

## Challenges in Intellectual Property Policy in Vietnam Participating in the Eu-Vietnam Free Trade Agreement (EVFTA)

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### Abstract

*The Eu-Vietnam Free Trade Agreement (EVFTA) is considered a new generation free trade agreement (FTA), with deeper commitments and covering many areas, in which the enforcement of intellectual property rights (IP) is an important content that member countries must seriously implement. Therefore, identifying challenges to Vietnam's IP rights is essential, in order to avoid long-term risks, as well as make appropriate adjustments, take advantage of the opportunities provided by the EVFTA for sustainable economic development and make the most of Vietnam's comparative advantages.*

**Key-words:** Intellectual Property, Free Trade Agreement, EVFTA, Vietnam, EU

### 1. Introduction

The issue of protection of intellectual property rights is significant and extremely important for not only intellectual property rights subjects, consumers, production and business subjects, but also related to the development of the country. (J. Stiglitz, 2006) Protection of intellectual property rights encourages creativity, promotes the efforts and dedication of many individuals to technical improvement and scientific research to create material and spiritual products for society. Intellectual property is the result of a process of creativity, intellectual investment, money, effort of individuals and organizations. (May & Sell, 2006) Intellectual creative activity wishes to achieve certain benefits in research. By protecting intellectual property, the State encourages and supports more creative organizations and individuals. By protecting intellectual property, it will ensure the rights (personal rights and property rights) of the owners to the products they create. *For production and business*

*subjects*, virtual protection of intellectual property rights also contributes to minimizing losses for manufacturers and businesses and promoting them to develop legitimate production and business. (Business & 1996, n.d.; Reichman & Samuelson, 1997; Samuelson, 2000; Thi Hoa et al., n.d.) For consumers, effectively protecting intellectual property rights will give consumers the opportunity to choose and use high-quality services and goods to meet the needs of consumers. (Business & 1996, n.d.; Helpman, 1992; Reichman & Samuelson, 1997; Samuelson, 2000; Thi Hoa et al., n.d.) Protection of intellectual property rights has limited intellectual property infringement, creating counterfeit or poor quality goods and other unfair competition. (Chin et al., 1988) For the country, Intellectual Property is affirmed as "a powerful tool for economic development", so the effective protection of intellectual property rights will create a healthy competitive environment. In the context of the current scene of international integration, along with the strong and continuous rotation of tangible assets as well as intangible assets between countries, the protection of intellectual property rights also contributes to the protection of national interests. (Soc'y & 1944, n.d.)

Protection of intellectual property rights is a mandatory obligation and a prerequisite for countries that are members of the World Trade Organization and to those that wish to become members of this Organization. (Chin et al., 1988) intellectual property rights can create commercial stress" In addition, protecting intellectual property rights also contributes to promoting healthy trade on a global level. (Pugatch, 2004) EVFTA's IP commitment includes commitments on copyright, invention, invention, pharmaceutical-related commitments and geographical instruction. Basically, Vietnam's IP commitments are in accordance with applicable laws. (Relationships & 2018, n.d.)

IP is expected to have a direct and great impact on Vietnam's legal and enforcement institutions, which are a collection of principles and requirements on protection standards as well as the exercise of the protection of IP rights. The EU is the world's leading exporter of IP products, so there is a need to strengthen the protection of IP rights. The EU also has a specific protection regime for geographical indicators and places great importance on the protection of this type of IP rights. For its part, as a developing country, owning only a very small number of IP products compared to EU partners, Vietnam desperately needs space to allow businesses, organizations and individuals to access IP products for economic, scientific and social development at the lowest possible cost. (Ha et al., n.d.)

Currently, Vietnamese law provides for the enforcement of IP rights by civil, criminal and administrative measures. In fact, the enforcement of IP protection has not really worked. Almost only administrative measures are applied mainly. (Nguyen & Do, 2021). However, the effectiveness of administrative measures is also relatively limited due to the fact that there are many participating forces such as customs, specialized inspectors, market managers and economic police, but it is not clear which

