Provenance of Australian food products: is there a place for Geographical Indications?

By William van Caenegem, Peter Drahos and Jen Cleary
Provenance of Australian food products: is there a place for Geographical Indications?

by William van Caenegem, Peter Drahos and Jen Cleary

July 2015
RIRDC Publication No 15/060
RIRDC Project No PRJ-009251
Provenance of Australian food products: is there a place for Geographical Indications?
Publication No. 15/060
Project No. PRJ-009251

The information contained in this publication is intended for general use to assist public knowledge and discussion and to help improve the development of sustainable regions. You must not rely on any information contained in this publication without taking specialist advice relevant to your particular circumstances.

While reasonable care has been taken in preparing this publication to ensure that information is true and correct, the Commonwealth of Australia gives no assurance as to the accuracy of any information in this publication.

The Commonwealth of Australia, the Rural Industries Research and Development Corporation (RIRDC), the authors or contributors expressly disclaim, to the maximum extent permitted by law, all responsibility and liability to any person, arising directly or indirectly from any act or omission, or for any consequences of any such act or omission, made in reliance on the contents of this publication, whether or not caused by any negligence on the part of the Commonwealth of Australia, RIRDC, the authors or contributors.

The Commonwealth of Australia does not necessarily endorse the views in this publication.

This publication is copyright. Apart from any use as permitted under the Copyright Act 1968, all other rights are reserved. However, wide dissemination is encouraged. Requests and inquiries concerning reproduction and rights should be addressed to RIRDC Communications on phone 02 6271 4100.

Researcher Contact Details
Name: Professor William van Caenegem
Address: 14 University Drive Robina QLD 4226
Phone: (07) 559 52275
Fax: (07) 5595 1011
Email: wvancaen@bond.edu.au

In submitting this report, the researcher has agreed to RIRDC publishing this material in its edited form.

RIRDC Contact Details
Rural Industries Research and Development Corporation
Level 2, 15 National Circuit
BARTON ACT 2600

PO Box 4776
KINGSTON ACT 2604

Phone: 02 6271 4100
Fax: 02 6271 4199
Email: rirdc@rirdc.gov.au.
Web: http://www.rirdc.gov.au

Electronically published by RIRDC in June 2015
Print-on-demand by Union Offset Printing, Canberra at www.rirdc.gov.au
or phone 1300 634 313
Foreword

This report examines the potential advantages of adoption of an Australian regime to allow the registration of Geographical Indications of Origin (GIs) for food products other than wine. The report is important as it examines the potential of such a system to enhance regional investment and jobs.

The topic of GIs in Australia has to date been approached through the prism of the potential implications for international negotiations concerning increased protection for GIs, which has been seen as predominantly advantaging established European GIs. There are legitimate concerns in relation to the international trading arrangements around GIs, not the least being the potential for GIs to be used as a means of protection and preventing market access.

Australia’s GI registration system for wines substantially came about through negotiations with the EU which offered market access advantages for Australian wines in return for domestic protection of European terms.

This report seeks to canvass the potential advantages of a food GI register from the perspective of regional economic development. The study focuses on the question whether higher quality local production of other foods might be encouraged by this particular form of provenance brand protection. Other legal remedies against free riding on provenance brands already exist in Australia, but they have disadvantages of complexity and high thresholds of proof. GIs are not privately owned like standard trademarks, are more permanent in nature, and potentially offer an additional and effective weapon in the armour of local producers who want to invest in and promote the unique character of their iconic local product. This can help them in the domestic market but may also present some advantages in agricultural export markets where imitation of well-known brands is a problem.

The potential beneficiaries of a food GI registration option are local producers who can collectively manage their provenance brand and share their investment in high-quality products that consumers come to recognise as uniquely emanating from their particular region. It offers them an additional chance to diversify and distinguish their product and become price-makers rather than price-takers producing a standard commodity product. It may add to their bargaining power up the value chain with distributors and retailers.

Capturing more of the value of high-quality products that reflect local conditions, including clean and green source environments, is potentially attractive for producers in many agrifood sectors, from vegetables to fruit, beef to pork, nuts to seafood and cocoa beans to vanilla pods. The report canvasses actors across the diverse business models of many of our rural industries in locations and food industries around the country. The views and information derived from many stakeholder interviews richly inform the conclusions.

The report finds that GI registration for food could should be considered as an additional tool for the maximisation of brand value in Australia. With a regulatory structure properly adapted to Australian conditions and legal traditions, the possibility exists for a low-cost, grassroots driven system that is grafted efficiently onto already existing QA and certification models of regulation and inspection.

The project has been funded by RIRDC and enabled the research team to thoroughly investigate the research question. The subsequent report makes a valuable contribution to the question of whether Australia should reconsider its current position on maintaining the status quo with regard to GI registration in this country.

This report is an addition to RIRDC’s diverse range of over 2000 research publications and it forms part of our National Rural Issues R&D program, which aims to inform and improve policy debate by government and industry on national and global issues relevant to agricultural and rural policy in
Australia by targeting current and emerging rural issues, and produce quality work that will inform policy in the long term.

Most of RIRDC’s publications are available for viewing, free downloading or purchasing online at www.rirdc.gov.au. Purchases can also be made by phoning 1300 634 313.

Craig Burns
Managing Director
Rural Industries Research and Development Corporation
Acknowledgements

Our thanks go to Ella Zauner (LLB) and Paris Gray (LLB Hons), Research Assistants at the Faculty of Law, Bond University, whose tireless work contributed greatly to the completion of our fieldwork and the compilation of this Report. Further thanks go to Liz Gordon of the Bond University Research Office for making all our practical arrangements, and to Tonya Roberts for her administrative and editing work. We also thank the 172 interviewees who gave generously of their time and insights. Many interviewees took time out of very busy work schedules as primary producers to afford us enough time to explore the subject matter of this Report in-depth with them. They contributed many significant insights to our research work and Report. We also wish to thank the Rural Industries Research and Development Corporation (RIRDC) for its support, both financial and in substance, to the undertaking of this important research, and Simon Winter in particular for his constructive engagement with the project. We also thank the four anonymous reviewers of this report who gave up their time to comment on it.
About the Authors

Jen Cleary is a human geographer with research interests in regional development and agricultural value chain analysis. Jen is based within the School of Commerce at the University of South Australia, and holds an honorary position as Adjunct Associate Professor at the Institute for Governance and Policy Analysis at the University of Canberra. Jen also holds a number of leadership positions in national and international organisations concerned with rural, regional and remote development and is recognised for her expertise, experience and extensive networks in this field. She co-chairs the International Rural Network and is Deputy Chair of Regional Development South Australia. Jen has served as Chair of Regional Development Australia, Far North (RDAFN) from 2009-2014 and has recently been reappointed by the Deputy Prime Minister for a further three-year period. In 2013, Jen joined the National Steering Committee of SEGRA (Sustainable Economic Growth for Regional Australia), a national, independent body that fosters collaboration and formulates policy advice across rural, regional and remote Australia.

Peter Drahos is a professor at the Regulatory Institutions Network in the Australian National University and holds a Chair in Intellectual Property at Queen Mary, University of London. He has held a number of visiting professorial positions, including Senior Fernand Braudel Fellow in the Department of Politics at the European University Institute, Florence. He has written books and articles on a variety of topics including regulatory globalisation, trade and development, the knowledge economy, the protection of indigenous knowledge, intellectual property and knowledge governance.

William van Caenegem is a professor of law at the Faculty of Law, Bond University. He specialises in Intellectual Property law and comparative law. Some years ago he wrote some of the first pieces in Australia concerning legal protection of Geographical Indications of Origin, in the context of the WTO/TRIPS negotiations on the subject. He is an Honorary Visiting Professor of Law at the School of Business and Law, University of Gothenburg, Sweden. He has published on many areas of intellectual property law, including IP and innovation and also IP and the protection of commercial reputation. The second edition of his textbook on Australian Intellectual Property law was published by LexisNexis in 2014.
# Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
</tr>
<tr>
<td>ACL</td>
<td><em>Australian Consumer Law (Sch 2 of the Consumer and Competition Act 2010 (Cth))</em></td>
</tr>
<tr>
<td>AGWA</td>
<td>Australian Grape and Wine Authority</td>
</tr>
<tr>
<td>AGWA Act</td>
<td><em>Australian Grape and Wine Authority Act 2013 (Cth)</em></td>
</tr>
<tr>
<td>AUSFTA</td>
<td>Australia – United States Free Trade Agreement</td>
</tr>
<tr>
<td>CETA</td>
<td>Comprehensive Trade and Economic Agreement between Canada and the EU</td>
</tr>
<tr>
<td>ChAFTA</td>
<td>China – Australia Free Trade Agreement</td>
</tr>
<tr>
<td>DAFF</td>
<td>Department of Agriculture, Fisheries and Forestry (Cth)</td>
</tr>
<tr>
<td>FSANZ</td>
<td>Food Standards Australia New Zealand</td>
</tr>
<tr>
<td>GIC</td>
<td>Geographical Indications Committee</td>
</tr>
<tr>
<td>GBWT</td>
<td>Granite Belt Wine and Tourism</td>
</tr>
<tr>
<td>JBS</td>
<td>JB Swift – former owners of the King Island abattoir</td>
</tr>
<tr>
<td>QDAAFF</td>
<td>Queensland Department of Agriculture, Fisheries and Forestry</td>
</tr>
<tr>
<td>RDAs</td>
<td>Regional Development Australia Committees</td>
</tr>
<tr>
<td>SPS</td>
<td><em>WTO Agreement on the Application of Sanitary and Phytosanitary Measures</em></td>
</tr>
<tr>
<td>TBT</td>
<td><em>WTO Agreement on Technical Barriers to Trade</em></td>
</tr>
<tr>
<td>TMA</td>
<td><em>Trade Marks Act 1995 (Cth)</em></td>
</tr>
<tr>
<td>TNC</td>
<td>Trans National Corporation</td>
</tr>
<tr>
<td>TPP</td>
<td>Trans-Pacific Partnership Agreement</td>
</tr>
<tr>
<td>TRIPS</td>
<td><em>WTO Agreement on Trade-Related Aspects of Intellectual Property Rights</em></td>
</tr>
</tbody>
</table>
# Contents

Foreword ........................................................................................................................................ iii
Acknowledgements ................................................................................................................... v
About the Authors ................................................................................................................... vi
Abbreviations ........................................................................................................................ vii
Contents ....................................................................................................................................... viii

Executive Summary ................................................................................................................... x

1. **Introduction** ................................................................................................................... 1

2. **Methodology** .................................................................................................................. 3
   2.1 Research Design ............................................................................................................. 3
   2.2 Research Methods .......................................................................................................... 4
   2.3 Interview Sampling and Data Analysis ........................................................................... 4
   2.4 The Research Environment .......................................................................................... 6
   2.5 Limitations of the Study .............................................................................................. 8

3. **Protecting Placenames in Australia: What’s in the Toolbox?** ....................................... 9
   3.1 Standard Trade Marks ................................................................................................. 10
   3.2 Certification Trade Marks ............................................................................................ 12
   3.3 Passing Off and Section 18 of the Australian Consumer Law ...................................... 13
   3.4 Food Standard Regulations ........................................................................................ 15

4. **Case Study 1: The Australian Experience With GIs – the Wine and Grape Industry** ...... 17
   4.1 A Little History ............................................................................................................. 17
   4.2 The GI System for Wine ............................................................................................ 18
   4.3 Procedural Complexity, Trade Marks and Public Assets .............................................. 20
   4.4 Enforcement ............................................................................................................... 20
   4.5 Costs .......................................................................................................................... 21
   4.6 Has the Wine GI Game Been Worth the Candle? .......................................................... 22
   4.7 The Grapes of Globalisation ..................................................................................... 24
   4.8 Reciprocal Spillovers ................................................................................................. 24
   4.9 Communities of Shared Commercial Fate: Investing in Quality .................................. 26
   4.10 Lessons from Wine GIs ............................................................................................ 27

5. **Case Study 2: The King Island Story – Have the Cows Bolted?** .................................... 28
   5.1 King Island Agriculture ............................................................................................ 28
   5.2 The Beef Story ........................................................................................................... 28
   5.3 The Dairy Story .......................................................................................................... 30
   5.4 Discussion .................................................................................................................... 31
   5.5 A Possible Future Scenario for King Island .............................................................. 32

6. **Case Study 3: You Can’t Just Call It Smelly White-Mould Cheese** ............................... 34
   6.1 The Regulatory Environment ..................................................................................... 34
   6.2 Common Use Names .................................................................................................. 35
   6.3 Could Dairy GIs Add Value to Regional Economies? ............................................... 36

7. **GIs and Food – Discussion and Findings** ....................................................................... 39
   7.1 The Importance of Brands ......................................................................................... 39
   7.2 Emphasis on Production Rather Than Marketing ..................................................... 40
   7.3 Capturing Value at the Farm Gate: The GI Option ..................................................... 41
   7.4 Avoiding Complacency ............................................................................................. 42
   7.5 Perceptions of Branding Rules: Confusion Rules ...................................................... 43
   7.6 Certification Marks .................................................................................................... 45
Executive Summary

What the report is about

In 1993 Australia passed legislation creating a system of registration for geographical indications (GIs) for wine, but not for non-wine food products. A GI (for example, Barossa Valley) indicates that a good possesses a special characteristic of some kind by virtue of its origin in a defined place. The policy question of whether Australia should introduce a GI registration system for non-wine food products has usually been approached through the lens of Australia’s agenda in trade negotiations (such as those in the World Trade Organization), especially the belief that most of the benefit of any globally increased protection for GIs would accrue to a small number of European countries.

While recognising that the international trade dimension is important to assessing the costs and benefits of GIs, in this Report we approach the topic not from a trade negotiations perspective, but from a regional development perspective. The use of GIs is generally justified on the basis that they offer rural regions development benefits in terms of greater investment in local value-adding, better incomes for farmers and greater employment opportunities for future generations. Our aim is to assess whether a food GI registration regime could be a useful tool to support rural and regional development in Australia.

Who is the report targeted at?

The report is aimed at a wide readership that includes policymakers in the agricultural, food and regional development sectors, peak farming bodies and other business organisations, brand committees that have been set up to market regions, food and tourism groups, regional development agencies, as well as agricultural producers, processors, distributors and retailers in the food sector.

Background

Regional economies dependent upon agriculture have experienced unprecedented change in Australia over the past 100 years. Increasing production efficiencies, integrated supply chains and increasing commoditisation have seen the decline of agriculture as a major driver of national growth and a decline in regionally based agricultural jobs.

To sustain themselves, regional communities increasingly need to either diversify or intensify their economies – often requiring external investment which brings with it the risks associated with the loss of control of local assets and infrastructure. Regional food producers find themselves in a world where they are much more affected by private regulatory initiatives in which retail actors in the supply chain set standards and create codes of practice around food safety, quality, animal welfare, environmental management, labour standards and so on that result in audit and certification obligations. Compliance with these and other regulatory standards has led to safe products that accord with the standards imposed. Some of these products having distinctive attributes, although this may not always be communicated to consumers.

Australia’s regions have the potential to turn some of these products into ‘iconic’ local products. Currently the potential value of such products for regional producers may not be fully realised because of a lack of marketing strategies or because other actors in the value chain are capturing this value through branding strategies underpinned by trade mark protection.

At present in Australia there are a number of ways in which a regional or local name can be protected, and the potential value associated with that placename extracted. These include:
• registration as a certification mark;
• registration of a placename as an ordinary or standard trade mark; and
• reliance on consumer deception and passing off laws.

A GI scheme deserves consideration as a useful additional branding/marketing option since it has distinctive legal qualities. GIs are public law instruments and not private property rights. Individual producers cannot own GIs. In essence they remain embedded in precisely defined regions. They have a great degree of permanency, being available for successive generations of producers in regions as public goods. As potential regional assets they can ground cost-sharing strategies and help producers achieve scale in marketing. They benefit from a stronger legal protection regime that does not require proof of consumer deception or misrepresentation and has few derogations or exceptions.

Method

As well as undertaking a comprehensive study of the relevant literature, we undertook a combination of desktop research and 172 semi-structured interviews across a broad geographic swathe of Australia’s agricultural landscape and a diversity of food production value chains. Interviews were also conducted with regional development agencies; state and federal government agencies; regulatory bodies and industry peak bodies and groups to provide both context and a more nuanced understanding of the operating environments of regional food and agricultural businesses.

Our sampling strategies were of two basic kinds. We chose crucially important cases that were information rich and from which one might be able to make generalisations. The wine case study was an obvious case to choose because the wine industry in Australia has direct experience of a GI system. Other important cases included regions associated with the production of premium goods that might potentially have iconic status (see the King Island case study). Our second sampling strategy was to maximise the variety of industries and regions for investigation. Australia’s large land mass supports a wide range of climatic and geographical zones. The resulting diversity of its agricultural production means that there is a potentially large class of industries to which the GI issue might or might not be relevant. This second sampling strategy allowed us to evaluate the limits of any generalisations produced by the first sampling strategy, and evaluate many different business models and supply chains. A detailed discussion of our methods is to be found in Section 2.

Findings

Our wine GI case study indicated that some wine GIs have generated two effects that may bring regional benefits. One is what we call a reciprocal spillover effect and the other is an investment-in-quality effect. We noted the reciprocal spillover effect in the Granite Belt region in Queensland, where the registration of the ‘Granite Belt’ GI had clearly delineated a wine-producing region that was able to be separately identified to wine production in greater Queensland. Winemakers in the region were able to build reputation on the ‘Granite Belt’ name and as this occurred, other businesses in the region, particularly tourism and food businesses, benefitted and in turn generated benefits for the wineries. The GI was identified by interviewees as critical to developing a group identity.

In terms of the investment-in-quality effect, we observed that the certainty of the GI boundary appears to have some role in attracting investment in quality. Once a GI precisely defines an area with a reputation for the production of quality wines it also defines who is a member of the resultant community of shared commercial interest and who is not. Once those in a GI region commit to quality they increase their chances of attracting likeminded investors. The fact that nobody can use the GI in description of goods that do not meet the origin criteria provides a level of protection against free riding, although its extent may depend on the design of the regulatory system (in particular whether in addition to rules of origin, other production standards are mandated). Because GIs are not privately owned and are permanent they also encourage local collaboration rather than competition over the use of a regional name to promote products.
GIs also have the potential to mitigate the ‘either/or’ choice: *either* external investment *or* local control. With GI registration there is potential to have both external investment (as has been essential in the case of King Island and for many other regional economies) while maintaining some measure of local control (which has been significantly eroded over time on King Island). More generally we found that although Australian agricultural production is of a very high standard, once product leaves the farm gate, investment in branding and promotion falls short. Farmers would benefit from a more focused and collaborative approach to post-farm gate promotion of the unique qualities of their products, and GIs are one option for this.

We find that although there is no universal need for registered GIs, there is a case to be made for the introduction of a food GI registration system. Our data show that the availability of flexible, low-cost GI registration could be a useful response to some local issues and conditions in particular regions and relating to particular problems. There is no ‘one-size-fits-all’ GI system that will accommodate the plethora of business models or the broad diversity of agricultural and food industry activity across Australia. That diversity ranges across high volume, commodity production in areas such as grains, fruit, vegetables and livestock, with little value-adding occurring in the region of product origin; through to high-value goods such as whisky, cheese, chocolate and truffles where much of the value-adding occurs within the region or origin and is dependent upon characteristics of the region as a signifier of quality.

In the case of high-value goods aimed at discerning consumers, either through direct sales, or through broader distribution channels, the option of GI registration may well be beneficial. Thus Tasmanian whisky producers might benefit from the advantage of having uniform and mandatory regulation as to what can legitimately be referred to as Tasmanian whisky. Mareeba mango growers might benefit from delineating precisely the circumference of Mareeba, and from taking advantage of the established reputation of their mangos in China more effectively. Beef producers on the Atherton Tablelands could benefit from specifying the exact boundaries of the natural grasslands that survive on high rainfall and volcanic soil.

Whatever form the design of a food GI register might take, we emphasise that while the principle of flexibility is important and necessary to support the diversity of Australian food production, the credibility of such a register and system should not be compromised. This is particularly important in terms of consumer trust in such a system.

For some regions there may be an advantage in thinking about ways in which to use GIs and quality specification standards to communicate in a credible way a commitment to ‘clean and green’ production. Producers may, if they set credible standards of local origin, also use GIs to inform consumers about genuinely local products. A credible GI scheme can be a useful counter to any indeterminacy in country of origin labelling.

Australia has considerable design sovereignty when it comes to creating a GI scheme that is suitable for Australian conditions. During the fieldwork, interviewees would make general suggestions about the kinds of matters that a GI register should address. We have synthesised these suggestions in the form of design principles (see Section 8): flexible rules of origin and specification, local initiation, low cost but effective enforcement.

**Recommendation**

Our recommendation is that the design of a GI registration scheme for Australia’s food sector should become an integral part of the planning and policy conversations taking place around the future of Australian agriculture. It is clear that the importance of branding as a source of comparative advantage in domestic and export agricultural markets will increase. For Australian farmers and regions the
imperative to plan around branding has never been greater. GI registration should be made available as one branding option.
1. Introduction

The policy question whether Australia should introduce a geographical indication registration system for non-wine food products has usually been approached through the lens of Australia’s agenda in trade negotiations (such as those in the World Trade Organization), especially the belief that most of the benefit of globally increased protection for GIs would accrue to European countries. While recognising that the international trade dimension is important to assessing the costs and benefits of GIs, in this Report we approach the topic not from a trade negotiations perspective, but from a regional development perspective. Central to European policy thinking about GIs is that they offer rural regions development benefits in terms of better incomes for farmers and greater employment opportunities for future generations. Our aim is to assess whether a food GI registration regime could be a useful regulatory tool to support rural and regional development. In other words, we are examining whether some of the development benefits that are claimed for GI systems have any relevance for Australia’s diverse regional and rural contexts.

We undertake this task against a background of regulatory flexibility in terms of international treaty law relating to GIs. For the time being, Australia retains considerable regulatory sovereignty over the design of a domestic GI system. Australian agriculture is characterised by a great diversity of conditions, production systems and business models. While research and studies of GI systems in other countries are useful, any case for food GIs in Australia depends on whether a suitably flexible system can be designed for Australia’s many diverse regions, a system that brings benefits that current forms of protection for placenames do not. Our case studies and interviews aimed to capture as much of this regional variation and diversity as was feasible in the time frame of the study.

Australia has already introduced a GI registration scheme for wines that affords protection to European wine GIs as well as to domestic wine GIs. The wine industry’s experience with GIs offers source of information about the actual experience of an Australian industry with GIs, and the wine GI system is therefore a case study from which relevant inferences can be drawn for a more general food GI scheme. If there are no regional benefits to be found in the case of wine GIs then it seems less likely that they would exist for other products.

Regional economies dependent upon agriculture have experienced unprecedented change in Australia over the past 100 years. Increasing production efficiencies, integrated supply chains and increasing commoditisation have seen the decline of agriculture as a major driver of national growth and, importantly in regional Australia, a decline in associated regionally-based jobs (Smith & Pritchard 2015). Australia’s economy has moved from a position where agriculture generated 80% of GDP to less than 5% today (Gutman 2007). Agricultural jobs continue to decline at an average rate of 2.3% p.a. (Bureau of Rural Sciences 2008).

For many regional communities in Australia, the forces of globalisation (Alston & Kent 2004), economic restructuring and deregulation combined with one-size-fits-all regional policymaking (Cleary 2014; Hogan et al. 2015) have had significant consequences at the local scale. Further adding to these challenges, the ongoing responsibility for regional development and its associated policies is also problematic, with no real consensus as to what should be done by which level of government (Collits 2015; Daniell et al. 2015). For remote places especially, these externalities create market pressures that lie well beyond local control (Carson & Harwood 2007). For many regional, rural and remote communities and the enterprises that underpin their economies, such external forces have required them to ‘reinvent’ themselves to remain viable, and for their businesses to rethink their business models to remain competitive.

Diversification has made some regions less vulnerable and more resilient to economic shocks or slow decline. For others, specialisation has enabled them to concentrate their efforts to achieve economies of scale and a critical mass with which to mitigate external forces (Houghton 2012). However, regions
which may lack the natural attributes to diversify or to specialise, or do not have adequate levels of endogenous human, social, built or financial capitals at their disposal to do either, remain vulnerable, and external investment in some or all of these areas becomes critical. For some communities, that investment may take the form of either increased welfare dependency (Marsden Jacobs et al. 2010), increased reliance on the ‘grant economy’ (Stern & Hall 2010), or to actively seek capital outside the region, either domestically or internationally, to support existing industries.

GIs by virtue of their legal character remain embedded in a region and so have the potential to function as a regional asset. By virtue of this character they form a more natural starting point for a dialogue involving various stakeholders about a region’s agricultural advantages and how to develop a cooperative approach to the branding of those advantages.

Section 2 of the Report deals with the methodology of the research. It explains the strategy and logic behind the fieldwork and studies that consisted of 172 interviews being conducted in six different fieldwork locations around Australia. Section 3 briefly outlines the domestic legal options currently available for the protection of geographical names in Australia. Section 4 presents the findings of the wine GI fieldwork study, suggesting that GIs are contingently rather than universally beneficial, a finding we reiterate in our general conclusions. It outlines two classes of regional benefits and discusses the conditions under which these benefits are most likely to occur. Sections 5 and 6 provide analysis on the findings from the King Island beef and dairy, and cheese fieldwork studies, respectively. Section 7 discusses the main findings of this study concerning GIs and food, and Section 8 looks at the design parameters that need to be considered if food GI legislation were to be introduced in Australia. Section 9 presents the conclusions and recommendations. It identifies some principles that should inform the discussion about a food GI register for Australia.
2. Methodology

2.1 Research Design

In considering how best to gather data to inform the research questions, there were a number of factors that influenced the design process. First, the complexity of the legal landscape in Australia for protection of placenames as provenance brands for local food products (as outlined in Section 3) needed to be understood in the context of the study environment (the agrifood sector). In this case, understanding the business models employed by the many different enterprises in various food and beverage industries across the agrifood sector was an important priority and led to the use of in-depth interviews. We needed to understand from our interviewees their operating environments and the manner in which these might impact or be impacted upon by the introduction of an extended GI regulatory regime. Thus, understanding how the agrifood sector ‘works’ in Australia within the existing legal frameworks was a critical consideration in determining how to design the study.

Secondly, given that ‘place importance’ is central to the establishment of a GI, location was one of the critical determinants of the study design. Historically GIs have been linked to the concept of terroir and wine especially, the idea being that in small areas ‘soil and microclimate impart distinctive qualities to food products’ (Barham 2003, p. 131).

Thirdly, Australia’s large land mass supports a wide range of climatic and geographical zones. The resulting diversity of its agricultural production means that there is a potentially large class of industries to which the GI issue might be relevant. In choosing location (and businesses) we aimed to widen rather than narrow the range of cases.

Fourthly, very little exists in the literature in the Australian context in relation to the research questions underpinning the study. Our preliminary paper (van Caenegem et al. 2014) established that Australia’s position on the extension of GIs beyond wine had remained unchanged since the passage of wine GI legislation in 1993, and further research was justified. The complexity of the legal landscape in relation to existing regulatory options (as highlighted in Section 3) and how well these currently serve the agrifood sector also needed to be taken into consideration.

Thus, the combined factors of (1) multivariate operating environments of agribusinesses; (2) geography and considerations of terroir; (3) the diversity of Australian agricultural production; and (4) the dearth of information regarding the impact of wine GI legislation and regarding the effectiveness of current regulatory mechanisms, lead to the consideration of a flexible, qualitative research design which would enable an in-depth exploration of the research questions.

Exploratory research lends itself to working in the natural setting in which the questions were raised, and does not limit the means through which data might be gathered, instead allowing for a mixed methods approach to be employed. In consideration of the factors discussed above, a variety of research methods have thus been utilised to best focus data collection and analysis, and this has resulted in a distinct and customised approach to the research design. This approach in social research enables one to draw upon principles from a variety of research designs and methods and is legitimate and valid in exploratory studies (Crotty 1998), providing the basis for a more fully informed process through which rich data might emerge. This study draws upon elements of case study research (Hird 2003; Yin 2003), grounded theory (Glaser & Strauss 1967) and thematic analysis (Guest et al. 2012).
2.2 Research Methods

In our literature review we focused on both the academic and ‘grey’ literature related to existing trade and development GI initiatives in the European Union context, and the developing adoption of GI regimes in Australian export markets. The desktop review evaluated both theoretical studies and specific case studies. We also collected data through interviews with Australian participants in international trade debates and negotiations, as well as actors in Australia (for example, from the dairy industry) with a stake in international trade issues related to food.

