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Narratives of Quality in European Food Governance And Beyond

Lorenzo Bairati

Università di Scienze Gastronomiche di Pollenzo, l.bairati@unisg.it

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NARRATIVES OF QUALITY IN EUROPEAN FOOD GOVERNANCE AND BEYOND

*Lorenzo Bairati**

ABSTRACT

In the communication of foodstuffs, there is an overuse of the notion of quality. Consumers are highly attracted to this concept even if its features and boundaries remain absolutely vague. Quality encompasses such terms as authenticity, tradition, diversity, territory, craftsmanship and naturalness, but these factors are, in turn, ambiguous in and of themselves, and often contradicted by the latest evolution of food production and distribution. This essay analyzes the relevance of these features in Europe from a legal perspective, as opposed to the homologation of tastes and cultures produced by the globalization of food systems. The reference to them in marketing and their reconstruction through PDOs and PGIs, as regulated by EU Regulation 1151/2011, is addressed in order to reflect the ongoing debate on food quality and its international protection. Consumer expectations will be considered as a seminal parameter in assessing the European state of the art in food quality preservation, especially from the Italian perspective. Concluding remarks will analyze the international debate on the “Italian Sounding” phenomenon, stress the conflicting positions (mainly expressed by the EU and the US), and propose insights to consider this controversy from a new perspective.

I.	Introduction	458
II.	Tradition vs. McDonaldization in the European Food Sector	459
III.	Marketing Quality in Food Labeling.....	464
IV.	Reconstructing Food Quality Through Geographical Indications .	468
V.	Concluding Remarks (with Regard to the Italian Position on the Italian Sounding Phenomenon Around the World).....	475

* Associate Professor of Global Food Law at the University of Gastronomic Sciences, Piazza Vittorio Emanuele 9, Pollenzo, 12042 Bra (Cn), Italy (l.bairati@unisg.it).

I. INTRODUCTION

One of the most abused terms in the European food market is “quality.” Yet despite the ambiguity and inconsistency of this concept, which encompasses authenticity, tradition, diversity, territory, artisanality, naturalness, wholesomeness, and so on, it is appealing to many consumers whose views of the term often clash with several key features of current globalized food systems. This essay analyzes the relevance of these features from a European legal perspective, as opposed to one of a homologation of tastes and cultures.

Section One stresses the link between food culture and the notion of tradition, which is often used in food marketing, highly appreciated by consumers, and considered by institutions as a value that needs safeguarding. This concept directly opposes the relentless “McDonaldization” of food systems whose main elements (efficiency, calculability, predictability, and control) are considered, from the perspective of a traditional approach, dangerous in terms of food-quality protection. In this regard, the role tradition plays in defining quality is addressed through an analysis of its elements and legal regimes at both the European and national levels.

Section Two analyzes the communication of quality through such terms as “artisanal” and “natural,” which frequently appear on food labeling while having a legal definition that is far from clearly defined. The proliferation of these terms is addressed with reference to one of the aims stated in EU Regulation 1169/2011, Recital 37, which is “to provide a basis to the final consumer for making informed choices,” by ensuring “that the final consumer easily understands the information provided on the [labeling].” In this regard, the risk of confusion and misinterpretation of such messages and logos is analyzed as a key legal issue for distinguishing the informative versus the marketing nature of labeling.

Section Three is devoted to the primary legal tools used throughout Europe to recognize and communicate food quality, i.e., Protected Designations of Origin and Protected Geographical Indications, both regulated by EU Regulation 1151/2012, followed by a reflection on the effects of the registration and codification of these legal tools in terms of reconstruction and reinvention of food authenticity. These schemes are analyzed in general terms in order to assess both the points of strength and shortcomings in the quality and diversity of food products manufactured in the European Union, as well as in providing clear information on those products with regard to specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices.

Concluding remarks are devoted to reflecting on the necessity of properly considering consumers’ views when tackling the international

debate on Geographical Indications with special reference made to Italian-sounding products. In particular, the focus is placed on exposing shortcomings and possible solutions for a better balance between different principles, such as the necessity of representing producers and production contexts, the importance of truly guiding consumers towards informed purchasing choices, and the need to ensure the free movement of goods without undue barriers.

II. TRADITION VS. MCDONALDIZATION IN THE EUROPEAN FOOD SECTOR

Consumers are more and more concerned about food systems. This is especially true when it comes to food safety and risk perception, and particularly over the last decade regarding sustainability in its multiple meanings. Growing feelings of distrust, skepticism, and fear are a consequence of products manufactured in complex chains that become more and more ambiguous due to their extent, both in the geographical and in the logistical sense.¹ More generally, food systems (not only fast-food restaurants) have been influenced by the well-known phenomenon of “McDonaldization,” i.e., “the process by which the principles of the fast-food restaurant are coming to dominate more and more sectors of American society as well as of the rest of the world.”² In fact, this new form of social organization, the four elements of which are efficiency, calculability, predictability, and control, have shaped many food value chains towards uniformity and standardization, which are not only the goals of businesses but also of policymakers at different levels of governance.³

In some cases (especially those characterized by the heavy industrialization of food production, which is the case in the US), this tendency is supported by a food culture that considers the homologation of food to be a reassuring feature in terms of safety.⁴ While in other cases (e.g., the EU and, in particular, Mediterranean countries), this is not the case. In

¹ See generally Elizabeth Whitworth, Angela Druckman & Amy Woodward, *Food Scares: A Comprehensive Categorisation*, 119 BRIT. FOOD J. 131 (2017).

² GEORGE RITZER, *THE MCDONALDIZATION OF SOCIETY: INTO THE DIGITAL AGE* 2 (9th ed. 2018).

³ According to this reconstruction, the consequences are process mechanization, product uniformity, and global proliferation of standardized products of mass culture, which threaten to override national and local modes of cultural expression. See JÜRGEN HABERMAS, *THE POSTNATIONAL CONSTELLATION: POLITICAL ESSAYS* 72–112 (Max Pensky ed. & trans., 2001).

⁴ This assumption is generally shared also by scholars who have stressed a partial change in this regard, especially in cities located on the East and West Coasts of the country. See MATTEO FERRARI, *RISK PERCEPTION, CULTURE, AND LEGAL CHANGE: A COMPARATIVE STUDY ON FOOD SAFETY IN THE WAKE OF THE MAD COW CRISIS* 27 (2016).

fact, in the EU, the general distrust of foodstuffs coming from countries that are distant both geographically and culturally, the worry over the complexity of transformed foodstuffs (due to the huge quantity and complexity of their ingredients) as well as the increasing amount of technology used to obtain them, reinforce the opinions of those who are opposed to this trend. Indeed, the awareness of the negative impacts of global value chains in terms of safety, sustainability, quality, and so on, is the basis for the growing interest on the part of institutions, NGOs, consumers, and businesses in those values to which the globalization of food systems can pose a danger.⁵ In fact, the dynamics of a reciprocal response among these subjects has produced a negative cultural stance toward processed, global, large-scale, and high-tech foods with long farm-to-plate chains while reinforcing a positive stance toward tradition as well as other elements related to the notion of quality, such as authenticity and naturalness (which is addressed later in the text), for two fundamental reasons. On the one hand, food tradition, intended as the production and consumption of a food product over an extended period of time without adverse health effects, is, per se, a demonstration of safety.⁶ On the other hand, as previously noted, food tradition can appear as a reaction to the homologation of tastes and to the flattening of food diversity because of its significance in terms of culture, identity, collective knowledge, and heritage, typically associated with customs and usage, i.e., an established practice passed from generation to generation.

