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# **SETTING THE BLOCKS FOR ASEAN: HOW IP INJECTION CAN INCREASE THE FRUITFULNESS OF AEC AND ITS GOAL OF 2025**

AUTHORED BY - ABHISHEK SHARMA,  
ANNANY MAMGAIN & ARYAN GARG

## **Abstract**

“Economic growth without investment in human development is unsustainable and unethical”

Amartya Sen

Starting from the word Human Development in the above quote, the theory remains unchallenged that even if we want to build a skyscraper, we have to start with a brick. Moreover, the bricks for the countries are their individuals. Also Humans are better known for their intellectual superiority. Individuals in every era of civilizations grew with the help of their intellect, and hence with the rising population, it becomes the necessity of time to protect the human intellect and its development.

In this Research Article, thematic analysis and content analysis are used as a research methodology to find out how the development of Intellectual property and related policies help in developing a particular Nation or region and how the same can be used to push The developments in ASEAN. This question is answered by analyzing the developed countries and related stats. The paper addresses ASEAN members individually as well, to highlight certain Problems which are country-specific.

As the paper starts from setting a background of Why IP is an important pillar of economic growth, it elaborates on the case of ASEAN and its previous commitments as a group. The research finds out the faults which were left unattended by ASEAN Nations on front of Intellectual property rights. This further contributed to the failure of ASEAN Economic cooperation Goals. *Now As ASEAN Has set a new Goal namely ASEAN Economic Cooperation (AEC) Blueprint 2025 A consolidated strategic action plan (CSAP)*. This article suggests ways to boost up results of that goals using IPR development in Post corona crisis and suggests visionary reforms to emerge as IP Hub of ASIA Pacific Region

**Keywords: ASEAN, CSAP, AEC Blueprint, IP (Intellectual property)**

## Introduction

A gathering of five countries with a common dream of peace: this was how the Association of Southeast Asian Nations, or ASEAN, began 53 years ago on August 8, 1967, in Bangkok, Thailand. When the world was witnessing the whammy of World War II and the conflict of bipolar world was seen as future, in that cloud of uncertainty across the world, ASEAN established a path of collaboration to secure its future<sup>1</sup>. At that point, the total GDP of ASEAN was just 23.7 Billion (USD), institutions of governance were still evolving and infrastructure was under development. The birth of ASEAN was indeed a moment, born out of the courage and foresight of the region's leaders<sup>2</sup>. The ASEAN with a constant pace grew with adding up of new member states and formed a much required ASEAN Economic Community (AEC) on 31 December 2015. The Member of AEC had by then grown to a population of 629 million with a combined GDP of some USD 2.4 trillion, making it the sixth largest economy in the world and the third largest in Asia<sup>3</sup>. In 2015, ASEAN trade also rose to USD 2.3 trillion, the fourth largest share in the world after China, the United States and Germany. Meanwhile, foreign direct investment totaled USD 121 billion, accounting for 7 percent of global inflows. It gave clear indications of ASEAN's Potential to grow. To enhance the growth of AEC, a Consolidated Strategic Action Plan was prepared<sup>4</sup>. And a AEC blueprint was created to Set and achieve certain goals with a deadline of 2025. *This article concludes with answering the question, how that pace of achieving CSAP- AEC Goal of 2025 can fastened by giving a push to Intellectual property rights.*

Two years since the CSAP (Consolidated Strategic Action Plan) to implement the AEC (ASEAN Economic Community) Blueprint 2025 was agreed, more than 40% of the total 647 action points have been partially fulfilled<sup>5</sup>. Of these, 17.7% have been completely achieved. ASEAN adopted the AEC Blueprint 2025. It (Blueprint) consisted of five pillars: a highly integrated and cohesive economy; competitive, innovative, and dynamic ASEAN; an ASEAN with enhanced economic

<sup>1</sup> ASEAN: LIFE AFTER THE CHARTER, (2010).

<sup>2</sup> Rodolfo C. Severino, *ASEAN and the World*, in SOUTHEAST ASIA IN SEARCH OF AN ASEAN COMMUNITY 256–341 (2006).

<sup>3</sup> Keith E. Maskus, *Intellectual Property Rights and Economic Development*, 32 Case W. Res. J. Int'l L. 471 (2000)

<sup>4</sup> Edmund W. Sim, *The Outsourcing of Legal Norms and Institutions by the ASEAN Economic Community*, 1 Indon. J. Int'l & Comp. L. 314 (2014).

<sup>5</sup> Rodolfo C. Severino & Moe Thuzar, *ASEAN Economic Cooperation and Its Political Realities*, in MOVING THE AEC BEYOND 2015: MANAGING DOMESTIC CONSENSUS FOR COMMUNITY-BUILDING 24–43 (Siew Yean Tham & Sanchita Basu Das eds., 2017)

connectivity and deeper sectoral cooperation; a resilient, inclusive, and people-oriented ASEAN; and a global ASEAN. Among those pre-decided 5 pillars, the 2nd pillar of AEC Blueprint, termed as innovation, required a massive development in intellectual property rights.

