



**Vietnam Chamber of Commerce and Industry
The Center for WTO and Economic integration**

REPORT

**THE REVIEW OF VIETNAM LEGAL FRAMEWORK AGAINST COMMITMENTS
UNDER EUROPEAN UNION - VIETNAM FREE TRADE AGREEMENT (EVFTA)
ON INTELLECTUAL PROPERTY**

INTRODUCTION

At the beginning of December 2015, the European Union and Vietnam announced the conclusion of negotiations for the European Union - Vietnam Free Trade Agreement (EVFTA), one of the two largest new-generation free trade agreements of Vietnam. With a broad coverage of various trade and trade-related sectors at and beyond countries' borders, EVFTA is forecasted to have a significant impact on Vietnam legal framework and economic institutions in the coming time.

One of the aspects under the coverage of EVFTA, which is considered to have significant and direct impacts on Vietnam's legal framework is Intellectual Property. This is a quite sensitive matter during the negotiation because of the disparity in the requirements of EU and Vietnam on the protection of Intellectual Property Rights. The negotiation result of such matter is a system of commitments towards enhancing the standards of protection of Intellectual Property Rights for owners, which correlates to some significant limitation in the accessibility to products of public or consumers of such products when compared to relevant current standards of Vietnam.

Therefore, a review of Vietnam legal framework against EVFTA commitments on Intellectual Property is necessary to determine these differences. Then appropriate amendments and adjustments can be made to ensure the compliance with the commitments under EVFTA, motivate the intellectual property activities as well as well apply the commitments to maintain the reasonable access to the intellectual property with the aim of supporting the business activities, socioeconomics and culture education in Vietnam.

The review of Vietnam's legal framework against EVFTA commitments on Intellectual Property is conducted by Vietnam Chamber of Commerce and Industry (VCCI) with analyses about the compatibility of Vietnam legal framework against commitments from the perspectives of enterprises and public. From this, recommendations are made to guarantee the conformity to the Agreement in the most beneficial ways for enterprises and public.

This Review belongs to a series of reviews of Vietnam's legal framework against EVFTA commitments on five important aspects (including Government procurement, Government procurement, Intellectual property, Customs and trade facilitation, and Transparency). All of these reviews are carried out by Vietnam Chamber of Commerce and Industry (VCCI) in the Program titled "The readiness of Vietnam's legal framework in implementing EVFTA" with the

supports of the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam.

This Review report is expected to be a good and useful information source for the process of reviewing the legal framework for EVFTA enforcement of the Government, and also considered a meaningful reference for the Congress's authorities in the process of approving, directing, implementing and controlling the EVFTA implementation.

Vietnam Chamber of Commerce and Industry would like to express its thanks to the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam for their supports in the implementation of this meaningful program./.

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LIST OF ABBREVIATIONS

EVFTA: European Union – Vietnam Free Trade Agreement

EU: European Union

FTA: Free Trade Agreement

IP: Intellectual Property

TPP: Trans-Pacific Partnership framework

WTO: World Trade Organization

Section 1

SUMMARY OF THE RESULTS OF THE REVIEW

I. Targets and situation of the Review

On 2nd December 2015, the official conclusion of negotiations for European Union - Vietnam Free Trade Agreement has been made. The text of the Agreement, announced on 1st February 2016 with 24 chapters, implies a new generation agreement with a very broad coverage from traditional trade sectors (such as goods, services, etc.) to the trade sectors that have been committed by Vietnam for the first time (such as State-owned enterprises, Government procurement, etc.), and even non-trade but closely linked to trade issues (such as environment, sustainable development, etc.). The commitment and liberalization levels under the Agreement are also much higher than that under previous free trade agreements signed by Vietnam, and approximately equivalent to that under Trans-Pacific Partnership (TPP).

With its coverage and commitment levels, EVFTA is forecasted to have a significant impact on Vietnam's legal and economic institutions in the coming time. The commitments under EVFTA raise the need of adjusting Vietnam's legal framework to guarantee it's seriously conforming and enforcing specific obligations in many sectors. In turn, this change expectedly creates a new institution reform wave for Vietnam, which helps enhance the quality of the legal system, improve business environment, set up a good base for sustainable development and bring considerable benefits for domestic investors and their foreign partners especially from European Union.

One of the committed aspects which is considered to directly and substantially affect Vietnam's legal system under EVFTA is the institution on intellectual property. This institution consists of the principles and requirements on the standard and enforcement of intellectual property rights protection. EU is the world-leading area in exporting intellectual property, so there is a demand for the enhancement of intellectual property rights protection. EU also has a specific protection regime for geographical indications and does focus on the protection of such kind of intellectual property rights. Regarding Vietnam, a developing country with only a small number of intellectual property products when compared to EU, Vietnam is strongly in need of an environment that allows the enterprises, organizations and individuals to access to intellectual property products to support the development of economy, science and society with the lowest possible price. It is not something of coincidence when intellectual property matter, especially the geographical indications, becomes one of the most difficult and complex issues during the negotiations of EVFTA,

and the Chapter Intellectual Property is also one of the largest chapters in EVFTA.

The review of Vietnam's current legal framework against specific commitments under EVFTA on intellectual property would be the basis to determine which commitments are different or incompatible with domestic regulations on intellectual property, then appropriate recommendations can be made to amend and adjust the legal framework to become compliance with EVFTA and to guarantee the accessibility to intellectual property products of public, enterprises, organizations and individuals

According to Vietnam's process of negotiating and approving international agreements, this kind of review is certainly carried out by relevant State authorities (Ministry of Justice and Ministry of Government procurement and Planning) to support the Congress's approving this Agreement and the guarantee of the country's implementing its obligations under EVFTA.

Nevertheless, the active review from *the perspectives of firms* in this situation is essential because:

- In many circumstances, the commitments can be interpreted and enforced in different ways; with the Review conducted from the perspective of public and firms, including enterprises owning intellectual property products and enterprise community using intellectual property products in business activities, the most beneficial way for the public and enterprises will be identified and recommended to competent authorities for consideration during the implementation;
- Regarding the commitments on intellectual property, although commitments under EVFTA on intellectual property are made within the scope of EVFTA only, the amendments to domestic legislation must be made generally (applicable to all other WTO members apart from EU) except for a small group of exception due to the national treatment and the most favored nation treatment principles stipulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights of WTO (TRIPS). Therefore, the impact of commitments on intellectual property under EVFTA on enterprises and entities using intellectual property in Vietnam need being viewed not only from the perspective of EU right holder but also from the perspective of WTO country members. With such a wide coverage, that the Review being made from the perspective of affected entities is more important.

The purposes of the Review are to make (i) detailed comparisons between Vietnamese legislations on Intellectual Property with particular obligations,

commitments on Intellectual Property included in the Chapter of Intellectual Property under EVFTA; (ii) analyses and assessments about the situation of domestic legislations compared with EVFTA's requirements and Vietnam's self-improvement demand and (iii) balancing the mutual advantages of the right holders and the users (iv) proposals of EVFTA - implementing measures from the perspectives and benefits of public and firms.

II. Coverage of the Review

1. About commitments on Intellectual Property in EVFTA

Under EVFTA, commitments on Intellectual Property are mainly provided in Chapter 12 on Intellectual Property with 40 pages and 31 Articles.

Regarding the content, commitments in Chapter 8 – Intellectual Property could be categorized in to the following groups:

Group 1: Commitments on general principles in IP protection

- Commitments on recognizing the target of promoting innovation and effective protection and enforcement of intellectual property rights, balancing the mutual advantage of producers and users
- Commitments on affirming the rights and obligations under international agreements, especially the TRIPS
- Commitments on the most favored nation treatment
- Commitments on right revocation

Group 2: Commitments on Standards concerning Intellectual Property Rights

- Commitments on standards for Copyright and Related Rights protection
- Commitments on standards for Trademarks protection
- Commitments on standards for Geographical Indications protection
- Commitments on standards for Industrial Designs protection
- Commitments on standards for Patents protection
- Commitments on the liability of Intermediary Service Providers

Group 3: Commitments on civil procedure in the enforcement of intellectual property rights

- Commitments on measures to ensure the enforcement of intellectual property rights (provisional measures, remedies, injunctions and alternative measures, etc.)
- Commitments on procedural matters in the enforcement of intellectual property rights (presenting evidences, right of information, presumption of authorship or ownership, etc.)

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- Commitments on property liability in intellectual property procedure (damages, legal cost, etc.)

Group 4: Commitments on the border enforcement of intellectual property rights

- Scope of border measures
- Responsibilities of custom authorities in the border enforcement of intellectual property rights
- Specific cooperation in the area of border measures
- Other enforcement provisions: encouraging the professional association or organizations to develop Codes of Conduct; Co-operation in enforcing intellectual property rights

The review of Vietnam legal framework against commitments on Intellectual property under EVFTA will be done with particular commitment under Chapter 12 EVFTA.

2. About Vietnam's Intellectual Property-related legislations

In Vietnam's legal framework, Intellectual Property-related matters within the scope of commitment of EVFTA consisted in these following domestic institutional:

- Laws on Intellectual Property: Law on Intellectual Property and guiding implementation document (Decrees, Circulars);
- Laws on Civil, Intellectual Property – related Part: At the of the Review, the Civil Code 2005, with Part 6 “Intellectual Property and Technology Transfer” including articles on intellectual property, still remains in force. However, in the Civil Code 2015, which takes effect from 01/01/2017 (presumed to come into force before EVFTA's official effective date), the Part on intellectual property has been taken out of the content of the Code. Hence, from the perspective of the enforcement of EVFTA, the Civil Code 2005 is no longer a legal source that need being reviewed;
- Other relevant laws: Law on Competition, Civil Procedure Code, Criminal Procedure Code, Law on Custom, etc.

This review will assess the regulations on intellectual property in all domestic legislations relating to different aspects of the commitments on intellectual property under EVFTA. Regarding the legal framework on intellectual property of Vietnam (the basic institutional), it is important to note that unlike other legal framework, in this legal framework, there are many provisions imposed under guiding documents (Decree, Circular) supplying new contents compared

to original document (Law on Intellectual Property). At one hand, this situation is a legal shortcoming because of its inconsistency with the general principles (accordingly, the guiding documents must not impose new requirements, conditions and regulations). On the other hand, this situation also makes the review on intellectual property law in general and this Review in particular become difficult (because having to check all the related documents at same time regardless of the legal validity of such documents).

It should be noted that until the present time (4/2016), besides 02 agreements having not taken effect yet (including EVFTA and the Trans Pacific Partnerships) to which Vietnam has no obligation to comply, Vietnam has 02 international agreement containing commitments on intellectual property being in force, which include the TRIPS of WTO and the bilateral trade agreement Vietnam – USA (BTA). In order to implement TRIPS and BTA, Vietnam legislation on intellectual property has been revised widely 02 times (2006 and 2009) and is considered to fully comply with the commitments on intellectual property under TRIPS and BTA. As a developing country, primarily importing and using intellectual property products, Vietnam does not maintain the standard of intellectual property rights protection higher than those committed under TRIPS or BTA. Therefore, the commitments on intellectual property at the standard of TRIPS+ (higher than the standard of protection under TRIPS) under EVFTA or TPP will have to be adjusted.

III. Summary of the Results of the Review and Recommendations

Results of the review about Vietnam's legal framework against EVFTA commitments on intellectual property regarding specific obligations are as follows:

1. The group of EVFTA's Intellectual Property commitments that Vietnam's legal framework have been compatible with

Review results

The detailed review presents the compatibility of Vietnam's legal framework with a majority of commitments under EVFTA on intellectual property, in all groups of commitments, from general principles to the standards of protection as well as the enforcement of intellectual property rights.

At first glance, these results seem to be surprising when taking in account the prior arguments on the requirements of intellectual property protection at TRIPS+ level of EU in general and the high requirements of EU partner during the negotiations on intellectual property of EVFTA in particular. Though, such surprise can be explained by a detail look into the commitments:

At first, taking part in WTO in 2007, Vietnam amended the domestic legal framework to adjust to WTO's requirement, especially the TRIPS. One of the *Firstly*, being a member of WTO since 2007, Vietnam has to reform the domestic legal system to meet WTO requirements, especially commitments under Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). One of the principles set out under EVFTA is that member state shall recognise and fully implement TRIPS requirements. Therefore, it is understandable when Vietnam legal framework is compatible with EVFTA commitment which is similar to TRIPS.

Secondly, Article X (between Article 2 and Article 3) of Chapter 12 EVFTA provides a special commitment considered as a "key" for a lot of EVFTA commitments on intellectual property: Most Favoured Nation principle (MFN). Accordingly, each Party shall immediately and unconditionally accord to the nationals of the other Party no less favourable than that it accords to any other countries (except as provided under Article 4 and Article 5 of TRIPS). This provision actually aims to impress the MFN responsibility under TRIPS to recognize the TPP commitments on intellectual property. As indicated in the final results of TPP negotiations on 5th November 2015, Vietnam's commitments on intellectual property under TPP contain a lot of TRIPS+ provisions which Vietnam shall accord to EU under MFN principle. This article explains why EVFTA does not provided the TRIPS+ requirements as expected, despite the fact that intellectual property is a tough issue during the negotiations.

Due to this issue, a full and total review of Vietnam legal framework against EVFTA commitments should be prepared with a detailed review against TPP commitments on intellectual property, and a due comparison between EVFTA and TPP to determine which commitments give the EU nationals better treatments. Within the limitation of scope and time, this Review is going to draw to the attention to review Vietnam legal framework against EVFTA commitments under Chapter 12 EVFTA. After this Review should a further research be performed to adjust Vietnam legal framework to meet EVFTA commitment.

In particular, Vietnam's legal framework is **totally compatible** with the following commitments under EVFTA on Intellectual Property:

Article 1 - Objectives

- Target on facilitating the creation and effective protection and enforcement of intellectual property rights

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- Target on facilitating technology transfer and commercialization, balancing the mutual advantages of owners and users

Article 2 – Nature and Scope of Obligations

- Affirm the rights and obligations under the international treaties on Intellectual Property, especially TRIPS
- 09 intellectual property objects

Article 4 – Copyright and Related Rights

- Article 4.1 – Protection Granted: Commitments on complying with the rights and obligations set out in the Berne Convention and the Rome Convention;
- Article 4.5 – Broadcasting organizations: Commitments on protecting the exclusive right of broadcasting organizations in the fixation of broadcast; reproduction, distribution to the public and rebroadcasting the fixed broadcasts;
- Article 4.7 – Term of protection: The term of protection runs for the life + 50 years for author rights; The term of protection runs for 50 years for performers, producers and broadcasting organizations rights;
- Article 4.8 – Protection of Technological Measures: Commitments on adequate legal protection against the circumvention of any effective technological measures
- Article 4.9 – Protection of Rights Management Information: Commitments on adequate legal protection against the acts of removing or altering of any electronic rights-management information, or of distributing, importing, broadcasting ... the public of works, performances, or phonograms from which electronic rights-management information's has been removed or altered without authority
- Article 4.10 – Exceptions and Limitations: Rights to apply limitations exceptions to Commitments on protection stipulated from Article 4.2 to Article 4.6

Article 5 – Trademark

- Article 5.1 – International Agreements: Commitments on affirming the rights and obligations under the Madrid Agreement; Commitments on using the Nice Agreement when registering trademarks; Commitments on simplifying and developing the trademark registration system.;
- Article 5.2 – Rights conferred by a trademark: Commitments on the protection of the trademark holder rights to consent the use of any sign identical with the trademark for the identical goods or services;

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- Commitments on the protection of the trademark holder rights to consent the use of any sign which is identical or similar with the trademark for the identical or similar goods or services;
 - Article 5.3 – Registration Procedure: Commitments on publicizing the electric database of registered trademarks;
 - Article 5.4 – Well-known Trademarks: Commitments on the protection of well-known trademarks as referred to in Article 6bis of the Paris Convention 1967, TRIPS Agreement and the Paris Union Agreement;
 - Article 5.5 – Exceptions to the Rights Conferred by a Trademark: Commitments on imposing exceptions to the trademark owner rights relating to the use of descriptive terms; Rights to imposing limitations and other exceptions as long as taking into account of the legitimate interest of the owners of the trademarks and of third parties;
 - Article 5.6 – Grounds for revocation: Commitments on the revocation if the use of the trademark may lead to confusion

Article 6 – Geographical Indications

- Article 6.2 – System of registration and protection of Geographical Indications: Commitments on maintaining the system for the registration and protection of geographical indications; Commitments on an administrative process verifying the geographical indications; Commitments on an objection procedures of the third parties; Commitments on the procedures for rectification and termination of geographical indications; Commitments on the rights to provide a more extensive protections than required
- Article 6.7 – Relationship with trademarks: Commitments on the protection of right of the owner who registered in good faith the trademark similar to a registered geographical indications at the time EVFTA takes effect
- Article 6.9 – General rules: Commitments that products bearing protected geographical indication shall comply with the product condition as stated under the Registration

Article 7 – Industrial Designs

- Article 7.2 – Protection of Registered Industrial Designs: Protection criteria: new and original; Right of the owner; The duration of protection available shall amount to at least 15 years.
- Article 7.4 – Exceptions and exclusions: Rights to impose on exceptions and exclusion in protecting industrial designs; Industrial design

protection shall not extend to designs dictated essentially by technical or functional considerations.

Article 8 – Patents

- Article 8.1 – International Agreements: Commitments on affirming rights and obligations under the Patent Co-operation Treaty; Simplifying and developing the patent registration procedures using the Patent Law Treaty

Article 9 – Protection of undisclosed information and data

- Commitments on not publicizing and allowing other people basing on undisclosed information and data of the registrant to register pharmaceutical products

Article 11 – Plant Varieties

- Commitments on the protection of plant varieties in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV)

Article 12 – General Obligation (Enforcement of Intellectual Property Rights)

- Affirming commitments under the TRIPS Agreement

Article 13 – Entitled Applicants (Enforcement of Intellectual Property Rights)

- Commitments on the rights to ask for protection of the entitled applicants, authorized persons, intellectual property collective rights management bodies, professional defense bodies

Article 15 - Evidence

- Commitments on recognizing the right of the Court to order the opposing party to present evidence
- Commitments on recognizing the right of the Court to order the party to provide the communication of banking, financial or commercial documents

Article 16 – Right of Information

- Commitments on guaranteeing the right of the Court to order parties to provide the evidence on intellectual property rights infringements (conditions, manners, the entity)

Article 17 – Other Remedies

- Commitments on guaranteeing the right of the Court to impose remedies on the ground of the request of the applicant

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- Commitments on guaranteeing the right of the Court to order the infringer to destruct the infringing goods

Article 20 - Damages

- Commitments relating to the determination of infringing elements to impose the damages

Article 22 – Publication of Judicial Decisions

- Commitments on the authority of judicial authorities to publicize or making available the Judicial Decisions to the public, at the expense of the infringer

Article 24 – Consistency with GATT and TRIPS Agreement (Border Enforcement)

- Commitments on affirming the obligations under TRIPS relating to border measures for the enforcement of intellectual property rights

Article 25 – Definitions (Border Enforcement)

- Definitions of goods infringing an intellectual property rights, counterfeit goods, pirated copyright goods, import goods, export goods

Article 26 - Scope of Border Measures

- Commitments on adopting procedure to control and detect suspected infringing goods at the border;
- Commitments on guaranteeing the right of customs authorities suspend the release of the goods suspected of infringing IPRs

Article 27 - Specific Cooperation in the Area of Border Measures

- Commitments on the active of the custom authorities in determining the infringing goods

Article 29 - Codes of Conduct

- Commitments on encouraging trade or professional associations or organizations to develop codes of conduct aimed at contributing towards the enforcement of intellectual property rights.

Article XX - Liability of Intermediary Service Providers

- Commitments on providing limitations or exemptions in its domestic legislation regarding the liability of intermediary service providers for infringements of copyright or related rights that take place on or through tele-communication networks in relation to the provision or use of their services

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- Commitment on rights to prescribe in domestic law circumstances under which intermediary service providers qualify/ do not qualify for the limitations or exceptions
 - Commitment on rights to establish procedures for effective notifications of claimed infringement, and effective counter-notifications
 - Commitment on right of a court or administrative authority, in accordance with Parties' legal systems, of requiring the intermediary service provider to terminate or prevent an infringement

Assessment and Recommendation

In overall, Vietnam legal framework is compatible with a lot of EVFTA commitment on intellectual property under Chapter 12. In principle, Vietnam legal framework does not need to amend, supplement, or adjust to implementation EVFTA commitment on this issue.

However, as provided, by recognising MFN principle under Chapter 12 EVFTA (as indicated as MFN principle under TRIPS), Vietnam commits to accord EU nationals no less favourable than that under other treaties including TPP. In other hand, TPP commitments on the similar EVFTA issues with which Vietnam legal framework compatible provides a lot of TRIPS+ provisions, especially commitments on term of protection, exceptions of copyright and related rights, protected subject and condition to protect patent, protection of information and unpublished data, responsibilities of intermediary service providers,...

