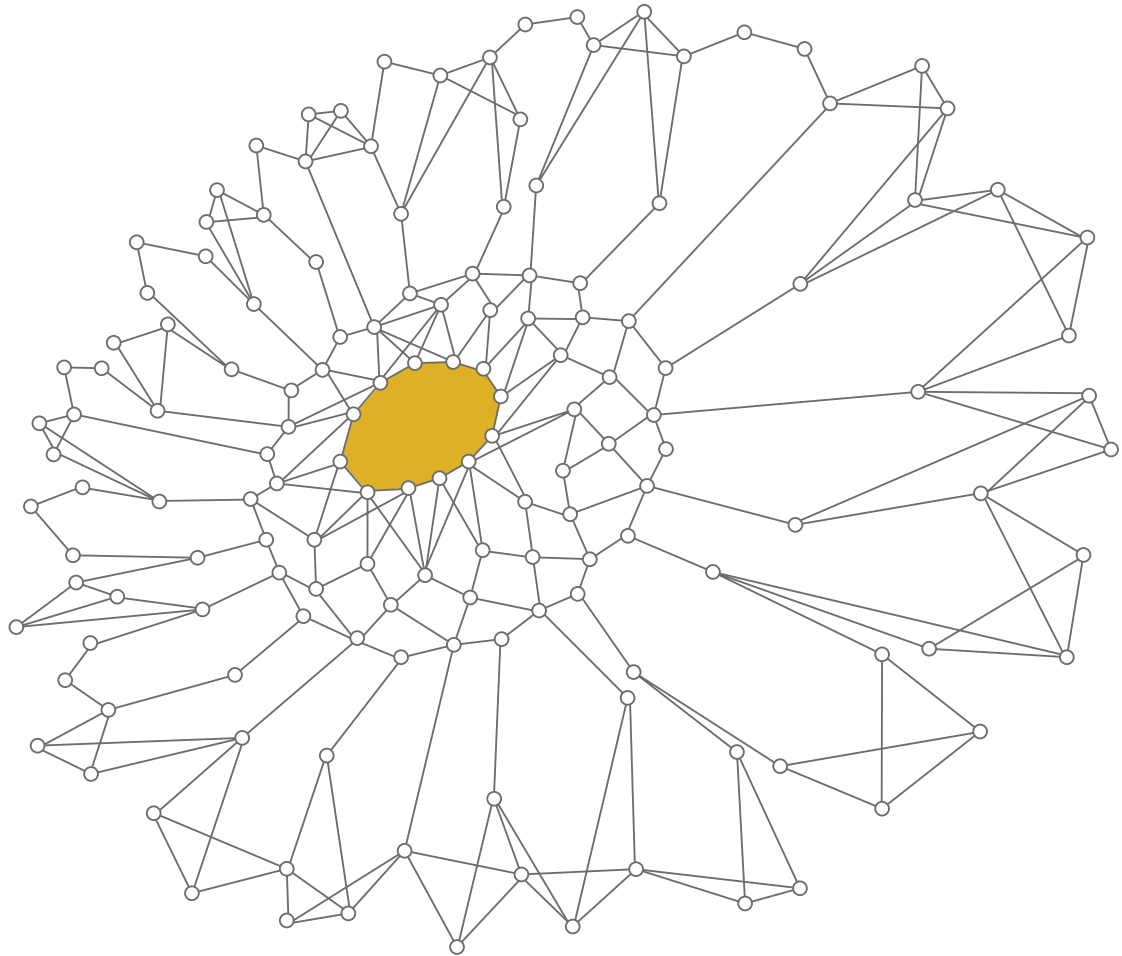




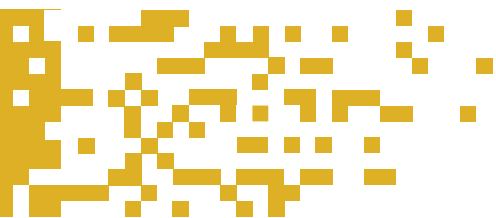
British Embassy
Hanoi



Vietnam Chamber of
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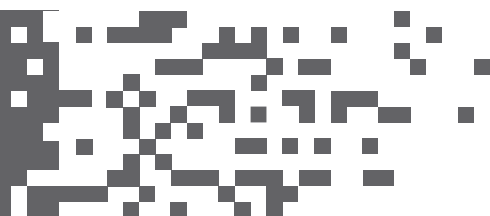
The review of Vietnam legal framework against
commitments under Trans-Pacific Partnership (TPP)
on **Intellectual property**



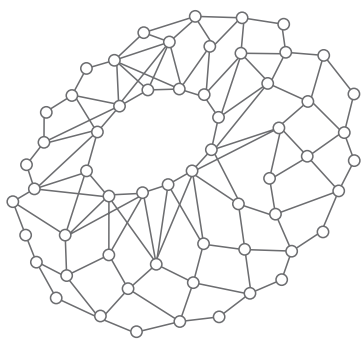
VIETNAM CHAMBER OF COMMERCE AND INDUSTRY
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The review of Vietnam legal framework against
commitments under Trans-Pacific Partnership (TPP)
on **Intellectual property**



Hanoi 2017



Introduction

The Trans-Pacific Partnership (TPP) is a new generation free trade agreement signed by twelve of the Pacific Rim countries, including the United States. It is among the biggest free trade agreements Vietnam negotiated and signed in recent years.

Although there is a unfavourable progress in the TPP ratification of the United States, the largest member of the TPP (with the decision of the President Donald Trumps related to withdrawal of the United States from TPP in January 2017), this Agreement is still expected by other member countries in order to continue somehow, in different scenarios, with all twelve members or less. Until now, although the future scenario of TPP is in question, the assessment and preparation of TPP commitments is still significant. In some positive scenarios, the preparation will take full economic opportunities expected from the TPP when it becomes effective. In some negative scenarios such as the failure of TPP, the review and assessment on Vietnam economic legal and policy system based on modern standards of TPP is meaningful in purpose of reforming Vietnam economic institution, and impulsing effective investment capital flow, building the trust and foundation for Vietnam economic sustainable developments.

One of the most controversial institutions in TPP negotiation process and the largest institution in the official document published after the conclusion of TPP negotiations is intellectual property. In general, the intellectual property standards under TPP are higher level compared to that of Vietnam legal framework, and tend to protect the right holder (the owner of intellectual property right). Meanwhile, the Vietnam enterprises and resident communities mainly belong to the group of intellectual property product users, and their interests are opposite to that of right holders. So from a logical perspective, Vietnam should not voluntarily implement TPP commitments on intellectual property unless it is compulsory.

However, in most realizable scenarios, TPP is still partly or totally effective somehow, so the preparation of TPP commitments is necessary, especially on intellectual property because of its complicated characteristics, and the long changing time in implementation.

Moreover, there are many similar commitments on intellectual property under TPP and European Union – Vietnam Free Trade Agreement (EVFTA). So even if TPP is ineffective to Vietnam, Vietnam still has to implement many intellectual property standards under TPP through EVFTA implementation.

The review of Vietnam legal framework against TPP commitments on intellectual property is prepared by the Vietnam Chamber of Commerce and Industry (VCCI) with the analysis of the compatibility of the Vietnam legal framework and commitments from the perspective of Vietnam enterprise. Therefore, this review is able to propose solutions to ensure compliance with the Agreement in a most beneficial way for Vietnam enterprises. The recommendations in review are provided in assumption of the validity of TPP and only are applied after ‘effective date’ of TPP. However, in some situations, if the implementation of a particular commitment brings benefits to Vietnamese holders, the recommendation with detailed notes will be clearly specified in order to apply in the near future. In addition, this review was made after the legal review Vietnam against EVFTA commitments on intellectual property prepared by VCCI, therefore, this review also has the comparison between TPP and EVFTA commitments on intellectual property issues to determine the difference and similarities on specific aspects.

This review is in the chain of 09 Review Vietnam legal framework against TPP and EVFTA commitments in the critical institutional areas (including Investment, Government procurement, Intellectual property, Customs and Trade facilitation, Transparency, Service market access) prepared by the Vietnam Chamber of Commerce and Industry (VCCI) within the framework of 02 stages of the Programme of Reviewing Vietnam legal framework with institutional commitments under new generation free trade agreement with the support of the Embassy of the United Kingdom of Great Britain and North Ireland.

Hopefully this report will be a useful information source for the legal review process for TPP and EVFTA approval’s preparation and the Vietnam business investment environment reform efforts of the Government, the National Assembly and relevant authorities.

Vietnam Chamber of Commerce and Industry expresses 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./.

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

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List of abbreviations

EVFTA:	European Union – Vietnam Free Trade Agreement
FTA:	Free Trade Agreement
RMI:	Rights Management Information
TPP:	Trans-Pacific Partnership framework
TPMs:	Technological protection measures
WTO:	World Trade Organization

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Part one

Summary about results of the review

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I. Background of the Review of the Review

The Trans-Pacific Partnership(TPP) is officially signed by 12 member states (including United States, Canada, Mexico, Peru, Chile, New Zealand, Australia, Japan, Singapore, Brunei, Malaysia and Vietnam) on 4th February 2016. This is a new generation free trade agreement having commitments with the highest level of liberalization, with the largest scope of commitments not only with Vietnam but also for all other member states.

This agreement is in the process of internal ratification of the Member States and shall be effective only when it meets conditions stated in the official document published after the conclusion of TPP negotiations (e.g., the number of countries ratifying, the percentage of these country's GDP per total GDP...). In these days, the TPP ratification progress faces with a great difficulty when President Donald Trump of the United State, the key member in TPP, announced the withdrawal of the United State from TPP. However, the other members of the TPP are still determined to manage the internal ratification process (e.g., Japan, New Zealand ...) with the purpose to implement this Agreement in any circumstances by other scenarios (TPP in present, TPP without the United State, TPP added new members including China, bilateral FTA between the United State and other TPP member countries...).

From a general perspective, being a member considered to have the lowest starting point in the TPP, Vietnam has the potential benefits from the TPP not only in the priority for Vietnam exporting products but also, and more importantly, the opportunity, motivation and direction to reform economic institutions in order to improve the business environment and competitiveness of the economy. With these objectives, of course, it will be better for Vietnam if the TPP takes effect as scheduled, with the negotiated commitments and full membership. However, even in the most un-expected scenario where the effective date of the TPP is pushed back a few years, the number of participants may be not enough as expected, and even TPP commitments can be adjusted and renegotiated, the TPP is still an important driving force and meaningful pressure for Vietnam to reform institutions, improve the business environment in the direction of big trend and modern customary of the world.

From the perspective of intellectual property rights in particular, the issue could becomes more complicated, because of the high protection standard on intellectual property commitments to right holders (the owner of intellectual property rights) when the main interests of Vietnam (enterprises, resident communities...)belongs to the group of intellectual property product users who get benefits

from using intellectual property products with the lowest fees paid for right holders. So from the logical aspect, Vietnam should not voluntarily implement TPP commitments on intellectual property unless it is compulsory. In the other words, unless TPP becomes effective, Vietnam does not need to pay attention on TPP commitments on intellectual property on the surface.

However, in most realizable scenarios, TPP is still partly or totally effective somehow, and Vietnam still has to implement TPP commitments, including commitments on intellectual property. So the review of Vietnam legal framework, compatibility assessment, and implementation recommendations on TPP intellectual property commitments is necessary from the perspective of Vietnam, especially because of its complicated characteristics required a long considerable time.

Moreover, there are many similar commitments on intellectual property under TPP and European Union – Vietnam Free Trade Agreement (EVFTA). EVFTA is a new generation free trade agreement which concluded negotiation rounds, being in legal review progress to prepare for signing in 2017. This dealt is expected to take effect in the next few years. So even if TPP is ineffective in Vietnam, Vietnam still has to implement many intellectual property standards under TPP through EVFTA commitments.

In addition, in some cases, the standards on intellectual property under TPP (especially implementation of intellectual property right) are valuable for Vietnam to protect legitimate rights of right holders against clear infringements on intellectual property, in purpose of attracting investments on intellectual property activities, encouraging business effectiveness and spreading knowledge. In these cases, Vietnam benefits from the consideration and implementation of TPP commitments in reasonable level despite the uncertainty of TPP's effectiveness, and they should be immediately implemented before the 'effective date' of TPP or EVFTA.

In that situation, the review of Vietnam legal framework against TPP commitments is valuable to Vietnam even when there is no clear future of TPP. The purpose of review is evaluating compatibility level, preparing for TPP implementation in the right time, determining and applying the beneficial standards to Vietnam in the following days.

To be more precise, the Review of Vietnam legal framework against TPP commitments on intellectual property is prepared to reach following targets:

- Clarify the content of TPP commitment on intellectual property, in comparison with the respective EVFTA commitments (if any);
- Identify the provisions of the Vietnam legal framework indirectly or directly related to TPP commitments on intellectual property; assess the content and compatibility of domestic legislation against TPP commitments;
- Analyze Vietnam internal demand (from the perspective of Vietnam business interests) as well as the commitments' requirements (assuming that commitment takes effect), then propose appropriate measures to modify and revise Vietnam legal framework on investment to improve the investment environment and effectively implement commitments when these commitments take effective date.

II. Coverage of the Review

1. About commitments on Intellectual Property under the TPP and the EVFTA

Under TPP, commitments on Intellectual Property are mainly provided in Chapter 18 and the Appendices. There is no related commitment in other Chapters under TPP.

The review is conducted under all commitments included in coverage of Chapter 18 under TPP and without the Appendices unrelated to Vietnam (the Appendices related to other TPP member countries). The TPP document mentioned in this Review is in the official document published after the conclusion of TPP negotiations which is legally reviewed and officially announced at 5th December 2015 by all TPP member countries. Thus, comments, analyses and recommendations in the review are only valuable to the commitments which have content like that of the document mentioned above. If TPP is renegotiated with several changed commitments, the results of the review only correct with commitments mentioned.

Similarly, the EVFTA commitments also are compared to similar commitments on Intellectual Property under TPP in the review, including the coverage of Chapter 12 EVFTA, all EVFTA commitments on Intellectual Property in Agreement documents announced in February 2016 (There is no other commitments on Intellectual Property under EVFTA, except commitments in Chapter 12)

2. About Vietnam legislation on Intellectual Property

In Vietnam legal framework, Intellectual Property-related matters are mainly consisted in legal framework on **Intellectual Property** (with Laws on Intellectual Property in 2005, revised in 2009, and its guiding implementation legislations such as Decrees or Circulars). In addition, some provisions relating to aspects of TPP commitments on Intellectual Property are provided in legislations of some other legal systems. For example:

- Custom law (relating to the border enforcement of intellectual property rights),
- Competition law (unfair competition on intellectual property rights),
- Civil law (civil relationship between objects as civil rights),
- Civil Procedure law (regulating the infringement on intellectual property with civil remedies, by civil sanctions),
- Criminal law (Crimes relating to infringement on intellectual property),
- Criminal Procedure law (regulating the crimes on intellectual property and corresponding criminal sanctions)...

At the time of the review (October 2016), there are international commitments on intellectual property which become effective in Vietnam, especially Vietnam commitments on investment under the framework of WTO (the Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS). Besides, Vietnam also accessed international agreements on Intellectual Property (the Berne Convention for the Protection of Literary and Artistic Works, the Madrid Agreement concerning the International Registration of Marks, the Paris Convention for the Protection of Industrial Property, and the international convention for the protection of new varieties of plants UPOV...). Vietnam legislations on intellectual property-related have suitable design for these international commitments; and, therefore, the Vietnam's protection level on intellectual property follows the protection standards under TRIPS and other related conventions, which contain basically popular protection levels all over the world.

However, TPP commitments on intellectual property are evaluated as TRIPS+ which means that the protection level on intellectual property rights and related requirements under TPP are mainly higher than present protection level under TRIPS and other conventions on intellectual property.

At the same time, since the TPP negotiation period, Vietnam's legal system on intellectual property has not been performed any great reform, especially the Law on Intellectual Property. Thus, the compatibility of the Vietnam's current legislations intellectual property and equivalent commitments under TPP is quite low.

This is the reason partially explaining the difference between the assessment results of compatibility of Vietnam legal system and TPP commitments on intellectual property, and the compatibility of Vietnam legal system and TPP commitments on other areas (such as investment, custom, government procurement...). Vietnam's basic legislations on other areas are adjusted sooner, from 2013 to 2016, and therefore, adapting with many TPP commitment tendency in the negotiation progress.

About the range of reviewed legislations, in reality Vietnam legal framework has many legislations in different levels providing the similar legal issues. In such cases, this Review does just focus on legislations containing direct and most broadly/highly covered provisions about the analyzed issues. It does not list any indirectly related regulations, or repeat other rules with higher legal validity.

III. Summary about Results of the Review and Recommendations

The results of detailed review of Vietnam legal framework with specific TPP obligations on intellectual property is that Vietnam legal framework is mostly compatible with TPP commitments (totally compatible with 55 Articles, and partly incompatible with 27 Articles per total 82 Articles in Intellectual Property Chapter under TPP). Comparison review of TPP and EVFTA also describes similarities and differences between commitments on intellectual property under these two Agreements.

The next part will summarize the comparison results of TPP and EVFTA, specific and analyze the characteristics of TPP commitments on intellectual property which is compatible or incompatible with Vietnam legal framework, together with corresponding recommendations.

1. Comparing TPP and EVFTA commitments on intellectual property

According to MFN and NT principle under TRIPS, if Vietnam has EVFTA commitments on intellectual property and EVFTA becomes effective, these commitments will be applied to all Vietnam's partners (EU or non-EU). Besides, many EVFTA commitments on intellectual property have similar content or requirement level to that of TPP. Thus, several TPP commitments on intellectual property which is similar to EVFTA commitments will be implemented from the 'effective date' of EVFTA even if TPP is ineffective. Therefore, the comparison of commitments on intellectual property under TPP and EVFTA is extremely meaningful.

The comparison results of TPP and EVFTA shows that TPP generally requires higher protection on intellectual property (with more TRIPS+ regulations) than EVFTA. However, in some particular situations, TPP and EVFTA commitments have similar contents (such as protection principles and exclusive rights) or even in some case EVFTA has higher requirements (such as geographical indication).

Group of equivalent commitments mainly concentrates on the following aspects:

- General issues (definitions; general protection target on intellectual property; the exhaustion on intellectual property)
- Trademark (several contents of identical or similar trademark; well-known trademark, assessment procedure, protest, cancellation; maintaining validation of certificates through electronic system; classifications of goods and services)
- Copyright and Related Rights (specific rights of right holders; restriction and exception of exclusive rights; collective management)
- Enforcement (general requirements of enforcement, requirement of procedure, civil and administrative sanction; temporary measures; border measures)

Basically, equivalent commitments under TPP and EVFTA mainly have the same protection level as under TRIPS. A few other commitments under TPP and EVFTA which are designed to follow the TRIPS + standards ((higher protection level than TRIPS) have different detailed contents therefore, these commitments are not classified in the group of equivalent commitments.

Group of TPP commitments which are not provided under EVFTA includes:

- General issues (Principles and obligations; Agreement relating to TRIPS and Public Health; transparency; Patents Cooperation; Public Property; Cooperation on Communication Knowledge)
- Trademark (Trademark protection on sound and smell; collective trademark, registration trademark; term of protection ; the non-compulsory registration of license contract; domain name)
- Country name
- Industrial Designs protection systems (improving quality, effectiveness of the system)

According to commitments in this group, TPP has higher protection requirements than EVFTA (not providing these commitments in its wordings, EVFTA is presumed not to have any related requirement; meanwhile, TPP has these commitments and implementing requirements)

With regard to contents, there are several areas which are committed under TPP but not EVFTA, including issues of pharmaceutical exception (relating to Public Health), Trademark and Industrial Designs protection, or issues that are concerned by the United State (who is the TPP member to initiate this issue on intellectual property negotiation) but are not EU's priorities. In opposition, EVFTA's IP commitments on geographical indication are very detailed, and account a large number of articles; and TPP does not these equivalent commitments. It indicates EU's attention in this institutional area.

Group of issues committed provided both under the TPP and the EVFTA but in different requirement levels includes:

- Non-crimination principles: EVFTA only has MFN principle while TPP only has NT principle
- Cooperation on Intellectual Property: EVFTA contains higher commitment
- Cooperation on Patents and Work-sharing: TPP contains higher commitment
- Trademark (using several contents of identical or similar trademark; electronic registration system): TPP contains higher commitment
- Geographical indication: EVFTA contains higher commitment
- Proprietary data protection for agrochemical product: TPP contains higher commitment
- Patents of pharmaceutical product (revising the term of patents protection shortened unreasonably because of the delay in the process of obtaining the certificate of free sale): EVFTA provides the max level of revision while TPP does not provide any detailed level.
- Term of Industrial Designs protection: EVFTA contains higher commitment
- Term of Copyright and Related Rights protection: TPP contains higher commitment
- Presumption of right holders: EVFTA contains higher commitment
- The enforcement of Intellectual Property right (publishing the determinations related to intellectual property): EVFTA contains higher commitment
- Sanctions relating to infringement on technological protection measures TPMs: TPP contains higher commitment
- Right Management Information protection RMIs: TPP contains higher commitment
- Internet service providers (legal sanctions and obligations): TPP contains higher commitment

With regard to this group of commitments, when EVFTA takes effect, Vietnam will have to revise intellectual property-related registrations in purpose of EVFTA implementation and compliance. In that cases, the similar commitments under TPP and EVFTA also is applied even in the case TPP does not have effect. Thus, firstly, according to the commitments which are higher committed under TPP than EVFTA, the actualization level is similar to that of EVFTA. Secondly, according to the commitments which are lower committed under TPP than EVFTA, TPP commitments are completely actualized.

In conclusion, because of having similar commitments (totally or partly) on intellectual property with the EVFTA, TPP commitments could be actualized in Vietnam at the same level with that of EVFTA even if TPP does not have effect.

2. Review result on the compatibility of Vietnam legal framework with TPP commitments on intellectual property

2.1. The group of TPP commitments that Vietnam's legal framework have been compatible with

Situation

The results of the review show that the Vietnam legal framework is totally compatible with 55 per 82 Articles of Intellectual Property under TPP.

In fact, in spite of high standards, the foundation of TPP commitments on intellectual property also is TRIPS principles. The part of TRIPS+ commitments is actually the addition and clarification to the foundation. Meanwhile, since becoming the official member of WTO and taking responsibility of implementing fully compulsory commitments under WTO including TRIPS, Vietnam legal framework has been revised in order to adjust the new commitments. Thus, the results of the review illustrate that most of TPP commitments on intellectual property relating to basic issues under TRIPS are completely and suitably provided in Vietnam legal framework.

More precisely, commitments which totally meet Vietnam legal framework relating to the following groups of issues:

- Definitions relating to regulations on intellectual property
- Commitments on general issues (general principles, transparency, cooperation)
- Exhaustion
- Trademark (the type of trademark, exceptions preventing trademark owners' rights, "confusingly similar" mark, well-known trademark, procedure of trademark protection, classification of goods, term of protection)
- Country domain name
- Geographical indication (choosing the general or particular protection system to trademark, procedure of geographical indication protection, starting time of protection)
- Patents and confidential data (protection conditions, the cases of revoking/cancelling/nullifying protection certificates, exception preventing exclusive rights, priority principles to first registration, applicant's comment and correct right, compulsory controlling exception to pharmaceutical, independence in term of protection between patents and exclusive rights of data)

- Industrial designs (all commitments on industrial designs, including protection object, improving protection system of industrial designs)
- Copyright and related rights (Related definitions, exclusive rights of each group of related holders, limitation and exception of exclusive right, balance principle between interests of right holders and public targets, free transfer)
- Enforcement of intellectual property right (presumption of right holders and validity of certificates, maintaining procedure/measure for right protection required by right holders, rights to prevent the trade of goods infringing intellectual property, sanctions to infringement of information security regulation, temporary measures, border suspending goods doubtfully infringing intellectual property, required information from related sides, compulsory warranty while requiring temporary measures, administrative sanctions, infringed property confiscation or equivalent monetary penalty)
- Criminal count (criminal counts for intentional activities of counterfeiting, exporting, importing, distributing trademark counterfeiting or pirated copyright goods on a commercial scale)
- Software used by government

As mentioned above, most TPP commitments which Vietnam legal framework is compatible with repeat of emphasize implementation obligations under TRIPS. Besides, Vietnam implemented completely TRIPS obligations by providing them in the domestic legal system when Vietnam participated in the WTO.

In addition, in a few cases, TPP commitments reflect some higher protection standards on intellectual property than that of TRIPS. However, these commitments are provided under the United State – Vietnam Bilateral Trade Agreement (BTA). And Vietnam also revised the intellectual property-related legislations in order to be suitable with BTA, especially the revision of Law on Intellectual Property in 2009.

Recommendations

From the principle perspective, with regards to compatible commitments under the TPP, the revision of Vietnam legislation is unnecessary.

However, there is a fact that (i) several domestic regulations which contains “non-conflict” provision are unclearly compatible, which could negatively influence the implementation and protection of intellectual property right; and (ii) in many circumstances, regulations are compatible but their implementation in realistic is ineffective and unsuccessful in achieving supposed objectives (especially infringement of copyright and related rights)

Thus, even in the compatible cases, the research group recommends Government and appropriate authorities to initiate some specific measures to ensure the effectiveness of these regulations, especially:

- Continuously reforming administrative procedure, electronical government on management and protection of intellectual property.
- Continuously revising legislations, providing proper supplementary structure to improve implementation effectiveness
- Investigating to take full advantage of lawful exceptions (e.g.: exception on patents of pharmaceutical relating to public health, balance between the interests of right holders and community interests...)

2.2. **The group of TPP commitments that Vietnam's legal framework have partly been incompatible with**

Situation

The result of the review shows that Vietnam legal framework is partly incompatible with commitments in 28 per 82 Articles of Intellectual Property Chapter under TPP.

As a highlight feature, all commitments in this group are partly incompatible (only with some aspect provided under some clause/point/paragraph of an article under TPP Intellectual Property Chapter), none of them are totally incompatible with an article or an issue under TPP Intellectual Property Chapter.

More precisely, commitments that Vietnam's legal framework is totally compatible with fall in the following issues:

- Accessing to some required conventions on Intellectual Property (Patent Co-operation Treaty, Paris Convention, Berne Convention, Madrid Agreement, UPOV 1991)
- Trademark (protection of sound trademark, encouraging smell protection; automatic situation considered as "liable to create confusion"; announcement about the reason of refusing registration by document; electronical registration system; non-compulsory registration of license contract; the system of resolving conflicts relating to suitable domain name ICANN);
- Geographical indication (the method of determining common vocabulary in general language)
- General patent (protecting three groups of objects: new uses/new using method/ new using process of familiar products; condition of grace period "novelty"; publishing information relating to registration, patent license; extension the term of protection due to the delay during registration progress)
- Patents relating to agrochemical product (the term of protection on exclusive right of data; definition of agrochemical product)

- Patents relating to pharmaceutical product (revising the term of patent protection due to the delay during registration progress; the term of protection on exclusive right date in general, biologicals in particular, patent linkage)
- The term of protection on copyright and related rights to performances, recordings; count, exception, vocabulary relating to electronical measures in order to protect TPMs right; count, definitions relating to right management information RMIs;
- General enforcement (fixed compensation in civil procedure; sanctions on infringement of information security regulation; damage compensation when overusing procedure)
- Border enforcement (announcing to right holders when infringed goods is suspended custom clearance/seized; the right of automatically enforce border procedures without requirement of right holders)
- Criminal measure for infringement (definition of "trade scale"; criminal count of films reproduction in theatre, infringement of trade secret, infringement of signal of cable and satellite's encoded programs)
- Civil sanction (protection of useful people for signal of cable and satellite's encoded programs)
- Definition of Internet service providers

In comparison with the group of compatible commitments, the group of partly incompatible commitments has considerably fewer. However, the incompatibility on intellectual property is clearly higher compared to other TPP areas (such as investment, government procurement, custom and trade facilitation...). This fact describes the differences in method of approaching between Vietnam and other influential countries in intellectual property negotiation under TPP, especially the United State. Precisely, TPP commitments in the official document published after the conclusion of TPP negotiations is strongly influenced by the perspective of the United State as an intellectual property product exporter, which requires higher protection level for right holders than the usual level under TRIPS+. Meanwhile, like most of TPP member countries including developed ones as Australia or New Zealand, Vietnam is an intellectual property product importer with the usual protection standards on intellectual property right such as TRIPS. Therefore, the same as many TPP members, Vietnam tends to avoid the implementation of TPP protection standards on intellectual property before the TPP's effective date. This is the reason of the delay on compatibility between TPP commitments on intellectual property and Vietnam's domestic legislations compared to commitments in other areas (especially commitments on transparency, procedure reform, modernization...) which are applied to Vietnam legal framework during negotiation progress because of its internal demands.

From the content perspective, all TPP commitments that Vietnam's legal framework has partly been incompatible with are commitments under TRIPS+, divided to two groups: the group of TRIPS+ standards on procedure process and the group of TRIPS+ standards on protection level of right holders (bring benefits to right holders).

Precisely, the group of TRIPS+ standards on procedure includes the following commitments:

- Transparency and simplifying of procedure (publishing the information of registration and certificates, consolidation of vocabulary)
- Electronicization of registration procedure
- Protection of right holders on serious/clear infringements (damage compensation, publishing information, protection of secret information in procedure...)

The group of TRIPS+ standards on protection level of right holders includes the following commitments:

- Extending the number of protected objects (trademark, patents)
- Improving the flexibility of protection conditions (extending the “novelty” for patents)
- The extension on the term of exclusive right protection (patents, patents-registration for distribution, exclusive right of data)
- Increasing and extending the principles of right holders on presumption of authorship or ownership (copyrights and related rights)
- Strengthening the structures in order to protect the interests of right holders in implementation of intellectual property (detection, prevention, handling, sanctions for infringement of intellectual property)
- Penalisation of infringement on intellectual property (infringement on films, TPMs, RMIs, signal of cable, signal of satellite’s encoded programs)

Recommendations

In principle, according to commitments that Vietnam legal framework has been incompatible with, Vietnam have to revise the legal framework in order to compatible with all of them before the effective date of TPP. However, in the circumstance that TPP has unpredictable future, there is no information about the effective date of TPP (with commitments under the document of Agreement published in November 2015).

Thus, the possibility and time of converting all TPP commitments on intellectual property into Vietnam legal framework completely depends on internal demand on improving the intellectual property-related registrations in purpose of highest benefits for Vietnam (including register community and business community).

As mentioned above, according to the results of the review, the group of TPP commitment that Vietnam legal framework has been incompatible with could be divided into two smaller groups: the group of commitments on transparency and modernization of procedure, and the group of commitments on improving protection for right holders.

In the content perspective, while it is assessed that the commitments of group 2 (the group of improving protection for right holders) are unsuitable to the interests of Vietnam (in which register and business community mainly belongs to the group of using intellectual property products, and in opposite view of right holders), the commitments of group 1 (the group of transparency and modernization of procedure) is suitable with the Vietnam demand on transparency and informing procedure in the investment trade areas, in general, and the intellectual property areas, in particular.

Therefore, according to the cases which have been incompatible with TPP commitments on intellectual property, there are recommendations on current activities of Vietnam which are designed based on characteristics of the groups mentioned above.

According to the group of commitments on improving protection for right holders, Vietnam only should revise domestic legislations following these commitments if the effective date of TPP is confirmed, and the revision only becomes effective when TPP is officially effective in Vietnam¹, applying for the following cases:

- Several definitions: “broadcasting”, “communication to the public”, “performer”, “making available” (Article 18.58); “effective technological measure” (Điều 18.68); “right management information” (Article 18.69); “trade scale” (Article 18.77); “Internet service provider” (Article 18.79)
- Participating three Conventions on Intellectual (Budapest Convention; Singapore Convention; WCT; and WPPT) (Article 18.7)
- Trademark protection for sound and smell (Article 18.8)
- Regulations that the identical trademark of similar goods or services is marked as “liable to create confusion” (Article 18.20)
- The connection of management system on country domain name, using the procedure of resolving conflicts relating to suitable domain name ICANN (Article 18.28)
- Determining common vocabulary in general language (Article 18.33)
- Patent protection on three groups of objects: new uses/new using method/ new using process of familiar products (Article 18.37)
- Conditions of extending the “novelty” for patent registration (Article 18.38)
- Revision and extension of the term of patent protection because of unreasonable delay (Article 18.46)
- Ten-years protection on exclusive right of data for agrochemical products (Article 18.47)

^{1/} Note: TPP analyzed in this review has all commitments as TPP published officially in November 2015. The review becomes ineffective when TPP is accepted and effective with renegotiation or revision of content.

- The revision of the term of patent protection for pharmaceutical products because of unreasonable shortening on the term of protection due to the delay in the process of approving the distribution registration (Article 18.48)
- Five-years protection on exclusive right of data for pharmaceutical products (Article 18.50)
- Eight-years protection (or five-years protection together with corresponding methods) on exclusive right of data for biologicals (Article 18.51)
- Patent linkage (providing information of new registration document for right holders, and maintaining non-criminal structures preventing new distribution licence from the third-party) (Article 18.53)
- 70-years protection on performances, sound recordings and video recordings (Article 18.63)
- Crimes, sanctions, exceptions/ limitations for infringement relating to electronical measures PTMs (Article 18.68)
- Crimes, sanctions, exceptions/ limitations for infringement relating to deleting and changing right management information RMI (Article 18.69)
- Regulations relating to fixed compensation in order to choose by right holders (Article 18.74)
- Competence to implement border procedure without requirements from right holders (Article 18.76)
- Criminal count for infringement on reproduction of film products in theatre which causes remarkable damages to right holders (Article 18.77)
- Criminal count for infringement on trade security (Article 18.78)
- Civil or criminal sanctions for infringement on intellectual property right of signal of cable and signal of satellite's encoded programs (Article 18.79)

According to the group of commitments on transparency and modernization of procedure, Vietnam should revise the intellectual property-related registrations following these commitments immediately instead of waiting the effective date of TPP:

- Regulation of exhaustion on intellectual property right (Article 18.11)
- Improving the quality of patent registration system, rationalization and simplification of patent registration process; Co-operation of patent department in order to facilitate the using and sharing of patent assessment results, and reduce the difference of procedure and process (Article 18.14)

- Announcing to applicants by documents or electronical tools, giving the reason of refusing in refusing announcement (Article 18.23)
- Implementation of electronical registration system for patents (Article 18.24)
- The registration of license contracts is non-compulsory (Article 18.27)
- Regulation on exceptions preventing the exclusive right of patent (Article 18.40)
- Providing detailed information for patent form, patent certificates (Article 18.45)
- Regulation that using of works must be accepted by all right holders (Article 18.61)
- Additional definitions as “right management information” (Article 18.69)
- Maintaining effectively the procedures, sanctions and preventing measures for infringement on intellectual property; ensuring the reasonable, simple, economical and equitable implementation of procedure; equivalent sanction level (Article 18.71)
- Decision of the Court and implementation administrative decision on intellectual property must be promulgated in document and be announced (Article 18.73)
- Regulations on jurisdiction of the Court in sanctions for infringement on information security protection; jurisdiction requiring damage compensation due to overuse procedure (Article 18.74)
- Regulations on obligations of competent authorities in announcing and providing information to right holders when infringed goods is suspended custom clearance/seized (Article 18.76)

With the characteristics and influences of commitments mentioned above, the revision of legislations and actual implementation for compatibility with standards of these commitments is meaningful in improving investment and business environment, together with protecting interests of interested holders in Vietnam (including right holders and register communities). In the other words, the voluntary implementation of this group of commitments brings benefits for Vietnam (related holders in Vietnam). Thus, in spite of non-compulsory implementation, Vietnam should immediately start to revise and implement these commitments without waiting to the effective date of TPP, because of the internal demand of Vietnam economic in improving business and investment environment, encouraging creativity and sustainable improvements.

Conclusion

The review of Vietnam legal framework and TPP commitment, and comparison between TPP and EVFTA on intellectual property shows remarkable but unsurprising results.

Precisely, the commitment level of Vietnam on intellectual property under TPP is basically higher than that of EVFTA (except issues relating to geographical indication), in not only commitments that are only provided under TPP but also commitments that are provided under both TPP and EVFTA based on TRIPS+. The similar commitments under EVFTA and TPP mainly belong to areas that stressed on TRIPS implementation.

From the domestic legal perspective, although Vietnam legal framework is compatible with most of TPP commitments on intellectual property, there are a few of TPP commitments that Vietnam legal framework has partly been incompatible with and no TPP commitments that Vietnam legal framework is totally incompatible with, the review results indicates that the incompatibility of Vietnam legal framework and TPP commitments on intellectual property is higher than that of other areas such as investment, customs and trade facilitation...

Most of the incompatible commitments are commitments which have higher protection level on intellectual property than that of TRIPS (TRIPS+) relating to protection objects (expanding the group of objects protected by intellectual property right), protection conditions (reduction, expansion or flexibility of protection conditions), term of protection (expanding or revising to expand the actual validation term of protection certificates), improving right of right holders (e.g. clearer exclusive rights, right of receiving information on free sale registration of related products, right of implementation requirement, right of choosing damage compensation requirement...) and increasing infringement controlling structures (structures for easier implementation, more crimes of infringement on intellectual property...). According to these commitments, the review recommends implementation measures which are suitable with the interest of Vietnam and only are implemented when fixing the effective date of TPP.

Besides, there is a group of TPP commitments that Vietnam legal framework is incompatible with, and tending to follow transparency and facilitation (published information of form, certificate; reconfirming vocabulary; maintaining electronical system...) or protect right holders from infringement (protecting secret information, announcing when counterfeiting goods is detected and seized...). These requirements are suitable with tendency of administrative procedure inform in order to complete Vietnam's legal framework, in general, and intellectual property-related legislations, in particular. In these cases, the implementation of changes following TPP commitments is expected to bring remarkable benefits for Vietnam. Therefore, the review

recommends that Vietnam should revise the legal framework and actual implementation based on TPP commitments as soon as possible instead of waiting to the effective date of TPP in purpose of improving business environment, investment attraction, and protection of related public interest, together with encouraging creativity in Vietnam./.