agencies are the clue and there is no close and effective coordination between agencies. (Trinh & Nguyen, n.d.) Meanwhile, civil remedies at the request of stakeholders are limited. According to statistics of the court industry, the handling of disputes, infringement of rights by civil remedies in court only accounts for a very low percentage compared to tens of thousands of rights infringements handled by administrative measures and focuses mainly on disputes related to the field of copyright (83.5%), disputes in the field of industrial property account for a very low percentage (5.5%).(Bank, 2020). The number of cases of infringement of the right to be criminally handled is also not much. In fact, most IP infringements are handled by administrative measures and focus primarily on counterfeit goods on trademarks, geographical indications and goods infringing on industrial designs. The sanctioning forms are mainly fines and suspensions for a period of time for the production and trading of infringing goods and services; confiscation of material evidences and/or means of violation or forced removal of infringing elements on goods, means of trading or destruction of infringing goods and/or means of business... Although there have been many efforts on the part of IP rights enforcement agencies, the reality is that IP rights abuses in Vietnam are still increasingly common and complicated. This has significantly affected the legitimate rights and interests of the rights subject, discouraged investors, negatively impacted the economic and social life. It can be affirmed that one of the biggest weaknesses and challenges of our country today is that the effectiveness of enforcement activities is still low, not meeting practical requirements, especially the enforcement of IP rights by judicial means. (Maciejewski & Zysk, n.d.).

## **2. Literature Review**

Intellectual property is increasingly playing a very important role for socio-economic development, especially in the current trend of deep and comprehensive integration. Building a strong and complete IP protection system is an indispensable factor in any country's long-term economic development strategy. It is also a mandatory demand in the process of economic integration. (Chin et al., 1988) The brand is known as a key part of the brand of the business or the product. Although registration of intellectual property rights has been very clearly regulated in the law, the infringement of intellectual property rights in Vietnam is still increasing, especially the infringement of counterfeit goods. Trademark registration is the basis for businesses to protect and enhance the trademarks they create. (Lina, n.d.) Many studies have explained that tangible assets of the enterprise account for only about a quarter of the total value of the enterprise's assets. (M. R.-M. S.M. Review & 2004, n.d.)

That is to say, the value of in invisible assets or brand value of the business accounts for 3/4, especially accounting for more than 90% of the asset value of the business. (J. E. Stiglitz, 2008)competitive advantage in the context of international economic integration. (L Bollen et al., n.d.) By registering the protection of industrial property rights, domestic enterprises have the advantage of starting from competitors in production and business activities during the protection period. The monopoly advantage on the one hand prevents competitors from using and exploiting registered objects, on the other hand allowing businesses to profit through market monopoly. (May, 2015)bring commercial advantages and financial profits to owners. (J. & 1989, n.d.)

To best protect your rights, businesses first need to implement the right to self-protection by applying technological measures to prevent infringement. (J. E. Stiglitz, 2008) many ways such as printing anti-counterfeit stamps, use packaging printed with modern technology or use technical measures to mark, identify and distinguish products for protection, put information about protected intellectual property rights on products to inform products and services that are subject to intellectual property protection and advise others not to infringe. (Laury Bollen et al., 2005; Chinying Lang, 2001; P. R.-A. E. Review & 2002, n.d.; J. E. Stiglitz, 2008). It can be seen that, in order to protect your intellectual property rights in the best way, businesses should register to protect the intellectual property rights they are using or will use, develop and perfect the intellectual property strategy of the enterprise. (Grossman Edwin L-C Lai et al., 2002; J. E. Stiglitz, 2008) information about competitors, while avoiding infringing on the rights of others. (Stjepandić et al., n.d.).

### **3. Result and Policy Suggestions**

The year 2020 has witnessed changes caused by the Covid-19 pandemic around the world and in Viet Nam. The global economic growth declined sharply, while Vietnam's economic growth reached 2.91%. The Covid-19 pandemic also made a strong influence on intellectual property activities around the world and in Vietnam. In that context, the Intellectual Property Office of Viet Nam (IP Viet Nam) has made strong efforts to strengthen its activities on all aspects and achieved encouraging results, making an important contribution to the development of science, technology, the economy and the society of the country. As of the first year to carry out the National IP Strategy, IP Viet Nam formulated and submitted to the Minister of Science and Technology to sign Decision No. 508/QDBKHCN on March 24, 2020 issuing its Implementation Plan for the National IP Strategy, as well as guided ministries and localities to implement the Strategy.(Report, 2020) The national IP strategy will either has its own Implementing plan or its activities will be embedded in other policies, program,