The research also involved extensive fieldwork, using a case study approach to gather data from across a range of geographic and industry context-specific settings. The case study approach to social inquiry has arisen out of a desire by researchers to comprehend social situations and phenomena with regard to both their complexity and their natural contexts (Hird 2003). For this study, cases were chosen on the basis of both geographical and thematic relevance to the research questions. A ‘case’ may also involve the study of one individual or many, and involve singular or multiple events (Hird 2003; Yin 2003). In this study, we drew upon data gathered from a range of actors through semi-structured interviews to build a comprehensive picture of existing agricultural business practices and business models; and to examine perceptions of those actors of the idea of extending Australia’s GI regime beyond its current wine-only application.

Semi-structured interviews involve the researcher usually determining in advance the broad topic and themes about which they are seeking information (Lindlof & Taylor 2002). As such, they allow flexibility, in that supplementary questions based on the context-specific discussions between the researcher and the interviewee may be asked (Saunders et al. 2003). Thus, for interviews of this nature, the questions tend to be open-ended rather than closed (Leonard 2003). In the context of the exploratory nature of research conducted in this study, semi-structured interviewing was a most suitable research method, in that it enabled interviewees to highlight what was important to them about the topic, and in some cases, to provide additional, rich information that might otherwise have been unattainable by the researchers. This approach was beneficial as in some cases discussions led into areas that had not previously been identified, but which were significant for addressing our research questions. Interviewees are referred to as numbered Respondents in the report.

In structuring the resultant Report, we have focused upon three cases of particular relevance to the GI question. First, the wine industry as the only Australian industry for which GIs have been legislated furnishes us with evidence of the current impact of GIs in the Australian context. Secondly, we chose King Island as a specifically bounded place that produces high value iconic products. In terms of the GI question, this case study focuses upon both the nature of place and its influence on the provenancing of highly sought after products. Our third case study focuses upon the dairy industry more generally. Our interest here lay in examining the differences in production employed by large and small operators in the industry and artisanal production versus mass production. The dairy industry is also of high interest in relation to the GI question, because of the number of well-known names used currently in Australia to denote cheese ‘types’ but which are protected GIs in other parts of the world, particularly in Europe.

2.3 Interview Sampling and Data Analysis

Interviewees were situated both in regional Australia and/or in capital cities, dependent upon their roles in relation to the value chain/s or in which they had an interest (Figure 2.1). The majority of interviewees were situated in the regions and were directly involved with agricultural production. First, we targeted specific geographic regions, with the aim of capturing as much variation as we could (Figure 2.2). These included the Northern Rivers region in New South Wales and South East Queensland; Far North Queensland; the ‘Top End’ of the Northern Territory; the East Kimberley (primarily Kununurra and the Ord Valley); the Yarra Valley in Victoria; and Tasmania. The final case study regions were negotiated and determined in conjunction with RIRDC.
Secondly, our interview sampling was purposive, in that interviewees were specifically targeted based upon the four critical factors outlined in Section 2.1. A list of potential interviewees was prepared prior to the commencement of each field trip. In some cases, we approached regional bodies such as Regional Development Australia Committees (RDAs); regional branding initiatives (for example, Northern Rivers Food in Northern NSW, Granite Belt Wine and Tourism in Queensland) for advice and assistance in identifying and targeting local businesses and individuals relevant to the study. From the generated list, interviews were scheduled, information about the study was distributed and consent obtained.

We also used ‘snowball’ techniques to identify additional research subjects in each location or within each theme. In these instances, additional interviewees were recommended by current interviewees as having specialist knowledge in the industry under examination, or within the region; a long history of operation and/or experience within the industry or region; or specialist knowledge of the regulatory environment at play in relation to the targeted industry. Our final range of interviews was thus a non-probability based sample (Bryman & Bell 2007).

Interviews were conducted across a considerable breadth of food industries. These included:

- **fish and seafood**: snapper, abalone, wild barramundi, wild salmon, farmed salmon, trout, oysters, lobster, squid, eel, scallops, whiting, prawns, crab, seaweed, redclaw
- **livestock industries**: beef, pork, lamb, wallaby, poultry, eggs
- **dairy**: milk, cheese, butter, yoghurt; buffalo milk, cheese, yoghurt
- **fruit, vegetables, pulses, seeds and nuts**: apples, avocado, bananas, berries, cherries, table grapes, grapefruit, oranges, mangoes, lemons, melons, pears, pineapples, strawberries, beans, peas, chickpeas, macadamias, cocoa, vanilla, chia, olive oil, stone fruit varieties for canning
- **grasses and fungi**: sugarcane, truffles, mushrooms
- **beverages**: wine, tea, whisky, spirits, liqueurs, coffee.

A topic guide for data collection and analysis was developed based on the literature review, the initial paper prepared by the authors (van Caenegem et al. 2014) and the pilot interviews. Interviews were conducted over 40-90 minutes and they were not audiotaped. In most cases at least two interviewers were present. In addition, field notes were collated and observations recorded.

Data analysis was undertaken across six phases as proposed by Braun and Clarke (2006) whereby gathered data is coded, further analysed and major themes are identified. Essentially the six phases are:

- preliminary review of the data to identify emergent patterns
- identification of primary codes for further analysis
- development of overarching themes
- examination of overarching themes to confirm accurate depiction of the data has occurred
- theme definition and attribution to the data (including external validation)
- generation of written report.
2.4 The Research Environment

We chose fieldwork locations based upon the four major considerations detailed in Section 2.1. A description of each fieldwork site is presented below.
2.4.1 Northern Rivers New South Wales and South East Queensland

We first undertook a pilot study in Northern New South Wales (Northern Rivers region); the Granite Belt, a Queensland wine GI region; and the Maleny area in the Sunshine Coast Hinterland (South East Queensland). The Northern Rivers region was chosen on the basis of a number of well-established agrifood businesses and the presence of an established regional branding initiative. The Granite Belt was chosen upon the basis of an existing, but relatively new wine GI in the region, and on the basis that the GI existed in an area less well known for wine production than some other more well-established wine regions in Australia, thus we were more likely to be able to isolate the impact of the GI in relation to the industry in this location. The Maleny region was chosen primarily as an area known for dairying, the production of cheese and well-developed tourism, as it forms part of the Sunshine Coast tourism destination.

Undertaking the pilot project work enabled the project team to test some initial ideas and hypotheses developed from desktop research and in the pre-project paper (van Caenegem et al. 2014). We also developed interview processes of target selection and interviewing methods during this pilot phase.

2.4.2 Far North Queensland, Darwin Northern Territory and East Kimberley Western Australia

The targeting of three regions across Northern Australia was negotiated as part of the final contractual arrangements with RIRDC. The purpose for choosing this broad swathe across the top of Australia as a study site was to provide data specifically to inform the potential for GIs in the proposed expansion of agriculture in Northern Australia.¹

These three sub-regions in Northern Australia were specifically targeted as examples of regions with no existing or possible regional grape wine GIs, but with some specific and quite iconic tropical products. Additionally, food producers and processors have shown local or regional branding initiative, for example, uniting behind a ‘Taste Paradise’ brand in Far North Queensland. Beef production and export in Northern Australia is a highly significant industry, as is the Ord-East Kimberley Stage 1 Irrigation scheme and the subsequent expansion, with its attendant scaling up of (primarily) commodity production. Total agricultural value is largely split between beef and cropping in the East Kimberley region, with some horticultural and niche food production. Crops include: pumpkins, melons, chick peas, various beans, sorghum, maize and millet. Additionally, iconic food fish for example, barramundi and shellfish feature as part of Northern Australian food industries. Developing niche areas such as vanilla production, cocoa bean and tea growing in the Daintree; biodynamic tropical dairying in far North Queensland; along with specialist tropical fruit growing, for example, lychees, rambutan, mangosteen and jackfruit across tropical Queensland and the Northern Territory, were also of interest.

2.4.3 Tasmania

Tasmania has producers that have established reputations for high quality products in both food and wine. The state also has a developed regional image for high quality, clean and green products exemplified and promoted through the ‘Brand Tasmania’ initiative. Understanding how effective ‘Brand Tasmania’ has been as a marketing tool was of high interest in the study, in terms of whether branding alone can effect higher prices for products and whether branding strategies are able to protect high value goods from threats of ‘passing off’ and ‘free riding’ in the market. Also of interest in

¹ In negotiating the final case study sites, we note that research in one study site (the Barossa Region in South Australia) proposed in our initial research plan, was unable to be undertaken given the imperatives around collecting data in Northern Australia. However, some of the characteristics of the Barossa region (iconic wine region; high levels of food and wine tourism; well-developed branding strategies) can also be seen in the Yarra Valley in Victoria.
Tasmania were a number of highly recognisable and iconic trade marks related to high-value beef and dairy production on King Island. The natural geographical boundaries associated with being an island, together with the production of high-value goods made King Island an ideal site to consider ‘place-based’ value. Direct export of high-value agricultural products from Tasmania to Asia due to its quarantine-based biosecure environment also made Tasmania a highly relevant fieldwork location. Detailed interviews were undertaken on Bruny Island for the same reason.

2.4.4 Yarra Valley Victoria

The Yarra Valley in rural Victoria is a well-known wine producing region that also has varied food production with large and small scale sectors, and which lies in close proximity to a capital city with a large consumer base. Examining the impact of this proximity in relation to both exposure of local wine GIs and also the potential collateral benefits in tourism and associated rural industry development was an important consideration in the selection of this case-study site. The Yarra Valley also offered us the chance to interview producers who had been involved in an ultimately unsuccessful use of a certification mark to brand the region.

2.4.5 Other Interviews

Aside from the interviews conducted in the geographical study sites listed above, we also conducted interviews with:

- industry representative bodies, e.g. Northern Territory Cattlemen’s Association
- state and federal government staff within agricultural support agencies, e.g. Department of Agriculture, Fisheries and Forestry (DAFF)
- Queensland Department of Agriculture, Fisheries and Forestry (QDAFF) and regulatory bodies, e.g. the Australian Grape and Wine Authority (AGWA).

These interviews were primarily conducted in capital cities, where we also interviewed large distributors, market operators and retailers such as Coles and Woolworths. Many were completed face-to-face, but some were also undertaken by phone.

2.5 Limitations of the Study

The case studies represent a mix of sampling strategies. As we have indicated, the wine GI case is information rich and significant and we therefore devoted considerable resources to it in terms of the number of wine GIs studied, the number of people interviewed and the literature analysed. We also aimed at in-depth analysis of the cheese industry and other potentially iconic products such as mangoes. Once we had inductively arrived at the possibility that GIs could be contingently beneficial, it followed that we should widen rather than narrow the number of industries for investigation. For example, rather than adding yet another interviewee from the wine industry it made sense to interview someone from the olive oil industry or the truffle industry to see if there were contingent circumstances under which the option of GI registration might be useful. We were also attentive to the need to cover well-established (for example, dairy, mangoes, berries) as well as incipient industries (for example, vanilla, cocoa, chia). Inevitably we had to make trade-offs between breadth and depth. While the total number of interviews is large for this kind of qualitative study, the number of industries meant we were unable to study each one in-depth. We partly compensated for this by using snowball techniques to identify and interview people who were regarded as highly knowledgeable and experienced in an industry (sometimes described to us as ‘pioneers’). Within the scope of this study we were unable to pursue more specialised issues such as the possible role of GIs in protecting and promoting the use of indigenous knowledge in bush foods (see Drahos & Frankel 2012; Drahos 2014).
3. Protecting Placenames in Australia: What’s in the Toolbox?

A number of consumer demands and preferences, including an interest in local foods, ‘authentic’ foods and healthy foods have combined to make placenames and their associated values increasingly valuable to producers and the agrifood business in Australia and in other countries. Generally we are concerned here with ‘provenance branding’; the use of a placename in association with goods, where that use signals more to consumers than their mere geographical origin. The ‘secondary meaning’ of a geographical term protected as a GI, is that the goods in relation to which it is used, have certain typical qualities due to their geographical origin; the secondary meaning of the term as a registered trade mark is as a ‘badge of origin’, indicating that the goods originate with a particular producer, owner or authorised user of the mark concerned.

At present in Australia there are a number of ways in which a regional or local name can be protected. These include:

• GI registration if the product is wine
• registration as a certification mark
• registration of a placename as an ordinary or standard trade mark, and
• reliance on consumer deception laws and passing off (an action aimed at protecting a trader’s established goodwill).

Contrary to widespread belief amongst many small-to-medium enterprises, registration of a business name by virtue of federal legislation (Business Names Registration Act 2011) does not confer any protection against misuse by competitors, and is therefore not considered in this Report. Business name registration only serves to identify the party behind the name. If proprietary control over a name is sought by a business, lawyers will generally advise the owner to seek trade mark protection.

We will deal with the case of wine GI protection in Section 4 of this Report. Here we simply point to the definition of GIs to be found in art. 22 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The key principle in that definition is that a GI indicates that a good possesses a special characteristic of some kind by virtue of its origin in a defined place.

We should also note that GIs are public law instruments and not private property rights. They have a great degree of permanency, being available for successive generations of producers in regions as public goods. Once a GI is declared for a region its effect is mandatory; all relevant producers in the region who use the GI must comply with the rules concerning its use. In Australia a wine producer located within a GI such as the Barossa Valley may produce wine from grapes coming from anywhere in Australia, but if ‘Barossa Valley’ is to appear on the bottle then the rules of the GI must be followed (that is, 85 per cent of the grapes must come from the Barossa).

As a general observation, the most significant difficulty of principle with the other approaches listed above in relation to placenames (except for registration of a certification mark), is that a real geographical name is generally considered descriptive or generic, and therefore not suitable for registration and private appropriation as a trade mark, nor sufficiently distinctive to attract a remedy in passing off. The right of other traders to accurately indicate where their products originate will either trump the trade mark registration of a placename by a single business, or will form the basis of a good faith defence against an allegation of registered trade mark infringement (Shimizu 2011).
3.1 Standard Trade Marks

The traditional legal principle holds that placenames as regular terms tending to describe the geographical origin of goods should not be registered as trade marks for lack of ‘distinctiveness’. Before the introduction of the Trade Marks Act 1995 (TMA) there was an absolute prohibition on the registration of placenames as such, unless their use was fanciful and hence ‘distinctive’ in trade mark law terms (the statutory requirement that trade marks be distinctive is now dealt with in s. 41 of the TMA). If there was a possibility of other traders from the same area wishing to use the term in relation to their goods without any improper motive, then registration was denied. This was the case even if on the facts the applicant could prove that the placename was universally regarded by consumers as a corporate trade mark and not an identification of geographical origin. Thus the term ‘Oxford’ was refused registration in relation to reading matter (see Oxford University Press v Registrar of Trade Marks (1990) 24 FCR 251), and the term ‘Michigan’ in relation to heavy equipment (see Clark Equipment Co v Registrar of Trade Marks (1964) 111 CLR 51). However, a fanciful geographical term (such as North Pole in relation to bananas, an example given by the court in the Michigan case) could achieve registration. The prohibition could also be defeated by a slight modification or embellishment of the placename, or its inclusion as one element of a more complex trade mark which might also have graphical (or ‘device’) elements, for instance.

With the introduction of the TMA the law changed to accept that a placename as such may be registered as a trade mark even though there was no aspect of inherent distinctiveness at all. In other words, the absolute prohibition on registering placenames which others might legitimately expect to be able to use, was abandoned. For example, the word ‘Bega’ appearing in a registered trade mark for cheese and dairy products prior to 1995 would not have conferred exclusive rights to the use of the word ‘Bega’ in relation to those goods. After 1995 registration of such terms became possible on the basis of proof of ‘acquired distinctiveness’ alone, that is, where the applicant could establish that the name had become sufficiently accepted by consumers as a badge of origin designating a particular business.

Thus the law has come to recognise that over time a real placename can acquire sufficient distinctiveness by being used in trade to become a registered trade mark, because due to its standing in the eyes of consumers it becomes very difficult to imagine any other trader expecting to be able to use it as a branding device without improper motive.

It should be noted that a placename may be registered as a trade mark without the goods ever being produced there (for example, because it is fanciful or wholly unknown as a place), and that where a trade mark becomes registered on the basis of proof of acquired distinctiveness because the mark has become regarded as a corporate brand rather than a geographical identifier, there is little to stop the brand owner from moving production outside the region. Decisions concerning the location of production are made on the basis of the owner’s views about brand choice, integrity and how the brand is to be developed.

Although the registration of a placename (such as ‘Oxford’, ‘Michigan’, ‘Colorado’, ‘Bega’) as a trade mark may be attended by particular difficulties and require extensive proof of acquired distinctiveness, the hurdles are far lower where what is actually registered is a placename with additions, embellishments or device elements. Such trade marks (also fanciful ones such as North Pole for bananas) are fairly easily registered. The additional term might be little more than a product category (for example, ‘Byron Bay Pale Lager’ TM No. 1538970) or the term ‘Company’ as in ‘Byron Bay Coffee Company’ (TM No. 1581670) or ‘Byron Bay Cookie Company’ (TM No. 955327).

If the trade mark actually registered consists of more than just a placename, then the rights of the trade mark owner vest not in the name as such but in its particular unique and distinctive rendering, or combination with other words and/or device elements. Sometimes trade mark registration is accompanied by disclaimers relating to certain terms incorporated within a more complex mark.
Apart from distinctiveness, it is also a statutory requirement that a registered trade mark not be misleading or deceptive because of some inherent connotation it has, as provided by s. 43 of the TMA. A registered trade mark must also not be ‘contrary to law’, and thus a trade mark that is misleading or deceptive in the sense of s. 18 of the Australian Consumer Law (ACL) may be refused or removed on that separate but overlapping ground.

In the present context, a source of potential consumer deception is inclusion in a registered mark of a placename where it misrepresents the geographical origin of the goods for which the trade mark is used or intended to be used. This may result in the refusal of registration in cases where the goods for which the registration is sought are of a kind that consumers might know as being grown or produced in the area identified. Alternatively, a condition (or ‘endorsement’) may be imposed upon the registration, requiring that the goods in relation to which the mark is used be indeed produced in the named place. In fact, endorsements and disclaimers are a commonly used tool to allow registration of trade marks while concurrently limiting the scope of the owner’s monopoly or imposing restrictions on their use for the sake of protecting consumers against deception. The imposition of such limitations is particularly significant in relation to trade marks that consist of or include a geographical term. For example, in relation to the registered trade mark ‘Byron Bay Blonde Ale’ the condition reads as follows (TM No. 1252120):

It is a condition of registration that in instances where the trade mark is used on beer that is not brewed by the applicant or that is not brewed in Byron Bay the product or packaging to which the trade mark is attached will include further information specifying the place of manufacture and/or the company that brewed the beer.

A further example is provided by the endorsement of the ‘The Rothbury Estate’ trade mark (TM No. 727340), that requires it to be used in relation to wines emanating from that area (see further below).

A policy concern inherent in easy registration of placename-based trade marks is that a standard trade mark is private property and thus allows, to a certain degree determined by the particular mark’s character, the privatisation of place. Although in theory the scope of protection of a trade mark is confined to its precise form, in reality it allows the owner to monopolise at least to some degree a real descriptive term that belongs to the public domain. Competitors who also wish to refer to the placename in the branding or designation of their goods might in theory be able to benefit from good faith and other legal defences, but will in fact often be unwilling or unable to test the matter. There is a sufficient degree of uncertainty and opaqueness about the rules that apply to trade mark misuse to mean that a business with a placename-based trade mark may be in a de facto stronger position than the law in the books suggests. The registration of placenames as trade marks may thus have a chilling effect on local competition based around provenance.

On the other hand the same subtleties also mean that a business that has invested in a placename brand suffers a degree of uncertainty, and in theory also a narrow monopoly confined by the actual mark as represented in the application for registration of the mark. Therefore there is a real risk that competing local businesses will be able to free ride on the investment made by a rival to establish a good reputation for goods associated with a certain place of origin, thanks to the rival’s efforts.

Despite the law’s principled reservations concerning the registration of trade marks that consist of or incorporate placenames, registration of such marks is common in the food and agricultural industries, as the legal standards are quite accommodating. Through long use and promotion even a placename as such might achieve registration as a trade mark. But even without such extensive use a placename can nonetheless be registered with relative ease, certainly where it has not yet been adopted for this purpose by any other trader and is not claimed ‘as such’.
3.2 Certification Trade Marks

Certification trade marks are a special category of registered mark. A certification trade mark does not serve to indicate that the marked goods originate with a particular business, but rather that they are certified to comply with certain quality standards or characteristics (see s. 169 of the TMA). The certification can relate to geographical origin. In fact, apart from inclusion on the register of wine GIs, the main mechanism by which Australia complies with its TRIPS obligations to protect GIs is by providing the opportunity to interested parties to register the GI as a certification trade mark. An example of a GI registered as a certification mark in Australia is TEQUILA (Cert TM No. 1377413(33)).

A certification trade mark must be distinctive, just as any standard mark must be. The mark ‘Parish of Pokolbin’ by contrast was refused registration as a certification trade mark as it was not considered capable of distinguishing the certified goods and services (see Parish of Pokolbin Incorporated [2014] ATMO 98 (9 October 2014)). The term Pokolbin had significance as a real geographical identifier. The addition of the archaic term ‘parish’ did not sufficiently detract from the ordinary descriptive meaning of ‘Pokolbin’ to make ‘Parish of Pokolbin’ into a mark capable of distinguishing certified goods or services from non-certified ones. This points to the distinctiveness problem with certification marks as an alternative to a registered GI: the more the mark is descriptive of a real geographical region, the less it is likely to be registrable as a certification mark. Otherwise the private owners of the mark would achieve a monopoly over the use of the term for its lawful purpose; by contrast in the case of a registered (wine) GI, the term does not fall into private hands.

The private owner of a certification trade mark usually licenses others (certifiers) to use the mark. To obtain registration of a certification mark the applicant must deposit the rules that will apply to certification by use of the mark. The rules are reviewed by the Australian Competition and Consumer Commission (ACCC) for any inconsistency with competition law. Rules that have the intended effect of excluding a particular competitor from certification may not be approved, for instance.

A certification trade mark is private property and subject to all the usual validity requirements that apply to standard trade marks, including, as indicated above, distinctiveness (although there are some subtle differences with standard marks in this respect), but with the exception of the requirement of ongoing use. A certification trade mark is also subject to all the exceptions and derogations that apply to standard marks, such as use in good faith and generic use. Although a certification mark is commonly advanced as a viable alternative to a GI registration for a placename, there are thus significant differences between the two systems. A GI is essentially descriptive, not privately owned and not subject to the same derogations as a certification trade mark.

Certification marks that concern the origin of goods (for instance wine or foodstuffs) in a particular place are not public instruments. A certification mark must be distinctive rather than simply descriptive of origin and, as a private right, should not stand in the way of any producer within the area indicating where the goods originate, or branding the goods as originating in a particular place. Therefore a certification mark should normally consist of more than just a placename or placename and category of goods, as the descriptive geographical term must remain free for all to use. From this perspective an interesting example of a certification mark that was intended for use in connection with place-based branding is the Yarra Valley mark (TM No. 997102; the ‘YV certification mark’). The actual mark consists of the stylised letters YV against a multicoloured background that includes the words ‘Yarra Valley’. The existence of this trade mark would not prevent the use of the placename ‘Yarra Valley’ in relation to particular goods or businesses situated there, nor would it stand in the way of the registration of a standard trade mark incorporating those terms as such. In the requirement of distinctiveness, a certification trade mark differs fundamentally from a registered GI, which concerns a descriptive term.

The distinctive YV certification mark covered a substantial range of products and services in the tourism, food, wine and agribusiness sectors; its use being subject to compliance with quite extensive
conditions. By contrast a registered GI is product specific and as a public instrument its rules are mandatory, carrying penalties for noncompliance.

Prior to the establishment of the Australian wine GI register, a certain number of European wine GIs were registered as certification marks, and there is nothing preventing such registrations even now. In terms of foodstuffs other than wine, GI registration is not an option in Australia, so that a certification mark registration may appear to be a viable alternative. However, if a term is considered generic in Australia, such as the word ‘feta’, it will not be possible to obtain registration of a certification mark for that term as such. A more complex mark incorporating the term may, however, be registrable, but its effect will be less comprehensive (for example, ‘Genuine Feta made in Greece’ with a device element, or ‘Genuine Haloumi made in Cyprus’; such a mark can coexist with the free use by all traders of the descriptive terms ‘feta’ or ‘haloumi’). For local Australian products, registration of a certification trade mark may also be possible in the same limited manner and subject to the limitations and derogations mentioned above.

As an aside, an alternative to a certification trade mark relating to local production is the registration of a collective trade mark. Such trade marks serve to indicate that goods have been produced or processed or otherwise passed through the hands of a particular association (see s. 162 of the TMA). This could be an association of local producers of a particular food or beverage. Although the same competition review by the ACCC as applies to certification marks is not required for collective marks, they indicate only a connection with an association and not origin within a certain place more generally, although the association may be local in character or incorporate a locality in its name. The registration of a collective mark referring to a local association does not restrain others in the area from indicating the true origin of the goods or using the local placename as such in various branding styles.

A certification mark such as the Yarra Valley mark does provide producers from different industries with a means to unite around a place-of-origin strategy. However, as we will see, if there are too many players sitting at the branding table, developing a strategy that all can live with becomes difficult.

### 3.3 Passing Off and Section 18 of the Australian Consumer Law

Generally the choice for a local food producer or processor is between a proactive approach by obtaining registration of a trade mark, or simply relying on consumer deception laws as abuses arise. A trader may also complain to the ACCC and hope for action via that mechanism. Local producers or processors may choose not to obtain registration of the trade mark they use, or may be unaware of the option or consider it too expensive and complex. In that case if the brand adopted consists of, or includes, a placename, the common law of passing off and s. 18 of the ACL means legal action is possible against a competing business, whether locally based or not, that makes a deceptive use of the same or a similar placename.

The difficulty is that placenames are considered descriptive and free for all to use in an honest and accurate manner to indicate or suggest geographical origin. Thus the evidentiary onus is considerable as the rights owner must establish distinctiveness and that the use a rival makes of the placename, is misleading for consumers. ‘Distinctiveness’ means proving that consumers have come to see the placename as associated exclusively with the claimant. Some uncertainty may also result from the fact that it is often unclear what exact area a placename refers to, or what it means to consumers. The delineation of a certain region may be uncertain and have to be resolved before the court, and may be disputed by rival traders. Thus where the competitor arguably does little more than accurately identify a place of origin, proving consumer deception may be particularly difficult. In the process the

---

2 Although feta can be spelt as either ‘feta’ or ‘fetta’, we have used the generic spelling ‘feta’ throughout this report for purposes of consistency.
competitor may well ride on the coattails of a ‘pioneer’ who has established a good reputation for the placename as a brand.

The advantage of seeking trade mark registration is that use of a registered mark by competitors on the kind of goods specified in the registration amounts to a breach of the law, irrespective of whether consumers are in fact confused or misled. By contrast, if a mark is unregistered (a ‘common law mark’) the trader must prove consumer deception. A further advantage is that if a mark is inherently distinctive (that is, not purely descriptive, for example, a placename plus a device element or a fanciful placename) it can be registered and is protected even though it has not been (much) used in trade and consumers are not aware of it. To rely on the common law the trader must establish that the mark is sufficiently known by consumers and regarded as a distinctive sign identifying a particular trader, rather than a descriptive, generic or common term. This may be particularly difficult where the common law mark consists of or incorporates a descriptive (rather than fanciful) geographical term. The onus will be on the trader to provide sufficient proof, a task that may be rendered difficult by the presence in the market of other marks incorporating a similar geographical reference.

