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Foreign Direct Investment Inflows and Intellectual Property Strategies for Multinational Corporation in Emerging Markets: The Case of Vietnam (1986 – 2016)

Amy Linh Thuy Nguyen (PhD student, University of York)

ABSTRACT

While the current anti-globalisation wave is considered as regional and cyclical relapse among Western countries, the new era of globalisation has shifted away from stagnant developed economies to the rising prosperity of emerging Asia, where is attracting substantial global FDI inflows. Focusing on Vietnam, the country that is seen as Asia's next economic tiger, it is crucial for foreign investors to study the evolution of IP protection strategies, including trademarks, to ensure their competitiveness and long-run survival within Vietnam market. This paper looks at the business history of trademarks and their impact on Vietnam's economic development between 1986 and 2016. It draws on the work of Wilkins (2004), Da Silva Lopes and Duguid (2010), and Lopes and Guimaraes (2014), among others, and combines trademark registrations data with trade and inward FDI data. The paper aims to fill in the inherent gap within academic literature about the evolution of IP in Vietnam and the protection strategies used by MNEs in emerging markets.

Key Words: Intellectual property rights; trademarks; inward FDI; emerging markets; Vietnam; EMNCs; globalisation, de-globalisation.

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1. INTRODUCTION

1. Research Background

The arrival of Internet and the convergence of cross-border homogeneous market segments were once the premise behind "the world is flat", a period of rapid rise of globalisation in which Thomas Friedman referred in 2005. Over the past decade, things have changed and the anti-globalisation movement has never been more advocated, especially after many turbulent events like the Donald Trump election, the Brexit vote, and the rise of nationalism parties in Europe. Nevertheless, it should be recalled that there was similar phase in the late 1970s (before globalisation came back as a norm again), with protectionism, manufacturing technology, diversified organisation capabilities, and demand on differentiated products as the key factors that tilted the balance of globalisation toward fragmentation (Doz, 1987; Morrison et al., 1991). Similarly, it is proposed that the current anti-globalisation wave is just another “regional and cyclical relapse at this particular phase among Western countries”, and so the new era of globalisation has shifted from stagnant developed economies to the rising prosperity of emerging Asia (Financial Times, 2017).

In the light of this new era of globalisation, there are increasing trends in inward Foreign Direct Investment (FDI) in developing Asia which surpassed half a trillion dollars and remained the largest recipient destination for global FDI inflows (UNCTAD, 2018; A.T.Kearney, 2015). There have been many studies of inward FDI in ASEAN countries, in which prominently Vietnam, among other countries within the ASEAN region, has become a promising and attractive destination for FDI inflows (Mirza and Giroud, 2004; Anwar and Nguyen, 2010; ASEAN, 2017). Figure 1 presents the attractiveness of FDI in Vietnam within the region. It shows that the percentage of FDI inflows by ASEAN host countries in 2016, with Vietnam ranked the second highest recipient of inward FDI in the ASEAN region (only after Singapore). Figure 2 indicates that Vietnam’s FDI inflows overtook and substituted for the other countries within Tiger Cubs economies (Indonesia, Malaysia, Philippines, and Thailand) in 2016, representing the highest FDI and a significant location for foreign investment.

[insert Figure 1]

[insert Figure 2]

Moreover, given the “new kind of cold war” or escalating trade wars between the US and China, Vietnam has become a standout location for inward FDI as many companies shift supply chains to Vietnam in order to avoid American tariffs on Chinese goods (The Economist, 2019; Bloomberg, 2019). On one hand, the other neighbours of Vietnam such as Indonesia and Philippines, are facing their increasing threats from high levels of external debts, and crumbling pressures from their currencies because of the rising US dollar (Jegarajah, 2018). On the other hand, Vietnam becomes more attractive to foreign investors, with the profile of low-cost labour, improving infrastructure, favourable demographic dynamic, and one of the fastest growth-rate countries in the world with its economy is predicted to be even bigger than Singapore’s economy size by 2029 (Bloomberg, 2019).

Through different FDI activities, Emerging Market Multinationals (EMNEs) are striving to make use of their intangible Intellectual Property (IP) assets beyond national borders and reaching to every corners of the world as the backbone of the economic globalisation. IP is defined by the World Intellectual Property Organization (WIPO) as the creations of the mind that are protected in law by its Intellectual Property Rights (IPRs), (for example: patents, trademarks, copyrights, trade secrets, and industrial designs) in which enable the creators to earn the exclusive recognition or financial benefit (WIPO, 2018a). The IPR has increasingly becoming the critical differentiation between MNEs, especially in terms of their sustainable competitive advantage and wealth creation, as well as playing a significant role in performance resilience or recovery of a company (Aggarwal, 2008, 2010; Teece, 2018, 2007).

Nevertheless, like a double-edged sword of globalisation and technology development, IP loss, or unauthorised use of such intangible asset in the host country, has become substantial business risk that is threatening any MNEs (Aggarwal, 2010). For instance, a recent report from OECD shows that trade in counterfeit and pirated goods has risen steadily with the value of imported fake goods rose from USD 461 billion in 2013 to USD 509 billion in 2016, representing 3.3% now of the world trade, and posing a major challenge toward innovation-driven global economy (OECD, 2019; Ft, 2019). Essentially, counterfeit trade brings profits toward organised crime gangs at the expense of innovative firms and governments, as well as jeopardises consumers' health and safety with fake products such as ineffective prescription drugs, unsafe dental filling materials, fire hazards from poorly wired electronic goods, sub-standard chemicals in lipsticks, and cancerous baby formula, etc... (OECD, 2019).

