

Exploring the Economic Rationale for Protecting Geographical Indicators in Agriculture

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"The enduring competitive advantages in a global economy lie increasingly in local things – knowledge, relationships, motivation – that distant rivals cannot match"

(Porter, 1998)

Abstract

The misappropriation of the names of geographical regions such as Parma, Roquefort and Champagne is protected in the European Union by a system of Geographical Indications, and is acknowledged by the World Trade Organization as an important intellectual property right. This article addresses whether there is a case for similar protection in South Africa. The article explores the economic rationale for implementing a system of Geographical Indications by addressing issues such as information asymmetry and the role of reputation; formation of niche markets; monopoly formation, value added and rural development. The economic rationale for protecting Geographical Indications derives mainly from the fact that place of origin may be used as a quality signal, or alternatively, that the resources of the region may be captured as quality attributes. In the first instance the meaning of the geographical name is emphasized in order to reduce information asymmetries. Where place of origin is used as an attribute, resources of the region are used to increase the value of the product. This includes specific resources such as production techniques, varieties and species, but also resources that are general to the region such as landscape, environment and culture. Economic arguments present a strong justification for the introduction of geographical indications in South Africa. At the same time it will afford greater protection to indigenous resources and geographical names which could, through the collective and inclusive nature of the system, directly contribute to rural development.

1. Introduction

Recent news reports (Business Day, 15 March 2006) regarding the use of names such as Port and Sherry and the alternative names of Tawny and Ruby for South African liquor products have once again put the issue of

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Geographical Indications (GIs) in the spotlight. At issue, is the increasing trend by food companies and producers to use regional names to distinguish agricultural products. This follows trends in the food sector over the past decade which indicate that consumers are increasingly placing value on products they can associate with a certain place and/or special means of production (Ilbery & Kneafsey, 1998). This renewed interest in “authentic”, “traditional”, “wholesome” and “traceable” food results from a range of factors such as increased awareness of food safety, the socio-cultural status of consuming certain foods and renewed interest in and, nostalgia of, culinary heritage (Ilbery & Kneafsey, 2000).

Given the global, competitive environment characterized by declining agricultural commodity prices, this trend towards traditional and/or quality products provides producers of origin labelled products with the opportunity to move away from commodity markets into more lucrative niche markets through differentiation. It is a well-established fact that rural communities throughout the world have over centuries developed typical products, based on the interaction between local know-how (including selection, production and processing) and particular environmental conditions such as the soil and climate. Take for example the images of windmills and sheep, farm homesteads, endless vistas, and tranquillity, which are encapsulated in the name “Karoo”. These attributes of the Karoo region provide a certain commercial value or premium to products ‘originating’ from the Karoo, as the name “Karoo” has become synonymous with quality, tradition and wholesomeness.

The commercial value of geographical names is confirmed by the increasing number of trade marks being registered which incorporate regional names, in an attempt by firms to identify and link their products to names and regions of reputation. With this comes the threat of misappropriation, as producers not even remotely linked to the geography or the values and images of the region, exploit regional names for profit. It is this misappropriation of the names of geographical regions (and to some extent other indigenous resources) that led European nations to protect names such as Parmesan, Roquefort, Champagne, Port and Sherry through a system of Geographical Indications. Geographical Indication systems ensure that only producers within a specific geographical region benefit from the commercial exploitation of their heritage. In addition to preventing misappropriation of local resources, the protection of Geographical Indications provide a valuable marketing tool through which to improve market access and promote niche products. This in turn has important implications for rural development, as it provides an opportunity to improve rural livelihoods based on local resources.

Sadly however, this link between product and region, embedded in local culture, has to a large extent been left unexploited and vulnerable to misappropriation in South Africa. The question which arises is, therefore, whether there is not an argument to be made for a similar system of protecting geographical names and indigenous resources in South Africa.

This is the context of this paper, as it explores the economic rationale for the implementation of a system of geographical indications, in order to gain a deeper understanding of the importance of protecting geographical indications. Those calling for increased protection of geographical indications are motivated by various socio-economic objectives such as increased rural incomes and consumer protection. This paper aims to illustrate how these objectives can be achieved through the use of geographical indications by addressing the following points consecutively: information asymmetry and the role of reputation, formation of niche markets, monopoly formation and value added. The discussion draws from different economic theories in an attempt to explain the economic fundamentals underlying the protection of geographical indications. The issue is necessarily addressed from an economic perspective and does not include advantages at national level such as the preservation of biodiversity. The paper concludes with an analysis of how the economic rationale behind geographical indications contribute towards rural development objectives.

2. Defining Geographical Indications

Unlike other categories of intellectual property rights such as patents and trademarks, there is no general definition accepted worldwide for geographical indications (Escudero, 2001):

“With the exception of design law, there is probably no category of intellectual property law where there exists such a variety of concepts of protection as in the field of geographical indications. This is maybe best demonstrated by the term ‘geographical indication’ itself, which is relatively new and appeared only recently in international negotiations.”

