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**SWISS ACTIVITIES: FIGHTING COUNTERFEITING & PIRACY AND IMPROVING  
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS\***

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\* The views and opinions expressed in this paper are those of the author and not necessarily those of the World Intellectual Property Organization (WIPO) or its Member States.

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## **SWISS ACTIVITIES: FIGHTING COUNTERFEITING & PIRACY AND IMPROVING ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **INTRODUCTION**

The Swiss Federal Institute for Intellectual Property (hereafter, the Institute) is the agency responsible for all matters relating to intellectual property in Switzerland<sup>1</sup>. One of its tasks is to create a legal framework for the enforcement of rights and the fight against counterfeiting and piracy, in order to give right holders effective means to defend their rights against counterfeiting.

When adhering to the WTO in 1995, Switzerland adapted its national legislation to meet the obligations of the TRIPS Agreement on the protection and enforcement of intellectual property (TRIPS Agreement). Since then, the Swiss legislative framework regulating the enforcement of intellectual property rights has been further improved and additional provisions have been introduced, including on customs measures. Switzerland has a long tradition of protecting intellectual property and today, it provides protection for intellectual property rights above and beyond the minimum standards set by the TRIPS Agreement.

In parallel to these efforts at the national level, the global volume of counterfeit and pirated products has continued to increase, many instances of which are connected to organized crime. The statistics of the Swiss Federal Customs Administration confirms this tendency: In 2002, customs officials intervened in 69 cases of suspicious trademark or copyright infringement. By 2003, it was 212 cases, and in 2004 the number had risen to 495. Between 1995 and 2004, the market value of counterfeit and pirated goods intercepted at the border by Swiss Customs has increased by factor 100.

Switzerland is actively fighting counterfeiting and piracy and committed to effective enforcement on several fronts: At the national level, it is improving coordination between industry and government, creating awareness of the problem among the public and currently enhancing further its relevant regulatory framework. At the international level, Switzerland is promoting more effective measures against counterfeiting and piracy within the framework of bilateral relations and international organizations and participates in a number of relevant technical cooperation programs. This paper gives an overview of Switzerland's efforts in the fight against counterfeiting and piracy.

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<sup>1</sup> For additional information on the legal status of the Institute see <http://www.ige.ch/E/institut/i10.shtm>.

## **National coordination and public-private partnership**

### **1. *Institute as federal contact office***

As federal agency, the Institute represents and promotes the interests of Switzerland through its efforts to create adequate intellectual property protection and effective enforcement both at home and abroad. Like the EU, its member countries such as France, Great Britain and Italy, or the USA, Switzerland has responded to the consistent increase of this illegal activity: Since 2004 it functions as the national contact office for questions relating to the fight against counterfeiting and piracy. Its role has been to coordinate the Institute's work dealing with counterfeiting and piracy and to closely follow the development of the phenomenon. It also works closely with the industries impacted by counterfeiting and piracy and guarantees that the interests of Switzerland, in respect to enforcement and prevention, are systematically included at national and international level within the relevant bodies and organizations.

### **2. *Survey***

In the context of its work as national contact office for counterfeiting and piracy, the Institute conducted a survey in the spring of 2004. The aim of the survey was to ascertain the extent to which Swiss companies and foreign companies active in Switzerland are impacted by counterfeiting and piracy at the national and international levels. Swiss industry is not unscathed by the consequences of counterfeiting and piracy. Of the 72 companies responding, 64% claimed to be impacted by counterfeiting and piracy, and 54% said they had been directly confronted with specific cases of counterfeiting and/or piracy of their products over the past twelve months.

The respondents are particularly impacted by trademark and design counterfeiters on the European and Asian markets: Of the responding companies, 79% are affected by trademark counterfeiting and 66% by design counterfeiting. 54% of respondents stated that they are impacted by piracy of their copyrights and 50% reported counterfeiting of their indications of sources. In contrast, patent-protected products were stated to be subject to counterfeiting and piracy by only 29% of respondents. According to the information provided by the companies concerned, counterfeit or unauthorized copies of products made by Swiss companies or foreign companies active in Switzerland are prevalent on markets in the EU/Switzerland and in Asia. The Eastern European markets are also affected. It should be noted that no distinction was made between the place of manufacture and the place of sale for forged products or unauthorized copies. Further clarification will be required as to whether these products are actually manufactured in the regions specified, are just exported to these regions, or are brought through as goods in transit.

