

Sunshine in a Bottle? Geographical Indications, the Australian Wine Industry, and the Promise of Rural Development

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1 INTRODUCTION

Running through the various detailed justifications for intellectual property is a grand promise. By enacting laws that confer some degree of exclusivity over intangibles such as knowledge, data, and information, a country is promised a better future. In the case of geographical indications (GIs) the promise is of rural development. The recitals to a 1992 Council Regulation of the European Community, which set up a framework for registering GIs relating to agricultural products and foodstuffs, imply this promise, suggesting that GIs could improve farmer income and help keep people in ‘less-favoured or remote areas’.¹

A regulatory tool that promises to improve the lot of the poor, especially the rural poor, deserves serious attention. With more and more of the world’s population moving into cities, governments everywhere are interested in policy ideas that will help keep some people in agricultural production. In the case of the European Union’s (EU) twenty-eight members, some 23 per cent of the population live in rural regions.² More and more people, and not just Europeans, are looking to participate in the economic life of cities. More of us are drawn to shopping malls than barns.

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¹ See Council Regulation (EEC) No 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 1992 O.J. (L 208) 1.

² *Urban-intermediate-rural Regions*, EUROSTAT PRESS OFFICE (30 March 2012), <http://ec.europa.eu/eurostat/documents/2995521/5150318/1-30032012-BP-EN.PDF>.

The EU's advocacy for more international protection for GIs is well known. It was the EU that put forward draft text for the protection of GIs at the beginning of the negotiations of what became the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994.³ Since then, the EU has continued to pursue protection for its GIs through preferential trade negotiations.⁴

One of the first countries to negotiate with the EU over protection of its wine GIs was Australia. After long negotiations that began in the 1980s, Australia and the EU signed an agreement in 1994 to regulate the wine trade between them (1994 Agreement).⁵ A replacement agreement was signed in 2008, coming into force in 2010.⁶ These agreements were entered into because Australia needed better access to the EU's wine market and in particular wanted to provide consumers with more information on wine labels relating to matters of vintage, variety, and production.⁷ Australia enacted legislation in 1993 that would protect the wine GIs of EU countries, as well as allow Australian wine producers to apply for GIs.⁸

At the time of the negotiations, many on the Australian side, especially those in government, saw national GI systems in Europe as part of the protectionist agricultural policies of the EU. During this time, Australia was one of the leaders of the Cairns Group, the group that was leading the charge to liberalize trade in agriculture in the Uruguay Round of multilateral trade negotiations.⁹ The belief that GIs were examples of a larger picture of the over-regulation of the EU wine sector is understandable keeping in mind that since 1962 more than 2,000 directives, regulations, and decisions concerning wine in the EU

³ UNCTAD-ICTSD, RESOURCE BOOK ON TRIPS AND DEVELOPMENT 279 (2005) (ebook).

⁴ See, e.g., Comprehensive Economic and Trade Agreement, Can.-EU, Consolidated CETA Text, ch. 22, Intellectual Property, 26 September 2014, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf; see also Irene Calboli, *Expanding the Protection of Geographical Indications of Origin under TRIPS: 'Old' Debate or 'New' Opportunity?*, 10 MARQ. INTELL. PROP. L. REV. 181 (2006).

⁵ Agreement between Australia and the European Community on Trade in Wine, and Protocol, Austl.-EU, *opened for signature* 26 January 1994, 1820 U.N.T.C. 3 (entered into force 1 March 1994).

⁶ Agreement between Australia and the European Community on Trade in Wine, Austl.-EU, 1 December 2008, [2010] A.T.S. 19 (entered into force 1 September 2010).

⁷ Explanatory Memorandum, Australian Wine and Brandy Corporation Amendment Bill 1993 (Cth) 2.

⁸ 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* (Cth).

⁹ DONALD KENYON & DAVID LEE, *THE STRUGGLE FOR TRADE LIBERALISATION IN AGRICULTURE: AUSTRALIA AND THE CAIRNS GROUP IN THE URUGUAY ROUND* (2006).

have been published.¹⁰ At the same time, the trade incentives for Australia to continue negotiating with the EU over GIs were and remain strong. For example, in 2007–2008 the European Community accounted for about 50 per cent of Australia's wine exports, worth about \$1.3 billion.¹¹

In any case, Australia's enactment of a wine GI system did set up a natural experiment in which Australia's wine regions would become test sites for whether or not GIs contribute to regional development. By definition, natural experiments are not run under laboratory conditions. Australia did not copy a European GI model but rather, taking into account the circumstances of the Australian wine industry, it developed its own model of protection. Perhaps the most important aspect of those circumstances was that an export boom had begun in the late 1980s, well and truly before Australia's GI legislation came into operation in 1994.¹² As we will see, Australia's wine GI system represents an experiment with a minimalist model of GI regulation: one that can be contrasted with a French command-and-control model.