Therefore, although this group of commitments seems not to require Vietnam to amend, supplement legislation, the final conclusion of this matter only could be determined after a due research on similar TPP commitments.

2. The group of EVFTA's intellectual property commitments that Vietnam's legal framework partly or totally is incompatible with

Review results

In comparison with the group of commitments on intellectual property under EVFTA that Vietnam's legal framework has been compatible with, the group of commitments that Vietnam's legal framework has not been compatible with comprises a smaller quantity. In which, the cases of partly incompatible play the majority, the cases of totally incompatible are very small.

In particular, Vietnamese legislations are **totally incompatible** with EVFTA's commitments on intellectual property in the following issues:

Article 6.3 - Established geographical indications

- Commitments on recognizing the geographical indications of the European Union (including 171 geographical indications listed in Annex GI-I, Part A)

Article 8.3 - Administrative Authorisation

- Commitments on compensating the patent owner for unreasonable delays in the granting of pharmaceutical marketing authorisation

Article 23 - Presumption of Authorship or Ownership

- Commitments on the presumption principles that the ones having their name appear on the work are the work author, right holders unless there are contrary proof.

Vietnamese legislations are **partly (but not entirely) incompatible** with EVFTA's commitments on intellectual property in the following issues:

Article 2 – Nature and Scope of Obligations

- Commitments on the protection of intellectual property rights against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property

Article 4 - Copyright and Related Rights

- Article 4.2 – Authors: Commitments on the protection of the exclusive right of authors in direct or indirect reproduction of their works; Commitments on the protection of the exclusive right of authors in the distribution their works or the copies thereof to the public; Commitments on the protection of the exclusive right of authors in the communication to the public their works

- Article 4.3 – Performers: Commitments on the protection of the exclusive right of performers in the fixation of their performances; Commitments on the protection of the exclusive right of performers in the reproduction, distribution, making available and broadcasting their fixed performances to the public

- Article 4.4 - Producers of phonograms: Commitments on the protection of the exclusive right of producers of phonograms in direct or indirect reproduction by any means and in any form, in whole or in part of their phonograms; Commitments on the protection of the exclusive right of producers of phonograms in making available and distribution their phonograms to the public

- Article 4.5 - Broadcasting organisations: Commitments on the protection of the exclusive right of broadcasting organisations in the fixation of their

broadcasts; in the reproduction, distribution to the public their broadcasts and in the rebroadcasting of their broadcast by wireless means

- Article 4.6 - Broadcasting and Communication to the Public: Commitments on the right to be paid equitable remuneration of performers and phonogram producers if a phonogram is published for commercial purposes

- Article 4.8 - Protection of Technological Measures: Commitment on effective protection against the import, distribution, sale...devices with the aim of disabling the technological measures; Defining the expression 'technological measures';

- Article 4.9 - Protection of Rights Management Information: Defining the expression 'rights-management information'; Commitments on the protection of rights relating to the copies of work, performances or phonograms communicated to the public

- Article 4.10 - Exceptions and limitations: Not apply to cases where the temporary copy is made on the sole purpose of lawful transmission

Article 5 – Trademarks

- Article 5.3 - Registration Procedure: Commitments on written and duly reasoned opposition to trademark applications

- Article 5.6 - Grounds for revocation: Commitments on the revocation of a trademark registration if within a continuous period of five years prior to a request for revocation, it has not been put to genuine use

Article 6 - Geographical Indications

- Article 6.5 - Protection of geographical indications: The protection measures of geographical indications specified in Annex GI-I-A of EU (in which, the use of expressions such as "kind", "type", "style" ...along with the geographical indication to other products is prohibited)

- Article 6.6 - Right of use of geographical indications: Commitments on the unlimited legitimate use of geographical indications and no re-registration is needed

- Article 6.8 - Enforcement of protection: Commitments on appropriate administrative action, to the extent provided for by its domestic law, to prohibit a person from manufacturing, preparing, packaging, labeling, selling or importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin

Article 7 - Industrial Designs

- Article 7.2 - Protection of Registered Industrial Designs: Commitments on the “visible” condition on component design

-Article 7.5 - Relationship to Copyright: Commitments on an industrial designs protection under the law of copyrights if all the conditions are conferred

Article 14 - Provisional Measures

- Commitments on the guarantee of the rights of the competent judicial authorities, on request by a right holder, to prevent infringing goods from circulating, including the right to order the services providers to block the movable and immovable property, block bank accounts and other assets.

- Commitments on the guarantee of the rights of the competent judicial authorities to preserve relevant evidence

- Commitments on the guarantee of the rights of the competent judicial authorities to adopt provisional measures without the other party being heard

Article 18 – Injunctions

- Commitments on the guarantee of the rights of the competent judicial authorities to issue an injunction aimed at prohibiting the continuation of the infringement after the decision to conclude infringement

Article 20 – Damages

- Differing the amount of damages in two circumstances: the infringer know or unknown to the infringement

Article 21 – Legal Costs

- Commitments on the guarantee of the rights of the competent judicial authorities to order the losing party to bear the court, lawyer fees and others

Article 27 - Active Involvement of Customs Authorities

- Commitments on the cooperation between the custom authorities and right holders, including allowing the provision of information for risk analysis

Assessment and Recommendation

Regarding the commitments on intellectual property under Chapter 12 EVFTA (03 commitments), the commitment on automatic recognition the geographical indications of EU under Annex GI-I EVFTA which is a particular feature of EU and could not be seen in any other partner; the last two commitments relate to domestic legislations (commitment on the added duration to compensate the undue delay in the process of approving the marketing of pharmaceutical, and commitment on presumption of authorship or ownership).

With regard to the commitment on automatic recognition the geographical indications of EU under Annex GI-I EVFTA, the content of this commitment is clear (about name, classification, and recognition of geographical indication,..), the reasonable interpretation is direct application of this article without the revision of Vietnam legislations on intellectual property.

With regard to the last two commitments, their implementation is similar to that of EVFTA commitments on intellectual property which is partly compatible (as indicated below).

With regard to group of partly compatible commitments, in fact, almost commitments in this group have slight difference with more detailed and comprehensive than the respective domestic legislation (e.g. commitments on the scope of copyright and related rights, commitments on the implementation of intellectual property,.)

Logically, there are two solutions to implement these commitments: (1) revising legal framework to apply to EU nationals only; or (2) revising general legislations to apply to all nationals (domestic, and foreign). However, according to the abiding MFN principle of TRIPS, Vietnam has an only choice of option (2) which means revising the legal framework to meet the most intensive commitments under EVFTA (and TPP).

Specifically, under Article 3 (National Treatment – NT) and Article 4 (Most Favoured Nation – MFN) of the Agreement on Trade-Related Aspects of Intellectual Property of the World Trade Organization (TRIPS), with regard to the protection of intellectual property, WTO members shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals; and any advantage, favour or immunity granted by a Member to the national of any other country shall be accorded immediately and unconditionally to the nationals of all other Member. There are some exceptions to these principles among which are cases relevant to performer, producers of phonograms, broadcasting organizations where NT and MFN only apply to issues within the scope of TRIPS.

Subject to the provided exceptions, with regard to the protection of intellectual property, if a WTO member having further commitment on intellectual property with other partners (e.g., in the framework of an FTA), it shall accord no less treatment to the other WTO members. Meanwhile, two other agreements in the framework of WTO, General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) do not requires the application of NT and MFN principles to the FTAs' commitments (under Article XXIV of GATT, and Article V of GATS).

So under EVFTA, in principle, if EVFTA commitments on intellectual property are higher than TRIPS' standards, legal choices for implementation will be:

- With regard to commitments having different content from the rights of performers, producers of phonograms, and broadcasting organizations as indicated under TRIPS: Vietnam could choose to (1) amend relevant legislations and apply to EU partners, or (2) amend the general law and apply to all nationals.
- With regard to all other commitments, Vietnam shall amend the general law to meet EVFTA provisions and apply to all nationals.

In reality, all rights of performers, producers of phonograms, and broadcasting organization under EVFTA have been adopted in TRIPS, therefore, all EVFTA commitments on intellectual property shall be implemented and accorded to all other nationals as to EU nationals under Article 3 and Article 4 TRIPS.

Hence, the only solution for the difference between EVFTA commitments on intellectual property and Vietnam legal framework is to amend the general legislations of Vietnam to meet EVFTA requirements. The implementation should be perform with direct revision of Law in intellectual property, instead of guiding legislations to avoid further difference between laws and its guiding legislations.

3. The group of EVFTA's Intellectual Property commitments that not fall in the scope of Vietnam's legal framework

Chapter on Intellectual Property of EVFTA provides some commitments to promote dialogue and cooperation, continue negotiation,... between competent authorities of Vietnam and EU. These commitments do not fall in the scope of domestic law on merits; consequently, do not affect current domestic legal system.

This group includes the following commitments:

- Article 6.4 - Amendment of List of geographical indications as recognized under EVFTA
- Article 6.10 - Co-operation and transparency between Vietnam and EU during the implementation
- Article 6.11 - Working Group on Intellectual Property Rights, including Geographical Indications
- Article 28 - Specific Cooperation in the Area of Border Measures

These issues do not fall in the scope of domestic law on merits, and do not require domestic legal amendment to implement on interested entities.

However, during the implementation of this group, related authorities should pay attention to issue internal rules, construct new and compatible mechanism to meet the commitments to effectively meet these commitments.

In conclusion

The Review indicates that Vietnam legal framework on intellectual property is basically compatible with the respective EVFTA commitments. EU seems not to require a lot of TRIPS+ standard in this agreement with Vietnam. Some incompatible commitments almost concentrate on details, separate and specific issues. Along with non-discrimination principle under TRIPS, Vietnam has to revise general legislations on intellectual property to meet these commitments.

However, should it be noted that MFN impressed under EVFTA requires Vietnam to accord EU nationals no less favourable than TPP nationals which is the international agreement containing the most intensive requirements on intellectual property so far. Therefore, it is necessary to review TPP commitments on intellectual property before revising Vietnam legal framework to meet EVFTA commitments./

Section 2: TABLE OF COMPARISON BETWEEN VIETNAM LEGAL FRAMEWORK AND EVFTA COMMITMENTS ON INTELLECTUAL PROPERTY RIGHTS

Notes:

Commitments Vietnam does not or has not yet (on account of reservation, no compulsion, inadequate itinerary or no conditional situation, etc.)
Commitments Vietnam's legal system has completely acceded to
Commitments Vietnam's legal system has partially acceded to
Commitments Vietnam's legal system has not acceded to and needs revising

Provisions	Specific commitments		
Section A/Mục A			
General Provisions and Principles			
Article 1 Objectives	The objectives are to facilitate the creation and to achieve an adequate and effective level of protection and enforcement of intellectual property rights	The objectives are to facilitate the creation, the transfer and dissemination of technology and the mutual advantage of producers and users of technological knowledge	
Article 2 Nature and Scope of Obligations	Reaffirmation of the rights and obligations under international	09 categories/subject matters of intellectual property	Protection of intellectual property includes protection against unfair

	treaties dealing with intellectual property, especially WTO Agreement on Trade-related Aspects of Intellectual Property (TRIPS Agreement)		competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property
Article X Most Favoured Nation Treatment	Commitments to treat EU entities, in terms of intellectual property no less beneficial than others in any other countries		
Article 3 Exhaustion	Rights to establish its own regime for the exhaustion of intellectual property rights in domestic laws		
Article 4 Copyright and Related Rights			
Article 4.1 - Protection Granted	Commitments to comply with the rights and obligations set out in the Berne Convention for the Protection of Literary and Artistic Works; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the TRIPS Agreement	Commitments to accede to the WIPO Copyright Treaty - WCT and the WIPO Performances and Phonograms Treaty - WPPT	
Article 4.2 - Authors	Commitments to provide for authors	Commitments to provide for	Commitments to provide for

	the exclusive right to authorise or prohibit direct or indirect, reproduction by any means and in any form, in whole or in part of their works	authors the exclusive right to authorise or prohibit any form of distribution to the public by sale or other transfer of ownership of the original of their works or of copies thereof	authors the exclusive right to authorise or prohibit any communication to the public of their work
Article 4.3 - Performers	Commitments to provide for performers the exclusive right to authorise or prohibit the fixation of their performances	Commitments to provide for performers the exclusive right to authorise or prohibit reproduction the fixations of their performances	Commitments to provide for performers the exclusive right to authorise distribution to the public, by sale or other transfer of ownership, fixations of their performances
	Commitments to provide for performers the exclusive right to authorise the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them of fixations of their performances	Commitments to provide for performers the exclusive right to authorise the broadcasting by wireless means and the communication to the public of their unfixed performances, except where the performance is itself already a broadcast performance	
Article 4.4 - Producers of phonograms	Commitments to provide for phonogram producers the exclusive right to authorise or prohibit direct or indirect, reproduction by any means and in any form, in whole or in	Commitments to provide for phonogram producers the exclusive right to authorise or prohibit distribution to the public, of their phonograms	Commitments to provide for phonogram producers the exclusive right to authorise or prohibit the making available to the public of their phonograms

	part of their phonograms		
Article 4.5 - Broadcasting organisations	Commitments to provide broadcasting organisations with the exclusive right to authorise or prohibit the fixation of their broadcasts	Commitments to provide broadcasting organisations with the exclusive right to authorise or prohibit the reproduction of fixations of their broadcasts	Commitments to provide broadcasting organisations with the exclusive right to authorise or prohibit distribution to the public of fixations of their broadcasts
	Commitments to provide broadcasting organisations with the exclusive right to authorise or prohibit the rebroadcasting of their broadcasts by wireless means		
Article 4.6 - Broadcasting and Communication to the Public	Commitments to provide a right in order to ensure that a single equitable remuneration paid by the user for the uses of the phonogram for commercial purposes is shared between the relevant performers and phonogram producers.		
Article 4.7 - Term of protection	The rights of an author of a literary or artistic work shall run for the life of the author and for at least 50 years after his death	The rights of performers shall expire not less than 50 years after the date of the performance.	The rights of producers of phonograms shall expire not less than 50 years after the fixation is made

	The rights of broadcasting organizations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite		
Article 4.8 - Protection of Technological Measures	Commitments to provide adequate legal protection against the circumvention of any effective technological measures	Commitments to provide adequate legal protection against the manufacture, import, distribution, sale, rental, offer to public for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services, which are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of, any effective technological measures	The rights to adopt or maintain appropriate limitations or exceptions
	Define “technological measures”		
Article 4.9 - Protection of Rights Management	Commitments to provide adequate legal protection against any person knowingly performing without	Define “rights-management information”	Commitments to apply when any of these items of information is associated with a copy of, or

Information	authority: the removal or alteration of any electronic rights-management information		appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement
Article 4.10 - Exceptions and limitations/Các ngoại lệ và hạn chế	The rights to apply limitations or exceptions to the rights set out in the Articles 4.2 – 4.6	Not applicable to provisional copies with the sole purpose of which is to enable a transmission in a network between third parties by an intermediary, or a lawful use	
Article 4.11 - Artists' Resale Right in Works of Art/Quyền của nghệ sỹ đối với việc bán lại tác phẩm nghệ thuật	Government may provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, subsequent to the first transfer of the work by the author (to receive a royalty based on the sale price obtained for any resale of the work)		
Article 4.12 - Co-operation on Collective Management of Rights	Promote dialogue and cooperation between their respective collective management organisations		
Article 5 Trademarks			

<p>Article 5.1 - International Agreements</p>	<p>Reaffirm their obligations under Protocol related to the Madrid Agreement concerning the International Registration of Marks</p>	<p>Commitments to use the classification provided for in the Nice Agreement Concerning the International Classification</p>	<p>Commitments to simplify and develop its trademark registration procedures</p>
<p>Article 5.2 - Rights conferred by a trademark</p>	<p>Commitments to confer on the proprietor exclusive rights therein to prevent all third parties not having his consent from using in the course of trade any sign which is identical with the trademark for goods or services which are identical with those for which the trademark is registered</p>	<p>Commitments to confer on the proprietor exclusive rights therein to prevent all third parties not having his consent from using in the course of trade any sign which is identical or similar with the trademark for goods or services, which are identical with or similar to those for which the trademark is registered, where such use would result in a likelihood of confusion on the part of the public</p>	
<p>Article 5.3 - Registration Procedure</p>	<p>Commitments to provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration shall be communicated in writing and duly reasoned</p>	<p>Commitments to provide for the possibility to oppose trademark</p>	<p>Commitments to provide a publicly available electronic database of published trademark applications and trademark registrations</p>

Article 5.4 - Well-known Trademarks	Commitments to protect well-known marks as provisions in Article 6bis of Paris Convention 1967, TRIPS Agreement and the Paris Union		
Article 5.5 - Exceptions to the Rights Conferred by a Trademark	Commitments must regulate exceptions to the rights of trademark's owners regarding the use of "descriptive terms"	The rights to regulate other limitations or exceptions, as long as the legitimate interests of the owners of the trademarks and of third parties are taken into account	
Article 5.6 - Grounds for revocation¹	Provide that a trademark registration shall be liable to revocation if, within a continuous period of five years prior to a request for revocation, it has not been put to genuine use	Revocation of a trademark in case that, after the registered date, or inactivity of the proprietor, it has become the common name.	Revocation if the use of any protected mark is misleading.
Article 6 Geographical Indications			
Article 6.1 - Scope of application	Apply to geographical indications of wines, spirits, agricultural products and foodstuffs		
Article 6.2 - System of	Maintain the system listing protected geographical indications	Regulate the administrative process of registering and	Maintain the procedure allowing objections of third parties.

¹ For Vietnam "revocation" is equivalent to "termination".

<i>registration and protection of Geographical Indications</i>		protecting geographical indications containing the examining process to ensure that the geographical indications meet requirements.	
	Ensuring procedures of amendment and cancellation of geographical indications	The right regulates wider limitation of protection than the Agreement	
Article 6.3 - Established geographical indications	Having recognized geographical indications of EU listed in Annex GI-I		
Article 6.4 - Amendment of List of geographical indications	Procedures of Amendment of List of geographical indications recognized in EVFTA.		
Article 6.5 - Protection of geographical indications	Special protection for geographical indication listed in Annex GI-I-A of EU (containing the regulation prohibiting the use of geographical indication which is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like)	Agreements on practical conditions of the use of homonymous geographical indications	Agree to inform EU when Vietnam negotiates with other parties about geographical indications which are similar to indications in EU's Annex under EVFTA.

	Protect a geographical indication even when it ceases to be protected in the other party	Not protect as a geographical indication a name that is likely to mislead the consumer as to the true origin of the product	
Article 6.5a - Exceptions	Exceptions regarding EU's specific geographical indications (listed).		
Article 6.6 - Right of use of geographical indications	Ensure the use of indefinite validity of geographical indications, without re-registration.		
Article 6.7 - Relationship with trademarks	Ensure the legitimate interests of trademark's owners if the trademark is identical or similar to a protected geographical indication at the time EVFTA takes effect.		
Article 6.8 - Enforcement of protection	Enforce appropriate administrative remedies which is suitable with domestic law to prohibit activities including manufacturing, preparing, packaging, selling or importing a product in a manner that is misleading regarding its origin		
Article 6.9 - General rules	The product bearing geographical indication shall meet the requirements listed in the Protection		

	Title.		
Article 6.10 - Co-operation and transparency	Commitments about co-operation and transparency between Vietnam and EU during enforcements.		
Article 6.11 - Working Group on Intellectual Property Rights, including Geographical Indications	Establishing and operating the Working Group		
Article 7 Industrial Designs			
Article 7.1 - International Agreements	Commitments to accede the Hague Agreement on registering industrial designs		
Article 7.2 - Protection of Registered Industrial Designs	Conditions of protection: "new" or "original"	Conditions of "visible" features with component part design.	Rights of owners.
	Minimum validity of protection: 15 years		
Article 7.4 - Exceptions and exclusions	Regulations about exceptions and exclusions in protection of industrial designs.	Not protect the essentially technical or functional designs.	