The food industry, luxury goods industry and tobacco industry are particularly negatively impacted by counterfeiting and piracy, according to the survey. The food industry particularly suffers from forged trademarks and indications of source in the EU (and in Switzerland). In the luxury goods industry, trademark infringements are most prevalent. Counterfeit trademark products in the lucrative markets of the EU/Switzerland and the USA/Canada were particularly noted to be problematic. Within the luxury goods industry, the watch industry is badly affected, in particular, by trademark and indications of source infringements. Finally, the tobacco industry has recently been impacted by an ever-increasing number of trademark, copyright and design infringements. The survey responses also indicate that it is very difficult to estimate the damage caused by the counterfeiting and piracy of original products, particularly because it is difficult to assess damages to a product's or a company's reputation and the resulting loss of sales. The loss-figures vary depending on the size of the companies

or the trade association representing the companies, ranging from tens of thousands of Swiss francs to annual losses of CHF 800 million in the watch industry.

The results of the survey also offered ideas for improving existing measures and developing new measures in the fight against counterfeiting and piracy. A sustained fight against the problem and improved enforcement of intellectual property rights are only possible if the existing judicial and institutional tools are optimized and new effective measures are developed. One of the survey questions concerned specific measures which, in the respondents' view, would bring about an improvement or offer a more effective approach against counterfeiting and/or piracy. Improved training for authorities responsible for the enforcement of intellectual property rights (customs, police and judiciary) and increased public awareness, for example through information campaigns, were rated as promising. Introducing new legislation, primarily to stiffen criminal sanctions, improving the exchange of information among sectors and creating more effective border measures were considered important. The survey also asked whether respondents would welcome the creation of a task force composed of representatives from administrative authorities and companies concerned by the problem as well as other stakeholders from trade and industry. Seventy-six percent of the companies affected by counterfeiting and piracy expressed their interest in participating actively in the work of such a team.

### 3. *Swiss Anti-Counterfeiting and Piracy Platform*

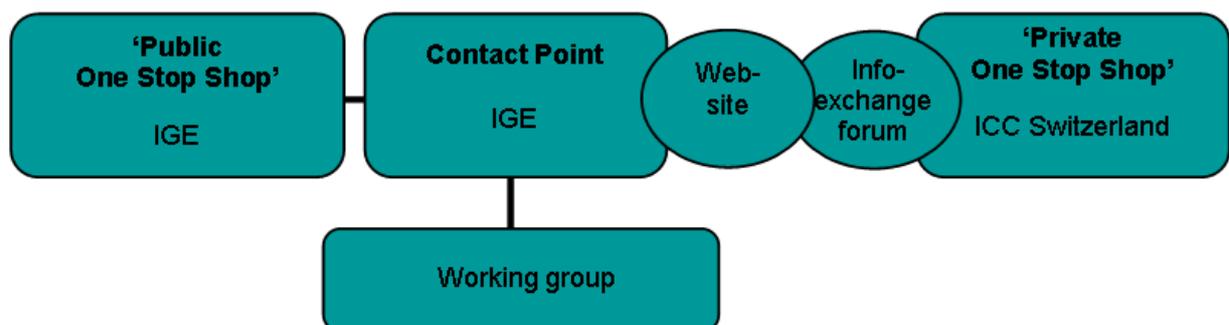
Following up the needs expressed in the survey, the Institute and representatives from industry conducted intensive discussions on ways to combat the problem and decided that a coordinated, trans-sector approach was needed. To this end, ICC Switzerland (National Committee of the International Chamber of Commerce) and the Institute created an anti-counterfeiting and piracy platform which includes representatives from the industry branches concerned and the relevant government authorities. The Swiss Anti-Counterfeiting and Piracy Platform was formed on July 4, 2005.

#### **Mission of the Swiss Anti-Counterfeiting and Piracy Platform:**

To mount a vigorous and long-term fight against counterfeiting and piracy through active awareness-building and enhanced coordination and cooperation between the private and the public sector as well as within those sectors.

#### 3.1 Structure

Structure of the Swiss Anti-Counterfeiting and Piracy Platform:



The counterfeiting and piracy Contact Point is managed by the Institute. It is intended for the public, maintains the Swiss Anti-Counterfeiting and Piracy Platform website and is the home of the secretariat of the working group.

