by claiming that these are only marketing strategies and that the past of the product is generally unrelated to its present. For instance, he observes that the ancient version of Champagne has nothing to do with the current one:

(...) Champagne is somehow instructive in this regard, because, until the mid-nineteenth century, local culture was more related to still wines, not *Methode Champenoise* sparkling wines. Economic expediency produced the push for early GI protection that required an emphasis on the local and French ethos of sparkling wine.⁹⁶

On the same note, Justin Hughes argues that the traditional environment, often evoked by the producers of GI products, is just a caricature and a mystification. In fact, according to him, the processes of production are nowadays highly industrialised, and goods such as Champagne or Bordeaux wine have become consumer goods spread worldwide rather than traditional niche products.⁹⁷

These arguments highlight a serious issue, i.e. it must be ensured that the history of the product is indeed able to link the product to a specific place.⁹⁸ The way in which these excerpts analyse the concept of tradition needs to be discussed, however. In fact, tradition is, by definition, an evolving

⁹⁴ UNESCO - World Heritage List, 'Vineyard Landscape of Piedmont: Langhe-Roero and Monferrato' <<http://whc.unesco.org/en/list/1390>>.

⁹⁵ Barjolle, Boisseaux and Dufour (n 4) 17-20.

⁹⁶ Broude (n 84) 677.

⁹⁷ Hughes, 'Champagne, Feta and Bourbon' (n 84) 340-342.

⁹⁸ For instance, the applicant's guide of the INAO specifically provides that the only important historical references are those that are related to the present uses. See, INAO, 'Guide du Demandeur' (n 37) 26.

concept that naturally embodies all the innovations introduced by the community that develops it.⁹⁹ In the case of Champagne, the fact that the sparkling version of this product prevailed was due to a specific cultural evolution linked to the change in taste of the high social classes.¹⁰⁰ Then, it naturally evolved into a highly successful product, exported all over the world. Yet, the physical, historical, cultural and economic link between the wine and its area of origin is certified by copious historical evidence and, as shown in the previous paragraph, by international institutions such as UNESCO. The fact that the product evolved into something different from what it was in the past, therefore, does not mean *per se* that there is no link between the history of the product and its present reputation. Sometimes, however, the line between a genuine tradition and a distortion of the history of the product is not clear and this issue creates problems, as will be analysed in the following sections.

For completeness, it is worth adding that the fact that a product was relatively unknown and considered ‘poor’ in the past, does not mean that its subsequent success makes it less linked to the history of their area of origin. For instance, the Italian ‘Lardo di Colonnata PGI’,¹⁰¹ a product obtained from pig meat fat, was for centuries a highly caloric snack for the people who worked in the caves to extract the famous Carrara marble. There is evidence that the product has been consumed since Roman times, and it is demonstrated that its manufacture contributed to keeping the economy of this small town alive for centuries.¹⁰² The fact that the Lardo has now lost its social function and has become a gourmet good, is just a step in its evolution.

⁹⁹ For an authoritative definition of traditional knowledge, see WIPO IGC, ‘The Protection of Traditional Knowledge: Draft Objectives and Principles’ (2006) WIPO/GRTKF/IC/10/5, 19. See also, Martin Beckstein, ‘The Concept of a Living Tradition’ [2016] *European Journal of Social Theory* 1; Susette Biber-Klemm and Danuta Szymura Berglas, ‘Biodiversity and Traditional Knowledge: Factual Background and Problems’ in Susette Biber-Klemm and Thomas Cottier (eds.), *Rights to plant genetic resources and traditional knowledge: basic issues and perspectives* (CABI Pub 2006) 17.

¹⁰⁰ In particular, it is linked to the fact that the middle and upper class in the French *belle époque* considered sparkling wine an essential sign of status quo. This prestigious drink, however, was a must in the parties of the French aristocracy even before the French Revolution. See Laura Costantino, ‘Le Alterne Vicende Della Piadina Romagnola Tra Competenze Amministrative e Giurisdizionali Nazionali, Ruolo Della Commissione e Legame Con Il Territorio (Case Note)’ [2018] *Giustizia Civile.com* <<http://giustiziacivile.com/unione-europea/note/le-alterne-vicende-della-piadina-romagnola-tra-competenze-amministrative-e>>.