development plan of relevant fields.(Khoát & Cismas, 2019) Although heavily affected by the Covid-19 epidemic, integration and international cooperation activities in intellectual property rights in 2020 were still proactively and actively implemented, making important contributions to maintain cooperative activities for successful negotiations of international agreements, including the Regional Comprehensive Economic Partnership (RCEP) Agreement and the FTA between Viet Nam and the United Kingdom of Great Britain and Northern Ireland (UKVFTA).(Ha et al., n.d.) In particular, to carry out the tasks of the Viet Nam's 2020 ASEAN Chairmanship, IP Viet Nam successfully hosted 03 online meetings of the ASEAN Intellectual Property Working Group (AWGIPC) and assumed of the AWGIPC's Chair in the period of 2019-2021. In 2020, IP Viet Nam received 76.072 applications for establishment of IP rights, handled 71.829 applications and issued 48.072 registrations (increased by 1,3%, 10,5% and 18,1% over 2019, respectively).(Report, 2020) This showed strong efforts by the Office in establishing IP rights, adequately meeting the needs for protecting IP rights of individuals and businesses and ensuring a healthy environment for investments and businesses in Viet Nam, especially in the context of the Covid-19 pandemic. IP asset development was also a key area where IP Viet Nam dedicated a lot of attention and support through, providing opinions on documents of the Party, resolutions of the People's Councils and decisions of the People's Committees of provinces on the use of IP for local socio-economic development. By 2020, 42 provinces had issued their Programme of IP Asset Development; 1,148 OCOP (One Commune One Product) products have been supported in regard of IP rights; thousands of training courses and communication programs on IP have been carried out; ect.(ThiHoa et al., n.d.)

### **Main Contents of the EVFTA Related to Intellectual Property Rights Enforcement**

The Intellectual Property Chapter of the EVFTA consists of 63 terms and 2 appendixes (List of geographical indicators and Product Group Catalog). The main contents of this chapter include commitments on the principles of protection of intellectual property rights, scope of intellectual property rights, patents, industrial designs, trademarks, geographical indications, confidential information, plant varieties, the issue of running out of rights and enforcement of intellectual property rights. (*Original Article:*

*Http://Evfta.Moit.Gov.vn/Default.Asp?Page=overview&category\_id=2809fd0e-B509-41c4-Aa5f-Fc2257d628c2*, n.d.) However, much of these commitments fundamentally reiterate the corresponding contents of the TRIPS Agreement or only minor additions. In general, in terms of intellectual property rights within the framework of EVFTA, Vietnam has committed to high level of

protection. Vietnamese law basically meets the requirements of this content even higher than the provisions of TRIPS. (Fabris, 2017) sensitive products such as pharmaceuticals, fertilizers, pesticides (box 1)

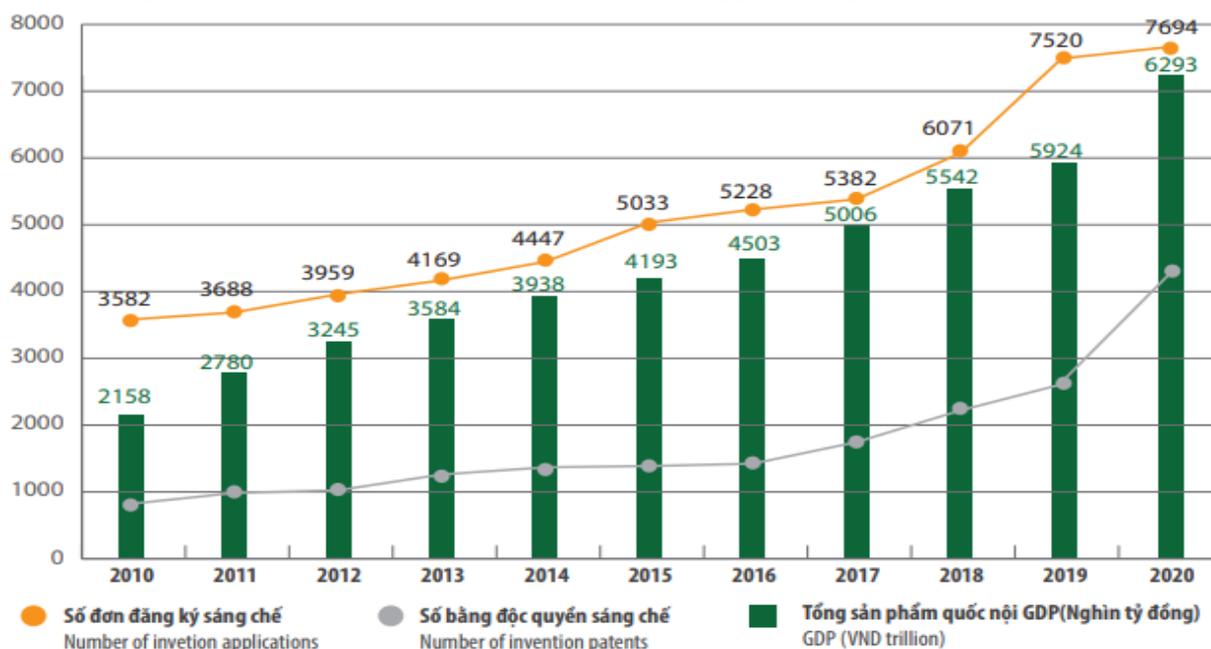
**Box 1: Summary of the main contents of the EVFTA on intellectual property rights**