The Institute manages also the "Public One Stop Shop" and acts as the liaison between the Contact Point and the governmental authorities involved.

The "Private One Stop Shop" is under the management of ICC Switzerland. It functions as the liaison between the Contact Point and the business and trade organizations affected by counterfeiting and piracy. It is directly linked to the electronic information exchange forum.

The working group is made up of representatives from business and government. The group is responsible for the conception and implementation of the plan of action and can create *ad hoc* project groups.

### 3.2 Tasks

The Swiss Anti-Counterfeiting and Piracy Platform has three main tasks:

#### a) Coordination

The "Public One Stop Shop" coordinates among the governmental agencies involved and the "Private One Stop Shop" among the businesses and Swiss trade organizations. The working group is responsible for the coordination and flow of information between the governmental authorities and Swiss businesses. In addition, it follows-up members' suggestions and requests regarding Swiss legislation, negotiation of international treaties, law enforcement or educational campaigns and other initiatives.

#### b) Information pooling

The "Private One Stop Shop" maintains the electronic Information Exchange Forum which is fed by the various participating businesses and trade organizations. The type of information and documentation included in the forum are, for example, details on domestic and foreign contacts for setting up an information network, reports on experience, and actual cases or strategies. The Information Exchange Forum is accessible via password. Its structure is currently being finalized.

The Contact Point of the Swiss Anti-Counterfeiting and Piracy Platform serves the general public. In addition, it is responsible for the information on the Swiss Anti-Counterfeiting and Piracy Platform website concerning tasks, structure and composition of the platform and the extent and consequences of counterfeiting and piracy. The launch of the website is scheduled for the second half of 2006.

#### c) Awareness building & education

The working group is responsible for the conception and implementation of the plan of action. The objective of the working group is to elaborate a coordinated, trans-sector action plan for awareness-building activities. A project group is currently drafting a proposal for the basic concept of the plan of action. The proposal will be submitted to the working group early summer 2006.

The working group can create *ad hoc* committees for special projects.

### 3.3 Working group and administrative support

The working group is made up of representatives from the industry sectors (associations, businesses and organizations) and governmental agencies. Industry sectors represented are,

among others, food, pharmaceutical, luxury, music, software and tobacco. Among the governmental authorities represented in the working group are the Swiss Federal Customs Administration, the Federal Office of Police, Swissmedic (the Swiss Agency for therapeutic products), the Federal Department of Foreign Affairs, the Federal Office of Consumer Affairs, the Swiss Federal Office of Public Health and the State Secretariat for Economic Affairs. The group is chaired by the Swiss Federal Institute of Intellectual Property.

The working group receives administrative support from the Contact Point. The Contact Point functions as secretariat of the working group.

### 3.4 Financing

Website and Contact Point are financed by the Institute which also provides the necessary personnel in that regard. In addition, the Institute manages the "Public One Stop Shop". The Information Exchange Forum is financed by the private sector. ICC Switzerland manages the "Private One Stop Shop" and provides the necessary personnel. ICC Switzerland may charge a user fee. The working group members must cover their own costs.

The activities within the plan of action and the projects are financed as specified in the plan of action or, respectively, the project budget. If a project is not covered under the plan of action, it must be authorized by the working group to receive the support of the Swiss Anti-Counterfeiting and Piracy Platform. In addition, the unanimous approval of the representatives of the funding organizations is necessary.

### 3.5 Contact information

Swiss Anti-Counterfeiting and Piracy Platform	Tel.	+41 (0)31 325 21 00
Einsteinstrasse 2	Fax	+41 (0)31 325 22 00
CH - 3003 Berne	E-Mail:	<a href="mailto:info@stop-piracy.ch">info@stop-piracy.ch</a>
Switzerland		

Information Exchange Forum: Accessible for members.

Website: [www.stop-piracy.ch](http://www.stop-piracy.ch), currently under construction.

## 4. *Training*

In addition to its role as national coordinator and its cooperation with the private sector, the Institute is also making efforts to sensitize the general public, in particular young people and business to the problems of counterfeiting and piracy. The Institute leads special training activities on counterfeiting and piracy as part of its lectures on the enforcement of intellectual property for start-up companies and SMEs. In addition to training on trademark infringement, issues regarding aspects of current technological advances or aspects of copying, downloading and digital rights management are taken up. One of the more recent Institute's symposiums was on "Digital Rights Management: The End of Collecting Societies?" in Lucerne, on June 24 and 25, 2004.

