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ASEAN DEVELOPMENT ON CHILDREN'S TOY SAFETY

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Abstract

There is a growing concern on the safety of children's toys around the world particularly within Association of Southeast Asian Nations (ASEAN), European Union (EU) and United States (US). As one of the largest exporter of children's toys in the world, ASEAN should have a framework in the form of policy or directives to ensure the safety of toys. The development of toy safety initiatives in ASEAN is slow. ASEAN should expedite toy safety initiatives for the safety of children as consumers. This paper will discuss the position of consumer protection in the ASEAN Economic Community (AEC) Blueprint and the toy safety initiatives in ASEAN. The findings of the research shows that ASEAN lacks control mechanisms to ensure children's toy safety at the ASEAN level. Last but not least, this article also offers recommendations on improving the existing system and areas for enhancement on procedures related to the safety of children's toys.

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1. Introduction

The global toy industry is a billion-dollar industry with a market value amounting to USD 92 billion in 2014. At that time, it was estimated that the value would reach USD 115.946 billion in 2019. ASEAN has become the third largest exporter of toy products in the world after China and Europe accounting for €864.09 million with exported toy products worth €255.36 million to the European Union (EU) in 2011. Further, recent statistics in several ASEAN Member States (AMS) show an increase of demand for toy products when the export of toys from Thailand reached USD 213 million in 2016 (ThaiPRnet.Toy, 2017), while Vietnam's export of sports equipment and toys was worth USD 235.7 million in the first quarter of 2017 (Thanh Nien News, 2017).

However, unlike EU, ASEAN has no uniform and/or harmonised legislation that regulates the safety of children's toys. This problem may significantly pose a serious threat to children's lives especially when they are at greater risk of hurting themselves than adults. In 2007, EU which has harmonised legislation to regulate children's toy safety recalled more than 19 million toys which violate the applicable toy safety standards (Larson & Jordan, 2018). Besides that, the Consumer Product Safety Commission (CPSC) of the United States has reported that there is an increasing trend in the number of toys-related deaths and injuries from 2001 to 2010. The CPSC also reported that the number of injuries may continue to grow for 2011 and 2012 (Mak & Lau, 2013). The fact that ASEAN does not have uniform and/or harmonised legislation that regulates the safety of children's toys will make ASEAN more vulnerable to unsafe toys.

Although there is no statistical data on toy-associated accidents available at the ASEAN level, the concern on the need to have solid toy safety regulations in this region has arisen in recent years. As highlighted in the Roadmapping Capacity Building in Consumer Protection in ASEAN, there is an increase in the demand from consumers to have products and services that meet safety requirements and standards especially, when it comes to the safety of their children. Thus, comprehensive and well-functioning national and regional consumer protection systems enforced through effective legislations are needed. Based on the same report, there were a recommendation from Brunei and Myanmar to develop national standards for toy products and set up a computerized system for data collection on consumer injuries due to unsafe toy products and inadequate labeling.

Besides that, the former Secretary-General of ASEAN, Minh (2017) said that ASEAN has played an important role in implementing global frameworks and programs such as the Sustainable Development Goals (SDGs) adopted by the United Nations in 2015, of which one of the goals is to promote healthy lives and wellbeing and reduce preventable death of new born babies (SDG3). In the same year, the ASEAN Economic Community (AEC) Blueprint 2025 was ratified by the ASEAN Leaders which provides broad directions through strategic measures for the AEC from 2016 to 2025 and emphasises new strategic actions to protect and promote the interests of consumers by inaugurating a joint ASEAN consumer protection framework through higher levels of consumer protection legislations including children's toys product. It is expected to be able to build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, promotion of sustainable consumption and stronger involvement of consumer representatives.

2. Problem Statement

There is no specific agency responsible for observing and administering the safety standards for children's toys product. AMS is also facing serious safety failures involving various consumer goods. The ASEAN Committee on Consumer Protection (ACCP) website also reports a few voluntary and/or mandatory recalls of goods potentially used by babies or children (such as toys, strollers and bicycles), covering recent and old goods. The Thailand market for instance, due to the safety concerns over a manufacturing defect in a children's toys product, has retrieved such goods several times (ASEAN Secretariat, 2018). Hence, a framework is needed at the ASEAN level in the form of policy or directives to ensure the safety of children's toys.

3. Research Questions

The broad objective of this study is to discuss the toy safety initiatives at the ASEAN level. The specific objectives are:

- 3.1.** to identify the development of consumer protection at the ASEAN level; and
- 3.2.** to examine the toy safety initiatives at the ASEAN level.

4. Purpose of the Study

As there is no existing policy or directives in relation to toy safety at the ASEAN level, there are many unsafe toys entering AMS. Hence, there is a vital need for policy or directives to be developed on toy safety at the ASEAN level.