Development of Intellectual Property Rights (IPR) in ASEAN, despite the progress made, has not lifted most ASEAN Member States' performance on a larger scale. With the exception of Singapore and Malaysia, implementation in the other countries has been inconsistent, including allowing some extent of infringement of patents through the issuance of compulsory licenses. The new AEC Blueprint 2025 is much more comprehensive in terms of the strategic measures to promote IP protection<sup>6</sup>, but this must be supported by stronger cooperation among member states and with international partners, with more serious compliance by the relevant authorities.<sup>7</sup>

**Chapterization:** This article is divided into 5 chapters which step by step explains the following: In the very first chapter it is briefed that why IP is a Important aspect for economic development, and how Intellectual property has played a key role in almost every strong economy in the world and at end it claims that with the growing Digitalization, IP is becoming driving wheel of economy. Second chapter justifies the claims that why ASEAN is a potential bidder of future IP development and how its AEC 2025 goals need a specific attention on Intellectual property and related aspects. Third chapter only highlights the current situation of ASEAN Members by highlighting their individual aspects related to intellectual property. Fourth chapter discusses the problems, which need to be resolved if ASEAN wants AEC 2025 goal to become a reality<sup>8</sup>. Fifth and the final chapter conclude by arguing in the favor ASEAN as future Hub of IP industries and suggest ways that can be implemented in AEC 2025 Blueprint for taking an edge in post corona world in fields related to Intellectual property.

NOTE: Every chapter indicates a reading outcome in its very first line.

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<sup>6</sup> Chien-Huei Wu, ASEAN at the Crossroads: Trap and Track between CPTPP and RCEP, *Journal of International Economic Law*, Volume 23, Issue 1, March 2020, Pages 97–117,

<sup>7</sup> Muhammad Rifky Wicaksono , Kusuma Raditya , Laurensia Andrini , Muhammad Hawin , Paripurna Sugarda, Herliana & Hariyanto, *Implementing the Extraterritoriality Principle to Strengthen Competition Law Enforcement in Indonesia in the AEC Era: A Comparative Study*, 9 Indon. L. Rev. 27 (2019)

<sup>8</sup> Mark McGillivray et al., *Understanding the ASEAN Development Gap*, in THE 3RD ASEAN READER 95–98 (2015).

## 1. Intellectual properties & Development

**Outcome: This chapter will answer. Do IPR really help in economic development? If yes which Industry in ASEAN will it affect maximum.**

What do inventions, business methods, industrial process, novels, songs, painting, etc have in common? .... It Is that they all results from production of information (or knowledge)<sup>9</sup>.

The question of how (IPR) Intellectual property rights influence the insight of market development<sup>10</sup> and growth is complex and based on multiple factors. The effectiveness of Intellectual property rights in this regard depends considerably on specific conditions in each Nation. If we talk about individual nations of ASEAN it will be discussed in chapter 3. For now if we figure out some sectors which directly gets benefits of Intellectual property rights. So we get the following list<sup>11</sup>.

- 1) Agribusiness<sup>12</sup>
- 2) Clean tech
- 3) Pharmaceuticals
- 4) Life Science & Bio Technology
- 5) Material Science & Chemical Engineering
- 6) Fin tech & med tech
- 7) Mining & Resources and consumer products (Design Oriented).

Let us take an example of the United States. Below are some bullet points which provides more concrete support to the argument that, If ASEAN Want to achieve its economic goals it is bound to improve Intellectual Property Rights<sup>13</sup>.

- Intellectual property(IP)-intensive industries employ over 55 million Americans, and hundreds of millions of people Across the world.
- Employment in IP-intensive industries are expected to grow faster over the next decade than the national average of United States.

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<sup>9</sup> Paul Belleflamme, Martin Peitz, *Intellectual Property*, in INDUSTRIAL ORGANIZATION: MARKETS AND STRATEGIES , 531–572

<sup>10</sup> Digital technologies, intellectual property and development, in TRADE GOVERNANCE IN THE DIGITAL AGE: WORLD TRADE FORUM 365–454 (Mira Burri & Thomas Cottier eds., 2012).

<sup>11</sup> Keith E. Maskus, *Teaching the economics of intellectual property rights in the global economy*, in TEACHING OF INTELLECTUAL PROPERTY: PRINCIPLES AND METHODS 166–184 (Yo Takagi, Larry Allman, & Mpazi A. Sinjela eds., 2008).

<sup>12</sup> Ching-Fu Lin, *The Emergence of ASEAN Regional Food Safety Governance: Structure, Substance, and Context*, 74 Food & Drug L.J. 80 (2019)

<sup>13</sup> Nguyen Khanh Doanh & Yoon Heo, *Impacts of Intellectual Property Rights on Trade Flows in ASEAN Countries*, 14 JOURNAL OF INTERNATIONAL AND AREA STUDIES 1–15 (2007).

- The average employee in an IP-intensive offices earned about 30% more than his counterpart in a non-IP related workforce
- The average salary in IP-intensive industries in United States pay \$50,576 per worker compared to the national average of \$38,768.
- America's IP is worth \$5.8 trillion, more than the nominal GDP of any other country across the world
- IP-intensive industries account for over 1/3– or 38%– of total United States Gross Domestic Product.
- These industries also have 72.5% higher output per worker than the national average, valued at \$136,556 per worker.
- IP related industries accounts for 74% of all U.S. exports- which amounts to more than \$1 trillion.
- The direct and indirect economic impacts of innovation are extreme, accounting for more than 40% of U.S. economic growth and employment.