Part two

The summary review table

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Section A: General Provisions			
Article 18.1: Definitions	Definitions used in IP Chapter of TPP	<p>Assessment</p> <p>Vietnam legal framework has similar definitions to TPP (except in the cases definitions are not relevant to domestic legislation), therefore, it is compatible.</p> <p>Recommendation</p> <p>No revision of the law.</p>	<p>Equivalent</p> <p>Except that: EVFTA does not have a definition on “performance”</p>
Article 18.2: Objectives	The TPP’s objectives on the protection and enforcement of IP rights	<p>Vietnam legal framework recognizes similar objectives to TPP, therefore it is compatible.</p> <p>Recommendation</p> <p>No revision of the law.</p>	Equivalent
Article 18.3: Principles	Commitment on adopting measures necessary to protect public health and nutrition that such measures are consistent with the provisions of this Chapter.	<p>This is the right to reserve of TPP member, therefore Vietnam legal framework is speculated to be compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	EVFTA does not have equivalent commitments
	Commitment on preventing the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology	<p>Vietnam legal framework does not have any regulations that are inconsistent with this principle, therefore it is compatible.</p> <p>Recommendation</p> <p>No revision of the law.</p>	
Article 18.4: Understandings in Respect of this Chapter	Commitment on recognizing the need to promote innovation and creativity; facilitate the diffusion of information, knowledge, technology, culture and the arts; foster competition and open and efficient markets, taking into account the interests of relevant stakeholders	<p>Vietnam legal framework recognizes similar objectives to TPP, therefore it is compatible.</p> <p>Recommendation</p> <p>No revision of the law.</p>	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.5: Nature and Scope of Obligations	Commitment on implementing the provisions of IP Chapter and recognizing the right to freely determine the appropriate method of implementing the provisions of this Chapter	This is the right of Vietnam (to freely determine the appropriate method of implementing, as long as it is consistent with TPP), it is speculated to be compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Article 18.6: Understandings Regarding Certain Public Health Measures	Commitment on implementing the Declaration on TRIPS and Public Health	Vietnam legal framework is consistent with TRIPS, therefore it is compatible with TPP Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Article 18.7: International Agreements	The category of Treaties that each Party has ratified or acceded or must ratify/accede when the TPP takes effect	Vietnam is not currently the member of 03 compulsory Treaties Recommendation Considering the time to accede international Treaties of which Vietnam has not been a member and it must be compatible with the time when the TPP takes effect.	EVFTA does not require Vietnam to accede to 03 compulsory Treaties like TPP
Article 18.8: National Treatment	Obligation to accord to nationals in respect of all categories of intellectual property except for the following circumstances: - phonograms by means of analog communications and free over-the-air broadcasting; - judicial and administrative procedures to secure compliance with laws or regulations that are not inconsistent with the TPP and; - procedures provided in multilateral agreements concluded under the auspices of WIPO.	Vietnam legal framework regulates general rights and obligations for all stakeholders and does not discriminate according to nationality, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have provision on national treatment like TPP but it has provisions on Most Favored Nation (MFN) treatment which TPP does not. Basically, the obligation of Vietnam is equivalent to EVFTA and TPP in respect of this matter.

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.9: Transparency	Obligation to endeavor to make available on the Internet its laws, regulations, procedures and administrative rulings of general application	Vietnam legal framework does provide to upload all legal documents to the internet, therefore it is compatible. Recommendation No revision of the law.	EVFTA does not have equivalent commitments
	Obligation to endeavor to make available on the Internet information that it makes public concerning: - applications for trademarks, geographical indications, designs, patents and plant variety rights; - registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights	Vietnam legal framework on does provide to upload all applications and IP protection titles, therefore it is compatible Recommendation No revision of the law.	
Article 18.10: Application of Chapter to Existing Subject Matter and Prior Acts	Principle of applying the commitments on all subject matter existing at the date of entry into force of the TPP, or that meets or comes subsequently to meet the criteria for protection Not restoring protection to subject matter that on the date of entry into force of the TPP for that Party has fallen into the public domain in its territory or before the date of entry into force of the TPP	Vietnam legal framework on principles on applying laws (retroactivity, the date of entry into force...) is consistent with TPP commitments, therefore it is compatible. Recommendation No revision of the law.	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.11: Exhaustion of Intellectual Property Rights	Commitment on recognizing the Exhaustion of Intellectual Property Rights	<p>This right depends on each TPP members, Vietnam legal framework also provides the exhaustion, therefore it is compatible.</p> <p>Recommendation</p> <p>In principle, it is not necessary to adjust, amend the law.</p> <p>Regarding the target of being transparent, it can be considered to sufficiently and convergently re-stipulate on exhaustion.</p>	Equivalent
Section B: Cooperation			
Article 18.12: Contact Points for Cooperation	Designating contact points for the purpose of cooperation	<p>This is a separate matter of the TPP. The implementation does not affect the domestic legal system regarding merit.</p> <p>Recommendation</p> <p>No revision of the law.</p>	Equivalent
Article 18.13: Cooperation Activities and Initiatives	Commitment on activities and areas of cooperation on the subject matter covered by Chapter 18 off the TPP	<p>This is a separate matter of the TPP. The implementation does not affect the domestic legal system regarding merit.</p> <p>Recommendation</p> <p>No revision of the law.</p>	EVFTA regulates specifically while TPP regulates more generally.

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.14: Patent Cooperation and Work Sharing	Commitment on recognizing the importance of improving the quality and efficiency of the patent registration systems as well as simplifying and streamlining the procedures and processes of the patent offices	It is unclear that whether Vietnam legal framework is compatible or not. Recommendation It is necessary to improve the transparency, quality and sufficiency of the procedures for patent protection	TPP requires specifically while EVFTA requires more generally.
	Cooperation among patent offices to facilitate the sharing and use of search and examination work of other Parties	Vietnam legal framework does not provide this matter. However TPP does not specify that whether this measure is compulsory or not. Therefore, it is impossible to determine the compatibility.	
	Cooperation to reduce differences in the procedures and processes of patent offices	This is a separate matter of the TPP, the implementation does not affect the domestic legal system regarding merit.	
	Recognizing the consideration to ratifying or acceding to the Patent Law Treaty	This is the commitment on endeavor, not associated with compulsory obligation, therefore Vietnam legal framework is speculated to be compatible	
Article 18.15: Public Domain	Commitment on recognizing the importance of a public domain and informational materials that assist in the identification of subject matter that has fallen into the public domain	Vietnam legal framework does not have specific provision regarding this matter. This TPP commitment does not include specific contents, just a recognition on the direction, therefore Vietnam legal framework is speculated to be compatible	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.16: Cooperation in the Area of Traditional Knowledge	Recognizing the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other	???	EVFTA does not have equivalent commitments
	Endeavour to cooperate to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.	???	
	Endeavour to pursue quality patent examination related to traditional knowledge	???	
Article 18.17: Cooperation on Request	The implementation of commitments on cooperation depends on the agreement, selection and resources of the Parties.	This is a separate matter of the TPP, the implementation does not affect the domestic legal system regarding merit.	EVFTA does not have equivalent commitments
Section C: Trademarks			
Article 18.18: Types of Signs Registrable as Trademarks	Commitment on not deny registration of a trademark only on the ground that the sign of which it is composed is a sound, a sign be visually imperceptible Commitment on endeavor to protect scent trademarks	Vietnam legal framework does not provide protection for the trademark being a sound, and a visually imperceptible sign; therefore it is not compatible. TPP does not require to protect scent marks, therefore Vietnam legal framework is speculated to be compatible Recommendation When TPP takes effect, it is necessary to amend Article 72.1 and Article 73, Article 74 of IP Law to include protection for trademark being a sound, and a visually imperceptible sign.	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.19: Collective and Certification Trademarks	Commitment on recognizing trademarks including collective and certification marks	Vietnam legal framework provides for these kinds of trademarks, therefore it is compatible Recommendation: No revision of the law.	EVFTA does not have equivalent commitments
Article 18.20: Use of Identical or Similar Signs	Commitment on providing that the owner of a registered trademark has the exclusive right to prevent third parties from using identical or similar signs that are related to those goods or services in respect of which the owner's trademark is registered. In case of using an identical sign for identical goods or services, a likelihood of confusion shall be presumed	Vietnam legal framework recognizes these rights of trademark's owner, therefore it is compatible. However, Vietnam legal framework does not consider the likelihood of confusion in case of using an identical sign for identical goods or services Recommendation When TPP takes effect, it is necessary to amend Article 129 of IP Law to regulate on the automatic presumption of likelihood of confusion in case of using an identical sign for identical goods or services, without the "likelihood of confusion" condition.	Basically, it is equivalent Except for: -the following Geographical indication that has signs identical or similar to registered trademarks: TPP regulates specifically, EVFTA regulates generally, therefore the scope of commitment obligation under the EVFTA is wider than TPP
Article 18.21: Exceptions	Commitment on recognizing the right to provide limited exceptions to the rights conferred by a trademark, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.	Vietnam legal framework regulates on exceptions regarding the trademarks, taking into account of the legitimate interest of relevant Parties, therefore it is compatible with TPP Recommendation: No revision of the law.	-general terms: EVFTA excludes (does not protect) while TPP does not. -the definition of "likelihood of confusion: TPP requires automatic presumption, while EVFTA does not mention this definition

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.22: Well-Known Trademarks	Obligation not to use these following criteria for determining a well-known trademark (i) the trademark has been registered in the Party or in another jurisdiction (ii) included on a list of well-known trademarks or given prior recognition as a well-known trademark	Vietnam legal framework on criteria for determining a well-known trademark does not include the criteria that are prohibited pursuant to the TPP, therefore it is compatible Recommendation: No revision of the law. However, to ensure the transparency, it should be necessary to supplement provisions to specify the criteria for determining a well-known trademark.	Basically, it is equivalent. Except that: the commitments on implementing Paris Convention under the TPP are closer than under the EVFTA
	Obligation to comply with Article 6bis of Paris Convention 1967 (regarding the cases of being likely to cause damage for a well-known trademark even goods or services that are not identical or similar to those identified by a well-known trademark)	Vietnam legal framework has provisions similar to this commitment in the TPP, therefore it is compatible Recommendation No revision of the law.	
	Recognizing Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks dated September 29 1999		
	Obligation to provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark if the use of that trademark is likely to cause confusion with the prior well-known trademark		

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.23: Procedural Aspects of Examination, Opposition and Cancellation	Obligation to ensure notification for applicants in writing or by electronic means, in which clearly stating the reasons for any refusal to register a trademark	<p>Although Vietnam legal framework provides about the notification of the result of examination, it does not require a clear statement regarding the reasons for any refusal to register</p> <p>Recommendation</p> <p>Amending Vietnam legal framework to supplement the provisions on a clear statement regarding the reasons for any refusal to register</p>	Equivalent
	Obligation to provide the applicant with an opportunity to respond, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark	<p>Vietnam legal framework stipulates provisions similar to TPP commitments, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	
	Obligation to provide a system for the examination that allows applicants to respond to the notifications as well as relevant parties to protest.		
	Obligation to require administrative decisions in opposition and cancellation proceedings to be reasoned and in writing.		

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.24: Electronic Trademarks System	Commitment on providing a system for the electronic application for and a publicly available electronic information system.	<p>Vietnam legal framework does not provide for the electronic application. Vietnam legal framework on administrative procedures in general has regulations on public administration services, however it is not sufficient to assess that these procedures have met the requirements regarding the application, processing and maintaining the validity of protection title which are conducted completely electronically.</p> <p>Recommendation</p> <p>Supplementing provisions on the establishment, maintenance and validity of the electronic portal for application and maintaining the validity of the protection title.</p>	<p>Equivalent</p> <p>Except that: EVFTA does not have any commitment on electronic application like the TPP</p>
Article 18.25: Classification of Goods and Services	Commitment on adopting or maintaining a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	<p>Vietnam legal framework stipulates provisions similar to TPP commitments, therefore it is compatible</p> <p>Recommendation:</p> <p>No revision of the law.</p>	Equivalent
Article 18.26: Term of Protection for Trademarks	Commitment on initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.	<p>Vietnam legal framework stipulates that the term for protection is 10 years and multiple renewals are allowed, therefore it is compatible</p> <p>Recommendation:</p> <p>No revision of the law.</p>	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.27: Non-Recordal of a Licence	Commitment on not requiring record of trademark licenses	Vietnam legal framework stipulates that the contract is valid only when it is registered with a state agency on IP, therefore it is not compatible. Recommendation Amending Article 148.2 of IP Law and relevant provisions in guiding documents.	EVFTA does not have equivalent commitments
Article 18.28: Domain Names	Commitment on connecting with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, using an appropriate procedure for the settlement of disputes based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy as approved by the Internet Corporation for Assigned Names and Numbers (ICANN)	Vietnam legal framework does not have specific provisions on the settlement of disputes regarding domain names, as well as not in accordance with ICANN mechanism (except for the cases related to unfair competition on domain names), therefore it has been incompatible. Recommendation Amending Decree No. 73/2013/ND-CP and Circular No. 24/2015/TT-BTTTT to establish a dispute settlement procedure regarding domain names based on ICANN policies.	EVFTA does not have equivalent commitments
	Commitment on providing appropriate remedies in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.	Vietnam legal framework stipulates particular remedies for the unfair competition on domain names, therefore it is compatible Recommendation: No revision of the law.	
Section D: Country Names			

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.29: Country Names	Obligation to provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good	Vietnam legal framework stipulates prohibitions and remedies and sanctions regarding the use of domain names like TPP, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Section E: Geographical Indications			EVFTA has a different system of commitments on geographical indications compared to TPP, it is not equivalent to assess the compatibility, except for the following circumstances.
Article 18.30: Recognition of Geographical Indications	Commitment on recognizing that geographical indications may be protected through a trademark or sui generis system or other legal means	Vietnam legal framework is protecting geographical indications pursuant to a particular system which is independent of trademarks. TPP allows members to choose a system, therefore Vietnam legal framework is compatible. Recommendation No revision of the law.	
Article 18.31: Administrative Procedures for the Protection or Recognition of Geographical Indications	Regulations on administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a sui generis system	Vietnam legal framework provides for particular administrative procedures on recognizing and protection geographical indications, therefore it is compatible Recommendation No revision of the law.	Equivalent

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.32: Grounds of Opposition and Cancellation	Commitment on procedures that allow interested persons	Vietnam legal framework stipulates provisions similar to TPP commitments, therefore it is compatible	EVFTA does not have equivalent commitments
	- to subject to the protection or recognition of a geographical indication	Recommendation No revision of the law.	
	Commitment on procedures that allow interested persons to seek the cancellation of a geographical indication, and allow cancellation.	Vietnam legal framework stipulates provisions similar to TPP commitments, therefore it is compatible	
	Commitment on allowing: -refuse protection/recognition of geographical indications -cancel protection/recognition of geographical indications. -a procedure for interested persons to sue the decisions of competent agencies.	Recommendation No revision of the law.	
	Commitment on allowing the cancellation of the protection or recognition of a geographical indication on the basis that the protected or recognized term has ceased meeting the conditions.	The analysis of this section should be referred to the detail review	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.33: Guidelines for Determining Whether a Term is the Term Customary in the Common Language	Commitment on determining whether a term is the term customary in common language	<p>Vietnam legal framework only has regulations on not protecting names, indications which has become common names of goods without guidance to determine common names, therefore it is incompatible.</p> <p>Recommendation</p> <p>Supplementing regulations to clarify the definition of “common names” into Article 80.1 of IP Law in order to be compatible with the TPP</p>	EVFTA does not have equivalent commitments
Article 18.34: Multi-Component Terms	Commitment on the cancellation of the protection of geographical indications which are multi-component terms in which the individual component is a common name.	The analysis of this section should be referred to the detail review	EVFTA does not have equivalent commitments
Article 18.35: Date of Protection of a Geographical Indication	The date of protection or recognition shall commence no earlier than the filing date in the Party or the registration date in the Party.	<p>Vietnam legal framework stipulates that geographical indications are protected since the day of granting, which is after the filing date, therefore it is compatible with the TPP.</p> <p>Recommendation:</p> <p>No revision of the law.</p>	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.36: International Agreements	<p>Obligation of a Party to apply at least procedures and grounds that are equivalent to those in Article 18.31(e) and Article 18.32.1 and make available to the public and allow the public to oppose the automatic protection of geographical indications in an international agreement.</p> <p>This obligation does not apply to:</p> <ul style="list-style-type: none"> - geographical indications for wines and alcoholic beverages - relevant signed international treaties which take effect or are ratified before the TPP; or the negotiation results are published at the end of TPP negotiations. 	<p>This commitment to Vietnam is in fact for the cases in which geographical indications are automatically recognized and protected under the EVFTA (because only EVFTA has commitment on automatic protection of geographical indications).</p> <p>EVFTA commitments belong to the case of “negotiation results are publicly published” (agreed in principles) before TPP ends negotiations, therefore Vietnam are not obliged to perform the obligations in this Article.</p> <p>Therefore, Vietnam legal framework is speculated to be compatible.</p> <p>Recommendation</p> <p>No revision of the law.</p>	<p>EVFTA does not have direct equivalent commitmentsRelated commitments</p> <p>Article 6.3 – Established Geographical Indication (under EVFTA)</p> <p>Article 6.4 – Amendment of List of geographical indications</p>
Section F: Patents and Undisclosed Test or Other Data			
Subsection A: General Patents			

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.37: Patentable Subject Matter	Conditions for patent protection	Vietnam legal framework stipulates the conditions for protection similar/equivalent to the TPP, therefore it is compatible	EVFTA does not have equivalent commitments
	Patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product	Vietnam legal framework does not mention but in practice, Vietnam have not protected any subjects in this group. Recommendation: Selecting one of the 3 subjects (the least common one) to guide implementing agencies to consider for protection pursuant to stipulated conditions.	
	Cases that are excluded from patentability	Basically, cases that are excluded from patentability pursuant to Vietnam legal framework are covered or equivalent to the TPP, therefore it is compatible Recommendation No revision of the law.	
	Excluding from patentability plants other than microorganisms	???	
Article 18.38: Grace Period	Conditions for grace period on the “novelty” of inventions which are disclosed/published before the time of registration	Vietnam legal framework has stricter regulations on the conditions for grace period than the TPP, simultaneously stipulates the time for grace period is only half compared to the TPP. Therefore Vietnam legal framework has not been compatible with the TPP Recommendation Amending Vietnam legal framework in accordance with the commitments on grace period of the TPP	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.39: Patent Revocation	Providing that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement	Vietnam legal framework stipulates cases in which a patent may be cancelled, revoked or nullified that are similar to TPP and consistent with Paris Convention and the TRIPS Agreement, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Article 18.40: Exceptions	Commitment on recognizing the right to provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner.	Vietnam legal framework stipulates several limited exceptions to the exclusive rights conferred by a patent which are consistent with the requirement of TPP, therefore it is compatible Recommendation Researching to supplement new exceptions to serve the public interest which comply with TPP commitments.	EVFTA does not have equivalent commitments
Article 18.41: Other Use Without Authorisation of the Right Holder	Commitment on implementing the rights and obligations in Article 31 of TRIPS Agreement on Other Use Without Authorization of the Right Holder.	Vietnam legal framework stipulates limited exceptions that are consistent with the TRIPS Agreement, therefore it is compatible with TPP Recommendation Researching to supplement new exeptions to server the pubic interest which comply with TPP commitments.	Equivalent
Article 18.42: Patent Filing	The “first-to-file” principle except for certain circumstances	Vietnam legal framework stipulates the “first-to-file” principle and in practice the latter filing has been considered which is consistent with TPP commitments, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.43: Amendments, Corrections and Observations	Commitment on providing a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application	Vietnam legal framework stipulates the rights to make amendments, corrections and observations of applicants, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Article 18.44: Publication of Patent Applications	Commitment on endeavoring to publish unpublished pending patent applications promptly after the expiration of 180 days from the filing date or, if priority is claimed, from the earliest priority date and the right to request publication of applicant	Vietnam legal framework stipulates provisions on publication that are consistent with the TPP, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Article 18.45: Information Relating to Published Patent Applications and Granted Patents	Commitment on providing information relating to published patent applications and granted patents	Vietnam legal framework stipulates on the publication of patent applications and granted patents (including inventions) but it is still general, not specifying the contents that must be published like TPP, therefore it is incompatible. Recommendation Amending Article 99 and Article 110 of IP Law in order to be consistent with the TPP	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays	Commitment on patent term adjustment for unreasonable granting IP authority delays	<p>Vietnam legal framework has not stipulated provisions on patent term adjustment for unreasonable granting authority delays, therefore it is incompatible.</p> <p>Recommendation</p> <ul style="list-style-type: none"> - Amending Article 93.2 of IP Law on adjusting patent term for unreasonable granting authority delays - Amending Article 119 of IP Law or guiding Decree on IP Law on industrial property to supplement the definition of “unreasonable delay” 	EVFTA does not have equivalent commitments
Subsection B: Measures Relating to Agricultural Chemical Products			
Article 18.47: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products	Commitment on protecting at least 10 years for undisclosed test or other data concerning the safety and efficacy of the product submitted to domestic IP agencies or submitted for marketing approval in the territory of a Party	<p>Vietnam legal framework only protects data in case of unfair competition and the term of protection is only for 5 years, therefore it is incompatible.</p> <p>Recommendation</p> <p>Amending IP Law on protection of data for agricultural chemical products and definition of agricultural chemical products in accordance with the TPP.</p>	EVFTA has the level of commitments as TRIPS, TPP has the level of commitments as TRIPS+.
Subsection C: Measures Relating to Pharmaceutical Products			

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.48: Patent Term Adjustment for Unreasonable Curtailment	Commitment on making available an adjustment of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process	<p>Vietnam legal framework does not provide for the adjustment of the pharmaceutical patent term due to unreasonable delays in marketing approval process, therefore it is incompatible.</p> <p>Recommendation</p> <p>Amending the IP Law in accordance with TPP commitments</p>	<p>Partially equivalent</p> <p>Both EVFTA and TPP require to make an adjustment, EVFTA provides for the maximum adjusting term, while TPP does not.</p>
Article 18.49: Regulatory Review Exception	Each Party shall adopt or maintain a regulatory review exception for pharmaceutical products	<p>Vietnam legal framework has similar regulations regarding this matter, therefore it is compatible</p> <p>Recommendation:</p> <p>No revision of the law.</p>	EVFTA does not have equivalent commitments
Article 18.50: Protection of Undisclosed Test or Other Data	Commitment on protecting 5 years for undisclosed test or other data concerning the safety and efficacy of the product submitted to domestic IP agencies or submitted for marketing approval in the territory of a Party	<p>Vietnam legal framework only protects data in case of unfair competition and the term of protection is only for 5 years, therefore it is incompatible</p> <p>Recommendation</p> <ul style="list-style-type: none"> - Amending Article 93 of the IP Law - Amending Law on Pharmaceutical Products on the term of marketing approval and the explanation on "unnecessary and unreasonable delays". 	EVFTA have commitments following TRIPS, lower than that of TPP

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.51: Biologics	Commitment on providing effective market protection for biologics through the protection of undisclosed data for a period of at least eight years, or 5 years with other measures to ensure equivalent protection level.	<p>Vietnam legal framework does not have specific provisions on protecting biologics, general provisions on protecting data of pharmaceutical products are not sufficient compared to TPP requirements, therefore it is incompatible.</p> <p>Recommendation</p> <p>Amending Article 128 of the IP Law in the direction of choosing the 5-year term of protection with other market protection measures within the term of 3 years later.</p>	
Article 18.52: Definition of New Pharmaceutical Product	Providing a new definition of pharmaceutical product.	<p>Basically, Vietnam legal framework defines new pharmaceutical products similar to the TPP, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	EVFTA does not have equivalent commitments
Article 18.53: Measures Relating to the Marketing of Certain Pharmaceutical Products	<p>Commitment on measures related to patents such as:</p> <ul style="list-style-type: none"> - Providing information on marketing approval application for patent holders and make available for patent holders to protect their interest (complaints , requests to apply provisional measures to prevent violations) or - Maintaining a system outside the judicial procedure to prevent the marketing approval granting of new pharmaceutical of third parties (possibly through connecting granting patents agencies and marketing approval agencies) 	<p>Vietnam legal framework only provides that marketing approval agencies must actively consider patents, it does not stipulate on the rights of patent holders (on information, complaints, applying measures to protect the rights), and mechanisms to protect the rights.</p> <p>Recommendation</p> <p>Supplementing regulations on this matter into the IP Law, in the direction of connecting granting patents agencies and marketing approval agencies.</p>	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.54: Alteration of Period of Protection	Commitment on not altering the period of protection for data exclusivity in the event of shorter patent protection term	Vietnam legal framework provides for terms of protection separately, independently which does not belong to the expected circumstances in Article 18.45, therefore it is compatible. Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Section G: Industrial Designs			
Article 18.55: Protection	Commitment on ensuring adequate and effective protection of industrial designs, including designs embodied in a part of an article or having a particular regard, where appropriate, to a part of an article in the context of the article as a whole	Vietnam legal framework does not mention designs embodied in a part of an article but does not prohibit the protection of this subject, therefore it is compatible. Recommendation No revision of the law.	Equivalent Except for: the term of protection under the EVFTA is longer than under the TPP
Article 18.56: Improving Industrial Design Systems	Commitment on improving the quality and efficiency of the industrial design registration system, considering to accede to the Lahay Agreement on international registration of industrial designs	Vietnam legal framework has been consistent, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Section H: Copyright and Related Rights			

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.57: Definitions	Definitions on broadcasting, communication to the public, fixation, performers, phonogram, producer of a phonogram, publication.	<p>"broadcasting": Vietnam legal framework has narrower provisions than TPP, due to the listing of broadcasting's subjects, while TPP does not. "communication to the public": Vietnam legal framework only provides for definition on "the right to communicate to the public"</p> <p>"performers": Vietnam legal framework does not have a definition but only lists the subjects considered as performers.</p> <p>"publication": Vietnam legal framework only provides for definitions on "published work, audio and visual fixation"</p> <p>Recommendation</p> <p>Amending Article 4 of the IP Law to supplement, adjust the relevant terms in accordance with the TPP.</p>	EVFTA does not have equivalent commitments
Article 18.58: Right of Reproduction	Commitment on providing the exclusive right of authors regarding the reproduction of their works	<p>Stipulating in Vietnam legal framework on the exclusive right regarding the reproduction, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	Equivalent
Article 18.59: Right of Communication to the Public	Commitment on providing the authors' exclusive right of communication to the public.	<p>Stipulating in Vietnam legal framework on the exclusive right of communication to the public, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	Equivalent
Article 18.60: Right of Distribution	Commitment on the exclusive right of authors, performers, recorders in distributing the works, performances, phonograms (including copies).	<p>Stipulating in Vietnam legal framework on the exclusive right of distributing, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	Equivalent

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.61: No Hierarchy	In cases in which authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer	Vietnam legal framework does not clearly provide for the case in which an subject under the copyright but has several holders with different rights as well as the hierarchy of these right holders. Recommendation: Supplementing 01 provision on the IP Law regarding this matter.	Equivalent
Article 18.62: Related Rights	Commitment on the rights related to copyright of specific groups of subjects.	Vietnam legal framework provides for the rights related to the copyright of each subject similar to the TPP, therefore it is compatible. Recommendation No revision of the law.	Equivalent
Article 18.63: Term of Protection for Copyright and Related Rights	Providing that the term of protection for copyright and related rights is not less than the life of the author and 70 years after the author's death on the basis of the life of a natural person, or not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance or phonogram or in case of failing such authorized publication within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.	Vietnam legal framework on the term of protection for copyright regarding works is longer than TPP (75 years pursuant to Vietnam legal framework compared to 70 years pursuant to the TPP), therefore it is compatible Vietnam legal framework on the term of protection for the rights to performances, audio and visual fixation is shorter than the TPP (Vietnam legal framework stipulates 50 years, TPP stipulates 70 years), therefore it is incompatible. Recommendation Increase the term of protection for subjects stipulated in Article 27.2.b and Article 34 of the IP Law to 70 years instead of 50 years as present.	EVFTA has commitments on the period of 50 years, while the TPP has commitments on the period of 70 years.

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.64: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement	Commitment on applying Article 18 of Berne Convention and Article 14.6 of TRIPS Agreement.	Vietnam legal framework complies with the provisions of Berne Convention and TRIPS Agreement, therefore it is compatible Recommendation No revision of the law.	Equivalent
Article 18.65: Limitations and Exceptions	Commitment on ensuring limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder This commitment changes the requirement rights of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT	Vietnam legal framework has provisions on limitations and exceptions similar to TRIPS, Berne, therefore it is compatible Recommendation No revision of the law.	Equivalent
Article 18.66: Balance in Copyright and Related Rights Systems	Commitment on endeavoring to achieve an appropriate balance in its copyright among other things by means of limitations or exceptions for public and nonprofit purposes or vulnerable subjects.	Vietnam legal framework has provisions on the cases of exceptions that allow free use without permission similar to TPP commitment, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Article 18.67: Contractual Transfers	Commitment on ensuring the free contractual transfer, even contract of employment.	Vietnam legal framework provides for the contractual transfer of IP right (without limitation on the types of contracts, which includes contract of employment), therefore it is compatible with TPP Recommendation No revision of the law.	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.68: Technological Protection Measures (TPMs)	Liabilities and penalties against the circumvention of effective technological measures that controls access to a protected work, performance, or phonogram, manufactures, imports, distributes, offers for sale or rental or provides devices for the purpose of circumventing any effective technological measure.	Vietnam legal framework has provisions on administrative remedies for the violations similar to the commitments but not providing on criminal remedies. Recommendation Supplementing the crimes in the commitments into Article 225 of the Criminal Code.	Equivalent Except for the fact that TPP requires to apply the violations with administrative, criminal and civil remedies, while EVFTA does not commit on the types of remedies.
	Providing that a violation of TPMs is independent of any infringement that might occur under the Party's law on copyright and related rights	Vietnam legal framework does not regulate the connection between the violations, therefore it is compatible with TPP (however, it does not affirm the independence of these measures) Recommendation Clearly stipulating in the IP Law that a violation of TPMs is independent of any other infringements	
	Exceptions and limitations	Vietnam legal framework does not provide for any exception or limitation outside the categories mentioned in the commitments, therefore it is compatible Recommendation Supplementing the exceptions for intended beneficiaries mentioned in the last paragraph of Clause 1 and Clause 4 of Article 25 and Article 32 of the IP Law.	
	Definition of an effective technological measure.	Vietnam legal framework does not have this definition. Recommendation Supplementing the definition of effective technological measure into Article 4 of the IP Law.	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.69: Rights Management Information (RMI)	Liabilities and penalties for any person that knowingly removes or alters any RMI.	Vietnam legal framework provides for administrative penalties for violations stated in the commitments but does not regulate criminal penalties. Recommendation Supplementing the crimes stated in the commitments into Article 225 of the Criminal Code.	Equivalent Except: -EVFTA commits on electronic information on protecting IP rights, TPP commits on information on protect IP rights in general, therefore it is wider.
	Exceptions	Vietnam legal framework does not regulate exceptions or limitations outside the categories in the commitments, therefore it is compatible. Recommendation Supplementing the exceptions stated in Clause 2 of Article 25 and Article 32 of the IP Law	-TPP requires to handle violations with administrative, criminal, civil penalties while EVFTA does not commit the types of sanctions
	Not requiring to include RMI in copies or present RMI when communicating to the public	Vietnam legal framework does not require to include RMI in copies or present RMI when communicating to the public, therefore it is compatible with TPP Recommendation No revision of the law.	
	Definition on RMI	Vietnam legal framework does not provide for the definition of RMI Recommendation Supplementing the definition into the Article 4 of the IP Law	
Article 18.70: Collective Management	Commitment on recognizing the role of collective management organizations on copyright and related rights	Vietnam legal framework has provision on collective management organizations similar to TPP commitments, therefore it is compatible Recommendation No revision of the law.	Equivalent

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Section I: Enforcement			
Article 18.71: General Obligations	Commitment on maintaining the procedures, preventive measures, penalties against IPR violations	<p>Vietnam legal framework provides for these procedures and measures, therefore it is compatible. However, the real implementing efficiency of these procedures and measures still remains relatively low.</p> <p>Recommendation</p> <p>No revision of the law.</p> <p>However, it is necessary to improve the enforcement to ensure the strictness of law and protect the legitimate interests of the right holders.</p>	Equivalent
	The enforcement procedures shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.	<p>Vietnam legal framework does not distinguish whether the violation is in reality or digital environment, therefore the enforcement procedures shall be applied generally, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	
	<p>Commitment on ensuring:</p> <ul style="list-style-type: none"> - the procedures are fair and equitable, reasonable, simple and not costly. - the proportionality between the seriousness of the infringement and the applicable remedies and penalties, as well as the interests of third parties 	<p>It is implausible to assess the fairness, reasonableness, simplicity or the proportionality of relevant provisions.</p> <p>Recommendation</p> <p>It is necessary to reform administrative procedures and improve the quality of regulations as required.</p>	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.72: Presumptions	Presumptions on right holders and validity and the possibility of meeting the conditions for protection title.	Vietnam legal framework provides for the presumptions on the contents similar to TPP commitments, therefore it is compatible Recommendation No revision of the law.	TPP has narrower commitments than EVFTA.
Article 18.73: Enforcement Practices with Respect to Intellectual Property Rights	Final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights preferably are in writing or are published or are made available to the public.	Vietnam legal framework provides for the form of judicial decisions and administrative rulings (in writing) and the publication of this information. However, the real efficiency is limited. Recommendation No revision of the law. It is noted to improve the enforcement of regulations on information disclosure	EVFTA has higher commitments than TPP (EVFTA stipulates specific obligations while TPP does generally)
	Commitment on publishing or making available to the public information on its efforts to provide effective enforcement of intellectual property rights, (such as statistical information on the Decisions, the activities of improving IP enforcement...)	Vietnam legal framework does not have provisions on the publication and availability of information. Recommendation Supplementing regulations on publishing information on the enforcement of intellectual property rights into the IP Law	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.74: Civil and Administrative Procedures and Remedies	Commitment on making available to right holders civil judicial procedures concerning the enforcement of any intellectual property right	Vietnam legal framework stipulates for these procedures, therefore it is compatible	Equivalent
	Providing that judicial authorities have the authority to order injunctive relief including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce	Vietnam legal framework stipulates for the authority to prevent the infringement of judicial authorities, therefore it is compatible	
	Commitment on adequate compensation for damages.	Vietnam legal framework provides for the compensation similar to TPP, therefore it is compatible	
	Commitment on determining the amount of damages, including lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price	Vietnam legal framework provides for determining the amount of damages including lost profits, therefore it is compatible	
	Commitment on determining the amount of damages, including profits earned by infringing party	Vietnam legal framework provides for determining the amount of damages, including profits earned by infringing party, therefore it is compatible	
	Commitment on pre-established damages, which shall be available on the election of the right holder	Vietnam legal framework does not provide for this matter, therefore it is incompatible Recommendation: Supplementing the compensation similar to TPP into the IP Law	
	Commitment on civil judicial proceedings: - that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, - ensuring reasonable cost for appointing a technical or expert, - Having measures to overcome the consequences in civil procedure - That competent Court have the authority to order relevant parties to provide evidences that they hold/control	Vietnam legal framework has provisions similar to the commitments, therefore it is compatible	
	Commitment on the jurisdiction of the court in the application of sanctions against all parties involving in the proceedings of violating the court order on protecting confidential information	Vietnam legal framework does not provide for the jurisdiction of promulgating orders on protecting confidential proceedings information (only stipulating the general obligation of protecting specific kinds of information) and does not provide for the sanctions and the authority to apply sanctions to the violation of confidentiality of information in civil judicial proceedings (only sanctions for the violation of State and business secrets), therefore it is incompatible. Recommendation Supplementing provisions on applying sanctions to violation of confidential information into the Civil Procedure Code, relating to intellectual property proceedings.	
	Commitment on the jurisdiction of the court in claiming for damages, the cost of abusing proceedings	Vietnam legal framework does not provide for the right to claim for damages due to the abuse of proceedings, thus the court cannot have order on compensating for these damages, therefore it is incompatible. Recommendation Supplementing provisions on the right to claim for compensation due to the abuse in IP proceedings similar to TPP into the IP Law.	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
	To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that those procedures conform to principles equivalent in substance to those set out in this Article	Vietnam legal framework does not stipulate the application of civil sanctions in administrative proceedings and procedures for handling administrative violations , therefore it is not subject to the application of these commitments. Recommendation No revision of the law.	
Article 18.75: Provisional Measures	Commitment on the authority: - to apply provisional measures before listening to the explanations of the other Party which complies with domestic law. - to require the applicant for a provisional measure to provide any reasonably available evidence with a sufficient degree of certainty - to seize suspected infringing goods, materials and implements relevant to the infringement of copyright and related rights, trademarks	Vietnam legal framework stipulates the procedures of applying provisional emergency measures similar to the commitments in this Article, therefore it is compatible Recommendation No revision of the law.	Equivalent

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.76: Special Requirements related to Border Measures	<p>Commitment on the authority:</p> <ul style="list-style-type: none"> - to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation - to require relevant parties to provide information - to require the applicant to provide a security. 	<p>Vietnam legal framework on IP and Customs has provisions similar to these commitments, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	Equivalent
	<p>It is likely to stipulate to inform or provide information for the right holder when the release of goods has been detained or suspended</p>	<p>In principle, Vietnam legal framework is compatible with these commitment because they are not compulsory. In fact, it is necessary to do so in order to protect the legitimate right of right holder in case that it has a high change (goods are seized)</p> <p>Recommendation</p> <p>It can be considered to supplement provisions on notifying/providing this information into Article 219 of IP Law</p>	
	<p>Commitment on automatic authority to conduct border procedures for goods under customs control without the request of the right holder</p>	<p>Vietnam legal framework only provides for the implementation of border procedures in case of right holder's request, therefore it is incompatible with the TPP</p> <p>Recommendation</p> <p>Supplementing into Article 216 of the IP Law the automatic authority to conduct control measures for exported and imported goods without the request of the right holder</p>	
	<p>Commitment on:</p> <ul style="list-style-type: none"> - Authority and procedures on determining suspicious goods and application of sanctions in case of violation - Authority to order the destruction of goods or handle the goods outside the channels of commerce 	<p>Vietnam legal framework has provisions similar to TPP commitments, therefore it is compatible</p> <p>Recommendation</p> <p>No revision of the law.</p>	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.77: Criminal Procedures and Penalties	Providing for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale Providing a definition for commercial scale	Vietnam legal framework stipulates for this crime but does not provide for the definition of “commercial scale” Recommendation Supplementing the definition of commercial scale into the Article 170a of the Criminal Code	EVFTA does not have equivalent commitments
	Providing for criminal procedures and penalties to be applied in cases of - Importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale - Importation and domestic use, in the course of trade and on a commercial scale or the distribution of these goods. - Aiding and abetting to infringement	Vietnam legal framework stipulates for these acts, therefore it is compatible Recommendation No revision of the law.	
	Commitment on criminal procedures and penalties for addressing the unauthorized copying of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work	Vietnam legal framework does not provide for this criminal act with similar constitutive factors, therefore it is incompatible with the TPP Recommendation Supplementing the crime with constitutive factors similar to the TPP into the Criminal Code.	
	Commitment on: - Maintaining the primary penalty and alternative penalty, remedial measures in the criminal processing of infringement. - Authority to confiscation, seizure of property or a fine equivalent to the value of assets, derived or obtained directly or indirectly from the infringement	Vietnam legal framework has provisions similar to the commitments, therefore it is compatible Recommendation No revision of the law.	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.78: Trade Secrets	Providing that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others	Vietnam legal framework provides for the mechanisms which can be used to prevent the infringement of trade secrets, therefore it is compatible Recommendation No revision of the law.	EVFTA does not have equivalent commitments
	Providing for criminal procedures and penalties for the infringement of trade secrets and the scope of the penalty.	Vietnam legal framework does not provide the crime for this act, thus there is no compatible penalty, therefore it has been inconsistent. Recommendation Supplementing the crime for the infringement of trade secrets into the Criminal Code	
Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals	Commitment on making it a criminal offence to the infringement of the cable signal and an encrypted program-carrying satellite signal	Vietnam legal framework does not provide crime for this act, therefore it is incompatible Recommendation Supplementing the criminal offence to the infringement of trade secrets into the Criminal Code.	EVFTA does not have equivalent commitments
	Commitment on: <ul style="list-style-type: none"> - Providing for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured. - Providing for criminal penalties or civil remedies for manufacturing or distributing equipment intended to be used in the unauthorised reception of any encrypted program-carrying cable signal 	Vietnam legal framework provides civil remedies for all infringement of protected IP rights, however it has not stipulated that cable signal and an encrypted program-carrying satellite signal are subject to the protection. Recommendation Supplementing the provision in which the encrypted program-carrying satellite signal are subject to the protection into the IP Law.	

