



YUSARN AUDREY
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The European Union – Singapore Free Trade Agreement (EUSFTA)

INTELLECTUAL PROPERTY RIGHTS

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Overview

- A. About the EUSFTA
- B. Main Objectives of the EUSFTA
- C. What is IP ?
- D. Changes to the Intellectual Property Rights in Singapore and impact resulting from EUSFTA – Intellectual Property (Border Enforcement) Act 2019

What is the EUSFTA

- The EUS-FTA is the first FTA between the EU and an ASEAN country.
- The EUS-FTA was signed on 19 October 2018; approved by the European Parliament on 13 February 2019, and the Council of the EU on 8 November 2019.
- The EUSFTA entered into force on 21 November 2019.

Main Objectives of the EUSFTA

- Eliminate nearly all import duties on EU-Singapore trade within 5 years after the agreement enters into force.
- Tackle non-tariff barriers.
- Increase efficiency in customs procedures to facilitate trade, whilst bolstering supply chain security through strengthened cooperation.
- Modernised rules to protect and enforce intellectual property rights.

Main Objectives of the EUSFTA

- Provide preferential market access opportunities for respective service providers in various industries such as telecommunications, financial sector, computer services, transport, environmental services, and certain business services and postal services.
- This pledges a commitment to equal treatment of EU and Singapore service providers in certain sectors.

Main Objectives of the EUSFTA

- Increased opportunities for EU firms to compete for public procurement contracts in Singapore.
- Enhance binding commitments on environmental protection and workers' rights in line with international standards and agreements.
- Provide provisions to enhance trade and investment's contribution to sustainable development such as corporate social responsibility, sustainability assurance schemes and conservation and sustainable management of natural resources.

Main Objectives of the EUSFTA

- Encourage high level of investment protection, whilst safeguarding the EU and Singapore's right to regulate and pursue legitimate public policy objectives.
- Modernise and reform investment dispute resolution mechanisms.

What is Intellectual Property (IP)

- Intellectual Property (IP) refers to creations of the mind, such as artistic works, names and images used in commerce, designs and new inventions.
- IP is protectable in law through patents, trade marks, copyright, designs, trade secrets, geographical indications, etc.
- IP rights are like any other property right. They allow owners of patents, trade marks or copyrighted works to benefit from their own work or creation.

The Intellectual Property (Border Enforcement) Act 2018

- The Intellectual Property (Border Enforcement) Act was enacted to amend the Copyright Act (CA), Trade Marks Act (TMA), Registered Designs Act (RDA), and the Geographical Indications Act (GIA). The changes were slated to come into force in 3 phases to do the following:-
 - i. Implement Singapore's obligations under the EUSFTA to enhance border enforcement measures against goods that infringe intellectual property rights.
 - ii. Provide new powers for Singapore Customs to obtain and provide information relating to the goods that they seize;
 - iii. Standardise the terms and provisions relating to border enforcement across the IP Acts.

The Intellectual Property (Border Enforcement) Act 2018

- The Act partially came into force on 10 Oct 2018 to amend the Copyright Act and Trade Marks Act.
- The enhanced border enforcement measures for copyright and trade marks came into operation with the entry into force of the EUSFTA on 21 Nov 2019.
- These enhanced measures are found in the following provisions of the Act: Division 2 of Part 1, Division 2 of Part 4 and sections 87(2), 88(2), 89(4), 89(5), 89(6), 90(4), 90(5), 90(6) and 90(7). These provisions amend the Copyright Act, the Trade Marks Act, the Customs Act and the Regulation of Imports and Exports Act.

The Intellectual Property (Border Enforcement) Act 2018

- Part 1 of the Act – Amendments to Copyright Act
– Copyright (Border Enforcement Measures)
Amendment Regulations 2018
- Part 2 of the Act – Amendments to Geographical Indications Act 2014
- Part 3 of the Act – Amendments to Registered Designs Act
- Part 4 of the Act – Amendments to Trade Marks Act
– Trade Marks (Border Enforcement Measures)
Amendment Rules 2018
- These changes come into force in three (3) phases.