This section will attempt to clarify the terminology used by looking at the different types of geographical indications recognized by legal doctrine and the various characteristics of each.

2.1 Indications of source

The term “indication of source” is used in both the Paris Convention for the Protection of Industrial Property of 1883 (section 1.2 and section 10) and the Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods of 1891 (section 1). Based on the language used in these treaties an indication of source can be defined as (Baeumer, 1999):

“An indication referring to a country or to a place situated therein as being the country or place of origin of a product.”

There are three key components to this concept (Rangnekar, 2003a):

- There is a clear link between the indication and geographical origin;
- Unlike other indications of geographical origin, there is no requirement for distinguishing qualities or attributes of the good;
- The protected indication can be constituted by words or phrases that directly indicate geographical origin or phrases, symbols or iconic emblems associated with the area of geographical origin.

An indication of source, for example “Made in South Africa”, is distinguished from a geographical indication in that its definition does not imply any special quality, reputation or characteristic that is attributable to its geographical origin. As such, an indication of source is dependant only on the product’s geographical origin and not necessarily its inherent qualities.

2.2 Geographical indications

Part two (section three) of the WTO’s TRIPS Agreement deals with the protection of “geographical indications”. The concept is defined as (section 22.1):

“Indications which identify a good as originating in the territory of a Member [of the WTO], or region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.”

Three conditions must be met (Rangnekar, 2003a):

- The indication must necessarily identify a good and can be non-geographical names, iconic symbols, words or phrases;
- The good must necessarily possess “given quality”, “reputation” or “other characteristics” that are “essentially attributed” to the designated geographical area of origin;
- The designated geographical area must be identified by the indication.

An example of a geographical indication would be Karoo Lamb.

2.3 Appellations of origin

The term appellation of origin is mentioned in the Paris Convention (section 1.2) and defined in the Lisbon Agreement as follows (section 2.1):

“Appellation of origin means the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.”

The key components to this concept are (Rangnekar, 2003a):

- Appellations must be direct geographical names;
- The appellation must serve as a designation of geographical origin of the product;
- Quality and characteristics exhibited by the product must be essentially attributable to the designated area of geographical origin.

Appellations of origin can thus be regarded as a special type of indication of source in that it not only conveys the geographical source of a product but makes a direct link between a product’s quality and its geographical origin. An example of an appellation of origin would be Roquefort Cheese, produced in Roquefort, France.

From the above discussion it is clear that ‘indication of source’ is the broadest term. It includes both ‘geographical indications’ and ‘appellations of origin’. In turn, geographical indications are more broadly defined than appellations of

origin. All appellations of origin are thus geographical indications but some geographical indications are not appellations of origin

For purposes of this paper, the term “geographical indication” will be used in the broad sense. However, it should be noted that different terminology is used in the different international legal instruments and that the rights and obligations flowing from these instruments exist only in relation to the category of geographical indication to which the instrument in question refers. In practice, it would, therefore, sometimes be necessary to make a distinction in the context of the regulation or agreement under consideration (WIPO, 2002).

3. Economic rationale for protecting geographical indications

3.1 The economics of information and reputation

Marks indicating the geographical origin of goods are the earliest type of trademark used by traders as a means to exploit local reputation through the use of distinctive signs to evoke a particular geographical origin (Rangnekar, 2003b). Although distinct intellectual property rights, this association suggests similarity in the economic rationale for protecting geographical indications and trademarks. The economics underlying the protection of these distinctive signs is founded on the economic theories of information and reputation. These theories demonstrate the importance of (1) preventing the market distortions that arise when there is asymmetry of information between producers and consumers and (2) averting the consequences of such asymmetry of information on the level of output quality (OECD, 2000).

Nelson (1970) shows that consumers do not have perfect access to information regarding the prices of goods, and even less so as to the quality of the goods. He classified goods on the basis of how information is accessed by and/or conveyed to consumers. This is summarised in table 1.

Table 1: Classification of goods based on access to information

Search goods	Consumers can ascertain quality prior to purchase through inspection and/or research.
Experience goods	Consumers can ascertain quality after purchase through use and experience.
Credence goods	Neither prior inspection nor subsequent use is sufficient to ascertain quality. Purchase decisions will be based mainly on the information provided by the producer. Independent certification becomes important.

The problem of asymmetrical information thus stems from the fact that the producer knows the product attributes while consumers do not know them and can only determine them through search or experience (OECD, 2000). This information gap gives lead to typical market information problems in the form of adverse selection and moral hazard, originally described by Akerlof (1970) in his work on the market for second hand cars. The relevance of these problems in the case of agricultural products is that food products, in terms of the categorisation in Table 1, display characteristics of all three types of goods (Rangnekar, 2003b). As food markets are characterized by varying qualities, only the producer is aware of the product's quality in advance, while the consumer runs the risk of buying an inferior product due to adverse selection.