Little attention has been paid thus far as to whether or not Australia's wine GI system has contributed to Australia's regional economies. One might argue that it was not designed to, but this does not necessarily mean that it has not had such effects in practice. In this chapter, I present the results of interview data with actors from the wine industry, including winemakers, wine associations, tourist associations, government officials (federal and state), and regulators. The interviews with winemakers took place in some of Australia's premium wine growing regions (Tasmania and the Yarra Valley in Victoria) as well as regions that were generally not regarded as such (e.g. Southern Queensland). The data are part of a bigger project carried out with William van Caenegem and Jen Cleary that examined the issue of whether Australia should enact a GI system for food.¹³ However, in this chapter I am concerned with the narrower question of whether there is evidence of regional developmental benefits that might be attributed to Australia's wine GI system.

¹⁰ Giulia Meloni & Johan Swinnen, *The Political Economy of European Wine Regulations* 3 (LICOS Ctr. for Insts. & Econ. Performance, Discussion Paper 320/2012, 2012) <https://feb.kuleuven.be/drc/licos/publications/dp/dp320.pdf>.

¹¹ See Parliament of Australia, *Bills Digest*, No 21 of 2009–2010, 22 June 2009.

¹² See ROBERT OSMOND & KYM ANDERSON, TRENDS AND CYCLES IN THE AUSTRALIAN WINE INDUSTRY, 1850–2000 (1998), www.adelaide.edu.au/wine-econ/papers/Aust_Wine_Trends_and_Cycles_1998.pdf.

¹³ See WILLIAM VAN CAENEGEM ET AL., PROVENANCE OF AUSTRALIAN FOOD PRODUCTS: IS THERE A PLACE FOR GEOGRAPHICAL INDICATIONS? (2015), <https://rirdc.infoservices.com.au/items/15-060>.

This is very much a micro-study, one grounded in the idea that there is merit in getting actors steeped in industry experience to exercise the wisdom of hindsight on critical issues such as the regional benefits of GIs. As with all micro-studies, there are limitations about its generalizability, but then I would argue that this is precisely the broader conclusion that one should come to about intellectual property. Its universal prescription as development medicine for countries sits at odds with the fact that it is an intervention into organic and local systems that respond very differently to the same medicine. The present case study does not point to regional development benefits, but rather it reveals the existence of mechanisms that explain how GIs might function to deliver regional benefits. Whether or not these mechanisms will operate is, as we will see, a matter of complex causal context. For example, lack of trust in a rural region can spoil the best-designed GI system. Wine has economic characteristics that many other products do not have, setting another potential limitation on what might be inferred from the present study.

The remainder of this chapter sets out the Australian GI scheme, including its costs and enforcement. If one were to summarize the Australian system in tweetable form, it is that ‘flexibility rules’. After the sections on the GI scheme, there follows a section on how various actors in the wine industry view GIs. The remaining sections discuss the link between GIs and regional development, identifying two mechanisms – reciprocal spillovers and group identity – that suggest how a GI might help regional development.

2 AUSTRALIA’S SYSTEM OF GEOGRAPHICAL INDICATIONS FOR WINE

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). Under the AGWA Act, the Geographical Indications Committee (GIC) has powers of determination to decide applications for GIs.¹⁴ The Act lists organizations that may apply for a GI and it specifies that a winemaker or grower of grapes may make an application. The detailed criteria for

¹⁴ See Australian Grape and Wine Authority Act 2013 (Cth) ss 40P–40Q [hereinafter AGWA Act 2013]. Sub-section 40Q(1) gives the GIC the power to ‘determine a geographical indication’. The same sub-section allows the GIC to determine a GI ‘on its own initiative’. In determining a GI, the GIC has to identify the boundaries of the GI area, decide on the indication, and, if relevant, set conditions of use. See AGWA Act 2013, s 40T(1).

determination are prescribed in the relevant regulations.¹⁵ These criteria include geological, climatological, cultural, and historical factors.¹⁶