The success of the notion of tradition (whose main consequences have been its overuse as a marketing tool and its promotion in terms of food quality) has been placed within the wider trend of re-traditionalization and analyzed by social scientists, anthropologists, and historians as a product of modernity.⁷ Legal scholars have participated in shaping a theory of tradition,

⁵ A consequence of this phenomenon is the international success of the Slow Food Movement, which promoted itself as a model for imagining alternate modes of global connectedness through the revitalization of artisanally produced foods. On the development of the Slow Food Movement related to consumers' perception of the food they eat, see Michele Graziadei, *Modernisation and Risk Regulation in the Italian Food Sector*, in *REGULATING RISK THROUGH PRIVATE LAW* 347, 357 (Matthew Dyson ed., 2018).

⁶ This concept is clearly expressed in Recital 15 of Regulation 2015/2283 of 25 November 2015 on novel foods, which states:

The placing on the market within the Union of traditional foods from third countries should be facilitated where the history of safe food use in a third country has been demonstrated. Those foods should have been consumed in at least one third country for at least 25 years as a part of the customary diet of a significant number of people. The history of safe food use should not include non-food uses or uses not related to normal diets.

Regulation 2015/2283, of the European Parliament and of the Council, 2015 O.J. (L 327) 1, 3.

⁷ See ANTHONY GIDDENS, *RUNAWAY WORLD: HOW GLOBALIZATION IS RESHAPING OUR LIVES* 36–50 (2002). See generally ULRICH BECK, ANTHONY GIDDENS & SCOTT LASH, *REFLEXIVE MODERNIZATION: POLITICS, TRADITION AND AESTHETICS IN THE MODERN SOCIAL ORDER* (1994). Other authors, such as Hobsbawm, Heelas, and Thompson, have discussed the invention of tradition and

especially by defining its features and limitations, while at the same time reflecting on its use as a scientific tool. These elements were tackled in H. Patrick Glenn's seminal work, *Legal Traditions of the World*, which proposed some indicators of the idea of tradition, but also warned that this notion maintains margins of ambiguity due to the impossibility of achieving a comprehensive theory.⁸ Indeed, theories are rational constructions derived from particular traditions. Therefore, a theory concerning tradition should be thought of not only as a method for expanding one's knowledge of the subject but also as a way of understanding it more profoundly and not simply as an object of inquiry per se. In the food sector, this theoretical contribution is a highly valuable tool for studying the multiple applications of this notion, which is both challenging and controversial not only because of the complexity and plurality of meanings used to describe food (e.g., commodity, cultural product, pillar of identity, etc.), but also because of its variable features and functions.⁹

What *is* clear is that the frequent European interventions to preserve food diversity have been a regulatory response to multiple voices, ranging from traditional producers to consumer associations and NGOs. In particular, over the past decades, European institutions have had to address the problem

emphasized the consequences of so-called de-traditionalization. This position will be re-examined in Section Three, *infra*.

⁸ See generally H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW* (4th ed. 2014).

⁹ Some scholars have proposed different definitions of tradition founded on the power of representing a group; the preponderance of short distance exchanges, mainly with respect to the supply of raw materials; small-scale and low-tech production, local skills and knowledge; belonging to a defined area; the cooperation of people operating within the same territory; and continuity over time. See Jorge Jordana, *Traditional Foods: Challenges Facing the European Food Industry*, 33 *FOOD RSCH. INT'L* 147, 147–52 (2000). The notion of tradition has also been the subject of different research projects, which have tried to focus on its features and boundaries, mainly conducted from an extra-legal perspective. Among them, the European “Truefood” project introduced an operational definition generated from a survey aimed at defining consumers' perceptions by focusing both on changes over time and association with place. A “Traditional Food Product” elaborated within this project was defined as: “a product frequently consumed or associated to specific celebrations and/or seasons, transmitted from one generation to another, made in a specific way according to the gastronomic heritage, naturally processed, and distinguished and known because of its sensory properties and associated to a certain local area, region or country.” Christophe Cotillon, Anne-Clothilde Guyot, Daniel Rossi & Maurizio Notarfonso, *Traditional Food: A Better Compatibility with Industry Requirements*, 93 *J. SCI. FOOD & AGRIC.* 3426, 3426 (2013). However, the Eurofir project proposed its own definition that was based more on food composition data and focused on standardization of traditional food concepts. Valérie Lengard Almlí, Wim Verbeke, Filiep Vanhonacker, Tormod Naes & Margrethe Hersleth, *General Image and Attribute Perceptions of Traditional Food in Six European Countries*, 22 *FOOD QUALITY & PREFERENCE* 129, 130 (2011). A commentary on the two projects and further analysis of the use of the concept of tradition in scientific publications as related to the food sector is proposed in Virginie Amilien & Atle Wehn Hegnes, *The Dimensions of 'Traditional Food' in Reflexive Modernity: Norway as a Case Study*, 93 *J. SCI. FOOD & AGRIC.* 3455, 3455 (2013); L. Filippo D'Antuono, *Traditional Foods and Food Systems: A Revision of Concepts Emerging from Qualitative Surveys On-Site in the Black Sea Area and Italy*, 93 *J. SCI. FOOD & AGRIC.* 3443, 3443 (2013).

of protecting regional tastes and idiosyncratic products (with their great cultural and economic significance) whose very survival has been threatened by a corpus of laws focused solely on massive food production.¹⁰ An interesting example of this phenomenon is the saga of “endangered foods,” which arose against the excessive, uniform, and standardized application of hygiene provisions for the manufacture of cured meat products and cheeses.¹¹ When faced with their own historic inflexibility of food hygiene regulations, European institutions demonstrated to be highly sensitive in reforming them, providing for a procedure that allowed Member States to grant derogations for foods with traditional characteristics: Regulations (EC) No. 852/2004, (EC) No. 853/2004, and (EC) No. 854/2004. In fact, Regulation (EC) 852/2004, which is the pillar of food hygiene regulation in the EU, provides the possibility for Member States to make so-called adaptations, i.e., to accommodate hygiene requirements in order to enable “the continued use of traditional methods, at any of the stages of production, processing or distribution of food.”¹² Additionally, European Institutions decided to come up with a definition for those foods with traditional characteristics in order to lay down some criteria to limit, to some extent, the range of this flexibility. To this purpose, Article 7 of Regulation (EC) No. 2074/2005, of 5 December 2005, defined “foods with traditional characteristics” as