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Article 18.80: Government Use of Software	Commitment on promoting to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights. Commitment on providing that central government agencies use only non-infringing computer software protected by copyright and related rights	Vietnam legal framework has provisions similar to the commitments, therefore it is compatible. Recommendation No revision of the law.	EVFTA does not have equivalent commitments
Section J: Internet Service Providers			
Article 18.81: Definitions	The definition of “Internet service provider”,	The definition of enterprise providing internet service and internet service pursuant to Vietnam legal framework are inconsistent with this provision of the TPP Recommendation Amending the definition on internet service provider in Decree No. 72/2013/ND-CP	EVFTA does not have equivalent commitments

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparison between EVFTA and TPP
Article 18.82: Legal Remedies and Safe Harbours	This framework of legal remedies and safe harbours for internet service provider	Vietnam legal framework only has provisions on cooperation obligation of Internet service provider to competent authorities but not has this obligation with right holders. Therefore, it is incompatible. Recommendation: Adding this provisions in the Law on Intellectual Property	TPP has clearer and more specific commitments on the behaviors, limitations and exceptions than EVFTA
	Limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by internet service provider or relevant parties.	Vietnam legal framework does not have clear provisions on deleting damage compensation, therefore, it is incompatible. Recommendation: Adding this provisions in the Law on Intellectual Property	
	Conditions for Internet Service Providers to qualify for the limitations	Vietnam legal framework has provisions similar to the legal choice under TPP, therefore it is compatible. Recommendation No revision of the law.	
	Requirement to restore the material subject to a counter-notice	Vietnam legal framework does not have provisions similar to commitments under TPP, therefore, it is compatible.	
	Ensuring that monetary remedies are available in its legal system against any person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party	Recommendation: Adding this provisions in the Law on Intellectual Property	
	Not requiring Internet Service Provider to monitor its service or affirmatively seeking facts indicating infringing activity.		
	Judicial or administrative procedures enable right holders to obtain expeditiously from an Internet Service Provider information in the provider's possession after sending notification.		
	An Internet Service Provider does not itself result in liability in case of failure to qualify for the limitations as well as without prejudice to the availability of any other defences under a Party's legal system		
	Parties' recognition on the importance, in implementing their obligations under this Article, of taking into account the impacts on right holders and Internet Service Providers		

TPP commitments	Contents of TPP commitment	Assessment on the compatibility of Vietnam legal framework	Comparision between EVFTA and TPP
Section K: Final Provisions			
Article 18.83: Final Provisions			
Annex 18-A			
Annex to Article 18.7.2			
Annex 18-B			
Chile			
Annex 18-C			
Malaysia			
Annex 18-D			
Peru			
Annex 18-E			
Annex to Section J			
Annex 18-F			
Annex to Section J			



Part three

The detailed review table

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.1: Definitions</p> <p>1. For the purposes of this Chapter:</p> <p>Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971;</p> <p>Budapest Treaty means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended on September 26, 1980;</p> <p>Declaration on TRIPS and Public Health means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted on November 14, 2001;</p> <p>Intellectual property includes the types of intellectual property that are the subject of Article 1 to Article 7 of Part II of the TRIPS Agreement*</p> <p>intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement*;</p> <p>*TRIPS</p> <p>PART II</p> <p>1. Copyright and Related Rights</p> <p>2. Trademarks</p> <p>3. Geographical Indications</p> <p>4. Industrial Designs</p> <p>5. Patents</p> <p>6. Layout-Designs (Topographies) of Integrated Circuits</p> <p>7. Protection of Undisclosed Information</p>	<p>Law on Intellectual Property 2005 (amended in 2009) (Law on IP)</p> <p>Article 3. Object matter of intellectual property rights</p> <p>1. Objects of copyright including literary, artistic and scientific works; objects of copyright-related rights including performances, audio and video recordings, broadcasts and encrypted program-carrying satellite signals.</p> <p>2. Objects of industrial property rights comprising inventions, discoveries, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications.</p> <p>3. Objects of plant variety rights consisting of propagating materials and harvested materials.</p>	<p>Assessment:</p> <p>1. Definitions relating to the name of Agreements:</p> <p>This is a specific issue of the Agreement, not related to the Vietnamese substantive law, so it is presumed that it was compatible with Vietnamese legislation.</p> <p>2. Other definitions:</p> <p>Vietnamese legislation has provisions that are similar to them under TPP, so it was compatible.</p> <p>>> Compatible</p> <p>Recommendation: No recommendations on amendments, adjustments on legislation.</p>	<p>Commitments under EVFTA</p> <p>Article 2</p> <p>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 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> <p>(a) copyright and related rights;</p> <p>(b) trademarks;</p> <p>(c) geographical indications;</p> <p>(d) industrial designs;</p> <p>(e) patent rights;</p> <p>(f) layout-designs (topographies) of integrated circuits;</p> <p>(g) protection of undisclosed information and</p> <p>(h) plant varieties 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>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Madrid Protocol means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid, June 27, 1989;</p> <p>Paris Convention means the Paris Convention for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967; with respect to copyright and related rights, the term right to authorise or prohibit refers to exclusive rights;</p> <p>Singapore Treaty means the Singapore Treaty on the Law of Trademarks, done at Singapore, March 27, 2006;</p> <p>UPOV 1991 means the International Convention for the Protection of New Varieties of Plants, as revised at Geneva, March 19, 1991;</p> <p>WCT means the WIPO Copyright Treaty, done at Geneva, December 20, 1996; WIPO means the World Intellectual Property Organization;</p> <p>for greater certainty, work includes a cinematographic work, photographic work and computer program; and</p> <p>WPPT means the WIPO Performances and Phonograms Treaty, done at Geneva, December 20, 1996.</p> <p>2. For the purposes of Article 18.8 (National Treatment), Article 18.31(a) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.62.1 (Related Rights):</p> <p>a national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 18.7 (International Agreements) or the TRIPS Agreement.</p>			<p>Assessment: Equivalent</p> <p>EVFTA commitments under this Article is equivalent with TPP commitments under Article 18.1 TPP</p> <p>With regard to point 1: This commitment restates and confirm Parties' responsibilities in the effective implementation of international agreements including TRIPS</p> <p>With regard to point 2: EVFTA lists the IP subjects, and refers to commitments under from Section 1 to Section 7 TRIPS which is equivalent to TPP commitments under Article 18.1 TPP.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.1 (Cont.) geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;</p>	<p>Law on IP</p> <p>Article 4. Interpretation of terms</p> <p>22. Geographical indication means a sign which identifies a product as originating from a specific region, locality, territory or country.</p> <p>Article 79. General conditions for geographical indications to be eligible for protection</p> <p>A geographical indication shall be eligible for protection when it satisfies the following conditions:</p> <ol style="list-style-type: none"> 1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication. 2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication. <p>Article 82. Geographical conditions relevant to geographical indications</p> <ol style="list-style-type: none"> 1. Geographical conditions relevant to a geographical indication mean natural and human factors which are decisive to the reputation, quality and characteristics of products bearing such geographical indication. 2. Natural factors shall include climatic, hydrological, geological, topographical and ecological factors and other natural conditions. <p>3. Human factors shall include skills and techniques of producers and local traditional production processes.</p> <p>Circular No: 01/2007/TT-BKHCN</p>	<p>Assessment: Compatible</p> <p>Under Article 79 of Law on IP, “reputation, quality or characteristics mainly attributable to geographical conditions”.</p> <p>Under Article 82 of Law on IP geographical conditions relevant to a geographical indication means natural and human factors. Natural factors are provided under Article 43.4.a.(iii) which regulates that “unique meteorological, hydrological, geological, topographic and ecological elements and other natural conditions; unique elements being skills of producers, including also a traditional production process of the locality (which might cover one, several or all production stages, from production of materials, processing of materials to making of products, and even the stage of product packing if this stage has an effect on the nature/quality and reputation of the product) if that process is liable to create and maintain the nature/quality and reputation of the product bearing the geographical indication, which contain information that is clear and detailed enough to be tested”</p> <p>Under TPP’s definition of geographical indication, quality, reputation or other characteristic of the good is essentially attributable to geographical origin.</p> <p>TPP does not explain or provides clear definition of “geographical origin”. Therefore, it could be determined that Vietnam current provisions on geographical conditions are compatible with TPP requirements on “geographical origin”</p>	<p>Under EVFTA, there is no definitions of “geographical indication” however, there is specific and typical commitment on geographical indication.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 43.4.a(iii).</p> <p>Geographical conditions liable to the nature/ quality and reputation of the product bearing the geographical indication, including unique meteorological, hydrological, geological, topographic and ecological elements and other natural conditions; unique elements being skills of producers, including also a traditional production process of the locality (which might cover one, several or all production stages, from production of materials, processing of materials to making of products, and even the stage of product packing if this stage has an effect on the nature/quality and reputation of the product) if that process is liable to create and maintain the nature/ quality and reputation of the product bearing the geographical indication, which contain information that is clear and detailed enough to be tested (if the above information contains secrets or technical know-how not yet disclosed or widely known beyond the locality, the applicant may refuse to supply detailed information on those secrets or know-how without being assured of confidentiality of those information upon his/her request)</p>		
<p>Article 18.1 (Cont.)</p> <p>performance means a performance fixed in a phonogram unless otherwise specified; with respect to copyright and related rights, the term right to authorise or prohibit refers to exclusive rights;</p>	<p>Law on IP</p> <p>Article 4. Interpretation of terms</p> <p>3. Copyright-related rights (hereinafter referred to as related rights) means rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.</p> <p>Article 17. Objects of related rights protected by the copyright</p> <p>1. Performances shall be protected by the copyright if they come as one of the following:</p> <p>c) Any performance to come into existence in respect of audio and video recordings, which shall be protected by the copyright as prescribed in Article 30 of this Law;</p> <p>d) Any performance not to come into existence in respect of audio and video recordings that have been broadcast, which shall be protected by the copyright as stipulated by Article 31 of this Law;</p> <p>dd) Any performance to be protected by the copyright in compliance with the international agreements of which the Socialist Republic of Vietnam is a member.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Definition of performance under Article 18.1 is to clarify the scope of obligations regulated under the TPP.</p> <p>Law on IP also protect any performance not to come into existence in respect of audio and video recordings.</p> <p>Recommendation: Supplement definition of performance to Article 4 of Law on IP</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.2: Objectives</p> <p>The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the 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>Law on IP</p> <p>Article 8. The State's intellectual property policies</p> <ol style="list-style-type: none"> 1. Recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; refuse to protect intellectual property objects which are contrary to social ethics and public order and prejudicial to defense and security. 2. Encourage and promote the creation and utilization of intellectual assets in order to contribute to socio-economic development and improvement of the people's material and spiritual life. 3. Provide financial supports for the receipt and make most use of intellectual property rights to serve the public interests; encourage domestic and overseas organizations and individuals to provide financial aids for creative activities and the protection of intellectual property rights. 4. Prioritize the investment in training and retraining the contingent of cadres, civil servants, public employees and other relevant persons engaged in the protection of intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights. 5. Mobilize social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting requirements of socio-economic development and international economic integration. 	<p>Assessment:</p> <p>Compatible</p> <p>TPP's objectives are suitable with government's policy on intellectual property provided under Article 8 Law on IP</p> <p>Recommendation: No recommendation on amendment, adjustment on legislation.</p>	<p>Article 1</p> <p>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</p> <p>(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 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>Assessment: Equivalent</p> <p>This EVFTA commitment on objectives is equivalent to commitment under Article 18.2 of TPP.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.3: Principles</p> <p>1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.</p> <p>2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p>	<p>Law on IP</p> <p>Article 8. The State's intellectual property policies</p> <p>1. Recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; refuse to protect intellectual property objects which are contrary to social ethics and public order and prejudicial to defense and security.</p> <p>2. Encourage and promote the creation and utilization of intellectual assets in order to contribute to socio-economic development and improvement of the people's material and spiritual life.</p> <p>3. Provide financial supports for the receipt and make most use of intellectual property rights to serve the public interests; encourage domestic and overseas organizations and individuals to provide financial aids for creative activities and the protection of intellectual property rights.</p> <p>4. Prioritize the investment in training and retraining the contingent of cadres, civil servants, public employees and other relevant persons engaged in the protection of intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights.</p> <p>5. Mobilize social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting requirements of socio-economic development and international economic integration.</p> <p>Article 9. Right and responsibility of organizations and individuals in the protection of intellectual property rights</p> <p>Organizations and individuals shall have the right to take measures permitted by laws to protect their intellectual property rights, and shall be obliged to respect the intellectual property rights of other organizations and individuals in accordance with the provisions of this Law and other relevant laws.</p>	<p>Assessment:</p> <p>Compatible</p> <p>In the process of promulgating and enforcing regulations on IPR, Vietnamese legislation recognized public objectives similar to the TPP. In principle, this is the TPP member's right allowed under the TPP.</p> <p>Regarding the specific content: the review to indicate whether Vietnam legislation is different from commitments on IPR under the TPP will be conducted in the following specific content of this Review.</p> <p>Recommendation</p> <p>In principle, no recommendation on adjustment, amendment on legislation.</p> <p>However, this is the very important right protecting public benefits that is stated under the TPP, thus, in the future, Vietnam should carefully consider to make use of this principle, especially TPP exceptions for the public benefits.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.4: Understandings in Respect of this Chapter</p> <p>Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:</p> <p>(a) promote innovation and creativity;</p> <p>(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and</p> <p>(c) foster competition and open and efficient markets, through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users and the public.</p>	<p>Law on IP</p> <p>Article 8. The State's intellectual property policies</p> <p>1. Recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; refuse to protect intellectual property objects which are contrary to social ethics and public order and prejudicial to defense and security.</p> <p>2. Encourage and promote the creation and utilization of intellectual assets in order to contribute to socio-economic development and improvement of the people's material and spiritual life.</p> <p>3. Provide financial supports for the receipt and make most use of intellectual property rights to serve the public interests; encourage domestic and overseas organizations and individuals to provide financial aids for creative activities and the protection of intellectual property rights.</p> <p>4. Prioritize the investment in training and retraining the contingent of cadres, civil servants, public employees and other relevant persons engaged in the protection of intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights.</p> <p>5. Mobilize social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting requirements of socio-economic development and international economic integration.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Article 18.4 of TPP is suitable with Vietnam's policy on IP as provided under Article 8 Law on IP.</p> <p>Articles 130, 211 and other Articles of the Law on IP have the content to protect fair competition, promote competition in this sector which are similar to requirements of the TPP.</p> <p>Recommendation: No recommendation on adjustment, amendment on legislation.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.5: Nature and Scope of Obligations</p> <p>Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.</p>	<p>Vietnamese legislation does not have corresponding specific provisions.</p>	<p>Assessment:</p> <p>Compatible</p> <p>As provided under this Article, the implementation is not compulsory. It depends on each party's policy of intellectual property development.</p> <p>In addition, this Article allows each party to be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice. This provision of TPP does not provide the clear definition of "appropriate method", therefore, each party could consider to adopt appropriate measure, as long as it does not conflict with other TPP requirements.</p> <p>Recommendation:</p> <p>In principle, there is no necessity of amendment, supplementation on Vietnamese legislation.</p> <p>Further research on appropriate method of implementing TPP commitments on intellectual property, and ensuring public interest concurrently.</p>	<p>The EVFTA does not have corresponding specific provisions.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.6: Understandings Regarding Certain Public Health Measures</p> <p>1. The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter</p> <p>Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to: facilitate the diffusion of information, knowledge, technology, culture and the arts; and through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users and the public.</p> <p>(a) The obligations of this Chapter do not and should not prevent a</p> <p>Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.</p>	None	<p>Assessment:</p> <p>Compatible</p> <p>This provision provides the priority application order between TPP and TRIPS in the issues related to public health.</p> <p>Vietnam provisions on IP are prepared suitable with TRIPS, therefore, compatible with Article 18.6 of TPP.</p> <p>Recommendation: No recommendation on adjustment, amendment on legislation.</p>	The EVFTA does not have corresponding specific provisions.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>18-3</p> <p>(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the Amendment of the TRIPS Agreement, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1, WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilisation of the TRIPS/health solution.</p> <p>(c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.</p> <p>2. Each Party shall notify, if it has not already done so, the WTO of its acceptance of the Protocol amending the TRIPS Agreement, done at Geneva on December 6, 2005.</p>			

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.7: International Agreements</p> <p>1. Each Party affirms that it has ratified or acceded to the following agreements:</p> <p>(a) Patent Cooperation Treaty, as amended September 28, 1979;</p> <p>(b) Paris Convention; and</p> <p>(c) Berne Convention.</p> <p>2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement for that Party:</p> <p>(a) Madrid Protocol;</p> <p>(b) Budapest Treaty;</p> <p>(c) Singapore Treaty;¹</p> <p>(d) UPOV 1991;²</p> <p>(e) WCT; and</p> <p>(f) WPPT.</p>	<p>Vietnam is the member of Agreements as follow:</p> <ul style="list-style-type: none"> - Patent Cooperation Treaty - The Paris Convention - The Berne Convention - Madrid Protocol - UPOV 1991 <p>Vietnam does not join:</p> <ul style="list-style-type: none"> - Budapest Treaty; - Singapore Treaty; - WCT; and WPPT 	<p>Assessment:</p> <p>Partially compatible</p> <p>In present, Vietnam is not a member of a number of Agreements which Vietnam is required to join under the TPP, including:</p> <ul style="list-style-type: none"> - Budapest Treaty; - WCT; and - WPPT <p>Particularly Singapore Treaty, despite of being a non-member, but in light of being a member of the Madrid Protocol, so under Article 18.7.2.c (allows to select one of the two treaties), Vietnam is not required to participate in the Treaty. Recommendation:</p> <p>Carefully consider accessing to participate Treaties that Vietnam still is non-member in line with the time of the actual effect of TPP.</p>	<p>EVFTA</p> <p>Article 5.1 – International Agreements</p> <p>The European Union and Vietnam:</p> <p>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 and Services for the Purposes of the Registration of Marks.</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>Article 11 Plant Varieties</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 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>Assessment: Commitments under the TPP is higher than commitments under the EVFTA relating to participating Treaties on IPR (Budapest, WCT, WPPT)</p>

1/ A Party may satisfy the obligations in paragraph 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.

2/ Annex 18-A applies to this subparagraph.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.8: National Treatment</p> <p>1. In respect of all categories of intellectual property covered in this Chapter,³ each Party shall accord to nationals of another Party treatment no less favorable than it accords to its own nationals with regard to the protection⁴ of intellectual property rights.</p> <p>2. With respect to secondary uses of phonograms by means of analog communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded within the jurisdiction of that other Party.</p> <p>3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:</p> <p>(a) necessary to secure compliance with laws or regulations that are</p> <p>(b) not applied in a manner that would constitute a disguised restriction on trade.</p> <p>4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.</p>	<p>Law on IP</p> <p>Article 2. Applicable entities</p> <p>This Law shall apply to Vietnamese organizations and individuals and to foreign organizations and individuals who satisfy the terms and conditions stipulated in this Law and in any international treaty of which the Socialist Republic of Vietnam is a member.</p>	<p>Assessment:</p> <p>Compatible</p> <p>In present, Vietnam legislation generally regulates the rights and obligations on intellectual property (all IPR) to all entities with no discrimination between domestic and foreign entities, as well as no discrimination among the foreigners. So currently Vietnamese legislation is compatible with TPP.</p> <p>Recommendation: In Principle, there is no adjustment, amendment on Vietnamese legislation.</p> <p>However, in the future, when implementing the commitments on IP under the TPP, if it is compulsory to conduct required obligations on IP including NT exceptions allowed in this commitment, Vietnam should carefully consider using these exceptions, relating to:</p> <ul style="list-style-type: none"> - Secondary uses of phonograms by means of analog communications and free over-the-air broadcasting; - judicial and administrative procedures, provided that such derogation is necessary to secure compliance with laws or regulations that are that are not applied in a manner that would conflict with TPP; and - Procedures provided in multilateral agreements concluded under the auspices of WIPO. <p>Recommendation: No</p>	<p>EVFTA does not have provision on national treatment, and have provision on Most favoured nation treatment.</p> <p>TPP does not provide MFN principle, but provides commitment on NT principle.</p> <p>Assessment: Equivalent</p> <p>With MFN principle under EVFTA and NT principle under TPP, EU organizations and individuals will have equivalent benefits with TPP citizens.</p> <p>Therefore, though EVFTA does not have NT principle as TPP, EU organizations and individuals still gain benefit as TPP citizens due NT principle. Regarding Vietnamese obligations, it is equivalent.</p>

3/ For greater certainty, with respect to copyrights and related rights that are not covered under Section H (Copyright and Related Rights), nothing in this Agreement limits a Party from taking an otherwise permissible derogation from national treatment with respect to those rights.

4/ For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, “protection” also includes the prohibition on the circumvention of effective technological measures set out in Article 18.68 (TPMs) and the provisions concerning rights management information set out in Article 18.69 (RMI). For greater certainty, “matters affecting the use of intellectual property rights specifically covered by this Chapter” in respect of works, performances and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter. The preceding sentence is without prejudice to a Party’s interpretation of “matters affecting the use of intellectual property rights” in footnote 3 of the TRIPS Agreement.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.9: Transparency</p> <p>1. Further to Article 26.2 (Publication) and Article 18.73.1 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.</p> <p>2. Each Party shall, subject to its law, endeavour to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights.⁵</p> <p>3. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.⁷</p>	<p>Law on promulgation of legislative documents 2015</p> <p>Article 157. Posting and publishing legislative documents</p> <p>Legislative documents promulgated by central regulatory agencies, the People's Councils and the People's Committees must be posted in full on the national legal database within 15 days from the day on which they are announced or signed and published on the media, except for those that contain state secrets according to regulations of law on state secrets.</p> <p>Decree No. 100/2010/NĐ-CP on "Cong bao"</p> <p>Article 17. Development and management of electronic "CONG BAO"</p> <p>1. The Government Office shall develop, manage and maintain the operation of electronic "CONG BAO" of the Socialist Republic of Vietnam on the government e-portal.</p> <p>Legislative documents posted on the national legal database are official.</p> <p>4. Electronic "CONG BAO" is used free of charge.</p> <p>Law on IP</p> <p>Article 99. Public announcement of decisions relating to protection certificates</p> <p>Decisions on the grant, termination, annulment of or adjustment to the certificate of industrial property protection shall be publicly announced by the regulatory body for industrial property rights in the Official Gazette of Industrial Property within sixty (60) days as from the date on which such decisions are granted.</p>	<p>Assessment:</p> <p>Compatible</p> <p>1. Under Law on promulgation of legislative documents and its guiding documents, legal documents must be published on the Official Gazette. Those legal documents fail to be published on the Official Gazette (both of hard version and electronic version on internet) shall take no effect.</p> <p>2. With the publication of information under Clause 2 and 3 of this Article, regulations on publication of legal documents of industrial property registration, and of industrial property protection are compatible with this Article of TPP.</p> <p>In addition, the publication on Internet with regard to industrial property register as provided on website www.iplib.noip.gov.vn and Official Gazette on industrial published periodically on website www.noip.gov.vn is compatible with this Article of TPP.</p> <p>Recommendation: No</p>	There is no corresponding commitments under the EVFTA.

5/ For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 18.24 (Electronic Trademarks System).

6/ For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.

7/ For greater certainty, paragraph 3 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 110 Law on IP stipulates “Applications for registration of industrial property which have been verified to be valid by the regulatory body for industrial property rights shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this Article..”</p> <p>CIRCULAR No. 01/2007/TT-BKHCN guiding the implementation of the governments decree no. 103/2006/ ND-CP on detailing and guiding the implementation of a number of articles of the law on intellectual property regarding industrial property Contents of publication of applications</p> <p>Article. 14</p> <p>Contents of publication of applications</p> <p>Information related to valid applications, including divisional applications published in the Industrial Property Official Gazette, includes information related to valid applications formality as stated in notices on acceptance of valid applications, information related to valid applications (transfer of applications, division of applications, serial numbers of parent applications, etc.); invention abstracts accompanied with drawings (if any); sets of photos or drawings of industrial designs; specimens of marks and enclosed lists of goods and services; summaries of particular characteristics and names of products bearing geographical indications.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.10: Application of Chapter to Existing Subject Matter and Prior Acts</p> <p>1. Unless otherwise provided in this Chapter, including in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.</p> <p>2. Unless provided in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.</p> <p>3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.</p>	<p>Law on Promulgation of Legislative Documents</p> <p>Article 152. Retrospective effect of legislative documents</p> <p>1. A law, resolution of the National Assembly, or legislative document of a central regulatory agency may have a retrospective effect if it is necessary for assurance of common interests, rights and interests of the entities regulated by the document.</p> <p>2. A document must not have retrospective effect in the following cases:</p> <p>a) The document imposes a new legal liability upon an act which does not incur such legal liability when it is committed.</p> <p>b) The document imposes a heavier legal liability.</p> <p>3. The legislative document is promulgated by the People's Councils, the People's Committee, or local government of an administrative - economic unit.</p> <p>Article 156. Application of legislative documents</p> <p>1. Legislative documents are applicable from their effective date.</p> <p>Legislative documents shall be applied to the acts committed at the time such documents are effective, except for those that have retrospective effect.</p> <p>4. If the new legislative document does not contain legal liability or impose a less serious legal liability on the acts committed before the effective date of the document, the new document shall apply.</p> <p>5. Application of Vietnam's legislative documents must not obstruct the implementation of the international agreements to which the Socialist Republic of Vietnam is a signatory. In case a Vietnam's legislative documents other than the Constitution and an international agreement to which the Socialist Republic of Vietnam is a signatory contain different regulations on the same issue, the international agreement shall apply.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Vietnamese legislation on principles of applying legal documents (retrospective effect, the time to come into force...) is suitable with TPP commitments, so, it has been compatible.</p> <p>Recommendation: No recommendation of amendment, adjustment on legislation.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.11: Exhaustion of Intellectual Property Rights</p> <p>Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.⁸</p>	<p>Law on IP</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>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 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> <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>	<p>Assessment:</p> <p>Compatible</p> <p>This is the right recognized under the TPP for its members, thereby, domestic legislation liberate to stipulate provisions on exhaustion of rights and conditions of it. Thus, it is implied that no matter how domestic regulations are, Vietnamese legislation has been compatible with this commitment.</p> <p>Law on IP includes provisions on exhaustion of rights (scattering in the regulations of each object of IPR)</p> <p>Recommendation:</p> <p>In principle, there is not necessity of amendment, supplement of Vietnamese legislation on this issue.</p> <p>However, to ensure the transparency and facilitation of uniform application, it is recommended to carefully consider to remove the provisions on exhaustion of rights into only one specific provision with clear definitions and conditions.</p>	<p>Article 3</p> <p>Exhaustion</p> <p>Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights object to the relevant provisions of the TRIPS Agreement.</p> <p>Assessment: Equivalent</p> <p>TPP and EVFTA requirements are equivalent in this matter.</p>

8/ For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>3. Owners of trade secrets shall not have the right to prevent others from performing the following acts:</p> <p>a) Disclosing or using trade secrets acquired without knowing or having the obligation to know that they were unlawfully acquired by others;</p> <p>b) Disclosing secret data in order to protect the public according to the provisions of Clause 1 of Article 128 of this Law;</p> <p>c) Using secret data stipulated in Article 128 of this Law which do not serve commercial purposes;</p> <p>d) Disclosing or using trade secrets created independently;</p> <p>dd) Disclosing or using trade secrets obtained by analyzing or evaluating lawfully distributed products, unless otherwise agreed upon by analyzers or evaluators and owners of such trade secrets or sellers of such products.</p> <p>Article 190. Limitations on rights of plant variety protection certificate holders</p> <p>1. The following acts are not regarded as infringements of rights to protected plant varieties:</p> <p>a) Using plant varieties for personal and non-commercial purposes;</p> <p>b) Using plant varieties for testing purposes;</p> <p>c) Using plant varieties to create new plant varieties, except the case specified in Article 187 of this Law;</p> <p>d) Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.</p> <p>2. Rights to plant varieties are not applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought into the Vietnamese or foreign markets by protection certificate holders or their licensees, except the following acts:</p> <p>a) Acts relating to further propagation of such plant varieties;</p> <p>b) Acts relating to export of reproductive materials of such plant varieties to countries where the genera or species of such plant varieties are not protected, unless such materials are exported for consumption purpose.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Section B: Cooperation Article 18.12: Contact Points for Cooperation Further to Article 21.3 (Contact Points for Cooperation and Capacity Building), each Party may designate and notify under Article 27.5.2 (Contact Points) one or more contact points for the purpose of cooperation under this Section.	There is no corresponding provision in Vietnamese legislation	<p>Assessment:</p> <p>Compatible</p> <p>This is a particular issue of the Agreement, the implementation relates to decisions on administrative procedures and do not affect the substantive law.</p> <p>Therefore, it is speculated that it has been compatible.</p> <p>Recommendation:</p> <p>There is no recommendation of adjustment on legislation.</p> <p>In reality, to ensure the transparency, the designation of only one focal point should be carefully considered (such as National Office of Intellectual Property of Ministry of Science and Technology, with the participation of officials off relevant ministries) - this designation should be conducted when TPP come into effect.</p>	<p>EVFTA</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> <ul style="list-style-type: none"> 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; b) exchange of experiences and information in the European Union and Vietnam on enforcement of intellectual property rights; 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; d) capacity-building; exchange and training of personnel; 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; f) enhancement of inter-governmental co-operation, for example between intellectual property offices; 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.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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>Assessment:</p> <p>Regarding commitments under Article 18.13</p> <p>The commitments to cooperate under the EVFTA is more specific in methods of cooperation in IP (capacity building, exchange of experience, dissemination, etc.) whereas commitments under the TPP only generally indicate (do not mention methods of cooperation clearly).</p> <p>Relating to TPP’s commitments under Article 18.14:</p> <p>TPP’s commitments are more specific at sectors of coordination on IP (national policy on IP, R&D activities, SMEs...) while EVFTA has general commitments mentioned as coordination of enforcement of IP Chapter</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.13: Cooperation Activities and Initiatives</p> <p>The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation may cover areas such as:</p> <ol style="list-style-type: none"> 1. (a) developments in domestic and international intellectual property policy; 2. (b) intellectual property administration and registration systems; 3. (c) education and awareness relating to intellectual property; 4. (d) intellectual property issues relevant to: <ol style="list-style-type: none"> (i) small and medium-sized enterprises; (ii) science, technology and innovation activities; and (iii) the generation, transfer and dissemination of technology; (e) policies involving the use of intellectual property for research, innovation and economic growth; (f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO; and (g) technical assistance for developing countries. 	<p>There is no corresponding provision in Vietnamese legislation</p>	<p>Assessment:</p> <p>Compatible</p> <p>This is particular issue of the Agreement, the implementation relating to administrative decisions on procedures does not affect substantive law.</p> <p>Thus, it is speculated that Vietnamese legislation has been compatible.</p> <p>Recommendation: No</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.14: Patent Cooperation and Work Sharing</p> <p>1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.</p> <p>2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties. This may include:</p> <p>(a) making search and examination results available to the patent offices of other Parties;⁹and</p> <p>(b) exchanging information on quality assurance systems and quality standards relating to patent examination.</p> <p>3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.</p> <p>4. The Parties recognise the importance of giving due consideration to ratifying or acceding to the Patent Law Treaty, done at Geneva, June 1, 2000; or in the alternative, adopting or maintaining procedural standards consistent with the objective of the Patent Law Treaty.</p>	<p>There is no corresponding provision in Vietnamese legislation</p> <p>Vietnam has not participated Patent Law Treaty.</p>	<p>Assessment: Compatible</p> <p>1. Regarding quality and transparency of procedures of protecting patent</p> <p>In practicing, there is no specific assessment of quality, efficiency, simplicity and rationality in the procedures and process of patent protection in Vietnam.</p> <p>Thus, we cannot determined whether Vietnam legislation on this issue is compatible with commitments under the TPP or not.</p> <p>2. Regarding the sharing and allowance of accessing search and examination results of other Parties</p> <p>Vietnam legal framework does not allow other parties to access patent search and examination results. However, combination of commitments under Article 18.17 of the TPP (thereby, there is no compulsory at the level of implementing commitments under Article 18.17 of the TPP). It seems that Vietnamese legislation has been compatible.</p> <p>3. Regarding participation of Patent Law Treaty</p> <p>Vietnam has not participated this Treaty, however, TPP does not require compulsory participation (only encourage participation). Thus, it is speculated that Vietnamese legislation is compatible.</p> <p>Recommendation:</p> <p>In order to implement commitments on “endeavor”, there is necessity to concern with step-by-step improvement (not only process in legislation but also in practicing) so that the transparency, quality and efficiency of system of patent’s registration and protection in Vietnam will be increased.</p>	

9/ The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.15: Public Domain</p> <p>1. The Parties recognise the importance of a rich and accessible public domain.</p> <p>2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.</p>	<p>There is no provision on this issue in Vietnam legislation</p>	<p>Assessment</p> <p>Compatible</p> <p>There is no specific provision on this issue in Vietnamese legislation. Although Vietnamese legislation contains provisions on the term of protection for each specific object, there is no provision to deal with the IP objects in case of the expiry of their term of protection (even including patent, utility solutions, industrial design in case where registration application for protection was filed in foreign countries, and not specified/selected or directly filed in Vietnam within the term of request for priority right).</p> <p>In fact, all the relevant parties (including government agencies) imply that everyone has the right to use their term of protection expired, or their applications are not filed in Vietnam during the term of request for protection.</p> <p>Nevertheless, these commitments under the TPP include non-specific content, just stipulate acknowledgment of orientation, so that it is speculated that Vietnam legislation is compatible.</p> <p>Recommendation:</p> <p>In principle, there is no adjustment on legislation. However, to ensure the transparency, the amendment of provisions on IPR falling into public domain should be carefully considered.</p>	<p>There is no corresponding provision on this issue under the EVFTA.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.16: Cooperation in the Area of Traditional Knowledge</p> <p>1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.</p> <p>2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.</p> <p>3. The Parties shall endeavour to pursue quality patent examination, which may include:</p> <p>(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;</p> <p>(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;</p> <p>(c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and</p> <p>(d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.</p>	<p>There is no provision on this issue in Vietnamese legislation,</p>	<p>Assessment:</p> <p>Compatible</p> <p>Currently, there is no provision on traditional knowledge in Vietnamese legislation.</p> <p>However, these commitments under the TPP include non-specific content, just encourage endeavor, so it is speculated Vietnam legislation is compatible.</p> <p>Recommendation: No</p> <p>There is no recommendation on adjustment on legislation.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.17: Cooperation on Request</p> <p>Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions mutually agreed upon between the Parties involved.</p>	<p>There is no corresponding provision in Vietnamese legislation</p>	<p>Assessment:</p> <p>Compatible</p> <p>This is the optional right of Member States to cooperate, according to which the commitments on cooperation under the TPP is not compulsory, the performance depends on the conditions, resources and specific agreements of the parties.</p> <p>Therefore, it is speculated that Vietnamese legislation is compatible (regarding issues on cooperation affecting the substantive law) or irrelevant (regarding issues on cooperation in other cases).</p> <p>Recommendation: No recommendation on adjustment on legislation.</p>	<p>There is no corresponding provision under the EVFTA</p>
Section C: Trademarks			
<p>Article 18.18: Types of Signs Registrable as Trademarks</p> <p>No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.</p>	<p>Law on IP</p> <p>Article 4.16 :</p> <p>Mark means any sign used to distinguish goods or services of different organizations or individuals.</p> <p>Article 72: General conditions for marks to be eligible for the protection : A mark shall be eligible to be protected when it satisfies the following conditions:</p> <p>1. It is a visible sign in the form of letters, words, drawings or images including holograms, or a combination thereof, designed in one or more colors.</p>	<p>Assessment:</p> <p>Partially incompatible</p> <p>Vietnamese legislation has not protected trademarks as sound, invisible sign. Thus, it is incompatible.</p> <p>Under the TPP, it is not compulsory to protect objects as smell, so it is speculated that Vietnamese legislation is compatible.</p> <p>Recommendation:</p> <p>When TPP comes into effect, it is necessary to amend Article 72.1, 73, 74 of Law on IP to be compatible with corresponding commitments under the TPP.</p>	<p>There is no corresponding provision under the EVFTA</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.19: Collective and Certification Marks</p> <p>Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.¹⁰</p>	<p>Law on IP</p> <p>Article 4.17: Interpretation of terms Collective mark means a mark used to distinguish goods or services of members from those of non-members of an organization which is the owner of such mark.</p> <p>18. Certification mark means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the mark.</p> <p>Article 74. Distinctiveness of marks</p> <p>2. A mark shall be deemed to be indistinctive if it is a mark falling into one of the following categories:</p> <p>designs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as a collective mark or certification mark as stipulated in this Law;</p>	<p>Assessment:</p> <p>Compatible</p> <p>Vietnamese legislation acknowledged collective marks, certification marks, and as well as certain cases where geographical indication can be protected in the form of mark. So it is fully compatible with the commitments on this issue under the TPP.</p> <p>Recommendation: No recommendation on adjustment, amendment on legislation.</p>	

10/ Consistent with the definition of a geographical indication in Article 18.1 (Definitions), any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.20: Use of Identical or Similar Signs</p> <p>Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications,^{11 12} for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.</p>	<p>Law on IP</p> <p>Article 123. Rights of owners of industrial property objects</p> <p>1. Owners of industrial property objects shall have the following economic rights:</p> <p>b) The right to prevent others from using industrial property objects in accordance with the provisions of Article 125 of this Law;</p> <p>Article 125 Right to prevent others from using industrial property objects</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>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>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>Assessment:</p> <p>1. Regarding prohibition of using identical marks</p> <p>Vietnamese legislation defines the use of signs which are identical or similar as protected marks for goods or services identical to goods or services on the registration list together with such mark as an infringement of intellectual property right of the owner if any capable of confusion exists.</p> <p>Article 72.2 and 74.2 of the Law on IP stipulate the distinguishing capable of marks in the same direction as commitments under the TPP, thereby, a sign is potential misleading if it is identical/similar to the protected mark and used for the product/service identical/similar to the product/service of the protected mark. Practical implementation of competent state agencies and IP representatives is also in this direction</p> <p>Thus, Vietnamese legislation has been compatible with commitments under the TPP on this issue.</p> <p>2. Regarding subsequent geographical indications</p> <p>Although there is no clear regulation for the case where geographical indication is form later, the interpretation and application of Article 129 Law on IP and Article 17.1 Decree 103/2006/ND-CP (as revised) geographical indication formed later is considered as a "sign", and if infringement conditions provided under Article 129 Law on IP are satisfied, the owner of trademark has right to prevent the use of geographical indication formed later under Article 123 and 125 Law on IP. Thus, Vietnamese legislation has been compatible with commitments under the TPP on this point.</p> <p>Recommendation: No recommendation on adjustment on legislation</p>	<p>EVFTA</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 registered*;</p> <p>(b) 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>*Without prejudice to article 5.5</p> <p>Article 5.5 – Exceptions to the Rights Conferred by a Trademark Each Party:</p> <p>(a) shall provide for the fair use of descriptive terms** as a limited exception to the rights conferred by trademarks; and</p> <p>(b) may provide for other limited exceptions, provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.</p> <p>**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>