¹⁰¹ ‘Lardo di Colonnata PGI’ [2003] OJEU C131/10, [4.4].

¹⁰² *ibid.*

Not all the aspects of the main criticisms of the concept of tradition in the field of sui generis GIs are convincing, therefore. Nonetheless, the work of Broude, and also of Hughes, is of paramount importance as it reminds us that if the historical element is not based on solid evidence, the origin link is unconvincing. This is the case when the present version of the good is completely unrelated to its traditional one, with the latter used only to create a mystified image for commercial purposes. This point will be discussed below.

5.2 The product is not linked to its tradition and history

The mere fact that a product enjoys an illustrious history does not always prove *per se* that there is a link between its present and its past version. It has just been stated that it is not necessary that the good be produced exactly in the same way as it was in the past, provided that this evolution takes place in the mould of the local tradition. It is necessary, however, to prove the existence of the link between the past and the present of the product in order to demonstrate that the reputation of the latter is legitimately based on its history, otherwise the granting of a GI would not be justified.

An extreme example of how the nature of a GI can be distorted by an inappropriate use of the historical link is the one of Mexican Tequila, analysed by Sarah Bowen in a famous article.¹⁰³ The AO for Tequila was registered domestically in 1974 by the Mexican Government, which is also its owner. The international registration in the Lisbon Register was finalized in 1978. Tequila has a very old tradition, dating back to the 16th century when the blue agave started being distilled in the area of the city of Tequila. Today, however, the bottlers and sellers of the product, who are the most powerful actors in the supply chain, have lowered the standards of Tequila and added variations to the traditional recipe, thus turning the drink into something far from the authentic origin product. Moreover, the traditional producers of agave are not represented in the process of production.¹⁰⁴ Since

¹⁰³ Sarah Bowen, 'Development from Within? The Potential for Geographical Indications in the Global South' (2010) 13 *The Journal of World Intellectual Property* 231.

¹⁰⁴ *ibid*, 238-240.

the method of production of the good and the environment in which it is made are completely different from the traditional one, it is questionable whether the current version of the product is linked to its historical roots anymore.

This famous example demonstrates that even if a longstanding history and know-how associated with a product do exist, these are not always enough *per se* to establish a valid product/place link in case the current version of the product does not reflect its history. Hence, if no other linking factor is present, e.g. *terroir*, the good should not be considered an origin product, even if it enjoys a well-established reputation in the market.

Now that these controversial issues concerning the suitability of history to establish a valid origin link have been discussed from a general perspective, it is possible to analyse some practical cases, taken from the EU experience, that illustrate the negative consequences of an improper use of the historical element.

6. When history does not establish an origin link: practical cases

The following sections will focus on selected cases, divided into three categories, which show the consequences of a use of the history that does not an origin link but that merely builds a commercial image for the products. Such distorted uses of the historical element have sometimes led to the deception of consumers and public controversies, thus confirming that this linking factor, although widely used in practice, is not always able on its own to link a product with its place of origin and that, if applied improperly, can in fact harm the origin function of *sui generis* GIs. In particular, the analysis will focus on three problematic scenarios: (1) when the method of production does not match the traditional image of the product; (2) when the raw materials are completely unrelated to the history

and tradition of the product; (3) when, although a tradition related to the product existed, the current version of the latter has nothing to do with it.¹⁰⁵

6.1. Scenario 1: the production method does not match the traditional image of the product

The ‘Piadina Romagnola PGI’¹⁰⁶ is a good example of a case in which the specification of a product exploits its strong reputation among consumers, while allowing a method of production that does not correspond to the one that the public might expect.

The Piadina is a flatbread made in the area around the Italian Adriatic coast of the Riviera Romagnola. Between 2014 and 2015 this product became the object of an administrative trial in Italy that raised many questions concerning the ability of GIs to truly protect the traditional version of a product.¹⁰⁷ The dispute involved a challenge by small scale ‘kiosk’ producers of *piadine* and other artisanal producers, who were supported, among the others, by the Slow Food association.¹⁰⁸ In particular, these contested that the Italian competent authority, i.e. the Ministry of Agriculture, allowed the registration of a specification that permitted the use of the PGI label on industrially-produced *piadine*. Hence, these were being treated as equivalent to *piadine* produced on a small-scale/artisanal basis and sold in street-side outlets as had traditionally been done.