Article 7.5 - Relationship to Copyright	Commitments to allow a design to be eligible for protection under the law of copyright if meet the conditions of protections under the law of copyright.		
Article 8 Patents			
Article 8.1 - International Agreements	Affirm the rights and responsibilities under PCT	Simplify and enhance the procedures with regard to PLT	
Article 8.2 - Patents and Public Health	Recognizing rights with regard to Doha Declaration on the TRIPS Agreement and Public Health.		
Article 8.3 - Administrative Authorisation	Commitment to compensate the delay in the medicines administrative authorization procedures		
Article 9 Protection of undisclosed information and data	Commitment not to published and allowed other Parties to rely on undisclosed information and data of the applicant for pharmaceutical registration		

Article 11 <i>Plant Varieties</i>	Commitment to protect plant varieties in accordance with UPOV Convention		
Section C Enforcement of Intellectual Property Rights			
Sub-Section C.1 General Enforcement Provisions			
Article 12 <i>General Obligations</i>	Affirm the commitment to ensure General Obligations of Intellectual Property in accordance with TRIPS		
Article 13 <i>Entitled Applicants</i>	Commitment to ensure the rights to ask for Intellectual Property Protection of the holders of intellectual property rights, the authorized persons, intellectual property collective rights management bodies, professional defense bodies		
Sub-Section 3.2 Civil Enforcement			
Article 14 <i>Provisional</i>	Commitment to ensure the rights	Commitment to ensure the	Commitment to ensure the rights

Measures	to enforce provisional measures of the judicial authorities of the right holder to prevent goods from movement within the channels of commerce, including the rights: - To order the party whose service is taken controlled of the goods. - To apply measures such as seizure, freezing bank account	rights to seizure of the Judicial authorities	to implement temporary measures before the relevant party make explanations
Article 15 Evidence	Commitment to recognize the right to order the opposing party to present relevant evidence of the judicial authorities	Commitment to recognize the rights of the judicial authorities to order to present documents relating to the communication of banking, financial or commercial to serve as evidence	The right to order a reasonable quantity of relevant evidence
Article 16 Right of Information	Commitment to ensure the right of the judicial authorities to order Parties to present evidence on the infringements of Intellectual Property (conditions, measures, right holders)		
Article 17 Other Remedies	Commitment to ensure the right of the judicial authorities in applying other remedies upon request of the right holder without compensation	The right to force the infringer the cost of removing infringing goods from the channel of commerce for destruction	

Article 18 Injunctions	Commitment to ensure the right of the judicial authorities upon deciding the infringements and to sentence to injunctions		
Article 19 Alternative Measures	The right to stipulate pecuniary compensation as an alternative for other measures		
Article 20 Damages	Compensation relating to determining the amount of damages to set up the compensation rate	Distinguish compensation rate in two cases: the infringer knows or does not know about the infringements	
Article 21 Legal Costs	Commitment to ensure the right of the proceedings agency to order the losing Party to be responsible for legal cost, attorney's cost and other cost		
Article 22 Publication of Judicial Decisions	Commitment for the Judicial authorities to order publication of Judicial decisions on Intellectual Property Rights with cost covered by		

	the infringer in accordance with the domestic legislations		
Article 23 Presumption of Authorship or Ownership	Commitment to recognize the presumption of authorship, the person has name on the products is the author, the owner unless there is proof for the contrary		
Sub-Section C.3 Border Enforcement			
Article 24 Consistency with GATT and TRIPS Agreement	Commitment to ensure the liabilities in TRIPS relating to measures implemented at border		
Article 25 Definitions	Definitions on counterfeit goods, counterfeit trademark goods, pirated copyright goods, import and export goods		
Article 26 Scope of Border Measures	Commitment to ensure the procedures to check and suspend goods suspected of infringing IPRs recorded within the customs authorities at border	Commitment to ensure the rights of the Customs authorities in the cases of suspending the release of the goods suspected of infringing IPRs recorded within the customs authorities	

Article 27 Active Involvement of Customs Authorities	Commitment to ensure the active of the Customs authorities in targeting and identifying the goods suspected of infringing an intellectual property right.	Commitment to ensure that the Customs authorities shall cooperate with the right holder, including allowing the provision of information for risk analysis.	
Article 28 Specific Cooperation in the Area of Border Measures	Commitments to cooperate between EU and Vietnam is to implement specific actions in the area of border measures		
Sub-Section C.4 Other Enforcement Provisions			
Article 29 Codes of Conduct	Commitment to encourage organizations, trade or professional associations to build the Codes of Conduct, submit to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.		

<p>Article 30 Co-operation</p>	<p>Commitments to cooperate between EU and Vietnam in implementing the regulations in this Chapter</p>		
<p>Article XX Liability of Intermediary Service Providers</p>	<p>Commitment to regulate domestic legislations the case of exclude or exempt from liabilities for tele-communication intermediary service providers, at least in the case of merely transmission or temporary storage of information provided by a user of the service at the request of a user of the service ("hosting") on specific conditions)</p>	<p>The rights to regulate on conditions to exclude/not exclude the limitation/exempt of the Intermediary Service Providers</p>	<p>The right to establish procedures for effective notifications of claimed infringement, and effective counter-notifications</p>
	<p>The right of the administrative authorities to requiring the intermediary service provider to terminate or prevent an infringement</p>		

**TABLE OF COMPARISON BETWEEN VIETNAM LEGAL FRAMEWORK AND
EVFTA COMMITMENTS
ON INTELLECTUAL PROPERTY RIGHTS**

EVFTA COMMITMENTS	Vietnamese legal system	Compatibility assessment/ Amendment recommendation
Section A General Provisions and Principles		
<p>Article 1 Objectives</p> <p>1. The objectives of this chapter are to:</p> <p>(a) facilitate the creation, production and commercialization of innovative and creative products between the Parties contributing to a more sustainable and inclusive economy for the Parties; and (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights</p> <p>2. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the</p>	<p>Article 4.1 and Article 8 Law on Intellectual Property ²</p>	<p>Assessment: No disparities between the objectives of the Agreement and Vietnamese policies on intellectual property (IP).</p> <p>Recommendation: No revision to current legal framework recommended</p>

² Law No.50/2005/QH11 dated 29th Nov 2015 of the National Assembly on Intellectual Property (amended by Law No. 36/2009/QH12) (“**Law on Intellectual Property**”)

<p>transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.</p>		
<p>Article 2 Nature and Scope of Obligations</p> <p>1. The Parties reaffirm the rights and obligations under and shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties, including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). The provisions of this chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property with an aim at ensuring adequate and effective implementation of those international treaties, as well as the balance between</p>	<p>Article 3, Article 4.4 Law on Intellectual Property</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. In essence, Vietnam’s Intellectual Property law conforms with TRIPS Agreement. 2. Subject matters of intellectual property rights in Vietnam’s IP law are compatible with all categories of intellectual property in the EVFTA³ <p>Recommendation:</p> <p>No revision to current legal framework recommended.</p> <p>However, attention should be put on the affirmation in Article 2 that besides the obligation to comply with the international treaties to which they are parties (particularly the TRIPS Agreement), the Parties also hold another responsibility to ensure an adequate</p>

³ Article 2: Nature and Scope of Obligations (page 1)

<p>the rights of intellectual property holders and the interest of the public.</p> <p>2. For the purposes of this Agreement, intellectual property refers at least to all categories of intellectual property that are the subject of Sections 1 through 7 of part II of the TRIPS Agreement, namely:</p> <ul style="list-style-type: none"> (a) copyright and related rights; (b) trademarks; (c) geographical indications; (d) industrial designs; (e) patent rights; (f) layout-designs (topographies) of integrated circuits; (g) protection of undisclosed information and (h) plant varieties <p>Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).</p>		<p>and effective implementation of those obligations.</p> <p>Moreover, Article 2 refers to the fact that EVFTA shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement. Indeed, the Agreement has generally created supplemental obligations to intellectual property rights under the TRIPS Agreement.</p> <p>Therefore, while Article 2 does not require any revision to Vietnam’s current legal framework on IP, particular commitments in other articles of this chapter may lead to some further amendment requirements.</p>
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<p>Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).</p> <p><i>(Article 10bis Unfair Competition</i></p> <p><i>(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.</i></p> <p><i>(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.</i></p> <p><i>(3) The following in particular shall be prohibited:</i></p> <p><i>(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;</i></p> <p><i>(ii) false allegations in the course of</i></p>	<p>- Article 2, Article 3.4, and Article 39 Law on Competition.⁴</p> <p>- Article 130, Article 145, Article 146, Article 195, Article 198, and Article 211 Law on Intellectual Property</p> <p>- Article 752.4 Civil Code 2005⁵ (this provision is removed from the Civil Code 2015⁶)</p>	<p>Assessment:</p> <p>The obligation to comply with Article 10bis of the Paris Convention in EVFTA bears no difference with the requirements in the TRIPS Agreement. Vietnam has currently applied intellectual property regulations in line with the TRIPS Agreement since 2007. Therefore, Vietnam’s legal system has reasonably complied with this provision of EVFTA.</p> <p>However, in particular, on comparing Article 10bis of the Paris Convention for the Protection of Industrial Property with similar provisions in Vietnam’s current legal system, there are still several distinctions. In detail:</p> <ol style="list-style-type: none"> 1. With regard to the protection against unfair competition: While the Convention requires that the protection of intellectual property must include the protection against unfair competition, Vietnam’s legal system specifies that industrial property rights include the rights to fight against unfair competition (in Civil Code 2005) or the
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⁴ Law No. 27/2004/QH11 dated 3rd Dec 2004 of the National Assembly on Competition (“**Law on Competition**”)

⁵ Civil Code No. 33/2005/QH11 dated 14th Jun 2005 of the National Assembly (“**Civil Code 2005**”)

⁶ Civil Code No. 91/2015/QH13 dated 24th Nov 2015 of the National Assembly (“**Civil Code 2015**”), having effect from 1st Jan 2017

<p><i>trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;</i></p> <p><i>(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.)</i></p>		<p>rights to repression of unfair competition (in Intellectual Property Law).</p> <p>Therefore, in principle, Vietnam’s legal system has complied with the Convention.</p> <p>However, specifically with regard to this aspect, Vietnam’s legal system is more limited (Because rights against unfair competition that are considered from the perspectives of the right holders are more restricted than the protection against unfair competition that are from the perspectives of the government, i.e. the protection includes both the protection for the right holders and the general protection which is guaranteed by the government).</p> <p>In reality, Vietnamese government has implemented several active protection measures (e.g. when the Market Surveillance Agency implements active official administration measures) which, however, is not specified in Vietnam’s intellectual property law system.</p> <p>2. With regard to the mechanisms for dealing with acts of unfair competition:</p>
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		<p>The Convention clearly specifies that protection against unfair competition practices includes at least prohibiting three groups of particular acts mentioned in the Convention (the prohibited entities in the first two provisions are limited to the competitors yet limited to any specific entity in the third provision). However, Law on Intellectual Property fails to stipulate the content of the rights against unfair competition (merely specify the content as well as the bases for the emergence and establishment of rights); Law on Competition (Article 40, 41, 45) only specifies the prohibition against several unfair competition practices among all the acts of industrial property-related unfair competition listed in Law on Intellectual Property (Article 130) and specifies no limitation on the entity. (Article 24 of Law on Competition only specifies the entity of unfair competition practices is “enterprise” – Notice: Article 3.4 of Law on Competition stipulates a broad definition of “unfair competition practices” (therefore, more inclusive</p>
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		<p>than the acts in Article 10bis). However, in reality, this definition is not practical (because according to current Law of Competition, determining acts of right infringement (including acts of unfair competition) is based on the specific acts listed yet the definition).</p> <p>3. With regard to specific acts of unfair competition: Law on Intellectual Property (Article 130) specifically lists acts of unfair competition (in form of a closed list), whereas the Convention applies the measures of specifying prohibited acts of unfair competition based on the nature or consequences of the acts, which therefore is broader.</p> <p>Recommendation:</p> <p>Revise the related regulations in Vietnam’s legal system to enhance the conformity with the Convention by taking the following measures:</p> <ul style="list-style-type: none"> - Do not list the acts of unfair competition or list the acts of unfair competition not in form of a closed list (to provide examples only) and stipulate a general
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		<p>definition (similar to the Convention).</p> <ul style="list-style-type: none"> - Specify the handling mechanisms for the acts of unfair competition (i.e. prohibiting). - (The optimal solution is both specifying the same as Paragraph 2 and Paragraph 3 in Article 10bis of the Convention and listing the acts of unfair competition as examples as in Paragraph 1 in Article 130 of current Law on Intellectual Property – i.e. not only defining but also listing some instances which is not in form of a closed list). <p>Both Law on Competition and Law on Intellectual Property, as aforementioned, stipulates acts of intellectual property-related unfair competition (which is the same story in other fields of unfair competition: the acts of unfair competition are specified both in Law on Competition and in Law on that field). This causes some inadequacies that (i) the definitions of the acts of unfair competition are not consistent between two legal systems; (ii) the approaches of handling the infringements are not sufficient (e.g. in Law on Competition, a breach of law on competition is only handled</p>
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		<p>with administrative procedures by the Competition Council and shall be only administratively sanctioned; whereas by nature, the infringement does cause harm to the other entity and therefore, should have been handled with civil remedies as the infringed party can ask for payment of damages).</p> <p>Therefore, besides the recommendation of revising Vietnam's legal system as mentioned above, it is also proposed that the content of intellectual property-related unfair competition practices should be united to be included only in Law on Intellectual Property in order to guarantee the uniform, concentrated and effective protection.</p>
<p>Article X Most Favoured Nation Treatment</p> <p>With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Party to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of the other Party, subject to the exceptions provided for in Articles 4</p>	<p>Law on Intellectual Property and relevant legislations.</p>	<p>Assessment:</p> <p>With regards to the provisions relating to the Most Favoured Nation Treatment principle (MFN), there has not been any regulation in Vietnam's legal system contradicting to this principle of WTO yet (because all foreign and domestic entities are applying the same intellectual property legal system without any discrimination).</p> <p>Notice: The MFN principle in the TRIPS agreement, though requires no discrimination</p>

<p>and 5 of the TRIPS Agreement.</p> <p>TRIPS</p> <p>Article 4</p> <p>Most-Favoured-Nation Treatment</p> <p><i>With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:</i></p> <p><i>(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property</i></p> <p><i>(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;</i></p>		<p>in all aspects of intellectual property (not depending on whether the aspects are specified in the TRIPS Agreement or not), still has an exception of the rights of performers, producers of phonograms and/or video recordings, or broadcasting organizations (in the case that the commitments concerning the rights of performers, producers of phonograms and/or video recordings, or broadcasting organizations are not included in the TRIPS Agreement, the MFN principle are not valid).</p> <p>Therefore, in the future when Vietnam holds a intellectual property commitment with other FTA parties (e.g. TPP) on the aspects relating to the rights of performers, producers of phonograms and/or video recordings, or broadcasting organizations which are not included in the TRIPS Agreement and if Vietnam determines to provide only those FTA parties with such a treatment, then Vietnam must provide European parties, according to EVFTA, with a similar treatment.</p> <p>Recommendation</p> <p>Based on the level of commitment relating to the rights of performers, producers of</p>
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<p><i>(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations <u>not provided under this Agreement</u>;</i></p> <p><i>(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.</i></p>		<p>phonograms and/or video recordings, or broadcasting organizations in EVFTA and TPP to select one out of two proposal:</p> <ul style="list-style-type: none"> - If the level of protection is considerably higher than that in Vietnam's current legal system: Only revise to apply for the entities in EU and TPP (other parties and Vietnamese entities still apply Vietnam's current legal system). - If the level of protection is different only at a negligible level, compared with the regulation in Vietnam's current legal system: revise Vietnam's legal system on Intellectual Property in general to provide the new level of protection for all entities.
<p>Article 3 Exhaustion</p> <p>Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.</p>	<p>Article 125 Law on Intellectual Property and guiding legislations.</p>	<p>Assessment:</p> <p>The Agreement does not require both Parties a regime of intellectual property right exhaustion compatible with the TRIPS Agreement (which means ensuring the principle of National Treatment and Most Favoured Treatment).</p> <p>In reality, with regard to the exhaustion doctrine of rights to industrial property, Vietnam's legal system selects to apply the policies that allows parallel import, i.e. rights</p>

		<p>of an owner to a specific goods shall exhaust as soon as the owner of intellectual property right has by himself or allows others to provide his goods to a market in any country (not only a market in Vietnam), then that goods are freely imported into Vietnam. This provision is applied to all, no discrimination.</p> <p>This is an adequate selection in the context and the level of development of Vietnam, because it allows the balance of benefits of intellectual property right holder and the society.</p> <p>However, Vietnam’s legal system at present specifies this issue in industrial property only.</p> <p>Recommendation: No revision to current legal framework recommended .</p> <p>Imposing additional regulations relating to right exhaustion in categories other than industrial property should be taken into consideration.</p>
<p>Section B Standards Concerning Intellectual Property Rights</p>		

<p>Article 4 Copyright and Related Rights</p>		
<p>Article 4.1 – Protection Granted</p> <p>The Parties:</p> <p>1. shall comply with the rights and obligations set out in the Berne Convention for the Protection of Literary and Artistic Works; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the TRIPs Agreement.</p> <p>2. shall⁷ accede to the WIPO Copyright Treaty – WCT and the WIPO Performances and Phonograms Treaty – WPPT.</p>	<p>- Law on Intellectual Property (especially Article 26, Article 33)</p> <p>- Acceding the Berne Convention for the Protection of Literary and Artistic Works; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the TRIPs Agreement.</p> <p>- Not acceding the WIPO Copyright Treaty – WCT and the WIPO Performances and Phonograms Treaty – WPPT.</p>	<p>Assessment:</p> <p>- Vietnam’s legal system is compatible with the provisions of Berne Convention (to implement Article 11bis of Berne Convention, Vietnam did amend, supplement Article 26 and 33 of Law on Intellectual Property 2005 on cases of use of related rights where permission is not required but payment of royalties and/or remunerations is required)</p> <p>- Vietnam’s legal system has not been scrutinized to be amended to accede to WCT and WPPT because Vietnam has not joined those treaties. However, according to EVFTA, Vietnam only has to accede to that obligation after three years since the Agreement comes into effect.</p> <p>Recommendation:</p> <p>It is recommended that Vietnam’s legal system be scrutinized, compared with the provisions in the Agreement, to be more compatible and well-prepared for the participation in the WIPO Copyright Treaty – WCT and the WIPO Performances and Phonograms Treaty – WPPT</p>

⁷ Within the period of 3 years from the entry into force of this Agreement

		<p>within at most 3 years since the Agreement coming into effect (although participating in the Conventions is the requirement of EVFTA, implementing the Conventions after participating is the general obligation of Vietnam in all related cases).</p>
<p>Article 4.2 – Authors</p> <p>The Parties shall provide for authors the exclusive right to authorise or prohibit:</p> <ol style="list-style-type: none"> 1. direct or indirect, reproduction by any means and in any form, in whole or in part of their works; 2. any form of distribution to the public by sale or other transfer of ownership of the original of their works or of copies thereof; 3. any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them. 	<p>- Article 13, Article 18, Article 20, Article 21, Article 45, and Article 47 Law on Intellectual Property</p> <p>- Article 736, Article 737, Article 738, and Article 740 Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p> <p>- Article 22, and Article 23 Decree No. 100/2006/NĐ-CP dated 21st Sep 2006 of the Government (amended and Revised by Decree No. 85/2011/NĐ-CP, and Decree No. 01/2012/NĐ-CP)</p>	<p>Assessment</p> <p>Vietnam’s legal system is compatible with the provisions of the Agreement on acknowledging rights of authors, however, not as completely as the Agreement (e.g. with regard to reproduction right, Vietnam’s legal system only acknowledges “the right to make copies of works by whatever means or in whatever form” without any mention to “direct or indirect, reproduction by any means and in any form, in whole or in part of their works” as stipulated in EVFTA).</p> <p>Recommendation:</p> <p>Revise Article 20 of Law on Intellectual Property to include more detailed provisions regarding rights of authors to be more compatible with EVFTA commitments in this article (even with regard to the provisions included in the Decree but in the Law, it is recommended that those should be included in the Law as the current Law has specified too</p>

		<p>brief and to some extent, the Decree has directed too inconsistently the provisions in the Law, therefore, failed to ensure a formidable legal background).</p>
<p>Article 4.3 – Performers</p> <p>The Parties shall provide for performers the exclusive right to authorise or prohibit:</p> <ol style="list-style-type: none"> 1. the fixation of their performances; 2. direct or indirect, reproduction by any means and in any form, in whole or in part of fixations of their performances; 3. distribution to the public, by sale or other transfer of ownership, fixations of their performances; 4. the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them of fixations of their performances; 5. the broadcasting by wireless means and the communication to the public of 	<ul style="list-style-type: none"> - Article 16.1, and Article 29 Law on Intellectual Property. - Article 744, and Article 745 Civil Code 2005 (theses provisions are removed from the Civil Code 2015) - Article 31 Decree No. 100/2006/NĐ-CP dated 21st Sept 2006 of the Government (amended and Revised by Decree No. 85/2011/NĐ-CP, and Decree No. 01/2012/NĐ-CP) 	<p>Assessment</p> <p>Vietnam’s legal system basically acknowledges rights of performers as mentioned in EVFTA yet so completely as what is specified in the Agreement (e.g. Vietnam’s legal system only specifies right of direct or indirect reproduction but reproduction in whole or in part of the fixations of the performances).</p> <p>Notice: Vietnam’s legal system distinguishes rights according to right holders (performers, performers-cum-investors) – this provision is compatible with international customs as well as EVFTA (EVFTA only specifies rights but requires specifying the right holders).</p> <p>Recommendation</p> <p>Revise Article 29 of Law on Intellectual Property to include specific regulations on rights of performers to be more compatible with EVFTA commitments in this article (even</p>

