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ACCESSION OF VIETNAM

Action Plan for the Implementation of the TRIPS Agreement

The Government of the Socialist Republic of Vietnam has submitted the following Action Plan for the Implementation of the Trade-Related Intellectual Property Rights (TRIPS), with the request that it be circulated to the members of the Working Party.

Plan of Action for the Implementation of the TRIPS Agreement

1. The Plan of Legislation

The legal system of Vietnam for protection of intellectual property rights (provided for mainly in the Sixth Part of the Civil Code 1995 and its implementing regulations) was based upon consultation of relevant laws of other countries all over the world and two fundamental conventions of the World Intellectual Property Organization, namely, the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic works, as well as provisions of the TRIPS Agreement. Therefore, in general it has already met current international standards. However, several of its provisions are still inconsistent with the TRIPS Agreement, and are therefore to be amended and supplemented. Vietnam has launched a legislation plan with the aim to fully implement the TRIPS Agreement by the end of 2000, as follows:

The WTO requirements under the TRIPS Agreement	The matters inconsistent with the TRIPS requirements in the prevailing laws of Vietnam	The legislation plan	Time and progress made
1. <u>National Treatment</u> Article 3 of the TRIPS Agreement and Note 3 thereof provide that each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property, where “protection” shall mean to include matters affecting the availability, acquisition, establishment, scope, maintenance and enforcement of IPRs.	The Circular No. 23 TC/TCT of May 9, 1997 of the Ministry of Finance guiding the collection and management of fees and charges in the field of industrial property provides the rate applied to foreign organisations and individuals higher than that applied to Vietnamese organisations and individuals.	To make an amendment to the Circular No. 23 TC/TCT of May 9, 1997 of the Ministry of Finance to provide a single rate applied to both foreigners and Vietnamese.	Submission of the Draft: 2000 Promulgation: 2000

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<p>2. <u>Copyrights and Related Rights</u></p> <p>The TRIPS Agreement requires the protection of copyrights in compliance with the standards of the Bern Convention, and provides in more detail and adds specific obligations concerning computer programs, databases or compilations of data, it also requires the protection of related rights in compliance with the standards as provided for in Article 14.</p>	<p>The prevailing laws of Vietnam do not have provisions corresponding to the following standards provided for in the TRIPS Agreement: the detailed regulations on the protection of computer programs and compilations of data (Article 10); the provisions on the term of protection of performers (Article 14.1); the provisions on the rights of fixation and communication to the public of broadcasts (Article 14.3); the provisions on the right of rental of phonograms (Article 14.4); the provisions on the right of communication to the public in respect of performance of dramatic, dramatico-musical and musical works (Article 9.1);</p> <p>Section 774 and Section 776 of the Civil Code 1995 restrict rights of authors of the published works in respect of the performance of the dramatic, dramatico-musical, musical and the fixation of the musical works, that are inconsistent with the requirements of Article 9.1 of the TRIPS Agreement.</p>	<p>To make an amendment to the Decree No. 76/CP of November 26, 1996 of the Government on copyrights, whereby provisions related to the implementation of international conventions on the protection of copyrights and other provisions shall be supplemented.</p>	<p>Submission of the Draft: 2000</p> <p>Promulgation: 2000</p>

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<p>3. <u>Trademarks, including service marks</u></p> <p>Article 16.1 of the TRIPS Agreement provides: “The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion”.</p> <p>Articles 16.2 and 16.3 of the TRIPS Agreement require the protection of well-known trademarks in compliance with Section 6bis of the Paris Convention against unauthorized registration and use, including the use for dissimilar goods and services.</p>	<p>The scope of trademark protection is more restricted than that required by the TRIPS Agreement: According to Section 53.1 and Section 34.3 of the Decree No. 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property, the acts which shall be considered as infringements of industrial property rights in respect of a registered trademark within the term of protection include the use of that trademark without authorization of the trademark owner.</p> <p>The protection of well-known trademark is just against the unauthorized registration as provided for in Section 6.1 of the Decree No. 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property.</p>	<p>To make an amendment to the Decree No. 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property, whereby the scope of protection of registered trademarks will be extended and provisions on the protection of well-known trademarks will be added.</p>	<p>Submitted the Draft: 1999</p> <p>Promulgation: 2000</p>
<p>4. <u>Geographical indications, including appellations of origin</u></p> <p>Article 22 of the TRIPS Agreement requires the protection of geographical indications in general, including appellations of origin.</p>	<p>The protection of geographical indications is inadequate in comparison with requirements of the TRIPS Agreement: According to Section 7.2 of the Decree 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property, the only one protected type of geographical indications is appellations of origin of goods; Geographical indications other than geographical names, even symbols of a country or a locality from which the goods originate, are not protected.</p>	<p>To promulgate regulations on the protection of geographical indications in the following new pieces of legislation:</p> <ul style="list-style-type: none"> - A Decree of the Government on the protection of trade secrets, geographical indications, trade names and the protection against unfair competition relating to industrial property; - A Circular of the Ministry of Science, Technology and Environment guiding the implementation of provisions on the protection of geographical indications as provided for in the said Decree. 	<p>Submitted the Draft: 1999</p> <p>Promulgation: 2000</p> <p>Submission of the Draft: 2000</p> <p>Promulgation: 2000</p>