Although the administrative tribunal of first instance (*TAR del Lazio*) ruled in favour of the plaintiffs that contested the validity of the specification,¹⁰⁹ on appeal the *Consiglio di Stato*, the Italian administrative tribunal of last instance, reversed the decision.¹¹⁰ In particular, it held, *inter alia*, that

¹⁰⁵ Instead, it will not focus on related issues, such as those concerning the correct identification of the area of production, as they would exceed the scope of the present work. For more on this point, see Dev Gangjee, ‘Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection’ (2006) 3 *Intellectual Property Quarterly* 291 and Bérard and others (n 5).

¹⁰⁶ ‘Piadina Romagnola / Piada Romagnola PGI’ [2014] OJEU C153/9.

¹⁰⁷ Andrea Zappalaglio, ‘The “Piadina Romagnola” Mess. A New Legal Case for an Old Question: What Is a GI?’ (2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2791400>. See also Gangjee, ‘From Geography to History: Geographical Indications and the Reputational Link’ (n 60) 60.

¹⁰⁸ The case also featured a challenge to the definition of the geographical region by a producer excluded from it. This aspect, however, will not be taken into consideration here.

¹⁰⁹ TAR Lazio, Sentenza n 5148, 15 May 2014.

¹¹⁰ Consiglio di Stato, Sentenza n 6933, 13 May 2015.

the artisanal and the industrial products were substantively identical, and that therefore excluding the latter from the text of the specification would have been discriminatory.¹¹¹ This decision is disputable as it does not consider that, *per se*, the *piadina* is only a flatbread and it is not linked to its area of production by any physical factor. Hence, the history of the product, that builds its present reputation, is the only element that can distinguish the original product from any other similar bakery product, by making it unique. The specification does not take this crucial point into consideration, however, thus allowing the production of *piadine* that do not match the traditional image of the product on which its present market reputation is built. In addition, the majority of consumers may not be aware of this.

This decision was appealed to the General Court of the European Union (GCEU).¹¹² The plaintiff argued that the EU Commission breached Regulation 1151/2012 by granting protection to industrially made *piadine* even when nothing in the specification suggested that the industrial product enjoyed any reputation. The Court dismissed the claim, however, holding that '[c]onsumers associate the product with Romagna independently from the way through which it is produced¹¹³' and that:

the single document and the specification (...) contain indications relating to human, cultural and social factors, concerning the know how handed down in Romagna from generation to generation as well as the efforts of the population of the area to enhance this product as coming from that area (...)¹¹⁴

¹¹¹ For a review of the litigation, see Valeria Paganizza, 'Dalla Padella Alla Brace: La Piadina Romagnola OGP Dal "Testo" al Consiglio Di Stato' (2014) 8 *Rivista di Diritto Alimentare* 45.

¹¹² Case T-43/15 *CRM v Commission* [2018] OJEU 11 June 2018. See also, Laura Costantino, 'Le Alterne Vicende Della Piadina Romagnola Tra Competenze Amministrative e Giurisdizionali Nazionali, Ruolo Della Commissione e Legame Con Il Territorio' (Case Note) [2018] *Giustizia Civile.com* <<http://giustiziacivile.com/unione-europea/note/le-alterne-vicende-della-piadina-romagnola-tra-competenze-amministrative-e>>.

¹¹³ *Ibid*, [47].

¹¹⁴ *Ibid*, [52].

In the first statement, the GCEU rightfully points out that the traditional character of the production, and its history, is not a necessary element to create a valid origin link. The second one, instead, is more controversial. Indeed, it is true that the specification of the product provides information on the historical element on which the origin link is built. What the Court fails to address, however, is that the abovementioned factors pertain only to the artisanal *piadina*, not to the industrial one. Therefore, the latter version of the product enjoys protection thanks to the reputation of the former. Despite the text of art 5(2) Regulation 1151/2012 does not prevent it, it is still controversial, from a substantive perspective, whether the industrial *piadina* is truly an origin product deserving to be protected as much as the artisanal one.