This opens up the potential link between the growing inward FDI trend and the relatively weak IP protection in emerging markets. The question on how important IP protection is in the international competition for FDI inflows is still unsettled in the case of Vietnam. Moreover, the current academic literature about the effect of IPR protection on inward FDI still met theoretically challenges and empirically contradictory (Saiz and Castro, 2017). Thus, there is still an inherent gap within the literature to examine the relationship between inward FDI and IPR in order to construct risk management strategy to help MNEs ensuring their competitiveness and long-run survivals in emerging markets like Vietnam.

2. Research Gaps

According to You and Katayama (2005), since the end of 1980s, IPRs protection has become a prominent issue for many countries especially in terms of FDI: the growing capacity of traditional manufacturing in developing countries have forced developed countries to rely more heavily on their comparative advantages in production of IP goods, and the developed countries have to face high R&D costs, while the free-riding imitation problems discouraged inward FDI in developing countries. Additionally, Dunning (1994) emphasises the need for governments to pay attention on regulatory environments in the era of globalisation, because different levels of IP protection across countries may influence where MNEs decide to locate. Casson and da Silva Lopes (2012) and da Silva Lopes, Casson, and Jones (2018) argue that excessive imitation not only can lead to withdrawal from the market, but can also result in changing the mode of entry, the location of headquarters, and the type of local entrepreneur in charge of the investment in the host country.

Despite the growing trend of FDI inflows in Vietnam, this may not be a rosy road ahead for foreign investors, as there are infringement mechanisms of IPR including trademarks in Vietnam (Yoon and Tran, 2011). Academic literature suggests that IPR violation is reflected through the leakage of technological knowledge spillovers creating unit cost reduction for imitators (Zigic, 2000, 1997). Thus, there are potential business risk of knowledge spillovers for foreign investors arising from local competitors (Casson and da Silva Lopes, 2013). For example, the Vietnam government may not recognise the patent rights for MNEs even if the knowledge transferring process is protected by patents, or MNEs may not be able to detect trademark, copyright infringement, or protect innovators from counterfeiting, etc. In other words, the degree of internationalisation positively correlates with the degree of business risk of leaking IP to local entrepreneurs, and so may hurt the foreign subsidiaries in local market as the result (Aggarwal, 2010). Therefore, firms are more likely to invest in countries with strong IPRs protection, since the smaller risk of imitation leads to a relatively larger net demand for protected products; and can assure foreign investors that their technology will not be leaked out to the rivals.

Saiz and Castro (2017) said that there is lack of academic studies on the effect of IPR protection on inward FDI, or it could be that those existing studies still met theoretically challenges and empirically contradictory. Moreover, the literature has been patent-focused so far, but rarely use trademark data. This is evidenced by Wilkins (1992) who emphasises trademark as a neglected intangible asset and proposes the critical role of trademark such as brand name identification on the rise of MNEs. In 1992, she wrote: "In some ways, the trade name seems even more fundamental than new technology in the emergence of the modern firm, modern products, and the understanding of modern industrial structures; ... When the consumer does not know personally the producer, the trademark becomes the surrogate for the direct access by the buyer to knowledge of the product" (Wilkins, 1992). It is also suggested further by da Silva Lopes and Guimaraes (2014) that the use of trademark data have a great potential in economics and management studies, specifically, not only to analyse the impact of innovations on economic development, but also on the dynamic evolution of industries and on society in general.

To date, there is still an inherent gap within the literature about IP protection on inward FDI in emerging Asia in general, and specifically in Vietnam market. A multi-level analysis of IPRs over FDI inflows for EMNEs with the case of Vietnam is essential and important in order to help foreign investors to develop their mitigation or/and prevention strategies in this risky environment. Therefore, it is crucial for MNEs to understand IPR in the host country and develop MNEs' IP protection strategies to ensure their competitiveness and long-run survivals within the local market in Vietnam. Given the above-mentioned gaps, this research shall study the relationship between FDI inflows and IPR in the case of Vietnam.

3. Research Contribution

This study should take into account of the historical dynamics, theoretical frameworks and empirical researches that relate to the area. By following the approach used by da Silva Lopes and Guimaraes (2014) on combining data from industry and firm-level analysis, this paper will aim to provide a long-term analysis of business history of trademarks in Vietnam and their impact on Vietnam's economic development over 30 years between 1986 and 2016. There shall be three main contributions from this paper in which aim to fill in the inherent literature gaps. First, it shall review the IP protection in Vietnam drawing on trademarks in the Vietnam for the past 31 years between 1986 (after the Doi Moi implementation) and 2016 (up-to-date available data), by combining trademark registrations data with exports statistics and inward FDI in Vietnam. Second, the paper shall also help to distinguish the strategies for IP protection between colonial and foreign investors versus local entrepreneurs. Third, cross-cultural issues are also considered in regard to the industries where the different types of entrepreneurs invested and the contributions of these industries to local economic development.

4. Research Questions

By employing mixed methods of qualitative (case study analysis and in-depth interviews) and quantitative (regression analysis), the research shall aim to address the following research questions:

(1) Why is it useful to analyse IP/Trademarks regimes in studies of inward FDI?

(2) Do IPR regime/Trademarks impact on inward FDI in emerging market? Like Vietnam?

(3) What are IP/Trademark strategies for foreign MNEs to ensure their competitiveness and long-run survival in emerging markets such as Vietnam?

In order to answer the above research questions, the paper shall set out the research objectives followed by its multiple institutional levels of units of analysis:

➢ To study the evolution of inward FDI and IP/Trademark in Vietnam at country-specific level.