5. Research Methods

In order to achieve the purpose of this study on development of children's toy safety in ASEAN, existing data from legal documents, country reports, ASEAN Economic Community Blueprints, published and unpublished articles and other relevant literatures were explored. Generally, this is a socio-legal study.

6. Findings

The ASEAN Economic Community Blueprint (AEC Blueprint) implemented by the heads of each AMS at the November 2007 ASEAN Summit has accomplished a major milestone. The Blueprint, which is a binding declaration of obligations of all associate countries, laid out a road map to accomplish the economic integration, and incorporated action plans, targets and timelines to expedite the process. One of the four main characteristics of the AEC Blueprint is to make ASEAN a highly competitive economic region, where the fundamental vision is to strengthen consumer protection.

The AEC Blueprint proposed three (3) measures taken to protect the consumer:

- i. strengthen consumer protection in ASEAN through the establishment of the ASEAN Coordinating Committee on Consumer Protection (ACCCP);

- ii. establish a network of consumer protection agencies to facilitate information sharing and exchange; and
- iii. organise regional training courses for consumer protection officials and consumer leaders in preparation for an integrated ASEAN market.

The ASEAN Annual Report 2013-2014 (ASEAN Secretariat, 2014) shows that 82.1% of the stipulated targets mentioned in the AEC Blueprint has been achieved by the ASEAN Economic Community. Nevertheless, there is no specific figure that shows how much was accomplished in regards to the consumer protection targets stated in the said Blueprint; but certainly, the ASEAN Committee on Consumer Protection (ACCP) has been established and the discussion regarding this committee and its functions are clarified below.

It is worth noting that the new ASEAN Economic Community Blueprint 2025 (AEC Blueprint 2025) has been established and emphasize new strategic actions to protect and promote the interests of consumers by inaugurating a joint ASEAN consumer protection framework through higher levels of consumer protection legislations. It is expected to be able to build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, promotion of sustainable consumption and stronger involvement of consumer representatives.

Still, the triumph of the AEC Blueprint can be acknowledged as a beginning for ASEAN. Besides promoting the development of consumer protection, the implementation of the AEC Blueprint has been essentially achieved in, among others, eliminating tariffs and facilitating trade; liberalising and facilitating investment; advancing the services trade liberalisation agenda; facilitating skilled labour mobility; streamlining and harmonising capital market regulatory frameworks and platforms; promoting the development of regional frameworks in competition policy and intellectual property rights; promoting connectivity; narrowing the development gap; and strengthening ASEAN's relationship with its external parties.

That being said, it is also worth noting that the development of toy safety initiatives in ASEAN is slow. In most AMS, there is no specific agency appointed to be responsible for observing and administering the safety guidelines for consumer products, specifically children's toys. In addition to the above, there is no uniform and/or harmonized legislation to regulate the safety of children's toys among AMS. This is among the many terms of reference of the ASEAN Committee on Consumer Protection (ACCP) established.

The ACCP was established in 2007 by the ASEAN Economic Ministers to serve as the principal point to monitor and implement mechanisms to foster consumer protection and regional arrangements in the AEC. The ACCP members are representatives of consumer protection agencies of AMS and its goal is to provide a facility or channel for ASEAN consumers to claim or complain for any loss incurred (in respect of any services or goods acquired or purchased) at a minimal cost in a less burdensome and speedy manner. Since its establishment, the focus has been to ensure that consumer protection legislation is in place in all AMS, institutional capacity is strengthened, consumer access to information is enhanced and mechanisms for consumer redress and recalls are in order (ASEAN Secretariat, 2018).

Nonetheless, as stressed in the Myanmar and Brunei Consumer Protection Report (Consumers International, Country Report: Myanmar, Brunei, (2011), the stakeholders of both countries were strongly advised that a regional committee as well as special Task Force, or Council or Working group should be established to address consumer issues related to children in order to protect the rights of children as consumers. The development of regional marketing guidelines should also be taken into consideration due to the fact that children are used in product promotion and advertisement and aggressive marketing of products to children. This situation has led several AMS, which are Brunei, Thailand and Myanmar to propose to establish a specific platform for addressing “children as consumers” at domestic and regional levels by:

- i. developing specific programmes or initiatives to address issues related to children being targeted for toy products or marketing or advertising;
- ii. collaborating with experts for research on impact of products on children; and
- iii. developing an ASEAN Code of Conduct for marketing to children.

Nevertheless, in the matter concerning crucial categories of products such as foods, cosmetic products and children’s toys, it would be politically easy and economically proper to mobilise the political system to enact legislation regulating product safety, as there is a high chance of harm especially if the consequences of a product failure are severe. Thus, a few AMS have had quite strict legislation regulating products used by infants and children and such public regulation encourages manufacturers to produce safe goods and recall promptly any (potentially) defective goods. They have further incentives from market forces if they are multinational companies trying to preserve a global reputation.

