

## **February 2000**

### ***In This Issue***

Canada Restructures Stock Market

Vietnam Adds To Intellectual Property Law

United States Violates Trade Agreements

## **Canada Restructures Stock Market**

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Until November 1999, Canada had four stock exchanges: Montreal, Toronto, Alberta, and Vancouver. Many companies had dual listings on the exchanges. On 15 March 1998, the boards of governors of the four exchanges agreed to restructure the Canadian capital market. The restructuring follows the principles of market specialization, with Toronto as the senior equities market, Montreal as the derivatives market, while Alberta and Vancouver have merged to become Canada's junior equities market.

The market restructuring aims to create stronger synergies amongst the exchanges. The derivatives market will act as a catalyst to strengthen the senior market and the newly formed junior equities market should provide a strong source of listings which will eventually move to the senior equities market.

The new junior equities market or Canadian Venture Exchange (CDNX) became operational in November 1999, with a corporate office in Calgary; an operations office in Vancouver; and regional service operations in Calgary, Toronto, Vancouver and Winnipeg. For the present moment, Montreal has kept its junior equities market, but the Montreal Exchange is examining the issues for and against merging with the other junior markets.

CDNX has approximately 3,000 listed companies. The corporate office in Calgary has overall functional control responsibility for corporate finance, the regional service operations, and executive and administrative functions. The Vancouver office, provides functional control for trading, surveillance, market information systems and their related technologies, as well as compliance and marketing.

The junior equities market operates within a three-tiered structure. Tiers 1 and 2 will operate as a continuous market with a central order book — Tier 1 for advanced companies and Tier 2 for venture and capital pool companies. Tier 3 is a dealer, quotation driven market that will host pre-listings and special situation issuers. There are several benefits from the market restructuring:

- There is a harmonized trading environment, with a common technology platform and one set of rules;
- Venture companies will have improved access to capital and will benefit from improved service levels, broader investor following and elimination of overlapping fees;
- Investors will benefit from a well-regulated, fair and accessible market with enhanced protection through uniform regulatory standards, consistent enforcement, and improved market information; and
- Member firms will benefit from common technology platforms, which enable greater efficiencies and reduced costs within their operations.

There will also be opportunities for collaborative marketing programs to expand business in the fields of niche expertise such as mining, oil and gas, telecommunications, and technology within Canada and worldwide. Venture companies represent the strongest job creation sector of the Canadian economy. Through its members, CDNX will develop opportunities for today's entrepreneurs to build their businesses to become the leading senior companies of tomorrow.

## **Vietnam Adds To Intellectual Property Law**

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In Vietnam, violations in the area of intellectual property (IP), such as counterfeit goods, inferior goods bearing reputation marks, trademark piracy, production of goods, and use of well-known marks without consent of the registered owners, abound. In particular, counterfeiting has been a growing problem in Vietnam.

Decree No. 140/HDBT and latterly Decree No. 57/CP were applicable to infringements concerning counterfeiting but had limited application. On 6 March 1999, the Vietnam Government issued Decree No. 12/1999-CP which provides administrative penalties for industrial property infringement. This Decree replaced Articles 15(1)(a) and (3)(a) of Decree No. 57/CP and took effect on 21 March 1999. At present, the Decree is deemed to be the most effective legal document for combating unlawful activities in this field.

Decree No. 12/1999-CP provides administrative penalties for violations concerning all matters in the field of industrial property. The Decree aims to be the most effective regulation implemented to protect the industrial property rights of lawful owners, and the lawful interests of the public. Under Decree No. 12/1999-CP, the statute of limitations for industrial property violations is generally one year or two years. The limitation period is calculated from the date the infringement occurred.

Under the old legislation, the limitation period only applied to producing or trading in infringing products bearing registered trademarks. Under Article 5(1), persons who undertake activities which assert industrial property rights in areas prohibited or restricted, or engage in unfair competition, monopolistic practices, or infringe other parties' IP rights, may be subject to a fine from 200,000 to 1-million Vietnamese dong. The same fine applies to persons who provide incorrect information or evidence in connection with industrial property proceedings.

However, the provision that persons who engage in monopolistic practices are subject to a warning or fine, conflicts with the current Vietnam industrial property law. An owner of an IP object can obtain exclusive rights to prevent others from using his IP object through registration.

