



Australian Government

IP Australia

growing innovation



Inquiry by the Foreign Affairs
Sub-Committee into Australia's
relationship with ASEAN

*Submission by IP Australia
August 2008*

Introduction

IP Australia welcomes the invitation from the Foreign Affairs Sub-Committee to contribute to the Inquiry into Australia’s relationship with ASEAN. Our submission comprises the following key sections:

Background

- [The IP rights environment within ASEAN](#)
- [IP Australia’s engagement with ASEAN and individual ASEAN countries](#)

Expanding Australia’s relationship with ASEAN

- [Opportunities for mutually beneficial engagement](#)

Importance of a strong IP rights system in the region

As a result of globalisation, businesses are increasingly seeking protection of their intellectual property (IP) rights in multiple jurisdictions. Increasingly, industry and users of the IP rights system are calling for governments to streamline IP laws and processes to provide for more simplified and consistent practices around the world as well as to help reduce the transaction costs of conducting business internationally.

Among ASEAN member countries, there are widely divergent levels of IP development. A regionally integrated IP system among ASEAN members will help to reduce complexity and transaction costs for businesses investing in the region. This will benefit both the businesses and economy of ASEAN as well as Australians seeking to do business in the region. When IP rights are consistently protected within the ASEAN region, investors and traders have greater confidence that their enterprise and IP can be appropriately protected (and enforced).

About IP Australia

IP Australia and the Attorney-General’s Department are the two Australian Government agencies responsible for administering Australia’s IP rights system.

IP Australia administers rights in relation to trade marks, patents (standard and innovation), industrial designs, and plant breeder’s rights. In addition to IP Australia’s considerable experience and expertise in administering these rights, IP Australia also undertakes programs to promote IP, advises on and develops IP policy and legislation, and administers the registration and discipline of patent and trade mark attorneys in Australia.

IP Australia strives to support national innovation, investment and competitiveness by contributing to an effective, efficient, consistent and accessible IP system both within Australia and internationally.

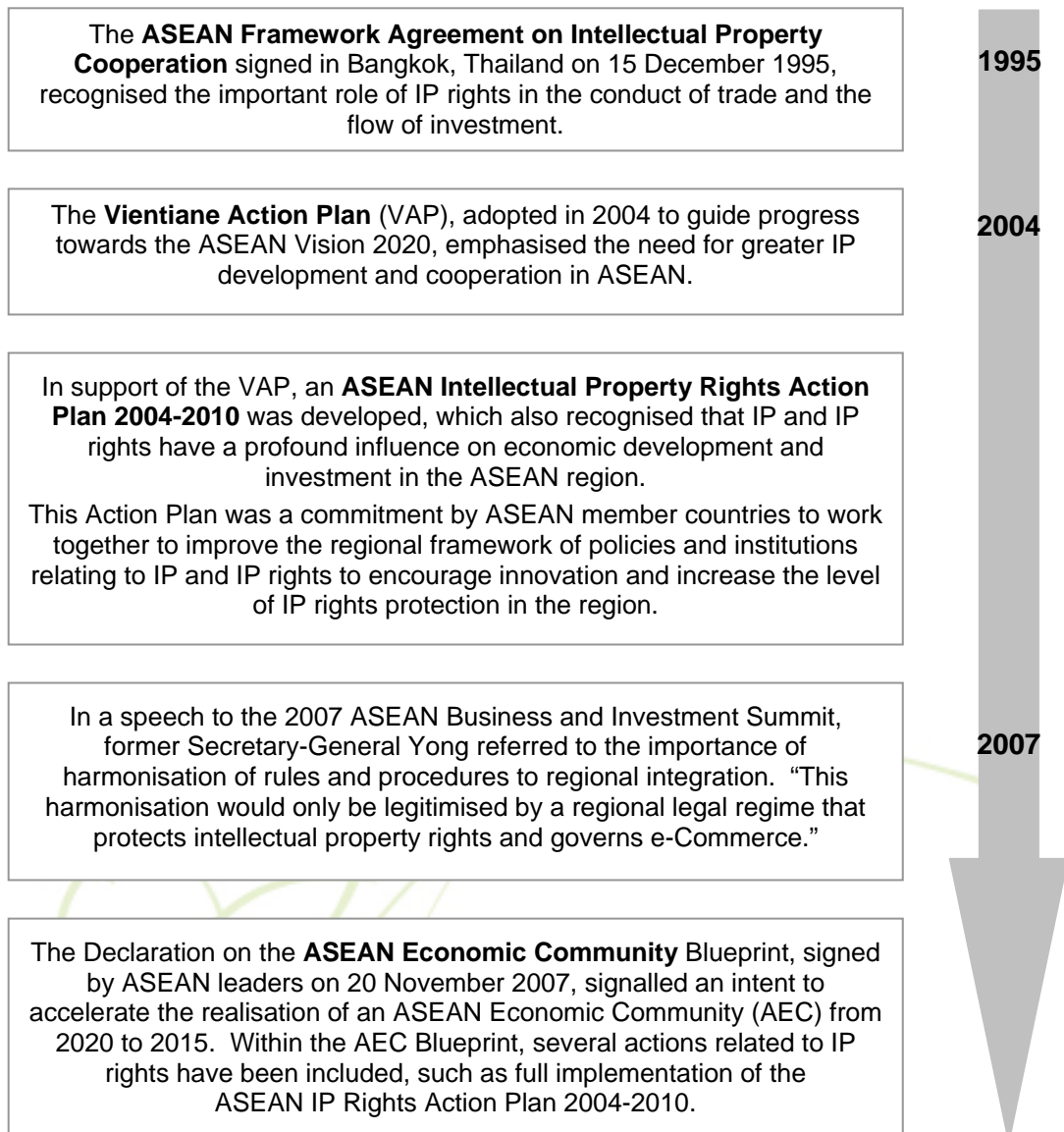
Further information about IP Australia is available from www.ipaustralia.gov.au

