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The U.S. Government's Global Hunger & Food Security Initiative



INTELLECTUAL PROPERTY RIGHTS RATE Summary

This document presents the findings of the Regional Agricultural Trade Environment (RATE) assessment conducted in the ASEAN region in 2012 by the Maximizing Agricultural Revenue through Knowledge, Enterprise Development, and Trade (MARKET) Project.



USAID
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INTELLECTUAL PROPERTY RIGHTS

Regional Agricultural Trade Environment (RATE) Summary

USAID Maximizing Agricultural Revenue through Knowledge, Enterprise
Development and Trade (MARKET) Project

SUBMITTED TO
USAID Regional Development Mission for Asia

UNDER CONTRACT
486-I-01-07-00008-00
Task Order AID-486- T0-11-00009

SUBMITTED BY
Nathan Associates Inc.
www.nathaninc.com

December 2013

*On the cover: A newly branded product on display in Indonesia
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In Brief

INTELLECTUAL PROPERTY RIGHTS

Why Intellectual Property Rights?

A robust and carefully enforced legal and institutional regime supporting intellectual property rights (IPR) is critical to ASEAN's agricultural community, which benefits from the incentives IPR provides to develop the innovative approaches and practical tools that raise productivity. Protections offered by the IPR system provide economic incentives needed for SMEs and independent inventors—which may include farmers themselves—to develop innovative solutions, secure investors, and make new solutions available to others. The ultimate benefit is a thriving domestic market and ability to compete internationally. Conversely, doubts about a country's commitment to IPR discourage investors from selling their products and investing in that country.

ASEAN's Approach

In the AEC Blueprint, ASEAN anticipates that “intellectual property (IP) policy can serve as a powerful stimulus to (a) cultural, intellectual and artistic creativity and their commercialization; (b) efficient adoption and adaptation of more advanced technologies; and (c) continuous learning to meet the ever-rising threshold of performance expectations.” In 1995, ASEAN Member States agreed to the ASEAN Framework Agreement on Intellectual Property Cooperation. In 1996, they established the ASEAN Working Group on Intellectual Property Cooperation, which is “to develop, coordinate, and implement all IP-related regional programs and activities in ASEAN.”

Regional Findings

The legal frameworks of ASEAN Member States increasingly integrate international best practice pertaining to IPR, but national law and policy continue to vary widely.

Copyright and trademark piracy remains a significant obstacle to trade and growth. In addition, concerns over brand dilution and theft keep many entrepreneurs from creating trademarks.

A lack of IPR capacity and public understanding constrain full realization of the benefits of IPR. An effective IPR environment requires strong support from educational institutions and civil society.

Opportunities for ASEAN and Regional Entities

- Strengthen regional participation in global IP systems in the international IP community.
- Continue to commit public outreach on enforcement and compliance issues.
- Promote a regional network of university IPR programs to share information, curriculum, and ideas for supporting the private sector.

Opportunities for Member States

- Join major IP conventions.
- Take serious action against IPR violations at the borders.
- Advocate for entrepreneurs to develop brands through trademark and trade dress protection through outreach and facilitation.

AT ISSUE: Protecting the Creations, Innovations, and Brands of ASEAN'S Agricultural Enterprises and its International Trading Partners

Intellectual property rights (IPR) are increasingly recognized as a factor in the economic development of all countries, large and small, rich and poor.¹ An effective IPR system makes markets more predictable and reduces investment risk. This benefits local producers, who have better access to finance and are better able to compete in a safer business environment. Effective use of the IPR system allows businesses to expand their markets, increase profitability, and enter export markets for the first time. An effective IPR system also better positions a country to attract foreign investment, as international investors give substantial weight to intellectual property (IP) protection when deciding where to invest in new business activities.

Intellectual property protects intangible property interests and prohibits dishonest business practices. An intellectual property system creates legal rights in trademarks and works of authorship, and in such new things as inventions, designs for useful objects, and new plant varieties. It also protects consumers and honest businesses against acts of unfair competition.

An IPR regime is critical to agricultural communities, which benefit from the incentives it provides to develop innovative approaches and practical tools that raise productivity. The protection offered by the IPR system provides the legal framework and economic incentives needed for small and medium-sized enterprises (SMEs) and independent inventors—which may include farmers themselves—to develop innovative solutions, secure investors, and make new solutions available to others. The ultimate benefit is a thriving domestic market and a greater ability to compete internationally.



Entrepreneurs are only now catching on to the value of trademarking their products.