A fine of 2-million to 10-million Vietnamese dong will be applied to persons who obliterate or falsify Certificates of Registration, or who engage in deceptive practices for granting, renewing, amending, or approving a trademark registration or registering license.

Article 6(1) of Decree No. 12/1999-CP imposes a fine from 500,000 to 2-million Vietnamese dong on persons who incorrectly indicate the IP owner, authors of inventions, utility solutions, industrial designs, or that goods or services were manufactured or rendered under license.

In order to take advantage of Vietnamese consumers' taste for goods manufactured in a foreign country, numerous products actually made in Vietnam bear incorrect indications such as "made in Japan", or "under license by an Italian company ...". Labels of well-known trademarks are also placed on goods in bad faith. Article 6(2) addresses these issues and fines are imposed for labels indicating the incorrect origin of a good.

Preparing or registering license contracts must accord with the formalities stipulated in the industrial property laws. It is compulsory to register trademarks in respect of goods and services for fields in which trademark registration is statutorily required. Breaching the requirement attracts a fine of 1-million to 5-million Vietnamese dong under Decree No. 12/1999-CP.

A fine of 2-million to 10-million Vietnamese dong may be imposed on persons using a trademark as a sign which is deceptive or confuses consumers as to the origin, function, utility, quality and value of the goods or services. A fine of 500,000 to 2-million Vietnamese dong is imposed on persons failing to pay patent royalties in respect of compulsory licenses.

The administrative measures pursuant to Articles 15(1)(a) and (3)(a) of Decree No. 57/CP of 31 May 1997 stated that counterfeiters producing goods bearing a trademark identical or similar to a registered mark in respect of the designated goods without the registered trademark owner's consent were liable to pay a fine of 2-million to 10-million Vietnamese dong. Additionally, a fine of 1-million to 5-million Vietnamese dong is imposed on infringers selling goods bearing a trademark identical or similar to a registered mark in respect of the designated goods without consent of the owner of the registered trademark.

In comparison with these provisions, the fine stipulated in Decree No. 12/1999-CP is applied across a much broader scope and its level is much higher. The new fine is from 5-million to 20-million Vietnamese dong, for

committing one of the following acts:

- Circulating or advertising goods or parts which bear signs or packaging of a registered mark or patent falsely claiming the goods' origin;
- Producing patented goods or parts, applying a patented process of production, or exploiting patented goods or parts; or
- Placing on goods or packages a sign identical or similar to a registered trademark; or
- Providing services under a name or device, or applying to other services a sign identical or similar to a registered service mark.

The fine may go up to from 50-million to 100-million Vietnamese dong if such infringements are repeated or committed on a large scale. Furthermore, under Article 9(3) of Decree No. 12/1999-CP persons who produce, sell, transport or store for production, import or export labels, branding, samples of marks, or packages bearing signs which are identical or similar to registered marks will be subject to a fine of 2-million to 10-million Vietnamese dong.

This is the first time administrative penalties for industrial property agents who commit infringing acts in the field of industrial property have been addressed. It is significant as agents are now liable for their actions in rendering IP services. Under the Decree, agents may be subject to a fine from 500,000 to 20-million Vietnamese dong, if they provide incorrect information or advice, or obstruct the judicial process regarding IP claims.

However, the above formulation may be wrongly interpreted as some acts are not deemed to be administrative infringements if they do not cause prejudice to lawful industrial property owners although they are clearly illegal. The same fine also will be imposed on industrial property agents who charge incorrect fees, deceive clients into entering contracts, abuse the use of an IP attorney license, provide false information to State Authorities.

Fines of 1-million to 5-million Vietnamese Dong also are imposed for offering IP services without a proper license. Persons falsifying or obliterating an IP service license and IP attorney's license may be fined 2-million to 10-million Vietnamese dong. In addition, a fine of 5-million to 20-million Vietnamese dong is imposed on industrial property agents, for offering services outside their statutory functions, or falsely claiming to be a Government Officer specializing in IP matters.

Additional penalties include ordering the infringer to pay compensation, the confiscation or destruction of production and sales equipment and the goods themselves. Decree No. 12/1999-CP appears to remedy one of the starkest legislative gaps in industrial property protection in Vietnam. The most important and significant power of this, is that it gives authorities a detailed legal basis for resolving disputes and settling infringement issues, and provides local and foreign traders undertaking business in Vietnam a "firm legal bar" for efficiently protecting their lawful interests.

