

# AID-FOR-TRADE CASE STORY

SWITZERLAND

**Promoting the Use of Intellectual Property in Vietnam as a Tool to Foster Trade**

**Successful Technical Assistance to Middle-Income Countries offers a Potential for Triangular Cooperation with Least Developed Countries**

**Date of submission:** 31 January 2011

**Region:** Asia

**Country:** Vietnam

**Type:** Technical cooperation (trade policy support, capacity building)

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**Table of Contents**

**Executive Summary**.....2

**1. Issues Addressed**.....2

**2. Objectives Pursued**.....3

**3. Design and Implementation**.....4

**4. Success Factors**.....4

**5. Results Achieved**.....5

**6. Lessons Learned**.....7

**7. Conclusion (applicability to other programs)**.....8

## Executive Summary

A balanced and well enforced IP system continues to be of high importance for the integration of developing countries into the world economy. Only where legitimate IPRs are protected and enforced, enterprises will be able to amortize their investments into research and development, design and brand building. A well enforced protection system for IPRs is conducive to the transfer of technology, and stimulates investments and trade, which contributes significantly to economic development.

Taking the example of Switzerland's Intellectual Property (IP) cooperation with Vietnam, this case story illustrates Switzerland's efforts in promoting the use of intellectual property as a tool to foster trade. Swiss IP cooperation combines traditional trade policy support with the strengthening of supply-side capacity by promoting the use of IPRs as a means to attract technology and investment in order to increase competitiveness. This two pronged approach addresses both a reinforcement of the legal and institutional side and encourages the use of IPRs by right holders.

The intervention in Vietnam comprised the following three steps: i) contribution to a WTO compliant legal and institutional framework for IPRs in Vietnam; ii) support to the Government's efforts to bring IP into the daily life of people by promoting the use of IPRs at universities, strengthening geographical indications (GIs) for Vietnamese products and the protection of Vietnam's traditional knowledge (TK) and folklore. iii) expansion of the outreach of the Swiss-Vietnamese cooperation by transferring IP expertise to Lao PDR (triangular cooperation).

Switzerland's experience has shown, that establishing well functioning IPR systems in developing countries calls for a comprehensive approach, combining the strengthening of legal/institutional framework and the practical use of IPRs. Joint-implementation of projects by specialized institutions in donor and beneficiary countries has proven most useful. While maintaining its focus of IP interventions on middle income countries, Switzerland has developed innovative forms of triangular cooperation to provide technical assistance on IPRs also to LDCs.

### 1. Issues Addressed

In order to benefit from increased international trade, enterprises need to shift to more sophisticated, higher value-added products and services. Markets for such products are technology-driven. Successful enterprises differentiate themselves by creativity and innovation. IPRs, such as patents, which provide an incentive for investing into advanced technology, and trademarks that allow for a distinction between products of competitors, represent a fundamental value for enterprises. Only where legitimate IPRs are protected and enforced, enterprises will be able to amortize their investments into research and development, design and brand building. A well enforced protection system for IPRs stimulates investments and trade and is conducive to the transfer of technology. As a result, enterprises will be better able to attract investment, know-how and modern technology, which is important for them to modernize production and to improve their international competitiveness in an open market economy.

The Swiss IP cooperation with Vietnam combines traditional trade policy support with the strengthening of supply-side capacity by promoting the use of IPRs as a means to attract technology and investment in order to increase competitiveness of Vietnamese products. This two pronged approach addresses both a reinforcement of the legal and institutional side and encourage the use of IPRs by right holders.

The first phase (2001-2006; Budget 1.8 million Swiss Francs) of the project focused on assisting Vietnam in establishing TRIPS-compliant legal and institutional framework, including non-discriminatory protection of subject matters and a well functioning IP administration and enforcement system.

The second phase (2007-2010; Budget 1 million Swiss Francs) - implemented after Vietnam's accession to the WTO - emphasized on strengthening and encouraging the use of IPRs to increase the competitiveness of Vietnamese enterprises in an open market economy in order to enable them to better benefit from international trade.