11/ For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

12/ For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 129. Acts of infringement of rights to marks, trade names and geographical indications</p> <p>1. The following acts, if performed without the permission of mark owners, shall be deemed to be infringements of the right to a mark:</p> <p>a) Using signs which are the same as protected marks for goods or services identical to goods or services on the registration list together with such mark;</p> <p>b) Using signs which are the same as protected marks for goods or services similar or related to those goods or services on the registration list together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;</p> <p>c) Using signs which are the same as protected marks for goods or services similar or related to those goods or services on the registration list together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;</p> <p>d) Using signs which are the same as or similar to well-known marks, or signs in the form of translations or transcriptions of well-known marks identifying any goods or services, including those that are not identical to, dissimilar or unrelated to goods or services on the list of those bearing well known marks, if such use is likely to cause confusion as to the origin of the goods or services or misleading impressions as to the relationship between users of such signs and well known mark owners.</p> <p>2. All acts of using commercial indications identical or similar to, trade names of others which were used earlier for the same or similar type of goods or services, which can cause any confusion as to legal business entities, establishments or activities under such trade names shall be deemed to be infringements of the right to the trade name.</p> <p>Decree 103/2006/NĐ-CP</p> <p>Article 17.1</p> <p>Industrial property rights of an organization or individual may be invalidated or banned from exercise if they conflict with previously established intellectual property rights of another organization or individual.</p>		<p>Assessment</p> <p>Commitments under the EVFTA and TPP on this issue are basically similar except:</p> <ul style="list-style-type: none"> - Regarding the cases where the subsequent geographical indications are identical or similar to the registered mark: The TPP clearly states these cases while the EVFTA does not but generally stipulates instead (and also does not mention previous or subsequent geographical indications) – thus it is assessed that the scope of the commitments under the EVFTA is wider than commitments under the TPP on this issue. - Regarding the term of “potentially misleading”: commitments under the TPP require identical or similar cases automatically considered to be potentially misleading, whereas the EVFTA does not mention this term, thus, the extent of commitments to protect marks in the TPP is supposed to be higher.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.21: Exceptions</p> <p>A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.</p>	<p>Law on IP</p> <p>Article 125.2</p> <p>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 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> <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>	<p>Assessment</p> <p>Compatible</p> <p>The TPP allows countries to impose restrictions on trademark monopolies (exceptions to rights) on condition that in such cases the legitimate interests of the owner and third parties are taken into account.</p> <p>Vietnamese legislation has provided for many exceptions to the trademarks, with conditions deemed to be a relative balance between the interests of the owner, and interests of third parties including the interest of the public, the interests of the majority).</p> <p>Thus, Vietnamese legislation is basically compatible with commitments under the TPP.</p> <p>Recommendation: No recommendation on adjustment, amendment on legislation.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 20 of Circular No 11/2015/TT-BKHCN stipulated that:</p> <p>Reuse, repair, recycling of products and product packages</p> <p>The reuse, repair or recycling by organizations or individuals of products or product packages bearing marks, trade names or geographical indications marketed by rights holders to create other products shall also be regarded as an act of infringing upon industrial property rights or an act of unfair competition in case such act misleads consumers as to the commercial origin of products, business entity, business activities or properties of products under relevant provisions on acts infringing upon industrial property rights and acts of unfair competition.</p> <p>This provision does not apply in case where products bear an explicit notification that products and product packages are reused, repaired or recycled and have no signs which may mislead consumers as to the commercial origin of products, business entity, business activities or properties of products under relevant provisions on acts infringing upon industrial property rights and acts of unfair competition.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.22: Well-Known Trademarks</p> <p>1. No Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.</p> <p>2. Article 6bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark,¹³ whether registered or not, 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 trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.</p> <p>3. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999.</p> <p>4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark,¹⁴ or identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.</p>	<p>Law on IP stipulates</p> <p>Article 4 - Interpretation of terms</p> <p>Well-known mark means a mark widely known by consumers throughout the territory of Vietnam.</p> <p>Article 6. Grounds for the generation and establishment of intellectual property rights</p> <p>2. Related rights shall arise at the moment a performance, audio and video recording, broadcast or encrypted program-carrying satellite signal are created in a fixed form of expression or shall be exercised without causing loss or damage to copyright.</p> <p>Article 74. Distinctiveness of marks</p> <p>2. A mark shall be deemed to be indistinctive if it is a mark falling into one of the following categories:</p> <p>g) Signs confusingly identical or similar to another person's mark recognized as a well-known mark which has been registered for goods or services which are identical or similar to those bearing such well known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration was aimed at taking advantage of the reputation of the well-known mark;</p>	<p>Assessment:</p> <p>Compatible</p> <p>Vietnamese legislation does not regulate the conditions for the protection of well-known trademarks which are prohibited under the TPP. Vietnamese legislation also refuses to protect the cases of confusion with famous trademarks as required by the TPP. So basically, Vietnamese legislation has been compatible.</p> <p>Recommendation:</p> <p>In principle, there is no necessity to amend or supplement the legislation.</p> <p>However, to ensure the transparency, the amendment, supplementation of provisions on quantifying the criteria of well-known trademarks should be taken into account.</p>	<p>Article 5.4 – Well-known Trademarks</p> <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>Assessment:</p> <p>Commitments under the EVFTA on well-known trademarks is basically equivalent with commitments under the TPP.</p> <p>However, the TPP's commitments relating to Article 6bis of the Paris Convention and the refusal of protection in the event of the use of a marks similar or potential misleading to a well-known trademarks are tighter than these under the EVFTA, regarding commitments specifying the content, scope and measures of implementation.</p>

13/ In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

14/ The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 75. Criteria for evaluation of whether or not a mark is well known</p> <p>The following criteria shall be taken into account when considering whether or not a mark is well known:</p> <ol style="list-style-type: none"> 1. The number of relevant consumers who can recognize the mark by the purchase or use of goods or services identified by such a mark, or learn about the mark from advertisements. 2. The territorial area in which goods or services bearing the mark are circulated. 3. Turnover received from the sale of goods or services identified by the mark or the quantity of such goods sold or services. 4. Duration of continuous use of the mark. 5. Widespread reputation of goods or services bearing the mark. 6. Number of countries providing the protection for the mark. 7. Number of countries recognizing the mark as a well known mark. 8. Assignment price, licensing price, or contributed capital contribution value of the mark. <p>Article 129. Acts of infringement of rights to marks, trade names and geographical indications</p> <ol style="list-style-type: none"> 1. The following acts, if performed without the permission of mark owners, shall be deemed to be infringements of the right to a mark: <ol style="list-style-type: none"> d) Using signs which are the same as or similar to well-known marks, or signs in the form of translations or transcriptions of well-known marks identifying any goods or services, including those that are not identical to, dissimilar or unrelated to goods or services on the list of those bearing well known marks, if such use is likely to cause confusion as to the origin of the goods or services or misleading impressions as to the relationship between users of such signs and well known mark owners. 		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.23: Procedural Aspects of Examination, Opposition and Cancellation</p> <p>Each Party shall provide a system for the examination and registration of trademarks which includes among other things:</p> <p>(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;</p> <p>(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;</p> <p>(c) providing an opportunity to oppose the registration of a trademark or to seek cancellation¹⁵ of a trademark; and</p> <p>(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.</p>	<p>Article 117 of Law on IP stipulates</p> <p>An application form for registration and grant of a layout design protection which does not fulfil the requirements stipulated in Article 109 of this Law shall be refused.</p> <p>Where an application for registration of industrial property falls into the cases stipulated in Clauses 1 and 2 of this Article, the competent authority for industrial property rights shall carry out the following procedures:</p> <p>a) Notify an intention to refuse to grant a protection certificate, which must clearly state the reasons therefor and set a time-limit for the applicant to make an objection to such intention;</p> <p>b) Notify the refusal to grant a protection certificate if the applicant makes no objection or makes unjustifiable objection to the intention to refuse the application as stipulated at Point a of this Clause; (Article 117.1 & 117.2 stipulates on cases that an application for registration of an invention, industrial design, mark or geographical indication, and for the grant of a protection certificate shall be refused)</p> <p>Article 14 of Decree No. 103/2006/ND-CP stipulates:</p> <p>1. Applicants and all organizations and individuals with rights and interests directly related to decisions or notices concerning the processing of industrial property registration applications, which are issued by the state management agency in charge of industrial property, may lodge complaints with state management agency in charge of industrial property or initiate lawsuits at court according to the provisions of the Law on Intellectual Property and relevant laws. The time limit for settlement of complaints is specified in Clause 5 of this Article.</p> <p>Article 112 of Law on IP stipulates</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 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.</p>	<p>Assessment:</p> <p>Compatible</p> <p>a. With regard to point a and d, under Law on IP and its current guiding documents, all notifications are made in writing and in the case where application is refused, this refusal notification must clearly indicate the reason and legal base. Therefore, form and content of notification sent to the Applicant meet requirement provided under point a and d of this Article.</p> <p>b. With regard to point b, in case of refusal notification, applicant has a reasonable time to respond to these notification, and competent authorities' decision and act which is assumed to affect applicant's legitimate right, applicant have right to complaint, denounce or bring the case to competent court to settle under the law.</p> <p>c. With regard to point c, under Law on IP, after application is published on Official Gazette of industrial property and before Vietnam national office of intellectual property issues decision to refuse or grant any protection certificate, any third party has right for opposition, and request national office of intellectual property to refuse the grant of protection certificate under current regulation.</p> <p>Recommendation: No recommendation on adjustment on legislation</p>	<p>EVFTA</p> <p>Article 5.3 – Registration Procedure 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>Assessment: Equivalent</p> <p>TPP commitment in this matter is equivalent with that of EVFTA.</p>

^{15/} For greater certainty, cancellation for purposes of this Section may be implemented through nullification or revocation proceedings.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.24: Electronic Trademarks System Each Party shall provide:</p> <p>(a) a system for the electronic application for, and maintenance of, trademarks; and</p> <p>(b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.</p>	<p>Law on IP</p> <p>Article 89 - Methods of submitting an application for registration of establishment of industrial property rights</p> <p>1. Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam, and foreign organizations and individuals having production or business establishments in Vietnam shall submit applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam.</p> <p>2. Foreign individuals not permanently residing in Vietnam and foreign organizations and individuals without production or business establishments in Vietnam shall submit applications for registration of establishment of industrial property rights through their lawful representatives in Vietnam.</p> <p>Article 3.4.c & 3.4.d of Decree No.43/2011/ND-CP:</p> <p>Online public service is a public administrative service or another service provided by a state agency to organizations and individuals in a network environment.</p> <p>c/ Level-3 online public service means a level-2 online public service which allows users to make online declarations on forms of documents and send these forms online to the service provider. Transactions in the processing of dossiers and provision of the service are made in the network environment. Payment of fees (if any) and notification of results shall be made directly at the service provider;</p> <p>d/ Level-4 online public service means a level-3 online public service which allows users to make online payment of fees (if any). Results may be notified to users online, directly or by post.</p> <p>Additionally, Annex I promulgated with Document No. 2779/VPCP-KGVX of Office of the Government dated April, 22th, 2016 on the list of level 3, 4 public online service that Ministries operate in 2016 ; in the extent of administrative procedures which should be operated under Ministry of science and technology, registration and grant protection certificates will be deployed in this year.</p>	<p>Assessment:</p> <p>Partly compatible</p> <p>a. With regard to Point a.</p> <p>Point a of Article 18.24: requires a system for electronic applications, does not require the system to submit online applications, does not compel to use the electronic applications instead of application in paper.</p> <p>- There is no provision in legislation allowing to submit electronic applications even in offline form instead of application in paper, however, allowing to submit electronic documents together with documents in paper.</p> <p>Law on IP includes no provision.</p> <p>Circular No.01/2007/TT-BKHCN, Point 7.2(b)(iii) and (viii)</p> <p>(iii) All documents of the application must be presented in the portrait format (particularly, drawings, figures, charts and tables may be presented landscape) on A4 paper sheets (210mm x 297 mm), of which the top, bottom, left and right margins are all 20 mm, except for accompanied documents originally not intended to be included in the application;</p> <p>(viii) The application may be accompanied with carriers of electronic data of part or the entire content of its documents.</p> <p>The objective of Article 18.24.a is to establish an electronic application system for submitting and maintaining the INDEPENDENT and REPRODUCTIVE marks for the current system of submitting applications in paper. This means that the applicant can choose between submitting applications in paper or submitting electronic applications with no necessity of filing the applications or additional documents in paper.</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>Assessment: Equivalent</p> <p>EVFTA commitment in this matter is equivalent with that of TPP.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
		<p>The provision in Circular No. 01/2007 / TT-BKHCN as a legal document with legal value lower than the Law, does not intend to establish an independent system, but rather as the option of the Applicant. The wordings in the provisions of Circular 01 also show that electronic documents are supplementary documents together with submitted applications, which means that these electronic documents cannot be submitted independently.</p> <p>- Article 89 of Law on IP on methods of submitting an application either directly or through the service of industrial property representative is not related to the form of an application (paper/ electronic).</p> <p>=> The example of the amendment, supplementation of Article 89.1 of the Law on Intellectual Property is in the direction that: "Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam, and foreign organizations and individuals having production or business establishments in Vietnam shall submit applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam in paper or electronic form.</p> <p>In the case of such supplementation, the Decree guiding the implementation of the law and circular guiding the implementation of the decree will have a legal basis for further interpretation of this electronic submission system.</p> <p>b. With regard to Point b</p> <p>Compatible, further research on assessment and recommendation of Article 18.9 on publishing information on internet.</p> <p>Recommendation: Consider to revise Article 89 Law on IP on the method of submission or issue Law on online public administration (based on Decree 43/2011/NĐ-CP)</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.25: Classification of Goods and Services</p> <p>Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:</p> <p>(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;¹⁶ and</p> <p>(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.</p>	<p>Article 105.3 of Law on IP</p> <p>Goods or services listed in an application for registration of a mark must be classified into appropriate groups in accordance with the Classification List under the Nice Agreement on the International Classification of Goods and Services for the purpose of mark registration, and published by the regulatory body for industrial property rights.</p> <p>Article 37.4.e of Circular No. 01/2007/TT-BKHCN (amended)</p> <p>The section List of goods and services bearing the mark in the written declaration must be divided into groups in accordance with the International Classification of Goods and Services under the Nice Agreement published by the NOIP in the Industrial Property Official Gazette.</p> <p>Notification No. 1378/TB-SHTT dated March, 9th, 2012 of National Office of Intellectual Property on uniform application of the classification of goods/ services Nice version 10.</p> <p>Article. 39.9 of Circular No. 01/2007/TT-BKHCN (amended) stipulates on assessment of similarity of goods and services</p> <p>a) Two goods or two services shall be considered identical (of the same type) if these two goods or services have the following characteristics:</p> <p>(i) They have the same nature (composition, ingredients) and the same function and utility; or</p> <p>(ii) They have similar natures and the same function and utility;</p> <p>b) Two goods or two services shall be considered similar if these two goods or services have the following characteristics:</p> <p>(i) They are similar in nature; or</p> <p>(ii) They are similar in function or utility; and</p> <p>(iii) They are marketed in the same commercial channel (they are distributed by the same mode, or sold together or compete with each other in the same type of shop...);</p>	<p>Assessment:</p> <p>Compatible</p> <p>a. With regard to commitment under point a</p> <p>Completely compatible.</p> <p>b. With regard to commitment under point b.</p> <p>Completely compatible.</p> <p>Article 39.9 Circular 01/2007/TT-BKHCN guiding the assessment of similarity of goods and service, and this assessment based on the nature of goods, functions, objectives, uses, and the method to bring goods into market, and their relationships.</p> <p>Recommendation: No recommendation on amendment on legislation.</p>	<p>Article 5.1 – International Agreements</p> <p>The European Union and Vietnam:</p> <p>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 and Services for the Purposes of the Registration of Marks.</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>Assessment: Equivalent</p> <p>Both TPP and EVFTA require to classify goods under Nice Classification.</p>

16/ A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>c) A goods and a service shall be considered similar if they fall into one or several of the following cases:</p> <p>(i) They have a correlation in nature (a goods or service or a material or component of a goods or service forms constitutes part of the other); or</p> <p>(ii) They have a correlation in function (to accomplish the function of a goods or service, it is necessary to use the other or they are usually used together); or</p> <p>(iii) They have a close correlation in method of realization (a goods or service is the result of the use or exploitation of the other);</p>		
<p>Article 18.26: Term of Protection for Trademarks</p> <p>Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.</p>	<p>Article 93.6 of Law on IP</p> <p>A registration certificate of mark shall be valid from the issuing date until the end of ten (10) years as from the submission date and may be renewed for many consecutive terms, each of which shall have ten (10) years.</p>	<p>Assessment: Compatible</p> <p>Provisions in Vietnamese legislation are similar to commitments under the TPP, thus, it has been compatible.</p> <p>Recommendation: No recommendation on adjustment on legislation.</p>	<p>There is no corresponding commitment under the EVFTA.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.27: Non-Recordal of a Licence</p> <p>No Party shall require recordal of trademark licences:</p> <p>(a) to establish the validity of the licence; or</p> <p>(b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.</p>	<p>Clause 2, Article 148 of Law on IP</p> <p>As for the industrial property rights established on the basis of registration according to the provisions of Point a Clause 3 Article 6 set out in this Law, the contract for the licensing of the right to an industrial property object shall be valid as agreed upon by the parties involved but shall only apply its legal value to a third party as being registered with the competent authority for industrial property rights.</p> <p>Article 24.4 of Decree No. 105/2006/ND-CP:</p> <p>If the requester for handling of infringement is a transferee of the ownership of the intellectual property right subject matter, a transferee of the right to use the intellectual property right subject matter, a heir or successor of the intellectual property right subject matter, in addition to those documents referred to in Clauses 1, 2 and 3 of this Article, the requester shall also produce the original or a valid copy of the contract for transfer of the ownership of the intellectual property right subject matter or for the use of the intellectual property right subject matter or a document of certification of the inheritance or succession of the intellectual property right subject matter. When the transfer has been entered in the protection title or the certificate of registration of the contract for transfer of the ownership of the intellectual property right subject matter or for the use of the intellectual property right subject matter, these documents shall be also regarded as evidence to prove the right holder status.</p>	<p>Assessment:</p> <p>Incompatible</p> <p>a. With regard to commitment under point a</p> <p>Under Article 148 Law on IP, the contract for the licensing of the right to an industrial property object shall be valid as agreed upon by the parties involved but shall only apply its legal value to a third party as being registered with the competent authority for industrial property rights.</p> <p>Now, there is not clear provision to determine “legal value to a third party”, in fact, third party often uses</p> <p>Article 148.2 to refuse the right to transfer usage right of trademark or order to registered with the competent authority to accept the legal effect of this contract.</p> <p>b. With regard to commitment under point b</p> <p>Under Article 24.4 Decree 105/2006/ND-CP, it is not clear on the evident value of the contract for the licensing of the right to trademark which is not registered in National office of intellectual property. It make the application of Article 24.4 is not unified between competent authorities (some recognise contract’s effect, some do not)</p> <p>Thus, in both cases, the Vietnamese legislation and practice regarding this issue require the registration of a license contract as a compulsory procedure united with the legal validity of this contract with the third parties and when it is transferred. Therefore, Vietnamese legislation is not compatible with TPP.</p> <p>Recommendation: Revise Article 148.2 Law on IP in direction of abolishment of provisions on registering license contract and amendment of corresponding guiding documents on this issue.</p>	<p>There is no corresponding commitment under the EVFTA.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.28: Domain Names</p> <p>1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:</p> <p>(a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:</p> <p>5. (i) is designed to resolve disputes expeditiously and at low cost;</p> <p>6. (ii) is fair and equitable;</p> <p>7. (iii) is not overly burdensome; and</p> <p>8. (iv) does not preclude resort to judicial proceedings; and</p> <p>(b) online public access to a reliable and accurate database of contact information concerning domain name registrants, in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.</p> <p>2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies¹⁷ shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.</p>	<p>Article 130.1.d. Law on IP</p> <p>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>Article 211.3 of Law on IP</p> <p>Organizations and individuals that commit acts of unfair competition in intellectual property shall be administratively fined under the competition law.</p> <p>Article 76 of Law on information technology</p> <p>Modes of settling disputes over registration and use of Vietnamese national domain names ending in ".vn"</p> <p>Disputes over the registration and use of Vietnamese national domain names ending in ".vn" shall be settled in the following modes:</p> <ol style="list-style-type: none"> 1. Negotiation or conciliation; 2. Arbitration; 3. Initiation of lawsuits at court. <p>Article 14.16 Decree No 99/2013/ND-CP</p> <p>stipulates on sanctioning of administrative violations in industrial property for registering or appropriating the right to use or using domain names identical or confusingly similar to protected marks, geographical indications or trade names of other parties in order to appropriate domain names, taking advantage of or harming reputation of those marks, trade names or geographical indications; and using marks protected in a country being contracting party to a treaty which bans representatives or agents of mark owners from using these marks and to which Vietnam is a contracting party, provided that users are representatives or agents of mark owners and this use is neither authorized by mark owners nor justifiable.</p>	<p>Assessment:</p> <p>Partially compatible</p> <p>a. With regard to commitment under Clause 1.a.</p> <p>Under Article 76 Law on information technology, disputes over the registration and use of Vietnamese national domain shall be settled in the following modes:</p> <ul style="list-style-type: none"> - Negotiation or conciliation; - Arbitration; - Initiation of lawsuits at court. <p>These dispute settlement resolution is general method to settle civil difference.</p> <p>Currently, there is no specific regulation on particular dispute settlement of over the registration and use domain, although Circular 10/2008/TT-BTTTT dated 24/12/2008 provides that disputes over the registration and use of Vietnamese national domain are resolved under an Uniform Domain Name Dispute Resolution Policy of ICANN</p> <p>However, Circular 24/2015/TT-BTTTT replacing Circular 10/2008/TT-BTTTT does not provide any specific condition on grounds, conditions, and general principle for initiate a case based on ICANN's rules. Therefore, current legal framework does not provide dispute settlement procedure compatible with ICANN's rules.</p> <p>Although Circular 11/2015/TT-BKHCN guiding Decree 99/2013/NĐ-CP provides the guidance on the case of</p> <p>register, hold, or use domain name to proceed unfair competition activities similar to ICANN's rules, these rules only apply on the case to define the unfair competition activities in the administrative infringement, and could not apply one other cases (without unfair competition activities).</p>	<p>There is no corresponding commitment under the EVFTA.</p>

17/ The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 14.18 of Decree No.99/2013/ND-CP on forcible change of enterprise name or removal of infringing elements in enterprise name, for violations specified in Clauses from 1 to 15 of this Article; forcible change or withdrawal of domain names, for violation specified in point a Clause 16 of this Article.</p> <p>Article 19.2 of Circular No. 11/2015/TT-BKHCN stipulates on act of registering, appropriating the domain name use right or using domain names</p> <p>a/ A party that may request handling of an act of registering, appropriating the domain name use right or using domain names is the owner of a mark, geographical indication or trade name and has used the subject matter in a public and stable manner in its lawful business activities and has its reputation as an industrial property rights holder and goods or services bearing such mark, geographical indication or trade name known to Vietnamese consumers;</p> <p>b/ Act of registering, appropriating the domain name use right or using domain names shall be regarded as an act of unfair competition in industrial property, except for domain names already distributed through auction or contest for selection under Point a. Clause 2, Article 48 of the Law on Telecommunications, falling in either of the following cases:</p> <ul style="list-style-type: none"> - Using Vietnamese national domain names “.vn” with sequences of characters identical or confusingly similar to marks, trade names or geographical indications currently protected or widely used for advertising, introduction of products, offer for sale of identical, similar or related goods or services on websites which such domain names direct to; causing a confusion about and taking advantage or causing damage to the reputation of or material damage to owners of such marks, trade names or geographical indications; or, - Registering or appropriating the right to use Vietnamese national domain names “.vn” with sequences of characters identical to reputable or well-known marks, trade names or geographical indications in Vietnam, while there are grounds to believe that organizations or individuals register or appropriate the domain name use right only for resale to earn profits or to prevent owners of such protected marks, trade names or geographical indications from registering domain names. 	<p>Thus, Vietnamese legislation is incompatible with the TPP on this issue.</p> <p>With regard to commitment under Clause 1.b</p> <p>Currently, the basement of the Center for Internet Vietnam allow to access and research the basement of registry of high qualified domain ccTLD of Vietnam. Thus, Vietnamese legislation has been compatible with the TPP.</p> <p>With regard to commitment under Clause 2.</p> <p>Under Article 130 and 211 Law on IP, 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 could be handle as administrative infringement.</p> <p>Article 14.16 Decree No 99/2013/ND-CP provides the specific punishment of the unfair competition activities related to the registration, holding and using domain name, as well as the remedies for these activities which are to compulsory change information or return domain name. Thus, Vietnamese legislation has been compatible with the TPP.</p> <p>Recommendation: Revise Decree 73/2013/ND-CP and Circular 24/2015/TT-BTTTT to design a domain dispute settlement procedure based on ICANN’s policy</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>c/ The party requesting handling of the act of registering, appropriating domain name use right or using a domain name regarded as an act of unfair competition in industrial property shall provide the following evidence to prove that:</p> <ul style="list-style-type: none"> - The rights holder has used the mark, geographical indication or trade name in a public and stable manner and has its reputation as an industrial property rights holder and goods or services bearing such mark, geographical indication or trade name (possibly information on advertising, marketing, exhibition; sale turnover; number of products sold; system of distribution agents, joint ventures and associated parties; investment scale; appraisal by state agencies, the mass media, selection by consumers, and other information showing the reputation of the business entity; goods or services bearing such mark, geographical indication or trade name) known to consumers in Vietnam. - For the act of using a domain name regarded as an act of unfair competition in industrial property: The requesting party shall prove that the party requested to be handled has used the domain name on the Internet for advertising or introducing products, offering for sale identical, similar or related goods or services, causing damage to the reputation of or material damage to the owner of the protected mark, trade name or geographical indication; and the party requested to be handled continues to use the misleading mark, trade name or geographical indication through such domain name after being requested by the mark, trade name or geographical indication owner to stop using it. <p>For the act of registering or appropriating the domain name use right regarded as an act of unfair competition in industrial property: The requesting party shall prove that the party requested to be handled has registered but has not used the domain containing characters identical to a mark, trade name or geographical indication widely used and reputable in Vietnam; and there are grounds to believe that the party requested to be handled registers or appropriates the domain name use right only for resale to earn profits or to prevent the owner of the protected mark, trade name or geographical indication from registering a domain name;</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>The party requested to be handled has no lawful rights to and interests from protected marks, geographical indications and trade names of the rights holder.</p> <p>Uniform Domain Name Dispute Resolution Policy of ICANN</p> <p>1. Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a “complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure, that</p> <p>(a) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and</p> <p>(b) you have no rights or legitimate interests in respect of the domain name; and</p> <p>(c) your domain name has been registered and is being used in bad faith.</p> <p>In the administrative proceeding, the complainant must prove that each of these three elements are present.</p> <p>2. Evidence of Registration and Use in Bad Faith in the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:</p> <p>(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or</p> <p>(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or</p> <p>(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or</p> <p>(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Section D: Country Names			
Article 18.29: Country Names Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.	Law on IP Article 73.5 Signs which cause misunderstanding or confusion or which deceive consumers as to the origin, properties, use, quality, value or other characteristics of goods or services. Article 74.2.dd Signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as a collective mark or certification mark as stipulated in this Law; Circular 01/2007/TT-BKHCN (amended, supplemented by Circular 18/2011/TT-BKHCN dated on 22/07/2011)] Article 39.12 of The assessment of the ability of signs to cause other confusions shall comply with the provisions of Article 73 and Clause 2, Article 74 of the Intellectual Property Law and the following specific provisions. a) A sign shall be considered having caused confusion of origin of goods or services in the following cases: (i) It is identical or similar to the name or emblem of a nation or territory (national flag, national emblem, name of the nation or a locality) or confusingly similar to the name or emblem of a nation or territory, causing a mislead that goods or services bearing the mark originate from that nation or territory;	Assessment: Compatible Under Law on IP, the registration of signs which cause misunderstanding or confusion or which deceive consumers as to the origin, properties, use, quality, value or other characteristics of goods or services will be denied under Article 73.5 or 74.2.d Law on IP. In case, it is identical or similar to the name or emblem of a nation or territory (national flag, national emblem, name of the nation or a locality) or confusingly similar to the name or emblem of a nation or territory, causing a mislead that goods or services bearing the mark originate from that nation or territory, it depends on factual circumstance to be punished as the act of labeling or packing forged names or addresses under Article 3.8.e and Article 13 and Article 14 Decree 185/2013/NĐ-CP or as the act of using trading goods which are unidentified origins or sources Article 21.1.c Decree 185/2013/NĐ-CP. Recommendation: No	There is no corresponding commitment under the EVFTA.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Decree No 185/2013/NĐ-CP</p> <p>Article 3 - Interpretation of terms</p> <p>8. "Counterfeit goods" include:</p> <p>Goods with labels or packing which have forged names or addresses of other entrepreneurs; trade names or product names; circulation registration codes, bar codes or the goods packing of other entrepreneurs;</p> <p>Article 13 and Article 14 stipulates acts of trading and producing forged goods in term of goods labels or goods packing</p> <p>Article 21.1.c</p> <p>A warning or a fine of between VND 200,000 and 400,000 for one of following violated acts shall be imposed in cases the violated goods valued less than VND 1,000,000:</p> <p>c. Trading goods which are unidentified origins or sources;</p>		
Section E: 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> <p>Assessment:</p> <p>TPP does not have equivalent commitment with this EVFTA requirement.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.30: Recognition of Geographical Indications</p> <p>The Parties recognise that geographical indications may be protected through a trademark or sui generis system or other legal means.</p>	<p>Law on IP</p> <p>Article 4. Interpretation of terms</p> <p>17. Collective mark means a mark used to distinguish goods or services of members from those of non-members of an organization which is the owner of such mark.</p> <p>18. Certification mark means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the mark.</p> <p>Section 6 of Law on IP stipulates conditions of protection of geographical indications.</p> <p>Article 79. General conditions for geographical indications to be eligible for protection</p> <p>A geographical indication shall be eligible for protection when it satisfies the following conditions:</p> <p>1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication.</p> <p>2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Vietnamese legislation has protected geographic indications according to its own system, which allowed by commitments under the TPP, so Vietnamese legislation has been compatible.</p> <p>Recommendation: No recommendation on adjustment on legislation.</p>	<p>EVFTA</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>(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>Assessment:</p> <p>Content in commitments under the EVFTA is similar to these under the TPP.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.31: Administrative Procedures for the Protection or Recognition of Geographical Indications</p> <p>If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a sui generis system, that Party shall with respect to applications for that protection or petitions for that recognition:</p> <p>(a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals;¹⁸</p> <p>(b) process those applications or petitions without imposition of overly burdensome formalities;</p> <p>(c) ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;</p> <p>(d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;</p> <p>(e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and</p> <p>(f) provide for cancellation¹⁹ of the protection or recognition afforded to a geographical indication.</p>	<p>Law on IP</p> <p>Article 88.</p> <p>The right to register Vietnamese geographical indications belongs to the State.</p> <p>The State shall permit organizations and individuals producing products bearing geographical indications, collective organizations representing such organizations or individuals, and administrative bodies of localities to which such geographical indications pertain, to exercise the right to register geographical indications. Persons who exercise the right to register geographical indications shall not be eligible to become owners of such geographical indications.</p> <p>Decree No. 103/2006/ND-CP</p> <p>Article 8</p> <p>Foreign individuals and organizations that are holders of rights to geographical indications under laws of countries of origin are entitled to register such geographical indications in Vietnam.</p> <p>Article 110.1.</p> <p>Applications for registration of industrial property which have been verified to be valid by the regulatory body for industrial property rights shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this Article.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Vietnamese legislation has provided for the order, procedures, grounds for screening the application and protecting geographical indications by a separate system that meets the relevant requirements of the TPP's commitment (regarding proposed subject, transparency, protest procedure, cancellation protection ...).</p> <p>Thus, Vietnamese legislation has been compatible with the commitments under the TPP.</p> <p>Recommendation: No recommendation on adjustment on legislation.</p>	<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>(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.</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>

18/ This subparagraph also applies to judicial procedures that protect or recognise a geographical indication.

19/ For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 114.1</p> <p>1. The following applications for registration of industrial property shall be substantively examined for evaluation of the eligibility for grant of protection certificates for the object stated in such applications under protection conditions and for determination of the respective scope of protection:</p> <p>a) Applications for registration of inventions which have already been verified to be valid and involve requests for substantive examination which are filed in accordance with regulations;</p> <p>b) Applications for registration of industrial designs, marks and geographical indications which have been verified to be valid. Article 95 and 96 of Law on IP regulates on invalidation and cancellation of effectiveness of protection certificate.</p> <p>Article 6.1 of Decree 103/2006/ND-CP (amended and supplemented by provisions under Decree 122/2010/ND-CP on bases and procedures for the establishment of industrial property rights</p> <p>1. Industrial property rights to inventions, layout designs, industrial designs, marks and geographical indications are established on the basis of decisions of the state management agency in charge of industrial property which grants protection titles to applicants for registration of those objects according to the provisions of Chapters VII, VIII and IX of the Law on Intellectual Property. Industrial property rights to marks internationally registered under the Madrid Agreement and the Madrid Protocol are established on the basis of recognition of such international registration by the state management agency.</p>		<p>Assessment: Equivalent</p> <p>EVFTA provides principles for each party to establish its own geographical indication registration system. TPP provides more specific about conditions, requirements on registration procedures of geographical indication in each party. However, in principle, EVFTA commitment does not conflict with TPP commitment.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.32: Grounds of Opposition and Cancellation²⁰</p> <p>1. If a Party protects or recognises a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least, on the following grounds:</p> <p>(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;</p> <p>(b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and</p> <p>(c) the geographical indication is a term customary in common language as the common name²¹ for the relevant good in the territory of the Party.</p> <p>2. If a Party has protected or recognised a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party.²²</p>	<p>Law on IP</p> <p>Article 112</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 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.</p> <p>Article 79. General conditions for geographical indications to be eligible for protection</p> <p>A geographical indication shall be eligible for protection when it satisfies the following conditions:</p> <ol style="list-style-type: none"> 1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication. 2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication. <p>Article 80</p> <p>The following objects shall be ineligible for protection as geographical indications:</p> <ol style="list-style-type: none"> 1. Names or indications which have become generic names of goods in Vietnam. 2. Geographical indications of foreign countries where they are not, or no longer, protected or used. 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. 4. Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications. 	<p>Assessment:</p> <p>Partly compatible</p> <p><u>With regard to commitment under Clause 1</u></p> <p>Clause 3, Article 80 of Law on IP stipulates not to protect geographical indications that conflict with the registered trademarks in term of protection, but does not regulate the trademarks in process of considering protection (protection application is submitted in advance).</p> <p><u>With regard to commitment under Clause 2</u></p> <p>Partly compatible. Clause 2 Article 18.32 refers to grounds provided under Clause 1. Because grounds provided under point a Clause 1 is not regulated under Law on IP, therefore Article 96 of Law on IP will be compatible with this after Article 80 Law on IP is revised.</p> <p><u>With regard to commitment under Clause 3</u></p> <p>Article 95.1.g Law on IP includes similar regulations, thus it is compatible with this commitment.</p>	<p>There is no corresponding commitment under the EVFTA</p>

20/ A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.

21/ For greater certainty, if a Party provides for the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, the Parties understand nothing shall require a Party to protect or recognise a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.

22/ For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraph 2 or paragraph 4 of this Article in relation to that geographical indication.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognised term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.</p> <p>4. If a Party has in place a sui generis system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any of the circumstances identified in paragraph 1 has been established.²³ That party shall also provide a process that allows interested persons to commence a proceeding on the grounds in paragraph 1.</p> <p>5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.</p>	<p>Article 96.1 regulates on the Cancellation of effectiveness of protection certificates</p> <p>1. A protection certificate shall be entirely invalidated in the following cases:</p> <p>a) The applicant for registration does not have the right and is not entitled to transfer the right to register the invention, industrial design, layout design or mark;</p> <p>b) The object of the industrial property protection may fail to satisfy the requirements for protection at the time the protection certificate is granted.</p> <p>Article 95.1.g regulates on the Invalidation of property protection certificates</p> <p>The geographical prerequisites to the reputation, quality or special characteristics of products bearing a geographical indication have changed, which results in the loss of such reputation, quality or attribute of products.</p>	<p><u>With regard to commitment under Clause 4</u></p> <p>Under Vietnam legal framework on IP, Vietnam does not have separate system for only geographical indication protection via judicial procedures, therefore Vietnam does not need to comply with Clause 4.</p> <p><u>With regard to commitment under Clause 5</u></p> <p>There is no clear provision on protection of translation or transliteration of that geographical indication. Therefore, it is not compulsory to comply with Clause 5 Article.</p> <p>Recommendation:</p> <p>Supplement the grounds under Article 18.32.1.a TPP into Article 80 Law on IP.</p>	

23/ As an alternative to this paragraph, if a Party has in place a sui generis system of the type referred to in this paragraph as of the applicable date under Article 18.36.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.33: Guidelines for Determining Whether a Term is the Term Customary in the Common Language</p> <p>With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include:</p> <p>14.(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and</p> <p>(b) how the good referenced by the term is marketed and used in trade in the territory of that Party.²⁴</p>	<p>Article 80 of Law on IP regulates on 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>1. Names or indications which have become generic names of goods in Vietnam.</p>	<p>Assessment:</p> <p>Incompatible</p> <p>Law on IP and its guiding implementing document do not have any provision or any specific guide on determining whether a term is the term customary in the common language. Therefore, Article 80.1.a Law on IP is not enough to be compatible with this TPP Article.</p> <p>Recommendation:</p> <p>To be compatible with commitment under the TPP, specific guiding on the term "generic names" of Article 80.1.a Law on IP should be supplemented.</p>	There is no corresponding commitment under the EVFTA
<p>Article 18.34: Multi-Component Terms</p> <p>With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), an individual component of a multi- component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.</p>	<p>Article 80 of Law on IP regulates on 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>1. Names or indications which have become generic names of goods in Vietnam.</p>	<p>Assessment:</p> <p>Incompatible</p> <p>Vietnamese legislation does not include any provisions on multi-component terms, so it is unlikely that a multi-component term with a separate component as generic name is not be protected as a geographical indication.</p> <p>Recommendation:</p> <p>Supplementing multi-component terms in Law on IP.</p>	There is no corresponding commitment under the EVFTA
<p>Article 18.35: Date of Protection of a Geographical Indication</p> <p>If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date²⁵ in the Party or the registration date in the Party, as applicable.</p>	<p>Article 93.7 of Law on IP</p> <p>A registration certificate of geographical indication shall have indefinite validity as from the issuing date.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Vietnamese legislation prescribes that a geographical indication is protected from the issuing date meaning the following day of registration application, so it has been compatible with the TPP.</p> <p>Recommendation: No</p> <p>No recommendation on adjustment on legislation.</p>	There is no corresponding commitment under the EVFTA

24/ For the purposes of this subparagraph, a Party's authorities may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Parties to refer to a type or class of good in the territory of the Party.

