

15 Research and Study on Protection of Intellectual Property in Asian Countries

The WTO/TRIPS Agreement taken into effect in January 1995 has obligated even developing countries to implement the Agreement by January 1, 2000. The Survey covered the major Asian countries (regions) that have close business ties with Japan: China (including Hong Kong), South Korea, Taiwan, Thailand, Indonesia, the Philippines, Malaysia, Singapore, India and Vietnam. It surveyed the latest status of establishment and actual operation of IP related laws in these Asian countries (regions) as of January 1, 2000, and examined their compatibility with the TRIPS Agreement.

Although most of the Asian countries covered by the Survey have almost completed the establishment of intellectual property systems, it is pointed out that some of them are short of intellectual property experts, have yet to enact implementation rules (bylaws), and also yet to establish procedures for enforcement.

I Foreword

Against the background of corporate activity growing more global and intangible, the importance of harmonizing international systems for the protection of intellectual property is strongly called for. In order for developing countries to promote their technical and economic development through the promotion of industries and expansion of trade, it is essential for them to further introduce technology and investments from industrial countries. For this purpose, systems to protect intellectual property appropriately must be prepared and employed reliably in developing countries.

Recognizing that the difference or undeveloped state of the intellectual property system of each country constitute trade impediments, the GATT Uruguay round of trade talks that began in September 1986 decided to take up TRIPS (Trade Related Aspects of Intellectual Property Rights) for discussion. The WTO-TRIPS Agreement, which is a compilation of the discussions, was concluded and went into effect in January 1995. However, since the intellectual property to be protected under the Agreement is extensive and its level of protection is higher than those provided by conventional international treaties, the Agreement has a provision that gives a grace period of 5 years to developing countries. That grace period expires in January 2000.

However, there are some countries in Asia that have yet to establish domestic laws conforming to the TRIPS Agreement or countries that are not employing established domestic laws properly. This may partly account for the deluge of counterfeit goods that have become tangible in many countries where Japanese investment and the introduction of

technology have recently expanded. It is, therefore, hoped that systems for the proper protection of intellectual property will be further improved and their steady employment ensured.

Various studies and investigations have been made so far concerning the intellectual property systems in Asian countries. But, since there are not only many countries that are now establishing a system or improving the employment of their system but also some countries whose systems or employment of the system is not well-defined, it is necessary to grasp the situation of intellectual property laws in Asian countries as of January 1, 2000, the date on which the grace period of the TRIPS Agreement is to expire, and to extract problems concerning the implementation of the TRIPS Agreement.

Thus, the purpose of the Survey was to clarify the problems involved in the systems and their employment by grasping the situation of the intellectual property laws of Asian countries and their employment, and to ensure smooth investment in Asian countries and a technological cooperation system by making suggestions regarding appropriate measures to Asian countries.

In order to achieve the above objectives, the Survey covered the major Asian countries (regions) that have close business ties with Japan: China (including Hong Kong), South Korea, Taiwan, Thailand, Indonesia, the Philippines, Malaysia, Singapore, India and Vietnam. It surveyed the situation of the latest improvements concerning the intellectual property-related laws of these countries (regions) and bylaws related to the employment of the systems and analyzed them from the aspect of conformity with the TRIPS Agreement.

Specific surveys were conducted by local experts in the countries surveyed on a

consignment basis and the results of the surveys and suggestions concerning the implementation of the TRIPS Agreement were compiled into a report.

II International Treaties and Intellectual Property Law

The table 1 of "Intellectual Property Systems in Asian Countries" shows the situation of each country's affiliations with international treaties and the situation of establishment of domestic intellectual laws. The table 2 of "Comparison of Intellectual Property Systems in Asian Countries and the TRIPS Agreement" shows the situation of conformity of the domestic laws with the TRIPS Agreement article by article.

As to international treaties, of the Asian countries covered by the Survey, China, Taiwan and Vietnam are not members of the World Trade Organization. Taiwan is not affiliated with any of the international treaties for diplomatic reasons. Thailand is not a member of the Paris Convention for the Protection of Industrial Property. Vietnam is not a member of the Berne Convention for the Protection of Literary and Artistic Works. Thailand, the Philippines and Malaysia are not members of the Patent Cooperation Treaty.