Responding to commitments made under Art. 67 of the TRIPS agreement, Switzerland started to implement outreach projects in LDCs through a new form of triangular cooperation with more advanced beneficiary countries. This will leverage the expertise built in more advanced beneficiary countries, expand the outreach of trade-related technical assistance and contribute to the strengthening of cooperation among developing economies.

Switzerland replicated the successful approach used in Vietnam in other middle-income countries (Azerbaijan, Ghana, Egypt and Indonesia), while still tailoring project objectives to specific country needs. This programmatic approach not only reduced programme implementation cost (economies of scale), but also facilitated exchanges on best practices among beneficiary countries in the South (economies of scope).

## 2. Objectives Pursued

**Phase I (SPC):** aimed at boosting economic development and trade by supporting Vietnam's integration into the international trade system. Main objective was to establish a TRIPS-compliant legal and institutional framework in preparation of the WTO accession.

An exit at the end of phase I would have left Vietnam with a reasonably well developed policy framework in those areas required by TRIPS, but with a still weak capacity to use IPRs as a tool to promote trade and economic development. While Vietnam did become a WTO member in early 2007, the country continued to face significant challenges to put the newly established IPR system into practice. Implementing decrees to the new IP Law were still missing. Enforcement of IPRs, although gradually improved, remained relatively weak and inconsistent. Furthermore, many groups of potential right holders had not yet tapped into the benefits that IPRs may offer them. This was in particular true for the faculty, students, and researchers of technical universities who, through their inventions, contribute to the technological advancement of the country. Furthermore, only few rural producers associations had capitalized on the potential of protection of GIs to market their products. Last but not least, Vietnam expressed a desire to protect traditional knowledge (TK) and folklore of indigenous communities whilst ensuring their benefits from its exploitation.

**Phase II (SVIP):** Overall development objective was "to promote the use of IPRs that is in line with international commitments but also benefits disadvantaged groups, in order to improve the business environment, encourage know-how and technology transfer, facilitate exports and contribute to economic development". Specific objectives focused on complementing the legal framework, enhancing the provision of administrative services of the NOIP, enforcement of IPRs, teaching of IPRs at universities, GIs, and the protection of TK and Traditional Cultural Expressions (TCEs).

**Phase III (Outreach to Lao PDR, LIPP)** aims at improving the IPR system of Lao PDR towards compliance with WTO requirements. The LIPP, which started in 2010, is specifically designed to (a) capitalize on expertise built under the Swiss-Vietnamese IP cooperation and (b) to promote south-south cooperation between Vietnam and Lao PDR in the field of IPRs.

Switzerland and Vietnam will jointly provide and fund the international technical input required.

### 3. Design and Implementation

**Design:** All three phases of the project were designed based on proposals submitted by the beneficiary country. Needs assessment were also conducted at the level of indirect beneficiaries (e.g. enterprises). An initial project outline was independently assessed and translated into a project document by external experts. All three phases of the project focused on filling specific gaps that were not covered by other donors (mainly Japan, the EU and the U.S.). For each phase, one overall objective was translated into specific objectives, with a set of activities (measures) to be undertaken.

**Key beneficiaries** were the Government of Vietnam (GoV) represented by the NOIP (under the Ministry of Science and Technology) and the COV (Ministry of Culture, Sport and Tourism), which received comprehensive expert advice in the process of improving the legal system and its implementation. Enforcement agencies, including the People's Courts, the Inspectorates of the Ministry of Science and Technology (industrial property and trademarks) and the Ministry of Culture, Sport and Tourism, the economic police (Ministry of Public Security), the Department of Market Control (Ministry of Trade and Industry) and the General Department of Customs benefitted from capacity building activities in the field of enforcement. Producers' associations of 10 provinces received support in establishing GIs. Activities further benefited the private sector (enterprises), the civil society (IPR associations and collective societies in the field of authors' rights and relating rights) and students, faculty, researchers and scientists of technical universities and research institutes.

