

PROVENANCE OF AUSTRALIAN FOOD PRODUCTS – IS THERE A PLACE FOR GEOGRAPHICAL INDICATIONS?

Geographical Indications of Origin (GIs) in Australia have traditionally been understood through the lens of implications for international trade policy. This research argues that there is reason to seriously consider potential advantages of adoption of the registration of Geographical Indications of Origin (GIs) for food products other than wine. The potential regional benefits of a GI regime need to be considered in the broader context of trade implications.

Geographical Indications of Origin (GIs) are a typically European form of IP protection for valuable provenance brands that to date has only been enshrined in Australian law in relation to wine. This report examines the potential advantages of the registration of food products other than wine. It especially canvasses the potential advantages of a food GI register from the perspective of regional economic development.

The research is built around a comprehensive interview process which draws on the expertise of a range of industry and community participants to examine several ‘real life’ case studies in specific regions within Australia. The wine industry is assessed to discover how the notion of GIs has already been applied in Australia.

The research shows that GIs have generated two effects that may bring regional benefits, namely a reciprocal spillover effect and an investment-in-quality effect. GIs also have the potential to improve consumer understanding of the origins of quality foods.

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

- beverages (wine, tea, whisky, spirits, liqueurs, coffee)
- dairy
- fish and seafood
- fruit, vegetables, pulses, seeds and nuts
- grasses and fungi (sugarcane, truffles, mushrooms)
- livestock industries

WHO IS INTERESTED?

This research is of interest to a broad range of stakeholders concerned about Australia's regional and agriculture future.

- Industry participants including producers, processors, distributors and retailers, may be interested in this research as it provides an improved understanding of certain tools which may enhance individual business and broader industry profitability.
- Brand committees, food and tourism groups and regional development agencies which have been established to market regions may study the lessons learned from the case studies to guide future activities.
- Industry and Government can consider the analysis when formulating policy direction in relation to regional development, agricultural and food sectors.
- Industry and Government may use the insights to be gleaned from this research to better design policy responses in areas such as competitiveness, consumer perception, trade, food policy and infrastructure.

UNDERSTANDING GEOGRAPHICAL INDICATIONS

The topic of GIs in Australia has to date been approached through the prism of international negotiations concerning increased protection for GIs, which has been seen as predominantly advantaging established European GIs. In the Australian context this has not facilitated a discussion about the potential for such a tool to be used to achieve other policy goals such as enhanced regional investment and employment.

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.

Australia's regions have the potential to turn some of their products into 'iconic' local products – that is one products widely known and acknowledged for distinctive excellence. Currently the potential value of such products may not be fully realised because of a lack of marketing strategies around provenance or because other actors in the value chain are capturing this value through branding strategies underpinned by trade mark protection.

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Existing Protection – What's in the Toolbox

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).

» *Key Insights*

The existing mechanisms have certain drawbacks in terms of providing the kind of protection afforded by a GI system. The most significant issue with the other approaches (except for registration of a certification mark), is that a real geographical name is generally considered descriptive or generic. This means that such names are not suitable for registration and private appropriation as a trade mark, nor sufficiently distinctive to enable passing off laws to be a remedy. By contrast, a GI specifies that a good possesses a special characteristic of some kind by virtue of its origin in a defined place.

GIs are also public law instruments and not private property rights, having a great degree of permanency, being available for successive generations of producers in regions as public goods.



Wine Industry

The wine industry, as the only industry that has the option of registering a GI in Australia, provides insights into how such a system can operate domestically. The Australian GI system was developed as a result of agreements on trade in wine between the EU and Australia.

It established a Geographical Indications Committee (GIC) with powers to determine GIs, and was designed to provide legal certainty over the boundary of a given wine region.

The rules that govern the use of an Australian GI are straightforward compared to those found in many European systems. There is no obligation to use a GI, but where a single GI such as 'McClaren Vale' is used then at least 85 per cent of the wine must have come from grapes grown in the region.

» *Key Insights*

Costs – A range of costs accompany the wine GI system including the costs of application, system operation and compliance. If a food GI system were to be implemented, the costs of audits to individual growers could be minimised by adapting existing audit systems to monitor compliance.

Value – GI regions are generally held to be important in the wine industry although it is difficult to establish how valuable they are. The answer is likely to vary depending on which segment of the consumer market is being studied but GIs do appear to have become progressively more important in the industry's strategic thinking.

