

Conference « food quality
certification – adding value
to farm products »
Brussels, 5-6 Feb 07

***Protecting GIs : an international
comparison of schemes and systems***

*B. Sylvander, Director of research
(INRA – Toulouse – France)*

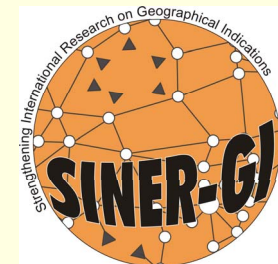
Summary of the presentation

- Introduction, overall context
- 1. Diversity of GIs' systems
- 2. Diversity of GIs' protection schemes
- 3. Diversity of performances and impacts
- Conclusion



Introduction

- *I will present some of the preliminary results from the STREPE project « SINER-GI » (Strengthening International Research on Geographical Indications: from research foundation to consistent policy)*
- Three reports delivered and a product database in progress :
www.origin-food.org



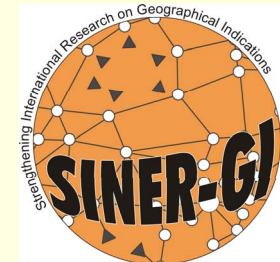
Overall context :

changes of global market rules

- Neo-liberalism and State's failures at the world level
- Private sectors taking over public services ?
- Emergence and development of a mix of **private / public standards** (environment, fair trade, GIs, etc.)
- Intellectual property rights (IPRs), Standard Setting Organisations (SSOs), "forums" : play **new and important roles in market regulation** under a new international trade governance (or regime)
- **Forum shopping** : ability of the actors to resort to the market for standards
- **Demanding consumers**



1. Diversity of the GI systems



Diversity of products with a geographical indication as identifier, within the frame of the global quality economy

- Trademark Products, Certified TMP, Protected Designations of Origin, Protected Geographical Indications, GIs in general (product + identifier)
- Geographical Organic products
- Geographical Fair trade product
- Geographical Farmhouse products
- Geographical handicraft products (ex « Slow food »)
- Direct sales and « local » products
- Etc..



Initiators / stakeholders motives

- Recover the use of usurped names (Charlevoix Lamb, Canada ; Melton Mowbray pork pies, UK ; Basmati Rice, Darjeling tea, India ; Long Jin tea, China ; Roibos tea, South Africa)
- Improve the access to markets (especially export markets) (Tequila)
- Preserve the biodiversity and fight against biopiracy (India)
- Protect the traditional know how (Argan oil, Morocco)
- Support collective development initiatives (Sotol, Mexico)

Other stakes can be mentioned :

- Better regulate market fluctuations, through product differentiation and market segmentation on the domestic and international markets as well (Tequila, Mexico ; Coffees (Costa Rica, Nicaragua, etc.)
- Better implement the overall market rules (labelling, fight against fraud and counterfeiting, sanitary standards, traceability, ...)
- Support individual (industrial) strategies... (Charanda, Mexico)

Adapted from Sautier (2005)



Market structures, governance, consumers

- Many different market structures
 - Single firm : (*Zagora apple GR, Laguiole F*)
 - Monopoly with fringes : (*Roquefort, Crottin de chavignoles, F*)
 - Oligopoly : (*Beaufort, F*)
 - Scattered structure (*Parmiggiano reggiano, It*)
- Several governance forms
 - Corporate governance : single firm, channel captain
 - Clubs (collective marks, certain CTM ?)
 - Interprofessionnal bodies / unions
 - Weak (*Cantal, F*)
 - Strong (*Comté, F*)
- *Consumer attitudes / behaviours are very diverse..*

Are GIs sectors mainstreaming ?

- Market structures are quite diverse in the GI sectors, but :
- Are GIs sectors mainstreaming ?
 - Attractivity for GI products is high
 - Industrial firms and small holders operating on segmented markets : weak competition
 - They may be operating on same markets :
 - → **Problems**
 - Trademarks not always registered, usurpations / imitations, etc.
 - Necessity of knowledge transfer, not easily accessible
- All GI systems have to face, sooner or later the “scaling up” issue ...



