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***“Cooperation in Intellectual Property and the ASEAN Way:
Challenges and Opportunities for the ASEAN Economic Community”***

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Cooperation in Intellectual Property and the ASEAN Way: Challenges and Opportunities for the ASEAN Economic Community

Abstract

According to the ASEAN Economic Community (AEC) Blueprint 2025, transforming ASEAN into a highly innovative and competitive region is set out as one of the characteristics and elements of the AEC. Furthermore, strengthening intellectual property (IP) cooperation is considered as one of the key elements of a competitive, innovative, and dynamic ASEAN. IP Cooperation has long been recognised as one of ASEAN's priority areas. By adopting the Framework Agreement on IP Cooperation in 1995 (the Framework Agreement), the member states agree to strengthen their IP cooperation at the regional level, and provide IP protection that is consistent with international standards. Furthermore, the possibility of creating a harmonised IP system in ASEAN has been stated as one of their commitments. Since the adoption of the Framework Agreement, various action plans on regional IP cooperation have been announced. Nevertheless, up to now, the goal of having a harmonised IP regime has never been achieved. The implementation of some initiatives, especially those relating to IP harmonisation, has not been accomplished before the deadline as provided in the relevant action plans. This results in delays in the overall implementation and prevents ASEAN from achieving its goal of strengthening regional IP cooperation within the set timeframe. This non-implementation could therefore make the ASEAN's commitment to IP cooperation non-binding. Given that the ASEAN Way, which gives much emphasis on the principle of national sovereignty, the principle of non-interference, and consensus-based decision-making, is highly preserved in ASEAN, it has been argued that this traditional practice is one of the major factors that foster habits of non-implementation among the member states. This would therefore make the ASEAN Way an obstacle to strengthening IP cooperation at the regional level instead of a facilitator. Thus, this article aims to clarify whether the ASEAN Way is an obstacle rather than a facilitator to ASEAN IP cooperation, as well as investigate challenges and opportunities in enhancing regional IP cooperation. Furthermore, if the ASEAN Way is assessed to be an obstacle, this paper will analyse how it should be modified to help ASEAN fully achieve its goal in strengthening regional IP cooperation, and thereby transform ASEAN into a highly innovative and competitive region.

1. Introduction

ASEAN recognised that in order to remain a relevant and competitive regional grouping in the global economy, a deeper level of regional integration is required.¹ Consequently, ASEAN committed itself to greater economic integration by establishing the ASEAN Economic Community (AEC) at the end of 2015. The AEC is one of the three pillars of the ASEAN Community. In addition to the AEC, ASEAN aims to establish the ASEAN Political-Security Community (APSC) and the ASEAN Socio-Cultural Community (ASCC) in order to fully establish the ASEAN Community.² The establishment of the AEC seeks to deepen economic integration by transforming ASEAN into a single market and production base. To achieve this goal, the free movement of goods, services, investment, capitals and skilled workers within the community are required.³ According to the ASEAN Vision 2025, deeper and broader economic integration would enable ASEAN to be “highly integrated and cohesive; competitive, innovative and dynamic; with enhanced connectivity and sectoral cooperation; and a more resilient, inclusive, and people-oriented, people-centred community, integrated with the global economy.”⁴

However, full-scale implementation of the AEC is still an ongoing process. There are still commitments which remain to be fulfilled. These unfulfilled commitments under the previous AEC Blueprint and post-2015 economic vision of ASEAN were incorporated into AEC Blueprint 2025, which serves as ASEAN’s roadmap for transforming ASEAN into a single market and production base. To ensure that goods can freely move within the community, both tariff and non-tariff barriers (NTBs) to trade must be removed. Significant progress has been made in tariff reduction.⁵ Nevertheless, removing NTBs remains challenging and is thereby considered the major impediment to achieving a single market. According to the ASEAN Community Vision 2025, ASEAN is committed to eliminating NTBs in order to establish a highly integrated community by 2025. Disparities in intellectual property (IP) laws among the member states can be considered as one of the common NTBs to trade that limit the free movement of goods. IP rights are essentially territorial and can be protected by the individual countries that have granted these rights.⁶ In other words, IP rights can be obtained and enforced on a country-by-country basis. Hence, the territorial nature of IP rights can be used to create barriers to cross-border trade, and thus adversely affect the creation of a common market.

Additionally, to transform ASEAN into an innovative and competitive region, ASEAN recognised that strengthening IP rights cooperation at the regional level was necessary. Various frameworks and cooperation among the ASEAN members, as well as joint projects between ASEAN and its dialogue partners were established to achieve this goal. However, ASEAN seems to face challenges and opportunities in intensifying regional cooperation in this area, especially in moving

¹ Lay Hwee Yeo, ‘Political Cooperation between the EU and ASEAN: Searching for a Long-Term Agenda and Joint Projects’ in Paul J.J. Welfens, Suthiphand Chirathivat, and Franz Knipping (eds), *EU-ASEAN: Facing Economic Globalisation* (Springer 2008) 53.

² ASEAN, *ASEAN Economic Community Blueprint* (ASEAN Secretariat, 2008) 5 <<https://www.asean.org/wp-content/uploads/images/archive/5187-10.pdf>> accessed 4 April 2022.

³ *Ibid.*, 6.

⁴ ASEAN, *ASEAN 2025: Forging Ahead Together* (ASEAN Secretariat 2015) 15.

⁵ ASEAN, *A Blueprint for Growth ASEAN Economic Community 2015: Progress and Key Achievements* (ASEAN Secretariat 2015) 10.

⁶ Lionel Bently and Brad Sherman, *Intellectual Property Law* (4th edn, OUP 2014) 6.

towards its goals in creating a harmonised regional IP system. The implementation of some initiatives, especially those relating to IP harmonisation, has not been accomplished in accordance with the deadline as provided in the ASEAN IPR Action Plan 2004–2010 and the ASEAN IPR Action Plan 2011–2015. This results in delays in the overall implementation of these initiative, and prevents ASEAN from achieving its goal of strengthening regional IP cooperation within the set timeframe. This non-implementation could therefore make ASEAN’s commitment to IP cooperation non-binding. Given that the ‘ASEAN Way’, which gives much emphasis on the principle of national sovereignty, the principle of non-interference, and consensus-based decision-making, is highly preserved in ASEAN, it has been argued that this traditional practice is one of the major factors that foster habits of non-implementation among the member states. This would therefore make the ASEAN Way an obstacle in fostering IP cooperation at the regional level instead of a facilitator. Thus, it has led to the debate on whether the ASEAN Way should be adapted to allow for increased participation and compliance. This would be a significant challenge and opportunity for ASEAN’s future in moving towards its goal of establishing a highly integrated economic community.