As to domestic laws, South Korea has established all necessary laws, while Indonesia and Vietnam have yet to establish viable laws. China, Thailand, Indonesia, the Philippines, Malaysia, India and Vietnam have yet to establish a law concerning the circuit layout of semiconductor integrated circuits. Indonesia has yet to establish laws concerning the protection of designs and trade secrets. Vietnam has yet to establish laws concerning the prevention of unfair competition and the protection of trade secrets. Patent for material is not protected in India. India and Malaysia have no provisions on the term of protection of patents. Thailand and India have yet to provide protection for geographical indications.

III Suggestions

The WTO-TRIPS Agreement has resolved many of the long-standing problems concerning intellectual property and established a new comprehensive system to protect intellectual property in many countries of the world, including developing countries. It is significant in many respects, including:

① Raising the level of protection concerning wide-ranging intellectual property,

- ② Compliance with the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works,
- ③ Establishment of provisions concerning the enforcement of intellectual property,
- ④ Introduction of the principle of most-favored-nation treatment, and
- ⑤ Adoption of WTO's original dispute-settlement procedures (prohibition of unilateral sanctions).

Since the Asian countries covered by the Survey are scheduled to start implementing the TRIPS Agreement on January 1, 2000, they are improving or establishing a domestic system of intellectual property at a rapid pace. But the survey results show that they still have many problems to solve.

The following are suggestions to solve such problems.

1 Importance of Various Forms of Cooperation toward System Establishment

Since the Asian countries covered by the Survey are scheduled to start implementing the TRIPS Agreement on January 1, 2000, they are improving or establishing a domestic system of intellectual property at a rapid pace. Many of the countries have almost completed the establishment of the intellectual property system and those countries that have not completed are making steady progress toward the establishment of the system.

However, the level of protection provided for by the TRIPS Agreement is higher than that offered by the conventional systems of Asian countries. As things stand now, the most that the Asian countries can do is to establish an intellectual property system to implement the TRIPS Agreement. Their awareness of the need to protect intellectual property or secure the effectiveness of the enforcement of intellectual property rights is not sufficient. Therefore, in order for the Asian countries to develop their industry and promote technology transfers from abroad, it is necessary to make them aware of the need to establish an intellectual property system and the importance of the enforcement of intellectual property rights.

Specifically, it is necessary not only to extend various forms of cooperation for the establishment of intellectual property systems to the Asian countries but also to make them aware that the establishment of an intellectual property system will further promote technological cooperation commensurate with the development stage of the industry of each country and that it will accelerate technology transfers from

abroad.

It is also necessary to disseminate the importance of the intellectual property system to the people as a whole, by actively conducting educational campaigns aimed at the young and old, men and women, and through personnel exchanges.

In Thailand, universities play a major role in promoting various activities such as education, research and enlightenment of the legal system of intellectual property. In other Asian countries as well, universities can play a major role in education, research, enlightenment and other activities for the legal system of intellectual property. For that purpose, it is necessary to extend cooperation for the establishment, etc. of educational and research systems to universities in the Asian countries.

Also, since the Asian countries covered by the Survey welcome the various training systems provided by Japan as useful, such systems should be further improved qualitatively and continued. Specifically, it will be necessary to continuously develop improved training systems of quality and offer them field by field or level by level in order to help develop human resources and thereby encourage Asian countries to be self-reliant.

2 Affiliation with WTO

Since most of the countries in the world, including the Asian countries covered by the Survey, are members of the WTO, they are obliged to implement the TRIPS Agreement.

However, of the Asian countries covered by the Survey, China, Taiwan and Vietnam are not yet members of the WTO. As to China and Taiwan, they are not members of the WTO for diplomatic reasons. However, since Japanese corporations are engaged in various businesses, including local production and exports, in China, Taiwan and Vietnam, and since it is important that they implement all WTO rules, including the establishment of a legal system for intellectual property, these countries are asked to join the WTO at an early date. It is true that the establishment of a legal system for intellectual property and the improvement of its employment are being made in China, Taiwan and Vietnam. However, unless they join the WTO, the dispute-settlement provisions of the TRIPS Agreement cannot be applied. Therefore, China, Taiwan and Vietnam are asked to join the WTO at an early date and become obligated to implement the TRIPS Agreement.