<p>their unfixed performances, except where the performance is itself already a broadcast performance.</p>		<p>with regard to the cases included in the Decree but in the Law, it is recommended that those cases should be included in the Law as the current Law has specified too brief and to some extent, the Decree has directed too inconsistently the provisions in the Law, therefore, failed to ensure a formidable legal background).</p>
<p>Article 4.4 – Producers of phonograms</p> <p>The Parties shall provide for phonogram producers the exclusive right to authorise or prohibit:</p> <ol style="list-style-type: none"> 1. direct or indirect, reproduction by any means and in any form, in whole or in part of their phonograms; 2. distribution to the public, by sale or other transfer of ownership, their phonograms, including copies thereof; 3. the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them of their phonograms 	<p>- Article 16.3, Article 30 Law on Intellectual Property</p> <p>- Article 744, Article 746 Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. Vietnam’s legal system basically conforms with the provisions in Paragraph 1 in Article 4.4, however, not so clearly as the commitment (yet to stipulate right to reproduce in part or in whole of the phonograms, and in any form – Notice: According to the definition in Article 4.4 of Decree 100/2006/NĐ-CP, “copies of works means directly or indirectly reproduced versions of the entire or part of works.” However, this is only from the aspects of result but the aspects of act as in EVFTA,. Therefore, considered as basically compatible, Vietnam’s legal system would be more compatible if Vietnam’s legal system did stipulate as

		<p>specifically as the Commitment)</p> <ol style="list-style-type: none"> 2. Vietnam’s legal system fundamentally accede to the commitment in Paragraph 2 of Article 4.4, except for one point: the Agreement specify “or other transfer of ownership” (any type of ownership transfer), whereas Article 30.1 only specifies “by mode of sale, rent”. 3. Vietnam’s legal system has not acknowledged rights of producers in Paragraph 3 of Article 4.4 (in reality, there are some specialist ideas claiming that in terms of meaning, Paragraph 3 in the Agreement is actually a form of rights in Paragraph 2 in the Agreement; therefore, the provisions in Article 30.1 of Law on Intellectual Property has included the rights in Paragraph 2 and 3 of the Agreement and therefore, two systems have been compatible). <p>Recommendation</p> <p>Revise Article 30 of Law on Intellectual Property to include specific regulations regarding rights of producers consistent with EVFTA commitments in this provision (even with regard to the cases included in the Decree</p>
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		<p>but in the Law, it is recommended that those cases should be included in the Law as the current Law has specified too brief and to some extent, the Decree has directed too inconsistently the provisions in the Law, therefore, failed to ensure a formidable legal background).</p> <p>Notice: To make Vietnam's legal system more compatible with EVFTA commitments in this Article, recommend specifying in detail in Law on Intellectual Property, including the specification of the commitment in Paragraph 3 (even whether rights to making phonograms available to the public include rights to distribute to the public or – because detailed specification would be more convenient for application, and moreover, those rights are very important in the era of information technology; therefore, significant in participating Treaties on Copyrights and Related Rights such as WCT and WPPT).</p>
<p>Article 4.5 – Broadcasting organisations</p> <p>Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:</p> <p>1. the fixation of their broadcasts;</p>	<p>- Article 16.4, Article 31, Law on Intellectual Property</p> <p>- Article 744, Article 747 Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p>	<p>Assessment</p> <p>Vietnam's legal system has acceded to EVFTA commitments.</p> <p>Recommendation:</p>

<p>2. the reproduction of fixations of their broadcasts;</p> <p>3. distribution to the public of fixations of their broadcasts; and</p> <p>4. the rebroadcasting of their broadcasts by wireless means</p>		<p>No revision to current legal framework recommended</p>
<p>Article 4.6 –Broadcasting and Communication to the Public</p> <p>Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Each Party may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.</p>	<p>- Article 21.1, Article 29.4, Article 30.2, Article 32, Article 33 Law on Intellectual Property</p> <p>- Decree No. 21/2015/NĐ-CP dated 14th Feb 2015 of the Government</p> <p>- Article 32, 35.3 Decree No. 100/2006/NĐ-CP dated 21st Sept 2006 of the Government (amended and Revised by Decree No. 85/2011/NĐ-CP, and Decree No. 01/2012/NĐ-CP).</p>	<p>Assessment:</p> <p>Vietnam’s legal system basically conforms with the provisions in Article 4.6 of EVFTA.</p> <p>However, attention should be put on the facts that most specific provisions (which are considered to be compatible with EVFTA commitments) are all specified in the Decrees but in the Laws (Vietnam’s law is too general).</p> <p>Recommendation:</p> <p>Consider revising Article 31 in Law on Intellectual Property to specify in more detail rights to receive permission and payment of royalties and/or remunerations as mentioned in Article 4.6 of EVFTA (because current provisions in Decree 100/2006/NĐ-CP is seemingly too inconsistent with the Law, therefore, failed to ensure a formidable legal background)</p>

<p>Article 4.7 - Term of protection</p> <p>1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for at least 50 years after his death, irrespective of the date when the work is lawfully made available to the public.</p> <p>2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.</p> <p>3. The rights of performers shall expire not less than 50 years after the date of the performance. However,</p> <p>- if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier,</p> <p>4. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made.</p>	<p>- Article 27, Article 34 Law on Intellectual Property</p> <p>- Article 7, Article 29 Cinematography Law 2006 (amended and Revised in 2009)</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. Berne Convention and the Agreement require the minimum term of protection. The provision regarding to term of protection in Vietnam's legal system has acceded to that term (longer than or equal to the minimum term). 2. Berne Convention still protects authors' moral rights after their death, at least until economic rights are in the term of protection. Vietnam's legal system requires moral rights are protected in an infinite term (Paragraph 1,2,4 in Article 19). <p>Vietnam's legal system has acceded to the requirements of EVFTA.</p> <p>Recommendation</p> <p>No revision to current legal framework recommended.</p> <p>Attention should be put on the principle of MFN in this Chapter of EVFTA that if commitments in TPP are more beneficial for organizations, individuals than those in EVFTA, then EU organizations, individuals shall enjoy the commitments in TPP. This</p>
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<p>However, if the phonogram has been lawfully published within this period, the said rights shall expire not less than 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire not less than 50 years from the date of the first lawful communication to the public.</p> <p>5. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.</p> <p>6. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or</p>		<p>principle is applied for all cases but particularly effective in those provisions relating to term of protection. Therefore, it is essential to scrutinize both the commitments in TPP and EVFTA relating to term of protection to revise Vietnam's legal system to be more compatible. Notice: the principle of National Treatment and Most Favoured Treatment in TRIPS allows an exception to the rights of performers, producers of phonograms and video recordings, and broadcasting organizations, only in case those rights are not specified in TRIPS but those rights' term of protection is still included in TRIPS. Therefore, if commitments in TPP with regard to this issue is higher than that of Vietnam's legal system, then Vietnam's legal system should be revised to be applicable for all entities (not only entities from EU or TPP).</p>
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<p>the first such communication to the public, whichever is the earlier. The term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.</p> <p>7. The terms laid down in this Article shall be calculated from the first of January of the year following the event which gives rise to them.</p>		
<p>Article 4.8 - Protection of Technological Measures</p> <p>1. The Parties shall provide adequate legal protection against the circumvention of any effective technological measures, which are used by the right holder of any copyright or related right which the person concerned, carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.</p> <p>2. The Parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, offer to public for sale or rental, or possession for commercial purposes</p>	<p>Article 28, 35, 198 Law on Intellectual Property</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. <i>With regard to protection of technological measures:</i> While the Agreement defines specifically that concept, Vietnam's legal system only define generally "technological solutions applied by copyright/related rights holders to protect the copyright/related rights of their works". Basically, this provision in Vietnam's Law on Intellectual Property has included the definition in the Agreement, therefore, acceding to the commitment. 2. <i>With regard to acts</i> specifies in Paragraph 2 in Article 4.8: Vietnam's legal system specifies a more limited

<p>of devices, products or components or the provision of services, which:</p> <p>(a) are promoted, advertised or marketed for the purpose of circumvention of, or</p> <p>(b) have only a limited commercially significant purpose or use other than to circumvent, or</p> <p>(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of,</p> <p>any effective technological measures.</p> <p>3. In providing adequate legal protection and effective legal remedies pursuant to paragraph 1, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraphs 1 and 2. The obligations under paragraphs 1 and 2 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under each Party's domestic law.</p> <p>4. For the purposes of this Agreement, the expression 'technological measures'</p>		<p>number of acts than EVFTA</p> <p>3. <i>With regard to the subject matters that are affected</i></p> <p>Vietnam's legal system only specifies the objects whose technological measures are directly disabled are more limited than those specified in the Agreement.</p> <p>Recommendation</p> <ul style="list-style-type: none"> - Supplement provisions about acts specified in Paragraph 2 in Article 4.8 of the Agreement. - Consider including the definition of protection of technological measures in Article 4 of Law on Intellectual Property (Interpretation of terms)
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<p>means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right as provided for by national legislation.</p> <p>Technological measures shall be deemed 'effective' where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.</p>		
<p>Article 4.9 - Protection of Rights Management Information</p> <p>1. The parties shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:</p> <p>(a) the removal or alteration of any electronic rights-management</p>	<p>Article 28, 35, 199 Law on Intellectual Property</p>	<p>Assessment:</p> <p>1. Vietnam’s legal system has acceded EVFTA commitments but fail to clearly specify the cases that rights-management information is attached to public distribution works or copies of works (Vietnam’s legal system only mentions general “works”, presuming</p>

<p>information;</p> <p>(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works, performances, or phonograms or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by domestic legislation.</p> <p>2. For the purposes of this Agreement, the expression 'rights-management information' means any information provided by right holders which identifies the work or other subject-matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.</p>		<p>that includes both copies and public distribution works).</p> <p>2. Vietnam's legal system does not define rights-management information.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Supplement Article 28 of Law on Intellectual Property to emphasize that not only information attached to the works but also information attached to copies or public distribution works. - Consider including the definition of "rights-management information" in Article 4 of Law on Intellectual Property (Interpretation of terms)
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<p>3. Paragraph 2, shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement.</p>		
<p>Article 4.10 - Exceptions and limitations</p> <p>1. The Parties may provide for limitations or exceptions to the rights set out in the Articles 4.2 – 4.6 only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holders in accordance with the conventions and international Treaties to which they are Parties.</p> <p>2. The Parties shall provide that acts of reproduction referred to in Articles 4.2 to 4.6, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable</p> <p>(a) a transmission in a network</p>	<p>- Article 7, 25, 26, 32, 33 Law on Intellectual Property</p> <p>- Article 69 Law on Information Technology</p>	<p>Assessment:</p> <ul style="list-style-type: none"> - Vietnam’s legal system has acceded the commitments in Article 4.10.1 of EVFTA. - The specification in Vietnam’s legal system exceptions of provisional copies of works/ temporary copies in network environment is compatible with the commitments in Article 4.10.2, except for the condition of “have no independent economic significance” (Article 69 of Law on Information Technology does not specify such condition) <p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend revising Article 69 of Law on Information Technology to supplement the condition “have no independent economic significance” of contemporary copies as mentioned in

<p>between third parties by an intermediary, or</p> <p>(b) a lawful use</p> <p>of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Articles 4.2 to 4.6.</p>		<p>Paragraph 2 of the Agreement. Besides, due to particular characteristics of intellectual property rights, it is recommended considering moving Article 69 of Law on Information Technology (already revised according to aforementioned recommendation in this report) to revised Law on Intellectual Property (this method is both more logical and more practical because Law on Intellectual Property are supposed to revised to implement TPP and EVFTA commitments whereas Law on Information Technology are not supposed to be revised).</p> <ul style="list-style-type: none"> - Specifically, Article 20.3 and Article 20.4 of Law on Intellectual Property should supplement provisions by “except for cases specified in Article 25, 26 of this Law” (with regard to Article 20.3) and “except for cases specified in Article 32, 33 under this Law” (with regard to Article 29.4)
<p>Article 4.11 – Artists’ Resale Right in Works of Art</p> <p>1. The Parties may provide, for the</p>	<p>- Article 5, 20, Article 21, and Article 41 Law on Intellectual Property</p> <p>- Decree No. 100/2006/NĐ-CP dated 21st Sept</p>	<p>Assessment:</p> <p>Vietnam’s legal system has not specified the provisions on “resale right” to works of art.</p>

<p>benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.</p> <p>2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any professional dealers in works of art.</p> <p>3. The Parties may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.</p> <p>4. The protection provided in paragraph 1 may be claimed in a Party only if legislation in the Party to which the author belongs so permits, and to the extent permitted by the Party where this protection is claimed. The procedure for collection and the</p>	<p>2006 of the Government (amended and Revised by Decree No. 85/2011/NĐ-CP, and Decree No. 01/2012/NĐ-CP)</p>	<p>Although Vietnam is a member of Berne Convention, this Convention's provisions are not directly applied in Vietnam. Moreover, this obligation in Berne Convention is not compulsory.</p> <p>However, as the obligation about resale right in Article 4.11 is not compulsory. Therefore, in principle, Vietnam's legal system has been considered to accede the EVFTA from this aspect.</p> <p>Note that according to provisions of Paragraph 4 in Article 4.11, with regard to artistic works of Vietnamese artists, if Vietnam does not but EU do specify this right, then the right shall not been protected in both EU and Vietnam.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
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<p>amounts shall be a matter for determination by national legislation.</p>		
<p>Article 4.12 - Co-operation on Collective Management of Rights</p> <p>The Parties shall endeavour to promote dialogue and cooperation between their respective collective management organisations for the purpose of promoting the availability of works and other protected subject matter in the territories of the Parties and the transfer of royalties for the use of such works or other protected subject matter.</p>	<p>Article 56, 57 Law on Intellectual Property</p>	<p>Assessment:</p> <p>This issue is not included in domestic laws. Moreover, this is only “effort” obligation (not compulsory obligation in EVFTA)</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Article 5 Trademarks</p>		
<p>Article 5.1 – International Agreements</p> <p>The European Union and Vietnam:</p> <ul style="list-style-type: none"> - reaffirm their obligations under Protocol related to the Madrid Agreement concerning the International Registration of Marks, - shall use the classification provided for in the Nice Agreement Concerning the International Classification of Goods 	<ul style="list-style-type: none"> - Vietnam is member of the Madrid Agreement concerning the International Registration of Marks. - Vietnam has not been member of Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. However, Vietnam has used Nice classification under Circular No. 01/2007/TT-BKHCN dated 	<p>Assessment:</p> <p>Vietnam’s legal system has acceded to provisions in Article 5.1 of EVFTA.</p> <p>Note that the Agreement does not require Vietnam to participate in the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks but to use Nice classification. Similarly, the Agreement does not require Vietnam to participate in the Trademark Law Treaty and Singapore Treaty</p>

<p>and Services for the Purposes of the Registration of Marks.⁸</p> <p>- shall simplify and develop its trademark registration procedures using the Trademark Law Treaty and Singapore Treaty on the Law of Trademarks, inter alia, as reference points.</p>	<p>14th Dec 2007 guiding Decree No. 103/2006/NĐ-CP. (esp. Section 37.4.e Circular No. 01).</p> <p>- Vietnam is in progress to accede using the Trademark Law Treaty and Singapore Treaty on the Law of Trademarks. In principle, Viet Nam regulations on patent meet the requirement contained in this treaty.</p>	<p>on the Law of Trademarks but to be in progress to simplify the procedures of trademark registration and to use those treaties as a reference. In reality, Vietnam’s legal system has conformed with those conditions, therefore, compatible with the Agreement.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Article 5.2 - Rights conferred by a trademark</p> <p>The registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:</p> <p>(a) any sign which is identical with the trademark for goods or services which are identical with those for which the trademark is registered⁹;</p> <p>(b) any sign which is identical or similar</p>	<p>- Chapter XXXV Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p> <p>- Article 72, Article 123, Article 125, Article 129 Law on Intellectual Property</p>	<p>Assessment:</p> <p>Vietnam’s legal system has acceded to provisions of EVFTA.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>

⁸ For greater certainty, a Party is required to follow updated versions of the Nice Classification to the extent that the updated version has been published by WIPO and for Vietnam, official translation has been published by its authority.

⁹ Without prejudice to article 5.5

<p>with the trademark for goods or services, which are identical with or similar to those for which the trademark is registered, where such use would result in a likelihood of confusion on the part of the public.</p>		
<p>Article 5.3 – Registration Procedure</p> <p>The Parties shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration shall be communicated in writing and duly reasoned.</p> <p>The Parties shall provide for the possibility to oppose trademark applications and an opportunity for the trademark applicant to respond to such opposition.</p> <p>The Parties shall provide a publicly available electronic database of published trademark applications and trademark registrations.</p>	<p>- Section I, Chapter VIII Law on Intellectual Property</p> <p>- Article 98, 110, 112, 117 and 118 Law on Intellectual Property</p> <p>- Decree No. 103/2006/NĐ-CP (amended and Revised by Decree No. 122/2010/NĐ-CP)</p> <p>- Article 41.6 Circular No. 01/2007/TT-BKHCN (amended and revised by Circular No. 13/2010/TT-BKHCN; Circular No. 18/2011/T-BKHCN; and Circular No. 05/2013/TT-BKHCN)</p> <p>Law on Intellectual Property</p> <p>Article 112. Third party opinions on the grant of protection certificates</p> <p>From the date on which an application for registration of industrial property is published in the Official Gazette of Industrial Property to the date before a decision on grant of a protection certificate is made, any third party</p>	<p>Assessment:</p> <p>1. Vietnam’s legal system has required notifying refusal for the grant of protection title in writing to the applicants but has not specified that this notification must stipulate the refusal reasons (there are refusal reasons in a notice of intended refusal only but a notice of refusal).</p> <p>In reality, the determination to refuse to grant protection title also includes reasons. However, this is not legalized into compulsory obligations.</p> <p>Furthermore, note that according to the provisions of Article 5.3, specifying the reasons is not only providing the violated provisions but also analyzing clearly how those provisions are violated (“<i>duly</i> reasoned”). Therefore, legalizing the requirement of proving in detail the reasons of refusal is</p>

shall have the right to express their opinions on the grant or refusal to grant a protection certificate to the competent authority for industrial property rights. Such opinions must be in writing and enclose documents or quote the source of information.

Circular No. 01/2007/TT-BKHCH

13.6 Notification of results of formality examination and acceptance of valid applications

a) For an application falling into one of the cases specified at Point 13.2 of this Circular or containing errors specified at Point 13.3 of this Circular, the NOIP shall send to the applicant a notice on its intended rejection of the application. Such a notice must clearly state the name and address of the applicant; the name of the industrial property representation service organization (if the application is filed through that organization); the name of the object stated in the application; the filing date and the serial number of the application; errors and reasons for which the application is rejected; and set a time limit of one month from the date of notification for the applicant to give opinions

necessary.

4. Vietnam's legal system has had procedures to oppose trademark application (Opinions of the third party on the grant of protection tile)
5. Vietnam has had public electronic data base of applications and registered marks

at:
<http://iplib.noip.gov.vn/WebUI/WSearch.php>

However, the data base are not sufficient and updated (several times annually) whereas the number of monthly applications is from 3000 to 4000 applications and the number of protection titles are approximately equal to the number of applications. Note that the data base at present is active in reality, but there is no legal provisions in legal documents, therefore no legal requirements for the operating mechanism as well as other related conditions.