Background

The IP rights environment in ASEAN

Among the ASEAN member countries there are varying levels of economic development, and with this, significant diversity in the development of IP systems in the region. This can make it difficult for local businesses of member countries as well as foreign investors and traders to understand and access these IP systems.

For many years ASEAN has been working towards greater regional economic integration. Throughout this time, it has been consistently recognised that improvement of ASEAN’s regional framework of IP right protection policies and institutions is an important part of ASEAN’s economic development agenda.



The development of strong, consistent IP regimes throughout the ASEAN region is integral to realising an ASEAN Economic Community by 2015. Certainty and reliability in the quality of IP rights issued by the IP offices of ASEAN member countries is an important contributing factor to increase business confidence, investment and innovation.

Whilst some ASEAN members have well-developed IP legislation and processes further work is required before ASEAN member countries and their economies can achieve maximum gains from IP protection.

IP Australia’s engagement with ASEAN and individual ASEAN countries

IP Australia has strong, long standing relationships with IP offices of ASEAN member countries. Engagement with these offices, and with other IP offices internationally, is important and contributes to IP Australia’s ability to:

- influence the development of effective IP systems internationally in line with Australia’s interests; and
- support the Australian Government’s foreign, trade and innovation policies.

As indicated by Mr Michael Danby MP, Chairman of the Foreign Affairs Sub-Committee, in the 10 July 2008 press release that announced this Inquiry, “ASEAN has a forecasted combined gross domestic product of US\$1450 billion in 2008 – a doubling since 2003. This provides a huge opportunity for Australian business.”

Targeted and mutually beneficial engagement with ASEAN and individual ASEAN countries contributes to IP Australia’s ability to support Australian business to access and maximise the growing trade and investment opportunities in the region.

In particular, IP Australia engages with ASEAN to:

- **Improve accessibility and reduce transaction costs for Australian applicants seeking to register their IP in the ASEAN region**

This is done by working with offices to assist them in streamlining their IP systems and processes in line with international standards and best practice, and with accession to international IP treaties that facilitate more consistent and less complicated mechanisms for IP rights protection.