2. The AEC and the ASEAN Way

ASEAN officially launched the ASEAN Community on 31 December 2015, with three principal pillars: the aforementioned AEC, the APSC, and the ASCC. The acceleration of the establishment of the ASEAN Community in 2015 demonstrates a strong commitment of ASEAN members states in enhancing and deepening their political, economic, and social cooperation. However, although a clear common goal is set, a full realisation of the ASEAN Community would also depend on ASEAN’s traditional way of conducting its regional affairs, the so-called ASEAN Way.

2.1 Development of the AEC

ASEAN was established on 8 August 1967, by the 5 founding member countries, namely Indonesia, Malaysia, Philippines, Singapore and Thailand, who signed the “ASEAN Declaration”, otherwise known as the “Bangkok Declaration”, which was aimed at promoting social, economic, and cultural cooperation, strengthening stability in the region, and improving the quality of life of the citizens of the member states. At present, ASEAN consists of ten member countries. Brunei, Vietnam, Laos, Myanmar, and Cambodia joined ASEAN in 1984, 1995, 1997 and 1999 respectively, but ASEAN may expand in the future by accepting more members. Timor-Leste has been applying for formal ASEAN membership since 2011. However, due to opposition from some member nations, consensus on accepting the new member cannot be reached. They are concerned with Timor-Leste’s capacity in complying with all the obligations of the membership.⁷ Consequently, Timor-Leste is the only country in Southeast Asia that has not yet joined ASEAN.

The ASEAN member countries can be divided into two major groups, namely the ASEAN-6 and ‘CLMV’. The ASEAN-6 countries, which are the former member countries with higher levels of socio-economic development, include Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Brunei. The CLMV countries, which are the new member countries with lower levels of socio-economic development, consist of Cambodia, Laos, Myanmar, and Vietnam. By expanding the

⁷ Mutiara Windraskinasi and Arie Afriansyah, ‘The Struggle of Becoming the 11th Member State of ASEAN: Timor Leste’s Case’, (2017) 5 *Brawijaya Law Journal* 74, 94.

organisation to cover almost all Southeast Asian countries, ASEAN will receive many benefits, especially economic benefits. Such expansion would increase the region's economic and political bargaining power and result in a larger ASEAN market. This will increase the competitiveness of ASEAN in the world market.

It was found that there is a significant income gap between the ASEAN countries, particularly between the high-income countries (such as Singapore and Brunei) and low-income countries (such as Myanmar and Cambodia). According to the World Bank data on gross domestic product (GDP) per capita in 2020, Singapore had the highest GDP per capita of US\$59,797.752 followed by Brunei with US\$27,442.954.⁸ Myanmar had the lowest GDP per capita of US\$1,467.604.⁹ There is also a noteworthy gap between the ASEAN member countries in their levels of human and social development.¹⁰ The 2020 Human Development Report by the United Nations Development Programme (UNDP) contains indicators that reflect the levels of health, education, income, and poverty of each country—generally summarised through the Human Development Index (HDI). In this report, Singapore, Brunei, and Malaysia were ranked and classified as ‘very high human development’ countries; Singapore was ranked 11th on the HDI, while Brunei and Malaysia were ranked 47th and 62th, respectively. A high HDI ranking indicates that a country has high achievements in human development: it is a country whose citizens enjoy “a long and healthy life, being knowledgeable and have a decent standard of living”.¹¹ On the contrary, Myanmar was ranked 147th out of 189, which is the lowest ranking of any ASEAN country. Myanmar was categorised as a ‘medium human development’ country. The other ASEAN countries are classified as ‘high human development’ or ‘medium human development’ countries: Thailand, Philippines, Indonesia, and Vietnam were considered to be ‘high human development’ countries, while Cambodia and Laos were classified as ‘medium human development’ countries, the same group as Myanmar. These statistics show that ASEAN countries still have wide disparities in quality of life. Furthermore, the gap is significantly wider between the ASEAN-6 and CLMV countries, particularly between the highly-developed country, Singapore and the less developed countries, Cambodia and Myanmar.

The establishment of the AEC in 2015 was considered “a major milestone in the regional economic integration agenda in ASEAN”.¹² However, the December 2015 deadline for realising the core pillars of the AEC has passed, and there are still remaining unfinished measures that need to be implemented. As of 31 October 2015, the implementation rate of the full AEC Scorecard stood at 79.5%.¹³ This is not beyond expectation. The 2015 deadline was described to be overly

⁸ World Bank, ‘GDP per capita (current US\$)’ <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>> accessed 10 January 2022.

⁹ *Ibid.*

¹⁰ David Carpenter and Izyani Zulkifli and Mark McGullivray, ‘Narrowing the Development Gap in ASEAN: Context and Approach’ in Mark McGillivray and David Carpenter (eds), *Narrowing the Development Gap in ASEAN: Drivers and Policy Options* (Routledge 2013) 3.

¹¹ UNDP, ‘Human Development Index (HDI)’ <<http://hdr.undp.org/en/content/latest-human-development-index-ranking>> accessed 10 January 2022.

¹² ASEAN, ‘ASEAN Economic Community’ <<https://asean2021.bn/asean/about-asean/asean-community/asean-economic-community#:~:text=The%20establishment%20of%20the%20ASEAN,and%20over%20622%20million%20people.>> accessed 4 April 2022.

¹³ ASEAN, *A Blueprint for Growth ASEAN Economic Community 2015: Progress and Key Achievements* (ASEAN Secretariat 2015) 10.

optimistic.¹⁴ Jayant Menon, lead economist from the Office of Regional Economic Integration at the Asian Development Bank (ADB), opined that: ‘it’s highly unlikely that the ASEAN will meet all the targets by 2015. That’s quite clear. Even the ASEAN scorecards show that. A more realistic deadline, keeping in mind the new member-countries, will be 2025.’ To build on the AEC Blueprint 2015, the AEC Blueprint 2025 was adopted at the 27th ASEAN Summit by the ASEAN Leaders. It provides broad directions for the next phase of ASEAN economic integration from 2016 to 2025. According to the AEC Blueprint 2025, transforming ASEAN into a highly innovative and competitive region is set out as one of the characteristics and elements of AEC. To further deepen economic integration, ASEAN aims to create a stable, prosperous, and highly competitive region. Enhancing regional cooperation in IP rights is considered as one of the core elements in helping ASEAN move towards its goal in establishing a highly competitive region.