- *Regarding geographical indications, when the Agreement comes into force, Vietnam will protect more than 160 EU geographical indications (including 28 member states) and the EU will protect 39 geographical indications of Vietnam. Vietnam's geographical indications are related to agricultural products and food, facilitating some types of Agricultural Products of Vietnam to build and affirm the brand in the EU market.*
- *Regarding trademarks, the two parties undertake to apply favorable and transparent registration procedures, including having an electronic database of published trademark applications and registered trademarks for public access; at the same time, it is permitted to terminate the validity of the registered trademark but not to use it in a real way within 5 years.*
- *Regarding enforcement, the Agreement provides for controls at the border for exports suspected of infringing on intellectual property rights.*
- *Commitment to the most favored national treatment (MFN): Commitment to the principle of national favorability in this Agreement ensures that EU organizations and individuals enjoy the benefits of high protection standards not only for intellectual property rights subjects under the WTO Agreement on trade-related aspects of intellectual property rights (TRIPs) but also other subjects of intellectual property rights in the free trade agreements that Vietnam participates in (such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership - CPTPP)*

Source: Ministry of Industry and Trade of Vietnam "Commitments of Vietnam and EU in some key areas of EVFTA and IPA"

The purpose of the EVFTA in relation to intellectual property rights is to further supplement and define the rights and obligations between the parties under the TRIPS Agreement and other treaties, as well as to ensure the full and effective implementation of the parties. In fact, the goal of evfta is to bring Vietnam's intellectual property management system to international standards of intellectual property management system so that both parties benefit from a more standardized system. (Figure 1)

Figure 1 - The correlation between GDP and invention applications/patents during 2010 - 2020



Source: *Annual Report on Intellectual Property Activities of Vietnam (2020)*

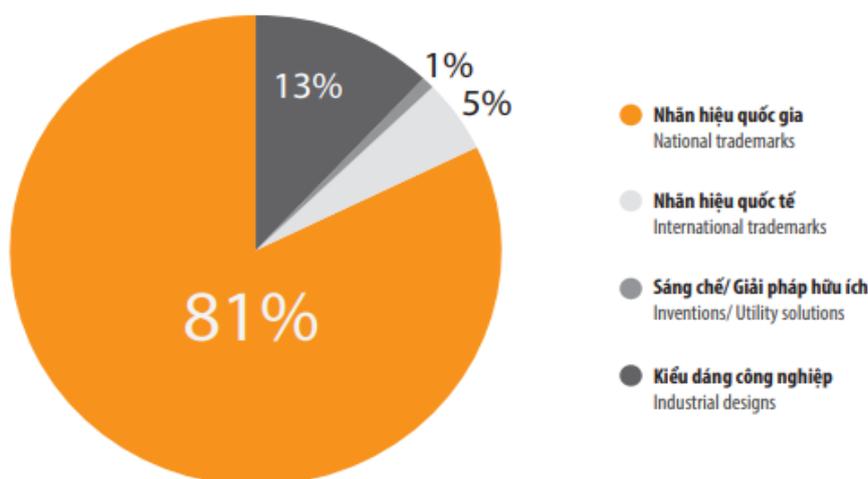
According to the EU, Vietnam agrees to make extensive changes to the domestic legal framework, strengthening protection of intellectual property rights. However, European companies remain concerned about intellectual property rights in Vietnam in many respects, from registration to common violations and enforcement. As observed by European investors, trademark registration in Vietnam is a lengthy process and complaints procedures are quite slow, while intellectual property infringement is still common, especially in residential markets and commercial areas. In addition, online infringements of copyright, related rights and industrial property rights are many (Fabris, 2017).

