

ASEAN TODAY

REGIONAL LEGAL & BUSINESS NEWS

April 2019

ASEAN Economic Community News

Non-Tariff Barriers to Trade

Currently, there are over 6,000 non-tariff barriers to trade in ASEAN and this number keeps growing. Trade barriers inhibit trade by restricting the import or export of goods via mechanisms other than the impositions of tariffs and include protectionist policies, domestic subsidies, internal taxes, administrative barriers, and health and sanitary regulations. Since the launch of the ASEAN Economic Community in 2015, member countries have not removed any non-tariff trade barriers. Experts believe that stronger political will from the governments of the ASEAN member states is needed to address the problem or ASEAN is at risk of failing to fulfill its economic integration goals. Non-tariff barriers affect micro and small and medium-sized enterprises the most and limit their participation in transnational production networks. One way to address non-tariff barriers would be to for ASEAN to focus on the difficulties businesses face in accessing the region's markets.

Green Finance

ASEAN and the Asian Development Bank launched the ASEAN Catalytic Green Finance Facility this month to spur US\$ 1 billion in green infrastructure investments in Southeast Asia. The facility will provide loans and technical assistance for sovereign green infrastructure projects and hopes to catalyze private capital by mitigating risks through innovative finance structures. The facility's US1 billion will come from the ASEAN Infrastructure Fund (AIF), the Asian Development Bank and development banks from the European Union, France, and Germany. The AIF also launched the Inclusive Finance Facility to provide concessional financing for critical infrastructure in Cambodia, Laos, and Myanmar.

Intellectual Property

To commemorate World Intellectual Property Day 2019, enforcement officials, investigators, and prosecutors from the ASEAN region met in Manila, Philippines to discuss the enforcement of intellectual property rights and best practices to combat the trade in counterfeit goods and online infringement. A recent report by the European Union Intellectual Property Office (EUIPO) and the Organisation for Economic Cooperation and Development (OECD) estimates that counterfeit and pirated goods made up 3.3% of world trade in 2016 which is a considerable jump from the 2.5% estimated in 2013. The meeting was part of a series of events by the EU-funded ARISE Plus Intellectual Property Rights (ARISE+ IPR) program which also hosted the 4th meeting of the ASEAN Network of IPR Enforcement Experts (ANIEE) the next day.

Indonesia News

E-Commerce Tax Revoked

Indonesia revoked the new e-commerce tax regulations that were scheduled to come into effect on April 1, 2019. The revoked e-commerce tax provisions included online marketplace operators having to report each seller's revenue, online sellers needing to register for taxpayer numbers, and businesses making more than IR4.8 billion (US\$340,000) responsible for charging value added tax(VAT). Indonesia plans to become Southeast Asia's largest digital economy by 2020 and the e-commerce tax had the potential to deter businesses from coming online. While tax revenues are very important for the country, sellers are using e-commerce to grow and reach new customers, not evade taxes. It is estimated that by 2022, Indonesia will have 44 million online-commerce shoppers worth an estimated US\$55-65 billion and that e-commerce will create 26 million full time jobs, 20% of the country's total workforce.

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ASEAN Labor

Minimum Wage Rising

A global credit rating agency reports that minimum wages in Southeast Asia continue to climb rapidly and that the region could lose its competitive edge. Average minimum wage in Southeast Asia was 63% of the global average in 2015 and has risen to 82% currently. Average minimum wage is projected to equal or even overtake the global average in the next 10 years. If the availability of large pools of low-cost labor evaporates, manufactures may turn to Artificial Intelligence or shift their operations to Africa or South Asia.

Myanmar Watch

Deforestation Problems

The production of charcoal for commercial use in Myanmar is prohibited, but the illegal production and trade in charcoal persists and keeps growing. Much of Myanmar's charcoal is made from mangrove trees and the country has the highest loss of mangrove forest in Southeast Asia, 2.2% a year since 2000. Many of Myanmar's neighboring countries have also banned charcoal production, so there is a high demand for the illegal charcoal and a thriving cross border trade in it. Within three states in Myanmar, over a billion new mangrove trees need to be planted in 350,000 hectares of deforested coastal woodlands

Singapore Update

Restructuring Hub

The High Court of England and Wales made a landmark ruling recently that recognizes Singapore's new moratorium law for insolvency and corporate restructuring. This strengthens Singapore's intent to become an international debt restructuring hub. The new law makes it easier for companies with creditors from outside Singapore to be rescued and rehabilitated. As the UK courts have recognized Singapore's moratorium law, rulings will no longer just apply to Singapore proceedings and will have an extra-territorial effect.

