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Book Review

Geographical Indications at the Crossroads of Trade, Development and Culture: Focus on Asia-Pacific

Irene Calboli and Ng-Loy Wee Loon (Editors)

Cambridge, UK: Cambridge University Press. 2017. ISBN: 978-1-107-16633-2, 550 pages

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This book covers legal and institutional frameworks and debates surrounding Geographical Indications (GIs) in the Asia Pacific region, presenting both international situations and discussions, as well as how these are applied in most of the countries of the region. It opens up on discussions, on the relationship between GIs and traditional knowledge. More analysis on practical applications and implications of GI protections, and aspects on economic and social development would make this book a much more comprehensive resource for practitioners and policymakers.

The list of contributors of this book reveals a panel of experts in law and Intellectual Property (IP), with very few contributions from trade, development, or culture experts (all three in the title), and none at all from other related fields of agronomy, social science, management, and economics.

The first part of this book are general issues, presenting the context in which GIs are being developed and discussed, not specific to the Asia Pacific region, except for some short but interesting case studies. The first and

second chapters of the book introduce global issues related to Geographical Indications (GIs) and a way of framing the debate. The introduction points out some controversies regarding GIs, and raises interesting questions on loosening the definition of GIs, particularly when it comes to the strength of the linkages to the territory (“terroir with less terroir?”), leading to “geographical inaccuracy”. This theme is explored in more detail in the second chapter, in which the author highlighted the risk of protecting GIs based solely on reputation, even without any physical link to the territory, as this, the author claims, would diminish the justification for *sui generis* GI protection.

I would contend that the main justification for special protection of GIs, particularly when taken from an IP perspective, is to define and protect a “collective reputation,” based on historical depth. Even in the absence of physical linkages to the territory, some products (in particular, artisan products) should and could benefit from this particular form of collective protection. Authorities must be able to examine the claim and guarantee that

all legitimate inheritors of the product name should be able to participate in its construction (to avoid capture by a minority). This is only possible if GIs are treated as a special category (either as trademarks or *sui generis*) of IP. However, even though I am not persuaded that the loosening of linkages to the terroir is problematic or avoidable, I find the solution suggested in the second chapter, i.e., that GIs should disclose on their packaging all the information as to “actual geographical origin of any raw materials, ingredients and manufactory steps...that do not originate from the GI region...,” very elegant and useful, and should be further explored.

The introduction also presents some international legal framework to consider (Agreement on Trade-Related Aspects of IP Rights (TRIPS), Geneva Act of the Lisbon Agreement, UNESCO conventions). It concludes that GIs are not a magic bullet, and that a good legal framework is necessary, but not sufficient, and that to be successful, a GI must be well managed by the GI stakeholders.

The third and fourth chapters highlight some limitations of what GIs can deliver, and suggests that other labelling schemes may be, in certain circumstances, better at delivering the expected development benefits. This is clearly correct and needs to be reinforced. Based upon my experiences, for starters, GIs are only suited to a small selected group of products (i.e., those that fit the definition). Secondly, the fact that they are, and have to be, collective in nature, inclusive of all legitimate inheritors of the product means that investments needed to develop them may be too expensive for the expected returns, or that marketing the origin of the product may not be the best approach.

Chapters 5, 6, and 7 look in more detail at international trade agreements concerning GIs (Geneva Act of the Lisbon Agreement and regional trade agreements), and points out the

damages caused by the “tug of war” between the European Union (EU) and the United States (US) on the issue. Chapter 9 presents an interesting possible resolution of this “tug of war,” and presents the “prehistory” of GI protection in the Americas. Experience (in the Philippines at least) shows that this “tug of war” between the two giants is indeed damaging to the development perspective of many producers of place-based products, and leaves a policy and legislative vacuum for many years (and remain unresolved). Thus, producers are left without proper protection for the GIs. Any pointers toward a way to resolve this conundrum is useful to the debate.

Chapter 8 looks more specifically at how Asia GIs might fare in the European market, with interesting examples. It shows limitations of exporting GIs to markets where the product has, as of yet, no reputation, and that can be difficult for consumers to recognise (i.e., names of Chinese places). This chapter also looks at various forms of protection and legal interpretations. Chapter 10 looks at the legal framework for GIs in Singapore and suggests ways, and highlights difficulties and possible pitfalls, in which countries in the region can accommodate GIs in free trade agreements with both the EU and the US.