25/ For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.36: International Agreements</p> <p>1. If a Party protects or recognises a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications)²⁶ or Article 18.32.4 (Grounds of Opposition and Cancellation), that Party shall apply at least procedures and grounds that are equivalent to those in Article 18.31(e) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32.1 (Grounds of Opposition and Cancellation), as well as:</p> <p>(a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognising the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;</p> <p>(b) make available to the public, on the Internet, details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;</p> <p>(c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall provide a meaningful opportunity for interested persons to participate in an opposition process; and</p> <p>(d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.</p>	<p>There is no corresponding provision in Vietnamese legislation.</p>	<p>Assessment: compatible</p> <p>Currently, Vietnam has committed on a number of specific geographical indications under the EVFTA, it is speculated that they have fallen into Clause 6, Article 18.36 of the TPP. And according to this Clause 6, Vietnam has no obligations to implement commitments under Clauses 1-5 of Article 18.36 and conduct related additional duties.</p> <p>Thus, Vietnamese legislation has been compatible with the TPP.</p> <p>Recommendation:</p> <p>No recommendation on adjustment on legislation.</p>	<p>EVFTA</p> <p>There is no corresponding commitment under the EVFTA</p> <p>Related commitment:</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 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>

26/ Each Party shall apply Article 18.33 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 18.34 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>2. In respect of international agreements referred to in paragraph 6 that permit the protection or recognition of a new geographical indication, a Party shall: ^{27, 28}</p> <p>(a) apply paragraph 1(b);</p> <p>(b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before such a term is protected or recognised; and</p> <p>(c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.</p> <p>3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.</p> <p>4. For the purposes of this Article, a Party is not required to apply Article 18.32 (Grounds of Opposition and Cancellation), or obligations equivalent to Article 18.32, to geographical indications for wines and spirits or applications for those geographical indications.</p> <p>5. Protection or recognition provided pursuant to paragraph 1 shall commence no earlier than the date on which the agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of the agreement, on that later date.</p> <p>6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognised pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:</p> <p>(a) was concluded, or agreed in principle ²⁹, prior to the date of conclusion, or agreement in principle, of this Agreement;</p> <p>(b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or</p> <p>(c) entered into force for a Party prior to the date of entry into force of this Agreement for that Party.</p>	<p>27/ In respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.</p> <p>28/ A Party may comply with this Article by applying Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation).</p> <p>29/ For the purpose of this Article, an agreement “agreed in principle” means an agreement involving another government, government entity or international organisation in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically announced.</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</p> <p>be protected in {Annex GI – I} in accordance with the procedure set out in paragraph 3.a of Article 6.11 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> <p>Due to no commitment under the EVFTA corresponding this commitment under the TPP, it is impossible to assess the equivalence.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Section F: Patents and Undisclosed Test or Other Data			
Subsection A: General Patents			
<p>Article 18.37: Patentable Subject Matter</p> <p>1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application³⁰.</p> <p>2. Subject to paragraphs 3 and 4 and consistent with paragraph 1, each Party confirms that patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product. A Party may limit those new processes to those that do not claim the use of the product as such.</p> <p>3. A Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law. A Party may also exclude from patentability:</p> <p>(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;</p> <p>(b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.</p> <p>4. A Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 3, each Party confirms that patents are available at least for inventions that are derived from plants.</p>	<p>IP Law</p> <p>Article 8. Policies of the State on intellectual property</p> <p>1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing the interests of intellectual property right holders and the public interest; not to protect intellectual property objects which are contrary to social ethics and public order or which harm national defence and security.</p> <p>Article 58. General conditions for inventions to be eligible for protection</p> <p>1. An invention shall be eligible for protection in the form of the grant of an invention patent when it satisfies the following conditions:</p> <p>(a) It is novel;</p> <p>(b) It is of an inventive nature;</p> <p>(c) It is susceptible of industrial application.</p>	<p>Assessment:</p> <p>Partly compatible</p> <p><u>With regard to paragraph 1 – About protection conditions of patents</u></p> <p>Vietnam legal framework protects patents with similar conditions as TPP (the original includes the novelty) therefore it is compatible with TPP</p> <p>With regard to paragraph 2 – About subjects could be protected as patents</p> <p>Vietnam legal framework does not mention specific subjects which could be protected as patents protect. Vietnam's list of subjects not protected as patents does not include subjects as provided under Paragraph 2 (new uses of a known product, new methods of using a known product, or new processes of using a known product). Accordingly in principle Vietnam legal framework does not exclude the protection of these subjects as long as they meet general conditions on the novelty (the original) and industrial application. However, in practise, NOIP (Vietnam National Office of Intellectual Property) refuses to grant protection in these cases, because these cases do not meet general conditions on the novelty (the original).</p> <p>However, TPP requires these case to meet general conditions of a patents as Vietnam legal framework.</p> <p>Consequently Vietnam legal framework could be considered to not conflict with TPP, but, in practice it could be incompatible (because known product is automatically considered to not meet requirement on the novelty/the original).</p>	No equivalent EVFTA commitment

30/ For the purposes of this Section, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful”, respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled, or having ordinary skill in the art, having regard to the prior art

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 59. Objects ineligible for protection as inventions</p> <p>The following objects shall be ineligible for protection as inventions:</p> <ol style="list-style-type: none"> 1. Scientific discoveries or theories, mathematical methods. 2. Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games and doing business; computer programs. 3. Presentations of information. 4. Solutions of aesthetic characteristics only. 5. Plant varieties, animal breeds. 6. Processes of plant or animal production which are principally of a biological nature, other than microbiological processes. 7. Human and animal disease prevention methods, diagnostic and treatment methods. 	<p><u>With regard to paragraph 3 – about excluding cases not protected as patents</u></p> <p>With regard to general exclusion: Vietnam legal framework exclusion does not protect cases which is the same as the TPP (public order, social moral) and TRIPS (public security and national defense). Therefore Vietnam legal framework is compatible.</p> <p>With regard to specific exclusion: Vietnam legal framework lists 07 case not to protect. Although their wordings could be exactly inequivalent, their content is:</p> <ul style="list-style-type: none"> - either basically equivalent with TPP cases (e.g. TPP allows to exclude diagnostic, therapeutic and surgical methods for the treatment; Vietnam legal framework exclude disease prevention methods, diagnostic and treatment methods, therefore Vietnam legal framework and TPP is equivalent) - or cases which do not meet conditions to be protected patents provided under Paragraph 1 TPP (e.g. Vietnam legal framework excludes protection of computer software, TPP does not mention this subject; however, computer software is technical solutions, not patents, therefore, it does not meet protect conditions) <p>Therefore, Vietnam legal framework is compatible with this TPP commitment.</p> <p><u>With regard to paragraph 4 on microorganism</u></p> <p>Article 59.5 and 59.6 of IP Law does not protect animals or plants, as well as their procedures of production, because they are not microorganism procedure.</p> <p>However, in the case the procedure for the production of plants or animals which are non-biological and microbiological processes, it still has possibility to be protected as patent.</p> <p>Therefore, Vietnam legal framework could be considered to be compatible with this TPP commitment.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
		<p>Recommendation</p> <p>About the possibility of protection of new uses of a known product, new methods of using a known product, or new processes of using a known product</p> <p>Vietnam legal framework does not conflict with this TPP requirement, consequently in principle no need of revising legislations.</p> <p>In practice, VN could conflict with this TPP requirement, therefore, the solutions should be:</p> <ul style="list-style-type: none"> - Choose appropriate subjects: Because TPP does not require VN to protect all of 3 mentioned above subjects listed under Paragraph 2 TPP, it only requires one of three. Therefore, the first step is to determine the most appropriate subjects to protect (which is the most unpopular in practise) -After that, issuing appropriate guiding legislation to fully consider the normal protection conditions, excluding new uses of a known product, new methods of a known product which is automatically considered to not have the novelty/the original”. 	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.38: Grace Period</p> <p>Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure³¹; ³²</p> <p><u>(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and</u></p> <p><u>(b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.</u></p>	<p>Article 60. Novelty of inventions</p> <p>3. An invention shall not be deemed to have lost its novelty if it is published in the following cases, provided that the invention registration application is filed within six (6) months from the date of publication:</p> <p>(a) It is published by another person without permission from the person having the right to register it as defined in article 86 of this Law;</p> <p>(b) It is published in the form of a scientific presentation by the person having the right to register it as defined in article 86 of this Law;</p> <p>(c) It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it as defined in article 86 of this Law.</p>	<p>Assessment: Incompatible</p> <p>TPP does not limit grace period, but requires Parties to give grace period to at least one case where the public disclosure was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and occurred within 12 months prior to the date of the filing of the application in the territory of the Party.</p> <p>Vietnam IP law provides more cases to receive grace period but sets more conditions in the direction to restrict these cases, specifically:</p> <p>- <u>With regard to subjects:</u> Vietnam legal framework provides two groups of entities who are person having right to register, and another person without permission from the person having the right to register it as provided under TPP. However TPP does not provide the condition of this 'another person' to make the public disclosure which requires 'without permission from the person having the right to register'.</p> <p>- <u>About the situation/circumstance of public disclosure:</u> under Vietnam legal framework, if patents is published by the right holder, this closure is accepted only in the two following cases:</p> <p>+ Being published as a science research;</p> <p>+ Being displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register.</p> <p>Meanwhile TPP does not require anything relating to situation/circumstance of public disclosure by both of right holders and 'another person'</p> <p>- <u>With regard to term:</u> IP Law only provides the protection term is 06 months. Meanwhile, TPP provides 12 months.</p> <p>Recommendation:</p> <p>Revising IP Law³³ to meet TPP's requirement on term, and grace period.</p> <p>Note: revising as provided under TPP is beneficial to Vietnam in the case the low conception of keeping patent secret in Vietnam. In the case VN enterprises are right holders, the revision of Vietnam legal framework to comply with TPP is expected to give them higher chance to register for patent protection when this patent is published before by other entities.</p>	No equivalent EVFTA commitment

31/ No Party shall be required to disregard information contained in applications for, or registrations of, intellectual property rights made available to the public or published by a patent office, unless erroneously published or unless the application was filed without the consent of the inventor or their successor in title, by a third person who obtained the information directly or indirectly from the inventor

32/ For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorised by, or derived from, the patent applicant.

33/ In this document, the proposal of legal revision is also understood as revision of documents under legal (such as Decree of implementation instruction, Circular) equivalent with revised regulations suitable with legal regulations on enforcing legal documents, except cases which are specified as revision of specific regulations under Decree and/or Circular.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.39: Patent Revocation</p> <p>1. Each Party shall provide that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable.</p> <p>2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.</p> <p>Article 5A Paris Convention</p> <p>A - Patent: Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses; B - Industrial Designs: Failure to Work; Importation of Articles; C - Marks: Failure to Use; Different Forms; Use by Co-proprietors; D - Patent, Utility Models, Marks, Industrial Designs: Marking</p> <p>A - (1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.</p> <p>(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.</p>	<p>Article 95. Termination of validity of protection titles</p> <p>1. The validity of a protection title shall be terminated in the following cases:</p> <p>(a) The owner fails to pay the stipulated validity maintenance or extension fee;</p> <p>(b) The owner declares relinquishment of the industrial property rights;</p> <p>(c) The owner no longer exists, or the owner of a certificate of registered mark is no longer engaged in business activities and does not have a lawful heir;</p> <p>(d) The mark has not been used by its owner or the licensee of the owner without justifiable reason for five (5) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (3) months before the request for termination;</p> <p>(dd) The owner of a certificate of registered collective mark fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;</p> <p>(e) The owner of a certificate of registered certification mark violates the regulations on use of the certification mark or fails to supervise or ineffectively supervises the implementation of such regulations;</p> <p>(g) The geographical conditions decisive to reputation, quality or special characteristics of products bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of products.</p>	<p>Assessment: Compatible</p> <p>Regulations Termination of validity of protection titles of Article 95 and Cancellation of effectiveness of protection titles of Article 96 Law on IP are compatible with regulations under Paragraph 1 and 2 of Article 18.39 of TPP.</p> <p>With regard to Paragraph 2 of Article 18.39 of TPP, because currently Vietnam IP law is compatible with TRIPS and Paris Convention, Vietnam IP law is considered to be compatible with Article 18.39.3 of the TPP.</p> <p>Recommendation: None</p> <p>No recommendation on adjustment on legislation</p>	<p>No equivalent EVFTA commitment</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>(3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.</p> <p>(4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.</p> <p>(5) The foregoing provisions shall be applicable, mutatis mutandis, to utility models.</p>	<p>Article 96. Cancellation of effectiveness of protection titles</p> <p>1. A protection title shall be entirely invalidated in the following cases:</p> <p>(a) The applicant for registration has neither had nor been assigned the right to register the invention, industrial design, layout design or mark;</p> <p>(b) <u>The industrial property object failed to satisfy the protection conditions at the time the protection title was granted.</u></p> <p>Article 145. Grounds for compulsory licensing of inventions</p> <p>1. In the following cases, the right to use an invention may be licensed to another organization or individual pursuant to a decision of the competent State body defined in clause 1 of article 147 of this Law without permission from the holder of the exclusive right to use such invention:</p> <p>(a) Where the use of such invention is for public and non-commercial purposes or in service of national defence and security, disease prevention, and treatment and nutrition of people or other urgent needs of society;</p> <p>(b) Where the holder of the exclusive right to use such invention fails to fulfil the obligations to use such invention stipulated in clause 1 of article 136 and clause 5 of article 142 of this Law upon the expiration of four years as from the date of filing the application for registration of the invention, or the expiration of three years as from the date of granting the invention patent;</p> <p>(c) Where a person who wishes to use the invention fails to reach an agreement with the holder of the exclusive right to use such invention or on entry into an invention licence contract in spite of efforts made within a reasonable time for negotiating a satisfactory commercial price and conditions;</p> <p>(d) Where the holder of the exclusive right to use such invention is deemed to have performed anti-competitive practices prohibited by the law on competition.</p> <p>2. The holder of the exclusive right to use an invention may request termination of the use right when the grounds for licensing stipulated in clause 1 of this article no longer exist and are unlikely to recur, provided that such termination shall not be prejudicial to the licensee of the invention.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Article 18.40: Exceptions A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.		Assessment: Compatible In this issue, TPP member could choose to comply or not; therefore, Vietnam legal framework is presumed to be compatible. Recommendation: None No recommendation on adjustment on legislation	No equivalent EVFTA commitment
Article 18.41: Other Use Without Authorisation of the Right Holder The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, any waiver or any amendment to that Article that the Parties accept.	Article 145. Grounds for compulsory licensing of inventions 1. In the following cases, the right to use an invention may be licensed to another organization or individual pursuant to a decision of the competent State body defined in clause 1 of article 147 of this Law without permission from the holder of the exclusive right to use such invention: (a) Where the use of such invention is for public and non-commercial purposes or in service of national defence and security, disease prevention, and treatment and nutrition of people or other urgent needs of society; (b) Where the holder of the exclusive right to use such invention fails to fulfil the obligations to use such invention stipulated in clause 1 of article 136 and clause 5 of article 142 of this Law upon the expiration of four years as from the date of filing the application for registration of the invention, or the expiration of three years as from the date of granting the invention patent; (c) Where a person who wishes to use the invention fails to reach an agreement with the holder of the exclusive right to use such invention or on entry into an invention licence contract in spite of efforts made within a reasonable time for negotiating a satisfactory commercial price and conditions; (d) Where the holder of the exclusive right to use such invention is deemed to have performed anti-competitive practices prohibited by the law on competition. 2. The holder of the exclusive right to use an invention may request termination of the use right when the grounds for licensing stipulated in clause 1 of this article no longer exist and are unlikely to recur, provided that such termination shall not be prejudicial to the licensee of the invention.	Assessment: Compatible. Vietnam IP law contains compatible regulations with TRIPS. Therefore, it is compatible with TPP requirement under Article 18.41. In addition, it should be noted that Vietnam legal framework seems to not make use of all rights granted by TRIPS (including regulations on some exceptions to limit patent exclusive right because of public interest), consequently, Vietnam need further research to supplement these regulations to effectively make use of TPP commitment to grant rights to regulates these exceptions.	Article 8.2 – Patents and Public Health 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. 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. Article 2 Nature and Scope of Obligations 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 the rights of intellectual property holders and the interest of the public. Assessment TPP and EVFTA have different approached in this provisions: - TPP refers to Article 31 of TRIPS on the different usage without the permission of right holders; meanwhile - EVFTA refers to the Doha declaration and public health and Decision of the WTO General Council. However, note that Article 2 of EVFTA provides that EVFTA parties have responsibilities to comply with and implement TRIPS commitments. Although there are some different wordings, TPP and EVFTA are considered to have the similar provisions.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.42: Patent Filing</p> <p>Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date,³⁴ unless that application has, prior to publication,³⁵ withdrawn, abandoned or refused.</p>	<p>Article 90. "First to file" principle</p> <p>1. Where two or more applications for registration are filed by different parties for the same invention, for registration of industrial designs identical with or insignificantly different from each other, for registration of marks identical with or confusingly similar to each other, or for identical or similar goods or services, a protection title may only be granted to the valid application with the earliest priority or filing date amongst applications which satisfy all conditions for the grant of a protection title.</p> <p>2. Where there are two or more applications satisfying all the conditions for the grant of a protection title and having the same earliest priority or filing date, a protection title may only be granted to a single application from such applications with agreement from all applicants. Without such an agreement, all such applications shall be refused the grant of a protection title.</p>	<p>Assessment: Compatible.</p> <p>TPP requires to issue patent to the first submission, with some exceptions. TPP does not require but allowing the grant of patent for the later submission in other cases.</p> <p>VN provides to grant patent certificate for the first and the following in the line (Article 90 IP Law and Circular 01/2007). With regard to the case of later submission, although, Vietnam legal framework does not provide, in practise, NOIP considers to grant patent certificate to the following submission.</p> <p>Recommendation: None</p> <p>No recommendation on adjustment on legislation</p>	No equivalent EVFTA commitment
<p>Article 18.43: Amendments, Corrections and Observations</p> <p>Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.³⁶</p>	<p>17. Amendment/supplementation/division/conversion/transfer of applications</p> <p>13. Formality examination of applications</p> <p>13.6 Notification of results of formality examination and acceptance of valid applications</p> <p>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 or correct errors.</p>	<p>Assessment: Compatible.</p> <p>Vietnam legal framework provides detailed procedure which includes the step which allows applicant to fix and comment on the ground used by the competent authorities to consider the registration, therefore, it is totally requirement in this TPP commitment</p> <p>Recommendation: None</p> <p>No recommendation on adjustment on legislation</p>	No equivalent EVFTA commitment

34/ A Party shall not be required to apply this Article in cases involving derivation or in situations involving any application that has or had, at any time, at least one claim having an effective filing date before the date of entry into force of this Agreement for that Party or any application that has or had, at any time, a priority claim to an application that contains or contained such a claim.

35/ For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application

36/ A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>15. Substantive examination of applications</p> <p>15.7 Jobs to complete the substantive examination</p> <p>a) Notification of results of substantive examination of applications</p> <p>On the date of expiration of the time limit for substantive examination of an application specified at Point 15.8 of this Circular at the latest, the NOIP shall send to the applicant one of the following notices:</p> <p>(i) If the object stated in the application fails to satisfy the protection conditions, the NOIP shall issue a notice on its intended refusal to grant a protection title, clearly stating the reason(s) for refusal, possibly guiding the change of the protection coverage (volume) and setting a time limit of two months from the date of issuance of the notice for the applicant to give opinions and satisfy the requirements. The applicant may request prolongation of the above time limit according the provisions of Point 9.2 of this Circular;</p> <p>(ii) If the object stated in the application satisfies the protection conditions but the application still contains errors, the NOIP shall issue a notice on its intended refusal to grant a protection title, clearly pointing out errors in the application and setting a time limit of two months from the date of issuance of the notice for the applicant to justify or correct errors. The applicant may request prolongation of the above time limit according to the provisions of Point 9.2 of this Circular;</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>17.1 Amendment and supplementation of applications</p> <p>a) Before the NOIP issues a notice on its rejection of an application, a notice on its refusal to grant a protection title or a decision on the grant of a protection title, the applicant may amend or supplement documents of the application on his/her own initiative or upon the request of the NOIP.</p> <p>c) The amendment and supplementation of an application must not expand the protection coverage (or increase the protection volume) beyond the contents disclosed in the description, for invention or industrial design registration applications, in the list of goods and services, for mark registration applications, and must not change the nature of the object stated in the application. If the amendment expands the protection coverage (increases the protection volume) or changes the nature of the object sought to be protected, the applicant shall file a new application and all procedures shall be carried out anew.</p> <p>d) The applicant may request correction of errors in the names and addresses of the applicant and the author</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.44: Publication of Patent Applications</p> <p>1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.</p> <p>2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.</p> <p>3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.</p>	<p>Article 110. Publication of applications for registration of industrial property (IP Law)</p> <p>1. Applications for registration of industrial property which have been accepted as being valid by the State administrative body for industrial property rights shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this article.</p> <p>2. Applications for registration of inventions shall be published in the 19th month as from the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.</p> <p>Article 23a. Confidential invention; Protection title of confidential invention; content and limitation on confidential invention rights (Decree 103/2006/ND-CP)</p> <p>3. Confidential invention registration applications, confidential invention patents and confidential utility solution patents may not be disclosed and must be kept confidential under the law on protection of state secrets.</p> <p>6. After a confidential invention is disclosed by a competent agency under the law on protection of state secrets, its registration application and protection title shall be handled as follows:</p> <p>a/ The confidential invention application shall be further processed like an invention application;</p> <p>b/ The confidential invention patent or confidential utility solution patent shall be converted into an invention patent or utility solution patent and published in the Industrial Property Official Gazette and recorded in the National Register of Inventions.</p>	<p>Compatible.</p> <p>Vietnam legal framework provides the publication of applications for registration of patent to meet TPP requirement provided in this commitment, therefore it is compatible</p> <p>Recommendation: None</p> <p>No recommendation on adjustment on legislation</p>	<p>No equivalent EVFTA commitment</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.45: Information Relating to Published Patent Applications and Granted Patents</p> <p>For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement for that Party:</p> <p>(a) search and examination results, including details of, or information related to, relevant prior art searches;</p> <p>(b) as appropriate, non-confidential communications from applicants; and</p> <p>(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.</p>	<p>IP Law</p> <p>Article 99. Publication of decisions relating to protection titles</p> <p>Decisions on the grant, termination of validity, cancellation of validity or amendment of protection titles for industrial property rights shall be published by the State administrative body for industrial property rights in the Official Gazette of Industrial Property within sixty (60) days as from the date of issuance of such decision.</p> <p>Article 110. Publication of applications for registration of industrial property</p> <p>1. Applications for registration of industrial property which have been accepted as being valid by the State administrative body for industrial property rights shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this article.</p> <p>2. Applications for registration of inventions shall be published in the 19th month as from the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.</p>	<p>Assessment: Incompatible.</p> <p>Currently, but for published information as provided under the provision on publication of registration of Vietnam Law on IP and its guiding legislations, the access of information as provided under Article 18.45 of the TPP is impossible.</p> <p>Vietnam digital library of patents certificate still in the testing process, and only allow the access of patent description.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Revise Article 99 and 110 of the Law on IP to supplement more information, content, materials need to publish related to patents. - The general trend of some countries in the access of information on industrial property registration is the ability to access non-confidential transaction information of Registers and IP competent authorities. In addition, it is a good chance for Vietnam enterprises to access necessary information. Therefore, Article 99 and 110 need the general revision for all subjects of industrial property, not only patent. 	<p>No equivalent EVFTA commitment</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays</p> <p>1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.</p> <p>2. A Party may provide procedures for a patent applicant to request to expedite the examination of its patent application.</p> <p>3. If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of the patent owner shall, adjust the term of the patent to compensate for such delays³⁷.</p> <p>4. For the purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of such delays, periods of time that do not occur during the processing³⁸ of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable³⁹ to the granting authority; as well as periods of time that are attributable to the patent applicant⁴⁰.</p>	There is no equivalent provision	<p>Incompatible because Vietnam legal framework does not have equivalent regulations.</p> <p>Recommendation: Revise Law on IP, specifically according to the 2 following plans:</p> <p>Plan 1:</p> <ul style="list-style-type: none"> - Revise Article 93.2 of Law on IP on the case to extend the protection term due to the unreasonable and unnecessary delay; - Revise Article 119 providing the period for assessing registration of industrial property, and supplementing to require explanation for the unreasonability and unnecessary <p>Plan 2:</p> <ul style="list-style-type: none"> - Revise Article 93.2 of Law on IP on the case to extend the protect term due to the unreasonable and unnecessary delay; - Revise Decree guiding Law on IP on industrial property, supplement the requirement of clear explanation for the unreasonable and unnecessary delay. <p>+ Term of patents certificate: in the case there is the delay of patent grant more than five years from the date of submission, or three years after the request of assessing registration, it should depend on which expired date is later to determine the maximum and minimum term adjustment. Suggestion: It is recommended to set the period of 5 years (since the first submission) or 3 years (since the requirement of content confirmation), depending on which expired date is later. If the patent certificate is granted later than this period, the term adjustment will increase the term as much as late period. E.g. If patent is lately granted for one month in comparison with this period, the term will be adjust to add one month.</p>	No equivalent EVFTA commitment

37/ Annex 18-D applies to this paragraph.

38/ For the purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant

39/ A Party may treat delays "that are not directly attributable to the granting authority" as delays that are outside the direction or control of the granting authority.

40/ Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all patent applications filed after the date of entry into force of this Agreement for that Party, or the date two years after the signing of this Agreement, whichever is later for that Party

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Subsection C: Measures Relating to Pharmaceutical Products Article 18.47: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products 1. If a Party requires, as a condition for granting marketing approval ⁴¹ for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product, ⁴² that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar ⁴³ product on the basis of that information or the marketing approval granted to the person that submitted such test or other data for at least 10 years ⁴⁴ from the date of marketing approval of the new agricultural chemical product in the territory of the Party. 2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party. 3. For the purposes of this Article, a new agricultural chemical product is one that contains ⁴⁵ a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.	Article 128. Obligation to maintain secrecy of test data 1. Where the law requires applicants for licences for trading in or circulating pharmaceuticals or agro- chemical products to supply test results or any other data being trade secrets obtained by investment of considerable effort, and where applicants request such data to be kept secret, the competent licensing body shall be obliged to apply necessary measures so that such data is neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public. 2. From the time of submission of secret data in applications to the competent body stipulated in clause 1 of this article to the end of a five year period as from the date the applicant is granted a licence, such body must not grant licences to any subsequent applicants in whose applications the said secret data is used without the consent of submitters of such data, except for the cases stipulated in clause 3(d) of article 125 of this Law.	Assessment Compatible Article 128 of IP Law aims to the exclusive protection mechanism of data in compliance with TPP (which provides the responsibility to perform necessary measures to ensure that these data are used for unfair commercial use, without register's permission), therefore it is compatible with TPP Recommendation (Also relating to the recommend to implement Article 18.50) Revise Article 128 of Law on IP on the protect term of undisclosed test or other data for agriculture chemical products. (from five years to ten years) and supplement regulation on the right protection in the case the submission of evident of marketing approval for this product in another different territory.	EVFTA Article 9 Protection of undisclosed information and data 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. [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 to protect the public. [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. Assessment: Inequivalent This EVFTA commitments meet requirements provided under TRIPS and Vietnam IP Law, and are not equivalent with TPP (much lower) Note: TPP classifies secret data under subjects as agricultural chemical product, pharmaceuticals, and biology products with different protection term.

41/ For the purposes of this Chapter, the term “marketing approval” is synonymous with “sanitary approval” under a Party’s law

42/ Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

43/ For greater certainty, for the purposes of this Section, an agricultural chemical product is “similar” to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant’s request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product

44/ For greater certainty, a Party may limit the period of protection under this Article to 10 years

45/ For the purposes of this Article, a Party may treat “contain” as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat “utilise” as requiring the new chemical entity to be primarily responsible for the product’s intended effect.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Subsection C: Measures Relating to Pharmaceutical Products			
<p>Article 18.48: Patent Term Adjustment for Unreasonable Curtailment</p> <p>1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.</p> <p>2. With respect to a pharmaceutical product⁴⁶ that is subject to a patent, each Party shall make available an adjustment⁴⁷ of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.^{48; 49}</p> <p>3. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations, provided that the Party continues to give effect to this Article.</p> <p>4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the processing of marketing approval applications.</p>	There is no equivalent provision	<p>Assessment</p> <p>Incompatible</p> <p>With regard to commitment</p> <ul style="list-style-type: none"> - The responsibility to adjust protection term of patent related to pharmaceutical registration (Article 18.48) is much 'lower' than this responsibility to issue certificate (Article 18.46) which is less flexible. - Article 8.3 EFVTA is lower and more flexible than the first mentioned above: revise term is a method to offset, but not compulsory. <p>With regard to Vietnam legal framework: Vietnam legal framework does not provide these issue.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Revise Law on IP, specifically to revise Article 93 of Law on IP on the adjustment patent protection term due to unreasonable delay; and - Revise Law on Pharmaceutical, to provide the term to issuing the marketing certificate of pharmaceutical and cases which is determined to be 'unreasonable and unnecessary delay'. Excepting the case of apply Annex 18-D related to Peru to other member states, TPP does not provide conditions, standards to determine 'unreasonable and unnecessary delay', therefore, the determination completely depends on the lawmakers. - The protection term adjustment should be revised as indicated under Article 18.46. 	<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". 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 territories. 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 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 years 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>Assessment:</p> <p>TPP does not limit the protection term of patent because of unreasonable shortening due to the procedure to obtain marketing certificate. Meanwhile, EVFTA sets the maximum of period which each member states need to extend for the patent holders and is equivalent to the delay. However, both of TPP and EVFTA do not provide the minimum offsetting term. Consequently, Vietnam still has large legislation space to provide the offsetting term and the offsetting method.</p>

46/ A Party may comply with the obligations of this paragraph with respect to a pharmaceutical product or, alternatively, with respect to a pharmaceutical substance.

47/ For greater certainty, a Party may alternatively make available a period of additional sui generis protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The sui generis protection shall confer the rights conferred by the patent, subject to any conditions and limitations pursuant to paragraph 3

48/ Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all applications for marketing approval filed after the date of entry into force of this Article for that Party

49/ Annex 18-D applies to this paragraph

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.49: Regulatory Review Exception</p> <p>Without prejudice to the scope of, and consistent with, Article 18.40 (Exceptions), each Party shall adopt or maintain a regulatory review exception⁵⁰ for pharmaceutical products</p>	<p>IP Law</p> <p>Article 125. Right to prevent others from using industrial property objects</p> <p>2 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 in service of their personal needs or for non-commercial purposes, or for purposes of evaluation, analysis, research, teaching, testing, trial production or information collection for carrying out procedures of application for licences for production, importation or circulation of products;</p>	<p>Assessment: Compatible</p> <p>IP Law meets TPP requirements on the compulsory control procedure.</p> <p>Recommendation: None</p> <p>No recommendation on adjustment on legislation</p>	<p>No equivalent EVFTA commitment</p>

50/ For greater certainty, consistent with Article 18.40 (Exceptions), nothing prevents a Party from providing that regulatory review exceptions apply for purposes of regulatory reviews in that Party, in another country or both

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.50: Protection of Undisclosed Test or Other Data⁵¹</p> <p>1. (a) If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,⁵² that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar⁵³ product on the basis of:</p> <p>(i) that information; or</p> <p>(ii) the marketing approval granted to the person that submitted such information, for at least five years⁵⁴ from the date of marketing approval of the new pharmaceutical product in the territory of the Party.</p> <p>(b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of a person that previously submitted such information concerning the safety and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of that Party⁵⁵.</p>	<p>Article 128. Obligation to maintain secrecy of test data</p> <p>1. Where the law requires applicants for licences for trading in or circulating pharmaceuticals or agro- chemical products to supply test results or any other data being trade secrets obtained by investment of considerable effort, and where applicants request such data to be kept secret, the competent licensing body shall be obliged to apply necessary measures so that such data is neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.</p> <p>2. From the time of submission of secret data in applications to the competent body stipulated in clause 1 of this article to the end of a five year period as from the date the applicant is granted a licence, such body must not grant licences to any subsequent applicants in whose applications the said secret data is used without the consent of submitters of such data, except for the cases stipulated in clause 3(d) of article 125 of this Law.</p>	<p>Assessment</p> <p>Partly compatible.</p> <p><u>With regard to paragraph 1 and 2</u></p> <p>Article 128 of Law on IP similar provision with TPP on the issue of the proof on the marketing certificate in the territory of other countries.</p> <p><u>With regard to paragraph 3</u></p> <p>Because Vietnam IP law issues the provision compatible with TPP, except when Vietnam wants to issue more specific provisions, the current regulations are completely compatible with TPP.</p> <p>Recommendation</p> <p>Revise Article 128 of Law on IP, supplement the provision on protection in the case of submitting marketing approval of this product in the territory of the Party; supplement the provision on clinical information</p>	<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 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>Assessment: Inequivalent</p> <p>This EVFTA commitments meet requirements provided under TRIPS and Vietnam IP Law, and are not equivalent with TPP (much lower)</p> <p>Note: TPP classifies secret data under subjects as agricultural chemical product, pharmaceuticals, and biology products with different protection term.</p>

51/ Annex 18-B and Annex 18-C apply to paragraphs 1 and 2 of this Article.

52/ Each Party confirms that the obligations of this Article, and Article 18.51 (Biologics) apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

53/ For greater certainty, for the purposes of this Section, a pharmaceutical product is “similar” to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant’s request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

54/ For greater certainty, a Party may limit the period of protection under paragraph 1 to five years, and the period of protection under Article 18.51.1(a) (Biologics) to eight years.

55/ Annex 18-D applies to this subparagraph

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>2. Each Party shall:⁵⁶</p> <p>(a) apply paragraph 1, mutatis mutandis, for a period of at least three years with respect to new clinical information submitted as required in support of a marketing approval of a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration; or, alternatively,</p> <p>(b) apply paragraph 1, mutatis mutandis, for a period of at least five years to new pharmaceutical products that contain⁵⁷ a chemical entity that has not been previously approved in that Party.⁵⁸</p> <p>3. Notwithstanding paragraphs 1 and 2 and Article 18.51 (Biologics), a Party may take measures to protect public health in accordance with:</p> <p>(a) the Declaration on TRIPS and Public Health;</p> <p>(b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or</p> <p>(c) any amendment of the TRIPS Agreement to implement the Declaration on TRIPS and Public Health that enters into force with respect to the Parties.</p>			

56/ A Party that provides a period of at least eight years of protection pursuant to paragraph 1 is not required to apply paragraph 2..

57/ For the purposes of this Article, a Party may treat “contain” as meaning utilise

58/ For the purposes of Article 18.50.2(b) (Protection of Undisclosed Test or Other Data), a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.51: Biologics⁵⁹</p> <p>1. With regard to protecting new biologics, a Party shall either:</p> <p>(a) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic,^{60; 61} provide effective market protection through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, <i>mutatis mutandis</i>, for a period of at least eight years from the date of first marketing approval of that product in that Party; or, alternatively,</p> <p>(b) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic, provide effective market protection:</p> <p>(i) through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, <i>mutatis mutandis</i>, for a period of at least five years from the date of first marketing approval of that product in that Party,</p> <p>(ii) through other measures, and</p> <p>(iii) recognising that market circumstances also contribute to effective market protection to deliver a comparable outcome in the market.</p> <p>2. For the purposes of this Section, each Party shall apply this Article to, at a minimum, a product that is, or, alternatively, contains, a protein produced using biotechnology processes, for use in human beings for the prevention, treatment, or cure of a disease or condition..</p>	<p>Article 128. Obligation to maintain secrecy of test data</p> <p>1. Where the law requires applicants for licences for trading in or circulating pharmaceuticals or agro- chemical products to supply test results or any other data being trade secrets obtained by investment of considerable effort, and where applicants request such data to be kept secret, the competent licensing body shall be obliged to apply necessary measures so that such data is neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.</p> <p>2. From the time of submission of secret data in applications to the competent body stipulated in clause 1 of this article to the end of a five year period as from the date the applicant is granted a licence, such body must not grant licences to any subsequent applicants in whose applications the said secret data is used without the consent of submitters of such data, except for the cases stipulated in clause 3(d) of article 125 of this Law.</p>	<p>Assessment:</p> <p><u>With regard to Paragraph 1 commitment</u></p> <p>Partly compatible</p> <p>With regard to commitment: This Paragraph allows the method to protect market as provided under Article 18.50.1 and 18.50.3 with term of 08 years; or the method as provided under Article 18.50.1 and 18.50.3 with the term of 05 years with other measures and recognizes that market circumstance also contributes to the market protection to bring the same result on the market.</p> <p>Vietnam legal framework does not have specific regulation on the protection of testing case for biologics, has the general provision for pharmaceuticals and agricultural chemical products, with some different from TPP on the term (shorter), and protection target/method (only limit on the protection target to prevent the unfair trade activities)</p> <p>Vietnam legal framework does indicate any choice among 02 plans TPP allows (excepts the case on the term of 05 years but not including the conditions as TPP required)</p> <p><u>With regard to Paragraph 2 commitment</u></p> <p>According to Article 2 of the Law on Pharmaceuticals, biologics is medicine and considered to be pharmaceuticals. Therefore, the provisions on pharmaceutical marketing as provided under Article 128 of the Law on IP could used to assess the compatibility with Article 18.51 of TPP</p> <p>- With regard to Paragraph 2 of Article 18.51: This provision requires each parties to apply at least to the protein products or products containing protein produced by the use of biological process, for human beings to prevent, treat or cure a disease or a statement. Requirement under this Paragraph is more specific and detailed than that under Article 128 of IP Law.</p>	<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 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>Assessment: Inequivalent</p> <p>This EVFTA commitments meet requirements provided under TRIPS and Vietnam IP Law, and are not equivalent with TPP (much lower)</p> <p>Note: TPP classifies secret data under subjects as agricultural chemical product, pharmaceuticals, and biology products with different protection term.</p>

59/ Annex 18-B, Annex 18-C and Annex 18-D apply to this Article

60/ Nothing requires a Party to extend the protection of this paragraph to:

(a) any second or subsequent marketing approval of such a pharmaceutical product; or
(b) a pharmaceutical product that is or contains a previously approved biologic

61/ Each Party may provide that an applicant may request approval of a pharmaceutical product that is or contains a biologic under the procedures set forth in Article 18.50.1(a) (Protection of Undisclosed Test or Other Data) and Article 18.50.1(b) within five years of the date of entry into force of this Agreement for that Party, provided that other pharmaceutical products in the same class of products have been approved by that Party under the procedures set forth in Article 18.50.1(a) and Article 18.50.1(b) before the date of entry into force of this Agreement for that Party..