- **Improve the quality of the IP systems within ASEAN to ensure that rights granted to Australian applicants are strong and enforceable**

This is done by undertaking technical assistance and capacity building activities in the ASEAN region to transfer knowledge and to enhance the skills and capabilities of IP offices to examine and grant IP rights that have a presumption of validity. It is important that applicants have certainty in the right that an IP Office has granted to ensure that their IP asset is protected in relevant markets and that enforcement actions, if required, will be successful.

Importantly, IP Australia’s technical assistance and cooperation activities in the ASEAN region support Australia’s obligations under Article 67 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) whereby

“developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel. “

How IP Australia currently engages with ASEAN

IP Australia engages with ASEAN member countries bilaterally (summarised below in *Table 1*) and multilaterally (summarised in *Table 2*) in various fora and on various activities. The nature of this engagement is primarily focused on:

- Technical assistance and capacity building;
- Joint cooperation activities;
- Information sharing and exchange; and
- Provision of services.

Table 1 - Bilateral level engagement

- ✓ participate in bilateral meetings with IP offices, including at a Heads of Office level, to enhance mutual understanding, share information on respective domestic developments and exchange views on international IP issues.
- ✓ development and implementation of Action Plans with Thailand and Vietnam that prioritise areas for and timing of cooperative activities.
- ✓ provide commercial patent search and examination services to Singapore and Thailand.
- ✓ participate in IP discussions as part of Free Trade Agreements with individual ASEAN member countries.
- ✓ providing short term training placements for staff of IP offices. For example, IP Australia hosted 4 senior examiners from Malaysia for training on search and examination of biotechnology related patent applications.
- ✓ hosting visits from individual IP offices of ASEAN member countries to exchange information on IP rights search and examination and administration.
- ✓ hosting visits from industry representatives of ASEAN member countries to enhance understanding of Australia’s IP system and approach to IP rights administration.
- ✓ APEC-funded capacity building for IP officials from Thailand, Vietnam, Philippines and Indonesia in developing strategies and tools for conducting public education and awareness programs.

Table 2 - Multilateral level and other engagement

- ✓ membership to the World Intellectual Property Organization (WIPO), and participation in various WIPO meetings and committees. All ASEAN member countries are also members of WIPO.
- ✓ membership to the Asia Pacific Economic Forum (APEC), and participation in working groups and activities related to IP such as the Intellectual Property Rights Experts’ Group (IPEG). The APEC IPEG is a useful forum to share information and strengthen relationships with those ASEAN countries that are also members of APEC (ie. Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam).
- ✓ participation of IP Australia officials in the Experts Group on IP for the Australia-ASEAN-New Zealand Free Trade Agreement (AANZFTA) negotiations. This has been a good opportunity to strengthen relationships with ASEAN IP officials and to enhance mutual understanding.
- ✓ undertaking capacity building projects funded through the ASEAN Australia Development Cooperation Program (AADCP) that focus on regional partnerships within ASEAN. From 2004-2006 IP Australia conducted training workshops for IP offices of ASEAN countries on advanced search and examination techniques for patents, trade marks and industrial designs.
- ✓ participating in AusAID funded programs, such as the Australian Leadership Awards Fellowship Program (ALA). The ALA program aims to strengthen leadership and management capabilities of government officials in the Asia Pacific region. IP Australia participated in an ALA funded activity, where representatives from six offices in the region (including from Thailand, Vietnam, Indonesia and Philippines) spent 3 months working alongside counterpart IP Australia staff.
- ✓ working jointly with the Intellectual Property Office of Singapore (IPOS) and the Hong Kong Intellectual Property Department (HKIPD) on an APEC-funded project to enhance public education & awareness (PE&A) expertise and resources within the IP offices of APEC economies. Where possible, IP Australia has facilitated the participation of ASEAN countries who are not members of APEC (such as Cambodia, Laos and Burma) in this project through, for example, invitations to attend relevant workshops.
- ✓ partnering with WIPO to host the workshop “How to Enhance IP Competitiveness in Select Industries in ASEAN”. Held in Cambodia in November 2007, the focus of this activity was to better enable Chamber of Commerce organisations within the ASEAN region to improve the understanding and management of IP right among their members.

