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ASEAN Economic Community 'not an abstract concept'

SMU law professor Locknie Hsu says that businesses will benefit from concrete improvements in the rule of law

THE 10-member Association of South-east Asian Nations, or ASEAN, has long been disparaged as a talk-shop. Founded in 1967, ASEAN was then more of a political arrangement to maintain peace and stability in the region than an economic deal that directly benefits businesses and ordinary people.

Yet late last year, the ASEAN Economic Community (AEC) was established by ASEAN's political leaders at a summit in Malaysia. The AEC obliges ASEAN member states to allow the free flow of goods, services, capital, and labour across the region in accordance with terms agreed by the member countries.

It would make ASEAN, in theory, the third largest economy in Asia and the seventh largest in the world, with a combined gross domestic product of US\$2.6 trillion in 2014 and a combined population of 622 million. By boosting the competitiveness and connectivity of the region, economic output will hopefully improve, with more jobs generated and more opportunities for businesses.

Is this all hype? Not so, said Singapore Management University (SMU) law professor Locknie Hsu, who researches trade and investment law.

She pointed to how there are already a number of binding legal agreements made over the years. For example, the ASEAN Free Trade Area (AFTA) established in 1992 limited the tariffs that member states can impose on goods originating from the region; the ASEAN Trade in Goods Agreement (ATIGA) in 2009 has also eliminated almost all import duties on intra-ASEAN trade.

The AEC is seen as a further nudge in the right direction. "It gives a certain impetus and keeps the momentum going. Groups in various areas meet and discuss regularly, and deal with issues collectively. A lot of people say it moves slowly but it still moves."

Such collectively-agreed commitments do feed into domestic laws, and affect how domestic laws work, she said.

Yet crucially, laws need to be enforced at the local level. While outright tariffs have come

down, non-tariff barriers such as import licensing requirements and border delays still exist.

"For example, if we have a treaty that says you can't do certain things at the border, you will have an issue if the local official somehow circumvents the letter of the law and takes a long time to clear your goods. It's an implementation issue. You need to ensure enforcement at the local level."

Implementation issues need to be addressed effectively, so that ASEAN member states can provide a unique supply chain proposition to the world. This will better allow businesses elsewhere to find it attractive to do a "plug and play" in our region, Prof Hsu said.

Improving the rule of law

What Prof Hsu finds encouraging is that ASEAN policymakers have been including more language, in recent agreements, on promoting governance and the rule of law.

"There is greater awareness among negotiators and policymakers, and they see a need to perpetuate it in declarations and agreements. Having more pervasive language on the rule of law and governance is a good thing," she said.

Phrases and words such as "rules-based" and "transparency" have appeared in documents such as the AEC Blueprint and the Bali Concord III, compared to earlier days when such references were uncommon in ASEAN documents, Prof Hsu said.

"However, awareness of the rule of law is the first step. The next step is actualising it. This can translate into various concrete things, like ensuring effective regulatory systems, enforcement of laws, and proper implementation of laws at the local level."

Businesses will ultimately benefit from concrete improvements in domestic law and legal systems, and the higher standards of transparency, fairness and enforcement that come with them, she said.

Law firms can benefit

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"Businesses will ultimately benefit from concrete improvements in domestic law and legal systems, and the higher standards of transparency, fairness and enforcement that come with them ... With the establishment of the AEC and increased cross-border trade flows, the legal profession can also enjoy more opportunities."

- Professor Locknie Hsu,
Singapore Management University
School of Law

Firms which can recognise the opportunities that ASEAN presents, better train lawyers in cross-border work and build strong internal expertise on ASEAN members' laws will benefit more, she said.

Legal cultures vary across countries. For example, contract issues may differ depending on whether a country has a common law or civil law system. Some countries have mixed systems, while others have Islamic (Syariah) law.

Law firms have to confront the question of whether they should use a correspondent law firm in the foreign country, or whether they should do something more significant, such as merge with a foreign firm, or train their own lawyers in Singapore to cater to the regional needs of clients, or both.

"Lawyers have to be equipped so that they can have a meaningful conversation with their counterparts," Prof Hsu said.

An ASEAN focus

It has been quite a journey for Prof Hsu, who graduated with a local law degree in 1985 and went on to obtain her Master of Laws degree at Harvard University in 1990.

It was at Harvard where she became more interested in trade after doing a course. She continued her teaching and academic research in Singapore thereafter.

In 2001, she was attached to the Ministry of Trade and Industry, assisting with Singapore's Free Trade Agreement (FTA) negotiations with Australia and Japan.

"It was very exciting and very eye-opening because you sit at the table and see how your own country speaks to other countries and negotiates," she said.

Negotiating FTAs is about problem-solving using legal frameworks and language. "The governments were trying within each country's constraints and systems to find common interests that would economically benefit both sides, and derive the best agreement possible."

Prof Hsu then joined SMU in 2007, where she was made a full professor of law in 2015.

She believes in educating young people early about ASEAN. Not every law school in ASEAN

trains their students on what it means, ASEAN's legal role, and how its arrangements and agreements can facilitate trade and investment in the region, she said.

She includes ASEAN investment treaty law in her Trade and Investment Law course taught to senior SMU law students. She also includes a discussion on what ASEAN means to businesses in her business Law course taught to non-law students. For practising lawyers who do not have time to sit for a full course, Prof Hsu holds professional development seminars from time to time to introduce relevant topics.

Prof Hsu also currently chairs the Trade and Investment Group in the ASEAN Law Association. There, judges, academics and lawyers meet to gather and share information about ASEAN laws, so as to build up the strength and proficiency of lawyers in the region.

In February 2016, Prof Hsu's book on trade, investment, innovation and their impact on access to medicines – a highly-debated set of issues at the global level – was published by Cambridge University Press. The book fills a gap in existing works by providing an Asian perspective, which is especially relevant given the rapidly ageing populations in Asia and ASEAN, and mounting concerns over the costs of healthcare.

At SMU, one project she is working on with colleagues aims to address the legal obstacles faced by businesses trading and investing in ASEAN. The end point of the study, due to conclude in about a year's time, is to make policy recommendations.

"What's interesting about my work is the potential to meld legal analysis with policy to produce something concrete that could improve the business environment even more."

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