➢ To analyse the effect of IPR protection/Trademark on inward FDI in Vietnam at country-specific level.

➢ To study potential risk management strategies for foreign investors in Vietnam with regards to deal with high-risk associated with adequate IP/Trademark protection. This analysis will focus on the pharmaceutical industry which is the main industry recipient of FDI in Vietnam during the period of analysis.

II. CONTEXT: VIETNAM – IPR AND FDI TRENDS

1. Vietnam

Despite the enduring political instabilities in the past such as First Indochina war (19 Dec 1946 – 1 Aug 1954) and Second Indochina war (or so-called Vietnam War) (1 Nov 1955 – 30 Apr 1975), Vietnam has remarkably transformed from one of the world's poorest nations into a country that is now seen as the Asia's next economic tiger. Shifting from a command economy into a market economy since major reforms of Doi Moi ("Renovation") program in 1986, over the past 30 years, Vietnam has achieved substantial successes on its economic development (McKinsey, 2012; Tran, 2013). Its recent GDP growth climbed up to 6.8% in 2017 reflecting the fastest economic expansion in the past ten years, as well as the highest growth compared to the other Tiger Cubs countries in 2017 (Philippines 6.7%; Malaysia 5.9%; Indonesia 5.1%; Thailand 3.9%) (The World Bank, 2017).

In term of geographical context, Vietnam is bordered by China to the north, Laos to the northwest, Cambodia to the southwest, Thailand across the Gulf of Thailand to the southwest, and the Philippines, Malaysia and Indonesia across the South China Sea to the east and southeast. The country's capital has been Hanoi since the reunification of the North and South Vietnam in 1976, while as Ho Chi Minh City is the biggest city in Vietnam.

Vietnam offer a stable political environment and the current Government is the Communist Party. Over the past decade, the country has actively and comprehensively engaged in international integration, with the diplomatic relations with over 170 countries, and trade relations with over 230 countries and territories. Vietnam is also the 15th largest country in the world by population and has one of the youngest demographics where nearly 40% of the country's 96 million population are under the age of 25, 60% of the population are of working age (CIA, 2018; IndexMundi, 2018). In term of education, Vietnam has impressive scores in OECD's PISA 2015 results in which Vietnam was ranked 8th out of 72 economies, ahead of more developed economies like Hong Kong, China and South Korea (PwC, 2017b). Reasons behind these achievements are due to the focused curriculum and high investment in education in Vietnam (Schleicher, 2015). Additionally, Vietnam is projected to be the fastest-growing emerging economy before 2050 given its massive purchasing power from middle-class growth (The World Bank, 2017; PwC, 2017a). These economic potentials offer location advantages for Vietnam creating huge opportunities for the last cub of the Asian tigers to become one of the world's most attractive investment destinations.

2. Foreign Direct Investment Inflows

Inward FDI in Vietnam has a relatively short history of development compared to other countries in the region (Mirza and Giroud, 2004; Trinh and Nguyen, 2015). Following the Doi Moi policy (major economic reforms that transformed Vietnam from a command economy into a market economy in 1986), the first Law on Foreign Investment was introduced only in December 1987 to permit and welcome FDI in Vietnam (Delaunay and Torrisi, 2012). Back then, there were just around 200 FDI projects in Vietnam, with a total value of $1.6 billion USD from 1988 to 1990 (EY, 2017; GSO, 2018). Nevertheless, the trend has constantly increased over the past 30 years and recently hit the new level of record with investment reaching $11.3 billion USD in the first half of 2016, up by 105% from the same period the year before, making the total registered FDI in 2016 of $26.8 billion USD from more than 2600 projects (The Economist, 2016; GSO, 2018).

The increasing inward FDI trends in Vietnam from 1988 to 2016 can be illustrated in Figure 3. It is worth mentioning that despite the global financial crisis in 2007 – 2008, there was a peak in FDI inflows in Vietnam. The main reason for that is because Vietnam received the highest inward FDI value in the history of $71.7 billion USD, from two giant multinational enterprises (MNEs) with two major steel projects contributing to the peak (GSO, 2018). One worth $9.8 billion USD from Malaysia's Lion Industries, and the other capitalised at $7.8 billion USD from Taiwan's Formosa, reflecting the international business community's growing confidence in Vietnam's business environment (The Saigon Times, 2008). The increasing trend of FDI inflows into Vietnam filled the gap between little available domestic savings and the large investment demand (Chand et al., 2001). Moreover, it should also be highlighted that the current outlook of the intensified trade war between China and the US has boosted the foreign investment in Vietnam as MNEs that want to hedge such political risk (Scmp, 2018).

[insert Figure 3]

The largest 300 MNEs accounted for 70% of the total FDI across the world (Dunning and Lundan, 2008). This evolution is also reflected in the inward FDI in Vietnam where 24,005 projects with the total registered capital value of $341598.2 million are injected in the Vietnamese economy by foreign investors between the period of 1988 and 2016 (GSO, 2018). It should also be noted from Figure 3 that overtime, the number of projects increased even though the amount of FDI grew only slightly. In Vietnam, the top presence of foreign MNEs in 2016 is in the banking sector, but the biggest MNEs are industrial firms, especially in operating in heavy industries such as chemicals, steel and industrial machinery (ASEAN, 2017). Similarly, the number of each industry's projects increased even though the amount of FDI inflows grew only similar amounts.