Lying at the heart of a GI system is the delineation of the boundaries of an area and the decision on the indication to be used in relation to that area. Boundaries have to be described as accurately as possible because these descriptions would be included in the Register of Protected GIs and would become the legal basis for deciding whether, for example, someone has made a false claim on a wine label.¹⁷ By way of example, the description on the GI Register for 'South Eastern Australia' is as follows:

The beginning point of the boundary is located at the intersection of the Tropic of Capricorn and the eastern coastline of Australia and proceeds thence in a generally south west direction in a straight line to the intersection of the Queensland / New South Wales State borders with the State border of South Australia at the location identified on the map as 'Cameron Corner', and proceeds thence in a generally south west direction in a straight line to the intersection of the South Australia coastline with the Great Australian Bight (Southern Ocean) passing through the centre of the township of Ceduna in South Australia.

The area so enclosed includes all of the State of New South Wales, all of the State of Victoria, all of the State of Tasmania, all of the Australian Capital Territory, and those parts of the State of Queensland lying to the south and the east of the described boundary, and those parts of the State of South Australia lying to the south and the east of the described boundary, and all of those off-shore islands under Australian Government control lying to the south and east of the described boundary.¹⁸

There is something else to note about this GI: its extraordinary size. It includes, for example, the State of New South Wales, a state bigger than France in terms of square kilometres (800,642 square kilometres compared to 549,087).¹⁹ The State of New South Wales is itself a registered GI and within

¹⁵ See, e.g., Australian Grape and Wine Authority Regulations 1981 (Cth) reg. 25 [hereinafter AGWA Regulations 1981].

¹⁶ See *id.*

¹⁷ The offence of false description is dealt with in sections 40C and 40D of the AGWA Act.

¹⁸ Section 40ZB requires the Registrar to keep a Register of Protected Geographical Indications and Other Terms. The register can be searched electronically. See *Register of Protected GIs and Other Terms*, WINE AUSTRALIA, www.wineaustralia.com/en/Production%20and%20Exporting/Register%20of%20Protected%20GIs%20and%20Other%20Terms.aspx [hereinafter *Register*].

¹⁹ *Land Areas of States and Territories*, AUSTRALIAN GOVERNMENT: GEOSCIENCE AUSTRALIA, www.ga.gov.au/scientific-topics/national-location-information/dimensions/area-of-australia-states-and-territories (figure for New South Wales); *Surface Area*, THE WORLD BANK, <http://data.worldbank.org/indicator/AG.SRF.TOTL.K2> (figure for France).

New South Wales there are a number of registered GIs, the most well-known being the Hunter Valley.²⁰ With GIs that enclose areas the size of large European countries, there is little plausibility to the claim that there is a distinctive set of qualities imparted by the locality to a particular wine. The system was not designed to bring *terroir* into a close regulatory association with the production of wine, but rather had a market-access goal. This is clear from the Explanatory Memorandum to the *Australian Wine and Brandy Corporation Amendment Act 1993* when it states that in order ‘to enable wine labelled by region to be marketed in the EC, the boundaries of Australian geographical indications concerned must be defined’.²¹ The fact that large country-like GIs of the size of ‘South Eastern Australia’ were created meant that no Australian wine producers would be left out of a GI region and therefore access to the EC market.

The rules that govern the use of a wine GI registered in Australia are straightforward compared to those found in many European systems, especially the French appellation system *appellation d’origine contrôlée* (AOC). The French system allows obligatory rules to be prescribed for many things, including allowable grape varieties within a region, minimum levels of alcohol, production methods, maximum yield levels, and methods of harvesting.²² 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 regulation of yield in the French system is one important element of a scheme aimed at maintaining a standard of quality. Regulating yield was probably one of the last things on the minds of the Australian designers of the GI system in the boom years of the 1990s. The Australian wine GI system is a simple system concerned with the regional designation of grapes and is silent on processes about which the French system is vocal. The principal regulatory tool in Australia is a Label Integrity Program²³ (LIP) that includes GI labelling but with the GI system not specifying standards aimed at quality.

In Australia there is no obligation to use a GI, but where a single GI such as ‘McClaren Vale’ is used, at least 85 per cent of the wine must have come from grapes grown in the region defined by the registered GI.²⁴ Multiple GIs can

²⁰ See *Register*, *supra* note 18. ²¹ See Explanatory Memorandum, *supra* note 7, at para 5.

