Index

Abélès, Marc 90
Abricott Luizet du Valais, Switzerland 449
Addor, F 125, 158, 184, 220, 234, 293, 325
administrative issues
approval procedure for product labels, WIPO-administered treaties 108–9, 113–14, 115
China, GI protection 336, 350, 355, 357–8
TRIPS Agreement, protection of GIs 139–40, 143
see also registration
Adolphe, Cindy 85
Africa, terroir definition 77–8
Agdomar, M 168
Agier, Michel 91
Agneau du Quercy (sheep meat), France 449
agriculture
diversity in agricultural production, call for 172–3
environmental conditions, traditional practice and sense of place 81, 85
farmers’ markets 89–90
farming and land ownership schemes as obstacles 81–2
handicraft goods and foodstuffs 311–14, 321–2
income and support to local employment, effects on 453–5
Akerlof, George 443, 482
Alaska mineral water 385
Allaire, G 306
Allen, Max 484
Alphandéry, Pierre 90
Alsace germain, France 310
‘ambush marketing’ legislation 171
see also legislation; markets, TRIPS Agreement
An, Qinghu 329, 355
Anderson, K 251
Anheuser-Busch (AB) company (US) 397–8, 401, 402–3, 405–6, 412, 425, 431, 437, 438
see also Budweiser cases and GIs v trade marks
Anker, K 501, 502, 503, 504, 506
Anthony, Dan 307
Appadurai, Arjun 91
appeal process, Australia, wine GI legislation 272, 274–7
Appellation d’Origine Contrôlée (AOC) labelling
early collective wine branding see under France, collective wine branding (19th–20th centuries)
and terroir concept see global labelling challenge, AOC labelling and terroir concept
Appellations of Origin
Lisbon Agreement see WIPO-administered treaties, Lisbon Agreement for the Protection of Appellations of Origin terroir and sense of place 79–80
WIPO definition 100–102
Aranmula Metal Mirror, India 316
Armagnac, France 17, 27
Audier, J 297, 511, 521, 522, 533, 542, 546
Augé, Marc 90
Austin, G 163
Australia
EU bilateral trade agreement 178–9, 366
generic product descriptions, use of 154–5, 170
market considerations 153–4
Victorian Champagne Company 154–5
wine recognition 42
Australia, cases

Anheuser-Busch v Budejovicky Budvar 397, 400, 401
Beringer Blass Wine Estates v Geographical Indications Committee 277
Comité Interprofessionnel du Vin de Champagne (CIVC) v NL Burton (Freixenet) 252–6
Comité Interprofessionnel des Vins de Côtes de Provence v Stuart Alexander Bryce (La Provence wine) 264–6, 288
Comité Interprofessionnel du Vin de Champagne v Powell 178
Mabo v Queensland (No 2) 504, 505
Thomson v B Seppelt and Great Western trade mark 247–9, 281–3
Yarra Valley Dairy v Lemnos Foods 155
Yorta Yorta Aboriginal Community v Victoria 501

Australia, Indigenous knowledge and GIs of origin 484–507

botanical names and GIs, differences between 498–9
botanical taxonomy issues 494–8
connection to ‘place’ or ‘country’, importance of, and notion of terroir 491–4, 499–504, 506
evidence, transportability of 502–3, 504–6
GI of origin definition 486–7, 488
group rights 490
Indigenous, criteria associated with 486
and Indigenous law 490–91
legal mechanism to support and promote indigenous interests 492, 501–7
native title, formal recognition 504–6
natural geographical indications of origin 487
outsider status of GIs 488–90
paintings as communication method 502–3, 505–6
protection period, lack of limitation 490
quality and authenticity issues 490

‘traditional knowledge’ definition 485–6, 488, 489–90
Australia, wine GI legislation 245–91
appeal process 272, 274–7
application fee as registration deterrent 289
Australian Grape & Wine Authority (AGWA) 251, 270, 286–7, 289
Australian Wine and Brandy Corporation (AWBC) Act 251–2, 260, 263–73, 275–6, 280, 282–3, 286–8
Australian Wine and Brandy Corporation (AWBC) Act, trade mark v GI disputes 278–9
Beaujolais litigation 256–7, 258, 261, 262
Champagne, meaning to Australian purchasers 255–6
Competition and Consumer Law 252, 254
Coonawarra litigation 207, 249–50, 268–9, 273–7
EU GI, use in non-infringing manner 280–81
EU-Australia Wine Treaty 249, 258–63, 264–5, 286–9, 517
European protection attempts 252–8
export growth 260
fee as registration deterrent, Australia 289
‘FEET FIRST’ trade mark and use of German GI ‘First’ 280–81
‘first in time, first in right’ approach 279
foreign GIs, protection for 264–6
free trade agreements 246–7
generic names, lack of protection for 253–4, 258, 259–61
generic names, phase-out tranches 261–2
GI criteria problems 268–9
GI definition 266–9
GI protection, narrowing of (2010) 287–9
GIC (Geographical Indications Committee) and geographical boundaries 271–2, 273–7, 278–9, 284–5
Grape and Wine Authority Act 245
Great Western trade mark 247–9, 281–3
history 245–63
injunctions 269
Label Integrity Program 252
misleading descriptions 263–4
regional hierarchy 269, 275–6
Register of Geographical Indications 272–3, 289
registered GIs, protection for 263–4, 272–3, 289
Registrar of Trade Marks 278–9, 283, 284–5
rights of interested persons 269–71
Rothbury trade mark dispute 284–5
Spanish Champagne and generic problem 252–6
trade mark protection, earliest case 247–9
trade mark v GI disputes 278–9
Trade Marks Act 249, 280
Trade Practices Act (TPA) and passing-off action 252–6, 288
traditional expressions, protection for 262–3, 289
US–Australia Free Trade Agreement 278–85
value of wine GI 249–50
Wine Australia Corporation Act 267–8, 269, 286–7
wine production history 251
Winemakers Federation of Australia (WFA) 260
Ayu, M 245
Babcock, B 161
Baeumer, Ludwig 365, 375
Bagal, M 49
Baham, Elizabeth 89
Bailey, Robert 68
Balganesh, S 157
Barham, Elizabeth 20, 46–71, 87, 89, 126, 134, 135, 200, 204, 207, 292, 297, 484, 488, 491, 493, 494, 499
Barjolle, Dominique 53, 88, 238, 239, 240, 440–62, 466, 479
Barnes, D 169
Bashaw, B 339, 345, 347, 349, 357
Basmati rice, India 213–14, 219–20, 536–7
Bassett, Thomas 78
Bäumer, L 430–31
Bavarian Bier, Germany 380, 381, 388–9, 515–16, 523, 524, 546
Bavarian Blockmalz candy, Germany 522–3
Beaujolais litigation, Australia 256–7, 258, 261, 262
Beebe, Barton 168, 171, 182, 526
beer
Bavarian Bier, Germany 380, 381, 388–9, 515–16, 523, 524, 546
Budweiser see Budweiser cases and GIs v trade marks
Newcastle Brown Ale, UK 478
Plzen, Czech Republic 422, 543
Sapporo, Japan 362
see also wines and spirits
Beeston, J 251
Beier, F 430
Beiter, K 403
Belletti, Giovanni 458
Benson, R 540
Bently, L 217
Bérard, Laurence 47, 59, 61, 67, 69, 70, 72–91, 135, 200, 207, 301, 318, 319
Beresford, Lynne 328
Bergamote de Nancy sweets, France 309
Bergeron, L 362
Bertrand, George 77
Bessière, J 65
Bhagwati, Jagdish 204, 237
Biagioli, Mario 489
Biénabe, E 311
Bienaymé, M 313
see also trade
Bingen, Jim 89
Blakeney, M 175, 183, 325, 508
blending (‘mélanges’) practice, France 21, 23, 24, 36
Blowen, S 59
Blue de Bresse cheese, France 478
Bodhausen, G 99, 100, 110, 232
Boeren Leidse met Sleutels cheese, Netherlands 449, 452, 454, 455, 457
Boisard, P 539
Boisvert, Valérie 85
Boltanski, L 54, 55, 459
Bonnet, C 161, 480
Bons Bois spirit, France 115
Bordeaux wine 17, 18, 19–20, 21, 22, 23, 26, 27, 31, 35, 38, 261
botanical taxonomy issues, Australia 494–9
Bourgeon, J 16
Bowen, Sarah 47, 49, 60, 125, 126
Bramley, C 14–15, 159, 484, 486, 489
branding advantages, India, Feni liqueur 480, 482, 483
‘brand entrepreneurs’ and incentive preservation concerns 165
see also labelling
Bresse poultry production, France 81
Brie cheese, France 515
Brody, P 134, 151, 530
Broude, T 173, 220
Brunet, Roger 75–6
Bruwer, J 528
Budweiser beer, US 51–2
Budweiser cases and GIs v trade marks 396–439
Anheuser-Busch (AB) company (US) 397–8, 401, 402–3, 405–6, 412, 425, 431, 437, 438
bilateral treaties on GIs 402–4, 409, 415–17, 435
Budweiser Budvar (BB) brewery 398–403, 405–6, 410–12, 439
conflicting prior trade marks 406 and Czech Republic Accession Treaty 409, 417–18
defence strategies 408–12
‘descriptive use’ defence 408
dilution of indications in bilateral treaties 416
‘honest practices’ issue 412
lawsuits 400–404
Madrid Agreement 414, 415, 421, 426, 429
misleading indications 412–14, 416–17, 418
Paris Convention and GIs 412–13
registrability issue 405–8, 409, 416–17
right to use as defence strategy 408–10
trade mark and trade name issues 401, 404–12
translations of indications 399, 410–11, 421
Versailles Peace Treaty as multilateral agreement 415
WTO Panel Report 408–9
community law relationship 435–6
generic appellations of origin 421–2, 429
history of 418–19
implementation regulations 435
indications eligible for protection 425–6
infringement procedures 429–30
judicial review 429–35
Lisbon Register 422–4
national courts 424–35
prior trade mark rights 420–21
products eligible for protection 424
protection scope 426
registration procedure 419–21
scope and contents 421–2
specific Budweiser issues 422–36
third party protection 427–9
Budweiser litigation
Austria 403–4, 416, 417, 437
Bulgaria 401, 430
Denmark 411
France 406
Hungary 401, 426, 430, 438
Israel 401, 430, 431–5, 438
Italy 402, 406, 409, 422, 430, 431, 437, 438
Portugal 402–3, 422, 430–31, 438
Spain 402, 431
Switzerland 403
Burgundy wine, France 23, 28, 38, 208
Burrell, R 154, 160, 161, 165, 169
Buttel, F 54
Café Chiapas, Mexico 115