It is clear that information asymmetry impacts negatively on the market: the quality of total supply drops, higher-quality products are driven out of the market and some consumers will no longer be able to satisfy their preferences (OECD, 2000). Producers maintaining the quality of their products are exposed to unfair competition from producers who sell lower quality products at the same price. In order to protect themselves against such behaviour consumers adopt various strategies. These include the making of repeat purchases, developing a strong sense of brand loyalty and a willingness to pay a premium for reputation. In response, producers adopt strategies for creating reputation in their products.

The concept of reputation, widely used in analysis of markets characterized by imperfect information (Stiglitz, 1989; Tirole, 1988), serves to an extent to bridge the market failure associated with asymmetry of information. In his model on reputation, Shapiro (1982 and 1983) analyses the firm's choices regarding the quality level of its production with a view to maximizing profits in a situation where it is assumed that markets are perfectly competitive but information is imperfect (OECD, 2000). He stresses the importance of the dynamics emerging among the following three elements: firm reputation, consumer learning and the seller's choice of product quality (OECD, 2000). If product quality cannot be observed in advance, consumers tend to use the quality of products offered by the same producer in the past as an indicator of future levels of quality. According to Shapiro (1983) reputation thus embodies expected quality in that individuals extrapolate past behaviour to make inferences about likely future behaviour. This value judgment develops over time creating an intangible asset whose value is given by capitalisation of future price premiums (Belletti, 1999).

In instances where purchase decisions are based on product reputation, producers who decide to produce for the high quality market are forced to invest in reputation. Often this period of investment requires the producer to sell his product below production costs until reputation has been established (OECD, 2000). The need to make initial investments means that in an equilibrium scenario, high-quality goods must be sold at premium prices (OECD, 2000). This premium represents the returns on the initial investment to establish the reputation (Shapiro, 1983). Given this, products which enjoy reputation earn a premium that is sustained even at equilibrium (Rangnekar, 2003b). Rangnekar (2003b) explains that the premium earned is proportional to the lags associated in consumers learning the true quality of a product. It follows from this that a producer will only be motivated to improve its product quality if consumers undergo a learning process regarding the quality of its products. The premium can thus be justified based on the role reputation plays in reducing information asymmetries and its role in dissuading short term compromises in quality thereby lowering the actual price paid by reducing search costs for the consumer. In the context of information asymmetry, reputation thus becomes both an inducer and indicator of quality.

However, the successful use of reputation to restore efficiency to the market through averting the consequences of information asymmetries, requires that reputation be protected through a process which can be viewed as the "institutionalisation of reputation". Distinctive signs such as geographical indications are one way of achieving this, by making use of a process which requires formalisation of the relationship between the product and the region and/or tradition. This formalisation derives from the use of legal instruments that prevent the misappropriation of benefits.

These quality signals embody reputation in that they signal a certain level of quality. The quality signal reduces the information and search cost for buyers if it reveals quality differences. It is through this function of signalling certain quality standards (and thus reputation) that consumers are induced to return and purchase new products that a trademark (and thus a geographical indication) becomes an asset of the firm, embodying its accumulated goodwill (Grossman and Shapiro, 1988). The collective nature of geographical indications as a quality signal means that use of the sign is not limited to a single producer but to all producers within the designation which adhere to the code of practice. Product reputation is thus the result of the actions of different agents active in the same area of production and is projected through tradition over a period of time (Marty, 1998).

In conclusion, it could thus be said that geographical indications are the result of a process whereby collective reputation is institutionalised in order to solve certain problems that arise from information asymmetry and free riding on reputation. As such, the abovementioned theories of information and reputation highlight two important features of geographical indications protection i.e. that it functions as both a consumer protection measure (through addressing information asymmetries and quality) and a producer protection measure (through its role in protecting reputation as an asset).

3.2 Improved market access

Apart from its role in overcoming the detrimental effects of information asymmetries and free riding on reputation, geographical indications also reflect inherent values associated with a region and thus regional quality. As such, territory goes beyond its purely informative role and acquires the characteristics of an attribute (Pacciani *et al.*, 2001). The resources of the region (landscape, cultural and historical resources and local *savoir faire*¹) become encapsulated in the origin labelled product, thereby synthesizing the territorial attributes in the product name. It is this characteristic of territory as an attribute that translates into improved market access for products bearing a geographical indication, through increased competitiveness in the market and the development of a sustainable competitive advantage. This section explores the economics behind improved market access for products bearing a geographical indication with reference to the creation of niche markets, monopoly formation and value added.

