



VIETNAM CHAMBER OF COMMERCE AND INDUSTRY

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Hanoi, August 31, 2012

Ambassador Ron Kirk
600 17th Street, N.W
Washington, DC 20508

Regarding Intellectual Properties Chapter in TPP

Dear Ambassador Kirk,

The Vietnam Chamber of Commerce and Industry (VCCI) would like to express our sincere thanks and high appreciation of your goodwill and contribution to the impressive development of Vietnam - United States bilateral trade relation in recent time.

As a non-governmental organization representing Vietnam business community, with the support of many other interest groups (47 entities representing more than 43,000 companies, cooperatives, patient groups, etc.), we write regarding the ongoing Trans-Pacific Partnership (TPP) negotiations on Intellectual Properties (IP) Chapter.

Being the first entity in Vietnam raising the voice and urging Vietnam Government to make affirmative decision on the full membership of TPP negotiations in 2010, we do understand and expect much on TPP potential opportunities that could reasonably benefit Vietnam's businesses, farmers and the whole population.

However, on receipt of leaked Intellectual Properties (IP) Chapter Draft, we suddenly learnt that this TPP could impose challenges that might not be overcome and thus cause adverse and terrible impacts on a considerable and fragile part of Vietnam's population. Presumed to bring in further benefits to only a few IP right holders, the current Draft could also harm American consumers, although their incomes and living-standards are much higher than Vietnamese's.

The current IP Chapter Draft in TPP will, thus, be the main factor undermining quality of life, limiting incomes of poor people, aggravate social gaps and instability. We believe this is the most concern of TPP negotiating partners, and thus only by approaching this Chapter in a different way and revising the proposed provisions accordingly the TPP negotiations may be finally concluded.

Risks caused by current IP Chapter Draft

While fully aware of the necessity and benefits of IP rights protection in promoting innovation and economic development, and thus, in favor of reasonable IP protection in Vietnam as well as Vietnam's participation to WIPO Treaties by appropriate schedules, we are seriously concerned that:

- ***The enhancement of IP right holders' protection level and/or lowering IP rights eligible conditions (TRIPS+), especially in Patent and Data exclusivity regarding Pharmaceuticals, shall prevent any efforts in increasing access to this kind of products that are crucial in protecting human health and life in Vietnam as well as other countries***

At least for Vietnam, this perspective is unacceptable both from moral and legal points of views. According to a WHO report, in Vietnam, patients actually pay 46.58 times the international reference prices for innovator brands and 11.41 times for the lowest priced generics, while Vietnam has just "graduated" from the low-income country. Too-high-priced medicines is the main reason leading to too-low percentage of access-to-medicine in Vietnam, with only 20% in general and 13% for maternal-child medicines. If the current IP Chapter Draft is passed, all chances for reducing medicines' price in Vietnam shall be killed, and the situation shall thus be worse. With the fact that a large part of patients are or about in working-age, businesses and the whole society will adversely affected then;

- ***TRIPS+ in Patent and Data exclusivity regarding Agrichemicals, Geographical indications (GI) and Copyrights, shall draw back Vietnam's productions in general and agriculture in particular***

As Vietnam is a backward agricultural country which has undergone a long and difficult period of war and embargo, millions of Vietnam farmers are still spending a large part of production costs on fertilizers, plant protection chemicals and veterinary products. Higher protections on

Patent and Data exclusivity means raising agrichemicals' price, preventing any possibility to lower agricultural production costs and thus crushing all chances to ameliorate incomes of 69.4% Vietnamese population who are living on agricultural production at household size.

In Vietnam, most of GIs belong to poor countryside communities. Protecting GI by Trademark or Trademark-similar mechanisms shall absolutely give tools to bad guys to rob important properties that link to income, culture and life of many weak and limited-awareness communities in Vietnam countryside.

Similarly, TRIPS+ in Patent and Copyrights shall deprive many industries in Vietnam from the opportunity to modernize their current backward production because of too high-priced technologies;

- ***TRIPS+ might worsen the IP rights violation situation in Vietnam, and thus do more harm to right holders***

Vietnam has been facing with difficulties in implementing TRIPS standards (which are already high, as proposed by developed countries, including the US). So, any attempt to heighten current IP standards (TRIPS+) might be disabled in spite of Vietnam Government's goodwill. In this context, US right holders' benefits shall definitely be damaged. Thus, concentrating on proposals to enhance the enforcement of IP rights in Vietnam will be the best solution.

