

SOUTH AUSTRALIAN REGIONAL DEVELOPMENT CONFERENCE 2019

REGISTERED GI'S – A USEFUL REGIONAL DEVELOPMENT TOOL FOR AUSTRALIA?

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WHAT IS A REGISTERED GEOGRAPHICAL INDICATION OF ORIGIN?

- **A Geographical Indication (GI)** is a place name or sign used on certain products which originate in that geographical location
- A special kind of Provenance Brand.
- A GI indicates a product:
 - has local ingredients
 - is made according to local methods
 - and has certain qualities...
...linked to its geographical origin




- Protected by registration and a strong enforcement regime in EU and many other countries (different between wine and non-wine)

WHAT ISSUES DO GI'S ADDRESS? COLLABORATION, DIVERSIFICATION AND COMPETITION

- Producer of a homogenous (food) product is a price taker not a price maker, since the buyer can switch between suppliers
 - Producer of a diversified or unique (food) product has a stronger bargaining position as there is no exact substitute supplier
 - Therefore investment in diversified, unique, different-quality product that takes advantage of unique locale make sense
 - Commodity suppliers win by economies of scale and efficiencies
 - Diversified suppliers win by unique character and quality perception
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CONCRETE PROBLEMS WITH PROVENANCE

- Regional branding strategies: inconsistency and decay – failures of collaboration
 - Consumer and trade mark law: ignorance, confusion and uncertainty rules – weak and ineffective laws
 - Entrepreneurial uses of place-based trade marks leading to ‘Privatisation of Place’.
 - Loss of local brand identity in the supply chain
 - Free riding on regional brands in local & foreign markets
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WHAT LEGAL OPTIONS ARE THERE TO PROTECT PROVENANCE?

- Standard Trade Marks
 - Certification Trade Marks
 - Collective Trade Marks
 - Passing Off – protecting goodwill of brand
 - Section 18 of the Australian Consumer Law – protecting consumers against misrepresentations as to origin
 - Australian Wine Grape Authority Act for registered wine GI's
 - Food Standards and Labelling Regulations
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WHAT IS DIFFERENT ABOUT REGISTERED GI'S AS A LEGAL TOOL?

- Settled borders and specifications – not up for challenge in litigation
- Real place names rather than distinctive marks
- Stricter enforcement:
 - ✓ No need to prove reputation, consumer deception, 'use as a trade mark'
 - ✓ Fewer exceptions and limitations, such as identification 'in good faith' of place of origin
 - ✓ No use of -style, -kind, accurate identification of origin

WHAT INTERNATIONAL LEGAL RULES APPLY?

- ▶ TRIPS Compromise on GIs – special protection for wine
- ▶ Other foodstuffs and goods only require protection against consumer deception
- ▶ Agenda for ‘progress’ on GIs (central register, higher level of protection) has not progressed
- ▶ EU pursues an FTA or special treaty policy (eg wine treaty); or administrative collaboration.
- ▶ Potential for reciprocal protection?
- ▶ US/Australia etc. traditionally oppose GI protection per se, and expansion agenda...

WHY THE HISTORICAL OPPOSITION IN AUSTRALIA?

- Australia's position: perceptions of possible trade gains and losses
- Increased GI protection internationally perceived as disproportionately advantageous to European producers
- Nonetheless the Agreement between the European Community and Australia on trade in wine is perceived as a positive for the Australian wine industry.
- Australian opposition to extending GI protection beyond wine also based on:
 - ✓ Current level of protection is adequate
 - ✓ GIs stand in the way of innovation
 - ✓ Enhanced protection would be a burden
 - ✓ It would disrupt existing legitimate market practices and branding strategies
 - ✓ Australian agriculture is hyper-efficient as it is.

But potential local economic impacts were understudied

SOME POTENTIAL AUSTRALIAN EXAMPLES...

- ▶ WINE GI'S – HAVE THEY WORKED?
 - THE GRANITE BELT WINE GI FOR... QUEENSLAND WINE
 - WELL ESTABLISHED GI'S
 - TRANSACTION COSTS – THE COONAWARRA CASE
 - SPILLOVER EFFECTS
- ▶ KING ISLAND – DAIRY, BEEF AND SEAFOOD
- ▶ TASMANIAN WHISKY
- ▶ BYRON BAY PALE LAGER
- ▶ BAROSSA VALLEY
- ▶ MANUKA HONEY?

CONCLUSIONS



- Potential benefits:
 - The pooling of scarce producer resources
 - Taking advantage of unique local characteristics and qualities
 - Direct consumer message: combatting supply chain loss of identity
 - More effective enforcement and deterrence of provenance abuse
 - With a GI legal protection regime that is simpler and stronger
 - Spillover effects from iconic food to other local products/services
 - Wine GIs system seems to work...
- Potential detriments:
 - Consumer deception about uniqueness?
 - Consumer responsiveness/flexibility of specifications?
 - Specifications limit innovation?
 - Favoring small scale and expensive agricultural production
 - Anti-competitive, 'ambit claims', excessive burden of regulation