3.2.1 Formation of niche markets

Decreasing prices, changing consumer preferences and increased competition on commodity markets have created a need for an alternative approach to the production and marketing of agricultural products. As a result, producers are moving away from commodity production and entering more lucrative niche markets. These producers firstly face the challenge of finding a market with consumer appeal and economic value and secondly of protecting the market against competitors that would eventually erode any premiums. The second challenge derives from the fact that once competitive advantage has been created, other producers enter the market to capture the higher profits. As more producers enter the market, the product begins to move from niche to commodity status, thereby eroding any premiums earned.

The advantage associated with niche production is evident if one compares the position of a cereal producer and maize farmer (Hayes *et al.*, 2003). The first

has absolute control over supply and must decide on the price. Typically one that covers costs and gives reasonable return to capital. The latter cannot influence the price as no single commodity producer can alter the market price. He must inevitably accept the market price even though it doesn't cover costs. The difference is that the cereal manufacturer has differentiated itself and consumers view its product as unique, whereas the farmer sells an undifferentiated product. From a consumer perspective, if faced with a commodity product, decisions will be based on price. The benefit of differentiation and niche production is clear: differentiation allows a producer to move away from being a price taker towards being a price maker and thus brings freedom from the price fluctuations associated with commodity markets (Hayes *et al.*, 2003).

Why then do farmers refrain from differentiating? According to Hayes *et al.* (2003) farmers are often faced with a lack of price incentives due to commingling. Even where wholesale buyers provide price incentives to farmers to produce high quality products, competition from other farmers eliminates the profitability thereof. Also, the scale of any individual farmer's output is too small to justify the cost of creating and maintaining a brand that is recognizable by consumers and that cannot easily be imitated.

Based on these problems, Hayes *et al.* (2003) conclude that any instrument designed to differentiate agricultural produce must meet a number of criteria. Firstly, it should allow price signals to be transmitted from consumer to producer. Secondly, it should achieve a scale of production sufficiently large to justify the cost of creating and maintaining the differentiated image among consumers. Thirdly, it should prevent imitation of the differentiated product. Lastly, if profits associated with the differentiated product are to be captured by farmers rather than other actors in the supply chain, the farmers must own the rights to the differentiated product.

Through the creation of a set of institutions geographical indications are instrumental in affording producers pursuing a niche based strategy an opportunity for place-based product differentiation. In discussing place-based marketing strategies, Thode and Maskulka (1998) mention that although product positioning based on product attributes and image is still viewed as a necessary and viable strategy, marketers increasingly lament that there are simply too many parity products (Giges, 1988). Porter (1980) argues that the "parity trap" can be avoided through strategic marketing in order to create a sustainable competitive advantage. His method of matching a company's strengths with market opportunities to create a sustainable advantage is followed internationally. However, in a world characterized by escalating

competition, this approach has been challenged on the grounds that a sustainable competitive advantage is becoming more difficult to achieve and, more importantly, to maintain (D'Aveni, 1994). Thode and Maskulka (1998) acknowledge that the level of competition world-wide has intensified, but proposes that sustainable competitive advantage based strategies are still viable as long as they are unique, truly differentiable and directly tied to the tangible quality of the product.

In this regard, place of origin provides a unique positioning opportunity. The premise on which place-based niche marketing rests is the fact that the economic value of certain products can be attributed to the unique environment from where they originate. Place could thus be used as a basis for differentiation if there is a perceptible, not necessarily quantifiable, link between the product's place of origin and the presumed quality of the product (Thode & Maskulka 1998). The potential economic value of this approach is reflected in the fact that the market value of quality goods identified with a specific territorial indication of origin is estimated to be around 7.5% of the European market (Euro 45 Billion) with an estimated increase of Euro 1-2 billion per year (Trognon *et al.*, 1999). Trognon *et al.* (1999) emphasises that this should not be perceived as merely a fashion phenomenon but as a growing trend.

The potential of geographical indications as a quality label facilitating place-based differentiation and thereby creating niche markets, is further evident if measured by the abovementioned conditions for differentiation as set out by Hayes *et al.* (2003). The central tenet on which geographical indications operate is that of supply control both, by demarcating the geographical area within which production may take place, as well as limiting the yields within the demarcated area. By limiting supply, producers entitled to use the geographical indication obtain reasonable premiums. A low level of production coupled with high prices will provide incentives to other producers to increase production, but increased production will lead to lower prices and profits. This poses the biggest challenge facing niche producers, that is, ensuring that entry into the market is limited, thereby preventing the erosion of any premiums. This challenge derives from the fact that once competitive advantage has been created other producers enter the market to capture the higher profits. As more producers enter the market the product begins to move from a niche to a commodity product, thereby eroding any premiums earned. The success of any niche market will, therefore, in the long run depend on its ability to limit production. In the case of geographical indications, appropriate regulations serve to limit entry and yields. The institutional framework within which geographical indications operate thus