Recommendation:

- Supplement Law on Intellectual Property the provisions of including the bases of refusal in the notification of the

	<p>or correct errors.</p> <p>b) For a valid application, the NOIP shall send to the applicant a notice on acceptance of valid application, clearly stating the name and address of the applicant, the name of the mandated representative (if any) and information on the object stated in the application, the filing date and the date of priority (in case a claim for priority is not accepted, the reason for non-acceptance must be clearly stated).</p> <p>13.7 Rejection of applications</p> <p>If the applicant to whom the NOIP has sent a notice on its intended rejection of the application according to the provisions of Point 13.6.a of this Circular fails to correct errors or unsatisfactorily corrects errors or makes no opposition or makes unreasonable opposition to the intended rejection within the set time limit, the NOIP shall send to the applicant a notice on its rejection of the application and, upon the applicants request, refund the paid fee and charge amounts for jobs to be done after the formality examination.</p>	<p>refusal of granting protection title ;</p> <ul style="list-style-type: none"> - <u>Legalize</u> and keep improving in reality the data base more sufficient and updated which eases the process of looking up the application situation and registered trademarks.
Article 5.4 - Well-known Trademarks		

<p>For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, the Parties shall give consideration to the Joint Recommendation adopted by the assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO (September 1999).</p>		
<p>Paris Covention 1967</p> <p>Article 6bis</p> <p>[Marks: Well-Known Marks]</p> <p>(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of</p>	<p>- Chapter XXXV Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p> <p>- Article 4.20, Article 74, Article 75 Law on Intellectual Property</p> <p>- Article 6.2 Decree No. 103/2006/NĐ-CP dated 22nd Sept 2006 of the Government (amended and Revised by Decree No. 122/2010/NĐ-CP)</p> <p>Circular No. 01/2007 BKHCN guiding Decree No. 103/2006/NĐ-CP</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. With regard to definition, well-known marks, Article 75.1 of Law on Intellectual Property uses the criteria evaluation of a well-known mark including “The number of involved consumers who have been aware of the mark through purchase or use of goods or services bearing the mark or through advertising”. This provision is possibly considered not to require “taking account of the knowledge of the

<p>a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.</p> <p>(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.</p> <p>(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.</p> <p>TRIPS</p>		<p>trademark in the relevant sector of the public” according to Paris Convention 1967.</p> <p>Moreover, acceding Paris Union Joint Declaration is not compulsory, according to Article 5.4 of Chapter 12 of EVFTA but only a recommendation - “the Parties shall give <i>consideration ...</i>”.</p> <p>Therefore, Vietnam’s legal system is considered to be compatible with such provisions in EVFTA.</p> <p>2. Note that with regard to the implementation, although the regulation of Vietnam’s legal system on this issue have acceded to the commitments, the protection of well-know marks in reality has great difficulties (due to unclear, and inconsistent criteria, e.g. the number of people aware of, territorial area, turnover of the sale of goods or provision of services, advertising expenditure, duration of continuous use, number of countries protecting the mark, number of countries recognizing the mark as a well-known mark...). Apparently, the factors of popularity of each type goods at different point of</p>
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<p>Article 16 - Rights Conferred</p> <p>2. Article 6bis of the Paris Convention (1967) shall apply, mutatis mutandis, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.</p> <p>3. Article 6bis of the Paris Convention (1967) shall apply, mutatis mutandis, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.</p>		<p>time have different particular characteristics, therefore, different. Therefore, there can be fixed quantitative criteria for all cases. However, to avoid the sensibility, inconsistency and unpredictability of law, it is necessary to have at least level of criteria (instead of naming the criteria at present).</p> <p>Recommendation:</p> <p>Although Vietnam' legal system at present is compatible with the "hard" requirements of EVFTA with regard to this issue, in the future, Vietnam may need to consider revising the legal system concerning this issue, for example:</p> <ol style="list-style-type: none"> 1. To make clearer the factors determine the level of satisfaction with which a mark qualifies the criteria to be a well-known mark. This may establish a consistent, transparent and predictable background to recognize well-known trademarks. 2. Specify in more detail about the competence and procedure to recognize
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<p>Paris Union Joint Declaration</p> <p>Article 2: Determination of Whether a Mark is a Well-Known Mark in a Member State</p> <p>(3) [Factors Which Shall Not Be Required] (a) A Member State shall not require, as a condition for determining whether a mark is a well-known mark:</p> <p>(i) that the mark has been used in, or that the mark has been registered or that an application for registration of the mark has been filed in or in respect of, the Member State;</p> <p>(ii) that the mark is well known in, or that the mark has been registered or that an application for registration of the mark has been filed in or in respect of, any jurisdiction other than the Member State; or</p> <p>(iii) that the mark is well known by the public at large in the Member State.”</p>		<p>well-known marks.</p>
<p>Article 5.5 – Exceptions to the Rights Conferred by a Trademark</p> <p>Each Party:</p>	<p>Law on Intellectual Property</p> <p>Article 125. Right to prevent others from using industrial property objects</p>	<p>Assessment:</p> <p>Vietnam’s Law does have legislations about exceptions preventing trademark owners’ rights which are compatible with Article 5.5 of</p>

<p>(a) shall provide for the fair use of descriptive terms¹⁰ as a limited exception to the rights conferred by trademarks; and</p> <p>(b) may provide for other limited exceptions,</p> <p>provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.</p>	<p>1. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall have the right to prevent others from using such industrial property objects unless such use falls into the cases stipulated in Clauses 2 and 3 of this Article.</p> <p>2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:</p> <p>a) Using inventions, industrial designs or layout designs to serve the personal or non-commercial purposes, or to aim at evaluation, analysis, research, teaching, testing, trial</p>	<p>the Commitments. Exceptions in validity are also compatible with general international practices.</p> <p>Besides, it is important to note that these are rights, not compulsory obligations under EVFTA (if using Exception laws, it is crucial to “provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties”)</p> <p>Thus, in full compliance with EVFTA.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - In principle, no revision to current legal framework recommended - Might take more specific laws about “descriptive terms” into consideration to ensure transparency during application process.
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¹⁰ The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, and where such use is in accordance with honest practices in industrial or commercial matters.

	<p>production or information collection for the purpose of carrying out procedures for application for licenses for production, importation or circulation of products;</p> <p>b) Circulating, importing, making best use of utilities of products which were lawfully launched to the market including overseas markets, except for products that are launched to the overseas markets by any other person other than the mark owners or their licensees;</p> <p>c) Using inventions, industrial designs or layout designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the territory of Vietnam;</p> <p>d) Using inventions or industrial designs patented by the previous person according to the provisions of Article 134 of this Law;</p>	
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<p>dd) Using inventions patented by persons authorized by the competent authority according to the provisions of Articles 145 and 146 of this Law;</p>	<p>e) Using layout designs without knowing or having the obligation to know that such layout designs are patented;</p>	<p>g) Using marks the same as or similar to protected geographical indications where such marks have acquired protection in an honest manner before the date of filing the application for registration of such geographical indication;</p>	<p>h) Using in an honest manner personal names, marks describing type, quantity, quality, utility, value, geographical origin and other properties of goods or services.</p>
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<p>Article 5.6 - Grounds for revocation¹¹</p> <p>1. The Parties shall provide that a trademark registration shall be liable to revocation if, within a continuous period of five years prior to a request for revocation, it has not been put to genuine¹² use by its owner or his/her licensee in the relevant territory in connection with the goods or services in respect of which it is registered, without justifiable reasons, except where the use is commenced or resumed at least 3 months before the request for revocation. Parties may provide that this, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the request for revocation may be filed.</p> <p>2. A Party may provide that a trademark can be liable to revocation if, after the date on which it was</p>	<p>- Article 73, Article 95, Article 96 Law on Intellectual Property</p> <p>Article 7. Limitations on intellectual property rights</p> <p>2. The exercise of intellectual property rights must neither prejudice the State and public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law.</p> <p>Article 95. Invalidation of property protection certificates</p> <p>1. A property protection certificate shall be invalidated in the following cases:</p> <p>d) The mark has not been used by its owner or the licensee without any justifiable reason for five (05) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (03) months before the request for termination;</p> <p>- Point 21.3 Circular 01/2007/TT-BKHHCN dated 14th February 2007 supplemented and</p>	<p>Assessment:</p> <p>1. In full compliance with Paragraph 1, Article 5.6, except:</p> <ul style="list-style-type: none"> - Commitment stipulates regulations about “genuine use” (with full explanation in footnote 10) while Vietnam’s IP Law has not mentioned this issue yet (though in practice, Vietnamese authorities have manipulated it in several particular cases). - Regulation about disregard for owner’s actions under circumstances where these actions occur after the proprietor becomes aware of the request for revocation. However, it is not a compulsory obligation (Vietnam’s Law can whether regulate or not). Thus, Vietnam’s IP Law is in compliance at this article. <p>1. Vietnam’s Law has not particularly regulated about revocation of a trademark in case that, after the</p>
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¹¹ For Vietnam “revocation” is equivalent to “termination”.

¹² Genuine use implies real use for the purpose of trading in the goods or services in question so as to generate goodwill. In general, this implies actual sales and there must have been some sales of the goods or providing of the services during the relevant period of time. Use in advertising may amount to genuine use. However, mere preparatory steps are not to be regarded as genuine use of a mark. Genuine use is opposed to token or artificial use designed solely to maintain the trade mark on the register.

<p>registered in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered.</p> <p>3. Any use of a registered trademark by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, that is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services shall make the trademark liable to revocation or alternatively be prohibited by relevant domestic law.</p>	<p>amended by Circular No. 13/2010/TT-BKHCHN dated 30th July 2010</p> <p>- Law on competition</p> <p>Article 40. Misleading instructions</p> <p>1. Enterprises shall be prohibited from using instructions which contain misleading information about commercial names, business slogans, business logos, packaging, geographical indications and other elements in accordance with regulations of the Government in order to mislead customers in their understanding of goods and services for competitive purposes.</p> <p>2. Conducting business in goods and services which use misleading instructions as prescribed in clause 1 of this article shall be prohibited.</p>	<p>registered date, or inactivity of the proprietor, it has become the common name. However, it is a right, not compulsory obligation, thus in principle, Vietnam's Law is in full compliance with EVFTA.</p> <p>2. Vietnam does have regulation to prohibit any use of registered trademark liable to mislead the public (it is applied for both subjects of the actions, goods and services containing misleading information).</p> <p>Thus, in full compliance with EVFTA.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Consider to revise Article 95 of Intellectual Property Right on criterion of "genuine use" and clarify this term in instructive documents; - Consider to pass new regulation regarding whether to terminate (revoke) the protection title of a mark if, after registration, it has become a common name (under EVFTA, this is not a compulsory obligation, only "can be liable to revocation")
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		<ul style="list-style-type: none"> - If introduced to Vietnamese legal system, consider particular conditions and process to ensure both social benefits and the legitimate rights of trademark's owners, especially in cases when it is not owner's fault that the trademark has become a common name
Article 6 Geographical Indications		
<p>Article 6.1 - Scope of application</p> <p>1. This Article applies to the recognition and protection of geographical indications for wines, spirits, agricultural products and foodstuffs which are originating in the territories of the Parties.</p> <p>2. Geographical indications of a Party to be protected by the other Party, shall only be subject to this Article if they are protected as geographical indications under the system as referred to in Article 6.2 in the territory of the Party of origin</p>	Article 79, Article 80 Law on Intellectual Property	<p>Assessment:</p> <p>Under Vietnam's IP Law, the scope of geographical indications is wider than the scope regulated under EVFTA in types groups under application (Vietnamese law regulates all types of products, while EVFTA only regulates only 3 groups of products which are protected under the system as referred to in Article 6.2 EVFTA and are protected in EU.)</p> <p>Recommendation:</p> <p>Depending on specific commitments in Article 6 regarding geographical indications, logically there are 2 possible alternatives:</p> <ul style="list-style-type: none"> - Alternative 1: If EVFTA commitments regarding geographical indications can

		<p>be generally applied to all groups of products without incurring difficulties in legal system and practice, apply EVFTA commitments for all geographical indications, regardless of whether they are under the scopes mentioned in EVFTA Article 6.1</p> <ul style="list-style-type: none"> - Alternative 2: If EVFTA commitments about geographical indications have specific specifications which are unable to be applied, or not yet able to be applied to all groups of products, consider to design 1 special sub-article in Articles of Geographical indications in Intellectual Property as well as relevant instructive documents, in which: <ul style="list-style-type: none"> + Special sub-article: apply to 03 groups of products which are wines, spirits, agricultural products and foodstuffs which are originating in the territories of the Parties + General sub-article: apply to geographical indications for other products. <p>Choosing between the two mentioned alternatives depends on the review result of specific commitments presented below.</p>
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		In practice, the review result suggests that Alternative 1 is suitable.
<p>Article 6.2 - System of registration and protection of Geographical Indications</p> <p>1. Each Party shall maintain its system for the registration and protection of geographical indications, which shall contain at least the following elements:</p> <p>(a) a register listing geographical indications protected in the territory of that Party;</p> <p>(b) an administrative process verifying that geographical indications to be entered, or remained, on the register referred to in subparagraph 1(a) identify a good as originating in a territory, region or locality of a Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;</p> <p>(c) an objection procedure that allows the legitimate interests of any natural or legal person to be taken into account;</p>	<p>Article 95, Article 96, Article 98, Article 79, Article 88, Article 112 Law on Intellectual Property</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. Vietnam’s Law meets the requirements of registration and protection system of Geographical Indications. The geographical indication posted-registration book is stored at National Office of Intellectual Property. 2. Vietnam does regulate the administrative process of registering and protecting geographical indications containing content examining process (06 months from registration date, register will be examined in content according to origins, qualities, reputations and other specifications of the goods which are mentioned in Vietnam’s IP Law). Thus, in full compliance with EVFTA in this process. 3. Vietnam’s legal system has recorded the right to express dissenting opinion of any third parties regarding geographical indication register. 4. Vietnam’s law does have legislations about amendment, termination and

<p>d) procedures for rectification and termination of entries on the register referred to in subparagraph 1(a), that take into account the legitimate interests of third parties and the right holders of the registered geographical indications in question.¹³</p> <p>2. Parties may, but shall not be obliged to, provide in their domestic legislation more extensive protection than is required by this Agreement, provided that such protection does not contravene the protection provided under this Agreement.</p>		<p>cancellation of geographical indications. Thus, Vietnam has met EVFTA's requirements in this issue.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Article 6.3 - Established geographical indications</p> <p>1. Having completed an objection procedure and having examined the geographical indications of the European Union listed in {Annex GI – I, Part A}, Vietnam recognises that they are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement that have been</p>	<p>- From Article 108 to Article 120 Law on Intellectual Property</p> <p>- Article 13 Decree No. 103/2006/NĐ-CP dated 22nd Sept 2006 of the Government (amended and revised by Decree No. 122/2010/NĐ-CP)</p>	<p>Assessment:</p> <p>According to commitments at paragraph 1, Article 6.3, Vietnam has recognized the geographical indications listed in Annex GI-I (having completed 2 objection procedures mentioned in paragraph 1, gathered opinions from third parties and examined.</p> <p>Thus, the recognized geographical indications of EU listed in Annex GI-I are obviously protected under the system referred to in</p>

¹³ Without prejudice to the legislation on the system of registration and protection of geographical indications, each Party shall provide for legal means for the invalidation of the registration of geographical indications.

<p>registered by the European Union under the system referred to in Article 6.2. Vietnam undertakes to protect those geographical indications according to the level of protection laid down in this Agreement.</p> <p>2. Having completed an objection procedure and having examined the geographical indications of Vietnam listed in {Annex GI – I, Part B}, the European Union recognises that they are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement that have been registered by Vietnam under the system referred to in Article 6.2. The European Union undertakes to protect those geographical indications according to the level of protection laid down in this Agreement.</p>		<p>Article 6.2 of the Agreement.</p> <p>This recognition does not change or affect current Vietnamese Law about recognizing procedure.</p> <p>Recommendation:</p> <p>Directly apply Article 6.3, no revision to current legal framework recommended.</p>
<p>Article 6.4 - Amendment of List of geographical indications</p> <p>1. The Parties agree on the possibility of amending the List of geographical indications to be protected in {Annex GI – I} in accordance with the procedure set out in paragraph 3.a of Article 6.11</p>	<p>No regulations</p>	<p>Assessment</p> <p>This issue does not belong to the scope of amendment concerning the commitment’s content. Hence, it is irrelevant to Vietnam’s domestic legal system.</p> <p>Recommendation:</p>

<p>and in line with paragraph 1 {Amendment} of Article X.6 of the Chapter on Institutional, General and Final provisions, for instance:</p> <p>(a) by removing geographical indications which have ceased to be protected in the country of origin; or</p> <p>(b) by adding geographical indications, after having completed the objection procedure and after having examined the geographical indications as referred to in Article 6.3(1) and 6.3(2), to the satisfaction of both Parties.</p> <p>2. A geographical indication for wines, spirits, agricultural products or foodstuffs shall not in principle be added to {Annex GI - I}, if it is a name that on the date of signing of this Agreement is listed in the relevant register of the Parties with a status of "Registered".</p>		<ol style="list-style-type: none"> 1. No revision to current legal framework recommended. 2. Situation 2: If (VN-EU) amends EVFTA's List of geographical indications, directly applying these amendments is recommended (recognizing geographical indications in the List of Amendments)
<p>Article 6.5 – Protection of geographical indications</p> <p>1. Each Party shall provide the legal means for interested parties to prevent:</p> <p>(a) the use of a geographical indication</p>	<p>Article 80, Article 129.3, Article 130, Article 163 Law on Intellectual Property</p> <p>Article 129. Acts of infringement of rights to marks, trade names and geographical indications</p>	<p>Assessment:</p> <ol style="list-style-type: none"> 1. Current Vietnam's legislations have met requirements listed in paragraph 1, Article 6.5 except the regulation prohibiting the use of geographical

<p>of the other Party listed in {Annex GI – I} for any product that falls within the product class specified in {Annex GI – I} for that geographical indication and that either:</p> <p>i. does not originate in the country of origin specified in {Annex GI – I} for that geographical indication; or</p> <p>ii. does originate in the country of origin specified in {Annex GI – I} for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product was for consumption in the other Party;</p> <p>(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and,</p> <p>(c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris</p>	<p>3. The following acts shall be deemed to be infringements of the right to protected geographical indications:</p> <p>a) Using protected geographical indications for products which do not satisfy the criteria of particular specifications and quality of products bearing geographical indications, although such products originate from geographical areas bearing such geographical indication;</p> <p>b) Using protected geographical indications for products similar to products bearing geographical indications for the purpose of taking advantage of their reputation and reliability;</p> <p>c) Using any sign which is identical or similar to a protected geographical indication for products that do not originate from geographical areas bearing such geographical indication, and therefore are likely to mislead consumers into believing that such products originate from such geographical areas;</p>	<p>indication which is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like. However, it is important to note that under EVFTA's commitment, this is applied to only EU's geographical indication listed in Annex GI-I.</p> <p>2. With regard to content, Commitments at paragraph 2, 3 Article 6.5 are not related to domestic laws, but Vietnam should take negotiation sequences into account to ensure responsibilities.</p> <p>Besides, with regard to commitment that VN and EU will mutually agree on practical conditions of the use of homonymous geographical indications, when applying this into practice, Vietnam should examine widely about homonymous geographical indications to ensure legitimate interests of parties concerned .</p> <p>3. Commitments at paragraph 4,5 Article 6.5 are rights, not compulsory obligations, thus Vietnam's Law is supposed not to be compulsorily regulated. However, Vietnam should put attention on instructing procedures to</p>
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<p>Convention (1967).</p> <p>The protection referred to in subparagraph (a) shall be provided even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.</p> <p>2. Without prejudice to Article 23 of the Agreement on the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.</p>	<p>d) Using protected geographical indications of wines or spirits for those that do not originate from geographical areas bearing such geographical indication, even where the true origin of goods is indicated or geographical indications are used in the form of translations or transcriptions, or accompanied by such words as "category," "model," "type," "imitation" or the like.</p> <p>Article 130. Acts of unfair competition</p> <p>1. The following acts shall be deemed to be acts of unfair competition:</p> <p>a) Using commercial indications which can cause any confusion as to business entities, business activities or commercial origin of goods or services;</p> <p>b) Using commercial indications which can cause confusion as to the origin, production method, utilities, quality, quantity or other specifications of goods or services; or as to the conditions for provision of goods or services;</p> <p>c) Using marks protected in a country which is</p>	<p>notify Vietnamese geographical indications which cease to be protected in Vietnam to EU as well as procedures of expiring protection of EU's geographical indications which cease to be protected in EU (since they are new issues which are just presented in EU and have not been regulated in Vietnam.)</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Pass on regulation applying directly paragraph 1 Article 6.5 (in fact point a and the note at the end of paragraph 1) (with regard to prohibit the use of geographical indication which is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like in Annex GI-I). - Put attention on instructing domestic procedures to (i) amendment of list in Annex GI-I after negotiation and (ii) notification procedures to EU about geographical indications in Vietnam which cease to be protected as well as procedures of expiring protection of
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<p>3. Where a Party, in the context of negotiations with a third party, proposes to protect a geographical indication of the third party which is homonymous with a geographical indication of the other Party protected under this Article, the latter shall be informed and be given an opportunity to comment before the third party's geographical indication becomes protected.</p> <p>4. Nothing in this Article shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the country of origin. Such notification shall take place in accordance with procedures laid down in Article 6.11(3).</p> <p>5. A Party shall not be required to protect as a geographical indication a</p>	<p>a signatory to a treaty of which the Socialist Republic of Vietnam is a member and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is not endorsed by both permission from the owner and justifiable reasons;</p> <p>d) Registering or possessing the right to use or using domain names which are confusingly the same as or similar to protected trade names or marks of others, or geographical indications without having the right to use, for the purpose of possessing such domain names, benefiting from or prejudicing the reputation and reliability of the respective mark, trade name or geographical indication.</p> <p>2. Commercial indications stipulated in Clause 1 of this Article mean signs and information serving as guidelines to trading of goods or services including marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods.</p>	<p>EU's geographical indications which cease to be protected in EU)</p>
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<p>name that is likely to mislead the consumer as to the true origin of the product in case it conflicts with the name of a plant variety or an animal breed.</p>	<p>3. Acts of using commercial indications stipulated in Clause 1 of this Article include acts of attaching such commercial indications to goods, goods packages, means of service provision, business transactional documents or advertising means; and selling, advertising, stocking for the purpose of selling and importing goods identified by such commercial indications.</p> <p>Article 163. Taxonomy of plant varieties</p> <p>3. Taxonomy of plant varieties shall be considered improper in the following cases:</p> <p>a) They consist of numerals only, unless such numerals are relevant to specifications or the breeding of such varieties;</p> <p>b) They violate social ethics;</p> <p>c) They may easily cause misleading as to features or specifications of such varieties;</p> <p>d) They may easily cause misleading as to identifications of the breeders;</p> <p>dd) They are confusingly identical or similar to marks, trade names or geographical indications protected before the date of publication of protection registration applications of such plant varieties;</p>	
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	e) They affect prior rights of other organizations or individuals.	
<p>Article 6.5a - Exceptions</p> <p>1. Notwithstanding Article 6.5, the protection of the geographical indications listed in Part A of {Annex GI – I} and identified by one asterisk {note: “Asiago”, “Fontina” and “Gorgonzola”} shall not prevent the use in the territory of Viet Nam of any of these indications by any persons, including their successors, who made actual commercial use in good faith of those indications with regard to products in the class of “cheeses” prior to 1 January 2017.</p> <p>2. Notwithstanding Article 6.5, the protection of the geographical indication listed in Part A of {Annex GI – I} and identified by two asterisks {note: “Feta”} shall not prevent the use in the territory of Viet Nam of this indication by any persons, including their successors, who made actual commercial use in good faith of the</p>	<p>No regulations on:</p> <ol style="list-style-type: none"> 1. Using ‘cheese’ and ‘champagne’ in geographical indication 2. Limitation of time for order to use or register trademark if the like geographical indication causes damages. 3. Limitation of time indicated in point 4 Article 6.5a 4. Issue indicated in point 5 Article 6.5a 	<p>Assessment:</p> <p>Although Vietnam’s Law does not regulate commitments listed in Article 6.5, in general Vietnam does not show conflict with these commitments since they are rights or noncompulsory obligations. In practice, according to information from the Negotiation Group, this is to balance between Vietnam’s commitments with EU under EVFTA and other parties under TPP (especially the USA, Australia, New Zealand) about concerned foodstuffs (cheese, wine), rather than geographical indications under Vietnam’s considerations.</p> <p>Moreover, these commitments are quite obvious, thus Vietnam can consider to apply them directly in some minor relevant cases instead of having own legislations about this issue.</p> <p>Recommendation:</p> <p>Directly apply Article 6.5a</p>