Once we go through the above 2 list it clearly answers that not only ASEAN but any country aiming for Economic progress is bound to consider Intellectual property rights as an important Issue. Above example is just one China, EU and many more economic setups have similar figure regarding Intellectual property industries. Hence it can be concluded that if ASEAN want to Achieve the AEC 2025 Goals than it has to improve its IPR infrastructure<sup>14</sup>. Otherwise this time also it will be short of achieving the goals like earlier 2 times. Also among the industries mentioned in the above list fin tech, clean tech <sup>15</sup>and med tech are bound to grow drastically which also demands the digital infrastructure (Again a IP dependent Industry).<sup>16</sup>

## 2. The case of ASEAN & Its AEC Goals

**Outcome:** This chapter will throw light on the current situation of ASEAN in reference to global situation and some brief about ASEAN economic community goals. Also points made in this chapter will be support the argument of the paper “That ASEAN is a future bidder

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<sup>14</sup> Steven D. Anderman, *Intellectual property rights and competition law in smaller and medium sized open economies*, in THE INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION POLICY 313–314 (Steven D. Anderman ed., 2007).

<sup>15</sup> Ivan Morales, *Balancing Intellectual Property Rights and Clean Technology Development: Encouraging Cooperation*, 17 Hous. J. Health L. & Pol'y 405 (2017).

<sup>16</sup> David P. Schmidt, *Intellectual Property Battles in a Technological Global Economy: A Just War Analysis*, 14 BUSINESS ETHICS QUARTERLY 679–693 (2004).

**of Global Markets related to IP.**

ASEAN's main motive, mentioned in the Bangkok Declaration (founding document), is to accelerate economic growth, social progress, and cultural development among the members states. Despite the declaration's specific emphasis on economic and social cooperation<sup>17</sup>, however, ASEAN's most activities until the end of the Cold War were directed toward stabilizing the region by "preventing the Balkanization of Southeast Asia". In fact, for most ASEAN members, economic cooperation was a means to achieving political cooperation. Hence, the political will to integrate national markets at the regional level was largely absent until the early 1990. In result of this MNC's and other global giants were not much attracted<sup>18</sup> towards this region but due to its diverse market and a strategic location the perspective of companies started changing post 2003.

The most positive point which initiated the global turn towards ASEAN was increase in Demand due its diverse market and its location within the reach of India and China the billion dollar markets<sup>19</sup>. Also the US-China trade war made companies think to find a more neutral and a stable working place. Hence the opportunities for ASEAN grew more and more. This situation is currently in the upward going graph and opportunities for ASEAN are growing Day by day and a push is given by The Corona poltics which is creating a Anti China environment, it is making industrialists think to have second option in case they aim to move out from China. ASEAN is the bidder to tap this opportunity. As earlier trends showed ASEAN unwillingness and lack of political will in economic expansion but that is now diminishing as AEC blueprint 2025 gives clear hints of Economic expansion.

Below chart shows the AEC Goals

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<sup>17</sup> ASEAN: LIFE AFTER THE CHARTER, (2010).

<sup>18</sup> Asean: e-ASEAN Framework Agreement, 40 INTERNATIONAL LEGAL MATERIALS 515–521 (2001).

<sup>19</sup> Stefano Inama & Edmund W. Sim, *Overview of ASEAN, in THE FOUNDATION OF THE ASEAN ECONOMIC COMMUNITY: AN INSTITUTIONAL AND LEGAL PROFILE* 19–35 (2015).

ASEAN Economic Community 2025				
A Highly Integrated & Cohesive Economy	A Competitive, Innovative & Dynamic ASEAN	Enhanced Connectivity & Sectoral Cooperation	A Resilient, Inclusive, People-Oriented & People-Centred ASEAN	A Global ASEAN
Trade in Goods	Effective Competition Policy	Transport	Strengthening the Role of MSMEs	Strategic approach towards external economic relations
Trade in Services	Consumer Protection	ICT	Strengthening the Role of the Private Sector	Review and improve existing ASEAN FTAs and CEPs
Investment Environment	Strengthening IPR Cooperation	E-commerce	Public-Private Partnership	Enhance economic partnerships with non-FTA DPs
Financial Integration, Financial Inclusion, and Financial Stability	Productivity-Driven Growth, Innovation, R&D, Technology Commercialisation	Energy	Narrowing the Development Gap	Engage with regional and global partners
Facilitating Movement of Skilled Labour & Business Visitors	Taxation Cooperation	Food, Agriculture, and Forestry	Contribution of Stakeholders on Regional Integration Efforts	Support to the multilateral trading system
Enhancing Participation in GVCs	Good Governance	Tourism		Engagements with regional and global institutions
	Effective, Efficient, Coherent and Responsive Regulations, and GRP	Healthcare		
	Sustainable Economic Development	Minerals		
	Global Megatrends and Emerging Trade-related Issues	Science & Technology		

