VIETNAM:
SEIZING THE OPPORTUNITIES OF NEW-GENERATION FREE TRADE AGREEMENTS

A joint event organized by the Ministry of Industry and Trade, and the World Bank

SUMMARY RECORD

September 5, 2016
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Vietnam is among twelve Pacific Rim economies that have recently reached agreement to strike the most comprehensive trade pact seen anywhere in two decades, the Trans-Pacific Partnership (TPP). Representing some 40 percent of global GDP and covering 30 percent of global merchandise trade, the TPP is the most ambitious and comprehensive trade agreement concluded to date. Vietnam has also recently concluded Free Trade Agreement negotiations with the European Union (EVFTA). Not only containing traditional market access issues in goods, trade services, and investment, both agreements also cover new areas either not covered by or going much deeper than the World Trade Organization (WTO). Moreover, the new agreements set international rules that will have stronger impacts on Vietnam’s domestic policies and institutions than any FTAs in the past.

Vietnam has gained much from the adoption of trade liberalization and international integration, which has helped not only to boost economic growth, export, employment, and investment but also to catalyze domestic reforms. Despite commendable progress, the country remains at an early stage of development and is now grappling with the difficult transition to middle income country status. Participation in the TPP and EVFTA provides Vietnam with the opportunity to continue its rapid growth pathway and to enhance national competitiveness. However, these agreements also carry significant risks and, without careful implementation of commitments, many of the benefits might pass the country by.

The core part of getting the most out of any trade agreement is implementation. This is especially challenging in a transitional economy such as Vietnam, where there remains a sizable gap between international commitments and domestic laws and regulations. The strong focus in these so-called new-generation agreements will require major effort on Vietnam’s parts to fully implement significant behind-the-border commitments. This is likely to involve not only significant work to review, revise legislative regulations and institutional frameworks but also structural changes that cut across a broad range of economic sectors.

The World Bank Group is committed to helping Vietnam make the most of its international trade agreements. This event is one part of a broader program aiming to ensure that Vietnam continues to achieve rapid rates of economic growth, generates shared prosperity and creates high quality jobs for the country’s youthful population in a sustainable manner. Specially, the objective of the event is to improve common understanding among key stakeholders on the challenges, opportunities and risks Vietnam faces as the country deepens international integration to maximize net benefits brought about by new free trade agreements.
ACKNOWLEDGEMENT

This Summary Record documents the materials which were presented at the workshop “Vietnam: Seizing the Opportunities of New-Generation Free Trade Agreements” in Hanoi on June 15, 2016. The event was attended by some 400 participants from development partners, international organizations, government agencies, the private sector, academia and the media. The objective of the workshop was to improve understanding among key stakeholders on the challenges, opportunities and risks that Vietnam faces as it implements these new free trade agreements, and so is the objective of this Summary Record.

The event was coordinated by a joint team, including Pham Minh Duc, Richard Record and Julian Clarke from the World Bank; and Luong Hoang Thai and Ngo Chung Khanh from the Ministry of Industry and Trade. Overall guidance was provided by World Bank Practice Manager Mona Haddad and Vice Minister Tran Quoc Khanh.

The team would like to express sincere thanks to Deputy Prime Minister Vuong Dinh Hue and World Bank Regional Vice President Victoria Kwakwa for their participation and opening remarks to the event.

The event could not have been a success without the contributions of a large number of technical specialists. These include Tran Quoc Khanh (Vice Minister, Ministry of Industry and Trade), Mona Haddad (Practice Manager, World Bank), Nguyen Khanh Ngoc (Vice Minister, Ministry of Justice), Vu Tien Loc (Vietnam Chamber of Commerce and Industry), Nguyen Thi Thu Trang (Vietnam Chamber of Commerce and Industry), Richard Record (World Bank), Nguyen Anh Son (Ministry of Industry and Trade), Nguyen Thi Xuan Thuy (Ministry of Industry and Trade), Nguyen Do Anh Tuan (Institute of Policy and Strategy for Agriculture and Rural Development), Le Tien Truong (Vietnam National Textile and Garment Corporation), Pham Thi Hong Yen (Party Central Committee’s Economic Commission), Chunlin Zhang (World Bank), Gerard McLinden (World Bank), Nguyen Thang (Vietnam Academy of Social Sciences), Nguyen Dinh Cuong (Central Institute of Economic Management) and Sjamsu Rahardja (World Bank). The workshop also benefited from the logistical and administrative support of Tran Thi Thanh Thuy (Ministry of Industry and Trade), Pham Thi Hai Yen (Ministry of Industry and Trade) and Bui Thi Phuong Nga (World Bank).
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ABBREVIATIONS

APEC  Asia-Pacific Economic Cooperation
AFTA  ASEAN Free Trade Area
ASEAN  Association of Southeast Asian Nations
ASEM  ASEAN Europe Meeting
ASW  ASEAN Single Window
ATIGA  ASEAN Trade in Goods Agreement
B2B  Private-to-Private sales
CMT  Cut make & trim
CPS  Country Partnership Strategy
Database  Trade in Value-Added Database
E&E  Electronics and Electrical Equipment
ESCAP  Economic and Social Commission for Asia and the Pacific
ETI  Enabling Trade Index
EVFTA  European Union – Vietnam Free Trade Agreement
FDI  Foreign Direct Investment
FTA  Free trade agreement
G2G  Government-to-Government
GATT  General Agreement on Tariffs and Trade
GDC  General Department of Vietnam Customs
GDP  Gross Domestic Product
GP  Government procurement
GVC  Global value chain
HCMC  Ho Chi Minh City
ICT  Information and Communication Technology
IP  Intellectual property
IPR  Intellectual Property Rights
IWT  Inland Waterway Subsector
LPI  Logistics Performance Indicator
LSCI  Liner Shipping Connectivity Index
MARD  Ministry of Agriculture for Rural Development
MNCs  Multi-national Corporations
MOF  Ministry of Finance
MOFA  Ministry of Foreign Affairs
MOH  Ministry of Health
MOIT  Ministry of Industry and Trade
MOST  Ministry of Science and Technology
MOT  Ministry of Transport
MPI  Ministry of Planning and Investment
1. Introduction
Vietnam has reached agreement to join the Trans-Pacific Partnership (TPP). Representing some 40 percent of global GDP and covering 30 percent of global merchandise trade, the TPP is the most ambitious and comprehensive trade agreement concluded to date. Vietnam has also recently concluded Free Trade Agreement negotiations with the European Union (EVFTA). Not only containing traditional market access issues in goods, trade services, and investment, both agreements also cover new areas either not covered by or going much deeper than the World Trade Organization (WTO). Moreover, the new agreements set international rules that will have stronger impacts on Vietnam’s domestic policies and institutions than any FTAs in the past.

The country’s enthusiasm for these agreements has been motivated by the fact that while Vietnam has gained much from trade liberalization and international integration, there remains a long way to go. Participation in the TPP and EVFTA provides Vietnam an opportunity to continue its rapid growth and to enhance national competitiveness. However, these agreements also carry significant risks that need to be mitigated.

The World Bank Group is committed to helping Vietnam make the most of these trade agreements. In organizing the Conference “Vietnam: Seizing the Opportunities of New-Generation Free Trade Agreements”, on June 15th, 2016 in Hanoi, its objective is to improve understanding among key stakeholders on the challenges, opportunities and risks Vietnam faces as it implements these new free trade agreements.

This report summarises the key issues discussed during the conference, highlighting key points raised and conclusions reached. Arising from these, recommendations are made to enable Vietnam to avoid the risks and maximize the benefits of New-Generation Free Trade Agreements.

2. Vietnam’s readiness to implement new FTAs
Regardless of possible delay in ratification by TPP members and EVFTA progress, Vietnam is determined to implement these new FTAs. Joining TPP and EVFTA is expected to boost domestic reforms and enhance trade competitiveness. Among stakeholders, state bodies appear ready in legal assessment and road-mapping. However, their capacity in policy analysis to identify broader issues and impacts for policy formulation and implementation monitoring would need to be strengthened. Further, while Vietnamese enterprises, another important group of stakeholders, are supportive of the FTAs and have made initial plans to take advantage of the TPP and EVFTA, they have inadequate capacity to do so for these FTAs and especially TPP. Many do not fully understand the commitments, are not able to assess the impacts of the commitments on their businesses, and therefore unable to select appropriate options. A capacity building plan should be developed and implemented if Vietnam wants to take advantage of and mitigate risks associated with the new FTAs.

Vietnam signed the TPP on Feb 4th, 2016. Although each TPP member has two years to institute legal procedures to ratify the Agreement, Vietnam is likely to ratify by August 2016, given broad consensus among major stakeholders. Vietnam and EU concluded the negotiation for EVFTA in November 2015. Both parties have already published the text and are conducting legal reviews of the Agreement. Upon conclusion of this process, the Agreement is expected to be signed in late 2016. Nevertheless, Brexit might delay EVFTA progress.

The implementation phases of both FTAs are:

- **Phase 1: Ratification and awareness raising** (about six months) when legislative and other plans are identified, and Vietnamese stakeholders gain familiarity with TPP/EVFTA.

- **Phase 2: Pre-implementation** (about two years). The preparation for TPP/EVFTA implementation starts with legal changes implemented, some markets opened. Broad issues are identified and roadmaps and plans set up.
• **Phase 3: Full Implementation** *(10+ years)*. Full market opening and implementation of commitments on Intellectual Property Rights (IPRs), Government procurement (GP), State-owned enterprises (SOEs), labour, investment, E-commerce, customs and trade facilitation, subsidies, etc.. *(Figure 1)*

With respect to Phase 1, stakeholders (State bodies, business communities and the public at large) in Vietnam have already started their preparation for implementation of the two FTAs. MOIT has also been holding workshops and seminars to disseminate knowledge of the two FTAs. Handbooks on specific issues of the two FTAs are being published. In industry, the Vietnam National Textile and Garment Group (VINATEX) has been disseminating information on the two FTAs to enterprises, helping them to prepare their own competitiveness analysis to choose the right strategy and relevant products.

For Phase 2, an initial assessment by the Ministry of Justice finds that modifications of laws to comply with TPP and EVFTA are manageable, intellectual property and labor laws requiring the most work. Implementation especially with respect to dispute settlement for EVFTA also poses particular challenges.

**Figure 1: Action plan for implementation of FTA**


Phase 3 will involve development of government action plans to implement the two FTAs. In industry, Vietnamese enterprises are supportive of the FTAs and made initial plans to take advantage of the TPP and EVFTA. But they have inadequate capacity, ready for the FTAs and especially TPP. A large number of them do not fully understand the commitments, are not able to assess the impacts of the commitments on their businesses, and therefore unable to select appropriate options.

Beyond this challenge are several others, the severity of which is not fully recognized as follows. Most of the steps the government has taken so far have been to ensure compliance, with little effort to leverage the Agreements’ provisions to Vietnam’s benefit. With tariffs reduced rapidly, local firms producing import-substituting goods, as well as other firms, will face much stiffer competition. Much of the gains are dependent on rules of origin (RoO), especially in apparel within TPP, which will likely involve more expensive intermediate inputs from TPP members rather than from current non-members sources. Some commitments like labor rights, environmental standards; IPR enforcement, and trade facilitation terms will be difficult to comply with. Any delay in implementation of the FTAs will disadvantage Vietnamese producers vis-a-vis their competitors. The benefits brought by TPP and EVFTA may dissipate if Vietnam’s competitors join TPP or sign new FTAs with EU.

In light of the above threats to the potential benefits from Vietnam’s participation in these FTAs, the government should act swiftly and decisively to mitigate these threats. Measures enacted should move beyond compliance to leverage benefits by creating a conducive environment for FTA implementation while cushioning against potential negative impact. Specific focused areas would
include: (i) Regulatory reforms in the areas covered by the FTAs, e.g., trade barriers, labor and environmental standards; (ii) Strengthening institutions through revitalizing existing institutions and establishing new ones if needed; and (iii) Operational/administrative changes in management, staffing, budgeting, and information technology support.

Various support modalities such as: (i) analytical support; (ii) technical assistance; (iii) capacity building; (iv) financial support; and (v) regulatory and institutional coordination will be needed in all phases of FTA implementation. International donor assistance can be sought for these.

3. Moving up the value chain and industrial upgrading

The fact that Vietnam’s exports are highly dependent on imported materials coupled with the TPP’s restrictive rules of origins could limit Vietnam from maximizing the TPP / EVFTA’s benefits. This challenge in turn creates a great opportunity for industrial restructuring toward integration into GVCs and the development of ancillary industries in Vietnam. Looking forward, Vietnam will need to develop well-functioning clusters of selected industries to gain further comparative advantage and enhance the capacity of SMEs to effectively participate in supply chains led by MNCs.

Under TPP and EVFTA, Vietnam’s tariff and non-tariff barriers will be reduced significantly, with the largest reduction for apparel, textiles, and food products. Greater competitive advantage for exports of these products will increase their export market shares.

Foreign direct investment (FDI) are also expected to rise, especially in upstream industries of garment and footwear, boosting supporting and other new domestic industries. Enterprises, especially small- and medium-size enterprises (SMEs) will be promoted, linking to FDI firms along the value chain.

However, Vietnam’s ability to take advantage of these opportunities is dampened by the fact that sectors such as garment, footwear, raw coffee, seafood, rice, and cashew nut are clustered in segments with the lowest value added of the global value chains (GVCs), relying on cheap low- or semi-skilled labor. SMEs also do not produce to international quality, speed and scale standards. Investment and R&D is insufficient. Production efficiency is low, competitiveness of many SMEs remains weak, hygiene and food safety are still a problem. Well-functioning clusters are absent.

Despite increasing integration of a few sectors like textiles and clothing into the GVC, domestic firms lack linkages with their foreign FDI counterparts. As a result, spillover benefits from GVCs and FDI to domestic firms are modest.

Yet, existing export sectors like garments are expected to remain strong economic drivers for Vietnam even in the medium term. The new FTAs have the potential to provide incentives for value creation and upgrading domestic industries through (i) FDI attraction and spillovers; (ii) local manufacture upgrading from pro-active participation in GVCs, eventually turning GVC participation into sustainable development; and (iii) restructuring of domestic value chains to increase domestic value added and move up the value chain.

How can this occur? Measures to move up the value chain and upgrade industries should focus on, among other things: (i) Capacity building for local enterprises through upgrading standards, technology and skills, thereby enhancing capacity to take advantage of preferences and provisions like RoO; (ii) Human resource development for industry, through closer linkages between industry and training institutions, improve technical and vocational education and training (TVET)/technical training, and skills upgrading; (iii) Provision of public services to support FTA implementation, trade and investment promotion through agencies to support businesses master latest management techniques and strengthening domestic distribution networks; (iv) Attraction of strategic FDI, especially technology-intensive ones; and (v) Restructuring of major supply chains like garments to capture more value-added segments.

4. Leveling the playing field and facilitating trade

Challenges aplenty confront efforts to level the playing field for private firms, mostly small, in the informal sector, and no match for the dominant state enterprises. Progress towards engendering a competitively neutral business environment has been slow and halting. Implementing these FTAs can hasten reform in this direction.
Trade facilitation and logistics performance improvement also face headwinds mainly in border management and trading across borders. Implementation of both FTAs’ trade facilitation provisions would help realize all modern trade facilitation principles.

**Levelling the playing field**

Vietnam’s state-owned enterprises (SOEs) have always dominated the enterprise landscape, accounting for a third of GDP; and with private firms small, young and largely in the informal sector, the playing field is far from level. While much effort has gone into improving the business environment, private enterprises continue to face daunting challenges. These include land access favoring SOEs which also enjoy subsidies, generous equity financing, favorable debt financing terms.

Moving away from this historical legacy and embracing a new regime of competitive neutrality can be a long journey and may require tough reform actions. Vietnam’s business environment has become more favorable, but the improvement has been slow. Despite being ranked medium in the Global Competitive Index and the Ease of Doing Business Index, not much improvement has been shown over time.

The reasons for slow progress are several. Firstly, the intervention is more of control than facilitation for businesses. Secondly, the law enforcement is inadequate, with a gap between the legislation and its implementation. Thirdly, coordination among stakeholders is weak, while accountability is opaque. Last, many legislations have loopholes leaving inefficiencies unchecked.

This slow progress dampens entrepreneurship, reduces effectiveness and efficiency of many government programs to support businesses and impedes the creation of a level playing field. The TPP and EVFTA offer opportunities for rectifying this undesirable situation through three main commitments: (i) Non-discrimination and commercial considerations; (ii) prohibition of non-commercial assistance; and (iii) impartial regulator/access to civil courts.

**Facilitating trade**

Improving trade facilitation and logistics performance resulting in time and cost saving is a key to productivity and competitiveness improvement. But several challenges affect trade facilitation and logistics performance in Vietnam – both in hardware and software. The weakest areas are border management (customs and other border agency procedures) and trading across borders.

Commitments on customs and trade facilitation under TPP, EVFTA are represented by the Trade Facilitation Agreement (TFA) plus under WTO, and go further than WTO provisions. Being fully consistent with ASEAN and APEC, implementation of both FTAs’ trade facilitation provisions presents a strong opportunity for realizing all modern trade facilitation principles. These principles include a balance between control and facilitation, continuous improvement, informed compliance, intervention as an exception rather than a rule, collaboration between agencies and across borders, clear measures of performance, and focus on trade supply chain needs.

The discussion above suggests that an equitable and facilitating business environment that drives productivity and private sector development has hitherto been hampered by SOE privileges in land use, government equity and debt financing, subsidies. Further, the weakest areas adversely affecting the business environment are institutions, infrastructure, higher education and training, innovation and technology, and the financial market. The first three areas have been well recognised and targeted as the three breakthroughs in the Social-Economic Development Strategy 2011-2020, but the progress has been moderate. Improvement of the business environment is thus vital.

**Recommendations**

Levelling the playing field and facilitating trade requires implementing the following recommendations.

- To promote private sector development, Vietnam should take a competitiveness-oriented approach, not compliance-oriented one when implementing the TPP and EVFTA commitments.
- Three focus areas for policy makers are: (i) Before the border – improving market access, trade policy reform (including NTMs) and tariff liberalisation; (ii) at the border - regulatory and procedural harmonisation and simplification, automation and institutional reform of border...
management agencies; and (iii) behind the border – improving business and investment climate and trade and transport infrastructure through three strategic breakthroughs (improving institutions, infrastructure and human resource), dealing with supply side constraints, allowing more foreign competition in services and finance).

- The state sector (both state bodies and SOEs) should be reformed radically. The role of the government and the market in the economy should be clearly re-defined toward letting market to function in the areas without market failure, gradually removing commanding and administrative measures; turning the role of the government from controlling into facilitating. SOE privileges in land use and access to financing and subsidies should be abolished. This process is ongoing but still slowly and lags behind, instead of leading the reforms.

- Mechanisms and policies to enhance access to resources and markets for businesses through the development of financial market, labour market, science-technology market, and land market should be improved.

- Capacity building for government and businesses to seize opportunities brought by the FTAs should be speeded up.

- Coordination among stakeholders should be strengthened.

5. Minimizing risks

The reforms of Doi Moi and subsequent structure change were key drivers of inclusive growth in Vietnam. The TPP can potentially facilitate further structural change, but may also run the risk of widening the income distribution. The rapid expansion of labor-intensive manufacturing industries may also run further risks to social protections of labor as well as the environment. Ensuring that Vietnam’s enterprises meet other standards under the TPP and EVFTA can work to reduce such risks, including those stipulated in the labor and the environment chapters of these trade agreements. Doing so will require important domestic reforms. Meeting the labor standards will involve politically sensitive changes to labor laws and practices, primarily in the area of freedom of association. The Environment Chapter provides much flexibility and autonomy in domestic implementation, but Vietnam should nonetheless expect to modify or establish their domestic environmental legislations and institutions.

Ensuring Inclusive growth

Vietnam’s economic reforms since Doi Moi in 1986 has produced impressive achievements in its socio-economic development. Some 30 million Vietnamese people were lifted out of poverty in relatively short time span of less than two decades, highlighting the inclusiveness of the country’s growth performance. Overall, Vietnam’s level of inequality is in line with its level of development; Vietnam ranks in the middle – 17th out of 34 countries – of the World Economic Forum’s overall inequality ranking for lower middle income countries (WEF 2015).1 Despite negative gains during the global financial crisis of 2008-09, Vietnam witnessed improvements in the income distribution with income growth through 2012.

A lower-middle class has emerged in the process. The population share of the lower middle class (living on a per capita income of between US$4-10 per day) grew rapidly from only 28.4% in 2004 to 47.8% in 2012, becoming the largest group of population in 2012. Meanwhile, the population shares of the poor and near-poor groups living on less than US$4 declined.

While Doi Moi can be credited with Vietnam’s impressive and inclusive growth, the recent growth slowdown, has resulted in slower improvements of the inclusive growth index. While the worsening external environment linked to the 2008 global economic crisis is a factor, so is the spate of internal problems. Major reforms implemented in early years of Doi Moi have also run out of steam. In addition, WTO accession has not been complemented with sufficiently bold domestic reforms, making the economy more vulnerable to external shocks, and deepening inherent structural weaknesses.

The TPP and EVFTA will have consequences for continued inclusive growth in Vietnam. On the

1 Vietnam is ranked 1st out of 36 lower-middle-income countries on the sub-index of employment and labor compensation, and 4th on the sub-index of labor compensation (WEF 2014).
positive side, accelerated movement of workers out of agriculture to manufacturing and services will lead to formalization of the labor market with further expansion of labor-intensive manufacturing industries such as textile and garment, footwear, electronics etc. SOE reform and other TPP-linked behind the border reforms will create a more level playing field, benefiting SMEs, which are the main source of employment in Vietnam. On the negative side, sectors that are important for inclusive growth may be impacted, for example by increasing competition for farmers engaged in livestock. The rapid expansion of labor-intensive manufacturing industries may also run further risks to social protections of labor as well as the environment. Ensuring that Vietnam’s enterprises meet other standards under the TPP and EVFTA can work to reduce such risks, including those stipulated in the labor and the environment chapters of these trade agreements.

Social Protection and Labor

Meeting labour standards will be a challenge for Vietnam in TPP implementation. Both the TPP and EVFTA require the protection of a range of workers' rights, including freedom of association; elimination of forced labor; effective abolition of child labor; and elimination of discrimination in employment. Vietnam must undertake most of these reforms before the TPP enters into force between the two countries. The substance of the labor provisions is in the sustainable development chapter of the trade agreement with the European Union covers worker rights as well as environmental protection.

The labor standards chapter in the Trans-Pacific Partnership, even more than the terms of the EVFTA. It is an important one for Vietnam because full access to the US market depends on implementing it to the satisfaction of US authorities. But for Vietnam, meeting the labor standards will involve politically sensitive changes to current labor laws and practices, primarily in the area of freedom of association.

Environment

One of the greatest environment risks stemming from TPP-induced growth is in the textile and apparel sector. Rapid growth of manufacturing without adequate environmental protection can produced damaging effects on the environment and ultimately long-term growth and development.

To comply with the TPP's yarn-forward rules of origin, there will be a need to restructure the textile and apparel sector toward backward integration domestically. But creating a domestic textile sector has large environmental risks. All the investments in textile manufacturing—particularly the dyeing and finishing of fabric—have an enormous environmental impact. Textile manufacturing is not only extremely water-intensive, using up to 250 tons of water for every 10,000 meters of fabric produced, but also discharges extremely high volumes of wastewater and pollutant load. The textile industry also uses a large variety of toxic chemicals in manufacturing. The risk is that Vietnam could become one of the largest consumers of textile chemicals in the world (approximately 25 percent of the chemicals manufactured globally are used in the textile industry). Hence, Vietnam will need to have wise policies for choosing advanced technology and environmental FDI to upstream and ancillary industries. This is in compliance with the TPP, where consultation and dispute resolution are available for Parties to address any matter arising under the Environment Chapter, which provides much flexibility and autonomy in domestic implementation. Even with such flexibility and autonomy, Vietnam should nonetheless expect to modify or establish their domestic environmental legislations and institutions, although the extent of such an exercise would depend heavily on the existing legislations and institutions in Vietnam.

6. Other issues

Obligations set forth in other chapters of the TPP and EVFTA will require amendments to Vietnam’s existing legal framework. Notably are chapters on intellectual property rights and dispute settlement, both of which go beyond other prior bilateral and regional trade agreements.

Regarding intellectual property, both the TPP and EVFTA have strong provisions for IPR, and well beyond TRIPs provisions. There exist significant gaps as well as areas of discrepancy between these requirements and the current Vietnamese IP legislative framework, which will require major amendments of the current Vietnamese regulatory and institutional framework. The main Vietnamese legislative provisions that would require amendment relate to membership in international agreements, transparency, trademarks, geographical indicators, patents, data protection/exclusivity, copyright, enforcement and Internet service providers.
Regarding dispute settlement, the TPP chapter on dispute settlement covers more issues than previous dispute settlement systems, including the environment, labor, cross-border data flows, and state-owned enterprises. It also does not provide for appeals which may drive parties to take their disputes to the WTO. However it also introduces some new provisions that aim to make it a faster and more transparent system. The EVFTA also contains a chapter setting the rules for the settlement of disputes. Vietnam will have to make institutional and structural adjustments in order to comply with its obligations under the two agreements. The government will need to take measures to improve transparency and the rule of law. Specifically, Vietnam will need to implement new standards for labor and environment.

7. Conclusions
In general, potential benefits brought by the two FTA are huge. Vietnam is projected to be the largest winner in percentage change terms in TPP. TPP plus EVFTA will account for about two thirds of Vietnamese exports and inward FDI. Both trade and FDI increase, but trade rises much more. A part of the gain comes from trade diversion from non-members to members. But to capture these benefits entails considerable effort. As this discussion has shown:

- Willingness among all stakeholders to embrace the TPP and EVFTA can only be translated to readiness if efforts are made to improve the regulatory framework, strengthen institutions, and streamline administrative and organizational processes;
- Capacity building, including human resource development, and the provision of support services should help progressive restructuring of supply chains to capture more value added;
- Levelling the playing field between SOEs and private enterprises through major reforms and better trade facilitation of trade should motivate entrepreneurship and create the needed environment for Vietnamese businesses to compete under the Agreements;
- Measures to minimize the risks associated with the implementation of these Agreements are needed. These risks include adverse impacts on inclusive growth, degradation of social protection and environmental damage;
- Other risks like dispute settlement challenges and protecting intellectual property rights need to be dealt with through accelerating domestic reforms.

In the final analysis, it should be remembered that as important as the FTAs are, the most important factor is the role of Government to reform SOEs, maintain macroeconomic stability, create a favorable business environment which depends less on state control and more on state support and facilitation, all with a view not just to ensure compliance but to leverage the Agreements' benefits.
PRESENTATIONS
Regional and global integration has played a major role in Vietnam’s economic transformation. Largely isolated from international trade and investment flows at the onset of the reforms, Vietnam has become a major destination for inflows of foreign direct investment and a thriving export economy.

Exports have been a major engine of Vietnam’s strong growth record. Having grown at over 20 percent per year since 2000, today Vietnam’s manufacturing exports stand at more than $100 billion today. And the country’s trade to GDP ratio is close to 180 percent, one of the highest in the world. Vietnam has become the second largest exporter of rice and coffee, the top exporter of pepper and cashew, and an important supplier of fish and shellfish. In manufacturing, garment, footwear, and more recently, electronics assembly have grown at extremely rapid rates.

This process of global integration has been underpinned by decisive trade liberalization. From early bilateral agreements, to Vietnam’s landmark accession to the World Trade Organization in 2007, the country has actively engaged in multilateral trade liberalization.

Looking ahead, Vietnam continues to enjoy strong comparative advantages that could propel further foreign investment and export driven growth. Vietnam is among twelve Pacific Rim economies that have recently reached agreement on the most comprehensive trade pact seen anywhere in two decades, the Trans-Pacific Partnership (TPP). The TPP represents some 40 percent of global GDP and covers 30 percent of global merchandise trade. The TPP is the most ambitious and comprehensive trade agreement concluded to date. Vietnam has also recently concluded negotiations for a Free Trade Agreement with the European Union (EVFTA). Making most of these upcoming trade agreements, both in terms of greater market access and the facilitation of domestic reforms presents a key opportunity for Vietnam.

Not only containing traditional market access issues in goods, trade services, and investment, both agreements also cover new areas either not covered by or going much deeper than the WTO: such as e-commerce, labor, environment, small- and medium-sized enterprises, state-owned enterprises and regulatory coherence. Moreover, the new agreements set international rules that will have stronger impacts on Vietnam’s domestic policies and institutions than any free trade agreements in the past.

These new-generation trade agreements are expected to generate considerable benefits for Vietnam in terms of trade, investment, growth and job creation. Preliminary results suggest that TPP could increase Vietnamese incomes by the year 2015 by as much as 8 percent and the EVFTA by as much as 4 percent. Among the current TPP signatories, Vietnam—as the economy with the lowest per-capita GDP—has unique comparative advantages, in particular in labor-intensive manufacturing and in sectors that are currently subject to high tariffs, such as textiles and garments. By enhancing market access in key export markets, the new trade agreements are expected to boost overall trade and to lead to further increases in (already considerable) FDI inflows to build up export capacity, including in upstream suppliers to sectors that are subject to strict rules of origin (e.g. textiles and garment).

However, these agreements also carry significant challenges and, without careful and full implementation of all key commitments, many of the potential benefits might pass the country by. This is especially challenging in a transition economy such as Vietnam, where sizable gaps remain between international commitments and domestic laws and regulations. The strong focus in the TPP and EVFTA on so-called “21st Century” trade policy, including significant behind-the-border commitments will require major efforts on Vietnam’s part to fully implement the agreements. This is
likely to involve significant work to review, revise and adjust legislative texts, regulatory procedures and institutional frameworks that cut across a broad range of economic sectors.

International trade has provided Vietnam with both the opportunity to access international markets, and the capacity to benefit from sophisticated foreign technology and ideas. However, perhaps even more importantly trade has served as a benchmark for measuring Vietnam’s international competitiveness, and as a driver of domestic reforms – unleashing the country’s natural comparative advantages to their full potential.

The World Bank Group is committed to helping Vietnam make the most of the next generation of international trade agreements. This event today is just one part of a broader program aimed at ensuring Vietnam continues to achieve rapid rates of economic growth, generates shared prosperity and creates high quality jobs for the country’s youth, in a sustainable way. Specifically, the objective of today’s event is to assist stakeholders to have a common understanding on the challenges, opportunities and risks Vietnam faces as the country deepens international integration to maximize net benefits brought about by new free trade agreements.
Plenary 1:
Setting the Stage – Vietnam’s readiness to implement its new FTAs
TPP APROVAL REGULATIONS

1. To be effective within 60 days from the date when all the countries notify New Zealand (the main depository country) of the fulfillment of domestic legal procedures for the approval of the Agreement.

2. In case not all countries have completed the domestic legal procedures within 2 years from the date of signature, the TPP Agreement shall be effective within 60 days from the 2 year expiry date if having at least 6 countries, accounting for at least 85% of gross domestic products combined in 2013 completed all the legal procedures from the date.

APPROVAL STATUS OF TPP MEMBER COUNTRIES

<table>
<thead>
<tr>
<th>Country</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Already proposed to the Parliament for the approval procedures, but pending for the new Government</td>
</tr>
<tr>
<td>Brunei</td>
<td>Reviewing legal documents, tentatively proposing to the legislative council in March 2017</td>
</tr>
<tr>
<td>Canada</td>
<td>Consulting with the public and the Parliament, tentatively proposing to the Parliament by the end of 2016</td>
</tr>
<tr>
<td>Chile</td>
<td>Consulting with the Parliament, tentatively proposing for passing by the end of 2016</td>
</tr>
<tr>
<td>Japan</td>
<td>Already proposed to the Parliament, it is likely to be passed in the fall meetings in 2016</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Already proposed to the Parliament to seek permission for joining TPP, but must work on the laws to be revised prior to announcement of the approval time</td>
</tr>
<tr>
<td>Mexico</td>
<td>Already proposed to the Parliament, it is likely to be passed in December 2016</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Already proposed to the Parliament, it is likely to be passed by the end of 2016</td>
</tr>
<tr>
<td>Peru</td>
<td>Proceeding with approval procedures, but not sure about the date because of the election</td>
</tr>
<tr>
<td>Singapore</td>
<td>Proceeding with approval procedures, it is likely to be passed by the end of 2016</td>
</tr>
<tr>
<td>The United States</td>
<td>Consulting with the Parliament, ITC being assessed by TPA, the Government is working on the date to propose it to the Parliament</td>
</tr>
</tbody>
</table>

VIETNAM REGULATIONS ON TPP APPROVAL ACCORDING WITH THE 2005 LAW ON INTERNATIONAL TREATIES

- The negotiating body receives the formal negotiating documents (15 days)
- The negotiating body consults with the MOFA and related bodies (15 days)
- MOFA and related bodies respond to the negotiating body (15 days)
- The negotiating body proposes to the Government to table the State President (15 days)
- The Government tables it to the State President
- The State President submits to the National Assembly for approval
- TPP
THE STATUS OF TPP APPROVAL OF VIETNAM

• On April 28, 2016, in light of the opinions from the Ministry of Foreign Affairs, Ministry of Justice, other related Ministries and bodies, the Ministry of Industry and Trade proposes to the Government for approval of the TPP Agreement.

• In its Resolution No. 33/NQ-CP, dated May 9, 2016, the Government mandates the Ministry of Industry and Trade to take the lead and collaborate with the Ministry of Foreign Affairs, Ministry of Justice, other related Ministries and bodies to refine the Submission Note Proposing the Approval of the TPP Agreement for the Prime Minister to act on be half of the Government to table it to the State President for review and decision, and submit it to the National Assembly for the latter’s approval in the 1st meeting of the National Assembly Session XIV (tentatively from July 20 to Aug. 9, 2016).

• Currently, the Ministry of Industry and Trade is corraborating with the Ministry of Foreign Affairs, Ministry of Justice, other related Ministries and bodies to finalize the Submission Note for the Approval of the TPP Agreement for the Prime Minister to table to the State President in accordance with the 2005 Law on International Treaties.

REGULATIONS ON THE APPROVAL AND THE STATUS OF APPROVAL OF THE EVFTA

• In November 2015, Vietnam and EU formally concluded the negotiation (the negotiation conclusion statement was signed off in the witness of the leaders of both parties).

• Currently, the two parties already published the text and are conducting legal reviews of the Agreement. Upon the review process, the two parties shall proceed with the signing, tentatively in 2016.

• After signing, the two parties shall proceed with the procedures for approval in accordance with their respective procedures.

THE TPP & EVFTA IMPLEMENTATION PLAN

Foreign relations:
• A focal point of contact was appointed in accordance with the Agreements.
• Participation in the Councils and Committees in accordance with the Agreements.

In-country implementation:
• Development of Government action plans.
• Refinement of the legal systems.

Communication and dissemination:
• Development of a separate e-Portal for TPP & EVFTA.
• Nationwide communication and dissemination for all related audience, including State bodies, business communities and the public at large.
LEVERAGING TPP AND EU FTA FOR VIETNAM’S VISION 2035
By Ms. Mona Haddad, T&C Practice Manager, World Bank

VIETNAM’S TRADE AND GROWTH PERFORMANCE

Vietnam’s record of growth and poverty reduction is impressive

The private sector played an important role

- There are over 650,000 domestic private enterprises registered today, compared to 40,000 in 1999 and virtually none in 1990

Growth driven by exports
Most exports are low-tech, but increasing share of hi-tech

<table>
<thead>
<tr>
<th>Resource-based</th>
<th>Primary</th>
<th>Medium-tech</th>
<th>Low-tech</th>
<th>High-tech</th>
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</thead>
<tbody>
<tr>
<td>7%</td>
<td>4%</td>
<td>6%</td>
<td>8%</td>
<td>5%</td>
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<td>18%</td>
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<tr>
<td>0%</td>
<td>0%</td>
<td>0%</td>
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</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Direct VA</th>
<th>Total VA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
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</tr>
</tbody>
</table>

Labor content of exports rising

With strong integration into global value chains
Electronic exports: mainly foreign value added

- Foreign value added share of gross exports
- Domestic value added share of gross exports

But no spillover benefits from GVCs and FDI to domestic firms

- Foreign firms account for 70% of exports, 60% of imports; and 10% of GDP
- Linkages of domestic firms to GVCs and FDI lacking
- SMEs not producing at international level, quality, speed, scale

IMPACT OF TPP AND EV-FTA

Positive effects of mega-agreements

- Percent growth in 2030

- Compared with baseline without agreements in 2030
Lower barriers facing Vietnamese exports

### Shaking up the GVC

- TPP members account for 40% of global GDP and 20% of global merchandise trade and will further increase market access and thus trade among themselves.
- But impact on input sourcing, investment, trade partners:
  - ROOs are likely to make Vietnam use more expensive intermediate inputs from other TPP members than non-members they normally source from;
  - In electronics, around 90 percent of Vietnamese imports of parts of cellular phones come from non-TPP countries in East Asia (China, Korea).
  - TPP tariff reduction will create a competitive advantage for Vietnam over exports of non-members.
  - TPP and non-TPP members likely to invest in Vietnam.