The scaling up issue

- Globalization and neo-liberalism lead to open market where competition is stronger (example : the wine market)
- All GI products initiatives facing sooner or later a strategic question, summarized as the “*scaling up*” issue.
 - When growing, most of the GI producers have to comply with the generic market standards (sanitary standards, labeling, traceability, generic quality grading, more environmentally friendly production modes, etc.).
 - Standards requested by the supermarkets.
 - Larger firms (not necessarily specialized in GIs) are generally more able to meet those requirements than the smaller ones (often specialized).
 - A strategic turn for many specialized firms.
 - Sometimes specialized supply chains manage it well
 - Sometimes, it represents a serious threat and the scaling up must be carefully designed.

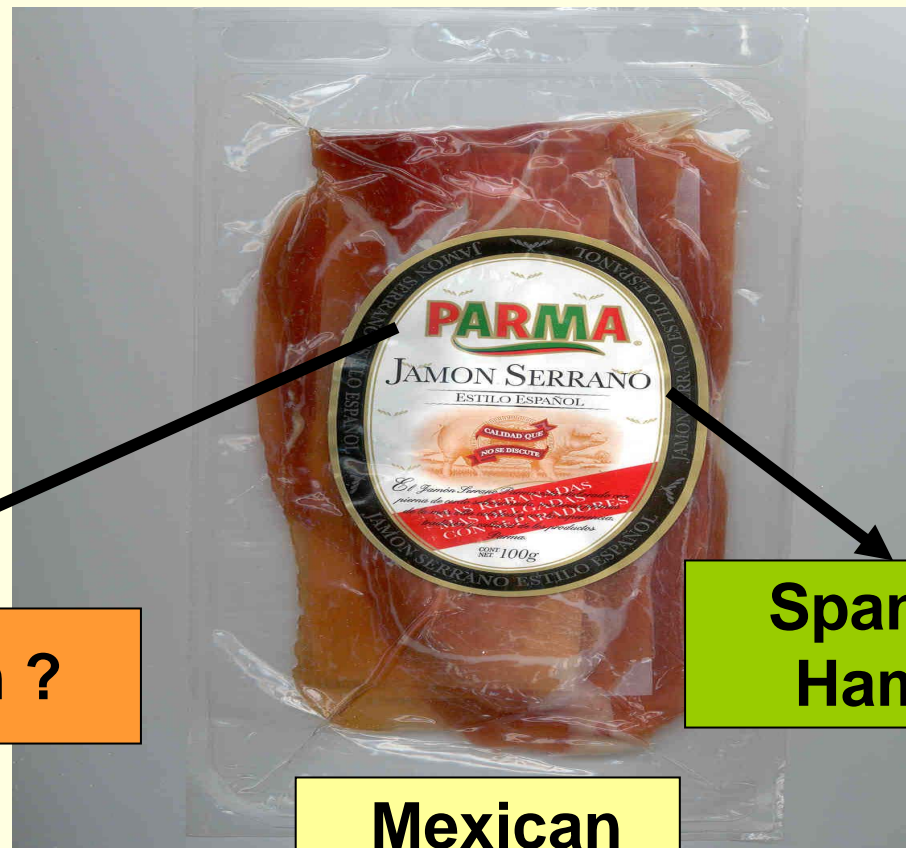


2. Diversity of the GIs protection schemes



Main stake : how to ensure the actual origin of a good ?

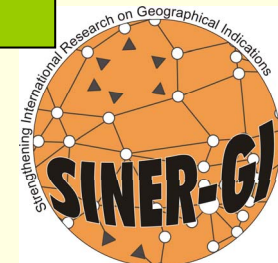
An example for connotation / usurpation



= Italian Ham ?

Spanish Ham ?

Mexican Ham !!



Examples for « usurpations »

- Bresilian "Champagne"
- Danish (or French) "Feta"
- American "Chablis"
- Australian "Parmiggiano "
- Canadian "Parma Ham"
- American Basmati Rice
- Mexican Manchego
- Etc..