The TRIPS Agreement prescribes that members shall comply with the Paris Convention for the Protection of Industrial Property and the

Berne Convention for the Protection of Literary and Artistic Works (TRIPS Agreement, Articles 2 and 9). Of the Asian countries covered by the Survey, Thailand is not a member of the Paris Convention for the Protection of Industrial Property and Vietnam is not a member of the Berne Convention for the Protection of Literary and Artistic Works. They are each asked to become a member of such convention at an early date. Since Vietnam is not a member of the Universal Copyright Convention either, the country is asked to become a member of the Berne Convention at an early date from the standpoint of appropriate protection of works of foreigners.

The TRIPS Agreement also prescribes that, in principle, patents shall be available to any inventions in all fields of technology (Article 27). Therefore, members of the TRIPS Agreement have the obligation to protect inventions concerning microorganisms as patents. However, of the Asian countries covered by the Survey, Thailand, Indonesia, Malaysia, India and Vietnam are not members of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. Although the TRIPS Agreement does not require member countries to join the Budapest Treaty, these countries are asked to join the treaty at an early date from the standpoint of providing appropriate protection to inventions concerning microorganisms by foreigners.

Furthermore, of the Asian countries covered by the Survey, Thailand, the Philippines and Malaysia are not members of the Patent Cooperation Treaty. Although the TRIPS Agreement does not require members to join the Patent Cooperation Treaty, these countries are asked to become members of the treaty at an early date from the standpoint of international protection of inventions.

Since Taiwan is not a member of any international treaties (agreements) for diplomatic reasons, protection of the intellectual property of foreigners is provided by mutual recognition treaties, etc. But such intellectual property is hardly given full national treatment. Therefore, Taiwan is asked to join the WTO at an early date.

3 Establishment of the Intellectual Property System

Establishment of the intellectual property system is now under way in many of the Asian countries covered by the Survey. Although most of the countries (regions) have almost completed the establishment of the intellectual property

system as of January 1, 2000, some of them have yet to complete the establishment.

Therefore, there are following problems that remain unsolved.

- ① The short period of prescription and the provision for the protection of infringement in good faith in China,
- ② The absence of protection for shape of goods in the Unfair Competition Prevention Law in China,
- ③ Patent objects and famous trademarks in Thailand,
- ④ Insufficient penalties for the crime of infringement of intellectual property in many countries,
- ⑤ The term of patent right, interpretation of rights, border measures in Malaysia,
- ⑥ The absence of original design registration system in Singapore,
- ⑦ The absence of protection for well-known trademarks and opposition system in Vietnam,
- ⑧ Inadequate legal system for protection of trade secrets,
- ⑨ Inadequate legal system for protection of computer programs, and
- ⑩ Inadequate legal system for protection of semiconductor integrated circuits.

As many of them cause problems with regard to the conformity with the TRIPS Agreement, each country is asked to establish an intellectual property system at an early date.

Since many of the Asian countries are now preparing legislation for intellectual property or are deliberating one at their national assemblies, we need to keep a close watch on their movements.

Specifically, we need to keep a close watch on the following matters that are expected to have a considerable impact on Japanese industry.

- ① Further improvement of copyright systems (to cope with the advent of the multi-media society),
- ② Conformity of the provisions on patent objects, and
- ③ compulsory licenses in patent systems with the TRIPS Agreement.

4 Training of Experts

It is pointed out that most of the Asian countries covered by the Survey are short of intellectual property experts.

It goes without saying that training patent attorneys and lawyers possessing enough expertise, both in terms of number and quality, is important for appropriate the protection of intellectual property. To this end, it is an urgent

task to train patent attorneys and lawyers in the Asian countries, and extending various forms of cooperation concerning the training is called for. In order to realize the prompt and accurate protection of rights, it is also important to improve judicial and administrative organizations, including judges, both in terms of number and quality, in addition to developing both in terms of number and quality patent office personnel, such as examiners and appeal examiners.

