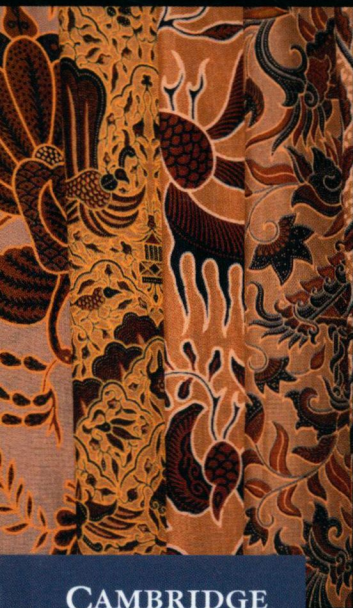


Geographical Indications at the Crossroads of Trade, Development, and Culture

Focus on Asia-Pacific

Edited by Irene Calboli
and Ng-Loy Wee Loon



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FOCUS ON ASIA-PACIFIC

Edited by

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Singapore Management University and Texas A&M University

NG-LOY WEE LOON

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GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE

Historically, few topics have proven to be so controversial in international intellectual property as the protection of geographical indications (GIs). The adoption of TRIPS in 1994 did not resolve disagreements, and countries worldwide continue to quarrel today as to the nature, the scope, and the enforcement of GI protection nationally and internationally. Thus far, however, there is little literature addressing GI protection from the point of view of the Asia-Pacific region, even though countries in this region have actively discussed the topic and in several instances have promoted GIs as a mechanism to foster local development and safeguard local culture. This book, edited by renowned intellectual property scholars, fills the void in the current literature and offers a variety of contributions focusing on the framework and effects of GI protection in the Asia-Pacific region. The book is available Open Access at <http://dx.doi.org/10.1017/9781316711002>.

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Editors' Preface

Why a book on geographical indications (GIs) with a focus on the Asia-Pacific region? Our reason is simple enough. For several decades, GIs have not received mainstream attention by national policy-makers in Asia-Pacific. Consider that on the international stage, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement)¹ has been of interest, at least so far, only to one country in Asia, namely, North Korea. Of course, this does not mean that there is no legal protection for GIs in this region; after all, GI protection is mandated by the Agreement of Trade-Related Aspects of Intellectual Property (TRIPS).² However, our sense was that GI laws in this region were enacted, at least initially, by the policy-makers primarily as a matter of compliance with international obligations without fully understanding the implications of these laws.³ This state of affairs, we felt, deserved further investigation and attention by academics – especially now that many countries in the region are showing a growing interest for GIs, and GIs have appeared on the agenda in the bilateral or pluri-lateral negotiations for international trade agreements (FTAs) between countries in the region and other countries, in particular the

¹ Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, October 31, 1958, *as revised*, July 14, 1967, 923 U.N.T.S. 205.

² Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

³ This is borne out by observations made by some of the authors in this volume. To cite a few, the chapter authored by Tay Pek San (Chapter 12) reporting on Malaysia's experience with GIs writes that when the country enacted its GI Act 2000, there was "relatively little understanding of the benefits and potential impact" of GI protection. A similar message came from Szu-Yuan Wang (Chapter 15) reporting on Taiwan, when he described the country's struggles to understand this "foreign" transplant when it was amending its laws to protect GIs upon accession to the WTO in 2002. As the readers may observe, several other chapters in the volume express similar considerations and concerns.

European Union (EU). For example, the EU has recently concluded FTAs with South Korea, Singapore, and Vietnam and is also negotiating, or discussing the possibility to negotiate, similar agreements with Malaysia, India, and other countries in Asia-Pacific. And then there were the negotiations for a multilateral agreement of the Pacific that led to the adoption of the Trans-Pacific Partnership (TPP) in 2015 (but whose fate is, at present time, uncertain due to the recent withdrawal of the United States therefrom). GIs were a sticky topic in the TPP, as negotiating parties were almost evenly divided between countries supporting strong protection, and others, such as the United States, Canada, Australia, and New Zealand, which were less enamored of GIs.