2.2 Fundamental Principles of the ASEAN Way

ASEAN’s loose and informal cooperation is known as the ASEAN Way, which was defined as “a process of regional interactions and cooperation based on discreteness, informality, consensus building and non-confrontational bargaining styles”.¹⁵ The ASEAN Way of cooperation is a long-standing norm and decision-making process of ASEAN that seeks to to enhance cooperation among member states and build regional peace and stability. It consists of three important principles, namely the principle of respect for national sovereignty, the principle of non-interference, and the principle of consensus. These can be considered as fundamental principles for all the member states in ASEAN.

2.2.1 The Principle of Respect for National Sovereignty

ASEAN places much emphasis on national sovereignty of the member states in its decision-making process. The member states tend to prioritise state autonomy over the ASEAN community as a whole.¹⁶ They are reluctant to conduct regional affairs that could undermine sovereignty of the member states. This might be because of the region’s history of colonisation; save for Thailand, all ASEAN members have previously been colonised by Western countries. Therefore, limiting national sovereignty is a sensitive issue among ASEAN member states. ASEAN remains an intergovernmental organisation, and is not a supranational organisation like the European Union (EU). In the EU, all EU members give consent to limit some part of their sovereignty, and transfer it to a regional institution for the benefit of the union. This approach can avoid delays in implementation of its initiatives and plans, and helps the EU achieve a greater level of institutionalisation compared to other regional institutions. For ASEAN, the adoption of the ASEAN Charter, a legal framework which is considered a Constitution in ASEAN, was a significant step in its pursuit of becoming a more rule-based organisation. Nevertheless, high preservation of national sovereignty “make[s] ASEAN’s goal for deeper integration a goal in name

¹⁴ ‘South-East Asia Summit 2014 Summary’ (2014) *The Economist* 2014 2.

¹⁵ Amitav Acharya, *Constructing a Security Community in South East Asia: ASEAN and the Problem of Regional Order* (Routledge 2014) 63.

¹⁶ Jürgen Rüländ, “Southeast Asian regionalism and global governance: ‘multilateral utility’ or ‘hedging utility’?” 33 *Contemporary Southeast Asia*, at 83-112.

and form only”.¹⁷ Consequently, despite the ASEAN Charter coming into force, ASEAN still remains an intergovernmental organisation.

2.2.2 The Principle of Non-Interference

The principle of non-interference is the most prominent feature of the traditional ASEAN Way. ASEAN members agree not to interfere in one another’s internal affairs. This principle helps to build trust among the member states. The adoption of non-interference can help reduce conflicts and maintain stability between member states. However, ASEAN’s adherence to non-interference is seen as a major obstacle for ASEAN in dealing with affairs both inside and outside the region.¹⁸ The decision-making process relies mostly on “friendship rather than power, stability rather than adventurism”,¹⁹ and indeed, ASEAN tends to use informal communication to negotiate, which imposes non-legally binding obligations.²⁰ Non-binding commitments have led to a problem of non-implementation.²¹ Therefore, this principle has been perceived as one of the reasons that has led to loose and overly-flexible regional cooperation, thereby causing the integration process to fall further behind schedule.²²

2.2.3 The Principle of Consensus

ASEAN’s decision-making process, i.e. the ASEAN Way, is still mainly based on the traditional principles of consultation and consensus. This was defined as a process which ensures that “each and every action taken in the name of ASEAN must either contribute to or be neutral, but not detract from, the perceived national interests of the individual ASEAN member state.”²³ The consensus procedure does not mean that unanimity has to be found.²⁴ Not all member states have to agree explicitly since consensus can be reached so long as member states’ interests are not disregarded.²⁵ However, this might be harder to achieve when all ten members’ national interests are at stake.²⁶ This is further compounded if the member states are at different levels of development, especially where social, economic, and legal aspects, are involved. This process may lead to decision paralysis.

Therefore, it was suggested that to facilitate more effective decision-making ASEAN should move away from consensus-based decision-making and adopt more flexible mechanisms.²⁷ For instance,

¹⁷ Lay Hong Tan, “Will ASEAN Economic Integration Progress beyond a Free Trade Area?” (2004), 53 ICLQ (2004), 935-967.

¹⁸ S. S. TAN, “Is Asia-Pacific regionalism outgrowing ASEAN?” (2011) 156 The RUSI Journal 58-62.

¹⁹ Rodrigo Tavares, *Regional Security: The Capacity of International Organizations* (Routledge 2010) 87.

²⁰ Yi-Hung Chiou, ‘Unraveling the Logic of ASEAN’s Decision-Making: Theoretical Analysis and Case Examination’ (2010) 2 Asian Politics & Policy 371, 374.

²¹ Takeshi Yuzawa, “The Fallacy of Socialization?: Rethinking the ASEAN Way of Institution-building” in Ralf Emmers (ed), *ASEAN and the Institutionalization of East Asia* (Routledge 2011) 87.

²² *Ibid.*

²³ *Bilson Kurus, ‘The ASEAN Triad: National Interest, Consensus-Seeking, and Economic Co-operation’* (1995) 16 Contemporary Southeast Asia 404, 405.

²⁴ Rodolfo C. Severino, *Southeast Asia in Search of an ASEAN Community: Insights from the Former ASEAN Secretary-general* (Institute of Southeast Asian Studies 2006) 34.

²⁵ *The Straits Times* (Singapore), November 13, 1994, 17.

²⁶ Alan Collins, *The Security Dilemmas of Southeast Asia* (Palgrave Macmillan 2000) 119.

²⁷ ASEAN, “Report of the Eminent Group on the ASEAN Charter” (December 2006) 6.

when consensus can not be achieved, decisions should be made through voting.²⁸ Also, the ‘ASEAN minus-x’ formula, which had been occasionally used in economic matters,²⁹ should be adopted in other areas of regional integration, subject to the discretion of the relevant ASEAN Community Councils³⁰ However, consensus-based decision-making should still be applied to all sensitive important issues.³¹

It can be seen that ASEAN places much emphasis on national sovereignty of the member states in its decision-making process. ASEAN member countries tend to prioritise state autonomy over the ASEAN Community as a whole.³² In other words, ASEAN is reluctant to conduct regional affairs that could undermine sovereignty of the member states. ASEAN’s decision-making is also largely non-binding, and therefore lead to a problem of non-implementation.³³ This supports the view that “many ASEAN agreements were never intended to be implemented”.³⁴ Additionally, the adoption of a non-interference policy is seen as a major obstacle for ASEAN in dealing with affairs outside the region.³⁵ The ASEAN Way can have negative effects on its decision-making process. Strict reliance on the consensus-based decision-making process, the need to preserve national sovereignty, and non-interference with other members’ internal affairs can limit success in regional affairs and adversely affect ASEAN’s overall effectiveness. This could obstruct ASEAN’s effort to deepen integration and fully establish the ASEAN Community.

