

**ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS
AND ECONOMIC INTEGRATION IN VIETNAM**

By

VU, Binh Xuan

THESIS

Submitted to
KDI School of Public Policy and Management
in partial fulfillment of the requirements
for the degree of

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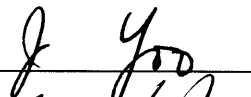
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ABSTRACT

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Vietnam has recently become the 150th member of the World Trade Organization (hereafter WTO) on October 2006. Consequently, Vietnam is taking efforts to reform economic institutions to be consistent with the WTO requirements and to widely integrate into the global economy while enhancing trade exchanges with other countries. The government recognizes that global economic integration is imperative to Vietnam's economic development. In the progress of globalization, intellectual property is becoming increasingly important as a tool for economic growth and technological advancement. This brings attention to the knowledge economics where the knowledge capacity plays a central role in economic development and intellectual properties are highly protected. The intellectual property rights and its role in international integration are still new to many Vietnamese people, even to enterprises and government officials. The lack of basic knowledge and government support on this issue leads to general unconcern regarding IPR registration and protection. In some sense, the Vietnamese people are not ready for the global integration and the competition in the international market. In recent years, by

speeding up the progress of reform on IPR institutions, the legal institutions and enforcement of IPRs have achieved the first result: more IPR institutions that are in compliance with international standards and bilateral agreements (WTO, WIPO, BTAs, Berne, Paris...) have come into force. Especially, Vietnam became an official member of the agreement on Trade-Related Aspects of Intellectual Property Rights (hereafter TRIPs) when joining WTO. This is a strongest commitment on IPR enforcement. However, with 20-year-market-opening time, there still remain many shortcomings in the field of intellectual property rights such as inadequate legal institutions, human capacity, inefficient enforcement, social awareness and knowledge, transparency, education, etc. These problems have much adversely impacted on the progress of international integration, economic growth, improvement of the investment environment and social awareness of IPRs, etc in Vietnam.

Protection of intellectual property rights is a large field. It is related to many issues, such as politics, economics, legislative system, registration system, enforcement system and other policies. Thus in this thesis, I do not plan to analyze all technical aspects of IPR. Rather, I intend to focus on the current status of IPR enforcement institutions in the context of international integration by analyzing policies and strategies of IPR as well as solutions on improving IPR enforcement for the Vietnamese Government.

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Chapter 1

INTRODUCTION

1. Overview of IPR enforcement system in Vietnam

1.1. The legal and institutional system of IPR and its enforcement

Since the beginning of the economic reform in 1986, Vietnam opened the domestic market to the world. The government started the trade liberalization and privatization policies in order to develop the economy that had been stagnant for a long time under the centrally-planned economy. Also, the government has shown the will to narrow the development gaps between Vietnam and other countries in the region and the world. Such these polices of reform have changed the face of the economy from a poor-backward economy to a developing economy with much higher rates of GDP growth in recent years. However, with the much lower starting point than many other developing countries, Vietnam has been facing many institutional and economic problems including competition capacity, unsustainable development, market institutions and laws, environment pollution, etc.

Vietnam started the economic reform from the centrally planned economy where all economic activities of the economy were directly planned and forced by the central and local governments. Thus, communal activities and individual activities were not clearly differentiated. In fact, any individual innovation or invention would become communal property and such property right would belong to the community. Therefore, an individual could not own his invention or innovation for his own economic activity or in the other words, he could not have entirely private property right.

In most areas, Vietnam continuously has to renew, amend and as well as abrogate laws many times to make them more and more conformable with market institutions and the progress of international integration. However, these jobs have not been done systematically and comprehensively. General speaking, the law system of Vietnam lacks flexibility and feasibility while it is too unstable. On the one hand, it brings about difficulties for enforcement forces and opportunities for corruption. On the other hand, it brings about difficulties, burdens and inconveniences for enterprises and attractive loop-holes for law violations. Moreover, for this reason, it took a long time for Vietnam to reform and improve the law system in the process of negotiation to become a WTO member, started in 1995.

And additionally, the United States of America (hereafter the US) is the biggest market for most countries in the world, while, up to now, the US still has not yet granted so-called Permanent Normal Trade Regulations to Vietnam (hereafter PNTR). And the US treats Vietnam as a non full market economy for the 12 year time after joining WTO,¹ which situations also causes obstacles for Vietnam in trade-investment exchanges and other economic relationships with the US. Vietnamese enterprises still have less favor in the US market and other countries as well, because many other countries treat the Vietnamese economy by the same way as the US and basing on the Vietnam-US agreement on joining WTO. Especially, when economic disputes occur, Vietnamese government and enterprises would suffer disadvantages. For instance, recently, in the two anti-dumping cases (catfish and shrimp) between Vietnam and the US. The US relied on the non-market reasons to settle the two disputes. Finally, Vietnam lost both of them, and

¹ The bilateral US-Vietnam agreement on joining WTO

after that Vietnamese enterprises suffered high anti-dumping tariffs when exporting catfish and shrimp to the US market.

The protection of intellectual property rights was established by the promulgation of the Ordinance on Innovation, Technical Improvement, Production Rationalization and Invention on January 23rd, 1981. This ordinance was similar to the laws that prevailed in other socialist countries with centrally planned economies and provided for morals rather than ownership rights of creators. Government regulations were subsequently promulgated for trademarks (1982), utility solutions (1988), industrial designs (1988), and copyright (1986).

The Vietnamese economy has been opened for over 20 years. But so far, it is still considered a transitional economy. In the beginning years of the reform, plans and policies on privatization were very slowly deployed. The implementation of privatization was not strictly driven by the policies in the resolutions of the communist party and the National Assembly. Moreover IPR related laws, property right-related laws and institutions had not been radically performed and even some of them are unconfomable to market economics.

There were several barriers in the progress of administrative reform. State owned enterprises dominated the economy for a long time. Even now, in some areas state-owned enterprises are still monopolists and dominant. In the field of IPR, until 1999, the government promulgated the complete decree on sanctions against administrative IPR violations and is continuing to be amended in compliance with international treaties and TRIPS Agreement. In Vietnam, most acts built and enacted by the National Assembly only provide general regulations. They usually do not contain enforceable and detailed

regulations, their sanctions are just directional. In order to enforce these laws, the government has to build and promulgate decrees and many other law documents providing detailed and quantitative sanctions and regulations that are able to be applied by enforcement agencies of the state. In many cases, although acts promulgated by the National Assembly are available and in force on the legislative side, these acts have to wait for related laws promulgated by the government and its ministries. Therefore law enforcements are much dependent on the government, and so that delays in law enforcement are always arising. Also in the field of IPR enforcement, so far there is the new IPR Act 2005 (the first act on IPR separately from the civil code). But, intellectual property is divided into 3 areas: industrial property, copyright and plant variety. These three IP areas are managed by 3 different ministries: the ministry of science & technology for industrial property, the ministry of culture & information for copyright and the ministry of agriculture & rural development for plant variety.

About administrative sanctions on IPR infringements, there are already enacted sanctions on IPR infringements provided in 3 governmental decrees for the above three fields. However, many of these sanctions are non-deterrent and too low compared to profits gained from IPR infringements. Thus, fined IPR infringers tendentiously repeat their old infringements. At present, the IPR Act 2005 is still waiting for many other regulations to be effective in reality. This is because many of its articles are in conflict with those in the 3 current decrees on administrative sanctions in the IPR field. For example, pecuniary penalty in IPR Act 2005 is determined based on the turnover of selling IPR infringed goods that is much higher than current pecuniary penalty. Pecuniary penalty in IPR Act 2005 is within 1 to 5 times the turnover of selling IPR infringed goods

dependently on how serious the IPR infringement is. But currently, the general ordinance on administrative sanctions provides maximum fixed pecuniary sanctions for administrative levels (enforcement forces) in ascending order.² And these maximum pecuniary penalties are mostly much lower than those provided in IPR Act 2005, quite apart from the fact that the much high inflations for the last 7 years since the general ordinance on administrative sanctions was enacted in 2000.

In respect of enforcement institutions, Vietnam currently has 6 main enforcement authorities (enforcement forces). They directly belong to 6 different ministries of the government and there always exist functional overlaps among them. As a consequence, there is systematic tendency to avoid responsibility, overlapping operations and lack of coordination among the enforcement forces and agencies. Besides, the devolution and division system of enforcement of government levels and among enforcement authorities also contains inadequacies and asynchronies on the structure and legal functions of enforcement. This leads to the inefficiency in protection of IPRs, consumers' rights and business environments in the domestic market. In Vietnam, as many other fields of law implementation, the current authorities of IPR enforcement tend to keep and raise their powers in the field of IPR protection. For example, there is a national steering committee for fighting against smuggling, counterfeit & trade violation.³ Its function as a coordinator is to organize cooperations among enforcement agencies. However, the head of the committee does not have real power, and the cooperative relationships among members are not close due to the lack of a proper coordination mechanism. The problem is that, each force or governmental agency just take care of their own commissioned

² This means that a higher enforcement level can impose a higher penalty on IPR infringer than a lower enforcement level.

³ This is called Committee 127, its members come from related ministries of the government.

responsibilities. They do not take care of the common benefits in the IPR enforcement system. This is currently a general weakness in the system of executive bodies in Vietnam. More analyses on this issue are in part 2.2 of this Chapter.