Unsurprisingly, the EU's narrative on GIs is that GIs can play an important role in trade, rural development, and the conservation of national cultural heritage – a position that has been enshrined in the EU law on GIs since the adoption of the very first GI Regulation in 1992.⁴ Today, this narrative is gaining consensus in several countries in Asia-Pacific, particularly those that are rich in agricultural products and traditional handicrafts. However, this narrative needs further testing and exploration, as enthusiasm for GIs could not necessarily harvest the results that several countries in the region may hope for. To this end, we convened a meeting of a group of scholars and other experts in March 2015 at the Faculty of Law of the National University of Singapore (NUS) to discuss the changing landscape of GI protection in this region and, to a certain extent, worldwide. We believed that a comprehensive analysis of these questions would assist policy-makers and trade negotiators in this region to formulate appropriate responses during FTA negotiations, in the adoption of national laws on GI protection and, beyond that and regardless of FTA negotiations, to review how the potential in their country's GIs may be actualized with best practices, quality-control programs for GI products, and the like. At the meeting, several themes were addressed, and in particular the following questions. What should policy-makers and trade negotiators in Asia-Pacific make of the claims and the rebuffs of benefits from GI protection? Is it true that a GI protection regime will provide higher economic returns to farmers and other holders of traditional knowledge through price premiums and enhance rural development and/or preserve indigenous knowledge and culture? What level of legal protection of GIs, if not that set out in TRIPS, will

⁴ See recital 6 of the Council Regulation (EEC) No. 2028/1992 on the Protection of Geographical Indications and Designations of Origins for Agricultural Products and Foodstuff (stating that GIs have “proved successful with producers, who have secured higher incomes”).

produce these benefits? Where are the success stories? Can these success stories be replicated in other countries, especially the developing countries in the Asia-Pacific region?

Our harvest was bountiful. We heard from those who warned of overstatements of the benefits that stronger GI protection can produce⁵ and who unveiled the hidden costs of romanticizing the GI debate,⁶ while others were optimistic, sometimes cautiously,⁷ sometimes more openly.⁸ We learned of real-life success stories⁹ and of failures¹⁰ in various countries – and success stories and failures occurring within the same country.¹¹ Even more importantly, we learned about the various factors that contributed to the success or failure in the case studies presented. As expected, we saw national politics, and even geopolitics, at play when there are fights over GIs between the central government and the local government in a country,¹² or between neighboring countries.¹³ Our playfield also went beyond Asia-Pacific, and scholars discussed recent development in international law, above all the recent controversial adoption of the Geneva Act of the Lisbon Agreement in

⁵ See, e.g., Justin Hughes (Chapter 3) focusing on the promised economic benefits; and Tomer Broude (Chapter 19) focusing on the preservation of intangible cultural heritage and promotion of cultural diversity.

⁶ See, Rosemary J. Coombe & S. Ali Malik (Chapter 4) highlighting the socioeconomic marginalization of the Nepali-speaking women workers in the *Darjeeling* tea plantations in India even as this GI gains renown around the world, allowing others to reap the economic benefits.

⁷ See, e.g., Irene Calboli (Chapter 1) supporting the positive aspects of GI protection as long as producers disclose the actual origin of all products' raw materials; Peter Drahos (Chapter 11) highlighting the possible positive aspects of GI protection in Australia in the wine sector; Steven Van Uytsel (Chapter 21) in the context of preservation of intangible cultural heritage in Japan.

⁸ See Dev Gangjee (Chapter 2), highlighting how the current definition of GIs reflects not only a geographical but also an historical linkage between products and places; Barbara Pick, Delphine Marie-Vivien, and Dong Bui Kim (Chapter 13) supporting the importance of GIs in Vietnam.

⁹ See Peter Drahos (Chapter 11) on the case study of the *Granite Belt* GI for wine in Australia.

¹⁰ See Yogesh Pai and Tania Singla (Chapter 14) on the case study of the *Banarasi* GI for silk sarees in India.

¹¹ See Barbara Pick, Delphine Marie-Vivien, and Dong Bui Kim (Chapter 13) on the case studies of the *Hq Long* GI for fried calamari (success story) and the *Lạng Sơn* GI for star anise (not so successful) in Vietnam.

¹² See Christoph Antons (Chapter 20) on Indonesia where the central government and local government can fight for control over GIs linked to national cultural heritage and traditions.

¹³ See Tay Pek San (Chapter 12) on the dispute between Malaysia and Indonesia over ownership of the term *batik*, a textile art involving the practice of dyeing cloth through wax-resistant methods; Muhua Zahur (Chapter 18) on the resentment in Bangladesh when location-based products of Bangladesh such as *Jamdani* fabric were registered in India by Indian parties; and Szu-Yuan Wang (Chapter 15) on the registration of certain Taiwanese tea production districts as trademarks in China.