The Intellectual Property (Border Enforcement) Act 2018

- The following subsidiary legislation have also been issued and took effect on 21 Nov 2019:-
 - Copyright (Border Enforcement Measures Fees) Regulations 2019
 - Copyright (Border Enforcement Measures) (Amendment) Regulations 2019
 - Trade Marks (Border Enforcement Measures Fees) Rules 2019
 - Trade Marks (Border Enforcement Measures) (Amendment) Rules 2019

Commencement of the IPBE Act 2018

PHASES	POWERS
<p>Phase 1: Took effect 10 Oct 2018 upon passing of the Intellectual Property (Border Enforcement) Bill</p> <ul style="list-style-type: none"> With the passing of the Intellectual Property (Border Enforcement) Bill on 9 July 2018, the Copyright Act and Trade Marks Act were first amended and came into force on 10 Oct 2018 to give Singapore Customs wider powers to obtain relevant information and documents after goods or copies of copyright materials have been seized. 	<p>Amendments to the Copyright Act and Trade Marks Act empower:</p> <p>(i) Customs to acquire information from persons whom they reasonably believe to have any information/document relevant for the purposes of enabling Intellectual Property Rights (IPR) holders to institute infringement proceedings against persons connected with the seized imports (<i>Sections 4 and 57 of the IPBE Act</i>); and</p> <p>(ii) for IPR holders to obtain from Customs the names and contact details of any person connected with the detained imports/exports necessary for the purpose of instituting intellectual property infringement proceedings* (<i>Sections 7 and 60 of the IPBE Act</i>).</p> <p><i>*This helps facilitate obtaining contacts of <u>any</u> person connected with the infringing goods, which will in turn enable proper institution of proceedings.</i></p>

Commencement of the IPBE Act 2018

PHASES	POWERS
<p>Phase 2: Came into effect on 21 Nov 2019 upon entry into force of the EUSFTA</p> <ul style="list-style-type: none"> Implementation of enhanced border enforcement measures in the Copyright Act and Trade Marks Act; and standardised terms and provisions relating to border enforcement in both these Acts. 	<p>Amendments to the Copyright Act and Trade Marks Act that allow:</p> <p>(i) enhanced border enforcement measures empowering IPR holders to request Customs to inspect and seize infringing exports* including extending Customs' power to obtain information on seized goods for exports as well as imports (<i>Sections 12 and 65 of the IPBE Act</i>); and</p> <p>(ii) standardise the terms and provisions relating to border enforcement in the Copyright Act and Trade Marks Act.</p> <p>*Previously the Copyright Act and Trade Marks Act provided for seizure on request of suspected infringing goods that are imported, however there was no similar provisions that exist for the seizure of suspected infringing goods that are exported. The Act now enables the seizure on request of suspected infringing goods that are to be exported.</p>

Commencement of the IPBE Act 2018

PHASES	POWERS
<p>Phase 3: Within 3 years of the EUSFTA coming into force</p> <ul style="list-style-type: none"> Enhanced border enforcement measures in the Registered Designs Act; implementation of new powers in the Geographical Indication Act and Registered Design Act for Singapore Customs to obtain and provide information relating to the seized goods; and standardised terms and provisions relating to border enforcement in the Registered Designs Act and the Geographical Indication Act. 	<p>The proposed amendments to the Registered Designs Act and Geographical Indications Act are set to:</p> <ul style="list-style-type: none"> (i) enhance border enforcement measures, including empowering IPR holders to request Customs to inspect and seize infringing exports/imports (<i>Sections 35 and 53 of the IPBE Act</i>); (ii) empowering Customs to acquire information from persons whom they reasonably believe to have any information/document relevant for the purpose of enabling IPR holders to institute intellectual property infringement proceedings against persons connected with the seized exports/imports (<i>Sections 39 and 53 of the IPBE Act</i>); and (iii) standardise the terms and provisions relating to border enforcement in the GIA and RDA.

Enhanced Border Enforcement

- Impact of changes for IPR owners :-
 - a. Singapore Customs will be able to obtain and provide information relating to the seized goods. IPR owners will also be able to request Customs to stop both imported and exported goods*.
 - b. The new border enforcement regime will extend to geographical indications (GI).
 - c. New powers are provided to Customs (under the CA and TMA) to obtain and provide IPR holders with information that is necessary for instituting IPR infringement proceedings relating to seized infringing goods (such as the names and contact details of people connected to the seized goods).
 - d. Within 3 years from 21 Nov 2019, new powers will be provided to Singapore Customs (under the GIA and RDA) to obtain and provide information relating to the seized goods.