Nevertheless, these key principles of the ASEAN Way are enshrined in the ASEAN Charter. According to the Preamble, member states agree to respect the principles of sovereignty, non-interference, and consensus. ASEAN has been criticised for re-emphasising these traditional practices in the ASEAN Charter, which was supposed to provide a legal framework for ASEAN to achieve further institutionalisation and improve its operational efficiency. As the ASEAN Charter has entered into force, ASEAN has been conferred a legal entity separate and independent of the member states. The Charter also aims to transform ASEAN from a loose and informal organisation to a more rule-based organisation.³⁶ However, it becomes questionable whether the traditional ASEAN Way of cooperation is still appropriate for ASEAN in pursuing deeper regional integration. Although the ASEAN Way can lead to less conflict and ensures stability among members, it is an “ineffective and inefficient” mechanism in solving problems at the regional level.³⁷ Strict adherence to the principles of national sovereignty, non-interference, and consensus may no longer be suitable for ASEAN in moving towards a fully-fledged ASEAN Community, which requires greater institutionalisation and closer cooperation from all member states. Thus, if

²⁸ *Ibid.*

²⁹ Avery Dorothy Howard Poole, ‘Institutional Change in Regional Organizations: The Emergence and Evolution of ASEAN Norms’ (DPhil thesis, University of British Columbia 2013) at 106-107.

³⁰ ASEAN, ‘Report of the Eminent Group on the ASEAN Charter’, *supra* 27.

³¹ *Ibid.*

³² Rüländ, *supra* 16.

³³ Yuzawa, *supra* 21.

³⁴ Simon Chesterman, *From Community to Compliance?: The Evolution of Monitoring Obligations in ASEAN* (Cambridge University Press 2015) 10.

³⁵ Tan, *supra* 18.

³⁶ Yeo Lay Hwee, “From AFTA to ASEAN Economic Community - Is ASEAN Moving Towards EU-Style Economic Integration?” in Finn Laursen (ed), *Comparative Regional Integration: Europe and Beyond* (Ashgate Publishing 2010) 221.

³⁷ ASEAN, ‘ASEAN-10: Meeting the Challenges, by Termsak Chalermpanupap’ <<http://www.asean.org/asean-10-meeting-the-challenges-by-termsak-chalermpanupap/>> accessed 10 December 2021.

the ASEAN Way continues to prevent rather than enable deeper regional integration, adaptation of this long-standing practice would be required.

3. IP Protection in ASEAN

IP laws among the ASEAN countries have developed diversely. At the early stage of IP development in ASEAN countries, their IP laws were developed based on colonial histories and backgrounds. IP laws of all the ASEAN members, except for Thailand, which was never colonised, were modelled from their mother country. For instance, Indonesia's first copyright law, also known as the Copyright Law 1982, was influenced by Dutch law and that of other European countries.³⁸ Myanmar's Copyright Act 1914 was developed based on the United Kingdom's Copyright Act 1911.³⁹ Moreover, it is inevitable that the level of social and economic development is interrelated with a country's in setting up IP policies and standards. Countries with a high level of development tend to provide strong IP protection and enforcement, whereas less developed countries usually have weaker IP regimes. However, after the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), a significant international instrument of IP rights, was adopted, the ASEAN members states that were members of the World Trade Organisation (WTO) were required to further reform their IP laws to conform to the standard set by the TRIPs Agreement. That said, the TRIPs Agreement specified the minimum standard of IP protection at an international level, and obliged all WTO member countries to comply with it and implement it in their national laws. Therefore, IP protection among the ASEAN countries became further homogenised.

Nevertheless, although most ASEAN countries have since enacted comprehensive IP laws that are consistent with international standards, ASEAN's developing and least developed countries still struggle with IP administration and enforcement. A lack of funds, experience, resources, and infrastructure contribute to ineffective administration and rampant IP infringement particularly copyright and trademark infringement.⁴⁰ Thus, a wide gap in the development of IP protection and enforcement among the ASEAN countries remains. Furthermore, the gap is significantly wider between ASEAN's developed countries like Singapore, and ASEAN least developed countries such as Myanmar. By way of illustration, in signing a Free Trade Agreement (FTA) with the United States (US), some forms of IP protection in Singapore exceeds the standard set by the TRIPs Agreement. Meanwhile, the IP regime in Myanmar remains below international minimum standards.

All in all, the standardisation of IP laws in ASEAN is trending upward. The current trend throughout the world is to use bilateral trade agreement, especially FTAs. FTAs will result in ASEAN members having to increase their level of IP protection beyond the TRIPs Agreement in order to maintain good relations with their trade partners. This could impose a significant burden on ASEAN countries, particularly ASEAN's developing and least developed countries, to immediately reform their IP systems to provide a matching level of protection. These countries

³⁸ Assafa Endeshaw, *Intellectual Property in Asian Emerging Economies: Law and Policy in the Post-Trips Era* (Ashgate Publishing 2010) 15.

³⁹ Chongnang Wiputhanpong, 'Copyright is an engine of free expression' or 'free expression is an engine of copyright?' in Susy Frankel (ed), *Is Intellectual Property Pluralism Functional?* (Edward Elgar Publishing 2019) 366.

⁴⁰ Nurul Barizah, 'The Development of ASEAN's Intellectual Property Rights Law; From TRIPS Compliance to Harmonization' (2017) 7 *Indonesia Law Review* 95, 100-106.

generally lack of sufficient administrative capacity and infrastructure to implement these standards. Moreover, overly stringent standards in some areas, particularly in pharmaceutical patents, could result in limited access to vital medicine at affordable prices.⁴¹ This would be contrary to the public interest. Thus, before signing any trade agreement providing TRIPs Agreement-plus obligations, ASEAN countries, particularly its developing and least developed members, should carefully weigh potential trade benefits of an agreement against their readiness and capacity to implement an agreement, and the overall impact it will have on the public interest of their country.