The key motivations for these MNEs to invest in Vietnam overtime can be explained by nine motives of FDI (Saleh et al., 2017; Cuervo-Cazurra and Narula, 2015; Nguyen, 2014; Mirza and Giroud, 2004; Dunning, 1993):

- ***Natural resource seeking***: foreign MNEs can acquire cheaper raw materials and abundant agricultural products in Vietnam with higher quality compared to their home country;
- ***Market-seeking***: multinationals can exploit the Vietnam market directly given the country's growing population and consumer demand fed by its rising middle-class, so they can secure market share and sales growth via Vietnamese market size and market potential;
- ***Efficiency seeking***: MNEs can minimise the operational costs by expanding their scales and scopes as Vietnam has skilled workforce at relatively low wages, impressive growth figures, politically stability, and open government policies such as FDI promote policies, trade agreement, tax incentives;
- ***Strategic asset seeking***: Vietnam has many advantages for agricultural development, but its potential has not been fully utilised. Foreign investors who advance in high-tech agriculture experience can then invest in Vietnam and bring into play their strengths to promote their long-term strategic objectives and gain R&D capabilities in Vietnam;
- ***Escape investment***: MNEs may see Vietnam as a tax haven destination as there are many tax incentives policies that potentially could help MNEs to escape all the austere and restrictive legislations at their home countries;

- ***Trade-supportive investment***: foreign MNEs can promote and facilitate their exports and imports of goods and services in the rising market of Vietnam, especially when the Vietnamese Government currently offers many benefits such as FDI promote policies and supportive trade agreements; also at this time when the trade war between the world's biggest markets – China and the US has escalated;
- ***Finance-supportive investment***: multinationals can support the purchasing of foreign produced goods and services from the investing firms, and can thus establish domicile in Vietnam for regulatory and tax reasons;
- ***Management-supportive investment***: foreign investors can support the control and coordination function in Vietnam regional office or branch offices on behalf of the MNE headquarters;
- ***Passive investment***: MNEs can arbitrage by buying and selling firms or assets with some involvement of direct managerial inputs such as private equity capital firms or asset stripping.

These factors have continually attracted substantial investments to Vietnam from more than 100 countries globally, with the key foreign investors are presented in Figure 4. From Figure 4, it is observed that the key FDI investors in Vietnam in 2016 classified by the number of projects or/and by the total values are the same. The top three foreign investors are from countries like Republic of Korea; Japan; and Singapore – neighbours' countries of Vietnam in the region.

[Insert Figure 4]

These FDI motivations are constructed based on Eclectic (OLI) Paradigm by John Dunning's classical framework in which proposed MNEs must have Ownership, Location, and Internalisation advantages for their FDIs to be beneficial (Dunning, 1993; 2004). Moreover, Da Silva Lopes (2010) emphasised the role of Ownership advantages with additional level of institutional analysis including asset ownership advantages and product-specific ownership advantages to highlight the capabilities of firms to differentiate their products and services for obtaining product innovation and scale economies. Foreign investors must initially and most importantly possess certain Ownership advantages such as the ability of keeping strategic assets inimitable, in order to go aboard and compete with local entrepreneurs in an institutionally challenging environment. Given this assumption, the OLI paradigm can serve as an initial platform for the research.

Nevertheless, it should be noted from the Rugman's FSAs-CSAs Matrix (Firm-Specific Advantages – Country-Specific Advantages Matrix) that MNEs can in fact go to foreign markets even without FSAs (i.e. ownership and internalization factors) and only base on the CSAs (or location factors). As the results, these MNEs will be in the position of the first quadrant with a resource-based and/or at a mature stage, and being globally-oriented to produce a commodity-type product from their cost leadership strategy. But given that the host country of this study focuses on emerging markets, so cost leadership strategy that relies totally on low price through the pursuit of cost reductions – may not be feasible given the nature of emerging market settings. Thus, it is important for MNEs to possess FSAs (essentially prioritising Ownership advantages) in emerging markets. Therefore, the paper shall highlight and pay attention on the role of Ownership advantages in the context of Intellectual Property Rights (IPR) protection, ceteris paribus, as the key drivers of inward FDI in Vietnam, and the reasons shall be explained in the following sections.

3. Intellectual Property Rights

IP is an intangible asset of any MNEs, and it has increasingly become the critical Ownership advantages from Dunning's OLI paradigm or Rugman's FSAs. IP creates the essential differentiation between MNEs, especially in terms of their sustainable competitive advantage and wealth creation, as well as playing a significant role in performance resilience or recovery of a company (Aggarwal, 2008, 2010; Teece, 2018, 2007). Given the context of globalisation and technology development, IP loss has become substantial business risk that is threatening any MNEs (Aggarwal, 2010). Therefore, MNEs have motivations to protect their IPRs which can be summarised into five different motives (Reitzig, 2004; Blind et al., 2006):

- ***Protective motive*** (protection from imitation and counterfeiting);
- ***Blocking motive*** (blocking competitors defensively and offensively, use IP rights to increase switching costs for existing consumers and raise entry barriers for rivals);
- ***Reputation motive*** (improvement of technological image, increase in company value);
- ***Exchange motive*** (improve position in co-operations and access to the capital market, exchange potential, licensing income);
- ***Incentive motive*** (motivation of staff, internal performance indicator like carrot and stick approach).

There are many types of IPRs such as *Patents* (exclusive right to an invention of a new product or process); *Trademarks* (exclusive right to a distinctive name, word, sign, symbol or logo to designate and differentiate brand's products and services); *Copyrights* (exclusive right of authors, artists and publishers to publish and disperse ideas); *Trade secrets* (confidential information, formula and practice which is not generally known); and *Industrial designs* (process of design that is separated from manufacture and is applied to products like shape, model and decorate through mass production) (da Silva Lopes and Guimaraes, 2014).