¹⁰ In fact, the 2009 Communication of the European Commission (1) on agricultural product quality focused on traditional agricultural products and qualified them as products of quality. *See generally Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions*, COM (2009) 234 (May 28, 2009). A 2010 European Parliament Resolution (2) on the quality of agricultural products stated that “the European Union has the highest quality standards for food products in the world.” European Parliament Resolution of 25 March 2010 on Agricultural Product Quality Policy: What Strategy to Follow?, EUR. PARL. DOC. P7_TA (2010) 0088. The resolution affirmed that “European quality products constitute a living cultural and gastronomic heritage for the Union and are an essential component of economic and social activity in many of Europe’s regions, bolstering activities directly linked to local realities, especially in rural areas.” *Id.* The Resolution also remarks that “existing policy concerning the distribution chain affects small producers’ chances of reaching a wide target group [of consumers].” *Id.* In the same Resolution the European Parliament:

[C]onsiders that after 2013 the CAP should support the quality policy and, in particular, producers’ efforts to promote more environment-friendly production methods; points out that regions are the CAP’s partners and that they co-finance and manage rural development; adds that, by virtue of their geographical proximity, regions are the partners of producers and, in particular, producers of traditional and organic products; takes the view that regions should be involved in the recognition and promotion of products that carry an indication, traditional products and organic products.

Id. ¶ 14.

¹¹ An example of an endangered food that became noteworthy in this debate is *Lardo di Colonnata*, a type of cured pork fat (i.e., lard) obtained from layering the raw fat in rectangular marble basins placed in cellars. Regarding this episode and its significance in terms of preservation of these kinds of products, see generally Alison Leitch, *Slow Food and the Politics of Pork Fat: Italian Food and European Identity*, 68 *ETHNOS* 437 (2003).

¹² Regulation 852/2004, for the European Parliament and of the Council on the hygiene of foodstuffs, art. 13(4)(a)(i), 2004 O.J. (L 139) 1. An identical provision is contained in Regulation 854/2004, of the European Parliament and of the Council, art. 17(4)(a)(i), 2004 O.J. (L 139) 206.

foods that, in the Member State in which they are traditionally manufactured, are: (a) recognised historically as traditional products, or b) manufactured according to codified or registered technical references to the traditional process, or according to traditional production methods, or (c) protected as traditional food products by a Community, national, regional or local law.¹³

As a result, many food products have continued to survive thanks to their traditional features, even if they do not comply with the specific provisions of European hygiene regulations regarding: (1) premises where products are exposed (in particular walls, ceilings, and doors being smooth, impervious, non-absorbent or of corrosion-resistant material and natural geological walls, ceilings, and floors); (2) materials of which the instruments and the equipment used specifically for the preparation, packaging, and wrapping of these products are made.

It is clear that European institutions, instead of trying to come up with an overall definition of the word “tradition,” opted to nurture a kind of cooperation with Member States in order to achieve a list of traditional foods through a procedural method. The result was a sort of interactive definition, i.e., based on rules of different origins (both technical and legal) and of different subjects, such as producers, local public entities (e.g., the Italian regions), Member States, and the European Commission.¹⁴

¹³ In Italy, there is a specific list of numerous traditional foods drawn up by the Ministry of Agriculture, Food and Forestry Policies that is regularly updated. See Decreto ministeriale 5 giugno 2014, G.U. June 20, 2014, n.141 (It). This is a national category and, therefore, independent of the European schemes of PDO, PGI, and TSG. Traditional food, in short, is a direct expression of both local and territorial identities inherent in the product’s unique qualities, which are greatly appreciated by consumers. It is also the product of artisanal and cultural knowledge handed down from generation to generation that today represents a specific quality only obtainable in limited food products (e.g., market niche products). On the legislation regulating traditional, agro-food products, see Lorenza Paoloni, *Traditional Food*, in EUROPEAN AND GLOBAL FOOD LAW 479 (Luigi Costato & Ferdinando Albinetti eds., 2016).

¹⁴ The cooperative method between different subjects and levels of governance emerges clearly from the Report from the Commission to the Council and the European Parliament on the experience gained from the application of the hygiene Regulations (EC) No 852/2004, (EC) No 853/2004, and (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004, according to which:

In order to protect food diversity and to serve consumers and the needs of small-scale producers, provisions were included in the legislation for flexibility. In accordance with the principle of subsidiarity, MS are best placed to find appropriate solutions based on local situations and on appropriate levels of hygiene in these businesses, without compromising the objective of food safety.

Report from the Commission to the Council and the European Parliament on the experience gained from the application of the hygiene Regulations (EC) No 852/2004, (EC) No 853/2004 and (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004, at 8, COM (2009) 403 final (July 28, 2009). On the ambiguities surrounding parameters used to limit the margin of appreciation left to Member States, and on the consequences in terms of legal uncertainty in risk regulation and of costs to food

Obviously, criticisms related to food traditions have not been limited solely to this specific sector. In fact, the harshest ones have related to consumer food perceptions from two perspectives: (1) the communication of tradition, together with other elements associated with the notion of quality, by businesses in their marketing activities, and (2) the reconstruction of tradition through typical legal tools used to promote quality agricultural products, i.e., the quality schemes regulated in EC Regulation 1151/2012. The related analysis is addressed in the following sections.

III. MARKETING QUALITY IN FOOD LABELING

As mentioned in the previous section, the globalization of food systems and European market integration has caused a growing concern among many consumers regarding the potential loss of the social, cultural, and symbolic values associated with food and have also fostered a more nebulous relationship between food and the context in which it is produced. In fact, the progressive increase in marketed foodstuffs is a direct consequence of the globalization of value chains, which renders the activity of choosing ever more difficult.¹⁵ Therefore, when it comes to both quality and marketing initiatives, consumer expectations have been gaining more and more importance, especially with regard to the simple presentation and advertising of food products. Indeed, consumers' expectations of special features and quality attributes are often addressed by businesses through messages that often end up proving to be ambiguous and confusing. This is particularly true with respect to certain expressions that stress such quality attributes as product authenticity, consistency with traditional recipes, selection of quality ingredients, minimal technological intervention, etc., which can prove to be especially critical when they are used as marketing tools by industrial producers who base their communication strategies on romanticizing the past and evoking a general nostalgia and desire to return to a simpler and slower world, as opposed to today's fast-paced, hi-tech contemporary lifestyle.

As a consequence, even on the labeling of prepacked products, terms such as fresh, natural, pure, traditional, artisanal, premium, original, authentic, homemade, etc., are included more and more frequently by producers. According to (EU) Regulation 1169/2011, these terms fall under voluntary food information, which (1) shall not be misleading, particularly: (a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production, and (2) shall be

business operators, see James Lawless, *The Complexity of Flexibility in EU Food Hygiene Regulation*, 5 EUR. FOOD & FEED L. REV. 220, 220–31 (2012).