1.2. Enforcement agencies and mechanism

1.2.1. Enforcement agencies

The Vietnam enforcement system of intellectual property rights consists of 3 major subsystems: civil enforcement by civil courts, administrative enforcement by administrative bodies and criminal enforcement by the police. For civil dispute settlements, only provincial courts and the supreme court have competence in judging intellectual property right-related disputes. The administrative function belongs to 6 different bodies: Market Control Force (hereafter MCF for short), Cultural Specialist Inspectors, Science and Technology Specialist Inspectors, Customs, Provincial Committees and Economic Police. The following are some discussions on their functions in detail.

First, Market Control Force (under Ministry of Industry and Trade) specializes in control of domestic markets and handling all kinds of administrative IPR infringements in the domestic market. This force is organized into three administrative levels (ministry, provincial and district or inter-district) with total of approximately 6,000 market inspectors. The enforcement function of the Market Control Force is to fight against smuggling, counterfeiting (including IPR infringements), unfair competitions and other trade violations in the domestic market. According to law regulations in the force, the Market Control Force has the powers of arresting administrative infringers, seizing and sealing off exhibits and infringed goods (similarly to Customs and Police). Because of this, nowadays in Vietnam, the Market Control Force handles

the majority of administrative IPR infringements. And this force plays a main role in enforcement and protection of IPRs.

The function of the Market Control Force covers all administrative trade-related infringements in all fields. However, this force is not concentrated on any specific specialty. Some of their operations are dependent on and related to many other specialties and other bodies. And many of their administrative decisions on handling infringements are based on other bodies' conclusions that limit their operations and reduce the effect in fighting against counterfeits and IPR violations. For instance, when the Market Control Force handles an IPR case. Before it can decide a final penalty on the IPR infringer, it has to conduct procedures on assessment for a legally official conclusion on that infringement⁴ or a consultation with other related authorities. In most of provinces, the Market Control Force has to cooperate with traffic police to stop transports running on road for sudden inspection. And only in important provinces and areas, the Market Control Force has authority to use control flag to directly stop suspectable transports.

Second, Specialist Inspectors (under Ministries: Science & Technology; Culture, Sport & Tourism; Agriculture & Rural Development). Culture Specialist Inspector specializes in copyright infringements. Science-Technology Specialist Inspector specializes in industrial property right related infringements. And Agriculture-Rural Development Specialist Inspector specializes in plant variety-related IPR infringements. According to Inspection Law, a specialist inspector force is organized of 2 levels: ministry and provincial. Each specialist inspector force has total of around 200 inspectors all over the country (from 3 to 5 inspectors for each province).

⁴ Technically assessed by National Office of Intellectual Property (hereafter NOIP) under Ministry of Science & Technology for industrial property right-related infringements, Copyright Office – under Ministry of Culture and Information for copyright-related infringements and Planting Office under Ministry of Agriculture & Rural Development for plant variety-related infringements. Currently, in order to implement the IPR Law 2005, the government is going to separate the function on IPR infringement assessment from these state authorities. Therefore, conditioned private companies can provide IPR infringement assessment as a service business.

Additionally, unlike Police and Customs and Market Control Force, Specialist Inspectors have not powers of arresting administrative infringers, seizing and sealing off exhibits and infringed goods. Their operations are also dependent on other forces and specialist bodies. Therefore specialist inspectors do not have enough force and capability to inspect and handle IPR infringements arising continuously on the market.

Third, Customs (Ministry of Finance) specializes in IPR infringements related to imports, exports at only border crossings, airports and seaports while the wholly national border is controlled by the Border Defence Force (under Ministry of Defence). The Border Defence Force also has responsibility in fighting against smugglings and counterfeits crossing borders. There are no customs in non-border, non-seaport and non-airport provinces. The customs procedure for IPR control is provided in IPR law. But in fact, enterprises rarely file remedies against IPR infringed goods before the customs. This is because enterprises would face much difficulty in determining whether the state of imported and exported goods is legal or not. Moreover the customs procedures are more complicated than those in the domestic market. Additionally, enterprises have to deposit a certain percentage of the value of goods for stopping customs clearance procedures. Generally, up to now the government does not have correspondently effective solutions and policies yet to deter foreign goods. This situation adversely impacts the domestic market and the economy (counterfeits, smugglings, dumping goods and many other trading violations). Currently the government attach more and more importance to the fight against non-tariff trade violations at borders and as well as the role of the customs.

Fourth, Provincial Committees (provincial governments at total 64 provinces all over the country) specialize in big and complicated IPR cases related to various areas. Provincial

Committee has competence to penalize IPR cases exceeding the competences of enforcement forces after processing infringement record provided by specialist inspectors or other forces. At local level, provincial committees have authority to impose highest fine on the infringer. Actually, all sanction decisions of provincial committee are based on files of infringement that were processed by functional forces before being transferred to provincial committee.

And fifth, Economic Police (Ministry of Public Security) specializes in criminal IPR cases. Normally, criminal IPR infringements considered as criminal are those that are seriously harmful to human health or cause other serious damages to the society. The economic police is strongly organized to district level with a numerous number of policemen. Nevertheless, the economic police only have authority to handle criminal cases. And thus, IPR violators cleverly try to avoid criminal violations, and civilianization of IPR infringements is quite prevalent in law enforcement bodies. Administrative enforcement agencies tend to treat violations as administrative infringements. In many criminal cases they civilianized criminal violations into administrative infringements and civil cases. This is a reason that IPR cases are not much handled by the economic police. Mostly the police plays the role as the cooperater or the repressive force in fighting against IPR infringements and other trade violations as well.

1.2.2. Enforcement mechanism

Typically in Vietnam, most IPR infringements are handled through administrative procedures by the administrative bodies (Market Control Force, Specialized Inspection Forces, Customs), and the Economic Police Force is responsible for criminal violations of IPRs in the markets. Because of the advantages of administrative procedures (such as time saving, low cost, simple procedures, good effects, etc) comparing to litigations

before the courts, most companies and IPR holders prefer to take administrative procedures to prevent violations of their IPRs. Naturally, intellectual property is a property right and part of civil rights, and IPR disputes are civil cases. In many other countries, especially developed countries, IPR disputes are mostly settled through civil procedures (civil courts). However, on the economic side, IPR infringements, counterfeits and pirated goods also directly affect markets, consumers' rights and other socioeconomic matters, such as loss of tax, environment pollution, human health, crime, etc. Furthermore in many cases, IPR violations happen without creating any dispute between related parties. Several examples include imported goods, smuggled goods, unclaimed goods, pirated goods, etc. In such cases, enforcement authorities are not able to determine the violators as civil defendants in civil disputes of IPR. Normally, violators change quickly for new imitations and infringements. In Vietnam, a lot of IPR violations were clearly civil disputes but complainants still chose administrative procedures to seek for legal protection of their IPRs. In fact, they also can sue IPR cases to courts for protection of their rights, but they rarely do so. So far, Vietnam courts just have judged few IPRs disputes between large and famous companies and some copyright-related cases.

The followings are some general situations of IPR enforcement measures in Vietnam:

- **Administrative procedures**

Currently, administrative procedures are practically considered the most important source for enforcement of intellectual property rights in Vietnam. So far, most of intellectual property infringements and disputes are solved by this way. When an IPR infringement occurs, the IPR holder can request various administrative agencies to handle

the infringement. The condition precedent for the IPR owner to bring a complaint to an administrative agency is that the intellectual property object has been registered in Vietnam. Since intellectual property rights are established under certificates of protection issued by the national office of intellectual property and some other IPR registration-related offices (copyright office...), these bodies play an important role in the enforcement. This is due to the practice that, a number of other state agencies are vested with power and duties of handling administrative infringements, including IPR infringements (i.e. administrative procedures can be commenced without complain of the owner). However, these agencies often do not take their initiatives to enforce industrial property rights because they are in general lack of understanding and experience in intellectual property matters. Nonetheless, it should be noted that, being the specialized agency in establishment of IPR in the country, the agencies of IPR registration have no power to apply administrative remedies to stop and deal with the infringements, counterfeits and pirated goods as well. Rather, they reply to complaints by issuing a warning letter to the infringements. And more importantly, an official confirmation and clarification of the infringement (a kind of infringement assessment) which makes other enforcement bodies more self-confident in taking stronger measures.

According to the government decrees on sanctions against Administrative Violations in the field of intellectual property, depending on the nature and seriousness of the violation, the violating individual or organization may also be subject to one of several forms of the following additional sanctions:

1. To be revoked the right to use the business license definitely or indefinitely
2. To be confiscated the exhibition and/or violation means

3. To be compulsory removed the infringing elements on the products, goods or business facility; compulsory removed information causing the violation;

4. To be compelled the compensation for the damage caused by the administrative violation';

5. To be compelled the destruction of the infringing articles bearing the infringing element, infringing goods of inferior quality which are harmful to human health.

Generally speaking, the current laws are lacking provisional measures to prevent continued and imminent infringements as required under the TRIPs agreement. Unless an infringement is apparently established often with the confirmation from IPR registration offices, the enforcement bodies are reluctant to apply the seizing of the infringing articles before deciding the merits of the case. There is not any provision (under the intellectual property laws) which allows an applicant to request the enforcement bodies to apply provisional measures (with a guarantee filed) in order to prevent the incalculable losses may be resulted from the threatened infringements. Monetary fines set forth in both the above decree are not strong enough to deter continued infringements.

And for border measures, Vietnam customs are facing problems on capacity, lack of skilled officials, institutions, border measures, long and complicated borders in both mainland and coast, etc. At present, the land and sea borders are under the control of the border army. This force is not specialized in export-import control.