6.2. Scenario 2: the raw materials are sourced from areas completely unrelated to the reputation of the product

In principle, under the EU *sui generis* GI system, PDO products must be entirely made in their area of origin. This is not a rigid rule, however, and exceptions are possible in specific circumstances.¹¹⁵ PGI goods, instead, enjoy a flexible locality requirement, following which only one step of the production process has to take place in the designated area.¹¹⁶ These locality requirements were introduced in the EU GI Law only in 1992 by Regulation 2081/1992 whereas they are absent in the both in the Lisbon Agreement and in the TRIPs. Moreover, in France, i.e. the country that invented the very concept of ‘Appellation of Origin’, it has always been allowed, in some cases, to source the raw materials from outside of the designated areas. For instance, traditionally, the milk used to make the Roquefort cheese was sourced even from Algeria.¹¹⁷ This degree of freedom granted to the producers by EU *sui generis* GI rules is indeed justified as the exigencies of the production could make it necessary to source the raw materials from outside the area of production as they may not be available inside of it.

¹¹⁵ Regulation 1151/2012, art 5(3).

¹¹⁶ Regulation 1151/2012, art 5(2)(c).

¹¹⁷ We are thankful to Delphine Marie-Vivien for the interesting insight.

This level of flexibility, despite being understandable and justifiable, brings some undesired consequences, however. In particular, the analysis of the specifications carried out by the present research allows the identification of two different controversial scenarios.¹¹⁸ First, one in which the raw materials are imported from areas that are completely unrelated to that to which the reputation of the product is linked. The case of ‘Bresaola della Valtellina PGI’ is a good example of this. The second scenario, instead, concerns cases in which the area from which the raw materials of the product can be sourced has been excessively expanded over the years, through progressive amendments of the specifications, thus becoming overly broad and raising doubts as to whether the good can still be considered an origin product. This is the case, for instance, of the ‘Lardo di Colonnata PGI’ and the ‘Prosciutto di Parma PDO’.

6.2.1. The raw materials are unrelated to the area to which the reputation of the product is linked

‘Bresaola della Valtellina PGI’ is an example of a product that is linked to a specific area by its strong commercial and historical reputation and, therefore, worthy of PGI protection under art 5(2) Regulation 1151/2012. The way in which the product is made, however, and especially the nature of the raw materials used, leads to the conclusion that, in this case, the reputational link may become misleading and unable to constitute the basis of a true origin link.

Bresaola is a salty and naturally aged beef typical of Valtellina, a mountain valley in northern Lombardy. It enjoys a strong market reputation and boasts an ancient history. Its specification states that writings dating back to the 15th century prove the existence of ancient practices related to the production of the product.¹¹⁹ Moreover, it mentions that the know-how involved in the making is passed down from generation to generation, thus belonging to a local tradition.¹²⁰ The single

¹¹⁸ Even countries in which the competent authority is strict, such as France, are not immune from these dysfunctions. See, Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts' (n 30) 197-199.

¹¹⁹ Bresaola della Valtellina PGI [2010] OJEU C321/23, [5.1], [5.3].

¹²⁰ *ibid.*

document does not require the product do be made with local, or even national meat, however, and indeed is very generic on the point.¹²¹

In 2016, a scandal arose when it became known that the Bresaola is produced from meat of zebu, a cattle imported from South America that does not exist in Europe. Consumers were not aware of this and, unsurprisingly, considered the GI label deceiving.¹²² Some producers, however, replied by claiming that the South American beef is better than the European one and that they selected it in order to make the best product possible.¹²³ This is an interesting observation that shows that often the concept of origin and that of quality are confused. In fact, the use of this kind of raw material is completely incoherent with the history and reputation of the product that, in turn, has generated a specific image, and expectations, in the mind of the consumers. Indeed, very few of them were aware of the origin of the meat and, according to a survey, 87% shared the opinion that, in this case, the label was actually misleading.¹²⁴

This case confirms that history is not enough to constitute the basis of a valid origin link, if the product that is marketed is not substantively linked to it. Furthermore, it highlights the fact that the concept of quality and that of origin are not interchangeable. While no one questions the excellence of the ‘Bresaola della Valtellina’, it is questionable whether it qualifies as an origin product since the raw materials used to make it are completely alien to the image of the product upon which its reputation has been built in the minds of consumers.