Definitions

- *TRIPS (1994) : “Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”*

- So GIs are not necessarily :
 - geographical names
 - protected by any specific legal mean of protection (out of the usual laws on business practices, trademarks, protection against misleading, unfaire competition, etc.)
 - recognised by any special institutional frame



Differences between TM and PDO/PGI

<u>Caractéristiques</u>	<u>Trademark</u>	<u>Appellation of Origin</u> <u>PDO – PGI</u>
<i>Distinctive sign</i>	Creation : fancy / new name. TM is distinctive	Determined by the already existing “terroir” (geographical and human know-how)
Quality	No necessary link to quality, unless search of reputation	Identifier guaranteed by the State, quality linked with origin
Ownership	Owner (individual or collective in the CTM case) Transfert is possible (in certain limits for CTM)	Public ownership Unalienable Cannot become generic
Registration	First in time, first in rights	Procedures, claims, oppositions, register
Use	Mostly private (unless collective TM and Certification TM)	Mostly collective
Conditions of use	Free, but not deceptive Rules for CTM and collective TM Closed (TM and collective TM) Open (CTM)	Comply with the conditions stated in the Codes of practices
Duration of use	Limited in time (10 ou 20 years) Must be renewed	Permanent
Protection	Private Passing off (the plaintiff has the proof burden)	Public Ex officio protection



Stakes in the WTO negotiations

Positions in the conflict

EU

Public good

GIs = public property, no
time limitation, free entry

Specific quality, non
reproducible, based on
indissociable natural and
human factors

Usurpations are illegal
Protection ex officio

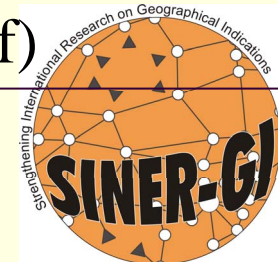
Cairn group

Private Good


Trademarks, transferable,
closed clubs if CTM ?,
First in time, first in right

Not legitimate if good
substantially equivalent
Quality is reproducible

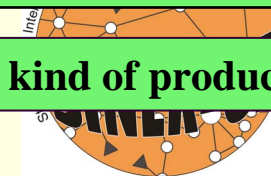
Prove that the consumer is
misled (passing off)








From permissive protection schemes to prescriptive ones

Permissive scheme							Prescriptive scheme
Prevention and repression of misleading or unfair use - Enforcement mainly on private initiative				Definition of right holders and public enforcement			
Individual trademarks	Collective / certification marks	Definition of GIs when a conflict occurs	Definition of GIs by regulations	Registered GIs (weak requirements on quality)	Registered GIs with general requirements on quality	Registered GIs with special requirements (tradition, terroir...)	
Judicial decisions		Purely administrative rules		Initiative from producers in relation with public policies			
Wines		Agro-food products			All kind of products		