### WHAT NEEDS TO BE DONE?

- TPP and EVFTA: wide coverage beyond trade
- 75% of nonzero tariffs zeroed immediately, 99% eventually
- ROO allows cumulation, more flexible than in past US FTAs
- Services and investment commitments on negative list basis (improvements over GATS)
- Mechanisms to minimize trade impact of SPS and TBT
- Government procurement rules beyond WTO GPA
- Rules for the digital economy: access to networks, no tariffs on digital products, free data transfers
- Intellectual Property protection; Geographic Indications (EVFTA)
- New chapters
  - Trade facilitation (48 hour clearance, express delivery)
  - State-owned enterprises, SMEs
  - Regulatory coherence (transparency, access)
- Binding labor and environmental commitments
THE TPP & EVFTA IMPLEMENTATION PLAN

Regulatory consistency for NTMs

**Priorities:**
- Identify future priorities in coordination with other working groups and committees established under the TPP

**Coordination:**
- Avoid duplication with other institutions with a similar mandate, providing value addition on regulatory cooperation

**Contact Point:**
- Designate and notify contact point to provide information

**Establishment:**
- Committee to meet within one year from the entry into force of the Agreement

**Review:**
- Review performance and mandate every 5 years and recommend improvement

Regulatory impact assessment: avoid unnecessary, costly, non-transparent, discriminatory NTMs

- Assess the need for a regulatory proposal, describing nature and significance of the problem
- Examine feasible alternatives, including their costs and benefits
- Explain the ground for concluding that the selected alternative achieves the policy objectives in an efficient manner
- Rely on the best reasonably obtainable existing information

Intellectual Property: adjustment needed but good for technology adaptation and innovation

**Legislative implications:**
- Detailed legislative gap assessment between the existing Vietnam IP legal framework and the provisions introduced by the TPP and EVFTA

**Institutional implications:**
- The institutional and infrastructural changes that GoV would have to adopt to comply with TPP and EVFTA

**Development implications:**
- The consequences that a TPP/EVFTA-compliant legal framework would have on the Vietnam economy / specific sectors

SOE obligations: more level playing field for commercial activities

**Non-discrimination and commercial considerations**
- SOEs apply commercial considerations except when fulfilling public service mandate

**Prohibition of non-commercial assistance**
- Non-commercial assistance includes:
  - direct transfers of funds or liabilities;
  - goods and services other than general infrastructure on terms more favorable than commercially available

**Impartial regulator/access to civil courts**
- Regulators impartial vis a vis SOEs or private operators from other TPP parties
- Provide public list of SOEs and information on their activities upon request

**Investor-state dispute: protecting investors**
- EVFTA: permanent international tribunal
- TPP:
  - ISDS proceedings fully open and transparent;
  - participation of civil society organizations;
discouraging and dismissing frivolous suits.

Alternative approaches for dealing with investor grievances before they become disputes, while providing investors with the guarantees and aftercare services they need to invest in Vietnam.

**Competition policy: fostering open markets**
- Explicit recognition that effective implementation of trade related commitments requires a pro-competitive environment that fosters open markets and penalizes anticompetitive behavior.
- Parties required to:
  - establish and enforce a procedurally fair and transparent competition law frameworks (Chapter 16);
  - implement the competitive neutrality principle in order to level the playing field between public and private operators (Chapter 17);
  - promote pro-competitive regulatory environments in key sectors such as telecommunications (Chapter 13), financial services (Chapter 11), public procurement (Chapter 15).

**IMPLEMENTATION PROCESS**

**FTAs implementation**

<table>
<thead>
<tr>
<th>6 Months: Awareness Raising</th>
<th>2 Years: Pre-Implementation</th>
<th>10+ Years: Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLAN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ratification: legislative and other plans identified</td>
<td>Entry into force: Most legal changes implemented, some market opening</td>
<td>Full Implementation: Full market opening, IPRs, GP, SOEs, Labor, Investment, E-commerce, customs and trade facilitation, subsidies, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NEEDS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awareness Raising</td>
<td>Gap analysis</td>
<td>Capacity Building</td>
</tr>
<tr>
<td>Dissemination of Information</td>
<td>Identify broader issues</td>
<td>Adjustment support</td>
</tr>
<tr>
<td></td>
<td>Setting up roadmaps and plans</td>
<td>Revised roadmaps</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Supervision</td>
</tr>
</tbody>
</table>

**Implementation plan**

**Phased Approach:**
- Phase 1: Understanding the TPP/EVFTA
- Phase 2: Preparing for TPP/EVFTA implementation
- Phase 3: Maximizing the benefits of the TPP/EVFTA

**Support Modalities:**
- Analytical support
- Technical assistance
- Capacity building
- Financing support for implementation
- Regulatory and institutional coordination

**Interventions needed for FTA implementation**
- Operational/administration:
  - Assign new tasks to existing institutions
  - Create new institutions
  - Change management, staff, budget, IT
  - Regulatory reforms
LEVERAGING MEGA FTAs FOR VIETNAM’S VISION 2035

Seizing opportunities for competitiveness

- Strong Policy and Implementation Coordination Among Various Stakeholders

Economic Upgrading in GVCs

Maximize benefits from FTAs

**Improve enterprise efficiency**
- Reform SOEs (better governance, more private firms)
- Invest in infrastructure and education

**Reduce trade barriers**

**Create world-class service/investment climate**
- Services and investments drive value chains, productivity
- Allow more foreign competition in services, finance
- Establish coordinated, transparent regulations

**Meet labor and environmental standards**
- Introduce high labor and environmental standards which make products more attractive in advanced countries and make the benefits of trade clearer to Vietnamese workers
- But guard against labor unrest and excessive cost increases

**TPP, EVFTA, RCEP, FTAAP…**
- Support domestic reforms
- Lead to Vietnam Vision 2035
1. Background
During the last 30 years of economic opening and international integration Vietnam has gradually expanded and deepened trade relations, starting with bilateral trade agreements with the Vietnam-US BTA being an important landmark, and moving to regional and global integration such as the accession to the WTO, the conclusion of new generation FTAs and especially the Trans-Pacific Partnership (TPP) and the EU-Vietnam Free Trade Agreement (EVFTA) concluded in February 2016 and December 2015 respectively. Relevant regulations in Vietnam are also improved as part of this process to ensure that international commitments will be properly implemented.

Parallel to international integration is the endeavor to reform domestic laws and regulations that is implemented as an internal need. The legal and judiciary reform is implemented under Resolution No. 48-NQ/TW dated May 24, 2005 of the Politburo on the Vietnam Legal Improvement Strategy until 2010 with a vision until 2020 and Resolution No. 49-NQ/TW dated June 2, 2005 of the Politburo on the Judiciary Reform Strategy until 2020. As a result, an improvement of law making process and procedures, quality of legal text, and law implementation has been observed. The speed of law making, including the ratification process at the National Assembly has been accelerated in the recent time. During its 13th term, the National Assembly has ratified a total 107 laws, including the 2013 Constitution and its implementing laws. Vietnam has achieved a fairly complete legal system covering all business and social areas.

Another observation is that the international integration and the domestic legal improvement process interact and complement each other.

2. The impact of TPP and EVFTA on the legal system in Vietnam
The TPP and EVFTA cover wide areas with commitments reaching far beyond provisions under the current international agreements that Vietnam has signed such as the WTO, AEC and other FTAs. Many provisions in the TPP and EVFTA have gone beyond the scope of current Vietnamese laws. The TPP, for instance, in addition to commitments regarding market access, investment protection, trade facilitation, etc. also requires members to improve their laws in relations to labor, anti-corruption, competition, consumer protection, and intellectual property, etc. EVFTA is somewhat simpler than TPP, especially with regards to labor, transparency, anti-corruption, etc. but it provides an entirely new approach to investment dispute settlement never seen before in international investment history. However, the text of this agreement is undergoing a legal review, therefore the impact assessment of the agreement on the Vietnamese legal system based on the text published by MOIT is only provisional.

3. Observations of the review of TPP and EVFTA implementation regulations
3.1. The law making process
Firstly, a feasible legal improvement process need to be worked out based on the impact assessment of TPP and EVFTA. The option selected must ensure relevance and successful implementation and that maximum benefits can be derived from opportunities that these agreements offer.

The experience shows that Vietnam has done well improving its legal system to support international integration in the past. This proved that Vietnam is committed to honor its international commitments. Vietnam has been so far not complained by any country for adopting laws in violation of its international commitments. However, it is still important that Vietnam continues devoting sufficient time and resources to ensure that its legal system be improved timely and meet high quality standards.

Secondly, the law improvement under the light of the TPP and EVFTA should be put in the wider context of improving the Vietnamese legal system as directed in Resolution 48-NQ/TW date May 24,
2005 of the Politburo on the Vietnam Legal Improvement Strategy until 2010 with a vision until 2020 and the implementation of the 2013 Constitution.

The provisional impact assessment of the TPP and the EVFTA shows that the implementation of the 2013 Constitution and the Resolution 48-NQ/TW of the Politburo has been well coordinated in many areas spanning from economic, trade to cultural, social, environment and human right issues. At the same time, Vietnamese legal institutions have also been reviewed and improved to support the implementation of international commitments such as the Vietnam-US BTA and the WTO. As such, despite the huge amount of laws, ordinances, government decrees, and Prime Minister’s decisions, the number of proposed new, revoked and revised laws is adequate. Intellectual property and labor areas require the most revisions. A recent review confirms that the amount of legal text that requires improvement or new regulations is in line with the provisional assessment made before. Law improvements and new issuance have been considered in the law making program of the National Assembly and the Government in 2016-2017 period.

3.2. Law implementation

Law implementation is a huge challenge in Vietnam. Therefore, it is essential to pay due attention to this issue to ensure smooth implementation of TPP and EVFTA commitments and to make best use of their potential for the country’s development. This is entirely in line with the strategic re-orientation away from law making towards law improvement and implementation.

It would not make sense to take part in the TPP and EVFTA if Vietnam fails to create adequate conditions for their implementation, including amongst other things, education, communication to raise common awareness and to stimulate collective actions. It is therefore important to provide information, and to educate about the agreements, their provisions and potential impact. Well-prepared implementation will result in more desired outcome.

3.3. Improving the human capital quality

In addition to the focus on law improvement, EVFTA and TPP also pay attention to law enforcement and dispute settlement to a higher degree compared with other FTAs that Vietnam has concluded in the past. Vietnam has been involved in some international and regional trade disputes, but the country has yet to further strengthen its current limited pool of professionals and learn from international experiences.

Especially, the EVFTA represents a considerable challenge to Vietnam regarding the implementation of its dispute settlement mechanism—something that never existed before. As provided, parties shall recommend professionals to serve as arbitrators in these institutions—each party shall nominate 3 nationals at the lower and 2 nationals at the appeal level. This is not an easy task for Vietnam considering its limited high quality human resources, especially those who are capable of serving as arbitrators in these international bodies.

That said, going forward, Vietnam will need to improve both organizational and human resource issues to successfully take part in the international dispute resolution. The country will need to design and implement lawyer training programs to develop an adequate human resource that can effectively support its international integration, and TPP and EVFTA implementation in particular.
VIETNAMESE ENTERPRISES ARE READY

1. Vietnamese enterprises are aware of TPP - EVFTA
   - High rate of enterprises knowing about TPP – EVFTA
   - Number of enterprises knowing fairly well is growing fast

![Awareness of Vietnamese Enterprise about Trade Agreements](chart)

2. Vietnamese enterprises reasonably optimistic about the impact of FTAs
   - The majority of enterprises highly appreciate the impact of FTAs
   - Enterprises see a more positive impact of FTAs on the economy than on themselves

![FTAs' Impacts to the Economy and Each Enterprise](chart)

3. Enterprises have plans to benefit from FTAs
   - 88% enterprises have plans to improve capacities in the next 3 years

   ![Plan to improve business’s production capacity taking advantages from new FTAs](chart)

By Mr. Vu Tien Loc, Chairman, and Ms. Nguyen Thi Thu Trang, Vietnam Chamber of Commerce and Industry
ENTERPRISES MAY NOT BE READY ENOUGH FOR TPP - EVFTA

1. Commitments are not easy to read, to understand, or to make relevant preparations

Complicated text
- Complicated content: 30 chapters, 1,200-6,000 pages written in academic languages; many conventions
- Complicated wording: an issue may be mentioned in many commitments, unfamiliar languages (many technical terms, even in translations)

Guidance is available, but far from enough
- Government agencies provide very brief summary about EVFTA; summary at policy level of several chapters of the TPP only;
- VCCI and business associations have only provided a summary of the TPP; there are no summaries of specific sectors as yet.

2. Still many barriers to leveraging TPP – EVFTA
- Two biggest barriers—lack of information on commitments and lack of information on enforcements by state agencies
- Entrepreneurs are well aware of their limited competitiveness

3. Many factors still preventing enterprises from improving their capacities
- Tax policy, bureaucracy, customs procedures, infrastructure, worker’s skills, compensation policy are among the biggest barriers
- Corporate capacity (negotiation, market access, technology, etc.) is also barriers, but of less significance
CONCLUSION

ARE VIETNAMESE ENTERPRISES READY?

Some ground to embrace TPP - EVFTA

• Enterprises being aware and starting the learning process
• Enterprises being positive about the impact of FTAs
• Enterprises having ideas about and starting to plan to benefit from opportunities brought about by TPP-EVFTA

...but, it appears that they are not ready yet for TPP - EVFTA

• no thorough understanding of the commitments and their impact
• facing barriers in leveraging the commitments
• numerous barriers discouraging enterprises from improving their capacities

Who can help enterprises prepare themselves ready

• Enterprises?
• The Government?
• VCCI – Associations?
Breakout 1: Moving up the value chains and industrial upgrading
WHY ARE WE INTERESTED IN TRADE (AGREEMENTS)?

- Trade can improve efficiency by directing resources to high-productivity sectors.
- Trade and investment can link industries to international value chains.
- Trade can help to improve domestic technology, and motivate entrepreneurship.
- Trade can check the power of domestic monopolies, stimulating better regulation.
- Trade can lead to growth
- Trade can contribute to increased formal employment, and reduced poverty.

THE SCALE OF VIETNAM’S NEW PTAS IS LARGE

<table>
<thead>
<tr>
<th></th>
<th>TOTAL $B</th>
<th>With TPP %</th>
<th>With EVFTA %</th>
</tr>
</thead>
<tbody>
<tr>
<td>VN Trade</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports</td>
<td>161</td>
<td>41.6</td>
<td>21.5</td>
</tr>
<tr>
<td>Imports</td>
<td>153</td>
<td>26.3</td>
<td>6.3</td>
</tr>
<tr>
<td>VN FDI stocks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outward</td>
<td>2</td>
<td>48.1</td>
<td>4.8</td>
</tr>
<tr>
<td>Inward</td>
<td>40</td>
<td>47.1</td>
<td>21.8</td>
</tr>
<tr>
<td>Barriers to VN exports</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tariffs</td>
<td>-</td>
<td>5.8</td>
<td>5.1</td>
</tr>
<tr>
<td>NTBs</td>
<td>-</td>
<td>11.0</td>
<td>18.0</td>
</tr>
</tbody>
</table>

- TPP plus EVFTA account for about 2/3 of Vietnamese exports and inward FDI.
- TPP is about twice as important as EVFTA.
- Trade barriers are high with NTBs included: 17% for TPP, 23% for EU trade.
- Barriers would fall most on exports of apparel, textiles, food processing.

...AS IS THE (POTENTIAL) IMPACT

<table>
<thead>
<tr>
<th></th>
<th>BASELINE $B IN 2030</th>
<th>TPP % increase in 2030</th>
<th>EVFTA % increase in 2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>VN Income</td>
<td>497</td>
<td>8.1</td>
<td>3.6</td>
</tr>
<tr>
<td>VN Trade</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports</td>
<td>357</td>
<td>30.1</td>
<td>11.8</td>
</tr>
<tr>
<td>Imports</td>
<td>361</td>
<td>29.5</td>
<td>11.5</td>
</tr>
<tr>
<td>VN FDI stocks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outward</td>
<td>4</td>
<td>7.2</td>
<td>3.9</td>
</tr>
<tr>
<td>Inward</td>
<td>108</td>
<td>14.4</td>
<td>6.7</td>
</tr>
</tbody>
</table>

- These are annual gains are relative to baseline in 2030; will remain indefinitely.
- Big income, trade gains in both agreements.
- Gains from TPP are somewhat more than twice those from EVFTA.
- Both trade and FDI increase, but trade much more.
VIETNAM IS PROJECTED TO SEE THE LARGEST GAINS...

Income gains from the TPP by 2030 (% GDP), by country

• Small, open economies gain most in % of GDP, but large economies gain most in absolute dollars.

• Viet Nam gains most from cuts in tariffs and goods NTB (blue).

• Excluded, smaller competitors (Thailand, ASEAN nie) lose most.

• Small complementary economies gain (Hong Kong, Taiwan).

• Large excluded economies are not much affected (China, India).

...as tariff and non-tariff barriers are reduced...

• These are barriers facing Vietnamese exports averaged across all partners.
• Largest cuts will be made for apparel, food products, textiles.
• EVFTA < TPP effect, partly because EU has smaller share of VN exports than US.
But much of the gains are dependent on rules of origin:

- Used to prevent trade deflection in a trade agreement short of a customs union—like TPP and EVFTA—that is when the member of TPP with the lowest MFN for a product, imports it and re-exports it duty-free to a member with a higher MFN tariff.

  - However, RoO can be a powerful trade policy instrument:
    - RoO can fully insulate an industry from the liberalization intended by an FTA.
    - RoO can protect intermediate good producers by favoring intra-FTA supply links.
    - RoO can be used to attract investment in strategic sectors: e.g. investments in producing textiles.
    - RoO’s effects in the short run are different than in the long run.

- The devil is in the details…

**TYPES OF ROO**

- **Wholly obtained or produced** = Where only one country enters into consideration in attributing origin.

- **Substantial transformation** = Where two or more countries have taken part in the production process. Tailored product by product and comprising of three types that can be used as stand-alone or in combination with each other:
  - Change in Tariff Classification (CTC) = Requires the final product to change its HS tariff heading, chapter, heading, sub-heading, or item in the originating country.
  - Value Content (VC) = Requires a MIN % of local value added in the originating country (or a MAX % of value originating in non-member countries).
  - Technical Requirement (TECH) = Prescribes that the product must undergo specific manufacturing processing operations in the originating country.
ROO FOR APPAREL IN TPP AND EVFTA

- **TTP:** Yarn-forward RoO prevails, requiring that yarns and fabric produced in a TPP country used in the making of apparel to qualify for origin and benefit from the zero tariffs under TPP. For instance:

  \[ \text{cotton} \rightarrow \text{yarn} \rightarrow \text{textiles} \rightarrow \text{apparel} \]

- **EVFTA:** most apparel require the use of fabrics produced in Vietnam or an EU producer, regardless of the origin of yarn, with some exemptions though. Tends to be less restrictive than in TPP

  - **Knitted apparel (HS 61):** knitting and making-up is required form most of it. Other type of knitted apparel, require that an additional transformation of yarn or fibers take place.
  
  - **Non-knitted apparel (HS62):** fabric is required to be woven in an EVFTA member, as well as making-up the garment, including cutting it. Also alternative rule allowing some non-EVFTA fabric for some products.

Exports of Vietnam apparel by destination

Exports of Knitted Apparel (HS-61)  
Exports of Non-Knitted Apparel (HS-62)

- The dominance of the US market has been more marked for exports of non-knitted apparel (HS-61) than non-knitted apparel (HS-62).
- EU accounts for 25 percent of Vietnamese non-knitted apparel exports but much less in knitted apparel

Market access…

**USA MFN tariff**

<table>
<thead>
<tr>
<th>Knitted apparel HS-61</th>
<th>Non-knitted apparel HS-62</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent</td>
<td>Percent</td>
</tr>
<tr>
<td>6</td>
<td>0 0.5</td>
</tr>
<tr>
<td>5-10</td>
<td>5-10</td>
</tr>
<tr>
<td>10-15</td>
<td>10-15</td>
</tr>
<tr>
<td>15-20</td>
<td>15-20</td>
</tr>
<tr>
<td>20-25</td>
<td>20-25</td>
</tr>
<tr>
<td>25+</td>
<td>25+</td>
</tr>
</tbody>
</table>
Domestic value addition is already higher in textiles/footwear

- Manufacturing sectors that use more of foreign rather than domestic inputs are electrical and optical equipment (~65% foreign input), and machinery & equipment (~70% foreign input).
- Footwear is being produced by using domestic inputs mainly (~60% domestic input).
- Domestic value addition is greater in indirect sectors, except for textile and footwear.

Source: TIVA OECD database
But imported inputs are mostly from non-TPP members

Vietnam imports most of its apparel inputs from non-TPP countries, with China being by far the largest provider of intermediate goods for the apparel sector, followed by the Republic of Korea, and Taiwan…
… meaning that value chain structuring will be required in order to benefit from TPP and EVFTA preferences.

CONCLUSION
• Several studies have investigated the economics effects of TPP and EVFTA for members using Computable General Equilibrium (CGE) models, and Vietnam is consistently found to be one of the biggest winners.
• Yet, we should exercise some caution:
  ○ Difficult to take into account the heterogeneity in firms and their differentiated response in choosing the mix of foreign and domestic inputs when confronted with RoO.
  ○ Difficult to model technology upgrades to comply with RoO.
  ○ Difficult to model the potential incoming foreign investment (i.e. production of fabric and yarn in Vietnam).
• To comply with RoO of TPP and EVFTA and benefit from preferential market access, vertical integration of the chain will need to take place in Vietnam by attracting fabric and yarn production, as well as other operations.
• Even ahead of entry-into-force, new PTAs are sending a strong signal, to which the private sector is already beginning to respond…
• How can Vietnam effectively manage this process…?
• …and avoid getting stuck in a low value-added trap?
LOW-VALUE-ADDED TRAP

The Chinese Economy: A Low "Value-Added" Production Hub in East Asia

September 16, 2012

China rushing to escape low-value manufacturing trap

Tuesday, 16 Jun 2015 | 9:27 PM ET


MANUFACTURING VALUE ADDED IN GDP

Value added, % of GDP

Manufacturing stagnating despite declining in agriculture

Source: OECD

Vietnam’s manufactures exports accelerating, but domestic value added share in gross export declining, and lower than that of others

Source: WDI

GVC PARTICIPATION

\[
[GVC]_{\text{participation}} = \frac{DVX + FVA}{GE}
\]

- Backward participation in GVCs: Foreign VA embodied in exports (FVA) – the higher FVA, the higher dependence on foreign inputs
- Forward participation in GVCs: Domestic VA embodies in foreign exports (DVX) – the higher DVX, the more dominant domestic VA is
- Viet Nam has lower GVC participation rate than that of neighboring countries, high FVA but low DVX

Source: OECD
AVOID LOW-VALUE ADDED TRAP

Assembly = lowest value added!

Only small part of total cost for labor-intensive assembly

Source: RIETI, 2010

Source: Forbes, 2011

VALUE CHAIN: TEXTILE & GARMENT

Gross Export

Domestic VA 63.53%

Foreign VA 37.47% (Backward)

Exported in final goods 43.55%

Exported in intermediates 18.96%

Absorbed by direct importer or return home 7.02%

Re-exported to third countries 11.96% (Forward)

Source: OECD

Source: GSO, WB, Trademap, VITAS

VALUE CHAIN: AUTOMOTIVE INDUSTRY

Assemblers:
TL: 16 car makers
VN: 20 car makers

1st tier suppliers:
TL: 690 companies
VN: 84 companies

2nd + 3rd tier suppliers:
TL: 1700 companies
VN: 145 companies

Large enterprises/MNCs

SMEs (mechanics, electronics, rubber & plastics, chemicals, etc.)

Source: BOI (TL data), IPSI (VN data)
NEW FTAs – A KEY DRIVER FOR VALUE CREATION AND UPGRADING MANUFACTURING?

Source: Own illustration

### MAJOR CHAPTERS OF FTAs AND THEIR POTENTIAL IMPACTS

<table>
<thead>
<tr>
<th></th>
<th>TPP</th>
<th>EVFTA</th>
<th>Potential impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market access (tariff</td>
<td>Chapter 2</td>
<td>Chapter 2 (Annex 2b on motor</td>
<td>• Export market expansion</td>
</tr>
<tr>
<td>schedules)</td>
<td></td>
<td>vehicles and motor vehicles’ parts)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Lower costs of inputs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Local mnf. upgrading</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Higher competition pressure</td>
</tr>
<tr>
<td>Rules of origin (ROOs)</td>
<td>Chapter 3 (Annex 3D &amp;</td>
<td>Chapter 4</td>
<td>• GVC restructuring</td>
</tr>
<tr>
<td></td>
<td>Appendix 1-Automotive)</td>
<td></td>
<td>• Moving up value chain</td>
</tr>
<tr>
<td></td>
<td>Chapter 4 – T&amp;G</td>
<td></td>
<td>• FDI attraction</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Local mnf. upgrading</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Barriers to get 0% tariff</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Compliance costs</td>
</tr>
</tbody>
</table>

### FTAs AND TEXTILE AND GARMENT

<table>
<thead>
<tr>
<th>TPP</th>
<th>EVFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yarn-forward</td>
<td>Fabric-forward</td>
</tr>
</tbody>
</table>

- **Spinning**
- **Weaving/Kitting**
- **Dyeing/Finishing**
- **Fabric**
- **Branding**
- **Designing**
- **Material resourcing**
- **Cutting/Sewing**
- **Marketing/Distributing**

- Red arrow: Upgrade VC using FTAs
- Red dashed arrow: Upgrade VC without using FTAs

Source: Own illustration
POLICY IMPLICATIONS

- **Strategic FDI attraction**
  - Attract technology intensive FDI creating spillover effects and linking with local economy/industry
  - Improve investment/business climate (refer to rankings of WEF, WB)
  - Attract targeted FDI through negotiation

- **Industrial human resource development**
  - Tightening linkages between industry and training institutions
  - Develop more practical TVET/technical training

- **Capacity building for local enterprises**
  - Improve productivity, standards and quality
  - Improve capability in kaizen, QCD, production management
  - Develop business support services
OVERVIEW ON INTERNATIONAL INTEGRATION IN AGRICULTURE

- **Achievements:**
  - Expand markets, increase export turnover and market share, consecutively gain trade surplus
  - Import agricultural products having no advantage to supply for domestic demand
  - Improve the competitiveness
  - Create jobs, improve income, reduce poverty

- **Limitation:**
  - The gained benefits are lower than potential and lower than others sectors
  - Production depends on import materials
  - Weak competitiveness, low quality and hygiene and food safety
  - Low farmers income and business effectiveness

- **Causes:**
  - Low starting point, more risks and unsatisfactory investment
  - Lack of preparing internal resources and science researches before the integration
  - Lack of supporting technique, juridical & quality standards to implement commitments
  - Lack of solutions, risk management policies and out of control cross-border trade (spreading disease, trading frauds)
  - Slow institutional reform, investment environment is not attractive enough

OVERVIEW THE AGRICULTURAL TRADE BETWEEN VIETNAM AND TPP, EU

Increasing agricultural trade surplus in TTP and EU market. Vietnam has competitive advantages on agriculture.

Source: USDA, UN ComTrade
RATE OF AGRICULTURAL PRODUCER SUPPORT 2011-2013

Source: OECD 2015

EXPORT GROWTH BASED ON LOW PRICE

<table>
<thead>
<tr>
<th></th>
<th>Ranked by export volume</th>
<th>Ranked by export value</th>
<th>Ranked by export price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cashew-nut</td>
<td>1</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Black pepper</td>
<td>1</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Coffee bean</td>
<td>2</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Cassava</td>
<td>2</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Rice</td>
<td>3</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Rubber</td>
<td>4</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Tea</td>
<td>5</td>
<td>7</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: Estimate based on FAOSTAT

UNDERDEVELOPMENT OF AGRIBUSINESS

Source: World Bank
## TARIFF COMMITMENTS AND CHANCE

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Chance to expand export markets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rice</td>
<td>• TPP &amp; EU are not the main markets, export turnover to TPP is more than EU (Malay, Sing, USA, Mexico, EU, …) • TPP: Tax potential: Malaysia, Mexico, Chile, Peru, USA: 0-20% (shall be removed within 8-15 equal annual stages), Japan, EU: Limited Quota- Potential markets: Mexico, Malaysia</td>
</tr>
<tr>
<td>Fruit &amp; vegetable</td>
<td>• TPP &amp; EU are not the main markets: USA, Japan, Malaysia, EU (a lot of: chili, sweet maize; a few: mango, dragon fruit &amp; litchi) • TPP: Tax potential: Canada, Japan, Mexico, Chile, Peru, USA: 0-29.8% (shall be removed within 1-15 equal annual stages), especially Mexico has big potentials due to Mexico is protecting potato (245%), black and white bean (125%). • EU: 0-20.8% (mostly shall be removed on the enter-in-force (EIF) date) • Potential markets: USA (litchi, Logan, mango), EU (dragon fruit, chili, …), Mexico (mango, dragon fruit, mango), Canada (tropical fruit), Australia+NZL (mango, dragon fruit)</td>
</tr>
<tr>
<td>Shrimp &amp; Pangasius</td>
<td>• TPP, EU are the main markets: USA, Japan, EU, Mexico • TPP: Tax potential: Japan, Canada, Chile, Mexico, Peru, USA: 0-20% (mostly shall be removed on the EIF date except Japan &amp; Mexico: 10-15 equal annual stages), EU: 5.5-20%, shall be removed within 6-8 equal annual stages. • High potential markets: EU, Mexico; Low: USA, Canada</td>
</tr>
<tr>
<td>Cashew, Pepper &amp; Coffee</td>
<td>• TPP, EU are the main markets: USA, Singapore, Japan, Malaysia, Australia, Canada, EU • EU &amp;TPP: Tax potential: Japan, Canada, Chile, Mexico, Peru, EU: mostly: 0-9% &amp; shall be removed on the EIF date. Mexico has trade protectionism with coffee commodities • Potential markets: Mexico (cashew, pepper, …), EU (coffee), TPP (instant coffee)</td>
</tr>
<tr>
<td>Natural rubber</td>
<td>• TPP &amp; EU are not the main markets: Malaysia, USA. • Only Chile has the import tariff: 6%, shall be removed on the EIF date. • Potential markets: A few due to oversupply (Chile, Malaysia, …)</td>
</tr>
<tr>
<td>Wood &amp; Wood furniture</td>
<td>• TPP, EU are the main markets • Tax potential: Canada, Chile, EU (0-10% shall be removed on the EIF date); Mexico, Peru (9-15% shall be removed within 6-10 equal annual stages) • Potential market (low): Peru, Chile, Canada, Mexico, …</td>
</tr>
</tbody>
</table>

## TARIFF COMMITMENTS AND COMPETITION WITH IMPORTED PRODUCTS

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Competition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cattle meat</td>
<td>• The current main markets: Australia, NZL, USA • Tax potential for: Australia, NZL, Japan, Chile, Canada, Mexico, Peru, USA, EU: 5-30% down to 0% within 3-4 equal annual stages</td>
</tr>
<tr>
<td>Milk</td>
<td>• The current main markets: Australia, New Zealand, USA • Tax potential for: Australia, NZL Japan, Chile, Canada, Mexico, Peru, USA, EU: 0-20% down to 0%, 5-6 years. Especially, now, powdered milk not containing sugar (HS: 0402.21) made in Australia, NZL are free of duty</td>
</tr>
<tr>
<td>Pork</td>
<td>• The current main markets: USA, Canada, EU (Spain, Denmark, …) • Tax potential for: Australia, NZL: 7% down to 0% in 2020, Japan, Chile, Canada, Mexico, Peru, USA, EU: 15-27% down to 0% within 10 equal annual stages</td>
</tr>
<tr>
<td>Poultry meat</td>
<td>• The main markets: USA • Tax potential for: 0-40% down to 0% within 13-14 equal annual stages</td>
</tr>
<tr>
<td>Livestock feed</td>
<td>• The current main markets: India (maize), USA (maize, soybean), Denmark (soybean) • Tax potential (maize, soybean) for: Australia, NZL, Japan, Chile, Canada, Mexico, Peru, USA, EU: 0-10% down to 0% within 3-8 equal annual stages.</td>
</tr>
<tr>
<td>Pesticide</td>
<td>• The current main markets: USA, Japan, Germany, UK, France • Tax potential for: Australia, NZL, Japan, Chile, Canada, Mexico, Peru, USA, EU: 0-6.5% down to 0% on the EIF date</td>
</tr>
<tr>
<td>Fertilizer</td>
<td>• The current main markets: Belgium, Germany, Netherland • Tax potential for: Japan, Chile, Canada, Mexico, Peru, USA, EU: 0-6% down to 0% on the EIF date</td>
</tr>
<tr>
<td>Agri. Machinery</td>
<td>• Tax potential for: Australia, NZL, Japan, Chile, Canada, Mexico, Peru, USA, EU: 0-20% down to 0% within 4-6 equal annual stages • The current main markets: Netherland, Germany, Italy</td>
</tr>
<tr>
<td>Fruit &amp; Vegetable</td>
<td>• The current main markets: USA, Australia, EU • Tax potential for: Australia, NZL, Japan, Chile, Canada, Mexico, Peru, USA, EU: 5-20%, down to 0% within 3-5 equal annual stages.</td>
</tr>
<tr>
<td>Raw wood</td>
<td>• The current main markets: USA, Malaysia, NZL • Tax potential for (small): Australia, NZL, Japan, Chile, Canada, Mexico, Peru, USA, EU: 0-3%, down to 0% within the EIF date</td>
</tr>
</tbody>
</table>
## NON- TARIFF COMMITMENTS

<table>
<thead>
<tr>
<th>Commitment</th>
<th>TPP</th>
<th>EU</th>
<th>Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Origin Regulations</strong></td>
<td><strong>Wholly Obtained:</strong> Rice, Milk (Buttermilk materials) • The ratio of the regional value content is higher than 40%: other agriculture, forestry and fishery</td>
<td><strong>Wholly Obtained:</strong> Rice, shelled cashew, pepper, coffee, processed fishery, shrimp, pork, beef, meat of the poultry,... • The rate of Value added of the output product is higher than 30%: rubber, wooden furniture**</td>
<td>• The limitative capacity of certification • Low traceability of materials</td>
</tr>
<tr>
<td><strong>SPS</strong></td>
<td><strong>Regional condition</strong> • The recognition of equivalence • Risk analysis • Inspection • Transparency • Dispute settlement (EU: no the separate regulation)</td>
<td>**Low harmonization: 38% (both of TBT and SPS) • Transparency: difficult to ensure consulting time for member countries due to short time of legal document development • Limited scientific capacity for develop and peer review SPS/TBT measures • Lack of inter-ministerial coordination in document development and enforcement • Lack of agencies providing public services for the enterprises • Difficult to put too high barriers as VN’s enterprises with limited capacity may not satisfy • It takes time and costs to inspect • Low capacity of the dispute settlement</td>
<td></td>
</tr>
<tr>
<td><strong>TBT</strong></td>
<td><strong>Transparency</strong> • Cooperation • Inspection • Labeling (EU: more detail , TPP: Not available) • Technical support (EU: more detail)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## NON- TARIFF COMMITMENTS

<table>
<thead>
<tr>
<th>Commitment</th>
<th>TPP</th>
<th>EU</th>
<th>Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Intellectual Property</strong></td>
<td><strong>Brands, patents</strong> • Intellectual property with natural gene, traditional knowledge • Transparency</td>
<td><strong>Geographical indications</strong> • Intellectual property for crops seed • Not focus on exceptions and rejected cases • Not detailed for transparency</td>
<td>• The risk of losing the intellectual property for natural gene and traditional knowledge • Lack of capacity for dispute settlements</td>
</tr>
<tr>
<td><strong>Investment</strong></td>
<td>Most favored nation treatment, national treatment No use policy relating the investment condition Compensating by armed, unstable social and policy No requisition / nationalization for investment project, except for public purposes and compensation Recognizing and permitting the transfer of assets Investors can sue and settle at ICSID, UNCITRAL</td>
<td></td>
<td>• Policies changed frequently • Transfer pricing and tax haven • Weak research and legal capacity • Some regulations are not appropriate: Investment Law (compensation), discrimination (purchase, import right)</td>
</tr>
<tr>
<td><strong>Labor</strong></td>
<td><strong>Separate chapter</strong></td>
<td><strong>No separate chapter</strong></td>
<td></td>
</tr>
</tbody>
</table>
## OVERALL ASSESSMENT

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Impact</th>
<th>Level</th>
<th>Chance</th>
<th>Challenge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rice</td>
<td>Positive</td>
<td>Medium</td>
<td>Low</td>
<td>Open markets FDI (Mexico, Malaysia,..) SPS, TBT</td>
</tr>
<tr>
<td>Fruits and Vegetables</td>
<td>Positive</td>
<td>High</td>
<td>High</td>
<td>Open markets (USA, Australia, New Zealand, Japan, Canada, EU,..) SPS, TBT, quotas, compete with Cambodia</td>
</tr>
<tr>
<td>Coffee</td>
<td>Positive</td>
<td>Medium</td>
<td>High</td>
<td>Open the export markets, FDI into process industry Processing technology</td>
</tr>
<tr>
<td>Cashew</td>
<td>Positive</td>
<td>High</td>
<td>Low</td>
<td>Open the export markets (Mexico,..), FDI into process industry SPS, International standard Origination regulation, SPS, International standard</td>
</tr>
<tr>
<td>Rubber</td>
<td>Positive</td>
<td>Low</td>
<td>Low</td>
<td>Open the export markets Processing technology, supply greater than demand</td>
</tr>
<tr>
<td>Pepper</td>
<td>Positive</td>
<td>High</td>
<td>Low</td>
<td>Open the export markets (Mexico,..) SPS SPS</td>
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<tr>
<td>Fishery</td>
<td>Positive</td>
<td>High</td>
<td>High</td>
<td>Open markets (Japan, USA, Mexico, EU,..) SPS, TBT, processing technologies, Antidumping duty</td>
</tr>
<tr>
<td>Wood &amp; lumber products</td>
<td>Positive</td>
<td>Medium</td>
<td>Medium</td>
<td>Open export markets Origination regulations, legal material sources; Increased foreign investment -&gt; higher competitiveness level (traditional craft villages)</td>
</tr>
<tr>
<td>Livestock</td>
<td>Negative</td>
<td>High</td>
<td>High</td>
<td>Utilize SPS, TBT measures Competition with import goods, decrease in price of animal feed</td>
</tr>
<tr>
<td>Fertilizer, pesticide &amp; Agricultural machinery</td>
<td>Positive</td>
<td>Negative</td>
<td>Negative</td>
<td>Open import markets, Improve inputs</td>
</tr>
</tbody>
</table>

## ORIENTATION CONTENT

| Market development            | Improve processing: vegetables, fisheries; Improve distribution system abroad Develop brand name; Expand market and promote export: ○ Fruits and vegetables: USA, New Zealand, Australia, Canada, Japan, EU ○ Rubber: Malaysia ○ Rice: Malaysia, Mexico ○ Shrimp, pangasius: EU, Japan, USA, Mexico |
| Production development and management | Increase scale and improve competitiveness of farms; Develop value chains and strictly control the use of chemicals; Improve quality management, origin and geographical indicators. |
| Responding to FDI investment  | Attract FDI (high-technology, primary inputs, seeds/breeds, supporting industries ...); Improve competitiveness of domestic enterprises; Support the development of domestic distribution chain; Encourage Vietnam firms to invest in other member countries |
| Quality standards             | Harmonize regulations with international standards; Develop a system of scientific evidences for developing and peer-review TBT/SPS measures |
RECOMMENDATIONS
• Review commitments and improve legal framework and policy;
• Provide public services to support integration, trade and investment promotion:
  o Establish some agencies at both national and local levels to disseminate, guide and support agribusinesses;
  o Set up and improve capacity of public service provision agencies on quality management, hygiene and food safety;
  o Set up professional agencies to provide market information, analysis and development;
• Enhance the capacity to utilize allowed measures;
• Accelerate agricultural restructuring program in practice.