Proving a sufficient reputation and also consumer deception is the central requirement of passing off (see also s. 18 of the ACL). This often proves to be an onerous requirement, expensive to prove and relatively uncertain in terms of outcome, making this a less than attractive legal option for rural businesses which are often SMEs with little capacity for a protracted legal battle. By contrast, registering a trade mark is usually (unless there is opposition) a relatively cheap and straightforward matter.

Furthermore, it may be that other aspects of the competitor’s behaviour dispel any risk of consumers being deceived by the use of a mark including a geographical term: the prominent display of a disclaimer or of the competitor’s own mark, or the proper identification of the actual place of origin of goods bearing the mark. On the other hand, whereas registered trade marks law focuses on the alleged imitation and use of the registered mark as such, in the context of passing off the overall conduct of the competitor may be taken into account and lead to a conclusion of breach. For instance, a trader who has used ‘Maleny Coffee Company’ as a brand, but without registering it as a mark, might be successful against a competing trader who uses the mark ‘Maleny Coffee Roastery’ because the rival has not only chosen a similar but rather descriptive name, but also opted for a similar get-up, colour and size of coffee packs. If the terms ‘Maleny Coffee Company’ were registered as a trade mark and an action brought on the basis of the TMA, the focus would be on the similarities between the registered mark ‘Maleny Coffee Company’ and the mark ‘Maleny Coffee Roastery’ as used by the defendant, and not on the surrounding similarities in get-up, colour, pack size and design.

For present purposes, the law relating to passing off which aims to protect the value of a trader’s goodwill, and s. 18 of the ACL, which aims to protect consumers against commercial deception, are very similar. The touchstone of both areas of law is the effect of the competitor’s behaviour on consumers: are they led to the erroneous conclusion by the competitor’s conduct that some legitimate commercial connection exists between the two traders concerned?

Where the problem is not adoption of a similar mark or get-up by a rival trader, but a trader misrepresenting the geographical origin or association of goods in a manner that misleads consumers at large, the ACCC has the power to institute civil proceedings (see s. 228 of the ACL). Action may result in court-enforceable undertakings as, for instance, in relation to the Maggie Beer case (see undertaking D14/110666) and Byron Bay Lager case (see undertaking D14/51628) or in litigation before the Federal Court as in the King Island Meatworks case (ACCC v King Island Meatworks & Cellars [2012] FCA 859). Undertakings obtained might be to clearly indicate on labels where food is actually produced. In the Byron Bay Lager case pursued by the ACCC, the bottled beer was not brewed in Byron Bay, as the brand in combination with other information on the label falsely suggested; in the Maggie Beer Barossa foods case the labelling falsely suggested production in the Barossa Valley whereas it actually occurred in Adelaide.
The ACCC has indicated that so-called ‘credence’ claims (or premium claims) relating to the origin of food are a high priority, but naturally the ACCC only has the capacity to pursue a small number of cases. The ACCC receives about 160,000 complaints every year about all matters, of which about 35 go to court per year, about 30 court enforceable undertakings are accepted and 30 infringement notices issued. Of all these matters only a fraction resulted from false claims of origin (Sims 2014, p. 184). Unsurprisingly there was a common perception amongst interviewees that given the demands upon the ACCC there was little chance that individual complaints about false suggestions of origin would be pursued. The ACCC itself believes that the publicity surrounding a small number of high profile matters will provide a satisfactory deterrent effect (Sims 2014, p. 184).

Because of the nature of credence claims (for example, particular qualities associated with regional origin), and their widespread use in marketing, vigilance by the ACCC in the interests of consumers is certainly critically important. The ACCC has also indicated it is concerned with false claims of origin with small local or artisanal businesses where the reality is industrial production by large companies. The ACCC is conscious that consumers pay regard to and are prepared to pay more for food that is locally produced, or comes from a place with which particular qualities or characteristics are associated, or emanates from small family run businesses.

For many businesses (certainly SMEs) suing in passing off is thus little more than a theoretical possibility given the cost and risks involved. Such a business may complain directly to the alleged infringer and hope for a positive reaction, or take the matter to the ACCC. However, only a small fraction of cases of consumer deception about provenance branding (credence claims) will ever be taken forward by the ACCC.

### 3.4 Food Standard Regulations

Food laws impose requirements on the labelling of food products. In terms of the geographical origin of food, the Australia New Zealand Food Standards Code, Standard 1.2.11 imposes country of origin labelling requirements. Country of origin labelling is not mandatory if the food is sold by certain entities such as restaurants or caterers (Australia New Zealand Food Standards Code, Standard 1.2.11, clause 1). Food labelling requirements may also derive from WTO treaty standards, principally relating to technical barriers to trade and sanitary and phytosanitary measures (WTO Agreement on Technical Barriers to Trade (TBT) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS); Blakeney 2013).

Other than to identify the country of origin in accordance with Standard 1.2.11, there is no general legal requirement to indicate the exact place of origin of food. If a trader does make claims on food labels of a more specific geographical origin (for example, within a state, region or place), other than country of origin, they are subject to the general requirement of accuracy (that is, not being misleading or deceptive) imposed by the ACL.

A significant concern exists about country of origin labelling requirements for food. The accuracy of country claims on labels is important for local consumers but also in export markets, as Australian food products are often regarded as safe and environmentally friendly by consumers in other countries. The Australian Consumer Law s. 255 contains so-called safe harbour provisions, which require certain standards to be met before an unqualified country of origin claim can be displayed on a label. ‘Made in’ labels will comply if the product was substantially transformed in the country identified, and more than 50 per cent of production costs were incurred in that country. ‘Product of’ claims will comply if all of the significant ingredients or components of the product come from the country represented and virtually all of the production/manufacturing processes associated with the product occur within the country identified. More qualified claims such as ‘Made in Australia with local and imported ingredients’ are permitted if they meet the general standard of the ACL, that is, they do not mislead or deceive consumers. Country of origin labelling laws are currently under examination by the...
Commonwealth House of Representatives (see House Standing Committee on Agriculture and Industry, Inquiry into country of origin food labelling, 27 March 2014).

While these laws are not the focus of our Report, our interviews with representatives from Choice indicated that these laws remain a source of confusion and concern for consumers. GIs are not an issue to which the Australian consumer movement has paid much attention, but as a matter of principle a ‘well-functioning GI system would have benefits for producers and for consumers’ (Respondent #101). However, in the Australian context there would probably be disadvantages for Australian consumers if producers could not use, for example, ‘feta’ as a generic term (Respondent #101).

We note that GIs may indirectly assist Australian consumers who are dissatisfied with country of origin labelling laws. The indeterminate nature of these laws tends to come to fore in food contamination crises such as in the recent case of an hepatitis A outbreak being linked to the import of frozen berries from China. Where, as in the case of Australia, a country has high food safety standards and regulatory regimes that bring about compliance with those standards, a GI system with credible standards of local origin will provide consumers with precise information about what is a genuinely local product.

In terms of legal remedies, there is inconsistency between wine on the one hand, where the option of GI registration exists, and all other food and beverages. Wine regions can benefit from a more elevated level of legal protection of their provenance brand than any other food producing regions. Registration as a GI does offer some real legal advantages in that the issues around enforcement are less complex. For example, the trade mark law limitations and derogations do not generally apply to registered GIs. The need to prove consumer deception is not part of the GI enforcement model. The rules of the GI can be stated simply and clearly (for example 85 per cent of the grapes must be from the GI region) (see Section 4 for further discussion).

In the following sections we analyse three cases – wine GIs, cheese and beef production on King Island, and the dairy industry – to see if there is evidence for GIs being able to contribute to longer-term investment in a region.
4. Case Study 1: The Australian Experience with GIs – the Wine and Grape Industry

4.1 A Little History

The wine industry in Australia is the only industry that has the option of registering a GI under legislation specially dedicated to that purpose, namely Part VIB of the Australian Grape and Wine Authority Act 2013 (AGWA Act). Without going into the detailed legal history, GI protection for wine in Australia goes back to agreements on trade in wine between the EU and Australia, the first of these coming into operation in 1994 (1994 Agreement) and a replacement agreement that was signed by the EU and Australia in 2008, coming into force in 2010 (2010 Agreement). The Australian Wine and Brandy Corporation Act 1980 was amended in 1993 to provide a system of protection for GIs (see Australian Wine and Brandy Corporation Amendment Act 1993 No. 93 of 1993).

The trade incentive for Australia to continue negotiating with the EU over wine is considerable. In 2008 the then Minister for Agriculture Tony Burke, pointed out that the European Community had in 2007-08 accounted for about 50 per cent of Australia’s wine exports, worth about $1.3 billion (Burke 2008). Moreover, the 2010 Agreement also saw Australia come to the table with more than 100 of its own registered GIs for which it was able to obtain protection in the European market. The 2010 Agreement offers Australia the strongest protection for its wine GIs of any of the international markets to which Australian wine is exported (Respondents #103 and #104). Protecting Australian wine GIs in emerging markets such as China is for the time being more difficult, a point made by a number of interviewees.

If Australia wishes to obtain better protection for its GIs in markets such as China then a special bilateral agreement of the kind it negotiated with the EU is one proven pathway to reciprocal protection. Such an agreement provides a framework for an ongoing dialogue between the industries and officials of the countries party to the agreement. The EU is not the only partner with which Australia has negotiated provisions relating to GIs. As countries have intensified their bilateral trade negotiations Australia has found itself having to negotiate provisions on GIs with other trading partners, the Australia-United States Free Trade Agreement (AUSFTA) being an important example.

As some of our interviewees with historical knowledge made clear, GIs have involved Australia in long and ongoing negotiations with the EU that stretch back to the 1980s. Australia’s experience with wine GIs also shows that for an industry to change the way it labels its products requires careful management and a long implementation period. The 1994 Agreement with the European Community was a case of where Australia saw GIs as a means to an end, the end being access to the European market. However, the focus of our study is not on whether GIs are a useful bargaining chip in trade negotiations, but rather on whether they have some of the inherent benefits claimed for them in terms of aiding regional development. In the questions we put to our wine industry interviewees we were aiming to find out whether they believed there were benefits to GIs beyond the bargaining chip story.

---

5 These are listed in Annex II, Part B of the 2010 Agreement.
6 There are reported to be provisions on GIs in the China – Australia Free Trade Agreement (ChAFTA) but at the time of writing these have not been made public.
The industry’s experience with GIs can be thought of as forming an important case. If the benefits of GIs are not to be found in this industry one might ask whether they are likely to eventuate for any Australian agricultural product. However, the Australian wine GI system has atypical features, in particular its limitation to origin requirements only.

4.2 The GI System for Wine

The GI system is a specific system that needs to be distinguished from other laws that affect what may or may not be put on the label of a wine bottle. For example, a country of origin claim on a wine bottle is mandatory under the Australia New Zealand Food Standards Code, as are other claims relating to alcohol content or the name of the food. Similarly there are consumer protection laws that set limits upon what winemakers may claim about their product and its origins (see Section 3).

A principal regulatory contribution of the Australian GI system is to provide legal certainty over the boundary of a given wine region. When the GI system was introduced into Australia, the then Minister Simon Crean in his second reading speech asked: ‘Where does the Coonawarra end and the Riverland start? This question is just as relevant for Australian wine consumers as it is for the EC requirements.’

For present purposes, the key features of the wine GI system are that the Act establishes a Geographical Indications Committee (GIC) with powers to determine GIs. The Act lists organisations that may apply for a GI as well as specifying that a winemaker or grower of grapes may make an application. The GIC may determine a GI of its own initiative. Detailed criteria for determining a GI are prescribed in regulations. These include geological, climatological, cultural and historical factors (see regulation 25 of the Australian Grape and Wine Authority Regulations 1981 (Cth)).

Lying at the heart of a GI system is the delineation of the boundaries of an area and deciding on the indication to be used in relation to that area. Boundaries have to be described as accurately as possible. This description is included in the Register of Protected GIs and becomes the legal basis for deciding whether, for example, someone has made a false claim on a wine label. By way of example, the lengthy description for the Barossa GI begins in the following way:

The beginning point of the boundary is identified on the map: TRURO 6729-3, and is located at the intersection of the Hundreds of Belvidere, Julia Creek and Dutton at a topographical feature identified as "Mount Rufus", and proceeds thence in a generally south-west direction and thence in a generally south direction along the eastern boundary of the Hundred of Belvidere to its intersection with the Hundred of Jellicoe, …

The rules that govern the use of a GI registered in Australia are straightforward compared to those found in many European systems, especially the French appellation system (Appellation d’Origine Contrôlée or AOC). The French system allows obligatory rules to be prescribed for many things including allowable grape varieties for a region, minimum levels of alcohol, production methods, maximum yield levels and methods of harvesting (van Caenegem 2003a, 2003b). The purpose behind this detailed prescription is to ensure the production of a wine of good quality from grapes that best fit the terroir of the area. The Australian wine GI system probably can be said to represent the other end of the spectrum. It is a simple system concerned with the regional designation of grapes and is silent on processes on which the French system is vocal.

In Australia there is no obligation to use a GI, but where a single GI such as ‘McClaren Vale’ is used then at least 85% of the wine must have come from grapes grown in the region. Multiple GIs can be claimed up to a maximum of three. In the case of multiple claims the basic rule is that 95% of the wine must have come from grapes grown in those regions with at least 5% of the wine coming from each region.
The Australian GI system takes a strict bright line approach to GIs, minimising through its rules game-playing opportunities and ensuring that truth in labelling remains a genuinely paramount value. For example, the guide to labelling with GIs makes clear that:

Statements such as “our winery is situated in McLaren Vale” when the particular wine in question is not from McLaren Vale are not permitted, even if true and even if supplemented by clarifying information.⁷

The 85% rule means that there is some flexibility in terms of sourcing grapes, since if required, up to 15% can come from outside the region. If so there is no requirement for this to be mentioned on the label. Similarly, there is no obligation under GI rules to process the grapes in the region in which they are grown.

The advantage of a GI registration regime over other forms of legal protection against the misuse of brand marks is that there is no requirement to establish that the use of the GI, in relation to wine that does not meet the 85% standard, misleads consumers. There is no possibility of using the GI while making it clear that the wine does not originate in the region, nor is there a good faith defence as exists in relation to registered trade marks (for example, the use of a mark in good faith to indicate the origin of goods). It is also important to note that the particular Australian wine GI system, because it relies only on rules of origin and imposes no other standards, does set up a potential free rider problem. Winemakers within a region may work hard to create a reputation for quality through the adoption of best practice methods and drawing on the strong innovation base of the industry. In the absence of detailed prescribed standards there is nothing to stop someone from buying into the region, making a lower quality wine, but being able to use the GI to market the wine because they have sourced 85% of the grapes from the region. Some of the views we heard suggest that some winemakers see the reputation of a region as depending on a small pool of excellence: ‘Six out of 50 wineries are excellent in [region], there are about 10 other wineries that are good’ (Respondent #16).

However, as we will see later informal social mechanisms have developed to try and counter this potential free riding problem. At the time the rules of the Australian GI system were being talked about the industry produced wines of varying quality and price. A number of interviewees pointed out that in order to accommodate this diversity, a ‘keep it simple’ approach was adopted. The GI system was not intended to be a barrier to entry into the industry. Rather than using formal rules and sanctions to set a standard of wine production in a region, the industry has pursued quality in other ways. Important to the drive for quality at the regional level have been informal social mechanisms such as tasting groups organised by winemakers. These provide new entrants into the region with information, constructive feedback, support and the opportunity to win recognition through competing for prizes. The aim has been to socialise those who are interested into a culture of quality production rather than prescribe it through law. According to our interviewees, the Australian approach to GIs has helped the industry to grow. A highly prescriptive system might have functioned as a deterrent. In the words of one interviewee:

how would it have been if people were allowed to say “mate you’re not good enough to get into this even though you grow your fruit here”’? (Respondent #94)

While these rules seem clear enough it should be noted that the process of arriving at these rules for an entire industry may not be straightforward. Obtaining agreement amongst producers may prove difficult. Moreover, while a simple GI system might be desired by an industry it seems that in practice this might be difficult to achieve. If one examines the laws that define Australia’s wine GI system there is a degree of complexity, especially in procedural terms. Indeed, the current system took considerable time to organise, gain agreement within the industry and to implement – a process first mooted and begun in the late 1980s, according to one interviewee who was prominent in the negotiations and establishment of the system.

⁷ For this and other examples, see Wine Australia (2010).
4.3 Procedural Complexity, Trade Marks and Public Assets

One source of procedural complexity flows from the need to address the relationship between trade marks and GIs. Australia’s law on this issue has been affected by the AUSFTA, this agreement leading to provisions that allow for objections to the determination of a GI based on pre-existing trade mark rights. For example, Rothbury Wines were able to use these provisions to object successfully to the determination of a ‘Rothbury’ GI, citing the existence of a suite of registered, pending and common law trade marks. The 2010 Agreement led to further changes to Australia’s trade mark and GI laws.

If Australia did decide to have a GI system for food, a likely cost would be the integration of that system into the existing trade mark landscape. One experienced interviewee in the wine industry pointed out that when GIs were being introduced into the Australian wine industry the regulatory scheme was not complicated by an FTA with the United States that favoured a first-in-time, first-in-right approach to the protection of trade marks.

Owners of trade marks are in a position to influence the workability of a GI system for food in Australia. One can imagine for example that in a hypothetical world where it was possible to register ‘King Island’ as a GI for cheese, the owner of the trade mark ‘King Island Dairy’ would have legitimate concerns about the confusion that this might cause amongst consumers and so object to the grant of the GI. As an aside one can see that in a world where consumer interest in provenance has grown, those who have secured trade mark protection involving placenames have obtained a potentially significant competitive advantage.

4.4 Enforcement

As we have seen, the regulatory footprint of Australia’s GI system, in terms of rules, is light. Nevertheless if a GI system is to win the trust of consumers, producers have to follow its rules. This is something well understood by the Australian wine industry. In the words of the industry regulator, the Australian Grape and Wine Authority:

> Australia is increasingly recognised as an abundant source of regionally distinctive wines made from an array of both traditional and recently introduced grape varieties. Maintaining the integrity of region and variety claims has, therefore, never been more important (AGWA n.d.).

This in turn raises questions about how compliance with the rules is best achieved, how breaches of the rules are to be detected, and what the strategies for enforcement should be. AGWA provides information and educational services to the wine industry about its labelling obligations. It also has responsibility for monitoring compliance with the Label Integrity Program, GI claims forming part of that program. Whether or not Australia had a GI system it would still have a Label Integrity Program for wine because the industry understands the foundational importance of truth in labelling.

The Label Integrity Program imposes record keeping obligations on those in the wine supply chain. There are a range of sanctions available under the law including the suspension or cancellation of an export licence, as well as terms of imprisonment and/or fines.

Compliance with the Label Integrity Program is monitored by a small group of auditors (four at the time of interviews). This audit team aims to cover all Australian wine producers once every 3 to 4 years. Audits may be cold-calls or by appointment. Wine producers are obliged to keep detailed records that help meet the goal of full traceability. Traceability is one of the things that compliance

---

10 Part VIA of the AGWA Act contains provisions relating to the Label Integrity Program.
inspectors comment upon in their audit reports. Auditors appear to follow what is known in the regulatory literature as an enforcement pyramid. The key idea behind the pyramid is that punishment and persuasion should be linked in a certain sequence that always begins with dialogue and persuasion at the base of the pyramid and ends with the most punitive sanction at the apex of the pyramid (see Ayres & Braithwaite 1992). At the time of interviews approximately 400 audits per year were being carried out. Resorting to coercive levels of the enforcement pyramid by the regulator appear rare, with few licence suspensions and only two prosecutions in the last 15 years (Respondent #104). Only one of those prosecutions related to alleged breaches of provisions relating to geographical indications (Respondent #104). A lot of the effort invested in obtaining compliance takes the form of presentations, advice and the provision of manuals and templates to wine producers and exporters. An important factor in the wine industry’s compliance culture is that many of its participants agree with the industry’s strategic objective of increasing Australia’s reputation for premium wines and the important role of GI regions within that objective.

4.5 Costs

There are a range of costs that accompany the wine GI system; the costs of application, the costs of running the system and the ongoing costs of compliance. The costs begin with a group’s time in putting together an application for the determination of a GI. The costs of application include a fee and those arising from assembling the evidence/information required as part of the application process. The application fee is currently set at $27 500, a fee that approximates the average cost of the GIC hearing an application. The fees for wine GIs have changed over time. Initially they were met out of industry levies and then were kept at a low rate. The potentially deterrent effect of the present fee was seen as a desirable consequence by many interviewees.

The real costs of application, however, lie in the evidence that is required to convince the GIC that it should determine the boundaries of a GI. As we indicated earlier the applicant has to address a wide range of criteria (specified in the AGWA Regulations) as part of the application for a GI, and provide evidence in relation to those criteria. Providing evidence on matters such as the history of an area, its discreteness and homogeneity by reference to attributes such as climate and geology requires expert evidence. The estimates we were given suggest that these types of costs run into the order of tens of thousands of dollars. However, costs might rise to a six figure sum if, for example, they ran into opposition to the GI from a trade mark owner. This sum might be larger still if, as in the case of the dispute over the determination of the boundary for Coonawarra GI, the matter ends up before the Federal Court with many years of legal expenses having to be met.

The Coonawarra dispute is a spectacular example of a bitter and prolonged dispute over a GI boundary, but it is also something of an outlier (Edmond 2006). Settling GI boundaries has been a story of consensus rather than conflict. Most other Australian GI boundaries were determined without recourse to battalions of lawyers and appeals to the Federal Court. Another reason may be that before the introduction of the formal GI system, some winemakers in Australia were organising themselves on a regional basis and so perhaps there was, at least in some regions, a customary sense of boundaries. For example, there were about six regional wine associations in Victoria in the 1980s (Respondent #151). Also in the 1980s some winemakers had organised an appellation program in Tasmania (Respondent #128).

Obviously a GI system for food would require a GI register and a registrar to administer it. These are relatively modest salary costs. More significant are the costs of maintaining a compliance unit to monitor obligations under whatever GI system was designed for food. In the case of wine GIs there are only a small number of compliance inspectors and audit costs are passed on to producers. In the case of the wine industry the costs of an individual audit relate to compliance with the Label Integrity

11 Another example is Baxendale’s Vineyard Pty Ltd v The Geographical Indication Committee (2007) 160 FCR 542.
Program and various other regulations and do not relate just to the GI rules. If a food GI system were to be implemented the costs of audits to individual growers for compliance with the rules would very likely be incorporated into the cost of audits these growers already pay for their participation in various quality management and environmental systems. In short, existing audit systems could be adapted for use in checking records for compliance with the food GI rules.

4.6 Has the Wine GI Game Been Worth the Candle?

As the quote from AGWA in the previous section suggests, many people in the wine industry believe that GI regions are important. How important turns out to be difficult to say, and the reasons vary between regions and participants. Two perspectives on wine GIs emerged from the interviews. One was a winemaker’s perspective that, not surprisingly, looked to the role of GIs in helping to define and communicate the connection between the region and the wine. The other was a marketing perspective in which assessing the value of GIs comes down to answering one simple question about GIs. As one interviewee put it, ’does the consumer care?’ (Respondent #128).

If we look to consumer preferences as a guide to the importance of GIs, separating the influence of region from a range of other purchasing influences such as age, awards, brand, expert or other recommendation, price, previous experience and so on, it is not clear where region sits in a ranking exercise. The studies suggest that region is probably recurrently important, but how important is difficult to isolate (Goodman et al. 2006). The answer is likely to vary depending on which segment of the consumer market is being studied.

Our interviews with those in the wine industry who took a marketing perspective on GIs tended to confirm the difficulty of isolating the effects of regions on consumer purchasing decisions. Some interviewees made the point that industry surveys showed that the recall by Australian consumers of even high profile GIs, such as the Barossa, the Hunter Valley, and Coonawarra, is weak and essentially non-existent for many lesser Australian GIs. Amongst consumers in international markets there is also very little recall of Australian GIs. The survey results we were told about would have many winemakers reaching for antidepressants. There is ’massive ignorance and confusion out there’ when it comes to GIs with consumers, according to one survey, thinking that Chardonnay and Jacobs were GIs (Respondents #103, #104 and #171). In Europe, consumer awareness of the European GI scheme was also reported as being very low with only 8% of consumers recognising the relevant symbols (European Court of Auditors 2011, p. 25). This is a telling example as it shows how difficult it is to familiarise consumers with new GI label categories (in this case the Protected designation of origin (PDO) and Protected geographical indication (PGI) symbols). That said, as the examples of Bordeaux and Champagne demonstrate, if a group of producers can establish a successful GI in a crowded marketplace they will be rewarded by large premiums.

Those we interviewed tended to think that GIs were needed above a certain price point: ’From $15.00 onwards you need a region’ (Respondent #158). Others nominated higher price levels. As prices for wines increase, winemakers can ’make them taste like where they are grown’ (Respondent #163). GIs were also seen as being important in export markets, especially as the rise in the Australian dollar began to affect the ability of wine producers to compete in the lower end of the market.

The interviews also suggested that the export success of Australia’s wine industry in the 1990s was built around creating an image for Australian wine, providing consumers with information about the variety of grape they were drinking and the application of modern brand building techniques that allowed the winemakers of the New World to communicate with European consumers in ways that the Old World looked upon with disdain. The marketing of Yellow Tail is a good example of the kind of creative strategy that was employed. Yellow Tail is reported to sell more in the United States market than all French producers combined (Veseth 2008), likely to the mass of consumers with low GI-awareness.

Australian GIs appear not to have been central to this marketing strategy. The Australian wine export figures for the period 1989-1998 show remarkable growth; an average increase of 26% per year (Hira
& Aylward 2013, p. 402). They also show that Australia’s export success was occurring well before the introduction of the GI system. GIs functioned as a Trojan horse allowing the Australian industry to gain greater access to European consumers. Once in the market, the combination of quality, price and marketing of Australian wine did the rest.

It is probably also fair to say that GIs became progressively more important in the Australian wine industry’s strategic thinking as it considered its future as an industry. In its 1996 publication Strategy 2025, AGWA identified ‘wine regions as defined by geographic indications as a brand marketing opportunity’. The growing emphasis on GIs and regions can also be seen in its 2007 publication, Directions to 2025:

Today, Australian wine is rightly best known for its Brand Champions. We will be able to consider the job near-done when we can say the same for our Regional Heroes - wines which reflect the remarkable number of successful combinations of classic grape varieties with Australian wine regions.

And even more recently AGWA, outlining its strategic plan for 2015-2020 in a discussion paper, indicated that ‘increasing the demand and premium paid for Australian wine’ was a key strategic priority to be underpinned by research into ‘Australia’s unique terroirs’ and compliance with its labelling laws (AGWA 2014, p. 8).

There was a strongly held view amongst interviewees that having too many new GIs could create marketing problems. Australia’s well-known GIs were reputable wine regions before they became GIs. The Barossa Valley, McLaren Vale, the Hunter Valley, the Yarra Valley and Rutherglen grew in prominence as wine regions throughout the 20th Century. These regions progressively changed from an exclusive reliance on producing cheap fortified wine and bulk wine, to making improved quality table wine, particularly as a greater range of grape varieties were tried and the industry placed more emphasis on technological innovation of all kinds (Hira & Aylward 2013, p. 401). When Australia adopted the GI system these regions had the benefit of sunk reputational costs. Taking a largely unknown region and turning it into a consumer brand is a much more difficult and expensive exercise irrespective of whether or not the region is defined by a GI. Some GIs were described as ‘unwieldy and impossible’ (Respondent #171). Thinking about how to lift some of Australia’s GIs out of anonymity remains a marketing challenge for the wine industry.

Our interviewees, whether speaking from a winemaker’s perspective or a marketing perspective, were generally not in favour of a further sub-delineation of Australia’s existing wine GIs. For example, Tasmania has been a registered GI since 1994 with no sub-regions appearing on the register. The Tasmanian winemakers we interviewed saw no gains in the creation of GI sub-regions. They saw Tasmania as a strong and recognisable brand. They characterised their industry as a small industry that had to work together if it was to grow and keep the focus on producing quality wines. Their worry was that sub-regional GIs might have a splintering effect on an industry that could not at this point in its evolution, lose the cooperation it had achieved: ‘At this stage of our maturity we’ve got more to lose than to gain by going our own separate ways’ (Respondent #128).