4. The Development of ASEAN Cooperation on IP

The establishment of the AEC shows ASEAN's strong commitment towards deepening economic cooperation. One of the ASEAN's major forms of economic cooperation is in its IP initiatives. ASEAN member countries are aware of the importance of IP, which is proven to be one of the important factors that can enhance competitive capacity and economic development of a country. Therefore, cooperation in IP has been continuously pursued through collaboration between the ASEAN member countries, as well as collaboration between ASEAN and its major trading partners.

To foster deeper economic integration, further harmonisation of laws is required.⁴² According to Singapore's Minister for Home Affairs and Law, K. Shanmugam, harmonisation of legal rules can help to "remove uncertainty, reduce cost, generate greater business confidence, and ultimately advance ASEAN community-building goals".⁴³ Regionalising laws, particularly those relating to trade and investment is crucial to facilitate the free movement of goods, services, capital and labour within the ASEAN common market.⁴⁴ Among all areas, the harmonisation of IP laws and the establishment of AEC are prime objectives and challenges of ASEAN.⁴⁵ To ensure that IP rights granted by member states do not create barriers to trade, harmonisation of member states' laws on IP rights is necessary. Since IP rights are limited to the territory of the state granting it, disparity in Member States' national IP law would be an obstacle to a well-functioning common market. Given these factors, internal and external cooperation with significant trading partners has been developed to pursue a higher level of IP harmonisation.

4.1 Internal Cooperation

4.1.1 The Framework Agreement

⁴¹ Jennifer Anna Sellin, 'Does One Size Fits All? Patents, the Rights to Health and Access to Medicines' (2015) 62 *Neth Int Law Rev* 445, 464.

⁴² NG Jing Yng, 'Rule of law key for ASEAN's progress, says Shanmugam' (20 June 2012) *Today Online* <<http://www.todayonline.com/world/asia/rule-law-key-aseans-progress-says-shanmugam>> accessed 10 January 2022.

⁴³ *Ibid.*

⁴⁴ Lawan Thanadsillapakul, 'The Harmonisation of ASEAN Competition Laws and Policy and Economic Integration' (2004) 9 *Unif L Rev* ns 479, 480.

⁴⁵ Thomas J. Treutler, Siraprapha Rungpry, and Anh Mai Duong, 'Implications of the AEC in the IP field' (2012) *Thai-Norwegian Business Review* 18.

The Framework Agreement, which entered into force in 1995, was an important first step for ASEAN in establishing a clear regional framework for intellectual property cooperation. The main objective of the Framework Agreement is to promote cooperation on IP within ASEAN, as well as promoting the protection of IP in accordance with international standards.⁴⁶ It is also stipulated to study the feasibility of establishing an ASEAN patent and trademark system, as well as the establishment of the ASEAN Patent and Trademark Office.

Furthermore, in 1996, the ASEAN Working Group on IP Cooperation (AWGIPC), comprising of IP offices of the ASEAN members, was established. The AWGIPC is actively involved in developing and implementing IP programs to improve capacity and collaboration among member states as well as dialogue partners and organisations. For instance, to explore the possibility in establishing regional trademark and patent system, the ASEAN Patent Expert Group and the ASEAN Trademark Experts Group were established by AWGIPC.⁴⁷

However, ASEAN has not yet achieved the goal of establishing a regional IP system system. The Framework Agreement is considered as an important starting point for fostering closer cooperation among the member states and initiating the idea of integrating the IP regimes at regional level. However, further steps and instruments, such as ASEAN Intellectual Property Rights (IPR) Action Plans, have and should been adopted in order to build on regional cooperation.

4.1.2 ASEAN IPR Action Plans

From 2004 to the present, ASEAN Member States have jointly developed three ASEAN Intellectual Property Action Plans, namely, ASEAN IPR Action Plan 2004-2010, ASEAN IPR Action Plan 2011-2015, and ASEAN IPR Action Plan 2016-2025, to promote more in-depth cooperation on IP in the region.

ASEAN recognised that in order to firmly establish the AEC, IP cooperation, in particular, creating a strong and more unified IP systems, is one of the important tasks of ASEAN. Therefore, the development and implementation of ASEAN IPR Action Plans are considered important steps in bringing ASEAN towards strengthening cooperation in enhancing IP protection in ASEAN to meet international standards. There have been several action plans on IP covering these aspects. For instance, one of the key goals that has been established since the beginning was the establishment of a more unified IP system. As can be seen from the ASEAN IPR Action Plan 2004-2010, it is clearly stated that one of the important tasks is to explore the feasibility of establishing an ASEAN regional trademark and design system⁴⁸, as well as acceding to important international IP agreements such as the Madrid Protocol, the Hague Agreement, the Paris Convention, the Paris Convention, and the Berne Convention and the Patent Cooperation Treaty (PCT). This is to enhance the protection of IP laws of member countries in accordance with international standards. However, despite providing a clear framework for strengthening regional IP cooperation, ASEAN

⁴⁶ See Article 1 of the ASEAN Framework Agreement on Intellectual Property Cooperation, ASEAN Secretariat, <<https://asean.org/wp-content/uploads/2021/01/ASEAN-FRAMEWORK-AGREEMENT-ON-INTELLECTUAL-PROPERTY-COOPERATION-BANGKOK-15-DECEMBER-1995..pdf>> accessed 22 April 2022.

⁴⁷ *Ibid.*

⁴⁸ ASEAN Secretariat, ‘ASEAN IPR Action Plan 2004-2010’ (2004), 4 <http://www.ecap3.org/sites/default/files/IP_resources/ASEAN%20IP%20Rights%20Action%20Plan%202004-2010.pdf> accessed 18 April 2022.

did not attain its goal of establishing a regional trademark and design system within its established timeframe. Different levels of IP protection and enforcement, due to each country's differing capacity to carry out its commitment, and different levels of economic development all contributed to the failure to achieve this goal. Therefore, to continue these missions, ASEAN has, therefore, continuously developed, and enforced an action plan on IP rights until the present.

Another major development in regional IP cooperation can be the completion of the ASEAN IPR Action Plan 2011-2015 and the adoption of the ASEAN IPR Action Plan 2016-2025. It was found that the ASEAN IPR Action Plan 2011-2015 provides a clear framework covering various aspects of regional cooperation in IP rights. However, it adopts a more flexible approach than the previous plan, which resolved to establish a region-wide IP system. ASEAN departed from this ambitious goal under the ASEAN IPR Action Plan 2011-2015. The diversity of IP standards among ASEAN members is considered as a major factor inhibiting regional IP integration. Therefore, the ASEAN IPR Action Plan 2011-2015 strived to improve IP infrastructure, promote closer intra-ASEAN IP cooperation and cooperation between ASEAN and its external partners, and approximate national IP laws of the member states through an accession to major international IP treaties.⁴⁹ Having more flexible IP cooperation policies under the ASEAN IPR Action Plan 2011-2015 implied that creating an ASEAN-wide IP system was not realistic at that moment.