Figure 5 observed that among different types of IP, Trademarks received the highest world's total applications of 8.4 million, with Patents followed by 2.9 million applications in 2015. This hints the important role of Trademarks compared to the other types of IP. Nevertheless, many academic studies on the roles of IRPs has traditionally been patent-focused, and trademark has always been under-researched (You and Katayama, 2005; Blind et al. 2006; De Rassenfosse 2012).

[Insert Figure 5]

Unlike Patent which is a key source of competitive advantage in technology-oriented industries, active in R&D intensive industries; Trademarks are more central in consumer- and service-oriented industries, active in advertising-intensive or marketing aspects, such as commercialisation of an invention or protection of firm's brand (Vries et al., 2017). In contrast, both patents and trademarks have in common is the legally protection under the same rationale of boosting incentives; and maximising the difference between value of IP that is created and used, and the social cost of its creation (Besen and Raskind, 1991; Wilkins, 1992).

Historical evidence on trademark registration data shows that France, among other countries across the world, was a first mover in trademarking their goods and services in 1856 (da Silva Lopes and Duguid, 2010). In the UK, Trademark did not begin to become important assets until the late 19th century (Higgins, 2012). In response to the international pressure (specifically from France), countries like the US and the UK only started to arise on trademark laws, with the first year of trademark registration in the US was in 1870, and the UK was in 1876 (da Silva Lopes and Duguid, 2010). Nevertheless, recent research around the world on trademark has gained momentum and attracted more scholars' attentions where trademark is found positively related to firm's valuations, firm's survivals, venture capital funding; and product differentiated advantages (da Silva Lopes and Guimaraes, 2014; De Vries et al., 2017). Like all (natural) monopoly does, trademark can serve to increase efficiencies through MNE's name or reputation. Specifically, MNEs (with monopoly power) can be more efficient than new-comer firms in term of cost reduction (well-known MNE with a strong financial viability can access to cheaper borrowings compared to unknown names); talent acquirer (familiar firm is more likely to attract and retain talented personnel); lower unit costs via economies of scope and scale (large modern corporation with familiar trademark and sizeable market can draw to more customers, open the way for added production, and reduce in unit cost, increase return to scale) (Wilkins, 1992).

It is only in recent years that we see similar trend in Asian countries. There was a strong growth in trademark applications in Asia (55.3%) compared to the rest of the world in 2016 (Figure 6). Moreover, many studies had been done on patents in Asia, and thus, this paper shall focus on the relatively new part of the field, trademark in Asia region among the other IPRs in other regions.

[Insert Figure 6]

Before studying deeper the evolution of Trademarks, it is important to understand the overview of IP landscape in Vietnam, drawing on the history of institutional development and its connection to the current IPR laws in Vietnam. There is a popular misconception among scholars and practitioners that IP law in Vietnam only existed after the Doi Moi economic reforms in 1980s (Tran, 2015). In fact, a recent study argued that the IP law has emerged in Vietnam since at least 1864 under the auspices of authors' rights law; before then no information was recorded (Tran, 2017). Nevertheless, its evolution in Vietnam remains a special case among other countries in the region. The reason behind is because "almost no single country in Southeast Asia has had more foreign influences from abroad than the existing legal system in Vietnam" (Fowler et al., 2017). Its contemporary legal transplants historically derived from principles of Confucianism in the fifteenth century, to the borrowed colonial laws from France under a semi-feudal society in the mid-1800s, then later the imported Soviet doctrine of socialist legality in the mid-1940s, and more recently from Western legal systems (Gillespie, 2001). These historical legal transplants have divided the IP evolution in Vietnam into three main periods as following.

It all started around 1858 to 1862 when France captured Southern Vietnamese provinces, the French colonial rule began, and the Treaty of Saigon was signed. As the result, the very first IP law in Vietnam dated in 1864 when France passed a decree in Article 37 in which at least three important French statutes on copyright must have had effect i.e. the 1791 Act; the 1793 Literary and Artistic Property Act; and the 1852 International Copyright Act (Tran, 2017). However, colonization did not always result in the automatic imposition of IP laws, especially in its early days. Not until the mid-1800s, the French introduced respect and legal ownership of IP with a strong emphasis on droit d'auteur (copyright) and the commercial value of patents, which even Karl Marx appreciated (Fowler et al., 2017). Then 1933 is a significant development of IP law in Vietnam, when France brought the country along with its Southeast Asian colonies into the international IP community, by extending the application of the Berne Convention and the Paris Convention to its overseas territories (Tran, 2017).

The colonial French law can be seen as the root in the Vietnamese IP legal system, but it gradually be supplemented or evolved to become socialist law, starting with the first Constitution in 1946 on initial IP rights of North Vietnam (Thinh, 2017). Following the First Indochina War (Anti-French Resistance War) which resulted from political divisions between two rival states, the North Vietnam (Communist-ruled, Democratic Republic of Vietnam), and the South Vietnam (Non-communist-ruled and U.S. ally, Republic of Vietnam); the Supreme Court issued Directive No.772-TATC in 1959 which ordered the suspension and abolition of all previous colonial and feudal laws in North Vietnam, replaced them with an entirely new and instable socialist legality imported from Soviet doctrine considering its centrally planned economy in North Vietnam (Tran, 2017). The IP law inherited from the French still existed in South Vietnam and only came to an end in 1975 after the collapse of the Republic of Vietnam in the South during the Second Indochina War (Vietnam War). On 30th April 1975, the North and the South were united under one regime of a Communist government but remained impoverished and politically isolated. During the wars, the entire Vietnamese legal system got disrupted; once the wars ended, the inherited French IP law was also demolished, making room for the introduction of inventor's certificates and exclusive patents following the Soviet model (Pham, 2004).