Further information about IP Australia’s international activities, including within the ASEAN region, can be found on IP Australia’s website:

http://www.ipaustralia.gov.au/resources/international_index.shtml

Expanding Australia’s relationship with ASEAN

As previously stated, IP Australia has an established relationship with counterpart organisations in ASEAN member countries and intends to maintain these relationships. IP Australia has the expertise to assist ASEAN member countries to further enhance the quality, transparency and accessibility of IP rights protection systems to ensure that rights granted are strong and enforceable.

In addressing the Terms of Reference of the Inquiry, IP Australia has identified opportunities for expanding engagement with ASEAN under the area of ‘enhancing the regional economy’.

Opportunities for mutually beneficial engagement

Several opportunities exist for IP Australia to work with ASEAN to contribute to their regionally integrated IP system, and ultimately enhancement of the regional economy in ASEAN. As a cost recovery, service delivery federal agency, IP Australia’s capacity to act on these opportunities is subject to availability of funding and resources.

Broadly, these opportunities are:

1. Strengthening connection and collaboration with the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC).

The AWGIPC comprises senior representatives from the IP offices of each ASEAN member country. It is the forum within ASEAN that has primary responsibility for implementing the ASEAN IP Rights Action Plan 2004-2010 and other IP rights actions identified in the AEC Blueprint. IP Australia is seeking to establish a closer working relationship with the AWGIPC, in particular to provide strategic advice and support in its implementation of the ASEAN IP Rights Action Plan 2004-2010.

2. Working in partnership with ASEAN Dialogue Partners and other international organisations to assist ASEAN to meet its aspirations under the 2004-2010 IP Rights Action Plan and the AEC Blueprint.

Australia is a Dialogue Partner to ASEAN along with Canada, China, the European Union, India, Japan, New Zealand, Republic of Korea, Russia and the United States. Working in partnership with one or more of these Dialogue Partners, as well as with other international organisations such as WIPO, that are also seeking to support ASEAN and the AWGIPC can contribute to more effective coordination of activities, more efficient use of resources (both financial and human resources) and help to minimise duplication of effort.

3. Advice and assistance to implement key international IP treaties.

Membership of key international IP treaties, such as the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (Madrid Protocol) and the *Patent Cooperation Treaty* (PCT), are outcomes of the ASEAN IP Rights Action Plan 2004-2010 and AEC Blueprint. These treaties provide for a more efficient, less complicated way for patent and trade mark owners to gain protection, while not affecting countries’ respective thresholds for what is patentable or what is registrable as a trade mark. The result of acceding to or complying with international harmonisation treaties is a reduction in transaction costs and an increase in certainty and transparency.

4. Advocacy to Australian SMEs to improve understanding of IP rights systems and protection mechanisms in the ASEAN region.

In response to increased demand for information by Australian Small to Medium Enterprises (SMEs) on overseas IP protection, and as part of an existing small business education program, IP Australia launched in early 2008 a national seminar series and website called *IP Passport – Helping Your Business Take Off Overseas*.

This program provided on information IP rights protection in the following markets – the USA, Republic of Korea, China, India, Indonesia and Japan. The website, <http://www.ipaustralia.gov.au/ippassport/index.shtml>, features country fact sheets to assist SMEs make informed decisions about their IP prior to export to these markets. Subject to resources, this program could be extended to include the combined ASEAN region.

5. Implementation of relevant IP cooperation outcomes of AANZFTA

The AANZFTA currently under negotiation includes Economic Cooperation on IP. This aims to assist ASEAN implement the FTA.

IP Australia looks forward to ongoing cooperative relationships with ASEAN member countries on IP issues, and to assisting the Australian Government to expand its relationship with ASEAN.