¹²¹ *ibid*, [3.3].

¹²² Isabella Fantigrossi, ‘La Bresaola Della Valtellina IGP? E’ Fatta Con Carne Di Zebù Dal Brasile. E in Pochi Lo Sanno’ *Il Corriere della Sera* (2016) <http://cucina.corriere.it/notizie/cards/bresaola-valtellina-igp-fatta-carne-zebu-sudamericano-pochi-sanno/caso-bresaola_principale.shtml>.

¹²³ Elle Lee, ‘Bresaola from Valtellina: A Traditional Italian Cold Cut’ [2017] *Artimondo: artisanal excellence* <<http://www.artimondo.co.uk/magazine/bresaola-from-valtellina/>>.

¹²⁴ Fantigrossi (n 122).

6.2.2. *The area of origin of the raw materials is excessively broad*

Many times the area from which the raw materials can be sourced is excessively broad, thus raising objections as to whether the good is truly an origin product.¹²⁵ This practice, which is due to the understandable necessity of meeting the demands of the market, is not limited to agricultural products, since similar examples can be found in the field of wine.¹²⁶ We can find examples of it in the specifications of both PGI and PDO products.

For instance, the pig's fat necessary to make the 'Lardo di Colonnata PGI' can be sourced from all regions of northern and central Italy, even from areas located 600 kilometres away from the small town of Colonnata.¹²⁷ While this practice is absolutely compliant with the GI rules, it is probably not enough to make a convincing origin product since consumers generally expect the raw materials to come from an area that is at least related to the area where the good is manufactured. An even better example of this trend can be found among PDOs. Indeed, the area from which the pig meat needed to produce the 'Parma Ham PDO' can be sourced has been expanded in recent decades. In 1970, this raw material could be sourced only from four regions of northern Italy, including the region of production and two next to it.¹²⁸ Today, the meat can be sourced from practically all the regions of northern and central Italy.¹²⁹

Although, as already argued above, this provision is justified by the exigencies of the production and it is not unreasonable *per se*, it has been criticised as it harms the credibility of the GI and of the level

¹²⁵ A recent research carried out by Max Planck Institute for Innovation and Competition, to which I contributed and still unpublished, reveals that, in the EU, in more than the 60% of cases the areas of productions of GI products – PDOs and PGIs - are larger than 1000 km².

¹²⁶ For instance, the area of production of Prosecco wine has been considerably expanded over the years such that today it no longer reflects the traditional areas of manufacturing. See, Diego Tomasi, Federica Gaiotti and Gregory V Jones, *The Power of the Terroir: The Case Study of Prosecco Wine* (Springer 2013).

¹²⁷ The meat can be sourced from Tuscany, Emilia-Romagna, Veneto, Friuli-Venezia Giulia, Lombardy, Piedmont, Umbria, Marche, Lazio and Molise, see *ibid*, [4.2].

¹²⁸ The regions were: Emilia Romagna, Veneto, Lombardia, Toscana, Piemonte. See, Legge 4 Luglio 1970, n 506 (GU 17 July 1970 n 179), art 2.

¹²⁹ In particular from Emilia-Romagna, Veneto, Lombardia, Piemonte, Molise, Umbria, Toscana, Marche, Abruzzo e Lazio. See, *Decreto Legge* 15 Febbraio 1993, n 26 (GU 26 July 1993), art 3.

of protection granted to it. For instance, after the famous ECJ decision *Consorzio del Prosciutto di Parma v Asda*,¹³⁰ the Parma Ham can be sliced only in the place of manufacturing. This is a good ruling as it strengthens the relationship between the product actually sold on the market and its area of origin. This becomes hard to justify, however, when the raw materials needed to make the good can be imported from up to 450 kilometres away.¹³¹