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<p><u>5. Industrial Designs</u></p> <p>Article 26.1 of the TRIPS Agreement provides: "The owner of a protected industrial design shall have the exclusive right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes".</p>	<p>The scope of industrial design protection is more restricted than that required by the TRIPS Agreement: According to Section 53.1 and Section 34.2 of the Decree No. 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property, the acts which shall be considered as infringements of a registered industrial design within the term of protection include the use of that industrial design without authorization of the industrial design owner.</p>	<p>To make an amendment to Decree 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property, whereby the scope of protection of industrial designs will be extended.</p>	<p>Submitted the Draft: 1999 Promulgation: 2000</p>
<p><u>6. Patents for inventions/micro-organisms</u></p> <p>Article 27 of the TRIPS Agreement requires patent protection of inventions in all fields of technology, including microorganisms.</p>	<p>Microorganisms are patentable (not falling under the list of patent exclusions as provided for in Section 4.4 of the Decree 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property).</p> <p>However, at present there is still a lack of detailed provisions on the form of patent application, the examination procedures as well as deposit procedures in respect of microorganisms, and there has not yet been enough sufficient technical conditions to conduct the examination of the patent application in respect of microorganisms.</p>	<p>To promulgate a Circular of the Ministry of Science, Technology and Environment providing the application form, the examination guidelines and deposit of microorganisms for the purpose of examination of the patent applications in respect of microorganisms.</p>	<p>Submission of the Draft: 2000 Promulgation: 2000</p>

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<p><u>7. Patent for inventions/plant varieties</u></p> <p>Article 27.3 of the TRIPS Agreement requires that plant varieties shall be protected by the patent system or by an effective sui generis system.</p>	<p>Plant varieties are not patentable (falling under the list of patent exclusions as provided for in Section 4.4 of the Decree 63/CP of October 24, 1996 of the Government on detailed provisions of industrial property).</p> <p>The prevailing legal system of the protection of plant varieties (including the Decree No. 31/CP of 1981 on innovations and inventions; the Circular No. 01/NN-KCM of 1994 guiding the payment of remuneration for the authors of new plant and animal varieties; the joint Circular No. 1608/NN/UBKTNN of December 23, 1982 on the registration and the invention protection in respect of plant varieties; the Decree No. 07/CP 1996 on the management of plant varieties) is inefficient and fails to encourage creative activities: The rights of the author of a new plant variety, conferred by the Certificate of New Plant Variety Author which is effective within 15 years from the filling date of the application, include moral rights and the right to receive remuneration which is awarded at a low rate (it only bears a symbolic value). The exclusive right to use the new plant variety belongs to the State.</p>	<p>To promulgate provisions on the protection of new plant varieties in accordance with the UPOV standards in the following new pieces of legislation:</p> <ul style="list-style-type: none"> - A Governmental Decree on the protection of new plant varieties; - A Circular of the Ministry of Agriculture and Rural Development guiding the said Governmental Decree. 	<p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p>