Agricultural producers, processors, and traders can make effective use of IP to market their goods. Strong and effective laws on trademarks and geographical indications in particular allow producers to gain a reputation for the quality of their products. Building the reputation of a product through a brand or geographical indication may also permit agricultural enterprises to obtain higher prices than can be obtained by selling the same goods at commodity prices. The protection of intellectual property is also important to food safety, as consumers are entitled to rely on labeling to indicate the source and reliability of the goods they purchase. Where goods and income are burdened by unchecked trademark counterfeiting, substandard and sometimes overtly dangerous goods enter the market disguised as reputable products. Enforcing prohibitions against unfair and dishonest practices, such as alteration of expiration dates or repackaging of other goods into brand-name containers, enhances food safety.

In protecting domestic and foreign innovators alike, good IP laws and institutions lay fertile ground for domestic innovation, give domestic producers more access to innovations developed elsewhere, help create a thriving domestic market for agricultural products, and provide a business environment attractive to foreign direct investment.

This paper summarizes the state of IPR in ASEAN and its Member States as it pertains to agriculture-related commerce. It also suggests opportunities for action, including harmonization of government practices and more guidance for enterprises with respect to IP protection and opportunities.

How Intellectual Property Relates to Other RATE Topics

Access to Finance. Obtaining a patent or registering a mark, design, or new plant variety creates legal rights that facilitate access to finance. A patent, for example, allows an invention to be safely disclosed to potential lenders, who might otherwise take the technology for their own. A patent can also facilitate access to finance by serving as security for a loan or as part of the initial capital for a startup company.

Nontariff Barriers. Failure to provide adequate and effective protection of IPR is a nontariff trade barrier. Domestic enterprises need such protection to compete in foreign markets. Infringing goods, or goods in infringing packaging, may be refused entry to foreign markets.

Informal Economy. Many small businesses are unable or disinclined to obtain legal protection for their intellectual property rights because they are in the informal economy. Businesses that trade in infringing goods are also more likely to be found in the informal economy, where they not only defraud consumers and honest businesses but also deprive governments of tax revenue.

Competition. IP laws promote competition by creating legally enforceable rights that enable innovators to compete with established enterprises. IP laws also facilitate competition by protecting consumers and honest businesses against dishonest and deceptive business practices that might otherwise drive small companies out of business.

WHAT IS ASEAN'S CURRENT APPROACH TO INTELLECTUAL PROPERTY?

ASEAN recognizes that “Protection of intellectual property rights (IPRs) stimulates further creativity and innovation, which in turn spur progress in industries and ultimately leads to national development.”²

ASEAN further recognizes that IP is an important factor in trade and is necessary to attract foreign direct investment. In its ASEAN Economic Community (AEC) Blueprint, ASEAN anticipates that “intellectual property (IP) policy can serve as a powerful stimulus to (a) cultural, intellectual and artistic creativity and their commercialization; (b) efficient adoption and adaptation of more advanced technologies; and (c) continuous learning to meet the ever-rising threshold of performance expectations.”³

In 1995, ASEAN Member States agreed to the ASEAN Framework Agreement on Intellectual Property Cooperation, and in 1996, they established the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC). The mandate of the AWGIPC is “to develop, coordinate, and implement all IP-related regional programmes and activities in ASEAN.”⁴ To this end, ASEAN has adopted two action plans pertaining to IP generally: the IPR Action Plan 2004-2010 and the IPR Action Plan 2011-2015, as well as a Work Plan for ASEAN Cooperation on Copyrights. In accordance with these plans, the AWGIPC engages in outreach and consultation on IPR issues, including those pertaining to trade, with ASEAN dialogue partners and organizations, namely IPR representatives from China, the European Patent Office, the European Union, the Japan Intellectual Property Office, the U.S Patent and Trademark Office, and WIPO.⁵

ASEAN's first IPR Action Plan was formulated

(1) to help accelerate the pace and scope of IP asset creation, commercialization and protection; to improve the regional framework of policies and institutions relating to IP and IPRs, including the development and harmonization of enabling IPR registration systems; to promote IP cooperation and dialogues within the region as well as with the region's Dialogue Partners and organizations; to strengthen IP-related human and institutional capabilities in the region, including fostering greater public awareness of issues and implications, relating to IP and IPRs.⁶

The most recent IPR Action Plan has five strategic goals:

Strategic Goal 1: A balanced IP system that takes into account the varying levels of development of Member States and differences in institutional capacity of national IP Offices to enable them to deliver timely, quality, and accessible IP services to promote the region as being conducive to the needs of users and generators of IP.

Initiatives include reduction in turnaround time for trademark registration; cooperation on patent search and examination; regional classification of ethnic goods and services; and capacity-building for patent, trademark, industrial design professionals; development of an action plan on IPR enforcement; copyright exceptions for visually-impaired persons and persons with disabilities; effective use of the copyright system; establishment of collective management societies by 2015; “Creative ASEAN” to promote the creative sector; protection of geographical indications; protection of traditional knowledge, genetic resources, and traditional cultural expressions; and plant variety protection.