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>3. Recognising that international and domestic regulation of new pharmaceutical products that are or contain a biologic is in a formative stage and that market circumstances may evolve over time, the Parties shall consult after 10 years from the date of entry into force of this Agreement, or as otherwise decided by the Commission, to review the period of exclusivity provided in paragraph 1 and the scope of application provided in paragraph 2, with a view to providing effective incentives for the development of new pharmaceutical products that are or contain a biologic, as well as with a view to facilitating the timely availability of follow-on biosimilars, and to ensuring that the scope of application remains consistent with international developments regarding approval of additional categories of new pharmaceutical products that are or contain a biologic.</p>		<p><u>With regard to Paragraph 3 commitment</u></p> <p>Paragraph 3 of Article 18.51 indicates the possibility of TPP member states to negotiate to revise the exclusive term provided under Paragraph 1 and the scope of application provided under Paragraph 2 via a commission on IP. This is the matter of this Agreement, not related to domestic law on merit.</p> <p>Recommendation</p> <p>Revise Article 128 of Law on IP, supplement the provision on biologics in the appropriate direction.</p>	
<p>Article 18.52: Definition of New Pharmaceutical Product</p> <p>For the purposes of Article 18.50.1 (Protection of Undisclosed Test or Other Data), a new pharmaceutical product means a pharmaceutical product that does not contain⁶² chemical entity that has been previously approved in that Party.</p>	<p>Law on pharmacy 2016</p> <p>Article 2. Definitions</p> <p>14. New drug means a drug that contains a new active ingredient or an herbal ingredient which is medically used in Vietnam for the first time; a drug that has a new combination of licensed active ingredients or herbal ingredients that have been medically used in Vietnam.</p>	<p>Assessment</p> <p>Compatible</p> <p>Basically, the definition of new pharmaceutical under Vietnam legal framework is compatible with TPP (the composition of new chemical entities or new composition of known chemical entities), therefore compatible.</p> <p>Recommendation: None</p> <p>No recommendation on adjustment on legislation</p>	No equivalent EVFTA commitment

62/ For the purposes of this Article, a Party may treat “contain” as meaning utilise.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.53: Measures Relating to the Marketing of Certain Pharmaceutical Products</p> <p>1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:</p> <p>(a) a system to provide notice to a patent holder⁶³ or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;</p> <p>(b) adequate time and opportunity for such a patent holder to seek, prior to the marketing⁶⁴ of an allegedly infringing product, available remedies in subparagraph (c); and</p> <p>(c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.</p> <p>2. As an alternative to paragraph 1, a Party shall instead adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.</p>	<p>Circular 44/2014/TT-BYT</p> <p>Article 13. General rules</p> <p>1. The applicant shall take responsibility for intellectual property pertaining to its registered drugs.</p> <p>2. The applicant establishes intellectual property rights or looks up related intellectual property objects before applying for drug registration in Vietnam.</p> <p>3. In case there is any dispute about intellectual property when the application is processed, the objector to the issuance of drug registration number subject to dispute must provide the conclusion of the intellectual property authority or intellectual property enforcement body on infringement of intellectual property rights. The Ministry of Health shall not issue drug registration numbers to the drugs which are subject to infringement of intellectual property rights of other individuals or organizations according to good basis.</p> <p>4. In case there is any dispute about intellectual property rights after the drug registration number is issued, the Ministry of Health shall decide to revoke the registration number or suspend the sale of the drug as prescribed in Clause 6 Article 23 or Clause 2 Article 33 of this Circular at the request of holder of intellectual property rights or a third-party beneficiary and pursuant to the judicial decision or final conclusion of the intellectual property authority or the intellectual property enforcement body on infringement of intellectual property rights.</p> <p>Article 14. Patents on registered drugs</p> <p>1. Regarding a drug containing active ingredients which are under the period of intellectual property protection, the applicant may provide related legal documents on condition of protection and intellectual property rights (patent) on registered drugs (if any).</p> <p>2. Within 02 years before the expiry date of the period of patent protection, the applicant may submit the application for registration of generic drug together with documents proving that drug protection period will expire soon and clarify the request in the application using the form No.6A/TT issued herewith.</p>	<p>Assessment</p> <p>Partly compatible.</p> <p>According to Circular 44/2014/TT-BYT, the competent authority to issue marketing approval of pharmaceutical does not play the role of the authority to perform administrative infringement under Law on IP, and performs simply the role of pharmaceuticals control authority. Specifically, when pharmaceuticals control authority accesses the dossier, proof submitted by the right holders (including the conclusion of competent authority on IP rights' implementation) and considers that the issuance of marketing approval could lead to the infringement of right holder's patent, it will not issue marketing approval.</p> <p>Commitment on the coordination of patents in this Article is a new requirement, and requires not only the competent authority to issue marketing approval to check the patent certificate, but also emphasizes that patent holder need informing on the risk of infringement, and at the same time, could perform necessary action to protect its right, and cooperate with the competent authorities to issue marketing approval and patent certificate. Vietnam legal framework does not have this provision, consequently it is not compatible with TPP</p> <p>Recommendation</p> <p>Supplement the provisions on this issue to the Law on IP, in the direction to coordinate between the competent authorities to issue marketing approval and patent certificates.</p>	<p>No equivalent EVFTA commitment</p>

63/ For greater certainty, for the purposes of this Article, a Party may provide that a "patent holder" includes a patent licensee or the authorised holder of marketing approval.

64/ For the purposes of paragraph 1(b), a Party may treat "marketing" as commencing at the time of listing for purposes of the reimbursement of pharmaceutical products pursuant to a national healthcare programme operated by a Party and inscribed in the Appendix to Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices).

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.54: Alteration of Period of Protection</p> <p>Subject to Article 18.50.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), Article 18.50 or Article 18.51 (Biologics) and is also covered by a patent in the territory of that Party, the Party shall not alter the period of protection that it provides pursuant to Article 18.47, Article 18.50 or Article 18.51 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 18.47, Article 18.50 or Article 18.51.</p>	<p>There is no equivalent provision</p>	<p>Assessment</p> <p>Compatible</p> <p>IP Law has independent provisions on the protection term of patents and the data; and does not have any provision regulating the affect between these two terms.</p> <p>Therefore, it does not fall in the case predicted under Article 18.14</p> <p>Recommendation</p> <p>No recommendation on adjustment on legislation</p>	<p>No equivalent EVFTA commitment</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Section G: Industrial Design			
<p>Article 18.55: Protection</p> <p>1. Each Party shall ensure adequate and effective protection of industrial designs and also confirms that protection for industrial designs is available for designs:</p> <p>(a) embodied in a part of an article; or, alternatively,</p> <p>(b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole.</p> <p>2. This Article is subject to Articles 25 and 26 of the TRIPS Agreement.</p>	<p>Clause 2 and 3, Article 7 of Law on IP:</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>3. In the circumstances where the achievement of defense, security, people's livelihood objectives and other interests of the State and society specified in this Law needs to be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals under appropriate terms. The limitation on rights to inventions classified as state secrets complies with regulations of the Government."</p> <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> <p>1. Exteriority of a product which is required by the technical features of the product.</p> <p>2. Exteriority of civil or industrial construction works.</p> <p>3. Exteriority of a product which is invisible during the use of the product.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Clause 2, 3 Article 7 and Article 64 Law on IP provides objects ineligible to be treated as a protected industrial design. If an object is not in this list, it will be protected as regulated.</p> <p>Vietnam provisions on industrial design protection is compatible with TRIPS' provisions.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</p>	<p>Article 7.2 - Protection of Registered Industrial Designs</p> <p>1. The Parties shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.</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 fulfil 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 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>Assessment: Partly equivalent</p> <p>Commitment under Clause 1 of this TPP Article on protected objects is equivalent to Clause 2 of Article 7.2 EVFTA.</p> <p>Commitment on protection conditions is in compliance with Article 25 and 26 of TRIPS.</p> <p>TRIPS provides to protect industrial design for at least 10 years. Meanwhile, EVFTA protects protect industrial design for at least 15 years. Therefore, the term of protection of industrial design under EVFTA is longer that under TPP.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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> <p>Assessment: TPP does not have any commitment on exception for industrial design.</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 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>Assessment: TPP does not have any equivalent commitment with that of EVFTA under this Article.</p>
<p>Article 18.56: Improving Industrial Design Systems</p> <p>The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems, as well as facilitating the process of cross-border acquisition of rights in their respective industrial design systems, including giving due consideration to ratifying or acceding to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva, July 2, 1999.</p>		<p>Assessment:</p> <p>Compatible</p> <p>Vietnam legal framework is designed following regulations under TRIPS and regulations relating to industrial designs. Therefore, it meets the requirements of commitments on this issue under TPP.</p> <p>Recommendation: No</p> <p>There is no recommendation on revision of Vietnam legislations.</p>	<p>Assessment: TPP does not have any equivalent commitment with that of EVFTA.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Section H: Copyright and Related Rights			
<p>Article 18.57: Definitions</p> <p>For the purposes of Article 18.58 (Right of Reproduction) and Article 18.60 (Right of Distribution) through Article 18.70 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:</p> <p>broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;</p> <p>communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;</p> <p>fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;</p> <p>performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;</p> <p>phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;</p>	<p>Article 4.11 of Law on IP</p> <p>Broadcasting means the transmission of the sound or image or both of a work, a performance, a phonogram, a video recording or a broadcast to the public by wire or wireless means, including satellite transmission, in such a way that people may access such work from a place and at a time they themselves select.</p> <p>Article 23 Decree No. 100/2006/ND-CP detailing and guiding the implementation of a number of articles of the civil code and the intellectual property law regarding the copyright and related rights</p> <p>The right to communicate works to the public by wire or wireless means, electronic information networks or any other technical means provided for at Point e, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to make their works or copies thereof available to the public, in such a way that members of the public may access such works from a place and at a time they themselves select.</p> <p>Article 16.1 of Law on IP on Performers</p> <p>Actors and actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter commonly referred to as performers).</p> <p>Article 16.3 on Sound Creator</p> <p>Organizations and individuals who initially create the sounds and images of performances or other sounds and images in a fixed form (hereinafter commonly referred to as producers of audio and video recordings).</p> <p>Article 4.9 of Law on IP</p> <p>Published work, phonogram or video recording means a work, phonogram or video recording which has been permitted for release to the public in a reasonable quantity of copies by the holder of copyright or related rights.</p>	<p>Assessment:</p> <p>Partly compatible</p> <p>Vietnam legal framework does not provide the definition of communication to the public, fixation, and phonogram.</p> <ul style="list-style-type: none"> - With regard to the definition of broadcasting: Under Vietnam’s definition of broadcasting, broadcasting applies on sound or image or both of a work, a performance, a phonogram, a video recording or a broadcast to the public. Meanwhile, under TPP, the definition of broadcasting indicates the methods to transmit to the public without the objects transmitted. Therefore, TPP’s definition is larger than that under Law on IP. - With regard to the definition of “communication to the public”, Vietnam legal framework does not provide specific definition, and only provide the definition of right to communicate to the public. - With regard to the definition of performer: Vietnam legal framework provides that Actors and actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter commonly referred to as performers), however, does not provide the definition of perform. Meanwhile, TPP has more specific definition with the form of performance such as act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore. - The definition of Vietnam legal framework on producer of a phonogram is equivalent with that of TPP. - With regard to the definition of publication: Vietnam legal framework does not have this definition, and only provides the definition of “Published work, phonogram or video recording” which is not compatible with TPP, because this definition is concentrated on the published objects, not on the nature of the act of publication. 	<p>Assessment: TPP does not have any equivalent commitment with that of EVFTA.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and</p> <p>publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.</p>	<p>Article 22 of Decree No. 100/2006/ND-CP on the right to publish works</p> <p>The right to publish works or authorize other persons to publish works provided for in Clause 3, Article 19 of the Intellectual Property Law means the right of the author or copyright holder of a work or another individual or organization authorized by the author or copyright holder to make a work available to the public in a sufficient amount of copies to satisfy the reasonable demand of the public, depending on the nature of the work.</p>	<p>Recommendation: To supplement the definition of broadcasting, communication to the public, fixation, performers, phonogram</p> <p>publication into Article 4 of Law on IP</p> <p>(Because these definitions directly influence cover of related rights and obligations, Vietnam legal framework should has equivalent definitions in spite of non-compulsory, which is basis of implementation of commitments on specific rights and obligations)</p>	
<p>Article 18.58: Right of Reproduction</p> <p>Each Party shall provide⁶⁵ to authors, performers and producers of phonograms⁶⁶ the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.</p>	<p>Article 20. Economic rights</p> <p>1. Moral rights shall be exercised by authors to:</p> <p>a) Create derivative works;</p> <p>b) Display their works to the public;</p> <p>c) Reproduce their works;</p> <p>d) Distribute or import the original or copies of their works;</p> <p>dd) Communicate their works to the public by wireless or landline means, electronic information networks or other technical means;</p> <p>e) Lease the original or copies of cinematographic works and computer programs.</p> <p>2. Authors or copyright holders shall exclusively exercise the rights stipulated in Clause 1 of this Article or may grant other persons the right to exercise such rights under the provisions of this Law.</p> <p>Article 23.2 of Decree No. 100/2006/ND-CP</p> <p>The right to reproduce works provided for at Point c, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to make copies of works by whatever means or in whatever form, including permanent or provisional backup of works in electronic form.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Provisions on exclusive rights and forbid all reproduction is compatible with Vietnam legal framework.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</p>	<p>Article 4.2 – Authors</p> <p>The Parties shall provide for authors the exclusive right to authorise or prohibit:</p> <p>1. direct or indirect, reproduction by any means and in any form, in whole or in part of their works;</p> <p>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;</p> <p>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> <p>Assessment: Equivalent</p> <p>TPP on reproduction is equivalent with EVFTA commitments under Article 4.2.1</p>

65/ For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance or phonogram has been fixed in some material form.

66/ References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.59: Right of Communication to the Public</p> <p>Without prejudice to Article 11(1)(ii), Article 11bis(1)(i) and (ii), Article 11ter(1)(ii), Article 14(1)(ii), and Article 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the 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 these works from a place and at a time individually chosen by them.⁶⁷</p>	<p>Article 20. Economic rights</p> <p>1. Moral rights shall be exercised by authors to:</p> <ul style="list-style-type: none"> a) Create derivative works; b) Display their works to the public; c) Reproduce their works; d) Distribute or import the original or copies of their works; dd) Communicate their works to the public by wireless or landline means, electronic information networks or other technical means; e) Lease the original or copies of cinematographic works and computer programs. <p>2. Authors or copyright holders shall exclusively exercise the rights stipulated in Clause 1 of this Article or may grant other persons the right to exercise such rights under the provisions of this Law.</p> <p>Article 23.4 of Decree No. 100/2006/ND-CP</p> <p>4. The right to communicate works to the public by wire or wireless means, electronic information networks or any other technical means provided for at Point e, Clause 1, Article 20 of the Intellectual Property Law means the exclusive right of copyright holders or their authorized persons to make their works or copies thereof available to the public, in such a way that members of the public may access such works from a place and at a time they themselves select.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Regulations under Vietnam legal framework on rights of communication to the public is compatible with that of TPP.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</p>	<p>Article 4.2 – Authors</p> <p>The Parties shall provide for authors the exclusive right to authorise or prohibit:</p> <ul 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>Assessment: Equivalent</p> <p>TPP commitment in reproduction right is equivalent with that of EVFTA provided under Article 4.2.3.</p>

^{67/} The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11bis(2) of the Berne Convention.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.60: Right of Distribution</p> <p>Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies⁶⁸ of their works, performances and phonograms through sale or other transfer of ownership.</p>	<p>Article 20. Economic rights</p> <p>1. Moral rights shall be exercised by authors to:</p> <ul style="list-style-type: none"> a) Create derivative works; b) Display their works to the public; c) Reproduce their works; d) Distribute or import the original or copies of their works; dd) Communicate their works to the public by wireless or landline means, electronic information networks or other technical means; e) Lease the original or copies of cinematographic works and computer programs. <p>2. Authors or copyright holders shall exclusively exercise the rights stipulated in Clause 1 of this Article or may grant other persons the right to exercise such rights under the provisions of this Law.</p>	<p>Assessment: Compatible</p> <p>Regulations under Vietnam legal framework on economic rights (including original or copies) is compatible with commitments under TPP.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</p>	<p>Article 4.2 – Authors</p> <p>The Parties shall provide for authors the exclusive right to authorise or prohibit:</p> <ul 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>Assessment: Equivalent</p> <p>TPP commitment in reproduction right is equivalent with that of EVFTA provided under Article 4.2.2.</p>
<p>Article 18.61: No Hierarchy</p> <p>Each Party shall provide that in cases in which authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram:</p> <ul style="list-style-type: none"> (a) the need for the authorisation of the author does not cease to exist because the authorisation of the performer or producer is also required; and (b) the need for the authorisation of the performer or producer does not cease to exist because the authorisation of the author is also required. 		<p>Assessment: Incompatible</p> <p>Vietnam legal framework does not have any clear and specific regulation in the case where authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram.</p> <p>Recommendation: Supplement this requirement as a specific article in Law on IP</p>	<p>Assessment: TPP does not have any equivalent commitment with that of EVFTA.</p>

68/ The expressions “copies” and “original and copies”, that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.62: Related Rights</p> <p>1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals⁶⁹ of another Party; and to performances or phonograms first published or first fixed⁷⁰ in the territory of another Party.⁷¹ A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.</p> <p>2. Each Party shall provide to performers the exclusive right to authorise or prohibit:</p> <p>(a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and</p> <p>(b) the fixation of their unfixed performances.</p> <p>3. (a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means,⁷² and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.</p> <p>(b) Notwithstanding subparagraph (a) and Article 18.65 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law.⁷⁴</p>	<p>Article 13. Authors and copyright holders who possess works protected by the copyright</p> <p>1. Organizations and individuals who possess works protected by the copyright comprise persons who directly create such works and copyright holders stipulated in Articles 37 to 42 enshrined in this Law.</p> <p>2. Authors and copyright holders stipulated in Clause 1 of this Article shall comprise Vietnamese organizations and individuals; foreign organizations and individuals with works published for the first time in Vietnam and not yet published in any other country, or with works also published in Vietnam within a period of thirty days after the first publication carried out in another country; and foreign organizations and individuals with works which are protected in Vietnam under an international treaty on copyright of which the Socialist Republic of Vietnam is a member.</p> <p>Article 29, Law on IP. Rights of performers</p> <p>1. Performers who are also the investors shall have the moral and economic rights to their performances. Where performers are not the investors, the performers shall have the moral rights and the investors shall have the economic rights to such performances.</p> <p>2. Moral rights shall be exercised by authors to:</p> <p>a) Have their name acknowledged upon performance or when distributing audio and video recordings or broadcasting their performances;</p> <p>b) Protect the integrity of their performance imagery, and prevent others from modifying, editing or distorting the work in any way prejudicial to the honor and reputation of the performer.</p>	<p>Assessment:</p> <p>Compatible</p> <p>Regulations under Vietnam legal framework on related rights of copyrights is compatible with that of TPP.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</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 their unfixed performances, except where the performance is itself already a broadcast performance. <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>Assessment: Equivalent</p> <p>TPP commitment on performers' right is equivalent with that of EVFTA provided under Article 4.3 and Article 4.4.</p>

69/ For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

70/ For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

71/ For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 18.8 (National Treatment), each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

72/ With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's obligations under Article 18.8 (National Treatment).

73/ For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

74/ For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>3. Economic rights shall include the exclusive right to be exercised or by which others are authorized to exercise their following rights to:</p> <p>a) Express their live performance in a fixed form on audio and video recordings;</p> <p>b) Directly or indirectly reproduce a performance which has been expressed in a fixed form on audio and video recordings;</p> <p>c) Broadcast or transmit to the public in other ways an unfixed performance so that it may be accessed by the public, except where such performance is intended to be broadcast;</p> <p>d) Distribute to the public an original performance and copies thereof in the form of sale, rental or distribution by any technical means which are accessible to the public.</p> <p>Article 30. Rights of producers of phonograms and video recordings [14]</p> <p>1. Producers of phonograms and video recordings have the exclusive right to or authorize others to exercise their following rights to:</p> <p>a) Directly or indirectly reproduce their phonograms and video recordings;</p> <p>b) Import and distribute to the public their original phonograms and video recordings and copies thereof in the form of sale, rent or distribution by whatever technical means accessible to the public.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<p>Article 4.5 – Broadcasting organisations Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:</p> <ol style="list-style-type: none"> 1. the fixation of their broadcasts; 2. the reproduction of fixations of their broadcasts; 3. distribution to the public of fixations of their broadcasts; and 4. the rebroadcasting of their broadcasts by wireless means <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>Assessment: TPP does not commit on the matter of broadcasting organisations, broadcasting and communication to the public.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.63: Term of Protection for Copyright and Related Rights</p> <p>Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:⁷⁵</p> <p>(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;⁷⁶ and</p> <p>(b) on a basis other than the life of a natural person, the term shall be:</p> <p>(i) not less than 70 years from the end of the calendar year of the first authorised publication⁷⁷ of the work, performance or phonogram; or</p> <p>(ii) failing such authorised publication within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.⁷⁸</p>	<p>Article 27. Term of copyright protection [13]</p> <p>1. The moral rights mentioned in Clauses 1, 2 and 4 of Article 19 set out in this Law shall be protected by the copyright for an indefinite term.</p> <p>2. The moral rights provided for in Clause 3, Article 19 and the economic rights provided for in Article 20 of this Law shall be protected within the term as follows:</p> <p>a) Cinematographic works, photographic works, works of applied art and anonymous works have a term of protection of seventy five years from the date of first publication. For cinematographic works, photographic works and works of applied art which remain unpublished within twenty five years from the date on which they are expressed in a fixed form, the term of protection is one hundred years from the date thereof. For anonymous works, when information on their authors is published, the term of protection will be calculated under Point b of this Clause.</p> <p>b) A work not specified at Point a of this Clause is protected for the whole life of the author and for fifty years after his/her death. For a work under joint authorship, the term of protection expires in the fiftieth year after the death of the last co-author;</p> <p>c) The term of protection specified at Points a and b of this Clause expires at 24:00 of December 31 of the year in which the copyright protection term expires.</p>	<p>Assessment: Partly compatible</p> <p>- Cinematographic works, photographic works, works of applied art and anonymous works have a term of protection of seventy five years from the date of first publication, and if they remain unpublished within twenty five years from the date on which they are expressed in a fixed form, the term of protection is one hundred years from the date thereof. This regulation is compatible with TPP.</p> <p>- Other work is protected for the whole life of the author and for fifty years after his/her death. This regulation is lower than the term under TPP (70 years)</p> <p>- The rights of performers, producers of audio and video recordings, broadcasting organizations shall be protected for 50 years which starts from the year following the year in which the performance, any unpublished audio and video recording are turn into a fixed form, or a broadcast is made. This regulation is lower than the term under TPP (70 years)</p> <p>Assessment: Increase the term of protection of objects under Article 27.2.b and Article 34 of Law on IP from 50 years to 70 years.</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. 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.</p> <p>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>

75/ For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 18.65 (Limitations and Exceptions) and that Party's international obligations.

76/ The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article 18.8 (National Treatment) shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

77/ For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.

78/ For greater certainty, a Party may calculate a term of protection for an anonymous or pseudonymous work or a work of joint authorship in accordance with Article 7(3) or Article 7bis of the Berne Convention, provided that the Party implements the corresponding numerical term of protection required under this Article.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 34. Term of the protection of related rights</p> <p>1. The rights of performers shall be protected for fifty (50) years, which starts from the year following the year in which the performance is turn into a fixed form.</p> <p>2. The rights of producers of audio and video recordings shall be protected for fifty (50) years which starts from the year following the year of publication, or fifty (50) years which starts from the year following the year in which any unpublished audio and video recording is turned into a fixed form.</p> <p>3. The rights of broadcasting organizations shall be protected for fifty (50) years which starts from the year following the year in which a broadcast is made.</p> <p>4. The terms of protection stipulated in Clauses 1, 2 and 3 of this Article shall expire at 24:00 on 31 December of the year in which the protection of the related rights expires.</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 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>Assessment: No compatible.</p> <p>- The term calculated on the base of the life of author under TPP (70 years) is longer than that under EVFTA (50 years).</p> <p>- The term not calculated on the base of life of author under TPP (70 years) is longer than that under EVFTA (50 years).</p>
<p>Article 18.64: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement</p> <p>Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.</p>	<p>Vietnam legal framework does not have any regulation opposite to Articles relating to Berne Convention and TRIPS under TPP</p>	<p>Assessment: Compatible</p> <p>Vietnam legal provisions on IP are compatible with Berne Convention and TRIPS, therefore, compatible with this TPP provision.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</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 the rights of intellectual property holders and the interest of the public.</p> <p>Assessment:</p> <p>EVFTA commitments on this issue is equivalent with that of TPP because of the requirement of EVFTA on implementing commitments under international treaties including TRIPS and Berne Convention.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.65: Limitations and Exceptions</p> <p>1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.</p> <p>2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.</p>	<p>Law on IP</p> <p>Article 25. Cases of use of published works in which permission and payment of royalties or remunerations are not required remunerations are not required</p> <p>1. Cases of use of published works in which permission and payment of royalties or remunerations are not required include:</p> <p>a) Make a copy of works for personal scientific research or teaching purposes;</p> <p>b) Reasonable recitation of works without misrepresenting the authors' views for the commentary or illustration purpose;</p> <p>c) Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;</p> <p>d) Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose;</p> <p>dd) Reprography of works by libraries for the archive and research purposes;</p> <p>e) Performance of dramatic works or other performance art works in cultural, communicative activities without collecting any charges in any form;</p> <p>g) Audio and video recording of performances for the news-broadcasting and teaching purposes;</p> <p>h) Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for the purpose of promoting images of these works;</p> <p>i) Transcription of works into Braille or characters of other languages for the blind;</p> <p>k) Importation of copies of others' works for personal use.</p>	<p>Assessment: Compatible</p> <p>These exceptions are regulated under Article 25 and Article 32 of Vietnam Law on IP that are compatible with TRIPS and the Berne Convention, the WCT and the WPPT; therefore, they are compatible with this TPP provision.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</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 between third parties by an intermediary, or</p> <p>(b) a lawful use 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>Assessment: Equivalent</p> <p>TPP commitment is equivalent with EVFTA commitment on exception cases.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>2. Organizations and individuals that use works defined in Clause 1 of this Article may neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of these works.</p> <p>3. The provisions of Points a and dd, Clause 1 of this Article are not applicable to architectural works, plastic-art works and computer programs.</p> <p>Article 32. Cases in which related rights may be exercised without having to seek permission or pay royalties or remunerations</p> <p>1. Related rights may be exercised without having to seek permission or pay royalties or remunerations in the following cases:</p> <p>a) Making one copy of a work for the purpose of conducting personal scientific researches;</p> <p>b) Duplicating a work for teaching purposes, except for performances, audio and video recordings or broadcasts which have been published for teaching purposes;</p> <p>c) Taking appropriate quotes from a work in order to provide information;</p> <p>d) Making provisional copies of a work in order for a broadcasting organization to carry out the broadcasting when the broadcasting right has been granted.</p> <p>2. Organizations and individuals who use works stipulated in Clause 1 of this Article must neither affect the normal use of performances, audio and video recordings or broadcasts; nor cause any prejudice to the rights of performers, producers of audio and video recordings, or broadcasting organizations</p>		<p>Article 4.11 – Artists' Resale Right in Works of Art</p> <p>1. The Parties may provide, for the 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 amounts shall be a matter for determination by national legislation.</p> <p>Assessment: TPP has no commitment on the rights of authors for works of art in the case of reselling. Therefore, in this case, EVFTA requires higher than TPP.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.66: Balance in Copyright and Related Rights Systems</p> <p>Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 18.65 (Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.^{79 80}</p>	<p>Article 25. Cases of use of published works in which permission and payment of royalties or remunerations are not required</p> <p>1. Cases of use of published works in which permission and payment of royalties or remunerations are not required include:</p> <ul style="list-style-type: none"> a) Make a copy of works for personal scientific research or teaching purposes; b) Reasonable recitation of works without misrepresenting the authors' views for the commentary or illustration purpose; c) Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries; d) Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose; dd) Reprography of works by libraries for the archive and research purposes; e) Performance of dramatic works or other performance art works in cultural, communicative activities without collecting any charges in any form; g) Audio and video recording of performances for the news-broadcasting and teaching purposes; h) Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for the purpose of promoting images of these works; i) Transcription of works into Braille or characters of other languages for the blind; k) Importation of copies of others' works for personal use. <p>2. Organizations and individuals that use works defined in Clause 1 of this Article may neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of these works.</p> <p>3. The provisions of Points a and dd, Clause 1 of this Article are not applicable to architectural works, plastic-art works and computer programs.</p>	<p>Assessment: Compatible</p> <p>Regulations under Vietnam legal framework on exception in which permission and payment of royalties or remunerations are not required are compatible with that of TPP.</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</p>	<p>Assessment: TPP does not have any equivalent commitment with that of EVFTA.</p>

79/ As recognised by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh, June 27, 2013 (Marrakesh Treaty). The Parties recognise that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.

80/ For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 18.65 (Limitations and Exceptions).

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 32. Cases in which related rights may be exercised without having to seek permission or pay royalties or remunerations</p> <p>1. Related rights may be exercised without having to seek permission or pay royalties or remunerations in the following cases:</p> <p>a) Making one copy of a work for the purpose of conducting personal scientific researches;</p> <p>b) Duplicating a work for teaching purposes, except for performances, audio and video recordings or broadcasts which have been published for teaching purposes;</p> <p>c) Taking appropriate quotes from a work in order to provide information;</p> <p>d) Making provisional copies of a work in order for a broadcasting organization to carry out the broadcasting when the broadcasting right has been granted.</p> <p>2. Organizations and individuals who use works stipulated in Clause 1 of this Article must neither affect the normal use of performances, audio and video recordings or broadcasts; nor cause any prejudice to the rights of performers, producers of audio and video recordings, or broadcasting organizations.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.67: Contractual Transfers</p> <p>Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right⁸¹ in a work, performance or phonogram:</p> <p>(a) may freely and separately transfer that right by contract; and</p> <p>(b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.⁸²</p>	<p>Article 45. General provisions on the transfer of copyright and related rights</p> <p>1. Transfer of copyright and related rights means the conveyance of the ownership of the rights from copyright holders or related right holders stipulated in Articles 19, 3, 20, 29.3, 30 and 31 of this Law to other organizations and individuals as agreed in a contract or in accordance with laws.</p> <p>2. Authors shall not be permitted to transfer the moral rights stipulated in Article 19 of this Law, except for the right of publication. Performers shall not be permitted to transfer the moral rights stipulated in Clause 2 Article 29 of this Law.</p> <p>3. Where a work, performance, audio and video recording or broadcast is jointly owned, the transfer thereof must be agreed upon by all co-owners. In a case of co-ownership of a work, performance, audio and video recording or broadcast which is composed of separate parts detachable for separate use, copyright holders or related right holders may transfer their copyright or related rights to their separate parts to other organizations or individuals.</p> <p>Article 47. General provisions on licensing the copyright and related rights</p> <p>1. Licensing of copyright and related rights means the grant of permission by the copyright holder or related right holder for another organization or individual to use for a definite term one, several or all of the rights stipulated in Clause 3 Articles 19, Article 20, Clause 3 Article 29, Article 30 and Article 31 enshrined in this Law.</p> <p>2. Authors shall not be permitted to license the moral rights stipulated in Article 19 of this Law, except for the right of publication. Performers shall not be permitted to license the moral rights specified in Clause 2 Article 29 of this Law.</p> <p>3. Where a work, performance, audio and video recording or broadcast is under joint ownership, the licensing of copyright or related rights therein must be agreed upon by all co-owners. In the case of joint ownership of a work, performance, audio and video recording or broadcast which is composed of separate parts detachable for independent use, copyright holders or related right holders may license their copyright or related rights in their separate parts to other organizations or individuals.</p> <p>4. Any organization or individual who is the licensee of copyright or related rights shall be permitted to license other organizations and individuals after obtaining the permission from the copyright holder or related right holder.</p>	<p>Assessment: Compatible</p> <p>Recommendation: No</p> <p>There is no recommendation on legislations.</p>	<p>Assessment: TPP does not have any equivalent commitment with that of EVFTA.</p>

81/ For greater certainty, this provision does not affect the exercise of moral rights.

82/ Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.68: Technological Protection Measures (TPMs)⁸³</p> <p>1. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorised acts in respect of their works, performances, and phonograms, each Party shall provide that any person that:</p> <p>(a) knowingly, or having reasonable grounds to know,⁸⁴ circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram;⁸⁵ or</p> <p>(b) manufactures, imports, distributes,⁸⁶ offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:</p> <p>(i) are promoted, advertised, or otherwise marketed by that person⁸⁷ for the purpose of circumventing any effective technological measure;</p> <p>(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure;⁸⁸ or</p> <p>(iii) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,</p> <p>is liable and subject to the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies).</p> <p>Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged wilfully⁸⁹ and for the purposes of commercial advantage or financial gain⁹⁰ in any of the above activities.⁹¹</p>	<p>Article 28.12 and 28.14 of Law on IP</p> <p>12. Deliberately destroying or de-activating the technical solutions applied by the copyright holder to protect the copyright in his or her right-holder's works.</p> <p>14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing, or having grounds to know, that such equipment may de-activate technical solutions applied by the copyright holder to protect the copyright in his or her works.</p> <p>Article 35.7, 35.8, 35.9 and 35.10 of Law on IP</p> <p>7. Deliberately destroy or de-activate technical solutions applied by the related right holder to protect his or her rights.</p> <p>8. Broadcast, distribute or import performances, copies of a fixed performance or audio and video recordings upon knowing, or having grounds to know, that the electronic information on the management of rights has been removed or modified without any permission from the related right holder.</p> <p>9. Manufacture, assemble, transform, distribute, import, export, sell or lease equipment upon knowing, or having grounds to know, that such equipment helps to illegally decode encrypted program-carrying satellite signals.</p> <p>10. Deliberately receive or relay encrypted program-carrying satellite signals without any permission from the legal distributor.</p>	<p>Assessment: Partially compatible.</p> <p>- Regarding Paragraph 1: Vietnamese law stipulates behavior as described in Point a and b of Paragraph 1 of Article 18.68 of the TPP is the infringement of copyright and related rights and may be subject to administrative and civil sanctions (if rights holders sue or request to sue). However, Vietnamese law does not consider violations defined in paragraph 1 of this Article of the TPP as crimes.</p> <p>- Regarding Paragraph 2: Vietnamese law has no specific regulations, so it is compatible with that of TPP</p> <p>- Regarding Paragraph 3: Violations as described in Paragraph 1 of this Article of the TPP is stipulated in different points of Article 25.1 and Article 32.1 of Law on IP, and therefore it is possible to consider these behaviors as independent of the infringement of copyright and related rights. So, it is assumed that of Vietnam legal framework is compatible with that of TPP.</p> <p>- Regarding the last part of Paragraph 1 and Paragraph 4: Vietnamese law has no specific regulations on exceptions for violations as mentioned in Paragraph 1 of Article 18.68 of the TPP. This is the rights accepted under TPP so that of Vietnam legal framework is compatible with that of TPP. But the lack of utilizing all exception under TPP in Vietnam will be a disadvantage for user of works and related works in Vietnam.</p> <p>- Regarding Paragraph 5: Vietnamese law has no definition of effective technological measures, so the compatibility with that of TPP is uncertain.</p> <p>Recommendation:</p> <p>- Supplementing behaviors as defined in Paragraph 1.a and 1.b of Article 18.68 of the TPP on Article 225 of Criminal Code 2015.</p> <p>- Supplementing exceptions for entities subjected to exceptions as stated in the last part of Paragraph 1 and Paragraph 4 in Articles 25 and 32 of Law on IP.</p> <p>- Supplementing the definition of effective technological measures under pursuant to the TPP in Article 4 of Law on IP.</p> <p>- Specifying the violation of technological measures protecting the rights is independent of other violations.</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 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 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.</p> <p>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>

83/ Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not render effective a technological measure the only purpose of which is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.

84/ For the purposes of this subparagraph, a Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

85/ For greater certainty, no Party is required to impose civil or criminal liability under this subparagraph for a person that circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, performance or phonogram, but does not control access to such that work, performance or phonogram.

86/ A Party may provide that the obligations described in this subparagraph with respect to manufacturing, importation, and distribution apply only in cases in which those activities are undertaken for sale or rental, or if those activities prejudice the interests of the right holder of the copyright or related right.

87/ The Parties understand that this provision still applies in cases in which the person promotes, advertises, or markets through the services of a third person.

88/ A Party may comply with this paragraph if the conduct referred to in this subparagraph does not have a commercially significant purpose or use other than to circumvent an effective technological measure.

89/ For greater certainty, for purposes of this Article and Article 18.69 (RMI), wilfulness contains a knowledge element.

90/ For greater certainty, for purposes of this Article, Article 18.69 (RMI) and Article 18.77 (Criminal Procedures and Penalties), the Parties understand that a Party may treat "financial gain" as "commercial purposes".

91/ For greater certainty, no Party is required to impose liability under this Article and Article 18.69 (RMI) for actions taken by that Party or a third person acting with the authorisation or consent of that Party.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity. A Party may also provide that the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies) do not apply to any of the same entities provided that the above activities are carried out in good faith without knowledge that the conduct is prohibited.</p> <p>2. In implementing paragraph 1, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, provided that the product does not otherwise violate a measure implementing paragraph 1.</p> <p>3. Each Party shall provide that a violation of a measure implementing this Article is independent of any infringement that might occur under the Party's law on copyright and related rights.⁹²</p> <p>4. With regard to measures implementing paragraph 1:</p> <p>(a) a Party may provide certain limitations and exceptions to the measures implementing paragraph 1(a) or paragraph 1(b) in order to enable non-infringing uses if there is an actual or likely adverse impact of those measures on those non-infringing uses, as determined through a legislative, regulatory, or administrative process in accordance with the Party's law, giving due consideration to evidence when presented in that process, including with respect to whether appropriate and effective measures have been taken by rights holders to enable the beneficiaries to enjoy the limitations and exceptions to copyright and related rights under that Party's law;⁹³</p>	<p>Article 20 DECREE No. 131/2013/ND-CP on sanctioning administrative violations of copyright and related rights:</p> <p>Acts of infringing upon the right to apply technological solutions to self-protect copyright</p> <p>1. A fine of between VND 3,000,000 and 5,000,000 shall be imposed for internationally deleting or modifying copyright management information in electronic form attached to the original or copies of a work.</p> <p>2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed for intentionally cancelling or deactivating technical and technological solutions applied by the copyright holder to protect copyright to his/her work .</p> <p>3. A fine of between VND 10,000,000 and 20,000,000 shall be imposed for producing, assembling, mutating, distributing, importing, exporting, selling or renting devices or system to deactivate technical and technological solutions applied by the copyright holder to protect copyright to his/her work.</p> <p>4. Remedial measures:</p> <p>a) Forcible re-export of material evidence used for committing acts of violation for import specified in Clause 3 of this Article;</p> <p>b) Forcible of destruction of material evidence used for committing acts of violation specified in Clause 2 and Clause 3 of this Article in case the remedial measure specified in point a of this Clause is not applied.</p>	<p>Article 20 DECREE No. 131/2013/ND-CP on sanctioning administrative violations of copyright and related rights:</p> <p>Acts of infringing upon the right to apply technological solutions to self-protect copyright</p> <p>1. A fine of between VND 3,000,000 and 5,000,000 shall be imposed for internationally deleting or modifying copyright management information in electronic form attached to the original or copies of a work.</p> <p>2. A fine of between VND 5,000,000 and 10,000,000 shall be imposed for intentionally cancelling or deactivating technical and technological solutions applied by the copyright holder to protect copyright to his/her work .</p> <p>3. A fine of between VND 10,000,000 and 20,000,000 shall be imposed for producing, assembling, mutating, distributing, importing, exporting, selling or renting devices or system to deactivate technical and technological solutions applied by the copyright holder to protect copyright to his/her work.</p> <p>4. Remedial measures:</p> <p>a) Forcible re-export of material evidence used for committing acts of violation for import specified in Clause 3 of this Article;</p> <p>b) Forcible of destruction of material evidence used for committing acts of violation specified in Clause 2 and Clause 3 of this Article in case the remedial measure specified in point a of this Clause is not applied.</p>	<p>4. For the purposes of this Agreement, the expression 'technological measures' 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 authorized by the right holder of any copyright or related right as provided for by national legislation. 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>Assessment: Partly equivalent</p> <p>TPP Commitment on technological measures is equivalent to EVFTA commitment. However, TPP clearly commits that each Party must handle the infringement of technological measures with Criminal, Administrative and Civil sanctions, while EVFTA does not clearly have any commitments on these sanctions.</p>

92/ For greater certainty, a Party is not required to treat the criminal act of circumvention set forth in paragraph 1(a) as an independent violation, where the Party criminally penalises such acts through other means.