Despite being designed regularly on a reasonable level, Vietnam's enforcement system remains complex and insufficiently effective so that intellectual property rights owners can take measures against infringements. Limitations on the knowledge and experience of officials in charge of Vietnam's local intellectual property sector also raised concerns among European investors about sanctions in this area in accordance with local regulations. In many places, judges in rural areas lack the knowledge and experience to be able to make rulings in line with Vietnam's commitments to international intellectual property standards. Currently, there is no specialized intellectual property court in Vietnam. Civil lawsuits and criminal prosecutions are handled by the general courts. Because training in intellectual property and human resources in this area in the judicial system has not met the requirements, the results of solving cases and jobs in this field still have certain limitations. (Ha et al., n.d.).

## Opportunities and Challenges for Vietnamese Enterprises in Enforcing Intellectual Property Regulations

For Vietnam, the EU is a very important market. The EU is the world's second largest import market and currently Vietnam's second largest export market (after the US). This is a potential market with a population of more than 500 million people, a GDP of about 15,000 billion USD, accounting for 22% of globalGDP. (Journal & 2021, n.d.)property protection activities. As for the group of businesses and rights owners, the intellectual property commitments in the EVFTA are evaluated not only to increase economic benefits, increase creative motivation but also contribute to cost savings, confidence in registration of rights protection, since all commitments increase the level of protection of rights. (Figure 2).