Strategic Goal 2: Developed national or regional legal and policy infrastructures that address evolving demands of the IP landscape and AMSs [ASEAN Member States] participate in global IP systems at the appropriate time.

Initiatives include accession to the Madrid Protocol, the Hague Agreement, and the Patent Cooperation Treaty, which relate, respectively, to the international protection of marks, industrial designs, and inventions, and amending laws accordingly.

Strategic Goal 3: The interests of the region are advanced through systematic promotion for IP creation, awareness, and utilization to ensure that IP becomes a tool for innovation and development; support for the transfer of technology to promote access to knowledge; and with considerations for the preservation and protection of indigenous products and services and the works of their creative peoples in the region.

Initiatives include establishment of a regional network of patent libraries to increase access to scientific and technological information; development of a region-wide IP promotion campaign; improved awareness on technology transfer and commercialization; enhancing the capability of SMEs to generate and use IP; and development of an ASEAN IP Portal.

Strategic Goal 4: Active regional participation in the international IP community and with closer relationships with dialogue partners and institutions to develop the capacity of Member States and to address the needs of stakeholders in the region.

Initiatives include development of structured cooperation with WIPO on a regional level; enhanced cooperation with dialogue partners [notably under trade agreements]; active participation by Member States in international fora and more open relationships with the private sector; and developing a strong negotiating position.

Strategic Goal 5: Intensified cooperation among ASEAN Member States and increased level of collaboration among them to enhance human and institutional capacity of IP Offices in the region.

Initiatives include capacity-building for patent, trademark, and industrial design examiners and infrastructure modernization of ASEAN IP offices.



The leader of a cooperative has trademarked this organic coffee.

ASEAN Member States have shown mixed results in developing and enforcing fully viable IP regimes. In its annual “Special 301” report (2012) on protection of IP among the trading partners of the United States, the Office of the U.S. Trade Representative (USTR) included two ASEAN Member States—Indonesia and Thailand—on its Priority Watch List, signaling concerns about the adequacy of their IP regimes. In addition, Brunei, the Philippines, and Vietnam remain on the Watch List, a less severe, but still concerning, designation. In recognition of Malaysia’s recent improvement in IP protection and enforcement, USTR removed Malaysia from its 2012 Special 301 Watch List.

In its 2012 midterm review of ASEAN's progress toward achieving the commitments in the AEC Blueprint, the Economic Research Institute for ASEAN and East Africa (ERIA) states that

it is worth emphasizing that the ASEAN IPR Action Plan 2004-2010 was implemented to a reasonable degree. As a result of regional cooperation as well as national efforts, the IPR environment is improving in ASEAN. At the same time however, the current level of IPR environment (e.g., local innovation, piracy rates) lags behind other emerging economies.⁷

In support of the "way forward," ERIA recommends full implementation of the ASEAN IPR Action Plan 2011-2015, introduction of special treatment for SMEs to enhance local innovation, introduction of numerical targets to monitor administration quality, sharing of best practices on organization issues facing IP agencies, and acceleration of accession to key IP conventions.⁸

INTELLECTUAL PROPERTY IN ASEAN: HIGHLIGHTS FROM THE RATE ASSESSMENT

The RATE assessment reviewed the status of IPR in ASEAN's agriculture and agricultural trade sectors in four areas: legal framework, implementing institutions, supporting institutions, and social dynamics.⁹ Questions centered on the legal and institutional framework supporting IP in the agriculture and trade sectors, as well as enforcement and private sector commitment to IPR. Key findings of the RATE inquiry are set forth below.

Growing Reliance on International Best Practice, But Continued Variance in National Law and Policy

Thanks in part to ASEAN's emphasis on IP as a prerequisite to growth, Member States have begun to take advantage of existing treaties and model laws in developing their IPR regimes. Still, given the number of agreements available and the success of these agreements, the ASEAN region has some way to go before claiming adequate participation in the global IPR community. The table below shows which international IPR agreements Member States have so far joined. Member states have been rapidly signing on to and ratifying a number of treaties identified as targets in the ASEAN IPR Action Plan. IPR specialists consider other treaties not cited in the plan just as important but these are not being ratified as quickly.

Singapore and the Philippines stand out for their participation in international agreements. Singapore is a member of 11 substantive international agreements on intellectual property and one classification agreement.¹⁰ It is also a negotiating partner for the proposed Trans-Pacific Partnership and is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), concluded in November 2010, to strengthen enforcement and address the proliferation of counterfeiting and piracy in international trade. The Philippines has enlisted in nine substantive international agreements on intellectual property.¹¹

View from Laos

IPR AS A TRAILBLAZER IN LAOS' WTO ACCESSION QUEST

In joining the WTO, countries must enact intellectual property laws that meet the stringent requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights. Laos developed an intellectual property law that addresses all requirements, including for enforcement. Because the law is considerably more detailed than has been customary, it was quickly implemented without need for a Decree. The government sought input from WTO members before finalizing the Law and Decisions and achieved a modern, comprehensive, intellectual property law that allowed it to become a WTO member early in 2013.