provides a legal framework within which producers can obtain property rights on the differentiated product thereby preventing other producers from entering the market and allowing the producers entitled to use the geographical indication to appropriate the benefits. This framework further facilitates collective production and marketing, providing the necessary scale of production required to justify the cost of creating and maintaining the differentiated product image. This is particularly important in the case of artisanal products (with the majority of geographical indications being artisanal) which are labour intensive rather than capital intensive and, therefore, cannot benefit from economies of scale. This is confirmed by research (Barjolle & Chappuis, 2000) which indicates that these producers increase their chances of success by adopting a common market strategy which allows them to attain a scale of production large enough to justify the investments in product image.

The economic value of geographical indications is thus to a large extent based on the economics of differentiation and niche marketing. It is a socially constructed differentiation which is exogenously validated and allows small producers to create a competitive advantage similar to that of a trademark.

However, Alavoine-Mornas (1997) warns that the originality a typical local area brings to a product can only lead to a differentiation, if clients recognize its value. This highlights the fact that in some instances niche marketing through origin labelling may require an extensive awareness campaign in order to capture the benefits associated with differentiation. Also, it should be noted that various factors could weaken the territorial associations consumers have with a product. These factors include aspects such as packaging, processing, distribution and marketing. In certain instances technical aspects of production and/or processing can override features of the product that are intrinsically linked to its area of origin (Rangnekar, 2003a).

3.2.2 Monopoly formation

In terms of the neoclassical economic theory, geographical indications are considered to be collective monopolies (Moran, 1993). Seemingly a *contradictio in terminis*², the existence of monopolies consisting of a group of firms was argued by Olsen (1962): "The concept of industry in pure competition, which is everywhere acknowledged, is based on assumptions that are perfectly parallel to those required for the concept of industry in monopolistic competition, which is often denied".

The collective nature of geographical indications is well explained with reference to Buchanan's (1965) club theory and the case of Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs) created under EU Regulation 2081/92. Cornes and Sandler (1996), as cited by Thiedig and Sylvander (2000), define a club as "a voluntary group of individuals who derive mutual benefits from sharing one or more of the following: production costs, membership characteristics or a good characterized by excludable benefits".

Legally protected geographical indications like the PDOs/PGIs under EU Regulation 2081/92 are considered to be club goods coupled with government support to provide it, whilst geographical indications protected only by competition law are club goods with no or little governmental support for a more or less latent group (Thiedig & Sylvander, 2000). In comparing PDO/PGI clubs to the characteristics of a club as identified by Cornes & Sandler (1996), Torres (2000) makes the following observations:

- *Voluntarism*: The decision to provide a PDO/PGI is voluntary. However, once the group is established, all the producers using the protected name within the delimitation are compulsory members, even if they have not applied for the protection. All involuntary members have to contribute to the control costs. However, all members also share in the benefits. Members are free to leave the club by ceasing to use the denomination.
- *Sharing*: The PDO/PGI is shared by members of the group of producers in the demarcated area. It is not evident whether extension leads to signs of congestion. It is assumed that at the beginning new members increase the utility for everyone due to camaraderie, but after a critical number of members congestion will occur. PDO clubs are less at risk given that membership and volume of production of the club good is limited by geographical delimitation and product specification. PGI clubs are more likely to show signs of congestion given weaker constraints. Illegitimate use of the designation can decrease the benefits significantly. Also, crowding appears to be a danger for the origin labelled sector in general, for as the list of recognized indications grows profits for existing indications may decrease. According to Thiedig and Sylvander (2000) this raises the issue of "hostclubs" which they define as "clubs of clubs" such as the French *Institut National Des Appellations D'Origine* (INAO) as well as the European Register created under EU Regulation 2081/92.
- *Exclusivity*: The group itself defines exclusivity by delimiting the production area as well as by agreeing on product specifications in the code

of practice. Consequently, only producers within the demarcated region complying with the code of practice, may join the club.

- *Exclusion mechanism:* The PDO/PGI legislation provides for exclusion by making provision for private or public inspection bodies which ensure that members comply with the rules while authorities oversee all uses of the designation. Under EU Regulation 2081/92 the exclusion mechanism is territorially bound and therefore limited by the borders of the European Union. This limits its effectiveness and explains the importance for the European Union of extending the protection provided under TRIPS.

This discussion on club theory confirms the collective nature of geographical indications as reflected in the widely articulated view that geographical indications are collective processes of value creation (Barjolle & Sylvander, 2000). This means that producers belonging to the collective are faced with a unique collective *cum*³ competitive situation in that not only do they collectively produce a common good, they also compete within the collective at individual level. As a result, further differentiation often takes place within the designation through the use of private brands.