In Vietnam, violations in the area of intellectual property (IP), such as counterfeit goods, inferior goods bearing reputation marks, trademark piracy, production of goods, and use of well-known marks without consent of the registered owners, abound. In particular, counterfeiting has been a growing problem in Vietnam, and many brand owners are constantly engaged in hit and run skirmishes with proponents of counterfeit goods.

## **United States Violates Trade Agreements**

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In October 1999, a panel created by the Dispute Settlement Body of the World Trade Organization (WTO) issued its final report concluding that the United States' Foreign Sales Corporation (FSC) tax regime creates illegal export subsidies. A FSC corporation is given special tax treatment under United States tax laws. The purpose of the FSC provisions was to promote United States exports in a manner compatible with the agreements negotiated between the United States and its trading partners.

The European Union (EU) opposed the FSC regime since its enactment in the mid-1980's, and filed a complaint against in November 1997. In July 1998, after failed consultations between the EU and the United States, the EU

requested that the WTO's Dispute Settlement Body form a panel to rule on the issue. The WTO panel was formed in September 1998. In October 1999, the WTO's panel released its findings in a report (United States–Tax Treatment for "Foreign Sales Corporations", [www.wto.org/wto/dispute/108r.pdf](http://www.wto.org/wto/dispute/108r.pdf) for the full report). The Panel concluded that the United States FSC regime created illegal export subsidies and should be abolished by 1 October 2000. The EU alleged that the FSC regime violated certain export subsidy prohibitions of:

- The WTO Agreement of Subsidies and Countervailing Measures ("SCM Agreement") by granting tax subsidies contingent on export performance and tax subsidies contingent on the use of domestic over imported goods; and
- The WTO Agreement on Agriculture by granting tax subsidies to agricultural goods in excess of the budgetary outlay and quantity commitment levels specified in negotiated schedules.

The EU also claimed that the FSC regime violated the 1994 GATT, but this was not pursued once the panel was formed. Interestingly, the report notes that both Canada and Japan filed positions with the WTO Panel supporting the EU position.

The United States position has consistently been that the FSC regime is not an illegal export subsidy. In fact, the United States had taken great care to meet the requirements of its trade treaties when it first enacted the FSC legislation in the mid-1980's. Previously, the Domestic International Sales Corporation (DISC) tax regime, enacted by the United States in 1971, had been attacked as a violation of the GATT. In response to the GATT challenges, the United States all but eliminated the DISC regime, enacting the FSC legislation in an attempt to promote exports while complying closely with the treaty requirements. The FSC regime was enacted to enable United States' manufacturers, who were under harsher tax schemes, to compete with non-United States' manufacturers who faced less onerous taxing schemes. The FSC represents a partial adoption of the territorial approach to taxation, common in Europe, and intended to equalize the position of United States' manufacturers in markets outside the United States, such as the EU, where the availability of value-added tax rebates along with territorial taxing schemes make non-United States goods cheaper than those manufactured in the United States.

The WTO panel ruled that the FSC regime does create illegal export subsidies and should be withdrawn by 1 October 2000. In reaching its conclusion, the WTO first found that the FSC income exemptions violated the SCM Agreement, which prohibits "subsidies" that are "contingent upon export performance". Noting that the SCM Agreement defines "subsidy" to require both a financial contribution by a government and a conferred benefit, the WTO panel determined that the FSC regime does create "subsidies" since "the exemptions provided by the FSC scheme result in the foregoing of revenue which is otherwise due and thus gives rise to a financial contribution".

Second, the panel found that the FSC regime "clearly confers a benefit, in as much as both FSC's and their parents need not pay certain taxes that would otherwise be due". Finally, the WTO panel determined that the subsidies are "contingent upon export performance" because they are available only with respect to "foreign trade income"; foreign trade income arises from the sale or lease of export property (or the provision of services); and export property is limited to goods made, produced, or grown in the United States that are held for use or disposition outside the jurisdiction. The WTO panel also addressed the claim that FSC's violated the Agreement on Agriculture, concluding that the FSC regime also violates the subsidy provisions of that Agreement.

In December 1999, the United States appealed the WTO's determination. The EU cross-appealed and raised two issues included in the original complaint but not addressed by the WTO panel in its Report: administrative pricing and the United States content requirement. The WTO Appellate Body is expected to take 60 to 90 days to rule on the appeals.