

*Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* BY IRENE CALBOLI AND WEE LOON NG-LOY, eds [Cambridge: Cambridge University Press, 2017. xx + 550 pp. Hardcover: £85.00 (open access)]

The protection of Geographical Indications (“GIs”) has been a subject of immense controversy. The provisions in the Agreement on the Trade Related aspects of Intellectual Property Rights (“TRIPS”) dealing with GIs, which were negotiated during the Uruguay Round of multilateral trade negotiations that gave birth to the World Trade Organization (“WTO”), represent a sensitive compromise—a compromise between WTO member states that believe in different standards of protection and different means by which such protection may be granted. Despite the compromise, the debate on the protection of GIs continues to not only expand the existing North-South divide, but also create new divisions within the developed world. It is also notable that the topic has acquired a renewed interest and flavour. While we are seeing GIs being hotly debated within the WTO framework in its Doha Round of trade negotiations, the World Intellectual Property Organization (“WIPO”) has recently extended the protection afforded to appellations of origin under the *Lisbon Agreement for the Protection of Appellations of Origin and their International Registration*, 31 October 1958, 923 UNTS 205 (entered in force 25 September 1966) [*Lisbon Agreement*] to GIs with important modifications that truly seeks to establish an ‘international register’ for GIs. Furthermore, we are also witnessing a trend in provisions on GIs being included in bilateral and plurilateral trade agreements between major economies such as the United States of America (“USA”) and the European Union (“EU”) on the one hand and developing nations on the other, which has the indirect effect of establishing the internationally dominant approach for the protection of GIs.

In view of the controversy and renewed interest surrounding this topic, it is not surprising that the protection of GIs has become the focus of numerous discourses on intellectual property and economics. Much has already been written on the scope of GIs protection, the method of protection and even whether GIs qualify as ‘intellectual property’. Although works that have considered the debates and issues pertaining to the protection of GIs from the perspective of developing countries are still plentiful, far less have focused on countries in the Asia-Pacific region, a region which is predominantly agricultural and culturally rich. *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* edited by Professors Irene Calboli (Texas A&M University/Nanyang Technological University) and Wee Loon Ng-Loy (National University of Singapore) and published by the Cambridge University Press is a consolidated effort to fill that void in GIs scholarship. This book is extremely timely, particularly in view of the difficulties faced by some of the countries in this region in grappling with GIs protection—eg the internal territorial battle over ‘*basmati*’ in India, the concerns raised by Sri Lankan cinnamon and tea producers about the lack of a local GIs register and Indonesia’s decentralized structure of government and its impact on the protection of local GIs (to name a few).

Apart from its focus on a region that remains relatively unexplored, this edited book volume is unique for two other reasons. First, and notably, the open access policy that applies to the book. This enables any interested reader to freely access

the contents of the book—a feature that will no doubt benefit academics and scholars from the developing world. Secondly, the book brings together contributions from established and experienced scholars of intellectual property (and of course, GIs), as well as aspiring younger scholars, who have approached the topic with renewed thinking.

The book comprises 16 chapters usefully divided into four parts. Part I seeks to introduce the key points of contention in the GIs debate, and sets out the trends concerning GIs and their protection both internationally and at national levels, particularly in developing Asian countries. Irene Calboli's introductory chapter (Chapter 1), which introduces the reader to the general themes that underpin the book, posits that the Euro-centric (or Western) perception of GIs is no longer tenable, in view of the increasing interest that developing nations have shown on GIs—whether it is to promote and protect their own local interests or as a side effect of entering into trade agreements with countries that have significant interest in protecting their own GIs in foreign markets. This chapter also discusses, albeit briefly, the approaches adopted by several countries in the Asia-Pacific region towards the protection of GIs and the benefit GIs offer in promoting socio-economic development and safeguarding cultural interests, a discussion that receives much needed attention and insight in subsequent chapters written by academics from the region. Lastly, the chapter deals with the question of whether the exclusive rights that a GI confers should extend in relation to products that do not entirely originate from the territory to which the GI relates. The chapter concludes that it should not—a conclusion that Dev Gangjee concurs with in his contribution (Chapter 2) in which he argues that the regime for GIs protection must maintain a causal link between product and place. The next two chapters adopt a more cautious tone towards the claims made by GI advocates, particularly about the impact of GIs on rural development. Thus, while Justin Hughes in Chapter 3 suggests that the promise of GIs is a “limited promise” (at p 61) and that any regime for GIs protection must be “properly calibrated” (at p 62) in order to benefit rural economies, Rosemary Coombe and S Ali Malik in Chapter 4, focusing on value chain governance, argue that GI premiums are rarely shared equitably in the Asian context (actual producers benefiting the least). Coombe and Malik argue that emerging new models that are capable of better recognizing the environmental and cultural labour of producers (women, in particular) in ways that support their livelihoods should be encouraged. Daniel Gervais's contribution (Chapter 5), the last in this part, considers the Geneva Act to the 1958 *Lisbon Agreement* and questions whether it has succeeded in building a bridge between the Lisbon system and the approach adopted in common law countries where GIs are protected under trademark law. He concludes that while the Geneva Act is an improvement to the 1958 *Lisbon Agreement*, it has only laid some useful foundations in bridging the Lisbon/common law gap.