Between December 2005 and February 2006, the Institute held seminars at schools of applied arts in Bern, Basel, Geneva, Lucerne and Zürich. The focus was on building awareness of various aspects of counterfeiting and piracy and their consequences for future authors and creative people.

In March 2006, the Institute met students from the "Collège Voltaire" in Geneva, to discuss counterfeiting and piracy. The students studied the phenomenon of counterfeiting and piracy, its economic and social impact and the duties and functioning of custom authorities. The

necessity of cooperation between enforcement agencies was also an important aspect of the discussion. Based on this first positive experience, the Institute plans to enhance its training activities in the field of counterfeiting and piracy.

## **I. Legislative measures**

In its role as federal agency for intellectual property, the Institute is also responsible for drafting intellectual property laws (Art.2, para.1 lit.a of the Federal Statute and Tasks of the Federal Institute of Intellectual Property (IGEG)). Currently, various legislative measures to improve the fight against counterfeiting and piracy are before the Swiss Parliament.

### **5. *Partial revision of the Swiss Patent Law***

The centerpiece of the current partial revision of the patent law is a regulation providing adequate and effective patent protection for biotechnological inventions. However, it includes other important legislative goals such as the improvement of the judicature in the area of patents. Because of the differing levels of importance and urgency of these items, the Federal Council decided March 2005 to move ahead in phases with the various partial items. In a first phase, two agreements concerning the European Patent system were submitted to parliament in May 2005. In a second phase, in November 2005, legislative message regarding the substantial portion of the revision, including, inter alia, the measures to combat counterfeiting and piracy, was handed over to parliament. In the third and last phase of the patent law revision, the propositions regarding judicature will be discussed.

#### **5.1 Measures to combat counterfeiting and piracy**

Proposals for additional measures against counterfeiting and piracy were forwarded to parliament along with recommendations for patenting biotechnological inventions in the context of the partial revision of the patent law in November 2005.

Because the Swiss legislation on intellectual property was created at different time periods, it reflects different levels of development, particularly in the area of enforcement: For instance, the core elements of the patent law were created in the 1950's while the design law was completely revised less than four years ago. Enforcement measures such as customs assistance of the customs office and the option for right owners to prohibit the transiting of counterfeit or pirated goods in addition to their import and export are rather new and not included in the older laws.

The question of counterfeiting and piracy of original goods has gained on importance in recent years in Switzerland. The survey conducted by the Federal Institute of Intellectual Property in 2004 revealed that Swiss businesses are also heavily impacted by this trend. To reverse this trend, the Swiss Government has decided to further enhance current enforcement and border measures in order to deal with this challenge. Effective measures for combating counterfeiting and piracy are key at various levels: For one, strong measures are needed to remove pirated goods from circulation as they cross the border. For another, appropriate legal measures are needed for enforcing intellectual property rights at the judicial level so that right holders can successfully confront counterfeiters and other third parties involved in putting counterfeit goods in circulation. Finally, consistent interception also of counterfeit and pirated goods in transit is needed to avoid Switzerland becoming a transit country for pirated goods.

The current patent law revision will introduce effective customs assistance and border measures into all intellectual property laws. Furthermore, right holders will have the right to request samples of the withheld goods in order to ascertain whether, indeed, these are pirated.

In addition, a simplified procedure for destroying illegal shipments will be provided so that the owners are not forced to go through long and expensive civil or criminal proceedings in order to get the pirated goods permanently out of circulation. The exclusive right of the patent owner is extended to include 'transit' of goods.

Commercial piracy is a crime which offers big profits at comparatively little risk. Accordingly, deterrent sanctions are a key element in effectively combating counterfeiting and piracy. Also, commercial piracy is increasingly occurring as part of organized crime. To counteract this in a more effective and decisive way, sanctions to punish such criminal activities of commercial scale will be further strengthened, particularly by increasing the fines, in all intellectual property laws.

