

Agreement
between
the Government of the Socialist Republic of Vietnam
and
the Swiss Federal Council
on the Protection of Intellectual Property
and on Co-operation in the Field of Intellectual Property

The Government of the Socialist Republic of Vietnam

and

The Swiss Federal Council,

Hereinafter referred to as “the Contracting Parties”,

REAFFIRMING the particular importance of intellectual property in foreign trade and in the flow of investments between both countries,

DESIRING to provide for an effective and adequate protection of intellectual property rights, in order to reduce distortions and impediments to trade and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade,

RESOLVED to contribute to the strengthening of the multilateral system of intellectual property, including the conventions administered by the World Intellectual Property Organisation (hereinafter referred to as the "WIPO") and the World Trade Organisation (hereinafter referred to as the "WTO"),

NOTING the efforts of the Socialist Republic of Vietnam to participate in the multilateral world trade system established by the WTO, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "TRIPS Agreement") and the desire of the Swiss Confederation to enhance co-operation in the field of intellectual property,

HAVING REGARD to the Agreement on Trade and Economic Co-operation and to the Declaration of Intent on Co-operation between the Government of the Socialist Republic of Vietnam and the Swiss Federal Council, signed on 6 and 7 July 1993 respectively,

Hereby agree as follows:

Article 1

General Provisions

(1) The Contracting Parties shall ensure adequate, effective and non-discriminatory protection of intellectual property rights and the enforcement thereof, in particular against counterfeiting and piracy, in accordance with the provisions of this Agreement, with a view to avoid trade distortions created by inadequate and ineffective protection of intellectual property rights.

(2) The Contracting Parties agree that the strengthening of the multilateral world trade system, including in particular the multilateral conventions in the field of intellectual property, and co-operation to that end, are important components of this Agreement.

(3) For the purposes of this Agreement, the protection of intellectual property has as its object in particular: copyright and neighbouring (related) rights, including computer programmes and databases; trademarks; geographical indications, including appellations of origin; industrial designs; patents for invention; protection of plant varieties; topographies of integrated circuits; protection of undisclosed information and other objects which may be protected under the law of each Contracting Party.

Article 2

International Conventions

(1) The Contracting Parties reaffirm their commitment to comply with the obligations and rights set out in the multilateral agreements which are specified in paragraph (1) of Annex 1 of this Agreement and to which they are party, and agree to take measures for adhering to the multilateral agreements specified in that paragraph before 1 January 2002 if they are not yet party thereto. Upon request of either Contracting Party, this deadline may be reviewed taking into account the progress made for accessions, in particular with regard to the WTO.

(2) The Contracting Parties shall make best endeavours to adhere to the multilateral agreements specified in paragraph (2) of Annex 1 of this Agreement and aimed at facilitating co-operation or registration in the field of intellectual property, in particular those concluded under the auspices of WIPO, if they are not yet parties to such agreements.

(3) The list contained in Annex 1 of this Agreement shall be reviewed periodically by the Contracting Parties taking into account future developments in the field of intellectual property.

Article 3

Level of Protection

(1) Subject to paragraph (2) of this Article, the Contracting Parties shall ensure that the level of protection of intellectual property is at least the same as that provided for by the TRIPS Agreement.

(2) Without prejudice to Article 4 of this Agreement, if one of the Contracting Parties is not yet in a position, on the date of entry into force of this Agreement, to provide for the level of protection mentioned in paragraph (1) above, it shall ensure such level of protection not later than 1 January 2002. Upon request of either Contracting Party, this deadline may be reviewed taking into account the progress for accession to the WTO.

(3) Upon request of one Contracting Party, the deadline referred to in paragraph (2) above shall be reviewed taking into account any shorter time limit agreed by the other Contracting Party in its relations with any third country or international intergovernmental organisation.

Article 4

National and Most-Favoured-Nation Treatment

(1) The Contracting Parties shall grant to each other's nationals treatment no less favourable than that accorded by each Contracting Party to its own nationals with regard to the protection of intellectual property. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Article 3 thereof.

(2) With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by either Contracting Party to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of the other Contracting Party. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.

Article 5

Territorial Application

This Agreement is extended to the Principality of Liechtenstein, as long as this country is bound to the Swiss Confederation by a customs union treaty and by a bilateral treaty on the grant of a unitary patent.