cahier de charges (certification requirements) 70

see also global labelling challenge, AOC labelling and terroir concept

Calboli, I 162

Calisson d’Aix sweets, France 310

Camembert cheese, France 82, 480, 515, 539, 545–6

Campbell, H 70

Canada

Delgamuukw v British Columbia 504

EU bilateral trade agreement 179, 237

Halloom cheese 533

Cantal cheese, France 449, 452–3, 454, 455, 457

Caribbean countries, EU Economic Partnership Agreement 180

Carmody, C 225

Carrier, J 56

Carter, T 236

Carty, H 165

Casabianca, F 69, 80

CCFN (Consortium for Common Food Names) 517–18

ceramics

Moustiers earthenware, France 307

Porcelaine de Limoges and Porcelaine de Nevers, France 307

Poterie de Valauris, France 314

certification, cahier de charges (certification requirements) 70

certification marks


TRIPS Agreement, protection of GIs 136, 139

WIPO-administered treaties 107–8

see also collective marks

Chablis wine 43, 134, 537

Chablis with a Twist, US 207, 211–12, 233

Chamberlin, E 442

Champagne, France 134, 546–7

advertising campaign, US 546–7

collective wine branding (19th–20th centuries) 17, 20, 23, 24, 27, 29

meaning to Australian purchasers 255–6

Spanish Champagne 160, 252–6, 513–14

Victorian Champagne Company, Australia 154–5

Chandola, H 216

Chappuis, J 445

Chardonnay wine 134, 500

Chartier, Roger 75

Châtaigne d’Ardèche (chestnuts), France 311–12

Cheddar cheese, UK 449, 452, 454, 455, 457, 515, 538, 546

cheese

Blue de Bresse, France 478

Boeren Leidse met Sleutels, Netherlands 449, 452, 454, 455, 457

Brie, France 515

Camembert, France 82, 480, 515, 539, 545–6

Cantal, France 449, 452–3, 454, 455, 457

Cheddar, UK 449, 452, 454, 455, 457, 515, 538, 546

Chevrotin, France 516

Comté, France 449, 452–5, 457

Edamer, Netherlands 449, 452, 453, 454, 455, 515, 546

Emmental, Switzerland 515

Feta see Feta cheese

Fontina, Italy 449, 452–5, 457, 529

Gorgonzola, Italy 387–8

Gouda, Netherlands 515

Gruyère, Switzerland 449, 452, 453–5, 457

Halloumi, Cyprus 155, 531, 533

kanterkaas, Netherlands 147, 161

L’Etivaz, Switzerland 445

Parmesan, Italy 112, 138, 449, 452, 453–5, 457, 515–16, 523, 538

Reblochon, France 115

Roquefort, France 112, 235, 313, 523, 536, 544

Stilton, UK 113, 531

Chen, J 153

Chen, Shiping 357

Chevrotin cheese, France 516

Chiappetta, V 165
Chiemsee trade mark, Germany 384–5, 405–6, 411
Chile
EU bilateral trade agreement 179
*terroir* use 86
wine recognition 42
China
Great China Wall trade mark 385
Guanxi Sweet Shaddock (pomelo) trade mark 356, 497
Hong Kong, China Proposal, WTO multilateral register negotiations 187, 189–90, 199–200
Jinhua Ham 347, 348–9, 351–2
Shanxi Laochencu vinegar 353
Xianglian lotus seeds 350
China, GI protection 327–58
administrative appeal and judicial review 350, 357–8
administrative forces for industry and commerce (AICs) 336, 355, 357
Anti-Unfair Competition Law 345
bilateral trade agreements, scarcity of 356
cancellation of ordinary trade marks containing GIs, call for 349
challenges 346–52
coeexistence as conflict solution 349
Consumer Rights and Interests Protection Law 345
control and supervision of GI use 335, 340, 344
cost factors 353
enforcement 335–7, 340, 344, 354–5
exclusive rights, obtaining and enforcement 354–5
fair use exemption of geographical name under trade mark system 334, 352
‘first in time/ first in right’ principle 348, 350
foreign applicants 332, 340–41, 344, 357
French Cognac application 341
General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) 336–41, 346, 351–2, 354, 355–6, 357
GI definition in Trade Mark Law 331
history of 327–8
infringement cases 336, 340, 355
international protection 356–7
legal considerations 329–30, 355–8
Lisbon Agreement 356
Madrid international registration system 356–7
Ministry of Agriculture (MOA) supervision 336–7, 341–4, 346, 351, 354, 355–6, 357
misleading trade marks 347, 350, 354, 355
producer application to use a GI product 339, 343
Product Quality Law 346
Provisions on the Protection of Geographical Indication Products (PPGIP), scope of GI products 337–8, 340, 355–6, 357
registration numbers 336
registration requirements 331–2, 338–9, 342–3, 347
State Administration for Industry and Commerce (SAIC) 327, 329, 330, 331, 332–3, 334, 346, 355
*sui generis* regime and trade mark regime comparison 351–2, 353–8
*sui generis* systems 336–44, 346–7
Trade Mark Law, GIs included in 329–30
trade mark law ranks higher than AQSIQ and MOA administrative regimes 355–6
trade mark regime, conflict between GIs and trade marks and proposed solutions 347–50
Trade Mark Review and Adjudication Board (TRAB) 350, 357
TRIPS compliance 332, 356, 357
wines and spirits, special provisions 332–3
Zhangqiu Scallion trade mark 356
Zhejiang Food v Shanghai Taikang Food 351
Cholet textiles, France 316
Christiansen, A 239
Clarkin, M 154, 155
classification
Ethiopia, coffee-growing 85–6
grands crus 38–9
India, Feni liqueur, reclassification plans 471–2
international standards for product classifications, generic status and genericide 537–8
term status in official classifications as evidence 535–8
see also geographical indications; trade marks
co-existence provisions 366, 368–70, 371–2, 381–2, 387, 391–3
China 349
see also conflicts between trade marks and GIs, resolving
Coase, R 445
Cocks, Sam 361, 383
Coelho, A 41
Coestier, B 16
coffee
Café Chiapas, Mexico 115
classification and grading system, Ethiopia 85–6
Monsooned Malabar, India 313–14
see also teas
Cognac, France 27, 341
collective dimension of GIs, handicrafts and link to origin in culture 318–19
collective marks
EU 112–13
TRIPS Agreement 136, 139
WIPO-administered treaties 107, 108, 113
see also certification marks
collective organisations, and coordination of production and sales in rural development 445–6, 447, 449–51, 456, 458, 460–61
collective wine branding see France, collective wine branding (19th–20th centuries)
Colombia
Denomination of Origin 325
woven handicrafts 307, 315
colonial legacy, India 471–2
commercial performances directly linked to organisational performance 448–58
see also intellectual property tools for rural development objectives
competition see unfair competition
Comté cheese, France 449, 452–5, 457
conflicts between trade marks and GIs, resolving 361–95
Alaska mineral waters trade mark 385
appropriate reference date for priority and protection of GIs prior to their registration 380–81
bad faith question 387–8
Bavaria v Bayerisches Bier case 380, 381, 388–9, 515–16, 523, 546
Chiemsee trade mark 384–5
co-existence provisions 366, 368–70, 371–2, 381–2, 387, 391–3
EU Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs 379–82
EU Wine Regulation 366, 377–9
European Court of Human Rights (ECHR), Anheuser-Busch v Portugal (Budweiser trademark) 367, 372–4, 382, 390–91, 392
exclusivity to prior well-known marks 366, 368–71, 376, 378
fair use of descriptive terms 369, 370, 392–3
Fuerteventura trade mark 385
future direction 393–5
Geneva Act 395
geographically descriptive names as trade marks 384–5
GI protection systems 364–5
Gorgonzola/Cambozola case 387–8
Great China Wall trade mark 385
internal trade mark law defense
370–71
Kerry Spring mineral water 392, 411
Lisbon Agreement on appellations of origin 365–6, 374–7, 394–5
misleading trade marks 371, 383–5, 386, 389–90
monopoly avoidance 382–93
multilateral register proposal for GIs 393–4
national level protection 380–82, 387–8, 390–91, 394
principles 363–7
priority, exclusivity and territoriality (PET) protection 363–4, 366–7, 371–82, 386–8
protection of GIs against use in translation 372–3
refusal of an international registration 375–6
refusal of trade mark application because of GI 380
refusal of trade mark because of conflict with EU Community GI 386–90
refusal of trade mark because of conflict with national GI 390–91
refusal of trade mark as geographically descriptive 383–5
registered trade marks as ‘possessions’ 373–4
reputation of trade mark 371, 378–9, 386, 387, 389–90
Sapporo beer 362
sui generis protection systems 365, 366–7, 369
superiority-based rule 365–6, 367, 371–2
third-party use and phase-out period 365, 366, 374–5
Torres Vedras wine 378–9
trade mark application an object of private property 372–4
WTO Doha Round negotiations 393–4
WTO Panel Report 367–72, 379, 387, 394, 408–9
Conlinsk, J 16
connection to ‘place’ or ‘country’, importance of 491–4, 499–504, 506
see also terroir
Conrad, Albrecht 131, 544
Consortium for Common Food Names (CCFN) 517–18
consumer protection 31–2, 33, 159–63
China Consumer Rights and Interests Protection Law 345
consumer deception test 223–5
consumer understanding effects, generic status 512, 524–5, 527–31, 546–7
Coombe, Rosemary 489
Coonawarra wine litigation, Australia 207, 249–50, 268–9, 273–7
Coquet, L 26
Cornish, W 147
Correa, C 175
Corte-Real, Antonio 397, 431
cost factors
application fee as registration deterrent, Australia 289
China 353
products differentiated by geographical origin, costs and benefits comparison 444–6
TRIPS Agreement, GI extension rethink and EU policies 158, 161–2
WTO multilateral register negotiations 197–8
see also economic factors
counterfeits, marginal counterfeits, emergence of 452–3
see also intellectual property tools for rural development objectives
Covarrubia, P 180
Craven, E 181
Critz, J 42
Croce, E 65
culture, and handicrafts see handicrafts and link to origin in culture
customers see consumer protection
Cyprus, Halloumi cheese 155, 531, 533
Czech Republic
Budweiser see Budweiser cases and GIs v trade marks
Plzen beer 422, 543