<p>indication with regard to products in the class of “cheeses” made from sheep's milk or made from sheep and goat's milk, prior to 1 January 2017.</p> <p>3. Notwithstanding Article 6.5, a transitional period of 10 years from the entry into force of this Article during which the use of the geographical indication, or its translation, transliteration or transcription, listed in Part A of {Annex GI – I} and identified by three asterisks {note: “Champagne”} shall not be prevented, shall apply to any persons, including their successors, who made actual commercial use in good faith of this indication with regard to products in the class of “wines”.</p> <p>4. A Party may provide that any request made under this Article 6 in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party provided that the trademark has been published by</p>		
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<p>that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.</p> <p>5. The provisions of Article 6 shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.</p>		
<p>Article 6.6 - Right of use of geographical indications</p> <p>Once a geographical indication is protected under this agreement, the legitimate use of such protected geographical indication shall not be subject to any registration of users, or further charges.</p>	<p>Article 88, Article 92, Article 93, Article 121 Law on Intellectual Property</p> <p>Article 92. Protection certificates</p> <p>1. A protection certificate shall recognize the owner of the invention, industrial design, layout design or mark (hereinafter all referred to as protection certificate owners); the author of the invention, industrial design or layout design; and the object, scope and term of protection.</p> <p>Article 93. Validity of protection certificates</p> <p>7. A registration certificate of geographical indication shall have indefinite validity as</p>	<p>Assessment</p> <p>Vietnam's Law applying for protection of geographical indications (geographical indications of both Vietnam and other countries including EU) is in compliance with commitments in Article 6.6, in which:</p> <ul style="list-style-type: none"> - Organizations and individuals producing concerned products at concerned places have the rights to use geographical indications without registrations. - Certificates of registered geographical indications shall have an indefinite validity starting from the grant date, thus the legitimate use of such

	<p>from the issuing date.</p> <p>Article 123. Rights of owners of industrial property objects</p> <p>2. Organizations and individuals who are granted by the State the right to use or the right to manage geographical indications according to the provisions of Clause 4 of Article 121 of this Law shall have the following rights:</p> <p>a) Organizations which are granted the right to manage geographical indications may permit other persons to use such geographical indications according to the provisions of Point a Clause 1 of this Article;</p>	<p>indications shall not be subject to any further charges regarding to expanding validity of the certificates.</p> <ul style="list-style-type: none"> - However, Article 92 of Intellectual Property Rights regulates to record “organizations or individuals having the right to use such geographical indications” in Protection Titles. In principle, it means that for organizations or individuals who are not recorded in Protection Titles, if they want to use such geographical indications, Protection Titles have to be amended - equivalent to re-registration, thus not in compliance with commitments in Article 6.6. Moreover, this legislation also shows conflict with Article 123, Intellectual Property Right, in which organizations having the right to manage geographical indications also hold the right to allow others to use such geographical indications (meaning that organizations and individuals having the right to use geographical indications are not necessarily recorded in Protection Titles but only under the charge of organizations owning the right to manage such geographical
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		<p>indications.)</p> <p>Recommendation:</p> <p>Revise Article 92 Intellectual Property Right to eliminate the regulation to record “organizations or individuals having the right to use such geographical indications” in Protection Titles in order to be compatible with commitments under EVFTA as well as the nature of Protection Titles.</p>
<p>Article 6.7 - Relationship with trademarks</p> <p>1. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, in a Party before the applicable date set out in paragraph 2, measures adopted to implement this Article 6 in that Party shall not prejudice eligibility for or the validity of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to a geographical indication.</p> <p>2. For the purposes of paragraph 1, the applicable date is:</p>	<p>From Article 72 to Article 76, Article 78, Article 80, Article 125 Law on Intellectual Property</p> <p>Article 80. Objects ineligible to be treated as a protected geographical indication</p> <p>The following objects shall be ineligible for protection as geographical indications:</p> <p>3. Geographical indications identical or similar to a protected mark, where the use of such geographical indication is likely to cause confusion as to the origin of products.</p> <p>4. Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications.</p>	<p>Assessment:</p> <p>Vietnam’s law currently has eliminated the possibility of having geographical indications identical or similar to a protected mark, apart from some specific listed cases.</p> <p>Since EVFTA takes effect, it is unlikely that there is a mark registered before the date mentioned in paragraph 2 Article 6.7 of EVFTA identical or similar to a geographical indication which will be protected under EVFTA (including geographical indications listed in the EU’s List of 169 geographical indications, because in order to be protected, such geographical indications have</p>

<p>(a) the date of entry into force of this Article/Agreement regarding geographical indications referred to in Article 6.3; or,</p> <p>(b) the date on which a complete application by a Party for protection of a geographical indication as referred to in Article 6.4 is received by the competent authority of the other Party.</p> <p>3. Such trademark may continue to be protected, used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties.</p>	<p>Article 125. Right to prevent others from using industrial property objects</p> <p>2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:</p> <p>g) Using marks the same as or similar to protected geographical indications where such marks have acquired protection in an honest manner before the date of filing the application for registration of such geographical indication;</p> <p>h) Using in an honest manner personal names, marks describing type, quantity, quality, utility, value, geographical origin and other properties of goods or services.</p>	<p>experienced procedures of gathering opinions from third parties, researching and examining – and such procedures have been held with regard to objectives under Vietnam’s law, including Article 80 IP Law, which state that one of the subjects ineligible for protection as geographical indications is “Geographical indications identical with or similar to a protected mark, where the use of such geographical indications is likely to cause a confusion as to the origin of products”</p> <p>Even in cases that a protected mark is identical or similar to geographical indications under EVFTA, Vietnam can still protect these marks (it is a right)</p> <p>Thus, in general, Vietnam is in full compliance with Article 6.7 of the Agreement.</p> <p>However, it is important to note that in actual practice, there may be risks occurring relating to: (i) different explanations about possibilities of “identical, similar” with protected mark, occurring during examining Geographical indications Register; (ii) determining the rights of trademark’s owners, organizations and individuals having the right to use geographical indications in case</p>
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		<p>Vietnam protects both similar mark and geographical indication.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - In principle, no revision to current legal framework recommended - Consider instruction regulations (for instance in instructive documents about protecting geographical indications) about solving cases in which there are similarities or confusions between mark and geographical indication.
<p>Article 6.8 - Enforcement of protection</p> <p>1. Each Party shall provide for enforcement by appropriate administrative action, <i>to the extent provided for by its domestic law</i>, to prohibit a person from manufacturing, preparing, packaging, labeling, selling or importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.</p> <p>2. Each Party shall at least enforce the</p>	<p>Article 129, Article 199 Law on Intellectual Property</p> <p>Article 25 Decree No. 54/2009/NĐ-CP</p> <p>Article 5, Article 11 Decree No. 89/2006/NĐ-CP</p>	<p>Assessment:</p> <p>The Agreement requires Vietnam to provide enforcement by appropriate administrative action to prohibit actions that is misleading regarding a food's origin.</p> <p>Vietnam's Law does have legislation about administrative remedies for activities including manufacturing, preparing, packaging, selling or importing a product in a manner that is misleading regarding its origin (but not yet has sentencing laws for advertising such product)</p> <p>Thus, in general, Vietnam's Law is in compliance with commitment in Article 6.8</p>

<p>protection provided for in Articles 6.5. and 6.7 at the request of an interested party.</p>		<p>(except handling of advertising concerned products.)</p> <p>Vietnam's Law about labeling and handling of administrative violations regarding labeling products does not regulate this issue (food does not belong to the group of compulsory labeling products, and the labeling activity only requires the origin, thus handling of administrative violations only applies when not presenting the origin on the label, not label which is misleading regarding the origin).</p> <p>Recommendation:</p> <p>Revise Article 14, Decree No. 99/2013/NĐ-CP to implement administrative remedies for advertising products in a manner that is misleading regarding the origin.</p>
<p>Article 6.9 - General rules</p> <p>Products bearing protected geographical indication shall comply with the product specifications, including any amendments thereof, approved by the authorities of the Party in the territory of which the product originates.</p> <p>Any matter arising from product specifications of registered products</p>	<p>Law on intellectual property</p> <p>Article 129. Acts of infringement of rights to marks, trade names and geographical indications</p> <p>3. The following acts shall be deemed to be infringements of the right to protected geographical indications:</p> <p>a) Using protected geographical indications for products which do not satisfy the criteria</p>	<p>Assessment:</p> <p>In full compliance with EVFTA, in which products bearing geographical indication shall comply with the product specifications listed in Protection Title.</p> <ul style="list-style-type: none"> - Recommendation: No revision to current legal framework recommended

<p>shall be dealt with in the Working Group on Intellectual Property Rights, including Geographical Indications established in Article 6.11.</p>	<p>of particular specifications and quality of products bearing geographical indications, although such products originate from geographical areas bearing such geographical indication;</p>	
<p>Article 6.10 - Co-operation and transparency</p> <p>1. The Parties shall, either directly or through the {Joint Committee} established pursuant to Article 6.11, maintain contact on all matters relating to the implementation and the functioning of this Article. In particular, a Party may request from the other Party information relating to product specifications and their amendment and relevant contact points for control or management.</p> <p>2. Each Party may make publicly available the specifications or a summary thereof and relevant contact points for control or management corresponding to geographical indications of the other Party protected pursuant to this Article.</p>	<p>No regulation.</p>	<p>Assessment:</p> <ul style="list-style-type: none"> - The act of establishing Joint Committee does not belong to the scope of domestic legal system. - The responsibility of making publicly available the information corresponding to geographical indications of the other Party is not compulsory obligations, thus Vietnam’s law is in compliance with EVFTA about this issue. <p>Recommendation:</p> <p>No revision to current legal framework recommended</p> <p>About the Joint Committee: refer to Recommendation in Article 6.11</p>
<p>Article 6.11 – Working Group on Intellectual Property Rights, including</p>	<p>No regulation.</p>	<p>Assessment:</p>

<p><i>Geographical Indications</i></p> <p>1. Both Parties agree to set up a Working Group on Intellectual Property Rights, including Geographical Indications, consisting of representatives of the European Union and Vietnam with the purpose of monitoring the implementation of this Article and of intensifying their co-operation and dialogue on geographical indications.</p> <p>2. The Working Group on Intellectual Property Rights, including Geographical Indications adopts its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the European Union and in Vietnam, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than 90 days after the request.</p> <p>3. The Working Group on Intellectual Property Rights, including Geographical Indications shall also see to the proper functioning of this Chapter and may</p>		<p>Regulations in Article 6.11 does not belong to the scope of domestic law.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - In principle, no revision to current legal framework recommended - Consider to build up Vietnam’s organizing framework as the basis for unification so that Vietnamese authorities concerned can participate effectively in activities of Joint Committee and the Working Group on Intellectual Property Rights.
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<p>consider any matter related to its implementation and operation. In particular, it shall be responsible for:</p> <p>(a) preparing a recommendation for the Parties to amend {Annex GI I} as regards geographical indications in accordance with Article 6.4.</p> <p>(b) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;</p> <p>(c) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article.</p>		
<p>Article 7 Industrial Designs</p>		
<p>Article 7.1 - International Agreements</p> <p>The Parties shall accede¹⁴ to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs</p>	<p>Vietnam is in progress of acceding to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999)</p>	<p>Assessment</p> <p>With regard to procedures, Vietnam can meet this requirement of the Agreement when this EVFTA’s commitment takes effect, which is equivalent to 2 years after the effective date of EVFTA (because Vietnam is in progress to</p>

¹⁴ Within the period of 2 years from the entry into force this Agreement

(1999).		<p>accede).</p> <p>With regard to content, Vietnam should review Vietnam’s legal system with Hague Agreement in order to appropriately amend the laws (for example, currently Vietnam has not been using appropriated forms required in the Hague Agreement).</p> <p>Recommendation</p> <ul style="list-style-type: none"> - Progress the necessary procedures to accede to the Geneva Act within the period of 2 years from the entry into force this Agreement. - Review Vietnam’s legal system in comparison with Hague Agreement to appropriately fulfill responsibilities required in Hague.
<p>Article 7.2 - Protection of Registered Industrial Designs</p> <p>1. The Parties shall provide for the protection of independently created industrial designs¹⁵ that are new or original¹⁶. This protection shall be</p>	<p>- Chapter XXXV Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p> <p>- Article 63, Article 64, Article 65, Article 66, Article 67, Article 93, Article 125, Article 126 and from Article 198 to Article 210 Law on</p>	<p>Assessment:</p> <p>1. With regard to general conditions for industrial designs eligible to be protected:</p> <p>+ About wording, according to Vietnam’s IP Law, 03 conditions must be</p>

¹⁵ The Parties agree that when the domestic law of a Party so provides, a design means the appearance of the whole product or a separable and/or inseparable part of product.

¹⁶ The Parties agree that when the domestic law of a Party so provides, individual character of designs can also be required. This refers to designs that significantly differ from known designs or combinations of known designs’ features. The Union considers designs to have individual character if the overall impression it produces on the informed users differs from the overall impression produced on such a user by any design which has been made available to the public.

<p>provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.¹⁷</p> <p>2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:</p> <p>(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and</p> <p>(b) to the extent that those visible features of the component part fulfill in themselves the requirements as to novelty and originality.</p> <p>3. "Normal use" within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.</p> <p>4. The owner of a registered design shall have the right to prevent third</p>	<p>Intellectual Property</p> <p>Article 63. General conditions for industrial designs eligible to be protected</p> <p>Industrial designs eligible to be protected must meet the following requirements:</p> <ol style="list-style-type: none"> 1. It is novel; 2. It is creative; 3. It has industrial applicability. <p>Article 64. Objects ineligible to be treated as a protected industrial design</p> <p>Objects ineligible to be treated as a protected industrial design include:</p> <ol style="list-style-type: none"> 1. Exteriority of a product which is required by the technical features of the product. 2. Exteriority of civil or industrial construction works. 3. Exteriority of a product which is invisible during the use of the product. <p>Article 125. Right to prevent others from using industrial property objects</p>	<p>met: the design must be <i>novel, creative and has industrial applicability</i> though according to EVFTA, the condition is only "new" or "original" (note that this requirement is similar to Article 25.1 TRIPS).</p> <p>However, Vietnam's law is assessed to be in full compliance with the nature of requirements in TRIPS and EVFTA for the following reasons:</p> <p>+ In both TRIPS and EVFTA, the latent of "new" and "original" is not defined, it is for countries to define. In practice, Vietnam has chosen to distinguish between these two conditions and also required industrial design to meet both rather than put them into one. It is also a popular choice in the world and is considered as an appropriate practice under TRIPS and EVFTA about this issue.</p> <p>+ About the condition of "industrial applicability": this is a condition which goes along with the subject of "industrial design". While other</p>
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¹⁷ It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfill the criteria of this paragraph, and: (a) fulfill any other criteria for design protection; and (b) are not otherwise excluded from design protection, under the Parties' respective domestic law.

<p>parties not having the owner’s consent at least from making, offering for sale, selling, importing, or stocking for sale a product bearing or embodying the protected design when such acts are undertaken for commercial purposes.</p> <p>5. The duration of protection available shall amount to at least 15 years.</p>	<p>1. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall have the right to prevent others from using such industrial property objects unless such use falls into the cases stipulated in Clauses 2 and 3 of this Article.</p> <p>Article 126. Acts of infringement of rights to inventions, industrial designs and layout designs</p> <p>The following acts shall be regarded as infringements of rights of owners of inventions, industrial designs and layout designs:</p> <p>1. Using protected inventions, protected industrial designs or industrial designs insignificantly different from protected industrial designs, or protected layout designs or any original part thereof within the valid term of a protection certificate without permission from the owners.</p> <p>2. Using inventions, industrial designs and layout designs without paying compensation according to the provisions on provisional rights in Article 131 of this Law.</p>	<p>countries state the requirement on the definition of “industrial design”, Vietnam has chosen to state in terms of conditions to protect. By nature, there is no difference. Thus, Vietnam is in full compliance with EVFTA about this issue.</p> <p>2. With regard to protection of industrial design in a component part: the Agreement requires that if the component part, once it has been incorporated into the complex product, remains <i>visible</i> (to users) and such visible features of the component part fulfill in themselves the requirements as to novelty and originality. Whereas, Vietnam’s legal system only holds indirect requirements about this “visible” condition in Circular No. 01/2007/TT-BKHCN (Point 35.3.b(iii)) without any regulations in Intellectual Property Rights.</p> <p>3. A patent on an industrial design in Vietnam shall be valid in 05 years and may be renewed for no more than two consecutive terms, which means that</p>
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	<p>Article 93. Validity of protection certificates</p> <p>1. Protection certificates shall be valid throughout the entire territory of Vietnam.</p> <p>4. A patent on an industrial design shall be valid from the issuing date until the end of five (5) years after the submission date and may be renewed for two consecutive terms, each of which shall have a period of five (5) more years.</p> <p>- Circular No. 01/2007/TT-BKHCH</p> <p>35.3 Assessment of compatibility of objects stated in applications with the type of industrial design protection title</p> <p>An object stated in an application shall be considered incompatible with the type of industrial design protection title when:</p> <p>a) The object is not the appearance of a product;</p> <p>b) The object stated in the application is:</p> <p>(i) A products appearance dictated by its technical specifications;</p> <p>(ii) A civil or industrial construction works appearance;</p>	<p>the maximum validity of an industrial design patent in Vietnam is 15 years. According to the Agreement, the minimum validity is 15 years. Thus, in principle, Vietnam is in compliance with EVFTA.</p> <p>Recommendation</p> <p>Revise Article 64 in Intellectual Property Rights to amend requirements regarding “visible” features when assessing conditions to protect industrial design of products in general and of component part in particular.</p>
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	(iii) Interior design (invisible part) of a product in use (exploitation of a products utility by ordinary methods and by any consume excluding its maintenance, preservation or repair).	
<p>Article 7.4 - Exceptions and exclusions</p> <p>The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs, and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.</p> <p>2. Industrial design protection shall not extend to designs dictated essentially by technical or functional considerations.</p>	Article 64, Article 125 Law on Intellectual Property	<p>Assessment:</p> <p>In full compliance with the Agreement in Article 7.4 in which:</p> <ul style="list-style-type: none"> - Exceptions to the protection of designs do not unreasonably conflict with the normal exploitation of owners; - Do not unreasonably prejudice the legitimate interest of the owner of the protected design as well as ensure the legitimate interests of third parties. <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Article 7.5 - Relationship to Copyright</p> <p>A design shall also be eligible for protection under the law of copyright of that Party as from the date on which the</p>	Article 14, Article 15 Law on Intellectual Property	<p>Assessment:</p> <p>Vietnam's Law does not exclude industrial design from ineligibility for protection under the law of copyright, but at the same time does</p>

