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► To cite this version:

Thomas Poméon, Gilles Allaire. From claims to rights: establishing Geographical Indications for cheese in Mexico.. 25. ESRS Congress "Rural resilience and vulnerability: The rural as locus of solidarity and conflict in time of crisis, European Society for Rural Sociology / Société Européenne de Sociologie Rurale (ESRS). INT., Jul 2013, Florence, Italy. 386 p. hal-02342385

HAL Id: hal-02342385

<https://hal.science/hal-02342385>

Submitted on 3 Jun 2020

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From claims to rights: establishing Geographical Indications for cheese in Mexico

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Abstract – Geographical Indications (GIs) have significantly spread out beyond its initial European bases. This led to reconsider and debate on the nature and legitimacy of GI concept, the place of origin-related quality, conditions for implementing a GI, and its social implications and impacts. From Mexican traditional cheese GIs implementation case studies, we examine the link between qualification regimes, which hold justifications and claims about GIs, and the property regimes (as bundles of rights), that arise from a GI recognition and implementation. In a context of blurred definition of the GI concept (objectives, procedures), we show the stakes and impacts of different claims confrontation on the implementation of a GI as a common pool resource: inclusion/exclusion of resources in the GI, property rights distribution and local development impacts.

INTRODUCTION: GIS IN QUESTIONS

Beyond classic intellectual property rights debates, we consider a GI as a “common”, based on a set of natural resources, reputation, different knowledge (technical, commercial, relational), etc. Access to this complex common resources system (Allaire and Biénabe, 2013) is ruled through the attribution of a bundle of rights concerning the uses of a GI (operational rules: who can use the GI and how?) and collective-choice rules (who can participate to operational rules determination?) (Schlager and Ostrom, 1992). In terms of resources, a GI system provides reputation on which authorized users can take advantage to capture added value and market positions. It also provides spill over effects, on landscape, local identity and pride, others local economic activities, etc.; they can be seen as local development effects, and they have an important place in the justification of GIs. Nevertheless, GIs’ impacts differ largely case by case.

Involving multiple levels, from local to national, and stakeholders with diverse motivations, the set-up of GIs refers to a well or little defined balance of power and to modes of appropriation of food heritage based on different logics. Claims and expectations are multiple and variable (Sylvander et al., 2006), although they tend to be stabilized by the establishment of institutional arrangements linking the introduction of GIs as a property regime to a qualification regime which holds justifications and claims. With the GI concept spreading, usually with an explicit claim of promoting local development, we want to explore the transition from a set of claims to standards of quality and to a property regime.

Even if GIs have a relatively long history in Mexico, since the recognition of the Denomination of Origin (DO) to Tequila in the 60s (included in Lisbon Agreement system), the GI legal provisions remain incomplete and rarely used. Initiatives aiming at the introduction of GIs for Mexican traditional cheeses, studied in a doctoral thesis (Poméon, 2011) and mobilized here as empirical basis, demonstrate the difficulties and uncertainties coming with a GI approach. Involving different actors but also different legal status, they prove the plasticity of GI concept itself, of claims that underlie it and of property regimes that emerge. We then discuss the nature of GIs and put forward the relationship between concepts of quality, claims and the definition and implementation of a GI.

MATERIALS AND METHODS

Our study is based on the analysis of legal texts as well as documents from administrations (Instituto Mexicano de la Propiedad Industrial –IMPI; federal and state administrations) and regulatory bodies in charge of GIs. A field work, conducted through semi-directed interviews and questionnaires between 2007 and 2010, allowed us to collect data from different stakeholders concerned by cheese GIs implementation: dairy farmers, cheese makers, retailers, researchers, national and local officials (Poméon, 2011). We focus on two cheese GIs projects: Cotija cheese and Bola de Ocosingo cheese. If their features, their territory and the design of GIs implementation vary, they coincided in their aim to obtain a legal status to add values to a traditional cheese associated with a specific area.

Data were analysed through an analysis grid including topics about the “how” and the “why” associated with GIs implementation project, and their consequences. We refer to theoretical elements of commons pools resources theory, mainly around Ostrom works, and conventions theory.