It is extremely difficult to provide accurate protection to intellectual property without training experts, such as patent attorneys, lawyers, patent examiners and judges, in the Asian countries (regions). From this standpoint, it is necessary to extend international cooperation concerning enforcement procedures, in addition to international cooperation concerning the grant of right procedures that has been the main point of cooperation so far. Specifically, it is important to promote international cooperation that includes the judicial field, such as international exchanges of judges in charge of interpretation of rights and calculation of the amount of compensation for damage.

5-1 On Enforcement

Since it is important that enforcement procedures are available to permit effective action against an act of infringement of intellectual property rights, the TRIPS Agreement has provisions concerning enforcement.

However, since enforcement of intellectual property rights is not a problem peculiar to the intellectual property system but a problem that involves the civil code, civil proceeding law, and penal code, etc., many of the TRIPS Agreement's provisions concerning enforcement are general and abstract. Therefore, it is no exaggeration to say that whether or not proper enforcement of intellectual property rights can be secured in the member countries of the TRIPS Agreement all depends on the specific employment of domestic laws by the member countries. In this respect, there are many problems concerning the enforcement of intellectual property rights in the Asian countries covered by the Survey.

5-2 Restrictions on License Contracts

The problem of proper protection of intellectual property, particular the one that is expected to arise from promoting technology transfers of intellectual property of foreign corporations into Asian countries, is the various

regulations established by many of the Asian countries (regions) on license contracts.

Although the contents of the regulation vary from one country to another, typical examples are the following:

- ① Prior approval system at the time of introduction of technology,
- ② Restrictions on royalties and regulations on remittance of money abroad,
- ③ Restrictions on the content of license contracts and mandatory requirement of specific clauses,
- ④ Mandatory registration as requirements for entry into force of license contracts,
- ⑤ Special regulations in the field of specific technology (foods, medicines, etc.), and
- ⑥ Not well-defined registration practice due to inadequate preparation of implementation bylaws.

A license contract on intellectual property between the parties concerned is not a problem peculiar to intellectual property but a problem related to laws on competition (anti-monopoly law) and foreign investment. Moreover, there is no specific provision on the matter in the TRIPS Agreement. Therefore, we hope that the matter will be discussed at an international level. The balance between the intellectual property system and competition law (anti-monopoly law) is particularly important when we consider the protection of intellectual property. Therefore, we hope that there will be positive discussions toward the international harmonization of competition laws and that, thereby, restrictions on license contracts will be eased.

If regulations on license contracts are strict, these will clearly constitute an impediment to technology transfers from abroad and, in some cases, would constitute an impediment to the proper protection of intellectual property and thus an infringement of the TRIPS Agreement.

For this reason, it will be necessary to study the restrictions on license contracts in the Asian countries (regions) fully, grasp the problems involved and put forward improvement measures.

5-3 Validity of Administrative Control

The TRIPS Agreement, in order to secure the accurate protection of intellectual property, provides for not only judicial relief but also strengthening the administrative control on the infringement of intellectual property (Part III of the TRIPS Agreement). In particular, the TRIPS Agreement provides for specific and detailed provisions concerning strengthening border measures from the standpoint of strengthening the control of counterfeit goods that was

considered at the GATT Tokyo round of trade talks (Article 51 and Article 60).

In the light of the present state of counterfeit goods circulating in Asian countries, the counterfeit goods circulating in one country may not be those produced in that country but, in many cases, imported from another country. Therefore, it is extremely important to strengthen border measures. However, some of the Asian countries (regions) covered by the Survey have no procedures concerning border measures, like Indonesia and Vietnam, and some others have only inadequate provisions concerning border measures, like Hong Kong and Malaysia. Such countries are asked to establish border measures at an early date. Moreover, since the effectiveness of border measures in other countries is still unknown, it is necessary to keep a close watch on the future employment of the control systems and to extend various forms of cooperation, such as providing information, to enhance the effectiveness of border measures.

The situation differs from one country to another among the Asian countries covered by the Survey. However, in some countries control by administrative organs, such as the police, is as effective as or more effective than judicial relief. Therefore, we hope that the effectiveness of administrative control will be further enhanced. Some of the Asian countries covered by the Survey have an "economic police" system that exclusively handles economic cases, including exposure of infringement of intellectual property and they have actually exposed many goods infringing on intellectual property.