- **Civil procedures:**

Pursuant to the Civil Code and other legal instruments, right holders can file civil proceedings against infringements of their rights and claim for compensation at the Vietnam court. The court of jurisdiction over intellectual property infringements and

disputes is the provincial people's court where the defendant is located. The infringements or disputes involving foreign parties shall be settled by the People's court of Hanoi or Ho Chi Minh City. The procedures for civil proceedings are set forth in the Ordinance on Procedures for Civil Cases dated 29 November 1989 and the Circular No.03/NCPL dated 22 July 1989 of the People's Supreme Court guiding the hearing the disputes regarding industrial property.

Proving the infringement shall be the burden of the plaintiff. Before the court decides to bring the case to a hearing, the court must arrange a conciliation process between the parties. If the agreement is reached between the parties during the conciliation process, the court will recognize the agreement. And the case is then finalized. At any time during the process of the case, the court itself or, as requested by the parties or the People's Prosecutor, may apply provisional measures, such as seizing, prohibiting the circulation of the infringing articles, facilities, suspending the production, in order to prevent the disperse of the infringing articles or evidence of infringement. The provisional measures may, however, be protested by the defendant or suspended by the People's Prosecutor.

The court will make a decision to bring the case to a hearing at the first instance within 4 months or 6 months (in complicated cases) from the date the court receives the complaint. Then the court shall open the hearing within 1 month or 2 months (in complicated cases) from the date of issuance of the said decision. After 15 days from the date on which the court of first instance makes judgment or decision on the case, the parties may appeal to the higher court which is the Supreme People's Court in Hanoi.

However, in fact, just few cases of IPR infringements and disputes as well have been brought to the courts. This is because, customarily, the Vietnamese people are reluctant to bring problems to the courts. Only for the case in that they have no choice other than lawsuit. The court system and judges are still weak in technical and legal issues. They are also in lack of experience, especially on intellectual property matters. Usually in the field of intellectual property, law courts are not able to gather and verify relevant evidences for proceedings (for instance, infringement elements of IPRs, compensation for damages, etc). Even many enterprises do not trust the courts that can protect their rights and interests from IPR infringements and counterfeits. In addition, although IPR infringement is the cause of much losses about prestige, profit and market share. Not many enterprises are willing to sue IPR infringers to civil court, because they know that they can not sue all IPR infringers. While there are largely IPR infringers nationwide and IPR infringers can easily adapt to products newly appearing in the market. They would flexibly switch to various IPR infringed products.

- **Criminal Procedures:**

Industrial property infringements and copyright piracies, if committed willfully and seriously detrimental to consumers and the society, shall be considered as offences and subjected to criminal liability. The Criminal Code reserves a number of articles regarding the offences of intellectual property rights, which include: Article 126 “offence of infringement of copyrights and patent rights”, Article 167 “offence of production and trade in counterfeit goods”, Article 170 “offence of deceiving consumers” and Article 215 “offence of violating the regulations on publication”. The punishment may be fines,

imprisonment, seizing, forfeiture, and destruction of infringed goods and devices for manufacturing infringed goods.

In Vietnam, the Economic Police Force mainly concentrates on IPR violations relating to serious damages of human health, animals (medicines, foods...) or infringements causing serious consequences to the economy and society (fake money...).

Criminal procedures concerning an IPR infringement can be commenced by the People's Prosecutor, Economic Police, Customs Office and/or Border Troops (belonging to the Army). In Vietnam, because the custom force is not able to spread its force in all border areas, the government has to empower border troops with the border management.

As mentioned in part 1.2.1 above, each force is authorized to independently implement the IPR laws and handle IPR cases in the range of its competence. These forces also have to cooperate with other forces in the IPR field. The problem is that, Vietnam has too many forces having the same function on IPR enforcement. All of them are responsible for IPR enforcement in the market. Additionally, the Steering Committee for fighting against smuggling, counterfeit & trade violation has not real power and clear function. And normally, the head position of the Committee is held by a minister. He is not able to impose any compulsory order on a force of another ministry. Therefore, operations of IPR enforcement forces often overlapped on each other. An enforcement force can avoid a responsibility on IPR enforcement. Even sometimes, a force may shift a responsibility to other forces when the responsibility is too difficult and complicated or seemingly unfeasible. That is why IPR enforcement in Vietnam is not high efficient even though it has lots of enforcement force.

1.3. Policies-Laws and Implementation in Reality

In many fields, differences and gaps between legal and real implementation are quite widespread in Vietnam. This situation occurs rather seriously in developing countries that retard the progress of reform and economic developments. Even though particular laws are available, the law enforcement system could not bring about desirable results in reality. The reason lies in the implementation mechanism. In many countries, the implementation mechanism is closely related to the political and market institutions that very complicatedly and strongly impact on the law implementation mechanism. And as a matter of course, in the field of IPRs, in spite of availability of domestic IPR laws promulgated almost consistently with international requirements and WTO agreements (TRIPS), the IPR enforcement has many implemental difficulties existing closely associated to the progress of economic reform. After 20 years, even though fundamental institutions on market are established, Vietnam lacks practical institutions in most fields of the economy. Basic rights of business freedom are recognized in the constitution and economic laws. However, in fact, these rights are limited by the bureaucratic enforcement mechanism. Government officials, even senior leaders, still maintain bureaucratic thoughts. They value strict management on enterprises above making facilities, conveniences for enterprises and other socioeconomic benefits. And the government also realized that the reason for bureaucracy is corruption, and corruption impedes economic development and democracy. However, admittedly in the recent years the government controls corruption not efficiently as the wills and determinations from the National Assembly and the Government. A new Government is deploying a variety of solutions in order to control and deter corruption. But it may take time to improve the situation. Because corruption is related to many aspects like politic system, economic development level, governmental administration system, entrepreneur development,

etc. The economic policies changed but the political institutions do not come up with these changes. And the will of superior leaders is also the elements considerably affecting the IPR enforcement.

On the other hand, in many less developed and developing countries, governments are not able to implement strong and effective measures to solve IPR-related issues. Enforcing full protections as required in bilateral and multilateral agreements is really a difficult challenge for these countries, especially for foreign IPRs. The reasons lie in inefficient enforcement mechanism, limited social awareness, economics, etc.

For some reasons, such as small market, no representative office, or non-serious damage, etc, many right holders, mainly foreign companies, do not take any activity or require any deterrent measure from enforcement authorities of Vietnam to prevent IPR violations. In these cases, normally, Vietnam enforcement authorities are not actively concerned about IPR violations happening in the market, because they want to avoid troubles in forming violation documents. Their priorities are the violations that right holders or consumers take care about.

1.4. Transparency

In recent years, in order to comply with WTO standards on transparency, the government is trying to establish national channels for access to IPR information and laws. So that, every citizen can access and make use of IPR information and laws. However, up to now, Vietnam has not yet the official law on transparency. Therefore, agencies of the government are usually arbitrary in setting levels and regulations of transparency for documents when issuing them and in their activities.

Generally, this situation causes obstructions to business and trade. Besides, this is an environment for corruption and bureaucracy. To some extent, the status of non-

transparency and unenforceability in laws and policies is also a source for less efficiency in IPR enforcement. People get difficulties in approaching and obeying laws and regulations that generate conditions for IPR infringements and also prevent right holders from protecting their IP rights. Even, government officials and enforcement bodies often face difficulties in enforcing laws and regulations, and this status also leads to evading enforcement responsibilities in their missions.

2. Social awareness of intellectual property rights and education.

As mentioned in the introduction, the concept of IPR is still new to many of Vietnamese people and domestic enterprises. For a large part of citizens, they do not know about IPR and IP laws. Thus, when going shopping, most citizens do not differentiate genuine goods and counterfeits, copyrighted goods and pirated goods, etc. They mostly care about prices, quality and design. For a part of knowledgeable youth in urban areas who know more about IPR, they also do not care about IPR when shopping. Even when they know that a certain product is illegal, they still buy and use the good just because they like using famous trademarks and designs. When IPR laws are not seriously enforced, enterprises and consumers will be indifferent to IPR. Consumers think that IPR protection is only responsibility of enterprises and the government. For medium and small enterprises, before ineffective IPR enforcement and people's consuming psychology and habits, they are not really encouraged to develop their own IPs. And enterprises prefer making copy of other enterprises' IPs to developing their own IPs. This choice helps IPR infringers to minimize R&D costs and quickly accede to the market.

In education, a few law universities teach IPR. Almost all of them do not have the faculty on IPR, and lack IPR trainers and lecturers. Moreover, the policy on education

universalization of IPR is not widely carried out yet. Therefore, the government, as well as domestic enterprises, is very short of professional manpower for IPR development and protection, even in the domestic market.

Most domestic companies, even large corporations, do not have IPR-specialized division. So far, just some corporations, after experiencing overseas IPR disputes and paying huge costs for those disputes, have considered IPR as a leading strategy for business success. And they have built policies for investment and development on IPR, as well as protection of IPRs on domestic and global markets. Some large companies have their own specialized divisions for IPR instead of having to hire IPR lawyers from law firms. So far, strong foreign trademarks are dominant in the domestic market, especially among high-technology goods.

3. Entrepreneur problem

In the Vietnam economy, the large domestic business groups are state owned. There is no group owned by private. There are 200,000 private enterprises and 5,655 state-owned enterprises (of these, 2,347 are equitized but the dominant shares are still held by the government)⁵. The average 55 per cent of the total investment capital in the whole economy is from the state budget⁶ - a very high rate which says many things. The loss and waste rates of this capital are relatively higher than other sectors. A big flow of capital from the state budget is invested in producing most normal products that the private sector can do better.

⁵ As part of the entrepreneur reform, the government privatize almost all state owned enterprises through selling out shares on the market. For important areas, the government still keep monopoly and domination, such as: exploration and exploitation of natural resources, electricity, fresh water, banking, telecommunication, etc.