ASEAN Member States' Participation in International Agriculture Related IPR Agreements

	Brunei-Darussalam	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
Paris Convention for the Protection of Industrial Property ^a	✓	✓	✓	✓	✓		✓	✓	✓	✓
Trademark Law Treaty			✓							
Singapore Treaty on the Law of Trademarks								✓		
Madrid Agreement -False or Deceptive Indications										
Madrid Agreement on International Registration of Marks	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Protocol to the Madrid Agreement ^a							✓	✓		✓
Nice Agreement on International Classification					✓			✓		
Vienna Agreement on International Classification of Figurative Elements of Marks					✓					
Patent Law Treaty		✓	✓							
Budapest Treaty on International Recognition of Deposit of Microorganisms ^a	✓	✓					✓	✓		
Patent Cooperation Treaty ^a	✓		✓	✓	✓	✓	✓	✓	✓	✓
Strasbourg Agreement - International Patent Classification										
Hague Agreement International Registration of Industrial Designs, Geneva Act ^a										
Locarno Agreement - International Classification for Industrial Designs										
International Union for Protection of New Varieties of Plants, 1989 Act								✓		✓
WIPO Copyright Convention ^a			✓		✓		✓	✓		

Notes: ^a Identified in ASEAN IPR Action Plan, 2004-11. ✓=Member of the agreement.

There is a vast range of protections among the IP regimes of the ten ASEAN Member States. Though all ten are members of the World Intellectual Property Organization (WIPO), a United Nations agency, the scope and adequacy of their IP laws vary considerably, as does their emphasis on the importance of intellectual property. Agreements yet to be adopted include those to facilitate international protection of industrial designs and new plant varieties.

In spite of measured regional success in adopting international agreements, some Member States have spotty records in establishing and enforcing growth-oriented legal and regulatory regimes. Nonetheless, the 2000s have been a busy period for implementation of agriculture-related IPR measures. For example, between 2002 and 2006, Malaysia added copyright and plant variety protection laws, and amended laws on trademark and patents. Thailand's IPR regime dates to the early to mid 1990s, and is generally considered complete. Thailand also adopted a geographical indications law in 2003.

Other Member States, including Myanmar and Cambodia, lag considerably in establishing modern IPR regulatory systems. In 2002, Cambodia enacted its Law on Marks, Trade Names and Acts of Unfair Competition and in 2003 its Law on Patents, Utility Models and Industrial Designs and its Law on Copyright and Related Rights, both in response to WTO accession demands. Cambodia has yet to enact legislation to protect new plant varieties. Work is reportedly under way to develop a law to protect trade secrets.

Still other Member States, such as Laos, have acted quickly and responsibly in establishing IPR regimes as part of WTO accession. Vietnam adopted a comprehensive IPR law, covering copyright, industrial property and plant variety protection, in 2006 in order to comply with WTO accession commitments.

Copyright and Trademark Piracy: A Significant Obstacle to Investment and Growth

A solid regulatory framework is of little use in the absence of enforcement by efficient and practical government agencies. And that enforcement of intellectual property laws is lax is readily evident in the thousands of shops across Asia selling counterfeit goods.

All Member States struggle in some way with IPR enforcement. Over the past decade, the Vietnamese government has put into place a framework for IP protection, enacting laws and regulations, establishing and building the capacity or supporting institutions, and penalizing violations. Vietnamese citizens increasingly understand why certain violations, especially counterfeiting of foodstuffs and medicines, are considered crimes. Yet, ambivalence in the public and private sectors about the importance of IPR and its value to Vietnamese society persists. Vietnam is one of 26 countries on the 2012 Special 301 “Watch List” of the Office of the USTR. This fact evidences U.S. concern that stakeholders throughout Vietnam’s economy are not sufficiently committed to sustaining a fair, transparent, and efficient IPR regime.

Enforcement is a significant issue in Indonesia, where piracy and counterfeiting in the informal sector and in shopping malls and retail stores is rampant. Indonesia remained on the USTR’s Priority Watch List in 2012. Other enforcement concerns include penalties that serve no deterrent objective. Enforcement remains a problem in Malaysia as well, though the Ministry of

View from Myanmar

SOME CATCHING UP TO DO

Myanmar’s Copyright Act of 1911 (UK) dates from 1914. It provides a ten-year term dating from first publication, far short of the Berne standard of life of the author plus fifty years. The 1911 Copyright Act also provides for a fine of 20 rupees per infringing copy but not exceeding 500 rupees per transaction, with imprisonment of up to a month for a second conviction. Some provisions on unfair competition, relating to food safety, are in the National Food Law. Enforcement is provided by the Specific Relief Act 1877 (as last amended up to Act No. 3 of 1954) and the Criminal Procedure Act, which dates from 1878 but appears to have been recently revised.