Therefore, we hope that the administrative control system in Asian countries will be further reinforced and that the effectiveness of exposure of infringement will be enhanced in those countries where goods infringing on intellectual property are produced.

5-4 Court System

In some of the Asian countries (regions), the court system is not fully established or not fully functioning as a general dispute settlement organ, not to mention settlement of disputes concerning intellectual property.

One of the reasons is that they are short of experts both in terms of number and quality. But as for the countries where a court system has yet to be fully developed, it will be necessary to cooperate for the establishment of one, and as for the countries where the court system is not fully functioning, it is essential to cooperate in the employment of the system.

Some of the Asian countries covered by the

Survey have established special courts on intellectual property, such as the Patent Court in South Korea and the Court on Intellectual Property and International Transactions in Thailand. We hope that trial by a special judge will result in expeditious and accurate settlements of cases concerning intellectual property. We hope that the function of such special courts will be further enhanced and that the scope of cases handled will be expanded in these countries. We also hope that a special court will be established in more countries so that expeditious and accurate settlement of intellectual property cases will be achieved.

In some of the Asian countries covered by the Survey, court rulings are not exactly executed. Such countries are asked to establish a system and improve the employment of the system so that court rulings will be executed effectively.

5-5 Establishment of Effective Enforcement System

The effectiveness of control of counterfeit goods circulating in the Asian countries covered by the Survey has increased thanks to strengthened control in recent years. However, there are still many problems, such as circulation of new counterfeit goods and an increase in the number of high-quality counterfeit goods.

Many of the more recent counterfeit goods are difficult to distinguish on the basis of their appearances alone. And it is costly and ineffective for each corporation to establish its own enforcement system. Therefore, corporations are asked to form a corporate union in order to establish an effective enforcement system.

6 Problems Involved in Enforcement

Although most of the Asian countries covered by the Survey have almost completed the establishment of an intellectual property system, some of the systems are not sufficient and some of the countries have yet to enact implementation rules (bylaws) for system employment.

It is essential to establish implementation bylaws in order to make the intellectual property systems in the Asian countries effective and transparent. It is important for us to keep a close watch on Asian countries' moves to establish a system and improve the content of the system, while, at the same time, extending various forms of cooperation concerning the establishment of implementation bylaws.

Of the Asian countries covered by the Survey, Singapore and Malaysia consign examinations

of patent applications to other countries and limit the scope of information to be made available concerning examinations to only English-language documents. It is, therefore, necessary to make proposals for the improvement of such practices.

In line with the establishment of patent systems in Asian countries, the number of patent applications from abroad is expected to increase further. However, it will still take some time before the Asian countries can establish a viable examination system.

Therefore, it is necessary to provide various forms of cooperation concerning examinations of patent applications, such as the following, in accordance with the situation of each country:

- ① Submission of examination results conducted in advanced countries,
- ② Approval of examination results conducted in advanced countries,
- ③ Improvement of information for use in examinations and building a database, and
- ④ Establishment of an examination system.

7 About the Dispute Settlement Mechanism of the TRIPS Agreement

The TRIPS Agreement prescribes that when a member violated the Agreement, it shall be settled through WTO's original dispute settlement mechanism (Article 63 and Article 64 of the TRIPS Agreement, Part V).

Since developing countries have not been obligated to implement the TRIPS Agreement so far, disputes have mostly been those between advanced countries. However, with the grace period having expired, it is expected that the number of disputes between any given advanced country and developing country would increase, if developing countries fail to comply with their obligations under the TRIPS Agreement.

Therefore, the Asian countries covered by the Survey are asked to develop an intellectual property system and employment procedures.

The TRIPS Agreement has a provision that states that the Council of TRIPS shall monitor Members' compliance with their obligations under the Agreement (Article 68). So far, the Council has conducted reviews of domestic laws and ordinances of advanced countries.

Since the Council for TRIPS is expected to conduct reviews of laws and ordinances of developing countries, including the Asian countries covered by the Survey, they are asked to comply with their obligations under the Agreement, including items now under consideration, at an early date.