**Project organization and governance:** The Swiss Federal Institute of Intellectual Property (IPI) – the Swiss IP Office - executed the project on behalf of the Swiss Government. The IPI was represented in Vietnam by Swiss Consulting Co. Ltd – a company specialized in providing development consulting services - as a local focal point, with the main responsibility to ensure local coordination as well as financial and operational monitoring. Day-to-day coordination was increasingly delegated to the field, while the IPI focused on strategic guidance and coordination, expert input, and the organization of activities in Switzerland. A "Coordination Group", including representatives of the SECO, the IPI, and the NOIP governed the project, with a focus on assessing results and approving work plans.

### 4. Success Factors

- **High degree of relevance:** The project was designed based on a careful participatory needs' assessment at all levels and fully aligned with the objectives of Vietnam's own IP development strategy. The intervention was timely by responding to expressed needs at the time Vietnam was accelerating its international integration. It also specifically considered the context of a developing country, by including IPRs where Vietnam is able to capitalize on its existing internal strength, such as GIs, TK and TCEs.
- **No hidden agenda** resulted in credibility of Switzerland as a reliable development partner. The project was aligned towards Vietnamese needs and not for instance to advocate for Swiss commercial interests.
- **Flexibility:** The project provided a targeted and timely response to evolving needs.
- **The relationship between Switzerland and Vietnam evolved to the level of a real partnership**, where two countries exchange experience and expertise on an equal footing. This is – inter alia - evidenced by Vietnam's offer to contribute expertise to Swiss-funded technical cooperation projects, including Lao PDR.

- **Excellent ownership of local counterparts:** The NOIP and the COV displayed an exemplary level of commitment. This is also evidenced by significant cost contributions to activities beyond previous agreements. Working directly with the specialized agencies responsible for IPRs was a crucial success factor.
- **Mutual accountability towards results/delivering on commitments:** The project fostered a culture of mutual accountability and alignment towards achieving tangible results. Partners were permanently involved into decision making on strategic and operational matters. The project started and ended exactly on time, with no disruption between the three phases, which is rather exceptional in development cooperation. Commitments were strictly adhered to and all input delivered timely and in good quality. Integrity of all partners involved allowed for maintaining momentum throughout the project and contributed to a relationship of mutual trust.
- **Most of the day-to-day management was decentralized to the field.** Sourcing of local expertise and organizations of activities in Vietnam was delegated to Vietnamese counterparts. This not only significantly accelerated implementation, but also contributed to local ownership. The IPI was able to focus on key strategic issues of high importance, sourcing high-quality expertise, and technical backstopping rather than getting tight up in micro-management matters.
- **Expanding the geographical focus to the provincial level allowed** for a diffusion of the measures over the confines of the big cities and fostered communication between authorities of the provinces and the central government in IP matters.
- Rather than just “training trainers” or capacity building, **institutionalizing the core competencies needed for a strong IPRs system** increased the prospective for sustainable results beyond Swiss support.

## 5. Results Achieved

### 5.1 Input to policy making significantly contributed to Vietnam’s WTO accession

- Switzerland significantly contributed to TRIPS compliance of Vietnam’s IPR framework and to Vietnam’s accession to the WTO by providing highly specialized policy advice. This was done through seminars and specific, targeted expert missions. In preparation of the debate on the new Law on Intellectual Property in 2005, a delegation of parliamentarians together with top representatives of the Politburo participated in a one-week fact-finding mission in Switzerland, in order to obtain a first hand insight on the Swiss experience in capitalizing on the opportunities of a strong IPRs system.
- A “white paper” on the establishment of specialized intellectual property courts in 2007 contributed to Vietnam’s efforts to reform the judicial system. A decision on what model to use is however still pending.
- More recently, Switzerland provided support to amending the Vietnamese IP Law in 2008 and to the preparation of different implementing decrees.

### 5.2 Public administration reform and institutional strengthening

- Switzerland played an active role in modernizing the Vietnamese IP administration. Swiss assistance filled specific gaps of a much more comprehensive project funded by Japan, focusing on the establishment of two branch offices of the NOIP and a computer-based registration system within the Copyright Office. Switzerland also supported the NOIP to establish an English language website.