Following the Doi Moi economic reforms from closed economy to open economy in 1986 and the introduction of first FDI law in late 1987, Vietnam started considering the essential of IP rights to move forward the open-door-policy-goal. From an economic aspect, the role of IP law can help creating barrier to entry, restrict competition within the local market, protect innovation and create temporary monopoly power to favour rightsholders (Ilie, 2014). Vietnam also wanted to create a good environment for businesses to flourish, and so the issuance of an Ordinance on Industrial Property in 1989 was considered as one of important movements to attract foreign investment in Vietnam (Nguyen et al., 2018). Vietnam marked another milestone in the IP protection when the government issued Decree No.142/CP in which highlighted the copyright protection in compliance with bilateral and international IP and free trade treaties (Thinh, 2017).

Nevertheless, it did not always result in an automatic implementation of the socialist IP law in the transition toward a market-based economy, not until the Congress promulgated the Civil Code of 1995 (and renewed later in Civil Code 2005) to officially enforce a comprehensive IP system and to enhance it effectively in Vietnam (Pham, 2004; Thinh, 2017, Nguyen, 2017). Vietnam started to recognise the important role of IP rights in the context of globalisation, trade and investment flows, as well as the collaboration and cooperation within IP-related fields among countries (Fowler et al., 2017). Vietnam used to promote export-oriented investment in the 1990s, but the new emphasis on development of key industries emerged after the mid-1990s with a strong intention of using FDI for industrial policy objectives (Fujita, 1999). To establish a standard for international law on IP, the country acceded to most of the major IPRs multilateral treaties such as Paris Convention (1949), Agreement on Trade Related Aspects of Intellectual Property Rights TRIPS (1994), and Berne Convention (2004) (Nguyen, 2017). Together with the efforts of joining ASEAN in 1995, APEC in 1998, and WTO in 2007, Vietnamese government therefore has been establishing a stronger IP legal system, strengthening the multiple trade agreements between countries, and attracting more FDI inflows (Fowler et al., 2017). However, given the interrupted history of institutional development in Vietnam explained above, the country unavoidably made several shortcomings in its simplistic and relatively new Vietnamese IP laws, and so explaining the ambiguity in current IPR laws in Vietnam (Nguyen, 2017; Yoon and Tran, 2011).

Regarding the current trademark system, Vietnam has adopted the principle of "first-to-file" for trademark registrations (NOIP, 2018). This means that any trademark with an earlier filing or priority date will be granted with a single valid application, while for those identical or confusingly similar trademarks with later filings shall be excluded from trademark protection. In other words, the party who files for registration first and satisfies all required conditions gets the trademark. In the case of two or more applications having the same earliest priority or filing date, and satisfying all the conditions, then the registration may only be granted to a single application out of these applications under an agreement by all applicants; without such an agreement then all these applications shall be refused for the grant of a trademark registration (NOIP, 2018).

There are two popular trademark registration systems that are widely used around the world: “first-to-file” and “first-to-use” principles. The “first-to-file” system (being used in countries like Vietnam, China, France, Germany, Japan and Spain) opposites to the "first-to-use" principle (being used in countries like the US, Philippines, Australia, and New Zealand), in such a way that a party filing for a trademark has to show that it is either used the mark in business or intends to use the mark in the future for business (Bryer, 2015). There are some issues arising from first-to-file system, for example, anyone can grab IPs with no related interest, strictly from the standpoint of owning IPs as potential investments (Lee and Yee, 2012). This practice can be considered unethical, but not illegal by law and so can lead to a number of unresolved lawsuits. A representative case for this is by Coca-Cola in Latin America, where Coca-Cola was frustrated with the largest Colombian beverage company, Postobón, for its resistance to investing in the development of Coca-Cola over its pre-existing, and often competing, brands (Ciafone, 2018). Specifically, the Coca-Cola Company suspected that Postobón had courted its franchise in order to protect its own Colombian soft drink business and restrain Coca-Cola’s expansion into the country (Moreno, 2013). It should also be noted that from the Global Competitiveness Report for 2017-2018 period by the World Economic Forum, there is the ranking for IP protection index and Vietnam only rank number 99 with value of 3.6 (Figure 7). Therefore, all of these institutional barriers and legal voids reflect the relatively weak position of the overall Vietnamese IPR protection in general, and of the Vietnam’s current Trademark system specifically, which can pose substantial challenges for foreign investors in Vietnam.

[Insert Figure 7]