Reciprocal Spillovers – The Granite Belt case (see breakout box) suggests that a GI may help a region to gain the benefits of reciprocal spillovers that might not otherwise occur. In the example below, tourism operators benefited from an improved reputation for the region's wine.

QUEENSLAND WINE – REALLY?

Queensland does not enjoy a great, or even good, reputation for wine because its climate and soils are largely unsuitable for growing wine grapes. However, the granite soils around Stanthorpe area are an exception.

The problem for the winemakers in the region was that as long as they were under the banner of 'Queensland wine', success was limited. The registration of the Granite Belt GI in 2002 was seen as an important breakthrough creating the opportunity for them to escape the poor reputation of Queensland wines. It became the basis for a marketing strategy for wine that allowed winemakers to distinguish their wine from the rest of Queensland.

The GI also became the basis for creating a broader identity for the region as a tourist destination. Two conditions were crucial to success: 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.

Investing in Quality – Although investment in quality in Australia's traditional wine growing areas was occurring well before the advent of the GI system, it appears to encourage many businesses to strive even harder to improve quality. 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.

Where a region has committed to a quality product, the GI boundary also creates certainty for future investors because they know precisely where they must buy in order to gain the benefit of the GI.

» Key Insights

- The Australian wine industry has shown that Australia can develop valuable GIs although it takes time and requires a long-term strategy that can cut through to consumers in brand-congested marketplaces. A wine GI may benefit a region by triggering or intensifying a process of reciprocal spill overs in which other services are established to meet tourist demand.
- Bilateral negotiations would 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.
- The Australian wine GI system followed a ‘keep it simple’ approach that focused on the regional origin of grapes and did not address production methods. However, informal mechanisms and practices of quality control have been adopted by winemakers to address free riding issues and negative externalities.
- Wine GIs are associated with the production of premium wines, providing investors with certainty about where to invest in order to gain the benefits of the region’s reputation for quality.
- The administration and audit costs of the wine GI system appear relatively modest and use has been made of existing audit systems.

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Case Studies

» King Island – an iconic place

Place importance and iconic produce are both classic attributes of GIs in terms of place-brand uniqueness, and thus the report examined the King Island ‘story’ in some detail. King Island has an economic history underpinned by agrifood production, primarily in dairy and beef. Over time, a number of restructures of these businesses occurred as they faced issues of isolation, high transport and power costs and ageing port infrastructure. In response, businesses sought to ensure value-adding was retained locally as much as possible. They also sought to extract a premium based on the unique qualities of King Island.

The strategy has had mixed success with local control having been lost to a large degree. King Island Dairy is currently owned by Lion Dairy and Drinks, a subsidiary company of Lion and the local abattoir for beef production was closed in 2012 by its latest owner, JBS. 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 to some regional economies.

Maintaining local control of livelihood assets including land, infrastructure and livestock on King Island, through collective ownership of the brand ‘King Island’ would be of great benefit to the community, in a way that a monopoly-like ownership of the trade marked name cannot guarantee. This case study shows that GIs may have the potential to mitigate the ‘either/or’ choice: *either* external investment *or* local control.



» Cheese – an iconic product

Cheese, like wine, comes in many varieties, and like wine, there can be vast differences in quality, taste, expectations and associations. As a fine food, cheese may enjoy iconic status and reputation. As an iconic local product cheese has the advantage that it would be a practicable GI option in sub-tropical regions of Australia where a wine GI is not an option.

Experimentation in cheese making, which may drive the development of uniquely 'Australian' cheese products worthy of a GI, is likely to be the province of smaller, regional enterprises, rather than the bigger players in the industry. Larger players could see no real advantages in having GI legislation as their trademarks and the freedom to use generic, common-use names for their products was seen as adequate.

Clustering of 'like' businesses via the use of a GI for the production of unique, artisanal products may enhance the regional economy and improve the quality aspects of local products. Clusters would also help generate the spillover and quality effects. Value adding in situ also has potential to provide local employment and a local outlet for dairy farmers.



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Food GIs - Findings

Importance of brands – Marketing/branding and trademarks can act as an important barrier to entry to competitors. Whilst multinationals devote large sums of money to this function, overwhelmingly self-employed producers believed that marketing/branding was a crucial but neglected part of their business.

Production rather than marketing – Australian producers are generally focused on producing high quality products, relying on accumulated skill, know-how and innovation, but involvement with selling their products 'stops at the farm gate'. Premium quality, sometimes associated with certain locations, is therefore often not apparent to end consumers and thus fails to generate premium returns. Consumers do not learn the 'back story' of the production of the food they consume.