⁶ Investment capital: How much, from where and for where? at <http://www.moi.gov.vn/BForum/detail.asp?Cat=14&id=1432> - the official website of the ministry of industry of Vietnam

At present, the government as well as most ministries, local governments and other state bodies, even military and police, still manage state-owned enterprises. Although state bodies do not intervene in business operations of state-owned enterprises any more under law. But in fact, they still manage the capitals and control business strategy in these enterprises. Somehow, they still control state-owned enterprises through administrative directions. Managers and chief accountants in state-owned enterprises are civil servants (government officials) and their salaries are paid by state budgets.

Usually, state owned enterprises using state capital fall into habits of relying on the protection and subsidy from the government. They are not active and have not much motivation in the competitive market, investing in R&D projects and developing their own intellectual properties. To some extent, governmental bodies always give priority to state-owned enterprises in many fields. And usually, other economic sectors, especially private companies with limited capital and capability, meet with more difficulties when accessing capital, investment projects, R&D projects, auctioning, administrative - civil facilities, etc. As a result, they tend to seek for profit rather than develop trademarks and IPRs. These distort competition and cause inequality among economic sectors in the domestic market. In order to exist in the fiercely competitive environment, private and small-medium companies' businesses incline to be opportunistic and involve illegal businesses. Many of them have to imitate and run after popular trademarks, inventions and designs of other famous companies. Because they do not have enough capability, capital, experience, to promote and develop their own trademarks, designs and other IPs.

According to a 2001 report of the National Office of Intellectual Property of Vietnam, up to 2001, there were 90,000 trademarks registered for protection in Vietnam.

Among these, 85 per cent are foreign trademarks and the remaining 15%, are those of domestic producers. The following are figures on IP registration in Vietnam:

Table 1 - The number of applications for invention protection

Year	Submitted by Vietnamese	Submitted by Foreigner	Total
1981 - 1988	453 (98.5%)	7	460
1989	53 (74.6%)	18	71
1990	62 (78.5%)	17	79
1991	39 (61%)	25	64
1992	34 (41%)	49	83
1993	33 (14.5%)	194	227
1994	22 (7.5%)	270	292
1995	23 (3.4%)	659	682
1996	37 (3.7%)	971	1008
1997	30 (2.4%)	1234	1264
1998	25 (2.2%)	1080	1105
1999	35 (3%)	1107	1142
2000	34 (2.7%)	1205	1239
2001	52 (4%)	1234	1286
2002	69 (5.7%)	1142	1211
2003	78 (6.8%)	1072	1150
2004	103 (7.2%)	1328	1431
2005	180 (9%)	1767	1947
2006	196 (9%)	1970	2166
2007	219 (7%)	2641	2860

Source: the National Office of Intellectual Property

Table 2 - The number of granted patents from 1984 to 2007

Year	The number of granted patents		
	For Vietnamese	For Foreign	Total
1984 - 1989	74 (91%)	7	81
1990	11 (78.6%)	3	14
1991	14 (51.8%)	13	27
1992	19 (54.3%)	16	35
1993	3 (18.7%)	13	16
1994	5 (26.3)	14	19
1995	3 (5.3%)	53	56
1996	4 (6.4%)	58	62
1997	0 (0%)	111	111
1998	5 (1.4%)	343	348
1999	13 (3.9%)	322	335
2000	10 (1.59%)	620	630
2001	7 (0.89%)	776	783
2002	9 (1.2%)	734	743
2003	17 (2.2%)	757	774
2004	22 (3.1%)	676	698
2005	27 (4%)	641	668
2006	44 (6%)	625	669
2007	34 (4%)	691	725

Source: the National Office of Intellectual Property

Table 3 - Number of applications for trademarks from 1982 to 2007

Year	The number of applications		
	By Vietnamese	By Foreigner	Total
1982 -1988	461 (37.4%)	773	1234
1989	255 (52.3%)	232	487
1990	890 (60%)	592	1482
1991	1747 (74%)	613	2360
1992	1595 (34.5%)	3022	4617

1993	2270 (37%)	3866	6136
1994	1419 (34.3%)	2712	4131
1995	2217 (39.3%)	3416	5633
1996	2323 (42.7%)	3118	5441
1997	1645 (34.2%)	3165	4810
1998	1614 (44.3%)	2028	3642
1999	2380 (57%)	1786	4166
2000	3483 (59%)	2399	5882
2001	3095 (48.8%)	3250	6345
2002	6560 (74.4%)	2258	8818
2003	8599 (70.8%)	3536	12135
2004	10641 (71.3%)	4275	14916
2005	12884 (71.5%)	5314	18018
2006	16071 (68.1%)	6987	23058
2007	19653 (72%)	7457	27110

Source: the National Office of Intellectual Property

Table 4 - Number of trademarks registered from 1982 to 2007

Year	Number of registered trademarks		
	For Vietnamese	For Foreigner	Total
1982 - 1989	380 (24.5%)	1170	1550
1990	423 (61.5%)	265	688
1991	1525 (79.7%)	388	1913
1992	1487 (44.7%)	1821	3308
1993	1395 (39.5%)	2137	3532
1994	1744 (42.7%)	2342	4086
1995	1627 (35.4%)	2965	4592
1996	1383 (35.2%)	2548	3931
1997	980 (39.4%)	1506	2486
1998	1095 (35.2%)	2016	3111
1999	1299 (34%)	2499	3798
2000	1423 (49.5%)	1453	2876

2001	2085 (57.3%)	1554	3639
2002	3386 (65%)	1814	5200
2003	4907 (68.6%)	2243	7150
2004	5444 (71.6%)	2156	7600
2005	6427 (65.8%)	3333	9760
2006	6335 (71%)	2505	8840
2007	10660 (67%)	5200	15860

Source: the National Office of Intellectual Property

In the last seven years since 1999, when the first enterprise law was enacted and became effective (amended in 2000, 2007), the number of Vietnamese applications has been rapidly increasing. The number of registered trademarks by Vietnamese enterprises also increases year by year. This is because, on the one hand, more and more individuals and private enterprises have right to join business activities. And most of businesses are free under law. On the other hand, the government had much effort to eliminate obstacles in IPR registration, and now it become more convenient and easier. And today, enterprises are aware of the role of IPR in business activities. They understand that IPR registration is the basis for protecting their products and prestige in the market.

However, for invention, the numbers of applications and granted patents for Vietnamese are still so small compared to those of foreigners. In 2007, the number of inventions granted for Vietnamese is just 34. This demonstrates that the Vietnamese activities in science - technology invention and R&D are considerably weak and not yet effectively encouraged through strategic policies by the government (as just mentioned above).

As for the number of registered trademarks, it seems that Vietnamese have surpassed foreigners. But actually, there have been being more and more new private

enterprises established and many of them registered a large amount of trademarks for their production diversification and for other purposes. For example, they registered a new trademark but when they produce a new product, they change the registered trademark into a new one similar to a more famous trademark or design of another enterprise. This easily confuses consumers and thus may be considered as an unintentional infringement, causing many difficulties for handling such kind of IPR infringement. In addition, most of Vietnamese trademarks are not well-known. Therefore these trademarks exist in the market just for a short time, and enterprises have to move to other new ones.

4. The current state of IPR infringement: economic consequences

4.1. The current status of IPR infringement in Vietnam

There is not yet a full and official report on IPR violation in Vietnam probably since the statistical capability is still limited. Currently in Vietnam, in many aspects of economics, consumers' right, environment of competition, etc, especially legal producers' benefits, the state of IPR infringements is relatively serious on most fields of the economy. According to recent reports, 90 per cent of soft-wares are pirated (2005 report), copyright violations are very widespread. Trademarks and geographical indications, especially the well-known, are frequently faked. IPR violations cause uncountable damages for the economy and the society. IPR infringed goods take up a significant part of the whole trade on the market. And so the tax losses evaded by IPR violators are fairly huge. Legal enterprises' market shares and prestige are reduced, and even serious to some products, such as seasoning, cosmetics, foods, etc. In some field, IPR infringed goods are dominant in the domestic market (especially imported goods). Domestic consumers are very concerned about products affecting their health.

However just a small part of citizens living in cities may have information and knowledge to avoid IPR counterfeits whereas most people in rural areas are still cheated. While 80% of the 84 million people population of Vietnam live in rural areas. They frequently face dangers and risks from using IPR infringed goods, and there were ever serious damages to consumers, especially harmful foods. Also, this situation has negatively affected on the domestic investment environment. This makes foreign corporations hesitant when investing in Vietnam while the government is endeavoring to encourage and attract domestic and foreign investments.

The followings are some data on IPR infringements and counterfeits in Vietnam in recent years:

Table 5 - Complaints on IPR infringements

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Invention & Utility Solution			2	9	23	33	41	17	7
Industrial design	41	60	93	108	53	65	210	264	92
Trademark	110	119	198	282	278	306	324	320	67
Total	151	179	293	399	354	404	596	601	166

Source: the National Office of Intellectual Property

Table 6 - The number of cases on counterfeits, including both IPR and others (quality counterfeits and low quality products) handled by Market Control Force

Year	2001	2002	2003	2004	2005	2006	2007	Total
Handled cases	4,006	6,859	5,808	5,977	8,739	12,885	15,323	59,597

Source: the Market Control Department

According to Table 5, we can see that the number of IPR infringements increase on all IPRs year by year. However these numbers only show the infringements which were complained

by IP owners at the National Office of Intellectual Property. In fact, on the market, the number of IPR infringement was much higher, and the number of violators must be much more than the number of complaints before NOIP many times. This is because, in the market, many violators involved in and even repeat the same IPR infringements.