Daes, E 490
Dagne, Teshager Worku 484
Damer, S 511
Darby, M 443
Darjeeling tea, India 312, 523, 528, 540
Das, K 125, 221
Davis, J 217
De Sainte Marie, C 69
De Saussure, F 210
De Zwart, M 155
Dedeire, Marc 78
Defontaines, Jean-Pierre 79
definitions
‘appellation of origin’, WIPO-administered treaties 100–102
French terroir definition debate 76–8, 79–80, 84–5
GI definition, Australia 266–9
GI definition in Trade Mark Law, China 331
GI definition, TRIPS 46–7, 48, 188, 190, 191, 193, 196–8
GI definition, WIPO-administered treaties 102–4
GI of origin definition, Australia 486–7, 488
‘identification’ and ‘indication’ of a product, differences between (TRIPS definition) 208–10, 213, 223–4, 236–7
‘indication of source’, WIPO-administered treaties 99–101
‘local traditions’, France 25
‘origin’ of wine, uncertain legal definitions, France 21
terroir, Africa 77–8
‘traditional knowledge’, Australia 485–6, 488, 489–90
Delfosse, Claire 47, 59, 76
DeLind, Laura 89
Demaret, P 146
Demossier, Marion 60, 79
Dentelle du Puy (lace), France 304
Desai, A 472
‘descriptive use’ defence 408
see also Budweiser cases and GIs v trade marks
developing countries
and domestic protection 218–20, 221–3
production systems 85–6
WTO multilateral register negotiations 195–6
WTO TRIPS Agreement, protection of GIs 124–5, 140, 174–7
see also individual countries
Devléitian, A 430
Dewald, B 528
Diamond, Shari 528
Dibden, J 154
differentiation, products
differentiated by geographical origin 444–6
dilution of famous trade marks 43–4, 108, 163–8
see also trade marks
dilution of indications in bilateral treaties 416
Dion, Roger 77
discrimination on basis of subject matter categories, lack of justification for 316–17
see also handicrafts and link to origin in culture
diversification practices and artisanal product 453, 455
diversity in agricultural production, call for 172–3
Doha Round see WTO Doha Round
Dombes carp farming, France 81–2
Downes, David 484, 489, 490, 491
Drahos, Peter 215
Duby, G 23
Echols, M 537
ECHR (European Court of Human Rights), Anheuser-Busch v Portugal (Budweiser trade mark) 367, 372–4, 382, 390–91, 392
eco-labels 53
economic factors
collective wine branding, France (19th–20th centuries) 23, 36–7
economic advantages for producers in international markets, securing 152–3, 176
economic performance, costs and benefits comparison 444–5
traditional economic arguments, justification through 159–63
see also cost factors; value
Economides, N 159
Edamer cheese, Netherlands 449, 452, 453, 454, 455, 457, 515, 546
Edmond, G 273
Emmental cheese, Switzerland 515
Enneking, U 481
entry deterrence and market concentration, India, Feni liqueur 478–9
environmental factors
agriculture, environmental conditions and traditional practice 81, 85
eco-labels 53
environmental significance of GIs 126
handicrafts, and processing under special environmental factors 313–14
sustainability 66–8, 136, 173
Escudero, S 430, 486
Ethiopia, coffee-growing classification and grading system 85–6
EU
Alaska mineral water 385
Australia bilateral trade agreement 178–9, 366
Australia, wine GI legislation protection attempts 252–8
bilateral trade agreement effects 516–18, 544–5
Budweiser cases see Budweiser cases and GI marks v trade marks
Canada bilateral trade agreement 179, 237
Chile bilateral trade agreement 179
collective, guarantee or certification marks, use of 112–13
commercial performances directly linked to organisational performance 448–58
Community Trade Mark Regulation (CTMR) 113, 384, 387
Economic Partnership Agreement, Caribbean countries 180
EU-Australia Wine Treaty 249, 258–63, 264–5, 286–9, 517
EU-Korea Free Trade Agreement 180, 517–18
exclusivity to prior well-known marks 366
French rural policy, influence on EU policies 152–4
GI, Australian use in non-infringing manner 280–81
GI extension see WTO TRIPS Agreement, GI extension rethink and EU policies
Great China Wall trade mark 385
handicrafts and link to origin in culture 293–5, 322–5
labels of origin, administration of 52–3
legislation on geographical indications protection, French influence on 41, 44
list of generic terms under Regulation 2081/92.24 (agricultural products and foodstuffs) 514–16
place names, pre-existing European place names, use of, global labelling challenge 50–51
Protected Designation of Origin (PDO) 83–4, 299–300, 315, 324–5, 448–58
Protected Geographical Indication (PGI) 83–4, 300–301, 307, 308, 309–10, 324–5, 448–58
refusal of trade mark because of conflict with a Community GI 386–90
Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs 83–4, 379–82
sui generis protection systems 112–13
Switzerland bilateral trade agreement 179
Trade Marks Directive 169, 368, 383, 388, 390, 391–2, 408, 410, 411
Transatlantic Trade and Investment Partnership (TTIP) 520
US bilateral trade agreement 179, 180–81, 236, 516–17, 518
‘Wine Pact’ with US 134–5, 517, 547
Wine Regulation 366, 377–9
and WTO multilateral register negotiations 187–8, 190–92, 194, 195, 197–8, 199–200, 201
see also individual countries

EU, cases
Anheuser-Busch v Budĕjovický Budvar 363
Anheuser-Busch v Rudolf Ammersin 379, 397
Bavaria v Bayerisches Bier 380, 381, 388–9, 409, 515–16, 524
Budejovicky Budvar narodni podnik v OHIM 211, 390, 400, 407–8, 436
Budejovicky Budvar v Rudolf Ammersin 379, 397, 403, 404, 409, 416, 436
Bureau national interprofessionnel du Cognac v Gust Ranin Oy 386
Canadane Cheese Trading v Hellenic Republic 155, 208, 510
Carl Kühne v Jütro Konservenfabrik 301
Chiemsee 384–5, 405–6, 411
Commission v Germany (on ‘Parmesan’) 147, 534–5
Consorzio del Prosciutto di Parma v Asda Stores Ltd (Parma ham) 229–30
Diageo v Intercontinental Brands 253
Exportur SA v LOR SA and Confiserie du Tech 300
Germany and Denmark v Commission (on ‘Feta’) 147, 207–8, 223, 381, 494, 510–11, 524–9, 534, 535–6, 538–9, 540, 546
Gerril/Kerry 392
Gorgonzola/Cambozola 387–8
Grana Padano v OHIM 529, 533
Koninklijke Philips Electronics v Lucheng Meijing Industrial Company 363
Kornsptiz 532
L’Oréal v Bellure 169

Nokia Corporation v HMRC 363

European Court of Human Rights (ECHR), Anheuser-Busch v Portugal (Budweiser trade mark) 367, 372–4, 382, 390–91, 392
Evans, G 175, 301, 325, 508
Evans, L 251
evidence contested expression is generic 522–3, 525–40
transportability of, Australia, Indigenous knowledge 502–3, 504–6
exclusive rights, obtaining and enforcement, China, GI protection 354–5
exclusivity to prior well-known marks 366, 368–71, 376, 378
see also prior trade mark rights
expert opinion as evidence 532–3
see also generic status and genericide
export growth
Australian wine 260
French AOC export revenue rise 65

Fabre, Daniel 73
fabrics
Cholet textiles, France 316
Dentelle du Puy (lace), France 304
Harris Tweed certification, UK 307
Kancheepuram Silk, India 304, 306, 317–18
Kashmir Pashmina, India 315
Mysore Silk, India 306–7
Pipli Appliqué Work, India 318
Pochampally Ikat and Orissa Ikat (tie-dye), India 305, 320
Shetland Wool, UK 315
woven handicrafts, Colombia 307, 315
‘fair trade’ rules 202–42
bilateral trade negotiations 234–7
consumer deception test 223–5
controversies over legitimate use of GIs, long-running 217–18
developing countries and domestic protection 218–20, 221–3
Doha Round of trade negotiations 215
GATT on origin marking 227–8, 236
GATT ‘trade-in-goods’ paradigm 219

generic and semi-generic terms 211, 212–13, 222, 223, 236
‘identification’ and ‘indication’ of a product, differences between (TRIPS definition) 208–10, 213, 223–4, 236–7
identity preservation 218–20

international trade negotiation methodologies 204–6

IP protection as policy objective 225–7

judicial analysis of function of trade marks and GIs 211–13

language use and geographical terms 207–10, 213–16, 221–2, 232–3

legal history of GIs 216–18


legitimacy negotiations, case-by-case basis (rule of reason) and per se choice 238–9, 240–41

Lisbon Agreement 232–3

locality and global trade 206–8

Madrid agreement on false indications of origin 232–3

misleading use of GIs, protection against 223–4, 229–33, 236

Paris Convention legacy 216, 218, 224–5, 230–32

policy objectives of GI protection 216–17

public domain intrusions 203–4, 211–12

traditional production 203, 219

TRIPS, collective management of 221–5

TRIPS and extension to products other than wines and spirits 223–4

TRIPS ‘fix-rule’ approach 240–41

TRIPS ‘IP-is-trade’ paradigm 219, 240

TRIPS and language usage 213–16, 221–2

TRIPS non-compliance 225–6, 227–8, 240

TRIPS standards on GI protection 208–10, 213, 215–16, 218, 233–4, 236, 239–40

WTO Uruguay Round trade negotiations 128–9, 148–9, 156, 183–6, 218

fair use of descriptive terms 138, 352, 369, 370, 392–3

false indications

Madrid agreement 232–3

see also misleading indications

false labelling prevention, France, collective wine branding 26

farming see agriculture

Farrer, K 155

Faure, E 430

Faure, M 60

‘FEET FIRST’ trade mark, Australia 280–81

Feni liqueur, India see India, Feni liqueur and welfare enhancement

Ferguson, James 91

Ferrari, Matteo 494

Feta cheese 449, 452, 453–5, 457, 515, 544

Germany and Denmark v Commission 147, 207–8, 223, 381, 494, 510–11, 524–9, 534, 535–6, 538–9, 540, 546