### About AEC

The ASEAN Economic Community (AEC) Blueprint 2025 was adopted by the ASEAN Leaders in 2015 as part of the ASEAN 2025<sup>20</sup>: Forging Ahead Together. The new Blueprint incorporates and carries forward the work of the AEC Blueprint 2015, which was adopted in 2007, and charts the broad trajectories of ASEAN economic integration from 2016 to 2025 following the formal establishment of the AEC on 31 December 2015. In 2006, ASEAN was home to the headquarters of 49 companies in the Forbes Global 2000<sup>21</sup>. By 2013, that number had risen to 74. ASEAN includes 227 of the world’s companies with more than \$1 billion in revenues<sup>22</sup>, or 3 percent of the world’s total. Singapore is a standout, ranking fifth in the world for corporate-headquarters density and first for foreign subsidiaries<sup>23</sup>. This trend can be pushed far more by attracting the IP Based industries by providing stronger IP infrastructure. Key points to improve the current structure are suggested in chapter 5

<sup>20</sup> Irene Calboli, *The ASEAN Way or No Way: A Closer Look at the Absence of a Common Rule on Intellectual Property Exhaustion in ASEAN and the Impact on the ASEAN Market*, 14 U. Pa. Asian L. Rev. 363 (2019).

<sup>21</sup> Pushpa Thambipillai, *The ASEAN-10*, in REGIONAL OUTLOOK: SOUTHEAST ASIA 2011–2012 30–78 (2011).

<sup>22</sup> Sungjoon Cho & Jurgen Kurtz, *Legalizing the ASEAN Way: Adapting and Reimagining the ASEAN Investment Regime*, 66 Am. J. Comp. L. 233 (2018).

<sup>23</sup> Peter Cornelius, *Corporate Practices and National Governance Systems: what Do Country Rankings Tell Us*, 6 German L.J. 583 (2005).

### 3. Individual Members & their Significance

**Outcome: This chapter will provide you inside of ASEAN member states on individual basis to improve the understanding.**

Starting from Singapore as it is one of the biggest and the brightest hubs in the world for the protection of intellectual property. It has ranked 4<sup>th</sup> in International Property Rights Index.<sup>24</sup> It became a member of WTO in 1995 and complied with the TRIPs guidelines. It is also a member of the UPOV Convention. The IP infrastructure in the country is robust, especially in the field of dispute resolution and arbitration. This is because Singapore's Intellectual Property Office supports the investors and innovates to widen the contours of their protection.<sup>25</sup> The services include the latest Mobile Application for trademark registration and partnership with ASEAN nations to fasten patent applications.<sup>26</sup> Furthermore, additional funds have been allocated to the universities in the country for research and the laws are flexible for their protection. Moreover, it encourages research in the areas of agriculture, biotechnology, and horticulture.<sup>27</sup>

#### MALAYSIA

After the formation of the Malaysian Intellectual Property Corporation (MyIPO),<sup>28</sup> the Intellectual Property framework of the country has improved significantly. The country complies with the guidelines of TRIPs and has the autonomy to manage the administration of the intellectual property rights in the country. It is also improving its protection for IT and biotechnology.<sup>29</sup> Several acts have been framed in the said regard, including but not limited to the Computer Crimes Act, 1997, and the amendments to its Copyright Act.

However, there has been a reported problem in the enforcement mechanisms and the working of the judiciary. A special task force was recently set up related to these problems, which led to an

<sup>24</sup> 2019 International Property Rights Index, Property Rights Alliance, <https://www.internationalpropertyrightsindex.org/country/singapore>.

<sup>25</sup> Singapore keeps top spot in Asia for IP protection, The Strait Times, (Oct. 19, 2019), <https://www.straittimes.com/business/economy/singapore-keeps-top-spot-in-asia-for-ip-protection>.

<sup>26</sup> Singapore's IP office Launches World's First Mobile App for Trademark Protection, IP Watchdog, (Aug. 27, 2019), <https://www.ipwatchdog.com/2019/08/27/singapores-ip-office-launches-worlds-first-mobile-app-trademark-applications/id=112600/> <https://www.ipwatchdog.com/2019/08/27/singapores-ip-office-launches-worlds-first-mobile-app-trademark-applications/id=112600/>.

<sup>27</sup> R.C. Dreyfuss and J. Pila, Oxford Handbook of Intellectual Property Law, Vol. 1 No. 1, 362 (2018).

<sup>28</sup> Malaysian Intellectual Property Office, <http://www.myipo.gov.my/en/about/#:~:text=ABOUT%20MyIPO&text=The%20Division%20was%20tasked%20o,Act%202000%20came%20into%20force>.

<sup>29</sup> N.A. Mohamed Yusof, The State of Social Progress in Islamic Societies, Establishing Patent Standard: the Case of Biotechnology Invention in Malaysia, (Apr. 2016).

increase in IP awareness.<sup>30</sup>

## **INDONESIA**

Indonesia, like other countries, is compliant with TRIPs and has been improving since the last two decades in terms of Intellectual Property Rights in the country. These reforms include an added legislative will to improve the existing laws in the country. The country amended certain significant laws such as the Copyright Laws in 2014, which was then followed by the Patent Law in 2016. Even in the Trademark Law, the amendments ease the registration procedure for marks and allows registration for some non – traditional marks.