**Previously Singapore Customs can on its own initiative, seize imports and exports (including goods that are in transit and being held by local companies), if these are suspected of being infringement goods. However where the request originates from IP rights holders, the customs officers can only seize goods being imported into Singapore. The change in the law will now give custom officers the powers to also seize goods being exported at the request of these rights holders.*

Enhanced Border Enforcement

- With the enhanced border enforcement measures, Customs will be able to take the following measures to stop both imported and exported goods in relation to the following IPR :-

ACTIONS	TM	CR	RD	GI
Custom Officer in relation to imports	Existing Right	Existing Right	New	-
Custom Officer in relation to exports	Existing Right	Existing Right	New	-
IP Owner in relation to imports	Existing Right	Existing Right	New	New
IP Owner in relation to exports	New	New	New	New

Impact of EUSFTA on Copyright Act

- Enhancement of creators' rights :-
 - a. **New right of attribution**: Under the current system, creators are not attributed their work when others use it. The proposed amendments will give creators the right to be attributed as the creator of their work, regardless of whether they continue to own or have sold the copyright. Defences and exceptions will also be available to the right of attribution.
 - b. **Default ownership of commissioned works**: For any works commissioned that are currently owned by the commissioning party, the proposed amendments now give default ownership of copyright in all works to creators. This will include photographs, sound recordings and films that are commissioned (unless otherwise agreed in writing). This gives protection to unknowing creators who may not understand the law particularly in circumstances where there are no contracts dealing with copyright ownership.
 - c. **New Enforcement measures**: There will be new enforcement measures made available to copyright owners so as to deter retailers and service providers from profiting off the provision of access to content from unauthorised sources, such as through the sale of set-top boxes that enable access to content from unauthorised sources, also commonly known as illicit streaming devices. The amendments will prohibit the import and sale of such devices. Civil and criminal liability will be imposed on those infringing retailers and service providers.

Impact of EUSFTA on Copyright Act

- Improvement of users' access to copyrighted materials :-
 - a. **Enhanced exception for use for educational purposes**: In addition to the exceptions currently available, non-profit schools and students will be able to use online resources that are accessible without payment for instruction purposes. This additional exception will make it easier for teachers and students to use online materials in classes and facilitate instruction. (NB. Online resources that require payment will not be covered by this exception).
 - b. **New exception for text and data mining for the purpose of analysis**: A new exception will be included to allow copying of copyrighted materials for the purpose of data analysis, where the user has lawful access to the materials that are copied. This is particularly relevant for those who use automated techniques to analyse text, data and other content to generate insights and risk infringing copyright as they typically require large scale copying of work without permission.

Impact of EUSFTA on Copyright Act

- Aid to creators and users in the collective licensing of copyrighted works :-

New class licensing scheme for CMOs

- a. Presently, collective management organisations (CMOs) are not regulated. The amendments introduce a class licensing scheme for CMOs, which will help to ensure that CMOs operate with transparency, governance and accountability, and are able to facilitate copyright licensing transactions efficiently.
- b. Any entity carrying out licensing activities in Singapore will automatically be subject to and be required to comply with all licence conditions that will be administered by IPOS. In addition, CMOs will be required to have dispute resolution mechanisms in place for creators.

Impact of EUSFTA on Copyright Act

- Other proposed changes :-
 - a. Clarity on situations when copyright exceptions would not be restricted by contractual terms.
 - b. The duration of copyright protection for unpublished works will be limited.
 - c. New exceptions for galleries, libraries and museums to make copies of items or publicly perform audio-visual materials for the purposes of exhibition and inclusion in publicity materials.

Geographical Indications Act (GIA)

Background :-

- Geographical indications (GIs) are terms that are used to inform consumers that a product comes from a particular place. These are indications identifies a given quality, reputation or other characteristic of a good that is essentially attributable to the place of its origin.
- Many GIs contain the name of the town, region or country where the goods originate from. E.g. "Champagne" denotes a wine that originates from the Champagne region in France.
- Singapore's original GIA 1999 was enacted to comply with the WTO's 1994 Agreement on TRIPS. Under the GIA 1999, the registration of GIs was not required. Instead GIs protected in a country that was a member of the WTO would generally qualify for protection in Singapore, subject to certain exceptions, such as where the GIs had become the common name in Singapore for the goods and/or services identified.

Geographical Indications Act 1998

(Prior to the EUSFTA) - The TRIPS provides a 2-tiered scheme of protection :-

- (a) all GI products enjoy a basic level of protection where GI labels cannot be used on products which do not come from the place indicated by the GI, if this misleads the public as to the true geographical origin of those products;
- (b) for wines and spirits, there is an enhanced level of protection where GI labels cannot be used even if the consumers are not misled as to the geographical origin of the goods in question.