As stated above, the Market Control Force is the main enforcement body on fighting against counterfeits and other trade violations. Therefore, most of IPR counterfeit cases are handled by this force. Around one third of the handled cases shown in Table 6 are IPR infringements in almost all kinds of goods. For some reason, this force did not total up and classify IPR-infringed goods.

Being a WTO member, however Vietnam is still a transitional economy while international trade-investment exchanges with other countries are based on common trade agreements of WTO. WTO preferential terms for less developed countries mainly allow Vietnam to implement common agreements later other developed members. Mostly these preferential treatments are not long enough for Vietnam to improve market and economic institutions, and develop domestic enterprises unless the government has really strong policies. Nowadays most domestic enterprises are still small and medium. They just have been being established rapidly in number only after the enactment of the first enterprise law 1999. Enacting the law is considered as the new stage for the development of private enterprises. By this law, many bureaucratic procedures were removed. As a result, up to now, there are more than 300,000 private enterprises (95% are small and medium). After the opening policy for nearly two decades, most of them, even leading state-owned corporations, still lack capital, technology, experience, competitive capacity, etc. And they have to be living in an incompletely legal framework in terms of market economics

(many business laws are being amended, complemented and newly built). This means that business rights are not fully implemented and still limited by the heavy bureaucracy, corruption and the non-transparency law-policy system. Nevertheless they have to compete with foreign companies not only on international markets but also right on domestic markets. In order to survive in more and more fiercely competitive markets, many companies, even foreign companies choose ways of imitating technologies and products of other companies to develop their businesses instead of developing technology and creating their own brands by themselves. In many cases, domestic enterprises make counterfeits or pirated goods whereas they do not know that their actions are IPR infringements. And this is not because of the unavailability of IPR laws or regulations but their unconcern with IPR matters. There are even many individuals and traders who can easily buy non-trademark goods (no trademark, no label), and then they just paste fake trademarks on these goods and sell out on markets. Sometimes, even enforcement bodies deliberately ignore IPR infringements and counterfeits in the markets. Generally, they just implement IPR laws and deal with IPR infringement to some extent, not thoroughly. That is the reason why IPR infringements are widespread in developing countries, and Vietnam is not an exception.

Typically, the unsystematically scattered distribution channels of producers contain loop-holes that create favorable conditions for counterfeits and other IPR infringed products to be distributed and sold along with real products. In addition, consumption habits and social awareness also lead to inefficiency of the policy implementation of IPR protection. Consumers are not choosy when buying some stuff anywhere provided that which is convenient to them. For many consumers, especially in

rural areas, when they buy something, they are not able to identify or do not care about whether the brand is genuine or not. Normally, fake goods are cheaper than the genuine. But some fake goods also have acceptable qualities. And thus, for a large of consumers, they choose to buy fake goods, especially pirated and simple products. Furthermore, the major part of the population are low income, hence buying fake goods is seemingly the best way to meet their needs. And otherwise their knowledge on IPR is limited. Commonly, buyer's action is not illegal under laws. With such the consumption habits that all bring about favorable environments for illegal business operations of counterfeits and pirated goods.

The stagnation of the progress of reform in the state economic sector is also a restraint for IPR protection. Even though most of operations of these two sectors are in the same legal framework, there still remain disparities between the private sector and the state sector.

4.2. Response from enterprises

Not many enterprises having their goods infringed put efforts on fighting against IPR infringements. Some large enterprises clearly know the situation that their IPRs are violated on the market. But they have no response to IPR infringements or just act to some extent because these companies do not trust in the actions against IPR infringements by enforcement forces and the courts. Sometimes they seem to be afraid of complicated administrative formalities and bureaucracy. They also do not expect practical results brought by enforcement forces. On the mentality of consumption, some famous enterprises hesitate to take strong actions against IPR infringements since these actions will adversely impact the consumption of their goods. Therefore, their output and

turnover would reduce. When consumers recognize a product being counterfeited, before various similar products in the market, they are willing to move to another product to replace the old product.

For some enterprises, on the one hand, IPR infringements are not too serious to their goods. On the other hand, they, especially famous foreign companies, can exploit the situation of IPR infringed goods. Their aim is to advertise and promote their products and trademarks widely to a large range of native consumers. Because normally, IPR infringed goods are cheaper than the genuine, they gradually compete against IPR infringed goods through organizing distribution channels more and more closely to consumers. Simultaneously, in order to dislodge IPR infringed goods out of the market, they use other measures, such as civil proceedings, administrative and criminal repression, etc. Additionally, in the forthcoming years, many enterprises expect that the enforcement system will be quickly improved compliant with the agreements signed with other countries and WTO in the process of negotiation for becoming WTO member. And in fact, recently, many laws and regulations policies on IPR enforcement were just enacted. The government has attached special importance to policies on IPR enforcement.

For small enterprises, due to weak ability, they are not able to use such measures above to eliminate IPR infringed goods in the market. And they have to accept to compete with IPR infringed goods. In foreign trade, financial scantiness and small sizes of Vietnamese enterprises are also attributed to a big disadvantage for Vietnam to exploit the IP protection regimes in other countries. Therefore, when Vietnamese enterprises meet disputes on IPR in foreign countries, they will face complex judicial procedures,

high fees for attorney, etc. In the fact, just a very small number of Vietnamese enterprises have enough strength to pursue litigation to defend their rights in other countries.

Actions against IPR infringements by associations of enterprises are also very weak due to the lack of close cooperation among members. The domestic industry is still less developed, hence it has not yet formed industrial groups. That is much difficult for enterprises to associate with each other in fighting against IPR infringements in the market.

4.3. Foreign trade

The domestic market of Vietnam, as many other countries, is under the increasing pressure of Chinese products and some other regional countries' (Thailand, Taiwan, Indonesia, Malaysia, etc). Goods from these areas are imported easily through the borders. A large amount of imported products are IPR-infringed goods, and including smuggled goods. Moreover the sharply increasing domestic consumption demand is a huge attraction for imported counterfeits and pirated goods while the supply of the domestic production is too small. Vietnam mainly export raw products and have to import high technology products. The enforcement forces usually face difficulties in dealing with these products. When counterfeits and pirated goods have been imported into domestic markets, they are transferred through a number of channels of distribution (normally not coordinated and difficult for control). The final distribution channels are retailers. Normally, IPR enforcement agencies meet difficulties and even are not able to have enough relevant evidence to deal with retailers. Subjectively, the question is, how the enforcement forces can handle IPR infringements and violations done by domestic people, whereas imported fake products are circulating and being consumed everywhere on the

domestic markets. Even they are much cheaper than domestic and genuine goods. And further, on the domestic market, the share of counterfeits and pirated goods is not so small compared to genuine goods, even larger in some products (such as pirated goods). A fact is that the enforcement forces cannot thoroughly and strictly implement IPR laws and regulations against all IPR infringements and counterfeits on the markets. If they can do so, the markets might fall into trouble with the domestic production and consumption that maybe adversely impact on the economy.

In addition, on the one hand, the assembly and the government have enacted new general laws and regulations consistently with international and WTO standards. The government also has directed the functional forces to enforce these laws and regulations. Even so the border measures and regulations in controlling IPR at borders are not yet effectively applied. Many of them have not been clearly formed yet. On the other hand, the borders control system is still quite weak and the inefficient coordination among functional forces is also a considerable shortcoming in the cross-border trading control. Especially in fact, the Custom Force System, the main force in border trade control in Vietnam, is not capable enough to manage effectively the whole borders and the domestic markets. This force is still being in the first period of modernization and capacity enhancement up to its advanced role as in other countries.

Furthermore, the lack of close cooperation with regional countries is also a reason for the increase of smugglings and IPR infringed good in recent years.

Chapter 2

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS, ECONOMIC DEVELOPMENT AND INTERNATIONAL INTEGRATION

In this chapter, I will analyze the relations among IPRs protection, economic development and international integration, as well as the requirements of IPRs enforcement in a free market economy and global trade.

1. Protection of IPRs in a transitional economy

As other developing countries experiencing transitional periods, at the beginning of the transition process, foreign direct investments and foreign trade in Vietnam were still small. The capacity of domestic production was mainly based on agriculture and mining. The system of IPR legislation was very simple and just had some articles in the civil code. These articles were hardly applied in practice. Over time, the economy has been continuously growing since the economic reform policy in 1986. Many new market institutions have been newly created and revised to be compatible with the global trading system, multilateral and bilateral trade agreements, especially WTO. However, legislations in most fields of the economy have not kept pace with the economic growth, including privatization, property rights and IPR. Along with the privatization reform, the government established the legislative system of IPR protection. Nevertheless, the privatization reform has not been done as strategically planned. In many aspects, it is still inadequate to the legislative system of IPR. This situation is rather an impediment for IPR enforcement. Accordingly, the overall question is how the government should enforce the IPR protection in order to harmonize development objectives, domestic welfares and international integration.

There are many obvious asymmetries related to IPR, technology development, applications and transfer between developed countries (DC) and less developed countries (LDC). Most IPR at this juncture is owned by the DCs. The galloping technological progress in diverse fields such as biotechnology, communication and information technology, robotics, and speciality materials has already exposed inadequacies in present day legal frameworks dealing with IPR related issues. Moreover laws related to IPR including legal, social, political and economic infrastructures in LDCs are not as well developed as in the DCs. Lack of familiarity with fundamental and operational concepts of IPR in such countries contribute to enhancing the asymmetries. Balancing “private and public benefits” of IPR and establishing an encouraging climate for knowledge creation, diffusion, and protection will be the key to effective IPR legislation and enforcement.