Vietnam improved its regulatory framework in 2011 by passing decrees to strengthen copyright protection and border enforcement ... Although Vietnam continued to undertake enforcement efforts in 2011, including conducting significant raids to combat book piracy, widespread piracy and counterfeiting remain a serious concern.

—USTR Special 301 Report (2012)

Domestic Trade, Cooperatives, and Consumerism (MDTCC) is now cooperating with right holders, training prosecutors for IP courts, and reestablishing its Special Anti-Piracy Taskforce. The institution of *ex officio* action has resulted in significant seizures of pirated products. In 2011, MDTCC launched the



Success with coffee, an important growth commodity in the ASEAN region, can depend on adequate IPR protections such as trademark, trade dress, and geographic indications.

voluntary “Basket of Brands” program, which offers more proactive enforcement for trademark holders who commit to testify in any resulting prosecutions.

In the Philippines, pirated and counterfeit goods are reportedly widely available and internet-based piracy is on the rise. In 2011, the government announced new rules to expedite and improve the disposition of intellectual property cases in the courts.

Widespread copyright piracy and trademark counterfeiting are growing challenges for Thailand, which was on the USTR Priority Watch List in 2011 and 2012. To strengthen IP enforcement, the government has created a National Task Force, established a National Committee on the Creative Economy, and formed the Thai-U.S. Creative Partnership. It has also taken steps to implement provisions of the WIPO treaties, and to improve legal mechanisms to address copyright piracy and trademark counterfeiting on the internet. Measures are also needed to protect test and other data against unfair commercial use or disclosure in connection with marketing approval for agricultural chemical products.

In Vietnam, representatives of foreign investors are especially concerned by poor legal protections for trademarks. The widespread practice of “imitate rather than innovate” has domestic producers, including state-owned enterprises, marking goods in such a way as to confuse them with more well-known products and thereby capitalize on the reputation of those products. In addition, according to European Chamber of Commerce, individuals and companies, as well as foreign parties, continue to register domain names containing the prominent and popular trademarks of others, taking advantage of Vietnam’s “first to

register” system employed by the Vietnam Internet Network Information Center.¹² Although the laws and regulations call for protection of trademarks, enforcement provisions are inadequate to realize the full intent of the legal framework. Official rulings on “confusing similarities” between trademarks are not consistent with international best practice, according to representatives of large foreign investors.

Although Singapore has a generally strong IP system, there are concerns about transshipment of infringing goods through Singapore, insufficient deterrent penalties for end-user software piracy, and the effectiveness of enforcement against online infringers.

Lack of Institutional Capacity: Fewer Stakeholders Benefit from IP Protections and Opportunities

In addition to piracy and counterfeiting due to poor enforcement, insufficient investment in the institutions that implement IP laws often results in poor understanding of rights and benefits of registering intellectual property, and fewer people seeking protection. For example, in Laos some sophisticated entrepreneurs were quick to catch on to the benefits of protecting trademarks, but many more choose not to attach trademarks to their products at all because they fear counterfeiting and brand dilution. During the RATE assessment, one entrepreneur complained, “as soon as I put a brand on my product, someone else will copy it and attach it to a bad copy.” The only alternative, many believe, is to absolutely control the chain of custody. As one producer said, “I need to hand-deliver my product to my customer. It is the only way to be sure the consumer isn’t tricked. I am the brand.”

In Cambodia, implementation of the IPR regime is overshadowed by perceptions of corruption that hang over most government offices in the country. Patents and trademarks are registered in a special office in the Ministry of Commerce. According to one private sector representative, the size of one’s informal payment determines how long it takes to secure a trademark. With a large payment, it may take a month; with a small payment, six months; and with no payment, at least one year. Nevertheless, domestic producers are increasingly interested in protecting trademarks and designs, as well as geographical indications. A few producer associations are committed to protecting their geographical indications, such as for pepper. They are generally satisfied with assistance provided by the Ministry of Commerce in securing special status for their products.

In Vietnam, obtaining a patent for a product is reportedly difficult and time consuming. Private sector representatives are most concerned by the cost of time delays rather than actual monetary costs. The National Office of Industrial Property (NOIP) is charged with the registration of trademarks. NOIP in particular is widely



Many entrepreneurs, including this woman, fear that branding their products will only invite counterfeiting.

regarded as ineffective in its mandate to rule on applications for protection of IPR. The NOIP online database is not promptly updated regarding the status of various trademark matters. The Plant Variety Protection Office, established in 2010, is involved in plant testing and has granted protections to at least 38 species since it was established. However, the process for obtaining a certificate of plant protection is reportedly more complex and time consuming than practitioners believe is necessary.