These collectives further exhibit the characteristics of a monopoly in that they segment the production market and erect entry barriers on producers both within and outside the relevant geographical area. The monopoly formation observed in geographical indication supply chains takes place by way of institutional barriers which limit entry at two levels: firstly, only producers within the demarcated area qualify for participation. This is followed by another barrier in that, within this region, only producers who comply with the code of practice fall within the collective. These institutional barriers which are created by limiting the use of the designation and defining the product and production process, facilitate the formation of a monopoly which encompasses all producers within the designation who comply with the code of practice. As a result, protection of geographical indications imposes, with reference to producers outside the designation, a monopolistic market structure, given the causal link between a product and its origin which results in a proprietary right, for those entitled to use it. The monopoly thus created is not unlike that which is legitimised under trade mark law by allowing a “monopolistic right” to a trade mark. However, for producers located within the designation, geographical indications retain local, public good characteristics of non-rivalry and non-exclusion. By limiting entry and functioning as a barrier to trade these collective monopolies thus eliminate competition from similar products produced elsewhere, thereby improving market access for those producers entitled to use the designation.

3.3 Value added

It is clear from the discussion on monopoly formation in origin labelled supply chains that the institutional barriers limiting the use of a designation act as a protective belt whereby geographical indication supply chains are collectively monopolized. Work done by Thiedig and Sylvander (2000) indicates origin labelled monopolies' potential of earning a premium. That there is indeed a premium to be captured in locality is reflected by the fact that French origin labelled cheeses earn an average of 2 euros per kilo more than French non-origin labelled cheeses. French *Poulet de Bresse* has a market price 4 times higher than regular French chicken. Producers of milk used for Comté cheese are paid 10% over regular milk prices. Similarly, producers of Italian Tuscano olive oil have managed to earn a premium of 20% since registration as a geographical indication in 1998 (EU Background Note, 2004).

The size of the premium is dependent on a number of factors such as market size, degree of competition with substitutes, consumer perceptions about the linkage of an indication with product attributes and demand elasticity (Correa, 2002). However, in all instances the premium seems to favour authentic and distinctive products linked to a specific area (Correa, 2002). The premium captured by products displaying a geographical indication suggests that some form of value is embedded in the use of this intellectual property right. This value is a mixture of economic, cultural and social values which derive from locality. Those actors using a geographical indication are thus pursuing a valorisation strategy whereby intellectual property is harnessed in an attempt to appropriate these values which allow for the extraction of rent.

3.4 Rural development potential

Apart from, and partly a consequence of the factors identified above, the most fundamental rationale for protecting geographical indications in the European Union is found in the rural development potential of origin labelled products. Both widespread literature and policies adopted by the European Union stress the importance of supporting origin labelled products to attain this objective (Pacciani *et al*, 2001). Origin labelled products, per definition, reflects a strict link between product and origin given that the product derives its unique characteristics from the climatic, human and technical environment of the region. As such, origin labelled products is one of the most evident manifestations of locality and is often considered useful instruments through which to preserve local culture and traditions and to foster rural development especially in disadvantaged areas (Pacciani *et al*, 2001).

In a rural development context geographical indications provide a tool by which rural producers can enter niche markets and earn the concomitant premiums, thereby contributing to improving their living conditions. Furthermore, the link between an origin labelled product and its territory derives not only from paedoclimatic specificities and its strong link with localised specific production assets; it also derives from local culture as it characterizes the “historical memory” of the local population and represents a catalyst of identity (Bérard and Marchenay, 1995). As such, geographical indications engage local resources, both natural and human, in a collective process involving all local actors, thereby activating all the components of the rural economy.

In analyzing the rural development potential of geographical indications it is necessary to distinguish two potential impacts. The first relates to the remuneration of specific assets directly involved in the production process. In this regard, the link between an origin labelled product and its area of origin allows for the creation of rents based on the “qualities” of the product, allowing for the remuneration of the specific assets used in the production process. The second impact on rural development relates to an inclusive territorial benefit to all actors within the region. The latter refers to the indirect benefits which may flow from establishing a geographical indication for certain regional products as reflected in for example, employment levels and income support. Furthermore, geographical indications may contribute to the local economy by maintaining economic and social activities in underprivileged areas, thereby stabilizing the activities it promotes.