The wariness about sub-regional GIs was not confined to Tasmania. The view that Australia had enough wine GIs was reported by our interviewees to be a general view within the industry. That said, some interviewees in Tasmania and elsewhere did hint at the desire of some smaller winemakers to have their own identity, suggesting that there is at least some debate within the industry about sub-regional GIs. An overall view from our interviewees was that while sub-regions could certainly be identified, something not surprising given the size of Australia’s wine GIs and the diversity of soils within those GIs, at this stage of the industry’s growth it was better not to formalise those boundaries.

The more general lesson here is that if an industry is to work successfully with a GI system it will have to arrive at a general consensus about its use, avoid its potentially destabilising effects and make it an ongoing part of its strategic planning objectives. The Australian wine industry has many levels and
institutional actors from the public, private and research sectors that produce internal circles of
deliberation and debate about its future (Hira & Aylward 2013). From those internal circles it has been
able to forge common strategic objectives that include an increasing use of GIs to meet the goal of
increasing the premium for Australian wine. If the potential benefits of GIs as regional assets are to be
harnessed by other industries, then GIs will need to be part of the broader planning dialogues that take
place within a region, a theme we return to in our conclusion.

4.7 The Grapes of Globalisation

The Australian wine industry is part of an industry that has continued to globalise. Here globalisation
refers to the expansion by Australian companies into export markets and the incorporation of these
companies into more complex corporate structures in which ultimate ownership may be vested in a
foreign multinational. By way of example, Orlando Wyndham, which owns some of Australia’s most
recognisable wine brands such as Jacob’s Creek, is owned by the French Pernod-Ricard Group
(Australian Wine Online n.d.). Accolade Wines, the largest company in Australia by grape intake, has
its corporate origins in Thomas Hardy & Sons and a lineage of mergers and acquisitions that has
turned it into a global wine company with markets in some 80 countries. Treasury Wine Estates, the
corporate product of the Fosters’ demerger of 2011, has more than 50 brands as part of its portfolio,
including brands located in Australia, New Zealand, the United States and South America.

The future of wine GIs in Australia and globally is more likely to be influenced by decisions in the
designer boardrooms of multinationals than in the cramped offices of the many hundreds of small
wine producers in Australia, 75% of whom crush less than 100 tonnes per year (Winebiz 2014). Of
Australia’s 2573 wine companies the top four account for 48% of the national crush. It seems clear
that the future of Australian wine GIs will be influenced by calculations about global demand,
production and corporate managers’ perceptions about the importance of region in consumer
purchasing behaviour. One view might be that those wine GIs with a reputation for quality in which
large corporate players have a stake will continue to attract investment as part of a strategy of
maintaining a quality portfolio of wine brands, but that the support for new GIs will be modest at best.

However, our study is not focused on where GIs rank in terms of influence on consumer behaviour or
on the role that they play in portfolio decision-making by multinationals, but rather on whether GIs
might confer benefits on regions. On this issue the interviews suggest that some wine GIs have
generated two effects that may bring regional benefits. One is what we call a reciprocal spillover effect
and the other is an investment-in-quality effect. The next two sections expand on these effects.

4.8 Reciprocal Spillovers

One of our case studies deals with a wine GI in the Granite Belt, Queensland. Wine GIs do not
commonly occur in Australia’s north, but the Granite Belt, because of its elevation (600-1000 metres)
and soils, is quite suitable for viticulture. Centred on the town of Stanthorpe in Southern Queensland,
the Granite Belt case study suggests that a registered GI may create regional development benefits
beyond that of other more generic region specific, provenance branding options.

Queensland does not enjoy a great or even good reputation for wine because its tropical and sub-
tropical climate and soils are largely unsuitable for growing wine grapes. The granite soils around
Stanthorpe area are an exception. The problem for the winemakers in the region was the reputation of
Queensland wine; as long as they were under the banner of ‘Queensland wine’, success was limited.
Queensland was simply not known as a traditional grape-growing area. Winemakers had to be skilled
in creating interest in their product first and not mentioning Queensland in their marketing. One
winemaker described how they explained the location of their winery in the Granite Belt to customers,
commenting, ‘notice how I don’t use the word Queensland’ (Respondent #18). The registration of the
Granite Belt GI in 2002 was seen as an important breakthrough: ‘it’s given us our own identity’ (Respondent #18).

In the interviews the wine producers were very clear that it was the registration of a GI that had been crucial to their success. It created the opportunity for them to escape the poor reputation of Queensland wines. The Granite Belt GI became the basis for a marketing strategy for wine that allowed winemakers to distinguish their wine from the rest of Queensland. It also became the basis for creating a broader identity for the region as a tourist destination. Importantly, there was an organisational vehicle that helped to back the promotion of the Granite Belt in the form of Granite Belt Wine and Tourism (GBWT), a peak local body representing wineries and other tourist operations.

According to interviewees the GBWT works with the GI boundary as a guide for its promotional activities. These activities are funded from member levies and fees, with businesses being able to buy different promotional packages. Critical to the stability of the GBWT has been finding a fee structure acceptable to the different types of businesses involved. Establishing a regional identity was described as a ‘slog’ (Respondent #20). The challenges include settling on an identity since there are always options, alternatives and a diversity of views.

The Granite Belt wine GI seems to have played an important role in the region’s growth by helping winemakers gain an independent identity and allowing them the opportunity to forge a reputation for the quality of their wines that was not distorted by an association with Queensland. As the region’s wines began to achieve recognition for their quality, tourists became more interested in visiting the region to sample the wines. This in turn generated demand for food and accommodation services; services that both drew on the success of the wine industry and contributed to its drawing power. In this particular case the GI was integral to a process of reciprocal spillovers in which the benefits of the wine GI spilled over into various other food and tourist ventures which in turn created benefits for the local wine industry. This process of reciprocal spillovers has continued to intensify with the establishment of the Queensland College of Wine Tourism in the region, a specialist education and training provider relating to the wine tourism industry.

The Granite Belt case suggests that a GI may, under a set of conditions, help a region gain the benefits of reciprocal spillovers that might not otherwise occur. In the case of the Granite Belt two conditions emerged as crucial: distance to a large urban centre (Brisbane can be reached in three hours by road) and the creation of an owner-operated regional marketing organisation (the GBWT). In terms of the proximity to Brisbane, what emerged from our interviews was that the marketing focused upon the Granite Belt as a weekend destination, rather than a day trip destination. This had important implications of course for the accommodation businesses in the region. Without a regional marketing body the Granite Belt region would have enjoyed much less success. As one non-wine producer who was paying $1600 to GBWT pointed out, ‘where would $1600 go if we had to market ourselves?’ (Respondent #12).

Proximity to tourism was mentioned as a factor in other interviews in other regions. In the Yarra Valley one winemaker pointed out that Yarra Valley shiraz grapes commanded a higher price than Grampian shiraz grapes (the difference being in the range of $400-$600 per tonne), despite the premium excellence of the Grampian grapes. They attributed this to the fact that the Grampians did not get the tourist exposure of the Yarra Valley. Conversely, if we consider the situation where no Granite Belt GI was registered and the winemakers in the region continued to operate under a Queensland identity, then on their own account they would have continued to struggle and the region would have attracted fewer tourists.

The Granite Belt case study points to the possibility of a GI triggering or accelerating a process of reciprocal spillovers. It is not the only case study where we encountered the spillover process. In the Yarra Valley we heard that the success of Yarra Valley wine in China had also triggered an interest in other Yarra Valley products such as cheese.
One important issue is whether a product other than wine can trigger this spillover process. Wine is a complex cultural product. It can be a bulk commodity (beverage wine), as well as a Veblen good (fine wine), a term used by economists to describe the purchase of goods which are linked to social status. In the case of goods with Veblen attributes consumers are prepared to pay more because these goods have status effects. The number of food products like wine that can generate strong reciprocal spillover effects may be quite restricted. It seems implausible, for example, to think that a GI for Granite Belt apples would generate a process of reciprocal spillovers of the same intensity as one for wine. For Northern Australia it is clear that the role of a signature or iconic GI cannot be filled by grape wine. That said there is an emerging tropical fruit wine industry in North Queensland, the Northern Territory and Western Australia with good export potential into markets such as China and Japan (Noller & Wilson 2009). GIs would be of long-term importance to this industry. While the possibility exists that a GI based on a non-wine iconic regional or local product might generate similar spillover benefits for local tourism ventures and for other local products, finding plausible candidates for this iconic status remains a challenge.

4.9 Communities of Shared Commercial Fate: Investing in Quality

The certainty that GIs bring to the placement of boundaries appears to have played an important contributory role in attracting investment in quality. Wine GIs in Australia, subject as they are only to rules or origin and not additional quality standards, do not of themselves trigger an interest in the production of quality wines. As we indicated earlier, investment in quality in Australia’s traditional wine growing areas was occurring well before the advent of the GI system. Nevertheless once a GI precisely defines an area with a reputation for the production of quality wines it also defines who is a member of the resultant community of shared commercial fate and who is not. A winemaker who produces a poor quality wine and who is in a region known for its quality wine generates a negative externality for the region. A winemaker who wins prizes generates a positive externality for their region. Our interviews with winemakers from regions with a reputation for premium wines indicated that all were sensitive to the negative and positive effects that individuals could have on a region’s reputation.

Informal mechanisms and practices have evolved amongst winemakers to try and ensure that the production of wine in a region does not fall below a certain quality. A common practice is the use of tasting groups or clusters in which winemakers bring along samples for evaluation by their peers. The goal is constructive criticism aimed at improving the wine prior to bottling. Wine competitions also seem to play a role in creating a culture of quality. Winemakers care about winning prizes. The esteem in which they are held by their peers and the broader industry matters to them. There are also the more obvious benefits that accrue from winning prizes – the capacity to price accordingly. Wine competitions are places where they can find out from judges in informal conversation why they did not win or place and how they might improve. The leadership of more established wineries in a region, such as a Josef Chromy in Tasmania, is also important. These wineries keep a weather eye out for newcomers, finding ways to give them advice about what works best in the region. The response is generally positive: ‘nobody wants to make bad wine – they jump on board immediately’ (Respondent #123).

Where a region has committed to a quality product, the GI boundary creates certainty for future investors. They know precisely where they must buy in order to gain the benefit of the GI. Winemakers who want to expand their business into premium wines benefit from having precisely defined regions that are associated with quality winemaking. A wine company such as De Bortoli, which has its headquarters in Griffith, has expanded into the Yarra Valley, as part of a strategy to increase its production of premium wines. The Yarra Valley GI is seen as generating an important halo effect.
The more general point here is that once a GI region has achieved a reputation for quality, the embeddedness of the GI means that investors have to invest in the region if they wish to benefit from the GI.

4.10 Lessons from Wine GIs

The lessons from Australia’s experience with wine GIs have international and national dimensions. These can be summarised as follows:

1. Bilateral negotiations will be crucial to the long-term management of GIs, especially if Australian industries want reciprocal protection for their own GIs in crucial markets such as China.
2. The Australian wine industry has shown that Australia can work with a GI system and moreover develop GIs that are valuable. Developing successful GIs takes time and requires a long-term strategy that can cut through to consumers in brand-congested marketplaces.
3. The longer Australia waits to develop its own GI system for non-wine products the more likely it is to face design constraints, as the Australia–United States FTA demonstrates.
4. If Australia develops a domestic GI system for food this will help to provide negotiating and bargaining focus in international fora.
5. The Australian wine GI system followed a ‘keep it simple’ approach that focused on the regional origin of grapes and said nothing about production method requirements.
6. In the case of the wine GI system, which is silent on quality standards; informal mechanisms and practices of quality control have been adopted by winemakers. These mechanisms are a way of addressing a free riding problem that arises in the absence of mandatory quality standards.
7. Settling the boundaries of GIs proved, with a small number of exceptions, less problematic than one might have predicted. A factor in this is probably that Australia wine GIs are large in area (and therefore inclusive).
8. A wine GI is a boundary delineation device that helps to define a community of shared commercial fate. In the case of a wine GI associated with the production of premium wines, the GI provides investors with certainty about where to invest in order to gain the benefits of the region’s reputation for quality.
9. The administration and audit costs of the wine GI system appear relatively modest. Use has been made of existing audit systems. The wine industry faced the costs of having to re-educate consumers in wine labelling, but these costs were absorbed over a long transitional period.
10. A wine GI may benefit a region by triggering or intensifying a process of reciprocal spillovers in which other services are established to meet tourist demand.
5. Case Study 2: The King Island Story – Have the Cows Bolted?

Our interest in King Island off the coast of Tasmania as a case-focus site arose from two factors – its geographical significance in being a naturally defined and bounded space as an island, and its reputation for iconic products (in dairy and beef). Place importance and iconic produce are both classic attributes of GIs in terms of potential to place-brand uniqueness, and thus we were keen to examine the King Island ‘story’ in some detail.

5.1 King Island Agriculture

King Island has an economic history underpinned by agrifood production, primarily in dairy and beef (Coates 2014). In 2011, total gross value of agriculture on King Island was $31 million (ABS 2013); 66% of which came from beef production and 28% from dairy (Coates 2014). King Island’s population in 2011 was approximately 1500 people, with roughly 700 in employment; 200 of these were employed in agriculture (ABS 2013).

Interestingly, agriculture on King Island has not grown necessarily from any comparative advantage of good soils and climate attributes such as high rainfall, but from political imperative. As Coates (2014) points out, King Island was decreed and settled as a farming community as a result of the distribution of soldier resettlement blocks in the early part of the 20th Century. There has also been a significant history of government support and intervention on King Island (Coates 2014).

5.2 The Beef Story

King Island beef is a highly sought after and iconic product with a reputation for high quality and excellent taste, attributable to its longer growing season and the absence of extreme summer temperatures to degrade pasture:

> The longer growing season means we have more control over the quality. We are grading in the top 10% for pasture-fed beef and this means KI beef brings around a 40% price premium on the shelf (Respondent #105).

King Island has some obvious disadvantages in terms of agricultural production, the most significant of which lies in its isolation. Similarly, the cost of power and ageing port infrastructure (Coates 2014) are factors that impact on potential profitability of agricultural enterprises on King Island. Combined, these factors add significantly to production costs. Being able to attract a premium price for a recognised high quality product is essential to maintaining market share and the viability of production on King Island, as our interviewees recognised and pointed out. The logical response to these challenges therefore lies in ensuring that value-adding is maintained in situ as much as possible and to transport ‘finished’ products to market. This is essentially what was occurring for a number of years, where beef cattle were slaughtered through the abattoir located on King Island.

The abattoir had been run initially as a subsidised enterprise, with heavy investment from the Tasmanian Government. In the early years the abattoir processed the meat but did not have any role in marketing or purchasing of the product (Coates 2014). A relatively tumultuous history followed, with the abattoir firstly leased by private interests in the 1980s (King Island Exports), until its subsequent sale to private interests – initially a Tasmanian enterprise, RJ Gilbertson Pty Ltd, which upgraded the facilities in the 1990’s resulting in production growth. SBA Foods bought the business in 1996, focusing on marketing to Japan, and then sold on to the Tasman Group, who developed a relationship with Coles. In 2008 South American TNC JB Swift (JBS) acquired the Tasman Group’s six Australian...
plants, further developing the relationship with Coles but ultimately closing down the abattoir in 2012 (Felix Domus 2013, p. 18). Reportedly, all operators continued to seek support from the Tasmanian Government in relation to the ongoing operations of the abattoir, in the form of either subsidies to support local jobs, or (as was the case for JBS), a no-interest loan to support a compliance upgrade in 2011 (Coates 2014). Despite this, having closed the on-island facility in 2012, JBS moved its processing operations to Tasmania. We now turn our attention to the perceptions of our interviewees, with regard to the impact of these events on their businesses.

Our interviewees were very aware of the challenges facing the beef industry on King Island, and were able to point to critical periods and decisions which have impacted upon the ongoing sustainability of their livelihoods. There was firstly recognition that the development of the dairy industry on King Island and the production of high quality cheeses had a major impact on the development of the beef industry: ‘We were lucky there for a while, really. Beef tagged along behind KI Dairy and we benefited from the associations of quality. Dairy led the way, I would say’ (Respondent #107). This is an example of the reciprocal spillover process that we referred to in Section 4.

A further example of the impact of critical decisions appears to be with the entry of a second processor of beef from King Island, for example:

Yeah, we had a choice then, when [processor] showed an interest in our beef. They would subsidise our transport costs to get the cattle processed by them on Tasmania. The split between producers on the island using the local abattoir and [processor] was about fifty/fifty, I reckon (Respondent #107).

This producer talked about the efforts of some to get local producers to ‘stick together’ and to maintain their ‘loyalty’ to JBS and the local abattoir, and their belief this was critical for the good of the industry on King Island:

We did talk about it, yeah, but it’s hard to do that when you’re offered a better price elsewhere. I can’t blame them. You’re under pressure to provide for your family and you do what it takes. Some of us were concerned that it wasn’t going to be good in the long-term though, and that’s exactly what happened. JBS closed down in 2012. Of course, the subsidy from [processor] only lasted until JBS shut down (Respondent #106).

Our interviewees reported on the subsequent challenges faced by the beef producers on King Island and the major impact the closure of the local abattoir has had on them. They related efforts to develop a local beef producer’s cooperative and plans to either redevelop the local abattoir (JBS refused to sell) or to develop a new, smaller multi-species abattoir ($30 million estimated costs were prohibitive). Respondents were very aware of the value of their product, and the value of the ‘King Island’ name; ‘KI brand puts a floor in the price’ (Respondent #107).

They also relayed stories of ‘passing off’ and concerns about ‘losing control’ of the King Island brand:

Even if we could get a local abattoir up and running, JBS won’t let us use the ‘King Island’ on our beef. They own that name. Without the name, how do we get the premium price? (Respondent #107).

Have you ever heard of ‘King Island rabbits’? There was a story in the paper about them. There are no rabbits on King Island! We worry about things like that – people using the King Island name (Respondent #108).

We also heard about [major retailer] selling ‘King Island beef stock.’ Apparently the beef is coming from [processor], but how do we know it is all King Island beef that it is getting made from? They don’t just buy beef from us. There’s no way to keep track of it (Respondent #108).
5.3 The Dairy Story

There is a long history of dairy production on King Island with the first operation being built in 1902. Coates (2014) reports on a patchwork of successes and failures and tells of an overall bleak economic outlook that included a prediction by the Bureau of Agricultural Economics (1977) that ‘sustained and substantial’ financial assistance would likely be required to support dairy production on King Island for the longer term.

In 1978, King Island Dairy was purchased by a local entrepreneur, Bill Kirk. Kirk, with the assistance of the Tasmanian State Government through a loan arrangement established the dairy as a viable business (Coates 2014). Improvements aimed at producing high value, high quality products appeared to be the focus of Kirk’s business strategy and our interviewees described him as:

…an entrepreneur. In the first place, he chased up delis and specialty shops [and] didn’t go down the usual road for distribution. He started to build the reputation and to establish the market that way (Respondent #110).

However, as described in the introduction to this case study, the dairy became less viable over time, and was subject to many of the challenges discussed, not least of which was the deregulation of the dairy industry in 2000. Increasing production costs and global competition saw diminished production on King Island, and with it, a shifting of any power to negotiate that farmers may have previously had:

South Cape [cheese] used to be made on King Island from second grade milk. Then it moved to Burnie, so it doesn’t make sense to use the milk from King Island anymore. We’re really price takers now. It used to be that we could negotiate our contracts [with King Island Dairy]. This year though, it pretty much just got slapped on the table. There was no room to negotiate. As dairy farmers, we don’t get any more for our milk than any dairy farmer on the mainland selling to anyone, even though our milk goes into premium products (Respondent #113).

There has been a need to seek external investment to support King Island Dairy which has seen it change hands a number of times. Currently, it is owned by Lion Dairy and Drinks, a subsidiary company of Lion, having been acquired by National Foods in 2001/2. Lion Nathan National Foods was formed in 2009, when Lion Nathan was purchased by Kirin Holdings Company Ltd and merged with National Foods. Lion was restructured in 2011, to become one company with three businesses: Lion Beer, Spirits and Wine Australia; Lion Beer, Spirits and Wine New Zealand and Lion Dairy and Drinks (Lion n.d.). Lion has invested significantly in building an iconic brand in ‘King Island Dairy.’ Currently, the King Island Dairy website makes much of the island location, climate and environment and their collective influence on the quality of the products produced by the business:

No ordinary island. No ordinary cheese. Guarding the stormy western entrance to Bass Strait is a lonely, rugged island. Situated at 144° longitude and 40° latitude, this isolated place is cut off from the rest of the world by jagged reefs, raging seas and howling Roaring Forties winds. With mineral rich soils, cool annual temperatures, abundant rainfall and a consistent salt spray thanks to the constant westerly winds, the environment contributes to quality milk production which helps us create some of the finest cheeses on earth. Welcome to King Island (King Island Dairy 2013).

Our subsequent interviews with representatives of Lion reinforced the importance of provenance to their product, and the conscious decision made by the company to differentiate King Island products as high quality products aimed at discerning consumers from the premium end of the market: ‘We would never ever use milk that wasn’t from King Island, for King Island products. There’s a lot of rigour behind our claim’ (Respondent #148); ‘Maintaining the integrity of the brand is critical to maintaining the value’ (Respondent #149).

Lion also owns fruit juice company ‘Berri’. Our interviewees pointed out that in this instance, although Berri is indeed the name of a place in the Riverland region of South Australia, the brand Berri had a different role in Lion’s portfolio, encompassing all sorts of products. The placename was
not important, as Berri products were aimed at mass market consumption, and indeed, ‘very little of it [juice] does come from Berri’ (Respondent #148).

5.4 Discussion

There are a number of significant points that this focus site highlights and these are now discussed. First, there has been an intense focus and major investment in branding by Lion that has built the reputation of King Island Dairy products. That investment has been made on the surety afforded by ownership of the King Island Dairy trade mark, which minimises risk (for example free riding) attached to the capital invested. Lion can be sure that it will maximise any rents that accrue as a result of their investment. Thus there is an argument that the private good associated with trade mark ownership provides the security necessary for the level of investment required to build a solid ‘backstory’ on which to stake a reputation for premium products.

For regional businesses, that is, the dairy farmers on King Island, there are positive outcomes from Lion staking its reputation on King Island products. Investing in the brand and building reputation means greater security of the market for King Island products and thus the ongoing need for a consistent supply of milk from King Island cows. King Island Dairy (by its own admission) is entirely dependent on locally produced milk. However, because of the isolation of King Island, dairy farmers have no alternative but to sell their milk to King Island Dairy as the sole operator on the island. Thus they are also completely dependent on King Island Dairy and this dependency has had the impact of ensuring they remain price takers rather than becoming price makers, as one would normally expect with producers of high quality inputs to differentiated, premium products. ‘We don’t get a premium price on milk on King Island. We have our price aligned to a competitor’s price’ (Respondent #113). The relationships between farmers and their buyer are purely transactional, and not embedded in the social relationships (Granovetter 2005) of the island. Strong social ties create trust norms which can mitigate the impacts of power imbalances in business relationships (Granovetter 1973, 1983, 2005). This is an important point, and one very well understood by our interviewees:

We do have a pretty good relationship with the local guy, but he can only do what his masters tell him to do and they don’t care. Actually makes it a bit hard for him here (Respondent #113).

In terms of the regional economy, the dairy industry has become extractive, in that rents that may have previously contributed to the local economy under local ownership of the dairy are leaking from the region.

Continued brand recognition provides a measure of safety for these regional producers. However, such safety is limited by the fickleness of the market. A large player like Lion pursues efficiencies and market share on a scale measured in tens or hundreds of millions of dollars. Stopping the production of particular lines at the King Island Dairy for cost reasons or placing more of the emphasis on the cheese factory located at Burnie in order to exploit the Tasmanian brand are all part of restless, ever-changing market calculations. There is no doubt that should King Island Dairy products fail to make market share or lose their ‘iconic’ status, then the rational response by Lion would be to withdraw from King Island. Should this occur, then the ‘King Island’ name (in relation to dairy products) is arguably lost as well since a future investor would have to deal with the trade mark ownership of ‘King Island Dairy’.

Arguably, it is the potential for local initiation and local control that are the most important features of a GI for regional SMEs and communities of which they are a part. Local control that can mitigate the impacts of power imbalances makes GIs important (in specific circumstances) to regional economies. Maintaining local control of livelihood assets including land, infrastructure and livestock in relation to both dairy and beef on King Island for example, through collective ownership of the brand ‘King Island’ would be of great benefit to the people of King Island, in a way that a monopoly-like ownership of the trade marked name cannot guarantee. GIs therefore have the potential to mitigate the
'either/or' choice: *either* external investment *or* local control. With the option of having a GI registration available as a tool, there is potential to have both external investment (as has been essential in the case of King Island and for many other regional economies) while maintaining some measure of local control (which has been significantly eroded over time on King Island).

In the case of the beef producers there is a realisation that a more cooperative approach to marketing is going to be crucial to their farm businesses. As our interviewees pointed out, the widespread uptake of quality assurance programs by beef producers around Australia is having a ‘levelling effect’ on prices, a point that has resonance for many Australian agricultural sectors both nationally and globally.

Having a strong brand is one of the key ways in which to counter this levelling process. At the time of our interviews some producers were looking at registering a trade mark, a process that has required them to look at the legal impact of JBS Australia’s ownership of the King Island Beef trade mark (TM No. 1385474). Had the GI option been available to beef producers at some earlier point in time these kinds of complications could have been avoided. Moreover, beef producers could have through GI rules settled issues such as how long cattle would have to remain on King Island in order to be classified as King Island beef, rules that would have also benefited Australian consumers.

Of course, if the GI option had been available there is nothing to say that beef producers would have chosen to register a Beef GI for King Island. Planning to create a long-term regional brand asset does require leadership, a willingness to find common ground amongst people who come to meetings with different mindsets. Nevertheless it would have been an option on the table to be argued for by those on King Island who were looking for new ways in which to retain the value from the King Island name. To some extent a GI does represent a test of a region’s social ties. If ‘people are not as tight as they think’, a GI will not save them (Respondent #113).

### 5.5 A Possible Future Scenario for King Island

GIs would clearly have been a useful option for the dairy and beef industries on King Island at an earlier point in their history. It may be that they still have a role to play in future value chain dynamics should they become available. A 2013 feasibility report, which discussed the difficult economics of establishing a new abattoir, concluded that ultimately the key for better financial conditions for beef producers lies in the development of supply chain options that ‘maximises their share in the value of the King Island name’ (Felix Domus 2013, p. 69), Marketing rather than processing has to be the focus. With considerable experience of the role of trade marks in the hands of multinational processors, as well as how decisions in the headquarters of these processors directly impact on the viability of their businesses, beef producers on King Island might well throw their support behind a Beef GI, if it were available, aiming at a GI that has strong credibility with consumers and providing producers with leverage in negotiations with other players in the value chain. While the registration of such a GI might have to face objections from existing trade mark owners such as JBS, David might well triumph over Goliath, backed by good lawyering and effective social media campaigns.

The most revealing interviews were with the King Island Brand Management Group, the members of which volunteer their time in working to protect the King Island name and the community interests that depend on it. They have had long experience with certification marks, trade marks and branding in general. They saw certification marks as largely inappropriate to their needs. They relayed stories of where trade mark owners had used the King Island name, but had ended up producing products of a quality that undermined the Island’s reputation for quality. They spoke about how difficult it was for a local council to contest a trade mark application by a multinational and about their fears that placename trade marks in the hands of big businesses was the start of a process of loss in which ‘the words will become disassociated from the place’ (Respondent #110). They pointed to the many years it had taken to get the ACCC interested in misuses of the King Island name, and the need ‘to have a watertight case before the ACCC would act’ (Respondent #111). Assembling evidence was not easy; ‘People won’t speak to the ACCC – they are scared’ (Respondent #117). They also well understood
the effects of the value chain structures that had consolidated over the years in Australian agriculture; ‘so much of this stuff is flowing the other way, so much of it’s being captured by the marketers and retailers’ (Respondent #107).

It is hardly surprising therefore that they showed a strong interest in the possibility of a GI system, a system that could lower the costs of enforcing placename protection (see our discussion in Section 3). They were looking for new strategies with which to try and reverse some of the flows of value, based on the King Island name that were going to other players.