It is worth mentioning that the 193 members states of the United Nations (UN) have adopted a new 2030 Agenda for Sustainable Development (2030 Agenda), succeeding the UN’s Millennium Development Goals (MDGs) on 5 September 2015. The 2030 Agenda features 17 Sustainable Development Goals (SDGs) with 169 targets, which UN member states, including AMS, have agreed to implement by 2030. SDG3 calls for action to ensure healthy lives and promote well-being for all at all ages. Healthy lives and promoting well-being have been emphasized in the United Nations Human Development Report (UNDP, 1994) which touched on the concept of human security. The concept of human security is clearly envisaged in clause 3.9 of SDG3. The aim of SDG3 is to reduce the number of death and illness from hazardous chemicals, air, water and soil pollution and contamination. This is very relevant to children’s toys. Toys produced by toy manufacturers shall not have hazardous chemicals in order to promote healthy lives and well-being of children. Minh (2017) stated that ASEAN is strengthening cooperation with the EU in sustainable development, including through promoting complementarities between the ASEAN Vision 2025 and SDGs.

In the context of ASEAN, the establishment of the Southeast Asia Toy Association (SEATA) is a worthy platform to be considered in order to provide all children with access to safe and educative toys through supporting the sustainable growth of the toy sector and being part of a global value chain in advocating the importance of learning through playing (SEATA Mission, n.d). Moreover, the fundamental objective is to ensure the maintenance of high safety standards by educating stakeholders including

consumers, industry players and policymakers on the importance of toy safety through inculcating best practises (SEATA Objectives, n.d).

Product safety is one of the successful factors to protect consumer and enhance market competition (Lee & Law, 2017). Although ASEAN has taken toy safety initiatives to protect the consumers, harmonised legislation at the ASEAN level is still needed. It is submitted that ASEAN should use the EU Toy Safety Directive as a model to come up with a Toy Safety Directive or Toy Safety Policy at the ASEAN level. The vision of an ASEAN Single Market proposed in the ASEAN Blueprint which creates a frontier without borders can prove to be advantageous to member states if they have the required vehicle that is able to overcome the drawback of its progression through successful harmonization and synchronization efforts (Alsagoff & Ismail, 2017). It is submitted that the ASEAN Toy Safety Directive or Policy would provide a required vehicle for the ASEAN Single Market. Furthermore, it is contended that one of the measures to achieve the objective of ASEAN Free Trade Agreement (ATIGA) in allowing free flow of goods in ASEAN as one of the principal means to establish a single market and production base (ATIGA, 2000) could be achieved if there is a Toy Safety Directive or Toy Safety Policy at the ASEAN level

Perhaps, another approach that could be taken to overcome the lack of comprehensive legislations on the safety of children's toys within AMS is by exercising non-treaty harmonisation mechanisms. On this basis, individual AMS with strong political ties and close trade relations may establish a structure for joint recognition agreements to regulate the safety of children's toys despite the lack of other international agreements or formal treaty commitments and implementation through Free Trade Agreements. A non-treaty Trans-Tasman Mutual Recognition Arrangement (2017) between New Zealand and Australia exemplifies what is now applicable to most consumer goods. This mechanism is not new, as the approach was used in 2003 in the area of cosmetic regulations when AMS established a framework for Mutual Recognition Agreements by signing the agreement on the ASEAN Harmonized Cosmetics Regulatory Scheme in 2003. Nevertheless, this was envisioned as an interim step towards implementing a harmonised 'ASEAN Cosmetics Directive' regime by 2008. The Directive based on the EU Cosmetic Directive (1976) has been executed in all AMS since 2013. Therefore, the 'positive harmonisation' initiatives on toy safety regulation are possible, especially when the EU or other bodies already have well developed harmonised schemes.

It is submitted that one of the ways to keep up with the progress and development in children's toys is by getting involved with stakeholders and trade associations. The International Council of Toy Industries (ICTI) for instance, is a global toy industry whose participants include national toy associations from 20 countries including China, the largest exporter of children's toys product in the world. Each of these has its own membership made up of toy brands operating in its own geography. The primary motivation was to acknowledge the rapid advancement of toy safety standards in Europe and United States. ICTI is viewed as collaborative effort in harmonizing existing standards with new products. It established an international network of experts taking responsibility of future dialogues on toy safety standards. With a mission to act as centre of information exchange on the current trends and issues as well as a centre of discussion, ICTI and its member associations are dedicated to the promotion of toy safety standards.

7. Conclusion

ASEAN should expedite initiatives on toy safety. This is due to the fact that children as vulnerable consumers are easily affected by unsafe toys. The ACCP should play a rigorous role in initiating measures related to toy safety. The proposal by the stakeholders in Brunei and Myanmar to establish Task Force or Council or Working Group to address issues related to children as consumers, should be given high priority. It is argued that the development of an ASEAN Toy Safety Directive or Toy Safety Policy could overcome the issue of unsafe toys in ASEAN.

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