93/ For greater certainty, nothing in this provision requires a Party to make a new determination via the legislative, regulatory, or administrative process with respect to limitations and exceptions to the legal protection of effective technological measures: (i) previously established pursuant to trade agreements in force between two or more Parties; or (ii) previously implemented by the Parties, provided that such limitations and exceptions are otherwise consistent with this paragraph.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>(b) any limitations or exceptions to a measure that implements paragraph 1(b) shall be permitted only to enable the legitimate use of a limitation or exception permissible under this Article by its intended beneficiaries⁹⁴ and does not authorise the making available of devices, products, components, or services beyond those intended beneficiaries;⁹⁵ and</p> <p>(c) a Party shall not, by providing limitations and exceptions under paragraph 4(a) and paragraph 4(b), undermine the adequacy of that Party's legal system for the protection of effective technological measures, or the effectiveness of legal remedies against the circumvention of such measures, that authors, performers, or producers of phonograms use in connection with the exercise of their rights, or that restrict unauthorised acts in respect of their works, performances or phonograms, as provided for in this Chapter.</p> <p>5. Effective technological measure means any effective⁹⁶ technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects copyright or related rights related to a work, performance or phonogram.</p>	<p>Article 25. Cases of use of published works in which permission and payment of royalties or remunerations are not required</p> <p>1. Cases of use of published works in which permission and payment of royalties or remunerations are not required include:</p> <p>a) Make a copy of works for personal scientific research or teaching purposes;</p> <p>b) Reasonable recitation of works without misrepresenting the authors' views for the commentary or illustration purpose;</p> <p>c) Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;</p> <p>d) Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose;</p> <p>dd) Reprography of works by libraries for the archive and research purposes;</p> <p>e) Performance of dramatic works or other performance art works in cultural, communicative activities without collecting any charges in any form;</p> <p>g) Audio and video recording of performances for the news-broadcasting and teaching purposes;</p> <p>h) Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for the purpose of promoting images of these works;</p> <p>i) Transcription of works into Braille or characters of other languages for the blind;</p> <p>k) Importation of copies of others' works for personal use.</p>		

94/ For greater certainty, a Party may provide an exception to paragraph 1(b) without providing a corresponding exception to paragraph 1(a), provided that the exception to paragraph 1(b) is limited to enabling a legitimate use that is within the scope of limitations or exceptions to paragraph 1(a) as provided under this subparagraph.

95/ For the purposes of interpreting paragraph 4(b) only, paragraph 1(a) should be read to apply to all effective technological measures as defined in paragraph 5, *mutatis mutandis*.

96/ For greater certainty, a technological measure that can, in a usual case, be circumvented

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>2. Organizations and individuals that use works defined in Clause 1 of this Article may neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of these works.</p> <p>3. The provisions of Points a and dd, Clause 1 of this Article are not applicable to architectural works, plastic-art works and computer programs.</p> <p>Article 32. Cases in which related rights may be exercised without having to seek permission or pay royalties or remunerations</p> <p>1. Related rights may be exercised without having to seek permission or pay royalties or remunerations in the following cases:</p> <p>a) Making one copy of a work for the purpose of conducting personal scientific researches;</p> <p>b) Duplicating a work for teaching purposes, except for performances, audio and video recordings or broadcasts which have been published for teaching purposes;</p> <p>c) Taking appropriate quotes from a work in order to provide information;</p> <p>d) Making provisional copies of a work in order for a broadcasting organization to carry out the broadcasting when the broadcasting right has been granted.</p> <p>2. Organizations and individuals who use works stipulated in Clause 1 of this Article must neither affect the normal use of performances, audio and video recordings or broadcasts; nor cause any prejudice to the rights of performers, producers of audio and video recordings, or broadcasting organizations.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.69: Rights Management Information (RMI)⁹⁷</p> <p>1. In order to provide adequate and effective legal remedies to protect RMI:</p> <p>(a) each Party shall provide that any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate or conceal an infringement of the copyright or related right of authors, performers or producers of phonograms:</p> <p>(i) knowingly⁹⁸ removes or alters any RMI;</p> <p>(ii) knowingly distributes or imports for distribution knowing that the RMI has been altered without authority;⁹⁹</p> <p>or</p> <p>(iii) knowingly distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances or phonograms, knowing that RMI has been removed or altered without authority,</p> <p>is liable and subject to the remedies set out in Article 18.74 (Civil and Administrative Procedures and Remedies).</p> <p>Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged wilfully and for purposes of commercial advantage or financial gain in any of the mentioned in part (a) activities.</p> <p>A Party may provide that the criminal procedures and penalties mentioned in part 1(b) do not apply to a non-profit library, museum, archive, non-profit educational institution or public non-commercial broadcasting entity.¹⁰⁰</p>	<p>Law on IP</p> <p>Article 28 – Infringement of the copyright</p> <p>13. Knowingly removing or altering rights management information under electronic form in the works.</p> <p>Article 35 – Infringement of related rights</p> <p>6. Removing or altering rights management information under electronic form without the acceptance of related right holders.</p>	<p>Assessment: Incompatible partly</p> <p><u>Regarding commitments in paragraph 1</u></p> <p>Vietnam legal framework has regulations on preventing infringement rights management information, which is suitable with that of TPP (although lack of logicity compared to that of TPP)</p> <p>However, Vietnam legal framework only provides administrative measures for these infringements and no criminal sanctions, so it is incompatible with that of TPP.</p> <p><u>Regarding commitments in paragraph 2</u></p> <p>There is no Vietnam regulations on exception of this issue, and this is rights instead of obligations so in principle, it is compatible with that of TPP.</p> <p><u>Regarding commitments in paragraph 3</u></p> <p>The describe of rights management information in copies or communications to public is non-compulsory in Vietnam legal framework, so it does not infringe the prohibition under TPP and is compatible with that of TPP.</p> <p><u>Regarding commitments in paragraph 4</u></p> <p>Vietnamese law has no specific definition of information management rights. Although it is still compatible with that of TPP but there is maybe different understanding compared to that of TPP because of the lack of definition.</p> <p>Recommendation:</p> <p>Supplementing the counts mentioned on commitments in Article 225 under Law on Criminal</p> <p>Supplementing the exception mentioned in Part 2 of Article 25 and Article 32 under Law of IP.</p> <p>Supplementing the definition for information management rights in Article 4 of Law on IP/</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 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>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>Assessment: Parity equivalent</p> <p>EVFTA commits to the protection information rights in electronic form. While TPP generally commits to the protection information rights.</p> <p>In addition, TPP clearly commits that each Parry must handle the infringement of technological measures with Criminal, Administrative and Civil sanctions, while EVFTA does not clearly have any commitments on these sanctions.</p>

97/ A Party may comply with the obligations in this Article by providing legal protection only to electronic RMI.

98/ For greater certainty, a Party may extend the protection afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in sub-subparagraphs (i), (ii) and (iii), and to other related right holders.

99/ A Party may comply with its obligations under this sub-subparagraph by providing for civil judicial proceedings concerning the enforcement of moral rights under its copyright law. A Party may also meet its obligation under this sub-subparagraph, if it provides effective protection for original compilations, provided that the acts described in this sub-subparagraph are treated as infringements of copyright in those original compilations.

100/ For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>2. For greater certainty, nothing prevents a Party from excluding from a measure that implements paragraph 1 a lawfully authorised activity that is carried out for the purpose of law enforcement, essential security interests or other related governmental purposes, such as the performance of a statutory function.</p> <p>3. For greater certainty, nothing in this Article shall obligate a Party to require a right holder in a work, performance or phonogram to attach RMI to copies of the work, performance or phonogram, or to cause RMI to appear in connection with a communication of the work, performance or phonogram to the public.</p> <p>4. RMI means:</p> <p>(a) information that identifies a work, performance or phonogram, the author of the work, the performer of the performance or the producer of the phonogram; or the owner of any right in the work, performance or phonogram;</p> <p>(b) information about the terms and conditions of the use of the work, performance or phonogram; or</p> <p>(c) any numbers or codes that represent the information referred to in subparagraphs (a) and (b),</p> <p>if any of these items is attached to a copy of the work, performance or phonogram or appears in connection with the communication or making available of a work, performance or phonogram to the public.</p>			

101/ For greater certainty, royalties may include equitable remuneration.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.70: Collective Management</p> <p>The Parties recognise the important role of collective management societies for copyright and related rights in collecting and distributing royalties¹⁰¹ based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.</p>	<p>Article 56. Organizations acting as community representatives on copyright or related right issues</p> <p>1. An organization acting as the community representative on copyright or related right issues means a non- profit organization that are established under an agreement between authors, copyright holders or related right holders and ensures their protection for copyright and related rights comply with legal regulations.</p> <p>2. An organization acting as the community representative on copyright or related right issues may perform the activities below as being authorized by authors, copyright holders or related right holders:</p> <p>a) Manage copyright or related rights; negotiate the licensing, collection and distribution of royalties, remunerations and other material benefits gained from the permission to exercise authorized rights;</p> <p>b) Protect the legitimate rights and interests of its members; carry out conciliation if a dispute arises.</p> <p>3. An organization acting as the community representative on copyright or related right issues shall have the following rights and duties:</p> <p>a) Encourage the creativity and other social activities;</p> <p>b) Co-operate with relevant partners in international organizations and countries on the protection of copyright and related rights;</p> <p>c) Send periodic and unscheduled reports to the regulatory agency on its community representative activities;</p> <p>d) Other rights and duties stipulated by laws.</p>	<p>Assessment: Compatible</p> <p>Article 18.70 does not stipulate the obligation for member states but only recognize the awareness of Parties of the role of collective copyright management organization, the provision of this Article of the TPP does not require member states to amend their own laws.</p> <p>Vietnamese law also has specific provision on collective organization representing copyright and related rights.</p> <p>Recommendation: None.</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>Assessment: Compatible</p> <p>TPP provides mutual awareness of Parties of the important role of collective management of copyright and related rights while EVFTA provides commitments on cooperation between the Parties on the protection of copyright collectives.</p>

102/ For greater certainty, “law” is not limited to legislation.

103/ For greater certainty, and subject to Article 44 of the TRIPS Agreement and the provisions of this Agreement, each Party confirms that it makes such remedies available with respect to

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
Section I: Enforcement			
<p>Article 18.71: General Obligations</p> <p>1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law¹⁰² so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements.¹⁰³ These procedures 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>2. Each Party confirms that the enforcement procedures set forth in Article 18.74 (Civil and Administrative Procedures and Remedies), Article 18.75 (Provisional Measures) and Article 18.77 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.</p> <p>3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>4. This Section does not create any obligation:</p> <p>(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or</p>	<p>Criminal Procedure Code</p> <p>Decrees on administrative sanctions in the field of intellectual property and competition.</p> <p>Their guiding legislations</p>	<p>Assessment: partially compatible</p> <p>- Regarding Paragraph 1: Vietnam legal framework has provision regulating administrative and criminal procedures/ measures to prevent, handle the infringement in the field of intellectual property, therefore, being compatible</p> <p>- Regarding Paragraph 2: Vietnamese law does not distinguish the environment (where the violation takes place) is actual or digital environment. If a behavior meets the conditions to be regarded as an infringement of the rights to protected objects as copyright and related rights, industrial property rights, regardless of the behavior that occurs in the digital environment or not, will be subject to sanctions prescribed by the law. Therefore, Vietnam legal framework meets TPP requirement and becomes compatible</p> <p>- Regarding Paragraph 3: This provision is the commitment of the parties to simplify enforcement procedures, ensure that the costs incurred in the implementation process will not be costly and enforcement procedures will have no unreasonable regulations or unnecessary delays. However, TPP has no specific provisions to define the terms “costly or unnecessary complex or regulations considered as unreasonable or unnecessary delays”. Therefore, Vietnamese law is considered as compatible with the provisions of the TPP</p> <p>- Regarding Paragraph 4: Compatible.</p> <p>This Paragraph clearly confirms not an obligation of the member states.</p> <p>- Regarding Paragraph 5: Compatible.</p>	<p>Article 12: General Obligations</p> <p>1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. 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>Article 41 of TRIPS</p> <p>1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures 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>2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.</p>

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<p>(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.</p> <p>5. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.</p>		<p>Provisions in this Paragraph of the TPP provide notes for each Party during the implementation of the provisions of Section I of the TPP in the intellectual property system of each Party on the proportionality between the seriousness level of behaviors with sanctions and legal rights of third parties. TPP does not provide any specific regulations to determine “proportionality”, therefore it can be implicitly understood that the current regulations of Vietnamese law are compatible with TPP notes in this paragraph.</p> <p>Recommendation: None.</p>	<p>4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member’s law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.</p> <p>5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.</p> <p>Assessment: Compatible</p> <p>EVFTA commitment on general obligation pursuant to Section 3 of TRIPS Agreement on IP enforcement.</p> <p>Current TRIPS commitment is compatible with TPP commitment regarding this general obligation</p>

104/ For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

105/ For greater certainty, a Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.

106/ For greater certainty, nothing in this Chapter prevents a Party from making available third party procedures in connection with its fulfilment of the obligations under paragraphs 2 and 3.

107/ For greater certainty, if a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party’s competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.

108/ A Party may provide that this paragraph applies only to those patents that have been applied for, examined and granted after the entry into force of this Agreement for that Party.

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<p>Article 18.72: Presumptions</p> <p>1. In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption¹⁰⁴ that, in the absence of proof to the contrary:</p> <p>(a) the person whose name is indicated in the usual manner¹⁰⁵ as the author, performer or producer of the work, performance or phonogram, or if applicable the publisher, is the designated right holder in that work, performance or phonogram; and</p> <p>(b) the copyright or related right subsists in such subject matter.</p> <p>2. In connection with the commencement of a civil, administrative or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered <i>prima facie</i> valid.</p> <p>3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted¹⁰⁶ by the competent authority of a Party, that Party shall provide that each claim in the patent be considered <i>prima facie</i> to satisfy the applicable criteria of patentability in the territory of the Party.^{107;108}</p>	<p>Decree 105/2006/NĐ-CP</p> <p>Article 6. Bases for determination of protected subject matters</p> <p>1. The determination of a protected subject matter shall be based on the examination of documents and evidence proving the bases for emergence and establishment of the rights specified in Article 6 of the Law on Intellectual Property.</p> <p>2. For intellectual property rights that have been registered with competent agencies, the protected subject matters shall be determined on the basis of the registration certificates, protection titles and other documents accompanying such certificates and protection titles.</p> <p>3. For copyright and rights of performers, rights of producers of phonograms or video recordings, rights of broadcasting organizations that are not registered with competent agencies, these rights shall be determined on the basis of the original exemplar of the work, the first fixation of the performance, phonogram, video recording, broadcast and relevant documents, if any.</p> <p>When the original exemplar of the work, the first fixation of the performance, phonogram, video recording, broadcast and relevant documents no longer exist, copyright or rights of performers, of producers of phonograms or video recordings or of broadcasting organizations shall be deemed to be true on the basis of information that is usually shown on lawfully published copies on authors, performers, producers of phonograms or video recordings or broadcasting organizations and on the subject matters of copyright or related rights.</p>	<p>Assessment: Compatible</p> <p>Vietnamese legal framework has specific regulations on the assumptions of protection term, and therefore, it is compatible.</p> <p>Recommendation: None</p>	<p>Article 23 Presumption of Authorship or Ownership</p> <p>The Parties shall recognise that, for the purposes of applying the measures, procedures and remedies 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>Assessment: Inequivalent</p> <p>EVFTA commits to authors of works of literature and art, and for the owners of other rights (including holders of copyright and related rights, the owner of industrial property rights) while the TPP only provides on the assumption of copyright and related rights, trademarks and patents.</p> <p>Therefore, TPP commitments are narrower than EVFTA's.</p>

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			<p>Article 13 Entitled Applicants</p> <p>The Parties shall recognise as persons entitled to seek application of the measures, procedures and 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 defence 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>Assessment: TPP does not have any commitment compatible with this EVFTA's commitment.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.73: Enforcement Practices with Respect to Intellectual Property Rights</p> <p>1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:</p> <p>(a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and</p> <p>(b) are published¹⁰⁹ or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.</p> <p>2. Each Party recognises the importance of collecting and analysing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.</p> <p>3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical information that the Party may collect for such purposes.</p>	<p>Civil Procedure Code</p> <p>Law on Access to Information</p> <p>Article 3: rules for ensuring the right of access to information</p> <p>1. All citizens are treated equal and not discriminated in exercising their right of access to information.</p> <p>2. The information must be provided in an accurate and sufficient manner.</p> <p>3. The provision of information must be made in a timely and transparent manner, convenient for citizens to access and in conformity with procedures regulated by the law.</p> <p>4. Restrictions on the right of access to information must be regulated by the law, where necessary, for the purpose of ensuring the national defense and security, social security, social ethics and community health.</p> <p>5. The exercise of the citizens' right of access to information must not be harmful to national interests, lawful rights and interest of other agencies, organizations and individuals.</p> <p>6. The Government grants favourable opportunities for the disabled and those who reside in border regions, islands, mountainous regions, areas faced to extremely difficult social and economic conditions to practice their right of access to information.</p>	<p>Assessment: Partially compatible.</p> <p>- Regarding Paragraph 1: In principle, judicial and administrative decisions pursuant to current regulations are promulgated under the form of writing and based on legal documents related to judicial judgment or administrative decision. However, the publication or availability in other forms for the public to approach the judgment or decision is not clearly stipulated yet. After the Law on access to information has come into effect (July 1st 2018), the disclosure will be implemented in accordance with this Law.</p> <p>- Regarding Paragraph 2: Vietnamese law is considered to be compatible because the commitment provided in this Paragraph is simply recommendation, not compulsory.</p> <p>- Regarding Paragraph 3: incompatible. Currently, the publication or availability in other forms for the public to access statistical information and other information in the civil, administrative and criminal systems are not unified and asynchronous.</p> <p>Recommendation: Supplementing provisions on disclosure of information related to the enforcement of intellectual property rights in Law on IP.</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,</p> <p>Assessment: Commitment in this Article of EVFTA is compatible with the Article 18.73 of the TPP.</p> <p>However, EVFTA clearly commits that, the publication or availability to the public of the legally effective judgment with the cost of the infringing party while the TPP has no commitment on this issue</p>

109/ For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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 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>Assessment: TPP does not have any commitment compatible with this one.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.74: Civil and Administrative Procedures and Remedies</p> <p>1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.¹¹⁰</p> <p>2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.</p> <p>3. Each Party shall provide¹¹¹ that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.</p> <p>4. In determining the amount of damages under paragraph 3, each Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.</p> <p>5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement.¹¹²</p>	<p>Article 26.4 of Code of civil procedure Civil stipulates disputes falling under the courts' jurisdiction</p> <p>Disputes over intellectual property rights, technology transfers, except for the cases prescribed in Clause 2, Article 30 of this Code.</p> <p>Article 30.2 of Code of civil procedure Civil stipulates Business and/or trade disputes falling under the courts' jurisdiction</p> <p>Disputes over intellectual property rights or technology transfers among individuals or organizations, which are all for the purposes of profits.</p> <p>Article 198 of Law on intellectual properties on Self-protection right</p> <p>1. Subject of the right shall be granted the right to apply the following measures to protect the intellectual property rights of such right-subject:</p> <p>a) To apply technological measures to prevent acts of infringement of its intellectual property rights;</p> <p>b) To request any organization or individual who commits an act of infringement of the intellectual property rights of the holder to terminate such act, make a public apology or rectification, and pay damages;</p> <p>c) To request the competent authority to deal with acts of infringement of its intellectual property rights in accordance with the provisions of this Law and other relevant laws;</p> <p>d) To initiate a lawsuit at a court or a claim at an arbitration centre to protect the legitimate rights and interests of the holder.</p>	<p>Assessment: Partially compatible</p> <p>- Regarding Clause 1: The provisions of Vietnamese law on the right to sue in Court are compatible with the provisions in Clause 1 of this Article of the TPP.</p> <p>- Regarding Clause 2: The provisions of Law on IP and Civil Procedure Code are compatible with the provisions of Article 18.74.2 of the TPP.</p> <p>- Regarding Clause 3 and 4: The provisions of Law on IP and Decree No. 105/2006 / ND-CP on the principles of determining damages and compensation for damages are compatible with the provisions in this Clause TPP.</p> <p>- Regarding Clause 5 Article 205 Law on Intellectual Property regulates that the compensation shall be based on the level of damage, including infringer's interest; therefore, compatible.</p> <p>- Regarding Clause 6-9:</p> <p>Vietnam legal framework does not compatible with TPP commitment under this provision.</p> <p>Vietnam legal framework regulates the pre-established maximum limit of compensation, which is not like that under TPP.</p> <p>In addition, the condition to apply this compensation is that the right holder could not prove the specific damages. This provision could harm right holder's interest when the actual damage is much greater than the presumed damage. In the determination of compensation, one among the difficulties of right holder is to prove the damages. In practice, right holder almost could not prove the exact damage.</p> <p>Meanwhile, TPP provisions regulate that right holder can choose the re-established damages, and does have to prove.</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 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 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>Assessment: The commitment in Article 16 of EVFTA is compatible with Article 18.74.13 of TPP</p>

110/ For the purposes of this Article, the term "right holders" shall include those authorised licensees, federations and associations that have the legal standing and authority to assert such rights. The term "authorised licensee" shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

111/ A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5 and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6 and 7 to be ordered in parallel.

112/ A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 3.

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<p>6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms or performances, each Party shall establish or maintain a system that provides for one or more of the following:</p> <p>(a) pre-established damages, which shall be available on the election of the right holder; or</p> <p>(b) additional damages.¹¹³</p> <p>7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:</p> <p>(a) pre-established damages, which shall be available on the election of the right holder; or</p> <p>(b) additional damages.¹¹⁴</p> <p>8. Pre-established damages under paragraphs 6 and 7 shall be set out in an amount that would be sufficient to compensate the right holder for the harm caused by the infringement, and with a view to deterring future infringements.</p> <p>9. In awarding additional damages under paragraphs 6 and 7, judicial authorities shall have the authority to award such additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.</p> <p>10. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents and trademarks, 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 the Party's law.</p>	<p>Article 202 of Law on IP</p> <p>Civil measures</p> <p>Courts may apply the following civil measures in dealing with organizations and individuals who have committed acts of infringement of intellectual property rights:</p> <ol style="list-style-type: none"> 1. Compulsory termination of the infringing acts. 2. Compulsory public apology and rectification. 3. Compulsory performance of civil obligations. 4. Compulsory payment of damages for loss. 5. Compulsory destruction, distribution or use for non-commercial purposes of goods, raw materials and facilities used largely for the production or trading of goods which infringed intellectual property rights, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right-holders. <p>Article 204 of Law on IP</p> <p>Principles for determining loss and damage incurred by an infringement of intellectual property rights</p> <ol style="list-style-type: none"> 1. Loss and damage incurred by acts of infringement of industrial property rights shall comprise: <ul style="list-style-type: none"> a) Material loss and damage including property loss, a drop in income and profit, loss of business opportunity, and reasonable expenses for mitigating such damage or loss; b) Non-material loss and damage including damage to honor, dignity, prestige, reputation and other spiritual loss caused to authors of literary, artistic and scientific works; to performers; to authors of inventions, industrial designs, layout designs; and to breeders of plant varieties. 2. The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringement of intellectual property rights. 	<p>- Regarding Clause 10: The provisions on principles of compensation, how to determine damages of Law on IP and Decree No. 105/2006 / ND-CP are compatible with the commitments in this Clause.</p> <p>- Regarding Clause 11: Vietnam legal framework is compatible with the Ordinance on Assessment and valuation expenses and expenses for witness and interpreter in legal procedures, which is the implementation base for this commitment.</p> <p>- Regarding Clause 12: The provisions of Vietnamese law are compatible with the provisions of this Clause.</p> <p>- Regarding Clause 13: The provisions of Civil Procedure Code related to the Court's competence to collect evidence are compatible with the provisions of this Clause of TPP.</p> <p>- Regarding Clause 14:</p> <p>Vietnam legal framework is incompatible with TPP in this commitment.</p> <p>Vietnam legal framework regulates the obligation of data protection during the proceedings (of the court and interested parties; and only limited in some specific information); does not regulate the authority of the court in issuing the order on information protection (not limiting the kind of information) and sanction for the parties' infringement of court's order on information protection as required under this Clause 14. Vietnam legal framework does not have remedies for the infringement of information protection in general (as listed under the Civil Procedure Code), only regulates the remedies for the infringement of the protection of the business and governmental confidential 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> <p>(a) the recall from the channels of commerce;</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 commerce for destruction, be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.</p> <p>Assessment: Commitment in Article 17 of EVFTA is compatible and equivalent with the commitment in Article 18.74.12 of TPP.</p> <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 infringement.</p>

113/ For greater certainty, additional damages may include exemplary or punitive damages.

114/ For greater certainty, additional damages may include exemplary or punitive damages.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties to the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.</p> <p>12. Each Party shall provide that in civil judicial proceedings:</p> <p>(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;</p> <p>(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise the risk of further infringement; and</p> <p>(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.</p>	<p>Article 205 of Law on IP: Bases for determining amount of damages for loss and damage caused by an infringement of intellectual property rights</p> <p>1. Where the plaintiff proves that an act of infringement of intellectual property rights has caused the plaintiff material damage, the plaintiff shall have the right to request the court to decide the amount of damages on one of the following bases:</p> <p>(a) Total material damage calculated in an amount of money plus profit derived by the defendant as a result of the act of infringement of intellectual property rights, where the reduced profit amount of the plaintiff has not yet been included in such total material damage;</p> <p>(c) Where it is impossible to determine the amount of damages for material damage on the bases stipulated in sub-clause (a) and (b) of this clause, such amount of damages shall be set by the court depending on the extent of loss but must not exceed five hundred million (500,000,000) dong.</p> <p>Decree No 105/2006/NĐ-CP (amended, supplemented)</p> <p>Article 16.- Principles for determination of damage</p> <p>1. Damage as a result of intellectual property right infringement provided in Article 204 of the Law on Intellectual Property is actual losses including both physical and spiritual losses directly caused to the intellectual property right holder by acts of intellectual property right infringement.</p> <p>2. Actual losses shall be regarded as having been occurred when all of the following bases exist:</p> <p>a/ The physical or spiritual benefit is real and belongs to the aggrieved person;</p> <p>b/ The aggrieved person could achieve the benefit referred to a Point a of this Clause;</p>	<p>In practice, the protection of information in case related on intellectual property is extremely important, because Vietnam customers' trending to avoid or try to avoid buying goods of this brand with the purpose of limiting the chance of buying counterfeiting goods. This actual trend is attributed to the circumstance that many right holders are not fond of largely publishing this kind of information.</p> <p>- Regarding Clause 15: Vietnamese law is incompatible with the provisions in this Clause of the TPP.</p> <p>Vietnam legal framework does not clearly regulate the case that if the procedure of right implementation is abused by the applicant, this abused party has to pay damages for the respondent under the civil procedure.</p> <p>In principle, compensation will be processed at the request of relevant parties in civil cases. Therefore, if the parties do not have any request, the Court cannot demand any party to compensate. Vietnamese current law does not regulate the circumstance in which if a party abuses enforcement procedures, they will have to compensate the other party for the losses according to civil proceedings. Besides, the cost for lawyers under the provisions of Civil Procedure Code, if any parties have any requests, they will have to pay themselves unless there is a different agreement between the parties; while pursuant to the provisions of the current Law on IP, only right holders will have their reasonable lawyers cost paid, however the lawyers cost of parties damaged by the abuse of the right holders is not stipulated in Law on IP.</p> <p>- Regarding Clause 16: Compatible, Vietnamese law currently does not provide the application of civil sanctions in administrative procedures and procedures for handling administrative violations. Therefore, the requirements set forth in the provisions of Clause 16 of this Article of TPP are not necessary to apply in Vietnam.</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 infringer²⁷ and, in appropriate cases, elements other than economic factors</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 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>Assessment: Commitment in Article 20 of EVFTA is compatible with commitment in Paragraph 3-9 of Article 18.74 of TPP.</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> <p>Assessment: Commitment in Article 21 of EVFTA is compatible with the commitment in paragraph 10 and 11 of Article 18.74 of TPP</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. The information may include information regarding any person involved in any aspect of the infringement or alleged infringement and the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of the goods or services and of their channels of distribution.</p> <p>14. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.</p> <p>15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights, including trademarks, geographical indications, patents, copyright and related rights and industrial designs, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.</p>	<p>c/ There is a decrease in or loss of the benefit of the aggrieved person after the act of intellectual property right infringement is committed as compared to the possibility of achieving such benefit if such act of intellectual property right infringement would not happen and it constitutes the direct cause of such decrease in or loss of the benefit.</p> <p>3. The level of damage is determined in accordance with the infringing elements of the intellectual property right subject matters.</p> <p>The determination of the level of damage is based on the evidence of the damage furnished by the parties, including the assessment results and damage declarations that clearly state the bases for determination and calculation of the level of damage.</p> <p>Article 17.- Loss in property</p> <p>1. Losses in property are determined in accordance with the level of decrease in or loss of the in-cash value of the protected intellectual property right subject matters.</p> <p>2. The in-cash value of an intellectual property right subject matter referred to in Clause 1 of this Article is determined in accordance with the following bases:</p> <p>a/ The price of transfer of the ownership right or the price of assignment of the use right of the intellectual property right subject matter;</p> <p>b/ The value of the business capital contributed in the form of intellectual property rights;</p> <p>c/ The ratio of the value of intellectual property rights to the total assets of an enterprise;</p> <p>d/ The value of investment in the creation and development of the intellectual property right subject matter, including marketing, research, advertising and labor costs, taxes and other expenses.</p>	<p>- Regarding Clause 17: Vietnamese law will be compatible with the provisions of Clause 17 after being modified to be compatible with the provisions of Clause 1-16 of this Article and the provisions of Article 18.66 and 18.69.</p> <p>Recommendation:</p> <p>- Supplementing regulations that the parties implementing the violation must compensate IPR holders for the profits earned by violator, and also supplementing pre-fixed level of compensation and the additional level of compensation in the principles of determining damages and compensation amounts of Law on IP;</p> <p>- Stipulating sanctions for parties violating a court order related to the protection of confidential information emerged or exchanged in civil proceedings related to intellectual property to Civil Procedure Code;</p> <p>- Supplementing rights of the parties damaged by the abuse of IPRs by right holders in Law on IP.</p>	

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>16. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that those procedures conform to principles equivalent in substance to those set out in this Article.</p> <p>17. In civil judicial proceedings concerning the acts described in Article 18.68 (TPMs) and Article 18.69 (RMI):</p> <p>(a) each Party shall provide that its judicial authorities have the authority at least to:¹¹⁵</p> <ul style="list-style-type: none"> (i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity; (ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article;¹¹⁶ (iii) order court costs, fees or expenses as provided for under paragraph 10; and (iv) order the destruction of devices and products found to be involved in the prohibited activity; and <p>(b) a Party may provide that damages shall not be available against a non-profit library, archive, educational institution, museum or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.</p>	<p>Article 18.- Decrease in income, profits</p> <p>1. The income, profits referred to Point a, Clause 1 of Article 204 of the Law on Intellectual Property include the following:</p> <ul style="list-style-type: none"> a/ The income, profits gained from directly using and exploiting the intellectual property right subject matter; b/ The income, profits gained from leasing the intellectual property right subject matter; c/ The income, profits gained from assigning the right to use the intellectual property right subject matter. <p>2. The level of decrease in income, profits is determined on the following bases:</p> <ul style="list-style-type: none"> a/ Direct comparison between the levels of actual income, profits before and after the acts of infringement are committed, applicable to each type of income specified in Clause 1 of this Article; b/ Comparison between the yields or volumes of products, goods or services actually consumed or supplied before and after the acts of infringement are committed; c/ Comparison between actual sales price of the products, goods or services on the market before and after the acts of infringement are committed. <p>Article 19.- Losses in business opportunities</p> <p>1. Business opportunities specified at Point a, Clause 1 of Article 204 of the Law on Intellectual Property include the following:</p> <ul style="list-style-type: none"> a/ Actual possibility of directly using or exploiting the intellectual property right subject matter in the business course; b/ Actual possibility of leasing the intellectual property right subject matter to other persons; c/ Actual possibility of assigning the use right of or transferring the intellectual property right subject matter to other persons; d/ Loss of other business opportunities directly caused by the acts of infringement. 		

115/ For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 18.68 (TPMs) and Article 18.69 (RMI), if those remedies are available under its copyright law.

116/ If a Party's copyright law provides for both pre-established damages and additional damages, that Party may comply with the requirements of this subparagraph by providing for only one of these forms of damages.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>2. A loss in business opportunities means loss of the in-cash value of the income that the aggrieved person would have achieved in any of the cases referred to in Clause 1 of this Article but fails to do so due to the acts of infringement.</p> <p>Article 20.- Reasonable expenses for prevention and remedy of damage</p> <p>Reasonable expenses for prevention and remedy of damage referred to a Point a, Clause 1, Article 204 of the Law on Intellectual Property include expenses for temporary custody, maintenance, storage of infringing goods, costs of implementation of provisional urgent measures, reasonable expenses for hire of the assessment service, prevention and remedy of consequences of acts of infringement, and cost of notification and correction in the mass media relating to acts of infringement.</p> <p>Article 147 of Law on civil procedure</p> <p>Obligation to bear first-instance Court fees</p> <p>1. The involved parties must bear the first-instance Court fees if their petitions are not accepted by courts, except for cases where they are exempted from, or do not have to pay such fees.</p> <p>Article 109. Disclosing and using materials and evidences</p> <p>2. Courts shall not disclose material/evidence contents related to State secrets, fine customs and practices of the nation, professional secrets, business secrets, family secrets or secrets of individuals' private lives at the legitimate requests of the involved parties; however, Courts shall notify the involved parties of the materials/ evidences that must not be disclosed.</p> <p>3. Proceeding officers and procedure participants must keep secret, as provided for by law, materials and evidences specified in Clause 2 of this Article.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 205 of Law on IP</p> <p>3. In addition to the amount of damages stipulated in Clauses 1 and 2 of this Article, an industrial property right-holder shall also have the right to request the court to compel the organization or individual who have committed the act of infringement of industrial property rights to pay reasonable costs of hiring a lawyer.</p> <p>Article 97.2.g of Code of civil procedure</p> <p>Requesting agencies, organizations and individuals to supply readable, audible and visible materials or other exhibits related to the resolution of civil cases;</p> <p>Article 168.3 of Code on civil procedure</p> <p>Expenses for interpreters or lawyers shall be borne by the persons requesting such interpreters or lawyers, except otherwise agreed upon by the parties.</p> <p>Decision No. 30/2004 / QĐ-BCA of Ministry of Public Security issued the list of state secrets of the judiciary confidentiality.</p> <p>Article 1. The list of state secrets about the secret of the judiciary including the information in the following range:</p> <ol style="list-style-type: none"> 1. Plan and coordinate interdisciplinary work in the fight against crime, safety plans and important trial; 2. The views of the members of the trial panel of the Court granted the deliberation; 3. Summary report, thematic reports on the work of the trial, the work program of the Supreme People's Court has not announced; 4. Plan and the document prepared to negotiate with foreign countries or international organizations for international cooperation of the judiciary in the People unpublished; 5. The scientific research projects on the construction of the State-level, implementation and application of the law, the proposal on the renewal of the mode of operation of the judiciary on the work of unpublished trials. 		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>6. Contents of the inspection work of adjudication, enforcement activities of the Supreme People's Court of the People's Court and military courts at all levels have not disclosed;</p> <p>7. Profile of key officials of the judiciary including Chief Justice records, Deputy Chief of the People's Court and military courts at all levels; Selection of Judges records people's courts and military courts at all levels;</p> <p>8. Planning key leaders of the people's courts and military courts at all levels;</p> <p>9. Files, documents, inspections, check the internal problems in the industry People's Court has not been published by competent authorities;</p> <p>10. The documents and information relating to the tender for the construction and repair of office buildings, shopping facilities working for the People's Court under the provisions of the law has not announced;</p> <p>11. Files, documents related to network design database systems industry People's Court.</p> <p>Decision No. 01/2004 / QĐ-TTg on the list of state secrets about secret level of the judiciary.</p> <p>Article 1. The list of state secrets secret by the People's Court of the industry include:</p> <p>1. A dossier of documents relating to the trial of the criminal case related to national security. Reports and statistics of the death penalty, the trial of the case sealed hard carriage under the provisions of the law's father announced.</p> <p>2. Contents of directing, planning and trial of important cases, cases point, the complexity of the case as prescribed by the competent authority</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>Assessment: TPP has no commitment compatible with the commitment in this Article of EVFTA</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.75: Provisional Measures</p> <p>1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right inaudita altera parte expeditiously in accordance with that Party's judicial rules.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.</p> <p>3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.</p>	<p>Article 206 of Law on IP</p> <p>Right to request the court to apply provisional urgent measures</p> <p>1. Upon or after the initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:</p> <p>a) In a danger of irreparable damage to such intellectual property right holder;</p> <p>b) Goods suspected of infringement of intellectual property rights or evidence related to the act of infringement of industrial property rights are likely to be dispersed or destroyed unless they are protected in time.</p> <p>2. A court may make a decision applying provisional urgent measures at the request of an industrial property right holder as stipulated in Clause 1 of this Article before hearing the party subject to such measures.</p> <p>Article 207 of Law on IP</p> <p>Provisional urgent measures</p> <p>1. The following provisional urgent measures may be applied to goods suspected of infringing upon intellectual property rights or to raw materials or facilities of production or trading of such goods:</p> <p>a) Retention;</p> <p>b) Dstraint;</p> <p>c) Sealing; prohibiting any alteration of the original state; prohibiting any movement;</p> <p>d) Prohibiting transfer of ownership.</p> <p>2. Other provisional urgent measures may be applied in accordance with the Civil Procedure Code.</p>	<p>Assessment: Compatible</p> <p>Vietnam legal framework provides the provisional measures which meet TPP commitments, and therefore, compatible.</p> <p>Recommendation: None</p>	<p>Article 14 Provisional Measures</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 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 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>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 208 of IPLaw</p> <p>Obligations of petitioners for provisional urgent measures</p> <p>1. Petitioner for provisional urgent measures shall bear the burden of proving their right provided for in Clause 1 of Article 206 of this Law by producing the documents and evidence stipulated in Clause 2 of Article 203 of this Law.</p> <p>2. A petitioner for provisional urgent measures shall be obliged to pay compensation for loss caused to a person subject to such measures in a case where the latter is found not to have infringed upon industrial property rights. To secure the performance of this obligation, a petitioner for provisional urgent measures shall give a pledge in one of the following forms:</p> <p>a) A sum of money equal to twenty (20) per cent of the value of the goods subject to the application of provisional urgent measures, or at least twenty million Vietnamese dong (VND 20,000,000) where it is impossible to value such goods;</p> <p>b) A deed of guarantee issued by a bank or other credit institution.</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>Assessment: Compatible</p> <p>EVFTA commits on the application of temporary emergency measures and conditions to apply these measures.</p> <p>TPP also commits to the temporary emergency measures, but only commits in principle that each party must ensure the commitment of the temporary emergency measures as long as compatible with judicial rules of each Party.</p> <p>Therefore, TPP is not contrary to the commitments in EVFTA and still can be considered as equivalent to the commitment in Article 14 of EVFTA</p>
			<p>Article 19 Alternative Measures</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 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>Assessment: TPP has no commitment compatible with the commitment in this Article of EVFTA</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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>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</p> <p>(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, 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>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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 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>Assessment: Commitment in Paragraph 1 and 2 of this Article of EVFTA compatible with Note 116 of TPP on counterfeit goods and pirate.</p> <p>Paragraph 3 and 4 in this Article of EVFTA provide a definition of export and import of goods. While under the commitment in paragraph 5 of Article 18.76 of TPP considers goods under customs control (including imports, rallying to export and transit) (and the notes from 121 to 123) as the subject of border controls in case of any signs of infringing the intellectual property rights of right holders. TPP in this case has wider commitments than EVFTA's.</p>
			<p>Article 24 Consistency with GATT and TRIPS Agreement</p> <p>In implementing border measures for the enforcement of intellectual 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>Assessment: TPP has no specific commitment on this matter.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.76: Special Requirements related to Border Measures</p> <p>1. Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.¹¹⁷</p> <p>2. Each Party shall provide that any right holder initiating procedures for its competent authorities¹¹⁸ to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.</p> <p>3. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.</p>	<p>Article 213 of IP Law</p> <p>Intellectual property counterfeit goods</p> <p>1. Intellectual property counterfeit goods regulated in this Law comprise goods bearing counterfeit marks and goods bearing counterfeit geographical indications (hereinafter referred to as counterfeit mark goods) defined in Clause 2 of this article and pirated goods defined in Clause 3 of this Article.</p> <p>2. Counterfeit mark goods means goods or their packages bearing a mark or sign which is identical with or indistinguishable from a mark or geographical indication currently protected for those very goods, without permission from the mark owner or organization managing the geographical indication.</p> <p>3. Pirated goods means copies made without permission from the copyright holder or related right holder.</p> <p>Article 216 of Law on IP</p> <p>Measures to control intellectual property related imports and exports</p> <p>1. Measures to control intellectual property related imports and exports shall comprise:</p> <p>a) Suspension of customs procedures for goods suspected of infringing intellectual property rights;</p> <p>b) Inspection and supervision to detect goods showing signs of infringing upon intellectual property rights.</p> <p>2. Suspension of customs procedures for goods suspected of infringing upon intellectual property rights means a measure to be taken at the request of an intellectual property right-holder in order to collect information and evidence on the goods consignment in question so that the intellectual property right holder may exercise the right to request that the infringing act be dealt with and to request the application of provisional urgent measures, preventive measures and/or measures to secure enforcement of administrative penalties.</p>	<p>Assessment: Partially compatible</p> <p>- Regarding Paragraph 1-4: Vietnamese law is currently compatible with the provisions of this paragraph of Article 18.76 of TPP.</p> <p>With regard to notify the right holder in case the competent authorities have authority of the infringement's name, and information of the seized or clearance-postponed package of goods: Although Vietnam legal framework does not clearly regulate this issue, this is not TPP compulsory commitment; therefore, in principle, Vietnam legal framework is compatible. However, in practice, this information is very useful for the right holders to protect their legitimate right in the serious case (because goods is seized). Therefore, Vietnam legal framework is recommended to provide this issue.</p> <p>- Regarding paragraph 5 and 6: incompatible.</p> <p>TPP requires provision on right to automatically initiate the measure application without right holders' request. Meanwhile, Vietnam legal framework only regulates the postponed measure on the request of the right holder.</p> <p>- Regarding Paragraph 7 - 9: Compatible.</p> <p>Recommendation:</p> <p>- Supplementing competent agencies' jurisdiction of implementing control measures of imported/exported goods themselves, when there is no request from the IPR holders in Article 216 of Law on IP;</p> <p>- Supplementing provisions to clearly stipulate the notification content that the customs agencies sent to the right holder when discovering the goods suspected of infringing upon rights during customs procedures in Article 219 of Law on IP.</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> <p>Assessment: Commitment in this Article of EVFTA is compatible with the commitment in Paragraph 1 of Article 18.76 of TPP.</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>Assessment: Commitment in Article 27 of EVFTA is compatible with the commitment in paragraph 5 of Article 18.76 of TPP.</p>