6.3 Scenario 3: the present and the historical versions of the product are unrelated

In the previous cases, the product enjoyed a specific historical reputation that linked it to a specific place. The nature of the product itself, however, for different reasons, substantively differed from the image of the product built by its reputation. Instead, in other cases, rarer than those discussed above, the historical and anthropological analysis show that the current product and its historical precedents are completely unrelated. An example of this is the ‘Volaille de Bresse PGI’ that consists of different types of poultry cuts and carcasses from the area of Bresse in France.¹³²

In the specification, the origin link is described only very briefly and is based on two elements: first, the market reputation that the good enjoys among the consumers; second, the history of the product. In particular, the latter is defined as follows:

Historical reputation, linked to the ‘Foire de l’Envoi’, a fair held in the village of Loué. This fair was very well-known in the 19th century and attracted many poultry dealers. The region’s farmers sold their poultry to these dealers. In 1958, breeders and packers in the Loué region successfully revived the production of high-quality farm poultry.¹³³

¹³⁰ Case C-108-01 [2003] *Consorzio del Prosciutto di Parma v Asda Stores Ltd* [2003] I-05121.

¹³¹ This interesting critique was put forward by Prof Hazel Moir during the EPIP Conference 2017 (Bordeaux, 4-6 September 2017)

¹³² Volaille de Bresse PGI [2008] OJEU L151/29, [4.2].

¹³³ *ibid*, [4.6].

It appears that the origin of the product dates back to the 19th century and was then revived in the 1950s. As documented by Bérard and Marchenay, however, the historical version of the good and the present one have nothing in common. The authors, focusing specifically on the chicken and the capon of Bresse, point out that in both cases the current methods of production are completely unrelated with the traditional ones and, in any event, they are fairly common and not characteristic of the area.¹³⁴ Moreover, even the race of the animals used to produce the product is different from the traditional one.¹³⁵ Hence, in this case a substantively new product has been created on the basis of the reputation of a previous one with which it has few things in common. Although the registration as a PGI is justified by the fact that the *Volaille de Bresse* enjoys a strong market reputation, the historical sources mentioned in the specification cannot establish a valid historical link and constitute a mere marketing argument.

In conclusion, the analysis above has demonstrated that the history and the tradition related to a product can constitute the basis of the origin link because they prove the origin of the good by showing the interaction between the community that makes it and a specific place. This element is not always used properly, however, and can become a mere marketing tool. This is an issue that should not be underestimated as it can potentially damage the origin function of *sui generis* GIs and, therefore, the foundations of the EU *sui generis* GI regime itself.

7. Some policy prescriptions for a stronger origin link

The previous section has concluded the research, developed throughout the book, on the nature, roots and evolution of the origin link in the EU Law of Geographical Indications. In light of the results of the analysis presented in the current and in the previous chapters, this section suggests some policy prescriptions, which may be useful in order to promote a better use of the linking factors, in line with the origin function of *sui generis* GIs. A disclaimer is needed, however: there is no magic formula

¹³⁴ Laurence Bérard and Philippe Marchenay, ‘Prouver l’Origine’ (n 5) [7].

¹³⁵ *ibid.*

that can solve all the issues of the origin link. Indeed, there are so many practical nuances that emerge from the analysis of the specifications – and single documents - of the registered EU GI products that a one-size-fits-all approach would be inexpedient. Taking this into account, we suggest the following criteria that should be applied in order to prevent the registration of weak GIs:

(1) Whenever possible, both the qualitative/*terroir* and the reputational link should be included in the specifications in order to strengthen the origin link and to make it more accurate.¹³⁶ Indeed, the analysis carried out in chapter 4 shows that this already occurs in the practice, as many PDO products include evidence of reputation in their specifications and, in turn, PGIs often embody the qualitative/*terroir* link. This is a good solution that, on the one hand, would prevent PGIs from becoming too broad, while, on the other, providing a complete picture of *terroir* conceived as a mix of natural and human factors.

(2) The more the product is based only on reputation and, in particular, on the historical element, the more its specification, in particular the origin link and the method of production, must reflect its traditional image. This does not mean that the good must be made as it was centuries ago, of course. Rather, it means that it must be coherent with the identity of the product, as it emerges from historical proofs, studies and other types of evidence, and it must represent the know-how shared by the producers in the designated area. This narrow way of interpreting the reputational link is necessary to avoid the distortions that we have shown in the previous sections, thus preventing an undue proliferation of weak GIs.