Ficsor, Mihály 375–6, 543

Fine, Ben 47

‘first in time, first in right’ approach 128, 136–9, 279, 348, 350

FitzSimmons, M 47–8, 61

Folsom, R 530

Fonte, M 47

Fontina cheese, Italy 449, 452–5, 457, 529

foreign GIs, protection for Australia 264–6

China 332, 340–41, 344, 357

see also international trade effects

Fowler, P 157

France

Agneau du Quercy (sheep meat) 449

Alsace geranium 310

AMAP (Association for the Preservation of Peasant Agriculture) 90
AOC labelling administrative process
see under global labelling
challenge, AOC labelling and
*terroir* concept
Armagnac 17, 27
Blue de Bresse cheese 478
*Bons Bois* spirit 115
Bordeaux wine 17, 18, 19–20, 21, 22,
23, 26, 27, 31, 35, 38, 261
Bresse poultry production 81
Brie cheese 515
Burgundy wine 23, 28, 38, 208
Calisson d’Aix sweets 310
Camembert cheese 82, 480, 515, 539,
545–6
Cantal cheese 449, 452–3, 454, 455,
457
Chablis see *Chablis*
Champagne see *Champagne*
Chardonnay wine 134, 500
Châtaigne d’Ardèche (chestnuts)
311–12
Chevrotin cheese 516
Cholet textiles 316
Cognac 27, 341
Comté cheese 449, 452–5, 457
Dentelle du Puy (lace) 304
Dombes carp farming 81–2
GI protection system 152–3
Gironde wine production 21–2, 23,
24, 26, 27, 31, 35
GIs for non-agricultural products
295, 297–8
handicrafts see handicrafts and link
to origin in culture, France
Institut National des Appellations
d’Origine et la Qualité
(INAO) 63–5, 66, 67, 68, 135–6, 321–2
*Institut National des Appellations
d’Origine v Yves Saint Laurent*
211
La Provence wine 264–6, 288
Lactalis dairy cooperative 82
Merville potatoes 449
Morteau sausage 314
Moustiers earthenware 307
Nyons olive oil 115, 312–13, 449
Pâtes d’Alsace 309–10
Pierre de Bourgogne 322
Porcelaine de Limoges and
Porcelaine de Nevers 307
Poterie de Valauris 314
Reblochon cheese 115
Roquefort cheese 112, 235, 313, 523,
536, 544
rural development benefits 65–6
rural policy and GI regulation,
influence on EU policies 152–4
Saint Joseph wine 67–8
Saint-Émilion wine 22, 261
Sancerre wine 261
*Société Empresa del Tabaco*
*Cubatabaco v Aramis* 211
sui generis system creation 105–6
*terroir* logic 1–2
*terroir* and sense of place see *terroir*
and sense of place
France, collective wine branding
(19th–20th centuries) 13–45
*Appellation d’Origine Contrôlée* (AOC) labels 13–14, 25, 37–9,
105–6, 135–6, 231, 268–9
*Appellation d’Origine Contrôlée* (AOC) labels, Decree of 30, 52
*Appellation d’Origine Contrôlée* (AOC) labels, ‘fair’ customs 40
*Appellation d’Origine Contrôlée* (AOC) labels, production
technique control 38
/appellation d’origine/ and definition
of quality 32–5
appellations and ‘established local
customs’ 27
atmospheric conditions, influence of
31, 36
collective appellations 39–41, 44
consumer protection considerations
31–2, 33
contemporary trends 41–5
economic information, circulation
of 36–7
European legislation on geographical
indications protection, influence
on 41, 44
false labelling prevention 26
fraud concerns 28–9, 32
freedom of association law (1887) 21
generic names and collective
designations 15–17
geographical delimitation effects
27–30, 33
global registry, call for 48
grands crus classification 38–9
identification of place names with
territory 38
institutional framework protection
40
intellectual property protection in
19th century France 15–39
judicial construction of wine market
(1908–1914) 25–30
judicial interpretations on economic
behaviours 22–3
‘local traditions’ definition 25
‘mélanges’ (blending) practice 21, 23,
24, 36
name indicating place of vintage
17–18
‘origin’ of wine, uncertain legal
definitions 21
place of manufacture, understanding
of 20
premier crus wine selling ‘by
subscription’ to consortium of
traders (1800s) 19
price drop, taxation, and
productivity restrictions (1931)
37–8
product definitions, disagreement
over 24–5
production and demand,
and changing economic
environment 23
public quality signs, controversy
over 16
quality considerations 16, 21, 22,
28–34, 38, 44
regional boundaries of appellation
regions, local commissions to
fix 26–7
regional name protection 20, 22
state authorities’ attitude 30–37
‘their composition and their
substantial qualities’, removal
from bill on appellations of
origin 30–31
total area in vineyards with no
right to an appellation
41–2
trade and competition regulation
(1830s) 18–19
trade mark and the geographical
denomination, shift of emphasis
to 36
trade mark protection comparison
15–16
trade marks and brands law (1857)
20
US comparison 42–4
VDQS (vin délimité de qualité
supérieure) status 42
wine traders and retailers, growth
of 23–4
Frankel, S 489
Franklyn, David 169, 528
free trade agreements see bilateral
trade agreements
free-riding concerns 158, 168–70, 197
fruit and vegetables
Abricot Luizet du Valais,
Switzerland 449
Guanxi Sweet Shaddock (pomelo)
trade mark, China 356, 497
Jersey Potatoes, UK 449
Merville potatoes, France 449
Opperdoeze ronde potatoes,
Netherlands 449
Zagora apples, Greece 449
Fuerteventura trade mark 385
Furger, Alex 216
future directions
conflicts between trade marks and
GIs, resolving 393–5
India, Feni liqueur and welfare
enhancement 482–3
WTO multilateral register
negotiations 186–7, 195–200
Gangjee, Dev S 1–9, 15, 53, 57, 83,
130, 133, 139, 147, 152, 155,
162, 165, 169, 170–71, 172, 176,
192, 206, 207, 214, 220, 230, 254,
294, 295, 298, 309, 319, 348,
361, 363, 372, 413, 451, 464, 487,
508–48
Gasnier, Thierry 73, 74, 84
GATT see WTO GATT
Gaytán, M 47
Geiger, Christophe 143, 324, 326
Index

generic status
appellations of origin, Budweiser cases 421–2, 429
‘fair trade’ rules 211, 212–13, 222, 223, 236
Food and Drug Administration (FDA) and generic status, US 536–7
France, collective wine branding (19th–20th centuries) 15–17
generic names, phase-out tranches, Australia 261–2
generic product descriptions, use of, Australia 154–5, 170
‘generic quality’ of raw material 306
genericide rules, TRIPS Agreement, protection of GIs 139
names, lack of protection for, Australia 253–4, 258, 259–61
product descriptions, TRIPS Agreement 154–5, 162–3, 165–8
WTO multilateral register negotiations see WTO multilateral register negotiations and international protection of GIs
generic status and genericide 508–48
Consortium for Common Food Names (CCFN) 517–18
consumer understanding effects 512, 524–5, 527–31, 546–7
controversy and commercial stakes 512–18
EU bilateral trade agreements, effects of 516–18, 544–5
EU list of generic terms under Art 3(3) of Regulation 2081/92.24 (agricultural products and foodstuffs) 514–16
evidence that contested expression is generic 522–3, 525–40
expert opinion as evidence 532–3
‘freezing’ of meaning for protected terms 541–3
generic terms as part of linguistic public domain 510–11, 519, 524–5, 527–31
genericide as fatal process 509–11
GI registration challenges 523
GIs as indicators of territory 509
informal or commercial usage, consumer understanding of 529–30
international standards for product classifications 537–8
international trade effects 512–13
labelling factors 534–5, 536
Lisbon Agreement 513, 541, 542–3
Madrid Agreement 513, 541–2
market conditions as evidence 533–5
misappropriations and misleading uses, claims of 513
narrower GI, reinvention of 545–6
negotiated reclamation of generic terms 544–5
Paris Convention 512
protection reclamation possibilities 541–7
reclaiming generic terms 544–7
rights holders’ action as evidence 538–40
semi-generic terms see semi-generic terms
sherry as generic term, UK 530–31, 539
Stresa Agreement 515
structural features 521–6
sui generis principle protection regime 521–3, 525, 541
term status in legislation or official classifications as evidence 535–8
territoriality principle 521–2
thresholds for generic status 523–5, 541
trade mark protection regime 519, 521, 523–4, 529–30, 532, 540
trade opinions as evidence 531–2
Trans-Pacific Partnership Agreement (TPP) 520–21, 528–9, 538
TRIPS Agreement Art. 24.6 508–9, 518–21, 526, 531–2
US-EU Transatlantic Trade and Investment Partnership (TTIP) free trade agreement 520
Geneva Act see under WIPO-administered treaties, Lisbon Agreement
geographical area, relationship with, WIPO-administered treaties 111–13
geographical indications
China see China, GI protection collective dimension, handicrafts and link to origin in culture 318–19
definition, Australia, wine GI legislation 266–9
definition, WIPO 102–4
generic status and genericide 523
Geographical Indications Committee (GIC), Australia 271–2, 273–7, 278–9, 284–5
global labelling challenge 52–7
India, Feni liqueur 463–4, 477, 478–80, 482–3
India Geographical Indications of Goods (Registration and Protection) Act 302–3
‘indication of source’ definition 99–100
and Indigenous knowledge see Australia, Indigenous knowledge and GIs of origin
non-agricultural and non-foodstuff products 293–4, 295, 297–8
protection and TRIPS see WTO TRIPS Agreement, protection of GIs
and trade marks, resolving conflicts see conflicts between trade marks and GIs, resolving
TRIPS extension rethink see WTO TRIPS Agreement, GI extension rethink and EU policies
see also classification; trade marks
George, Pierre 77
Germany
Bavarian Blockmalz candy 522–3
Bayerisches Bier (Bavarian beer) 380, 381, 388–9, 515–16, 523, 524, 546
Chiemsee trade mark 384–5, 405–6, 411
‘FEET FIRST’ trade mark, Australia 280–81
Kerry Spring mineral water 392, 411
Gervais, Daniel 46, 103, 123–45, 146, 183, 201, 233, 326, 375, 376, 504
Gettler, Leon 236
Geuze, Matthijs 95–122, 185, 186, 190, 215, 296, 326, 419, 466, 520
Gevers, Floren 129, 138, 361
GI see geographical indications
Gibson, C 175
Gilg, A 48
Giovannucci, Daniele 48, 87, 172, 328, 334, 354, 443, 519
Giraud, G 309
Gironde wine production, France 21–2, 23, 24, 26, 27, 31, 35
global labelling challenge 46–71
eo-labels 53
embeddedness of products 54, 56
GIs and conventions of place 52–7
global label of origin types, variations in 49, 53–4, 56
pre-existing European place names, use of 50–51
process feature, significance of 53
‘quality’ foods 54
social constraints and conventions theory 54–5
TRIPS definition of geographical indications 46–7, 48
US opposition to GIs and global registry 50–52
WIPO on GIs as intellectual property 53
see also multilateral register
global labelling challenge, AOC labelling and terroir concept 57–70
AOC delineation and ecological analysis 68, 69
cahier de charges (certification requirements) 70
cultural re-evaluation 60–61
French administrative process 62–6
French administrative process, Institut National des Appellations d’Origine et la Qualité (INAO) 63–5, 66, 67, 68, 135–6, 321–2
French administrative process, producers’ union 62–3
French AOC export revenue rise 65
French rural development benefits 65–6
human factors (savoir faire) 68–70
natural factors as determinants, and environmental sustainability 66–8, 136
patrimonialization 59, 60, 62
Saint Joseph wine and environmental gain 67–8
‘shared corporeality’ of agro-food practice 61
taste factors 69–70
terroir interpretation 57–62
xenophobic interpretation of terroir 61
globalisation versus localisation debate 90–91
see also terroir and sense of place
Goebel, Burkhart 46, 136, 162, 197, 279, 361–95, 403, 408, 544
Goldberg, S 170, 235
Goodman, David 47–8, 54, 61, 70, 126
Gopalakrishnan, N 318–19
Gorgonzola cheese, Italy 387–8
Gouda cheese, Netherlands 515
grands crus classification 38–9
Grazioli, A 125, 158, 184, 220, 234, 293, 325
Great China Wall trade mark, EU 385
Great Western trade mark, Australia 247–9, 281–3
Greece
Feta cheese see Feta cheese
Peza Olive Oil 449
Zagora apples 449
Groeschl, Manuela 46, 136, 162, 279, 361–95, 403, 408
Gruyère cheese, Switzerland 449, 452, 453–5, 457
Guanxi Sweet Shaddock (pomelo) trade mark, China 356, 497
Gupta, Akhil 91
Guy, K 23
Haight Farley, C 164
Halloumi cheese, Cyprus 155, 531, 533
Hamilton, M 240
handicrafts and link to origin in culture 292–326
agricultural goods and foodstuffs 311–14, 321–2
agricultural raw products obtained from a local variety 311–12
characterisation of handicraft goods 303–7
collective dimension of GIs 318–19
Colombia see Colombia
concepts underlying GIs 297–303
discrimination on basis of subject matter categories, lack of justification for 316–17
EU, implications for 322–5
EU interpretation and sui generis regime 293–5
EU, Protected Designation of Origin (PDO) 299–300, 315, 324–5
EU, Protected Geographical Indication (PGI) 300–301, 307, 308, 309–10, 324–5
foodstuffs 308–10
‘generic quality’ of raw material 306
geographical origin definition 318–19, 324
‘geographical origin’ interpretation 302–3
human factors 303–17
human factors, validity of GIs based on 317–20
international recognition of TRIPS distinction between wines and spirit and other goods 325–6
link requirement, evaluation consistency 316–20
link strength 320
Lisbon Agreement on appellations of origin 298–9, 303, 307, 314, 326
natural and human factors, combination of 311–17, 319
non-agricultural goods 314–16, 322–3
processed products obtained from local raw material 312–13
processing, natural factors influencing 316
processing under special environmental factors 313–14
production methods, sophisticated 304–5
proof of historically verifiable human factors 319
raw material, absence of specific origin requirement 306–7, 308–10
raw material, natural factors as source 314–15, 319
traditional designs and drawings 304–5, 319–20
TRIPS and GI protection 301–3
UK see UK ‘uniqueness’ issues 305, 307
Vietnam, Hué hat 315
handicrafts and link to origin in culture, France
Alsace geranium 310
Bergamote de Nancy sweets 309
Calisson d’Aix sweets 310
Châtaigne d’Ardèche 311–12
Cholet textiles 316
Dentelle du Puy (lace) appellation of origin 304
implications for 320–22
Morteau sausage 314
Moustiers earthenware 307
Nyons olive oil 312–13
Pâtes d’Alsace 309–10
Pierre de Bourgogne 322
Porcelaine de Limoges and Porcelaine de Nevers 307
Poterie de Valauris 314
Roquefort cheese 112, 235, 313, 523, 536, 544
terroir concept 297
handicrafts and link to origin in culture, India
Aranmula Metal Mirror 316
Darjeeling Tea 312, 523, 528, 540
Feni liqueur see India, Feni liqueur and welfare enhancement
Kancheepuram Silk 304, 306, 317–18
Kashmir Pashmina 315
Konark Stone Carving 306
Kondapalli Bommalu figurines 304, 306
Monsooned Malabar coffee 313–14
Mysore Silk 306–7
Navara Rice 311
Pipli Appliqué Work 318
Pochampally Ikat and Orissa Ikat (tie-dye) 305, 320
Handler, Michael 44, 48, 108, 124, 141, 146–82, 223, 236, 325, 393, 466, 517, 544, 545
Harris Tweed certification trademark, UK 307
Harte-Bavendamm, Henning 138, 361, 524
Heath, Christopher 51, 133, 217, 396–439, 543
Hénin, Stéphane 75
Hinrichs, C 54
Hong Kong, China Proposal, WTO multilateral register negotiations 187, 189–90, 199–200
Hué hat, Vietnam 315
Hughes, Justin 150, 162, 175–6, 224, 361, 372, 383, 463, 500, 513, 546–7
human factors global labelling challenge 68–70 handicrafts and link to origin in culture 303–20
‘identification’ and ‘indication’ of a product, differences between 208–10, 213, 223–4, 236–7
see also ‘fair trade’ rules
Ilbery, B 484
IMFL (‘Indian Made Foreign Liquors’) 464–5, 473, 476–7, 481
imitation concerns 161–2
INAO, (Institut National des Appellations d’Origine et la Qualité), France 63–5, 66, 67, 68, 135–6, 321–2
India
Basmati rice 213–14, 219–20, 536–7
Darjeeling tea 312, 523, 528, 540
Geographical Indications of Goods (Registration and Protection) Act 302–3
GIs for non-agricultural and non-foodstuff products 293–4
handicrafts see handicrafts and link to origin in culture, India
Monsooned Malabar coffee 313–14
Navara Rice 311
Proof of Origin (Historical Records) principle 319
Index 567