Impact of EUSFTA on Geographical Indications

- Pursuant to the EUSFTA, the Geographical Indications Act 2014 (**GIA 2014**) was passed in Parliament on 14 April 2014 and came into force upon the ratification of the EUSFTA on 21 Nov 2019.
- The GIA 2014 introduces 3 major changes:-
 1. A GI Registry will be established to oversee a three-stage application process;
 2. The more stringent protection formerly only available for wines and spirits under the GIA 1999 will also be conferred on GIs used for certain agricultural products and foodstuffs; and
 3. Within 3 years of the EUSFTA coming into force, improved border enforcement measures will be available to the proprietors of registered GIs (including availability to make request for the Singapore Customs to detain goods that are suspected of infringing the registered GI).

Impact of EUSFTA on Geographical Indications

- The provisions of the GIA that came into force on 21 Nov 2019 relate to the following :-
 - Provides for a new right of action in respect of certain non-misleading uses of a registered GI identifying an agricultural product or foodstuff belonging to a category of prescribed goods. **Sections 4(6) to 4(9).**
 - Provides for exceptions applicable to registered GIs. For example, a person may use in the course of trade any name contained in a registered GI in relation to any goods or services, if the name is identical with the term customarily used in common language to describe the goods or services in Singapore. **Sections 15 to 16.**
 - Provides for the registration of GI as prima facie evidence that the grounds for refusal of registration in section 41 of the Act are absent. Section 41 sets out the grounds on which registration may be refused. **Section 75.**
 - Provides for the High Court's power to issue a certificate of validity of registration in a proceeding where the registration of a GI is challenged. **Section 76.**

Impact of EUSFTA on Geographical Indications

- The Geographical Indication Rules (GI Rules) made under the GIA 2014 will govern the operational aspects of the GI Registry.
- The Rules will comprise of the process for application, examination and registration of a GI as well as dispute resolution procedures.
- The following subsidiary legislation also took effect on 21 Nov 2019:-
 - Geographical Indications (Composition of Offences) Regulations 2019.
 - Geographical Indications (Prescribed Goods under Section 10) (Amendment) Rules 2019.

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Qualifications:

- ✓ LL.B (Hons.) LL.M
- ✓ Registered Patent Agent
- ✓ Advocate & Solicitor Supreme Court of Singapore
- ✓ Advocate & Solicitor High Court of Malaya
- ✓ Solicitor of England & Wales
- ✓ Commissioner For Oaths
- ✓ Notary Public
- ✓ WIPO Regional Consultant 2004-2006
- ✓ Leading Lawyer, Who's Who Legal Singapore 2008
- ✓ IAM 250 Worlds Leading IP Strategists 2009, 2010, 2011
- ✓ IAM 300 Worlds Leading IP Strategists 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019

- Audrey is a Member of the Board of Directors, IP Office of Singapore.
- President, Licensing Executives Society Singapore 2011-2013; Chair Asia-Pac Committee LESI; Vice President, LESI.
- Audrey's career in law spans over 2 decades. She is well known amongst her clients & peers as an astute IP lawyer and strategist. In 1999 Audrey co-founded a boutique IP & corporate law firm Yusarn Audrey, offering legal and intellectual capital management as part of an integrated suite of IP solutions.
- In 2012, Audrey served on IPOS Steering Committee on a National IP Competency Framework as well as on the IP Sub Committee on "Developing a vibrant market place for IP transactions and commercialisation" for the purpose of the IP Hub Master Plan for Singapore, launched in March 2013.
- Audrey is an Adjunct Fellow of the Intellectual Property Academy of Singapore. The World Intellectual Property Organisation (WIPO) appointed Audrey as Regional Consultant (IP) in 2004 to design and head up a study involving IP as an economic tool for ASEAN. Audrey served as an external expert for the European Patent Office (EPO) under the EC-ASEAN IP Cooperation Programme. She is cited in the Who's who Legal 2008 as one the top lawyers in Singapore. Audrey served as an examiner for IPOS for the Patents Agents qualifying exams for several years.
- Audrey serves as an Independent Director of an SGX listed company
- Audrey was the Director of IPOS International and is an Advisor to IP Valuelab Singapore



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THANK YOU!

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