It should be noted that if the Asian countries failed to implement the TRIPS Agreement and if

Japanese industry was seriously affected by such failure, Japan would be able to call on such Asian countries to implement the Agreement at the reviews of laws and ordinances by the Council for TRIPS or through the use of the dispute settlement mechanism of the WTO.

8 About Prioritizing Countries

Although most of the Asian countries covered by the Survey have almost completed the establishment of an intellectual property system, many of the problems still remain.

However, even if a country does not have an established intellectual property system, its impact on Japanese industry may be minimal. Therefore, when we consider the problems that have to be tackled in the Asian countries, it is necessary to study them on a country-by-country basis, taking into account their impacts, etc. on the Japanese economy.

The problems concerning the implementation of the TRIPS Agreement by the Asian countries can be classified into the following:

- ① Intellectual property system yet to be established,
- ② Establishment procedures for and employment of intellectual property rights yet to be established, and
- ③ Enforcement procedures for and employment of intellectual property rights yet to be established.

That intellectual property systems have yet to be established in some of the Asian countries has something to do with the fact that such countries are not members of various international treaties, including the TRIPS Agreement. Therefore, it is extremely important for such Asian countries to join various international treaties in order to make perfect the establishment of legal systems for intellectual property in such countries and at the same time to secure proper protection for the intellectual property of foreigners.

Although most of the Asian countries covered by the Survey have completed the establishment of intellectual property systems, it is also necessary for them to prepare a system of procedures for establishing rights and a system to employ such a system appropriately, since application and examination are required in the case of establishing patent and other industrial property rights. It is, therefore, extremely important for the Asian countries to establish intellectual property systems, including implementation bylaws, and their employment procedures.

Moreover, the procedures for enforcement and employment of intellectual property rights,

including a judicial system necessary for accurate execution of intellectual property rights, are not sufficient in many of the Asian countries covered by the Survey. Therefore, it is also extremely important for the Asian countries to establish procedures for enforcement and employment of intellectual property rights.

Since the actual situation of the Asian countries differs from one country to another and Japanese industries' awareness of problems also differs by country, it is necessary to conduct detailed studies of the intellectual property systems comprehensively by fully taking the differences into consideration and to prioritize the countries by problems.

9 Conclusion

The Council for TRIPS, which administers the TRIPS Agreement, is required to hold discussions to review the implementation of the Agreement. Specifically, it will review not only those provisions whose reviews are mandatory, such as ① the provision concerning the protection of geographical indications (Part II, Section 3) and ② the provision concerning the protection of patents for biotechnology-related inventions (Article 27), but also the Agreement itself (Article 71). The review designed to amend the TRIPS Agreement is scheduled to start after January 1, 2000, or after the grace period for developing countries to implement the Agreement expires. And studies on "TRIPS Agreement and Competition" and others have already begun.

Since the problem of protection of intellectual property has a close bearing on other legal systems, it is hoped that there will be wide-ranging discussions on the problem including not only problems peculiar to intellectual property but also its bearings on other systems. Proper protection of intellectual property cannot be achieved until the Asian countries covered by the Survey establish not only intellectual property systems but also other legal systems, such as civil codes, codes of civil procedures and competition laws.

Since Japan's experiences would be helpful for other Asian countries in establishing various legal systems and employment procedures, Japan is being asked to extend wide-ranging cooperation to the Asian countries' efforts to establish various systems and employment procedures.

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TABLE 1: INTELLECTUAL PROPERTY SYSTEMS IN ASIAN COUNTRIES

Legend: ○ International convention : concluded ; Domestic law : An independent law exists △ Application of a law of another domestic law x No legal protection