Malaysia has a more positive image with respect to the capacity of its chief IPR officials and institutions. The Malaysia Intellectual Property Office (MyIPO) handles most IPR registrations, including those related to agriculture, except for plant variety protection. MyIPO handles geographical identifications, agriculture-related research patents, and trademarks for agro-business. Registration procedures are based on the International Filing System and classifications are based on International Patent Classification. According to MyIPO statistics, registration processes are completed in a reasonable time compared to international standards—and times are improving. It used to take one year to obtain a trademark; it took 10 months on average in 2012, with the expedited process taking six months. It used to take 36 months to obtain a patent. It now takes 26 months for the regular process and 20 months for the expedited process.

Notwithstanding MyIPO's relative efficiency, farmers and SMEs say IPR registration is expensive and time-consuming. They usually need to engage costly agent companies, including legal services, to prepare the paperwork. On the other hand, processors, importers, and exporters are more committed to a fair IPR regime and are able to collect royalties as expected in the current system. Malaysia is considering channeling the value of IPR into business by enabling IPRs to be used as collateral for loans from financial institutions. Although banks are wary about lending against any collateral other than real property or bank accounts, MyIPO professionals are exploring models for IP valuation in cooperation with some of the country's banks.

Filings, Patents, and Registrations of Patents Trademarks, and Industrial Designs by Nationals (N) versus Total (T) Filings in ASEAN Member States

Member State	Patents		Trademarks		Industrial Designs	
	Filings (N/T)	Patents/reg. (N/T)	Filings (N/T)	Patents/reg. (N/T)	Filings (N/T)	Patents/reg. (N/T)
Brunei-Darussalam	0/42	0/42	35/649	0/9	5/31	3/26
Cambodia	NA	NA	NA	NA	NA	NA
Indonesia	437/4,540	NA	37,759/ 42,777	NA	0/362	NA
Laos	NA	0/0	NA	NA	NA	NA
Malaysia	1,234/5,737	270/3,468	12,810/24,070	5,438/14,972	699/1,465	529/1,596
Myanmar	NA	NA	NA	NA	NA	NA
Philippines	172/2,997	22/1,679	8,874/15,019	5,380/11,181	458/798	309/522
Singapore	750/8,736	473/5,609	4,105/15,332	3,647/14,662	521/1,622	531/1,721
Thailand	1,025/5,857	59/846	24,737/36,087	11,981/22,483	3,171/3,873	NA
Viet Nam	391/3,143	29/677	22,378/32,864	16,231/26,712	1,430/1,899	747/1,236

Note: NA-No statistics available.

SOURCE: WIPO (Information updated December 2012)

Required for Effective IPR Environment: Strong Support from Educational Institutions and Civil Society

Intellectual property is a complex field. Patent attorneys, for example, have backgrounds not only in the law, but also in engineering, physics, or some other hard science. In order for the system to operate efficiently, civil society—universities and the bar, in particular—must have the capacity to advise both the judicial system and businesses in the application of IP rights.

The Philippines is a good example of a Member State that is promoting and facilitating supporting institutions. According to the Department of Trade and Industry, at least 95 percent of registered companies in the Philippines are SMEs and the government has made protecting their intellectual assets a priority, pledging, for instance, to conduct more information campaigns. Some law firms specialize in a wide range of IP issues including trademark registration and maintenance, plant variety protection, and IPR protection and enforcement. They work with international companies as well as local businesses. In 2009, Bicol University in Legazi City established an Intellectual Property Rights Unit in conjunction with Intellectual Property Philippines. Twenty-nine universities have established their own technology licensing offices with the support of IP Philippines.

Malaysia's agricultural universities are also facilitating the acquisition of IPR. Specialized divisions provide services whereby academics, scientists, negotiators, and lawyers work together to obtain trademarks and geographical identifications. At the University of Putra, the head of faculty reportedly secures an average of 10 patents per year. The division prepares paperwork and negotiates on behalf of the scientists/growers. Most law departments at universities have "Intellectual Property" in their curricula and demand for IP studies is on the rise.

In Cambodia, however, the legal profession is too small to support a thriving community of IP practitioners. Foreign investors usually engage Cambodian lawyers for guidance and administrative support, including with respect to IPR, but domestic firms rarely hire lawyers to handle licensing and permitting requirements. The legal profession in general does not have the confidence of the business community. Though improving, legal education is weak and academic corruption persists. Institutions that support IPR include the Cambodian Agriculture Research and Development Institute (CARDI), a division of the Ministry of Agriculture, Forestry, and Fisheries. CARDI conducts research on plant varieties and operates a division of plant protection. The university system includes a number of agricultural faculties that deliver instruction on plant protection to horticulture and agronomy students.