tea and rice GIs 125, 214
India, Feni liqueur and welfare enhancement 308, 463–83
alcoholic strength 469, 470
branding advantages 480, 482, 483
cashew varieties and production drop 473–4
colonial legacy 471–2
demand-side factors and production decline 476–7
distillers as distributors 482
entry deterrence and market concentration 478–9
Feni evolution, specification and cultural practices 467–71
Feni production decline 464–5, 473–7
future scenarios, possible 482–3
GI registration 463–4, 477, 478–9, 482–3
GI specifications 465–7
Goa economic development 464
‘Indian Made Foreign Liquors’ (IMFL) 464–5, 473, 476–7, 481
institutional issues and market segmentation 472–3, 478, 479
market size and concentration 480–82
monopoly rents issue 477, 480–81
political economy and production drop 474–6
product differentiation and GIs 479–80
reclassification plans 471–2
reputation, quality and price margins 480–81
sale restrictions 471–2
taxation and under-reporting of output 474–6
‘Indian Made Foreign Liquors’ (IMFL) 464–5, 473, 476–7, 481
indications see geographical indications
Indigenous knowledge, Australia see Australia, Indigenous knowledge and GIs of origin
information
economic information, circulation of, France 36–7
market failure and information asymmetry links 443
WTO database proposal 193, 196
infringement procedures 336, 340, 355, 429–30
injunctions, Australia 269
Institut National des Appellations d’Origine et la Qualité (INAO), France 63–5, 66, 67, 68, 135–6, 321–2
institutional issues
France, collective wine branding (19th–20th centuries) 40
India 472–3, 478, 479
intellectual property protection
19th century France 15–39
‘fair trade’ rules 225–7
World Intellectual Property Organization see WIPO
intellectual property tools for rural development objectives 440–62
agricultural income and support to local employment, effects on 453–5
collective organisations, and coordination of production and sales 445–6, 447, 449–51, 456, 458, 460–61
commercial performances directly linked to organisational performance (EU PDO-PGI research programme) 448–58
diversification practices and artisanal product 453, 455
economic performance, costs and benefits comparison 444–5
economic value linked to qualities and added value, distinction between 441–3, 459
legal protection of commercial value through intellectual property rights 451–3
marginal counterfeits, emergence of 452–3
market failure and information asymmetry links 443
market function 441
market as place where economic value is generated 441–4, 446, 458, 459–60
name protection, importance of 452–3
organisation function 441
organisation as instrumental in retaining economic value 444–6
organisational performance as determining factor for commercial performance 449–51
product differentiation and economic value creation 442, 459–60
production volumes in collective organisations, regulation of 446, 450
products differentiated by geographical origin, costs and benefits comparison 444–6
protection of local landscapes 456
quality products, effects of increasing demand for 443–4
territorial performance 456–8, 459–61
territory as beneficiary of impacts 447–8
territory function 441
international markets see markets international protection
China, GI protection 356–7
multilateral register negotiations see WTO multilateral register negotiations and international protection of GIs
refusal of international registration 375–6
WIPO registration system review 116–21
international standards see Madrid Agreement
see also WIPO-administered treaties, Madrid Agreement; WTO TRIPS Agreement
international trade effects ‘fair trade’ rules 204–6
generic status and genericide 512–13
see also foreign GIs, protection for Italy
Fontina cheese 449, 452–5, 457, 529
Gorgonzola cheese 387–8
Parma ham 115, 449, 544
Pilsen Urquell v Industrie Poretti 543
Jackson, John 239
Jacobsen, Rowan 47
Jacoby, J 164
Jamón de Terruel (ham), Spain 449
Janke, Terri 484–5
Japan
customs duties, taxes and labelling practices on imported wines 228
Sapporo beer 362
Jenkins, T 467
Jersey Potatoes, UK 449
Jing Dai 337
Jinhua Ham, China 347, 348–9, 351–2
Jordan, R 251
Josling, Tim 149, 173, 361
see also cases under individual countries; legislation
Kancheepuram Silk, India 304, 306, 317–18
kanterkaas cheese, Netherlands 147, 161
Karni, E 443
Kashmir Pashmina, India 315
Keon, J 233
Kerber, W 239
Kerr, W 176
Kerry Spring mineral water, Germany 392, 411
Kiesel, K 479–80
Kireeva, Irina 328–9, 337, 344, 351
Kirsten, J 15, 159, 484, 486, 489
Klieger, R 164
Knaak, Roland 151, 381–2, 403, 417–18, 430
Kneafsey, M 484
Knoll, A 207
Koenig, M 323
Konark Stone Carving, India 306
Kondapalli Bommalu figurines, India 304, 306
Kongolo, T 325
Kumar, Arun 475
Index