PROPOSALS FOR TECHNICAL SUPPORT
• Develop market information system, integration information system, especially information from international markets (standards, technical requirements, demands, consumption taste and trend,…)
• Research and build research capacity on:
  o Impact assessment of integration, and trade/investment policies;
  o Competitiveness of agricultural value chains;
  o Market access to TPP and EU;
  o Investment opportunities in TPP and EU.
• Technical support to meet SPS/TBT standards / regulations;
• Strengthen capacity of providing public services for investment promotion, value chain development, quality management, hygiene and food safety.
ANNEX

POTENTIAL EXPORT MARKETS OF VIETNAM AGRICULTURE TO TPP AND EU

POTENTIALS OF TPP AND EU’S AGRICULTURAL EXPORTS TO VIETNAM

Source: Calculation from UN Comtrade’s Database
## IMPORT TARIFF OF TPP & EU MEMBERS

<table>
<thead>
<tr>
<th></th>
<th>AANZFTA</th>
<th>ATIGA</th>
<th>VJEEPA</th>
<th>WTO</th>
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<tr>
<td></td>
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<td>New Zealand</td>
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<td>-</td>
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<td></td>
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<td>Y11</td>
</tr>
<tr>
<td><strong>Processing fruit &amp; vegetable</strong></td>
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<td>-</td>
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## IMPORT TARIFF OF VIETNAM

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<td>5-7</td>
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<td></td>
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<td>Schedule</td>
<td>2018</td>
<td>2018</td>
<td>-</td>
</tr>
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<td>Poultry Meat</td>
<td>Cur. tariff</td>
<td>0-20</td>
<td>0-20</td>
<td>0-5</td>
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<td>Y13</td>
<td>Y13</td>
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<td>Cur. tariff</td>
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<td>Soybean</td>
<td>Cur. tariff</td>
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<td>Y3</td>
<td>Y3</td>
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<td>Fish Flour</td>
<td>Cur. tariff</td>
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<td>-</td>
<td>-</td>
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<td>Pesticide</td>
<td>Cur. tariff</td>
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<td>0-5</td>
<td>-</td>
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<td>Y1</td>
<td>Y1</td>
<td>-</td>
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<td>Fertilizer</td>
<td>Cur. tariff</td>
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<td>Cur. tariff</td>
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<td>0-3</td>
<td>-</td>
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<td>Y1</td>
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<tr>
<td>Agr. Machinery</td>
<td>Cur. tariff</td>
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<td>Schedule</td>
<td>2017</td>
<td>2017</td>
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IMPACTS OF FTAS ON VIETNAM’S TEXTILE AND GARMENT INDUSTRY

By Mr. Le Tien Truong, CEO, VINATEX

OVERVIEW OF VIETNAM TEXTILE AND APPAREL INDUSTRY

General information
- Account for 10% industrial production value
- 2.5 mil. workers, account for 5% of labor force
- 2nd largest exporter, account for 16.5% total export turnover
- Ranked 5th among 156 world’s apparel exporters

<table>
<thead>
<tr>
<th>Area</th>
<th>No. of enterprises</th>
<th>Annual capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Upstream</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cotton ginning</td>
<td>4</td>
<td>5,000 tons</td>
</tr>
<tr>
<td>Synthetic fiber</td>
<td>9</td>
<td>400,000 tons</td>
</tr>
<tr>
<td>Filament yarn</td>
<td></td>
<td>182,000 tons</td>
</tr>
<tr>
<td>Spinning</td>
<td>103</td>
<td>900,000 tons</td>
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<tr>
<td><strong>Midstream</strong></td>
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<tr>
<td>Weaving</td>
<td>388</td>
<td>800 mil m2</td>
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<tr>
<td>Knitting</td>
<td>100</td>
<td>110,000 tons</td>
</tr>
<tr>
<td>Non-woven</td>
<td>9</td>
<td>16,000 tons</td>
</tr>
<tr>
<td>Dyeing and finishing</td>
<td>177</td>
<td>800 mil m2</td>
</tr>
<tr>
<td>Terry towel</td>
<td></td>
<td>62,000 tons</td>
</tr>
<tr>
<td><strong>Downstream</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Garment</td>
<td>4,424</td>
<td>4,000 mil. pcs</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>5,214</td>
<td></td>
</tr>
</tbody>
</table>

VIETNAM TEXTILE & GARMENT EXPORT TURNOVER 2001-2016

Vietnam export turnover proportion to main markets

Unit: Bil USD

Source: Trademap & Vietnam Customs
LESS-KNOWN FACTS ABOUT VIETNAM TEXTILE & GARMENT

- **Textile & Garment sector is a priority of Vietnam in FTAs:**
  - Competitive exporting ranking in big markets: 2nd in US, 6th in EU, 2nd in Japan and 2nd in Korea
  - Current tariff in country partner in FTAs is high but phasing-out. Ex: T&G current tariff in US is 17-18%, in EU is 8-12%...
  - Increasingly integrating into Global Value Chain (GVC) with higher value-added stages

- **Development potential:**

<table>
<thead>
<tr>
<th></th>
<th>GDP per capita 2015 (USD)</th>
<th>T&amp;G Export/ Total export Turnover (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>8,198</td>
<td>11.90%</td>
</tr>
<tr>
<td>India</td>
<td>1,781</td>
<td>14.10%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>41,000</td>
<td>3.90%</td>
</tr>
<tr>
<td>Korea</td>
<td>28,328</td>
<td>2.70%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>2,189</td>
<td>16.60%</td>
</tr>
</tbody>
</table>

- **Worker remuneration:**
  - For leading T&G companies, worker average income is 4800 – 5400/year; for Vinatex, average income is $3600/year, much more higher than Vietnam GDP per capita.
  - Working condition: Besides standard condition for worker, Vinatex also provides extra to workers such as meals for shifts, establish house for worker to lease with cheap price (employee without house), bonus policies to encourage worker’s performance...

**FTAs IMPACTS ON VIETNAM T&G INDUSTRY**

- **Previous trade agreements’ impact:**
  - 2001-2006: with US-VN BTA, VN average export turnover grew 1 bil USD/year, increase from 2 bil USD to 6.5 bil USD.
  - 2007–2015: joined WTO, also with ASEAN – Japan FTA and ASEAN – Korea FTA, VN average export turnover grew 2 bil USD/year, increase from 6.5 bil USD to 26.8 bil USD

- **Current trade agreements’ impact:**
  - With TPP, EVFTA and other FTAs, it is promising for VN export turnover to grow more and more in future.

**OPPORTUNITIES FROM FTAs**

**OPPORTUNITIES**

**Saving from tariff elimination**

- US market: 73.1% of tariff lines will be eliminated immediately; 19.7% of tariff line will be reduced by 35%-50% and be eliminated in 11th and 13th year; 7.2% of tariff line will be eliminated in 6th year.
• Canada market: 42.9% of tariff line will be eliminated in the first year and 57.1% of tariff line will be eliminated in 4th year.
• EU market: Tariffs will be totally eliminated after 7 years. Tariffs in the first year is not higher than GSP. The tariff elimination schedule will be 3-7 years, some tariffs will be eliminated immediately after the FTA is effective.

Expand the exporting scale:
• The partner of TPP such as US, Japan will be the potential textile and garment market for Vietnam. - - EU market is attractive, open, potential, especially the group of tariffs lines with fast phase - out schedule.
• In the first 3 years after TPP is effective (from 2018), Vietnam T&G growth rate could be as high as 18-20%/year. T&G export turnover could reach 50 bil USD in 2020.

Promote investment in upstream manufacturing, forming T&G supporting industry
• Promote investment in upstream manufacturing
• Partners from FTAs provide technologies, investment, manufacturing process, modern management experience to help develop Vietnam T&G supporting industry.
• Attract more foreign investment

Exceptions to the Rule of Origin
• Some exceptions to the Rule of Origin help Vietnam earn tariff incentive in some products in the early years after the TPP enters into force, as Vietnamese enterprises need time & preparation to meet the Yarn forward, Fabric forward rules.

CHALLENGES FROM FTA

CHALLENGES
Making use of exceptions to the Rule of origin:
• Yarn forward and Fabric forward Rule of origin are prerequisite terms for Vietnam to enjoy tariff preference from TPP and EVFTA. Especially, Yarn forward is the most complicated rule compared to any previous FTA. Although there are some exceptions to the Rule, it is also a challenge to make use of these exceptions

The compulsory requirement:
• Obligation to prove the Origin
• Obligation to declare
• Obligation to keep records, documents strictly
• For example: Manufacturers are obliged to store manufacturing document, prove the origin of product (yarn forward/fabric forward). The records must be stored for 5 years.

The competitive pressure from FDI sector:
• As the negotiation of EVFTA and TPP came to a conclusion, the wave of FDI into Vietnam textile and garment is getting stronger. In 2015, Vietnam T&G industry attracted approximately 100 FDI projects, with total registered capital of more than 2 bil USD. This presents the highest record ever of FDI in T&G in a single year.

Pressure from competitors in the world:
• Realizing Vietnam T&G benefits from TPP and EVFTA, many competing countries in T&G exporting sector take action immediately:
  o Release supporting program for their T&G enterprises such as China, Bangladesh, Pakistan.
  o Some countries try to join TPP.
  o India accelerates FTAs negotiation including FTA with EU.
PREPARATION FROM VITAS AND VINATEX

Disseminating and consulting for T&G enterprises

- **Prerequisites**
  - Declaring production capacity
  - Corporation or individual factories?
  - Production capacity for export.
  - Satellite factories outside the company.

- **Document archive**
  - Paper or e-document archive?
  - 5-year document archive: export consignments, input material origin, general information of production capacity…
  - Timesheets, worker salary…

- **Necessary conditions**
  - Rule of origin - 3 stages
    - Exceptions
      - List of cut & sew: 3 groups
      - Short supply list: 175 permanent products and 8 temporary products
      - 1 for 1 program

- **Sufficient conditions**
  - Tariff elimination schedule
    - TPP: EIF, B5, X50, X35 Step, X35
    - EU: EIF, 3 years, 5 years, 7 years

**Short-term, medium-term and long-term preparation**

- **Long-term priority**
  - Product groups which are not manufactured but the demand is large and promising

- **Medium-term priority**
  - Product groups that have elements in supply chain but still need additional investment or product groups are produced not much but under tariff incentive policies.

- **Short-term priority**
  - Product groups that are enterprises’ strength and immediately has tariff elimination, available material for manufacturing.

**PROPOSAL - REQUEST**

The Government & the National Assembly:

- To speed up the official signing of the EVFTA and the approval of both TPP and EVFTA in order to help Vietnamese textile and garment enterprises utilize the benefits.
- To provide WTO-and-FTAs-compliant supportive policy for garment and textile firms.
- To not create policies that restrict Vietnamese company’s competitiveness.
- Need to create policies to level the playing field for FDI & domestic companies and keep T&G investments in check.

**World bank**

- To support Vietnamese garment and textile enterprises by investing technology, increasing management level, training high-skill labor, especially in woven and dye process.

**Vietnamese textile & garment enterprises:**

- Pay more attention to the FTA and further explore the US, EU and others markets in order to use every advantages to increase added value for Vietnam textile & garment firms.
Breakout 2: Leveling playing field, facilitating trade, and promoting inclusiveness
IMPROVING BUSINESS ENVIRONMENT, ASSISTING AND DEVELOPING ENTERPRISES IN THE CONTEXT THAT VIETNAM JOINS TPP/EVFTA

By Ms. Pham Thi Hong Yen, Party’s Economic Commission

SITUATION, GUIDANCES, POLICY

• Commission Party: Issued a series of resolutions on international economic integration, building and completing Vietnam Legal system, perfecting the socialist-oriented market economy -> the foundation for the creation of a series of mechanisms and policies of the State in improving the business environment as the Constitution enacted by Congress in 2013, the Land Law in 2013, 2013 Bidding Law, the Law on Enterprises, Investment Law in 2014, etc.

• Government: Resolution 19 dated 04.28.2016 issued by the Government has set out the objectives and specific targets to improve the business environment, enhancing competitiveness, stating responsibilities and specific tasks of the ministries, branches and localities in improving the business environment

• However, despite some positive changes, the implementation of the guidelines and policies of the Party and State as well as the tasks and proposed solutions to improve the business environment in recent years has not created real breakthroughs in the fields.

RESULTS OF IMPROVING BUSINESS ENVIRONMENT IN VIETNAM

In 2016, Vietnam was ranked 90 amongst 189 economy, reaching only slightly over the average score (62.1/100). The favorable level for Vietnam’s business has not shown much improvement over the years.

Indicators of improving business environment in Vietnam 2007-2016

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</table>

• In regards to the assessment of global competitiveness in relation with 140 other economies, the competitiveness of Vietnam has changed and improved gradually, but remains limited.

• According to the Global Competitiveness CGI report in 2015, Vietnam economy ranked 56/140, hit 4.3 / 7 points, 12 rankings up from 2014 and is the highest ranking of Vietnam during the period from 2006 to 2015.

• The fields that Vietnam has a low ranking in the second half, average and below average include: institutional (85/140); Financial market development (84/140); Post-primary training and education (95/140); Infrastructure (76/140); Business degree (100/140), technology availability (92/140), Innovation (73/140)

• The Global Competitiveness report 2015-2016 pointed out 5 groups of problem which are considered to be the biggest obstacles for Vietnam, including: “Access to Finance”, “Policy Unstability”, “Unqualified labor” poor labor discipline “and” Corruption

LIMITATIONS OF THE BUSINESS ENVIRONMENT OF VIETNAM

• The limitations of the law and law enforcement in business. In particular, law enforcement on business lacks the stability and transparency; it is unpredictable both in content and implementation methods. As a result, this leads to inefficient assistance programs for enterprises of the government.
• The innovation capacity of the economy, especially by businesses, remains low. The mechanisms and policies to encourage innovation is finite. In the TPP countries, Vietnam currently has the lowest level of business development.

Ranking level of business development in TPP countries

• It is businesses’ limited access to resources and markets, especially the labor market and human resources, Vietnam infrastructure can hardly meet the development requirements

Ranking level of infrastructure in TPP countries

• The limitations in the level of science and technology and the application of science and technology in production and business compared to other countries in the world. 75% of the machinery of small and medium-sized enterprises are of outdated technology, dated back to the 60s-70s of the 20th century. Besides, the proportion of imported technology and equipment in Vietnam each year account for less than 10% of total national imports, while in developed countries, the ratio is 40%.
Vietnam’s technology ranking level among TPP countries

CHALLENGES OF INTERNATIONAL INTEGRATION CONTEXT

- Challenges and opportunities in the implementation of the high standards associated with the State’s role in providing public services
- Challenges and opportunities from liberalization, integration and international relations trends of the XXI century
- Challenges and opportunities from strong requirement of sustainable development in all three areas including environment, society and economy
- Challenges and opportunities from the world’s industrial revolution.

Proposals and recommendations
As of perspectives: We identify promoting and improving business environment and enhancing the national competitiveness are key solutions to the economic development and realize the opportunities of global integration. Comprehensive focus on improving the basic factors affecting the business environment, especially on raising the effectiveness and efficiency of the implementation of the legal system. Improve the effectiveness of the State agencies, ministries and local governments in creating strong motivation to develop business models, enhance the dynamism, innovation and creativity.

Some major solutions
- First, clearly define the role of the State and the market in the economy, renovate methods of leadership, management and administration of the State in the direction of respecting market rules and meeting international standards, gradually remove commanding and administrative measures
- Secondly, build mechanisms and effective policies to promote the development of businesses, especially private enterprises, start-up businesses; enact Law of supporting small and medium-sized enterprises.
- Third, build mechanisms and policies on enhancing access to resources and markets for businesses through developing and widening the market, especially financial market, capital market, labor market, science - technology market, estate market.
- Fourth, improve availability of international economic integration, build and perfect the cooperation mechanism in operation among agencies, ministries, branches and localities
- Fifth, improve innovation and creativity capacity, design strategies and policies to develop appropriate science and technology, especially information science and technology, network infrastructure and computer technology.
LEVELING THE PLAYING FIELD TO PROMOTE PRIVATE SECTOR DEVELOPMENT IN VIETNAM

By Mr. Chunlin Zhang, Lead Private Sector Development Specialist, World Bank

WHY IS A LEVEL PLAYING FIELD IMPORTANT?

- Vietnam is aspired “to become a basic industrialized country with the foundation of a modern and industrial country by 2020.”
- To achieve it, six transformations are essential, including “a productive and globally competitive private sector firmly in the lead” (Vietnam 2035).
- Despite past growth of private sector:
  - SOEs presence is pervasive with a share of 1/3 of GDP; and
  - Private firms are overwhelmingly small, young and informal;
- A level playing field is therefore crucial to private sector development

WHAT DOES IT MEAN BY A “LEVEL PLAYING FIELD”?

- In the context of competition between SOEs and non-SOEs, a level playing field means “competitive neutrality”, which is defined as:
  - Government business activities do not enjoy net competitive advantages over their private sector competitors simply by virtue of their public ownership.
- The OECD defines 8 building blocks for competitive neutrality:
  - Streamlining the operational form
  - Identification of costs by function, appropriate cost allocation mechanism
  - Achieving a commercial rate of return
  - Accounting for public service obligations
  - Tax neutrality
  - Regulatory neutrality
  - Debt neutrality and effective control of subsidies
  - Competitive, non-discriminatory and transparent public procurement

PARTICULAR CHALLENGES IN TRANSITION ECONOMIES

- To economies such as that of Vietnam that are in a transition from a state-sector dominated central planning economy to a private-sector led market economy, there are special challenges in achieving competitive neutrality, e.g.:
  - Land use: SOEs have advantage in accessing land over young and small private firms due to history.
  - Equity financing: in the past SOEs enjoyed generous equity capital financing from the government, which often did not insist anything on return.
  - Debt financing: SOEs also enjoyed soft lending from state owned financial institutions which followed government direction and relied on government guarantee. SOE restructuring often ended up with de facto debt forgiveness.
  - Subsidies: Traditional SOEs in the central planning economy also relied on government subsidies of various kinds to either finance operational loss or cover the cost of unfunded public service mandates. Nothing existed to prevent cross-subsidization between public service functions and commercial operations.
- Moving away from historical legacy and embracing a new regime of competitive neutrality can be a long journey and may require tough actions of reform.
THE TPP AND EVFTA OFFER OPPORTUNITIES

- Recognizing that a pro-competitive environment is required to implement trade related commitments;
- Specific obligations for SOEs intend to prevent competition distortions.
- Chapter 17 of TPP on SOE and designated monopolies has three main commitments.
  - Non-discrimination and commercial considerations
  - Prohibition of non-commercial assistance
  - Impartial regulator/access to civil courts
- Similar commitments are found in EVFTA, e.g.:
  - Non-discrimination: Commercial Activities of “covered” SOEs explicitly included;
  - Regulatory neutrality: General pattern/practice of regulatory impartiality toward all enterprises;
    “Endeavor to ensure” that SOEs “observe internationally recognized standards of corporate governance”.

THE THREE MAIN COMMITMENTS

- Non-discrimination and commercial considerations:
  - Act in accordance with “commercial considerations” in purchase or sale of goods or services;
  - Do not accord worse terms and conditions to firms from other TPP parties, unless based on commercial considerations.
- Prohibition of non-commercial assistance: No use of
  - “Assistance” that is granted to a SOE….
  - By virtue of its government ownership or control, and….
  - that causes “adverse effects” or “injury” to another TPP Party.
- Impartial regulator/access to civil courts
  - Impartial regulators vis-a-vis SOE and private operators from other TPP Parties;
  - SOEs exercising any governmental authority (e.g. the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees or other charges) act in a manner that is consistent with TPP obligations;
  - Foreign SOEs shall be accountable to the commercial courts of the TPP party where they engage in commercial activities.

EXAMPLES OF POSSIBLE DISPUTES ON NCA

<table>
<thead>
<tr>
<th>Terms</th>
<th>Possible disputes ---- when other conditions are met</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct transfers of funds --- Grants</td>
<td>• Tax/duty preferences?</td>
</tr>
<tr>
<td></td>
<td>• Failure to collect: taxes, duties, utility bills?</td>
</tr>
<tr>
<td>Direct transfers of funds --- Debt forgiveness</td>
<td>• Is enterprise restructuring “real?”</td>
</tr>
<tr>
<td>Loans/guarantees “on terms more favorable than those commercially available to that enterprise”</td>
<td>• Loan maturity unusually long?</td>
</tr>
<tr>
<td></td>
<td>• No interest paid until end-term “balloon” repayment?</td>
</tr>
<tr>
<td></td>
<td>• Collateral requirements and % guarantee coverage more favorable than commercially available?</td>
</tr>
<tr>
<td></td>
<td>• Credit availability to distressed SOEs?</td>
</tr>
<tr>
<td></td>
<td>• Non-pursuit of remedies against defaulting SOEs?</td>
</tr>
<tr>
<td>Equity capital “inconsistent with the usual practice...of private investors”</td>
<td>• Excessively large equity cushion?</td>
</tr>
<tr>
<td></td>
<td>• Not insisting on risk-adjusted ROE comparable to market norm?</td>
</tr>
<tr>
<td>“General infrastructure”</td>
<td>• Under-stated land values for transfers based on administrative procedures rather than an active market?</td>
</tr>
</tbody>
</table>
LIMITED SCOPE OF APPLICATION

• Scope of application of the commitments are limited by various definitions, carve-outs and exemptions, general and country specific. For example,
  o Article 17.6 (NCA) is not applicable to sub-central SOEs until further negotiation; and
  o It is also not applicable to NCAs granted to a SOE that causes adverse effect or injury ONLY to non-SOEs of the same Party.
  o For 5 years after EIF, Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply to a Vietnamese SOE if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the enterprise was less than SDR 500 million (about USD707 million or VND 15.7 trillion).

TWO POTENTIAL APPROACHES OF RESPONSE

<table>
<thead>
<tr>
<th>Compliance-Oriented</th>
<th>Competitiveness-Oriented</th>
</tr>
</thead>
<tbody>
<tr>
<td>With regard to TPP</td>
<td>Adherence to its letters</td>
</tr>
<tr>
<td>Primary objective</td>
<td>Minimize risk of successful complaint from another Party</td>
</tr>
<tr>
<td>Coverage</td>
<td>Only those SOEs that are covered by the TPP</td>
</tr>
<tr>
<td>Beneficiaries</td>
<td>May or may not benefit domestic non-SOEs</td>
</tr>
<tr>
<td>Approach</td>
<td>Risk-based: focusing on interplay between proscribed actions and other-Party enterprises</td>
</tr>
</tbody>
</table>

WHAT APPROACH TO RECOMMEND?

• Advisable for Vietnam to take the competitiveness-oriented approach because it serves better the need for greater development of the private sector.
• How? Implementing reform in 4 stages.

<table>
<thead>
<tr>
<th>Stage</th>
<th>What to do</th>
<th>For example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpretation</td>
<td>Develop a thorough interpretation and understanding of TPP obligations and how they work; communicate to SOEs and the private sector.</td>
<td>What is it exactly a “commercial consideration”? How would a dispute regarding NCA be handled?</td>
</tr>
<tr>
<td>Identification</td>
<td>Identify key areas where compliance risk is substantial and distortion is significant.</td>
<td>SOE claim on capital, SOE restructuring and SOE land use.</td>
</tr>
<tr>
<td>Design</td>
<td>Formulate competitiveness-oriented reform program and assess their possible impact.</td>
<td>Reducing directed lending to SOEs; Requiring market-based ROE from SOEs and eliminating excessive cash through dividend; following market standard in SOE restructuring; developing market for land use rights.</td>
</tr>
<tr>
<td>Implementation</td>
<td>Implement agreed reforms with adequate monitoring and evaluation to inform timely adjustment.</td>
<td>Taking care of the social impact when inefficient SOEs exit due to greater competition and harder budget constraints.</td>
</tr>
</tbody>
</table>
**How Can Trade Facilitation & Logistics Reform in Vietnam Maximize the Benefits from TPP and EVFTA**

*By Mr. Gerard Mc Linden, Lead Trade Facilitation Specialist, World Bank*

**Connectivity and Logistics Performance Are Key to Competitiveness**

- Over past 2 decades Vietnam has emerged as a major trading nation and key player in global value chains.
- Building on this strong foundation, the Government has articulated a clear strategy to attain industrialization by 2020 (S-EDP 2020).
- Improving trade facilitation and logistics performance presents a strong opportunity for productivity and competitiveness improvements.
- But there are several challenges affecting trade facilitation and logistics performance in Vietnam - both Hardware and Software issues.

**Why Focus on Trade Facilitation Performance?**

- Trade transaction costs play an important role in investment and sourcing decisions - border procedures can add 10 – 15% to the cost of getting goods to market.
- All countries benefit from trade facilitation reform but impact greatest in developing countries as costs typically much higher than in OECD countries.
- Strong link between trade, economic growth and poverty reduction.
- Drivers for reform include:
  - Regional and international comparisons
  - Public (and political) frustration with the pace of reform
  - International commitments
  - Private sector expectations
  - Competition for FDI
  - Participation in GVCs

**Modern Trade Facilitation Principles**

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority on control</td>
<td>Facilitation/control balance</td>
</tr>
<tr>
<td>Reform episodes</td>
<td>Continuous improvement</td>
</tr>
<tr>
<td>Limited public information</td>
<td>Transparency/Informed compliance</td>
</tr>
<tr>
<td>High levels of physical inspection</td>
<td>Intervention by exception (risk based)</td>
</tr>
<tr>
<td>Focus on goods</td>
<td>Focus on information</td>
</tr>
<tr>
<td>Focus on non-compliance</td>
<td>Focus on compliance &amp; non-compliance</td>
</tr>
<tr>
<td>Limited use of ICT (Customs)</td>
<td>Extensive use of ICT (by all agencies)</td>
</tr>
<tr>
<td>Adversarial relationship with trade</td>
<td>Constructive partnership with trade</td>
</tr>
<tr>
<td>Competition between agencies</td>
<td>Collaboration between agencies</td>
</tr>
<tr>
<td>Limited cooperation with neighbors</td>
<td>Extensive cross border cooperation</td>
</tr>
<tr>
<td>Limited operational statistics</td>
<td>Clear measures of performance</td>
</tr>
<tr>
<td>Immediate transaction focus</td>
<td>Compliance and audit focus</td>
</tr>
<tr>
<td>Focus on agency mandate</td>
<td>Focus on trade supply chain needs</td>
</tr>
<tr>
<td>Government always right</td>
<td>Capacity to challenge decisions</td>
</tr>
</tbody>
</table>

All fully consistent with: WTO, TFA, TPP, EVFTA, ASEAN, APEC.

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SOME NEW INSIGHTS

• When inspections come down detections go up

• And when clearance time comes down revenue goes up

THREE FOCUS AREAS FOR POLICY MAKERS

• Before the border - Improving market access, trade policy reform (including NTMs) & tariff liberalization

• At the border - Regulatory and procedural harmonization & simplification, automation and institutional reform of border management agencies

• Behind the border - Business and investment climate, improving trade and transport infrastructure, dealing with supply side constraints
## HOW DOES VIETNAM PERFORM?

<table>
<thead>
<tr>
<th>Country</th>
<th>Rankings</th>
<th>LPI ranking 2014 (Border Management)</th>
<th>Doing Business (Trading Across Borders)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td></td>
<td>3</td>
<td>41</td>
</tr>
<tr>
<td>Malaysia</td>
<td></td>
<td>27</td>
<td>49</td>
</tr>
<tr>
<td>Thailand</td>
<td></td>
<td>36</td>
<td>56</td>
</tr>
<tr>
<td>China</td>
<td></td>
<td>38</td>
<td>96</td>
</tr>
<tr>
<td>Chile</td>
<td></td>
<td>39</td>
<td>63</td>
</tr>
<tr>
<td>Philippines</td>
<td></td>
<td>47</td>
<td>95</td>
</tr>
<tr>
<td>Indonesia</td>
<td></td>
<td>55</td>
<td>105</td>
</tr>
<tr>
<td>Vietnam (LPI 48 – DB 90)</td>
<td></td>
<td>61</td>
<td>99</td>
</tr>
<tr>
<td>India</td>
<td></td>
<td>65</td>
<td>133</td>
</tr>
<tr>
<td>Mexico</td>
<td></td>
<td>70</td>
<td>59</td>
</tr>
<tr>
<td>Cambodia</td>
<td></td>
<td>71</td>
<td>98</td>
</tr>
<tr>
<td>Peru</td>
<td></td>
<td>96</td>
<td>88</td>
</tr>
<tr>
<td>Lao PDR</td>
<td></td>
<td>100</td>
<td>108</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Vietnam</th>
<th>East Asia &amp; Pacific</th>
<th>OECD high income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time to export: Border compliance (hours)</td>
<td>57</td>
<td>51</td>
<td>15</td>
</tr>
<tr>
<td>Cost to export: Border compliance (USD)</td>
<td>309</td>
<td>396</td>
<td>160</td>
</tr>
<tr>
<td>Time to export: Documentary compliance (hours)</td>
<td>83</td>
<td>75</td>
<td>5</td>
</tr>
<tr>
<td>Cost to export: Documentary compliance (USD)</td>
<td>139</td>
<td>167</td>
<td>36</td>
</tr>
<tr>
<td>Time to export: Border compliance (hours)</td>
<td>64</td>
<td>59</td>
<td>9</td>
</tr>
<tr>
<td>Cost to export: Border compliance (USD)</td>
<td>268</td>
<td>421</td>
<td>123</td>
</tr>
<tr>
<td>Time to export: Documentary compliance (hours)</td>
<td>106</td>
<td>70</td>
<td>4</td>
</tr>
<tr>
<td>Cost to export: Documentary compliance (USD)</td>
<td>183</td>
<td>148</td>
<td>25</td>
</tr>
</tbody>
</table>

### Who is improving?

<table>
<thead>
<tr>
<th>Bottom 20%</th>
<th>4th</th>
<th>3rd</th>
<th>2nd</th>
<th>Top 20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs</td>
<td>27</td>
<td>43</td>
<td>63</td>
<td>57</td>
</tr>
<tr>
<td>Other border agency procedures</td>
<td>22</td>
<td>31</td>
<td>41</td>
<td>48</td>
</tr>
</tbody>
</table>
### CUSTOMS & TRADE FACILITATION (TPP)

<table>
<thead>
<tr>
<th>Predictable, consistent and transparent Customs procedures *</th>
<th>Treatment of express shipments *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs – Customs international cooperation *</td>
<td>Disciplines on the use of penalty provisions *</td>
</tr>
<tr>
<td>Advance rulings on tariff classification, valuation and origin *</td>
<td>Risk management *</td>
</tr>
<tr>
<td>Provision of advice or information for importers or exporters *</td>
<td>Processing and release of goods *</td>
</tr>
<tr>
<td>Review and appeal in Customs matters *</td>
<td>Publication of Information *</td>
</tr>
<tr>
<td>Automation of trade procedures *</td>
<td>Confidentiality of information *</td>
</tr>
</tbody>
</table>

* WTO TFA

### TPP ADDITIONAL TF CHAPTERS

<table>
<thead>
<tr>
<th>Sanitary and Phytosanitary Measures (strengthened enforcement of WTO SPS provisions and enhanced transparency)</th>
<th>Environment (strengthened enforcement of CITES provisions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Barriers to Trade (strengthened enforcement of TBT provisions and enhanced transparency)</td>
<td>Cooperation and Capacity Building (support for implementation of border management provisions)</td>
</tr>
<tr>
<td>Cross border trade in services (potential impact on clearance and logistics service providers)</td>
<td>Competitiveness and Business Facilitation (deepening regional supply chains and measurement of supply chain performance)</td>
</tr>
<tr>
<td>Electronic Commerce (encourages and facilitates the adoption of automated trade facilitation solutions)</td>
<td>SMEs (reduction in red tape and trade facilitation bottlenecks that affect SMEs)</td>
</tr>
<tr>
<td>Competition Policy (potential impact on clearance and logistics service providers)</td>
<td>Regulatory Coherence (interagency coordination and consultation)</td>
</tr>
<tr>
<td>Intellectual property (strengthened enforcement of TRIPS provisions and enhanced transparency)</td>
<td>Transparency and Anti-corruption (codes of conduct for government officials - customs often regarded as amongst the most corrupt agencies of government)</td>
</tr>
</tbody>
</table>

### CUSTOMS & TRADE FACILITATION (EVFTA)

<table>
<thead>
<tr>
<th>Facilitation and control *</th>
<th>Advance Rulings *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs Cooperation *</td>
<td>Fees and charges *</td>
</tr>
<tr>
<td>International standards and procedural simplification *</td>
<td>Mandatory use of Customs Brokers *</td>
</tr>
<tr>
<td>Release of goods without delay and pre-arrival processing *</td>
<td>Customs Valuation *</td>
</tr>
<tr>
<td>Simplified procedures *</td>
<td>Pre Shipment Inspection *</td>
</tr>
<tr>
<td>Transit and transshipment *</td>
<td>Review and Appeal *</td>
</tr>
<tr>
<td>Risk Management *</td>
<td>Business Cooperation *</td>
</tr>
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<td>Transparency *</td>
<td>Customs committee *</td>
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* WTO TFA
### CUSTOMS & TRADE FACILITATION++ (EVFTA)

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<td>Business Cooperation</td>
</tr>
<tr>
<td>Transparency</td>
<td>Customs committee</td>
</tr>
</tbody>
</table>

Plus - Origin, TBT, SPS, Services, Investment, e-commerce, Competition, IPR, NTB, Capacity Building, Mutual Administrative Assistance

### WHAT THE WBG IS DOING TO SUPPORT VIETNAM

- **Trade Facilitation support**
  - National Trade Facilitation Committee
  - National Trade Information Portal (ASEAN NTR)

- **Transport and Logistics support**
  - Development of a National Logistics Action Plan
  - North South Corridor Study
  - Development of a Logistics Observatory System
NEW GENERATION FTAS AND INCLUSIVE GROWTH IN VIETNAM

By Mr. Nguyen Thang, Director, Center of Analysis and Forecast, Vietnam Academy of Social Sciences

INCLUSIVE GROWTH: KEY MEASURES
• Inclusive growth index, which integrates income growth and income distribution
• Inequality indicators
• Population share of the middle class

Inclusive growth in Vietnam: How has it been recently
Growth has been inclusive … but is getting less so because of recent growth slowdown

VIET NAM’S INEQUALITY IS COMMENSURATE WITH ITS LEVEL OF DEVELOPMENT
• Modest consumption-based Gini: 0.35-0.37
• Viet Nam in the middle of the World Economic Forum’s inequality ranking for lower middle income countries, 17 out of 34 countries (WEF 2015)
• WEF puts Viet Nam at the top of 36 comparator countries (lower middle income countries) on employment and labour compensation, while ranking it fourth on a sub-index for labour compensation.