¹⁵ See MICHAEL POLLAN, IN DEFENSE OF FOOD: AN EATER'S MANIFESTO 148 (2009).

accurate, clear and easy to understand for the consumer (Article 7.2). However, despite requests by consumer associations for clear definitions of these key terms, ambiguity remains because they have been defined only partially, especially by national standard agencies, while at the European level, a common definition is still nonexistent. Thus, many terms (and images) used in labeling (and communication in general) are potentially misleading to consumers, and the inconsistencies between national legislations regarding how they define these terms produce highly dangerous ambiguities for consumer protection as a result of two common occurrences at the supermarket: (1) a “mute market” in which consumers are not assisted in their choices, but are instead influenced solely by labeling and advertising; (2) consumers making purchasing decisions in a matter of seconds by quickly glancing at labels without reading them in their entirety and taking the time to rationally distinguish the wording (both mandatory and voluntary) and visuals on the labeling.

This phenomenon is manifested in verbal and visual associations via territorial product labeling, which many consumers consider to be meaningful in terms of food product safety and quality. And while this kind of particularity can be indicated on a voluntary basis, its mandatory imposition is at the center of a harsh debate that is calling attention to the principles in conflict. On the one hand, there is an expectation on the part of a considerable number of consumers to be aware of this element as a factor of transparency; on the other hand, the main principles of the European Single Market would be contradicted by such an imposition because it would support so-called consumer ethnocentrism, i.e., the tendency of consumers to buy products coming from their own country regardless of their specific quality attributes. This is the reason why, in this regard, European regulation is highly inconsistent. In fact, on some products, the indication of origin is imposed, and on others, it is not, while in some cases, the European legislature has imposed indicating the origin of the primary ingredient.¹⁶ The outcome has been highly unsatisfactory both to those who have called for the mandatory imposition of this requirement and those who have stressed the side effects of such an imposition in terms of trade barriers and an increase in a product’s final price. Within this contradictory legal framework, the

¹⁶ For this reason, some Member States have passed their own pieces of legislation in order to impose indicating the origin of the primary ingredient for foodstuffs not included in the EU regulation, often with conflictive consequences due to the principles of the European Single Market. Consumers’ demands have also been answered by producers, who have included on their labeling more and more references to the origin of product production and ingredients through multiple tools, such as simple indications, certifications, geographical trademarks, and ICT tools such as bar codes connected to programs and apps. See Lorenzo Bairati, *The Food Consumer’s Right to Information on Product Country of Origin: Trends and Outlook, Beyond EU Regulation 1169/2011*, 6 J. EUR. CONSUMER & MKT. L. 9, 9-16 (2017).

views of consumers (not only in Mediterranean countries) who are generally sensitive to this attribute have influenced a diffusion of visual and written territorial references. The subsequent bombardment of territorial evocations (even when not substantially founded) is absolutely critical in terms of consumer awareness as well as of quality promotion by those producers who convey their products' provenance in good faith.¹⁷

The same consumer perception is at the base of the widespread use of specific wording on the labeling that refers to human—rather than technological—intervention, the use of simple (and minimal) ingredients, and the consistency with recipes having historic and cultural recognition. The fact that, in food production and consumption, there is an obvious intertwining of cultural factors and economic interests is clearly demonstrated in all the cases in which there is a reference on the labeling to the food product's processing being more similar to a craft method than to an industrial one. In this regard, as previously noted, in the absence of European legal definitions, several national standard agencies have issued their own reports and guidelines to businesses in order to promote the best practices for their correct use in labeling.¹⁸ This is the case in the UK, imitated by other Member states, which has tried to submit criteria for a substantial definition of a great part of those evocative denominations.¹⁹

One of the most critical cases of the widespread use of a term that is not regulated at the European level is the word “natural,” whose proliferation depends on the strong consumer preference for an attribute that is perceived to be linked to health, freshness, and organic or locally produced foods.²⁰ Yet,

¹⁷ This is true not only because of the confusing number of logos but also because this is a typical example of catering to a false belief held by consumers, according to whom quality and safety depend directly on the origin of the product.

¹⁸ This issue is discussed within European institutions, particularly when a specific question is brought before the European Commission by a member of the European Parliament on common food labeling tricks, such as describing a product as “natural,” “traditional” or “artisanal” when in fact it is manufactured using industrial ingredients. The European Commission has responded that it has no intention of proposing further harmonization at the EU level regarding these terms because they are directly linked to national cultures and practices and therefore should be assessed locally through national case law or guidance set at national levels. Thus, the responsibility for enforcing these EU rules lies with the Member States, and any possible misleading character of a food label is first to be assessed on a case-by-case basis at the national level. See Parliamentary Question for Written Answer E-003659-18, *Food Label Tricks on the Market*, EUR. PARLIAMENT (July 2, 2018), https://www.europarl.europa.eu/doceo/document/E-8-2018-003659_EN.html.

¹⁹ See generally FOOD STANDARDS AGENCY, CRITERIA FOR THE USE OF TERMS FRESH, PURE, NATURAL ETC., IN FOOD LABELLING (2008), <https://www.food.gov.uk/sites/default/files/media/document/markcritguidance.pdf> (discussing labeling in the United Kingdom). The other well-known case is that of Ireland. See generally FOOD SAFETY AUTH. OF IR., GUIDANCE NOTE NO 29: THE USE OF FOOD MARKETING TERMS (May 14, 2015), available at https://www.fsai.ie/news_centre/press_releases/marketing_terms_14052015.html.

²⁰ Sergio Roman et al., *The Importance of Food Naturalness for Consumers: Results of a Systematic Review*, 67 TRENDS FOOD SCI. & TECH. 44, 45 (2017).

at the European level, a univocal definition of this word does not exist, despite several attempts at the national level to establish one. This is due in large part to the abstractness of the concept of naturalness, which is more and more attractive to consumers because it evokes an ideal that suggests the least possible manipulation, non-invasive methods (starting from cultivation), a minimum amount of (simple) ingredients, and so on. However, even if the word “natural” has spread throughout the packaging of many prepacked foods, its ambiguity remains, especially considering that the quantity of primary-ingredient manipulation used in the preparation of the great majority of all foodstuffs is undoubtedly high. More generally, scholars agree on the fact that the dichotomies natural/artificial and unprocessed/processed are also contradicted by the massive use of pesticides, additives, and other chemicals, which is typical for the production of ingredients commonly used by food industries.²¹ In this regard, the profusion of products bearing the word “natural,” but which are clearly artificial and obtained through typical industrial processes deemed undesirable by most consumers (e.g., with a high amount of preservatives, artificial colors, and flavors), demonstrates that, in this field, consumer awareness is a far-from-being-achieved goal.²²

Another case of undefined denomination at the European level concerns the term “artisanal,” which is primarily used to indicate many processed products. In this regard, the definitions used in the different Member States range from products that are linked to producers who are registered as

²¹ On the perception of consumers and their need to be reassured about the natural character of the food they purchase, see FERRARI, *supra* note 4, at 33; DEBORAH LUPTON, *FOOD, THE BODY AND THE SELF* 79 (1996); CASS R. SUNSTEIN, *LAWS OF FEAR: BEYOND THE PRECAUTIONARY PRINCIPLE* 20–21 (2005).