However, according to current 10-year ASEAN IPR Action Plan 2016-2025, which identifies strategic goals and initiatives that will help ASEAN become a more innovative and competitive region through the use of IP, there is a clearer indication of pursuing a greater level of IP harmonisation among the member states such as having a plan to develop online filing system for trademarks and explore possibility of establishing regional trademark system. Therefore, to ensure that all initiative can be achieved within the set time frame, it would be essential for ASEAN to strengthen the role of its monitoring mechanisms to ensure compliance with ASEAN's commitment. To achieve this, enhancing the administrative capacities of its member states is required in order to ensure that all the member states have ability to fully implement and participate in all ASEAN IP initiatives and commitments. Sufficient knowledge, resources, and strong will are necessary. More assistance from the more developed members is needed. Furthermore, the ASEAN Way should be interpreted in a more flexible way.

Furthermore, the ASEAN IPR Action Plan 2016-2025 is in line with the AEC Blueprint 2025, which aims to strengthen IP cooperation and use it as a tool to enhancing the socio-economic statuses of the member states.⁵⁰ That said, it aims to use IP as one of the key factors in enhancing competitiveness and promoting economic development of member countries through the four strategic goals. Firstly, ASEAN will develop a more robust IP system through strengthening IP offices and building IP infrastructures among the member states.⁵¹ For instance, the feasibility in developing a common set of formality requirements for trademarks and industrial designs across

⁴⁹ ASEAN Secretariat, 'ASEAN IPR Action Plan 2011-2015' (2011).

⁵⁰ ASEAN, ASEAN 2025: Forging Ahead Together (ASEAN Secretariat 2015) 14.

⁵¹ ASEAN IPA, 'The ASEAN Intellectual Property Rights Action Plan 2016-2025' (ASEAN IPA Annual Meeting & Conference, Kuala Lumpur, Malaysia, 4-6 March 2016) <<http://www.aseanipa.org/attachments/article/653/01.%20AWGIPC-ASEAN%20IP%20Plan.pdf>> accessed 15 January 2022.

the region will be explored.⁵² Initiative in acceding to the international treaties such as the Madrid Protocol, the PCT, the Hague Agreement, and other World Intellectual Property Organisation (WIPO) administered treaties will still remain for the remaining ASEAN countries that failed to join these treaties within the set timeframe in the previous action plan.⁵³ Also, programmes to enhance capacity-building will be developed through the establishment of the ASEAN IP Academy, with special focus on Cambodia, Laos, and Myanmar.⁵⁴ Secondly, regional IP platforms will be developed to contribute to enhancing the AEC.⁵⁵ For instance, to achieve this goal, the possibility of creating an ASEAN trademark registration system will be explored.⁵⁶ Additionally, implementation of an online filing system for IP rights such as trademarks, industrial designs, and trademarks will be pursued.⁵⁷ Establishing a regional network of patent libraries within schools and universities in ASEAN countries also included in this strategic goal.⁵⁸ Thirdly, an expanded and inclusive ASEAN IP ecosystem will be developed.⁵⁹ To enhance regional cooperation on IP rights enforcement, an ASEAN IP network (encompassing IP, judiciary, customs, and other enforcement agencies) will be established.⁶⁰ Lastly, to promote awareness of the value of IP as a financial asset and commercialisation, particularly in the area of geographical indications (GIs), regional mechanisms will be developed.⁶¹ For instance, establishing regional mechanisms in assisting GI protection in ASEAN and foreign market will be explored.⁶²

All in all, the ASEAN IPR Action Plan 2016-2025 contains clearers indication of how the region will harmonise IP laws among the member states. These include implementing an online trademark filing system, studying the prospect of establishing a regional trademark system, and creating a regional mechanism to assist GI protection in the region. If these initiatives can be achieved, it would help decrease the number of discrepancies in IP regimes among ASEAN members states, and thereby facilitate the establishment of a harmonised, regional IP system.

4.1.3 Other Cooperative Action Plans

In addition to the ASEAN IPR Action Plans, regional cooperation in IP can also be found in the ASEAN Digital Integration Framework Action Plan (DIFAP) 2019-2025. According to the DIFAP 2019-2025, ASEAN aims to develop coordination mechanisms to enhance enforcement of IP rights in the digital environment. To achieve this initiative, various regional workshops were organised to help enhancing IP enforcement, especially in combating IP infringement in response to the advanced technology.⁶³

⁵² ASEAN, ‘ASEAN IPR Action Plan 2015-2025’ (2021) 5, <<https://www.aseanip.org/Portals/0/PDF/ASEAN%20IPR%20Action%20Plan%202016-2025%20v2.0.pdf?ver=2021-06-10-135518-427>> accessed 18 April 2022.

⁵³ *Ibid.*

⁵⁴ ASEAN IPA, *supra* 51.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ ASEAN, *supra* 52.

⁵⁸ ASEAN IPA, *supra* 51.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ ASEAN, ‘ASEAN Digital Integration Framework Action Plan (DIFAP) 2019-2025’ (2019) 6.

Other initiatives in IP cooperation can also be found in the ASEAN Innovation Roadmap 2019-2025, which is expected to be used as a guideline in building the ASEAN Innovation Community.⁶⁴

4.2 External Cooperation

ASEAN has various dialogue partners that have supported and assisted the strengthening of its IP system. In addition to IP cooperation among ASEAN member states, there is also an important cooperation arising from cooperation between ASEAN and international organisations such as the WIPO, and important trading partners such as, the EU, the US,⁶⁵ and Japan.⁶⁶

For instance, to improve the region's legal environment for protecting IP, ASEAN established a cooperation programme with the WIPO. Various initiatives were adopted such as helping ASEAN in formulating the ASEAN Framework Agreement on IP Cooperation. A study was conducted by the WIPO on the impact and implications of IP developments on the ASEAN Free Trade Agreement (AFTA). Moreover, relevant national or ASEAN meetings/seminars on various IPR problems were organised by WIPO.⁶⁷