SOCIAL TRANSFORMATION: A LOWER MIDDLE CLASS EMERGES
• The lower middle class (USD 4-10 per day, USD 2005 PPP or the developing world’s middle class) grew rapidly
• But the population share of the global middle class (USD 10-100, USD 2005 PPP) has stagnated recently

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• But the population share of the global middle class (USD 10-100, USD 2005 PPP) has stagnated recently

• poor, with per capita income per day below US $2;
• near poor: US $2-4;
• lower middle class: US $4-10;
• upper middle class: US $10-13;
• and high income: above US $13

(2005 US$ PPP).
KEY DRIVERS OF INCLUSIVE GROWTH

- relatively egalitarian initial distribution
- liberalization of prices, agriculture and internal trade, non-agricultural sector
- International integration, advantageous geographical traits
- improvements in hard and soft infrastructure, resulting in improved external and internal connectivity and improved geographic and occupational labor mobility

All resulted in structural changes with large number of workers moving out of agriculture to manufacturing and services; share of agricultural employment dropped substantially, from almost 80% in the early years of Doi Moi to approximately 45% recently

WHAT EXPLAINS THE CURRENT SLOWDOWN?

- The recent growth slowdown originated from rising macroeconomic instability in the late 2000s
- Today, the major reforms implemented in the early years of Doi Moi have run out of steam.
- WTO accession has not been complemented with sufficiently bold domestic reforms, making the economy more vulnerable to external shocks, and deepening inherent structural weaknesses.

CHALLENGES

- Growth is still sluggish, multi-speed economy has been emerging more clearly, reducing the development effect of economic growth
  - FDI sector greatly outperforms domestic sector, while the linkages between the two have been limited
  - Within domestic sector – performance also varies across
    - Formal sector
    - Non-farm informal sector
    - Farming households
- Low hanging fruits in early years of Doi Moi are becoming rarer, as Vietnam is moving up the development ladder

Viet Nam passed “factor driven” and approaching “efficiency driven” stage of development

TPP: OPPORTUNITIES AND CHALLENGES FROM THE INCLUSIVE GROWTH PERSPECTIVES

- Opportunities:
  - TPP can potentially facilitate further structural change in the form of accelerated movement of workers out of agriculture to manufacturing and services, and more rapid formalization of the labor market thanks to perceived further expansion of labor-intensive manufacturing industries such as textile and garment, footwear, electronics etc.
  - TPP can potentially boost productive employment: Large increase in wage rates for all types of labor, growing most in the 2015-2030 period. Low skilled labor will see the highest growth in wages, peaking at over 10 percent above baseline in 2025 (Haddad 2016)
SOE reform and other TPP-linked behind the border reform will reduce transaction costs and create a more level playing field, thus disproportionately benefiting SMEs, which are the main source of employment in Vietnam, but have been facing disproportionately big constraints on their development.

TPP-LINKED CHALLENGES

• TPP may drive many farmers engaging in livestock out of the market
  - Livestock share of total incomes for rural households 6.8%, and 2% of rural households having livestock share of total incomes exceeding 50% (VHLSS 2014)
  - Livestock provide employment to over 6% rural workers as the first job and over 21% as the second job in 2014
  - Approximately 50% of self-employed workers in livestock sector have only primary schooling or lower, with the average age of 43 (VHLSS 2014), indicating their limited adjustment capabilities

RULES OF ORIGIN (ROO) SUBSTANTIALLY REDUCES THE PERCEIVED POSITIVE EFFECTS OF TPP ON INCLUSIVE GROWTH IN VIETNAM

• This is particularly true in the textile and apparel sector, where TPP imposes a “yarn-forward” rule, causing the efficiency reducing effect of trade diversion: ROOs are likely to make TPP countries in East Asia use more expensive intermediate inputs from other TPP members that they would normally would source from non-members
• FDI from non-TPP countries in textile industry may partially offset this, but raises two other concerns:
  - Environmental sustainability
  - Inability to move up the global value chains, causing Vietnam to fall into “the assembly trap”, resulting in most of TPP benefits going to FDI firms in the context of a persistently multi-speed economy

INTELLECTUAL PROPERTY RIGHTS (IPR)

• TPP-compliant legal framework would
  - have unfavorable impacts on specific sectors:
    - pharmaceutical and
    - the agri-business
  - which both are relevant to inclusive growth

BEYOND TPP: THE FOURTH INDUSTRIAL REVOLUTION (FIR)

• The Fourth Industrial Revolution, which is taking place at an exponential rate may radically change the global economic landscape, and disrupt many traditional industries, thus making many assumptions, and consequently results of simulations on impacts of TPP on Vietnam irrelevant
• Key elements of FIR:
  - Artificial intelligence; Robots; Internet of things, 3D printing, biotechnology etc.
  - Breakthroughs in many areas such as ICT, energy, transport etc.
• Impacts:
  - All people benefit as consumers
  - But many people suffer as workers
VIETNAM’S COMPARATIVE ADVANTAGE IN CHEAP LABOR AND FAVORABLE GEO-ECONOMIC POSITION MAY ERODE QUICKLY UNDER FIR

- Automation and digitalization has resulted in rapidly falling costs of robots, with the resultant possibility of manufacturing going back to developed countries to be closer to the final market and R&D centers
  - 3D printing allows people in the rich countries to 3D print their shoes at home in the foreseeable future, thus making the future of footwear industry in Vietnam uncertain
  - Foxconn has a plan to displace many workers with robots in their electronics factories, reducing the current window of opportunities of Vietnam’s electronic sector

- FIR is already felt in Vietnam
  - Internet banking in Vietnam has been displacing bank’s employees
  - Travel agency, sales, marketing etc. are also affected in major ways
  - Uber and Grab taxi and taxi bike are taking increasing shares in big cities
  - 3D printing has become more common in wood processing in traditional craft villages

TPP, FIR AND INCLUSIVE GROWTH

- All these may substantially change the expected outcomes of TPP, and may even reverse some on economic growth and income distribution
- TPP and new generation FTAs may further widen the gaps between owners of ideas and skills, and the rest, both across countries and within a country

SUMMARY

- Vietnam has achieved relatively inclusive growth by many measures, but it deteriorates because of recent growth slowdown
- This in turn is explained by drivers of growth set in motion by Doi Moi reforms running out of stem as Vietnam is transitioning from factor-driven to efficiency-driven stage of development
- New generation FTAs, including TPP can potentially help Vietnam in this transition through further international integration
- But challenges are considerable, both linked to the FTAs, and beyond, notably in the context of FIR
- Therefore, domestic reforms should be accelerated in tandem with Vietnam’s tireless efforts on the international integration front to maximize benefits and minimize costs associated

A BIG DEVELOPMENT QUESTION

- What institutional and policy reforms are needed to promote inclusive growth in Vietnam in the new context through:
  - helping people, particularly those with low human capital and are not sufficiently young to adjust to the new context where new generation FTAs mushroom and FIR is taking place at an exponential rate
  - helping future generations with the right types of education and training in the new era of globalization with FIR at the heart
BACKGROUND DOCUMENTS
I. TWO DECADES OF GLOBAL INTEGRATION

1. After years of negotiation, the Trans-Pacific Partnership (TPP) was signed on 4 February 2016 in Auckland, New Zealand by twelve Pacific Rim countries to form the world’s seventh-largest single market. As a member of TPP, Vietnam will be able to tap into the free flow of goods, capital, and skilled labor in a region with 620 million people and a combined gross domestic product of US$2.4 trillion.

2. In addition, negotiations to establish the Trans-Pacific Partnership (TPP) were concluded on October 5, 2015, at a meeting of Trade Ministers in Atlanta, Georgia, in the United States, ending more than five years of discussions among the 12 participating members, including Vietnam. The TPP has been described as a 21st century trade agreement, or a comprehensive and high-standard agreement. In addition to lowering tariffs on the trade in goods, the TPP includes measures to lower barriers to trade in services, non-tariff measures, measures on the enforcement of intellectual property rights, and reductions in the role of state-owned enterprises in markets, all of which are considered to constitute a good basis to facilitate further structural and institutional reforms in Vietnam.

3. Vietnam’s participation in the AEC and TPP is part of the country’s two-decade effort to increase international integration. Key milestones of the openness policy include Vietnam’s participation in the ASEAN Free Trade Area in June 1996, after the country’s admission to ASEAN in July 1995; the Bilateral Trade Agreement between Vietnam and the United States in December 2001; and Vietnam’s World Trade Organization (WTO) membership in January 2007.

4. Intensifying international integration, as manifested through numerous bilateral and multilateral trade agreements, has been one of the main factors contributing to Vietnam’s economic growth over the last two decades, and to making it an export-led, open economy. Recently, Vietnam also signed three bilateral free trade agreements (FTAs), including the Vietnam Japan Economic Partnership Agreement, the Vietnam-Chile FTA, and the Vietnam-Republic of Korea FTA. Vietnam and ASEAN have also signed and implemented six multilateral FTAs: the ASEAN FTA, the ASEAN-China FTA, the ASEAN-Korea FTA, the ASEAN-Australia and New Zealand FTA, the ASEAN-Japan Comprehensive Economic Partnership, and the ASEAN-India FTA. More recently, Vietnam has concluded the TPP and the EU-Vietnam Free Trade Agreement. Negotiations on the Eurasia Economic Community Agreement are underway.

5. This paper describes some of major gains achieved as a result of international integration, and the remaining constraints that hinder Vietnam from taking advantages of the international process, with an emphasis on key challenges and opportunities Vietnam faces in joining the TPP. These include the role of global and regional integration and trade agreements as a means of leveraging reforms. The paper concludes with a discussion of policy implications regarding the importance of engaging more effectively in global value chains, the need to improve connectivity and trade facilitation, and the role of policy coordination in cross-sector reform to take advantage of global integration.

A. Major Integration Gains and Remaining Constraints

6. Vietnam’s recent economic growth has enabled the country to engage with international markets and to leverage that engagement to support sustained growth in per capita income.
and rapid poverty reduction. As a result of its global integration gains, the country’s ratio of trade to gross domestic product (GDP) reached 164 percent in 2013, among the highest in ASEAN (figure 1). Since 2000, Vietnam’s manufacturing exports sharply increased, growing at an average annualized rate of 23 percent in nominal terms, reaching US$94.6 billion in 2013 (figure 2). This explosive growth is evidence of a deeper shift in the Vietnamese economy toward manufacturing and away from agriculture and other traditional activities. Structural change is well underway, and the process is likely to continue over the medium to long term. The number of products Vietnam produced and markets it accessed increased considerably between 2000 and 2011 compared to peer countries (figure 3).

![Figure 1: Trade-to-GDP ratio for Vietnam and comparators, 2000–13](image1)

![Figure 2: Manufactures as a percentage of merchandise exports for Vietnam and comparators, 2000–13](image2)

**Source:** World Development Indicators.

![Figure 3: Number of products produced and markets accessed, Vietnam and peer countries, 2000 compared to 2011](image3)

**Source:** Online Trade Outcomes Indicators, International Trade Department, the World Bank.

7. **Over the longer term, it is not just the growth rate of exports that matters, but also the composition of exports, and in particular the level of technology they embody.** Vietnam’s performance on this metric has also been very strong over the last five years or so, after having been flat for the preceding decade (figure 4). Between 2008 and 2013, after the WTO accession, high-technology exports increased from 5 percent of manufactured goods exports to 28 percent, which is comparable to China and higher than the ASEAN average. The technology sector is booming, albeit from a low starting point, thanks in part to a significant influx of foreign direct investment (FDI) by technology companies. FDI is considered to be a catalyst for growth and development, due to possible spillover effects on the local economy, especially in countries with low capital accumulation. In theory, spillovers such as innovation (through faster transfer of know-how and technology); increases in productivity, sophistication, and competitiveness (through increased competition); and a broader product choice for consumers should also contribute toward economic growth and transformation.
8. However, much of Vietnam’s FDI has tended to operate in enclaves generating little of the hoped-for technology transfers or downstream spillovers to domestic firms, particularly small and medium-sized enterprises (SMEs). The way FDI affects economic growth and local firms’ productivity depends on policies and on the business environment and technological level of firms. The basic prerequisite for spillovers from FDI is the existence of a technology gap between domestic and foreign firms. Potential spillovers increase with the technology gap as domestic firms get opportunities to increase efficiency through imitation of foreign technology. However, a too-wide gap will impede the domestic firms from absorbing technological advantages from foreign firms, and the absence of a qualified labor force can prevent the success of FDI spillovers. Services exports performance has been lackluster, with a heavy burden of regulation and restrictions (figure 5). Not only are services a source of export diversification, but continued robust performance in goods markets would also require access to high-quality, competitively priced services inputs.

Figure 4: High-technology exports as a percentage of manufactured exports for Vietnam and comparator countries, 2000–13

Figure 5: Exports of services as a percentage of total exports of goods and services for Vietnam and comparator countries, 2000–13

Source: World Development Indicators. Source: World Development Indicators.

Note: Services exports are calculated as the difference between total exports of goods and services, and merchandise exports.

9. Vietnam has actively used trade agreements—including accession to the WTO—as a way of driving and locking in domestic reform at home. Within ASEAN, the FTAs, in combination with Vietnam’s WTO bindings have been relatively successful in liberalizing goods trade: tariff rates are relatively low—on average 9 percent for industrial products and 17 percent for agriculture—and a good number of product lines are duty free, even though peak tariffs (greater than 15 percent ad valorem) persist for 26 percent of tariff lines (WTO 2013). In particular, under the pressure of timely compliance with the WTO triggers, Vietnam’s institutional framework has been significantly improved. Before and after WTO accession, a large number of relevant laws and regulations were reviewed and revised to meet WTO requirements. These include the enterprise law, the investment law, the procurement law, the land law, and the intellectual property law, all of which have contributed to greater transparency, an improved, more market-oriented business environment, and less government intervention.

B. TPP Opportunities and Potential Impacts

10. The TPP is expected to bring several immediate benefits to Vietnam, but fewer in the longer term. The benefits are potentially considerable, but so are the costs and risks, in particular during its implementation. TPP impacts are considered to be more significant than any other free trade agreement Vietnam has negotiated so far. The crucial changes as a result of implementation of the TPP are expected to help put Vietnam on the right track to the creation of a more competitive and innovative economy. The following analysis, based on available sources, presents a preliminary snapshot of the opportunities and challenges facing Vietnam as a TPP signatory. Further in-depth analytical work will be needed once all the terms of negotiations become available.
11. As Vietnam’s growth becomes increasingly trade-dependent, the TPP has the potential to facilitate both the country’s further GDP growth and deeper gains from continued liberalization. Preliminary estimates suggest that the TPP could add as much as 8 percent to Vietnam’s GDP, 17 percent to its real exports, and 12 percent to its capital stock during 2015–35. The estimates indicate that the largest area of benefit from the TPP in relation to real GDP comes from the impact of tariff reductions (52 percent in 2035), followed by reform of non-tariff measure impacts (32 percent), and liberalization of services restrictions (16 percent), as shown in figure 6, panels A and B.

![Figure 6: TPP impacts on GDP, 2015–35](image)

Panel A: Vietnam’s change in real GDP due to TPP, 2015–35 (Cumulative percent change relative to mid-growth baseline)

Panel B: Vietnam’s change in real GDP due to Baseline and TPP, by liberalization components, 2020–35 (Average annual growth)

Source: Minor et al. 2015.

12. The TPP could also create greater access to foreign markets, leading to larger export opportunities for Vietnam. As agreed by all TPP parties, most tariffs and non-tariff barriers on industrial goods will be eliminated and reduced immediately, and tariffs and other restrictive policies on agricultural goods will be eliminated or reduced over time. As estimated in table 1, both exports and imports are projected to rise under the impact of the TPP agreement (though the trade balance would decline). Market access, especially to the United States and Japan, is of particular importance to Vietnam as it leverages external engagement for development. Moreover, the TPP would result in considerable trade diversion, leading to the fact that the United States would import more from Vietnam than China, which is currently the largest supplier to the United States.

![Table 1: TPP impacts on key economic indicators, 2015–35](table)

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
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<th>2030</th>
<th>2035</th>
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<td>Real GDP</td>
<td>3.6</td>
<td>6.8</td>
<td>8.2</td>
<td>8.1</td>
</tr>
<tr>
<td>Real Exports</td>
<td>5</td>
<td>13.4</td>
<td>16.8</td>
<td>17.1</td>
</tr>
<tr>
<td>Real Imports</td>
<td>7.6</td>
<td>15.7</td>
<td>16</td>
<td>14.2</td>
</tr>
<tr>
<td>Real Investment</td>
<td>13.6</td>
<td>21.3</td>
<td>15</td>
<td>6.3</td>
</tr>
<tr>
<td>Capital Stock</td>
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<td>9.3</td>
<td>12.9</td>
<td>11.9</td>
</tr>
<tr>
<td>Change in Trade Balance</td>
<td>-4,941</td>
<td>-9,148</td>
<td>-6,051</td>
<td>-169</td>
</tr>
</tbody>
</table>

Source: Minor et al. 2015.

Note: Cumulative percent change relative to mid-growth baseline.
The TPP could boost real exports in the aggregate, and in particular increase manufactured exports considerably. As shown in figure 7, manufactured exports are expected to increase by approximately 30 percent over the baseline in 2035, while all other sectors—agriculture; oil, gas, and minerals; and services—would decline modestly. Manufacturing exports, comprising 58.1 percent of Vietnam’s 2015 real exports, are expected to increase during 2015–35, and although chemical and electrical machinery exports would decline slightly through 2020, they would quickly recover as capital stocks increase and liberalization continues. Oil, gas, and mineral exports, projected to be 16.5 percent of Vietnam’s 2015 exports, decline as a result of TPP. Vietnam’s agricultural exports are estimated to comprise 15.4 percent of 2015 exports. Nearly all agricultural sectors, including rice, grain, processed food, and forestry products (wood), would experience a decline in real exports during 2015–25.

Under the TPP, the textile, apparel, and leather (including footwear) sector, comprising nearly one-third of projected 2015 real exports, is the sector that could gain the most. Tariffs on these products in the TPP region are among the highest, averaging 17.1 percent on U.S. imports of these products from Vietnam to 7.7 percent in the TPP-Asia region and 20.6 percent elsewhere in the TPP region. As a result, Vietnam’s exports of textile and apparel products are projected to increase by approximately 60 percent above baseline real exports in 2035. Nevertheless, the TPP’s rules of origin could significantly limit the potential positive impacts. This point will be further discussed later in this paper.

The TPP could also boost Vietnam’s imports in all four groups of commodities—agriculture, natural resources (oil, gas, and minerals), manufactures, and services. As shown in figure 8, among these commodities, Vietnam’s imports of manufactures (with a two-thirds share of the baseline 2015 imports) increase by more than double that of agriculture (with a 10 percent share of the baseline 2015 imports) and services. Textile, apparel, and leather imports (with a 14.9 percent share of total Vietnamese imports) would grow to over 50 percent of baseline imports, followed by chemicals, which would rise to 15.4 percent by 2035. While imports from the TPP region would increase considerably, the projected share of non-TPP countries as a source of Vietnam’s imports also increase in some sectors. Imports of textiles and apparel from the TPP region would grow by between 151.3 percent from TPP countries in Asia, to 203.7 percent from the United States. However, these countries, collectively, comprise less than 10 percent of Vietnam’s textile and apparel imports. Imports of textiles, apparel, and leather goods from non-TPP sources increase by 42.5 percent. As mentioned, rules of origin may limit the use of nonregional inputs in the textile, apparel, and leather sector.

Figure 8: Percent change in real imports, by major sector, 2020–35

Figure 9: Change in real output, by major sector, 2020–35

Source: Minor et al. 2015.
Note: Cumulative percent change relative to mid-growth baseline.
16. **The TPP could help restructure the output mix toward faster industrialization.** As shown in figure 9, real output in the manufacturing sector could grow by a cumulative 30 percent above the baseline level. Services could grow by approximately 5 percent over the baseline. Agricultural output and oil, gas, and minerals are expected to decline slightly from baseline growth, but as investment increases, and capital prices decline, output recovers somewhat. Where there are projected decreases in agricultural output, they are greatest in the first few years of the TPP, before investment and capital stocks respond. In the long run, that is, 2025–35, changes in investment and factor costs attenuate the initial decreases in production from baseline growth.

17. **The TPP could stimulate investment both because of its derived demand for inputs and its effects on factor prices, in particular, capital rental rates.** It is projected that investment would increase significantly relative to the baseline from 2015 through 2025, peaking at nearly 23 percent above the baseline. But this stimulation would diminish in the second half of the observed period of 2015–35. The rise in investment is driven by the increasing rate of return on investments, which is a function of capital costs and the rental rate of capital, which are in turn influenced heavily by the rise in manufacturing exports to TPP markets. As a participant in the TPP, Vietnam can be expected to attract much larger flows of quality foreign investments, especially FDI allocated in upstream clusters of beneficial sectors, such as textiles, apparel, and leather.

18. **The TPP could strongly motivate and accelerate domestic reforms, which go beyond the scope of the “trade” issues in the agreement.** For a large segment of Vietnamese stakeholders, participation in the TPP is expected to create renewed domestic reform momentum, as seen after Vietnam’s accession to the WTO. The TPP reflects the content of modern trade agreements: competition, cooperation, and capacity building; services, including financial services, telecommunications, and temporary entry of service providers; customs; e-commerce; environment; government procurement; intellectual property; investment; labor standards; legal issues; market access for goods; rules of origin; non-tariff measures including sanitary and phytosanitary and Technical Barriers to Trade measures; and trade remedies. Of particular importance in Vietnam, the state-owned enterprise (SOE) chapter under the TPP agreement is expected to sustain structural adjustments in Vietnam toward perfecting a market-based economy and a level playing field. The TPP would see the powers of state enterprises reduced, and improve efficiency and transparency in the activities of SOEs. The cost is that in areas in which SOEs are supposed to provide public goods, they may come up against foreign competition, and the government control over these SOEs would be loosened because adjudication is outside Vietnam. Many TPP chapters will also stimulate institutional reforms to strengthen and standardize rules and transparency and support the creation of modern institutions in Vietnam.

19. **The TPP could support the creation of a more competitive and innovative economy.** Over the longer term, it is not just the growth rate of exports that matters, but also the composition of exports, and in particular the level of technology they embody. Despite Vietnam’s good performance in recent years, for example, between 2008 and 2013, high-technology exports increased from 5 percent of manufactured goods exports to 28 percent, comparable with China and higher than the ASEAN average, Vietnam’s exports have remained primarily low-value goods. As mentioned, larger flows of quality foreign investments can be redirected in particular to upstream supply chains and ancillary industries of beneficial sectors, such as textiles, apparel, and leather, to seize the TPP opportunities. This process will stimulate domestic private firms to participate in extended domestic supply chains and integrate into global value chains, which ultimately will further boost value-added exports.

C. TPP Challenges

20. **The significant dependence of Vietnam’s exports on imported materials, coupled with the TPP’s restrictive rules of origins, could prevent Vietnam from maximizing TPP benefits.** Figure 10 shows that the textiles and apparel sector faces key challenges associated with structural
transformation. The value chain is dominated by the assembly of clothing, which is labor-intensive, done by smaller firms using low tech, and subcontracted with multinationals. Spinning is the second-largest part of the value chain, and is capital-intensive and subcontracted with larger businesses. The segment of textile finishing is underdeveloped; its revenue accounted for only 1.7 percent of the total revenue of the textile sector. The segment weaving and dyeing, which is high tech, capital-intensive, and requires skilled workers, is also small. Figure 11 shows that most imported yarn and fiber are sourced from non-TPP territories. About 60 to 90 percent of Vietnam’s textiles come from other countries, mostly China and Taiwan, China. Even if half the domestic production used imported materials, it might not be possible for all exports to the United States to meet the TPP rules of origin requirements. Given this structural deficiency and the TPP’s strict rules of origins, the textile and apparel sector would have to restructure toward backward integration to maximize the TPP benefits.

21. This challenge creates a great opportunity for industrial restructuring toward integration into global value chains and the development of ancillary industries in Vietnam. The need to restructure the textile and apparel sector toward backward integration could facilitate domestic enterprises to expand domestic supply chains and actively participate in global value chains. This move would hence support the capture of increased value added, and also lead to learning and accumulation of knowledge capital. Since such industries are typically made up of SMEs, the SME sector is also promoted, with beneficial impacts on income and employment. One of the reasons Thailand’s automotive industry has been the most successful in Southeast Asia is the existence of a strong ancillary industry subsector.

22. Increased FDI to upstream and ancillary industries is not without cost, and Vietnam needs to have wise policies for choosing advanced technology and environmental FDI. As the private sector responds promptly to take advantage of the TPP, a number of Japanese, Chinese, and Korean firms are investing heavily in fiber production in Vietnam. All the investments in textile manufacturing—particularly the dyeing and finishing of fabric—have an enormous environmental impact. Textile manufacturing is not only extremely water-intensive, using up to 250 tons of water for every 10,000 meters of fabric produced, but also discharges extremely high volumes of wastewater and pollutant load. The textile industry also uses a large variety of toxic chemicals in manufacturing. The risk is that Vietnam could become one of the largest consumers of textile chemicals in the world (approximately 25 percent of the chemicals manufactured globally are used in the textile industry). In hosting increased flows of FDI as a result of the TPP, Vietnam will need to adopt a set of cautious policies to allow careful selection of advanced technology and environmentally friendly FDI investments that are clean by design to minimize environmental impacts.

23. Vietnam also has a limited ability to absorb and host sizable FDI due to the lack of globally connected firms participating in high-value chains, high logistics costs, and weak
infrastructure such as roads, power, ports, and logistics services. The post-WTO environment is evidence of this, where the acceleration of FDI especially in manufacturing took place only several years after the agreement was signed. Behind-the-border issues matter. The challenges include improving connectivity for integration into global value chains, and keeping trade costs low. Domestic private- and foreign-invested firms that participate in global value chains need to be able to move goods across borders cost-effectively and reliably. This requires both soft and hard infrastructure.

24. **Meeting labor standards is another challenge in TPP implementation.** The textile and apparel sector, for example, is relatively labor-intensive, generating income for 33 percent of industrial workers in Vietnam. Most of the labor skills required are low to medium, and the workers are often female, which helps create employment for a large section of the population, especially the rural workforce, thereby facilitating a shift from farm to nonfarm activities. High labor intensity together with the strong export orientation of the sector makes exports extremely important for employment creation. VITAS (2013) estimates that every US$1 billion increase in textile and apparel exports creates about 150,000 to 200,000 jobs. Therefore, the sector is strategic in terms of exports and job creation. Concerns about labor standards should be addressed. All the core International Labour Organisation Conventions should be signed and implemented.

II. THE WAY FORWARD – SEIZING OPPORTUNITIES

A. Engaging in Global Value Chains

25. **Vietnam's impressive trade performance as the result of global integration has been characterized by increased participation in global value chains (GVCs), reflected in the rising share of foreign value added in Vietnamese exports.** Given the “unbundling” of production that continues to transform world trade patterns, as well as falling transport and communications costs, more and more countries are adopting GVC-friendly economic frameworks.

26. **It is important to fully understand the dynamics of GVC participation that present challenges and opportunities for Vietnam's medium-term development prospects.** Vietnam's current development model is fundamentally different from that of recently industrialized countries, like Korea. In the case of Korea, the country set about developing full supply chains, from design, through component manufacture, to assembly and distribution. In Korea, large conglomerates (chaebols) played an important role in centralizing and coordinating that activity across a variety of sectors, including consumer electronics and transport equipment. In Vietnam, by contrast, the focus is not on developing full national supply chains, but rather on developing competence in particular tasks that form part of a GVC, with other tasks performed in other locations. For instance, Vietnam's important activity in electronics focuses on assembly of component parts imported from other (primarily Asian) countries, and depends crucially on the involvement of foreign multinationals for the provision of headquarter services, including supplier coordination and product development. Large foreign investors bring new, often leading-edge, plants and equipment, ICT (information and communications technology) systems, and work organization methods, as well as linkages to global markets. As such, in a developing country like Vietnam, they bring capabilities that are above those of local firms.

27. **Against this backdrop, development for Vietnam implies first joining GVCs—a procedure that is already well underway in a number of sectors—and then “moving up” within them to perform higher-value-added activities.** Those activities are important because they are frequently the source of positive spillovers at the sector and economy levels. For instance, research and development services, as well as design, are upstream activities that are of particular importance because they represent the kernel of a domestic innovation economy, in which indigenous technological progress forms the basis of sustained total factor productivity growth, which is crucial if Vietnam's rapid development is to continue advancing into middle-income-country status.
Supporting GVC-based development highlights the intersection between trade policy and what might be termed industry policy. Clearly, there are interventions the Vietnamese government could make to support the development and competitiveness of value chain activity within its territory. However, world market disciplines—as well as international trade rules—substantially constrain the types of measures that can be used. In an environment where governance needs to be improved and strengthened, picking winners—firms or sectors—is a debatable approach. Although successful examples can be identified in other countries, the more typical experience is that supposed “winners” absorb government support without ever upgrading performance to the level required to be competitive in the global marketplace.

The issue facing Vietnam is therefore not one of picking the “right” firms or industries for the next 20 years, but rather putting in place structures, institutions, and infrastructure that create a vibrant private sector economy in which resources can flow quickly toward competitive firms, so that they can grow and prosper, thereby increasing national income, but also improving employment market performance and helping absorb surplus labor liberated by productivity growth in the agricultural sector. In the global context in which Vietnam is undertaking a process of compressed development, the policy challenge is to identify strategic interventions that support and intensify the operation of market mechanisms, at the same time as correcting market failures—and in particular supporting the production of positive externalities at the level of industries and the economy as a whole.

An issue that arises in all sectors is how to promote backward linkages with upstream industries, such as supply of component parts and input services. Figure 12 shows that for the economy as a whole, approximately 60 percent of export value added comes from domestic inputs, with most of the remainder made up of indirect value addition by export industries. The share of foreign value added embodied in growth exports has risen progressively from 21 percent in 1995 to 36 percent in 2011, as foreign invested firms have played an increasingly large part in contributing to Vietnam’s export basket (figure 13). Value-chain-based development presupposes a certain degree of reliance on foreign intermediates, but there is nonetheless clear scope for Vietnam to develop its upstream industries in a range of sectors. Development of these industries not only reinforces links between value chains and the wider economy, for instance, by involving small and medium enterprises, but also represents a way of moving up into higher-value-added activities within different value chains.

One of the most innovative aspects of GVCs is their network character. Rather than a series of linear, point-to-point transactions, production and distribution take place within a complex web of relationships where value is transferred, and goods cross borders multiple times during production, which is defined as a minimum spanning tree. It is therefore important to understand Vietnam’s position in GVCs from a network perspective. The best-connected countries—those that are most

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**Figure 12: Breakdown of domestic value added in gross exports, total economy, 2011, percent**

- Direct: 37.7%
- Indirect: 62.2%
- Re-imported: 0.1%

**Figure 13: Foreign value added embodied in gross exports, total economy, 1995–2011**


Source: Based on the OECD-WTO TiVA Database.
central, in the sense of being important trading partners for several countries—are the “roots of the tree.” Peripheral countries—those that depend on the nodes—are the “leaves” of the trees. The size of the node representing each country reflects its network centrality, and the thickness of the connecting lines represents the strength of value-added trade between countries. Larger bilateral flows are represented as shorter distances between country nodes.

32. **Analysis of GVCs from a network perspective clearly shows that Vietnam is part of “Factory Asia”—the cluster of countries centered on China.** Figure 14 presents a minimum spanning tree representation of value-added trade as captured in the OECD-WTO TiVA Database.3 Factory Asia is linked to the developed-country markets of Europe and the United States by strong trade connections. In terms of Factory Asia itself, the thickness of Vietnam’s line connecting it with China makes clear that there is considerable scope to expand value-added trade with regional anchor economies, relative to the levels seen elsewhere in the region. In part, of course, Vietnam’s thinner line is a function of its smaller economy and lower level of per capita income. As its value chains develop and deepen, and as moving up takes place, the crucial link to China is likely to become stronger. Although not shown in the figure, links with other economies are also likely to intensify, including with the United States through the preferences accorded by TPP.

**Figure 14: Visual representation of the global network of trade in value added, 2011**

![Visual representation of the global network of trade in value added, 2011](image)

*Source: Santoni and Taglioni (2014), based on the OECD-WTO TiVA Database.*

**B. Improving Connectivity and Trade Facilitation**

33. **Connectivity is the essence of GVCs.** Firms that participate in value chains need to be able to move goods across borders cost-effectively and reliably, in order to keep inventory carrying costs low and to comply with the strict requirements of lead firms in terms of on-time delivery. As Vietnam integrates more fully into GVCs and upgrades its tasks over the next two decades, it will need to boost its connectivity performance. Although maritime and land transport are important, air transport takes on particular significance within GVCs like electronics because component parts have a high value-to-weight ratio, and are therefore well suited to faster but more expensive air transport.

34. **From a trade and competitiveness standpoint, connectivity refers to the ability of a country’s businesses and consumers to connect to global networks of trade, capital (including knowledge), and people.** At its most basic, connectivity is a network concept that cannot be understood using the linear logic of a point-to-point transactional framework. One measure of Vietnam’s ability to connect to international markets is its overall level of trade costs (referring to all factors that drive a wedge between producer prices in the exporting country and consumer prices in the importing countries; they can be understood as the transaction costs associated with international trade).

35. **Vietnam has been progressively reducing trade costs.** Trade costs as reported in the UNESCAP4 -World Bank database are bilateral—between exporting and importing country pairs—

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4 United Nations Economic and Social Commission for Asia and the Pacific.
and are computed in ad-valorem equivalent terms, taking manufacturing and agriculture separately. Trade costs for all countries are much higher for agriculture than for manufacturing (figures 15 and 16). Vietnam’s trade costs were noticeably high in comparative terms in 2000: 125 percent in manufacturing, and 205 percent in agriculture. However, Vietnam rapidly reduced its trade costs by 2010, particularly in manufacturing. The absolute level of trade costs in agriculture remains considerably higher than in manufacturing, although this is common around the world. Vietnam’s trade costs appear highly competitive compared to other countries, and are consistent with the rising importance of international trade in its economy.

36. All countries in the region are actively pursuing the core goals of improved connectivity, particularly in the context of goods and services markets, and the markets that support them. As a result, the general trend in the region is likely to be one of sustained performance improvement. If Vietnam is to enjoy a particularly rapid rate of growth, based in part on an effective policy leveraging external markets, then it must improve even more quickly and deeply than the rest of the region.