²² The EU has a definition of “natural food flavorings,” set out in Council Regulation 1334/2008 (EC). See Regulation 1334/2008, of the European Parliament and of the Council, 2008 O.J. (L 354) 34, 36. In Germany, the term has been mandatorily regulated since the 70s through its Food and Consumer Goods Act. See Gesetz zur Neuordnung und Bereinigung des Rechts im Verkehr mit Lebensmitteln, Tabakerzeugnissen, kosmetischen Mitteln und sonstigen Bedarfsgegenständen [Food and Consumer Goods Act], Aug. 15, 1974, BUNDESGESETZBLATT, Teil I [BGBl I] at 1945 (Ger.). For some examples of national definitions in addition to the already mentioned UK example, see DIRECTION GÉNÉRALE DE LA CONCURRENCE, DE LA CONSOMMATION ET DE LA RÉPRESSION DES FRAUDES, *Note d'information n 2009-136 (communicable au sens de la loi du 17 juillet 1978): Emploi des termes «naturel», «100 % nature» et de toute autre expression équivalente sur l'étiquetage des denrées alimentaires* [Directorate General for Competition, Consumption and Fraud Repression, Information Note n. 2009-136 (communicable within the meaning of the law of July 17, 1978): Use of the Terms “Natural”, “100% Natural” and any Other Equivalent Expression on the Labeling of Foodstuffs], MINISTÈRE DE L'ÉCONOMIE DES FINANCES ET DE LA RELANCE (Aug. 18, 2009), https://www.economie.gouv.fr/files/conseilnationalconsommation/docs/ni_terme_naturel.pdf, comprised of both consumer and business representatives. These models, as well as others, were analyzed from a comparative perspective in Andrea Maehara, *100% All Natural Ambiguity: A Comparative Approach to Food Labeling Requirements for the Term Natural by the Food and Drug Administration and the European Union*, 18 WASH. U. GLOB. STUD. L. REV. 263, 263–66 (2019); Heereluurt Heeres et al., *“Natural” Ingredients and Foods: A Practical Approach for Qualification*, 8 EUR. FOOD & FEED L. REV. 297, 297 (2013).

artisans (as in the French case),²³ to products that impose specified characteristics. This means that in some cases, such as in Belgium and Spain, for example, particular importance is given not only to small-scale production but also to specific product and process features, such as the artisanal process and special ingredients.²⁴ In other cases, the situation is even more ambiguous because of the existence of pieces of legislation that apply to specific artisanal products as well as inconsistent interpretations of artisanality by national agencies and courts. This is the case of Italy, where the use of this term has been the object of varied regulatory interventions as well as contradictory court orientations, as also demonstrated by recent cases.²⁵

IV. RECONSTRUCTING FOOD QUALITY THROUGH GEOGRAPHICAL INDICATIONS

A third issue that deserves an in-depth analysis relates to the functioning of European legal tools, which are used, par excellence, to communicate the most relevant value-adding attributes of food products, i.e., the so-called “quality schemes” for agricultural products and foodstuffs. These were

²³ See Loi 96-603 du 5 juillet 1996 relative au développement et à la promotion du commerce et de l'artisanat [Law 96-603 of July 5, 1996 Relating to the Development of Trade and Crafts], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZZETTE OF FRANCE], July 6, 1996, p. 10204; see also Décret 98-247 du 2 avril 1998 relatif à la qualification artisanale et au répertoire des métiers [Decree 98-247 of April 2, 1998 Relating to the Artisanal Qualification and The Directory of Trades], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZZETTE OF FRANCE], Apr. 3, 1998, p. 5172.

²⁴ The term has been regulated through a specific guideline in Belgium; specifically, see FPS ECONOMIE, *Guidelines sur l'utilisation de la terminologie "artisanal" et ses dérivés dans l'appellation des produits* (Oct. 5, 2017), <https://economie.fgov.be/sites/default/files/Files/Entreprises/guidelines-produits-artisanaux.pdf>. For a commentary on this solution, see Aude Mahy & Aleksandra Sanak, *Recent Developments in Belgium: Food Supplements, Use of the Term 'Artisanal' and Reference Doses for Allergens in Food*, 13 EUR. FOOD & FEED L. REV. 44, 44 (2018). In Spain, there have been many efforts for defining the term artisanal by some *Comunidades Autónomas*, while the national legislature recently passed Royal Decree 308/2019, which devoted an article to defining the features of artisanal bread. See Real Decreto 308/2019, de 26 de abril, por el que se aprueba la norma de calidad para el pan art. 4 (B.O.E. 2019, 113) (Spain).

²⁵ In fact, while the general rule is that the term artisanal refers to the facilities and organization of the producer and not to the features of the final product, Circolare 10 novembre 2003, n.68, G.U. Jan. 7, 2004, n.4 (It.), the recent specific definition of “*Birra Artigianale*” (according to Legge 28 luglio 2016, n.154, G.U. Aug. 10, 2016, n.186 (It.)) requires—apart from organizational requirements—process features, such as the non-use of pasteurization and microfiltration. A recent critical case brought to court was that of “artisanal” french fries, which were sanctioned by the *Autorità Garante per la Concorrenza e il Mercato* because they were industrially produced. This decision, confirmed in the first degree, see TAR Lazio, 10 novembre 2015, n. 12707, was reversed in the final degree, see Cons. Stato, sez. VI, 8 maggio 2019, n. 2979, because the judge determined that, independent from the organizational model of the business, the facilities that were used for the preparation of that specific product were substantially different from those conventionally used by large scale producers.

introduced at the European level in order to help identify and protect, as well as profit from, authentic production, ever endangered by the de-spatializing and homogenizing consequences of contemporary globalization. The specific aims of these legal tools, i.e., diversifying agricultural, fishery, and aquaculture production; assisting consumers in correctly identifying such products in the marketplace; and supporting agricultural and processing activities and the farming systems associated with high-quality products, thereby contributing to the achievement of rural development policy objectives, have been pursued primarily through Protected Designation of Origins (PDOs) and Protected Geographical Indications (PGIs), originally regulated by (EU) Regulation 2081/1992.