Vietnam's legal profession has matured significantly, thanks in large part to investments by international law firms and the large numbers of lawyers obtaining graduate education abroad. The lawyers who might be expected to represent clients for IP registration or enforcement purposes tend to be associated with

View from Cambodia

RIISING DOMESTIC DEMAND FOR IPR

Though still a small number of trademark applications – about 2,000– are filed in Cambodia each year, and the great majority of those are filed by foreigners, filings by residents have been increasing and accounted for roughly 20 percent of trademark registrations in 2005-2007, the most recent years for which information is available. Unfortunately, no patent grants were reported during the same period.

larger firms and have usually been educated abroad. Few lawyers are available to advise SMEs on matters of IPR, particularly in the trade sector.

University researchers and administrators in Vietnam tend to lack a robust understanding of intellectual property. Their organizations largely lack IP management capacity, although some are beginning to seek patents and plant variety protections. Nonetheless, leading research institutions in the life sciences are beginning to orient toward intellectual property as a means of technology transfer. For example, the Institute for Biotechnology of the Vietnam Academy of Science and Technology, which does not yet have a formal IP policy, has registered about 20 patents. The Hanoi Agricultural University's Science Management Office has handled IP issues for its researchers and faculty members and registered three or four patents and six to seven trademarks, largely on new crop varieties. The Institute of Agricultural Genetics in the Ministry of Agriculture and Rural Development asserts awareness of technology transfer as an important goal for new research projects, particularly with respect to farmers, but has not itself registered any intellectual property rights for inventions.

OPPORTUNITIES FOR ACTION

There are many pathways to change in ASEAN and its Member States. Reforms can be advanced by a single, visionary champion or a by a groundswell of stakeholders. Some reforms take root after many years, while others happen quickly once empowered people act quickly and decisively in a way that reflects public demand and best practice. In most cases, a “big idea”—including the type often promoted by international organizations such as the World Bank or the World Customs Organization—can be broken down into many smaller tasks that can be executed by a variety of public and private actors. Accordingly, the Opportunities for Action set forth below are multifaceted. They may be viewed as a foundation for regional or domestic policy development, as a resource for private sector initiatives, as a benchmark for tracking change, as a reference for academic instruction, and, most immediately, as a “jumping off point” for stakeholder discussion and consensus-building.

Opportunities for ASEAN and Regional Entities

Strengthen Regional Participation in Global IP Systems

Strategic Goal 2 of the ASEAN IPR Action Plan 2011-2015 calls for greater participation in global IP systems, and Strategic Goal 4 calls for regional participation in the international IP community. Progress on these two goals can be achieved in the near term by joining a WIPO-administered international agreement, a process that merely requires sending a letter to the WIPO Director General and thereby becoming a member three months later (or at a later time specified by the country). In most cases, a country should be prepared to implement the agreement by its effective date.

The 2004-2010 action plan identified membership in a number of international agreements as desirable for Member States. Those agreements are listed in the table on page 6 of this report, along with agreements that can help members make progress on Strategic Goals 2 and 4 of the current action plan. For example, the 2004-2010 plan calls for participation in the Patent Cooperation Treaty, which facilitates international protection of inventions. Nearly all ASEAN Member States have signed on to the treaty. The Madrid Protocol and the Hague Agreement facilitate the international protection of trademarks and industrial designs, respectively. Participation in the Madrid Protocol facilitates the process of obtaining

trademark protection and strengthens opportunities for investment, whether by foreign companies seeking assurance of trademark protection or by domestic firms preparing to enter foreign markets.

The International Union for the Protection of New Plant Varieties (UPOV) is an agreement particularly important for agricultural development. UPOV membership requires strict adherence to the terms of the agreement before joining. Membership facilitates international protection of new plant varieties in other UPOV contracting parties. This can be critical in securing access to desirable varieties—for example, varieties with properties that improve yield or are more resistant to disease or pests, or properties that yield more desirable varieties of fruit. Plant developers have been known to refuse to provide samples of their plants or seed to countries that do not offer effective plant variety protection and that are not members of UPOV. Membership can also be useful for local plants breeders—whether research scientists or farmers—who wish to profit from their new varieties without the risk that their plant varieties will be cultivated elsewhere, in competition with their own goods and without authorization.

Continue Public Outreach on Enforcement and Compliance

Strategic Goal 3 of the IPR Action Plan states that “the interests of the region are advanced through systematic promotion for IP creation, awareness, and utilization to ensure that IP becomes a tool for innovation and development.” This requires disseminating information not only about the benefits of registering intellectual property, but also about how counterfeiting and IP dilution harm growth in the long term. The ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) has had some success in outreach with its patent libraries initiative and patent capacity building. It can do the same in other areas, such as trademark and plant variety protection. Sharing outreach best practices will help build ASEAN’s base of knowledge in developing educational programs in the complex field of IPR. Agriculture chambers of commerce and sector associations as well as governments need to understand various IPR frameworks.