What is clear from the opening part of the book is that while the Asia-Pacific region has much to gain from GIs as a tool to promote local interests and rural development, there is much work to be done at both international and national levels before the benefits of GIs protection are capable of being fully reaped by the countries in the region, and in particular domestic producers.

Part II of the book is primarily concerned with the recent practice adopted by some countries to include provisions on the protection of GIs in Free Trade Agreements

(“FTAs”) and Bilateral Trade and Investment Agreements. As was noted earlier, trade (and investment) agreements are a means by which GI policies of the more dominant trading partner are imposed onto the less dominant, often on the premise that it would benefit the latter. Susy Frankel in Chapter 6 is highly critical of this approach and suggests that the benefits of GIs to local communities can only be realized with autonomy over the framing of national laws that extend GIs protection. As Susanna Leong demonstrates in her contribution (Chapter 10), the evolution of Singapore’s laws on GIs is a manifestation of how FTAs (first with the USA and then with the EU) could influence domestic GI policy and dictate how laws are framed even in a city-state that does not have any GIs of its own to protect. A contribution that stands out in this part is Christopher Heath’s chapter (Chapter 8), which raises an important question—*ie* how would Asian GIs fare in Europe? The response is likened to “the little steam locomotive that winds its way up from Colombo to Nuwara Eliya (a paradise for tea lovers); always an uphill struggle, but worth it” (at p 211). Heath was describing the *Udarata Menike*, the train that journeys between Sri Lanka’s capital and the serene hill-station where the world-renowned ‘Ceylon Tea’ is grown and produced. While it is uncertain whether Heath’s comparison was intentional or purely metaphoric, his sentiments are corroborated by local producers in Sri Lanka who are consistently lobbying in favour of a domestic GIs register, a point that is addressed in greater detail by Nazima Kamardeen in Part III.

Arguably, Part III of the book is what confers this collaborative effort its significance, in view of the in-depth analysis offered by the contributors about the potential of, and the challenges in, the use of GIs in a number of key jurisdictions in the Asia-Pacific region—*ie* Sri Lanka, India, Malaysia, Vietnam, Taiwan, China and Australia. Some of the key points that emerge from this part of the book include the following—that GIs play a crucial role in rural development, that local producers must be encouraged to use the GIs system and that the legal framework for GIs protection must complement a coherent national policy on GIs. Some noteworthy perspectives also emerge in relation to approaches to GIs protection. The Sri Lankan contributor (Nazima Kamardeen in Chapter 17) strongly contends that local producers will benefit if an Indian-styled GIs register is introduced under the law (currently, there being no such register and GIs being protected as certification marks and by the action against unfair competition). Yet, as Yogesh Pai and Tania Singla suggest in Chapter 14, citing four case studies—*ie* ‘Banarasi Sarees’ (at pp 347-350), ‘Pashmina’ (at pp 350, 351), ‘Darjeeling Tea’ (at pp 351-354) and ‘Alphonso Mango’ (at pp 354-357), the success of GI-based products heavily depends on a number of factors, and not merely on the registration of GIs. These factors include, collective action amongst producers to tackle the issue of counterfeiting, government intervention in establishing quality control and complying with standards imposed by importing nations.

Part IV of the book, which is also the last, considers the important interface between GIs and traditional knowledge and culture. Mahua Zahur in Chapter 18 argues that Asian countries have mostly relied on culture-based rationales to justify GI protection in domestic contexts—the case of Bangladesh unquestionably supporting the author’s contention (although she cites Singapore as an exception). Interestingly, the discussion on GIs and its cultural dimension brings to the fore the ‘reputational link’ between product and place (considered in Part I of the book).

Zahur contends that by making reputation an “independent criterion for GI protection” (at p 458), TRIPS (and domestic legislation that implements TRIPS standards) have made it possible for GIs such as ‘*Jamdani* fabrics’ to be registered as GIs. Tomer Broude’s contribution (Chapter 19) provides a critical account on the impact of GIs and intangible cultural heritage on cultural diversity, with a focus on culinary culture, while the book concludes with a contribution by Christoph Antons (Chapter 20), which considers GIs in a “contested environment” (at p 488) with a focus on Indonesia, demonstrating how the country’s decentralization policies have led to difficult bargaining processes between the central and regional governments, as well as the producer communities, about the nature and use of intellectual property laws relating to tradition and heritage, including GIs.

It is eminently clear that Irene Calboli and Wee Loon Ng-Loy have put together an impressive piece of work that provides fresh theoretical and pragmatic insights into the ongoing debate on GIs. The focus on the Asia-Pacific region has made this possible by facilitating an unbiased and honest discourse on GIs beyond the “Wine and Cheese war” between the “Old and New worlds” (at p 9).

**ALTHAF MARSOOF**

Assistant Professor

Division of Business Law, Nanyang Business School

Nanyang Technological University