In many respects, these legal tools have been a great success in helping producers communicate the concept of quality, especially in the areas of territorial links, consistency of recipes of historic and cultural value, support of rural development, etc.²⁶ In fact, while clearly having a commercial purpose, Geographical Indications (GIs) also maintain a strong connection to their place of production, consumption, and cultural identity. Thus, the large number of PDOs and PGIs, their proliferation in many (but not all) European States, consumers' growing reliance on them, and the intense scholarly debate about them continue to demonstrate the importance of these intellectual property (IP) tools in food quality promotion.²⁷

As noted in the previous paragraph, GIs must be founded on a given set of criteria pertaining to production methods, practices, and traditions rooted in social and historic circumstances and not necessarily linked to the intrinsic characteristics and qualities of the finished product.²⁸ All of these standards are defined, registered, and codified through a two-stage registration process, which requires the intervention of different subjects, i.e., producers, Member States, and the European Commission. In fact, in order to file an application for registration of protected designation with their national authorities, a group of producers (defined in Article 3.2 of EU Regulation 1151/2012 as “any association, irrespective of its legal form, mainly composed of producers or processors working with the same product”) must submit, above

²⁶ This is not the case of Traditional Specialities Guaranteed (TSG), which has not had success (the total number of TSG applications filed since the inception of the scheme has been low, especially when compared to those for PDO and PGI, due to a lack of interest on the part of potential applicants). The reason is that in the TSG scheme, there is no link between product and territory, and as a consequence, a TSG registration could potentially cause an unlimited number of producers and larger competitors from more developed areas to enter the market. Andrea Tosato, *The Protection of Traditional Foods in the EU: Traditional Specialities Guaranteed*, 19 EUR. L.J. 545, 552 (2013).

²⁷ On the evidence of the price advantage offered by geographical indications, see, for example, MARSHA A. ECHOLS, *GEOGRAPHICAL INDICATIONS FOR FOOD PRODUCTS* 25 (2d ed. 2017).

²⁸ Tomer Brode, *Taking “Trade and Culture” Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. PA. J. INT'L ECON. L. 623, 648–49 (2005).

all, the specifications of the product, i.e., a technical description of the regulated production process, with which compliance is mandatory for producers who wish to use the Geographical Indication.²⁹ The part of the description listing the raw materials, the regulated method of production, and the main physical, chemical, microbiologic, or organoleptic features, which link the product's specific qualities, reputation, or other characteristics to its geographical origin, must be demonstrated (Article 7). To do this, a narrative providing historical evidence of the product's existence in the past, including its trade name, as well as a geographical link, is needed. After a reasonable period of time, within which any natural or legal person can lodge objections, the request is forwarded to the European Commission by the national authorities. After considering the application and verifying that the conditions laid down in the EU regulation have been fulfilled, the application is then published in the Official Journal of the European Union. According to Article 51, within three months from the date of publication, the authorities of a Member State, or of a third country, or a natural or legal person having a legitimate interest and established in a third country, may lodge a notice of opposition with the Commission. Should this happen, (EU) Regulation 1151/2012 provides a specific procedure which, after a consultation stage between the interested parties, can lead to a decision by the Commission.

Once a product is registered, it takes on a complex nature and source. It becomes a cultural product, generated by a community through an intergenerational evolution without any specific public recognition. However, in order to be protected by the law, the relative proposal needs to go through a complex bureaucratic procedure whose outcome is (in positive cases) the insertion into the official GI database as a European regulation. Scholarly literature on this issue has been broad and thorough in stressing the main criticisms of this legal regime. What especially needs to be tackled (from the consumers' perspective) can be classified into two main categories: on the one hand are the criticisms related to the confusing coexistence of some GIs; on the other hand are the criticisms related to the process of reconstructing gastronomic traditions, whose outcome can be inconsistent with the authentic models.

Regarding the criticisms related to the confusing coexistence of some GIs, according to EU Regulation 1151/2012, the evocation regime is very strict and precise, but the danger of confusion is far from being completely

²⁹ The information that must be indicated in the product specification is specified by the Regulation (Article 7). Regulation 1151/2012, of the European Parliament and the Council of the European Union of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, art. 7, 2012 O.J. (L 343) 1, 2 [hereinafter Reg. 1151/2012].

prevented.³⁰ Registration grants all producers who respect the conditions laid out in the product's specifications the right to bear the geographical indication name in addition to protecting it against any unfair use by third parties who attempt to exploit its reputation by not respecting its product specification.³¹ The EU Court of Justice, in continuous interaction with national courts, also recently considered territorial evocation on labeling.³² A problem arises, however, when several GIs, different with regard to certain features but similar in name, substantially confuse consumers, not only because of the products' similarities but also because of consumers' scarce awareness of the EU regulation. Indeed, general ignorance among consumers regarding the legal differences between PDOs and PGIs can lead to confusion, especially considering that, in some cases, raw materials of PGIs can come from outside the area of production, e.g., 70% of the meat used for *Bresaola della Valtellina PGI* comes from Brazil.³³ At the same time, several cases of almost identical name coexistence, such as *Aceto Balsamico di Modena PGI* and *Aceto Balsamico Tradizionale di Modena PDO* and that of several types of *Emmenthal PDOs* and of *Pecorino PDOs*, are difficult for the average consumer to understand. Moreover, the use of both GIs and trademarks, even when legally permitted, can be confusing, as several seminal cases brought before the European Court of Justice have demonstrated.³⁴

Regarding the criticisms related to the process of reconstructing gastronomic traditions in terms of consumer awareness, various issues emerge that depend on the highly strategic approach the different subjects have in the registration process. In fact, the problem of competition and strategy between both the Member States and producers results in a heterogeneous and contradictory development in the quantity of GIs. In some

³⁰ Court of Justice of the European Union Press Release No 55/19, Judgment of the Court of Justice in Case C-614/17 *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (May 2, 2019), <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-05/cp190055en.pdf>.

³¹ They are also protected against any misuse, imitation, or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style," "type," "method," "as produced in," "imitation" or similar.

³² EU case law has been constant in limiting attempts to evoke GIs through very intensive interaction between the EU Court of Justice and National Courts. See, for example, Case C-614/17 *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego v. Industrial Quesera Cuquerella SL*, ECLI:EU:C:2019:11, ¶ 17 (May 2, 2019), on the evocation of a registered GI through the use of figurative signs.

³³ This is completely legal since PGIs can be obtained with raw materials coming from outside the area of production.

³⁴ I am especially referring to the *Budweiser* and the *Bayerisches Bier and Bavaria* cases. On these specific issues, see generally Christopher Heath, *The Budweiser Cases: Geographical Indications v Trade Marks*, in *DG RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY AND GEOGRAPHICAL INDICATIONS* 396 (Dev S. Gangjee ed., 2016).

cases, there is a conflict between the Member States regarding the link (which needs to be demonstrated in order to register a PDO) between the quality or characteristics of the product and a specified geographical environment.³⁵ An example of this is the very well-known case of Feta, which was registered through a regulation that was later annulled by the European Court of Justice and subsequently re-registered.³⁶ In fact, its registration (by the Hellenic Republic) was disputed by Denmark, Germany, and France because, in those States, there had been considerable production and consumption of a cheese with the same name for decades, despite differences in their production processes.³⁷ As a consequence, the name Feta was deemed a generic foodstuff name, having lost its exclusive link with its original community. In 2005, this conflict was finally resolved in favor of Greece by the European Court of Justice, which acknowledged that generally speaking, the cheese labeled “Feta” contained a reference to Greek territory, traditions, or culture, even when produced in Member States other than Greece, and concluded that the name “Feta” added distinctiveness to the product, underscoring the history in its original territory and context as a decisive criterion. This solution was highly debatable for several technical and legal reasons linked to the various types of milk that can be used, the rather arbitrarily defined geographical area, the minimal consideration of feta production in many other Member

³⁵ This is especially true because, according to Article 5, “designation of origin” is used to identify a product:

- (a) originating in a specific place, region or, in exceptional cases, a country;
- (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and
- (c) the production steps of which all take place in the defined geographical area.