Capturing value at the farm gate – Agricultural producers are often characterised as being price takers and have difficulty extracting value from the food supply chain. Yet, they face increasing regulation especially in situations where producers enter supply arrangements with processors or supermarkets. While the compliance burden of Australian producers in this private or hybrid regulatory world has increased, their profit margins have not.

Avoiding complacency – In some industries there is comparatively little interest in developing a branding strategy because the industry enjoys high demand and premium prices. However even in such industries, there are risks in being complacent in relation to branding. For example, the very successful rock lobster industry could face unexpected changes in the Chinese market or improved capacity of Chinese aquaculture. GIs potentially have a defensive role in helping industries to defend premiums in export markets. GIs help to distinguish quality Australian product from food sourced elsewhere.

“GIs potentially have a defensive role in helping industries to defend premiums in export markets”

Perceptions of branding rules: confusion rules – Legal remedies against free riding, available to any business that develops a value-added local food product and adopts a place-based brand, are diverse and relatively complex. The law relating to registered trademarks and passing off is perceived as difficult, and taking legal action as expensive and risky. By contrast legal rules concerning the use of GIs are relatively simple and the cost of enforcement is shared amongst all a group of local stakeholders.

Individual producers are also often reluctant to take legal action against wholesalers, supermarkets, or important clients. This may in part be due to the dependency of the grower on those players and the ease with which they could find substitute suppliers.

Certification marks – The use of certification marks appears to be low in the food sector. The collaborative process of developing the rules that apply to the use of the mark, obtaining approval and then enforcing and policing the mark perhaps being one disincentive. The descriptive nature of a place name is also a difficulty for registration as a certification mark. Certification marks and GIs are different systems with different strengths. The latter is an additional option rather than a substitute for certification mark registration.

Brand new world: farming and brands in the era of deregulation – A significant number of more entrepreneurial local producers interviewed have taken their efforts beyond the farm gate, for instance by linking up directly with high end retailers or directly distributing to restaurants or high end providers. In all these cases, production levels were to the micro- small- and medium-end of production scales and imposed a high burden on individual producers.

The time, cost and uncertain outcome of branding means that many producers do not differentiate their product. Rather they supply others who invest in brands and marketing. A common example of a grower entering supply contracts with supermarkets entails a risk of dependency.

Entrepreneurial uses of place-based trade marks – Some producers seek to extract greater value from the food supply chain through an individual entrepreneur managing a local name for branding purposes, and then use contractual relations with surrounding producers. This usually underpins efficiency, consistency and volume of supply enabling less commercially minded producers to focus on the production side rather than marketing.

Disadvantages of this approach include a high level of dependency on a particular entrepreneur or business and attendant risks of lack of continuity and sometimes, the acquisition of private rights in existing descriptive placenames which creates potential complications for others wishing to invest in the region.

Efficiencies of scale – Australian agricultural policy premised upon increasing efficiency and upscaling has largely supported commodity production, which in part has been driven by the geography of the nation and thin domestic markets associated with our small population. Therefore an effective GI system for Australia would likely only work for premium, value-added products, with the exception of some high-value fruits. There is increased interest in such products in Australia and in key agricultural export markets.

Integrated brand 'clubs' – Some producers have the option of entering into contracts to grow products that have been developed through extensive research and development programs, the genetics of which are protected by a combination of intellectual property rights.

For example, Driscolls, a United States company, has bred varieties of blackberries, blueberries, raspberries, and strawberries that it offers to growers. This model provides income stability for the grower but is neither cheap to enter, nor to exit. A low cost GI model might provide a group of growers with similar benefits if they decided to focus on a particular product, in a specific region, and to particular specifications.



Common use of provenance branding strategies –

Provenance branding strategies, with an emphasis on place, images, local individuals and backstories, have been adopted by Australian producers in every product sector at some point in time. Some producers found that shifting from a strategy of pursuing efficiencies of scale and production in undifferentiated commodities to producing food differentiated by quality and reference to origin and local backstories had worked to improve margins and provide profitability.

Effect of farmers' markets on region branding –

Farmers' markets can be of significance to some smaller, high-value local producers and, depending on the standards they adopt, may have an effect similar to a registered GI. 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.

Loss of brand identity – A potential disincentive for producers to invest in branding is the risk that other actors in the supply chain, intermediaries between producer and consumer, might strip them of their brand identity.

Unique regional characteristics – 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.

The international potential of GIs for food? –

The potential exists for GIs to benefit from greater protection in export markets for certain industries. 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.