¹³⁶ Here, we agree with Delphine Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016) 296.

(3) In light of the findings of the present work and considering, in particular, the importance of the historical element in order to establish the reputational link,¹³⁷ the mere market reputation should not be considered enough as basis of the origin link. Indeed, the fact that consumers tend to associate a product with a specific geographical area does not mean that they are right.¹³⁸ Hence, since the origin function of *sui generis* GIs must be preserved, a narrower interpretation of the reputational link must be adopted. It follows that the mere market reputation should, whenever possible, be accompanied by the history of the product, and of the method of production, supported by proper evidence and/or by the illustration of the qualitative/*terroir* link.

(4) Restricting the possibility to register GIs not based on a strong *terroir* and/or historical link to the designated area should not be considered a problem. Indeed, geographical names can also be protected by collective marks or certification marks.¹³⁹ *Sui generis* GI protection, meanwhile, should be reserved for products with a clear origin link.¹⁴⁰

(5) From the present work it emerges that sometimes there are still many differences between the approaches adopted by the different national competent authorities regarding the criteria needed to register a GI. The system currently in place, however, featuring a two-step procedure for the examination of the applications, should be retained. This allows the local authorities, closer to the

¹³⁷ See, Chapter 4, Section 6.

¹³⁸ Paraphrasing Bérard and Marchenay who rightfully argue that the mere fact that consumers believe that a product originates from a specific area, does not mean that it is truly anchored to that through history or environment. See, Bérard and Marchenay, 'Prouver l'Origine' (n 5) [7].

¹³⁹ For a focus on collective and certification marks, see World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use*. (2nd edn, WIPO 2004), [2.695-2.707]; Marsha A Echols (ed), *Geographical Indications for Food Products: International Legal and Regulatory Perspectives* (Kluwer Law International 2008) 135-148; Jeffrey Belson, *Certification Marks* (Sweet & Maxwell 2002); Norma Dawson, *Certification Trade Marks: Law and Practice* (IP Publishing Ltd 1988). For the position of the US concerning the protection of geographical names through trademarks, see United States Patents and Trademark Office, 'Geographical Indication Protection in the United States' (USPTO) <https://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf>. See also, Caroline Le Goffic and Andrea Zappalaglio, 'The Role Played by the US Government in Protecting Geographical Indications' (2017) 98 *World Development* 35.

¹⁴⁰ For a strong argument in favour of a stricter enforcement of the territorial link between the products and their area of origin see, Irene Calboli, 'Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies' [2015] *IIC* 760.

applicants, to carry out the first scrutiny of the application, which they might be reasonably expected to be able to perform better than any distant centralised bureau. It is important, however, to enhance the harmonisation of the practices of these national offices in order to improve clarity and uniformity. In this regard, the publication of a more extensive set of EU guidelines is desirable because the existing one is only a few pages long: far too short and vague to introduce clear and cogent standards.¹⁴¹

Moreover, it is worth considering whether the ongoing reform of the EU *sui generis* GI system is pointing in the right direction. A complete analysis of this reform project would exceed the scope of the present investigation. Therefore, we will limit ourselves to only one comment. In particular, today, following Recital 58 Regulation 1151/2012, the Commission must ‘scrutinise applications to ensure that there are no *manifest errors*¹⁴²’. Indeed, the published text of the draft of the reform seems to strengthen this provision by adding that this examination must be conducted by ‘taking into account the outcome of the scrutiny and opposition procedure carried out by the Member State concerned¹⁴³’. Although the explicit aim of the reform is to simplify and streamline the registration process,¹⁴⁴ this provision may have controversial consequences. First of all, the notion of ‘manifest error’ is already at best unclear and limits the action of the EU authorities; second, the scrutiny and the opposition procedures in the member states are conducted following the domestic rules of each country. These

¹⁴¹ European Commission, ‘Guide to Applicants: How to Compile the Single Document’ (2018).

¹⁴² Emphasis added.