Reg. 1151/2012, *supra* note 29, at 8. In some cases, several producers complained because the territory identified in the specification was more extensive than the original one (this is the case of Bitto cheese), or also because it appeared somehow conventional and arbitrary, because similar products could be found outside that area.

³⁶ See generally Joined Cases C-289/96, C-293/96, C-299/96, Kingdom of Denmark, Federal Republic of Germany and French Republic v Commission of the European Communities, ECLI:EU:C:1999:404 (Mar. 16, 1999).

³⁷ According to this position, Feta could not have been registered as a PDO because, despite its origin, it had become generic, given that the basic regulation stipulated that a series of issues must be taken into account, such as the current situation in the member state where the name originated, the situation in the areas where it is consumed, the situation in other Member States and any applicable national or EC laws. *Id.* ¶¶ 5–6. In this specific case, Denmark, Germany, and France stressed that the name comes from the Italian word meaning “slice,” and is used not only in Greece but also in other countries in the Balkans and the Middle East to refer to a cheese preserved in brine. *Id.* ¶ 3. On the other hand, Feta is a non-geographical term, and the sub-region indicated by the Greek government in its application for registration was artificially created and not based on tradition or on generally accepted views. *Id.* ¶ 4. In fact, Feta does not essentially or exclusively owe its quality and characteristics to a geographical environment because the geographical area indicated for the purpose of registration, in this case, mainland Greece and the department of Lesbos, incorporated almost the entire country, yet no objective reason was put forward to explain why the regions that had been excluded on the application were any different. See *id.* ¶¶ 6–7.

States, and so on. In fact, Feta is an example of a place-related food name that, strictly speaking, is not a GI since there is no relevant geographical place called Feta, which simply means slice or slab in Greek. Under EU law, however, Feta is considered a “traditional non-geographical name” worthy of protection similar to GIs and therefore safeguarded as a PDO.³⁸

However, the main issue related to PDOs and PGIs in Europe relates to a more general problem of the so-called reinvention of tradition, which, in the food sector, signifies that the product specifications contain technical rules that are in clear conflict with the traditional recipe.³⁹ This means that the previously mentioned interaction among producers (and also Member States) for the registration of each GI can lead to an artificial reconstruction of recipes while maintaining the traditional name. In this regard, all the cited literature stresses the idea that trying to register authentic methods and historical practices through product specifications is impossible, primarily because they are heterogeneous and dynamic. In these terms, specifications appear to be an attempt to reconstruct complex and evolving practices due to the need to answer to market demands and stereotypical modern collective representations. Moreover, due to the latest developments in food systems geared towards higher safety and hygiene standards, a shift to an industrial (instead of small-scale) production model as well as to new demands of globalized consumption,⁴⁰ traditional recipes cannot be promoted through specifications. A typical example of this phenomenon consists of product specifications that permit the use of pasteurized milk in the production of cheeses that were originally made with raw milk.⁴¹ This is the case of Stilton

³⁸ See BERNARD O’CONNOR, *THE LAW OF GEOGRAPHICAL INDICATIONS*, 130-31 n.33 (2004).

³⁹ Eric Hobsbawm proposed the concept of the “invention of traditions” by identifying some traditions that were thought to be ancient in their origins, but in fact, had been invented quite recently. In his opinion, the invention of tradition is a common phenomenon consisting of a set of practices, normally governed by overtly or tacitly accepted rules and of a ritualistic or symbolic nature, which seek to inculcate certain values and norms of behavior through repetition and thus automatically imply continuity with the past. See generally Eric Hobsbawm, *Introduction: Inventing Traditions*, in *THE INVENTION OF TRADITION 1* (Eric Hobsbawm & Terence Ranger eds., 2003).

⁴⁰ In this respect, scholars agree that the shift to an industrial model has irremediably broken the previous food/territory links resulting in a loss of typical foods as produced by small-scale, artisanal, and territorially differentiated agriculture. See ANGELA TREGGAR, *From Stilton to Vimto: Using Food History to Re-think Typical Products in Rural Development*, in *SOCIOLOGIA RURALIS* 91, 96 (2003). This is why specification places more emphasis on the territory than on the production method, even if neither the territorial distinctiveness nor the production practices are subject to “any serious scrutiny.” See *id.* In fact, most products used to be consumed in the same area where they were produced, but when consumption of these products spread to metropolitan areas, and especially when the related trade was globalized through the supermarket sales model, the evolution of recipes became necessary. See *id.* at 95–98. This has been clearly demonstrated in the specific sector of European cheeses by such well-known cases as Camembert de Normandie PDO and Roquefort PDO.

⁴¹ See MARIATERESA BARLETTA ET AL., *EUROPEAN DESIGNATIONS BETWEEN IDENTITY VALUES AND MARKET: A SURVEY ON PRODUCTION SPECIFICATIONS OF DAIRY CHAINS 5* (Raoul Resta & Charles Barstow eds. trans., 2019), <https://n4v5s9s7.stackpathcdn.com/sloueuropa/wp->

cheese, which is internationally renowned for its blue-veined appearance, an acquired taste, and pungent aroma and is one of the most well-known English cheeses.⁴² For centuries this cheese was produced in many farms surrounding the town of Stilton using raw milk and animal rennet. In the twenty-first century, to respond to an increase in demand, most of the large dairies that produced Stilton cheese started manufacturing a factory-designed cheese, using pasteurized milk and introducing controlled additives. A *Listeria* outbreak in 1989 (mistakenly thought to have originated in a batch of Stilton) then persuaded Stilton producers to make the use of pasteurized milk mandatory.⁴³ In 1996, Stilton received PDO status, which set in stone the raw-milk ban on Stilton. When it was finally demonstrated that raw-milk Stilton was not the cause of the *Listeria* outbreak, some producers opted to return to the traditional recipe (i.e., unpasteurized milk and animal rennet), but they could no longer call it Stilton because the product specification of the Stilton PDO imposed the use of pasteurized milk, and the six major dairies, which together produce over a million Stilton cheeses a year, refused to amend it. Subsequently, an amendment proposal to change the product specifications was filed with the UK Department for Environment, Food & Rural Affairs in October 2014, but it did not reach its goal. As a consequence, the producers whose raw-milk cheese could not be officially called Stilton chose the name Stichelton, which was the recorded Old English name of Stilton village in the 11th century.