The rising cost of R&D, changing business practices, convergence towards higher standards of IPR, coupled with the need to leap-frog in technology to overcome the existing phase lag, pose stiff challenges to all LDCs. As other developing countries, the Vietnamese government trends to implement the regime of IPR protection at a moderate level to support domestic enterprises and consumers in accessing new technologies and products as the way developed countries used to pursue to develop their economies. However, in the era of knowledge economy and the global economy becomes more and more integrated, every transaction become easier and more convenient than ever. Therefore, in the short term, by enforcing at a low level of IPR protection, a small part of consumers and domestic enterprises may gain benefits. But, in the long term, it will have adverse impacts on the economy, competition-investment environment, technology transfer, consumers, etc. Because when the economy is more developed, people's incomes

are higher and community's understanding is more improved, people demand to consume genuine and high quality products. Beside, economic institutions are more complete, and entrepreneurs switch to competition on new technology and intellectual values. This is a very incentive feature for sustainable economic development. The government is under the pressure to fully enforce IPR protection in order to improve the domestic competition environment and uphold sustainable economic growth. The government also must pay more attention on protecting producers and consumers' rights.

Experience of new industrial countries, such as Japan, Korea, Singapore and Taiwan has shown that IP protection is as a powerful tool for economic growth.⁷ These countries started their economic developments from the less developed economies with much difficulties on domestic capacities, such as poor natural resources, etc. In these countries, appropriate strategies and policies led to the fast developments, so they caught up with western developed countries just after a short time. One of the most important strategies is human resource. It is composed of intellectual values that create a motivation for development. Further, effective IPR enforcement mechanism pressed and encouraged domestic enterprises to invest in R&D and new innovations, adapt to the global climate, and also strengthen the force of domestic economy and sustainable development.

How will Vietnam benefit from enhancing IPR protection? The conventional wisdom suggests that economic gains from stronger IPR protection depend on a variety of factors, including market structure and the capabilities of innovator and imitator industries, as well as existing distortions in the economy. The extent and nature of direct foreign investment and its future also influence gains and losses from changes in the IPR

⁷ Kamil Idris - Intellectual Property: A Power Tool for Economic Growth, 2003

regime. Additionally, since Vietnam is in the process of transition to a market economy, the sequence and structure of economic reforms are critical determinants of welfare effects. Important insights into possible costs and benefits of strengthening IPRs are suggested in the traditional economic literature on IPR protection. As in many developing countries, stronger enforcement of IPR protection in Vietnam is likely to cause an adverse movement in the terms of trade and decline in purchasing power. By increasing imitation costs, stronger IPR protection raises prices and lower real incomes. At the same time, higher costs curtail imitation and increase the number of product varieties manufactured in foreign industrialized countries. To the extent that Vietnam imports such higher priced goods, the domestic terms of trade worsen. All in all, Vietnam loses from stronger IPRs due to the decline in the terms of trade and real income.

Contrary to economies without indigenous innovation, strengthening IPRs in Vietnam is likely to generate welfare gains from an expansion in domestic R&D. Vietnam has quite significant R&D experience in some areas, for example, agriculture, software, etc. Some domestic inventions match comparable world standards. By stimulating R&D investment, more effective IPR protection promotes not only quality improvement, but also the development of new products and processes. In addition, if new products are tradable, higher export revenues are likely to add to the overall welfare gains.

Nonetheless, net gains from strengthening IPR protection in Vietnam are limited by the costs of adjustment to the new IPR institutions and general public ignorance of IPR protection. Though Vietnam's Government and National Assembly has rapidly changed formal IPR institutions by adopting new IPR laws, the development of supporting legal infrastructure and conversion of informal institutions (such as traditions,

customs, and codes of conduct) are likely to take a much longer time. Some scientists and managers lack experience and understanding of patenting and believe in protecting their technology by secrecy. Others naively consider a public demonstration of novelty and authorship sufficient to protect their inventions.

An important determinant of welfare effects resulting from strengthening IPR protection is market structure. The more imperfectly competitive is market structure, the smaller is the loss of consumer surplus from strengthening IPR protection. To the extent that market structure varies among industries in Vietnam, the welfare effects of strengthening IPR protection are likely to differ across industries. In highly competitive industries, such as retail trade in video and software, one would expect substantial consumer surplus losses, while customers of less competitive pharmaceutical and chemical industries to be relatively less vulnerable to strengthening IPR protection. These losses are likely to be partially offset by gains from other sources, for example, trade and direct foreign investment.

The expansion of trade and direct foreign investment under a stronger IPR regime can bring additional welfare gains. Empirical evidence suggests that strong IPRs stimulate bilateral trade, particularly in large countries. Likewise, tightening IPR protection is likely to promote trade and technology transfer between Vietnam and foreign countries by rendering protection to firms' knowledge assets. For the same reason, stronger IPR protection will encourage direct foreign investment, particularly in domestic high technology sectors with innovative potential. Such foreign investment is much needed in Vietnam to facilitate industrialization, technological modernization and market restructuring. In a transition economy like Vietnam, the welfare analysis of strengthening

IPR protection must take into account the optimal sequencing of economic and political reforms. The corner stone of Vietnam's reforms is privatization, including the market transformation of legal and financial institutions. The adoption of new laws and regulations is the first step in the privatization process and should be complemented by enforcement through legal and political institutions. Furthermore, various economic institutions, primarily financial ones, should support privatization by providing a favorable economic environment for the growth of private enterprise. Being inseparable and reinforcing parts of market transition, IPR reforms and privatization of physical assets should occur simultaneously. With the origination of private firms, IPR protection becomes the main instrument for stimulating innovation, particularly in countries with limited public funds. Reciprocally, IPR protection is a necessary complement to privatization of physical assets in IPR-intensive sectors since a meaningful appraisal of assets hold include the value of intellectual property. Therefore, for the successful implementation of market reforms, privatization of physical and intellectual assets should proceed in parallel.

2. Intellectual property right protection and international integration

Since the low point of departure of the economy and from the centrally planned economy with poor and backward infrastructures, nowadays, the market economy of Vietnam has to depend more and more on foreign investments, exports and imports as well. A large amount of domestic consumed goods are produced by FDI enterprises. They play a very important role in the economic development strategy of Vietnam. According to an economic report last year, since 1988 to 2007, Vietnam had attracted 8,684 FDI projects with the total registered capital up to 85.05 billion USD. The share of FDI enterprises in

the economy accounts for: 20% of the whole capital of the economy, 16% of GDP, 31% of exports (not including the rude oil export, 54% including rude oil export), and 34% of the industrial production value.⁸ Most of FDI enterprises invest in the economy of Vietnam where they bring their intellectual properties into. These are new technologies, inventions (patents), trademarks, business secrets, industrial designs, geographical indications, etc with perspectives to develop their businesses through IPR advantages. They need their intellectual assets to be properly protected by the domestic law system. And they need a free, fair, transparent and favorable environment for their businesses. Nowadays, developing countries, even developed ones, are drastically competing with each other to attract FDI, tourists and many other inflows by improving domestic environments. Together with the free market-based system of institutions, evidently the law enforcement system plays the decisive role, especially the regulations on private properties.

On the aspect of economic and trade relations, Vietnam could not integrate into the world economy unless Vietnam fully implements commitments and agreements with other countries and international organizations. Vietnam could not benefit from foreign direct investments and the relaxation of IPR enforcement while having favorable treatments in exporting goods to other countries and receiving foreign direct investments. It is clearly a conflict that is unacceptable to partner countries of Vietnam. And in fact, some big partner countries of Vietnam, such as US, EU, Japan, have urged the Vietnamese government to intensify IPR enforcement in accordance with the commitments, especially after joining WTO.

Thanks to the increases in exports and imports in recent years, that remarkably has been boosting the growth of the Vietnamese economy. But the weakness of the IPR

⁸ Reported by Ministry of Plan and Investment through the website: www.mpi.gov.vn

enforcement system in fighting against IPR infringements also causes adverse effects on the growth of exportation and importation. That prevents both the accession of imports into the domestic market and exports into the world market.

Additionally, as the implementation of the policy of privatization in most economic areas, the private sector is contributing more and more to the economic development and the motivation for socioeconomic developments. And it will become the major part of the market economy. Beside that, more and more economic transactions and also actions of individuals are done towards the markets (creative actions of individuals become more marketable). They contain IPR elements generated from objectives of protection of business interests and benefits from IPRs. And intellectual properties play a substantially valuable part in business assets of enterprises. This sort of property should be protected fairly in order to encourage innovations and inventions of every individual and enterprise as well. A very important job of the government is to grant property rights and protect these rights in order to facilitate the legal environment for the growth of the private sector. It helps to release and mobilize resources in the society for economic developments, especially the infrastructure of the free market economy and sustainable developments. Therein, intellectual property rights are most vulnerable to be violated in the market. IPR infringements cause serious consequences for enterprises, such as reduction in turnover and competitiveness capacity, loss of prestige and market share, and so on.

In the era of globalization, every nation has to choose the policy of international integration to develop its country and narrow the gaps of development with other

countries. For less-developed countries, international integration is also the most necessity in order to reduce and escape from poverty and backwardness.

Vietnam just acceded to WTO and that states the efforts to integrate into the globalization economy. This means that Vietnam is ready and willing to accept to be in a new playing field. Vietnam has to open its market more freely and consistently with WTO standards and principles. Step by step, the government is taking efforts to eliminate trade barriers and domestic protections as well as implement commitments under WTO regulations and requirements. In the field of intellectual property rights, the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) sets out the minimum standards of IPR protection to be provided by each member. Each of the main elements of IPR protection is defined namely the subject-matter to be protected, the rights to be conferred, and permissible exceptions to those rights and the minimum duration of protection. The Agreement sets these standards by requiring that the substantive obligations of the main conventions of the WIPO, the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in their most recent versions must be complied with. For IPR enforcement, TRIPS sets out the provisions dealing with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the

procedures and remedies that must be available so that right holders can effectively enforce their rights.