<p>design was created or alternatively fixed in any form. Protection eligibility, the extent to which, and the conditions under which, such a copyright protection is conferred, including the level of originality required, shall be determined by that Party.</p>		<p>not clearly state whether a design can be eligible for protection under the law of copyright (note that the List of Protected subjects under the law of copyright is a closed list, which means only listed cases are applicable) except when “industrial designs” are presented in forms of “architectural works”, or “works of applied art” (whereas industrial designs can be presented in many other types).</p> <p>Thus, to strictly consider, Vietnam’s law does not fully meet EVFTA’s commitments in Article 7.5.</p> <p>Recommendation:</p> <p>Revise Article 14 of Intellectual Property Rights to amend regulations that a design shall be eligible for protection under the law of copyright.</p>
<p>Article 8 Patents</p>		
<p>Article 8.1 - <i>International Agreements</i></p> <p>The Parties reaffirm their obligations under the Patent Co-operation Treaty and shall simplify and develop its patent registration procedures using the Patent Law Treaty, inter alia, as a</p>	<p>Vietnam have acceded the Patent Co-operation Treaty (PCT).</p> <p>Vietnam has not acceded Patent Law Treaty (PLT).</p>	<p>Assessment</p> <ul style="list-style-type: none"> - Vietnam has acceded PCT and reaffirm legislations to be in compliance with PCT. - VN has not acceded PLT but in general, in full compliance with PLT’s requirements.

reference point.		<p>Recommendation</p> <p>No revision to current legal framework recommended</p>
<p>Article 8.2 – Patents and Public Health</p> <p>1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely upon the Doha Declaration.</p> <p>2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.</p>	<p>- Article 7.3, Article 125.2, Article 133, Article 145, Article 146, Article 147 Law on Intellectual Property</p> <p>- Article 22, Article 23, Article 24, Article 25, Article 26 Decree No. 103/2006/NĐ-CP (amended and Revised by Decree No. 122/2010/NĐ-CP);</p> <p>- Section 2 Chapter II Circular No. 01/2007/TT-BKHCN (amended and Revised by Circular No. 13/2010/TT-BKHCN and Circular No. 18/2011/TT-BKHCN)</p> <p>Article 3, Article 4 Law on Pharmacy¹⁸</p>	<p>Assessment:</p> <p>1. Vietnam is a developing country, thus Vietnam can apply the Doha Declaration to approach pharmacy inventions for social benefits.</p> <p>However, regulations about these cases are not fully sufficient. Vietnam’s Law is in compliance with EVFTA about this issue (since it is right, not compulsory obligation). Despite of that, in order to effectively use these rights, Vietnam should have organized assessment researches, specific strategies and turn them into specific legislations.</p> <p>2. Rights about health in general and public health in particular are presented in Law on Medical Examination and Treatment (2009) and Law on Pharmacy (2005), however the right to</p>

¹⁸ Law on Pharmacy No. 34/2005/QH11 of the National Assembly dated 14th Jun 2005 (“**Law on Pharmacy**”)

		<p>approach pharmacy has not been directly admitted in these laws.</p> <p>Recommendation:</p> <ol style="list-style-type: none">1. In principle Vietnam's law is in compliance with commitments in Article 8.2.2. With regard to the benefits of Vietnam, consider to amend regulations about this issue in Intellectual Property Rights; shall amend in both Law on Medical Examination and Treatment and Law on Pharmacy (if needed). Note that the amendment of these exceptions should be conducted in open ways (not closed list) in order to create flexibility in applying these exceptions into practices, provided that this is still compatible with the Doha Declaration.3. Consider the implementation to accede the processing system of Doha Declaration Paragraph 6 on the TRIPS Agreement and Public Health as an exported country and/or an imported country, as well as confirming Article 31bis TRIPS Agreement (if necessary) to enhance the effectiveness of applying the Doha Declaration.
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<p>Article 8.3 - Administrative Authorisation</p> <p>1. Parties recognise that pharmaceutical products protected by a patent on their respective territory are generally subject to an administrative authorisation procedure before being put on their market, hereinafter referred to as the "marketing authorisation procedure".</p> <p>Parties shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays in the granting of first marketing authorisation in the respective territories²³. Such compensation may be in the form of an extension of the duration of the rights conferred by patent protection, equal to the time by which the period mentioned in footnote 15 is exceeded. The</p>	<ul style="list-style-type: none"> - Article 93 Law on Intellectual Property - Article 20.4.(a) Circular No. 01/2007/TT-BKHCN - Article 35, and Article 36 Law on Pharmacy - Article 13, Article 14, and Article 15 Circular No. 44/2014/TT-BYT dated 25th Nov 2015 	<p>Assessment:</p> <p>Vietnam: There is no legal requirements of "compensation" for the reduction in the effective patent life resulting from unreasonable delays in the granting of first marketing authorization in the respective territories.</p> <p>With regard to the Agreement, Vietnam merely has duty to make compensation, yet the measure to achieve such compensation is depend on the choice of Vietnam. Direct compensation by extending the effective patent life is only one of the solutions, and this solution can directly affect the social welfare.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Amending Article 93 Law on Intellectual Property, with inclusion of compensation regulation with conditions specified in the Agreement (it is noteworthy to pay special attention to similar agreements made in TPP to have appropriate amendment) - Designing and considering the compensation
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<p>maximum duration of this extension shall not exceed 2 years.</p> <p>2. Alternatively to paragraph 1 of this Article, a Party may make available an extension, not exceeding five years¹⁹ of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the marketing authorisation procedure. The duration of the extension shall take effect at the end of the lawful term of the patent for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first marketing authorization to place the product on the market in the party, reduced by a period of five years.</p>		<p>mechanism to be applied and evaluate the suitable mechanism (Balance the interest between a Party and social)</p>
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¹⁹ This period can be extended for further six months in the case of medicinal products for which pediatric studies have been carried out, and the results of those studies are reflected in the product information.

<p>Article 9 Protection of undisclosed information and data</p> <p>1. In order to implement Article 39 of the TRIPS Agreement, and in the course of ensuring effective protection against unfair competition as provided in Article 10 bis of the Paris Convention (1967), each Party shall protect confidential information and data submitted to government or governmental agencies in accordance with paragraphs [A] and [B] below.</p> <p>[A]. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products, the submission of undisclosed test or other data, the origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary</p>	<p>Article 125, 128 Law on Intellectual Property</p>	<p>Assessment:</p> <p>Vietnam legislations have protected tested information and other data submitted by the applicant upon registration for distribution of pharmaceutical or agrochemical product in accordance with the EVFTA on term of protection for proprietary data (5 years), protection regime (against the use for commercial purpose), exceptions (publish for public interest, use not for commercial purpose, use similar data but it has to be self-built data).</p> <p>Hence, Vietnam legislations are in full compliance with the EVFTA.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - No revision to current legal framework recommended. - This institution in TPP has higher requirements than in EVFTA and Vietnam legislations. With regard to the MFN principle, the requirements in TPP is to apply to EVFTA, hence, Vietnam legislations shall need to be
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<p>to protect the public.</p> <p>[B]. Each Party shall provide that for data of a type referenced in paragraph [A] that are submitted to the Party after the date of entry into force of this Agreement, no other applicant for product approval may, without permission of the person that submitted them, rely on that data in support of an application for product approval during a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product.</p>		<p>revised after reviewing TPP.</p>
<p>Article 11 <i>Plant Varieties</i></p> <p>The Parties shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on</p>	<p>- Part 4th Law on Intellectual Property: from Article 157 to Article 191</p> <p>- Chapter XXXV Civil Code 2005 (theses provisions are removed from the Civil Code 2015)</p>	<p>Assessment:</p> <p>Vietnam had joined this Convention on November 24th 2006 and Vietnam legislations had been revised to meet the requirements of this Convention. Hence, Vietnam legislations</p>

<p>March 19, 1991, (the so-called "1991 UPOV ACT") including the exceptions to the breeder's right as referred to in Article 15 of the said Convention, and co-operate to promote and enforce these rights.</p>	<p>- Decree No. 88/2010/NĐ-CP dated 16th Aug 2010 of the Government (amended and Revised by Decree No. 98/2011/NĐ-CP)</p> <p>- Decree No. 114/2013/NĐ-CP dated 03rd Oct 2013 of the Government</p> <p>- Circular No. 16/2013/TT-BNNPTNT dated 28th Feb 2013</p> <p>- Circular No. 41/2009/TT-BNNPTNT dated 9th Jul 2009</p>	<p>meet the requirements of EVFTA on this issue.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Section C</p> <p>Enforcement of Intellectual Property Rights</p>		
<p>Sub-Section C.1</p> <p>General Enforcement Provisions</p>		
<p>Article 12 <i>General Obligations</i></p> <p>1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the</p>	<p>Part 5th Law on Intellectual Property (Article 198-219)</p>	<p>Assessment:</p> <p>In principle, Vietnam legislations meet the EVFTA requirements on this issue.</p> <p>However, a detailed review reveals that Vietnam legislations may not fully in</p>

<p>following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.²⁰ Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>2. Those measures and remedies shall also be effective and proportionate and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p>		<p>compliance with EVFTA requirements to apply necessary measures to assure the enforcement of Intellectual Property rights (e.g.: except for the case of self-protection of rights, or the case of State protection is currently not defined specific measure/actions (merely regulate the handling competence, penalty measurements...)).</p> <p>Recommendation:</p> <p>No revision to current Vietnam legal framework recommended. Yet there are other recommendations for specific articles (below).</p>
<p>Article 13 <i>Entitled Applicants</i></p> <p>The Parties shall recognise as persons entitled to seek application of the measures, procedures and</p>	<p>- Article 4, Article 56, Article 57, Article 198 Law on Intellectual Property</p> <p>- Article 44 Decree No. 100/2006/NĐ-CP dated 21st Sept 2006 of the Government</p>	<p>Assessment:</p> <p>Vietnam legislations meet EVFTA requirements with regard to this issue. Yet, the Parties have the rights to require State</p>

²⁰ For the purposes of sub-section C.1 the notion of "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; rights of the creator of the topographies of a semi conductor product; trade mark rights; design rights; patent rights; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as intellectual property rights in the national law concerned.

<p>remedies referred to in this section and in Part III of the TRIPS Agreement:</p> <p>(a) the holders of intellectual property rights in accordance with the provisions of the applicable law,</p> <p>(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,</p> <p>(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,</p> <p>(d) professional defense bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far</p>	<p>(amended and Revised by Decree No. 85/2011/NĐ-CP, and Decree No. 01/2012/NĐ-CP).</p> <p>- Part A-II Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP dated 3rd Apr 2008</p>	<p>Agencies to protect intellectual property law is mentioned separately in the Law, not concentrated on one Article, therefore it is hard to follow.</p> <p>Recommendation:</p> <p>- No revision to current legal framework recommended.</p> <p>- Consider adding 01 Article in Part Five of intellectual property law to clearly states that entities have the right to request and ensure the transparency of the legal system.</p>
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<p>as permitted by and in accordance with the provisions of the applicable law.</p>		
<p>Sub-Section 3.2 Civil Enforcement</p>		
<p>Article 14 Provisional</p> <p>1. The Parties shall ensure that, the competent judicial authorities may, on request by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures:</p> <p>a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into and the movement within the channels of commerce in their jurisdiction of goods, including imported goods</p>	<ul style="list-style-type: none"> - Article 200, Article 206, and Article 207 Law on Intellectual Property - From Article 99 to Article 126 Civil Procedure Code 2004 - From Article 111 to Article 142 Civil Procedure Code 2015 - Part B-II Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP dated 3rd Apr 2008 	<p>Assessment:</p> <ul style="list-style-type: none"> - Vietnam legislations meet the requirements of Article 14 in the EVFTA, specifically as following: - The rights to request judicial authorities to take emergency measures - Cases in which judicial authorities can apply emergency measures without the other party being heard; <p>2. Vietnam legislations do not meet the requirements of the EVFTA, specifically as following:</p> <ul style="list-style-type: none"> - On the period of request to apply temporary emergency measure: Vietnam legislations only allow the right holder to request temporary

<p>immediately after customs clearance:</p> <p>(i) An interlocutory injunction may also be issued against a party whose services are being used by a third party to infringe an intellectual property right and over whom the relevant judicial authority exercises jurisdiction.</p> <p>(ii) In the case of an alleged infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure or blocking of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets.</p> <p>(b) to preserve relevant evidence in respect of the alleged infringement, subject to the protection of</p>		<p>measure after or in the time of the lawsuits at the Judicial authorities; while the EVFTA stated that the right holder can request measures from the Judicial authorities at any time (regardless of the lawsuits), as long as there is relevant evidence in respect of basis for their claims.</p> <p>- It is noteworthy that: the Agreement specifies that the Judicial authorities acts upon request of a party is not necessarily be interpreted that there have been a lawsuit before (for at the request of applying temporary emergency measures, the Judicial authorities considered this as a case and there had been Parties)</p> <p>- On situations to apply/conditions to apply temporary emergency measures: According to Vietnam legislations, the right holder can only make request in 02 cases (risk of irreparable harm, the risk of dispersing or burned), while EVFTA prescribed many cases, each case with the temporary emergency measures accordingly ... (02 cases under Vietnam legislations are merely cases which, according</p>
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<p>confidential information. These measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.</p> <p>2. Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the judicial authorities shall have the authority to adopt those provisional measures without the other party being heard.</p> <p>3. The provisions of this Article are without prejudice to Article 50 of the TRIPS Agreement.</p>		<p>to EVFTA, shall be considered as serious that the Judicial authorities adopt temporary emergency measures without the other party being heard.</p> <p>Recommendation:</p> <p>Make amendments to the intellectual property rights Law to be fully in compliance with the EVFTA on the above differences.</p>
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<p>Article 15 Evidence</p> <p>Parties shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, Parties may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence. In the case of an infringement committed on a commercial scale Parties shall take such measures as are necessary to enable the</p>	<p>Article 203 Law on Intellectual Property</p>	<p>Assessment:</p> <p>Vietnam legislations have generally met the requirements of the EVFTA for the following reasons:</p> <ul style="list-style-type: none"> - Recognized the right to order the opposing party to present relevant evidence. - Evidence is not limited to whether in quantity or specific forms (thus, evidence relating to the communication of banking, financial or commercial documents); - With regard to the quantity of evidence, this is not compulsory in the EVFTA, therefore though Vietnam legal framework does not state, it is consider full compliance. <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
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<p>competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.</p>		
<p>Article 16 Right of Information</p> <p>1. Without prejudice to its domestic law governing the protection of confidentiality of information or processing of personal data, each Party shall provide that, in civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the applicant, the competent judicial authorities may order the infringer or, in the alternative, the alleged infringer, and/or any other person indicated below, to provide</p>	<p>- Article 203.5 Law on Intellectual Property</p> <p>- Article 58.1.c, Article 94, Article 389 Civil Procedure Code 2004</p> <p>- Article 70.7, Article 106, Article 495 Civil Procedure Code 2015</p>	<p>Assessment:</p> <p>1. Vietnam legislations (intellectual property rights Law) have provisions on the right of the competent judicial authorities to order the infringer (presumed the alleged infringer, or offending party), to provide evidence and unlimited forms of evidence, hence considered including information as defined in the EVFTA;</p> <p>2. With regard to mechanism process, according to Vietnam legislations:</p> <p>- With regard to conditions for the right holder to request the competent judicial authorities to order other Parties to provide information: Vietnam legislations do not define any terms</p>

<p>information as laid down in its applicable laws and regulations that the infringer or alleged infringer, or any other party possesses or controls.</p> <p>‘Any other person’ in this paragraph may include a person who:</p> <p>(i) was found in possession of the infringing goods on a commercial scale;</p> <p>(ii) was found to be using the infringing services on a commercial scale;</p> <p>(iii) was found to be providing on a commercial scale services used in infringing activities; or</p> <p>(iv) was indicated by the person referred to in this subparagraph as being involved in the production, manufacture or distribution of the goods or the provision of the</p>		<p>and conditions, whereas the EVFTA provision states that the order is to have grounds and proportionate (i.e., Vietnam legislation is better in the term of the Judicial authorities order, thus, full compliance with EVFTA. However EVFTA provisions are more reasonable, allow to restrict the abuse of using the right to order of the Judicial authorities in this case)</p> <p>- With regard to information mechanism, type of information: EVFTA provisions “depends on national legislations”, thus, Vietnam legislations is fully compliance.</p> <p>- With regard to right holders to presented information upon request of the Judicial authorities: According to Vietnam legislations there is only the infringer, while according to the EVFTA, the Judicial authorities has the right to order other Parties. However it is not compulsory request of EVFTA (the Parties “may” set rules), thus Vietnam legislations is fully compliance.</p>
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<p>services.</p> <p>2. The relevant information referred to in paragraph 1 may include information regarding any person involved on a commercial scale in the infringement or alleged infringement and regarding the means of production and distribution networks of the goods or services which infringe an intellectual property right.</p>		<p>Recommendation:</p> <p>Consider making amendments Article 203 in the intellectual property rights Law to add provisions of EVFTA relating to conditions for the Judicial authorities to order other Parties to provide information.</p>
<p>Article 17 Other Remedies</p> <p>1. The Parties shall ensure that the competent judicial authorities shall have the authority to order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, in such a manner as to minimize the risks of further infringements:</p>	<ul style="list-style-type: none"> - Article 202, Article 214, Article 215 Law on Intellectual Property. - Article 11.3 Law on Publication 2012. - Article 3 Decree No. 99/2013/NĐ-CP date 29th Aug 2013 of the Government - Chapter IV Decree No. 105/2006/NĐ-CP dated 22nd Sept 2006 of the Government (amended and Revised by Decree No. 119/2010/NĐ-CP): Article 28 to Article 33 - Part B-IV, Article 5.3 Part B-IV Joint Circular 	<p>Assessment:</p> <p>In principle, Vietnam legislations have met Article 17 of the EVFTA requirements.</p> <ul style="list-style-type: none"> - Vietnam has made regulations in compliance with agreement made in Article 17.1 (c) - Regulations in Article 17.1 (a) and (b) is more specific than Vietnam current regulations with regard to measurements made by the Judicial authorities in a civil case. However these measurements are defined concretely in sanctioning of administrative

<p>(a) the recall from the channels of commerce;²¹</p> <p>(b) the disposal outside the channels of commerce or;</p> <p>(c) the destruction of goods that they have found to be infringing an intellectual property right. The competent judicial authorities may also order destruction of materials and implements, whose predominant use of which has been in the creation or manufacture of those goods, or their disposal outside the channels of commerce in such a manner as to minimise the risks of further infringement.</p> <p>2. The Parties' judicial authorities shall have the authority to order that the remedies under this Article, at least for the destruction, including the removal from the channels of</p>	<p>No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP dated 3rd Apr 2008</p>	<p>violations in the field of industrial property.</p> <p>- Currently Vietnam has provisions that the judicial authorities shall have the authority to order that the removal from the channels of commerce for destruction, be carried out at the expense of the infringer.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
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²¹ Parties will ensure that this provision applies to infringing goods found in the channels of commerce and that infringers should be ordered to at least recall the goods back from its customers (for example wholesalers, distributors, retailers).