However, due to rampant corruption and weak governance, there have continuously been problems in the enforcement of these laws.<sup>31</sup> There is a flourishing market of black and pirated products in the country which remains mismanaged. Moreover, the lack of public awareness on IPR and related rights also poses some problems.<sup>32</sup>

## **THE PHILIPPINES**

The Philippines is amongst the first countries in the region to protect the intellectual property rights of the citizens. It adopted a code that protected the trademark, patent, copyrights, and other IP rights. The country has made tremendous progress in its infrastructure facilities, and has worked on increasing public awareness and has made flexible laws.

Although the country is working hard on its IP infrastructure, one cannot ignore specific problems. The country faces many challenges, including the slow registration process, piracy, lax administration, and corruption, among other things.<sup>33</sup>

## **THAILAND**

Although the history of Thailand in terms of IP protection in the country has not been remarkable, the government of Thailand has taken steps to improve the laws concerning Intellectual Property protection in the past few years.<sup>34</sup> The steps include compliance with TRIPs, dialogues with the

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<sup>30</sup> C. Antons, Intellectual Property in ASEAN countries, *European IP Review*, Vol. 13 No. 3 (1991)

<sup>31</sup> M. Barthos and Rineke Sara, Dysfunctional IP Infringements and Ineffectiveness of Enforcement Mechanisms under Indonesian Laws, *Journal of Legal, Ethical and Regulatory Issues*, Vol. 22 No.1 (2019).

<sup>32</sup> *Id.*

<sup>33</sup> N. Barizah, The Development of ASEAN's Intellectual Property Rights Law; From Trips Compliance to Harmonization, *Indonesia Law Review* (2017), <https://media.neliti.com/media/publications/62955-EN-the-development-of-aseans-intellectual-p.pdf>.

<sup>34</sup> *Supra* Note 7.

European Union and the accession to the Patent Cooperation Treaty in 2009.

However, like the other ASEAN members, several significant problems exist in the country for effective implementation of these laws viz. piracy, lax administration, the slow registration process for trademarks, and rampant corruption.<sup>35</sup>

## **BRUNEI**

Brunei Darussalam is not a developed country in terms of Intellectual Property Protection, but it is compliant of the TRIPs agreement and is making improvements in terms of creating a capable IP infrastructure in the country through establishing IP offices, amending laws, spreading IP awareness among the citizens and speeding the process of applications.<sup>36</sup>

## **MYANMAR**

The four Intellectual Property Laws were recently passed in 2019 by the government of Myanmar. These laws include Trademark Law, Industrial Design Law, Patent Law, and Copyright Law. Before that, there were no specific IP Laws except the Burma Copyright Act, 1914, which resulted in less investment in the country due to the lack of protection offered to the investors. The advent of these laws is a step in the right direction. It will reduce complications, save costs, and protect the interests of domestic and foreign investors. It will encourage the growth of various sectors such as retail, service, and manufacturing.<sup>37</sup>

## **LAOS**

Apart from the growing economy and the strategic location of Laos, the country's government recognizes the importance and benefits of a friendly IP network. There is a separate IP division in the area of Science, Technology, and Environment Agency, popularly regarded as the STEA. It had recently promulgated a full-fledged IP system in 2012. However, there is still a lot to be done to create infrastructure such as anti-corruption and anti-piracy laws.<sup>38</sup>

## **VIETNAM**

Vietnam has a fully-fledged Intellectual Property Law introduced in 2006. The country has also acceded to the Berne Convention protecting its IP rights worldwide. It is also compliant of the

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<sup>35</sup> Id.

<sup>36</sup> Supra Note 10.

<sup>37</sup> D. Sharma, Myanmar Passed Legislation to Protect Intellectual Property, Mondaq (Feb. 20, 2019), <https://www.mondaq.com/trademark/782500/myanmar-passed-legislation-to-protect-intellectual-property>.

<sup>38</sup> Supra Note 10.

TRIPs Agreement. There is a robust legislative will as well to implement the laws.

However, it is pertinent to note that piracy and lack of public awareness are two of the most critical issues hindering effective implementation of the laws in the country. The government has now pledged to increase formal IP education in the country to increase public awareness and to generate human resources for the same.<sup>39</sup>

## CAMBODIA

Cambodia is a member of the World Trade Organisation since 2004 and is working entirely to develop an efficient IP infrastructure in the country. It has recently complied with the TRIPs guidelines in 2017. Since the IP laws are not completely developed, the investors have an opportunity to take the leap and get their Intellectual Property protected.<sup>40</sup>

### 4. Complications with IPR Enforcement in ASEAN

**Outcome: This chapter throws light on real time problems in IP enforcement in ASEAN region which will further guide to draft a concrete suggestive measure.**

After the discussion on the conditions perpetuating in the South East Asian nations, it is pertinent to mention that the countries have some similar problems, but diversity exists in these nations in terms of economic, cultural, and socio-political conditions.<sup>41</sup>

The countries tried to cooperate and they recognized the importance of IP for the promotion of investment in the region, which led to the advent of the ASEAN Framework Agreement on IP Cooperation in 1995.<sup>42</sup> The agreement established joint ASEAN regional offices for patent and trademark protection and an association for safeguarding intellectual property in ASEAN.<sup>43</sup>

In the surge of the betterment of IP infrastructure in the region, the agreement ensured a unified IP system. However, there is still a long way to go. There have been reported issues on the resistance of single Intellectual Property System due to a decrease in the revenue system, lack of

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<sup>39</sup> A. Sitkoff, IPR Protection and Enforcement in Vietnam is Not as Strong as it Should Be, Vietnam Law Magazine (May 2018), <https://vietnamlawmagazine.vn/ipr-protection-and-enforcement-in-vietnam-is-not-as-strong-as-it-should-be-6217.html>.