Counterfeiting and piracy is a cross-border phenomenon. Pirated products arrive in the country not only as part of large shipments but also, and increasingly, in personal luggage. This is particularly true of trademark and design protected products. Up until now, Swiss intellectual property laws did not provide for action against private persons importing counterfeit and pirated goods for personal, i.e. non-commercial use. Even if the economic damage caused by the individual case may be negligible in such a situation, the total adds up significantly. Furthermore, there is nothing to assure that these goods remain in private possession and do not, finally, end up on the Swiss market. Additionally, personal use also stimulates demand for and supply of pirated products. While under patent and copyright law, private use exceptions (for example, for learning or training purposes) are considered appropriate under certain specific conditions, under trademark and design law no comparable interests can be asserted. In the context of the revision of the patent law, it is thus proposed that the Trademark and Design law be amended to give right holders the right to prohibit the import, export and transit of commercially produced, infringing goods also when they are said to be for private use/purposes.

In order to have a more effective measure for combating counterfeiting and piracy in court, the Swiss laws will provide the owner with the right to information including name and address of the sender, the place of origin, the number, and the recipients of infringing goods. Finally, a comprehensive notification obligation regarding the legal decision of the courts at the level of the Cantons will assure that the Federal Institute of Intellectual Property can gather and analyze the data and information necessary to engage effectively and problem-oriented in the fight against counterfeiting and piracy both nationally and internationally.

## 5.2 Federal Court for Patent Litigation

In addition to improved legislative protection against counterfeiting and piracy, appropriate litigation procedures are necessary to assure efficient, high-quality enforcement of intellectual property rights and the management of complex cases by courts. The Swiss Government's target in this respect is to review measures for simplifying and speeding up patent litigation in the courts and to decide on further steps by the end of 2006.

Patent law is a very complex area and requires extensive knowledge and years of experience. However, because of the existing forum regulations, patent law proceedings often take place in Cantonal courts with insufficient practical experience in patent law. The reason for this situation is the relative low number of patent litigation cases in Switzerland which makes it unfeasible for each Cantonal court to develop the necessary experience and know-how in this special and technical field of law.

The idea of creating a first instance federal patent court as a possible measure for improving patent litigation was already put forward for discussion during the consultation process for the partial revision of the patent law. In place of the many Cantonal courts, the recommendation

would create a first instance national special court with exclusive authority for patent infringement and validity. The relative small number of civil litigation regarding patents and the associated small size of the court would not necessarily be a disadvantage; rather it would allow a flexible court structure saving administrative costs. For instance, the court could be attached to existing judicial structures, thus exploiting the synergy effect and keeping costs low. The court should be comprised of judges who are trained in judicature as well as technical aspects and be recruited based on their proven knowledge of patent law, their technical knowledge and their language skills.

Swiss industry and financial circles have long been demanding the creation of a specialized court for patent litigation, an idea which now finds the support also from Members of Parliament. A single specialized federal court would improve the current situation and, through qualified judges, assure a comprehensive and high-quality judicature adequate to ever more technical and complex field of patent law. The focus of a specialized court would allow the judges to collect the necessary experience in patent law and would necessarily lead to an efficient and competent treatment of complex patent cases. Such an improvement of the effectiveness of patent litigation may result in an increase of cases in Switzerland in the medium and long term. This may be so because, currently, there is still a tendency for patent litigants to seek specialized courts outside of Switzerland, even if one of the parties is Swiss. Thus, the recommended measures would not only be of benefit for Swiss patent holders but also for patent holders in bordering countries.

#### **6. *Partial revision of the Swiss Copyright Law***

Switzerland's copyright law is currently undergoing a partial revision. Even though it is quite modern (the current version dates from 1992), there are nevertheless some adaptations necessary in order to meet the standards set by the WIPO Internet Treaties. At its March 10, 2006 session, the Swiss government approved the legislative message to ratify the WIPO Internet Treaties and the partial revision of the copyright act and submitted it to parliament for debate. It is assumed that the amendments will enter into force on January 1, 2008.

The salient features of the revision are the protection of technological measures, the recognition of artists' moral rights and of the right of making available to the public for artists, producers and broadcasters. Since the author's exclusive right is all inclusive and not limited to specifically enumerated exclusive rights for certain uses, the authors already benefit from it.