Design Sovereignty: The International and Domestic Legal Contexts

An Australian GI registration system would need to be designed in the context of existing international laws, treaties and trade agreements. The report addresses a range of issues which would need to be considered in the design of any such legislation. These include:

- Treaty Requirements and Australian Law
- Globalisation of GIs and Australian Export Markets
- Domestic Design Sovereignty and obligations in terms of international agreements.

The research synthesised suggestions arising through the interview process in the form of principles that could be used to inform the design of an Australian GI register for food.

Key elements seen as being important design principles include:

- Flexible Rules of Origin and Specifications
- Local Initiation
- Effective Enforcement

The full report provides significant discussion around these issues.

TASMANIAN WHISKY

The Tasmanian whisky industry has developed rapidly in recent years and achieved international recognition with a whisky from that State taking the 2014 World Whisky Prize. 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.'

A GI could resolve uncertainty about what constitutes a 'proper' Tasmanian whisky. It 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.

Potential Benefits of GI

» Key Insights

- Although there is no universal need for the introduction of a food GI registration system, it deserves serious consideration as a useful additional branding/marketing option. 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 challenges.
- GIs are public law instruments and not private property rights - individual producers or companies cannot own GIs. They remain embedded in precisely defined regions and have a great degree of permanency, being available for successive generations of producers in regions as public goods.

“ GIs are public law instruments and not private property rights – individual producers or companies cannot own GIs ”

- GIs are worthy of consideration from the broader regional development perspective as they may, under a set of conditions, help a region gain the benefits of reciprocal spillovers that might not otherwise occur. That is benefits flow to other businesses and the regional economy more broadly, as a result of the value captured through the GI.
- It is important to consider whether a product other than wine could trigger this spillover process. Wine is a complex cultural product but it has attributes for which 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 relatively limited.
- As potential regional assets GIs 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. They are simpler to enforce than ordinary trade marks or the laws of passing off and consumer deception.

“ As potential regional assets GIs can ground cost-sharing strategies and help producers achieve scale in marketing ”

- 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 (such as on King Island) while maintaining some measure of local control (which has been significantly eroded over time on King Island).



- Although Australian agricultural production is of a very high standard, once a product leaves the farm gate, investment in branding and promotion often 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. GIs can be an effective vehicle for telling a story of production quality and uniqueness.
- 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.

FUTURE POTENTIAL AREAS FOR CONSIDERATION:

1. The research concludes that there is a case for GI registration scheme for Australia's food sector.
2. It is clear that the importance of branding as a source of comparative advantage in domestic and export agricultural markets will increase.
3. For Australian farmers and regions the imperative to plan around branding has never been greater and GI registration could be a useful brand option.
4. Further, investigation of the positioning of Australian products in world markets increasingly dominated by the regulatory effects of GIs is essential. This is particularly important from the perspective of Australia as a 'third-party' trading partner with jurisdictions that are already promulgating greater use of GIs, including the EU, India, China and Korea.





METHOD

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. As well as undertaking a comprehensive study of the relevant literature the researchers undertook 172 semi-structured interviews across Australia's agricultural landscape and a diversity of food production value chains.

Factors considered in the research design included:

- multivariate operating environments of agribusinesses
- geography and considerations of terroir
- the diversity of Australian agricultural production
- the dearth of information regarding the impact of wine GI legislation and regarding the effectiveness of current regulatory mechanisms

The wine industry's experience with GIs offers sources of information about the actual experience of an Australian industry with GIs so is therefore a case study from which relevant inferences can be drawn for a more general food GI scheme.

The Rural Industries Research and Development Corporation (RIRDC) invests in research and development to support rural industries to be productive, profitable and sustainable. RIRDC's National Rural Issues program delivers independent, trusted and timely research to inform industry and government leaders who influence the operating environment of Australia's rural industries.

This research:

- Informs policy development and implementation
- Identifies future opportunities and risks
- Covers multiple industries and locations

RIRDC invests approximately \$1 million per annum in the National Rural Issues program and attracts other investment and partnerships to undertake research that supports cross sectoral and national decision making. From 2015, RIRDC will host an annual Agricultural Policy Roundtable to identify emerging opportunities and issues that independent, trusted and timely research could contribute to.

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Full report

This document provides a summary of the findings and approach used in the development of *Provenance of Australian food products - is there a place for Geographical Indications?*. A separate full report document has been prepared with the details of the analysis undertaken in the project and is commended to the reader for further information in support of the issues outlined in this document

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