Among ASEAN dialogue partners, the EU is regarded as one of the most committed partners. ASEAN's first cooperation project with the EU was called the ASEAN Intellectual Property Rights Co-operation Programme (ECAP I), which was effective from 1993 to 1997. This programme was the first collaboration in IP that brought ASEAN countries together.⁶⁸ ECAP I focused on improving national IP systems by providing advisory services, training courses, seminars and workshops, and establishing a programme to study in/visit the EU.⁶⁹ This resulted in modernisation of IP protection and enforcement in ASEAN.⁷⁰

In 2000 to 2007, the second phase of the EC-ASEAN IPR Cooperation Programme (ECAP II) followed. Its purpose was to further assist ASEAN's harmonisation efforts and enhance the IP rights capacity of its members. ECAP II expanded its objectives to cover all areas of IP rights, namely copyright and related rights, patents, trademarks, industrial designs, GIs, layout designs of integrated circuits and protection of undisclosed information. Myanmar was the only ASEAN

⁶⁴ ASEAN, 'Intellectual Property Rights', <<https://asean.org/asean2020/our-communities/economic-community%E2%80%8B/competitive-innovative-and-inclusive-economic-region/intellectual-property-rights/>> accessed 15 January 2022.

⁶⁵ See US Mission to ASEAN, 'ASEAN and U.S. Patent & Trademark Office Host Advanced Workshop on Enforcement of Intellectual Property Rights (IPR) Against Trade in Counterfeit' <https://asean.usmission.gov/asean-and-u-s-patent-trademark-office-host-advanced-workshop-on-enforcement-of-intellectual-property-rights-ipr-against-trade-in-counterfeit-good/> accessed 18 April 2022.

⁶⁶ See Ministry of Industry, Trade and Economy, 'Enhancement of Japan-ASEAN IP Cooperation' https://www.meti.go.jp/english/press/2021/0803_002.html assessed 18 April 2022.

⁶⁷ ASEAN, *supra* 64.

⁶⁸ ECAP III, 'ECAP Project Overview (1993-2016)' <<http://www.ecap3.org/about/ecap-project-overview-1993-2016.html>> accessed 5 April 2022.

⁶⁹ *Ibid.*

⁷⁰ ASEAN, 'Cooperation in Intellectual Property' <<https://asean.org/cooperation-in-intellectual-property/#:~:text=In%20the%20area%20of%20external,property%20protection%20in%20the%20region>> accessed 5 April 2022.

country that did not participate.⁷¹ Therefore, compared to the previous phase, ECAP II provided broader objectives and was carried out in closer cooperation among the ASEAN members. By adopting ECAP II, IP legislative frameworks and administrative procedures in the ASEAN countries have been significantly improved.⁷² Most IP laws became more consistent with international standards, particularly with the TRIPs Agreement.⁷³ For instance, Malaysian IP officials claimed that ECAP II was “a decisive contribution to the modernisation of Malaysia’s IP legal framework in line with international standards”.⁷⁴ This demonstrates the significant contribution that closer cooperation between the EU and ASEAN can have.

The third phase of the EC-ASEAN IPR Cooperation Programme was adopted in 2010 (ECAP III).⁷⁵ The ECAP III strove to build on the achievements and lessons derived from ECAP I and ECAP II. It endeavored to further integrate ASEAN into the global economy and to facilitate IP integration at the regional level.⁷⁶ Consequently, various activities were organised to enhance the capacity of ASEAN countries to deal with IP enforcement and to harmonise IP rights at the regional level. It focused on regional IP harmonisation in the areas of trademarks, industrial designs, GIs, including IP enforcement.⁷⁷ As a result, various initiatives were introduced to strengthen regional cooperation and help achieve further IP harmonisation. Moreover, it recognised diversity in the capacity of the ASEAN member states, and programmes were implemented which specifically took this into account. Particular attention was given to the ASEAN least developed countries to help them effectively and fully participate in these projects.⁷⁸ For instance, it was reported that the implementation of ECAP III has helped Cambodia improve capacity and efficiency of national IP institutions, thereby improving overall IP administration.⁷⁹ This would help ASEAN gradually and carefully proceed toward IP harmonisation and create a balanced IP system within the region.

Continuous cooperation through ECAP I-III has led to significant achievements in the pursuit of regional integration and further harmonisation of ASEAN’s IP regime.⁸⁰ For instance, an ASEAN online trademark information tool (TMview) was launched in 2014. It was developed by the IP offices of ASEAN countries with support from the EU’s Intellectual Property Office (EUIPO). TMview provides users free access to information on trademark registration and applications in all ASEAN countries except for Myanmar.⁸¹ This enables ASEAN countries to exhibit the

⁷¹ The Evaluation Unit, ‘Evaluation of EC co-operation with ASEAN’ (2009) Final Report, Volume 2, 25 <<http://www.oecd.org/derec/ec/47377499.pdf>> accessed 8 January 2022.

⁷² *Ibid*, at 24.

⁷³ *Ibid*, at 25.

⁷⁴ *Ibid*, at 26.

⁷⁵ ECAP III, ‘ECAP Project Overview (1993-2016).

⁷⁶ ASEAN, ‘Europe and ASEAN to embark on a € 5.1 million partnership to protect and promote IP Rights in the region’ (2010) 2-3 <https://asean.org/wp-content/uploads/images/archive/documents/FINAL_SCM1_Press%20Release_Eng.pdf> accessed 5 April 2022.

⁷⁷ *Ibid*.

⁷⁸ *Ibid*.

⁷⁹ Kenan Institute Asia, *Comparative Assessment Study of Patent and Trademark Offices in Southeast Asia* (Bangkok, Kenan Institute Asia 2011).

⁸⁰ ECAP III, ‘About ECAP’ <<http://www.ecap3.org/about/ecap-iii-phase-ii.html>> accessed 15 January 2022.

⁸¹ ASEAN, ‘ASEAN TMview’, <<http://www.asean-tmview.org/tmview/welcome.html>> accessed 15 January 2022.

trademark landscape in their country for all interested stakeholders and help promote filing trademark applications.⁸²

ASEAN has continued to strengthen IP cooperation among its member states, as well as cooperation between them and their important trading partners, especially the EU. Having continuous assistance from external partners, particularly from developed countries, ASEAN countries can obtain advantages through the transfer of knowledge and expertise from these countries. However, over-reliance on such assistance from external partners can also provide disadvantages. Relying so much on external cooperation implies that the IP initiatives would largely rely on funding from external partners. There might be the case that the funds are not spent in accordance with the plan and that might negatively impact the completion rate of the initiatives. Moreover, this can also decrease incentive of the ASEAN members to intensify their cooperation in this area. This would be contrary to the ASEAN IPR Action Plans that aim to encourage ASEAN member states to actively participate in regional IP initiatives. Additionally, since IP standards always flow outward from developed countries, relying so much on assistance from developed countries can imply that ASEAN countries might be much influenced by their IP policies and standards, which might not be appropriate to the level of development of the ASEAN countries.