37. Vietnam’s overall regulatory approach to the logistics sector—a core part of the connectivity agenda—is somewhat piecemeal, and at times overlapping and contradictory. Regulations include measures for logistics services as such, as well as those dealing with individual transport modes. The regulatory environment is a relatively complex one for operators, and policymakers will, over the medium term, need to give attention to rationalization—including through increased openness to international trade and FDI in logistics-related sectors—if the sector is to improve its performance at the rate necessary to support continued rapid growth in external trade.

38. Vietnam performs more strongly than the other ASEAN group in the Logistics Performance Index (LPI), but not as strongly as its neighbor China, or high-performing Singapore, which is at or close to the global performance frontier in each year (figure 17). However, Vietnam’s performance is strong in relation to its income level. It is singled out as one of a small group of “overperformers” in the latest LPI Report (LPI 2014), in the sense that its score is much higher than would be expected in light of the average cross-country relationship between per capita income and logistics performance. Indeed, Vietnam had the highest LPI score of any lower-middle-income country in 2014. Logistics and trade facilitation are points of relative strength in terms of the country’s ability to connect with global goods markets.
In recent years, infrastructure quality improved at a relatively rapid pace, but customs procedures are consistently underperforming, and the problem is not improving. The contrast between these two results is important. Infrastructure investment is a vital part of improving the logistics and trade facilitation environment, but it cannot have maximum impact without fast, transparent, and reliable customs clearance procedures. The overall performance of a port, for example, depends on both systems working together seamlessly. Other types of infrastructure cannot even be accessed before customs is cleared, which means that border agencies play an important gateway role. The relative effects of infrastructure and customs clearance on Vietnam’s overall score are clear in figure 18, which shows the component scores in terms of their percentage deviation from the country’s overall 2014 score. Four of the components are packed relatively tightly around Vietnam’s overall score, which means that performance is quite consistent in those areas. Infrastructure quality, by contrast, is scored about 10 percent higher than Vietnam’s overall score by survey respondents, which suggests that this area is one of relatively strong performance in terms of the overall country context. By contrast, the customs clearance score is about 10 percent lower than Vietnam’s overall score, which again highlights the need for increased attention to this area going forward.

Figure 17: Logistics performance for Vietnam and selected comparator countries, 2007–14


Figure 18: Components of logistics performance for Vietnam, percentage deviation from overall score, 2014


Other aspects of trade facilitation where Vietnam falls behind comparators include in heath and phytosanitary controls and in the quality of logistics service providers. Although local logistics services suppliers are numerous, they do not always have the capacity to handle complex multimodal transactions. Skilled workers are also in short supply. The sector is dominated by small and medium enterprises, which indicates a certain level of fragmentation. At the other end of the scale, a number of SOEs are also active in the sector, but generally do not leverage recent advances in logistics—such as information technology—in optimal ways.

Connecting effectively to global markets requires a country to have both the right hardware (physical infrastructure) and software (regulation for competitive services markets) in place. Vietnam will need to develop competitive services markets in trade and transport-related areas. Currently, levels of outsourcing of logistics functions are relatively low and limited to traditional areas such as transport. In the medium term, outsourcing is likely to grow as traders become more aware of the expertise logistics services providers have to offer and the perspectives they offer for cost reduction, and the need to manage complex supply chains becomes more critical to continued international competitiveness.

C. Strengthening Policy Coordination and Global Commitment Implementation

Delivering integration commitments, in particular under the TPP, means implementing a comprehensive and decisive domestic reform program, and this is a challenging process. Among other things, further structural adjustments to be taken in implementing the SOE chapter;
reforms to improve transparency in the government procurement chapter; impact analysis; and policy measures to be taken to address affected groups in the agriculture sector, tariff reductions, and revenue impacts, will need to be carefully studied, and appropriate measures implemented, if Vietnam wants to maximize the net benefits from global integration. The TPP is expected to stimulate comprehensive institutional reforms to strengthen and standardize rules and transparency and support the creation of modern institutions in Vietnam. Strong leadership is required for smooth change management.

43. **The reforms generated from global integration are multidimensional.** International experience shows that governance of global integration needs a strong intergovernmental coordination mechanism. Key stakeholders of the integration of Vietnam into global value chains, connectivity, border management, and trade facilitation, consist of a number of state management agencies such as the ministries of industry and trade, agriculture and rural development, transport, planning and investment, finance, resources and environment, and public health; the corporate sector (state-owned or private enterprises); and the global trade community at large. Effective interdisciplinary mechanisms should be well defined (based on the existing mechanisms or strengthened to effectively lead the process and monitor implementation of the globalization process).

44. **Coping with streamlining of non-tariff measures (NTMs) to comply with the TPP commitments and the WTO’s Trade Facilitation Agreement provides an example of the need for a multiagency effort.** Despite the recent progress in customs reform, and implementation of the National and ASEAN Single Windows, the compliance costs in terms of time and money for goods clearance on and behind the border remain high in Vietnam. Recent research shows that most of the high compliance costs relate to non-customs barriers or NTMs. Currently, more than 200 trade-related procedures and NTM-related licenses are regulated and required through a complex set of legislative documents and regulations. These licenses are managed and granted by a number of state management agencies, including, but not limited to, the Ministry of Industry and Trade; the Ministry of Agriculture and Rural Development; the Ministry of Transport; the Ministry of Planning and Investment; the Ministry of Resources and Environment; the Ministry of Health; the Border Defense Force of the Ministry of Defense; the Economic Police of the Ministry of Public Security; the Ministry of Science, Technology and Environment; the Ministry of Culture, Sports, and Tourism; the Ministry of Construction; and the State Bank of Vietnam. The efforts to streamline NTMs to comply with the TPP commitments and the WTO’s Trade Facilitation Agreement should offer lessons on the need of multiagency effort within government.

45. **With membership in the TPP, Vietnam stands at the threshold of transformative change that can propel its economy to a higher level of development.** For this to happen, it must deal with the many challenges, most of them of domestic origin, while seizing the opportunities that materialize. It falls to the Vietnamese leadership to confront these challenges and to leverage these opportunities to secure the country’s future development.
Viet Nam has recently concluded negotiations on the Trans-Pacific Partnership (TPP), the European Union-Viet Nam Free Trade Agreement (EVFTA), and trade agreements with Korea and the Eurasian Customs Union. These initiatives represent a major recommitment to international trade as a principal driver of Viet Nam’s development strategy. According to several estimates, the TPP and EVFTA agreements will increase Vietnamese incomes by 2030 by 8 percent and 4 percent, respectively. They will create broad opportunities for expanding manufacturing and accelerating industrialization. To maximize the gains from these agreements, Viet Nam will have to intensify enterprise reform, strengthen connections with global value chains, and invest in a world-class trade and investment environment.

INTRODUCTION

In 2015 Viet Nam concluded negotiations on four large trade agreements: the Trans-Pacific Partnership (TPP) with the United States and ten other economies in East Asia and the Americas, the European Union-Viet Nam Free Trade Area (EVFTA), and agreements with South Korea and the Eurasian Customs Union. Once these agreements are in force, Viet Nam will have free trade agreements with countries accounting for 84 percent of world GDP. And if current projections are correct, these initiatives will boost Viet Nam’s share of global manufacturing, accelerate reforms, and result in large gains for Vietnamese workers.

The new agreements are among the most comprehensive ever signed by a developing economy. To meet their terms, Viet Nam will have to make substantial policy changes, including in sensitive areas such as labor policy. And to maximize its gains, Viet Nam will need to invest in reforms and infrastructure to boost the productivity of export-oriented industries. This paper examines the effects of the new agreements on Viet Nam and asks how it can best exploit the opportunities they offer.

Section 2 reviews the role of trade in the Vietnamese economy, including projections of the effects of new the agreements in the intermediate future. Section 3 explores the reforms that will be required by the agreements, and those that will maximize their benefits. Section 4 offers recommendations.

HOW TRADE DRIVES VIET NAM’S ECONOMIC DEVELOPMENT

Viet Nam’s strategy of outward-oriented development began with the adoption of the Doi Moi reforms in 1986 and accelerated in 1995 after the removal of economic sanctions applied by the United States. In the wake of these events, the Vietnamese economy expanded 30-fold from $6 billion in 1989 to $186 billion in 2014, making it one of the world’s fastest growing economies. Viet Nam’s 6.6 percent GDP growth rate during this period exceeded those of South Korea, Malaysia and Thailand, based in part on a 150-fold increase in exports between 1986 and 2014.

a. Trade policy and the economic takeoff

Trade accelerated in part due ambitious multilateral and bilateral trade agreements (Figure 1). Especially important among them was Viet Nam’s accession to the WTO in 2007, which guaranteed it MFN status in members’ markets, reduced tariffs and eliminated quotas, and gave Viet Nam market economy status in Australia, China, India, Japan, Korea, Russia and New Zealand. Since then, Viet Nam has concluded agreements with New Zealand, Australia, Japan, India, Chile, Korea and the Eurasian Economic Union (EEU). The new FTAs with Europe, the United States and other partners are the latest steps in this strategy. As Viet Nam continues to negotiate agreements in Asia (the

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5 These are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and New Zealand. The TPP and EVFTA agreements have not yet been ratified at this writing.

6 These calculations also include agreements signed in the ASEAN+6 framework.
Regional Comprehensive Economic Partnership) and beyond, its trade agenda compares to those of the world’s most outward-looking economies, such as South Korea and Singapore.

**Figure 1. Milestones in Viet Nam’s trade policy**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>Doi Moi</td>
</tr>
<tr>
<td>1995</td>
<td>AFTA</td>
</tr>
<tr>
<td>2000</td>
<td>WTO negotiations</td>
</tr>
<tr>
<td>2004</td>
<td>VN - US BTA</td>
</tr>
<tr>
<td>2006</td>
<td>ASEAN - China FTA</td>
</tr>
<tr>
<td>2007</td>
<td>ASEAN - Korea FTA</td>
</tr>
<tr>
<td>2008</td>
<td>WTO accession</td>
</tr>
<tr>
<td>2009</td>
<td>ASEAN - Japan EPA</td>
</tr>
<tr>
<td>2011</td>
<td>Viet Nam - Chile FTA</td>
</tr>
<tr>
<td>2015</td>
<td>VN - Korea FTA</td>
</tr>
</tbody>
</table>


So far, the strategy has paid off. Following accession to the WTO, goods exports expanded three-fold between 2007 and 2014, from nearly $50 billion to more than $150 billion (Figure 2). Trade liberalization also stimulated imports, as Viet Nam to cut its average tariff from 17.4% to 13.4% in 2019. Import tariff to agricultural products is shrunk from 25.2% to 21%; industrial and manufacturing products from 16.1% to 12.6%; mining and gas from 5.61% to 5.58%.

In fact imports increased faster than exports, and Viet Nam experienced a trade deficit before returning to a surplus of $750 million in 2012 and $2 billion in 2014. Foreign direct investment (FDI) inflows also surged. Registered FDI jumped to nearly $72 billion in 2008 (Figure 3) and, as registered projects were gradually translated into actual investments, implemented FDI rose to around $11 billion after WTO accession compared to less than $4 billion before it. Foreign-invested firms have contributed substantially to Viet Nam’s trade; in the seven years after WTO accession, their share of exports rose from 57 to 68 percent.

**Figure 2. Viet Nam’s trade in goods**

**Figure 3. Viet Nam’s FDI inflows**

Economic integration has made large contributions to Viet Nam's economy overall. Despite the global economic crisis and the recent deceleration in Asia, Vietnamese growth has held up well in 5-6 percent annual range. The World Bank now projects that the Vietnamese economy will again accelerate, growing by 6.5 and 6.6 percent in 2015 and 2016, respectively (World Bank 2016). These growth projections were the only ones in East Asia and the Pacific, apart from Fiji’s, that the World Bank raised in its recent publication.

More fundamentally, Viet Nam has followed other successful economies in using international agreements as a tool for driving domestic reform. WTO accession brought institutional reforms to make markets more prominent and to improve the economy’s investment and business climate. The country’s rank in the World Economic Forum competitiveness index jumped from 77 (in 125 economies) in 2006-2007 to 56 out of 140 economies in 2015-2016 (Schwab, Sala-i-Martin, and Brende 2015). In addition, economic integration has deepened relations with key foreign partners, as witnessed for example by President Obama’s 2016 state visit, helping to make the political environment for economic growth more secure.

b. Trade in Viet Nam’s next stage of development

The vision of achieving industrialized economy status by 2020, outlined in the 10-year Socio-Economic Development Master Plan for 2011-2020, calls for raising the growth rate to 7-8 percent, developing a modern economic structure with manufacturing, industry and services accounting for 85 percent of GDP, and reducing labor in agriculture to 30-35 percent of employment. These targets are facing strong headwinds from the global economic slowdown. Viet Nam will have to rely increasingly on productivity growth for its development. International trade can contribute to this goal.

Broadly, the modernization strategy rests on three pillars. First, the industrial sector has to become more efficient. Second, the service sector—including especially the financial sector—has to become larger and more innovative in order to support upgrading throughout the economy. Third, additional public investment will be required in infrastructure. As the Master Plan notes, integration with the global economy can help to realize multiple aspects of these reforms, by driving export growth, upgrading technology, and setting standards for management efficiency. Viet Nam’s new trade agreements align closely with these requirements.

Global agreements (such as the GATT and GATS agreements administered by the WTO) are widely seen as “first best” policies for improving global productivity, since they stimulate world-wide competition to reduce costs. But since the Uruguay Round agreement was signed in 1993, no such comprehensive agreements have emerged. Regional agreements offer a “plan B” for sustaining economic integration without multilateral results. Next-generation FTAs can continue to expand Viet Nam’s opportunities in international markets and stimulate domestic reforms.

Regional trade agreements work, in part, like global agreements, by lowering barriers to efficient trade. This “trade creation” effect yields unambiguous benefits. But since regional agreements also exclude some partners, they may shift imports from efficient sources outside an FTA to less efficient sources within. This “trade diversion” effect reduces income. If trade creation predominates, the agreement will increase productivity overall. Regional agreements help to achieve this result in part by focusing liberalization on specifically on those barriers, including deeper non-tariff barriers, that matter to their members. On the whole, most FTAs that have been recently concluded appear to have been productive (Baldwin and Freund 2011).

The economics of preferential trade agreements is especially favorable for agreements among countries that already trade extensively with each other. Frankel, Stein, and Wei (1995) show that Asia-Pacific groupings are such “natural trading blocs,” since they include very efficient suppliers of much regional import demand. These benefits are reinforced if a successful regional agreements

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8 Valuable surveys of the economics of regional trade agreements are provided by WTO, 2011 and World Bank, 2005.
also leads to larger agreements (Baldwin and Jaimovich, 2010), as suggested by the experiences of the European integration and ASEAN.

c. Projected gains from the new agreements
The new agreements are the largest Viet Nam has ever signed; they are with partners that account for 61 percent of world GDP and approximately two thirds of Vietnamese exports and inward foreign direct investment (Table 1). Mostly the new partners are large, developed economies, but they also include smaller Asian and Latin American competitors. Since Viet Nam is especially competitive in exports such as textiles and garments, which are politically sensitive in advanced economies, it faces relatively high barriers in these markets, as will be discussed further below. Reductions in these barriers and reforms that make the Vietnamese economy more open and competitive can be expected to have large payoffs.

Table 1. The Scale of TPP and EVFTA

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>With TPP</th>
<th>With EVFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$Bill</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Vietnamese trade</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports</td>
<td>161</td>
<td>41.6</td>
<td>21.5</td>
</tr>
<tr>
<td>Imports</td>
<td>153</td>
<td>26.3</td>
<td>6.3</td>
</tr>
<tr>
<td>Vietnamese FDI stocks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outward</td>
<td>2</td>
<td>48.1</td>
<td>4.8</td>
</tr>
<tr>
<td>Inward</td>
<td>40</td>
<td>47.1</td>
<td>21.8</td>
</tr>
<tr>
<td>Barriers on Vietnamese exports</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tariffs</td>
<td>-</td>
<td>5.8</td>
<td>5.1</td>
</tr>
<tr>
<td>NTBs</td>
<td>-</td>
<td>11.1</td>
<td>18.0</td>
</tr>
</tbody>
</table>

Source: author’s database.

Several researchers have recently estimated the potential effects of the TPP and the EVFTA agreements, as summarized in Box 1. The estimates are surprisingly similar given the uncertainties inherent in such analysis, and so strongly reinforce each other’s findings. This discussion focuses mainly on results reported in World Bank (2016) and Petri and Phan (2016), in part because that study presents comparable analyses of the TPP and EVFTA agreements using the same methodology.

Results from the Petri and Phan (2016) study are reported in Table 2. The top line shows the additional real income that the agreements will each generate for Viet Nam over the baseline solution. The results indicate that by 2030 the TPP would increase Vietnamese income by some $40.5 billion (8.1 percent of the GDP projected by then), allowing correspondingly higher levels of consumption and investment. The EVFTA would have somewhat smaller but still substantial effects, raising Vietnamese incomes by $18.1 billion (3.6 percent of GDP).

Table 2. Effects of TPP and EVFTA on Viet Nam

<table>
<thead>
<tr>
<th></th>
<th>Baseline (USD 2015 bill)</th>
<th>TPP effect in 2030</th>
<th>EVFTA effect in 2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2030</td>
<td>Change USD</td>
</tr>
<tr>
<td>Income</td>
<td>209.1</td>
<td>497.3</td>
<td>40.5</td>
</tr>
<tr>
<td>GDP</td>
<td>209.1</td>
<td>497.3</td>
<td>49.9</td>
</tr>
<tr>
<td>Real exchange rate index</td>
<td>100.0</td>
<td>106.0</td>
<td>0.6</td>
</tr>
<tr>
<td>Trade</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports</td>
<td>161.0</td>
<td>356.6</td>
<td>107.4</td>
</tr>
<tr>
<td>Imports</td>
<td>161.5</td>
<td>361.2</td>
<td>106.5</td>
</tr>
<tr>
<td>Outward from Vietnam</td>
<td>1.6</td>
<td>4.2</td>
<td>0.3</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>Inward into Vietnam</td>
<td>40.0</td>
<td>108.0</td>
<td>15.6</td>
</tr>
</tbody>
</table>

Source: author. The results are from simulations in World Bank (2016) and Petri and Phan (2016).

Increases in GDP (measuring real production rather than real income) are 10.0 percent 5.1 percent, respectively. Production increases are larger than income increases due to price changes; while Vietnamese production increases focus on manufactured products, by 2030 the prices of these produces fall relative to the prices of services that account for a growing share of expenditures. The real exchange rate is projected to increase slightly relative to the US dollar under the TPP, suggesting that the agreement favors Vietnamese exports a little more than imports, and to decrease slightly under EVFTA, suggesting a larger effect on imports. Both solutions are computed so that the value of export and import changes\(^9\) is the same under each scenario, leaving the trade balance at its long-run trend level.

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Box 1

Research Results on Viet Nam’s TPP and EVFTA Agreements

Four major studies are available so far on the implications of Viet Nam’s new trade agreements. Three of these provide quantitative projections; the fourth offers a qualitative analysis of effects on global value chains.

The results reported in the text are based on a study conducted by this author and colleagues (see World Bank, 2016 and Petri and Phan, 2016 for methodological detail). The advantage of this study is that it addresses both the TPP and EVFTA agreements with a similar methodology. The study uses a computable general equilibrium (CGE) model with substantial detail on the provisions of each agreement.

The TPP is also the subject of a study commissioned by the World Bank (Minor, Walmsley, and Strutt 2015) for its Viet Nam 2035 report. That study estimates an increase of 8.2 percent in Vietnamese GDP over the baseline by 2030, with gains due to manufacturing sectors. The study notes large improvements in the wages of unskilled workers. In other simulations, it finds that an additional 8.4 percent of GDP could be gained from reforms that improve the competitiveness of the state-owned enterprise sector.

The EVFTA is the subject of a study commissioned by the European Trade and Investment Project (Baker, Vanzetti, and Huoung 2014). This study finds that Viet Nam’s national income would increase by 3.8 per cent and above baseline projections by 2025 (this percentage was calculated from footnote 32 in the report to produce results that are comparable with other results cited in the text; the report itself emphasizes slightly different quantitative measures). Real wages for unskilled labor are estimated to rise especially fast and household incomes are projected to grow also due to increased working hours.

Finally, qualitative analysis of the effects of the agreements is provided in preliminary work by Berger and Bruhn (2016). Their analysis focuses on how the new agreements will affect Viet Nam’s access to global value chains. It emphasizes both connectivity issues and the need for domestic reforms that support international linkages.

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\(^9\) The model is solved under the common long-term “closure” assumption that the trade balance is unaffected by trade agreements. Note that Table 1 shows export and import changes as real amounts rather than as values, so it shows slight differences between them.
Several factors explain why the TPP has larger effects than EVFTA. As already noted in Table 1, the TPP covers more of Viet Nam’s international transactions than the EVFTA. Trade with TPP partners is also projected to grow somewhat faster than with the EU, and the TPP includes potentially important suppliers such as Japan, that help to make more Vietnamese products consistent with the agreement’s ROO. Finally, the comprehensive provisions of the TPP will likely result in somewhat larger reductions in non-tariff barriers.

Note that the study does not examine the implementation of both agreements together. The results in that case would be somewhat smaller than one derives by simply adding the separate results. For example, the demand for Vietnamese exports from the United States and Europe together will drive up production costs more than they would under either agreement alone, thus resulting in a somewhat smaller ultimate export gains. However, the model does not generally suggest that these offsetting effects would be large.

Both agreements will accelerate structural transformation of the Vietnamese economy toward the manufacturing sector and stronger connections with global value chains (Figure 4). Since the impact of the TPP is expected to be somewhat greater than that of EVFTA, it will have somewhat larger effects on economic sectors. The second bar for each agreement—non-durable manufacturing—shows the largest increases in both cases. This sector includes garments, footwear, textiles, and some electronic products, and represents core Vietnamese comparative advantages. The sector would become one-third larger under the TPP, and one-sixth larger under EVFTA than it would in their absence.

Figure 4. Structural change: effects of trade agreements on value added, 2030

![Figure 4](source: Petri and Phan (2016) updated.)

Figure 5. Effects of trade agreements on wages and profits in Viet Nam, 2030

![Figure 5](source: Petri and Phan (2016) updated.)
Agriculture will face mixed effects as Viet Nam’s resources shift toward manufacturing. Agribusiness and food manufacturing are likely to see stronger markets for seafood, rice, pepper, coffee, fruits and vegetables. In seafood, for example, in 2013 22 percent of Viet Nam’s exports went to the U.S. and 17 percent to Japan (Mai 2014). Not only will tariffs be phased out in those markets, but regulatory coordination will ease non-tariff barriers. But protected sectors, including sugar, alcohol, tobacco, and those with limited comparative advantage like dairy, poultry and beef, will face stiffer competition. Some protection in these sectors may be phased out slowly, but producers will be under pressure to find higher value activities, including the production of fruit, vegetables and fish, and engaging in further processing.

Manufacturing industries will see the largest gains from the new agreements. Textiles and apparel employ more than 2 million workers and footwear an additional 1 million. These numbers will grow as exports expand to the United States, Europe and Japan. The gradual elimination of relatively high tariffs (for example, for apparel around 17 percent in the United States and 12 percent in Europe) will give Viet Nam a major advantage over competitors such as China, India, Bangladesh and Pakistan. Detailed projections envision an increase of around 20 percent for leading textile products exported to Europe under EVFTA (Baker, Vanzetti, and Huong 2014). Other new manufacturing opportunities will develop in electronics, ranging from components to mobile devices. As these activities expand, the range of upstream production activities will also grow, making Viet Nam still more competitive as a manufacturing center.

Service sectors, meanwhile, will face more foreign competition. Note that world-class service imports have important benefits; they increase the competitiveness of the economy overall in international markets. On average, about one-third of the value of exported products consists of “embedded” services, including logistics, financial services, design services and many other inputs. Some Vietnamese service sectors, such as distribution, are already open to some extent—with the entry of foreign retailers such as Big C, Metro Cash and Carry, and Luis Vuitton—but overall productivity remains low (Viet Nam Ministry of Planning and Investment 2012). The new agreements will strengthen financial services, such as insurance and banking, extending financial tools to the industrial sector as well as individuals with limited access to banking. To be sure, service liberalization also requires a stronger supervisory framework.

Vietnamese workers will benefit directly. Both agreements will increase wages, and the TPP is especially favorable for unskilled workers (Figure 5). The agreements also tend to increase the number of formal jobs, which offer higher wages and more secure working conditions (Plummer, Petri, and Zhai 2014). To be sure, since trade agreements expand some sectors and shrink others, they inevitably cause some dislocation of labor. To minimize associated costs, adjustments should be phased over time, and new policies are often important for assisting workers as they change new jobs. Transitional policies are relatively new to developing countries, but become increasingly important in a trade-oriented development strategy. Such policies are generally affordable, since the gains from trade are usually estimated to be many times as large as adjustment costs.

PRIORITIES FOR IMPLEMENTING THE NEW AGREEMENTS

How can Viet Nam benefit most from these new trade agreements? Some of the provisions of the agreements reflect the interests of partners, but many involve reforms that can be used to strengthen Viet Nam’s development framework. This section reviews how the agreements could become part of a strategy to achieve long-run development goals.

a. Making industrial enterprises more competitive

Looking back a decade from now, the new agreements will be evaluated in terms of how much they improved productivity, especially in industry. These gains will depend, in turn, on improvements that Viet Nam will now make in its business environment, and the institutional and physical infrastructure of its economy. Both agreements include provisions to guide related reforms.
The results will be especially sensitive to how well enterprises are governed. Prior to Doi Moi virtually all commercial activities were state-owned (Ngu 2002). The reforms then equitized many SOEs, reducing their number from 12,000 in 1989 to less than 1,000 in 2013 (Tu 2015). But since these early reforms, SOEs have retained and in some cases strengthened their position, and continue to dominate core industries. Thirty years of effort to improve management accountability in SOEs has met with some success, but their economic performance remains inconsistent and occasionally results in large losses. Recent productivity growth has been disappointing. Meanwhile, the private sector remains fragmented, and private firms are often too small to compete in global markets (Berger and Bruhn 2016). These inefficiencies will become even more costly given the competitive opportunities opened by the TPP and EVFTA.

SOE reform will be important for its own sake and because it will be closely monitored by foreign competitors. Under the TPP, SOEs competing with foreign enterprises are expected to base sales and purchases on commercial considerations, to operate mostly without government support, and to meet a range of transparency requirements. Although Viet Nam negotiated extensive exceptions to this chapter of the agreement, its market-economy status and the enforcement of other obligations will depend on its SOE policies. For all these reasons SOE reforms would have large effects on efficiency and Viet Nam’s international agreements. Minor, Walmsley, and Strutt (2015) found that comprehensive SOEs reform would add 9 percent Viet Nam’s GDP by 2030, even more than either the TPP or EVFTA agreement.

A second determinant of gains will be the quality of the institutional environment of business. Improvements will be needed in the regulatory framework—including greater predictability and transparency of regulatory decisions—an objective addressed by the “good regulatory practices” provisions of the TPP and EVFTA. These include provisions that promote the coordination of regulatory agencies, transparency in their rule-making process, and the evaluation of economic benefits from regulatory actions. Also important will be policies addressing services and investment (discussed below) that can help link Vietnamese firms to global value chains. A high-quality environment also requires good access to communications, including internet connectivity (for example, through an open framework for data transfers), and the enforcement of intellectual property rights.

A third critical factor will be the quality of Viet Nam’s infrastructure and workforce. This objective calls for an array of investments, including in access to power, efficient ports and transportation connections, and communications networks. These are expensive commitments and should involve, to the extent possible, public-private partnerships. Closer international connections and greater investor protections offered by the TPP and EVFTA agreements will help. Also important is the signaling value of the TPP and EVFTA—both reflect long-term commitments to international cooperation by Viet Nam and its partners. These are invaluable assets in attracting private investment. Education and human capital development represent similar and equally important investments from the viewpoint of economics, but require, of course, different combinations of domestic and international institutions.

b. Reducing barriers to trade

In the TPP and EVFTA Viet Nam and its partners will eliminate nearly all tariffs and quotas on trade among them. Table 3 shows recent trade-weighted averages for tariffs and non-tariff barriers that affect Viet Nam’s trade with the United States and the European Union prior to the new agreements. Overall, tariffs are low, averaging between 3.7 percent and 6.9 percent on these four types of flows. However, Viet Nam has faced reasonably high tariffs in textiles and apparel, averaging 13.9 percent on exports to the US, and 10.1 percent on exports to the European Union. These are averages calculated over many products; tariffs on some items range as high as 25 percent. Tariffs on

10 These provisions are not subject to dispute resolution, but nevertheless represent useful benchmarks for regulatory reform.
11 The IPR provisions may raise challenges, including the possibility of increased prices for medicines. In the TPP, Viet Nam negotiated 20-year phase-in periods for key pharmaceutical provisions but the implementation of IPR policies should account for effects on health care.
Vietnamese textile exports are only slightly smaller than those facing apparel exports. (Non-tariff barrier results in Table 3 will be discussed in the next section.)

Under the TPP, the US will eliminate 75 percent of its non-zero tariff lines immediately and 99 percent eventually (Freund, Moran, and Oliver). However, sensitive textiles and apparel imports into the United States would be divided into baskets, with some tariffs remaining for as long as 12 years. The EVFTA also envisions large tariff cuts. It will eliminate 86 percent of European tariffs immediately, accounting for 70 percent of Vietnamese exports to the EU. After 7 years, some 99 percent of its tariffs would be eliminated, including on textiles, apparel, footwear, and most seafood and rice products. Viet Nam will liberalize 65 percent of import duties on EU exports to Viet Nam immediately, and the rest over a 10-year period, covering products such as automobiles, wines and spirits, pork and poultry. Thus, both the EVFTA and the TPP will eliminate virtually all tariffs among their members.

Table 3. Tariff and non-tariff barriers in Viet Nam's trade

<table>
<thead>
<tr>
<th></th>
<th>Vietnam - United States Trade</th>
<th>Vietnam - European Union Trade</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Vietnam exports to US</td>
<td>US exports to Vietnam</td>
</tr>
<tr>
<td></td>
<td>Tariffs</td>
<td>NTMs</td>
</tr>
<tr>
<td>Grains</td>
<td>0.7</td>
<td>36.6</td>
</tr>
<tr>
<td>Other agriculture</td>
<td>0.1</td>
<td>12.8</td>
</tr>
<tr>
<td>Mining</td>
<td>0.1</td>
<td>2.4</td>
</tr>
<tr>
<td>Food, beverages, tobacco</td>
<td>1.6</td>
<td>18.3</td>
</tr>
<tr>
<td>Textiles</td>
<td>10.9</td>
<td>27.7</td>
</tr>
<tr>
<td>Apparel, footwear</td>
<td>13.9</td>
<td>14.4</td>
</tr>
<tr>
<td>Chemicals</td>
<td>2.7</td>
<td>3.0</td>
</tr>
<tr>
<td>Metals</td>
<td>1.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Transport equipment</td>
<td>0.6</td>
<td>5.2</td>
</tr>
<tr>
<td>Electrical machinery</td>
<td>0.3</td>
<td>1.1</td>
</tr>
<tr>
<td>Machinery</td>
<td>1.4</td>
<td>5.2</td>
</tr>
<tr>
<td>Other manufacturing</td>
<td>0.4</td>
<td>2.5</td>
</tr>
<tr>
<td>Utilities</td>
<td>2.1</td>
<td>1.1</td>
</tr>
<tr>
<td>Construction</td>
<td>71.6</td>
<td>33.5</td>
</tr>
<tr>
<td>Wholesale, retail trade</td>
<td>46.1</td>
<td>31.3</td>
</tr>
<tr>
<td>Communication</td>
<td>27.7</td>
<td>36.5</td>
</tr>
<tr>
<td>Finance</td>
<td>35.6</td>
<td>39.2</td>
</tr>
<tr>
<td>Private services</td>
<td>31.7</td>
<td>20.1</td>
</tr>
<tr>
<td>Social services</td>
<td>6.6</td>
<td>30.4</td>
</tr>
<tr>
<td>AVERAGES</td>
<td>4.1</td>
<td>18.4</td>
</tr>
</tbody>
</table>

Source: Petri, Plummer and Zhai (2011) updated database.
Note: tariffs are from GTAP9 2011. NTBs are from Kee (2009), updated 2012.

Rules of origin (ROO) define goods that originate within an FTA region and are therefore eligible for tariff preferences under the FTA. Economists favor simple rules of origin—say, that at least 40 percent of the value of a product consist of value added in member economies—but pressures from industries often result in more complicated and restrictive rules. Unfortunately, US agreements such as the TPP contain product-specific rules for sensitive industries such as textiles and apparel, chemicals, and automobiles. But the TPP does offer a major advance over previous agreements: its rules of origin allow for “cumulation,” that is, for counting inputs from any TPP member country as an originating input.

The biggest obstacle facing Viet Nam is satisfying the TPP’s restrictive “yarn forward” rule ROO for textiles and garments. This requires apparel products be manufactured entirely in TPP member economies, from yarn spinning to final assembly. However, since Viet Nam imports 80 percent of the
textiles used to make garments (mostly from China), several compromises were adopted to make it easier for garments from Viet Nam to meet the ROO. These provisions allow for some “cut and sew” products, a “short supply” list that allows many non-originating inputs to be imported, and “pay to play” provisions that allow inputs from non-member countries to be used in proportion to inputs bought in the United States. Viet Nam will need new mechanisms to enable firms to navigate these complex rules, but garment production should represent one of the earliest and most robust beneficiaries of the agreement. The EVFTA agreement uses a less restrictive “double transformation” standard, but has fewer exceptions than the TPP.

Non-tariff barriers (NTBs) are large and growing, in Viet Nam and among its trade partners. Table 2 shows that these barriers (expressed as tariff equivalent rates) are from 2 to 5 times as high as tariffs. Any successful effort to manage them will have a greater impact than most tariff reductions. Kim (2016) shows, for example, that notices of new regulations on standards to the WTO have increased four-fold since 2000. These barriers reinforce protection in textiles, apparel and food products, and are especially high for services, which have no tariff protection. The TPP and EVFTA seek to limit the use of regulatory standards for protectionist purposes and to promote their convergence across countries. More generally, the TPP contains a chapter on “regulatory coherence,” which proposes processes to make regulations more transparent and efficient, and establishes new cooperative mechanisms among regulators. In addition, a special bilateral agreement was concluded to ease US catfish import regulations.

c. Building a world-class services and investment environment

To participate effectively in global value chains, manufacturing and other firms require access to high quality services ranging from finance, communications and logistics to professional and computer services. Because services account for about 1/3 of inputs in manufacturing and make fundamental contributions to productivity, developing countries need to embrace open service markets, even if at first domestic firms find it difficult to compete with international firms.

Viet Nam’s new trade agreements:

- Ban restrictions on the value or volume of services traded or the legal form of suppliers;
- Prohibit requirements for commercial presence or input purchases in the importing country;
- Prescribe national treatment and most-favored-nation treatment in services trade;
- Encourage mutual recognition of professional qualifications;
- Prohibit restrictions on capital transfers by service providers, except in emergencies;
- Require transparent development and application of government regulations.

In the TPP, cross-border trade services are covered by a “negative list” approach that applies to all services except those excluded in an annex to the agreement. This is more comprehensive than the “positive list” approach used in the WTO GATS agreement, which applies only to services listed. Viet Nam has a relatively high number of exceptions compared to other members in the relevant Annexes of the TPP. Four service sectors (distribution and retail, communications, finance and professional services) that are especially important for economy-wide competitiveness are dominated by state-owned enterprises.

Services related to the digital economy are especially vulnerable to inappropriate regulations. The TPP addresses this sector by: prohibiting customs duties on digital products such as movies and music; requiring access to national telecommunication networks; freeing up data transmissions across borders; and banning requirements for local data centers. It will also help small and medium businesses access electronic commerce platforms. Since Viet Nam is still creating its Internet and digital legal framework, this is the right time to develop a modern system that allows its emerging e-commerce industry build on international best practices.