²² See William van Caenegem, *Registered Geographical Indications: Between Intellectual Property and Rural Policy* – Part I, 6 J. OF WORLD INTELL. PROP. 699–719 (2003); see also William van Caenegem, *Registered Geographical Indications: Between Intellectual Property and Rural Policy* – Part II, 6 J. OF WORLD INTELL. PROP. 861–874 (2003).

²³ See AGWA Act 2013, *supra* note 14, pt. VIA.

²⁴ See AGWA Regulations 1981, *supra* note 15, reg. 21.

also be claimed, though only up to a maximum of three in total.²⁵ In the case of multiple claims, the basic rule is that 95 per cent of the wine must have come from grapes grown in those regions, with at least 5 per cent of the wine coming from each region.²⁶

The Australian GI system takes a strict bright-line approach to GIs, its aim being to contribute to the greater goal of ensuring ‘the truth, and the reputation for truthfulness, of statements made on wine labels’.²⁷ For example, the Australian Grape and Wine Authority’s guide to labelling with GIs makes clear that

[s]tatements 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.²⁸

The 85 per cent rule means that there is some flexibility in terms of sourcing grapes since, if required, up to 15 per cent 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.²⁹

The 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. A small group of 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 per cent of the grapes from the region. It is clear from the interviews that at least some winemakers see the reputation of a region as depending on a small pool of excellent producers: ‘Six out of 50 wineries are excellent [in the region], there are about 10 other wineries that are good’ (Respondent #16).

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

²⁵ See *id.* ²⁶ See *id.* ²⁷ See AGWA Act 2013, *supra* note 14, s 39A.

²⁸ See, e.g., *Labelling*, WINE AUSTRALIA, www.wineaustralia.com/en/Production%20and%20Exporting/Labelling.aspx.

²⁹ This follows from the fact that neither the AGWA Act 2013 nor its regulations require processing within a GI region.

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. For example, the interviews showed that important to the drive for quality at the regional level have been informal social mechanisms such as tasting groups organized by winemakers – places where they can have an ‘honest conversation about the quality issue’ (Respondent #15). Such groups provide new entrants into a region with information, constructive feedback, support, and the opportunity to win recognition through competing for prizes. The aim has been to socialize 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)

3 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 (AGWA):

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.³⁰

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 LIP, GI claims forming part of that program.³¹ The LIP imposes record-keeping obligations on those in the wine supply chain.³² In addition, AGWA has a range of sanctions available under

³⁰ See *Regulatory Services*, WINE AUSTRALIA.

³¹ Part VIA of the AGWA Act 2013 contains provisions relating to the Label Integrity Program.

³² AGWA Act 2013, *supra* note 14, s 39F.

the law, including the suspension or cancellation of an export licence, as well as terms of imprisonment and/or fines.³³

Compliance with the LIP is monitored by a small group of auditors (a total of four at the time of the interviews).³⁴ This audit team aims to cover all Australian wine producers once every three to four years. Audits may be done via cold-calls or by appointment. Wine producers are obliged to keep detailed records that help to ensure full traceability because traceability is one of the things that compliance inspectors comment on 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.³⁵ At the time of the interviews, approximately 400 audits were being carried out annually. Resorting to coercive levels of the enforcement pyramid by the regulator appeared to be rare, with few licence suspensions and only two prosecutions in the last fifteen years (Respondent #104). Only one of those prosecutions related to alleged breaches of provisions relating to GIs (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.

4 COSTS

There is a range of costs that accompanies 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. These costs include a fee and those arising from assembling the evidence/information required as part of the application

³³ AGWA Regulations 1981, *supra* note 15, reg 9 (dealing with the suspension and cancellation of licences). Offences along with their respective penalties and/or fines are in the case of the LIP contained in Part VIA of the AGWA Act 2013 and in Part VIB in the case of the misuse of GIs.

³⁴ The information in this paragraph concerning the operation of the audit system was obtained from interviewing members of AGWA. Details of the audit system are also available from Wine Australia. *Regulatory Services Quality Manual*, WINE AUSTRALIA (June 2015), www.wineaustralia.com/en/~media/0000Industry%20Site/Documents/Production%20and%20Exporting/Label%20Integrity%20Program/Regulatory%20Services%20Quality%20Manual%20June%202015.ashx.