Source : E. Thevenod-Mottet

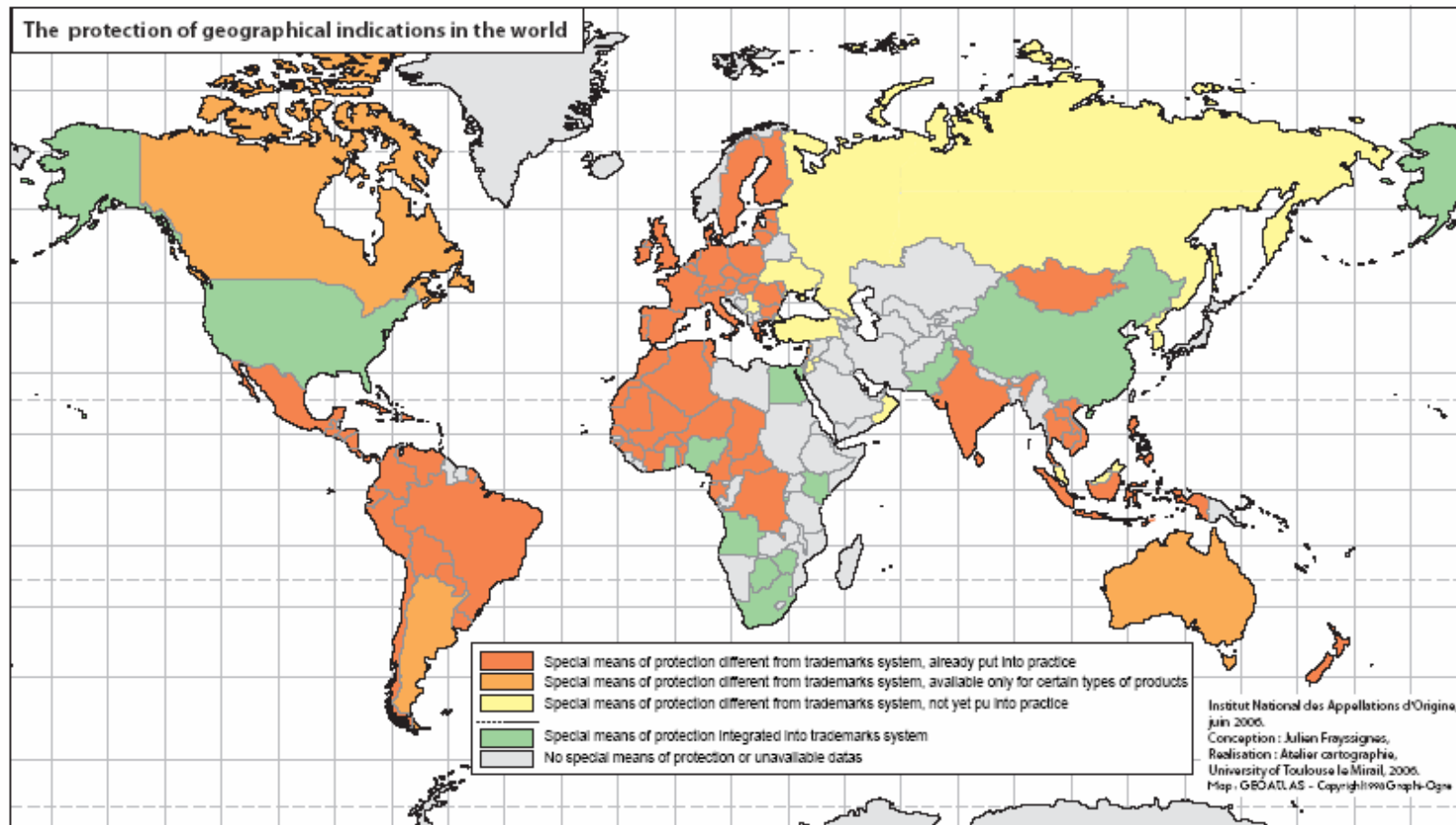


GI protections schemes in 2006

- Special means of protection different from Trademarks system (sui generis) 
- Special means of protection different from Trademarks system (sui generis), only for certain products (wines) 
- Special means of protection different from Trademarks system (sui generis), not yet put into practice 
- Special means of protection integrated in the Trademarks system 
- No special means / no information 



The legal situation of the GIs in the world



Source : SINERGI Project (Sylvander and Barham, 2007) to be published

Issues in the WTO negotiations

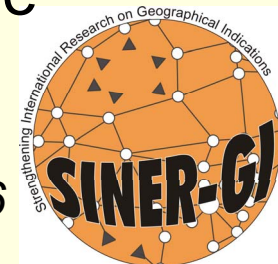
- Towards an **international register** of the GIs ?
 - mandatory (with ex officio protection) ?
 - a simple Database ?
- **Extension** of the protection from the wines to all products ?
- **Claw back list** ? (UE wants to recover the ancient GIs)
- **Bilateral agreements** (UE-US, EU – Australia, etc.)



Which justifications for a GI policy ?