¹⁴³ European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) No 1308/2013 Establishing a Common Organisation of the Markets in Agricultural Products, (EU) No 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs, (EU) No 251/2014 on the Definition, Description, Presentation, Labelling and the Protection of Geographical Indications of Aromatised Wine Products, (EU) No 228/2013 Laying down Specific Measures for Agriculture in the Outermost Regions of the Union and (EU) No 229/2013 Laying down Specific Measures for Agriculture in Favour of the Smaller Aegean Islands’ (2018) COM(2018) 394 final, 33. For the opinion of the European Parliament on this draft, European Parliament, ‘Report on the Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) No 1308/2013 Establishing a Common Organisation of the Markets in Agricultural Products, (EU) No 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs, (EU) No 251/2014 on the Definition, Description, Presentation, Labelling and the Protection of Geographical Indications of Aromatised Wine Products, (EU) No 228/2013 Laying down Specific Measures for Agriculture in the Outermost Regions of the Union and (EU) No 229/2013 Laying down Specific Measures for Agriculture in Favour of the Smaller Aegean Islands.’ (2019) A8-0198/2019.

¹⁴⁴ Ibid, 14.

can considerably differ, however. For instance, some countries have complex sets of national rules in place for the examination of the applications and for the management of the opposition procedures whereas others have not.¹⁴⁵ Therefore, limiting the power of intervention of the EU Commission, and in particular of the DG for Agriculture and Rural Development, will probably accelerate the proceedings. However, it will most likely fail to enhance the harmonization and homogeneity of the EU *sui generis* GI regime.

8. Conclusions

The present chapter has focused on whether the history of a product in the broad sense, i.e. the core of the historical element, can constitute a valid basis for the origin link. It has concluded that, generally speaking, the answer to this question must be positive, for two main reasons: first, because, similarly to *terroir*, history consists in the description of the interaction between the community that makes the origin product and a specific geographical area; second, because this link can be proved by concrete evidence, identified and interpreted in a scientific way.

It has also been highlighted, however, that this element is not always enough on its own. In fact, the history of a product can be just a depiction of a vague mystified past, unsupported by tangible elements. Furthermore, even if a longstanding tradition related to a place exists, this does not necessarily signify that the present version of a product is related to it, and that it belongs to the peculiar identity of the geographical area in question. In particular, the work has analysed some practical cases in which (1) the method of production allowed by the specification makes the product substantively different from the one that consumers have in mind, based on its historical reputation; (2) the raw materials necessary to make the good are sourced from areas that are completely unrelated to those from which these were traditionally imported. For instance, in the case of Bresaola, the meat

¹⁴⁵ An in-depth analysis of this issue cannot be conducted here. However, the research carried out by the Max Planck Institute Research Team on GIs, to which I contributed, reveals that, generally speaking, countries in which the interest for GIs is high have in place complete and all-encompassing *sui generis* national laws, e.g. Italy, France, Greece, Spain and Portugal. Those in which the number of applications is considerably lower, instead, do not feature detailed procedures.

comes from another continent altogether; (3) although a tradition concerning a product exists, the two are completely unrelated. Thus, the former cannot validly be used to demonstrate the existence of the link between the latter and its place of origin, since the good, although vaguely based on the local history, is substantively new.

Finally, the chapter has presented some policy prescriptions that, in light of the findings of the whole work, might be useful in order to prevent the granting of weak GIs based on a disputable product/place link. Among other things, it was suggested that the origin function of *sui generis* GIs can be preserved more easily by supporting a reasonably narrow interpretation of the linking factors. Therefore, the links that are merely based on the subjective perception of consumers, such as the market reputation of the product, should not be considered enough on their own. It is important to stress, however, that the specifications can be very nuanced and differ one from the other. Hence, distilling universal rules in this field as well as adopting a one-size-fits-all approach is probably inexpedient.

This concludes the analysis on the foundations of the current EU *sui generis* GI regime for the protection of agricultural products and foodstuffs that has focused predominantly, although not exclusively, on the essential issue of the origin link. The next, and final, chapter will discuss the future of the system. In particular, it will investigate whether, on the basis of the findings of the present book and, in particular, of the trends that show a predominance of the historical element, this can be extended to provide protection to non-agricultural products.

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