³⁵ IAN AYRES AND JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 35–38 (1992).

process. The application fee is currently set at \$27,500, a fee that approximates the average cost of the GIC hearing an application (Respondents #103 and #104). 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 (Respondent #104). 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. The applicant has to provide evidence on matters such as the history of an area, its discreteness, and homogeneity by reference to attributes such as climate and geology, all of which require expert evidence (Respondent #94). Estimates from the interviews suggest that such costs amount to tens of thousands of dollars. Costs might rise to a six-figure sum if, for example, there is opposition to the GI from a trademark owner. This sum might be larger still if, as in the case of the dispute over the determination of the boundary for the Coonawarra GI in South Australia, the matter ends up before the Federal Court with many years of legal expenses having to be met.

The Coonawarra saga is a spectacular example of a bitter and prolonged dispute over a GI boundary, but it is also something of an outlier.³⁶ 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 (Respondent #94). One reason may be that before the introduction of the formal GI system, some winemakers in Australia were organizing 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 organized an appellation program in Tasmania (Respondent #128).

5 PERCEPTIONS OF GEOGRAPHICAL INDICATIONS

As the quote from AGWA in Section 3 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 among 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

³⁶ See Gary Edmond, *Disorder with Law: Determining the Geographical Indication for the Coonawarra Wine Region*, 27 ADEL. L. REV. 59 (2006).

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 them: '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. Studies suggest that region is probably recurrently important, but how important is difficult to isolate.³⁷ The answer is likely to vary depending on which segment of the consumer market is being studied.

Those 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. GIs had a 'halo effect' that 'helped 5%–10% of the export market' for Australian producers (Respondent #151). The importance of GIs in export markets was linked to the increase in value of the Australian dollar: '[We] got priced out of the low-end market because of the rise in the dollar. [We] make more on a £10 bottle and there the "Yarra Valley" region makes the difference' (Respondent #163).

The 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 reported by interviewees (internal and not published) 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 per cent of consumers recognizing the relevant symbols.³⁸ This is a telling example, as it shows how difficult it is to familiarize consumers with new GI label

³⁷ Steve Goodman et al., *Wine Marketing: What Influences Consumer Selection in the Retail Store?*, THE AUSTRALIAN & NEW ZEALAND GRAPEGROWER & WINEMAKER, December 2006, at 61–63, www.adelaide.edu.au/wine-future/research/fields/consumer_knowledge/Goodman_Lockshin_Cohen_GW_2006.pdf.

³⁸ Eur. Ct. of Auditors, *Do the Design and Management of the Geographical Indications Scheme Allow It to Be Effective?*, Special report No 11/ 2011 (15 November 2011).

categories (in this case, the protected designation of origin (PDO) and protected geographical indication (PGI) symbols). Extolling the virtues of GIs is much easier if one is growing one's grapes in Burgundy.

The interviews also suggested that the export success of Australia's wine industry in the 1990s was built around the application of modern brand-building techniques that allowed the winemakers of the New World to communicate with European consumers in ways that caused the Old World to sniff with disdain. At the core of this marketing success was the image of Australia itself: a place that could pour sunshine into wine bottles from where it could be released like a genie to brighten the gloomiest European day.³⁹ The marketing of Yellow Tail wines is a good example of the kind of creative strategy that was employed. Yellow Tail is reported to sell more in the US market than all French producers combined.⁴⁰

Australian GIs were not central to this marketing strategy. The Australian wine export figures for the period 1989–1998 show remarkable growth, with an average increase of 26 per cent per year.⁴¹ 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 wine industry's thinking as it considered its future. One interviewee, a winemaker and leader within the wine industry, referred to the 1996 publication *Strategy 2025*, describing it as a long-term vision for the Australian industry that included an important role for GIs. In his words, 'We didn't want to be the wool industry. If we'd taken the path of the wool industry we'd be shipping tankards of fermented grape juice' (Respondent #151).

Some eleven years later, the growing emphasis on GIs and regions can be seen in the AGWA's 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

³⁹ The story of this marketing success is entertainingly told in the ABC documentary *Chateau Chunder*. *Chateau Chunder*, ABC TELEVISION (17 December 2015), www.abc.net.au/tv/prgrams/chateauchunder.htm.

⁴⁰ Mike Veseth, *[Yellow Tail] Tales*, THE WINE ECONOMIST (26 February 2008), <http://wineeconomist.com/2008/02/26/the-yellow-tail-tale/>.