Promote a Network of University IPR Programs

Universities are the main producers of thought on IPR and of the next generation of experts; they are also often among the first and most enthusiastic users of the IPR framework. A substantial percentage of agriculture-related patents come from the academic community. AWGIPC can take advantage of universities’ natural enthusiasm for IPR—perhaps through the ASEAN University Network or a network of regional law faculties—to share information and curriculum components among Member States. Universities also need a strong cadre of IP experts in law, agriculture, and business programs to ensure that understanding of IPR filters down to those who stand to most benefit from it. AWGIPC can help establish student networks, or promote an IPR “Moot” competition among regional law faculties that will build student capacity and encourage regional networking among the students who will one day lead regional policy and practice in IPR.

Opportunities for Member States

Join Major IPR Conventions

IPR conventions and model laws abound because trade depends on IPR frameworks; all people involved in trade and innovation should understand these frameworks and how they function in harmony in this complex area of regulation. The table on page 6 lists treaties directly relevant to trade in agriculture but

many more are related indirectly. ASEAN Member States should adopt all of these treaties. Some, mainly those highlighted in the AEC Blueprint, have been fairly widely adopted. The Paris Convention has, for example, been adopted by all but Myanmar. Encourage all ASEAN Member States to become members of, at a minimum, the following conventions:

- Budapest Treaty on International Recognition of Deposit of Microorganisms
- Paris Convention for the Protection of Industrial Property Patent Law Treaty
- Patent Cooperation Treaty
- Strasbourg Agreement on International Patent Classification.

Take Serious Action against IPR Violations at Borders

As described in the RATE paper on trade facilitation in ASEAN Member States, border authorities have a very spotty record when it comes to enforcing IPR at the border. In some countries where authorities accept bribes to turn a blind eye, counterfeit goods flow freely across borders. High employee turnover means there is little knowledge of which items are counterfeit and which are distinct enough to be called different. Some Member States have been slow to adopt best practices and accept help from donors and other interested groups even though they are aware of how these problems affect economic growth. To assert enforcement at the border, Member States can point to the need to comply with the TRIPS Agreement, which requires WTO members to prevent trade in infringing goods. Implementing TRIPS border measures requires a TRIPS-consistent legal framework, customs officials who understand how to identify infringing goods and how to properly suspend goods from customs clearance, and a judicial system that can address the legal issues of such cases.

Advocate Trademark and Trade Dress Protection for Entrepreneurs' Brand Development

In developed economies, small and micro-entrepreneurs are some of the most active “customers” for intellectual property. These include farmers and gardening hobbyists who develop new seed varieties, and small specialty farmers (e.g., organic, pesticide free, or unusual varieties) and small processors who build brand loyalty through trademark, trade dress, and copyright protection. And groups of small farmers are among the first to pursue geographical indications to protect unique crops and products. ASEAN Member States should reach out to small businesses, as well as to large processors and producers, to cultivate understanding of the benefits of IPR and to establish trust that IPR, if registered, will be protected. The government can conduct this outreach by

- Working with universities to develop educational outreach materials;
- Connecting universities, agricultural extension services, and the Intellectual Property Office to build IPR extension advice; and
- Encouraging law firms and lawyers to offer pro bono services to the small, disadvantaged private sector.

Endnotes

¹ See Abdul Sattar and Tahrir Mahmood, “Intellectual Property Rights and Economic Growth: Evidence from High, Middle and Low-Income Countries,” 49 *Pakistan Economic and Social Review* 163-186 (2011); Rod Falvey, Neil Foster, and David Greenaway, “Intellectual Property Rights and Economic Growth,” 10 *Review of Development Economics*, 700-719 (2006).

² ASEAN IPR Action Plan (2011).

³ ASEAN, AEC Blueprint (2008), Para. 43.

⁴ Id.

⁵ MyIPO website, “The 38th ASEAN Working Group on Intellectual Property Cooperation” (2012).

⁶ Id.

⁷ Economic Research Institute for ASEAN and East Asia (ERIA), *Mid-Term Review of the Implementation of AEC Blueprint* (October 2012) at 42.

⁸ Id. at 44.

⁹ For a full description of the methodology, see the RATE methodology document.

¹⁰ Substantive agreements include the Berne Convention for the Protection of Literary and Artistic Works; Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty; Paris Convention for the Protection of Industrial Property; Singapore Treaty on the Law of Trademarks; Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; Patent Cooperation Treaty; Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; Hague Agreement Concerning the International Registration of Industrial Designs; and the 1991 Act of the International Union for the Protection of New Varieties of Plants.

¹¹ Berne Convention for the Protection of Literary and Artistic Works; Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty; Paris Convention for the Protection of Industrial Property; Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; Patent Cooperation Treaty; and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

¹² EuroCham/Vietnam, Trade and Investment Recommendations (2012).