Figure 2 - Appeal Requests Settled in 2020 by Subject Matters

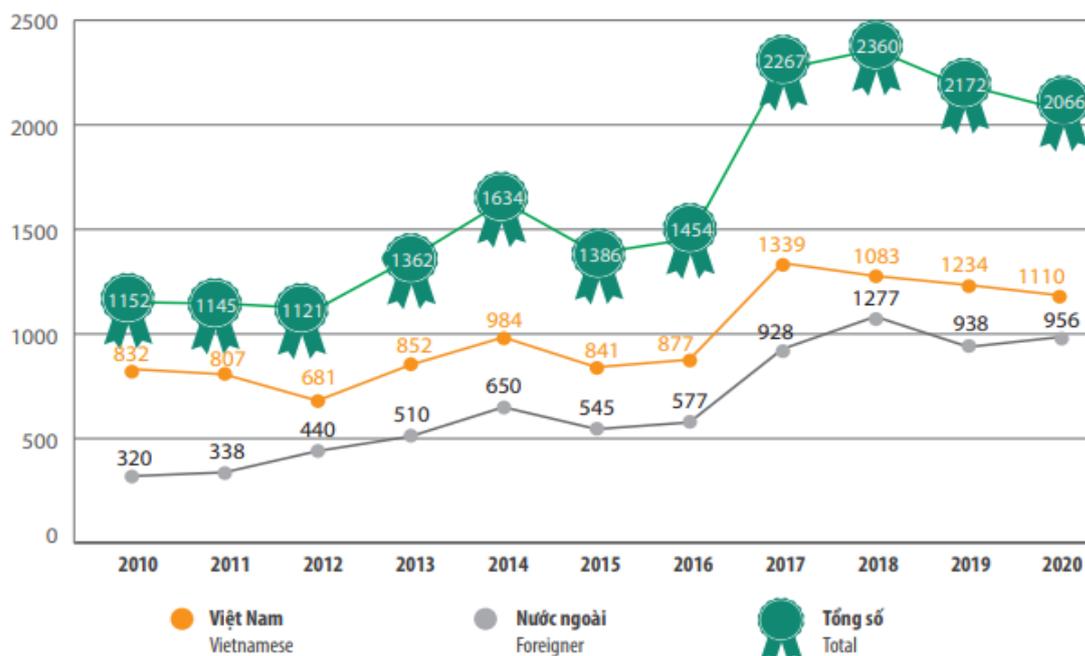


*Source: Annual Report on Intellectual Property Activities of Vietnam (2020)*

However, for the group of enterprises and those who use intellectual property protected products, they do not benefit but are greatly affected. (Trong TRAN et al., 2021) period is longer). At the same time, the risk of violations, the risk of costs due to being handled for violations increases for businesses and subjects using protected products. Even with the new criminal code, not only individuals, but legal people can also be criminally handled if they violate these protected contents (Thanh Thu et al., 2018). In addition, the high standard of intellectual property protection systems in next-generation FTAs such as EVFTA will also require businesses to research and spend more on

intellectual property protection to avoid falling into litigation, disputes and possible damages. (Project & 2016, n.d.) Notably, the intellectual property protection technology (TPMs) in the EVFTA expand the use of tpms not only to provide adequate legal protection for the production, import, distribution, sale, offering or lease to the public, but also regulations on the commercial use of equipment, products, components or provision of services. (Figure 3).

Figure 3 - Industrial Design Patents Granted from 2010 to 2020 by the Vietnamese and the Foreigner

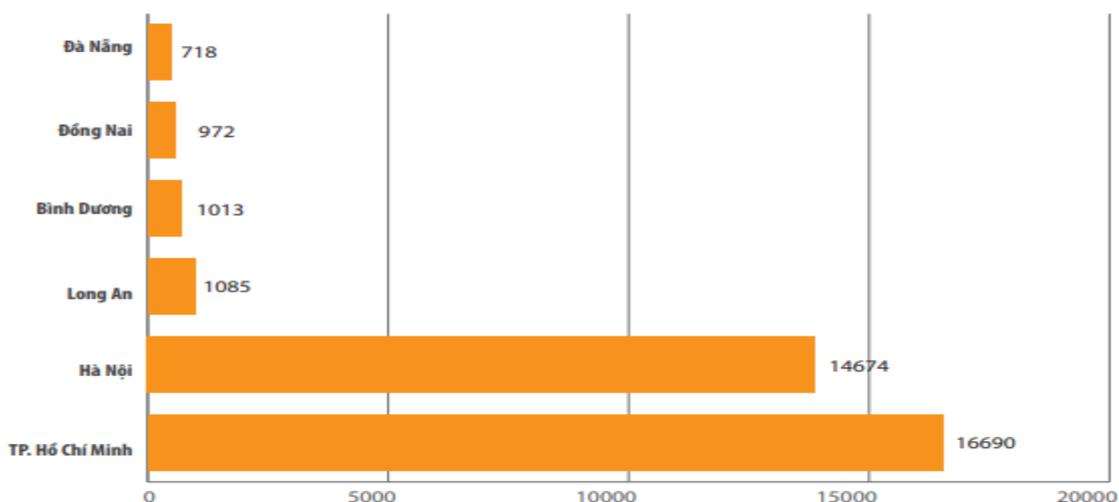


Source: Annual Report on Intellectual Property Activities of Vietnam (2020)

Besides respecting the intellectual property rights of businesses and organizations around the world, Vietnamese enterprises also need to pay attention to the protection of their intellectual property. However, according to the Vietnam Chamber of Commerce and Industry (VCCI), the interest of Vietnamese enterprises in intellectual property protection, industrial designs and trademarks is still very limited. This is one of the major barriers for Vietnamese enterprises to take advantage of the advantages and limit the negative effects that those regulations bring. (Minh et al., n.d.) . On the other hand, Vietnam's trademarked products and industrial patents need to carry out exclusive protection registration in the EU, contributing to helping Vietnamese enterprises to access the EU market more effectively, but this requires a fairly high cost and complex registration procedures (Key & cismas, 2019). Therefore, the protection of Vietnam's intellectual property rights registered abroad in general and in the EU in particular is currently at a significant level. The reason for the above situation is due

to limited financial capacity, Vietnamese enterprises are largely small and very small. This leads to inequalities in trademark registration between localities of Vietnam (Report, 2020).