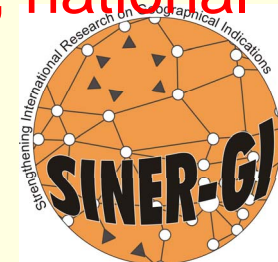
- Four public justifications for GI protection and promotion
 - 1. Organisation of the competition / usurpations / access to the markets
 - 2. Regulate the markets / market segmentation
 - 3. Rural /local / regional development
 - 4. Resources preservation (natural and cultural resources)
- Differences in the history and according to the national contexts

Sylvander et al. 2005, 2006



GI policies are not alone : other policies are concerned

- Research and literature shows that **protection policy cannot in itself account for GI the supply chains' development**. Other crucial issues are playing an active role (if consistent with GIs) :
 - Agricultural policy (if relevant)
 - Competition / labelling / consumer policies
 - Rural / local Development policy
 - Environment, conservation and safety policies
 - Research policy
- → **Weak support / strong support, from local, national institutions / NGOs, ...**

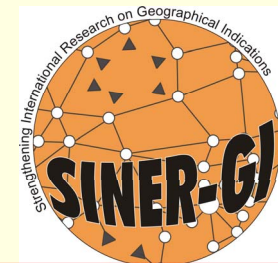


3. Diversity of performances / effects



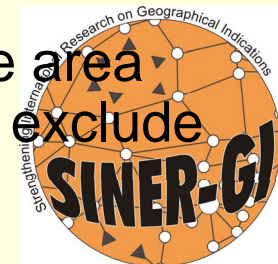
Success factors and effects ?

- « Success » **doe'snt mean much** at a general level (taking in consideration the great observed diversity of the GIs' systems and the GIs' protection schemes)
- → objectives / success factors / success criteria will be different in different GI systems
- → Therefore, we propose to define success with regards to :
 - The **internal goals** of the studied GIs' systems
 - The contribution to **the three dimensions of sustainability** :
 - Economic efficiency
 - Social equity
 - Environmental integrity