	CHINA	HONG KONG	SOUTH KOREA	TAIWAN	THAILAND	INDONESIA	PHILIPPINES	MALAYSIA	SINGAPORE	INDIA	VIETNAM
Convention establishing the WIPO	○ 1980	※	○ 1979	x	○ 1989	○ 1979	○ 1980	○ 1989	○ 1990	○ 1975	○ 1976
Paris Convention	○ 1985	○ 1997	○ 1980	x	x	○ 1950	○ 1965	○ 1989	○ 1995	○ 1998	○ 1948
Berne Convention	○ 1992	※	○ 1996	x	○ 1931	○ 1997	○ 1951	○ 1990	○ 1998	○ 1928	x
Universal Copyright Convention	○ 1992	※	○ 1987	x	x	x	○ 1955	x	x	○ 1958	x
PCT	○ 1994	※	○ 1984	x	x	○ 1997	x	x	○ 1995	○ 1998	○ 1993
Budapest Treaty	○ 1995	※	○ 1988	x	x	x	○ 1981	x	○ 1995	x	x
Joining to WTO	x	○ 1995	○ 1995	x	○ 1995	○ 1995	○ 1995	○ 1995	○ 1995	○ 1995	x
Patent Law	○ Enforced amended law in 1993	○ Enforced amended law in 1997	○ Amended law in 1999	○ Enforced amended law in 1994	○ Enforced amended law in 1989	○ Enforced amended law in 1997	○ Enforced IP law in 1998	○ Enforced amended law in 1985	○ Enforced amended law in 1986	○ Enforced amended law in 1999	○ Enforced Civil Code in 1998
Trademark Law	○ Enforced amended law in 1993	○ Enforced amended law in 1998	○ Amended law in 1998	○ Enforced amended law in 1988	○ Enforced amended law in 1992	○ Enforced amended law in 1997	○ Enforced IP law in 1998	○ Enforced amended law in 1987	○ Amended law in 1999	○ Enforced amended law in 1986	○ Enforced Civil Code in 1998
Design Law	△ (Patent Law)	○ Enforced amended law in 1997	○ Amended law in 1998	△ (Patent law)	△ (Patent law)	x	○ Enforced IP law in 1998	○ Enforced Amended law in 1999	△ (British law)	○ Amended law in 1970	○ Enforced Civil Code in 1998
Copyright Law	○ Enforced in 1991	○ Enforced amended law in 1997	○ Amended law in 1996	○ Amended law in 1998	○ Enforced amended law in 1995	○ Enforced amended law in 1997	○ Enforced IP law in 1998	○ Amended law in 1999	○ Amended law in 1998	○ Amended law in 1984	○ Enforced Civil Code in 1998
Prevention of Unfair Competition Act	○ Enforced amended law in 1993	△ (Common law)	○ Enforced amended law in 1999	○ Amended law in 1999	△ (Criminal law, Civil and commercial laws)	△ (Civil law, Criminal law)	○ Enforced IP law in 1998	(Common law, Trade descriptions act)	△ (Common law, etc.)	△ (Common law)	x
Trade Secret Law	△ (Prevention of unfair competition act)	△ (Common law)	○ Amended law in 1999	○ Enforced in 1998	△ (Criminal law, Civil and commercial laws)	x	x	△ (Common law)	△ (Common law, etc.)	△ (Common law, etc.)	x
Computer Program Law	○ Enforced amended law in 1991	△ (Copyright law)	○ Amended law in 1999	△ (Copyright law)	△ (Copyright law)	△ (Copyright law)	○ (copyright law in IP law)	△ (Copyright law)	△ (Copyright law)	△ (Copyright law)	○ Enforced Civil Code in 1998
Semiconductor Chip Act	x	○ Enforced in 1994	○ Enforced amended law in 1995	○ Enforced in 1998	x	x	x	○ Enforced in 1999	○ Enforced in 1999	x	x

※ In Hong Kong, returned to China, these treaties continue to have legal applicability.

This table was specially prepared by the Committee on Asian Intellectual Property of the Institute of Intellectual Property, in March 2000