As we have suggested GIs may help with King Island’s existing industries. They would also be relevant to any new industry on the island. Our interviewees indicated that the future may well hold such an industry and that ‘confidential’ discussions were occurring. Hypothetically, if entrants into this new industry were able to work cooperatively to build the provenance branding backstory for their product – for example, ‘high quality, uniqueness, clean, green’ attached to King Island, then they may have some measure of control over the development of the subsequent business model. The GI affords a collective good where (potentially) higher returns accrue at the local scale, rather than the private good of the trade mark, where value accrues to the trade mark owner. Capturing value and the associated economic rents and retaining these in the local economy may well be enhanced by the implementation of a GI, should the legislative option become available.
6. Case Study 3: You Can’t Just Call It Smelly White-Mould Cheese

Cheese, like wine, comes in many varieties, and like wine, there can be vast differences in quality, taste, expectations and associations. Particular cheeses and those recognised as high quality, also sit within the category of fine foods, and as such may enjoy iconic status and reputation. As an iconic product cheese also has the advantage that it would be a practicable GI option in sub-tropical regions of Australia where a wine GI is not a realistic option because of the climate. Cheese is also very often linked to place and especially so in the European context, for example, parmesan from Italy, roquefort from France and feta from Greece.

The dairy industry is also an industry where deregulation, which started around 2000, has had a strong impact, most of our small dairy interviewees describing it as a huge turning point. Various regions started to see the closure of dairy farms and cheese factories. An adjustment program for the industry has been put in place. This deregulation story includes what is termed the ‘milk wars’, generally linked to Coles’ action in 2011 of dropping the price of its milk to $1.00 a litre. The restructuring effects of deregulation continue to sweep through the industry, with a representative from Lion Dairy and Drinks pointing out early in 2015 that:

As a company that fundamentally believes in the inherent goodness of dairy, there is something not quite right when milk is cheaper than water (Hawthorne 2015).

Prices in the industry have been the subject of inquiries by the Australian Senate.12 Our interest therefore was in whether GIs for dairy, especially for cheese in the form of an iconic artisanally-made product might generate the kinds of spillovers and investment-in-quality effects that we had observed in the case of wine GIs. Innovation in the Australian cheese industry around regionality would help those farmers in Australia’s regions looking for ways to adapt and survive. A food GI system would form a natural branding complementarity to this innovation.

Our interviewees included large, small and artisanal cheesemakers in Queensland, New South Wales, Tasmania and Victoria as well as broader industry representation through Dairy Australia. During the course of our interviews we found two major viewpoints and a number of common themes which are discussed in this industry-focused case study.

6.1 The Regulatory Environment

Artisanal cheesemakers argued that the current regulatory environment, especially in relation to Food Standards Australia New Zealand (FSANZ) regulations around the use of unpasteurised milk is effectively stifling innovation and limiting creativity and experimentation.

What’s the point of encouraging young cheesemakers? The current regulations and restrictions are stifling the potential of the development of an artisan culture (Respondent #166).

Australia has worst case scenario regulation. It acts as a ceiling for innovators. Trouble with a ceiling is you end up hitting your head on it (Respondent #132).

This was a theme that we heard repeated several times from smaller, specialty cheesemakers. These interviewees also told us that many young Australian cheesemakers are leaving to work in Europe, where they feel they can experiment more freely in terms of creating cheeses of regional typicality. In European countries such as France and Italy many traditional cheeses are made using raw milk and natural culture starters. By way of example, Mozzarella di Bufala Campana, a cheese from Southern

12 For details see Department of Agriculture (2015).
Italy is a raw milk cheese made using a natural whey culture (under the GI, natural whey has to be used) (see Parente 2006).

In an important regulatory development, FSANZ in December 2014 approved changes to the Food Standards Code that will provide more scope for the making of raw milk cheeses in Australia (FSANZ 2014). These will come into force once they are approved by the Ministerial Forum on Food Regulation. For the purposes of this study this development would seem to strengthen the case for a food GI register as GIs in Europe are fundamental to protecting investment in cheese regions. We return to this point below.

On the flipside of the regulatory environment in the dairy industry, one important point that was made by several interviewees related to the high level of trust that currently exists in Australian (and New Zealand) dairy products and that have enabled unprecedented access to Chinese markets, for example, because of the perceived safety of those products. When put to some interviewees that GIs might enhance the provenance status of these products, thus further cementing truth in origin labelling, we were told by a major stakeholder in the industry that ‘country of origin labelling is sufficient. It is a bit clunky, but generally it works’ (Respondent #142). When asked whether passing off might be reduced by the implementation of a GI system where the burden of proof around breaches was less onerous, this interviewee did not think the GI system had anything to currently add that might assist in prosecuting breaches. Their major concerns lay with the current regulatory environment in Asia, and particularly China where passing off appeared to be rife: ‘Of 26 brands of infant formula labelled “product of NZ” on display at a trade event in China, only four brands were actually products of NZ’ (Respondent #143). They did not feel that the current regulatory environment in Asia was sufficiently robust enough to support the prosecution of passing off offences. This stakeholder saw that GIs had little to offer in terms of benefits and presented a risk in the current market environment. They saw that GIs had the potential to limit international market access by restricting the use of common names currently available but that may become unavailable under GI regulation (for cheese varieties, for example), without any of the benefits that might accrue from being able to more easily prosecute passing off breaches because the current regulatory environment would not adequately enforce the legislation in some international markets.

6.2 Common Use Names

The second major theme that arose from our interviewees in the dairy industry related to concerns about the restrictions a GI system might impose around the use of existing names for cheese.

One large dairy company we spoke to indicated that they had ‘about 10 staples’ that were recognised by their generic names and were exported around the world. For this company, maintaining the status quo was important for two main reasons. Firstly, their export markets were described as ‘unsophisticated’ and recognised cheese names that are currently used generically in Australia to describe a cheese style:

They [their market] understand mozzarella, not stretch curd pizza cheese. There’s also feta from Gippsland that goes to the Middle East and it’s called Gippsland Feta. Those names are important (Respondent #153).

For this company, experimentation based on the regionality of cheese was not high on their agenda and their production and marketing regimes were geared around the ‘staples’ they had developed, marketed and branded successfully. They could see no value for their business in extending the GI regime in Australia to encompass non-wine products and perceived that it could pose some risks in terms of the names they currently used to describe their cheeses. For the most part, we found that this was the broader view of the industry as well:

It is pretty hard to get excited about a soft, white-mould cheese when you’ve been calling it, and the consumer recognises it, as camembert for so long (Respondent #142).
This comment sums up the majority of views with regard to the perceived renaming issue that our interviewees felt would arise should a GI system in Australia be introduced, if it subsequently recognised existing GIs for cheese in other countries. We were advised for example, that there were already considerable efforts on the part of the EU to ‘claw back’ generic terms and that this was of great concern in the dairy industry in Australia and in other parts of the world. We were also told about the ‘Consortium for Common Food Names’ (see http://www.commonfoodnames.com) which had essentially been formed as a response to this issue. The consortium, headquartered in Washington DC, comprises industry bodies and companies concerned with the issue of generic food terms and the rights to maintain the use of these terms. Consortium members are strongly opposed to the current proposals to expand the Lisbon Agreement, for example, because of the likely impact of further restriction of generic food names.

The importance of the 10 or so generic names for cheese can be seen from Dairy Australia’s reports that quantify Australia’s cheese production using generic names such as brie, feta, mozzarella and parmesan. These and other generic terms are used by the major cheese manufacturers in an industry that in 2012/13 generated overall $787 million in export sales and $1.8 billion in domestic sales. Some of the major stakeholders we spoke to were confident that the EU’s attempt to recover these generic terms for the exclusive use of a small number of regions in Europe as against the rest of the world’s cheese producers (including those in European countries) would never succeed. The United States is ‘steadfast’ on this issue commented one interviewee (Respondent #153). There is an important distinction between the chance that common use of such terms would be abandoned by Australia, and the chance that some of its export market countries might do so in agreement with the EU.

Compromise and deals within deals are in the nature of trade negotiations. By way of example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA), which is going through processes of review, does suggest that compromises around food GIs, including cheese will probably emerge. For example it appears that in the case of cheese the agreement allows that Canada may use components of multipart terms such as ‘brie’ but ‘Brie de Meaux’ would be protected. Likewise, ‘Edam Holland’ would be protected, but the term ‘Edam’ could be used. According to the European Commission the ‘use of geographical indications (GIs) such as Grana Padano, Roquefort, Elia Kalamatas Olives or Aceto balsamico di Modena will be reserved in Canada to products imported from European regions where they traditionally come from’ (European Commission 2014).

The more general point we wish to make here is that large free trade deals in which GIs play a comparatively small part will continue to be made and the EU may make unexpected progress on the issue. The steadfastness of the coalition upon which Australia relies may slowly dissolve. The bilateral agreements over GIs may well create a set of standards that will be folded into the major trade negotiations such as the Trans Pacific Partnership. One trade negotiating advantage that Australia might gain from developing its own food GI register is that it could be designed in such a way so as to expressly protect the interests of its dairy industry. A strong domestic model of this kind might have more persuasive influence in the trade arena, offering interested countries a concrete alternative to the EU’s model mongering on GIs.

### 6.3 Could Dairy GIs Add Value to Regional Economies?

Given the positions put to us by those we interviewed, we concluded that experimentation in cheesemaking and the scope to do this would likely be the province of smaller, regional enterprises, rather than the bigger players in the industry. It was artisanal producers who reported the most frustration with the regulations and who, like other artisan movements are driven by a very different philosophy to the large players in industry:

> I’m trying to make the best Bruny Island cheese, not the best French brie in Tasmania. It’s important to us that we are no longer imitating and are creating instead (Respondent #132).
These artisanal producers see in GI s a chance to communicate a different philosophy of production.

The recent changes by FSANZ to raw milk cheese have been described by the Australian Specialist Cheesemakers’ Association (2015) as strict and conservative, probably best suiting smaller farmhouse cheesemakers who have good control over the health of their animals and the quality of their milk, as well as the skill and expertise to make cheese using raw milk.

This assessment accords with what we found in the interviews.

Large dairy processors would be unlikely to run raw milk through their machinery one day and pasteurised milk the next, as the costs associated with cleaning and sterilising subsequent to raw milk processing would be quite onerous and resource intensive. This may present opportunities for smaller, regional producers to capitalise on their smaller processing plants, and produce typical local cheeses.

In answer to one of our standard questions about what it would take to make a food GI system work, one winemaker made the following set of perceptive observations: ‘You need a cluster for food to get going, good leadership, people striving to make a better wine [or other product], some sort of taste point difference.’ He went on to observe that ‘there’s a place in the market for differentiated product, for authenticity that is about origin, having a sense that it’s real’ (Respondent #164).

The artisanal cheese industry in Australia does not lack for individuals passionate about creating rather than imitating. But it does lack clusters. It was striking during our course of interviews in various regions how often there would only be one or two cheesemakers within a region. Precisely the same observation was made by one of the major players we interviewed: ‘the structure in Australia of the cottage industry is different. You don’t have a sequence of small players in an area’ (Respondent #153).

We are not in a position to assess whether the FSANZ changes to raw milk standards for cheese will be a significant incentive for more artisanal producers to enter the industry and perhaps help build these local clusters. But the smaller cheesemakers we spoke to welcomed the idea of more entrants to their region. They saw advantages in term of collaboration and competition: ‘More cheesemakers in the region would force us to be better’ (Respondent #166). With innovative clusters the case for GI s becomes much stronger as the European experience suggests. As one interviewee put it, a GI ‘would set a definition of our identity, it would unify us as dairy producers’ (Respondent #24).

Clustering of ‘like’ businesses via the use of a GI for the production of unique, artisanal products may enhance the regional economy and also improve the quality aspects of local products. Clusters would also help generate the spillover and quality effects that we described in the wine industry case study. Value adding in situ also has potential to provide local employment and a local outlet for dairy farmers. In the Sunshine Coast hinterland, for example, arrangements between dairy farmers in the region and a small dairy which specialised in high value products meant that the dairy farmers were able to sell their milk locally, reducing transaction costs and receiving a higher price than they would normally. The difference in this instance from the farmers on King Island (see discussion in Section 5), is the availability of options. The local dairy had to pay a higher price to secure the local supply, which was not the case on King Island where no alternative outlet existed. In summary, it would appear from our interviews that international markets and the impact that GI s would have in these markets are of greatest concern to major industry players. They are concerned about current and future international negotiations around trade agreements and the treatment GI s may receive in such agreements. However, as we have suggested the development of free trade agreements involving GI s are likely to continue apace and probably requires Australia to plan accordingly.

Certainly resistance to the EU’s GI agenda should not automatically be translated into resistance against a domestic food GI model. Domestically, larger players could see no real advantages for their businesses in having GI legislation available. For them, their trade marks and the freedom to use
generic, common-use names for their products was adequate. However, for smaller, regionally based SMEs and artisanal producers, we could see some contingent benefits from the availability of GI legislation. These producers have aspirations to experiment and to develop uniquely ‘Australian’ cheeses that are truly characteristic of the regions in which they are produced, rather than being made using imported cultures or using imported names. Thus we learned that the Bruny Island Cheese Company has introduced new cheese varieties with names that do not reflect any European cheese styles (Respondent #132), such as ‘Oen’, ‘Nanna’, ‘O.D.E.’, ‘Saint’ and ‘Otto’, avoiding the use of the traditional European cheese styles or names. Should GI legislation be available, then it may well support these actors to work cooperatively to develop in situ value-adding businesses that retain much of that value within the regional economy.
7. GIs and Food – Discussion and Findings

7.1 The Importance of Brands

The role of marketing/branding in creating a barrier to entry for competitors is well understood in economics. Similarly the role of trade marks in creating barriers to entry has been understood for a long time (Bain 1956). Today’s multinationals devote large sums of money to studying the connections between brands and consumer brains, using trade marks to underpin branding strategies of considerable psychological sophistication (Yoon & Shiv 2012). A brand represents a ‘cluster of functional and emotional values that enables organisations to make a promise about a unique and welcomed experience’ (de Chernatony et al. 2011, p. 31).

Most of our interviewees were not employed by multinationals but were self-employed producers. Overwhelmingly they believed that marketing/branding was a crucial but neglected part of their business. Lack of expertise, time and resources were the most common reasons given for why producers were not doing more in an area in which they thought that more could, and should be done. Hardly surprisingly, these producers did not have a deep understanding of the proprietary tools needed to extract value from branding strategies. People would report to us that they had trademarked a placename such as ‘X Dairy’. Upon closer questioning it turned out that they had registered a business name rather than a trade mark. At the same time they understood that branding was one of the few ways in which they might change their position of being price taking suppliers of undifferentiated commodities.

By contrast the large businesses we spoke to had moved well beyond ‘branding 101’. They were managing a portfolio of brands, compiling ‘watchlists’ of their competitors’ trade marks and monitoring their trade mark applications. These companies understood the importance of provenance branding and creating a local ‘backstory’ for products; ‘it’s a meta-trend’ as one interviewee said (Respondent #148). During the interview with the Australian Consumer Association, we heard about survey data that also points to the existence of this trend.

Many smaller producers were supportive of GIs in principle, seeing them as a potentially useful tool to help Australian producers differentiate their products in commodity markets, as well as helping to cater for increasing consumer interests in the regional origins of food. Such views were often rooted in the widespread conviction that Australian primary production is generally of a very high standard. Some producers did not see a role for GIs in their industry and wondered about their costs. By way of example, an interviewee from the olive oil industry suggested that Australia’s clean and green image was all that the industry needed, regions in Australia were not producing enough to justify regionalisation and the premium end of the market was simply too small. The view that ‘brand Australia’ was all that was needed was reinforced by others, including two government agencies in different states. One interviewee from the state government sector raised the point that:

> It doesn’t matter where it comes from in Australia at the moment, just so long as it comes from Australia. In the Chinese market, we could send them everything we can produce and it wouldn’t even touch the sides of one large city (Respondent #172).

Yet others sounded cautionary notes, pointing out that while everybody believed that various regions of Australia were clean and green, it was not clear either what this meant or whether in fact it squared with the reality. Others were blunt, claiming that there were or had been uses of, for example, chemicals in their region whose residual traces made the claim of clean and green a fiction.

The large businesses and supermarkets were more wary with some interviewees asking the same basic question; ‘what is the value of a GI?’ The scepticism of these larger players about the use of GIs is
readily understandable. They are commercially practised in using trade marks to capture the benefits of their brand building strategies; trade marks that are central to their market valuations, and that can be bought and sold. In contrast a GI cannot be owned by an individual or group of producers. A multinational company cannot, for example, purchase the Barossa Valley wine GI. A GI is embedded by law in place and functions as a public good asset for all those producers who choose to work within its boundaries and abide by its rules. The potential exists, therefore, for any value that a GI might capture, to be distributed differently to the value captured by a trade mark. This potential to alter the flow of value in a supply chain is one reason why some of our interviewees in regions were interested in a GI as an option (see the King Island case study).

7.2 Emphasis on Production Rather Than Marketing

A general view emerging from the interviews was that Australian producers are focused on producing high quality products, relying on accumulated skill, know-how and innovation, but their real involvement with selling their products ‘stops at the farm gate’. This can result in the exceptional qualities of agricultural products, often also the result of unique geographical conditions, not being promoted or communicated to consumers with the emphasis and effect that they deserve. Premium quality associated with prime production areas was thus commonly reported as not being sufficiently apparent to end consumers and thus failed to generate premium returns.

A number of interviewees observed that marketing represents a highly specialised skill set that was not easy to acquire. History in part helps to explain why individual Australian farmers do not have a tradition of marketing, for example, stretching back to the first part of the 20th Century and the use of marketing boards to obtain monopoly selling powers in domestic and export markets (see Productivity Commission 2000, ch. 2). Such federal and state single desk marketing arrangements were established in a wide variety of industries including barley, wheat, cotton, wool, wine, eggs, honey, as well as for some fruit and vegetables. By virtue of these arrangements Australian farmers were, to a large extent, shielded from the need to differentiate their products by means of branding.

The shift towards deregulation that began in the 1980s, combined with the implementation of Australia’s National Competition policy in the 1990s, has seen the use of marketing boards dramatically decline. Increasingly farmers have had to face the prospect of entering a ‘brand’ new world. These policy changes have also affected the changing models of agricultural extension from state-based to user-pays that has seen a shift in the scope and nature of information available to farmers. Extension services have been provided by private consultants; agribusiness agents for example, Elders, Wesfarmers and fertiliser companies and, increasingly, through cooperative research centres; research and development corporations and universities (Marsh & Pannell 2000). There has been more emphasis on efficient production and the science of agriculture than on post-farm gate sales and marketing. Outside of this emphasis on production, other programs including Australian Government funded programs in the mid-1990s and early 2000s such as ‘Property Management Planning’ and ‘FarmBiz’ recognised the need to provide assistance to Australian farmers in the area of farm business management. These programs had an emphasis on issues such as business planning and succession, but again, did not emphasise issues such as marketing and branding.

There is a strong case to be made for placing greater emphasis on creating brands. The rents to be obtained from brands that represent genuinely innovative or high quality products are harder for competitors to erode. A good example of a company investing in developing a strong brand is the specialist fresh fish supplier, Huon Aquaculture. Its brand is backed by investment in developing world class production methods and technologies, and a commitment to ethical and sustainable production. The Tasmanian region is a key pillar of its branding message, a message Huon sees as central to its commercial destiny; ‘we’re not prepared to give that provenance story to anybody else’ (Respondent #127).
7.3 Capturing Value at the Farm Gate

Right across Tasmania in particular, we saw many examples where emphasis on the Tasmanian backstory of ‘clean, green, special’ was prominent. ‘Brand Tasmania’, an initiative of the Tasmanian Government, is focused upon selling the message that Tasmanian products are unique, high quality and highly desirable. The emphasis is on quality, rather than commodity, regardless of quantity:

Tasmanians breathe some of the world’s cleanest air and drink the purest water. Unpolluted coastal seas and rich, fertile soils enable them to produce the finest foods. Tasmania is an island of difference. Its people are resourceful; applying the kind of creativity that arises from geographical isolation to their business activities, scientific research and artistic endeavours (Brand Tasmania 2015).

For some interviewees the critical issue is whether a region’s brand value leads to more value for farmers:

Tasmania’s clean and green attributes are gateway attributes, they get you into markets, but you don’t get a premium, it’s very hard for farmers to get value. Farmers in Australia are at the bottom of the food chain (Respondent #120).

Even in Tasmania’s regions, with all their natural advantages, changing the dynamics of value chain distribution is a major challenge. For example, as part of the report by the National Resource Management Ministerial Council on Australia’s National Framework for EMS in Agriculture (2002) various case studies were reported, including a case from Tasmania in which onion farmers supplying Field Fresh Tasmania obtained certification under Nature’s Choice, a code of practice required of suppliers by the United Kingdom supermarket Tesco. The certification process was a pilot project and a group of farmers were given premiums by Field Fresh in order to encourage their participation. These were eventually dropped. The report goes on to observe that ‘no premiums are being obtained in the marketplace: certification remains a condition of doing business with Tesco’ (p. 28). Another case concerned table grape growers from Mildura who were supplying Sainsburys through a Melbourne-based company, Ausfresh. These growers had to implement the Euro-Retailer Produce Good Agricultural Practice (EUREPGAP), a code that contained detailed standards on good agricultural practice that was developed by British and European retailers and supermarkets. EUREPGAP has become Global Good Agricultural Practice (GlobalG.A.P.) as more retailers and producers around the world have joined this global certification system (see GlobalG.A.P. n.d.)

The EUREPGAP/GlobalG.A.P. story is an example of a much broader phenomenon that affects most of the producers that we interviewed. They find themselves in a world where they are much more affected by private regulatory initiatives in which powerful actors in the supply chain set standards and create codes of practice around food safety, quality, animal welfare, environmental management, labour standards and so on that result in audit and certification obligations for farmers. In essence, players such as supermarkets have become surrogate regulators. They are part of a decades-long quiet revolution in the way in which the roles of regulatee and regulator have been expanded and redefined using third parties. Even larger players such as the supermarkets are part of complex webs of certification and audit in which the role of regulatee and regulator fluctuates. For example, a pig farmer has to obtain certification under the Australian Pork Industry Quality Assurance Program and meet Woolworths Quality Assurance Standards in order to supply Woolworths, but Woolworths itself adopts the Meat Standards Australia grading system as well as responding to consumer demands for other kinds of certifications on the products that it sells (for example, the Fairtrade International logo).

Many of the producers we interviewed did describe the supermarkets as the ‘new regulators’. The quality assurance systems that farmers have to implement generate paper flows and weariness. ‘It’s just another burden’ said one farmer pointing to an accreditation hanging on his shed wall (Respondent #160). In summary, the basic problem that we heard about is that while the compliance burden of Australian producers in this private or hybrid regulatory world has increased, their profit
margins have not. The relationship between retail prices of groceries and farm gate prices is complex as the 516 page report by the ACCC into grocery prices makes clear (ACCC 2008).

Clearly this relationship is beyond the scope of this Report. Here we simply make the point that the more branding options farmers have available to them, the more freedom they will have to design a marketing/branding strategy that meets the particular context of their business. If farmers are in a situation of declining margins then this leaves little room to invest in marketing, but this is not an argument against GIs. In fact the joint-asset nature of GIs may encourage the emergence of collective cost-sharing approaches to marketing by farmers and regions. Provided that a low cost GI system can be designed, having it more widely available as an option would seem to serve branding freedom. The argument for this option has a temporal dimension. Even if a GI system does not suit an industry in its present context, it may do so as the industry matures and/or as consumer preferences become more focused on regionality; evidence suggests that consumer awareness and the demand for provenanced food and beverages is growing (Hurst 2007). This was supported by our interviews with larger retailers, who talked about having audit systems and traceability mechanisms in place. While these are ostensibly there to meet requirements around food safety, they are increasingly becoming important in terms of provenancing. Retail marketing practices are also increasingly geared towards making a direct connection between the farmer and the consumer and the benefits of fresh food. The Woolworths national ‘Jamie Oliver’ campaign is an example, where stylised mixed produce boxes and produce ‘stalls’ have been set up in supermarkets to sell the message of fresh food, direct from the farm. However, these marketing practices do not necessarily benefit regional producers. The ‘Jamie Oliver’ campaign cost producers an average 40 cents per crate contribution to marketing. Woolworths requested that farmers make the voluntary contribution and that benefits would flow through to their businesses through increased consumer consumption of fresh fruit and vegetables. According to AUSVEG CEO, Richard Mulcahy:

In terms of the overall per capita consumption, we’ve seen very little movement in 20 years.
Not one country in the world that has embarked in generic marketing has seen any per-capita increase in consumption (Landline 2014).

Many farmers were reluctant to refuse payment, on the basis that their businesses were entirely dependent upon their ongoing relationship with Woolworths (Landline 2014), although a subsequent ACCC investigation cleared Woolworths of any wrongdoing in relation to their treatment of farmers, citing a lack of evidence.

GIs can be thought of as being contingently beneficial. They may suit some industries at a particular point in their evolution or they may bring benefits to some regions but not others. The important point is that like other policies for regional, rural and remote Australia, there is no ‘one-size-fits-all’ broad brush application or design strategy that will fit all regions or industries.

7.4 Avoiding Complacency

In some industries such as rock lobster, there was comparatively little interest in developing a branding strategy because the industry was enjoying high demand and premium prices in the Chinese market. However even in industries enjoying export success such as rock lobster and abalone, interviewees cautioned against complacency about branding. The Chinese market could change for unexpected reasons (examples interviewees gave were closure of the Chinese market for a significant period because of a SARS-style outbreak; Chinese elites paying less for entertainment because of a crackdown on corruption). The capacity of Chinese aquaculture to improve the quality of its farmed products should not be underestimated. Chinese farmed abalone had seen the Australian abalone industry lose export markets. Tasmanian abalone is a wild caught, clean product that is being harvested on a sustainable basis as a result of a partnership between government, fishermen and universities. Communicating this to consumers in China and Australia by ‘cementing’ a brand in their head was seen as having long term importance (Respondent #131). A GI was seen as being part of a layer of protection that included other forms of certification such as that available from the Marine
Stewardship Council. In other words, GIs potentially have a defensive role in helping industries to defend premiums in export markets.

Individual industries do have the benefit of some investment in marketing funded by means of statutory levies (for example, various horticultural industries pay levies that are administered by Horticulture Australia Limited), but these levies are stretched to cover a variety of projects and produce, often research and development projects, leaving only modest amounts of funding at best to cover marketing activities. As some growers pointed out it, is very hard for those in, for example, the citrus fruit industry, to change consumer behaviour when growers are competing for the consumer dollar with the marketing departments of multinational confectioners producing popular chocolate bars; ‘It isn’t necessarily competition between ourselves, it is us competing with the likes of Mars Bars’ (Respondent #169).

GIs might allow for marketing/branding strategies that industry levy-based marketing struggles to deliver. The latter would very likely make little or no use of regionality and would be more generic in nature applying to vegetables or fruit. GIs are product and regionally specific and have potential as regional planning tools, a point we come back to in our conclusion.

### 7.5 Perceptions of Branding Rules: Confusion Rules

The present legal remedies against free riding available to any business that develops a value-added (either by production or processing) local food product and adopts a place-based brand were described in Section 3. The options are multifarious and the law relatively complex.

Interviewees frequently offered their perceptions of the efficacy of legal avenues and remedies open to them, often unprompted. A very common perception expressed by interviewees was that business name registration was somehow effective in protecting their brand against imitations and free riding, which is not in fact the case. Many food producers only had a very basic understanding of trade mark registration as an option, or of the remedies available to them if they had registered a trade mark. The perception that registering a trade mark is expensive and onerous was also widespread amongst interviewees, although in reality, unless there are objections or opposition to registration, the cost of registering a trade mark is not high (ranging from about $120–$350 unless there are complications) (see IP Australia 2014).

Many interviewees had formed an understanding, or had received some advice (often not from lawyers) that registering a placename or a mark including a placename was very difficult or even impossible. The distinction between registering as such a real placename, where the business was actually based, and registering a particular representation or embellished name was not commonly understood. Nonetheless some had received advice to the effect that adding ‘Company’ or a product category to the placename might suffice to obtain trade mark registration under certain conditions. The distinction between inherent distinctiveness and acquired distinctiveness which might allow a mark to be registered after a period of actual use was also not well understood by most interviewees.