FROM RIGHTS TO DEFINE GIS TO RIGHTS DEFINED BY GIS

Firstly we present collective-choice rules which refer to legal provisions and procedures framework for GI implementation. DOs are backed up with few articles of the Industrial Property Law, and for Collective Trademark (CT – considered by IMPI as a substitute for DOs) it is even shorter. Practically there is no specific and explicit regulation about the process of DO request, with just 2 months of public consultation. The IMPI is the only responsible for evaluating



and conferring DO protection. State is the holder of the DO, which is accessible to any producer that respects DO specifications (area, process, etc.). Any changes of specification should be done under the auspices of IMPI. For the CT, specifications for its use should be prepared by the entities which apply for its registration; as it is not at a legal status foreseen for GI protection, there are no formal provisions on this matter. A CT has a ten-year renewable duration. It cannot be transmitted to another entity, but new members can be welcomed.

In both cases, the IMPI rejected DO. Its justification was blurred and unofficial. Producer organizations applied then to a CT. Legally, a CT is not suitable for legal protection of geographical name, as it is reserved to DOs. But producer organizations managed to obtain the registration of CT similar to GI, respectively “Queso Cotija Region de Origen” (Cot.) and “Queso Bola de Ocosingo” (BdO). If we examine now operational rules that govern access and use of CT, both cases shared the same formal rules to access to CT: to be member of the entity who holds the CT. But *de facto* a producer can be excluded from using CT, even if he respects product specifications. It is what happened with BdO: the producer association includes some relatives, involved or not in production, while historical cheese makers are kept aside. In COT case, the association was opened to all producers, but conflicts challenged this opening. Concerning usage rules, BdO specifications are succinct and evasive, with no clearly defined production area, no rules for milk production. At the opposite, COT is backed with detailed and stringent specifications, from milk production to marketing. Concerning control and sanction for CT, rules could be freely determined, but in fact was still undefined.

If the both GI projects aimed to avoid unfair competition from low quality imitation, to obtain added value for identified products, claims and quality concept that inspired each of them differ. Actually they can be related to the design of access and withdrawal rights. In COT case, the GI project was connected with claims for heritage valorisation, including all the traditional *rancheros* way of producing and living, with strong expectations for local development. The QdB project was only based on a claim for reaching new markets, with expected benefits concentrated on few cheese makers. The conception of quality was dominated by an industrial-marketing vision (to reach a standardized product, introducing pasteurization and joining all the production in one site), while in COT case quality concept resulted from an hybridisation between traditional knowledge and technical innovation to improve quality without modifying Cotija productive tradition and typical quality.

GIS POTENTIAL FOR TRADITIONAL MEXICAN CHEESES

As we saw, laws and legal procedures are blurred. The IMPI (and most of public agencies and administrations) considers GI protection, especially DO,

unsuitable for small scale and artisanal productions. Moreover, it lacks capacity and expertise in managing GIs. It'd rather suggested to producers that they should choose other kind of legal status, as CT, without effective protection for geographical denomination. DOs appear to be reserved for large scale and standardised production mainly oriented toward export; and/or production with sufficient political lobbying capacity. The example of Tequila shows the predominant view about GIs. Specifications are decided by a small group of large Tequila's companies, mainly multinational; they control product specification and norms/standards, and agave supply (through own production, contracts and control devices). Heritage-related aspects are used as rhetoric for marketing, as a *mise-en-scene* of the tradition disconnected from the reality but not from market interest. Agave producers are hardly represented and powerless.

Mexico has no specific protection for traditional foodstuffs. Traditional cheeses, made with raw milk, are illegal regarding sanitary regulation; they survive through informal but still very active production and marketing networks. Operators of traditional cheese production are poorly represented in regulation and sector institutions, so their interests are disregarded. They are isolated, and are few informed about GI concept and what they could manage through it. Obtaining a GI could have been a way to protect and valorise traditional cheese production, but a lot of barriers remains. DO in Mexico seem to be a concept fit to and by Tequila large companies, and heritage foodstuff defence is more a politic and marketing rhetoric between rather than a real policy. This context, associated with local difficulties for organized cooperation between people (due to mistrust, lack of leadership, corruption, poverty, etc.), show that activation of local development dynamics through GIs would need long-term and multi-level process to be effective.

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