Article 6

Dispute Prevention and Settlement

- (1) Either Contracting Party may request consultations with the other Contracting Party regarding the interpretation or application of Articles 1 to 5 of this Agreement.
- (2) Disputes arising between the Contracting Parties regarding the interpretation or application of Articles 1 to 5 of this Agreement shall be settled through diplomatic channels.
- (3) This Agreement shall not preclude initiation of any of the dispute settlement procedures provided for in the Agreement between the Socialist Republic of Vietnam and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, signed on 3 July 1992 (Articles 9 and 10) with respect to disputes which fall under the scope of that Agreement.

Article 7

Co-operation

- (1) The Contracting Parties agree to enhance mutually beneficial co-operation. To that end, they shall co-ordinate efforts with the relevant international organisations or other interested countries, organisations or agencies.
- (2) Co-operative activities within the framework of this Agreement cover, but are not limited to, the fields of intellectual property as described in Article 1, paragraph (3) of this Agreement as well as the enforcement of intellectual property rights, including border measures.
- (3) Paragraph (1) above is without prejudice to co-operation which may be undertaken pursuant to other agreements or arrangements between the Contracting Parties, and other agreements and arrangements the Contracting Parties may conclude or have concluded with third parties or organisations.
- (4) For the purposes of the co-operation under this Agreement, the Contracting Parties agree to establish a Special Programme of Co-operation (hereinafter referred to as the "SPC").
- (5) The modalities of the SPC, in particular its establishment, its administration by a Joint Committee, composed of representatives of each Contracting Party, and its activities are laid down in Annex 2, which forms an integral part of this Agreement.

Article 8

Consultations on Co-operation

The Contracting Parties agree, upon request of either Contracting Party, to hold consultations, according to the needs arising from the interpretation and

implementation of Article 7 and Annex 2 of this Agreement, in particular with regard to legislative and enforcement activities as well as relations with third countries and international organisations.

Article 9

Entry Into Force and Termination

(1) This Agreement will become effective upon mutual notification by the Contracting Parties that their national constitutional procedures for the conclusion and application of international agreements are completed.

(2) Either Contracting Party may terminate this Agreement by means of a written notification to the other Contracting Party. This Agreement shall cease to be in force six months after the date on which the notification is received by the other Contracting Party. The termination of this Agreement is without prejudice to the duration of the SPC specified in Annex 2 of this Agreement.

Done at Hanoi, on July 7, 1999, in the Vietnamese, French and English languages, all texts being equally authentic. In case of divergencies between the texts, the English version shall be applied for interpretation.

For the Government of the
Socialist Republic of Vietnam:

Prof. Chu Tuan Nha
Minister for Science, Technology
and the Environment

For the Swiss Federal Council:

Dr. Jürg Leutert
Ambassador Extraordinary
and Plenipotentiary

Annex 1
to the Agreement
between the Government of the Socialist Republic of Vietnam
and the Swiss Federal Council
on the Protection of Intellectual Property and on Co-operation
in the Field of Intellectual Property

LIST OF INTERNATIONAL CONVENTIONS

(1) The international conventions mentioned in Article 2, paragraph (1), of the Agreement are:

- the Paris Convention, of 20 March 1883, for the Protection of Industrial Property (Stockholm Act, 1967);
- the Patent Co-operation Treaty (PCT) of 19 June 1970;
- the Madrid Agreement, of 14 April 1891, Concerning the International Registration of Marks (Stockholm, 1967);
- the WTO Agreement, of 15 April 1994, on Trade-Related Aspects of Intellectual Property Rights;
- the Berne Convention, of 9 September 1886, for the Protection of Literary and Artistic Works (Paris Act, 1971);
- the International Convention, of 26 October 1961, for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention);
- the International Convention for the Protection of New Varieties of Plants, of 2 December 1961 (UPOV Convention).

(2) The international conventions mentioned in Article 2, paragraph (2), of the Agreement are:

- the Hague Agreement, of 6 November 1925, Concerning the International Deposit of Industrial Designs (The Hague (1960) and Stockholm (1967) Acts);
- the Madrid Agreement, of 14 April 1891, for the Repression of False or Deceptive Indications of Source on Goods (Stockholm Act, 1967);
- the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989;
- the Trademark Law Treaty of 27 October 1994;

- the Budapest Treaty, of 28 April 1977, on the International Recognition of the Deposit of Micro organisms for the Purposes of Patent Procedure.