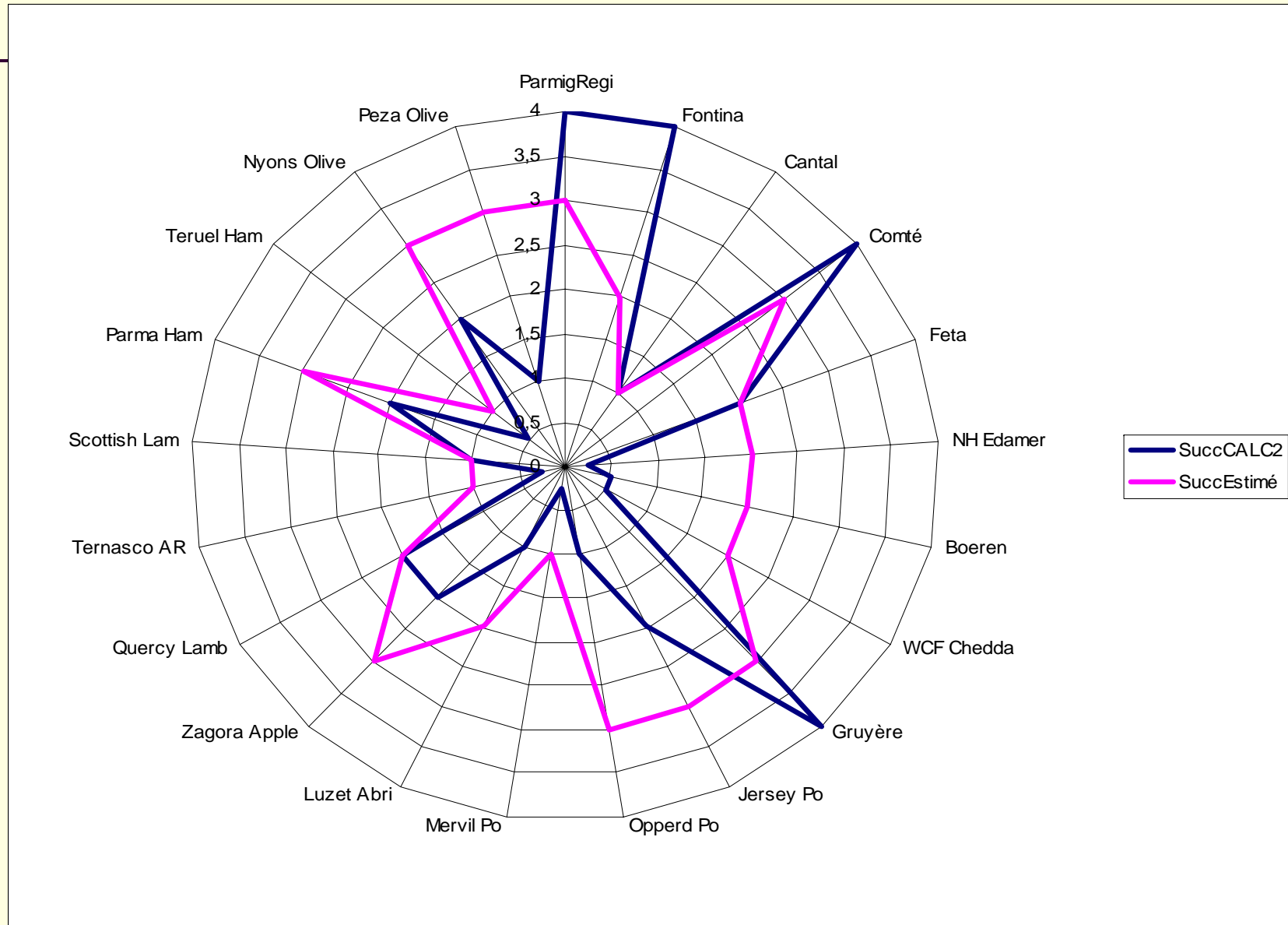


Methodological problems

- **Diachronic approach** : comparison between the “before” and “after” situation; this calls for a good reconstruction of the story
 - **Difficulties**
 - changes are often gradual rather than radical,
 - many other aspects are changing in the same time within the GI system as well as in the context
- **Synchronic approach** : comparison between
 - The GI product and its generic, non-GI version;
 - The GI region and another region
 - **Difficulties**
 - a product may not be available in the same area (better than the same region or country, to exclude differences in contextual factors)
 - another similar area may not be available



The performance of 21 PDO-PGI supply chains in Europe



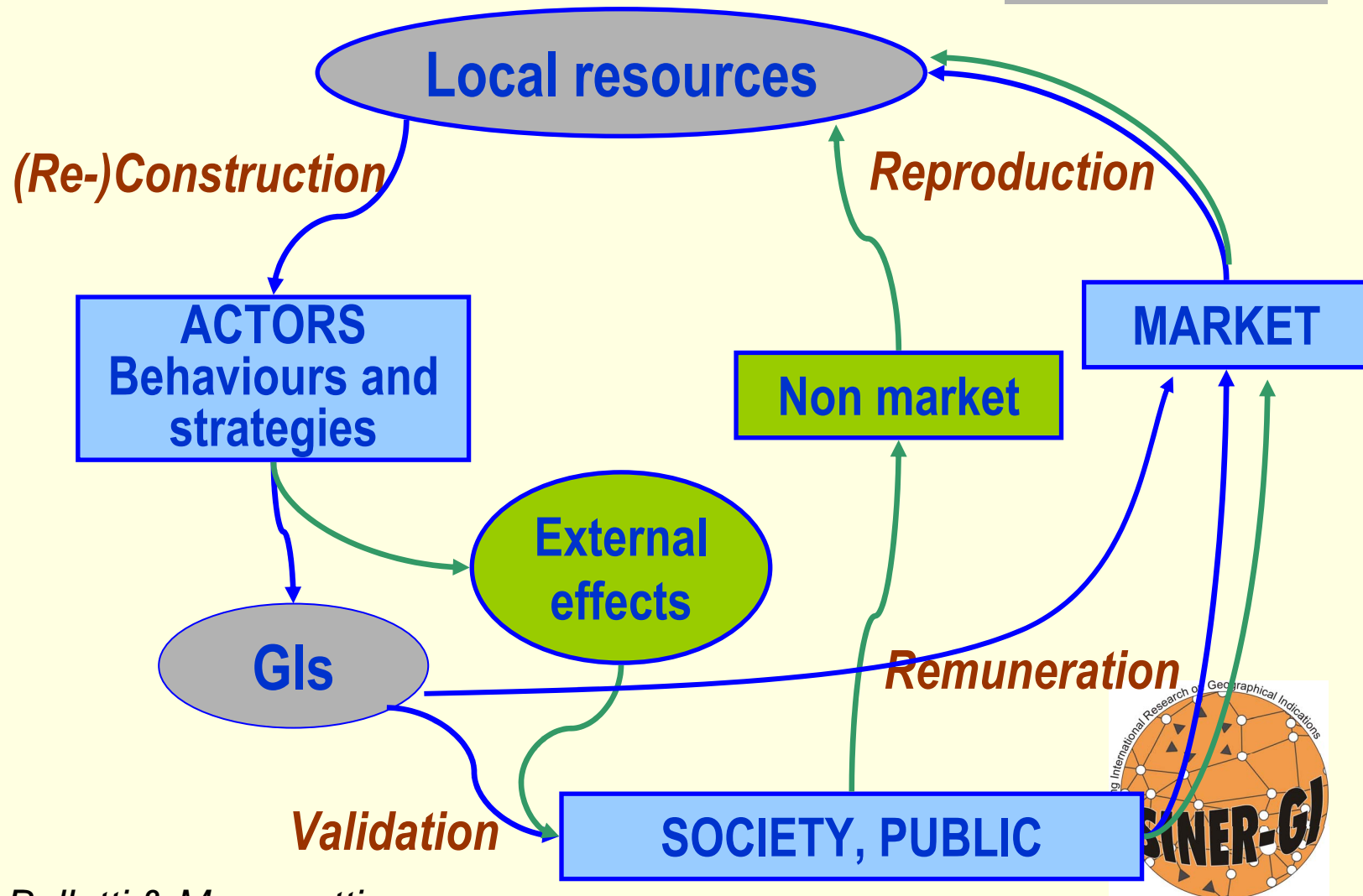
Impacts of the GI systems on sustainability (1/2)