- Closer collaboration with provincial authorities in the IP sector has been advocated throughout the projects, inter alia through the support to regular national IP conferences between the central and local levels. Those conferences have been institutionalized and continued in 2008 and 2009 without further project funding.
- Vietnam established an own IP Institute, which now serves as a competence centre on IP. While the core administrative functions will remain within the NOIP, the IP institute will focus on training and consultancy in the field of IPRs. Key staff of the IP Institute was trained in various specialized courses in Switzerland. On explicit request, Switzerland provided a comprehensive in-depth training on IP valuation in 2007, which is now one of the core services of the IP Institute.
- Vietnam established an own intellectual property project that is fully funded by the government budget. “Programme 68” commenced in 2008 and essentially carries on along the lines of the Swiss support. Beyond this, several provinces have established their own projects in different areas relating to intellectual property.
- In 2008, Vietnam also entered into an own technical cooperation programme with the People’s Democratic Republic of Lao, which mainly focuses on on-the-job training, capacity building, and policy advice. This expands the impact of the project beyond the boundaries of Vietnam and provides a good basis for the LIPP.
- IPRs enforcement has improved significantly, evidenced by the number of raids conducted and infringing goods confiscated. Follow-up courses for total of 240 enforcement officials were given by participants of training courses at the IPI. Support in establishing comprehensive training material was provided as well.
- Staff training at the NOIP is institutionalized. Together with the European Union, Switzerland supported the establishment of an IP training centre at the NOIP in early 2007. While the EU funded audiovisual equipment for the centre, Switzerland provided capacity building to the team of trainers, all of whom are now seasoned IP specialists. NOIP’s training centre is today able to conduct specialized courses that are specifically tailored to the needs of different government offices.

### 5.3 Institutionalizing IP education for technical students

- While specialized IP teaching in law faculties was covered by the EU, Switzerland focused on promoting the use of IPRs among technical universities. 15 professors were trained at the IPI. As a result, IP modules were introduced in all major technical universities. An innovation competition jointly supported by Switzerland, the WIPO and the private sector triggered high interest and good visibility for Switzerland. Awareness raising activities in universities are now institutionalized, for instance by yearly events on the occasion of the World Intellectual Property Day on 26 April.

5.4 The project successfully advocated for and provided advice to the establishment of business incubators at universities. The Head of ETH Transfer, ETH Zurich, Switzerland conducted three seminars that introduced the Swiss approach to encourage entrepreneurship among students. As a result, the government made systematic “management of inventions” in all research institutions and universities mandatory. By the end of 2008, “Technology transfer Centers” responsible for facilitating the commercialization of inventions were operational in all major public universities.

### 5.5 Private sector/IP users

- Public awareness has significantly increased: In coordination with other donors (USAID, EU, and WIPO), the project provided substantial support to comprehensive awareness raising activities conducted by the NOIP and COV. As an outcome, Viet-

namese media continue providing extensive regular coverage on IPRs issues. Recognizing that the quantity but not always the quality of media coverage had improved, the project organized “IPRs-briefings” for journalists. Increased public awareness is evidenced by a boom in IPRs registrations. According to the statistics of the NOIP, registered trademarks for instance doubled between 2001 and 2005 to over 100’000.

- Partially as a result of better public awareness, the private sector actively started to advocate for better IP protection. This is evidenced by the establishment of different NGOs, such as the Vietnam Anti-Counterfeiting and Intellectual Property Protection Association, and the Vietnam Association for Anti-counterfeiting and Trademark Protection. The “Computer Software Protection Partnership” between the Business Software Alliance, the Business Software Association of Vietnam, and the Copyright Office is conducting intensive campaigns to encourage enterprises to use legal software.
- Courses in Switzerland added not only to the professional abilities of the Vietnamese experts, but also to their didactic and presentation skills. According to an assessment made by participants, the quality of the seminars given back in Vietnam by the SPC/SVIP-trained experts was very high. The number of interested participants in seminars in Vietnam regularly exceeded the expectations.