<sup>40</sup> Supra Note 7

<sup>41</sup> Evan Garcia, Intellectual Property for Development: The ASEAN Story (Aug. 2017), [https://www.wipo.int/wipo\\_magazine/en/2017/04/article\\_0006.html](https://www.wipo.int/wipo_magazine/en/2017/04/article_0006.html)

<sup>42</sup> ASEAN Framework Agreement on Intellectual Property Cooperation, Bangkok, Thailand (Dec. 15, 1995), [https://asean.org/?static\\_post=asean-framework-agreement-on-intellectual-property-cooperation-bangkok-thailand-15-december-1995](https://asean.org/?static_post=asean-framework-agreement-on-intellectual-property-cooperation-bangkok-thailand-15-december-1995).

<sup>43</sup> Supra Note 2, See Article 1 and Article 3

adequate resources in specific regions, and lack of public awareness regarding IP laws.<sup>44</sup> Furthermore, the lack of anti-piracy laws creates further problems in efficient enforcement of the laws.<sup>45</sup> Moreover, lack of administrative, civil, and criminal setup poses a fundamental problem for the efficient implementation of these laws.<sup>46</sup>

Some of the issues are:

### 1. Lack of adequate litigations

Unification of laws does not only include formation of laws but also the implementation of these laws. Several different factors come into play when a country or a region wants to implement these laws. These include administrative actions, civil litigations and criminal actions.

Administrative actions practically deal with the filing of the case to the administrative tribunals. Effective administrative actions lead to speedy and timely resolution of cases, which is a boon for the country and the investors.<sup>47</sup>

Civil Litigation deals with legal action against the infringer of IP rights. These are generally filed against breach of contracts and infringement of one's patent, copyright and trademark. These involve additional cost and time. Firms need to file a civil suit if negotiations against the infringer fail.<sup>48</sup>

Criminal Actions is a more severe action that acts as a last resort to stop the infringement of Intellectual Property Rights forcefully.<sup>49</sup>

It is pertinent to mention that the unification of these nations is ensured when civil and criminal litigation and administrative action collaborate.

Notably, different countries in ASEAN face these issues. Countries such as Thailand, Vietnam, Myanmar, and Laos possess issues related to efficient administration due to lack of financial and formal human resources.<sup>50</sup> Moreover, Myanmar, Brunei, and Laos do not have thoroughly developed and efficient IP systems.<sup>51</sup> Therefore, it is challenging to enforce civil litigation.

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<sup>44</sup> P. Fowler, T. Charoenpot and C. Chernkwanna, ASEAN and Intellectual Property: Will a Complicated History Lead to a Certain Future?, 40 Loy. L.A. Int'l & Comp. L. Rev. 167 (2017) <http://digitalcommons.lmu.edu/ilr/vol40/iss2/2>

<sup>45</sup> C. Antons, Intellectual Property in ASEAN countries, European IP Review, Vol. 13 No. 3 (1991)

<sup>46</sup> IPR Enforcement in South-East Asia, South-East Asia IPR SME Helpdesk (2017), [https://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/EN\\_Enforcement.pdf](https://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/EN_Enforcement.pdf).

<sup>47</sup> Supra note 6, See Pp. 6

<sup>48</sup> Supra Note 6

<sup>49</sup> Supra Note 6, See Pp.7

<sup>50</sup> Supra Note 5

<sup>51</sup> Supra Note 5

## 2. Cost concerned and time period

The cost of obtaining Intellectual Property protection in the South East Asian region is exorbitantly high, which not only includes the cost of registration of patents, trademarks, copyrights, or industrial designs but also includes the cost of attorneys and translators.<sup>52</sup> Moreover, the average period required for registration of Intellectual Property in ASEAN is also high. There have been instances where companies obtained IP right in over a decade. In a consistently changing environment, extended time in getting IP registered can be harmful to the investors as it reduces their probable profits and increases the chances of piracy.

## 3. Public Awareness

The investors, wanting to invest in ASEAN, often complain of the lack of infrastructure to provide relevant knowledge to them regarding the procedures involved in processes, the status of applications, and rules and procedures in a universal language. Furthermore, the lack of adequate knowledge amongst the locals also hinders their rights and also lead to piracy, which is another big issue in the ASEAN.<sup>53</sup>

## 4. Piracy

Piracy or counterfeiting is one of the biggest concerns for the effective implementation of IP laws in ASEAN. The most affected among these rights is the trademark, which is exploited in this region. Formation of quick and effective measures to curb these practices is essential.<sup>54</sup>

## 5. International Standards

Harmonization in terms of compliance with international agreements and treaties is an essential part of any group to function. In the case of ASEAN, it is pertinent to mention that not all nations in the region are a part of standard protocols signed among the

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<sup>52</sup> Anthony De Andrade and V. Vishwanath, Patenting Costs in ASEAN: Upcoming Global Economic Powerhouse, IP Watchdog, (Apr. 17, 2017), <https://www.ipwatchdog.com/2017/04/07/patenting-costs-asean-upcoming-global-economic-powerhouse/id=81695/>; See also, Anthony De Andrade and V. Vishwanath, The Cost of Registering a Trademark in Southeast Asia, IP Watchdog, (Jan. 18, 2018), <https://www.ipwatchdog.com/2018/01/18/cost-register-trademark-southeast-asia/id=92311/>.