⁴¹ Andy Hira & David Aylward, *Australia as a Triple Helix Exemplar: Built upon a Foundation of Resource and Institutional Coordination and Strategic Consensus*, 31 PROMETHEUS 399, 402 (2013).

Regional Heroes – wines which reflect the remarkable number of successful combinations of classic grape varieties with Australian wine regions.⁴²

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.⁴³

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 twentieth 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 better grape varieties were developed and the industry placed more emphasis on technological innovation of all kinds.⁴⁴ 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.

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 interviewed saw no gains in the creation of GI sub-regions. They saw Tasmania as a strong and recognizable brand. They characterized their industry as a small industry that had to work together in order 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

⁴² See Winemakers’ Federation of Australia & Wine Australia, *Directions to 2025: An Industry Strategy for Sustainable Success* 14 (May 2007), www.wfa.org.au/assets/strategies-plans/pdfs/Directions-to-2025.pdf.

⁴³ Austl. Grape & Wine Auth., *Strategic Plan 2015–2020* 8 (Discussion Paper, 9 December 2014), <http://research.wineaustralia.com/wp-content/uploads/2014/12/AGWA-Strategic-Plan-2015-2020-Discussion-Paper.pdf>.

⁴⁴ Hira & Aylward, *supra* note 41, at 401.

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 the 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 formalize those boundaries. Many winemakers saw themselves as still being in a learning and experimental phase: 'There's a lot of learning to identify the perfect single vineyard for growing grapes – it can take 100 years to work it all out.'

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 destabilizing effects, and make it an ongoing part of its planning conversations. 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.⁴⁵ From those internal circles it has been able to forge common strategic objectives that at first did not heavily prioritize GIs in the export boom years of the 1990s, but now with the boom well and truly over, do include a greater emphasis on GIs.

6 GEOGRAPHICAL INDICATIONS AND REGIONAL BENEFITS

Even if, as seems likely, GIs will come to play a more important role in the Australian wine industry in terms of marketing, more sales will not necessarily translate into significantly more income or benefits for a wine GI region in Australia. The test of the development benefits of a GI system, as the Council regulation referred to in the introduction makes clear, is encouraging people in rural areas to stay and improving their income. In the case of the Australian wine GI system there is no obligation to process the wine within the region. Continued mechanization and automation in the Australian wine industry will also affect local employment opportunities. Industry structure matters to

⁴⁵ *Id.* at 399.

the likelihood of regional benefits. Australia's wine companies are export-oriented, as well as part of global ownership structures.⁴⁶ Investment decisions by large wine companies are likely to be determined by a global-market perspective rather than a regional perspective. For example, Accolade Wines, Australia's largest wine company, has a presence in 115 countries and a business model based on brand investment and contracting with grape growers.⁴⁷

The extent to which a GI improves the income of a wine region will also be deeply affected by market structures concerning distribution. For example, two supermarkets in Australia, Coles and Woolworths, dominate the retail grocery market and together account for some 70 per cent of domestic wine sales.⁴⁸ This structure makes for hard bargaining when it comes to winemakers selling their wine to these supermarkets. In the words of one of Australia's largest winemakers, 'they just taste and check with their calculators'. These retailers are also creating their own private label wines, placing even more pressure on the capacity of winemakers to improve their margins.⁴⁹ Even if some wine GIs result in a willingness by consumers to pay more for the wine, players other than individual winemakers may end up capturing those greater margins.

The Australian GI system was designed so as not to disturb the flexibility and diversity of the industry. Australia's GIs are, as pointed out earlier, like a set of very large Russian nesting dolls giving large wine companies a lot of flexibility when it comes to sourcing grapes and using GIs to indicate the source of the grapes. Large wine companies in Australia own about 20 per cent of the national vineyard estate, with the remainder in the hands of specialist grape growers and some small wineries.⁵⁰ In a recent submission to the Australian Senate, the Wine Grape Growers Association of Australia argued that the returns to their industry, which is most directly involved in regional

⁴⁶ Sixty-two per cent of industry volume is exported. See CENTAURUS PARTNERS, WINE INDUSTRY REPORT: EXPERT REPORT ON THE PROFITABILITY AND DYNAMICS OF THE AUSTRALIAN WINE INDUSTRY 5 (2013), www.wfa.org.au/assets/noticeboard/Expert-Review-Report.pdf. On the impact of globalization on the Australian industry, see D. K. Aylward & Michael Zanko, *Emerging Interorganizational Structures in the Australian Wine Industry: Implications for SMEs*, UNIV. OF WOLLONGONG RESEARCH ONLINE (2006), <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1076&context=commpapers>.