According to Pacciani *et al.* (2001) these effects rely on the extent to which local actors succeed in appropriating the rent with respect to actors located outside the territory. Given that the assets from which origin labelled products derive are employable by a plurality of actors without the possibility of individual appropriation, the potential of appropriating this rent is closely tied to the ability of local actors to create institutional processes that can regulate the use of these free goods (Pacciani *et al.*, 2001). The possibility of enhancing rural development through use of geographical indications is further dependent on exogenous factors such as the nature of the product as influenced by the level of elaboration, the characteristics of the production process, the marketing channels allowed by the nature of the product, the impact on the landscape and environment, the role of the product in the local culture as well as the structure of the supply chain (Pacciani *et al.*, 2001). In addition, the possibility of activating endogenous, integrated and sustainable rural development strategies based on an origin labelled product depends on how pervasive and

strong the association between the product and the local community is. In this regard, not all products are alike, depending on their symbolic content and identity within the local community and their presence and importance in the local economy (Pacciani *et al.*, 2001). It should furthermore, be added that it is not the institutionalisation of the resource origin itself that sets the conditions for development (Sylvander, 2004). Instead, it is argued that it depends on how this process is developed, and on the effectiveness of the valorisation strategies built upon it (Sylvander, 2004).

The evaluation of the impact of origin labelled products on rural development should be based on the multifunctional nature of origin labelled products (Sylvander, 2004), accounting also for indirect development goals such as the preservation of biodiversity and traditional knowledge. As such, assessment of the impact should not be limited to the standard criteria (higher prices, increased sales and employment and income levels). The spread of the economic effects within the rural area, the level of participation of local actors, the sustainability and reproduction of the social system and the environmental impact are all factors which should be considered (Sylvander, 2004) in evaluating the impact of origin labelled products on rural development.

However, a prerequisite for geographical indications to act as a rural development tool is an inclusive and representative industry organisation, that ensures participation of local actors and an equitable flow of economic benefits. Given the potentially exclusive nature of geographical indications, the danger exists that large farmers and agribusiness firms could capture the benefits that result from the geographical indication, without any benefits flowing to smaller, rural actors who are often the original custodians of the local resource. This is of particular importance in the South African context with its emphasis on the upliftment of emerging farmers.

4. Geographical Indications *versus* Trade Marks

Section 3 provides convincing arguments in favour of protecting geographical indications. The question which arises is whether the economic rationale behind geographical indication protection is not already captured under existing trade mark laws. It has proved to be a divisive question which has resulted in an international debate on the protection of geographical indications. Various countries such as the United States, argue that geographical indications are sufficiently protected under existing trade mark

laws. Other countries such as the European Union, propose a *sui generis*⁴ system for protecting geographical indications.

As a founding member of the WTO, South Africa must comply with the minimum requirements for the protection and enforcement of intellectual property rights, as provided for in TRIPS. TRIPS does not provide a specific system of protection and merely requires that Members provide the “legal means” to prevent the misleading or unfair use of a geographical indication. South Africa complies with the TRIPS provisions through a combination of consumer protection and unfair competition laws, its trade marks registration system and an administrative scheme for the protection of its geographical indications for wine (Laing, 2005). South Africa thus essentially follows the United States’ example of protecting geographical indications under trade mark laws.

By providing for the protection and registration of geographical indications under trade mark law, geographical indications are treated as a species of trade marks. Although all WTO Members have agreed that geographical indications should be recognized as a form of intellectual property, it should be understood that it differs fundamentally from trade marks. Both trade marks and geographical indications serve as distinctive signs whose purpose is to distinguish products and who are capable of acknowledging the link between a product and its origin. At a fundamental level however, there is a difference in terms of what the distinctive sign is signifying (Rangnekar, 2003a). Trade marks are distinctive signs identifying the relationship between the proprietor of the mark and his goods or services, and thus not limited by any territorial link. In contrast, geography is at the heart of geographical indications (Moran, 1993) – they being distinctive signs identifying goods as originating from a particular geographical area. Geographical indications thus show a link between the goods and their place of origin. As the definition indicates, this form of intellectual property claims that the unique qualities of certain products derive from a combination of features of the natural environment and traditional practices of the people living there. Fundamental to this claim is that these characteristics cannot be produced elsewhere. This forms the basis of one of the most fundamental differences between trade marks and geographical indications, in that the latter cannot be delocalized and therefore never sold as in the case of trade marks. This is in line with the good-place link on which geographical indication protection is based and which prohibits the transfer of the indication to producers outside the demarcated area. In contrast the right to assign or license is available to trade mark holders. This is inconsistent with the philosophical foundation of collective, regional ownership.

A further difference between trade marks and geographical indications is the private versus public nature of the rights which flow from the marks. Despite intellectual property being classified as private rights, geographical indications exhibit public good characteristics in that they are linked to a territory and cannot be privately owned by a single proprietor. In the case of geographical indications it is not a single person but all producers belonging to the region and adhering to product specifications that may lay title to ownership of the designation. The notion that a common good belonging to a specific territory could be privately owned, as is the case with trade marks or collective marks, is not accepted. In contrast, trade marks are true private property rights and are by their nature distinctive signs which are used by persons to distinguish their goods or services from those of others in the course of trade. As mentioned, geographical indications do not identify a particular producer. A trade mark is thus more linked to the notion of individual production and promotion whereas geographical indications are based on collective ownership. This collective element runs counter to the traditional concept of intellectual property rights which, as stated in TRIPS (section 4), are private rights. In addition to this legal difficulty, implementation difficulties exist. Collective management is successful only to the extent that common rules are issued and applied. The collective trade mark may fulfil this function by organizing the control of the application of common rules, but the legal character of the mark, even when it is collective, makes it more vulnerable than the geographical indication.