However, in a few cases there was a shrewd understanding of how a placename can be registered and how it may be relied upon to secure a competitive advantage over other local businesses that might also wish to rely on the attractive power of the place concerned (for example; Byron Bay, Maleny, Mareeba). In just a few cases a business had been approached by regulatory authorities in relation to reliance upon place-based branding, where there was an arguable case of misrepresentation (for example, the impression that a placename branded coffee consisted of local beans whereas in reality all the raw product was imported).

Many businesses and other interviewees reported that abuses of provenance brands were rife, but that they felt legally, little could be done about it. A number of business owners reported receiving information from various quarters about wrongly branded products. They said they usually responded
with an email or phone call. This was commonly about as far as businesses (mostly SMEs) were prepared to go, as it was felt that involving lawyers would escalate costs and was simply not worth it. Businesses reported that often parties contacted, when made aware of the problem agreed to alter or amend their labelling, professed ignorance of the problem or were apologetic. Many interviewees felt that this method was quite effective but that they probably only ever became aware of a small fraction of the real deceptions that were ‘out there’. Often interviewees mentioned that if all product labelled as being from the particular area was really sourced there (for instance King Island beef or Bangalow pork), production levels would far exceed what they knew was actually produced in the place concerned, although these claims were piecemeal and could of course not be substantiated. Many businesses felt it was simply not a productive investment of time and effort to legally pursue various apparent infringements, and that the ACCC did not have the resources required for blanket policing of abuses.

Another common perception was that placename brand users were often also playing fast and loose with origin. In other words, they were aware of placename brand users that in fact did not or only to some extent produced or processed goods in the place concerned. Often the perception was that little could be done about this. Many interviewees were also aware of placename branded products which were not based in the identified area. In some cases interviewees reported a ‘stand-off’ with such competitors; for instance, one cheese manufacturer was aware of another party with whom they had contracted at one point, who was now using a false placename brand in relation to a competing product (Respondent # 24).

However, producers also commonly reported that local business owners had a fairly good common understanding of the legality and fairness of references to place. In other words, they were often aware of one or two competitors who also adopted a placename as part of their brand, but felt comfortable that the brand overall was sufficiently distinctive and legally acceptable. Many interviewees made reference to getting on well with competitors in the same product sector who also derived some advantage from local provenance branding.

Scepticism about the effectiveness of the legal protection of provenance brands was often coloured by the very low esteem in which labelling laws concerning country of origin are held. In particular, the ‘Made in Australia’ rules, and the use of such statements as ‘Made in Australia from local and imported ingredients’ were perceived to be at best meaningless and at worst grossly misleading. This was a common complaint amongst interviewees and also seemed to colour their views concerning the accuracy of place of origin branding and labelling in general. There was a common perception amongst interviewees that ‘Made in Australia’ labelling is very important both domestically and for export, but that the rules were lax and allowed for misleading claims. The result was that genuine local products struggled to make the correctness of their claims of local origin and associated quality known to consumers. More generally there was considerable scepticism about labelling laws concerning food, whether relating to ‘Organic’ claims, claims such as ‘Free Range’, or claims relating to nutritional value. The patchy law in relation to labelling and identification of fish origins in retail shops and restaurants also contributed to the perception of ineffectiveness and unreliability of labelling laws and general legal requirements. This resulted in the whole area of food labelling and the identification of origin rules being held in low esteem and considered ineffective and unenforceable in any meaningful sense.

In terms of more collective provenance branding options, many interviewees had a vague and incomplete understanding of the GI system for wines – in the sense that they understood that European wine GIs were off limits for Australian winemakers, but little more. The nature of the underlying legal regime and its special character was generally not known other than by producers in the wine sector.

We observed that the law relating to registered trade marks and passing off is perceived as difficult, and taking legal action as expensive and risky. Recourse to litigation or serious legal action although sometimes contemplated was very rarely made. We learned from a Northern Rivers pork producer, for
instance, that an email or phone call to a restaurant or butcher supplying a product marketed falsely to
be the producer’s (placename branded) pork, often succeeded in stopping the practice. Sometimes
such misrepresentations were the result of accident or confusion, but commonly they were also
perceived as deliberate, as products so branded commanded a higher consumer price.

It was generally felt that contact with relevant authorities in this field concerning particular matters
was rarely helpful or satisfactory. That consumers, often paying higher prices for a product that was in
fact no different from the commodity standard under the false impression of getting a high quality
local product, was of considerable concern to producers. We found this issue most commonly in
relation to high end beef and pork, but it was also a serious issue in relation to fish, where instances of
misrepresentation were said to be rife, and labelling rules often ineffective.

It was also often not seen as being in the interest of individual producers to take a legalistic stance
concerning various issues with major wholesalers, supermarkets, or important clients. This was
perceived to be the case because of dependency on those parties and the ease with which they could
find substitute suppliers. Producers with a unique product with established high customer recognition
generally considered themselves to be in a stronger position to insist on their rights in this regard.

7.6 Certification Marks

We came across very few uses of certification marks. The collaborative process of developing the
rules that will apply to the use of the mark, obtaining approval and then enforcing and policing the
mark, is perhaps one disincentive. The involvement of the ACCC in certification marks may be
another. The cost of obtaining a certification mark increases because of the cost of drafting rules,
especially if the ACCC requires the rules to be redrafted. Lawyers may well advise clients that
certification marks are not worth the trouble and advise their clients to use standard trade marks
instead (see Hallett 2012).

Our interviews with the producers involved in the Yarra Valley certification mark indicated that it had
not been a durable success. The initial desire to create a regional approach to product quality brought
together small and big players from tourism, wine, food and agribusiness. Cooperation in the
beginning was described as good. However, the large number of players involved led to different
views about what the brand should aim to achieve. Ultimately the aims of improving the quality of
products and increasing product development were not met. The brand ‘became more like a tourist
logo – you could use it for a fee’ (Respondent #157).

Certification marks and GIs are different systems with different strengths. A strength of a GI is that it
helps to create branding focus around a precisely defined region and a product. As a boundary
delineation device it identifies who in a broader region is or is not part of a community of shared
commercial fate. As our discussion of the wine GI case study shows, the wine industry has been
successful in forging joint commitments to quality improvement in Australia’s premium wine regions.
Certification rules concerning the use of a local brand for a product can only bind those who volunteer
to participate, and do not mandate how place is referred to by other parties. Only the use of the
particular certification mark, rather than the placename as such, is governed by the rules and protected
against misuse as a registered mark.

Ultimately the key question is whether a GI system for food should be a regulatory option within the
Australian context. It would be an additional option rather than a substitute for certification mark
registration. There has been some use of certification marks by wine producers. Governments and
industries alike might welcome a world in which they had another option with which to try and reach
their regional development or product quality goals. For example, in a world in which the Tasmanian
government was looking at new industries for King Island such as wallaby exports, the option of
having a GI registered for such a product might be preferred over the use of a trade or certification
mark.
7.7 Brand New World: Farming and Brands in the Era of Deregulation

A significant number of more entrepreneurial local producers have taken their efforts beyond the farm gate, for instance by linking up directly with high end butchers, greengrocers and fruit and vegetable retailers. In other cases direct promotion and distribution to restaurants, local farmers’ markets, and high end provedores were reported upon by certain energetic producers. In all these cases, production levels were to the micro- small- and medium-end of production scales. We did not encounter large-scale commodity producers differentiating product in this manner. For the most part, producers at this scale faced logistical challenges in moving large volumes of produce. Markets simply were not available locally or regionally and production volumes were too high to be sold through farmers’ markets, where these might have been available.

For these commodity producers, any thoughts about seeking to move from commodity based production to premium, differentiated production are often limited structurally by the twin forces of geography and demography. Transaction costs associated with distance from markets are so high that their only choice is to grow for volume, in order to achieve economies of scale. For the most part, this involves getting as much product as possible on a large truck going to a single destination to be sold to one wholesaler /retailer, thus minimizing those transaction costs.

Australian agricultural policy premised upon increasing efficiency and upscaling (Smith and Pritchard, 2015) has supported this kind of commodity production, which in part has been driven by the geography of the nation and thin domestic markets associated with our small population. There is a very high risk for many producers to try and change their current production regimes, where the current production model is the most rational economic response to the production and market environment. Undifferentiated product enables supermarkets to maintain continuity of supply by allowing substitution from among producers, which in turn creates competition, deters cooperation and guarantees lowest prices paid for commodity products. Nevertheless, we did find examples of where producers had made the switch from commodity to value-added product (see the next section).

For Australian agricultural production then, the evidence from our interviews suggests that an effective GI system could only work for premium, value-added products, with the exception of some high-value fruits. Geography and demography are the most significant limiters of specialist production because transaction costs are simply too high, unless the premium on the value-added product is high enough to warrant it, as we have seen in Tasmania, for example. Comparatively high value products are therefore likely to be the main products that might carry a brand and be differentiated by place under a GI regime.

For those trying to differentiate, we consistently heard the message that taking a greater role in these marketing and promotional activities imposes a very high burden on individual producers. Place-based marketing initiatives that rely heavily on individual champions are fragile. As one interviewee pointed out, all too often ‘there’s no succession plan when the champion runs out of energy’ (Respondent #76).

We also encountered producer involvement in collective efforts at regional branding. The challenges in establishing a successful collective regional approach to branding a product or range of products across industries include winning the trust of enough producers in the first place to propel an initiative; and finding a fee structure that can sustain building the brand and at the same time is a fee that brand subscribers are willing to pay. The reluctance of many, particularly farmers, to pay for what they often saw as fuzzy outcomes was a recurring theme in the interviews.

Where producers from different industries are involved in a collective regional branding initiative a potential problem is settling on an iconic product to represent the region. In the race for iconic status,
If wine is a participant it tends to romp home. In the absence of wine there may be no obvious candidate or too many. For example, Northern Queensland produces a diversity of products and attributes, but in a collective enterprise involving producers from different industries, choosing a product and a simple message becomes difficult; ‘we were trying to find an iconic food. If you use a mango the banana farmers will get upset or the prawn trawler fishermen will be upset’ (Respondent #26)

We interviewed people with long experience with branding in regional tourism in order to gain their insights into the potential of GIs in the branding game. They would quickly identify potential candidates, sometimes ones that we had thought of (tropical fruit, coffee, chocolate), but others we had not (for example, tropical fruit wine, rain forest medications out of the Daintree and gourmet salts). There was experience and wisdom in their reflections:

The benefit of a GI is long-term. In the here and now the value is not as great. In 20 years it might be different. GIs can grow an industry. Trade marks grow a business (Respondent #30).

The time, cost and uncertain outcome of branding has resulted in many producers not seeking to differentiate their product, but rather supplying to others who were investing in brands, and doing so through a range of different marketing mechanisms. Examples of this type of arrangement include farmers supplying to the large supermarkets; farmers supplying to a local business that was doing some marketing, for example, local dairy farmers supplying a local cheesemaker; growers supplying a company that was building a national brand in a particular product such as chia; or supplying to a large wholesale distributor of fruit and vegetables such as Costa. These kinds of arrangements have different benefits and costs.

Those farmers who were supplying the supermarkets would speak of the benefit of reliable payments and in some cases they would say that the support of the supermarkets had been important to the long-term development of their business. There were also warnings by some interviewees about the dependency resulting from becoming a large supplier to the supermarkets:

If you’re a Woolies’ supplier you have to supply, you have to have a business continuity plan. Once you commit those volumes to supply Woolies you burn bridges (Respondent #152).

If you supply bulk tonnage to Woolies/Coles you are locked into them. You end up being big, but you don’t make any money (Respondent #38).

The danger then that many of our interviewees identified was that of being a price-taker in a supply chain in which the producer was having to constantly drive down costs and live with contractual conditions that were the product of unequal bargaining power; ‘They [supermarkets] just taste and check with their calculators’ (Respondent #158).

7.8 Integrated Brand ‘Clubs’

In other cases producers had entered into contracts to grow products that had been developed through extensive research and development programs, the genetics of which are protected by a combination of intellectual property rights in the form of patents, plant variety rights, and trade secrets. For example, Driscoll’s, a United States company, has bred varieties of blackberries, blueberries, raspberries, and strawberries that it offers to growers. Under this kind of arrangement the grower supplies berries of a specified quality to Driscoll’s which in turn supplies to supermarkets and other buyers. Driscoll’s takes responsibility for the marketing. The grower is relieved of product development, marketing and distribution. In this type of model the regionality of the berry from a marketing point of view is largely irrelevant. The owner of the variety is focused on creating a brand that represents a product of standardised taste and quality wherever it is grown in Australia. The
strawberry should taste the same whether it is grown in the Yarra Valley or Tasmania. The Jazz Apple variety that is owned by the Montague Group is another example of this kind of arrangement.

For a grower the advantage of contracting in to an integrated brand model of the kind illustrated by Driscoll’s is income stability. Providing the producer meets the standards required under the contract, they know that their crop is sold. The grower does pay a marketing fee, which may be calculated on the number of bins/boxes coming from the farm, but this fee creates a pool of money for the marketing of the variety that will be much larger than any generic marketing carried out by the relevant industry.

But we also learnt that there are costs to this kind of model. A farmer may want berry variety X, but not Y (because it is not the best one), but find that under the contract they have to take Y in order to obtain X. Some farmers have paid fees in the order of tens of thousands of dollars to take an early exit from this kind of model. The services and products that come with this one-stop-shop model are paid for by the grower through various fees such as plant royalties, production royalties and fees to cover marketing. This model is thus neither cheap to enter, nor cheap to exit. For so long as the brand owner continues to develop varieties that are more productive and meet consumer preferences, then the model works for the grower and the brand owner.

As one interviewee pointed out, in this kind of model, the grower, the brand owner and the supermarkets all have a common interest in not creating consumers who are too discerning about the varieties of strawberries, season and region of growth. If customers become too focused on a particular variety grown in a particular region that is delicious for a period of the year this creates a peak demand for strawberries with those qualities, but it also means that the income of strawberry growers may fluctuate if consumers reduce their overall demand, preferring to eat fewer strawberries, but willing to pay more. In the integrated brand model the aim is to supply a product of standardised quality to the supermarkets 52 weeks of the year.

Of course, not every farmer will want or be able to join an integrated brand ‘club’. An interesting question is whether there may be circumstances where a low cost GI model might provide a group of growers with benefits if they decided to focus on, for example, strawberries of a particular variety, grown in a defined region with perhaps other specifications relating to the maintenance of high quality (for example, the packing of the strawberries). The GI would not threaten the corporate club model. Rather it would offer a group of growers who were interested in exploiting a particular market segment with an extra branding strategy, one that did emphasise regionality and that might thus appeal to those consumers identified by Hurst (2007) who are interested and willing to pay for provenance and uniqueness.

### 7.9 Common Use of Provenance Branding Strategies

We found evidence of current and historical adoption and experimentation with provenance branding strategies by Australian producers in every product sector. Emphasis on place by reference to placenames, images, local individuals and backstories featured significantly in these strategies. Approaches to provenance branding had often evolved over time, as the standing or currency of certain references to place fluctuated, or as producers found that one strategy was more effective than another. For example, we interviewed several producers and tourism agencies in the Atherton region in Queensland who related the story of the attempts to change the marketing of the region from ‘The Atherton Tablelands’ to ‘The Cairns Highlands.’ All of the interviewees in this case recounted that the attempt at change was a dismal failure, and gave the reason as being the ‘vague’ nature of what might constitute highlands associated with Cairns. Clearly, the strategy aimed to capitalise on the more easily recognised ‘Cairns’ placename than that of ‘Atherton.’ In the case of Stanthorpe vs Granite Belt, the latter was more successful, and we understood from interviewees that the delineation of the region via the Granite Belt wine GI was helpful in this instance.
Some producers found that shifting from a strategy pursuing efficiencies of scale and production in undifferentiated commodities (such as standard cheese varieties, apples), to producing food differentiated by quality and reference to origin and local backstories had worked to improve margins and provide profitability. These instances were found across different regions and industries – cheese and beef in Tasmania and the transformation of one business from commodity apple production to locally sold apple juice and other apple products.

Some producers have registered trade marks that include placenames, others use such placenames as common law marks without having registered them or because they are, or believe they are, unable to register them. One producer had been given this advice explicitly upon an attempt to register ‘Daintree’ in his trade mark application. Producers commonly incorporate references to place in their broader branding, advertising and communications strategies, as well as in their core marks. Backstories sometimes emphasise local traditions or practices that are depicted as being of long standing, for instance in relation to cattle mustering, or the pioneering establishment of plantations. Examples of these included coffee plantations in the Atherton Tablelands and the food and wine traditions brought (and subsequently marketed) from Italian immigration to the Granite Belt region.

Some producers choose a placename referring to their own locality as part of or constituting their brands, for example, Kenilworth Country Cheese, others choose to associate themselves with nearby places because they are well known to broader circles of consumers. We noted several references to Nimbin, Byron Bay and Bangalow, for example, in the branding of products in these regions. Interviewees frankly admitted that they deliberately adopted a placename that was well-known, without actually being based there, but only if it was somewhere in the vicinity. None supported the adoption of a well-known placename for branding purposes by a business that was nowhere near that place and saw it as deceptive.

In the case of ‘Byron Bay’ we saw many examples of different products originating from a broad area with Byron Bay at its centre, but sometimes (strictly speaking) in a different locality. Byron Bay has a very high profile as a tourism destination and this generated a positive association which producers were able to capitalise upon in their branding strategies. We found similar examples in relation to the iconic Daintree region.

Sometimes an obscure placename would end up in a trade mark for a prosaic reason – it was where the factory was located. This was the case for instance with a cheese producer proximate to the Sunshine Coast. The adoption of the placename was not to evoke association with the (nonetheless attractive) natural environment of that particular location, but simply because that was where the factory was situated. In contrast, another cheese producer proximate to a well-known tourist destination (Maleny) in a hinterland area, chose to incorporate the name of that location in their branding, precisely because it is so well-known in metropolitan Brisbane and beyond.

We found several instances of place-based branding of businesses originally developed in the area identified by the name, where the business had then subsequently shifted to another place. This usually concerned a placename that had little wider resonance with consumers other than what they had come to learn of it by observing it as a brand. Where such a brand had become successful, businesses commonly shifted for commercial or practical reasons (for example, because of limited availability of the raw materials required in the original area) to a more convenient location, while retaining the old placename as their principal brand. Other businesses considered the connection with a local place, more often than not one that had broader consumer awareness, was absolutely essential and that they would never shift production outside the area. This was the case for King Island and the Yarra Valley.

Some producers had a striking and effective ‘backstory’ or visual imagery associated with a particular place, but in other cases some producers made surprisingly little of the natural environment where the product was grown and/or processed. For example, an Australian tea producer whom we interviewed pointed out that tea grown in Australia has no natural pests and thus requires no pesticides in its production, giving it an advantage over tea grown in most other parts of the world, which is generally
subject to quite intense pest management strategies. Much to our surprise little had been made of this in marketing terms, this also being true for the distinctive microclimate in which the tea was grown. Instead this company was in a commodity game in which, on the domestic front, it was dealing with price pressures from the supermarkets and was struggling to recover its costs when selling its tea as a filler to global tea merchants.

7.10 Effect of Farmers’ Markets on Region Branding

In a number of areas farmers’ markets were of considerable significance to some smaller, high-value local producers. Some interviewees said that they made a living from selling their products at weekly farmers’ markets in their region. In many of the regions where we conducted fieldwork (for example, the Yarra Valley (Victoria), Northern Rivers (New South Wales), Granite Belt (South East Queensland), there were a number of farmers’ markets which producers could choose to attend. They tended to form an important part of the rural economy, although on a relatively small scale overall. Many farmers do not benefit from farmers’ markets and for the moment these markets tend to service particular consumer groups rather than representing a structural change in the way food is distributed (James 2015). They were particularly important for local value-adding producers (such as small cheesemakers, organic fruit and vegetable producers, producers of nuts and berries, fruit juices, jams and so forth) who could typically sustain a family business through selling their products at these venues and by direct sale to a customer base built around the farmers’ markets model.

We observed that farmers’ markets, depending on the standards they adopt, may have an effect similar to a registered GI, because they impose geographical requirements – only produce from a delineated geographical area may be sold at the markets. This was the case with the Byron Bay markets for instance, which have a relatively detailed set of rules determining whether food is local enough to be sold there.

The settling and adoption of such rules of origin has effects similar to that of adopting a GI, although of course the markets cover a range of products. Borders are settled on the basis of agreed criteria, there is some process of supervision and control, and a resulting assurance for consumers that products from local farmers’ market are indeed local. However we also noted that in other instances, the degree to which the ‘local’ produce rule was enforced was questionable. In some instances consumer expectations that products would be available regardless of seasonality or weather-impacted loss of production, had created situations where some producers were not averse to sourcing product from outside the agreed borders to meet demand and maintain their local customer base. In these instances, there was a clear and deliberate defection from the established rules of origin and no real regulatory mechanism with which to enforce compliance.

Farmers’ markets in some areas are also an important mechanism for producers to have direct marketing contact with consumers. This was the case for an organic producer of vegetables from the Granite Belt in South East Queensland, for example. This business promoted its products, and that of some other local producers at a Brisbane farmers’ market under the umbrella of ‘Granite Belt Organic Growers’. This also resulted in the sharing of transaction costs, the most important being the cost of transport, between regional businesses. A better return also resulted for these producers through this form of direct selling, in that they were able to cut out intermediary buying/selling agents. Personal producer/consumer interaction also engendered significant customer loyalty, according to interviewees.

In this sense farmers’ markets that impose some rules of origin perform a function that is similar to that of a GI. They offer a framework for collaboration, help settle the borders of a region, promote the regional brand, and encourage local value-adding food businesses. The significant difference between farmers’ markets and GIs lies in the nature of enforcement mechanisms that deter defection as well as the fact that GIs potentially allow farmers to benefit from regional recognition in more distant markets.
7.11 Branding As a Collective Action Problem: GIs and collaboration

During the interviews many local producers would emphasise the competitive nature of agricultural production. Time and again we heard that the individualistic and competitive nature of farming in many regions blocked the level of cooperation that would be needed to achieve a successful place-based branding approach. In the emblematic words of one interviewee: ‘Work together? You’re talking farmers here’ (Respondent #38).

To some extent this depiction of competitive individualism is an exaggeration since farmers have managed to run cooperatives and participate in various grower and industry organisations, for example, ‘Best Prac’ Farming groups and so on. We came across cases where there were active processes of information sharing and knowledge exchange, and producers were more attuned to the practical advantages than to the competitive risks. Cocoa production in the Daintree and pineapple production over wide areas were examples of where information exchange was described as being more open. Information sharing was often of a practical nature, for example, the management of pests and diseases. Respondents also drew our attention to initiatives to develop regional brands such as the formation of the Great Southern Region Marketing Association to develop a coordinated approach to the marketing of the diversity of products and attributes of the Great South region, some 400 kilometres south of Perth.

It is easy enough to identify in the abstract the benefits of a group approach to marketing. Business plans based on the idea of sharing the costs of developing a regional brand make the idea seem easy and obvious. However, what the business plans promise and what is delivered often turn out to be two different things. The voices of experience that we heard pointed out that individuals within groups do not start from the same level of debt, the assets of the group and the requirements of the group may not match and ultimately market forces may simply overwhelm the capacity of the group. Our interviews also suggest that cooperation is easier to establish in the production phase of agriculture than in the marketing phase. When it comes to marketing and selling there is a temptation to go one’s own way. Branding may well be a typical collective action problem in which the rationality of short-term interest overwhelms the benefits of long-term collective cooperation.

We heard of a number of cases where collaboration around quality differentiated local products fell apart because of producers dealing individually with purchasers for the sake of a small price increment. The potential benefits of collective place-based branding were often defeated by an inability to agree on various aspects of the strategy, for example, which name to choose; what constituted the place area; what product to choose. Further to this, a number of interviewees cited a lack of time, skill and resources; distance between producers; no shared history in marketing, as practical impediments to collaborative regional marketing. These impediments were noted across a broad geographical spread of interviewees, including those in central Australia, far north Queensland and Northern Rivers, as well as across industries, including beef, pork, tropical fruits, chocolate and cheese.

One interesting example of the difficulties of obtaining cooperation related to beef from Central Australia. Beef from this region is ‘as clean and green as you could get’ (Respondent #92). The arid nature of the conditions contributes to a high quality, distinctive product. As a result there is considerable interest from the food industry in beef from this region, making a central Australian beef brand seem an obvious strategy. A consultancy report had suggested that the best way forward for producers in the region was to become more involved in branding and distribution. However, developing a regional brand around this product requires close cooperation amongst a core group of producers, funding the operation of a local abattoir and much greater involvement by the producers in the distribution chain. In addition there is no guarantee that the investment needed to establish such a brand would generate a worthwhile premium. Upon following up on this particular example with producers, and specific government agencies in the Northern Territory, we were told that although
there was considerable discussion amongst the small group of producers, a lack of time, the vast distances between properties, long-standing traditions of individualism and a lack of available expertise at affordable cost contributed to the inability of the group to establish a regional branding strategy. Thus not only heterogeneity but also geography can create difficulties. While a central Australian beef brand would help with the long-term viability of the industry in this region, helping producers to capture the value of their product that is currently going to others in the value chain, ‘you need a big driver to push the brand through’ (Respondent #91). However, even ‘the live export ban, drought, wasn’t enough to get co-operation’ (Respondent #92).

Local councils sometimes initiated and supported general regional branding initiatives (and we found several instances of this in Tasmania, Victoria and in the Kimberley), as did RDAs or other regional bodies. This resulted in multiple layers of local branding often based on different names and different areas, from the most concentrated to the very wide. Examples include ‘Granite Belt’ vs ‘Southern Highlands’; ‘Cairns Highlands’ vs ‘Atherton Tablelands’. Often some names were more historical whereas others were more newly coined.

The result was that multiple local branding initiatives and experiments often coincided, but were being driven by different organisations at different levels, resulting in a complex picture that was potentially confusing to consumers and inefficient in terms of the dilution of the region brands and the dissipation of promotional resources. Sometimes historical initiatives ‘limped on’ for a while, with reduced membership. By contrast, in regions where a wine GI existed, there tended to be more continuity and focus around that particular GI.

This collective action problem is intense in its effects for many Australian farmers because they are SMEs, operating as price-takers in an environment where there is constant pressure on their margins. Unlike large corporations many do not have experience with successful brands, and unlike large corporations they are not able to quantify the value of branding. At a general level they understand that trade marks and the brands they underpin are tools that enable others in the value chain to extract value from what they produce, but they see themselves as powerless to do much about it. With little money to invest in branding they become risk averse. Little wonder then that we constantly heard from those involved in regional branding initiatives that:

- farmers want to see real benefits before they pay (Respondent #26);
- anything they [fishers] can get out of paying for they will (Respondent #129).

If you perceive yourself to be in a world where ‘my time is poor, my money is poor’ (Respondent #10), not investing in cooperation on branding is a rational course of action.

One response to this problem is to accept one’s lot as a price-taker within the supply chain and accept what many interviewees described as regulation by the supermarkets. Another approach is to join an integrated brand club model run by a corporation that offers a services package including the marketing of the brand. A third response, which we explore in the next section, is to become an entrepreneur of place-based branding.

### 7.12 Entrepreneurial Uses of Place-Based Trade Marks

A way in which the branding collective action problem facing local producers has been addressed, which we observed repeatedly, is for an individual entrepreneur to adopt/control or register a local name for branding purposes, and then to organise production through ensuring supply from a number of local producers who observe certain standards and produce locally. Contractual relations and pricing arrangements with surrounding producers commonly, but not always, underpin consistency and volume of supply.
One example is the case of premium beef production in Northern Queensland. High quality grass-fed beef is promoted directly to restaurants and high end butcheries in Cairns, by the lead producer. The volcanic soil is seen as a crucial to the uniqueness of the final product. This producer sources quality controlled beef from its own pastures as well as from a number of other local cattle producers, but additionally undertakes the tasks of branding, advertising, promotion, consistent supply and delivery. In another example in the Northern Rivers, pork is sourced from piggeries abiding by certain quality standards in the general area and then marketed and promoted directly as (placename specific) pork to restaurants and individual butcheries, principally by one producer who has come to be the owner of the goodwill established.