Additionally, prior to becoming WTO member, Vietnam had to accept very high commitments on enforcement of IPR protection in bilateral agreements, especially with US, Japan and EU. Such commitments are bargains and also requirements in WTO negotiations with most member countries.

Therefore, by implementing WTO and TRIPS regulations and principles, Vietnam has to issue many new laws and amend existing laws in compliance with TRIPS regulations. Vietnam also has to reform, restructure and improve the IPR enforcement system to be more effective that Vietnam can not neglect and ignore any longer.

Moreover, Vietnamese enterprises now can produce technology goods and processed agricultural products for exportation and domestic consumption. In order to export to other markets and compete with other enterprises right in the domestic market, Vietnamese enterprises also have to register and protect their owned trademarks and other IPRs. Additionally, the economy of Vietnam is more and more open, freer and more dependent on the world market. Therefore, if IPR protection and enforcement in Vietnam are not efficient, firstly, Vietnamese enterprises will suffer losses caused by IPR infringements, especially small and medium enterprises, in the domestic market. They would mainly suffer IPR infringed goods imported from other countries and also from domestic production. Secondly, Vietnamese enterprises could not expect favorable protection for their IPRs in other countries of WTO, and they would get in difficulties to protect their IPRs (in fact, some Vietnamese enterprises suffered IPR cases abroad, and some lost).

Tendentiously, step by step, Vietnam has to reduce business investments by the state budget (state owned enterprises), eliminate discriminations and enhance equality among all economic sectors, enterprises (these also belong to the standards and requirements by WTO agreements). In order to help enterprises to develop and fairly compete with each other, especially small and medium enterprises, Vietnam should raise the level of IPR protection to eliminate illegal enterprises. These enterprises only incline to rely on and abuse other enterprises, and seek for precarious benefits by involving in violations.

Chapter 3

SUGGESTION ON STRATEGIES AND POLICY SOLUTIONS

Nowadays, the government, at both central and local levels, has recognized the role of IPRs protection in economic development strategies and international integration. The government also attempts to eliminate avoidances of responsibilities in international commitments step by step. Fundamentally, Vietnam has established its legislative system of registration and mechanism of enforcement of IPRs relatively complying with market requirements of the progress of reform. The system of IPRs laws and enforcement is playing the more and more important role in fighting against IPRs infringements, counterfeits and pirated. It brings about encouragement of innovations and inventions, protection of producers' and consumers' rights. It plays as an effective policy in improving investment environments more attractively, settling and purifying the domestic markets, fighting against unfair competitions, as well as fostering the progress of integration into the region and the world economy.

As a whole, IPR enforcement in Vietnam, with the exception of software copyright, has been progressing towards stronger protection since the early 1990s. Such a trend commonly emerges in developing countries. Over time, as a developing economy moves closer to the technological frontier, promotion of indigenous innovation becomes more important than imitation, increasing incentives for tightening IPRs. Correspondingly, the political economy balance shifts in favor of strong protection, as domestic innovator industries gain more lobbying power, supported by the foreign pressure for tighter IPR protection.

In the next years, to enhance the efficiency of IPR protection, the government needs to implement comprehensive solutions and policies in relation with other fields. And in this paper I just mention some key groups of solutions on improvement of the IPR enforcement:

1. Laws and transparency

Beside law building of IPR enforcement to be consistent with international treaties, bilateral agreements and TRIPS agreement, the government needs to boost implements on:

First, continuing to reform more strongly civil procedures of the court system in order to facilitate dispute settlements and handle IPR cases more effectively, cheaply and quickly, and to encourage violated enterprises and individuals to fight against IPR infringements through the tribunal system more fiercely. Make the IPR as well as other civil dispute settlements more familiar with all people. To do that, the Supreme Court (belonging to the national assembly, not the government) has to establish a speciality tribunal on IPR. Moreover, the Supreme Court also has to provide related civil and criminal procedures in handling IPR cases.

IPR laws need to be revised in accordance with economic, civil, administrative and criminal aspects of IPRs. IPR disputes should be conducted only through civil tribunal. IPR counterfeit and piracy cases should be conducted through administrative and criminal measures. This solution is described in detail below.

Secondly, more deterrent and severe sanctions and fines on IPR infringers should be applied and put into the unique decree on administrative sanctions, instead of current 3 decrees for 3 subfields of IPR (industrial property, copyright and plant variety). So the

government should quickly promulgate the new decree on administrative sanctions in conformity with the IPR Act 2005 in order to raise the comprehensibility, feasibility and convenience in enforcement. For criminal code, criminal sanctions should be applied more strongly against IPR repeat violators, large volume of violated goods, serious damages to consumers, society and right-holders, etc, especially to consumer health.

Thirdly, about border control, applying more enforceable procedures that enable the customs force and other forces to take effective remedies preventing counterfeits and other IPR infringed goods imported into the domestic market. Minimizing administrative procedures in custom control and stimulating enterprises to cooperate with the customs in deterring IPR infringed goods imported into the internal market.

Somewhat, transparency is an issue related to politics and economic benefits in transitional economies, it largely affect on competition climates. However, in general, transparency is an important factor for economic development that facilitates markets, competition and investment environments. In forthcoming years, the assembly and government should promulgate and enforce systematically laws on transparency compliant with WTO standards and signed agreements in order to attract investments and facilitate domestic business environments. The objective is a climate for free trade and business. The system of transparency and information access must be comprehensively improved in order to reject obstacles to business activities. The transparency law should be concretized at all levels of state bodies.

Besides, transparency is also a tool for promoting and encouraging enterprises and people to develop and protect their IPRs. This indirectly enhances the effect of IPR

enforcement. Transparency must be improved by the way laws and legal procedures are simple, easily accessible and realizable.

2. Enforcement mechanism and legal structure of IPR enforcement

After being WTO member, in order to form the effective strategy for IPR enforcement responding to global competitions, the government should make an entire assessment on the state of IPR infringements and enforcement. This assessment then should be put in relation with the international obligations of Vietnam, objectives of international integration, economic effects and so on. Basing on that, the government could build a suitable strategy and policy for the enforcement of IPR protection in coming years correspondingly to the process of integration of the Vietnamese economy. The strategy should aims to increase the efficiency of IPR enforcement activities, and also avoid adverse effects to the economy, investment environments, the markets, consumers, domestic production, etc.

In addition, the government should strengthen administrative, criminal and civil enforcements by establishing a more effective enforcement mechanism. That can mobilize the high capacities of all forces in combat against IPR infringements through the cooperation program among these forces. It could be an anti-counterfeiting coalition or a coordination committee of IPR enforcement, and it should be strongly empowered by the government. In fighting against and handling IPR infringements, the government ought to focus the IPR enforcement on 4 forces instead of too many forces at present. The Market Control Force is responsible for administrative IPR enforcement in the domestic market, The Customs for border control, The IPR speciality Tribunal for settling IPR disputes and other IPR infringements, and the Economic Police for serious cases

Promoting regional and international cooperation programs on IPR enforcement, action cooperation in border control, information providing, etc is today's trend to share benefits from IPR enforcement. In recent years, the government has cooperated with many countries and organizations to enhance IPR laws and institutions. However, the international cooperation in IPR enforcement is still not effective as expected mainly due to the big difference between the IPR enforcement system and other countries'. The government should decisively improve the IPR enforcement mechanism by applying models of other countries where IPR enforcements are efficient.

On the responsibility of IPR enforcement, currently, Vietnam has 6 IPR enforcement forces, including Market Control Force, Culture-Information Inspector, Science-Technology Inspector, Agriculture & Rural Development Inspector, Economic Police and Customs as mentioned in Chapter I. The question is who has the main responsibility of IPR enforcement. The functions of IPR enforcement are assigned by IPR area and place where IPR is violated. The function of IPR enforcement on copyright and piracy belongs to Culture & Information Inspector. On export & import, it belongs to Customs. On plant varieties, it belongs to Agriculture & Rural Development Inspector. On IPR criminal, it belongs to Economic Police; on normal products, it belongs to Science-Technology Inspector. And on trade, it belongs to Market Control Force.

However, the functions of these forces are not clear and overlapped. In fact, many products are related to various IPR areas. In many cases, IPR violations are not clear in trade or manufacturing. This problem leads to a situation that each force only care about easy jobs of IPR enforcement but not difficult ones. In fact, there were a lot of controversies on this issue among government bodies. But so far, the situation still has no

change. Therefore, the government needs to restructure the functions of IPR forces in order to muster the responsibility of IPR enforcement into a main force. And the other IPR authorities are responsible to cooperate with the main force through a coordinating regime.

The tribunal system should be in charge of all civil IPR disputes. Every IPR disputes must be handled through civil procedures. The current use of administrative procedures in IPR disputes does not solve civil aspects. This does not encourage right holders to protect their IPRs unless their turnover or prestige is seriously affected. Moreover, these procedures are not strong deterrent to IPR infringers since low penalties and infringers bear no compensation. Only civil procedures are able to deal with civil aspects in IPR distributes, such as compensation. This measure would better solve civil relations and ensure civil rights and benefits of right-holders and other related parts (e.g consumers). At least, there should be an intellectual property court in each provincial court system.⁹ For this reason, right holders could conveniently bring IPR cases to courts with lower costs and shorter time.