5. Challenges and Opportunities for Regional IP Cooperation in ASEAN

To foster regional IP cooperation, ASEAN relied both on collaboration between the ASEAN member states themselves and their external partners. However, despite a long and continuous efforts, it is undeniable that some goals, especially creating a regional IP system have not yet been achieved due to several challenges, especially ASEAN practice and a development gap between the member states, as well as disparity in IP laws among the member states.

5.1 ASEAN Practice

It seems likely that the ASEAN way served as impediment rather than facilitator in conducting regional cooperation, especially in the area of IP. This resulted in a delay of implementing ASEAN initiatives and commitments, including harmonising IP laws between the member states. Moreover, without possible sanction for non compliance by the member states, the adoption of ASEAN's policies and initiatives are mostly non-binding. As a result, various ASEAN IP initiatives were not fully implemented within the set timeframe, and thereby delay ASEAN process in this area.

To combat the problem of non-implementation problem, ASEAN members should give less emphasis on the preservation of national sovereignty and the principle of non-interference with other states internal affairs in or do move forward in a more unified manner. They should admit that to facilitate deeper economic integration, transferring part of their sovereignty to regional institutions for the benefits of ASEAN as a whole is necessary. This approach helped the EU achieve deep regional economic integration and successfully establish a well-functioning internal market. Although the issue of sovereignty is still sensitive issue in ASEAN due to the region's colonial history, this would be an appropriate time for ASEAN to deviate slowly from the traditional ASEAN Way and pursue its goal of becoming a more rule-based organisation.

⁸² *Ibid.*

Compared with other areas of cooperation like political security, preservation of sovereignty seems to be less sensitive in economic cooperation. Therefore, applying this perspective more readily in this area would be appropriate and be a good start for ASEAN move away from a ‘relationship-based’ organisation to more rule-based organisation. The situation has already improved with the application of the ASEAN Minus X decision-making process in some economic affairs, which were previously dependent on reaching a consensus among the ten member states.⁸³ This would enable decisions to be made without requiring full consensus from all member states and avoid decision paralysis.

5.2 Disparity in the Levels of Development among the Member States

The development gap between ASEAN members, particularly between the ASEAN-6 countries, namely Singapore, Brunei, Malaysia, Thailand, Indonesia, and Philippines, and the CLMV countries, namely Cambodia, Laos, Myanmar, and Vietnam, can be considered as one of the major challenges for regional harmonisation. The ASEAN members still have wide development gaps, particularly in socio-economic development. This remaining gap is still significant and should be seriously addressed. Since different level of development is interrelated with each country’s interest in setting up IP standards, it obstructs ASEAN progress in fostering regional IP cooperation.

Furthermore, pursuing complete and holistic IP cooperation at regional level, particularly the adoption of a ‘one size fits all’ system, might impose more of a burden to reform their national IP laws and infrastructures on some member countries. Implementing overly strict IP protection can have a negative effect on less developed countries as well, which may not be ready for IP harmonisation. Furthermore, imposing such IP standards may be too costly and burdensome. As a result, in order for less developed members to benefit from stronger IP rights, harmonised IP laws should be gradually developed, taking into account the interests and capacities of less developed countries.

To effectively help less developed members catch up with more developed and prevent the gap from widening further, it should be ensured that less developed countries receive more support from more developed countries. That said, it should be emphasised that in order for ASEAN to move forward in a more unified manner, it is necessary for less developed members to have sufficient capacity to fully participate in regional economic integration and obtain equitable benefits from this process.

6. Conclusions

ASEAN has recognised the need and significance of fostering regional IP cooperation, particularly creating a strong and more unified IP system among the member states in order to facilitate cross-border trade. ASEAN IP cooperation is highly active, as demonstrated by the various regional action plans adopted by the ten member states in 2004, 2010, and 2015. Continuous cooperation between the member states themselves and cooperation between ASEAN and external partners has

⁸³ Emmers, R., ‘ASEAN minus X: Should This Formula Be Extended?’ (2017) RSIS Commentaries, No. 199), Singapore: Nanyang Technological University.

been established.

While at early stages, ASEAN had an intention to establish a regional IP system in the area of trademark, patent and design, this goal has not yet been achieved due to various obstacles, particularly the ASEAN practice, and the disparity between the member states in the level of development. Therefore, ASEAN departed from its ambitious goal in creating a regional IP system and chose to adopt more flexible approach by requiring the member states to actively participate in the international IP community. However, some significant progress and achievements in IP harmonisation have been made as a result of closer internal and external cooperation. The disparity in IP laws between the ASEAN members tend to converge.

In order to further intensify regional IP cooperation, especially to develop a regional IP system, more engagement and participation from all the member states is needed. According to current ASEAN IPR Action Plan 2016-2025, which identifies strategic goals and initiatives that will help ASEAN become a more innovative and competitive region through the use of IP, there is a clearer indication of pursuing a greater level of IP harmonisation among the member states. To ensure that all initiative can be achieved within the set time frame, it would be essential for ASEAN to strengthen the role of monitoring mechanisms to ensure compliance with ASEAN's commitments. To achieve this, enhancing administrative capacity of the member states is required in order to ensure that all the member states have ability to fully implement and participate in all ASEAN IP initiatives and commitments. Sufficient knowledge, resources and strong will are necessary. More assistance from more developed members is needed.

Nevertheless, this stringent approach seems to be incompatible with the ASEAN Way. Therefore, despite the long historical root of the ASEAN way, this is an appropriate time to gradually move away from the traditional ASEAN Way and move forward in more unified manner to achieve deeper regional economic integration. However, immediately modifying the ASEAN way would not be a feasible solution and acceptable by all the member states. The issue of sovereignty is still sensitive in ASEAN due to the short life span as dependent states of the member states. Therefore, adaptation of the traditional ASEAN Way should be carefully pursued by starting to moving away from the traditional practice in the area of economic cooperation. Compared with other areas, particularly political security, this area is less sensitive. It should be emphasised that for the benefits of ASEAN as a whole in firmly establishing the AEC, the ASEAN Way should be interpreted in a more flexible way. This would therefore make the ASEAN Way serve as facilitator of regional cooperation, especially cooperation in IP rather than impediments.

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