Foreign investment has already played a critical role in Viet Nam’s development and will become still more important as integration proceeds. Viet Nam allows for direct investment through multiple organizational forms and has already phased out programs linking investment incentives to local
content and export performance. The Investment Law of 2014 and the Enterprise Law of 2014 already operate on a negative list basis (Yen 2015). The investor-state dispute settlements (ISDS) mechanisms included in EVFTA and the TPP are somewhat different, but both allow foreign investors to bring claims against governments through international arbitration. However, strong exceptions are made for health and safety regulations and for capital controls in times of financial emergency. Viet Nam will have to adopt the ISDS Convention and most likely amend its current investment law, but its policy environment should not be significantly affected. Meanwhile, the provisions will signal investors that Viet Nam is committed to international best practices.

d. Meeting international labor and environmental standards

Labor standards promote the welfare of workers but can slow development by raising costs. Getting them right is important. The dilemma is illustrated by contradictory positions taken by the International Labor Organization (ILO), which has drafted international labor standards and urged countries to adopt them, but has also recommended against adding them to trade agreements (Anuradha and Dutta 2012). Viet Nam has agreed to strict labor standards in the TPP and EVFTA. Both require commitments to the ILO Declaration on Fundamental Principles and Rights at Work, including freedom of association and the right to collective bargaining, and bans on forced labor, child labor, and discrimination in employment and occupation. Given the high political profile of labor issues in partner economies, implementation is certain to be monitored aggressively.

Some of these standards are already part of the Vietnamese Labor Code (Lee and Svanberg 2013). However, Viet Nam’s labor legislation falls short of TPP and EVFTA requirements in some areas, particularly with respect to labor unions. The United States-Viet Nam Plan for the Enhancement of Trade and Labor Relations offers detailed steps, developed by Viet Nam and the United States, to bring Viet Nam’s labor practices in compliance with the TPP. The plan requires Viet Nam to legalize independent unions, sets out requirements for union representation, and defines the rights of unions including the right to organize strikes.

Viet Nam has little experience in managing these new policy requirements. On one hand, they may increase tensions between employers and workers and raise production costs—not just in traded sectors, but across a wide range of industries. On the other hand, they may encourage social cohesion and international cooperation by helping workers in Viet Nam and elsewhere understand the value of the agreements. These reforms may also make Vietnamese products more desirable in markets with high expectations for labor practices. In other words, the labor provisions of the new agreements have complex implications—some dampen Viet Nam’s competitiveness while others increase it—and it will be essential to design a sophisticated implementation strategy that maximizes benefits.

Environmental issues are prominent in the TPP and EVFTA as in other European and US agreements. In the United States, the “May 10th Agreement” in the US Congress required that trade agreements adhere to multilateral environmental agreements (MEAs) and make environmental disputes under FTAs subject to the agreement’s dispute settlement provisions. In this vein, the TPP imposes new provisions to combat wildlife trafficking, illegal logging, and fishing subsidies; it has been well received by non-governmental organizations. The EU approach instead prioritizes trade and investment in green technologies and environmentally sustainable goods and services; cooperation, technology transfer and joint research in environmental areas; and policy formulation involving civil society and greater transparency.

RECOMMENDATIONS

The TPP and EVFTA are major milestones in Viet Nam’s economic modernization. They promise large benefits if implemented alongside vigorous reform.

Together, the TPP and EVFTA should increase Viet Nam’s income by more than 10 percent over baseline GDP levels by 2030, based on three different studies that provide similar estimates. The structure of the Vietnamese economy would shift toward its comparative advantages in manufactured goods such as textiles and apparel, and Viet Nam would likely attract substantial new foreign
investment. Some investments already anticipate these changes; in the first 6 months of 2015, textile industry investments set a record in excess of $1 billion.

Significant reforms will be required not only to implement the new agreements, but also to maximize the gains from them. As in the past, these trade agreements can help to drive modernization. First, Viet Nam can use them to accelerate its transition from large, state-owned enterprises to more agile and efficient private firms. Second, they can motive a cluster of policies to improve productivity, including access to world-class services, technologies, and intermediate inputs. This will require opening the service sector, improving connectivity, and welcoming investment. Third, they will increase the payoff to public investments in energy, transport, and workforce skills. All this will benefit from efforts to help workers and small and medium enterprises transition to more productive activities.

The modernization strategy outlined above—similar to Doi Moi in its historic importance—is not without risks. Viet Nam is betting on connections with major global markets and related reforms. If this strategy works, it will yield benefits not only to Viet Nam, but also—through better trade rules and policies elsewhere—to countries around the world. This argues for support from the international community. Assistance should focus on capacity building for policy makers, managers and workers in support of reform. If the TPP and EVFTA are viewed as genuine international partnerships, they will yield outcomes as attractive in practice as they are in design.
INTRODUCTION

The Trans-Pacific Partnership (TPP) was signed by twelve Pacific Rim countries including Vietnam in February 2016. Most participating countries are high income and upper middle income countries. Vietnam has the lowest incomes per capita; the unweighted average per capita income of the TPP signatories is 16 times higher the income of Vietnam. Peru has the second lowest per capita income that is still three times higher than the income of Vietnam.

The EU and Vietnam agreed on the EU-Vietnam Free Trade Agreement (EVFTA) in December 2015. There is considerable variation in incomes within the EU although all countries have much higher per capita incomes than Vietnam. The EU average is around 17 times the Vietnam per capita income.

Both the TPP and the EVFTA include extensive chapters on Technical Barriers to Trade (TBTs) and Sanitary and Phytosanitary (SPS) measures. These chapters regulate primarily trade issues but given the nature of TBTs and SPS measures also impact domestic regulation. Thus Vietnam is in a special position in both agreements because its incomes and thus its regulatory needs sometimes differ from the needs of most of the signatories. Vietnam has fewer resources and more basic needs.

The TPP includes chapters on SPS measures (chapter 7) and TBTs (chapter 8) and a chapter on regulatory coherence with implications for both SPS measures and TBTs (chapter 25). Chapter 25 on regulatory coherence introduces various good-regulation practices, although on a "best-endeavors" basis. The EVFTA includes chapters on SPS measures (chapter 7) and TBTs (chapter 6). Both the TPP and the EVFTA contains product-specific rules, a novelty compared with the WTO.

The obligations of the two agreements differ in detail but share common ground in the general direction. Both agreements align with the WTO’s SPS and TBT agreements while introducing new disciplines in select and very specific areas. Through this approach, the TPP and EVFTA attempt to remove trade barriers and upgrade regulatory capacity by promoting regulatory coherence.

This paper analyzes the TBT and SPS requirements in the two agreements with a view to provide a common understanding of the implementation challenges that Vietnam faces. Vietnam will need to comply with the commitments undertaken in a way that fits its own development challenges.

SPS AND TBT REQUIREMENTS IN THE TPP

In the TPP, the major new disciplines are in the SPS and TBT chapters as evidenced in Table 1. For SPS, most importantly testing for SPS regulatory needs must be conducted in a laboratory applying a quality assurance program consistent with international standards. Equally important, Vietnam must ensure that its import controls are risk-based. The SPS chapter also commits Vietnam to provide stronger transparency about its use of SPS measures and to introduce stronger risk analysis underlying its use of SPS measures.

Risk-based border controls can facilitate and shorten clearance procedures while at the same time improving the rate at which delinquent operators are caught by relying on well-established profiling techniques. However, its introduction could prove to be a challenge for Vietnam. In most high income countries, import controls are already risk-based, but in many developing countries, including middle-income ones, this is not so. Most often in developing countries, import programs apply less advanced (and less statistically satisfactory) end-product controls where the import agency tests samples of imports not chosen based on the risk history of the product, manufacturer or importer.
This commitment to introduce risk-based import controls is binding, as Article 7 instructs the parties to “ensure that [...] import programs are based on the risks associated with importations” (TPP SPS chapter, Art. 7.11.1). Implementing this requirement will likely require considerable upgrading and a significant change in thinking among responsible agencies in Vietnam. Technical assistance will be key to ensure that the requirement has a positive impact. If effectively implemented, it could lead to a significant lowering of NTBs, although an analysis of regulatory practices in particular industries would be needed to assert this with any degree of certainty. But in cases where Vietnam lacks the resources to implement risk-based systems, the requirement could imply the removal of import controls targeting legitimate concerns like food safety, leaving them unable to enforce any import control.

The TPP also substantially reinforces WTO disciplines on SPS conformity-assessment procedures by mandating that each country adopt quality-assurance programs for testing laboratories. Specifically, according to Article 7:

\[
\text{[t]he importing Party shall ensure that any testing is conducted using appropriate and validated methods in a facility that operates under a quality assurance programme that is consistent with international laboratory standards. (TPP SPS chapter, Art. 7.11.4)}
\]

Although international accreditation would be an obvious way of ensuring compliance, Article 7 falls short of demanding it, leaving countries responsible for finding the best route toward compliance.

Here again, in order for the TPP’s requirements to be attainable by Vietnam, support and technical assistance will be required to respond to the upgrading needs in terms of equipment and skilled personnel. Without such investments, they might end up being left unable to perform legitimate tests and controls.

Table 1: SPS and TBT provisions in the TPP different from the WTO agreements

<table>
<thead>
<tr>
<th>WTO disciplines</th>
<th>Trans-Pacific Partnership (TPP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SPS agreement</strong></td>
<td><strong>Chapter 7 - Sanitary and Phytosanitary measures</strong></td>
</tr>
<tr>
<td>Transparency</td>
<td>TPP strengthens transparency. Authorities must publish summary of written comments submitted through the commenting period for new SPS measures. They must, on request, publish materials about the risk assessment process. They must publish notices of SPS measures. The authorities also become obliged to notify importing parties about changes in SPS risks on the territory of the exporter</td>
</tr>
<tr>
<td>Risk analysis</td>
<td>TPP includes more rigorous process with stronger demands on documentation and opportunity to interested parties to comment</td>
</tr>
<tr>
<td>Control, inspection and approval procedures</td>
<td>TPP stipulates that importing parties auditing exporting parties’ competent authorities and inspection systems accord the exporting parties opportunities to comment and make data available. TPP stipulates that import testing shall be done by laboratories operating according to international practice. TPP stipulates that import controls shall be risk-based. TPP directs the parties to promote the implementation of electronic certification and other technologies to facilitate trade</td>
</tr>
<tr>
<td><strong>TBT agreement</strong></td>
<td><strong>Chapter 8 – Technical Barriers to Trade</strong></td>
</tr>
<tr>
<td>Harmonization &amp; mutual recognition</td>
<td>TPP reconfirms WTO TBT agreement</td>
</tr>
<tr>
<td>Equivalence</td>
<td>TPP is slightly stronger than the WTO as the TPP TBT chapter stipulates that a party shall explain why it does not accept a technical regulation as equivalent</td>
</tr>
</tbody>
</table>
Transparency

TPP contains more elaborate publication and notification requirements including obligations to allow foreigners to participate in consultations and obligations to publish drafts and background material.

TPP obliges parties to publish objectives of regulation and to justify these, alternative means considered, and the responses to comments received.

Conformity assessment procedures

TPP encourages parties to permit participation of conformity assessment bodies located in the territories of other parties in their conformity assessment procedures. The TPP stipulates that foreign accreditation bodies shall be allowed to accredit domestic conformity assessment bodies.

Contains no product specific disciplines

TPP introduces disciplines for particular products. The TPP TBT chapter includes product annexes for (i) wine and spirits; (ii) information and communications technology products; (iii) pharmaceuticals; (iv) cosmetics; (v) medical devices; (vi) proprietary formulas for prepackaged foods and food additives; and (vii) organic products.

The new disciplines in the TBT chapter are less demanding than the SPS ones with a possible exception for the product annexes. Vietnam commits itself to allow foreign testing, inspection, certification and accreditation agencies to operate in Vietnam:

Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party. In order to ensure that it accords such treatment, each Party shall apply to conformity assessment bodies located in the territory of another Party the same or equivalent procedures, criteria and other conditions that it may apply where it accredits, approves, licenses or otherwise recognises conformity assessment bodies in its own territory. (TPP TBT chapter, Art. 8.6.1)

The TBT chapter also strengthens transparency and lays down highly specific requirements for individual products, namely wine and distilled spirits, information and communications technology products, pharmaceuticals, cosmetics, medical devices, proprietary formulas for prepackaged food and food additives, and organic products.

SPS AND TBT REQUIREMENTS IN THE EU-VIETNAM FTA

As for the TPP, the EVFTA contains new disciplines in two SPS and TBT chapters as evidenced in Table 2. In addition, the EVFTA includes two product specific annexes, namely an annex on pharmaceutical products and medical devices and an annex on motor vehicles and motor vehicles’ parts. As for the TPP, the disciplines align with WTO rules while sometimes expanding them. The new disciplines are a blend of mandatory and voluntary ones.

The SPS chapter stipulates that OIE policy on animal health status must be respected. Likely, this will require Vietnam changing its veterinary import control policies to reflect the animal health situation in the EU. Another substantial commitments is that Vietnam must produce pest lists for regulated pests. This commitment is binding:

The Parties shall establish and update lists of regulated pests, using scientific names, and make such lists available to the other Party. (EVFTA SPS chapter, Art. 6.7)

Vietnam already produces pest lists, yet the pressure for backing such lists up with international standard procedures will rise with the EVFTA. Vietnam has also committed to establish contact points and participate in a new EVFTA SPS Committee.

The TBT chapter commits Vietnam to organize its conformity assessment bodies according to international best practice by ensuring the independence and absence of conflicts of interests between accreditation and conformity assessment bodies and, within market surveillance, between
regulatory agencies and the operators they survey. Furthermore, Vietnam must provide uses of conformity assessment a choice between operators.

The EVFTA TBT chapter expands transparency mechanisms. Foreigners must be allowed to participate in consultations about new regulations and all technical regulations and their associated conformity assessment procedures must be provided for free on the Internet.

Table 2: SPS and TBT provisions in the EVFTA different from the WTO agreements

<table>
<thead>
<tr>
<th>WTO disciplines</th>
<th>EU-Vietnam Free Trade Agreement (EVFTA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPS agreement</td>
<td>Chapter 7 – <em>Sanitary and Phytosanitary measures</em></td>
</tr>
<tr>
<td>Equivalence &amp; regionalization</td>
<td>EVFTA obliges the Parties to recognize the official animal health status as determined by the OIE</td>
</tr>
<tr>
<td></td>
<td>EVFTA introduces elaborate procedures on equivalence and regionalization attempting to make the WTO disciplines more operational</td>
</tr>
<tr>
<td>Transparency</td>
<td>EVFTA establishes contact points and a new EVFTA SPS Committee</td>
</tr>
<tr>
<td>Control, inspection and approval procedures</td>
<td>EVFTA instructs the Parties to produce pest lists for regulated pests</td>
</tr>
<tr>
<td></td>
<td>EVFTA establishes procedures for the approval of establishments for products by Competent Authorities for sanitary reasons and for the mutual recognition of these procedures</td>
</tr>
<tr>
<td>TBT agreement</td>
<td>Chapter 6 – <em>Technical Barriers to Trade</em></td>
</tr>
<tr>
<td>Technical regulation and standards</td>
<td>EVFTA encourages the application of good practice including least trade restricting practices and regulatory impact assessment</td>
</tr>
<tr>
<td></td>
<td>EVFTA commits the Parties to review convergence with international standards</td>
</tr>
<tr>
<td>Conformity assessment procedures</td>
<td>EVFTA elaborates on conformity assessment and encourages the use of elements like supplier declarations</td>
</tr>
<tr>
<td></td>
<td>EVFTA states that operators must have a choice of conformity assessment bodies</td>
</tr>
<tr>
<td></td>
<td>EVFTA commits the Parties to assurance of independence and absence of interests of conflicts between accreditation and conformity assessment bodies</td>
</tr>
<tr>
<td></td>
<td>EVFTA commits the parties to ensure the competency of market surveillance bodies and absence of conflict of interest between market surveillance and conformity assessment and between market surveillance and “the economic operators subject to control or supervision”</td>
</tr>
<tr>
<td></td>
<td>EVFTA contains more elaborate rules on marking and labeling</td>
</tr>
<tr>
<td>Transparency</td>
<td>EVFTA commits the Parties to review existing technical regulations with a view to promoting convergence with international standards</td>
</tr>
<tr>
<td></td>
<td>EVFTA introduces elaborate transparency requirements including obligations to allow foreigners to participate in consultations on new technical regulations and to make available free of charge on the internet all technical regulations and mandatory conformity assessment procedures</td>
</tr>
<tr>
<td>Contains no product specific disciplines</td>
<td>EVFTA includes an annex on motor vehicles. Vietnam will recognize most UNECE standards as sufficient for compliance with Vietnamese regulation and will promote alignment with UNECE standards in its motor vehicle regulation.</td>
</tr>
<tr>
<td></td>
<td>EVFTA also includes annex on pharmaceuticals. This annex seeks to ensure that EU and Vietnamese regulation, where appropriate, applies international pharmaceutical standards.</td>
</tr>
</tbody>
</table>
CONCLUSIONS AND RECOMMENDATIONS

Both the TPP and the EVFTA align themselves with WTO rules and in select and very specific cases build on these by adding additional disciplines. The overall strategic tool to further reduce trade barriers caused by TBTs and SPS measures is regulatory coherence. Thus the two agreements follow a strong trend in international trade regulation by using alignment with international best practice to reduce trade barriers.

Regulatory coherence is a tool that Vietnam should apply critically. In many instances, Vietnam will benefit from such alignment with international best practice, but not in all. Vietnam may, for example, benefit from using the EVFTA to weed out any remaining conflicts of interests within its conformity assessment and market surveillance efforts. In such cases, applying international best practice will both reduce trade barriers and promote more efficient and effective domestic regulation.

But in other cases, the regulatory tools that are part of what is known as international best practice are developed for economies of much higher incomes than Vietnam. These countries have different capabilities and regulatory problems. An example is the binding commitment to only test for SPS measures by laboratories applying a quality assurance program consistent with international standards. Countries like Vietnam may have a scarcity of laboratories operating at sufficient standards and will have to forego import control when implementing such commitments before the necessary capacity have been established. Another example is the promotion of international standards as the basis for regulation inherent in the WTO SPS and TBT agreements and confirmed in the TPP and EVFTA. Many standards have been developed for high income countries and will require significant adjustment to function optimally in Vietnam and similar countries (Jensen et al. 2012, Jensen & Keyser 2012).

Of course, a number of commitments in the TPP and the EVFTA are beyond discussion because they are mandatory. Many of the commitments in these two agreements, however, offer considerable flexibility, and it is advisable that Vietnam uses the flexibility to comply in a way that fits its own development challenges. The goals for Vietnam’s compliance with the TPP and the EVFTA should be broader than simple legal compliance. Vietnam should use the two trade agreements to promote reform to dismantle trade barriers and to create better regulation.

NEXT STEPS

An Action Plan should create a common understanding of Vietnam’s implementation commitments and use the TPP and EVFTA strategically to push Vietnam’s development goals including reducing trade barriers in Vietnam and abroad and to promote effective and efficient regulation. Such an Action Plan can only be written after additional fieldwork and consultations with government agencies, private firms and development partners have been undertaken. Vietnam will likely approach development partners, like the European Commission, for funding for capacity building and should ensure that Vietnam and its development partners share the same understanding of Vietnam’s implementation commitments.

The disciplines in the SPS and TBT chapters of the TPP and the EVFTA fall in three categories:

- Reiteration of WTO disciplines
- Best-endeavor commitments
- Binding commitments

Most of the text of the SPS and TBT chapters in both agreements reiterates and confirms already existing WTO disciplines. Some go beyond the WTO and these may be either best-endeavor commitments or strictly binding commitments. Tables 1 and 2 summarize the best endeavor and binding commitments. The strictly binding commitments are actually few with the possible exception of the product specific annexes. These annexes have not been thoroughly reviewed in this paper because of their highly detailed nature that require fieldwork and consultations to understand properly.

To develop an Action Plan, the following steps are recommended:
1. Fieldwork should establish the implications of new disciplines identified in the TPP and EVFTA SPS and TBT chapters at firm and industry level and at the level of the regulatory agencies; special attention should be granted to the implications of the product specific TBT annexes;

2. Consultations should be held with industry associations, government agencies and development partners to promote a common understanding of Vietnam’s implementation commitments – such implementation commitments may be classified in the three categories of existing WTO disciplines – best-endeavor commitments and binding commitments;

3. The inputs from the fieldwork and from the consultations should be used to establish the development goals of Vietnam: how to reduce TBTs including those related to SPS measures at home and abroad and how to create more efficient and effective regulation;

4. The identification of focus points for reform and compliance efforts. Possible focus points that address commitments identified in Tables 1 and 2 include:

   a. Better regulation: many disciplines in the TPP and EVFTA promote (often on a best endeavor basis) better regulation. The introduction of regulatory impact assessment is one such area. Vietnam has already experimented with regulatory impact assessment in select areas and consultations with government agencies should establish whether a more systematic application of this tool – common in high income countries – will promote better regulation in Vietnam;

   b. Introduce risk-based import control for SPS issues: to meet a binding TPP SPS commitment. The type of risk-based control chosen must be calibrated to Vietnam’s capabilities;

   c. Other reforms of import control: for example, the TBT SPS chapter encourages the development of electronic certification. Fieldwork and consultations should explore where such electronic certification is feasible;

   d. Laboratory upgrading: should upgrade SPS laboratories to operate along international standards, a binding commitment in the TPP SPS chapter. Although international accreditation would be an obvious way of ensuring compliance, the TPP does not explicitly demand it, leaving Vietnam responsible for finding the best route toward compliance.

   e. Promotion of international standards as the basis for technical regulation: the TPP and EVFTA include commitments on review and generally reiterate the WTO’s encouragement to use international standards. Vietnam must carefully determine how international standards may be adopted to promote its development goals. International guidelines of how to adopt international standards leave much flexibility of which parts of international standards to use and how to amend them if needed (ISO & IEC 2005);

   f. Include additional transparency commitments in existing transparency mechanisms already set up for WTO and ASEAN;
The Trans-Pacific Partnership (TPP) Agreement (“TPP Agreement”) affirms in its Preamble “that state-owned enterprises (SOEs) can play a legitimate role in the diverse economies of the Parties.” The Preamble recognizes, however, “that the provision of unfair advantages to [SOEs] undermines fair and open trade and investment.”

Non-market-based decisions on the production, sale or purchase of goods or services, related investment and financing could result in misallocations of capital, labor, and land that would – over the long-term – diminish overall social welfare. The TPP Agreement emphasizes that each Party is free to establish or maintain SOEs. TPP Parties, however, “resolve to establish rules for [SOEs] that promote a level playing field with privately owned businesses, transparency, and sound business practices.” Similarly, the EU-Vietnam Free Trade Agreement (“EVFTA”) notes the advantages of “a predictable legal framework for their trade and investment relations.”

These agreements provide an occasion for Vietnam to improve SOE corporate governance and performance. Disputes with EVFTA/TPP partners (“Partners”) may also arise. Partners may place close scrutiny because of perceptions that Vietnam’s SOEs have received disproportionate and favored access to capital, land, and other support from the Government of Vietnam (GOV). While adherence to the letter of these agreements will bolster Vietnam’s position in any dispute, adherence to their spirit will benefit Vietnam’s long-term economic development.

Section I summarizes obligations under the EVFTA and TPP Agreement pertaining to Vietnam’s SOEs. Section II highlights questions that Partners may raise as a result of recent GOV support for SOEs. Section III draws implications for short- and medium-term GOV policies and programs. Details of new SOE obligations are presented in Annex A for EVFTA and Annex B for TPP.

I. NEW OBLIGATIONS

Important new obligations relate to (A) non-discriminatory treatment; (B) regulatory neutrality; (C) non-commercial assistance; (D) transparency; (E) application; and (F) technical cooperation.

A. Non-discriminatory Treatment

Both EVFTA and TPP include substantive requirements on non-discrimination by SOEs in their purchase or sale of goods or services. Per EVFTA, when engaging in Commercial Activities, an SOE shall (a) act in accordance with Commercial Considerations in their purchase or sale of goods or services, and (b) accord to EU enterprises, goods, or services treatment that is no less favorable than that accorded – in like situations – to Vietnamese enterprises, goods, or services. This does not preclude Vietnam’s SOEs from purchasing/supplying goods/services, or refusing to do so, provided that such differences or refusal is based on Commercial Considerations.

While its rules are similar, TPP explicitly extends these to foreign direct investment enterprises (Covered Instruments) operating in Vietnam or Vietnam Covered Instruments operating in another TPP Party’s territory.

Thus it appears that the main initiatives are to extend Vietnam’s existing trade obligations – e.g., World Trade Organization (WTO) – to SOE practices.

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12 Office of the United States Trade Representative, TPP Full Text, accessed 28 April 2016, “Preamble”
13 TPP, 17.2.9
14 TPP, Preamble
16 Price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of an enterprise operating according to market economy principles in the relevant business or industry. EVFTA Section III, 1(f).
B. REGULATORY NEUTRALITY

Both EVFTA and TPP include substantive requirements for regulatory neutrality. Per EVFTA, GOV regulators shall not be accountable to any regulated enterprise. Regulatory treatment of all enterprises in like circumstances should be impartial. Impartiality is to be assessed by reference to a general pattern or practice of that regulatory body. Likewise, GOV should ensure that laws and regulations are enforced in a consistent and non-discriminatory manner. Lastly, GOV “shall endeavor to ensure” that SOEs et al “observe internationally recognized standards of corporate governance.”

While generally similar, TPP specifies additional details. Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges. This suggests that fees could include, for example, road tolls and seaport charges. TPP does not address SOE corporate governance as a component of regulatory neutrality, but rather as a Supplemental Measure (see below).

These requirements for regulatory neutrality are especially relevant for the financial, telecommunications, transportation, and electricity sectors.

C. NON-COMMERCIAL ASSISTANCE (NCA)

Unlike EVFTA, TPP includes explicit limitations on NCA to SOEs. TPP prohibits NCA that results has Adverse Effects or causes Injury to the Domestic Industry of another TPP Party, as summarized later. NCA is “assistance to an [SOE] by virtue of that [SOE’s] government ownership or control.” NCA includes the following:

- Direct transfers of funds or potential direct transfers of funds or liabilities. This may include
  - Grants or debt forgiveness;
  - Loans, loan guarantees, or other types of financing “on terms more favorable than those commercially available to that enterprise;” or
  - Equity capital “inconsistent with the usual investment practice, including for the provision of risk capital, of private investors.”
- “Goods or services other than general infrastructure on terms more favorable than those commercially available to the enterprise.

While the meaning of these is open to debate, an aggrieved party could pursue expansive interpretations, as suggested below.

“Terms more favorable than those commercially available to that enterprise” could be expected to include relative interest rates and guarantee fees. It could also include loan maturity and debt service schedule, collateral requirements, guarantee coverage, and enforcement of debt service and collateral.

- An unusually long loan maturity or balloon repayment schedule could provide competitive advantage by reducing an SOE’s interim principal or interest payments.
- Collateral requirements – adjusted for firm-specific circumstances – for a SOE should be comparable to those for competing enterprises.
- The percentage of a loan covered by a guarantee for a SOE should be comparable – again adjusted for firm-specific circumstances – to the coverage available to competing enterprises.

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17 5.1. This could be taken to refer to Organization for Economic Cooperation and Development, “OECD Guidelines on Corporate Governance of State-Owned Enterprises.”
18 17.3
19 “By virtue of...government ownership or control” would mean that that the GOV or any of its SOEs (i) explicitly limit NCA access to Vietnam’s SOEs; (ii) provides NCA that is predominately used by Vietnam’s SOEs; (iii) provides a disproportionately large amount of the NCA to Vietnam’s SOEs; or (iv) otherwise favors Vietnam’s SOEs through its discretion in the provision of NCA. 17.1
20 17.1
21 17.1
• If banks would call loans, activate technical default or cross-default clauses, or pursue remedies (e.g., foreclosure or petition for a court-supervised bankruptcy or restructuring) against a distressed or defaulted SOE – when banks would do so vis-à-vis a competing enterprise under similar circumstances – this could be a source of competitive advantage.

“Equity capital inconsistent with the usual investment practice” could be interpreted to include an unusually favorable equity valuation, an excessively large equity cushion, laxity in the exercise of shareholder rights, or absence of an equity exit mechanism (e.g., through sale) and a market for corporate control.

• An SOE equity valuation notably above those for comparable competing enterprises could be construed as a grant, which TPP prohibits as a form of NCA.

• An excessively large equity cushion – i.e., under-leverage – could enable a SOE to gain competitive advantage by taking excessive risk or accepting otherwise unsustainable losses in order to gain significant market share.

• The failure of a SOE shareholder to seek an adequate risk-adjusted return on its SOE equity holdings could enable the SOE to gain competitive advantage against another enterprise whose shareholders would not tolerate a similarly low return on equity (ROE).

• As the ability to sell shares to any able buyer and the threat of hostile takeover may discourage an enterprise from tolerating low equity returns that could be a source of competitive advantage, the absence of these disciplines for a SOE could be a source of competitive advantage.

TPP’s use of the term “general infrastructure” suggests a distinction vis-à-vis “specific infrastructure.

• General infrastructure could include, for example, kilowatt-hours of electricity or cubic meters of water. TPP excludes such general infrastructure as a form of NCA.

• Specific infrastructure could be interpreted to include, for example, a plot of land or a purpose-built road. Hence, the conveyance of land at a below-market price to an SOE or multiple conveyances in the absence of an efficient land market could be construed as a form of NCA.

NCA does not include (a) transactions within a corporate group that includes SOEs, when normal business practices require reporting the financial position of the group without these intra-group transactions; (b) other transactions between SOEs that are consistent with the usual practices of privately owned enterprises in arm’s length transactions; or (c) a Party’s transfer of funds to an independent pension fund for investment on behalf of its contributors/beneficiaries. While confusingly drafted, item (a) could be interpreted to mean SOE groups should be required to produce consolidated financial statements.

TPP’s standard for prohibited NCA is whether the NCA causes (i) Adverse Effects or (ii) Injury to the Domestic Industry of another Party.

Scope and tests for Adverse Effects are as follows:

• Vietnam shall not cause Adverse Effects to the interests of another Party through NCA, provided either directly or indirectly, to any Vietnam SOE with respect to (a) its production and sale of a good; (b) its supply of a service into a Partner’s territory; or (c) its supply of a service in a Partner’s territory through a Covered Instrument in the territory another Party. Similarly with respect to an SOE’s sale of a good or export of a service, “each Party shall ensure that its [SOEs] do not cause adverse effects through NCA between any of its SOEs. Adverse Effects will not

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22 17.1
23 17.6.1
24 17.6.2
result from a service supplied by a Vietnam SOE within Vietnam. This, however, does not include a service that is itself a form of NCA.\(^{25}\)

- Adverse Effects arise if, as a result of the NCA, any of the following occur: (a) displacement of imports to Vietnam or like sales from a Covered Instrument in Vietnam; (b) displacement of imports from any source into another Party’s territory; (c) significant price undercutting, price suppression, price depression, or lost sales; (d) similar displacement of like services; or (e) similar price or sales effects for like services.\(^{26}\) To show market displacement or impediment, a “significant change” in market share for at least 1 year must be demonstrated.\(^{27}\) Demonstration of “significant price undercutting” depends on a comparison of prices for a like good or service.\(^{28}\)

Thus, demonstration depends only on a comparison of prices, without consideration of the cost to produce the good or service.

Scope and tests for Injury are as follows:

- Injury provisions would be relevant to actions by a Vietnam FDI Covered Instrument in the territory of another Party. Vietnam shall not cause Injury to the “Domestic Industry\(^{30}\)” of another Party through the NCA it provides, directly or indirectly, to any Vietnam SOE that is a Covered Instrument in the territory of the other Party, in circumstances where (a) the NCA is provided with respect to the production and sale of a good by the SOE in the other Party’s territory, and (b) a like good is produced and sold in the other Party’s territory by its Domestic Industry.\(^{31}\)

- Injury to a Party’s domestic industry “shall be taken to mean material injury to a domestic industry, threat of a material injury to a domestic industry, or material retardation of the establishment of such an industry.” A determination of material injury depends on an objective examination of positive evidence,\(^{32}\) including the volume of production by the Covered Instrument that received NCA,\(^{33}\) the effect of such production on prices for like goods produced and sold by the domestic industry,\(^{34}\) and the effect of such production on the domestic industry producing like goods.\(^{35}\) It must be demonstrated that the goods produced and sold by the Covered Instrument are, because of NCA, causing “injury.” It is necessary to demonstrate a causal relationship, based on all relevant evidence, including factors other than NCA.\(^{36}\)

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\(^{25}\) 17.6.4
\(^{26}\) 17.7.1
\(^{27}\) 17.7.2
\(^{28}\) 17.7.3
\(^{29}\) 17.6.4. If a direct comparison of transactions is not possible, price undercutting may be demonstrated on some other reasonable basis, such as a comparison of unit values for goods.
\(^{30}\) The domestic producers as a whole of the like good, or those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the SOE that is a Covered Instrument that has received NCA.
\(^{31}\) 17.6.3
\(^{32}\) 17.8.1
\(^{33}\) 17.8.1. Consideration shall be given as to whether there has been a significant increase in the Covered Instrument’s volume of production, either absolutely or in relative terms, as well as to whether there has been a significant price undercutting by the goods produced and sold by the Covered Instrument or otherwise whether this production and sale has significantly depressed prices or prevented price increases. 17.8.2
\(^{34}\) 17.8.1. Consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the Covered Investment as compared with like goods produced and sold by the domestic industry, or whether the effect of production by the Covered Investment is otherwise to depress prices or prevent price increases to a significant degree. 17.8.2
\(^{35}\) Factors to be evaluated in an examination of the impact on domestic industry include actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments; and, in the case of agriculture, whether there has been an increased burden on government support programs. 17.8.3
\(^{36}\) Non-NCA factors may include volumes and prices of other like goods, demand contraction or other consumption changes, technological developments, or export performance and productivity of the domestic industry. 17.8.4
injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care.” The change in circumstances where NCA to the Covered Instrument “must be clearly foreseen and imminent” such that, “unless protective action is taken, material injury would occur.”

D. TRANSPARENCY

Compared with EVFTA, TPP has more stringent requirements for SOE transparency.

EVFTA simply requires that GOV provide specified information about the SOE subject of a complaint. If the EU “has reasonable reason to believe” that EU interests under Section III being adversely affected by the Commercial Activities of a Vietnam SOE, the EU may request GOV to provide the following information about this SOE: (a) ownership and voting structure; (b) any special shares or voting rights that differ from general common shares; (c) organizational structure, composition of its board of directors, and cross-holdings or links with other enterprises or enterprise groups; (d) description of the GOV departments or other public bodies that regulate and/or monitor the SOE, reporting lines, and rights or practices of the GOV in the appointment, dismissal, or remuneration of the SOE’s managers; (e) annual revenue and assets; and (f) exemptions, non-conforming measures, immunities and any other measures, including more favorable treatment applicable in Vietnam.

In addition to similar requirements for complaints, TPP requires prior public disclosure on large SOEs. In general, TPP requires that each Party provide (e.g., on an official website) a list of its SOEs within 6 months of Entry Into Force, and then update this list annually. For Vietnam, this public information requirement shall not apply until 5 years after Entry Into Force. Separately, within 6 months after Entry Into Force, Vietnam shall provide a list of its SOEs that have an annual commercial revenue of more than SDR 500 million (about $708 million or VND 15.9 trillion) in 1 of the 3 preceding years, and update this list annually until the aforementioned general obligation takes effect after 5 years.

Lastly, TPP establishes a Committee on SOEs and Designated Monopolies to review implementation of Chapter 17; consult on any matter arising under Chapter 17; promote Chapter 17 principles; and undertake such other activities as the Committee may decide. This committee shall meet within 1 year after Entry Into Force, and annually thereafter.

E. APPLICATION

Generally, TPP Chapter 17 applies as follows:

- Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) applies to a SOE if its annual commercial revenue in each of the 3 previous (to Entry Into Force) consecutive fiscal years was more than SDR 200 million (in February 2016 SDRs) – i.e., about VND 6.36 trillion.
- Article 17.5 (Courts and Administrative Bodies) applies regardless of the size of an involved SOE(s).
- Article 17.6 (Non-commercial Assistance) applies to a SOE if its annual commercial revenue in

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37 The totality of factors to be considered include (a) the nature of the NCA and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the Covered Instrument, indicating a likelihood of substantially increased sales; (c) substantial surplus capacity, either existing or imminent, at the Covered Instrument, taking into account the availability of export markets to absorb additional production; (d) whether goods sold by the Covered Instrument will significantly depress or suppress prices; and (e) inventories of like goods. 17.8.5
38 6.1
39 17.10.4 and 17.10.5. This shall not apply to Vietnam with respect to the SOEs listed in Annex IV that engage in the non-conforming activities described therein.
40 See 17.10.3. These shall not apply to Vietnam with respect to the SOEs listed in Annex IV that engage in the non-conforming activities described therein.
41 17.10.1
42 IMF, 6 April 2016.
43 17.10.1. After 5 years, TPP’s general transparency initiative would apply to any Vietnam SOE with annual commercial revenue in 1 of the 3 preceding years of at least SDR 200 million (i.e., about $283 million, or VND 6.36 trillion), adjusted since Entry Into Force at 3-year intervals at the SDR inflation rate. See also Annex 17-A.
44 17.12
each of the 3 previous consecutive fiscal years was more than SDR 200 million. NCA provided before 4 February 2016 (or within 3 years after Entry Into Force per a pre-signing law or contract) is exempt. NCA must be shown to cause Adverse Effects (Article 17.7) or Injury (Article 17.8).

