



**A**t a regional meeting with the ASEAN Intellectual Property Offices in Jakarta in September 2004 and based on the outcome of the “EU-ASEAN Operational Seminar on the Role of Customs in Combating Counterfeiting and Piracy” which took place in Manila on 17-21 November 2003, agreement was reached to produce a handbook for customs.

This guidebook is intended to assist the ASEAN customs authorities in their efforts to comply with their obligations under Part III of the TRIPs Agreement to put into place systems and procedures for the border control of intellectual property rights. Obviously, Members of the WTO, who become by virtue of that membership, signatories to

the TRIPs Agreement are obliged to comply with the border enforcement provisions of that Agreement. The ASEAN Framework Agreement on Intellectual Property Cooperation of 15 December 1995 (Article 2.2) provides that “Member States, being mindful of the international conventions on intellectual property rights to which they are parties, and the international obligations assumed under the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights, shall implement intra-ASEAN intellectual property arrangements in a manner in line with the objectives, principles, and norms set out in such relevant conventions and the Agreement on TRIPs.”

There are in addition good policy reasons why a country would wish to enforce intellectual property rights. In developed countries, there is good evidence that intellectual property is, and has been, important for the promotion of invention in some industrial sectors, particularly the pharmaceutical, chemical and petroleum industries as well as biotechnology and some components of information technology.<sup>1</sup> Copyright has also proven essential for the music, film and publishing industries. For developing countries, the nurturing of indigenous technological capacity through the intellectual property system has also proved to be a key determinant of economic growth and poverty reduction. The enforcement of intellectual property rights thus protects local commercial and industrial innovation, as well as encouraging technology transfer and foreign investment. Enforcement is therefore part of a developing country's economic development strategy.

Many Asian countries are directly or indirectly concerned by counterfeiting. During the last 20 years counterfeiting has evolved from both technical and logistical point of views. Objects which are counterfeited have changed: 20 years ago,

goods with a high added value were the main target of counterfeiting, today luxury goods represent only about 2% of counterfeited goods at European borders. The reality is that virtually every IP is being violated on a considerable scale and that the variety of fake products ranges from cereal boxes to plants and seeds, from aeroplane spare parts to sunglasses, from cigarettes to medications, from AA batteries to entire petrol stations. Big software producers are as likely to be harmed as small makers of a certain type of tea. The annual statistics published by the European Commission's customs services regarding the number and the nature of seized pirated and counterfeit goods originating from third countries provide detailed and reliable information about the dimension and the growth of the problem.<sup>2</sup> As is indicated in the next chapter IPR violations have adverse implications for economic development, fiscal revenue, public order and consumer health and protection.

Counterfeiting is a constantly evolving issue from the point of view of the goods, legislation, counterfeiting organisations, new customs techniques for detection and targeting. European customs authorities and selection techniques to

1 See UNCTAD/ICTSD, Intellectual Property and Development, Geneva, 2003.

2 [http://europa.eu.int/comm/taxation\\_customs/customs/counterfeit\\_piracy/index\\_en.htm](http://europa.eu.int/comm/taxation_customs/customs/counterfeit_piracy/index_en.htm)





combat counterfeiting and piracy. An exchange of information and knowledge between ASEAN and Europe can assist to enhance the combat against counterfeited goods and piracy.

It was appreciated by the drafters of the TRIPs Agreement that customs intervention against infringements of intellectual property is an extremely cost effective and efficient method of protection against counterfeit goods.

The advantages are:

- Interventions by customs authorities prevent damage to the protected products;
- Large quantities of counterfeit and pirate products can be intercepted before they have been distributed throughout a country, territory, or region;
- The cost of intervention is usually lower than other methods of enforcement; and
- Customs documents often provide some insight into the distribution chain of the infringing products.



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This Handbook will provide guidance to customs authorities to the TRIPs provisions on border enforcement. It examines best practices in relation to border enforcement in Europe, ASEAN and other parts of the world as well as the best practice of the World Customs Organisation. The Handbook further examines technological and organizational techniques and mechanisms in border enforcement.

Border enforcement legislation in the EU and ASEAN is surveyed, and the organisations in charge of enforcement in EU and ASEAN are identified. Finally, the Handbook identifies a number of useful industry resources which are of assistance in ensuring effective border enforcement of intellectual property rights.