Kumar, S 510
Kur, Annette 176, 361, 383

La Provence wine, France 264–6, 288
labelling
administrative approval procedure
for product labels 108–9, 113–14, 115
Appellation d’Origine Contrôlée
(AOC) labels see under France,
collective wine branding
(19th–20th centuries)
Australia Label Integrity Program
252
false labelling prevention, France,
collective wine branding
(19th–20th centuries) 26
generic status and genericide 534–5, 536
global see global labelling challenge
labels of origin, EU administration
of 52–3
US Bureau of Alcohol, Tobacco and
Firearms (ATF) wine-labelling
regulatory scheme 42–3
US certificate of label approval
(COLA) 135
see also branding
Lachiver, M 19, 21, 22, 23, 26
Lackert, Clark 138
Lacour, L 17, 20
Lactalis dairy cooperative, France 82
Ladas, S 208, 232, 413, 414, 415, 428,
435
LaFrance, M 164
Laing, S 206
Lamont, M 59
Landes, W 15, 16, 159
Lang, A 157, 168
language
botanical taxonomy issues, Australia
494–9
generic terms as part of linguistic
public domain 510–11, 519, 524–5, 527–31
use, ‘fair trade’ rules 207–10, 213–16,
221–2, 232–3
see also translation
Larrimore Ouellette, Lisa 529
Le Goffic, Caroline 13, 510, 522, 541

legislation
‘ambush marketing’ 171
China 329–30, 355–8
‘fair trade’ rules 216–18
Indigenous law, Australia 490–91, 492, 501–7
legal effects of registration 192–3, 194, 196–8
legal protection of commercial value
through intellectual property
rights 451–3
term status in legislation 535–8
wine GI legislation, Australia see
Australia, wine GI legislation
see also cases under individual
countries; judicial review
legitimacy negotiations, ‘fair trade’
rules 217–18, 224, 225–7, 228,
Lenclud, Gérard 86
Leopold, E 47
Letablier, M 80
L’Etivaz cheese, Switzerland 445
Li, Xiaoxia 358
Liepins, R 70
Lindquist, L 184, 513, 546
Linnemer, L 16
Lisbon Agreement see WIPO-
administered treaties, Lisbon
Agreement
Lister, C 156
localisation versus globalisation debate
90–91
see also terroir and sense of place
locally-produced foods and
sustainability 173
Long, A 47
Long, C 164
Longdin, L 171–2
Lorvellec, L 527–8
Loureiro, M 176
Lyson, T 54
Maby, Jacques 78
McBride, W 176–7
McCarthy, J 126–7, 524, 529, 530, 531
McCluskey, J 176
Madrid Agreement see WIPO-
administered treaties, Madrid
Agreement
Mahé, L 207
Maher, M 42, 43, 466
Mandal, R 472, 473
Marchenay, P 47, 59, 61, 67, 70, 81–2, 301, 318, 319
Marescotti, A 55
Marie-Vivien, Delphine 38, 62, 65, 85, 135, 219, 292–326, 365
markets
‘ambush marketing’ legislation 171
economic advantages in
international 152–4, 176
efficiency and trade marks 159–60
entry deterrence and market
concentration, India 478–9
market conditions as generic status
evidence 533–5
as place where economic value is
generated 441–4, 446, 458, 459–60
segmentation, India 472–3, 478, 479
Markham, D 19
Marsden, T 47
Martin, B 456
Martin, José Manuel Cortés 48, 51, 183–201, 223, 393, 466
Martino, T 165
Mather, C 181
meat
Agneau du Quercy (sheep meat),
France 449
Bresse poultry production, France
81
Jamón de Terruel (ham), Spain 449
Jinhua Ham, China 347, 348–9, 351–2
Melton Mowbray Pork Pie, UK
308–9
Morteau sausage, France 314
Parma ham, Italy 115, 449, 544
Scottish Lamb, UK 449
Ternasco de Aragon (lamb meat),
Spain 449
‘mélages’ (blending) practice, France
21, 23, 24, 36
Melton Mowbray Pork Pie, UK
308–9
Menival, David 135–6
Mercurio, Bryan 179, 181, 517, 545
Merville potatoes, France 449
Mexico
Café Chiapas 115
EU bilateral trade agreement 179
Meyer, Mireille 74
Michelet, Jules 74
Miller, D 56
mineral water
Alaska 385
Kerry Spring, Germany 392, 411
minimalist approach, WTO
multilateral register negotiations
187, 188–9, 192–4, 195–7, 199
misleading indications
Australia, wine GI legislation 256–8,
Budweiser cases and GIs v trade
marks 412–14, 416–17, 418
‘fair trade’ rules 223–4, 229–33, 236
see also false indications
misleading trade marks
China 347, 350, 354, 355
conflicts between trade marks and
GIs, resolving 371, 383–5, 386, 389–90
misrepresentation and
misappropriation 158, 159–63,
168–70, 513
monopoly avoidance 382–93
monopoly rents issue, India 477, 480–81
Monsooned Malabar coffee, India
313–14
Moran, Warren 152, 493, 499, 500
Morlat, R 76–7
Morrin, M 164
Morteau sausage, France 314
Moschini, GianCarlo 478, 480, 482
Moustiers earthenware, France 307
Mukhopadhyay, Pranab 49, 463–83
multilateral register
global registry, call for 48, 520
negotiations see WTO multilateral
register negotiations and
international protection of GIs
proposal 393–4
see also global labelling challenge
Munzer, Stephen 159, 463, 466, 489, 490, 499, 500
Murdoch, J 47
Mysore Silk, India 306–7
Index 571

Nair, Latha 510
national treatment
conflicts between trade marks and
GIs, resolving 380–82, 387–8,
390–91, 394
developing countries and domestic
protection 218–20, 221–3
domestic legal systems and WTO
multilateral register negotiations
191–2
WIPO-administered treaties
100–101, 102, 103–11
see also individual countries
native title, formal recognition,
Australia 504–6
see also Australia, Indigenous
knowledge and GIs of origin
Navara Rice, India 311
Nelson, P 443
Netanel, N 151
Netherlands
Boeren Leidse met Sleutels cheese
449, 452, 454, 455, 457
Edamer cheese 449, 452, 453, 454,
455, 457, 515, 546
Gouda cheese 515
kanterkaas cheese 147, 161
Opperdoeze ronde potatoes 449
New Zealand, Wineworths Group Ltd v
Comité Interprofessionel du Vin de
Champagne 160
Newcastle Brown Ale, UK 478
Nicolas, F 80
Niedermann, A 528
Nigh, T 68
notification systems see registration
Nuckton, C 42
Nyons olive oil, France 115, 312–13,
449
O’Connor, Bernard 293, 358, 415, 486,
519
Okediji, Ruth 146, 361, 383, 390
olive oil
Nyons, France 115, 312–13, 449
Peza, Greece 449
Olson, Mancur 463
Olszak, Norbert 297, 310, 365
Opperdoeze ronde potatoes,
Netherlands 449
organisation function, intellectual
property tools for rural
development objectives 441,
444–6, 449–51
origin, and Indigenous knowledge see
Australia, Indigenous knowledge
and GIs of origin
Osmond, R 251
Ostertag, M 231
paintings as communication method,
Australia, Indigenous knowledge
502–3, 505–6
Panizzon, Marion 485
Papadopoulos, A 47
Paris Convention see WIPO-
administered treaties, Paris
Convention
Parma ham, Italy 115, 449, 544
Parmesan cheese, Italy 112, 138,
449, 452, 453–5, 457, 515–16, 523,
538
passing off action 160–61, 252–6, 288
Pâtes d’Alsace, France 309–10
patrimonialization, global labelling
challenge 59, 60, 62
PDO (Protected Designation of
Origin), EU 83–4, 299–300, 315,
324–5, 448–58
Pecqueur, B 447, 458
Peer, S 59
Pélissier, Paul 77, 78
Pellegrino, Michael 511
Perri, G 65
Perrot, A 16
PET (priority, exclusivity and
territoriality) protection 363–4,
366–7, 371–82, 386–8
Peza Olive Oil, Greece 449
PGI (Protected Geographical
Indication), EU 83–4,
300–301, 307, 308, 309–10, 324–5,
448–58
phase-out period, and third-party use
365, 366, 374–5
phylloxera root louse 14, 23, 39–40
Pickett, A 526
Pierre de Bourgogne, France 322
Pipli Appliqué Work, India 318
Pires de Carvalho, Nuno 381

Dev S. Gangjee - 9781784719470
Downloaded from Elgar Online at 08/30/2019 05:09:22PM
via free access
place
conventions of, global labelling
challenge 52–7
of manufacture, understanding of 20
names, pre-existing European 50–51
and terroir see terroir
Plaisant, M 430
Plaisant, R 544
Plzen beer, Czech Republic 422, 543
Png, I 16
Pochampally Ikat and Orissa Ikat (tie-
dye), India 305, 320
Polanyi, K 54
political economy and production
drop, India, Feni liqueur 474–6
Pollan, M 172
Poncet, Yveline 85, 86
Porcelaine de Limoges and Porcelaine
de Nevers, France 307
port wine 237, 544
Porter, M 442
Portugal, Torres Vedras wine 378–9
Posner, R 15, 16, 159
Postel-Vinay, G 35
Poterie de Valauris, France 314
Prabhudesai, S 465, 481
Prat, Andrea 463
premier crus wine selling ‘by
subscription’ 19
prior trade mark rights
Budweiser cases 420–21
exclusivity 366, 368–71, 376, 378
WIPO-administered treaties 118,
121
see also trade marks
priority, exclusivity and territoriality
(PET) protection 363–4, 366–7,
371–82, 386–8
processed products, handicrafts and
link to origin in culture 312–14,
316
producer application to use a GI
product, China 339, 343
product classification see classification
product definitions, disagreement over,
France, collective wine branding
(19th–20th centuries) 24–5
product differentiation
and economic value creation 442,
459–60
India, Feni liqueur and welfare
enhancement 479–80
product reputation see reputation
production methods
developing economies 85–6
sophisticated, handicrafts and link
to origin in culture 304–5
production technique control,
France, collective wine branding
(19th–20th centuries) 38
production volumes in collective
organisations, regulation of 446,
450
Profeta, A 324
Proof of Origin (Historical Records)
principle, India 319
Protected Designation of Origin
(PDO), EU 83–4, 299–300, 315,
324–5, 448–58
Protected Geographical Indication
(PGI), EU 83–4, 300–301, 307,
308, 309–10, 324–5, 448–58
protection reclamation possibilities
541–7
see also generic status and genericide
public domain intrusions, ‘fair trade’
rules 203–4, 211–12

quality issues
Australia, Indigenous knowledge 490
economic value linked to qualities
and added value, distinction
between 441–3, 459
EU quality schemes for agricultural
products and foodstuffs 379–82
France, collective wine branding
(19th–20th centuries) 16, 21, 22,
28–34, 38, 44
and imitation concerns 161–2
INAO (Institut National des
Appellations d’Origine et la
Qualité), France 63–5, 66, 67,
68, 135–6, 321–2
increasing demand for products,
effects of 443–4
Product Quality Law, China 346
public quality signs, controversy
over, France 16
‘quality’ foods, global labelling
challenge 54
reputation, quality and price
margins, India, Feni liqueur
480–81
TRIPS Agreement, GI extension
rethink and EU policies 161–2,
171–4, 176
VDQS (vin délimité de qualité
supérieure) status, France 42
WIPO-administered treaties 100,
101, 102–3, 104, 106, 111, 113,
120