Administration measures should be used against counterfeits, piracy and IPR infringements that damage consumers and the society. This function belongs to the Market Control System (this force is now managed by Ministry of Industry and Trade). Counterfeits and infringements judged by court should be handled through the Market Control Force. This force is also in charge of imported IPR counterfeits and origin-unknown counterfeits that IPR courts are not able to solve. Normally, these cases are not

⁹ At present, only the supreme court, Hanoi court in Hanoi city and Ho Chi Minh court in Ho Chi Minh city are able to handle IPR cases

disputable, because there is not complaint from right-holder. This is a necessary condition for an IPR dispute before court.

Currently in the internal market, the main IPR mission is the combat against IPR counterfeits and piracy. So, the MCF needs to be fully powered and responsible in fighting against IPR counterfeits and piracy. For complicated IPR cases, through the cooperation regulations, other related authorities should be responsible to provide technical assistants to the MCF to handle IPR infringements.

On criminal procedures, the police should be in charge of criminal cases. The police should be full actively responsible to discover and investigate criminal IPR violations in the internal market and international trade. In case the police discover small or not serious violations, they should be responsible to transfer the case to other administrative forces, for instance the MCF, to solve under administrative or civil procedures. Conversely, in any case, when other forces discover criminal or civil elements, they should be responsible to transfer the case to the police to solve under criminal procedures or to the IPR courts to solve under civil procedures. And also the same way when the IPR courts receive non-disputable cases.

Finally, in order to mobilize and encourage IPR enforcement forces, the government should have a policy of high salary and reward for officials directly in fighting against IPR violations in the market. The policy would allow these officials to concentrate on IPR enforcement.

3. Educational universalization and awareness raising.

The government should promote the program of IPR universalization more broadly by putting curriculums and specialty of IPR into all educational levels, especially the

tertiary education. This is to train law enforcement, judicial and customs officials. Young people have chance to access to IPR knowledge.

Additionally, consumer pressure can play an important role in discouraging retailers and wholesalers from trading counterfeit goods. Thus, IPR-related bodies and local governments need to use communications tools to disseminate IPR information and knowledge to every citizen to raise public awareness about the impact of counterfeiting (loss of state budgets, foreign investment and technology transfer, risks to health, link with organized crime, etc.) and encourage the participation of consumers in combating against IPR infringement and counterfeits. The government needs to create a fund for promoting the participation of consumers in IPR enforcement activities.

4. Entrepreneur improvement and supports for enterprises

One of the core policies is hastening the privatization and the reform of private property towards market, and improving transparency of IPR laws, policies and enforcement. Privatization and market structure would have much strong positive effects on IPR enforcement. Such changes would diminish interventions by the government on civil, market and economic relations among enterprises. Therefore, the economy and the markets would be fairer, more equal and more transparent. A fair environment of competition would encourage R&D and inventions, and intellectual properties increase. Thus, the pressure and burden on IPR enforcement forces would be much lessened. The IPR protection would be more efficient.

The government established the State Capital Investment Corporation (SCIC) in 2005 to manage the capital of the government in privatized corporations. Currently, SCIC still hold dominant shares in most large corporations. And these corporations are under

specialized control and management by ministries and other government authorities. Bureaucracy still persists in the relation between government authorities and enterprises. This situation, on the one hand, restricts the rights of private shareholders, and contradictions arise in business activities. On the other hand, as mentioned above, the IPR development of enterprises would be inhibited. Therefore, the immediate policy for privatization is that, the government should speed up the privatization for all the state-owned enterprises and abolish administrative interventions to business activities of enterprises. The government only should maintain a small number of the state-owned enterprises which serve for social security and their business activities are not competitive with the private sector. This creates an equal competition environment for all enterprises and encourages the private sector to invest widely in the economy. Together with the improvements on law, transparency and IPR enforcement, this policy would stimulate private enterprises, especially small-medium enterprises, to take interest in, develop and protect their own intellectual properties.

About support from the government for small and medium enterprises, this is often a difficulty in a developing country. The government trends to focus money on infrastructures in the economy. For many Vietnamese enterprises, especially small and medium ones, IP development and protection against IPR violations are beyond their ability and budgets. They need preferential supports from the government in R&D, IP development and IPR protection. For R&D and IP development, the government should issue priorities on tax, capital, land, etc for small and medium enterprises. The financial assistance is also useful to these enterprises in IPR registration. Besides, through

associations of enterprises, the government should organize programs and activities for promoting IPR developments, such as training, legal supports, IP dialogues, etc.

For IPR protection, the government should finance the enterprises that dynamically participate in activities against IPR violations or are not able to pay costs for IPR protection. This policy would encourage and enable small and medium enterprises cooperate with courts and IPR enforcement forces in fighting against IPR violations.

5. International cooperation

Most of IPR enforcement officials lack specialist knowledge and experience on the IPR area while just a small number of well-trained officials working in IPR registration offices. These officials were also IPR trained overseas. The government should more often organize programs in order to promote cooperation and educational exchanges between Vietnamese regulators and law enforcement officials and international organizations and other governments, such as the WTO, WCO, WIPO, EU, U.S, Japan, etc to promote a better understanding among government officials and the general public about the detrimental effects of IPR violations on the Vietnamese economy. Vietnam also can send IPR enforcement officials to developed countries for advanced IPR training and study.

Experience and technical supports from developed countries are indispensable for Vietnam, such as law, enforcement mechanism, etc. Especially, for the enforcement mechanism, Vietnam still faces difficulties in civil, administrative and criminal procedures. Vietnam needs to consult and flexibly apply suitable models of IPR enforcement from other countries to the Vietnamese IPR system.

6. Border control and preventing smuggling

As analyzed above, the pressure of IPR violations by imported goods and smuggling are much considerable to Vietnam IPR enforcement. More and more high technology IPR counterfeits are being imported into Vietnam. That cause huge damages for the internal market and consumers. At present, the government should take more strict control along the border to deter foreign IPR infringed goods importing into Vietnam. The customs and border defense force must be stronger powered and more active in border control against IPR violations. Particularly, these forces should have full competence to arrest IPR counterfeits and piracy if the right-holder requests a remedy against imported goods, even without a deposit. Also for smuggling, these forces should have full competence in arresting IPR counterfeits and piracy and deciding to destroy infringed goods or eliminate violation elements before selling to the market.

In addition, international cooperation on IPR enforcement is also a measure to prevent IPR infringed commodities across borders, especially for neighbor countries. These countries have to build a data system for IPR enforcement that helps customs in each country to discover and handle IPR infringements more effectively.

7. Building an efficient itinerary for implementation of international commitments and rules.

Many international commitments on IPR enforcement, even WTO commitments, are still on paper. Many IPR enforcement officials are still vague about these commitments, especially the direct and local officials, while their enforcement mission is significantly effective to the implementation of international commitments.

So, right now, the government should make a detail plan for IPR enforcement. Basing on this plan, each enforcement authority has to set up an action plan to conform IPR enforcement to WTO commitments and standards. Particular mission must be disseminated to every IPR enforcement official. That raises officials' awareness and responsibility on IPR enforcement under international commitments.

8. The role of associations

The government should build a more favorable environment for product associations. Associations must be completely independent with the government as non-government organizations. Their activities should be only for common objectives of all member enterprises. Moreover, product associations should include all members, not discriminate domestic and foreign members. Domestic and foreign enterprises should have the same rights in associations. This could mobilize all enterprises in the domestic market, especially small enterprises. Accordingly, not only supports of associations for members would be more effective, but also the role of product association would be stronger in relations with IPR enforcement bodies.

Product associations would link enterprises together in their activities, these allow member enterprises assist and cooperate together in IPR protection.

CONCLUSIONS

Globalization is the opportunity for less developed countries to escape from poverty, attract investments and improve life condition for their people. It is also a chance for the government to speed up the economic reform. In the IP field, simultaneously, a country like Vietnam faces a challenge that the government has to enforce IPRs strictly. The IPR enforcement is related to socio-economic aspects: domestic enterprises, consumers, social benefits, international integration progress, etc. The question is that the government has to harmonize and facilitate for all sectors in the economy in order to impulse and promote their developments. The government has to improve IPR institutions for efficient IPR enforcement but also support small enterprises and consumers in accessing and adapting to the new IPR system.

IPR enforcement is an effective policy to protect and encourage investment. IPR enforcement is to protect achievements from investment activities, works by people and enterprises. That allows them to receive benefits and continue to reproduce and develop innovation activities. It also encourages domestic enterprises to improve and master their technologies. Humans and the society would also benefit from IPR enforcement, such as employment improvement, tax, high quality products, health protection, etc. A strong IPR system would increase GDP and has positive effects on the sustainability of economic development. A climate of fair competition brought by an efficient IPR system is a motivation for development and would also enable enterprises and people to utilize their advantages to produce best products for the society.

IPR protection becomes an obligatory condition for any country when integrating into the international trading system. Inefficient IPR enforcement is considered as a barrier to the international trade. Therefore, other countries could easily use this point as a reason for retaliation in other economic relations. For Vietnam, aside from avoiding conflicts and disputes with other member countries and the international trading system, enhancing IPR enforcement would increase the prestige of the Vietnamese economy over the world. A strong IPR system would help Vietnam to receive advanced technologies and investments from other countries. Conversely, a weak IPR system would become a serious problem for the country that Vietnam only could access to and receive old technologies. Normally, old technologies cause adverse impacts on productivity, quality of goods and other issues of the domestic economy, even health of people, living environment, etc. In many countries, governments are still irresolute about IPR enforcement policies. However in Vietnam, both for short term and long term, the government should be strongly decisive on IPR enforcement.

The end

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