- Article 17.10 (Transparency) applies to a SOE if its annual commercial revenue in each of the 3 previous consecutive fiscal years was more than SDR 200 million.
- Article 17.12 (Committee on SOEs) applies to a SOE if its annual commercial revenue in each of the 3 previous consecutive fiscal years was more than SDR 200 million.\(^{45}\)

Chapter 17 provides general exemptions and provides an opportunity for each Party to specify exemptions for sub-central government SOEs, as indicated below (Exhibit 1).

Generally, EVFTA Section III applies immediately upon Entry Into Force to a central government SOE if its annual commercial revenue in each of the 3 previous consecutive fiscal years was more than SDR 200 million. From 5 years after Entry Into Force, Section III applies to a sub-central SOE if its annual commercial revenue in each of the 3 previous consecutive years was more than SDR 200 million. Section III also provides general exemptions (Exhibit 1).

In addition to general exemptions applicable to all Parties, the GOV negotiated Vietnam-specific exemptions for each agreement (Exhibit 1). These presumably reflect GOV’s considered views on the relative ease or difficulty for Vietnam to comply with various EVFTA and TPP requirements.

**Exhibit 1: EVFTA and TPP: SOE Application and Exemptions**

<table>
<thead>
<tr>
<th>EVFTA</th>
<th>TPP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. General or Vietnam-specific Application</strong></td>
<td><strong>II. General and Vietnam-specific exemptions</strong></td>
</tr>
<tr>
<td>- Upon Entry Into Force: Any central-level SOE with annual revenue from Commercial Activities of at least SDR 200 million (about VND 6.36 trillion, or $283 million) during each of the 3 previous years</td>
<td>- Not-for-profit or cost-recovery activities, e.g., “public service mandates”</td>
</tr>
<tr>
<td>- 5 years after Entry Into Force: Any sub-central SOE with annual commercial revenues of at least SDR 200 million during each of the 3 previous years</td>
<td>- Temporary response to national or global economic emergency</td>
</tr>
<tr>
<td>- From 5 years after Entry Into Force: Also includes provincial/municipal SOEs</td>
<td>- Government procurement (see Section XX), investment, or services supplied in the exercise of GOV authority</td>
</tr>
<tr>
<td>Article 17.5 always applies at central-government level</td>
<td>On Non-discriminatory Treatment for any fulfillment of a “public service mandate,” so long as it does not disadvantage a Covered Instrument in Vietnam</td>
</tr>
<tr>
<td>Articles 17.4, 17.6, 17.10.2 – 17.10.9 (on providing information in response to complaint) apply from Entry Into Force for a central-government SOE if its commercial revenue for each of the 3 previous consecutive years exceeds SDR 200 million (in February 2016 SDRs)</td>
<td>Temporary response to national or global economic emergency</td>
</tr>
<tr>
<td>Sub-central-level SOEs are exempt from 17.4, 17.5.2, 17.6, and 17.6. Within 5 years after Entry Into Force, negotiation should begin to extend Chapter 17 disciplines to sub-central-level SOEs of the requisite size, unless otherwise exempted.</td>
<td>Government procurement (Chapter 15) or goods or services provided exclusively to Government for carrying out governmental functions</td>
</tr>
<tr>
<td>Transparency: from 6 months until 5 years after Entry Into Force, 17.10.1 (public dissemination of a list of SOEs) applies only to a SOE with commercial revenue of more than SDR 500 million in 1 of the 3 preceding years. After 5 years, list should include any SOE with commercial revenues of more than SDR 200 million (in February 2016 SDRs) in each of the 3 preceding consecutive fiscal years.</td>
<td></td>
</tr>
</tbody>
</table>

\(^{45}\) 17.13.5
<table>
<thead>
<tr>
<th>National defense, public order, or public security</th>
<th>From Non-discriminatory Treatment and NCA, any SOE owned/controlled by the ministries of Defense or Public Security – except Viettel Global JSC or enterprises engaged exclusively in Commercial Activities not related to national defense, public order, or public security</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central banking activities</td>
<td>Non-discriminatory Treatment pertaining to any existing non-conforming measure relating to Investment, Cross-Border Trade in Services, or Financial Services</td>
</tr>
<tr>
<td>Capital market regulation and supervision</td>
<td>On Non-discriminatory Treatment, for equity transactions by an SOE as a means of its equity participation in another enterprise</td>
</tr>
<tr>
<td>Resolution of a failing or failed financial institution</td>
<td>A service supplied by a Vietnam SOE within Vietnam, unless the service is itself a form of NCA.</td>
</tr>
<tr>
<td>Sovereign wealth fund or independent pension fund, unless used to provide NCA</td>
<td>Trade financing or insurance of FDI, if these are not intended to displace commercial financing and offered on commercial terms</td>
</tr>
<tr>
<td>Non-discriminatory Treatment pertaining to any existing non-conforming measure relating to Investment, Cross-Border Trade in Services, or Financial Services</td>
<td>NCA shall not apply to an enterprise outside Vietnam over which a Vietnam SOE has assumed temporary control as a result of foreclosure, default, or payment of an insurance claim</td>
</tr>
<tr>
<td>Central banking activities</td>
<td>Any financing necessary for restructuring (other than equitization), provided that this does not have significant market share or price effects on a Covered Instrument in Vietnam</td>
</tr>
<tr>
<td>Capital market regulation and supervision</td>
<td>A 1-time purchase of NPLs or unused assets at market value and financing, to settle redundant employees, for the purpose of equitization</td>
</tr>
<tr>
<td>Resolution of a failing or failed financial institution</td>
<td>Production, sale, or purchase of goods within Vietnam at a regulated price or quantity within Vietnam to ensure economic stability, despite effects on a Covered Instrument in Vietnam</td>
</tr>
<tr>
<td>Sovereign wealth fund or independent pension fund, unless used to provide NCA</td>
<td>NCA to cover the costs, including employee welfare costs, of such economic stability measures</td>
</tr>
<tr>
<td>Central banking activities</td>
<td>Purchase or sale of goods to facilitate economic development in lagging regions</td>
</tr>
<tr>
<td>Capital market regulation and supervision</td>
<td>Compensation for implementation of such economic development measures</td>
</tr>
<tr>
<td>Resolution of a failing or failed financial institution</td>
<td>Non-commercial goals or preferential treatment in purchases from SMEs, per GOV measure, as a means of promoting SMEs, from Non-discriminatory Treatment</td>
</tr>
<tr>
<td>Sovereign wealth fund or independent pension fund, unless used to provide NCA</td>
<td>From Non-discriminatory Treatment vis-à-vis Covered Instruments in Vietnam in Petrovietnam’s oil/gas exploration and production, including flight operation services</td>
</tr>
<tr>
<td>Central banking activities</td>
<td>Similarly, from NCA for Petrovietnam oil/gas project or related industries, for the objective of regional or socio-economic development in Vietnam</td>
</tr>
<tr>
<td>Capital market regulation and supervision</td>
<td>EVN purchases of a good or service for power generation, from Non-discriminatory Treatment vis-à-vis a Covered Instrument in Vietnam</td>
</tr>
<tr>
<td>Resolution of a failing or failed financial institution</td>
<td>NCA loans or loan guarantees for EVN power generation for regional or socio-economic development, vis-à-vis a Covered Instrument in Vietnam</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Privatization, equitization, restructuring, or divestment of GOV assets</th>
<th>Domestic economic stability measures, including sale or purchase at a regulated price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic development measures (e.g., income security, social welfare, housing, poverty reduction, education, health, ethnic minorities), unless these circumvent Non-discriminatory Treatment</td>
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</tr>
<tr>
<td>Purchases from an SME, pursuant to law, regulation, or GOV measure, exempt from Non-discriminatory Treatment</td>
<td>Purchases from an SME, pursuant to law, regulation, or GOV measure, exempt from Non-discriminatory Treatment</td>
</tr>
<tr>
<td>Petrovietnam oil/gas exploration and development, and associated flight services, exempt from Non-discriminatory Treatment</td>
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</tr>
<tr>
<td>EVN et al generation, transmission, and distribution of electricity and alternative energy, exempt from Non-discriminatory Treatment and Transparency</td>
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<td>EVN purchases of a good or service for power generation, from Non-discriminatory Treatment vis-à-vis a Covered Instrument in Vietnam</td>
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<tr>
<td>NCA loans or loan guarantees for EVN power generation for regional or socio-economic development, vis-à-vis a Covered Instrument in Vietnam</td>
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</tr>
</tbody>
</table>
Vinacoalmin sale of coal and minerals, per Vietnam law and regulations, exempt from Non-discriminatory Treatment and Transparency

State Capital Investment Corporation (SCIC) asset management, investment, and related activities using GOV financial assets

Debt and Asset Trading Corporation (DATC) debt restructuring activities

Airport Corporation of Vietnam ground handling services

Mass communications, printing, publishing, and audio-visual production and distributio

Vinacoalmin sales within Vietnam, from Non-discriminatory Treatment, vis-à-vis a Covered Instrument in Vietnam

NCA for Vinacoalmin to maintain production in remote/strategic areas, “provided the NCA does not have a significant effect on market share or prices for a Covered Instrument in Vietnam

State Capital Investment Corporation (SCIC) asset management, investment, and related activities using GOV financial assets, for earlier of 5 years or accession to International Forum of SWFs

DATC, VDB, Agribank, and their affiliates may consider non-commercial considerations in providing financial services (other than insurance or securities) to Vietnamese individuals or enterprises in Vietnam, so long as there is no intent to displace or impede private financing

GOV NCA to Banknetvn to provide financial switching services

Regarding Non-discriminatory Treatment, Airport Corporation may provide ground handling services to Vietnamese national airlines at preferential rates, per GOV measure

Vietnam Airlines may receive NCA in the form of a loan guarantee as part of an international financing agreement or contract, so long as it does not significantly affect market share or pricing

NCA for Vinalines pursuant to a restructuring plan

NCA for Shipbuilding Industry Corporation (SBIC), pursuant to a restructuring plan, despite SBIC competition with a Covered Instrument in Vietnam

All activities are exempt for any SOE in mass communication, printing, or publishing

SOEs may accord differential treatment in purchase/sale of audio-visual productions and distribution services

NCA for overseas Vietnamese-language programming broadcasts

NCA to Vietnam National Coffee Corporation for the production and sale of coffee within Vietnam

F. TECHNICAL COOPERATION

Both EVFTA and TPP include supplemental measures to promote good corporate governance at SOEs.

“Recognizing the importance of promoting effective legal and regulatory frameworks” for SOEs, EVFTA calls for GOV to engage with EU “in mutually agreeable technical cooperation activities with a view to promoting efficiency and transparency of [SOEs], subject to the availability of funding” under each Party’s cooperation programs.46

TPP Parties are encouraged to engage in technical cooperation, including (a) information exchanges on experiences in improving SOE corporate governance and operations; (b) sharing best practices on competitive neutrality and other policies to ensure a level playing field between SOEs and privately owned enterprises; and (c) organizing forums to share technical information on SOE corporate governance and operations.47

See Annex A and Annex B for more detailed discussion of, respectively, EVFTA (Section III) and TPP (Chapter 17) rules on SOEs.

46 7
47 17.11
II. GOV SUPPORT FOR SOEs

Following waves of “equitization” in 1989 – 1992 and 2002 – 2008, Central GOV has continued to maintain about 1,800 SOEs (Exhibit 2).

Exhibit 2: Vietnam’s SOEs, 2009 – 2013

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>1,806</td>
<td>1,779</td>
<td>1,798</td>
<td>1,792</td>
<td>1,789</td>
</tr>
<tr>
<td>Local</td>
<td>1,554</td>
<td>1,502</td>
<td>1,467</td>
<td>1,447</td>
<td>1,409</td>
</tr>
<tr>
<td></td>
<td>3,360</td>
<td>3,281</td>
<td>3,265</td>
<td>3,239</td>
<td>3,198</td>
</tr>
</tbody>
</table>

Source: GSO, 2014. GSO includes any enterprise in which GOV has 51 percent or more of charter capital.

Official statistics indicate that Vietnam’s SOE sector has experienced annual revenue growth of 18.2 percent during 2007 – 2014, become more profitable since 2010, and reduced its share of enterprise capital since 2007. But, as also discussed below, suspicions among TPP Partners may arise as a result of (a) a legacy of disproportionately large SOE claims on capital; (b) GOV support for distressed SOEs since 2008; and (c) a lack of market-based land valuations.

A. SOE CLAIMS ON CAPITAL

Vietnam’s SOEs maintain a disproportionately large claim on enterprise capital. In 2000, the SOE share (68 percent) of enterprise capital was 1.24 times the SOE share (55 percent) of net turnover for all enterprises. During 2007 – 2013, the average SOE share (37 percent) of enterprise capital was 1.37 times the SOE share (27 percent) of net turnover for all enterprises (Exhibit 3). For 2013, this ratio was still 1.29. SOEs’ share of pre-tax profits has exceeded their share of capital since 2010. But the source of this advantage is unclear. If this stronger profit performance is due to monopoly advantage, favorable pricing for land, or preferential financing, this could pose an issue for TPP.

Exhibit 3: SOE vs. Non-State Domestic and Foreign-Invested Enterprises, 2007 - 2013 (%)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net turnover</td>
<td>31</td>
<td>25</td>
<td>27</td>
<td>27</td>
<td>26</td>
<td>26</td>
<td>24</td>
<td>27</td>
</tr>
<tr>
<td>Pre-tax profit</td>
<td>NA</td>
<td>NA</td>
<td>40</td>
<td>32</td>
<td>43</td>
<td>48</td>
<td>42</td>
<td>41</td>
</tr>
<tr>
<td>Capital</td>
<td>47</td>
<td>41</td>
<td>40</td>
<td>34</td>
<td>34</td>
<td>32</td>
<td>31</td>
<td>37</td>
</tr>
</tbody>
</table>

Source: General Statistics Office yearbooks; and staff estimates.

SOEs have recently performed well relative to domestic non-state (NS) enterprises and foreign-invested enterprises (FIE), according to official statistics. During 2009 – 2013, Vietnam’s SOE sector profitability was almost double that of other enterprises (Exhibit 4). The SOE sector’s return on capital invested (ROCI) was 25 percent higher than that for other enterprises. The drop in SOE profitability and ROCI during 2010 likely reflects distress then among some large SOEs.

50 VDR2012, p. 27.
51 It is important to note that these tables are based on data reported to the GSO. GSO standards for financial reporting may vary significantly from Vietnam Accounting Standards (VAS). In turn, divergences between VAS and International Financial Reporting Standards (IFRS) could cause systematic over-statements of assets and equity – and, hence, income. International Monetary Fund and World Bank, “Vietnam Financial Sector Assessment Program (FSAP) Aide Memoire,” February 2014, p. 16.
Exhibit 4: Profitability & ROCI: SOEs vs. Other Enterprises, 2009 – 2013 (%)

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profitability</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOE</td>
<td>8.2</td>
<td>5.7</td>
<td>5.4</td>
<td>5.8</td>
<td>6.8</td>
<td>6.4</td>
</tr>
<tr>
<td>NS+FIE</td>
<td>4.6</td>
<td>4.4</td>
<td>2.5</td>
<td>2.3</td>
<td>3.1</td>
<td>3.4</td>
</tr>
<tr>
<td><strong>ROCI</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOE</td>
<td>4.1</td>
<td>3.1</td>
<td>3.2</td>
<td>3.5</td>
<td>3.8</td>
<td>3.5</td>
</tr>
<tr>
<td>NS+FIE</td>
<td>4.1</td>
<td>3.4</td>
<td>2.1</td>
<td>1.8</td>
<td>2.4</td>
<td>2.8</td>
</tr>
</tbody>
</table>

Source: General Statistical Office, 2014 Handbook; and staff estimates.

SOEs use more capital than do other enterprises in Vietnam. For example, in 2013, Vietnam’s SOE sector needed VND 1.8 to generate VND 1 of net turnover (Exhibit 5). This has declined from 2.0 in 2009. But the 2013 SOE ratio was almost 40 percent higher than that for NS and FIE enterprises. This may reflect several factors, including (i) SOE engagement in capital intensive activities (e.g., petrochemicals, energy, and telecommunications); (ii) excessive SOE investment in non-core activities (e.g., real estate, financial services) and post-crisis withdrawal from these investments; and (iii) lower efficiency among SOEs.52 But NCA for SOEs could be a factor as well.

Exhibit 5: Capital/Revenue Ratios: SOEs vs. Other Enterprises, 2009 – 2013

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOE</td>
<td>2.0</td>
<td>1.8</td>
<td>1.7</td>
<td>1.7</td>
<td>1.8</td>
</tr>
<tr>
<td>NS+FIE</td>
<td>1.1</td>
<td>1.3</td>
<td>1.2</td>
<td>1.2</td>
<td>1.3</td>
</tr>
</tbody>
</table>

Source: General Statistical Office, 2014 Handbook; and staff estimates.

SOE successes have resulted at least in part from non-commercial assistance, according to knowledgeable observers. In recent years, Vietnam “appears to have veered toward a model of state capitalism in which the [State Economic Groups] have enjoyed privileged access to factor inputs.”53 Another knowledgeable source cites “directed lending to SOEs and favored sectors throughout the decade.”54

GOV is in a position to influence the allocation at least half of Vietnam’s financial sector assets. At end-2011, state-owned commercial banks (SOCBs) and development banks accounted for 41 percent of financial sector assets (Exhibit 6).55 SOCBs remained exposed to political interference by central and local governments, leading to directed lending to SOEs and favored sectors.56 The number of Joint Stock Banks (JSBs) with State ownership steadily increased during 2008 – 2010. Some JSBs have become captive sources of financing for their owners.57 While the GOV has direct ownership in only four JSBs in 2010, SOCBs had ownership stakes in six and SOEs in as many as nineteen JSBs. Of twenty-seven JSBs, combined GOV/SOCB/SOE ownership ranged from 100 percent at two JSBs,

52 VDR2012, p. 32.
54 FSAP Aide Memoire, p. 15.
55 The five SOCBs were Agribank, Bank for Investment and Development (BIDV), Mekong Housing Bank, Vietcombank, and Vietinbank. The development banks [ ].
56 FSAP Aide Memoire, p. 15
57 FSAP Aide Memoire, p. 16.
to 80 – 92 percent at three, 52 percent at 1, 10 – 44 percent at twelve, and 2 – 8 percent at the other nine.\textsuperscript{58} Data for 2010 (Exhibit 7) show “a positive correlation between the ownership structure of the banks and their loan exposure to the SOE sector, implying that SOEs do not always require a controlling stake...in the JSB to influence lending activities in their favor.”\textsuperscript{59}

**Exhibit 6: Vietnam Financial Sector Assets, Year-End 2011 (%)**

<table>
<thead>
<tr>
<th>Universal and Commercial Banks:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>34.6</td>
</tr>
<tr>
<td>Domestic (including JSBs)</td>
<td>41.3</td>
</tr>
<tr>
<td>Foreign</td>
<td>10.0</td>
</tr>
<tr>
<td></td>
<td>85.9</td>
</tr>
<tr>
<td>Development Banks</td>
<td>6.3</td>
</tr>
<tr>
<td>Cooperative Banks</td>
<td>0.8</td>
</tr>
<tr>
<td>Finance/leasing companies</td>
<td>3.3</td>
</tr>
<tr>
<td>Investment banks/financial auxiliaries</td>
<td>1.5</td>
</tr>
<tr>
<td>Insurance/reinsurance</td>
<td>2.0</td>
</tr>
<tr>
<td>Collective investment schemes</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Source: FSAP Aide Memoire, p. 75.*

**Exhibit 7: State Ownership of JSBs vs. JSB Loans to SOEs, 2010 (%)**

```
Correlation between ownership and loan exposure in JSBs and SOCBs

Each point in the scatter plot represents a bank

% of charter capital in JSBs owned by the state (as of 31 Dec 2010)

% of loans to SOEs (end of 2010)

Trend line

```

*Source: VDR2012, p. 31.*

**Exercise of state ownership rights in state banks by the banking supervisor heightens the real or perceived risk of directed NCA.** State Bank of Vietnam (SBV) supervises banks in Vietnam. SBV objectives include “the exercise of state ownership rights in banks. Particularly in the exercise of state ownership rights, there are clearly conflicts of interest.”\textsuperscript{60} This conflict between bank supervision and functional ownership is an issue of broad importance to Vietnam’s financial sector. For TPP purposes, the combination of these functions in SBV heightens the risk – real or perceived and alleged – of NCA in the form of credits from SOCBs to SOEs.

\textsuperscript{58} VDR2012, pp. 29 – 31.
\textsuperscript{59} VDR2012, p. 31.
\textsuperscript{60} FSAP Aide Memoire, p. 49.
B. SUPPORT FOR DISTRESSED SOEs

Another concern is that distressed SOEs may obtain additional financial support solely as a result of State ownership. This could include (i) additional financing, when purely commercial considerations might prompt banks to call existing loans or halt new lending, or (ii) deferral of foreclosure or bankruptcy proceedings in the case of SOE default. This appears to have happened during 2010 – 2011.

Non-performing loan (NPL) ratios have recently been much higher for SOCBs than for JSBs. As of end-2012, NPL ratios were estimated to be 70 percent higher at SOCBs.61

About half of Vietnam's large SOEs appear to have been over-leveraged at end-2010. These included both SEGs and General Corporations.62 The ratio of liabilities to equity is an indicator of leverage. Circa 2009, liability/equity ratios were 307 percent for Vietnam’s SOEs – almost double the leverage for domestic Non-State and Foreign-Invested Enterprises.63 During Korea’s 1998 economic crisis, the Korean government directed that the thirty largest conglomerates (chaebol) should reduce their liabilities/equity ratio to 2 by end-1999.

SOEs have recently accounted for a disproportionately large share of NPLs. Estimates of SOE bank debt from SOE financial statements indicate that SOEs accounted for at least 33 percent of total bank credit, but a much larger share of NPLs, reflecting SOEs’ weaker financial performance. The National Financial Supervisory Commission has estimated that SOEs account for 50 – 70 percent of Vietnam’s NPLs. Another analysis based on a report to the Economic Committee of the National Assembly indicates that SOEs account for 70 percent of NPLs while a subset of SOEs – economic groups (EGs) and general corporations (GCs) – account for 53 percent of NPLs.64

By end-2010, many large SOEs were distressed, using liabilities/equity of 2:1 as a threshold (Exhibit 8). Four General Corporations (GCs) were insolvent, with zero or negative equity. For six GCs, the liabilities/equity ratio exceeded 10. Liability/equity ratios ranged from 3 to 10 for three EGs and at least 15 GCs.65

Exhibit 8: Liabilities/equity ratio for Selected SEGs and GCs, at end-2010

<table>
<thead>
<tr>
<th>SOE</th>
<th>Liabilities/equity ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>VN Sericulture Corp</td>
<td>insolvent</td>
</tr>
<tr>
<td>Various construction</td>
<td>various, including some insolvent</td>
</tr>
<tr>
<td>Various transport engineering</td>
<td>7.5 – 11.9</td>
</tr>
<tr>
<td>Industrial Equipment Corporation</td>
<td>2244.8</td>
</tr>
<tr>
<td>Vietnam Paper Corporation</td>
<td>4.6</td>
</tr>
<tr>
<td>Housing and Urban Development</td>
<td>4.1</td>
</tr>
<tr>
<td>Petrolimex</td>
<td>4.1</td>
</tr>
<tr>
<td>Vietnam Telecommunication Corporation</td>
<td>4.0</td>
</tr>
<tr>
<td>Vietnam Construction Industries</td>
<td>3.9</td>
</tr>
<tr>
<td>Electricity Corporation of Vietnam</td>
<td>3.9</td>
</tr>
<tr>
<td>Vietnam Airlines</td>
<td>3.5</td>
</tr>
<tr>
<td>HN Commerce Corporation</td>
<td>3.4</td>
</tr>
<tr>
<td>Vietnam Navigation Corporation (Vinalines)</td>
<td>3.1</td>
</tr>
</tbody>
</table>

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61 This does not include the stock of NPLs that has been written off the balance sheets of banks or NPLs of the two State development banks. FSAP, p. 26.
62 FSAP, p. 15.
63 VDR2012, p. 33, citing GSO data.
65 FSAP Technical Note, pp. 3-4
Despite existing distress, large SOEs obtained additional financial support. For example, Vinacoalmin saw a 25 percent growth in its liabilities during 2011, while liabilities at Housing and Urban Development Corporation increased 24 percent. For Vietnam Construction Industries Corporation ("Song Da"), reported liabilities growth of 14 percent was accompanied by an increase in liabilities/equity from 3.9 at end-2010 to 11.5 at end-2011.66

In some cases, healthier SOEs have had to bail out distressed SOEs. The Vietnam Shipbuilding Industry Group (Vinishin) default in 2010 was a notable SOE failure.67 Rather than put such a large SOE into a court-supervised restructuring or bankruptcy process, the GOV attempted to salvage Vinishin by shifting its contracts, assets, and liabilities to other SOEs. For example, a 33 percent rise in liabilities for Vietnam Oil and Gas reportedly reflects its acceptance of liabilities from Dung Quat Ship Industries, an affiliate of Vinashin, which is de facto bankrupt. While apparently suffering from its own operating problems, a 69 percent increase in liabilities at Vinalines and an increase in its liabilities/equity from 3.1 at end-2010 to 15.9 at end-2011 include transfers of assets and liabilities from Vinashin.68

Immediate causes large SOE distress included unfunded policy mandates, possible inefficiencies, and inappropriate diversification.

- SOEs may be required by the GOV to build infrastructure in lagging regions or undertake other activities from which the SOE cannot hope to earn a commercial profit. This is probably a major factor for distress among construction SOEs. In such cases, the GOV is shifting public investment costs on a non-sustainable basis to SOEs, to be financed in turn by State banks.
- Inefficiencies could result from any employment mandates that result in overstaffing, excessive costs due to cumbersome Government rules (e.g., for procurement and investment); or inadequate cost recovery (e.g., at EVN) due to political pressures.
- Diversification into unfamiliar non-core business contributed to distress. As of end-2011, SOE investments in non-core businesses reportedly totaled VND 23.8 trillion: 48 percent in banking, 39 percent in real estate, and 13 percent in other financial services (securities, insurance, investment funds).69

Ultimately, however, these recent problems reflect weak corporate governance.

- Corporate governance should be directed toward some fundamental purpose, such as the preservation and growth of State capital.
- In Vietnam, the GOV overall is the State shareholder. No specific official is designated as the State shareholder responsible for preserving and growing the State’s investment in each SOE. On the contrary, different GOV entities pursuing different agendas are responsible for financial monitoring, for approval of investment plans, for selecting the CEO, for firing the CEO, and for setting salaries.
• In this corporate governance vacuum, it appears that EG/GC CEOs have been free to reinvest cash surpluses (free from dividends) and borrow at will.

• Because of Government-linked below-market salaries, EG/GC management does not attract Vietnam’s top talent. CEOs are said to have focused on enhancing their reputation and rank within the Government and Party.

• Low salaries and a lack of effective corporate governance are an inducement to related-party transactions that siphon wealth away from SOEs to private interests.70

• More generally, un- or under-funded public service mandates work against a level playing field where SOEs and private enterprises compete in order to avoid market distortions.71

C. LAND VALUES

Land is the most important asset in Vietnam. State agencies and SOEs enjoy an advantage over private companies and individuals in gaining control over land.

The lack of market-based land prices could encourage complaints about non-commercial assistance (NCA). According to Vietnam’s constitution and law, land is owned by the public and managed on its behalf by the State. Land-use rights for specified periods and specific purposes are issued to individuals or enterprises, who are allowed by law to transfer these rights to other individuals. Even SOEs do not have clearly specified property rights to the land. Maintaining control over land while transferring the right of use from one sector to another is an important means of creating and transferring wealth in Vietnam.72

Administrative measures may significantly underprice land provided to SOEs. Markets for trading land-use rights are missing. “Functioning primary markets for land-use rights are virtually absent.” The role of a primary market “is played by state agencies, often using ill-defined administrative procedures.” As a result, “the ‘price’ for issuing land-use rights bears little resemblance to a true market-determined price.” Secondary markets [for the transfer of land-use rights] are more common, but these “operate under multiple constraints. Market mechanisms are rarely deployed in cases involving reclassification of land from agricultural to nonagricultural land.” In such cases, “the benefit from the transaction is mostly captured by the local government and by the ‘buyer’, who often receives the land at prices below what a functioning secondary land market would have produced.”

III. IMPLICATIONS FOR VIETNAM

Following general consideration of compliance risk, this Section presents broad preliminary recommendations for implementing EVFTA and TPP.

A. COMPLIANCE RISK

GOV efforts to comply with EVFTA and TPP should consider the main goals of each. General and country-specific exemptions aside, the five main SOE-related goals are as follows:

• SOE purchase or sale of goods or services should not discriminate against foreign enterprises.

• No SOE should gain an advantage in its home territory vis-à-vis a Covered Instrument as a result of judicial, administrative, or regulatory preference.

• NCA for a SOE in a Party’s territory should not cause Adverse Effects for another Party’s Covered Instrument operating in the same territory.

70 TN, p. 6
72 VDR2012, p. 72.
• **NCA for a SOE in a Party’s territory should not cause Adverse Effects in the markets of other Parties.**

• **A SOE operating as a Covered Instrument in the territory of another Party should not receive NCA such as to cause Injury to Domestic Industry in that territory.**

**EVFTA and TPP explicitly extend traditional trade treaty restrictions on non-discrimination to SOEs.** Thus, whatever measures the GOV may be taking now to mitigate actual or potential non-compliance with WTO measures on non-discriminatory trade should be extended to include Vietnam’s SOEs.

**The risk of non-compliance from regulatory preference will depend on the extent and nature of regulatory interactions, especially with Covered Instruments operating in Vietnam.** Important considerations include the following:

• **In addition to performing central banking functions (exempt), State Bank of Vietnam (SBV) regulates and supervises banks – including foreign banks – operating in Vietnam. SBV also holds equity in some domestic banks [update verification]. SBV’s long-standing conflict of interest between its ownership and regulatory functions will only be exacerbated by TPP. Foreign financial institutions operating or seeking to enter the attractive Vietnam market will be quick to complain about any perceived discriminatory regulatory behavior by SBV.**

• **Telecommunications regulation may not be an issue, at least for EVFTA or TPP. Vietnam’s mobile market is dominated by Vietnamese SOEs, including MOD-controlled Viettel. A small share of this market is held by a Hong Kong (HK) joint venture. Hong Kong has not signed the TPP.**

• **Generation volumes and prices for independent power producers (IPPs) are presumably set by contract, so these should not be an issue. The risks seem low. But it might be worthwhile to assess whether there is any consistent pattern of other regulatory behavior (e.g., technical standards, grid access) going against IPPs.**

• **Transport fees could be a form of discrimination. Fee preferences for Vietnamese airlines receiving ground-handling services from Airport Corporation are already exempt. It might be useful to examine whether there is discrimination in other transport fees (e.g., toll road usage, seaport services) paid by enterprises from Partner countries.**

**Overall, SBV probably poses the highest risk of real or perceived regulatory discrimination.** An inclination to favor domestic banks against foreign banks operating in Vietnam would be natural. SBV’s exercise of state ownership rights in state banks heightens the risk of regulatory discrimination.

**SOCBs and some JSBs are simply too open to having their SOE lending decisions influenced by the GOV, including through the SBV and SOEs. “SOCBs suffer from a lack of a well-defined governance structure. There is no central [GOV] unit that executes SOCB ownership responsibilities allowing separation of the SBV’s roles of ownership, board oversight, and banking supervision.”**

Some JSBs have become “captive sources of financing for their owners,” including SOEs.

**Poor financial performance by SOEs will increase the risk of NCA, either real or perceived.** A detailed analysis of income statements and balance sheets for SOEs – both in the SDR 200 – 500 million revenue range, and higher – would help the GOV with its own compliance risk assessment. Given gaps in VAS, SOE financial reporting will be more reliable if it is based on International Financial Reporting Standards (IFRS).

**Covered Instruments operating in Vietnam may pose the greatest risk of NCA non-compliance and complaint.** To the extent that Covered Instruments in Vietnam seek to serve the domestic market rather than export, such FDI enterprises may find sales within Vietnam harmed by Vietnam SOE selling or purchasing patterns. While the latter may be covered by Vietnam-specific exemptions to

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74 FSAP Aide Memoire, p. 52.
75 FSAP Aide Memoire, p. 16.
EVFTA or TPP, specific exemptions may be open to interpretation and argument. Other factors being equal, such risks will reflect actual presence of Covered Instruments within Vietnam. Compared with EVFTA Partners, TPP Partners have more than 5 times as many FDI projects worth more than 7 times as much (Exhibit 9). Thus, TPP Covered Instruments could be expected to pose more issues for GOV.

Exhibit 9: FDI in Vietnam, end-2014
(currency in $ millions)

<table>
<thead>
<tr>
<th>TPP</th>
<th>EVFTA</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>119</td>
<td>2,893</td>
</tr>
<tr>
<td>Japan</td>
<td>342</td>
<td>2,299</td>
</tr>
<tr>
<td>Malaysia</td>
<td>36</td>
<td>388</td>
</tr>
<tr>
<td>U.S.</td>
<td>43</td>
<td>310</td>
</tr>
<tr>
<td>Canada</td>
<td>13</td>
<td>297</td>
</tr>
<tr>
<td>Australia</td>
<td>30</td>
<td>147</td>
</tr>
<tr>
<td>Brunei</td>
<td>3</td>
<td>53</td>
</tr>
<tr>
<td>New Zealand</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>589</td>
<td>6,391</td>
</tr>
</tbody>
</table>

Source: GSO, 2014.

Compliance risk from a Vietnam Covered Instrument in another Party’s territory may be low. In general, it does not appear that Vietnam SOEs have done much outbound FDI. While Viettel is a notable exception, having had 9 foreign joint ventures since 2008, none of these are in TPP Partner territories.76

Unclear procedures or definitions that provide the basis for EVFTA/TPP exemptions could provoke complaints, especially those affecting the major SOEs listed in Annex IV. Examples of unclear procedures include the following: public service mandates; enterprise restructuring and restructuring plans; measures for economic stability; measures for economic development in lagging regions; and SME promotion. While GOV could respond to a wide range of complaints by invoking any of these justifications on an ad hoc basis, insufficient clarity and regularity could lead to protracted disputes with TPP or EVFTA Partners.

It seems useful to view Vietnam’s SOEs in terms of the following four tiers:

- 1st tier: central-level SOEs with recent annual revenue of about VND 16 trillion of more. Unless specifically exempted, these would be liable for all EVFTA and TPP compliance, including inclusion on a list of SOEs publicized for TPP transparency purposes.
- 2nd tier: central-level SOEs with annual revenue of about VND 6.4 – 16 trillion in each of the past 3 years. Unless specifically exempted, these would be liable for all EVFTA compliance and for all TPP compliance except the publicized list.
- 3rd tier: central-level SOEs with 2015 revenue of VND 4 – 6.4 trillion. These could soon become liable for EVFTA and TPP compliance.
- 4th tier: provincial- and municipal-level SOEs. Consideration of these for EVFTA and TPP purposes can be deferred.

76 These are Lao PDR, Cambodia, Haiti, Mozambique, East Timor, Cameroon, Peru, Burundi, and Tanzania. Wikipedia, accessed 27 May 2016.

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Prospective compliance risk is likely highest for the 3rd tier SOEs, which could soon become liable for EVFTA and TPP obligations. For 1st and 2nd tier SOEs, GOV was presumably aware of compliance risk issues during its EVFTA and TPP. In at least some cases, GOV successfully negotiated Vietnam-specific exemptions to allow general or SOE-specific non-conformity with EVFTA and/or TPP. We do not know whether GOV negotiators tried but failed to negotiate other exemptions.

B. PRELIMINARY RECOMMENDATIONS

Recommendations here are preliminary, and based only on review of the EVFTA Section III and TPP Chapter 17 as well the previously available Vietnam material referenced above. Pending review of additional information from GOV and interviews with GOV officials and Vietnam market officials, recommendations are as follows:

1. Provide guidelines to SOEs on their EVFTA/TPP obligations;
2. Develop a EVFTA/TPP database;
3. Conduct a compliance risk assessment;
4. Improve the financial performance of SOEs;
5. Reduce the risk of NCA credits;
6. Reduce the risk of NCA equity;
7. Provide standards for SOE restructuring;
8. Commercialize public service mandates;
9. Clarify the basis for general exemptions;
10. Develop an active market for land-use rights; and
11. Reform SOE corporate governance.