Philippines Bulletin

IP Protection

The Philippines plans to strengthen its intellectual property protection of creative assets as part of its goal to be the top creative

economy in ASEAN. The government wants to protect the country's creative industries, especially films, games, and animation, and keep them valuable in the global market. The Philippines exported created goods worth US\$900 million in 2014 and wants to be the top creative economy in ASEAN by 2030.

Vietnam News

Fintech Sector Growth

Vietnam's digital economy continues to thrive and the country's financial technology (Fintech) sector is booming. The government is actively promoting fintech development and established the National Agency for Technology, Entrepreneurship, and Commercialization Development (NATEC) in 2016. NATEC provides training and mentorship programs and also provides financial funding and acceleration and incubation assistance for new fintech companies. Analysts predict that the country's fintech sector will expand to US\$7.8 billion in 2020, up US\$4.4 billion from 2017. The government also plans to launch a cashless payment system by 2020 that will reduce cash transactions by 10%.

Cambodia Update

New Rail Service

Cross-border railway service between Cambodia and Thailand reopened this month after 45 years. There is now rail service between Bangkok and Phnom Penh which is expected to provide manufacturers a cheaper, high volume logistics option than trucking. The reopened services will boost business in both countries as Thai manufacturers want to shift labor intensive production processes to Cambodia and bring semi-finished products back to Thailand for assembly. This was not possible before due to the high cost of trucking dependent logistics.

THAILAND LEGAL REVIEW

Litigation News

Inquisitorial System

Although Thailand's legal system is a civil law system, the accusatorial system is applied to most cases in the Courts of Justice, except in some specialized courts and specific case types.

In general, most civil law countries use the inquisitorial system. Because it is a system that the state uses to search for the truth, the court has the role and the power to seek additional facts and evidence and is not limited to considering only the facts and evidence presented by the parties. The court has the power to initiate various proceedings by itself without needing a request by any party. In contrast, the accusatorial system is normally used in common law countries. These courts do not have the role or the authority to seek additional facts and evidence on their own. Each party must present the facts and examine the facts themselves. The court must be limited to the framework of considering only the facts and evidence presented by the parties even if the parties do not present complete evidence.

Previously in Thailand, the inquisitorial system was only applied to the Specialized Courts of the First Instance – the Central Labour Court, the Central Intellectual Property and International Trade Court, the Central Tax Court, and the Central Bankruptcy Court – and the Administrative Court, the Juvenile and Family Court, and consumer cases in Civil Court. Still, in other civil cases, the Civil Procedure Code does empower the court to take further evidence in the interest of justice without the request of either party. Further evidence can include recalling witnesses for reexamination.

The Criminal Procedural Code was amended and came into force on February 20, 2019 and has changed the method of trial and witness examination in the Thai Court to be a mixture of inquisitorial and accusatorial systems. Some of the major changes include:

In the case of death penalty (execution) or when the defendant's age is under 18 years old, the Court is required to ask the defendant whether the defendant wants a lawyer. If the defendant does request a lawyer, the Court must provide a lawyer for the defendant. (Section 165/1)

On the day of preliminary hearing of a criminal case instigated by the injured party, not the public prosecutor or attorney general, the defendant may inform the Court that the

key legal issues before the Court have no legitimate grounds and may specify the names of any witnesses and any documentary evidence or material evidence that will support the facts as prescribed in the petition of the defendant. The Court may subpoena or summon the witnesses or said documentary evidence or material evidence for consideration and order as it may be deemed necessary. (165/2)

The defendant is entitled to bring their own witnesses and evidence to prove to the satisfaction of the Court that there are no legitimate grounds for the Court to accept the case for further trial. In the past, the Defendant was only entitled to appoint a lawyer to cross-examine the Plaintiff's witness.

Rules have also been established to deal with plaintiffs in prosecutions and criminal proceedings in cases where the plaintiff is filing lawsuits in bad faith or distorting facts to bully or exploit the defendant or looking for other results than the benefits.

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