Recommended proposals for IP Chapter Negotiations

With those deep concerns, we would like that you and your TPP Negotiating Delegation take into account the following proposals:

- *NO enlargement of patentability scope to new items (especially new uses, plants, animals), NO extension for patent life span and NO lowering patent eligibility conditions:* With severe consequences on prices of those items essential to people income, life and health, the proposed measures in the Draft go against the world tendency where Governments are seeking hard to renegotiate for a lower protection of IP right holders regarding pharmaceuticals and agrichemicals. These measures conflict also to the TRIPS exceptions that the US itself agreed to, according to which patent is used to protect only real innovations that are meaningful and contributable to the development of human kind and the society but not to unreasonably prevent such development;
- *NO protection of GI under trademark or trademark-similar mechanisms:* GI has been a specific IP right, characterized by the fact that this kind of IP property does not belong to an individual person (natural or legal person) but the community as a whole, and that it is crucial not only to income but also to the communities' spiritual and social life. Protecting GIs under trademark or trademark-similar mechanisms (especially with their main principal of "first to file") shall nullify this core character of GIs at the detriment of fragile communities living on these GIs;
- *NO extension of copyright terms nor copyright protection scope (to technological protection measures – TPMs):* Drafted measures seeking for copyright term extension shall on one hand adversely and directly affect the cost and knowledge-access of the public, and do harm to individual freedom (of people using legally copyrighted items) in any countries on the other hand. In Vietnam, a backward developing country with high demand for the world diversified knowledge to develop, these impacts cannot be neglected.

We do believe that the income, life and health of millions Vietnamese and also American will depend on the negotiations and commitments in TPP IP Chapter. And we also strongly believe that you and your Delegation will take into account all those facts and proposals during TPP negotiations.

Thank you very much for your consideration and taking into account of our views, and we look forward to your response on these crucial issues.

Best regards,

Vu Tien Loc



President and Chairman of Vietnam Chamber of Commerce and Industry

Member of Vietnam National Assembly

**LIST OF VIETNAMESE ENTITIES
GIVING SUPPORT TO VCCI RECOMMENDATION ON IP CHAPTER NEGOTIATIONS IN TPP**

No.	Entity	Number of members
1	Vietnam Co-operative Alliance	18,104
2	Can Tho City Co-operative Alliance	210
3	Dong Thap Province Co-operative Alliance	131
4	Ha Giang Province Co-operative Alliance	359
5	Kien Giang Province Co-operative Alliance	118
6	Kon Tum Province Co-operative Alliance	
7	Lam Dong Province Co-operative Alliance	
8	Lang Son Province Co-operative Alliance	
9	Lao Cai Province Co-operative Alliance	231
10	Quang Binh Province Co-operative Alliance	298
11	Phu Tho Province Co-operative Alliance	
12	Thanh Hoa Province Co-operative Alliance	
13	Tien Giang Province Co-operative Alliance	117
14	Tuyen Quang Province Co-operative Alliance	150
15	Vinh Phuc Province Co-operative Alliance	
16	Vietnam Association of Seafood Exporters and Producers	286
17	Vietnam Catfish Association	
18	Vietnam Veterinary Pharmaceutical Association	87
19	Vietnam Poultry Association	240
20	Vietnam Fruit & Vegetables Association	80
21	Dalat City Fruit & Vegetables Association	
22	Vietnam Potato Association	8
23	Vietnam Rubber Association	142
24	Association of Seafood Exporters and Producers – Ca Mau Province	28
25	Dong Thap Province Fisheries Association	434

No.	Entity	Number of members
26	Vietnam Pharmaceutical Companies Association	119
27	Hai Phong City Pharmacy Association	
28	Quang Tri Province Pharmacy Association	5
29	Hanoi University of Pharmacy	
30	Hochiminh University of Medicine and Pharmacy	
31	School of Medicine and Pharmacy, Vietnam National University, Hanoi	
32	Pharmacy Department –Thainguyen University of Medicine and Pharmacy	
33	Vietnam Banks Association	55
34	Vietnam Timber and Forest Products Association	400
35	Vietnam Electrotechnical Industry Association	76
36	Vietnam Steel Association	100
37	Vietnam Pulp and Paper Association	95
38	Vietnam Federation of Civil Engineering Association	
39	Vietnam Plastics Association	209
40	Vietnam Association of Small and Medium Enterprises	20,000
41	Vietnam Cotton & Spinning Association	100
42	Vietnam Automobile Association	141
43	Foreign Invested Enterprises Association	300
44	Vietnam Leather and Footwear Association	143
45	Vietnam Retailers Association	200
46	Vietnam Textile & Apparel Association	365
47	Small and Medium Enterprises Association – Quang Tri Province	
Total Members		43,331