#### 5.6 Over 12 Geographical Indications registered

- The project successfully piloted the registration of three GIs - Lang Son Star Anis, Doan Hung Grapefruit and Vinh Orange. 30 specialists trained in Switzerland and France provided follow-up courses in Vietnam. This means that Vietnam has now the technical capacity to continue developing GIs as a tool to increase revenues of rural producers. Vietnam’s Programme 68 continued support to producers.

### 6. Lessons Learned

- **Comprehensive approach to exclusively strengthening of IPRs successful:** Establishing well functioning IPR systems in developing countries calls for a comprehensive, coordinated approach, addressing all subject matters in parallel and combining the strengthening of legal/institutional framework and the practical use of IPRs. Important was to take specific absorption capacities into account and to link the policy level to more technical type of support.
- **Sustainability of capacity building** requires institutionalizing training functions rather than only “train-the-trainers”. Follow-up trainings organized by training divisions of local counterparts contributed to strengthening staff training within institutions in a sustainable way. Projects should decisively shift from providing direct training at the level of IPR users to the strengthening of training institutions.
- **Joint-implementation** of technically complex projects allows each partner to contribute what he is best at. This is a good way to ensure ownership, capacity building and sustainability without compromising on aid effectiveness. This is also in the spirit of the Paris Declaration on Aid Effectiveness, which calls for joint-accountability among development partners.
- **Decentralize day-to-day management of projects**, while strengthening financial and operational monitoring was the right management structure.
- **Twinning approach promising:** The project successfully used a twinning approach between the Swiss and Vietnamese IP Offices. The Swiss IPI’s specific capacities in technical cooperation with developing countries were a distinctive advantage. Expansion of the “twinning” approach to a triangular structure (IP offices of Switzerland –



Vietnam – Lao PDR) contributes to enlarging the network among specialized government agencies in the both developing and developed world.

## 7. Conclusion (applicability to other programs)

- **IPRs are an effective tool to increase international competitiveness of enterprises in developing economies.** They contribute to a better investment environment, encourage technology transfer and modernization. This in turn enables companies to better capitalize on the opportunities of an open market economy, which is a condition to successfully participate in international trade.
- **Strengthening IPRs requires a holistic set of measures,** linking the policy level to promoting the practical use of IPRs for the benefits of companies. Phasing of technical assistance, focusing first on the policy and institutional framework and then strengthening institutions that promote IPRs and support enterprises in using them, proved to be the most effective approach to deliver technical assistance.
- **“Twinning approach” contributed to successful capacity building:** Joint-implementation of projects by specialized institutions in donor and beneficiary countries allows for expanding the worldwide network of trade-related technical cooperation in the field of IP. This contributes to the sustainability of technical cooperation beyond the formal boundaries of a project. A successful application of this model requires specific capacities by IP offices in developed countries to engage in technical cooperation with their peers in the South.
- **Replication of the approach to strengthening the use of IPR in Vietnam in other middle-income was successful:** Exchanging and applying experience from Vietnam resulted in synergies in terms of economies of scale and scope. Switzerland successfully capitalized on lessons learned in Vietnam to enhance technical assistance to other middle-income countries.
- **Outreach to LDCs through triangular cooperation:** Cooperation between developed and more advanced developing/emerging economies to provide technical assistance to LDCs is an innovative form of triangular cooperation, which contributes to the strengthening of south-south/regional cooperation among the developing world and allows for capitalizing on specific expertise of more advanced middle-income countries to deliver technical assistance to LDCs. This cost efficient approach to assisting LDCs in developing their IP systems responds well to Article 67 of the TRIPS Agreement. It provides for a unique opportunity to leverage the impact of aid provided to developing countries to LCDs, which in turn contributes to higher aid effectiveness.
- **Applicability to other areas of Trade Capacity Building:** Similar approaches could be envisaged for other areas of highly specialized technical support to developing economies, such as for instance in the field of standards, metrology, testing and quality (SMTQ) or the strengthening of competition policies and consumer protection.