This resolution is highly controversial, particularly in terms of consumer awareness. Indeed, the coexistence of both kinds of cheese can be rather confusing to consumers who could tend to consider Stichelton a misbranding of the Stilton PDO and the latter as more respectful of the traditional recipe. This example demonstrates that probably the most critical point in quality-schemes regulation is how a group of producers that registers a name can use it in a private, exclusive way by imposing certain practices while also

content/uploads/ENG_DOP.pdf. The consequence can be that certain modifications are introduced to the product specifications, such as the possibility to freeze the product, even if this is in patent conflict with the traditional way of producing the product (e.g., the *Piadina Romagnola* PGI). In other cases, the reinvention does not involve only ingredients, which are allowed even if they should be excluded or vice versa. Another problem arises where the agri-food being protected is a non-processed product and is different from that which the territory of production is noted for (this is the case of the *Pomodoro Pachino* PGI). In some cases, the problem is that there is an ambiguous relationship between the protected foodstuff and a vegetal variety (this is the case of the *Pomodoro San Marzano dell'Agro-Sarnese Nocerino* PDO and the variety *Pomodoro San Marzano*).

⁴² Stilton derives its name from where the cheese was originally sold, not produced. LAURA MASON & CATHERINE BROWN, *TRADITIONAL FOODS OF BRITAIN: AN INVENTORY* 135 (1999).

⁴³ The details are described by Trevor Hickman. See TREVOR HICKMAN, *HISTORIC CHEESES: LEICESTERSHIRE, STILTON & STICHELTON* 142 (2009).

excluding producers on a strategic basis.⁴⁴ More generally, the major shortcoming in this legal regime is that it tries to balance conflicting values, such as methods and practices of traditional small-scale production, with the current needs of a competitive market in an imperfect way.⁴⁵ Therefore, while food traditions are, by definition, in an ongoing evolution, GIs instead promote adherence to static practices linked only to a codified territory and product specifications without considering the consumers' needs as a specific goal to pursue.

V. CONCLUDING REMARKS (WITH REGARD TO THE ITALIAN POSITION ON THE ITALIAN SOUNDING PHENOMENON AROUND THE WORLD)

The first conclusion of this essay relates to the ambiguous boundaries of the notion of food quality in which the territorial factor appears highly variable and disputable, thus resulting in some rather undesirable consequences that affect the overall credibility of the system. For example, it emerges quite clearly that, despite the doubtless success of PDOs and PGIs in the European Union, the communication of food quality is full of inconsistencies, especially because consumers' expectations are not properly considered. In fact, the GI registration procedure focuses on products and producers, but it does not involve consumer associations, even if its protection is one of the apparent goals of quality-scheme regulations. Yet even if their intervention in the registration procedure is not excluded per se, according to EU Regulation 1151/2012, Article 51, it is still not necessary, like that of every other subject who could potentially have an interest in the registration of the GI. At the same time, quality attributes are communicated on labeling through mechanisms that are not fully regulated, so the actual meaning of many expressions such as *artisanal*, *natural*, *original*, *traditional*, and so on remain vague and variable.

This element should be borne in mind when considering the position of European countries, especially Italy, in relation to the international protection of food quality and to the "sounding" phenomenon around the world.⁴⁶ As it

⁴⁴ Dev S. Gangjee, *Proving Provenance? Geographical Indications Certification and Its Ambiguities*, 98 WORLD DEV. 12, 16 (2017).

⁴⁵ In this regard, it is useful to consider the massive use of PDO and PGI ingredients by large-scale food businesses to reassure consumers about their attention to territory, therefore, both bettering their image and addressing consumer expectations. This is the case of McDonald's using PDO and PGI ingredients in order to change its traditional image.

⁴⁶ The main proponent of this cultural rationale is the European Union, which has also broadened the cultural argument to apply to developing countries, claiming that GIs "are key to EU and developing countries' cultural heritage, traditional methods of production, and natural resources." European

is well known, the relationship between international trade law and cultural protection is one of the issues that should be debated within the World Trade Organization, and from the Italian perspective, the Agreement on Trade Related Aspects of Intellectual Property Rights has not sufficiently protected GIs at the global level. The problem relates especially to the use of names such as Parmesan, which are protected as GIs within Europe but are considered generic outside Europe. In this regard, and in general, as it relates to GIs, many non-European countries criticize European culinary dogmatism for betraying protectionism by using heritage rhetoric in order to oppose global competition.

Thus far, we have tackled several examples of the deep conflict between the sacralization of static food tradition (typical of European GIs) and the inventiveness and adaptability typical of practically every recipe and food system. Therefore, it appears that the positions against GIs of those countries historically subject to continuous cultural transformations and cross-cultural influences, due to various factors ranging from migration to social dynamics, are absolutely grounded. Indeed, I concur that the European claim of GIs' essentiality to cultural heritage, traditional methods of production, and natural resources is highly questionable, or at least not always true. Consequently, it is especially hard to consider them as a justified international trade restriction.⁴⁷

At the same time, the weakness of the position against GIs is not related to the scant importance given to food quality but rather to trivializing consumer food culture and awareness. In this regard, much progress can be made in countries, for example, the United States, where the evocation (via imagery or wording) of other countries on labeling (primarily Italy) is very common. In fact, the negative consequences of the Italian sounding phenomenon are not limited to the reduction of market portions of globally known products. Rather, they have to do with a more general phenomenon of evoking Italy on products that have no substantial link with Italy. This proves to be highly detrimental to consumer culture as it communicates the idea that the link between foodstuffs and territory is nothing but a manipulative marketing tool. And as such, it cannot merely be interpreted as misleading or not misleading because many consumers are perfectly aware that the evocations on labeling are not necessarily accurate in terms of the real origin or provenance of the product. Moreover, this kind of marketing underestimates the growing consumer expectation for products that are not only safe but also authentic in terms of features and territorial origin. In this regard, it is necessary to distinguish between the various forms of evocation.

Commission Memorandum MEMO/03/160, Why Do Geographical Indications Matter to Us? (July 30, 2003).

⁴⁷ In this regard, I share the position presented in Broude, *supra* note 28, at 632.

To start with, those which are completely unfounded and exploit the reputation of territorial food systems should be discouraged as parasitic activities, while those which can demonstrate a minimum link to a territory should be allowed and even incentivized.

It is clear that this development would require a change of perspective and a mutual assumption of responsibility from institutions of different levels, and it is highly improbable that this will happen in the near future. Therefore, if institutions are not keen on making it happen, that gap will once again need to be filled by private parties (i.e., businesses and certifiers) for the very reason that consumers' expectations are evolving in terms of sensitivity towards the overall quality of products. Consequently, businesses will be fundamental in replacing legislatures in the food quality communication sector, either through nonmandatory labeling disclosures or through soft law (i.e., private standards, guidelines, and certification tools). In this regard, private regulators have demonstrated to be much more efficient and effective than their public counterparts, and the consequences of their initiatives can be just as effective in terms of consumer awareness. This competition has already begun, and its outcomes will require a case-by-case analysis.