Rafael, R 480
Rangnekar, Dwijen 49, 308, 463–83,
488, 510
Rastoin, J 41
Raustia, Kal 159, 463, 466, 489, 490,
499, 500
Rautenberg, M 59
raw materials, handicrafts and link to
origin in culture 306–7, 308–10,
312–13, 314–15, 319
Rawls, J 206
Ray, C 61
Raynaud, E 446
Reblochon cheese, France 115
refusal of trade mark application see
under conflicts between trade
marks and GIs, resolving
regional hierarchy, Australia, wine GI
legislation 269, 275–6
regional name protection, France,
collective wine branding
(19th–20th centuries) 20, 22, 26–7
registration
application fee as registration
deterrent, Australia 289
of certification mark, US 113
challenges, generic status and
genocide 523
Geographical Indications of Goods
(Registration and Protection)
Act, India 302–3
global registry, call for 48
Lisbon register see WIPO-
administered treaties, Lisbon
Agreement
Madrid Agreement see WIPO-
administered treaties, Madrid
Agreement
multilateral register for wine and
spirit GIs, call for 520
numbers, China 336
protection, Australia 263–4, 272–3,
289
refusal of an international
registration 375–6
requirements, China 331–2, 338–9,
342–3, 347
and trade mark law 106–8
trade marks as ‘possessions’ 373–4
TRIPS Agreement, notification and
registration system 139–44
WIPO international registration
system review 116–21
see also administrative issues
Reichman, J 149
Reilly, Alex 503, 504, 505, 506
Reisman, D 16
Rent, A 17, 20
Renting, H 447
reputation factors
conflicts between trade marks and
GIs, resolving 371, 378–9, 386,
387, 389–90
reputation, quality and price
margins, India 480–81
TRIPS Agreement, GI extension
rethink and EU policies 159,
160, 167–70, 174–5, 176
WIPO-administered treaties 101–3,
104, 110, 111, 113, 120
Resinek, N 378
Revel, J 59
Réviron, S 445
Ribeiro de Almeida, Alberto Francisco
126
rice
Basmati, India 213–14, 219–20,
536–7
Navara, India 311
Richardson, M 165
right to use as defence strategy,
Budweiser cases 408–10
rights holders’ action as generic status
evidence 538–40
Rioja wine, Spain 544
Robinson, D 175
Roep, D 448
Roncin, François 66, 85
Research handbook on intellectual property and GIs

Ronga, G 430
Roquefort cheese, France 112, 235, 313, 523, 536, 544
Rose, B 51, 179, 547
Rothbury wine, Australia 284–5
Roudié, Philippe 19, 21, 23, 26, 27, 28, 77
Rovamo, Oskari 486, 487, 490, 491, 493, 494, 500
Roy, R 465
rural development
French policies 65–6, 152–4
and intellectual property tools see intellectual property tools for rural development objectives
Ryan, Ô 176
Sabot, S 67
Saint Joseph wine, France 67–8
Saint-Émilion wine, France 22, 261
Sancerre wine, France 261
Sapporo beer, Japan 362
Sautter, Gilles 77, 78
Schechter, F 165, 466
Scheffer, Sandrine 66, 85
Schoene, Volker 388, 522, 524–5
Schrick, G 546
Schroeder, W 68
Scotland see under UK
Sekiguchi, T 480
semi-generic terms 43–4, 530–31, 537
‘fair trade’ rules 211, 212–13, 222, 223, 236
TRIPS Agreement 134–6
see also generic status
Shanxi Laohencu vinegar, China 353
Shapiro, C 15, 443
Sherman, Brad 217, 484–507
sherry wine, Spain 160, 167, 529–31, 539
Shetland Wool, UK 315
Shi, Xinzhang 350
Simioni, M 161, 480
Singapore, Novelty Pte Ltd v Amanresorts 168
Singh, Ranjay 484
Singhal, Shivani 485, 486, 490
Skol, A 378
Smallwood, D 16
Smith, A 41
Soam, S 125
South Africa
EU bilateral trade agreement 179
wine recognition 42
South Korea, EU-Korea Free Trade Agreement 180, 517–18
Spain
Fuerteventura trade mark 385
Jamón de Terruel (hams) 449
Rioja wine 544
sherry as generic term 530–31, 539
sherry wine 160, 167, 529–31, 539
Spanish Champagne 160, 252–6, 513–14
Ternasco de Aragon (lamb meat) 449
Spence, M 170
Spencer, D 223
Spennemann, C 179
Stanziani, Alessandro 13–45, 59, 76, 84, 152, 257, 365
Stevenson, I 14
Stewart, T 131, 183
Stilton cheese, UK 113, 531
Stresa Agreement 515
sui generis regime
conflicts between trade marks and GIs, resolving 365, 366–7, 369
EU 112–13, 293–5
France 105–6
generic status and genericide 521–3, 525, 541
TRIPS Agreement 130–31, 143
WIPO-administered treaties 105–6, 112–14
Sunder, Madhavi 221, 485
superiority-based rule 365–6, 367, 371–2
see also conflicts between trade marks and GIs, resolving sustainability 66–8, 136, 173
see also environmental factors
sweets
Bavarian Blockmalz candy, Germany 522–3
Bergamote de Nancy sweets, France 309
Calisson d’Aix sweets, France 310
Pâtes d’Alsace, France 309–10
Switzerland
Abricot Luizet du Valais 449
Chocosuisse Union des Fabricants Suisses de Chocolat v Cadbury, UK 160
Emmental cheese 515
EU bilateral trade agreement 179
GIs for non-agricultural goods 294
Gruyère cheese 449, 452, 453–5, 457
L’Etivaz cheese 445
Sylvander, B 46, 47, 49, 54, 55, 66, 87, 238, 239, 240, 292, 444, 446, 459
taste factors 69–70
see also global labelling challenge, AOC labelling and terroir concept
Taubman, Antony 46, 147, 182, 202–42, 545
taxation 37–8, 474–6
tees 125, 214
Darjeeling, India 312, 523, 528, 540
see also coffee
Teply, L 530
term status in legislation or official classifications 535–8
see also generic status and genericide
Ternasco de Aragon (lamb meat), Spain 449
territorial performance, rural development objectives 441, 447–8, 456–8, 459–61
territoriality principle 521–2
terroir and AOC labelling see global labelling challenge, AOC labelling and terroir concept
handicrafts and link to origin in culture 297
xenophobic interpretation 61
terroir and sense of place 72–91
agriculture, environmental conditions and traditional practice 81, 85
anthropological interpretation 86–91
Australia 491–4, 499–504, 506
Bresse poultry production 81
concept issues 81–2
Dombes carp farming 81–2
farmers’ markets 89–90
farming and land ownership schemes as obstacles 81–2
French AOC system 79–80
French context and history 73–80, 135–6
French context, human geography and pedology 74–6, 85
French supermarket sector, influence on food-processing industry 82
French terroir definition debate 76–8, 79–80, 84–5
globalisation versus localisation debate 90–91
Lactalis dairy cooperative 82
local development and spatial planning tool 78–9
local production, motivation and management methods 87–90
localised production systems as ‘produits de terroir’ 86–7
misunderstandings and complex social factors 80–86
Normandy Camembert AOC 82
production systems of emerging and developing economies 85–6
Protected Designation of Origin (PDO) 83–4
Protected Geographical Indication (PGI) 83–4
‘sense of place’ concept 86–7
‘Terroir et Cultures’ organisation 80, 81
translation from French, problems with 84–6
TRIPS Agreement protection of GIs 83
UNESCO ‘Planète Terroirs’ 80
Thailand, GIs for handicraft goods 294
Thévenod-Mottet, E 302, 325, 440, 444
Thévenot, L 54, 55, 59, 459
third party protection, Budweiser cases 427–9
third-party use and phase-out period 365, 366, 374–5
thresholds for generic status 523–5, 541
see also generic status and genericide
Tian Furong 345, 346, 347
Torres Vedras wine, Portugal 378–9
TPP (Trans-Pacific Partnership Agreement) 520–21, 528–9, 538

Tracy, M 42

trade
‘fair trade’ rules see ‘fair trade’
rules
international trade effects, generic status and genericide 512–13
regulation (1830s), France 18–19
trade opinions as generic status evidence 531–2

trade marks
Australia 247–9, 278–9, 280, 283, 284–5
Budweiser cases see Budweiser cases and GIs v trade marks
conflict resolution see conflicts between trade marks and GIs, resolving
dilution of famous trade marks 43–4, 108, 163–8
EU Trade Marks Directive 169, 368, 383, 388, 390, 391–2, 408, 410, 411
France, collective wine branding (19th–20th centuries) 15–16, 20, 36
prior trade mark rights see prior trade mark rights
protection regime, generic status and genericide 519, 521, 523–4, 529–30, 532, 540
TRIPS Agreement protection 131, 133, 136–9, 159–68
US 43–4, 52, 217
WIPO-administered treaties 96–7, 106–8
see also classification; geographical indications
traditional designs and drawings 304–5, 319–20
traditional economic arguments, justification through 159–63

trade marks, protection for,
Australia 262–3, 289
‘traditional knowledge’ definition,
Australia 485–6, 488, 489–90
traditional practice in agriculture 81, 85
traditional production, ‘fair trade’ rules 203, 219
Trans-Pacific Partnership Agreement (TPP) 520–21, 528–9, 538
Transatlantic Trade and Investment Partnership (TTIP) 520
translation
from French, problems with 84–6
of indications, Budweiser cases 399, 410–11, 421
protection of GIs against use in translation 372–3
see also language
Tregear, A 176, 309
TRIPS Agreement see WTO TRIPS Agreement
Troplong, R 19
Trotta, G 515
Trubek, Amy 47, 88
TTIP (Transatlantic Trade and Investment Partnership) 520
Turbull, David 492
Tushnet, R 163

UK
Cheddar cheese 449, 452, 454, 455, 457, 515, 538, 546
Jersey Potatoes 449
Melton Mowbray Pork Pie 308–9
Merchandise Marks Acts 514
Newcastle Brown Ale 478
Port and Madeira protection 544
Scotland, Harris Tweed certification trademark 307
Scotland, Native Shetland Wool 315
Scottish Lamb 449
sherry as generic term 530–31, 539
Shetland Wool 315
Stilton cheese 113, 531
unfair competition rules 231
UK, cases
Bollinger v Costa Brava Wine Company (Spanish Champagne) 160, 253, 513–14
Index 577