TABLE 2 : COMPARISON OF INTELLECTUAL PROPERTY SYSTEMS IN INDIVIDUAL COUNTRIES AND THE TRIPS AGREEMENT

		CHINA	HONG KONG	SOUTH KOREA	TAIWAN	THAILAND	INDONESIA	PHILIPPINES	MALAYSIA	SINGAPORE	INDIA	VIETNAM	
Patent right	Patentable subject matter [27]	○	○	○	○	○	○	○	○	○	△	○	
	Rights conferred [28]	(1)	○	○	○	○	○	○	○	○	○	○	○
		(1)(2)	○	○	○	○	○	○	○	○	○	×	○
	Restriction on enforcement of right	(1)a	○	○	○	○	○	○	○	○	○	×	○
(1)b		○	○	○	○	○	○	○	○	○	○	○	
Design right	Restriction on enforcement of right [30,31]	○	○	○	○	○	○	○	○	○	△	○	
	Term of protection exceeding 20 years from filing date [33]	○	○	○	○	○	○	○	×	○	×	○	
Trademark right	Requirements for protection [25]	○	○	○	○	○	○	○	○	○	○	○	
	Protection [26]	Scope and restriction of right (1)(2)	○	○	○	△	○	×	○	○	△	○	○
		Term of protection exceeding 10 years (3)	○	○	○	○	○	○	○	○	○	△	○
Copyright	Protectable subject matter [15]	Unknown	Unknown	○	○	×	○	○	Unknown	○	Unknown	○	
	Rights conferred [16]	(1)	○	○	○	○	○	○	○	○	×	○	
		(2)(3)	○	△	○	○	△	○	○	○	△	△	○
	Term of protection exceeding 7 years, and renewal [18]	○	○	○	○	○	○	○	○	○	○	○	
Request for use [15](3),(19)	○	○	○	○	○	○	○	○	○	○	○		
Protection of geographical indications	[22](1)(2)	○	○	○	○	×	○	○	○	○	×	○	
	(3)	○	○	○	○	○	○	○	○	○	×	○	
Neighbouring copyright [14]	Refusal of the registration of a trademark	○	○	○	○	○	○	○	○	○	○	○	
	Protection of computer software [10]	○	○	○	○	○	○	○	○	○	○	○	
	Rental rights [11]	○	△	○	○	△	○	○	○	○	△	○	
	Term of protection exceeding 50 years [12]	○	○	○	○	○	○	○	○	○	△	○	
Neighbouring copyright [14]	Protection of performer (1)	○	○	○	×	○	○	○	Unknown	○	○	×	
	Protection of record producer (2)	○	○	○	×	○	○	○	○	○	○	○	
	Protection of broadcasting business (3)	○	○	○	×	○	○	○	○	○	○	○	

TABLE 2 : COMPARISON OF INTELLECTUAL PROPERTY SYSTEMS IN INDIVIDUAL COUNTRIES AND THE TRIPS AGREEMENT (continued)

	CHINA	HONG KONG	SOUTH KOREA	TAIWAN	THAILAND	INDONESIA	PHILIPPINES	MALAYSIA	SINGAPORE	INDIA	VIETNAM
Semiconductor chip	Protection of circuit design [35]	○	○	○					○		
	Semiconductor chip and product [36,37]	x	○	○	x	x	x	x	○	x	△
	Term of protection exceeding 10 years [38](1)a		○	○	○				○		
Protection of undisclosed information	[39]	○	○	○	△	x	△	△	△	△	△
Fair and equitable procedures	[42]	○	○	○	Unknown	Unknown	○	○	Unknown	○	△
Injunctions	[44]	○	○	○	○	○	○	○	○	○	○
Damages	[45]	○	○	○	○	○	○	○	○	○	○
Other remedies	[46]	○	○	○	○	Unknown	○	○	○	○	x
Right of information	[47]	○	○	○	○	○	○	○	○	○	x
Enforcement	Suspension of release by customs authorities	[51]	△	○	△				○	○	△
	Application	[52]	○	○	○				○	○	△
	Security or equivalent assurance	[53]	○	x	○	△			○	○	△
	Special requirements related to border measures	[56]	○	x	○	△	x		○	○	△
	Right of inspection and information	[57]	△	Unknown	○	△			○	○	△
	Ex officio action	[58]	○	○	○	△			○	○	△
Criminal procedures	Remedies	[59]	○	○	○	△			○	○	△
	[61]	○	○	○	○	○	○	○	Unknown	○	△

Note: In the provisions of the TRIPS Agreement in the column at left, numbers in brackets and parentheses indicate the number of the clause. (Example: [27](1) indicate Article 27, Section 1.)

This table was specially prepared by the Committee on Asian Intellectual Property of the Institute of Intellectual Property, in March 2000