Economic

Rural devlop

	+	-
<p>Market regulation (spillover effect)</p> <p>Introduce modern management tools</p> <p>Enhance collective action</p> <p>Makes alternative marketing possible</p> <p>Protect SME</p>		<p>Market effects (<i>Costa Rica coffee</i>)</p> <p>Risk for the added value to be captured by big firms (multiple retailers (<i>Migros/coop CH</i>))</p> <p>Flexibility and innovation problems</p> <p>Exclusion effects (<i>Foie gras, F</i>)</p>
<p>Promotes local development / networks</p> <p>Enhances multifunctionality</p> <p>Protects / enhances know how, resources, identity</p> <p>Roots activities in the region</p> <p>Maintain SME</p> <p>Keeps added value to producers</p>		<p>Problems with power balance</p> <p>Conflicts between multi-functionality domains</p> <p>Necessity of a critical mass (<i>North UK</i>)</p> <p>Exclusion effects</p>

A way out : endogeneous development : the “virtuous circle”



Source : Belletti & Marescotti

Impacts of the GI systems on sustainability (2/2)

Environment

	+	-
	<p>Codes of practices tool can be used for that purpose</p> <p>Local genetic resources → biodiversity</p> <p>Positive image can be exploited for environmental issues</p>	<p><i>Generally</i> : nothing in the regulations about environment</p> <p>Some derive effects (in some cases, economic growth takes precedence over environment) (<i>Roibos tea</i>)</p>



Contradictions between the Sustainability goals / achievements

- Examples :
 - Economic growth may be needed, but may entail environmental damages. However, no scaling up may lead to vulnerability (economic vs environment)
 - Adaptation to generic market may entails generic codes of practices, which threatens/ compete with traditional systems (economic vs social equity)



Conclusion : what is the objective ?

- To “transfer” our policy : misleading way (any “cut and paste” process would be a mistake)
- Our reports account for the great diversity of products, markets and institutional and legal frameworks.
- Diverse interpretations of the legal provisions around the world
- Contradictory interests and conflicting standpoints in the international negotiations
- No evidence that the GI concept would converge in the future
 - → The “concept of GI” may become meaningless ?
 - → The European GI forum has to become attractive on the “forum shopping market”. How ?
 - → But the “knowledge / technological transfer” of tools is still an important economic issue