⁴⁷ See Accolade Wines, Submission No 26 to the Senate Standing Committees on Rural and Regional Affairs and Transport References, Parliament of Australia, *Inquiry into the Australian Grape and Wine Industry*, May 2015.

⁴⁸ CENTAURUS PARTNERS, *supra* note 46, at 26. ⁴⁹ See *id.*

⁵⁰ KIRI-GANAI RESEARCH PTY LTD, THE AUSTRALIAN WINE GRAPE INDUSTRY TAKING STOCK AND SETTING DIRECTIONS FINAL REPORT 49 (2006), http://wgga.com.au/wp-content/uploads/TSSD-final-report_27Dec2006.pdf.

employment, were affected by their members' relative lack of bargaining power with large wine companies.⁵¹ GIs, one suspects, have made little impact on who gains how much out of the wine supply chain.

On the question of GIs and regional benefits, the interviews suggested two possible mechanisms that might help to answer the question of how a region might benefit from a GI. For convenience we can label these the reciprocal spillover mechanism and the group identity mechanism. The next two sections discuss each in turn.

7 RECIPROCAL SPILLOVERS

One wine region in which a number of interviews took place was in the Granite Belt (a registered GI), Queensland. Wine GIs do not commonly occur in Australia's north, but the Granite Belt, because of its elevation (600–1,000 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 have a great or even good reputation for wine because its tropical and sub-tropical climate and soils are largely unsuitable for growing wine grapes, with the granite soils around the Stanthorpe area being 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 winemakers 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

⁵¹ See Wine Grape Growers Australia, Submission No 30 to Senate Standing Committees on Rural and Regional Affairs and Transport, Parliament of Australia, *Inquiry into the Australian Grape and Wine Industry*, 18 June 2015.

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 organizational 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. 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 is three hours away by road) and the creation of an owner-operated regional marketing organization (the GBWT). In terms of the proximity to Brisbane, what emerged from the interviews was that the marketing focused upon the Granite Belt as a weekend destination rather than a day-trip destination. This had important implications 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 excellence of the Grampian grapes (Respondent #164). He 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 GI was important rather than some other marketing strategy based on a certification mark because of the precise in/out group effect of the GI, which is discussed in the next section.

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 the spillover process was observed. In the Yarra Valley an interviewee from a dairy observed 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 (a wine of excellent or superexcellent reputation), a term used by economists to describe the purchase of goods that are linked to social status. In the case of goods with Veblen attributes, consumers are prepared to pay more because these goods have status and cultural effects. More is being satisfied in the consumption of such goods than simply thirst or hunger. People are prepared to pay for wine-tour holidays and tell their friends about them, whereas apple-eating tours would perhaps not generate the same pattern of social reporting. The number of food products like wine that can generate strong reciprocal spillover effects may be quite restricted. The interviews revealed that the Granite Belt region does have a reputation for producing good apples, but it would be unlikely that a GI for Granite Belt apples would generate a process of reciprocal spillovers of the same intensity as one for wine. The mechanism of reciprocal spillovers, which explains how other businesses in a region both benefit from and contribute benefits to a GI area, depends critically on the possession of a signature or iconic GI.

8 FROM GROUPS TO COMMUNITIES OF SHARED COMMERCIAL FATE: INVESTING IN QUALITY

The certainty that GIs bring to the placement of boundaries appears to be playing an important contributory role in attracting investment into a GI region. Wine GIs in Australia, as they are subject only to rules of origin and not additional quality standards, do not of themselves trigger an interest in the production of quality wines. As indicated earlier, investment in quality in Australia's traditional wine-growing areas was occurring well before the advent of the GI system. A GI by virtue of its precise delineation creates a simple group identity based on geographic lines. For example, the Barossa Valley GI enables one to claim the identity of being a Barossa Valley winemaker. The GI can be thought of as creating a minimal group identity: a formal right to be counted as part of a group. But, of course, groups once constituted may evolve in all sorts of ways; this evolution itself is affected by variables such as trust and leadership. In those GI regions where a sufficient number of winemakers have committed to investing in quality and in improvement, the GI does not simply define a geographical group but also defines who is potentially a part of a community of shared commercial fate. 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. The 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 to ensure that the production of wine in a GI region that is associated with wines of a particular quality continues to meet or improve on those standards of 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 (Respondents #18 and #123). 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 important networking sites where they can find out from judges in informal conversation why they did not win a 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 quality, 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 (an area not associated with premium wines), 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 group identity that a GI system creates through its precise boundary delineation function helps winemakers who are interested in investing in quality to identify those who they must work with if they are to create a community with a sense of shared commercial fate within a region. If a group of winemakers makes the transition to quality wine production, then other effects such as greater investment in the region are likely to follow. The group-identity mechanism that operates as a result of the Australian wine GI system makes a modest but important contribution by defining who is in an area and who is not. This is simply a start. What happens after that depends heavily on leadership and the inclinations of people to work together.