We came across multiple instances of this organisational structure around regional origin. For instance, milk producers in a local area adhering to the required production standards supplied milk to a dairy that would produce products under a local named-area brand in the Brisbane hinterland. Some milk was also supplied to the placenamed milk producer by local famers for use in cheeses sold under its brands. Another example is cocoa production in the area around Mossman and the Daintree. In every case a network of contractual relations with local producers ensures reliability and consistent quality of supply. There is little objection from local producers to the acquisition of private rights in the relevant placename, because effectively as suppliers bound by contracts, the other local producers have a stake in the brand as well.

The central entrepreneur will often be the one to invest in the infrastructure required to process the product, be it a milk processing plant, meat processing and packaging infrastructure, or packaging sheds which allow for grading and branding of local fruit. Typically such other producers are not actively engaged with marketing the product, but are contractually bound to abide by certain locality and quality standards in relation to the goods they supply. The entrepreneurial business is thus the vanguard of a contractually based cooperative effort to achieve consistent supply of high quality and typical local product. What seems to be consistent is the idea of this strategy being formulated by an individual business and developed primarily by that business, rather than as a truly collective or cooperative strategy developed by a group of producers. At the centre of the contractual web sits a privately owned provenance brand.

Our attention was drawn to certain advantages of this approach – efficiency and flexibility, the ability of less commercially minded producers to focus on the production side and have reliable supply contracts in place, avoiding fragmentation and so forth. Identified disadvantages were the high level of dependency on a particular entrepreneur or business, risk of lack of continuity of the business, and the fact that this type of business model often goes hand in hand with the acquisition of private rights in existing descriptive placenames. This, as we have indicated, creates potential complications for others wishing to invest in the region (see the King Island case study).

### 7.13 Loss of Brand Identity in the supply chain

For many producers another disincentive to investing in branding was that other actors in the supply chain might strip them of their brand identity. There are commonly a number of intermediaries between producer and consumer. Traditionally in the Australian context, these are producer agents and then central market buyers. Purchasers also often have an agent. As well as commissions having price effects (such as lowering prices for producers) there are thus several agencies that will all be able to affect the image of the product. More commonly these days, producers deal directly with supermarkets, rather than going through wholesalers or central markets.

Supermarkets were reported by interviewees as having priorities in supply chain management that were inconsistent with differentiation on the basis of local origin in the food sector: uniformity of product, in particular in appearance; reliability of supply over time; and substitutability between the offerings of different suppliers within a certain product category. They prefer more generic products, elimination of supply fluctuations due to seasonality, and simplicity of message and of pricing.
The interviews with supermarkets revealed not unreasonable concerns that GIs might affect the volume of supply that supermarkets needed: ‘we’re restricted by volume, making it hard to pinpoint one area’ (Respondent #96); ‘It does come down to the volume thing’ (Respondent #97). The concern here was that if one pushed, for example, cherries from Young, how would that affect sales and supplies of cherries from other areas. Interestingly interviews at some central markets revealed a similar concern: ‘we can’t control it [GIs], it’s not as if we can get on the phone and ask for more Griffith fruit’ (Respondent #100).

At the same time the supermarkets saw the importance of region: ‘A call out on Tasmanian cherries, it resonates with the public’ (Respondent #96). For supermarkets working with general call outs such as ‘Australian grown’ or ‘Tasmanian cherries’, or more ambiguous ones such as ‘locally grown’ provides flexibility. This desire for flexibility was echoed by some of the large suppliers to the supermarkets that we spoke to, which were basing their strategy on volume, quality and a brand that would help them in their price negotiations with the supermarkets. Place of origin did not feature in their calculations.

There is also the reality that many supermarket customers are budget customers who are unable to pay the premiums that are being targeted through provenance branding strategies:

… there are then those for whom price is everything. So, for them, they don’t care where it comes from, so long as the price is low. Provenancing is really for those with disposable income (Respondent #144).

For well-heeled food lovers the supermarkets are developing separate branding strategies. Woolworths, for example, has launched ‘Thomas Dux’, a gourmet grocery brand.

The approach of supermarkets to the brand identity of their suppliers varies depending on the product. In the fruit and vegetable area there appears to be more reluctance to carry over indications of distinctive local origin into consumer oriented displays. This produces frustration for producers passionate about their products. They felt that the exceptional quality or qualities of their product was lost because of the homogenising or standardising effect of value chain practices.

If supermarkets are one of the main channels by which the message about unique qualities of a local product is distributed, then producers with a unique local product are swimming upstream to get the message through to the ultimate consumer. However, in some cases where region branding has penetrated to consumers, thanks to careful gradual up-scaling of the marketing effort, locality brands are carried through onto the supermarket shelves and at a premium price to the producer. This was the case for example, for one Tropical North Queensland dairy that focused on a bottom-up strategy for its unique products through a consumer focussed process (for example, the use of local night markets) that caused demand to ‘spread like wildfire’ (Respondent #83). For this dairy, one of the potential advantages of GIs lay in bringing smaller producers in the region into a philosophy of sustainable production.

**7.14 Products with Unique Regional Characteristics**

We interviewed a number of producers who were able to identify distinctive qualities inherent in their products by virtue of geographical origin. This was said to be the case for instance for grass-fed beef from the Atherton tablelands; beef from central Australian properties south of Alice Springs; mangoes from Mareeba; tea from the Daintree area; wild-caught Northern Territory barramundi; Ord River chickpeas; milk from the southern Atherton tablelands; Ord river pink grapefruit; Bruny Island lamb from Tasmania; King Island Beef. However, in other places interviewees admitted that there was nothing unique about the local product, which nonetheless, used placenames in branding. Examples included coffee in the Byron Bay region, pecans in Nimbin and nuts from the Atherton Tableland.
Even where interviewees were unable to identify a unique link between the product and the geography, they saw some potential in using GIs to signal credibly that they were better custodians of the resource.

A commonly reported issue however, was that the premium quality can often only be turned to a price/consumer demand advantage in relation to a small fraction of production, so that a large part simply goes into the general commodity market. This is the case for beef for example, where certain cuts may be able to be supplied to restaurants directly at a premium, but the rest of a carcass simply goes into the wholesale market, to the ground beef market in the United States, for example. The same is often the case with premium quality fruits and also seafood, where much of production that does not meet stringent quality requirements goes into ordinary price brackets or into processed rather than fresh product markets (for example, apples and pears and smaller sized crustaceans). A diversified strategy to make the most of these distinct markets is thus required, which is more complex, time consuming and demanding for producers.

Even though it was not uncommon for producers to identify their production as having unique local characteristics, it was also accepted that agricultural producers have to be flexible and crop rotation or adoption of new crops in certain areas was very common. Farmers diversify or move into new crops as opportunities or demand presents itself; for example, chia in the Ord; pineapples in the Northern Territory; cocoa in the Daintree and Mossman. Some areas will grow anything so that farmers will be responsive to market conditions and price levels, and vary their choices over time. In the Ord River irrigation scheme area, for instance, some products have been consistently produced there over time (for example, chickpeas, other pulses and vegetable crops), others have come and gone, such as sugar cane and bananas, and still others, such as chia, have been recently introduced. Other areas are more suited to a particular commodity, and have consistently if not exclusively focused on production in that area, for example, the Yarra Valley for strawberries; Sunshine Coast for pineapples; Mareeba for mangoes; Cherries in Tasmania and so on. Innovation and experimentation with new crops, new varieties, different growing methods and so forth, is very common across the areas where we conducted interviews.

Clearly some areas have a strong tradition and suitability for growing certain kinds of crops, and are therefore inherently more suitable for consideration of a local product-specific GI. Clearly also, Australian farmers are accustomed to flexibility and are opportunistic, so that any GI system should not stand in the way of normal innovation, changes in crop choices over time, mixed crops and other practices that make Australian agriculture competitive.

7.15 The Contingent Benefits of GIs

In a number of locations interviewees identified particular circumstances or conditions that supported a persuasive case for the registering of a local food GI. While the registration of a GI for these circumstances might not bring the kind of general spillover benefits that we identified in the case of wine, they might nevertheless bring specific benefits for producers and regional economies.

Interviews confirmed that many agricultural products have a very specific market and business model, depending for example on location (for example, proximity to a major city), on seasonality, on a particular customer/consumer group, climate, and so on. Peculiarities of the market often co-determine how potent a marketing tool for provenance branding might be. Examples where a GI might serve a very specific purpose are: Yarra Valley strawberries which one interviewee noted it would be useful to distinguish clearly from Queensland strawberries when supply briefly overlapped at a particular point in the season (Respondent #170); Mareeba mangoes, which have a historically distinct reputation in the Chinese market, where imitations were said to be rife (Respondent #41); Tablelands beef which is grass-fed from volcanic soils (Respondent #38); Northern Territory wild barramundi for the specific purpose of distinguishing from imported and farmed product (Respondent #54). By contrast, for cattle from the area between Kununurra and Wyndham, although it has exceptional qualities (natural feed,
clean and green environment and so forth) region branding is of little significance, as the cattle are almost exclusively destined for live export to feedlots in Indonesia (Respondent #61). That does not mean that there is not a case for a beef GI anywhere: the market is complex enough to support quality provenance brands such as King Island Beef (see Section 5); Cape Grimm beef produced by Greenham’s; and perhaps Central Australian beef (Respondent #92).

Although in some specific cases provenance branding supported by a GI could provide a competitive advantage, we found that often other factors were determinative of a price premium. One of the most significant is seasonality, in particular in seasonal produce such as fresh fruit. The key to profitability is often the ability to supply the markets in non-peak times, and in this regard certain regions have a distinct advantage. Mangoes from the Northern Territory can be harvested earlier than those from the more traditional producing regions further south in Queensland and elsewhere, for example. In that manner regional origin is often significant but not in a branding sense. Because of the wholesalers’ and supermarkets’ interests in continuity of supply rather than promotion of regional origin, and their consistency of quality over the season, the regionally differentiating factors tend not to be transmitted to the consumer. The regional advantage of early supply through a supermarket network that mutes or ignores regional quality does create a problem for some regional growers and consumers, as well as destabilising cooperative efforts by growers to overcome the problem: ‘the avocado coop wants quality but the individual farmer wants to pick early to get the premium, but the consumer gets a green hard avocado’ (Respondent #41).

The upshot is that the best quality product is not adequately identified to ultimate consumers. This was the case for example in relation to mangoes (with the added problem of unidentifiable imports) and pineapples, as well as pears and apples; and cherries, strawberries and raspberries. Such fruit may be of the highest quality at the peak of the season (for example, mangoes from the Ord Valley), but it will usually then command a lower price because of oversupply, and any regional differences will be lost to the value chain.

Although other factors often thus determined price premium, we found that interviewees in a number of locations favoured a registered GI as a method by which a particular issue could be addressed. The GI offered a chance to obtain a price premium and to communicate the special status of the local product to consumers. Ord Valley mango growers, for example, suggested they had strong reasons to differentiate themselves regionally from Darwin growers who had the seasonal advantage of being first in the market: ‘if consumers eat a bad mango from Darwin they will not buy another mango’ (Respondent #64). For these growers a GI register might be a potential tool to help them out of a world in which the supermarkets assume ‘a mango is a mango, nobody cares’ (Respondent #64).

As a final example, Tasmanian whisky was instructive – interviewees saw a strong case for a GI which would resolve the current uncertainty about what constitutes a ‘proper’ Tasmanian whisky: how much of the processing and ingredients have to be Tasmanian? This question could be resolved by cooperative action by producers, agreement on a common standard, and then implementation which preserves the uniqueness of the emerging local product. This is also an example of a new industry, where existing practices and legal rights do not stand in the way of this type of collective initiative. Indeed, a Tasmanian whisky took out the 2014 World Whisky Prize, and for the company whose product won this prestigious award, there was grave concern that without the availability of a GI through which to implement rules of origin and perhaps quality production, ‘Tasmanian whisky’ was at risk of ‘premium brand’ status dilution from poor imitators (Respondent #138). With regard to brand dilution and quality concerns about poor imitators, the Marlborough wine region in New Zealand provides us with evidence of the challenges faced when ‘too much of a good thing’ occurs in an industry. Here, we see an example of brand dilution – in this case the ‘Marlborough’ attribution to wines produced in the region. There have been several reports of imminent collapse of wine businesses in the region and concerns from longstanding businesses that the ‘quality’ reputation of wines from this region has been undermined by poor imitators seeking to benefit from that reputation. With no clear delineation of the region, one of the challenges appears to be the ‘morphing’ or expansion of what might realistically be considered to be the actual region (see Ghouri 2010).
7.16 The International Potential of GIs for Food?

For many producers of fresh unprocessed food, the domestic market was by far the most important, although there were also significant niche export markets where provenance was important, whether local or national. The potential exists for GIs to benefit from greater protection in export markets, due to the particular regulatory characteristics of GI laws and the potential in the future to obtain protection for Australian GIs on products beyond just wine.

Therefore we introduced interviewees to the international dimension of GI protection and sought their views. One striking piece of information related to the perception of high quality said to be inherent in the term ‘Mareeba Mango’ in some parts of China (Respondent #41), and the consequent frequency with which this denomination is abused. Generally speaking, because rural produce is often packed in boxes that have indications of regional origin on them, a common problem recounted to us is that once the produce is removed to display trays for example, the boxes are then easily reused by filling them with produce from other regions. To identify individual pieces of fruit as coming from a certain place is, however, increasingly possible through means such as individual stickering, and also by scientific testing. A further apparent problem is that labels are easily copied or imitated in a blatant manner in overseas markets, with recourse being very difficult to obtain.

However, the potential for GI registration and potential international protection to alleviate this problem, although it generated interest, was largely discounted because of the wider context of export markets for Australian agricultural products. Apart from particular products (such as beef for the Indonesian live cattle export market (Respondent #61), or grinding beef for the United States hamburger market (Respondent #68)), export markets tend to be seen as relatively difficult to service and unimportant to start with. Expansion of these markets is generally seen as very time and resource intensive, certainly where fresh produce is concerned, and the domestic alternatives are therefore more attractive.

Experiments with developing export markets, for example, for mangoes or tropical grapefruit (Respondents #87 and #88), are seen as requiring a great deal of effort without great assurance of continuity of the market. In other words, they tend to require large corporate involvement, or very effective collective action. The kiwifruit export market in New Zealand was often mentioned as an example of effective collective action; in terms of export markets from regions in Australia, we came across few examples of large corporates incorporating regional origin in their overseas marketing strategies. Examples of success with high quality rural products were to be found, however, for example in relation to beef (for example, AACo’s Wagyu beef brands, including Darling Downs Wagyu, and 1824 Premium Beef). A common incidence was also the export of genetically significant materials, such as for redclaw from Queensland (Respondents #36 and #37) and for certain cross-breeds in the cattle industry to establish production in overseas markets (Respondent #85).

Most of our interviewees did not consider export markets very important to their business model. Their efforts were focused on profitably satisfying domestic demand, and often there was limited capacity for exporting given its relative difficulty and novelty. A further reported problem was with quarantine requirements which are a very significant obstacle for mainland exports of fresh fruit, for instance (the presence of fruit fly being reported as the main issue). Because Tasmania is free of fruit fly and well isolated from contamination, interviewees there reported a very significant interest in direct exports, and in particular in the effective protection of ‘Brand Tasmania’ (Respondents #125, #130 and #131). There was general agreement amongst interviewees in Tasmania concerning the future export potential for Tasmanian produce through free trade agreements such as the one recently signed with China.

However, important direct export markets do exist for particular products for which provenance is very significant – examples from our interviews include Southern Australian rock lobster, mangoes (Respondent #41), macadamia nuts (Respondent #83) and redclaw (Respondent #36). In relation to such products as Tasmanian abalone (Respondent #131) or rock lobster (Respondent #130), cherries or...
truffles (Respondent #120), correct identification of origin is very important as the fresh and authentic varieties of these products command a considerable premium in overseas markets. Most Tasmanian truffles are sold in Hong Kong, for instance (Respondent #120). Tasmanian and South Australian product is also perceived as very safe, clean and green. These were small but valuable markets – in the case of abalone for example nearly all of the allowed catch is exported. In the foreign markets the product competes with lesser quality products from other areas that fetch lower prices, and thus the temptation to free ride on a provenance brand or simply falsely identify origin is very great.

The risk of imports from such markets coming back to ‘haunt’ the exporters of stock and genetic materials was generally discounted, in part because of the high quarantine standards in Australia, but also because local breeds for example, were constantly being improved.

7.17 Summing Up Interviewees’ Views

We found that there was no strong opposition to the introduction of a food GI regime for Australia. Some interviewees were indifferent to the idea or thought there was little room for it in their industry sector. Other interviewees were more interested and saw that it would be advantageous as an organisational model and to preserve something unique about their area for the long-term. Some saw this in general terms, others recognised potential for their particular product and region.

However, some interviewees did identify relevant concerns about such a system. One view expressed was that Australian producers, in many areas, are flexible and not wedded to particular crops over time. They tend to vary their crop choices, partly for reasons of rotation and the health and productivity of the soil, but also to meet changing demand, and changing market conditions (for example, emergence of competition for a particular crop from a particular area). They are often prepared to switch to new crops, either partially or wholly, if a good opportunity presents itself in the market. They will, for instance, take advantage of seasonality if at all possible. A good example of this was most growers in the Ord River area.

Interviewees also noted that climatic conditions and variability also require flexibility in relation to crop choices and plantation cycles. Thus cyclones in North Queensland have occasionally wiped out banana production in a particular area, and have also caused loss of plant stock in relation to crops such as macadamia nuts. Some crops recover rapidly but macadamia trees, for instance, have a 7 year regeneration cycle. This can cause problems for growers who (under a GI regime) might not be able to source sufficient product from other areas to substitute for their own loss of production capacity, and sell under their own brand.

Some interviewees took the position that they were farmers and not marketers. Their preference was to join integrated brand clubs and pay for often foreign-owned intellectual property rights to access genetic material and branding services.

Interviewees also pointed to individualism, innate competitiveness and an unwillingness to share know-how with other producers, as being typical of Australian primary producers. In the view of some, this would impede collaboration around a GI, which normally entails knowledge sharing and cooperative development. However, many growers also pointed to successful cooperative ventures in relation to policy agitation or in the management of pests and diseases, for instance.

Interviewees did commonly make the point that greater accuracy in labelling, including in relation to geographical origin of products or the contents of packages and so forth, is very much required. They understood GI regimes as being capable of partly fulfilling that role. In that context, many interviewees supported the idea of GI registration, and also the relative simplicity of the tests for infringement in relation to GIs.
The cost of a GI regime was commented upon, where growers in some product sectors pointed out that they had little discretionary funds that could go towards organising or pursuing a GI registration, and then policing compliance. However, depending on the level of fees and so forth imposed, and support from government bodies they sometimes agreed that if costs were shared a GI registration might be feasible. Some government officers interviewed intimated that partial government support for a GI registration in some places might be forthcoming.

Some interviewees saw an advantage in the legal nature of GI registration, in that their status as legally embedded regional public goods would better serve future generations of farmers. Overwhelmingly there was a sense that more had to be done to create incentives and assets for future generations if regions were to survive and prosper. Corporate trade marks and individual brands by contrast were more dependent on the vagaries of day-to-day business and the economy, and questions of inheritance and so forth.

Some interviewees saw little need or use for a registered GI system, as they already had a successful business model. Others thought that the repeated failures of efforts to organise locally around place would be alleviated by the possibility of registering a product-focussed GI.

All interviewees were in agreement that a system with mandated stringent specification requirements would not be suitable for Australia, although some saw a place for rules of some kind (primarily around quality control) in addition to specifying origin. In some cases this would be an obvious requirement (for example, a Mareeba mango would probably be specified as having to be a Kensington Pride variety). A number of interviewees saw GIs as being able to create credibility around a region’s image as clean and green.
8. Design Sovereignty: The International and Domestic Legal Contexts

8.1 The Impact of Treaty Requirements on Australian Law

At present the two most significant international obligations for Australia in relation to GIs are first, the provisions in the WTO TRIPS Agreement relating to this subject matter; and secondly, the agreement between Australia and the EU in relation to wine GIs referred to in Section 4.1. Other agreements such as the AUSFTA 2005 have also impacted on Australian law, resulting in amendments on trade marks and GIs. In the future either bilateral agreements, such as the FTA recently concluded with China or multilateral agreements such as the Trans-Pacific Partnership (TPP) may also be a significant source of GI-related obligations. Australia is not a signatory to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which sets the highest standards amongst the multilateral international instruments for GI registration and protection.

European advocacy and domestic policy choices, inter alia relying on the development potential of GIs, have resulted in a rollout of GI registration schemes in a number of countries in our region (Bowen 2010). This is for instance the case in China, Thailand, Japan, Malaysia and Indonesia (Augustin-Jean et al. 2012; Bashaw 2008). GI protection is also under active consideration in African states (Blakeney et al. 2012). The standards of protection in the TRIPS Agreement for GIs for wines and for non-wine agricultural products differ; greater protection being provided for wine GIs than for any other products (Blakeney 2014; Geuze 2009). For food other than wine, the only requirement is that the member state prevent misleading designations of origin; general consumer deception or unfair competition laws suffice to meet this standard (see art. 22.2 of TRIPS). Where a geographical term is in common use as a generic descriptor (as describing a style or character rather than actual geographical origin, such as the terms ‘cheddar’ or ‘feta’ in Australia) there will be no false suggestion in the use of that term wherever the product actually comes from. Australia complies with these standards relating to food other than wine by virtue of remedies in passing off (a common law tort); s. 18 of the Australian Consumer Law (ACL); and certain sections of the Trade Marks Act (TMA).

In relation to wines and spirits, TRIPS sets a higher standard. By virtue of art. 23.1, member countries must provide the means for interested parties to prevent the use of wine and spirit GIs in relation to goods not originating in the place indicated by the GI in question. This applies even where the true origin of the goods is indicated, they are used in translation or where they are accompanied by terms such as ‘style’, ‘kind’, ‘type’, ‘imitation’ and the like. In other words, such GIs must be protected against even non-misleading use on wine or spirits not coming from the designated area (as implemented in Australia by ss. 40C (false) and 40E (misleading) of the AGWA Act).

Generic uses of GIs registered elsewhere and pre-existing trade mark use of a GI are excepted from these rules by virtue of art. 24 of TRIPS. Nonetheless the combined effect of arts. 23 and 24 of TRIPS means that the general law of passing off and the ACL will not suffice to meet the TRIPS standard. The standard is interpreted to mean that a member country must provide the means whereby a foreign GI owner has the opportunity to obtain the higher level of protection by virtue of some form of registration of the term concerned. However, only if the term is protected as a registered GI in the country of origin will this be required.

Australia complies with its TRIPS wine GI obligations by having established a register of protected GIs (the Register of Protected Geographical Indications and Other Terms) by virtue of the AGWA Act. The TRIPS Agreement also imposes national treatment and most-favoured-nation obligations on its members (see arts. 3 and 4).
As a result of the negotiations between Australia and the European Community, GIs from the European Community have been included in the Australian wine GI register, which also includes the Australian wine GIs that have been declared to date (such as Tasmania, Hunter Valley, Barossa, Coonawarra and so forth). By way of negotiation with the European Community, Australia has progressively agreed to abandon the use of European geographical terms, including some that were arguably quite generic such as cognac, port and sherry (the latter now to be known as apera). These terms can only be used in relation to wines and spirits from the GI region of origin in Europe and not on any Australian product. The standard is strict as demonstrated by the La Provence case (Comité Interprofessionnel des Vins Côtes de Provence v Stuart Alexander Bryce [1996] FCA 742 (23 August 1996)).

8.2 The Globalisation of GIs and Australian Export Markets

Negotiations within the WTO concerning the legal protection of GIs have effectively stalled (Phase 2 of the Agricultural Negotiations includes GIs). The EU generally seeks to obtain higher levels of protection internationally for GIs across the board, for all foodstuffs represented on its various registers of GIs. It also does not accept the exclusion of generic geographical terms and such terms incorporated in trade marks from protection as GIs in member countries. It compromised on these points in the General Agreement on Tariffs and Trade (GATT) Uruguay round, a fact reflected in art. 24 of TRIPS, and the disparate obligations relating to wine and to other products (Banerjee & Majumdar 2011).

Post-TRIPS, the EU has continued to advocate for the expansion of the art. 23.1 level of protection from wine to all foodstuffs, and also for the establishment of a multilateral register of GIs which would have the effect of a presumption in favour of protection of foreign GIs in member countries. For more than a decade there has been virtually no movement on these issues, as a group of countries supporting the EU position and a group of opposing countries have not budged. The countries opposed to ‘GI extension’ include Australia, New Zealand, Canada and the United States. Proponents have included many developing countries, some of which have GIs that have achieved some wider recognition, but that have arguably become generic in many other countries. Proponents also favour the establishment of a ‘multilateral register’ which would offer a degree of automatic protection in all member countries for included geographical terms (art. 24 of TRIPS mandates further negotiations on this topic) (Carsten & Maskus 2006).

Australia, as part of a WTO coalitional group, has opposed elevating the standard of protection for non-wine GIs in multilateral treaties to the same level as the protection required for wine GIs.13 The basic argument of the opponents, including Australia, is that existing protection is adequate and that extending wine-level protection to other food would cut across existing marketing practices and that usurpation of so-called Euro GIs in the new world is an unintended consequence of migration. Australia also opposes inclusion of GIs in the agriculture negotiations which has been sought by the EU, a debate often referred to as ‘clawback’ (WTO 2001). On the issue of a multilateral register for GIs, Australia is part of a coalition that argues for a minimal role (information only) for the register, and also for voluntary participation only by member countries (see WTO 2011).

Australia’s main concern is the risk of preclusion from using European regional names that have become generic or descriptive of food styles in many parts of the world. Australian trade negotiators have argued that there are effective remedies available against the misleading use of non-wine GIs, by virtue of the action in passing off and under s. 18 of the ACL; food standard laws (including labelling requirements); and certain provisions of the TMA which prevent the registration of misleading indications of origin (see further below). Therefore the additional and stronger protection of a bespoke GI regime is said to be unnecessary for food.

13 The views of the opposing groups of countries in the WTO are summarised by the WTO secretariat in document WT/GC/W/546 and TN/C/W/25 (2005).
However, the EU has continued to pursue its agenda of obtaining a higher level of protection for European registered GIs in all fields in other countries outside the confines of the WTO. It has concluded bilateral agreements and engaged in forms of collaboration concerning GIs with a growing number of individual countries. These agreements require a higher level of GI protection on a reciprocal basis, including therefore for European GIs. For instance, the China/EU pilot in relation to the exchange of lists of GIs for protection (see The ‘10 plus 10 project’ EU 2012; Xiaobing & Kireeva 2011) resulted in the protection in China of 10 European GIs including ‘Grana Padano’, ‘Prosciutto di Parma’ and ‘White Stilton cheese’, and of 10 Chinese GIs in Europe, including terms such as ‘Pinggu da Tao’ (peach) and ‘Dongshan Bai Lu Sun’ (asparagus). By virtue of the EU-South Korea FTA, 160 GIs from the EU are protected in Korea (for example, Champagne, Scotch and Irish whisky) and 64 GIs from South Korea are protected in the EU.

The situation in China on GIs can best be described as one of evolving complexity. Three different regulatory agencies are involved in the administration of China’s GI laws; those laws including certification marks as well as specific GI laws (see EU-China Project on the Protection of Intellectual Property Rights 2009). China regards itself as having important GIs such as Jingdezhen Porcelain, Jinhua Ham, Shaoxing Yellow Wine, Laiyang Pear, Hami Melon, Turfan Raisin, Puer Tea, and Anxi Tieguanyin (Tea). Its views on GIs need to be located within its sense of historical identity, its regional cultural diversity and its long record of innovation in products such as silk and porcelain. It is not surprising therefore that it has become more interested in obtaining international protection for its GIs. GIs in China may well come to serve multiple agendas including that of trade protection, as well as the preservation and construction of cultural and historical identity.