The third part looks at GIs in specific countries in Asia and the Pacific on local and rural development aspects, focusing on the legal frameworks, starting with the Australian wine industry, followed by Malaysia, Vietnam, India, Taiwan, China, and Sri Lanka. The legal and institutional frameworks, often very complex (e.g., the case of China), are well described and may serve as good introductions when working in these countries.

The chapters on Vietnam and India bring in new and detailed studies of the limitations of the GI system based on very interesting case studies. However, it is regrettable that there are

only few detailed case studies of specific GIs, and even less original economic data in most of the other chapters.

Other countries (Bangladesh, Indonesia and Japan) were explored in part 4, under a slightly different angle, namely, the relationship between GIs and traditional knowledge, and cultural heritage. This is completed by a more analytical chapter on the relation between GIs and intangible cultural heritage, which highlights the risk of fixing certain practices at a certain given time (as is the case in GIs)—to ensure authenticity and quality—on cultural diversity and “fixing” living cultural heritage. The last chapter, on Japan, explores this in more detail, as well as looks at other pitfalls of GIs, namely, the potential capture of the GI by minority interest groups—often the richest and most capital intensive. This last section opens up the debate on several interesting topics that should be further studied.

The book claims to be the “first comprehensive guide on GI protection in Asia-Pacific” and does indeed provide good descriptions of the legal and institutional contexts in most countries of the region, as well as international agreements and issues. Nevertheless, I regret that some chapters remain only descriptive. In some of the chapters with more in-depth analysis, the data to prove the argumentation is often lacking, though I find numerous interesting theoretical concepts described and conclusions suggested. It is probable that insufficient data exist on GIs in the region so this is the first laudable attempt of gathering knowledge of GIs in this very large, important, and growing region of the world. Some of the chapters introduce some very interesting legal debates. It is also disappointing that two countries with very different, but both quite successful GI regimes in the region, namely, Thailand and Cambodia, are not described or analyzed.

The title is somewhat misleading—as almost all the authors have legal and IP backgrounds—whilst to cover the aspects of trade, development, and culture, experts from other backgrounds could have contributed a richer and more diverse analysis.

Though several authors highlight the need to look at other aspects than the legal registration, such as good organization and management by the GI groups, this aspect is hardly analyzed. From field experience in Europe, as well as in several countries in Southeast Asia (the Philippines, Indonesia, Cambodia, and Laos), I would argue that if it is important to get the legal framework correct for each given context, other factors are much more important in the success of GIs. The most important of these is the capacity of the value chain stakeholders to define, organize, manage, and control the quality of their GI product. This collective approach implies investments (both in time and resources) in building the GI groups and ensuring a consensus on the definitions and putting in place the correct mechanisms for decision taking, as well as for quality management (and control) and marketing.

Rural development policies, in particular the support given to collective organizations, can also play an important supporting role in the success or failure of GI initiatives. Other important policy issues that were not explored relate to the quality controls, the creation and use of a national logo for all GI products (as in the EU, but also in Cambodia and Indonesia), and marketing/export promotions.

In conclusion, this book makes a worthy attempt at gathering legal knowledge on the situation of Geographical Indications in this vast region, and presents useful background information for anybody involved in setting up the legal and institutional framework for GIs (policymakers, trade negotiators, and

legal practitioners) and also for legal students. However, it was not able to fulfill its promise of being a comprehensive guide also useful to “representatives of producers and consumer associations.” As the editor mentions, there is a need for “more research in this area in Asia-Pacific, especially more case studies of the practical application of GI protection to local and regional products” (page xix).

To complete this reading, it is recommended to study the various documents prepared by the FAO quality and origin program on the subject. Among them, one will find the very comprehensive guide for promoting quality linked to geographical origin and sustainable GIs by FAO (2010) as well as the trainers guide by FAO/REDD (2017). On the impacts, monitoring and evaluation of GIs, one could read Belletti et al. (2011), Deselnicu et al. (2010) and FAO/EBRD (2018).

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