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<p>8. <u>Process Patents /Proceedings in respect of the Infringement</u></p> <p>Article 34.1 of the TRIPS Agreement provides: in the civil proceedings in respect of the patent rights infringement of a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process used to obtain the allegedly infringing product is different from the patented process, otherwise any products in one of the following two cases shall be deemed to have been obtained by the patented process:</p> <ul style="list-style-type: none"> - if the product obtained by the patented process is new; - if there is a substantial likelihood that the allegedly infringing product was made by the process and the owner of the patent has been unable through reasonable efforts to determine whether that process was actually used to obtain the allegedly infringing product or not. 	<p>The laws and regulations of Vietnam on civil procedures require the plaintiff to prove the accusation against the defendant rather than require the defendant to prove himself to be innocent.</p>	<p>To promulgate a regulation on the obligation of the defendant to prove himself to be innocent in the cases of infringement in respect of the process patent in a new pieces of legislation:</p> <ul style="list-style-type: none"> - A joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science, Technology and Environment guiding the judgement of cases related to industrial property rights. 	<p>Submission of the Draft: 2000 Promulgation: 2000</p>
<p>9. <u>Layout-Designs of Integrated Circuits</u></p> <p>The TRIPS Agreement requires that the layout-designs of integrated circuits shall be protected in accordance with the standards provided for in Articles 35 - 38.</p>	<p>Vietnam does not yet have any regulations on the protection of layout-designs of integrated circuits as prescribed in Articles 35 - 38 of the TRIPS Agreement.</p>	<p>To promulgate regulations on the protection of layout-designs of integrated circuits in the following new pieces of legislation:</p> <ul style="list-style-type: none"> - A Decree of the Government on the protection of layout-designs of integrated circuits; - A Circular of the Ministry of Science, Technology and Environment guiding the implementation of the said Decree. 	<p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p>

The WTO requirements under the TRIPS Agreement	The matters inconsistent with the TRIPS requirements in the prevailing laws of Vietnam	The legislation plan	Time and progress made
<p>10. <u>Undisclosed information, including trade secret and test data</u></p> <p>The TRIPS Agreement requires that undisclosed information (including trade secrets and test data) shall be protected in the course of ensuring protection against unfair competition in accordance with the standards as provided for in Article 39.</p>	<p>Vietnam does not yet have any regulations on the protection of undisclosed information (including trade secrets and test data) as prescribed in the Articles 35 - 39 of the TRIPS Agreement.</p>	<p>To promulgate regulations on the protection of undisclosed information in the following new pieces of legislation:</p> <ul style="list-style-type: none"> - A Decree of the Government on the protection of business secrets, geographical indications, trade names and the protection against unfair competition related to industrial property; - Circulars of the Ministry of Science, Technology and Environment, the Ministry of Agriculture and Rural Development and the Ministry of Health guiding the implementation of provisions on the protection of business secrets in the said Decree. 	<p>Submitted the Draft: 1999 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p>

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<p>11. <u>Enforcement of intellectual property rights</u></p> <p>The TRIPS Agreement requires the effective enforcement of intellectual property rights by civil, criminal and administrative procedures and remedies, including border measures in accordance with Part III of the Agreement.</p>	<p>Vietnam does not yet have detailed regulations guiding the implementation of the laws on general civil, criminal and administrative procedures and remedies against infringements of intellectual property rights in accordance with Part III of the TRIPS Agreement.</p>	<p>To promulgate detailed provisions on civil, criminal and administrative procedures and remedies against the infringements of intellectual property rights in the following new pieces of legislation:</p> <ul style="list-style-type: none"> - The Criminal Code - A joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science, Technology and Environment guiding the judgement of cases related to industrial property rights; - A joint Circular of Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Culture and Information guiding the judgement of cases related to copyrights and related rights; - A Governmental Decree on administrative measures against violations in the field of industrial property; - A Circular of the Ministry of Science, Technology and Environment guiding the implementation of the Decree No. 12/1999/N§-CP; - A joint Circular of the General Department of Customs and the Ministry of Science, Technology and Environment on border measures and procedures against infringement of industrial property rights in exportation and importation; 	<p>Promulgated: 1999</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Promulgated: The Decree No. 12/1999/N§CP of March 6, 1999</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p>

