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# A HANDBOOK ON NEGOTIATING DEVELOPMENT ORIENTED INTELLECTUAL PROPERTY PROVISIONS IN TRADE AND INVESTMENT AGREEMENTS

*Prepared for ARTNeT by*

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# FOREWORD

As evidenced by the onset of the Fourth Industrial Revolution and the ever-increasing pace of industrial disruptions and innovations, technology and knowledge will be the undisputable drivers of the Asian century. Indeed, as countries inch closer towards harnessing the transformative powers of automation and digitization so must they also come to grips with an increasingly difficult regulative area governing inventions and innovative activity, namely, intellectual property.

While the importance of intellectual property is acknowledged and understood universally, the capacity to derive social and economic benefits remain distributed unequally. As is often the case, the Asia-Pacific region stands out as a region of superlatives and extraordinary variance with countries such as Japan and the Republic of Korea issuing more than a hundred thousand patents each year, with Nepal granting only two in 2015. Such differences in capacity to generate and attract innovation remain equally pervasive in other knowledge and technology intensive areas that rely on other forms of intellectual property such as trademarks, copyrights and industrial designs.

Rarely are the limits of these capacities tested as they are in free trade negotiations. Like this Handbook will show, intellectual property provisions have become a mainstay of modern trade agreements since the turn of the millennium, adding a new layer of complexity to negotiations that often present all-but-insurmountable challenges to even the most well-equipped nations. While global and regional economies continue on their, at times patchy, path towards harmonization and deeper integration, levelling the playing field for least developed countries and countries in transition to knowledge economies becomes a matter of supreme urgency if we are to expect equitable and sustainable outcomes from the process.

For the United Nations system to make good on its commitment to support its member states in implementing the Sustainable Development Goals, it must also take an active role in shaping the international discourse on science, technology and innovation policies. Drafted from the viewpoint of ensuring that countries with limited capacities and resources can achieve equitable trade negotiation outcomes in the area of intellectual property, this Handbook is a decisive step towards fulfilling that commitment.

Guided by the findings of leading academic authorities and research institutions, this Handbook establishes a firm basis for negotiators to formulate development-oriented intellectual property provisions. The Handbook also provides a robust benchmark based on an empirical analysis of intellectual property provisions utilized thus far in free trade agreements. Emerging as the output of an Asia-Pacific Research and Training Network on Trade (ARTNeT) initiative, the Handbook also joins the ranks of a wide array of demand-driven research created to enhance capacity of region to negotiate deep and development oriented preferential deals.

I hope this Handbook will be the catalyst Asia-Pacific needs to launch an era of modern trade agreements that strike the delicate balance of innovation, social equity and economic development analysis in a way that builds a sustainable future.

A handwritten signature in black ink, appearing to read 'Shamshad Akhtar', with a horizontal line underneath.

Shamshad Akhtar  
Under-Secretary-General of the United Nations and  
Executive Secretary of ESCAP

# ACKNOWLEDGMENT

This publication “A Handbook on Negotiating Development Oriented Intellectual Property Provisions in Trade and Investment Agreements” was prepared by Dr. Henning Grosse Ruse-Khan, a Reader in International and European Intellectual Property Law, the Co-Director of CIPIL and the Fellow and Director of Studies, King’s College, University of Cambridge and Mr. Teemu Alexander Puutio, Legal expert at the United Nations. The preparation of the publication and the related research and capacity building work was done under the substantive direction and guidance of Dr. Mia Mikic, Director of Trade, Investment and Innovation Division of the United Nations Economic and Social Commission for Asia and the Pacific and the Coordinator of Asia-Pacific Research and Training Network on Trade (ARTNeT).

The Handbook is the outcome of the ARTNeT secretariat’s initiative introduced in 2012 concerning intellectual property rights for facilitating the Asia-Pacific growth of the innovation economy by means of capacity building, network building, research and norm advocacy. Production of knowledge products such as this Handbook is intended to help close the development gaps in the Asia-Pacific through enhanced use and understanding of IPRs especially in the context of preferential trade and investment liberalization. Special attention is given to the priority needs of developing and least developed countries in the Asia-Pacific region.

There are several objectives of the initiative which have been embedded in the production of this Handbook:

- To enhance regional awareness, knowledge and understanding of intellectual property rights and of their social and economic impacts;
- To build regional capacity to effectively manage and deal with intellectual property rights;
- To facilitate regional trade and investment by improved use of intellectual property rights; and
- To facilitate the development and implementation of effective and sustainable IPR norms, policies and measures within the Asia-Pacific region

It is hoped that this Handbook will contribute to better preparation of the negotiators and other stakeholders in the region to reach successful and sustainable outcomes in trade and investment agreement negotiations that involve intellectual property. The readers are also invited to use a training material on “Negotiating forward-looking IPRs clauses in bilateral and plurilateral free trade agreements for developing countries in Asia and the Pacific” prepared by Dr. Albert Hu, National University of Singapore under this initiative and available on the ARTNeT knowledge platform.

In addition to the authors of the Handbook, Dr. Grosse Ruse-Khan and Mr. Puutio, who generously shared their expertise and time to further this ARTNeT initiative, many people deserve to be thanked for their contributions to the implementation of the initiative and preparation of the Handbook for print. They include all members of the ARTNeT secretariat team, supporting staff and consultants of Trade, Investment and Innovation Division, and numerous interns who continue to support the ARTNeT cause even after completing their internships.

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