III. LITERATURE REVIEW

Working in progress

IV. METHODOLOGY

Working in progress

V. ANALYSIS AND DISCUSSION

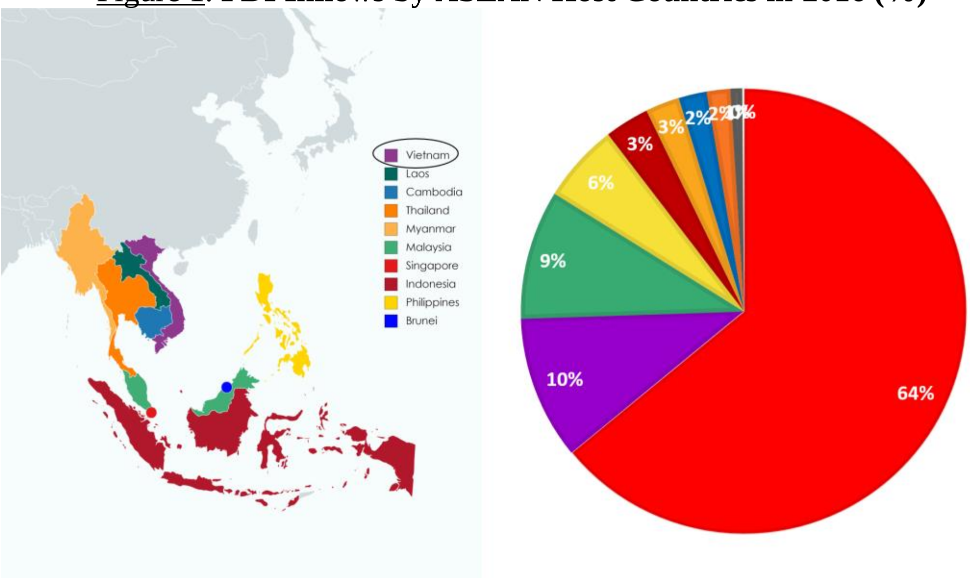
Working in progress

VI. CONCLUSION

Working in progress

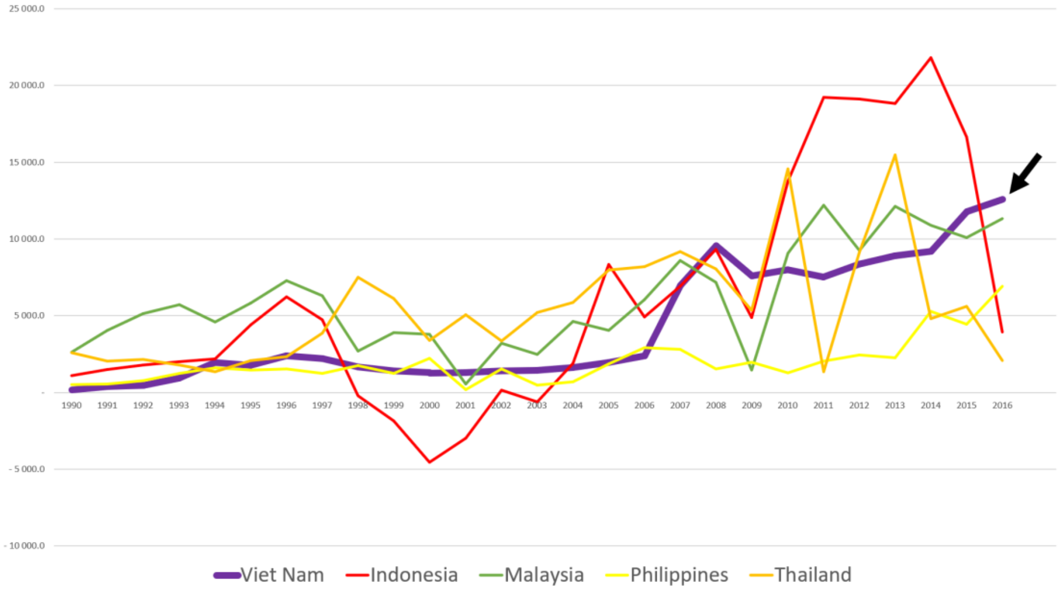
List of Figures

Figure 1. **FDI Inflows by ASEAN Host Countries in 2016 (%)**



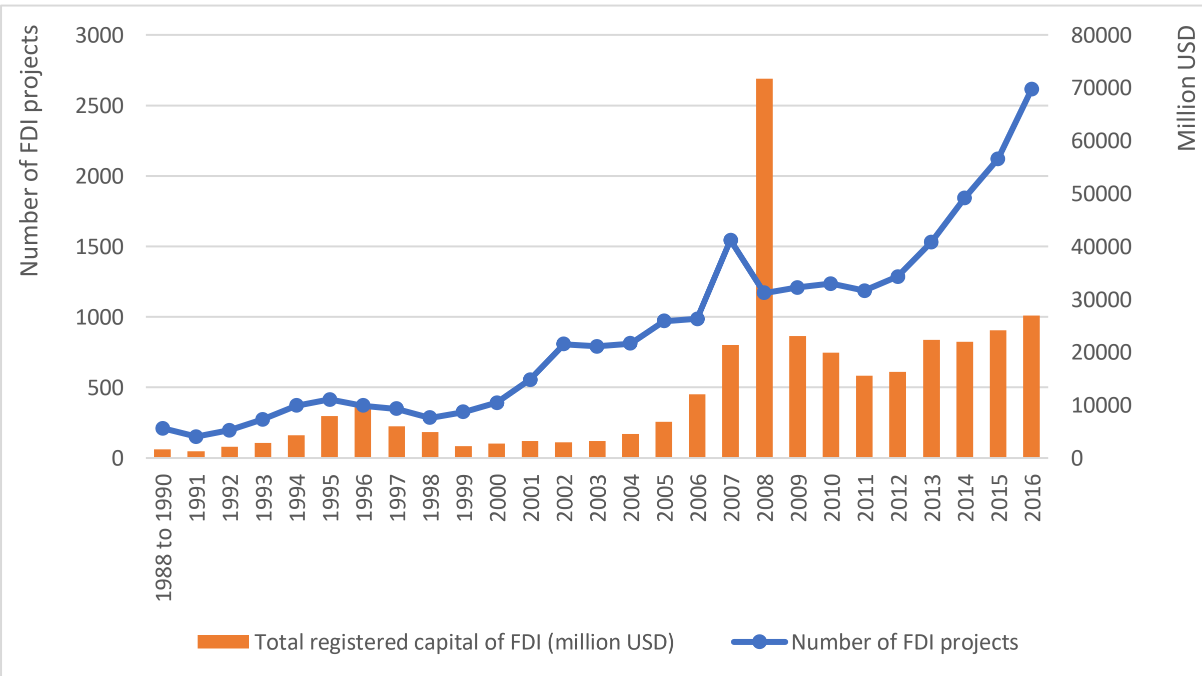
Sources: GSO (2018); UNCTAD (2018); ASEAN (2017).