<p>commerce for destruction, be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.</p>		
<p>Article 18 Injunctions</p> <p>The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer and where appropriate, against a party whose services are being used by the infringer and over whom the relevant judicial authority exercises jurisdiction, an injunction aimed at prohibiting the continuation of the infringement.</p>	<p>Article 202, Article 216, Article 218 Law on Intellectual Property</p>	<p>Assessment:</p> <p>1. If Article 18 is to interpreted as the injunction to violations</p> <ul style="list-style-type: none"> - With regard to infringement of an intellectual property right at border, Vietnam legislations (Article 216, 218 Intellectual property law) presently define measurements against infringing commodities, not limited to the right holder (whether commodities are in hands of the infringer or the party whose services are being used by the infringer). Thus it is in full compliance with the Agreement. - With regard to infringement of commodities not relating to the import and export procedure, Vietnam legislations (Articles 202, Intellectual property Law) are not satisfy the requirements of the Agreement (Vietnam legislations merely provide measurements

		<p>apply to the infringer, while EVFTA provisions measurements to the party whose services are being used by the infringer.</p> <p>2. Legal expert suggested that Article 18 of this Agreement shall not be interpreted as injunction issued against the infringer concluded by the Judicial authorities; rather, it is an injunction aimed at prohibiting the continuation of the infringement. For instance, after judicial conclusion, the same infringement reoccurred after some time, the judicial authorities may order the injunctions without trial or consider re-adopt temporary emergency measures.</p> <p>- If interpreted in this sense, current Vietnam legislations do not comply with EVFTA (current Vietnam legislations only have measurements for violated activities concluded by the Judicial authorities)</p> <p>Recommendation:</p> <p>- With regard to the first interpretation: amend Article 202 of Intellectual Property Law</p>
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		<p>to add the provisions of EVFTA about the applicability of measures considering the party whose services are being used by the infringer and taken controlled of infringing commodities.</p> <p>- With regard to the second interpretation: Consider revising Article 202 of the Intellectual property Law on criterion of infringement.</p>
<p>Article 19 <i>Alternative Measures</i></p> <p>The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 17 (Corrective measures) and/or Article 18 (Injunctions), the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person</p>	<p>Article 202, Article 214, Article 215 Law on Intellectual Property</p>	<p>Assessment:</p> <p>Vietnam legislations have pecuniary compensation provision, yet it is an independent measures, not alternative one as EVFTA states.</p> <p>However it is Vietnam rights, EVFTA is not compulsory to follow. Yet this measure is significant in helping right holder to have better protection, more flexibility (note that the violation is determined by the competent judicial authorities, the infringer is to take responsibility for his action), should be</p>

<p>acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.</p>		<p>consider to apply in domestic legislations.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - In principle, no revision to current Vietnam Intellectual property Law recommended. - With regard to protection of the right holder legitimate interest, in cases that violations have been clearly define, consider revise Intellectual property Law to add EVFTA regulations on replace measures with alternative measures such as pecuniary compensation with method (conditions) as stated in Article 19.
<p>Article 20 Damages</p> <p>1. The Parties shall ensure that the judicial authorities have the authority to order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right-holder damages to compensate for the actual injury the right holder has suffered as a result of the</p>	<ul style="list-style-type: none"> - Article 202.4, Article 204, and Article 205 Law on Intellectual Property - Section 2 Decree No. 105/2006/NĐ-CP dated 22nd Sept 2006 of the Government (amended and Revised by Decree No. 119/2010/NĐ-CP): Article 16 đến Article 20 - Part B-I, Part B-IV.4 Joint Circular No. 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP dated 3rd Apr 	<p>Assessment:</p> <p>1. In principle, Vietnam legislations meet Article 20 of EVFTA requirements.</p> <ul style="list-style-type: none"> - At present, Vietnam has provisions on types of damages to compensate under Article 20.1 (a) of EVFTA. - With regard to determine the amount of damages, Vietnam has appropriate regulation

<p>infringement.</p> <p>In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority:</p> <p>(a) to take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer²² and, in appropriate cases, elements other than economic factors²³</p> <p>(b) in appropriate cases, to set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in</p>	<p>2008</p>	<p>on this issue. Vietnam legislations (Article 2015.1b. Intellectual property Law) have defined the damages amount as fees which would have been due if the infringer had requested authorization to use the intellectual property right in question according to Point B, paragraph 1 Article 20.</p> <p>2. Vietnam has not yet distinguished methods of determining the amount of damage in the case where the infringer acknowledge or with reasonable grounds to know that he is engage in infringing and the case where the infringer did not knowingly engage in infringing activity.</p> <p>Recommendation:</p> <p>Revise and implement Article 205, Intellectual property Law, adding 02 specific cases (the infringer acknowledge or not know about the infringement)</p>
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²² The calculation of unfair profits made by the infringer shall not be duplicated in calculating lost profits.

²³ Non-economic factors shall include moral prejudice caused by infringement of moral rights of inventors/authors.

<p>question.</p> <p>2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.</p>		
<p>Article 21 Legal Costs</p> <p>Each Party shall provide that its judicial authorities, as a general rule and, where appropriate, have the authority to order that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic law.</p>	<ul style="list-style-type: none"> - Article 205.3 Law on Intellectual Property - Article 3, Article 4, Article 27, and Article 30 Ordinance 10/2009/UBTVQH12 dated 27th Feb 2009 of the Standing Committee of the National Assembly. - Article 8.2, Article 29, Article 31, and Article 32 Ordinance No. 02/2012/UBTVQH13 dated 28/3/2012 of the Standing Committee of the National Assembly. - Chapter IX Civil Procedure Code 2004 from Article 127 to Article 145 	<p>Assessment:</p> <ul style="list-style-type: none"> - With regard to legal cost, assessment cost is conducted by proceeding agencies, attorney's fees, Vietnam legislations have concrete regulations on the Party that have responsibility with legal costs, thus fully compliance with Article 21 of EVFTA. - With regard to cost assessment in the case of request or other circumstances, cost of assets evaluation, cost for witnesses, cost for the translator, Vietnam legislations have specified the Party to be obliged to pay, not necessarily

	<p>- Chapter IX Civil Procedure Code 2015 from Article 143 to Article 169</p>	<p>the losing party. However, the agreement under Article 21 relates to "other costs", which "depends on domestic legislations", Vietnam laws is therefore in full compliance with EVFTA.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Article 22 Publication of Judicial Decisions</p> <p>Judicial authorities shall have the authority to order, pursuant to its domestic law and policies, the publishing or making available to the public, at the expense of the infringer, appropriate information as decided by the judicial authorities concerning the final judicial decision.</p>	<p>- Article 227 Civil Procedure Code 2004;</p> <p>- Article 109, and Article 254 Civil Procedure Code 2015;</p> <p>- Resolution No. 03/2015/NQ-HĐTP dated 28/10/2015 of the Justices Council of the Supreme People Court</p>	<p>Assessment:</p> <p>Vietnam legislations do not have compulsory provisions in publication of judicial decisions in general, and that of Intellectual property Laws in particular.</p> <p>Vietnam legislations are not given authority to judicial authorities to publish appropriate information as decided by the judicial authorities regardless of Party responsible for the legal cost.</p> <p>In reality, at present, judicial authorities still gather significant sentences to publish,</p>

		<p>although on October 28th 2015, the Justices Council of the Supreme People Court issued Resolution No. 03 / 2015 / NQ-HDTP on the procedure of judicial selection, publication and application of case law, but in general, Vietnam has yet to implemented the publication of judicial decisions practically.</p> <p>However, EVFTA put emphasis on the compliance of domestic legislations relating to this issues (i.e., EVFTA does not bound Vietnam to the revise and implementation if the domestic laws does not stipulate it). Hence, in principle, Vietnam Legislations have meet Article 22 of EVFTA requirements.</p> <p>Recommendation:</p> <p>In principle, no revision to current legal framework recommended</p>
<p>Article 23 <i>Presumption of Authorship or Ownership</i></p> <p>The Parties shall recognise that, for the purposes of applying the measures, procedures and remedies</p>	<p>Article 203 Law on Intellectual Property</p>	<p>Assessment:</p> <p>Vietnam legislations have yet to regulate on the presumption of Authorship of Ownership.</p> <p>Specifically, according to Vietnam Laws, for</p>

<p>provided for in this Agreement for the author of a literary or artistic work, and for the other right holders with regard to their protected subject matter, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for their name to appear on the work or protected subject matter in the usual manner.</p>		<p>Parties to be recognized as the right holder, they have to provide concrete proof with regard to their protected subject matter (mostly official documents; in the absence of protection register, shall have the documents, exhibitions or information regarding the basis of rights...); while under EVFTA, in the absence of proof to the contrary, it shall be sufficient for Parties to be the right holder if they have their name to appear on the work or protected subject matter.</p> <p>Recommendation:</p> <p>Amending Article 23 of Vietnam Intellectual property Law to revise and implement to meet Article 23 of EVFTA requirements.</p>
<p>Sub-Section C.3</p> <p>Border Enforcement</p>		
<p>Article 24 Consistency with GATT and TRIPS Agreement</p> <p>In implementing border measures for the enforcement of intellectual</p>	<p>Law on Intellectual Property</p> <p>Law on Custom</p>	<p>Assessment:</p> <p>Vietnam legislation had been revised meet GATT and TRIPS requirements, therefore,</p>

<p>property rights by customs covered by this article, the Parties shall ensure consistency with their obligations under the GATT and TRIPS agreements and, in particular, with Article V of GATT agreement, Article 41 and Section 4 of the Part III of TRIPS agreement.</p>		<p>meet Article 24 of EVFTA requirements.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
<p>Article 25 Definitions</p> <p>For the purposes of Sub-section 3.2:</p> <p>1. Goods infringing an intellectual property right” means goods, the importation or exportation of which, according to the law of the country where the goods are found, infringe an intellectual property right, consisting of counterfeit goods referred to in paragraph 2(a) and pirated copyright goods referred to in paragraph 2(b).</p>	<p>- Article 3.2, Article 28.1, and Article 28.2 Commercial Law 2005²⁴</p> <p>- Article 213 Law on Intellectual Property</p> <p>- Article 3.1 Circular No. 13/2015/TT-BTC dated 30th Jan 2015</p> <p>- Article 3.8 Decree No. 185/2013/NĐ-CP dated 15th Jan 2013 of the Government (amended and Revised by Decree No. 124/2015/NĐ-CP)</p> <p>Law on Intellectual Property</p> <p>Article 124. Use of industrial property</p>	<p>Assessment:</p> <p>In general, Vietnam legislations had defined these terms in wider scope than those under Article 25 of EVFTA, hence it is compliance in principle.</p> <p>Note: It is suggested that the current Article 124 of Intellectual property Law refers to the using form of intellectual property object is merely consisting of “imported goods”, not including “exported goods”, thus, it is not consistent with the definition in paragraph 1 Article 25 of the Agreement on goods (which states goods include both imported goods and</p>

²⁴ Commercial Law No. 36/2005/QH11 of the National Assembly dated 14th Jun 2005 (“**Commercial Law 2005**”)

<p>2. (a) "counterfeit goods" means:</p> <p>(i) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and the importation or exportation of which thereby infringes the rights of the owner of the trademark in question under the law of the country where the goods are found (ii) "counterfeit geographical indication goods", namely goods, including packaging, unlawfully bearing a geographical indication identical to the geographical indication validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a geographical indication,</p>	<p>objects</p> <p>1. Use of an invention means the performance of the following acts:</p> <p>dd) Importing the products stipulated in at Point c of this Clause.</p>	<p>exported goods). It is a sensible suggestion with regard to the latent (for the nature of export products shall be seen as a form of Intellectual property object, bring benefit to the user).</p> <p>However, with regard to commitment, it is not suitable, for the definitions of "goods" under Article 25, paragraph 1 is applicable only to Section 3.2, i.e., it is only applicable to measures at border); according to Vietnam legislations (article 126, Intellectual property Laws and Article 73-76 Custom Law), all measures at border relating to intellectual property rights are currently applicable to both import and export goods.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
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<p>and the importation or exportation of which thereby infringes the rights of the geographical indication in question under the law of the country where the goods are found</p> <p>(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy as well as importation or exportation would have constituted an infringement of a copyright or a related right under the law of the country of importation or country of exportation respectively.</p> <p>3. "Import goods" shall mean goods brought into the territory of a Party from a place outside that territory, while those goods remain under</p>		
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<p>customs control.</p> <p>4. "Export goods" shall mean goods which are to be taken from the territory of a Party to a place outside that territory, while those goods remain under customs control.</p>		
<p>Article 26 Scope of Border Measures</p> <p>1. Each Party shall adopt procedures with respect to import and export goods, under which right holders can record IPRs within the customs authorities, and such authorities shall carry out appropriate controls in order to identify goods suspected of infringing those recorded IPRs.</p> <p>2. The customs authorities shall, in accordance with domestic procedures, suspend the release of the goods suspected of infringing IPRs recorded within the customs authorities.</p>	<ul style="list-style-type: none"> - Section 2 Chapter XVIII Law on Intellectual Property 2005: Article 216 - Article 219 - Article 4 Decree No. 185/2013/NĐ-CP dated 15th Jan 2013 of the Government (amended and revised by Decree No. 124/2015/NĐ-CP) - Circular No. 13/2015/TT-BTC dated 30th Jan 2015 - Article 14 Circular No. 39/2015/TT-BTC dated 25th Mar 2015 	<p>Assessment:</p> <p>In principle, Vietnam legislations meet Article 24 requirements of the EVFTA.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>

<p>Article 27 Active Involvement of Customs Authorities</p> <p>The customs authorities shall be active in targeting and identifying shipments containing import and export goods suspected of infringing an intellectual property right on the basis of risk analysis techniques. They shall provide for cooperation with right holders, including allowing the provision of information for risk analysis.</p>	<p>- Article 200, and Section 2 Law on Intellectual Property 2005: from Article 216 to Article 219</p> <p>- Article 4.2 Circular No. 13/2015/TT-BTC dated 30th Jan 2015</p>	<p>Assessment:</p> <p>1. In principle, Vietnam has yet conflict with EVFTA on this issue. However, Vietnam legislations mainly regulate provisions that the right holder shall be active and allowed to be actively join with the Custom in particular administrative work; without regulating the rights and liabilities of this issue in the Custom authorities' liabilities. The EVFTA agreement, on the contrary, defines that the customs authorities shall be actively cooperate with the right holder of intellectual property rights.</p> <p>2. Vietnam legislations has yet to have provisions on the responsibilities of Custom for the cooperation with the intellectual property rights right holder, including allowing the provision of information for risk analysis.</p> <p>Recommendation:</p> <p>Amending Article 200.4, Intellectual property Laws to revise and add EVFTA regulations on:</p> <p>- Liability to cooperate actively of Custom</p>
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		<p>authorities;</p> <p>- Liability in allowing the provision of information for risk analysis for the right holders</p> <p>Note: Logically says, these provisions shall be adopted in the Customs Law (Customs Act or decrees guiding the Customs Law). However, these documents are recently enacted and taken effect (2014 – 2015) and a preliminary review reveals minimum modifications need in accordance with TPP and EVFTA, thus, the recommendation to amend the Customs Law is not feasible. While the Intellectual property Laws are to be amended to implement EVFTA and TPP, it is recommended that this regulation be implemented in the Intellectual property Laws. In the future, when the Customs Law is amended, regulations under Article 27 is to be recommended to adopt in the Customs legislations.</p>
<p>Article 28 Specific Cooperation in the Area of Border Measures</p>	<p>No regulation</p>	<p>Assessment:</p> <p>At present, Vietnam legislations only have</p>

<p>1. Without prejudice to Article 2 section 2 (a) of the Chapter on Customs and Trade Facilitation, the Parties shall, where appropriate, arrange for exchange of information and cooperation between their customs authorities to enable effective border controls for intellectual property right enforcement, particularly in order to effectively implement article 69 of the TRIPS Agreement.</p> <p>2. The Parties shall, where appropriate, arrange for exchange of information and best practices between their customs authorities with regard to customs enforcement of intellectual property rights.</p> <p>3. Without prejudice to the general competence of the Trade Committee, the [Special Committee on Customs] referred to in Article [to complete] of this Agreement shall be responsible</p>		<p>general provisions on cooperation in the area of border measures.</p> <p>To specify this regulation in the case of EVFTA, it is necessary to have more concrete agreements among Parties.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended.</p>
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<p>to ensure the proper functioning and implementation of this Article. The Special Committee will set the priorities and provide for the adequate procedures for cooperation between the competent authorities.</p>		
<p>Sub-Section C.4 Other Enforcement Provisions</p>		
<p>Article 29 Codes of Conduct</p> <p>1. Parties shall encourage:</p> <p>a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights.</p> <p>b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.</p>	<p>Decree No. 45/2010/NĐ-CP of the Government</p>	<p>Assessment:</p> <p>Vietnam legislations have no relevant provision relating to this issue. However, Vietnam laws do not prohibit organizations to publish a general Codes of Conduct, or a specify Codes of Conducts for Intellectual property Laws.</p> <p>Recommendation:</p> <p>Consider making amendments by stimulating the Code of Conduct (in all fields) on the Draft Law on Associations (to be reviewed by Parliament in the next session)</p>

<p>Article 30 Co-operation</p> <p>*1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter.</p> <p>*2. Subject to the provisions of Article [X, horizontal art. on assistance/co-operation issues] of this Agreement, areas of co-operation include, but are not limited to, the following activities:</p> <p>a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the European Union and Vietnam on legislative progress;</p> <p>b) exchange of experiences and information in the European Union and Vietnam on enforcement of</p>	<p>No regulation.</p>	<p>Assessment:</p> <p>Out of the scope of domestic legislations with regard to intellectual property rights Law.</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended</p>
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<p>intellectual property rights;</p> <p>c) exchange of experiences in the European Union and Vietnam on central and sub-central enforcement by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;</p> <p>d) capacity-building; exchange and training of personnel;</p> <p>e) promotion and dissemination of information on intellectual property rights in, inter alia, business circles, socio-professional, social organisations; public awareness of consumers and right holders;</p> <p>f) enhancement of inter-governmental co-operation, for example between intellectual property offices;</p>		
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<p>g) actively promoting awareness and education of the general public for intellectual property rights policies: formulate effective strategies to identify key audiences and create communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.</p> <p>3. Without prejudice and as a complement to paragraphs 1 and 2, the Parties agree to hold effective dialogues as necessary on intellectual property issues ("Working Group on IPR (including GIs)"), to address topics relevant to the protection and enforcement of intellectual property rights covered by this chapter, and also any other relevant issue.</p>		
<p>Article XX <i>Liability of Intermediary</i></p>	<p>- Article 4.10, Article 20.1 (d), Article 25,</p>	<p>Assessment:</p>

<p>Service Providers</p> <p>(1) Subject to the other paragraphs of this Article, each Party shall provide limitations or exemptions in its domestic legislation regarding the liability of intermediary service providers for infringements of copyright or related rights that take place on or through tele-communication networks²⁵ in relation to the provision or use of their services.</p> <p>(2) The limitations or exemptions referred to in the previous paragraph shall cover at least the following activities:</p> <p>(a) the transmission in a tele-communication network of information provided by a user of the service, or the provision of access to a tele-communication network</p>	<p>Article 29.3 (d), Article 30.1 (b), Article 31.1(d), Article 32 Law on Intellectual Property</p> <p>- Article 5 Joint Circular No. 07/2012/TTLT-BTTTT-BVHTTDL dated 19th Jun 2012</p>	<p>1. On cases that are free of liability:</p> <ul style="list-style-type: none"> - Vietnam legislations and EVFTA have different approach on this issue. Specifically, while Vietnam legislations regulations are on cases that shall be liable (presumed that other cases will not be held responsible), EVFTA regulations are on cases that required to be excluded or exempt from liability. - With regard to content, the cases where the intermediary service provider shall be liable under current Vietnam legislations do not include cases of mandatory indemnity for service providers in EVFTA. Thus Vietnam legislations is not conflict with EVFTA on this issue. <p>2. On the right to order the intermediary service providers implement action to stop and prevent infringements:</p> <ul style="list-style-type: none"> - Vietnam legislations have regulations on this issue (this is more a matter of rights, VN may
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²⁵ This also includes the Internet.

<p>("mere conduit") ;</p> <p>(b) the transmission in a telecommunication network of information provided by a user of the service concerning the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other users of the service upon their request ("caching"), on condition that:</p> <p>(i) the provider does not modify the information other than for technical reasons;</p> <p>(ii) the provider complies with conditions on access to the information;</p> <p>(iii) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by</p>		<p>prescribe or not specify).</p> <p>Recommendation:</p> <p>No revision to current legal framework recommended.</p> <p>Note that TPP agreements in this issue have many details that are differ from those of Vietnam legislations, and similar to MFN principle, TPP agreements are to apply for EVFTA. Hence, although following EVFTA, Vietnam shall not have to make any modifications regarding the domestic's regulations, but it is to be amended after reviewing the TPP Agreements in this issue.</p>
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<p>industry;</p> <p>(iv) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information;</p> <p>(v) the provider removes or disables access to the information it has stored upon obtaining knowledge²⁶ of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled</p> <p>(c) the storage of information provided by a user of the service at the request of a user of the service ("hosting") on condition that:</p> <p>(i) the provider does not have the</p>		
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²⁶ Nothing in this Chapter precludes either of the Party to define in its national law conditions for determining how the knowledge about illegal information being hosted is obtained

<p>knowledge of illegal information and</p> <p>(ii) upon obtaining such knowledge²⁷ the provider acts expeditiously to remove or to disable access to information.</p> <p>(3 bis) Each Party may also prescribe in its domestic law circumstances under which intermediary service providers do not qualify for the limitations or exceptions in paragraph 2.</p> <p>(4) Eligibility conditions for service providers to qualify for the limitations or exceptions in paragraph 2 may not include the service provider monitoring its service, or seeking facts indicating infringing activity.</p> <p>(5) Each Party may establish procedures for effective notifications</p>		
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²⁷ Nothing in this Chapter precludes either of the Party to define in its national law conditions for determining how the knowledge about illegal information being hosted is obtained.

of claimed infringement, and effective counter-notifications.

(6) This Article shall not affect the possibility of a court or administrative authority, in accordance with Parties' legal systems, of requiring the intermediary service provider to terminate or prevent an infringement.