Chocosuisse Union des Fabricants Suisses de Chocolat v Cadbury 160
Fage UK v Chobani UK 418
John Walker & Sons Ltd v Henry Ost 160
Northern Foods v The Department for Environment, Food and Rural Affairs 309
Taittinger v Allbev 160
Vine Products Ltd v MacKenzie & Co Ltd (Sherry) 160, 167, 529–30, 539
Ulin, R 59
UNESCO ‘Planète Terroirs’ 80
unfair competition concerns
China, Anti-Unfair Competition Law 345
Paris Convention 109–10
TRIPS Agreement 130–31, 139
UK 231
unfair business practices, laws focusing on 109–11
‘uniqueness’ issues 305, 307
see also handicrafts and link to origin in culture
Urry, J 48
Uruguay Round see WTO Uruguay Round of negotiations
US
American Origin Products Association 89
Budweiser beer 51–2
Bureau of Alcohol, Tobacco and Firearms (ATF) wine-labelling regulatory scheme 42–3
certificate of label approval (COLA) 135
Champagne advertising campaign 546–7
‘dilution’ of famous trade marks 43–4
EU bilateral trade agreement 179, 180–81, 236, 516–17, 518
Food and Drug Administration (FDA) and generic status 536–7
France, collective wine branding (19th–20th centuries) comparison 42–4
‘local food’ and GIs 48
market considerations and TRIPS Agreement 153–4
opposition to GIs and global registry 50–52
Pan-American industrial property conventions 231–2
preferential trade agreements 179, 180–81
registration of certification mark 113
semi-generic terms, use of 43–4, 530, 537
‘Taste of Place’ conference, Vermont 88–9
Trademark Dilution Revision Act 217
Transatlantic Trade and Investment Partnership (TTIP) 520
US–Australia Free Trade Agreement 278–85
‘Wine Pact’ with EU 134–5, 517, 547
wine recognition 42
wine trade mark protection 43–4, 52
US cases
Anheuser-Busch 397
Bayer Co. v United Drug Co. 530
Community of Roquefort v William Faehndrich 235, 523, 536
Fontina 529
Institut National des Appellations D’Origine v Vintners Int’l (Chablis with a Twist) 207, 211–12, 233
Moseley v Victor’s Secret Catalogue 163, 217
Syncom Formulations v SAS Pharmaceuticals 211
Tea Board of India v The Republic of Tea (Darjeeling) 523, 528, 540
Ty v Perryman 163
Valadier, A 65
Valeschini, E 446
value
Australian wine GI 249–50
economic value linked to qualities 441–3, 459
legal protection through intellectual property rights 451–3

Dev S. Gangjee - 9781784719470
Downloaded from Elgar Online at 08/30/2019 05:09:22PM via free access
market as place where economic value is generated 441–4, 446, 458, 459–60
organisation as instrumental in retaining economic value 444–6
product differentiation and economic value creation 442, 459–60
see also cost factors; economic factors
Van Caenegem, William 126, 152, 153
Van de Kop, Petra 49, 87
Van der Merwe, Andries 545
Van der Ploeg, J 47
Vanzetti, A 437
VDQS (vin délimité de qualité supérieure) status, France 42
Versailles Peace Treaty 231, 415, 544
Vietnam, Huế hat 315
Viju, C 180, 517
Vittori, Massimo 49, 126, 158, 175
Vivas-Eugui, David 124, 161, 179, 234
Wadlow, C 231
Wallman, Melinda 535
Wallon, A 23
Wang, Min-Chiuan 125, 327
Watal, Jayashree 123
Watts, M 54
Waye, V 178
Weatherall, Kim 520–21
Weinrib, E 170
welfare enhancement see India, Feni liqueur and welfare enhancement
Wilkinson, J 54
Wilkinson, Percy 245–6
Wilson, James 58, 136, 491
wines and spirits
Armagnac, France 17, 27
Australia see Australia, wine GI legislation
Beaujolais litigation, Australia
256–7, 258, 261, 262
Bons Bois spirit, France 115
Bordeaux, France 17, 18, 19–20, 21, 22, 23, 26, 27, 31, 35, 38, 261
Burgundy, France 23, 28, 208
Chablis see Chablis
Champagne see Champagne
Chardonnay 134, 500
China, special provisions 332–3
Cognac, France 27, 341
collective wine branding see France, collective wine branding (19th–20th centuries)
Coonawarra litigation, Australia
207, 249–50, 268–9, 273–7
EU Wine Regulation 366, 377–9
EU-US ‘Wine Pact’ 134–5, 517, 547
Gironde wine production, France
21–2, 23, 24, 26, 27, 31, 35
La Provence, France 264–6, 288
multilateral register see multilateral register
port wine 237, 544
Rioja, Spain 544
Rothbury trade mark dispute, Australia 284–5
Saint Joseph, France 67–8
Saint-Émilion, France 22, 261
Sancerre, France 261
sherry, Spain 160, 167, 529–31, 539
Torres Vedras, Portugal 378–9
TRIPS Agreement protection 132–3, 139–41
US wine trade mark protection 43–4, 52
wine recognition 42
see also beer
WIPO-administered treaties 95–122
administrative approval procedure for product labels 108–9, 113–14, 115
‘appellation of origin’ definition 100–102
certification and guarantee marks 107–8
collective mark use 107, 108, 113
‘dilution’ protection for reputed marks 108
geographical area, relationship with 111–13
geographical indications definition 102–4
geographical signs, exemption of 107
global labelling challenge 53
goods of the same kind not originating in the geographical area of origin 120–21
history 95–8
‘indication of source’ definition 99–100
national treatment provisions
100–101, 102, 103–4, 105–6
national treatment provisions,
differences in means of
protection 104–11
non-geographical denominations
115, 119
prior trade marks, protection for
118, 121
product reputation factors 101–3,
104, 110, 111, 113, 120
quality factors 100, 101, 102–3, 104,
106, 111, 113, 120
Standing Committee on the Law of
Trade Marks (SCT) 96–7
sui generis protection system 105–6,
112–14
trade mark law and registration
106–8
unfair business practices, laws
focusing on 109–11
WIPO-administered treaties, Lisbon
Agreement 95–8, 101–2, 103–4,
111, 113–16
Appellation of Origin (AO) and
geographical indications,
differences between 128–30
Budweiser cases see Budweiser cases
and GIs v trade marks, Lisbon
Agreement for the Protection of
Appellations of Origin
China, GI protection 356
conflicts between trade marks and
GIs, resolving 365–6, 374–7,
394–5
‘fair trade’ rules 232–3
generic status and genericide 513,
541, 542–3
Geneva Act 102, 104, 119–21, 143,
395
handicrafts and link to origin in
culture 298–9, 303, 307, 314,
326
international registration system
review 116–21
limited membership 114, 116
Madrid and Hague systems, parallels
with 116–17, 118
register 125–6
Secretariat on Lisbon Agreement
375–6
Working Group on the Development
of the Lisbon System
(Appellations of Origin) 97–8,
117–19
WIPO-administered treaties, Madrid
Agreement
Budweiser cases 414, 415, 421, 426,
429
China and international registration
system 356–7
‘fair trade’ rules 232–3
generic status and genericide 513,
541–2
on Indications of Source 100
international registration system
108, 356–7
Lisbon and Hague systems, parallels
with 116–17, 118
WIPO-administered treaties, Paris
Convention
Budweiser cases 412–13
‘fair trade’ rules 216, 218, 224–5,
230–32
generic status and genericide 512
Indications of Source (IS) and
Appellations of Origin (AO)
definitions 99, 100–101
on misleading allegations 131, 137
on unfair competition 109–10
Wiseman, Leanne 484–507
Wiskerke, H 448
Wood, G 528
World Intellectual Property
Organization see WIPO
World Trade Organization see WTO
WTO
Doha Development Agenda 133–44,
187, 192, 195–6, 215, 393–4
GATT Agreement 148–9, 156, 219,
227–8, 236
Panel Report 367–72, 379, 387, 394,
408–9
Uruguay Round negotiations 128–9,
148–9, 156, 183–6, 218
WTO multilateral register negotiations
and international protection of
GIs 183–201
‘Built-In Agenda’ for future negotiations 186–7
cost factors 197–8
critical appraisals 192–4
developing countries 195–6
and domestic legal systems 191–2
Draft Composite Text on proposed multilateral register 195–6, 201
EU-led Proposal (comprehensive approach) 187–8, 190–92, 194, 195, 197–8, 199–200, 201
free-riding concerns 197
future direction 195–200
generic status consideration 191–2
Hong Kong, China Proposal 187, 189–90, 199–200
information database proposal 193, 196
legal effects of registration 192–3, 194, 196–8
minimalist approach (US-led Joint Proposal Group) 187, 188–9, 192–4, 195–7, 199
participation as voluntary or mandatory 198–9
presumption of eligibility for protection, provision of 197–8
product coverage issues 199–200
Seoul Summit Document 187
submission divisions 187–8
system participation concerns 193–4
WTO TRIPS Agreement
collective management and ‘fair trade’ rules 221–5
compliance, China 332, 356, 357
conflicts between trade marks and GIs 133, 367, 369–70, 371–2, 375, 377, 378, 379, 381–2, 383, 387
definition of GI 46–7, 48, 188, 190, 191, 193, 196–8
distinction between wines and spirit and other goods 325–6
‘fix-rule’ approach 240–41
generic status and genericide 508–9, 518–21, 526, 531–2
identification’ and ‘indication’ of a product, differences between 208–10, 213, 223–4, 236–7
‘IP-is-trade’ paradigm 219, 240
and language usage 213–16, 221–2
multilateral register negotiations 183–5
WTO TRIPS Agreement, GI extension rethink and EU policies 146–82, 223–4
‘ambush marketing’ legislation 171
bilateral preferential trade negotiations, significance of 178–82
‘brand entrepreneurs’ and incentive preservation concerns 165
costs and benefits concerns 158, 161–2
customer protection and trade marks (misrepresentation-based standard) 159–63
dilution of famous trade marks, prevention of 163–8
diversity in agricultural production, call for 172–3
dual minimum standards of GI protection (Articles 22 and 23) 146–8, 156–7, 158
economic advantages for producers in international markets, securing 152–3, 176
‘extended passing off’ action 160–61
free-riding concerns 158, 168–70
French rural policy and GI regulation, influence on EU policies 152–4
generic product descriptions 154–5, 162–3, 165–8
interests and motivations of parties concerned 152–6
justification through traditional economic arguments 159–63
justifications, assessment of purported 156–77
locally-produced foods and sustainability 173
market considerations in US and Australia 153–4
misappropriation prevention 158, 168–70
Index 581

quality goods, fostering production and consumption 171–4, 176
quality, and imitation concerns 161–2
reputation factors 159, 160, 167–70, 174–5, 176
stand-alone arguments 157–8
trade marks and market efficiency 159–60
WTO TRIPS Agreement, protection of GIs 123–45
administrative issues 139–40, 143
collective or certification marks 136, 139
developing countries 124–5, 140, 174–7
dual-purpose denominations 134–6
emergence of 127–9
environmental significance of GIs 126
‘fair use’ exception to rights conferred by a trade mark 138
‘first-in-time, first-in-right’ approach 128, 136–9
genericide rules 139
geographical origin concept 129–30
higher protection for products other than wines and spirits 141–2
homonymous indications 131–2, 139
notification and registration system 139–44
opponents’ case against GI protection 126–7
semi-generic denominations 134–6
substantive protection 130–33
sui generis system concerns 130–31, 143
terroir and sense of place 83
trade marks, protection under 131, 136–9
unfair competition concerns 130–31, 139
for wines and spirits 139–41
wines and spirits protection 132–3
xenophobic interpretation of terroir 61
see also global labelling challenge, AOC labelling and terroir concept
Xianglian lotus seeds, China 350
Yeung, M 176
Zacher, F 511
Zagora apples, Greece 449
Zahn, L 530, 537
Zalik, A 157
Zhang, Yumin 355
Zhangqiu Scallion trade mark, China 356
Zhao Xiaoping 347, 348
Zheng, Haiyan 49, 113, 327–58