<sup>53</sup> N. Barizah, The Development of ASEAN's Intellectual Property Rights Law; From Trips Compliance to Harmonization, Indonesia Law Review (2017), <https://media.neliti.com/media/publications/62955-EN-the-development-of-aseans-intellectual-p.pdf>.

<sup>54</sup> Steve Morrish, counterfeiting in Asia – You Make It, They Fake It, SCMS, (May 17, 2016), <https://www.smcs-risk.com/counterfeiting-in-asia/>

nations.<sup>55</sup> Myanmar is yet to accede to the Madrid Protocol for trademark registration.<sup>56</sup> Furthermore, some ASEAN nations have not acceded to the Paris, and the Berne Convention.<sup>57</sup>

The disparity in terms of income, laws, administration, and justice delivery system in these countries affect the goals set by the ASEAN Economic Community. This hinders the strategies concerning economic integration between nations, single market, mutual development, tariff elimination, and overall facilitation of trade.<sup>58</sup>

Therefore, there is a huge need for reforms in the existing circumstances to bring a much-needed change so that the vision of the ASEAN Economic Community can be fulfilled.

## 5. Ceasing the impeder's

Outcome: This chapter will conclude by telling all the ways by which IP Infrastructure of ASEAN can be improved. The below suggestions are processed analytically and if implemented, it will not only improve the IP investment but will also help ASEAN to emerge out of the impeder's which not directly linked to IP industry but still are causing hindering effect in it (some mentioned in chapter 4). Every suggestion below is drafted in a way to ultimately increase the AEC 2025 goal through IP Development.

ASEAN must initiate a short and departmental program work to Improving patent, trademark, and industrial design services and Promote improvement of Intellectual Property (IP) services in terms of timeliness and quality of output<sup>59</sup>. This can be further extended by promoting the excellence of collective management organizations (CMOs) in transparency, accountability and governance.

ASEAN should explore the feasibility of harmonizing formality requirements<sup>60</sup> for trademarks

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<sup>55</sup> Supra Note 13

<sup>56</sup> A. Debray, Myanmar: Myanmar's new Trademark Law, Mondaq, (Feb. 11, 2020), <https://www.mondaq.com/trademark/892264/myanmar39s-new-trademark-law#:~:text=Myanmar%3A%20Myanmar's%20New%20Trademark%20Law&text=Myanmar%20already%20bear%20the%20brunt,ASEAN%20countries%20and%20international%20standards.>

<sup>57</sup> Supra Note 6

<sup>58</sup> ASEAN Economic Community Blueprint, Association of Southeast Asian Nations, (1967)

<sup>59</sup> Intellectual Property Interoperability and the ASEAN Way, in INTERNATIONAL INTELLECTUAL PROPERTY AND THE ASEAN WAY: PATHWAYS TO INTEROPERABILITY 1–78 (Elizabeth Siew-Kuan Ng & Graeme W. Austin eds., 2017).

<sup>60</sup> INTERNATIONAL INTELLECTUAL PROPERTY AND THE ASEAN WAY: PATHWAYS TO INTEROPERABILITY, (Elizabeth Siew-Kuan Ng & Graeme W. Austin eds., 2017).

and industrial designs across the region while seeing this a technology solution must be on priority. ASEAN Should Accede to international treaties: Madrid Protocol; Hague Agreement; and Patent Co-operation Treaty (PCT)<sup>61</sup>, this should be done by giving individual attention to each member states • Endeavour to accede to other World Intellectual Property Organisation (WIPO)-administered international treaties should be in the priority consideration.

During the implementation of the suggestions given above, some more points need to be taken care of which are mentioned below.

1. Create targeted and sustainable capacity building and office-initiated client-assistance programs linked to different levels of development, with particular focus on CLM (Cambodia, Lao People's Democratic Republic, and Myanmar<sup>62</sup>). As Myanmar remains on the locational advantage to access the Indian Market, it requires individual monitoring.
2. Develop a fresh cloud based technology network of integrated IP services for the region, including technology transfer offices and innovation technology support offices (patent libraries) As Singapore is the world's headquarters destination by doing the part mentioned above this can further manage the density of MNC's offices across the region <sup>63</sup>
3. Upgrade service delivery of AMSs (ASEAN Member state) through E-services, including copyright, trademark, patent and industrial design search systems, and E filing systems <sup>64</sup>
4. Acquire the AI integrated IT Technical assistance to improve quality of regional ceremonies, together with the development of an automated system for electronic conformity and dossier systems for trademarks; online filing; sharing of copyright and patent information through the establishment of regional copyright, trademark and patent databases, and updating an improvement of the local industrial design and trademark databases
5. Integrate and centralize the management of the ASEAN Intellectual Property Portal by ensuring that data related to regional IP Progress, including statistical data, is accurate and regularly updated (e.g., no. of filings, registrations, grants, pendency periods).It must

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<sup>61</sup> Patent Cooperation Treaty, 9 INTERNATIONAL LEGAL MATERIALS 978–1025 (1970).