The terms of these bilateral agreements constitute a potential threat to Australian agricultural exporters as they may deny them the right and opportunity to supply third countries with products by reference to names that have arguably become generic terms. The same difficulty might apply to other non-European exporting countries: thus the United States has criticised the EU-South Korea FTA arguing that it unfairly prohibits the use of the term ‘feta’ on cheese imported from countries outside the EU.14 If terms such as ‘feta’ and ‘mozzarella’ are reserved for the European producers who comply with the European GI specifications in an Australian export market, then Australian producers are potentially obliged to abandon the use of what many would consider well-established descriptive terms. This puts them at a competitive disadvantage, certainly where a category of product is well recognised by consumers by reference to that term. Our interviews with large dairy exporters confirmed that this is an issue for the dairy industry.

Thus the terms of bilateral or multilateral agreements between the EU and some of Australia’s export market countries may put Australian exporters at a competitive disadvantage, requiring rebranding and re-education of consumers. It may also be that in the past it has in fact been Australian suppliers who have established the market for such a product in a third country. The main impact on Australia’s interests will come about because of the inclusion of European GIs in the registers of protected GIs in third countries, rather than through adoption of the European GI-extension proposals in the WTO.

In theory the demands and pressures from other countries could also result in Australia itself abandoning the right to use certain generic terms based on GIs in its domestic market. Quite a number of such terms are in common generic use in this country. It is of course highly unlikely that Australia would accept a prohibition on the continued use by domestic suppliers of terms that have become very generic here, such as feta. Nonetheless in the context of wine, Australia has abandoned the right to use certain GI-based terms that were well-established as generic descriptors, such as sherry and port. However, as discussed in the cheese case-study earlier in this Report (see Section 6), negotiations concerning GIs and using different strategies for different products is possible, as exemplified by the recent EU-Canada CETA. In that agreement, Canada retained the right to use some common names, despite agreeing to protect European GIs. The point to be made here, is that a ‘horses for courses’

approach is clearly possible. Thus the opposition to extension of GI protection in the TRIPS and agriculture negotiations may be of little significance in light of other agreements concluded by the EU, and of the seeming trend in this region to adopt GI registration legislation. Naturally such legislation is more relevant for our Asian trading partners where it pertains to the non-wine food sector.

The absence of a food GI registration scheme in Australia sets potentially strong limits on the present or future protection of Australian food exports to Asia. If a food GI register existed in this country then theoretically, (through bilateral/multilateral agreements with other countries) Australia could obtain a higher level of protection against free riding on such GIs in some of its significant agricultural export markets than is at present available through consumer deception laws. An attendant benefit of non-wine GI registration may be increased future protection of local registered (geographical) terms in export markets that have adopted food GI registration systems.

Clearly Australia can only do so much to prevent the EU from obtaining protection for its GIs through policy persuasion or trade agreements to the detriment of our own exporters. It can make its concerns known to its trading partners and seek procedural safeguards from third countries involved, that the interests of Australian industries (such as in the cheese industry) will be protected, but little more. To some extent it appears that Australia and the dairy industry are counting on the failure of EU bilateralism on GIs. Moreover as we suggested earlier in this section a country such as China may have its own reasons for adopting GIs that have comparatively little to do with EU bilateralism.

There is also perhaps a neglected trade consideration in favour of Australia creating its own domestic regulatory model. The importance for a country in having its own regulatory model as a means of influencing the direction of global business regulation is well-established (Braithwaite & Drahos 2000, pp. 578-601). The EU gains considerable regulatory influence in FTA negotiations on GIs by virtue of having its own detailed GI models to put on the negotiating table. Australia by developing its own GI model, one that suits a New World country that is an agricultural innovator and exporter, might be in a better position to influence the evolution of GI systems within its region, as well as those amongst its traditional coalition partners such as those in the Cairns group.

In light of this one option is to initiate a policy debate about the possible adoption and design of a GI system that could help Australian producers in export markets for certain products. It should be kept in mind in this context that the protection regime for registered GIs is generally ‘stronger’ than for ordinary trade marks or by way of consumer deception laws, which generally impose higher standards of proof and threshold requirements.

8.3 GIs and Domestic Design Sovereignty

As mentioned in the previous section the standards on GIs in the WTO TRIPS Agreement for the time being contain the key obligations when it comes to design issues for a food GI register. However, those standards confer considerable regulatory leeway. Article 22(1) requires only that a product identified by a registered GI has a ‘given quality, reputation or other characteristic [that] is essentially attributable to its geographical origin’. This is a shallow requirement as it is sufficient for the ‘reputation’ or ‘other characteristic’ of the product to be determined by its geographical origin – it is not strictly required that the inherent local characteristics or qualities (such as flavour, appearance and so forth) are essentially (or uniquely) attributable to geographical origin (such as terroir, or soil, climatic and geological characteristics).

The TRIPS definition by focusing on three separate concepts – quality, reputation, or other characteristic – and linking these to geographic origin, permits a country to think broadly about the advantages (natural, reputational and cultural) a named region has, and how those advantages link to products from the region. This provides scope for linking GIs to any comparative advantage that a region and industry may have, for example, in terms of sustainable production, or clean and green production. Many of our interviewees thought that their regions had these kinds of advantages.
Nonetheless, whatever shape a GI register takes, there may be little point in a registered GI if there is no typical local product. If the product for registration does not have a distinct quality by virtue of local geography that is apparent to consumers, or a historical reputation for such qualities, its chances of extracting a premium in consumer markets may be slim. The scenario of a GI having historically acquired a particular reputation which persists in the face of changed circumstances is less common in Australia because of its relatively short history and generally imitative approach to agricultural production.

In relation to the process of registering a new GI the international treaties are also not constraining. The mechanism for initiating a process of delineation, settling of requirements, and registration of a new GI can be devised to suit the particular needs and resources of the country. In some countries, identification of particular regions that are suited for particular products, their delineation and naming is national policy, and systematically undertaken. Alternatively the matter is not one of national or general policy but the initiation and prosecution of the registration process is left to local collectives or loose organisations of local producers. The Australian wine GI system allows a single local producer to initiate the process of registration of a local GI, but provides others the chance to formally object.

Nor is it internationally mandated to what extent government facilitates, encourages and supports local initiatives to register and maintain a GI, or what costs and requirements are imposed on applications for registration. In some countries cost is deliberately kept low by keeping government registration charges for GIs very low, as in the case of Italy. In short, Australia has the freedom to decide on procedures for determining food GIs and who would bear the costs of those procedures. In terms of an enforcement mechanism, the options are also relatively open, as described above.

A further question relates to pre-emption by genericisation of the placename concerned and by pre-existing trade mark rights. ‘Genericisation’ means that a placename has become a generic descriptor commonly in use for a kind or style of product in Australia; for instance, ‘parmesan’ (a name based on the region of the town of Parma in Italy) for a hard salty cheese, or ‘Bowen mango’ for Kensington Pride variety mangoes. In terms of legal rights, if a geographical term has become generic or descriptive, other parties should have the right to use it to describe the style or character of their products. Thus although ‘feta’ is a registered GI in Europe (Gangjee 2007), it is considered a descriptive term in Australia; its meaning to consumers being ‘white crumbly cheese’ rather than such a cheese from Greece. Traders are free to use the term for locally produced cheese as long as they do not misrepresent it as being the particular cheese from Greece.

Once a geographical term has become a generic descriptor of a certain style of goods, robust policy requires it to be free for all businesses to use to describe those goods. Thus genericness is an obstacle on the route to registration and protection of a GI. This may be a problem in relation to some potential GIs (for example, Bowen mango), but may not be for others (thus Mareeba mango may not be a generic descriptor as yet). It is difficult to quantify the extent of this problem, as it also depends on the exact nature of the GI registered.

A further issue is the relationship between proposed GIs and existing trade marks (Stern 2001, 2005). Many registered trade marks will contain or consist of placenames, whether local or international (mostly European). The international principle (which the Europeans do not necessarily agree with, as demonstrated by the ‘clawback’ list of GIs presented by Europe in the Agriculture Negotiations) of ‘first in time first in right’ is generally said to apply to the relationship between GIs and registered trade marks (Goebel & Groeschl 2014). This principle protects the rights of registered trade mark owners against the consequences of the subsequent registration of a GI, or may prevent such registration in the first place. Therefore the registration of food GIs may be pre-empted or rendered less effective by the pre-existence of registered trade marks incorporating the GI applied for.

Although the relationship between trade marks and GIs is complex, it is clear from the wine GI system that it is possible to allow both systems to coexist while still preventing consumer deception. Although in some cases GI registration may have to be refused on the basis of genericisation or pre-existing
trade mark rights, it is the case that in other circumstances, coexistence has been accommodated. In *Rothbury Wines Pty Ltd v Murray Tyrrell, Tyrrell's Vineyards Pty Ltd and Trevor Drayton* [2008] ATMOGI 1, the Deputy Registrar determined that the GI Rothbury would be likely to cause confusion with both the mark ‘Rothbury’ and the expression ‘The Rothbury Estate’. Drummond and Jougeulet criticise the decision in Rothbury strongly: they say that Rothbury and The Rothbury Estate are quite different and would not lead to confusion. They say the standard for comparison between a GI and a trade mark should be different from that between two trade marks, which is the standard applied in the decision (Drummond & Jouguelet 2009). They point out that The Rothbury Estate trade mark is in fact subject to endorsements recorded against its trade mark registration.

Thus GI registration may be refused on the basis of existing trade mark rights, but alternatively trade mark rights might have to cede ground to GIs to some extent. In this regard, in terms of international standards relating to the relationship between GIs and trade marks, TRIPS art. 22 (3) provides as follows, in relation to GIs in general:

> A Member shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trade mark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trade mark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

For Australia, this provision is reflected in s. 61 of the TMA which provides that an application can be opposed or a registered trade mark revoked because it consists of or contains a geographical indication for goods originating in a place other than where the goods for which the trade mark is registered originated, and the relevant goods are similar, or the use of the trade mark would deceive or cause confusion. The section relates to GIs registered in other countries (such as the Bavarian beer GI at issue in the Bavaria case: *Bavaria NV v Bayerischer Brauerbund eV* [2009] FCA 428 (30 April 2009)); but also to Australian registered GIs (at present only wine GIs).

In relation to wines the standard, as set out in TRIPS s. 23(2) is higher, in that a trade mark with respect to wines or spirits may be refused or invalidated if it contains or consists of a GI for wines or spirits where in fact they come from elsewhere, whether or not consumers are misled or deceived.

In Australia, this standard is reflected in the TMA. For instance, in relation to an Australian wine GI (‘Adelaide’), the registered trade mark ‘Queen Adelaide Regency’, because of the provisions of ss 40C and 40D of the *Australian Wine and Brandy Corporation Act 1980* (AWB) (now repealed and replaced by the AGWA Act), as interpreted in the La Provence case, could only be accepted subject to the condition the trade mark would only be used in respect of wines originating in the area in respect of which the geographical indication ‘Adelaide’ was legally used. In any case a trade mark cannot be registered if its use would be contrary to law (see s. 42 of the TMA) and if the trade mark included the GI ‘Adelaide’ and was used in relation to wine emanating from another area, its use would be an offence or infringement under the AWB/AGWA Act.

Thus at the very least the relationship between GIs and trade marks is complex. It cannot be said that putative or proposed GIs will simply have to cede to pre-existing trade mark rights and therefore be refused. In some ways trade marks already must cede ground to GIs, although this is more in the context of subsequently sought registration. However, the system allows for quite considerable coexistence of GIs and registered trade marks. Thus for instance in relation to wine GI’s, Drummond and Jougeulet point out that:

> Under reg 17 of the AWBC Regulations, if a mark is registered or pending and, after the filing date of the application, a GI is registered and the trade mark is identical to or is likely to be confused with the GI, the use of the mark to describe and present wine which did not originate in the GI locality is exempted from the offence provisions of the AWBC Act if the mark is used in the description and presentation of the wine and the origin of the wine is shown in the description and presentation of the wine in a way that is not likely to mislead (2009, p. 146).
The trade mark law as well through the use of endorsements and conditions attaching to registered trade marks allows the effective regulation of conflicts between a registered trade mark and a GI.

In other words, the present wine GI law demonstrates that it is possible to obtain registration of a new GI even if a trade mark is registered in respect of part or the whole of the particular placename concerned. Thus the level of pre-emption by existing public or private rights is difficult to estimate, but cannot be calculated by a simple equation between the potential number of putative food GIs and the number of trade marks incorporating the proposed GI term.

Finally, Australia already meets its international obligations in relation to GIs and benefits from considerable regulatory freedom in relation to any putative GI regime for foodstuffs other than wine.

8.4 Design Principles for a Putative Food GI Register in Australia

The evidence from the fieldwork suggests that in certain circumstances GIs can generate regional benefits in the form of spillover benefits, reduced disincentives for valued added local production and added attraction of investment into a region. Our interview data also suggests that different producer groups in different regions may find benefit in GIs that current branding strategies do not give them. During the course of the interviews, interviewees would make general suggestions about the kinds of matters that a GI register should address. We have synthesised these suggestions in the form of principles that could be used to inform the design of a GI register for food.

8.4.1 Flexible Rules of Origin and Specifications

Almost all interviewees saw merit in rules surrounding GIs that allowed for flexibility and minimal prescription while still obtaining the desired result. Flexibility surrounding the delineation of areas was also broadly supported, so that boundaries would be drawn not only on the basis of geographical features, topology, climate and terroir but also on the basis of historical usage and fairness. In terms of specifications, while the least prescriptive model was usually supported for the purposes of enabling innovation and evolution over time, it was accepted that in some cases, more than just rules of origin (as exist in the wine sector) would be required to obtain the desired result and limit free riding more effectively (for instance a variety might be prescribed, or a certain feeding method for pork production). Finally in terms of flexibility most interlocutors accepted that there should be an ability to bring in and/or produce a portion of the ingredients or processes from outside an area. Australia’s unpredictable climate and seasonal variability required this (such as 15 per cent of grapes being permitted to come from outside a GI area). There was some support for rules being loosened during particular periods (for example, during extreme drought or cyclones) so that supply could be maintained.

One caveat we would enter here is that the principle of flexibility should not compromise the credibility of a GI system. A GI simply creates an opportunity to extract a premium in the marketplace, but that opportunity will probably not be realised unless consumers become convinced that there really is something unique about the product. A GI system that allows for too many compromises around quality may in the end fail in consumer markets.

8.4.2 Local Initiation

All interviewees supported a model that allowed for local initiation of the process of application for a GI, delineation of the area, and definition of rules of origin and specifications. The application of this principle to the rules of application would require careful thought. For example, if GIs are to achieve their full potential as a tool of regional planning then the application process would need to involve other organisations and bodies beyond that of the local industry group that might be seeking the GI. In this sense the wine GI application process might not be the right model if the goal of the GI system is
regional development. The King Island Brand Management Committee, for example, has a broad membership that thinks about the King Island brand from the perspective of its value to the wider King Island community. This kind of inclusive approach creates a social identification with the brand that offers practical benefits in terms of enforcement. When King Islanders travelling in Australia pick up what they think is a misuse of the King Island name they report it to the King Island Council and Brand Committee (Respondents #110, #117 and #108). This kind of behaviour occurs because the brand is seen as a community and regional asset. A GI application process that does not allow for a broader dialogue around a proposed GI runs the risk of losing the kinds of networks that matter to its commercial success.

8.4.3 Low Cost but Effective Enforcement: grafting onto existing mechanisms and introducing bright-line rules

We learned from all interviewees that they already carried a considerable regulatory burden, because of requirements of traceability and rules and regulations relating to the safety and composition of food products. One low cost approach is to use existing audit mechanisms to enforce any future GI standards. Supermarkets play a key role in imposing and policing rules concerning food safety, handling, composition and the like. Growers are compelled to maintain comprehensive records, and various systems of inspection and provision of paperwork are in place. Certification is required via a number of systems. Our interview with a certification body, for example, revealed that one advantage of designing enforcement of GI standards using these systems is that ‘you have a network of auditors on the ground’ (Respondent #98). The legal process of setting the rules for the GI would be an independent process under legislation, but enforcing the GI standards throughout the entire supply chain could be achieved by making use of these existing networks of auditors, certification bodies and standards bodies such as Freshcare. In our view it would require little for a further layer to be grafted onto such systems, focused on indications of origin. This would be a relatively low cost addition to an existing system.

Most of our interviewees stressed what they perceived as the high cost and high risk attached to legal action to protect a place-based brand. They considered the chances that the ACCC would intervene in their own cases as minimal. Even in cases where the ACCC has intervened as in King Island, there has been a lot of work for those involved with the brand:

The amount of work to get a successful ACCC prosecution up was ridiculous. A GI system has to be simpler (Respondent #116).

Based on the number of stories we heard involving placenames and product substitution, as well as the level of complaints to the ACCC, no competition authority could, on its own, deal with the apparent scale of the problem. This is a classic case of where ‘smart regulation’ that draws on the enforcement capacities of third parties can be used to enforce a system that itself can be made simpler (Gunningham et al. 1998). The reality is that the law of registered trade marks and passing off has many subtleties and uncertainties which will drive up the cost of litigation (see our discussion in Section 3). The case of wine GIs in Australia shows that it is possible to have bright line rules enforced at relatively low cost by a group of auditors and a regulator with punitive powers.
9. Conclusions and Recommendations: GIs and the Comparative Advantage of Regions

GIs may function as regional public good assets. While some of our interviewees were interested in the narrow question of whether a GI would lead to a premium for their product, other interviewees were interested in the larger issue of whether GIs might help to advance a region. These interviewees included members of Regional Development Associations, policymakers with long experience in regional development, members of regional branding committees, as well as producers who were giving their time to help in various ways the communities of which they were a part. All of these interviewees were part of broader webs of dialogue about the future of development within their regions, webs made up of strands that include mayors, local councils, departments of agriculture, tourism boards, and business associations; strands that criss-cross and tie together in many different ways.

Some of these interviewees had questions regarding detail about GIs that we were unable to answer because they were really design issues for a GI food register. The shape of a food register for GIs and its potential uses in Australia are issues for those participants in the dialogic webs that steer a region’s development, or fight to slow its economic decline. In an era when urbanisation in Australia and globally will reach historically high levels, Australia’s regions will need planning options and flexibility if they are to do more than manage decline – see section 8.4 above.

Our fieldwork data supports the conclusion that GIs should be a part of those planning options. Obviously we are not claiming that all regions or all industries will benefit or see benefits in GIs. As this Report shows, many variables affect whether or not a GI system will bring regional benefits. Some wine GIs provide regional benefits in the form of reciprocal spillovers. Some wine GIs also show that GIs may help to drive further investments and improvement in the quality of production. The case of wine GIs also shows that even if GIs are not important to an industry, at one stage of its development they may become so. GIs may turn out to be important for Australia’s artisanal cheese movement if sufficient numbers can cluster within regions. GIs with stricter standards may assist in combatting the free rider problem which otherwise deters quality-enhancing investment.

From our interviews we conclude that there is not a uniform story to tell. Thus Tasmanian whisky producers might benefit from the advantage of having uniform and mandatory regulation as to what can legitimately be referred to as Tasmanian whisky. Mareeba mango growers might benefit from delineating precisely the circumference of Mareeba, and from taking advantage of the established reputation of their mangos in China more effectively. Beef producers on the Atherton Tablelands could benefit from specifying the exact boundaries of the natural grasslands that survive on high rainfall and volcanic soil.

GIs of themselves do not trigger greater cooperation, but they do place a boundary around those who are potentially part of the conversations about regional identity and differentiation for given products. Whether GIs serve a region will partly depend on the strength of a region’s webs of dialogic planning. Does a region have sufficiently strong networks of planning to be able to identify it competitive advantages, to be able to separate ‘what is myth and what is fact’? (Respondent #23). Is a GI branding strategy relevant to some of those competitive advantages? Can the dialogic webs in a region deliver the kind of persuasion and cooperation that is needed to implement such a strategy? The answer to these and other questions will vary from region to region. The natural and social assets of a King Island, the Atherton Tableland or the Ord Valley are all different.
Certainly what attracted some of our interviewees to the idea of exploring a GI system for their region was the fact that a GI would not be privately owned but would remain embedded in its defined territory, serving as an asset for producers and the region. For some regions there may be an advantage in thinking about ways in which to use GIs and quality specification standards to communicate in a credible way a commitment to ‘clean and green’ production. Michael Porter’s influential book, *The Competitive Advantage of Nations* (1990), argues that firms will often do better by locating to jurisdictions where tough regulatory standards create the opportunity for the long-term improvement of products and processes. In a world where consumers are becoming interested in both regionality and environmental sustainability, a GI system offers a region a credible way of signalling to consumers and to companies that it is a region that should be part of their purchasing and investment decisions.

A food GI system for Australia that maximises the possibility of benefits to Australia’s regions will require creative design, one that takes a ‘New World’ approach rather than simply following an ‘Old World’ model. It should be a model that draws on the insights of regulatory scholarship such as Porter’s analysis of competitive advantage, as well as one that draws lessons from Australia’s experience with the wine GIs.

Most Australian farmers are already part of the private regulatory world in which they have to comply with various industry-led schemes aimed at product safety and quality, animal welfare and environmental sustainability. Quality Assurance systems represent a regulatory revolution that has swept through industries globally and nationally. All Australian agricultural industries need to have QA systems of one kind or another in place and have to look to ways to improve those systems, often bringing them in line with emerging global systems. For example, a report published by Meat & Livestock Australia concluded:

> Australia will need to establish standards for animal welfare and QA systems to guarantee compliance for its red meat supply chain because, as an exporter, we will need to match if not exceed the national standards in our markets (Martin & Blache 2104, p. 2).

As QA systems spread nationally to include more and more farmers, and as those national systems converge through the formation of global umbrella organisations such as the Global Food Safety Initiative, all farmers will need QA ‘tickets’ in order to supply. It follows that if everyone is participating in QA systems no one will be able to claim to have a comparative advantage by virtue of those systems. In the United Kingdom, for example, no premium flows to producers by virtue of their compliance with two major QA systems, ‘Red Tractor’ and ‘Freedom Foods’ (Martin & Blache 2104, p. 11). Moreover as these systems are rolled out in developing countries by large investor companies, producers in those countries will reach quality standards of production much more quickly than Australian producers might anticipate.

In a world saturated by QA systems the importance of branding as a source of comparative advantage will increase. For farmers and regions the imperative to plan around branding has never been greater. As we saw in the section on loss of brand identity, the supermarkets are cautious in the way they deal with smaller producers, deciding on a case-by-case basis whether a producer will be allowed to keep their brand. They understand the extractive power of brands in the value chains over which they preside. It is big business after all that has been responsible for the globalisation of intellectual property rights (Drahos & Braithwaite 2002). Each large supermarket has become a house of brands, with multiple branding strategies that effectively keep producers in a commodity pen where they meet ever higher quality standards, but fight over price amongst themselves and with the supermarkets. It is largely a one-sided game. The supermarket buyers can use spot prices at the central markets to achieve better prices when it comes to re-negotiating supply contracts with their farmers.

There is as we have suggested no easy way out of these structures. Perhaps as one farmer said to us after we described the principles of GIs ‘it’s all a pipe dream’ (Respondent #161). Others were more optimistic seeing a chance to improve in some modest way their position in the value chain. They
should probably be given that chance. The stakes are high for Australia’s regions. The GI option may help some of them, but if so it will have to have the design characteristics that we describe in section 8.4 above.
10. References

Legislation

*Australian Consumer Law (Sch 2 of the Consumer and Competition Act 2010 (Cth)) (ACL)*

*Australian Grape and Wine Authority Act 2013 (Cth) (AGWA)*

*Australian Grape and Wine Authority Regulations 1981 (Cth)*

*Australian Wine and Brandy Corporation Act 1980 (Cth) (AWB)*

*Australian Wine and Brandy Corporation Amendment Act 1993 No. 93 of 1993 (Cth)*

*Business Names Registration Act 2011 (Cth)*

*Trade Marks Act 1995 (TMA) (Cth)*

*Trade Practices Act 1974 (TPA) (Cth)*

*US Free Trade Agreement Implementation Act 2004 (Cth)*

Cases

*ACCC v King Island Meatworks & Cellars* [2012] FCA 859 (King Island Meatworks case)


*Baxendale’s Vineyard Pty Ltd v The Geographical Indication Committee* (2007) 160 FCR 542

*Clark Equipment Co v Registrar of Trade Marks* (1964) 111 CLR 51

*Comité Interprofessionnel des Vins Côtes de Provence v Stuart Alexander Bryce* [1996] FCA 742 (23 August 1996) (La Provence case)

*Objection by Rothbury Wines Pty Ltd to determination of geographical indication filed in the names of Murray Tyrrell, Tyrrell's Vineyards Pty Ltd and Trevor Drayton* (2008) ATMO 13 June 2008

*Oxford University Press v Registrar of Trade Marks* (1990) 24 FCR 251

*Parish of Pokolbin Incorporated* [2014] ATMO 98 (9 October 2014)

*Rothbury Wines Pty Ltd v Murray Tyrrell, Tyrrell's Vineyards Pty Ltd and Trevor Drayton* [2008] ATMOGI 1 (Rothbury case)

Agreements


Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement)

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 31 October 1958

Trans-Pacific Partnership (TPP)

Books/Journals/Reports/Other


European Court of Auditors 2011, *Do the design and management of the geographical indications scheme allow it to be effective?*, Special report no 11/2011, European Union, Luxembourg.


Guest, G, MacQueen, K & Namey, E 2012, Applied Thematic Analysis, Sage, USA.


Additional Sources


Australian Farm Institute 2014, ‘Brand Australia: does Australian agriculture need a national brand?’, *Farm Policy Journal*, vol. 11, no. 4, pp. 1-54.


*Beringer Blass Wine Estates Limited v Geographical Indications Committee [2002] FCAFC 295*


Cawood, M 2014, ‘Does the Australian agricultural sector need a common national brand to promote its products in international and domestic markets?’, *Farm Policy Journal*, vol. 11, no. 4, pp. 43-5.

Cowell, B & Greco, R 2012, *Geographical indications and trade marks in the food and beverage industry in Australia*, International Law Practice Group Annual Client Seminar, Santiago, Chile.


DeLind, L 2011, ‘Are local food and the local food movement taking us where we want to go? Or are we hitching our wagons to the wrong stars?’, *Agriculture and Human Values*, vol. 28, pp. 273-83.


Edgecombe, J 1993, *Discovering King Island: Western Bass Strait*, Thornleigh, NSW.


Geuze, M 2013, ‘International registration of AOs and GIs in the light of the draft revised lisbon agreement’, Presentation at the Worldwide Symposium on GIs, Bangkok, 27 March.


Giovannucci, D, Josling, T, Kerr, W, O’Connor, B & Yeung, M 2009, Guide to geographical indications: linking products and their origins, International Trade Centre (ITC), Switzerland.


Hughes, J 2009, ‘Coffee and chocolate – can we help developing country farmers through geographical indications?’, Report prepared for the International Intellectual Property Institute, Washington DC.


Lawson, C & Sanderson, J 2013, The intellectual property and food project: from rewarding innovation and creation to feeding the world, Ashgate Publishing Ltd, England.


Mérel, P & Sexton, RJ 2012, ‘Will geographical indications supply excessive quality?’ European


Neilson, J 2007, ‘Institutions, the governance of quality and on-farm value retention for Indonesian specialty coffee’, *Singapore Journal of Tropical Geography*, vol. 28, no. 2, pp. 188-204.


Nieuwveld, L 2007, ‘Is this really about what we call our food or something else? The WTO food name case over the protection of geographical indications’, *The International Lawyer*, vol. 41, pp. 891-922.


O’Connor & Co 2007, *Geographical indications and TRIPs: 10 years later... A roadmap for EU GI holders to get protection in other WTO Members*, Insight Consulting, Brussels.


Tran Wasescha, T 2013, ‘Negotiations and discussions at the World Trade Organization (WTO): where are we and where do we go?’, Presentation at the Worldwide Symposium on Geographical Indications WIPO-DIP, Bangkok, 27-29 March.


NATIONAL RURAL ISSUES

Provenance of Australian food products: is there a place for Geographical Indications?

by William van Caenegem, Peter Drahos and Jen Cleary

RIRDC Publication No 15/060
RIRDC Project No PRJ-009251