9 CONCLUSION

There are two points that come from the negotiating phase of Australia’s experience with GIs that are worth emphasizing. Australia’s 1994 Agreement with the EU was an agreement that was specific to trade in wine. In other words, unlike in the case of a preferential trade deal that covers many industries and therefore sets up many possible trade-offs and complexities, the negotiations focused solely on the wine industry. This does raise the issue of whether it is better to negotiate GIs outside of a preferential trade agreement. The answer to this question will depend on whether one is negotiating with the EU or some other major trading partner such as the United States or China, but the point here is that the option of attempting to negotiate a specific agreement on GIs outside of a preferential trade agreement should at least be evaluated.

At the time of Australia’s introduction of a wine GI system, the relationship between trademarks and GIs in Australia did not prove a problem, one reason

being that Australia was not party to preferential trade agreements that contained provisions on the issue. Like other countries, Australia has gone down the preferential trade agreement path concluding in 2004 the *Australia-United States Free Trade Agreement*. Amongst other things, this agreement led to provisions in Australian law that allow for objections to the determination of a GI based on pre-existing trademark rights.⁵² 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 trademarks.⁵³ As countries become parties to more and more preferential trade agreements, they will have to introduce much more procedural complexity into the design of any domestic GI scheme. At a more fundamental level, if a trademark office has allowed many trademark registrations over the country’s valuable agricultural place names to creep onto the register, it may have created a huge practical obstacle to introducing a GI system.

Turning now to the issue of regional development, Australia’s GI system was introduced at a time when the Australian wine industry was in the greatest export boom period of its history. The dominant regulatory principle of this system was truth in labelling, but it was also a principle that was bent to serve the interests of the wine industry in flexibility. Truth had to accommodate the demand for flexibility in production and processing. A consumer buying a bottle of wine with the GI ‘South Eastern Australia’ on it is being told that the grapes come from an area the size of several large European countries. The Australian industry is now in one of its bust cycles, and there is much more talk about concentrating on quality, suggesting that the GIs linked to Australia’s premium wine regions will perhaps gain more attention from marketers. It is also important to keep in mind that Australia’s experience with GIs is a little more than two decades old, whereas the Australian wine industry itself has a history of boom–bust cycles going back to the 1850s. It would be fair to say that the industry is still in something of a learning period with GIs. 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 per cent of whom crush less than 100 tonnes per year.⁵⁴ Of Australia’s 2,573 wine companies, the top four account for 48 per cent of the national crush.

⁵² See *US Free Trade Agreement Implementation Act 2004 (Cth)* sch 3 (Austl.).

⁵³ *Rothbury Wines Pty Ltd v. Tyrrell* [2008] ATMOG11 (13 June 2008) (Austl.).

⁵⁴ *Wine Industry Statistics – Wine Producers*, WINETITLES MEDIA WINE INDUSTRY SOLUTIONS, www.winebiz.com.au/statistics/wineries.asp (last visited 16 February 2016).

The Granite Belt GI does point to the mechanisms of reciprocal spillovers and group identity that help to explain how a GI could contribute to regional growth. However, for reciprocal spillovers, the case of the Granite Belt shows that proximity to a large city (Brisbane) matters. The same is true for the Yarra Valley with its close proximity to Melbourne. A wine GI may help a region in terms of jobs and growth by being able to entice city dwellers to visit. Regions with iconic GIs need cities to tango. Wine has that allure. Apples do not. For those interested in a GI system that truly serves poor and remote regions, the Australian wine GI model is almost certainly not the answer. But then perhaps no GI model could serve in that way.