Related to the private nature of trade mark protection, the cost of protection is often prohibitively high for resource poor producers. Protection under trade mark systems requires costly registrations. In order to effect full protection multiple registrations may be necessary to protect a single geographical indication in the original language, in translated form as well as in design form. Also, to protect geographical indications internationally under trade mark law, the indication needs to be registered as a trade mark in every country where protection is sought. Given the trend towards greater globalization of markets this could place a considerable burden on a producer which could be considerably alleviated by a transnational system of protection such as the proposed multilateral register. If protection against unauthorized use of a trade mark is sought, it is up to the trade mark owner to institute legal action and carry the concomitant costs. Ideally, a *sui generis* system would provide for the State to institute action on behalf of those producers entitled to use the designation. This is an important issue for small producers who may not have the resources to ensure effective legal protection under a trade mark system.

Another factor which relates to cost, is the duration of protection under a trade mark system. Trade marks are periodically renewable, usually every ten years. For producers this could result in a considerable cost given that the trade mark would have to be renewed in every country where protection is sought. Under a *sui generis* system, provision can be made for a once off registration resulting in protection for as long as the conditions for protection are upheld. The fact that rights under the *sui generis* register will potentially be held in perpetuity, makes it very appropriate for the preservation of indigenous or traditional knowledge, such as a production technique. Also, as no individual or firm exercises exclusive monopoly control over the knowledge or information embedded in the protected indication, such knowledge remains in the public domain. This prevents the commodification of traditional knowledge as protection involves the codification of well established practices into rules that become part of public knowledge.

The differences between geographical indications and trade marks allude to the fact that, despite arguments that it is analytically reasonable to consider geographical indications as a species of trade marks, a *sui generis* system which takes into account the unique characteristics of geographical indications may be more suited to allow for the successful valorisation of local products in South Africa. It is, therefore, envisaged that a *sui generis* system for the registration and protection of geographical indications would potentially better serve the interests of local producers.

5. Conclusion

In summary it is evident that the economic rationale for protecting geographical indications derives from the fact that place of origin may be used as a quality signal or alternatively the resources of the region may be captured in the origin labelled product as quality attributes. In the first instance the informative meaning of the geographical name is emphasized in order to reduce information asymmetries. Where place of origin is used as an attribute, resources of the region is used to increase the value of the product. The added value derived from these resources leads to a differentiation based on product "qualities" and consequently to the creation of niche markets. The collective monopolies which result from the institutionalisation process, provide producers within origin labelled niche markets the opportunity to protect and enhance the acquisitional potential of these markets and to transform the value added into an economic rent. Although this premium may be small, a geographical indication, by differentiating products by their area of origin,

restricting supply and creating barriers to entry, act as a powerful marketing tool by which to improve a product's market access.

The discussion above illustrates that providing protection for geographical indications is more than just linguistic monopolisation. The economic arguments presented in this paper provide a strong justification for the protection of geographical indications in the developing world, and South Africa in particular. In contrast to more commercialised products, indigenous products with strong links to indigenous people have an advantage in establishing a geographical indication. The stronger the connection between the product and the region, as facilitated through its link with the indigenous people, the stronger the competitive advantage. This is in line with a study which found that geographical indications show the greatest potential to benefit local producers where traditional small scale production is still present, on the supply side, and where end-use products are marketed directly to consumers. In other words, they are less likely to be appropriate when the product is a commodity traded primarily in bulk (Downes and Laird, 1999).

This confirms the potential of employing the economic benefits of geographical indications to enhance development for local communities throughout the developing world. While, in a South African context, products such as Rooibos have received much attention in the recent past, many other communities produce products derived from local resources and know-how. These products, such as Honeybush tea, Karoo Lamb and Amadumbe are all products that could potentially provide communities with an opportunity to valorise their resources, thereby accessing the economic benefits associated with geographical indications. Through the collective and inclusive nature of the system, a geographical indication provides a unique opportunity to engage local resources in regional development strategies. The challenge in South Africa would, however, be to ensure an inclusive and a representative industry organisation, which can facilitate geographical indication protection. Without this there exists a danger that the larger farmers and agribusiness firms could capture the economic benefits without any benefits (greater employment and higher wages) flowing to the workers and small rural enterprises.

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Notes

1. "Know-how"
2. "Contradiction in terms"
3. "With" or "and"
4. "Of its own kind" or "unique"

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