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		<ul style="list-style-type: none"> - A joint Circular of the General Department of Customs and the Ministry of Culture and Information on border measures and procedures against infringement of copyrights and related rights in exportation and importation; - A joint Circular of the Ministry of Science, Technology and Environment and the Ministry of Trade on market control measures and procedures against infringement of industrial property rights in manufacture, trade and service activities. - A joint Circular of the Ministry of Culture and Information and the Ministry of Trade on market control measures and procedures against infringement of copy- rights and related rights in manufacture, trade and service activities. 	<p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p> <p>Submission of the Draft: 2000 Promulgation: 2000</p>
<p>12. <u>Transitional protection</u></p> <p>Article 70.2 of the TRIPS Agreement requires each Member to apply all provisions of the TRIPS Agreement to all subject matter meeting the following conditions: the subject matter which is in existence, protected by that Member, meets or comes subsequently to meet the criteria for protection under the term of this Agreement at the date of application of this Agreement for the Member.</p>	<p>According to Section 69.2 of the Decree No. 63/CP of October 24, 1996 of the Government on detailed regulations concerning industrial property, patents granted on the basis of old regulations shall continue to be valid under such legal provisions until the date of expiry, i.e. the end of 15 years from the priority date, rather than 20th year from the filing date as newly provided for in the Decree No. 63/CP to meet the TRIPS requirements.</p>	<p>To promulgate provisions on the application of the 20 year term of protection to inventions protected under the old legal system by an amendment to the Decree No.63/CP of October 24, 1996 of the Government on detailed provisions of industrial property.</p>	<p>Submitted the Draft: 1999 Promulgation: 2000</p>

2. The plan of ensuring the effective enforcement of laws

The State of Vietnam already has an administrative system of intellectual property both in the central and local governments and a mechanism of law enforcement agencies to ensure intellectual property rights enforcement, and intellectual property has become of increasing interests of wide circles of the society. However, in order to ensure the effective operation of the legal system of intellectual property protection, Vietnam should strengthen capacity of its Governmental agencies and improve the public awareness. Vietnam has launched a detailed plan of ensuring the effective enforcement of laws as follows:

WTO Requirement under the TRIPS Agreement	The matters inconsistent with the TRIPS requirements in the prevailing laws of Vietnam	Plan of ensuring the effective enforcement of laws	Schedule
Part IV of the TRIPS Agreement requires Members to ensure that the acquisition and maintenance of intellectual property rights procedures shall not be complicated and unreasonably delayed.	Capacity of the State administrative agencies (especially the industrial property right establishment agency) is far from being in line with that of other countries, and insufficient to ensure high quality procedures.	- To strengthen capacity of the intellectual property right establishment agencies (mainly of the industrial property agency) in the following directions: (i) automating technical operation; (ii) retraining the staffs; (iii) separating the State management function (establishment of rights) from other service functions, including information service and consulting service;	2000- 2002
Part III of the TRIPS Agreement requires Members to ensure that procedures of intellectual property rights enforcement shall be in time, effective, equal and not complicated.	The system of intellectual property right enforcement is the system of general enforcement bodies, which are cumbersome, administrative nature, uncentralised authority, overlapped functions and without the cooperation power among them; Capacity of the enforcement agencies is far from being in line with that of other countries. The public awareness of intellectual property is still poor. The activities of education, training, propagation, dissemination with regard to intellectual property laws have been initially	- To set up an electronic network of industrial property information; - To survey and make general assessment of the structure of the enforcement agencies, to propose a model structure in the following directions: (i) setting up the industrial property right/copyright Courts of 3 or 5 regions that would be located in large cities (Hanoi, Haiphong, Danang, Ho Chi Minh City); (ii) centralising the intellectual property control function on 2 administrative agencies, namely Customs Office with the function of border control and the industrial property right/copyright management agencies with the	2000- 2002 2000- 2002

WTO Requirement under the TRIPS Agreement	The matters inconsistent with the TRIPS requirements in the prevailing laws of Vietnam	Plan of ensuring the effective enforcement of laws	Schedule
	developed, however all these activities are still unsystematic and inappropriate in terms of scale. The activities of natural persons and legal entities are spontaneous and individual; Social organisations in the field of intellectual property have not been established yet.	<p>function of domestic control;</p> <p>- To strengthen capacity (materials, techniques, staffs) of the system of enforcement agencies;</p> <p>- To establish a research and training institution; to establish regular training programmes on intellectual property to develop human resource for intellectual property system; to carry out such training programmes for key sectors which are still lack of professional staffs, especially to train and improve the enforcement staffs; to propagate and disseminate intellectual property laws to improve public awareness.</p>	<p>2000- 2002</p> <p>2000- 2002</p>

3. Technical Assistance Request

In order to implement the above-mentioned plan of action, Vietnam would like to request from WTO technical assistance under a special program of intellectual property cooperation for which Vietnam would make detailed proposals appropriate to its actual needs, similar to the technical assistance for WTO developing country Members under Article 67 of the TRIPS Agreement.