With regard to the protection of technological measures, circumvention of access control is generally prohibited. Technological measures that control the access to content are already protected by a provision in the criminal code protecting e-commerce. The proposed amendment includes a prohibition against the circumvention of copy control measures. The protection of copy control measures is not all inclusive: it tries to reconcile the protection of copy control measures with a limited number of compulsory licenses to safeguard certain public interests by creating a specific "fair use" defense in case the circumvention is made for the purpose of using the work under such a compulsory license. Moreover, a mediation panel shall try to establish an amicable solution between the users and consumers and the right owners who are using the technological measures, should conflict arise. The proposed amendment further prohibits all manufacturing or making available of technologies, products, services, etc. that are aimed at circumventing technological measures that impede access or prevent copying.

Unlicensed peer-to-peer networks are illegal, since they clearly infringe the right of making available (which is already recognized for copyright owners).

The Institute is convinced that the adaptation of the law to the internet is of high importance but in itself not sufficient. What is further needed is a consistent education of the public. It must be sensitized to copyrights and made aware of the fact that generally any use of a work requires an authorization. For this reason the Institute, in cooperation with the concerned interest groups, has created a brochure illustrated with cartoons in English, French, Italian, and German which explains copyright in layman's terms. The brochure will be distributed free of charge or can be downloaded from the website ([www.swiss-copyright.ch](http://www.swiss-copyright.ch)) which contains additional information on copyright and an anti-piracy game. The brochure was introduced at a large media conference held by the Institute and including high ranking government officials and representatives of the concerned interest groups. It was attended by journalists from all relevant Swiss media enterprises and generally considered a success.

## **II. International context**

### **7. *International organizations and free trade agreements***

As the federal agency for intellectual property, the Institute represents Switzerland in international organizations dealing with intellectual property (Art. 2, para. 1 lit.d and e, IGEG). It presents the concerns and interests of Switzerland regarding the enforcement of rights and the reduction of counterfeiting and piracy to bilateral parties and international bodies such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). Switzerland's activities in the Advisory Group on the Protection and Implementation of Intellectual Property Rights for Investment of the Economic Commission for Europe (UN/ECE) and in the European Free Trade Association (EFTA) are highlighted below.

#### **7.1 UN/ECE Advisory Group on the Protection and Implementation of Intellectual Property Rights for Investment**

The UN/ECE Advisory Group is a unique partnership between the private sector and governmental institutions formed for the purpose of delivering better protection and enforcement of intellectual property rights in the transition economies of Central and Eastern Europe and the former Soviet Union. The Advisory Group co-operates with all the major intergovernmental organizations actively involved in intellectual property. One of its main objectives is to provide technical assistance to UN/ECE member countries in the process of implementing intellectual property and enforcement legislation, and assistance to state institutions involved in intellectual property legislation and regulations. The core of the Advisory Group's activity is the organization of consultative meetings and *ad hoc* training seminars.

The Institute is an active member and one of the co-chairs of this advisory group. It participates in most of the events organized by the advisory group and is active in the design of the working program. Among other events, the Institute co-organized a consultative visit to Bucharest, Romania in November 2004, held seminars in Serbia and Montenegro (Valuation and Commercialization of Intellectual Property Rights in Serbia and Montenegro, Belgrade, 27-28 March 2003) and the Ukraine (Intellectual Property Rights Enforcement, Kiev, 11-13 November 2003) and contributed to the organization of seminars in Poland (Intellectual Property Exploitation in the Internet Era, Warsaw, 1-2 April 2004), Croatia (The role of Intellectual Property and Innovation in Economic Growth, Zagreb, 22-24 September 2004), and Kazakhstan (Economic Dimension of Intellectual Property Right Enforcement, Almaty, 5-7 July 2005). In Zagreb, Croatia, the Institute presented a workshop on technology transfer

and contributed to the organizing and financing of a workshop DVD. The DVD is available on request.

## 7.2 The role of bilateral free trade agreements in improving enforcement of intellectual property rights

The main objective of the Swiss policy on foreign economic affairs is to open up foreign markets for Swiss goods and services and to improve conditions for market access. One way this aim can be achieved is through bilateral free trade agreements. Thus, Switzerland, as a member of the European Free Trade Association (EFTA) along with Iceland, Norway and Liechtenstein, has concluded a series of free trade agreements with other countries. The protection of intellectual property rights traditionally plays an important role in these EFTA free trade agreements. The aim of the section on intellectual property is to ensure an adequate level of protection of intellectual property rights. In addition, it aims to provide the legal certainty necessary for attracting and facilitating direct foreign investments, and to ensure that high- technology goods can be imported with relatively low risk of counterfeiting. An adequate level of protection for intellectual property rights is an essential element for mutually beneficial trade opportunities and a prerequisite to creating incentives for investment and technology transfer.