Annex 2
to the Agreement
between the Government of the Socialist Republic of Vietnam and
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SPECIAL PROGRAMME OF CO-OPERATION

Article 1: Establishment

In accordance with Article 7, paragraph (4) of the Agreement, the Contracting Parties agree to the establishment of a Special Programme of Co-operation (SPC).

Article 2: Duration

The Contracting Parties agree that the initial duration of the SPC will be of three years from the date of entry into force of the Agreement.

Article 3: Funding

Activities under the Agreement and this Annex will be subject to the availability of funds and to the applicable laws and regulations, policies and Programmes of the Socialist Republic of Vietnam and the Swiss Confederation.

Article 4: Administration

(1) For the purposes of the SPC, the Contracting Parties shall create a Joint Committee, which shall consist of representatives of both Parties. The Joint Committee shall establish its own rules of procedure and act by mutual agreement. It shall meet whenever necessary but at least once a year.

(2) The Joint Committee shall approve the working programmes to be elaborated by the competent executive agencies of the Contracting Parties. It shall monitor the proper implementation of the SPC.

Article 5: Activities

(1) The Joint Committee shall proceed to an assessment of the needs and priorities of the activities described hereafter, taking into account the co-operation activities supported by other bilateral or multilateral donors.

(2) The Programme of co-operation may include, but is not limited to, the following activities:

a) Activities aimed at strengthening the legislative and regulatory framework in the field of intellectual property rights:

1. Studying relevant international intellectual property treaties, in particular the TRIPS Agreement and certain conventions administered by WIPO, to which the Socialist Republic of Vietnam is not yet party; where appropriate, preparing proposals and recommendations for competent authorities for consideration of the accession of the Socialist Republic of Vietnam to such agreements and conventions;

2. Studying fields of intellectual property which are not yet protected in the Socialist Republic of Vietnam, such as undisclosed information as well as the repression of unfair competition;

3. Assessing the needs for modernising the legal framework, proposing new, and amendments and revisions to, intellectual property laws and regulations of the Socialist Republic of Vietnam to meet international standards and requirements of relevant international treaties, especially the TRIPS Agreement (substantive norms and enforcement).

b) Activities aimed at strengthening the intellectual property administrations:

1. Exchanging managerial experience with the intellectual property offices of the Swiss Confederation and other countries or regions through various means such as study visits and seminars;

2. Training and qualifying staff of administration offices responsible for intellectual property (i.e. industrial property, copyright and neighbouring rights), namely the managerial staff, legal officers, examiners, experts dealing with patent and other information, technical personnel, through long- and short-term training, through seminars, symposia and workshops;

3. Modernising administration offices responsible for intellectual property, including their branches, if any;

4. Modernising the patent and other information systems, including setting up a national network for intellectual property information services;

5. Providing necessary technical equipments.

c) Activities aimed at strengthening the implementation of intellectual property laws and at ensuring the effective enforcement of intellectual property rights:

1. Training and qualifying judges (administrative and judicial), customs officers and other authorities responsible for the enforcement of intellectual property rights, through seminars, study tours and workshops;
 2. Providing necessary technical equipments.
- d) Other activities, including the promotion of intellectual property and the use thereof:
1. Improving public awareness of the importance of protecting innovations and creations, of combating counterfeiting and piracy, through workshops with the participation of countries having experience in those fields;
 2. Promoting the use of intellectual property rights by enterprises, local communities and individuals in all fields of technology;
 3. Providing free-of-charge patent searches by the Swiss authorities for patent applications from individual inventors or enterprises under certain conditions;
 4. Promoting and developing the teaching of intellectual property in the Socialist Republic of Vietnam, in particular with emphasis on the use of that law for economic development.

Article 6: Authorities Entrusted with the Implementation of the SPC

The authorities which are in charge of the implementation of this Annex and in particular of the SPC are:

a) For the Government of the Socialist Republic of Vietnam:

National Office of Industrial Property

384-386 Nguyen Trai

Hanoi

b) For the Swiss Federal Council:

1. State Secretariat for Economic Affairs

Developing countries/countries in transition

Effingerstrasse 1

3003 Berne

2. Federal Institute of Intellectual Property

Einsteinstrasse 2

3003 Berne