<sup>62</sup> Kristina Jönsson, *Authoritarian States in Southeast Asia in Times of Globalization: Vietnam, Cambodia, Laos and Myanmar*, in GLOBALIZATION AND ITS COUNTER-FORCES IN SOUTHEAST ASIA 21–50 (2008).

<sup>63</sup> Michael A. Witt, *Corporate governance and initial public offerings in Singapore\**, in CORPORATE GOVERNANCE AND INITIAL PUBLIC OFFERINGS: AN INTERNATIONAL PERSPECTIVE 378–396 (Alessandro Zattoni & William Judge eds., 2012).

<sup>64</sup> Technology Transfer and Development in Asean: Machinery and Electronics Industries, in TECHNOLOGY AND SKILLS IN ASEAN: AN OVERVIEW 97–118 (1988).

be done in way to create a good public image and confidence This will attract outsiders who are tracing the development online<sup>65</sup>.

6. Implement all above solution with the Regional Action Plan on Intellectual Property Rights (IPR) Enforcement, creation of new action plan can be avoided, and the action plan which failed earlier due to poor implementation can be implemented this time more authentic monitoring with more political and administrative will <sup>66</sup>
7. Set up an ASEAN IP network (IP, judiciary, customs and other enforcement agencies) and Enhance internal and external ASEAN engagement <sup>67</sup>with external partners and stakeholders, including dialogue. Partners/consultations with the private sector/IP associations (e.g., ASEAN Intellectual Property Association, International Trademark Association, WIPO Singapore Office)
8. Develop a regional accreditation system for IP practitioners and IP enthusiast. Develop Intellectual Property valuation services to create awareness of the value of Intellectual Property as a financial asset, and this should be done very seriously as it will inevitably impact if done with international standards<sup>68</sup>.
9. Promote the commercialization of geographical indications (GIs) in ASEAN by improving the capacity of the productive sector in the development of protection and branding strategies and Promote a secure mechanism for Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (GRTKTCE)<sup>69</sup>
10. Lastly and importantly, ASEAN should change its previous trend and should follow a more inclusive attitude in regards to:
  - (i) Cultural, intellectual and artistic creativity and their commercialization;
  - (ii) Efficient adoption and adaptation of advanced technologies; and
  - (iii) Continuous, learning to meet the increasing expectations of stakeholders of AEC.<sup>70</sup>

<sup>65</sup> Ashish Arora, Andrea Fosfuri & Alfonso Gambardella, *Markets for Technology, Intellectual Property Rights, and Development*, in INTERNATIONAL PUBLIC GOODS AND TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME 321–336 (Keith E. Maskus & Jerome H. Reichman eds., 2005).

<sup>66</sup> Rodolfo C. Severino, *Institutional Development in ASEAN*, in ASEAN-CANADA FORUM 2008 55–62 (2010).

<sup>67</sup> Mahani Zainal Abidin & Firdaos Rosli, *Infrastructure Development in ASEAN*, in ASEAN ECONOMIC COMMUNITY SCORECARD: PERFORMANCE AND PERCEPTION 136–162 (2013).

<sup>68</sup> Bryan Mercurio, *Intellectual Property Rights, Trade, and Economic Development*, in LAW AND DEVELOPMENT PERSPECTIVE ON INTERNATIONAL TRADE LAW 49–80 (Yong-Shik Lee et al. eds., 2011).

<sup>69</sup> Elizabeth Siew-Kuan Ng, *ASEAN IP Harmonization: Striking the Delicate Balance*, 25 Pace Int'l L. Rev. 129 (2013)

<sup>70</sup> Sungjoon Cho & Jurgen Kurtz, *Legalizing the ASEAN Way: Adapting and Reimagining the ASEAN Investment Regime*, 66 Am. J. Comp. L. 233 (2018)

## Conclusion

**China remains** the Goliath of growing markets, with every fluctuation in its GDP making headlines around the world. But investors and global giants are increasingly turning their gaze southward to the ten dynamic markets that collaborate to make the promising Association of Southeast Asian Nations (ASEAN). The continuous increase in demand of this region has not only made them the best market to sell but also their increasing political will to expand and strategic location with India has attracted the global investors and manufacturing giants. As mentioned in chapter 1, it is apparent that how much Intellectual property is affecting the economy in a positive way and after reading chapter 2, we can claim the significance of ASEAN in future global trade. Hence after analysing the trends and the current ASEAN IP infrastructure and problems mentioned in trailing chapters, it is found that if ASEAN can implement the suggestions mentioned in chapter 5, it can not only push the achievements of its AEC 2025 goals but can also dominate the future markets. This paper concludes by determining the growing significance of intellectual property across the world, and how the same can be used for regional development by ASEAN to accomplish its personal goals like AEC goal of 2025