Generally, the Free Trade Agreements concluded by the EFTA States require that national enforcement provisions are in accordance with the TRIPS Agreement (in particular, Articles 41 to 61) but they do normally not go beyond the protection level provided in that Agreement. However, it is common EFTA policy to assess the situation and the needs of each partner country individually. Enforcement policies may play a greater role in negotiations with trade partners where counterfeiting and piracy is prevalent. In such cases, the parties to the trade agreement try to find solutions that can improve their enforcement regimes during the negotiation process. Switzerland and the other EFTA Member States assist their trading partners in their national enforcement strategies through technical cooperation, , by improving awareness and education and providing practical training in the field of intellectual property rights, particularly for customs and police officials.

### **III. Technical co-operation**

On July 7, 1999, an agreement between the Swiss government and the government of the Socialist Republic of Vietnam on the protection of intellectual property and on co-operation in the field of intellectual property was concluded in Hanoi. The agreement, ratified by both parties, follows an innovative approach in the sense that, for the first time, it focused only on intellectual property. The agreement has two sections. The first part deals with substantive law and fixes the mutual obligation to provide effective and non-discriminatory measures for the protection of intellectual property rights (such as national treatment and most-favored nation clauses). The second part deals specifically with co-operation in the field of intellectual property. For the implementation of the co-operation aspect of the agreement, an annex was included in which the Special Program of Co-operation (SPC) is set up.

The SPC has been established to assist Vietnam to fulfill the obligations set forth in international treaties on intellectual property including the TRIPS Agreement in view of its accession to the World Trade Organization.

The project and its component tasks are "demand driven" (i.e., based on explicit Vietnamese needs) and are designed to pursue activities that will yield sustainable and measurable results. The project adheres to three principles: 1) avoidance of duplicate activities that may already

be under way and supported by other sponsors; 2) complementing or 'plugging-in' to activities in complex fields (e.g., information technology) where such activities are supported by other donors; and 3) defining specific, well-defined activities which include criteria for assessment and follow-up. Some flexibility is included so that the project can be adjusted for experience after the first year. Total time and financial resources (excluding human resources) are fixed by the agreement at 36 months and CHF 3 million respectively.

The main responsibility for the overall strategy of the cooperation and the monitoring of the project lies with the Swiss State Secretariat for Economic Affairs (*SECO*). Executing agencies are the Institute and the National Office of Industrial Property of Vietnam.

The statement of work is broken down into four broad categories of activities which are, in turn, divided into more specific tasks. The four categories are: 1) strengthening the legislative and regulatory framework in the field of intellectual property in Vietnam, 2) strengthening the intellectual property administration, 3) strengthening the enforcement system of intellectual property rights, and 4) increasing public awareness of intellectual property.

In the last three years, particular emphasis has been put on enforcement. The Institute has led three training sessions of two weeks each for representatives from the Vietnamese police, custom authorities, market police and anti-counterfeiting forces in Switzerland. The expertise and experience of these officers are essential for improving the intellectual property rights enforcement system using more modern and less bureaucratic tools.

To assure a practice-oriented training, the Institute cooperated closely with the Swiss custom authorities and other private enforcement agencies in developing a special program. The program highlighted the separation of federal and cantonal authorities, the separation of market control competences, the role of intellectual property right holders and the tasks of the custom officers. Special attention was given to translating the legal border measures into practical application: The documents needed by private intellectual property right owners or their representatives when demanding assistance from the Swiss custom officials for clearance procedures (including formalities, computer assistance and risk analysis) were described and shown along with samples of seized counterfeit goods. One afternoon was dedicated to comparing Swiss and Vietnamese law. Visits to the various custom offices - airport (passengers and freight), highway (freight) and post-office (parcels and precious metals control) - and a visit to the Custom Academy showed how the Swiss legal system works in practice. The Central Directorate of Customs was given the opportunity to describe its duties and share statistical information on border controls as well. Documentation, including examples of awareness building leaflets, was included.

Each session also included presentations by private enforcement agencies and associations<sup>2</sup> who shared their actual experiences dealing with counterfeit products.

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<sup>2</sup> Such as the Federation of the Swiss Watch Industry.