Figure 4 - Five Top Trademark Applications by Vietnam's Provinces/Cities in 2020



Source: Annual Report on Intellectual Property Activities of Vietnam (2020)

Another limitation of many Vietnamese enterprises is that there is still very ambiguity in the field of intellectual property, the culture of respect for intellectual property rights is still low, even not knowing the current law on intellectual property. Many businesses/individuals using intellectual property have not been interested in the relevant regulations in Vietnam's FTAs so far as well as the EVFTA, but even the rights protected units do not have a clear sense of their rights and seek to "take advantage" of the beneficial intellectual property regulations in the EVFTA. (Journal & 2021, n.d.) . In general, the commitment to the level of protection and enforcement of intellectual property rights in the EVFTA contributes to ensuring that businesses of both parties enjoy the highest protection but still ensure certain flexibility so that a developing country like Vietnam can benefit from intellectual property protection. (Duc Huu, 2020) Therefore, Vietnamese enterprises need to master and meet the regulations on protection, exploitation, enforcement of ownership of intellectual property and regulations on technical barriers in trade of the EU. (NGUYEN et al., n.d.).

#### 4. Discussion

EVFTA offers many opportunities to access eu countries' markets, but also sets some standards higher than Vietnamese law, requiring businesses to focus on raising awareness about the field of

intellectual property. If you are not aware of the risk, you will bear the burden of control procedures, especially when falling into disputes and litigation. Therefore, along with the process of creating and developing new intellectual property, improving in-house technology capacity and the capacity to absorb new and advanced technologies to improve the quality of their products, intellectual property management activities in each enterprise, universities and research institutes are very important to create a wide environment for the application of intellectual property law into real life. In the coming time, in order to improve the enforcement of IP rights in the context of evfta effectiveness, it is necessary to focus on implementing important solutions:

- (i) To appreciate the professional capacity of IP and the capacity to perform public duties for functional agencies and forces. Professional fostering, IP rights enforcement is an important requirement, it is necessary to research and develop intensive IP training and retraining programs for IP enforcement agencies and forces and support, meeting the requirements of capacity building for enforcement agencies on people and facilities through programs to build and train clues on IP rights enforcement at central and local enforcement agencies.
- (ii) Enhance the effectiveness of coordination between administrative agencies, adjudicating agencies and specialized agencies through information sharing and action coordination; further improve the legal provisions on mechanisms for coordination and support in the prevention, investigation, dossier and handling of IP violations by functional agencies and forces.
- (iii) To innovate and improve the effectiveness of law dissemination and education; promote the role of news agencies in the struggle to condemn and criticize law-breaking acts in production and business. Combining propaganda with mobilizing business organizations and individuals and consumers to actively and actively participate in the prevention and combat of commercial fraud and counterfeit goods; provide information to the authorities about signs of violation to take measures to fight, prevent promptly and effectively. Strengthen the role of society in monitoring, coordinating and assessing the situation, thereby building and strengthening the trust of business organizations and individuals and consumers in the enforcement of IP rights, the fight against trade fraud and counterfeit goods.
- (iv) Effectively leverage experience and support from international organizations in the implementation of IP rights as well as in the training and nurturing of current and future human resources for enforcement agencies and forces.

## 5. Conclusion

Vietnam, as well as all countries that are increasingly concerned about IP, considers it an integral element of socio-economic development policies. It is easy to see that IP becomes a key content when negotiating free trade agreements (FTAs). In fact, Vietnam has recently joined new FTAs, especially the Free Trade Agreement between Vietnam and the European Union (EVFTA) and is revising the system of IP legislation to fulfill its committed international obligations. The content of promoting TSTT for sustainable development has really become a circuit throughout the operation of the TSTT development program. Many Vietnamese patents to solve environmental problems have been put into production and applied in practice by enterprises.

In terms of intellectual property, it is necessary to continue to raise awareness and form IP culture in the community. In particular, enterprises need to promote a central role in creating and exploiting TSTT, working with universities and research institutes to create products and technologies to solve practical problems for sustainable development. In addition to the efforts of enterprises, there should be active participation of state management agencies in intellectual property, as well as law enforcement agencies in Vietnam. In addition to reviewing and finalizing the domestic legal framework with the provisions of evfta, Vietnam needs to promote the propaganda and dissemination activities of EVFTA, continue along with legal support and consultancy activities for businesses when necessary. These activities will contribute to improving the effectiveness of the implementation of this Agreement in Vietnam.

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