Figure 2. **FDI Inflows by Tiger Cubs Economies from 1998 to 2016 (Million $)**



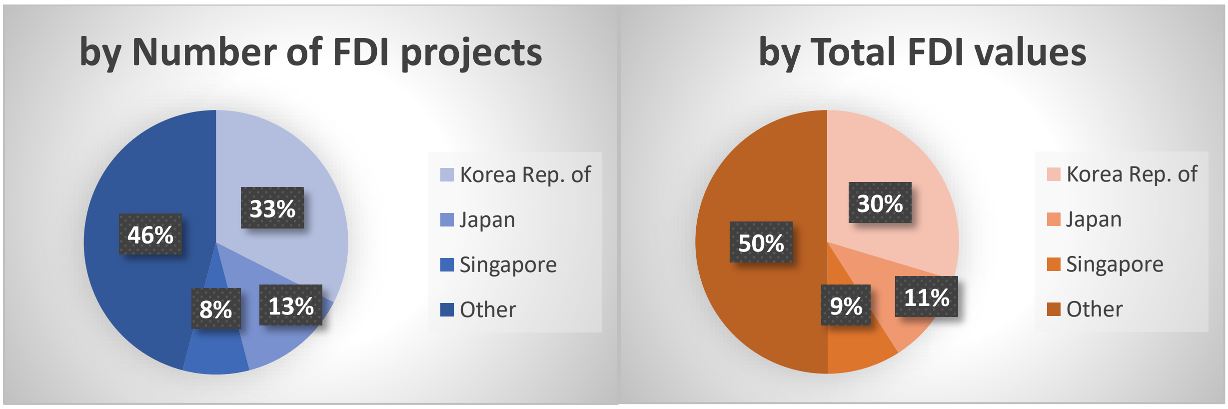
Sources: GSO (2018); UNCTAD (2018); ASEAN (2017).

Figure 3. **Inward FDI in Vietnam from 1998 to 2016**.



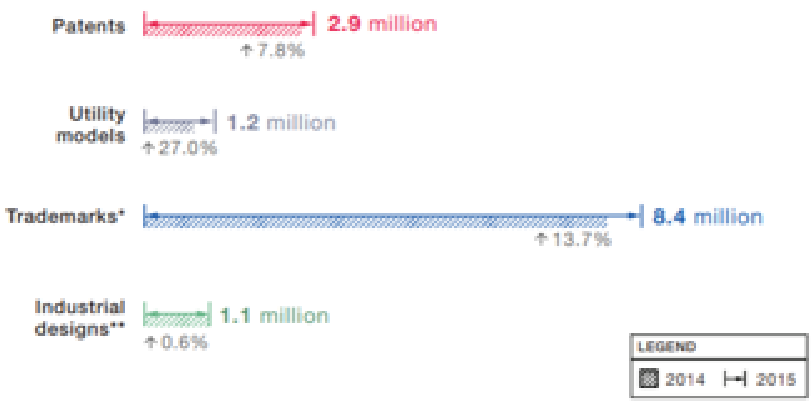
Source: GSO, 2018.

Figure 4. **Key FDI Investors in Vietnam in 2016**.



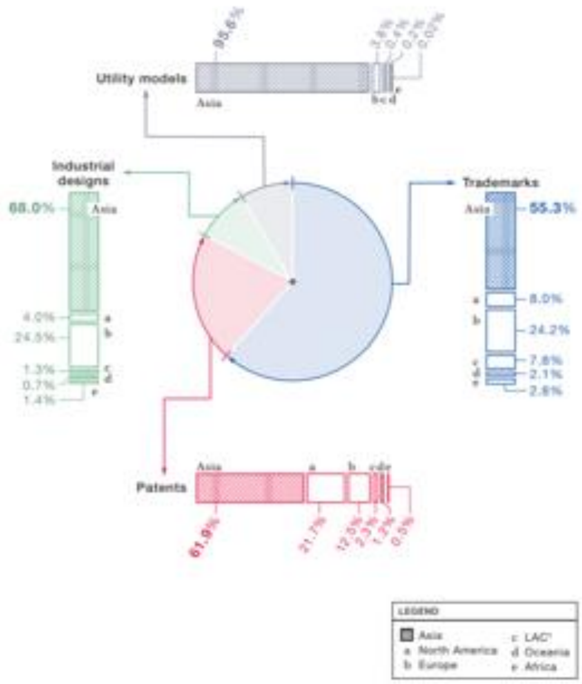
Source: GSO, 2018.

Figure 5. **World's total applications and growth in IP applications**



Source: WIPO (2016)

Figure 6. **Shares of World's IP filling activity by region**



Source: WIPO (2016)

Figure 7. **Global Competitiveness Report 2017-2018 by World Economic Forum: IP Protection Index Ranking**

Country	Ranking	Value
Singapore	#4	6.2
Japan	#18	5.8
Malaysia	#26	5.3
Indonesia	#46	4.5
China	#49	4.5
Korea	#54	4.4
Philippines	#71	4.1
Laos	#85	3.8
Vietnam	**#99**	**3.6**
Thailand	#106	3.5
Cambodia	#130	3.1

Source: World Economic Forum (2018).

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