117/ For the purposes of this Article:

- (a) counterfeit trademark goods means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and
- (b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

118/ For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party's law.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:</p> <p>(a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods;¹¹⁹ or</p> <p>(b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.</p> <p>5. Each Party shall provide that its competent authorities may initiate border measures ex officio¹²⁰ with respect to goods under customs control¹²¹ that are:</p> <p>(a) imported;</p> <p>(b) destined for export;¹²² or</p> <p>(c) in transit,^{123; 124}</p> <p>and that are suspected of being counterfeit trademark goods or pirated copyright goods.</p>	<p>3. Inspection and supervision to detect goods showing signs of infringing upon intellectual property rights mean a measure to be taken at the request of an intellectual property right holder in order to collect information for the exercise of the right to request suspension of customs procedures.</p> <p>4. If any intellectual property counterfeit goods described in Article 213 of this Law are found in the course of application of the measures stipulated in Clauses 2 and 3 of this Article, the customs office shall have the right and responsibility to apply administrative remedies to deal with such goods in accordance with Articles 214 and 215 of this Law.</p> <p>Article 217 of Law on IP</p> <p>Obligations of petitioners for the application of measures to control intellectual property related imports and exports</p> <p>1. A petitioner for application of a measure to control intellectual property related imports or exports shall have the following obligations:</p> <p>a) To prove that the applicant is an intellectual property right holder by producing the documents and evidence stipulated in Clause 2 of Article 203 of this Law;</p> <p>b) To supply sufficient information to identify goods suspected of infringing upon intellectual property rights or to detect goods showing signs of infringing upon intellectual property rights;</p> <p>c) To file a written request to the customs office and to pay fees and charges stipulated by laws;</p> <p>d) To pay damages and other expenses incurred to persons subject to control measures in a case where the controlled goods are found not to have infringed upon industrial property rights.</p> <p>2. In order to secure the performance of the obligation stipulated at Point d of Clause 1 of this Article, a petitioner shall provide a pledge in one of the following forms:</p> <p>a) A sum of money equal to twenty (20) per cent of the value of the goods consignment subject to the application of the measure of suspension of customs procedures, or at least twenty million Vietnamese dong (VND 20,000,000) where it is impossible to value such goods;</p> <p>b) A deed of guarantee issued by a bank or other credit institution.</p>		

119/ For greater certainty, a Party may establish reasonable procedures to receive or access that information.

120/ For greater certainty, that ex officio action does not require a formal complaint from a third party or right holder.

121/ For the purposes of this Article, a Party may treat "goods under customs control" as meaning goods that are subject to a Party's customs procedures.

122/ For the purposes of this Article, a Party may treat goods "destined for export" as meaning exported.

123/ This subparagraph applies to suspect goods that are in transit from one customs office to another customs office in the Party's territory from which the goods will be exported.

124/ As an alternative to this subparagraph, a Party shall instead endeavour to provide, if appropriate and with a view to eliminating international trade in counterfeit trademark goods or pirated copyright goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transhipped through its territory and destined for the territory of the other Party, to inform that other Party's efforts to identify suspect goods upon arrival in its territory.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>6. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraph 1, paragraph 5(a), paragraph 5(b) and, if applicable, paragraph 5(c), whether the suspect goods infringe an intellectual property right.¹²⁵ If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.</p> <p>7. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.</p> <p>8. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.</p> <p>9. This Article also shall apply to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travelers' personal luggage.¹²⁶</p>	<p>Article 219 of Law on IP</p> <p>Inspection and supervision to detect goods suspected of infringement of intellectual property rights</p> <p>Where an intellectual property right-holder requests inspection and supervision to detect goods showing signs of infringement of intellectual property rights and the customs office then finds such a goods consignment, the customs office shall promptly notify the petitioner thereof. If the petitioner does not request the suspension of customs procedures with regard to the offending goods consignment and the customs office does not issue a decision to consider the application of the administrative penalties stipulated in Articles 214 and 215 of this Law within a period of three working days from the date of notification, then the customs office must continue carrying out customs procedures for the goods consignment in question.</p> <p>Article 76 of Law on Customs</p> <p>Procedures for postponement of customs formalities</p> <p>1. Procedures for postponement of customs formalities for requesters whose inspection and supervision requests are accepted by customs authorities shall be carried out as follows:</p> <p>a/ When detecting shipments which show signs of intellectual property right infringement, the customs authority shall postpone customs formalities and promptly notify such in writing to the requester;</p> <p>b/ Within 3 working days after receiving the customs authority's notice, if the requester does not require postponement of customs formalities, the customs authority shall continue carrying out customs formalities under regulations.</p> <p>In case the requester requires postponement and pays a deposit and submits a document on guarantee as prescribed in Clause 3, Article 74 of this Law, the customs authority shall decide to postpone customs formalities.</p>		<p>125/ A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.</p> <p>126/ For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>2. In case intellectual property rights holders make requests for postponement of customs formalities for goods showing signs of intellectual property right infringement but make no written request for customs inspection and supervision, customs authorities shall decide to postpone customs formalities if the requirements prescribed in Clause 3, Article 74 of this Law are satisfied.</p> <p>Article 73 of Law on Customs</p> <p>Principles of inspection, supervision and postponement of customs formalities</p> <p>1. Holders of intellectual property rights protected in accordance with the law on intellectual property have the right to request customs authorities to apply inspection and supervision methods or postpone customs formalities for imported and exported goods showing signs of intellectual property right infringement.</p> <p>2. Customs authorities may decide to postpone customs formalities for imported or exported goods when intellectual property rights holders or legally authorized persons make written requests and show evidence of their lawful holding of intellectual property rights and evidence of infringements thereupon and have paid a deposit or produced documents on guarantee by credit institutions as security for payment of damage compensation and expenses as prescribed which may arise due to wrong requests for postponement of customs formalities.</p> <p>3. Provisions on postponement of customs formalities for imported and exported goods showing signs of intellectual property right infringement as prescribed in this Law are not applicable to humanitarian aid goods, personal belongings, goods eligible for privileges and immunities, baggage, donations and gifts within the duty-free quota and transited goods.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 214 of Law on IP</p> <p>Forms of administrative penalty and mitigation</p> <p>1. Organizations and individuals that commit acts of infringing upon intellectual property rights defined in Clause 1 Article 211 of this Law shall be compelled to terminate their infringements and subject to one of the main penalty type as follows:</p> <p>a) Caution;</p> <p>b) Fine.</p> <p>2. Depending on the nature and seriousness of their infringements, intellectual property rights-infringing organizations or individuals are also subject to either of the following additional penalties:</p> <p>a) Confiscation of intellectual property counterfeit goods, raw materials and means used mainly for the purpose of production or trading of these intellectual property counterfeit goods;</p> <p>b) Suspension of business activities in domains where infringements have been committed.</p> <p>3. In addition to the penalties specified in Clauses 1 and 2 of this Article, intellectual property rights infringers are also subject to either or both of the following mitigation efforts:</p> <p>a) Compulsory destruction or distribution or use for non-commercial purposes of intellectual property counterfeit goods as well as raw materials and means used mainly for production or trading of these intellectual property counterfeit goods, provided that the destruction, distribution or use does not affect the exploitation of rights by intellectual property right-holders;</p> <p>b) Compulsory transportation out of Vietnamese territory of in-transit goods infringing upon intellectual property rights or compulsory re-exportation of intellectual property counterfeit goods, as well as imported means, raw materials and materials used mainly for production or trading of these intellectual property counterfeit goods, after infringing elements have been removed from these goods.</p> <p>Article 37 Decree 15/2010/ND-CP</p> <p>Form 06 of Circular 13/2015/TT-BTC</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<p>Article 28 Specific Cooperation in the Area of Border Measures</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 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>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>Assessment: TPP has no commitment compatible and equivalent with the commitment in this Article of EVFTA.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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 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> <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>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
			<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>Assessment: TPP has no commitment compatible and equivalent with this matter.</p>

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.77: Criminal Procedures and Penalties</p> <p>1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of wilful copyright or related rights piracy, “on a commercial scale” includes at least:</p> <p>(a) acts carried out for commercial advantage or financial gain; and</p> <p>(b) significant acts, not carried out for commercial advantage or financial gain that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.^{127 128}</p> <p>2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.¹²⁹</p> <p>3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation¹³⁰ and domestic use, in the course of trade and on a commercial scale, of a label or packaging:¹³¹</p> <p>(a) to in its territory; and registered which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark</p> <p>(b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.</p> <p>4. Recognising the need to address the unauthorised copying¹³² of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.</p> <p>5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.</p>	<p>“Article 170a of the Criminal Code (amended and supplemented)</p> <p>Infringing upon copyright and related rights</p> <p>1. Those who, without permission of holders of copyright or related rights, commit either of the following acts of infringing upon copyright or related rights currently protected in Vietnam on a commercial scale, shall be imposed a fine of between fifty million and five hundred million dong or subject to non-custodial reform for up to two years:</p> <p>a/ Reproducing works, phonograms or video recordings;</p> <p>b/ Distributing to the public copies of works, phonograms or video recordings.</p> <p>2. Committing the crime in either of the following circumstances, offenders shall be imposed a fine of between four hundred million and one billion dong or sentenced to between six months and three years of imprisonment:</p> <p>a/ In an organized manner;</p> <p>b/ Committing the crime more than once.</p> <p>3. Offenders may also be imposed a fine of between twenty million and two hundred million dong, banned from holding certain posts or practicing certain professions or performing certain jobs for between one and five years.”</p> <p>“Article 171 of Criminal Code 1999 (amended and supplemented)</p> <p>Infringing upon industrial property rights</p> <p>1. Those who intentionally infringe upon industrial property rights to marks or geographical indications currently under protection in Vietnam on a commercial scale, shall be imposed a fine of between fifty million and five hundred million dong or subject to non-custodial reform for up to two years.</p>	<p>Assessment: Partially compatible</p> <p>- Regarding Paragraph 1: Vietnamese legal framework regulates the similar crime, but does not clearly stipulate “commercial scale”.</p> <p>- Regarding Paragraph 2: TPP allows the implementation of this commitment by regulating that the distribution and sale of counterfeiting goods in a commercial scale is illegal, and criminal. Vietnam legal framework has regulations on this issue, therefore, compatible.</p> <p>- Regarding Paragraph 3: Compatible. Behavior as described in the provisions of Paragraph 3 of TPP is considered to be an infringement of intellectual property rights of trademarks under the provisions of Law on IP and therefore, it is considered as a crime under the provisions of Article 171 of Criminal Code.</p> <p>- Regarding Paragraph 4: Incompatible. Vietnamese law currently does not have clear regulations to determine whether the acts as stipulated in paragraph 4 of this Article of TPP are crimes or not.</p> <p>- Regarding Paragraph 5: Compatible. Vietnamese law considers helpers or instigators as partners in crime and partners in crime will have to bear criminal responsibility as individuals that commit the crime.</p> <p>- Regarding Paragraph 6 - 7: Compatible</p> <p>Recommendation: Supplement to the Criminal Code the crime of illegal copy of cinematographic works in the cinema, Supplement to Article 170a the Criminal Code the definition of “commercial scale” in compliance with TPP.</p>	

127/ The Parties understand that a Party may comply with subparagraph (b) by addressing such significant acts under its criminal procedures and penalties for non-authorized uses of protected works, performances and phonograms in its law.

128/ A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

129/ The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. Furthermore, criminal procedures and penalties as specified in paragraphs 1, 2 and 3 are applicable in any free trade zones in a Party.

130/ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

131/ A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

132/ For the purposes of this Article, a Party may treat the term “copying” as synonymous with reproduction.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>6. With respect to the offences described in paragraphs 1 through 5, each Party shall provide the following:</p> <p>(a) Penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.¹³³</p> <p>(b) Its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.¹³⁴</p> <p>(c) Its judicial or other competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.</p> <p>(d) Its judicial authorities have the authority to order the forfeiture, at least for serious offences, of any assets derived from or obtained through the infringing activity. Its judicial authorities have the authority to order the forfeiture or destruction of:</p> <p>(i) all counterfeit trademark goods or pirated copyright goods;</p> <p>(ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and</p> <p>(iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.</p>	<p>2. Committing the crime in either of the following circumstances, offenders shall be imposed a fine of between four hundred million and one billion dong or sentenced to between six months and three years of imprisonment:</p> <p>a/ In an organized manner:</p> <p>b/ Committing the crime more than once.</p> <p>3. Offenders may also be imposed a fine of between twenty million and two hundred million dong, banned from holding certain posts or practicing certain professions or performing certain jobs for between one and live years.¹³⁵</p> <p>Article 213 of Law on IP</p> <p>Intellectual property counterfeit goods</p> <p>1. Intellectual property counterfeit goods regulated in this Law comprise goods bearing counterfeit marks and goods bearing counterfeit geographical indications (hereinafter referred to as counterfeit mark goods) defined in Clause 2 of this article and pirated goods defined in Clause 3 of this Article.</p> <p>2. Counterfeit mark goods means goods or their packages bearing a mark or sign which is identical with or indistinguishable from a mark or geographical indication currently protected for those very goods, without permission from the mark owner or organization managing the geographical indication.</p> <p>3. Pirated goods means copies made without permission from the copyright holder or related right holder.</p> <p>Article 20. Complicity</p> <p>1. Complicity is a situation in which two or more people deliberately commit the same crime.</p> <p>2. Organized crime is a form of complicity in which the accomplices cooperate closely in committing the crime.</p> <p>3. An accomplice means an organizer, perpetrator, instigator, or abettor.</p> <p>Perpetrator means the person who directly commits the crime.</p> <p>Organizer means the mastermind behind the commission of the crime.</p> <p>Instigator means the person entice or encourage other people to commit the crime.</p>		

133/ The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

134/ A Party may also account for such circumstances through a separate criminal offence.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant.</p> <p>(f) Its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil¹³⁵infringement proceedings.</p> <p>(g) Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder.¹³⁶</p> <p>7. With respect to the offences described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.</p>	<p>Helper means the person who provides spiritual or material assistance in the commission of the crime.</p> <p>4. The accomplice shall not take criminal responsibility for unjustified force used by the perpetrator.</p> <p>Article 40 of Criminal Code 1999 (amended and supplemented)</p> <p>Confiscation of property</p> <p>Confiscation of property means confiscation and transfer of part of or all of property under the ownership of the convict to state budget.</p> <p>Confiscation of property shall only be imposed upon people who are convicted of serious crimes, very serious crimes, or extremely serious crimes against national security, drug-related crimes, corruption, or other crimes prescribed by this Code.</p> <p>Confiscation of property shall be so carried out that the convict and his/her family are still able to carry on their life.</p> <p>Article 41 of Criminal Code 1999 (amended and supplemented)</p> <p>Confiscation of money and items directly related to the crime</p> <p>1. Expropriation or destruction shall be applied to:</p> <p>a) Instruments, vehicles used for the commission of the crime;</p> <p>b) Items or money earned from the commission of the crime or from selling, exchanging them; illegal profits earned from the commission of the crime;</p> <p>c) Items banned from trading by the State.</p> <p>2. Items and money illegally appropriated or used by the offender shall be returned to their lawful owners or managers instead of being confiscated.</p> <p>3. Items, money under the ownership of a person might be confiscated if such person allows the offender to use them for the commission of the crime.</p>		

135/ A Party may also provide this authority in connection with administrative infringement proceedings.

136/ With regard to copyright and related rights piracy provided for under paragraph 1, a Party may limit application of this subparagraph to the cases in which there is an impact on the right holder's

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
	<p>Article 105 of Law on criminal procedure</p> <p>Institution of criminal cases at victims' requests</p> <p>1. The cases involving the offenses prescribed in Clauses 1 of Articles 104, 105, 106, 108, 109, 111, 113, 121, 122, 131 and 171 of the Penal Code shall only be instituted at the requests of victims or lawful representatives of victims who are minors or persons with physical or mental defects.</p> <p>2. In cases where the criminal case institution requesters withdraws their requests before the opening of court sessions of first-instance trial, the cases must be ceased.</p> <p>Where exist grounds to determine that the institution requesters have withdrawn their requests against their own will due to force or coercion, the investigating bodies, procuracy or courts may, though such institution requesters have withdrawn their requests, still continue conducting the procedure for the cases.</p> <p>Victims who have withdrawn their criminal case institution requests shall have no right to file their requests again, except for cases where their withdrawal is due to force or coercion.</p>		

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.78: Trade Secrets¹³⁷</p> <p>1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices.¹³⁸ As used in this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.</p> <p>2. Subject to paragraph 3, each Party shall provide for criminal procedures and penalties for one or more of the following:</p> <p>(a) the unauthorised and wilful access to a trade secret held in a computer system;</p> <p>(b) the unauthorised and wilful misappropriation¹³⁹ of a trade secret, including by means of a computer system; or</p> <p>(c) the fraudulent disclosure, or alternatively, the unauthorised and wilful disclosure, of a trade secret, including by means of a computer system.</p> <p>3. With respect to the relevant acts referred to in paragraph 2, a Party may, as appropriate, limit the availability of its criminal procedures, or limit the level of penalties available, to one or more of the following cases in which:</p> <p>(a) the acts are for the purposes of commercial advantage or financial gain;</p> <p>(b) the acts are related to a product or service in national or international commerce;</p> <p>(c) the acts are intended to injure the owner of such trade secret;</p> <p>(d) the acts are directed by or for the benefit of or in association with a foreign economic entity; or</p> <p>(e) the acts are detrimental to a Party's economic interests, international relations, or national defence or national security.</p>	<p>Article 84 of Law on IP</p> <p>General conditions for trade secrets to be eligible for protection</p> <p>A trade secret shall be eligible for protection when it satisfies the following conditions:</p> <p>1. It is neither common knowledge nor easily obtainable.</p> <p>2. When used in business activities, the trade secret will bring about advantages for its holder over those who do not hold or use it.</p> <p>3. The owner of the trade secret maintains its secrecy by all necessary means so that such secret will be neither disclosed nor easily accessible.</p> <p>Article 6.3.c of Law on IP</p> <p>Grounds for the generation and establishment of intellectual property rights</p> <p>Industrial property rights to a trade secret shall be established on the basis of lawful acquirement of the trade secret and maintaining confidentiality thereof;</p>	<p>Assessment: Partially compatible</p> <p>- Regarding Paragraph 1: Vietnamese law stipulates the protection of trade secrets compatible with the provisions on trade secrets under the provisions of paragraph 1 of this Article.</p> <p>- Regarding Paragraph 2 and 3: Incompatible. Vietnamese does not consider the infringement of trade secrets rights as a crime.</p> <p>Recommendation:</p> <p>- Supplementing provisions of Criminal Code on the infringement of trade secrets rights.</p>	<p>No equivalent EVFTA commitment</p>

137/ For greater certainty, this Article is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.

138/ For the purposes of this paragraph "a manner contrary to honest commercial practices" means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.

139/ A Party may deem the term "misappropriation" to be synonymous with "unlawful acquisition".

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals</p> <p>1. Each Party shall make it a criminal offence to:</p> <p>(a) manufacture, assemble, modify,¹⁴⁰ import, export, sell, lease or otherwise distribute a tangible or intangible device or system knowing or having reason to know¹⁴¹ that the device or system meets at least one of the following conditions:</p> <p>(i) it is intended to be used to assist;</p> <p>(ii) it is primarily of assistance; or</p> <p>(iii) its principal function is solely to assist, in decoding an encrypted program-carrying satellite signal without the authorisation of the lawful distributor¹⁴² of such signal;¹⁴³ and (b) with respect to an encrypted program-carrying satellite signal, wilfully:</p> <p>(i) receive¹⁴⁴ such a signal; or</p> <p>(ii) further distribute¹⁴⁵ such signal, knowing that it has been decoded without the authorisation of the lawful distributor of the signal.</p> <p>2. Each Party shall provide for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured by an activity described in paragraph 1.</p> <p>3. Each Party shall provide for criminal penalties or civil remedies¹⁴⁶ for wilfully:</p> <p>(a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorised reception of any encrypted program-carrying cable signal; and</p> <p>(b) receiving, or assisting another to receive,¹⁴⁷ an encrypted program-carrying cable signal without authorisation of the lawful distributor of the signal.</p>	<p>Article 3.1 of Law on IP</p> <p>Object matter of intellectual property rights</p> <p>1. Objects of copyright including literary, artistic and scientific works; objects of copyright-related rights including performances, audio and video recordings, broadcasts and encrypted program-carrying satellite signals.</p> <p>Article 17.3 and Article 17.4 of Law on IP</p> <p>Objects of related rights protected by the copyright</p> <p>3. Broadcasts and encrypted program-carrying satellite signals shall be protected by the copyright if they come as one of the following:</p> <p>a) Those produced by a broadcasting organization of Vietnamese national;</p> <p>b) Those produced by a broadcasting organization protected by the copyright as prescribed in the international agreements of which the Socialist Republic of Vietnam is a member.</p> <p>4. Performances, audio and video recordings, broadcasts encrypted program-carrying satellite signals shall only be protected by the copyright as prescribed in the provisions of Clauses 1, 2 and 3 of this Article provided that they do not prejudice the copyright.</p> <p>Articles 35.9 and 35.10 of Law on IP</p> <p>Infringement of related rights</p> <p>9. Manufacture, assemble, transform, distribute, import, export, sell or lease equipment upon knowing, or having grounds to know, that such equipment helps to illegally decode encrypted program-carrying satellite signals.</p> <p>10. Deliberately receive or relay encrypted program-carrying satellite signals without any permission from the legal distributor.</p>	<p>Assessment: Partly compatible</p> <p>- Regarding Paragraph 1: Incompatible. Vietnamese law does not consider the infringement of cable and satellite signals carrying encrypted program as a crime.</p> <p>- Regarding Paragraph 2: Vietnamese law considers satellite signals carrying encrypted program as the object under the protection of the related rights and therefore the right holders have the right to apply civil and administrative measures to protect their legitimate rights. However, there are no clear provisions on the protection of cable signals carrying encrypted program as an object to be protected.</p> <p>- With regard to Paragraph 3: TPP allows to choose criminal or civil remedies for the action of producing, distributing the equipment is intended to be used in the unauthorised reception of any encrypted program-carrying cable signal. Vietnam legal framework does not consider this action as a crime. However, under Vietnam legal framework, in principle, this action harms right holders who therefore have right to bring the case to a civil court. Therefore, Vietnam legal framework is compatible.</p> <p>Recommendation:</p> <p>- Supplementing provisions on infringement of signal and satellite signals carrying encrypted program in the provisions of Criminal Code.</p> <p>- Supplementing signal cables carrying encrypted program as the objects of related rights protection in Law on IP.</p>	<p>No equivalent EVFTA commitment</p>

140/ For greater certainty, a Party may treat “assemble” and “modify” as incorporated in manufacture

141/ For the purposes of this paragraph, a Party may provide that “having reason to know” may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party’s “knowledge” requirements. A Party may treat “having reason to know” as meaning “wilful negligence”.

142/ With regard to the criminal offences and penalties in paragraph 1 and paragraph 3, a Party may require a demonstration of intent to avoid payment to the lawful distributor, or a demonstration of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.

143/ The obligation regarding export may be met by making it a criminal offence to possess and distribute a device or system described in this paragraph. For the purposes of this Article, a Party may provide that a “lawful distributor” means a person that has the lawful right in that Party’s territory to distribute the encrypted program-carrying signal and authorise its decoding.

144/ For greater certainty and for the purposes of paragraph 1(b) and paragraph 3(b), a Party may provide that wilful receipt of an encrypted program-carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.

145/ For greater certainty, a Party may interpret “further distribute” as “retransmit to the public”.

146/ If a Party provides for civil remedies, it may require a demonstration of injury.

147/ A Party may comply with its obligation in respect of “assisting another to receive” by providing for criminal penalties to be available against a person wilfully publishing any information in order to enable or assist another person to receive a signal without authorisation of the lawful distributor of the signal.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.80: Government Use of Software</p> <p>1. Each Party recognises the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights.</p> <p>2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorised by the relevant licence. These measures shall apply to the acquisition and management of the software for government use.¹⁴⁸</p>	<p>Article 2.4 of Decision No 169/2006/QĐ-TTg providing for investment in and procurement of information technology products by agencies and organizations using state budget capital</p> <p>4. To strictly observe the provisions of law on intellectual property in the procurement and use of IT products, especially software products and digital information contents.</p>	<p>Assessment: Compatible</p> <p>Recommendation: None</p>	No equivalent EVFTA commitment
Section J: Internet Service Providers ¹⁴⁹			
<p>Article 18.81: Definitions</p> <p>For the purposes of this Section: the term copyright includes related rights; and Internet Service Provider means:</p> <p>(a) a provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 18.82.2(a) (Legal Remedies and Safe Harbours); or</p> <p>(b) a provider of online services undertaking the functions in Article 18.82.2(c) or Article 18.82.2(d) (Legal Remedies and Safe Harbours).</p> <p>For greater certainty, Internet Service Provider includes a provider of the services listed above that engages in caching carried out through an automated process.</p>	<p>Article 3.2 and Article 3.4 of Decree No. 72/2013/ND-CP on the management, provision, and use of internet services and online information</p> <p>2. Internet services are a form of telecommunications services, including Internet access service and Internet connection services:</p> <p>a) Internet access service is the services that allow Internet users to access the Internet;</p> <p>b) Internet connection service is the service that allows Internet service providers and telecommunications service providers to connect with each other to share Internet load.</p> <p>4. Internet service providers are telecommunication enterprise that provide internet services defined in Clause 2 of this Article.</p>	<p>Assessment: Incompatible</p> <p>The definition of enterprises that provide internet service pursuant to the Vietnamese law is not compatible with the provisions of this Article in TPP.</p> <p>Recommendation: Amending regulation on Internet providers in Decree No. 72/2013/ND-CP</p>	No equivalent EVFTA commitment

^{148/} For greater certainty, paragraph 2 should not be interpreted as encouraging regional government agencies to use infringing computer software or, if applicable, to use computer software in a manner which is not authorised by the relevant licence.

^{149/} Annex 18-F applies to this Section.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>Article 18.82: Legal Remedies and Safe Harbours¹⁵⁰</p> <p>1. The Parties recognise the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective action by right holders against copyright infringement covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for right holders to address such copyright infringement and shall establish or maintain appropriate safe harbours in respect of online services that are Internet Service Providers. This framework of legal remedies and safe harbours shall include:</p> <p>(a) legal incentives¹⁵¹ for Internet Service Providers to cooperate with copyright owners to deter the unauthorised storage and transmission of copyrighted materials or, in the alternative, to take other action to deter the unauthorised storage and transmission of copyrighted materials; and</p> <p>(b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.¹⁵²</p> <p>2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:</p> <p>(a) transmitting, routing or providing connections for material without modification of its content¹⁵³ or the intermediate and transient storage of that material done automatically in the course of such a technical process;</p> <p>(b) caching carried out through an automated process;</p> <p>(c) storage¹⁵⁴, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider;¹⁵⁵ and</p> <p>(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.</p>	<p>Joint Circular 07/2010/TTLT-BTTTT-BVHTDL</p> <p>Article 5. Duty of enterprises providing intermediary service</p> <p>1. Storing content of digital information in their system of service provision, that only have transshipment, provisional, automatic, terminable character, be sufficient to meet technical requirement of digital information content transmit.</p> <p>2. Obeying works of inspection, check of competent state management agencies under provisions on copyright and related rights.</p> <p>3. Removing and deleting content of digital information which violates copyright and related rights, cutting, stopping and suspension of the Internet line, telecommunication line as receiving request in written of the inspector of the Ministry of Information and Communications or inspector of the Ministry of Culture, Sports and Tourism or other competent State agencies as prescribed by law.</p> <p>4. Supplying information of customers hiring website, digital information storage space and customers using other intermediary service at the request of inspector of the Ministry of Information and Communications or inspector of the Ministry of Culture, Sports and Tourism or other competent State agencies.</p> <p>5. Having responsibility directly for paying damages due to violation of copyright and related rights as prescribed by law on intellectual property and other related laws in the following cases:</p> <p>a) Being source to start publishing, transmitting or supplying content of digital information by Internet and telecommunication network without permission of the subject having right;</p> <p>b) Editing, truncating, copying content of digital information in any manner without permission of the subject having right;</p> <p>c) Intentionally canceling or disabling technical measures performed by the subject having right for protection of copyright and related rights;</p> <p>d) Operation as source of secondary distribution of content of digital information that obtain due to violation of copyright and related rights.</p>	<p>Assessment : Partly compatible</p> <p>1. With regard to Paragraph 1</p> <p>TPP provides the legal remedies for right holders to handle infringement in the online environment and safe zone for Internet suppliers. Accordingly, TPP require internet supplier to cooperate with right holders to prevent the store and transfer the copyright protected content without owners' permission.</p> <p>Meanwhile, Joint circular 07/2010/TTLT-BTTTT-BVHTDL does not provide the responsibilities of Intermediary Service Provider which is considered to be equivalent with Internet Service Supplier as provided under TPP. Specifically, these responsibilities include cooperating with right holders who are determined by the competent authorities.</p> <p>With regard to Paragraph 1 (b), Vietnam legal framework does not have clear and specific provisions on exception case of Internet Service Suppliers, does provide on the compensation for direct damages if Internet Service Suppliers perform activities as provided under Article 5.5 of the mentioned above Joint Circular.</p> <p>Therefore, with regard to paragraph 1, Vietnam legal framework is not compatible.</p> <p>2. With regard to Paragraph 2</p> <p>Paragraph 2 provides more specifically on the limitations under Paragraph 1(b), including limitations on (a) transmitting, routing or providing connections for material without modification of its content¹⁶¹ or the intermediate and transient storage of that material done automatically in the course of such a technical process; (b) caching carried out through an automated process; (c) storage¹⁶², at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider; and (d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.</p>	<p>Article XX Liability of Intermediary 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 telecommunication networks 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 ("mere conduit")</p> <p>(b) the transmission in a tele-communication 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 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 knowledge 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>

150/ Annex 18-E applies to Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours).

151/ For greater certainty, the Parties understand that implementation of the obligations in paragraph 1(a) on "legal incentives" may take different forms.

152/ The Parties understand that, to the extent that a Party determines, consistent with its international legal obligations, that a particular act does not constitute copyright infringement, there is no obligation to provide for a limitation in relation to that act.

153/ The Parties understand that such modification does not include a modification made as part of a technical process or for solely technical reasons such as division into packets.

154/ For greater certainty, a Party may interpret "storage" as "hosting".

155/ For greater certainty, the storage of material may include e-mails and their attachments stored in the Internet Service Provider's server and web pages residing on the Internet Service Provider's server.

161/ The Parties understand that such modification does not include a modification made as part of a technical process or for solely technical reasons such as division into packets.

162/ For greater certainty, a Party may interpret "storage" as "hosting".

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or, alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b).^{156 157}</p> <p>(a) With respect to the functions referred to in paragraph 2(c) and paragraph 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice¹⁵⁸ of alleged infringement from the right holder or a person authorised to act on its behalf,</p> <p>(b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled.¹⁵⁹</p> <p>4. If a system for counter-notices is provided under a Party's law, and if material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restores the material subject to a counter-notice, unless the person giving the original notice seeks judicial relief within a reasonable period of time.</p> <p>5. Each Party shall ensure that monetary remedies are available in its legal system against any person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party¹⁶⁰ as a result of an Internet Service Provider relying on the misrepresentation.</p> <p>6. Eligibility for the limitations in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity.</p>	<p>6. In addition to perform provisions in clauses 1, 2, 3, 4 and 5 of this article, enterprise providing service of online social network must perform the following duties:</p> <p>a) Requesting person using service for commitment of performing duty of ensuring of using legally content of digital information uploaded and published in the internet and telecommunication network system;</p> <p>b) Warning duty of civil compensation, ability of administration sanction, being prosecuted personal criminal liability for person using online social network having act that violating copyright and related rights.</p>	<p>Accordingly, Vietnam legal framework is not compatible.</p> <p><u>3. With regard to Paragraph 3.</u></p> <p>Article 5.5 of the Joint Circular provides the case where Internet Service Suppliers compensate directly.</p> <p>TPP allows domestic legislations either to provide the conditions for the exception of the Internet Services Suppliers or provide the case which are not excluded.</p> <p>Vietnam legal framework provides according to the second way. Therefore, Vietnam legal framework is compatible with TPP in this provision.</p> <p>4. With regard to Paragraph 4 - 9</p> <p>Vietnam legal framework is not compatible..</p> <p>Recommendation : Supplementing legal sanctions and safe zone in Law on IP.</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 knowledge of illegal information and</p> <p>(ii) upon obtaining such knowledge³¹ 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 of claimed infringement, and effective counter-notifications.</p> <p>(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.</p> <p>Assessment: TPP has clearer and more specific commitment than EVFTA's on the behaviors, limitations and exceptions that the internet service provider can receive.</p> <p>On the whole, TPP and EVFTA commitments on this issue are equivalent to each other.</p>

156/ A Party may comply with the obligations in paragraph 3 by maintaining a framework in which: (a) there is a stakeholder organisation that includes representatives of both Internet Service Providers and right holders, established with government involvement; (b) that stakeholder organisation develops and maintains effective, efficient and timely procedures for entities certified by the stakeholder organisation to verify, without undue delay, the validity of each notice of alleged copyright infringement by confirming that the notice is not the result of mistake or misidentification, before forwarding the verified notice to the relevant Internet Service Provider; (c) there are appropriate guidelines for Internet Service Providers to follow in order to qualify for the limitation described in paragraph 1(b), including requiring that the Internet Service Provider promptly removes or disables access to the identified materials upon receipt of a verified notice; and be exempted from liability for having done so in good faith in accordance with those guidelines; and (d) there are appropriate measures that provide for liability in cases in which an Internet Service Provider has actual knowledge of the infringement or awareness of facts or circumstances from which the infringement is apparent.

157/ The Parties understand that a Party that has yet to implement the obligations in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process provided in paragraphs 3 and 4, and does not entail advance government review of each individual notice.

158/ For greater certainty, a notice of alleged infringement, as may be set out under a Party's law, must contain information that: (a) is reasonably sufficient to enable the Internet Service Provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement; and (b) has a sufficient indicia of reliability with respect to the authority of the person sending the notice

159/ With respect to the function in subparagraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to material to circumstances in which the Internet Service Provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.

160/ For greater certainty, the Parties understand that, "any interested party" may be limited to those with a legal interest recognised under that Party's law.

TPP Commitments	Vietnam legal framework	Assessment	Comparison Between EVFTA & TPP
<p>7. Each Party shall provide procedures, whether judicial or administrative, in accordance with that Party's legal system, and consistent with principles of due process and privacy, that enable a copyright owner that has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, in cases in which that information is sought for the purpose of protecting or enforcing that copyright.</p> <p>8. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defences under a Party's legal system.</p> <p>9. The Parties recognise the importance, in implementing their obligations under this Article, of taking into account the impacts on right holders and Internet Service Providers.</p>			
Section K: Final Provisions			
<p>Article 18.83: Final Provisions</p> <p>This provision relates to some specific reservation of each TPP member on the schedule of some specific obligations under IP Chapter.</p>	No provision in this issue	This issue is a specific feature of this Agreement (timeline for obligation performance), not related to domestic merit law. Therefore, it is improper for assessment.	No equivalent EVFTA commitment
<p>Annex 18-A to 18-F</p> <p>This Annex relates to the separate reservation of each TPP member in the schedule of some specific obligations under IP Chapter.</p>			

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