1. SOE guidelines

The management of affected SOEs should know their obligations under EVFTA and TPP. Hence, if this has not been done already, it could be useful for the GOV to provide guidelines on EVFTA/TPP compliance. This should include specific guidelines on how large exempted SOEs (e.g., EVN, Petrovietnam, Vietnam Coffee, SBIC) can safely maintain their qualification for agreed exemptions. Such large SOEs are potentially important buyers or competitors for the enterprises of EVFTA/TPP Partners, including their FDI Covered Instruments in Vietnam. If feeling at a competitive disadvantage, Partner enterprises may seek to contest the basis for such exemptions. To avoid or minimize such controversies seems desirable. Such guidelines could be distributed as a ministry circular, or whatever form the GOV thinks most appropriate.

2. EVFTA/TPP database

A centralized database could facilitate GOV compliance, by making it easier for GOV to anticipate and respond to compliance issues. A database could include material on relevant SOEs and GOV programs, as follows:

• SOE section: This could cover 1st, 2nd, and 3rd tier SOEs.
  ○ The compilation and analysis of reliable (i.e., IFRS) data on financial position and performance would enable the GOV to anticipate financial difficulties that could create a perceived basis for financial NCA. A list of 1st tier SOEs should be disseminated on a GOV website within 6 months after TPP’s Entry Into Force.
  ○ A timely response by GOV to a written inquiry from a EVFTA/TPP Partner would be facilitated by prior GOV compilation of the following SOE information: percentage of GOV/other SOE ownership; description of any special shares or special voting rights; any GOV official serving as a SOE officer or director; annual revenue and total assets for the most recent 3 years; exemptions and benefits under Vietnam law; and additional publicly-available information, including annual financial reports and independent audits.

• GOV section: While TPP entitles GOV to provide NCA under general or SOE-specific exemptions, Partners may still challenge the basis for such NCA. A timely response by GOV to a written inquiry from a EVFTA/TPP Partner would be facilitated by prior GOV compilation of information
on the following: the basis in Vietnam law, regulation, or GOV measure for TPP exemptions and NCA; the form of NCA (e.g., grant or loan) under a GOV policy or program; duration or time limits for the policy or program; GOV agencies or SOEs providing the NCA; the SOEs that have received or are eligible to receive such NCA; per-unit, budgeted, or other values and prices for the goods or services benefitting from NCA; the amount of the NCA loan or NCA loan guarantee, interest rates, and associated fees; the amount of NCA equity invested, number and description of shares, valuation, and potential exit; transfer of land-use rights to SOEs, including price, transfer procedure, and comparable market prices; and statistical data permitting an assessment of the effects of the NCA on trade or investment between Vietnam and other Parties.

3. Compliance risk assessment

An assessment of EVFTA/TPP compliance risk could be useful for preparing GOV to forestall or respond to compliance challenges from other Parties. As suggested earlier, any such risk assessment should perhaps focus on potential compliance issues pertaining to (a) unsuccessful attempts by GOV to negotiate EVFTA/TPP exemptions; and (b) 3rd tier SOEs.

4. Improved financial performance

Additional improvements in the financial performance and position of SOEs could forestall NCA pressures and allegations. Measures to raise profitability, increase cash flows, and reduce excessive leverage for 1st, 2nd, and 3rd tier SOEs are desirable for other reasons as well, including economic stability and enhancement of state capital. Many such SOEs would benefit from operational restructuring (e.g., sale of non-core assets) and/or financial restructuring, perhaps including equitization. Sustainable financial gains would also be expected from improvements in corporate governance, as recommended below.

5. NCA credits

Reducing this risk of non-exempt NCA credits is especially important, and many options for such risk reduction are available. As recently as 2014, as detailed earlier, the IMF and World Bank were convinced that SOEs enjoyed preferential access to credits from SOCBs and SOE-controlled JSBs. Any such preferential credit access could enable SOEs to have a significant effect in terms of increased market share or price suppression. An aggrieved enterprise of another Party may be quick to allege that NCA credits have caused Adverse Effects or Injury. Options for reducing this risk include selective equitization, corporate governance reform, and more stringent financial supervision and regulation, as follows:

- Although it would address perceptions of directed and preferential lending, GOV may be reluctant to sell state shares in SOCBs, for example down to a minority shareholding. GOV would do well, however, to require SOEs to sell their JSB shares.

- To address potential TPP complaints and other conflicts arising from SBV’s exercise of state ownership rights, GOV is advised to designate another state entity as the shareholder for state shares in SOCBs. This other entity could be the Ministry of Finance (MOF) or – perhaps preferably – a returns-oriented holding company owned by MOF.

- In addition, SBV should review (and upgrade as necessary) regulations to limit the exposure of any bank to a single borrower and to control related-party transactions, such as lending from a bank to a significant shareholder.

6. NCA equity

GOV could reduce excessive equity at some SOEs, for instance through appropriate dividend policies. As noted earlier, excessive equity could enable a SOE to make a significant gain market share through otherwise unacceptable business risk or unsustainable losses. The amount of equity and available cash that an enterprise needs will depend on its business prospects (including whether the business is high growth, mature, or cyclical), expected risk-adjusted equity returns, and expected
returns on prospective investments. In any case where enterprise equity clearly exceeds actual need, cash should be returned to shareholders in the form of regular or special dividends. Vietnam’s state shareholder is advised to analyze the cash needs of 1st, 2nd, and 3rd tier SOEs and work with the boards of these SOEs to define and implement appropriate dividend policies.

7. SOE restructuring standards

GOV is advised to establish some standard as to what constitutes a bona fide SOE restructuring. EVFTA and TPP provide broad exemptions for SOE restructuring. A wide range of activities and associated NCA financing, including ad hoc, might be described as SOE restructuring. So as not arouse complaints that GOV is providing NCA under the cover of sham restructuring claims, GOV could promulgate some credible standard for SOE restructuring. For example, exempted SOE restructuring could be defined to include (a) leadership by major creditors; (b) retention of independent accountants and other necessary advisors; (c) creditor review of a formal restructuring plan; and (d) a criteria- , rule- , and time-bound process for commencement, creditor review, and creditor voting for restructuring approval or for conversion into a court-supervised reorganization or bankruptcy.

8. Public service mandates

GOV should explore possibilities to convert public sector mandates into contested business opportunities. At present, GOV’s use of public sector mandates understates the costs of GOV programs and burdens (unsustainably in some cases) some SOEs. In addition, the enterprises of other EVFTA/TPP Parties may allege that public sector mandates are being used as an excuse for SOEs to engage in discriminatory behavior and for the GOV to provide NCA to SOEs. While the zero-profit or loss-making attributes of public sector mandates might seem a source of aversion for profit-oriented enterprises, this need not be so. Instead of forcing SOEs to undertake public sector mandates and somehow compensating SOEs (or not) with NCA, the GOV could organize open public tenders and award contracts on a “least subsidy” basis. Whichever qualified enterprise – e.g., SOE, Covered Instrument in Vietnam, or other – agrees to undertake the specified work for the lowest subsidy from the GOV. Non-SOEs might not actually want to undertake, for example, infrastructure development in remote or lagging regions, but this alternative approach could at least provide transparency and eliminate public service mandate exemptions as a potential challenge from other EVFTA/TPP Parties.

9. General exemptions

It would also be useful for GOV to provide public information on policies/programs subject to EVFTA/TPP exemptions. This could include GOV policies/programs for economic stability, socio-economic development, and SME promotion. Clarity on GOV goals, legal/regulatory foundations, time-horizons, and means could forestall complaints from other EVFTA/TPP Parties that such policies/programs are being used without sufficient high-level rationale in order to justify discriminatory SOE practices and NCA. GOV dissemination efforts could include publication of relevant polices/programs in English, with links to English translations of relevant Vietnam laws or regulations or GOV measures.

10. Market for land-use rights

An efficient market for issuing and transferring land-use rights would remove a potential TPP issue, as discussed earlier. It would also improve economic efficiency and reduce distortions in urban development. Because land-use rights are allocated administratively in Vietnam, some administrative reform is needed to facilitate development of land market mechanisms. It is recommended that GOV establish an agency responsible for specifying and awarding land-use rights to enterprises. “This needs to be accompanied by (a) allowing more flexibility with land-use planning and letting buyers convert land use after paying an appropriate fee to the [GOV], and (b) creating a market for trading land-use rights among existing users. This would transfer the competition for land from a zero-sum political contest into a market transaction in which the various parties would be compensated for surrendering their control over land. Such a policy will increase the supply of land.

77 Vietnam 2035 Overview, p. 27.
in the market, resulting in lower costs, and ultimately lower the cost of creating new infrastructure. Replacing administrative pricing with market-based pricing of land-use rights should also reduce the potential for complaints from other TPP Parties that GOV is providing land at below-market prices as a form of NCA.

11. SOE corporate governance

SOE corporate governance reforms would respond to TPP implementation needs and principles. These would also support broader goals for wealth creation and economic development. Financially sound SOEs are less likely to become candidates – real or perceived – for NCA. In turn, sound corporate governance has been shown to enhance the financial performance and resiliency of SOEs. Moreover, EVFTA Section III stipulates that Parties “shall endeavor to ensure” that SOEs “observe internationally recognized standards of corporate governance,” while TPP Chapter 17 encourages parties to exchange information on experiences in improving SOE corporate governance and operations. The following corporate governance reform recommendations warrant GOV’s careful consideration:

- Issuance of a GOV SOE Ownership Policy that focuses on maximizing state capital, with supplemental goals to adhere to TPP labor rules and show social responsibility;
- Strengthen VAS to make it fully consistent with IFRS, and annually require independent audits for 1st, 2nd, and 3rd tier SOEs;
- Reduce SOE holdings so as to allow GOV to focus on 15 or so “strategic” sectors;
- Allow more cases of SOE mixed ownership, through minority equitization of additional SOEs;
- Designate a specific GOV entity – e.g., a ministry or a ministry-owned shareholding fund – to act as state shareholder for remaining SOEs;
- Exercise state ownership rights only through normal shareholder mechanisms – and review of financial reports and disclosures, participation in shareholder meetings, voting of state shares, and establishment of effective SOE boards of directors – and never through ad hoc interventions; and
- Upgrade SOE boards’ roles, responsibilities and practices so as to be consistent with OECD guidelines for SOE corporate governance.

Some recommendations will be easier and quicker to implement than others. For example, issuance of GOV guidelines for EVFTA/TPP compliance is far simpler than establishment of an active market for transferring land-use rights. It should be possible, however, to implement all the aforementioned preliminary recommendations within 5 – 10 years (Exhibit 10).

Exhibit 10: Summary of SOE EVFTA/TPP Recommendations

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Detailed milestone</th>
<th>Responsibility</th>
<th>Target date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Guidelines on SOE obligations under EVFTA/TPP</td>
<td>1st draft</td>
<td>MOIT</td>
<td>12/2016</td>
</tr>
<tr>
<td></td>
<td>Final draft</td>
<td>&quot;</td>
<td>6/2017</td>
</tr>
<tr>
<td>2. EVFTA/TPP database</td>
<td>SOE section</td>
<td>&quot;</td>
<td>12/2016</td>
</tr>
<tr>
<td></td>
<td>GOV section</td>
<td>&quot;</td>
<td>6/2017</td>
</tr>
<tr>
<td>4. SOEs’ improved financial performance</td>
<td>n.a.</td>
<td>Designated state shareholder</td>
<td>ongoing</td>
</tr>
</tbody>
</table>

78 VDR2012, p. 73.
<p>| 5. NCA credits risk | Upgraded bank exposure limits &amp; rules on related party transactions | SBV | 12/2016 |
| | Complete SOE sales of JSB shareholdings | SBV | 12/2018 |
| | Establishment and initial operation of a MOF-owned fund to hold and manage state shares in SOCBs | SBV/MOF | 12/2017 |
| 6. NCA equity risk | Finalization of dividend policies for 1st tier SOEs | Designated state shareholder | 12/2017 |
| | Dividend policies for 2nd and 3rd tier SOEs | &quot; | 6/2018 |
| 7. SOE restructuring standards | Publication | SBV | 10/2016 |
| 8. Public service mandates | Policy paper on conversion into contested business opportunities | GOV | 12/2016 |
| | Pilot tender for concept validation | Ministry tbd | 10/2017 |
| 9. General exemptions | Dissemination of GOV policies/programs on economic stability | GOV? | 12/16 |
| | Dissemination of GOV policies/programs on socio-economic development | GOV? | 3/17 |
| | Dissemination of GOV policies/programs on SME promotion | GOV? | 6/17 |
| 10. Market for land-use rights | Establishment of a land-use agency | GOV | 12/17 |
| | Draft policy for flexibility in land-use planning and land-use conversion for a fee | GOV Land Use Agency | 9/2017 |
| | Pilot demonstrations of fee-based land-use conversions | GOV Land Use Agency | 6/2018 |
| | Draft rules and procedures for trading land-use rights | GOV Land Use Agency | 12/2018 |
| | Pilot transactions to validate concept and systems for trading land-use rights | GOV Land Use Agency | 6/2019 |</p>
<table>
<thead>
<tr>
<th>Issue SOE Ownership Policy</th>
<th>GOV</th>
<th>3/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make VAS consistent with IFRS</td>
<td>MOF/SBV/SCC</td>
<td>6/2017</td>
</tr>
<tr>
<td>Require 1st, 2nd, and 3rd tier SOEs to use upgraded VAS and independent audits for 2018 financial statements</td>
<td>MOF/SBV/SCC</td>
<td>12/2018</td>
</tr>
<tr>
<td>Reduce SOE holdings and increase cases of mixed SOE ownership through additional equitization transactions</td>
<td>GOV</td>
<td>ongoing</td>
</tr>
<tr>
<td>Designate or create a specific GOV entity – e.g., ministry or ministry-owned fund – to act as state shareholder for remaining SOEs</td>
<td>GOV</td>
<td>6/2017</td>
</tr>
<tr>
<td>Upgrade SOE boards, especially including board roles, responsibilities, and practices</td>
<td>Designated state shareholder</td>
<td>6/2018</td>
</tr>
</tbody>
</table>

**ANNEX A: SUMMARY OF EVFTA SECTION III**

EVFTA Section III on “State Owned Enterprises, Enterprises Granted Special Rights or Privileges and [Designated] Monopolies.” Focusing on SOEs, the below discussion highlights (A) three substantive initiatives to minimize market distortions; (B) scope and application of these initiatives; and (C) supplemental measures.

“Nothing in [Section III] shall prejudice the laws and regulations of a Party governing its systems of state ownership” or prevent a Party “from establishing or maintaining [SOEs].”

**A. SUBSTANTIVE INITIATIVES**

The substantive initiatives focus on (a) non-discriminatory treatment; (b) neutral regulation; and (c) transparency. These are summarized below.

1. **Non-discriminatory treatment**

   The GOV shall ensure that its SOEs, when engaging in Commercial Activities, (a) act in accordance with Commercial Considerations in their purchases or sales of goods or services; and (b) accord...

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80 An enterprise, including any subsidiary, in which a Party, directly or indirectly, (a) owns more than 50% of the enterprise’s subscribed capital or the votes attached to the shares issued by the enterprise; or (b) can appoint more than ½ of the members of the enterprise’s board of directors; or (c) can control strategic decisions of the enterprise. 1(a)

81 Rights or privileges granted by a Party to a limited number of enterprises, or their subsidiaries, within a given geographical area or a product market the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same market in like circumstances. The granting of a license or permit to a limited number of enterprises through objective, proportional and non-discriminatory criteria is not in and of itself a special right or privilege. 1(d)

82 An entity engaged in a commercial activity, including a group of entities or a government agency, and any subsidiary thereof, that in a relevant market in the territory of the Party is designated as the sole supplier or purchaser of a good or service. Excludes monopoly arising from an exclusive grant of intellectual property. 1(c)

83 Pending any information from the Vietnam authorities on Designated Monopolies or Enterprises Granted Special Rights or Privileges.

84 3.1 and 3.2

85 Activities, the end result of which is the production of a good or supply of a service, which will be sold in the relevant market in quantities and at prices determined by the enterprise, and are undertaken with an orientation towards profit-making. 1(e)

86 Price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of an enterprise operating according to market economy principles in the relevant business or industry. 1(f)
to EU enterprises, goods, or services treatment that is no less favorable than that accorded – in like situations – to Vietnamese enterprises, goods, or services. This does not preclude Vietnam’s SOEs from purchasing/supplying goods/services, or refusing to do so, provided that such differences or refusal is based on Commercial Considerations.

2. Neutral regulation

GOV “shall ensure that any regulatory body or function that it establishes or maintains is not accountable to any of the enterprises that it regulates in order to ensure the effectiveness of the regulatory function, and acts impartially in like circumstances with respect to all the enterprises it regulates.” Impartiality is to be assessed by reference to a general pattern or practice of that regulatory body.

GOV “shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner,” including on SOEs, Designated Monopolies, and any Enterprise Granted Special Rights or Privileges.

Lastly, GOV “shall endeavor to ensure” that SOEs et al “observe internationally recognized standards of corporate governance.”

3. Transparency

If the EU “has reasonable reason to believe” that EU interests under Section III being adversely affected by the Commercial Activities of a Vietnam SOE, the EU may request GOV to provide the following information about this SOE: (a) ownership and voting structure; (b) any special shares or voting rights that differ from general common shares; (c) organizational structure, composition of its board of directors, and cross-holdings or links with other enterprises or enterprise groups; (d) description of the GOV departments or other public bodies that regulate and/or monitor the SOE, reporting lines, and rights or practices of the GOV in the appointment, dismissal, or remuneration of the SOE’s managers; (e) annual revenue and assets; and (f) exemptions, non-conforming measures, immunities and any other measures, including more favorable treatment applicable in Vietnam.

B. SCOPE AND APPLICATION

The substantive measures described above apply – upon EVFTA’s Entry Into Force – to any Vietnam central government SOE with annual revenue from Commercial Activities of at least SDR 200 million (i.e., about $283 million, or VND 6.36 trillion) during any 1 of the 3 previous years. After 5 years from Entry Into Force of the EVFTA, these substantive measures shall also apply to SOEs at provincial and municipal levels of GOV.

Section III does not apply to SOE activities undertaken on a not-for-profit or cost-recovery basis, such as carrying out a public service obligation; to measures on a temporary basis in response to a national or global economic emergency; to Covered Procurement within the meaning of Section XX; to SOEs engaged in national defense, public order or public security,”except if these are engaged exclusively in commercial activities unrelated to national defense, public order or national security.” Neither does Section III apply to GOV procurement, services and investment, or any service supplied in the exercise of GOV authority.

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87 4.1
88 4.2
89 5.2
90 5.3
91 5.1
92 6.1
93 2.3
94 1(e) and 4.1(a)
95 2.2
96 2.5
97 2.4. This is covered elsewhere in EVFTA.
98 2.6. This is covered elsewhere in EVFTA.
99 2.8
Vietnam-specific exemptions in the Section III Annex are summarized below (Exhibit A-1):

### Exhibit A-1: Vietnam-specific exemptions to EVFTA Section III

<table>
<thead>
<tr>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>The adoption, enforcement or implementation of the privatization, equitization, restructuring, or divestment of assets owned or controlled by GOV.</td>
<td>1</td>
</tr>
<tr>
<td>GOV measures to ensure economic stability within Vietnam, including directions to a SOE to sell or purchase at a regulated price, quantity, or other terms/conditions that what the SOE could decide on the basis of Commercial Considerations, subject to Vietnam laws, regulations, or GOV measure.</td>
<td>2</td>
</tr>
<tr>
<td>GOV domestic development measures, such as income security and insurance, social security, social welfare, social development, social housing, poverty reduction, public education, public training, public health and childcare, welfare and employment among ethnic minorities and in disadvantaged areas, provided that related activities do not circumvent the application of Article 4 (Non-discrimination) to SOE Commercial Activities.</td>
<td>3</td>
</tr>
<tr>
<td>Pursuant to a law, regulation, or GOV measure, goods or services purchased by a SOE from a small/medium enterprise exempt from Article 4.</td>
<td>4</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8 (Transparency): Petrovietnam prospecting, exploration, and exploitation of oil/gas, and related flight operation services.</td>
<td>5.1</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8: EVN and any enterprise engaged in power generation by hydropower, nuclear power and security-related generators, transmission, distribution of all types of electricity, power and alternative or substitute of electricity [sic].</td>
<td>5.2</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8: Vinacomin sale of coal and minerals, pursuant to Vietnam laws and regulations.</td>
<td>5.3</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8: State Capital Investment Corporation (SCIC) asset management, investment and related activities, using GOV financial assets.</td>
<td>5.4</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8: Debt and Asset Trading Corporation (DATC) activities related to the restructuring of debts pursuant to a law, regulation, or GOV measure.</td>
<td>5.5</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8: Airport Corporation of Vietnam ground handling services.</td>
<td>5.6</td>
</tr>
<tr>
<td>Exempt from Article 4 and Article 8: SOEs in ass communication, printing, publishing, audio-visual production and distribution.</td>
<td>5.7</td>
</tr>
</tbody>
</table>

### C. SUPPLEMENTAL MEASURES

“Recognizing the importance of promoting effective legal and regulatory frameworks” for SOEs, GOV shall engage with EU “in mutually agreeable technical cooperation activities with a view to promoting efficiency and transparency of [SOEs], subject to the availability of funding” under each Party’s cooperation programs.\(^{101}\)

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\(^{100}\) This carve out does not include SCIC’s portfolio investments. Within 5 years after EVFTA Entry Into Force, SCIC shall endeavor to become a member of the International Forum of Sovereign Wealth Funds or endorse the Generally Accepted Principles and Practices ("Santiago Principles") issues by the International Working Group of Sovereign Wealth Funds (October 2008) or suchlike.

\(^{101}\)
ANNEX B: SUMMARY OF TPP CHAPTER 17

TPP Agreement Chapter 17 “State-Owned Enterprises\(^{102}\) and Designated Monopolies\(^{103}\)” is the main focus for the TPP’s SOE rules, as well as for this section.\(^{104}\) The following discussion highlights (A) four substantive initiatives to minimize market distortions; (B) determination of adverse effects and injury; (C) scope and application of substantive initiatives; and (D) supplemental measures.

Each Party is free to establish or maintain SOEs or designate a Designated Monopoly.\(^{105}\)

A. SUBSTANTIVE INITIATIVES

The four substantive initiatives relate to (1) non-discriminatory treatment; (2) courts, regulators, and administrative bodies; (3) non-commercial assistance; and (4) transparency. These are summarized below.

1. Non-discriminatory treatment

GOV shall insure that each SOE, when engaging in Commercial Activities, acts in accordance with “Commercial Considerations”\(^{106}\) in its purchase of a good or service.\(^{107}\) The good or service supplied by an enterprise of a TPP Partner shall receive treatment “no less favorable” than that accorded to a like good or service supplied by enterprises of Vietnam, any other TPP Partner, or any non-Partner.\(^{108}\) A good or service supplied by an enterprise that is a Covered Instrument\(^{109}\) in Vietnam shall receive similar treatment.\(^{110}\) Rules are similar for the sale of a good or service, including to an enterprise that is a Covered Party.\(^{111, 112}\)

An SOE is not precluded from buying or selling goods or services on different terms or conditions including those relating to price, or refusing to sell goods or services, provided that such differential treatment or refusal reflects Commercial Considerations.\(^{113}\)

2. Courts, regulators, and administrative bodies

If a SOE exercises any regulatory, administrative, or other governmental authority that the GOV has delegated or directed such entities to carry out, “those entities shall act in a manner that is not inconsistent” with that Vietnam’s obligations under TPP. Examples of regulatory, administrative, or other governmental authority include the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.\(^{114}\)

\(^{102}\) An enterprise that is principally engaged in “Commercial Activities” in which a Party (a) directly owns more than 50 percent of the share capital; (b) controls, through ownership interests, the exercise of more than 50 percent of voting rights; or (c) holds the power to appoint a majority of members of the board of directors or any other equivalent body. “Commercial Activities” means activities that an enterprise undertakes with an orientation toward profit making and which result in the production of a good or supply of a service that will be sold to a consumer in a relevant market in quantities and at prices determined by the enterprise. This excludes enterprises that operate on a not-for-profit or on a cost-recovery basis. 17.1

\(^{103}\) A privately owned monopoly that is designated after the date of entry into force of the TPP Agreement, or any government monopoly that a Party designates or has designated. 17.1

\(^{104}\) The conclusion of this section also comments on TPP chapters pertaining to financial institutions, procurement, and competition.

\(^{105}\) 17.2.9

\(^{106}\) Price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry. 17.1

\(^{107}\) 17.4.1(a)

\(^{108}\) 17.4.1(b)(i)

\(^{109}\) With respect to a Party, an investment in its territory of an investor of another Party in existence as of the TPP’s entry into force, or established, acquired, or expanded thereafter. 17.1

\(^{110}\) 17.4.1(b)(ii)

\(^{111}\) 17.4.1(c)

\(^{112}\) Provisions for Designated Monopolies are similar. Discussion of these is deferred pending confirmation that Vietnam has Designated Monopolies separate from SOEs.

\(^{113}\) 17.4.3

\(^{114}\) 17.3
The GOV shall provide its courts with jurisdiction over civil claims, against an enterprise owned or controlled by a foreign government, based on commercial activity in its territory – unless the GOV does not provide jurisdiction over similar claims against enterprises that are not owned or controlled by a foreign government.\textsuperscript{115}

The GOV shall ensure that a regulator of SOEs exercises its regulatory discretion in an impartial manner with respect to the enterprises that it regulates, including enterprises that are not state owned. Impartiality is to be assessed by reference to a pattern or practice of that administrative (regulatory) body.\textsuperscript{116} This could be particularly relevant, for instance, for a telecommunications regulator, electricity regulator, or financial sector supervisor.

3. Non-commercial assistance

“Non-Commercial Assistance” (NCA) is “assistance to an [SOE] by virtue of that [SOE’s] government ownership or control.”\textsuperscript{117} NCA includes the following:

- “Direct transfers of funds or potential direct transfers of funds or liabilities. This may include
  - Grants or debt forgiveness;
  - Loans, loan guarantees, or other types of financing on terms more favorable than those commercially available to the enterprise; or
  - Equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of private investors.\textsuperscript{118}
- Goods or services other than general infrastructure on terms more favorable than those commercially available to the enterprise.\textsuperscript{119}

NCA does not include (a) transactions within a corporate group that includes SOEs, when normal business practices require reporting the financial position of the group without these intra-group transactions; (b) other transactions between SOEs that are consistent with the usual practices of privately owned enterprises in arm’s length transactions; or (c) a Party’s transfer of funds to an independent pension fund for investment on behalf of its contributors/beneficiaries.\textsuperscript{120}

Vietnam shall not cause Adverse Effects (see below I.B.2) to the interests of another Party through NCA, provided either directly or indirectly, to any Vietnam SOE with respect to (a) its production and sale of a good; (b) its supply of a service into a Partner’s territory; or (c) its supply of a service in a Partner’s territory through a Covered Instrument in the territory another Party.\textsuperscript{121} Similarly with respect to an SOE’s sale of a good or export of a service, “each Party shall ensure that its [SOEs] do not cause adverse effects through NCA between any of its SOEs.”\textsuperscript{122}

Vietnam shall not cause injury (see below I.B.2) to the “Domestic Industry”\textsuperscript{123} of another Party through the NCA it provides, directly or indirectly, to any Vietnam SOE that is a Covered Instrument in the territory of the other Party, in circumstances where (a) the NCA is provided with respect to the production and sale of a good by the SOE in the other Party’s territory, and (b) a like good is produced and sold in the other Party’s territory by its Domestic Industry.\textsuperscript{124}

\textsuperscript{115} 17.5.1
\textsuperscript{116} 17.5.2
\textsuperscript{117} More specifically, GOV or any of its SOEs (i) explicitly limit NCA access to Vietnam’s SOEs; (ii) provides NCA that is predominately used by Vietnam’s SOEs; (iii) provides a disproportionately large amount of the NCA to Vietnam’s SOEs; or (iv) otherwise favors Vietnam’s SOEs through its discretion in the provision of NCA. 17.1
\textsuperscript{118} 17.1
\textsuperscript{119} 17.1
\textsuperscript{120} 17.1
\textsuperscript{121} 17.6.1
\textsuperscript{122} 17.6.2
\textsuperscript{123} The domestic producers as a whole of the like good, or those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the SOE that is a Covered Instrument that has received NCA.
\textsuperscript{124} 17.6.3
Adverse effects will not result from a service supplied by a Vietnam SOE within Vietnam. This, however, does not include a service that is itself a form of NCA.\textsuperscript{125}

4. Transparency

Generally, each Party shall provide (e.g., on an official website) a list of its SOEs within 6 months of Entry Into Force, and then update this list annually.\textsuperscript{126} For Vietnam, this shall not apply until 5 years after Entry Into Force. Separately, within 6 months after Entry Into Force, Vietnam shall provide a list of its SOEs that have an annual commercial revenue of more than SDR 500 million (about $708 million\textsuperscript{127} or VND 15.9 trillion) in 1 of the 3 preceding years, and update this list annually until the aforementioned general obligation takes effect after 5 years.\textsuperscript{128}

Upon receiving a written request from another Party that explains how a SOE may be affecting trade or investment between the Parties, the GOV should provide the following information regarding this SOE: (a) the percentage of shares and voting shares cumulatively owned by the GOV or its SOEs; (b) a description of any special shares or special voting or other rights held by the GOV, et al; (c) the government titles of any government official serving as an officer or director of the SOE; (d) the SOE’s annual revenue and total assets over the most recent three years for which information is available; (e) any law-based exemptions and benefits for the SOE; and (f) any additional publicly-available information, including financial statements and audits, that is sought in the written request.\textsuperscript{129}

The GOV should be prepared to provide sufficient information on any NCA policy/program, including (a) the form of the NCA; (b) the entities providing the NCA and the SOEs receiving or eligible to receive the NCA; (c) the legal basis and policy objective for the NCA policy/program; (d) for goods, the unit value of the NCA (or, if this is not possible, the total or annual budgeted NCA, indicating, if possible, the average amount per unit in the previous year); (e) for services, the total or budgeted NCA, indicating, if possible, the total amount in the previous year; (f) for loan or loan guarantee NCA, the amount of the loan or the loan guaranteed, interest rates, and fees; (g) for goods or services NCA, the prices charged, if any; (h) for equity NCA, the amount invested, the number and type of shares received, and “any assessments that were conducted with respect to the underlying investment decision;” (i) duration of the NCA policy/program or any time limits attached to it; and (j) statistical data permitting an assessment of the effects of the NCA on trade or investment between the Parties.\textsuperscript{130}

B. ADVERSE EFFECTS AND INJURY

Adverse effects from NCA (provided by the GOV or another SOE) to a Vietnam SOE arise if, as a result of the NCA, any of the following occur:

a) Like imports to Vietnam or like sales from a Covered Instrument in Vietnam are displaced or impeded;

b) Like sales by a Covered Instrument, like imports from any other Party, or like imports from a non-Party in another Party’s territory are displaced or impeded;

c) There is a significant price undercutting in the market of another Party of like imports from another Party, or a like good produced by a Covered Instrument in that territory, or significant price suppression, price depression, or lost sales in the same market; or a non-Party’s like imports experience a significant price undercutting or significant price suppression, price depression, or lost sales;

\textsuperscript{125}17.6.4
\textsuperscript{126}17.10.1
\textsuperscript{127}IMF, 6 April 2016.
\textsuperscript{128}17.10.1. After 5 years, TPP’s general transparency initiative would apply to any Vietnam SOE with annual commercial revenue in 1 of the 3 preceding years of at least SDR 200 million (i.e., about $283 million, or VND 6.36 trillion), adjusted since Entry Into Force at 3-year intervals at the SDR inflation rate. See also Annex 17-A.
\textsuperscript{129}17.10.3. This shall not apply to Vietnam with respect to the SOEs listed in Annex IV that engage in the non-conforming activities described therein.
\textsuperscript{130}17.10.4 and 17.10.5. This shall not apply to Vietnam with respect to the SOEs listed in Annex IV that engage in the non-conforming activities described therein.
d) Like services in the market of another Party from a service supplier of that Party or any other Party are displaced or impeded; or

e) Like services from another Party’s service supplier face significant price undercutting, price suppression, price depression, or lost sales.¹³¹

To show a market displacement or impediment – above items 1(a), 1(b), and 1(d) – it must be demonstrated that there has been a “significant change in relative shares of the market to the disadvantage of the like good or service.” This shall include (a) a significant increase in the SOE’s market share of the good or service; (b) a constant market share for the SOE, despite circumstances in which without NCA its market share would have declined significantly; or (c) a decline in market share for the SOE that is significantly slower than what would have been expected without NCA. To clear market trends, any change must manifest itself for at least one year.¹³²

A demonstration of significant price undercutting – above items 1(c) and 1(e) – shall rely on a comparison of the prices of the SOE’s good or service with the prices of a like good or service.¹³³ Price comparisons shall be made at the same level of trade and at comparable times, with due account for factors affecting price comparability.¹³⁴

The discussion of injury focuses on NCA and Covered Investments. Injury to a Party’s domestic industry “shall be taken to mean material injury to a domestic industry, threat of a material injury to a domestic industry, or material retardation of the establishment of such an industry.” A determination of material injury depends on an objective examination of positive evidence,¹³⁵ including the volume of production by the Covered Instrument that received NCA, the effect of such production on prices for like goods produced and sold by the domestic industry,¹³⁶ and the effect of such production on the domestic industry producing like goods.¹³⁸ It must be demonstrated that the goods produced and sold by the Covered Instrument are, because of NCA, causing “injury.” It is necessary to demonstrate a causal relationship, based on all relevant evidence, including factors other than NCA.¹³⁹ “A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care.” The change in circumstances where NCA to the Covered Instrument “must be clearly foreseen and imminent” such that, “unless protective action is taken, material injury would occur.”¹⁴⁰

¹³¹ 17.7.1.
¹³² 17.7.2
¹³³ 17.7.3
¹³⁴ 17.6.4. If a direct comparison of transactions is not possible, price undercutting may be demonstrated on some other reasonable basis, such as a comparison of unit values for goods.
¹³⁵ 17.8.1
¹³⁶ 17.8.1. Consideration shall be given as to whether there has been a significant increase in the Covered Instrument’s volume of production, either absolutely or in relative terms, as well as to whether there has been a significant price undercutting by the goods produced and sold by the Covered Instrument or otherwise whether this production and sale has significantly depressed prices or prevented price increases. 17.8.2
¹³⁷ 17.8.1. Consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the Covered Investment as compared with like goods produced and sold by the domestic industry, or whether the effect of production by the Covered Investment is otherwise to depress prices or prevent price increases to a significant degree. 17.8.2
¹³⁸ Factors to be evaluated in an examination of the impact on domestic industry include actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments; and, in the case of agriculture, whether there has been an increased burden on government support programs. 17.8.3
¹³⁹ Non-NCA factors may include volumes and prices of other like goods, demand contraction or other consumption changes, technological developments, or export performance and productivity of the domestic industry. 17.8.4
¹⁴⁰ The totality of factors to be considered include (a) the nature of the NCA and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the Covered Instrument, indicating a likelihood of substantially increased sales; (c) substantial surplus capacity, either existing or imminent, at the Covered Instrument, taking into account the availability of export markets to absorb additional production; (d) whether goods sold by the Covered Instrument will significantly depress or suppress prices; and (e) inventories of like goods. 17.8.5
C. SCOPE AND APPLICATION

Chapter 17 applies to the TPP area as well as activities of a Party’s SOE that cause Adverse Effects in the market of a non-Party.\textsuperscript{141}

Exemptions include the following: central banking activities;\textsuperscript{142} capital market regulation and supervision;\textsuperscript{143} resolution of a failing or failed financial institution;\textsuperscript{144} a sovereign wealth fund, unless it is used to provide NCA;\textsuperscript{145} or an independent pension fund or enterprise owned or controlled by an independent pension fund, unless it is used to provide NCA;\textsuperscript{146} government procurement;\textsuperscript{147} or goods or services provided exclusively to a Party for carrying out governmental functions.\textsuperscript{148}

Non-discriminatory Treatment shall not apply to any SOE or Designated Monopoly purchase or sale of goods or services pursuant to any existing non-conforming measure that Vietnam maintains, continues, renews or amends regarding Investment (Chapter 9, 12.1), Cross-Border Trade in Services (Chapter 10, 7.1), or Financial Services (Chapter 11, 10.1). Similar exemptions exist for non-conforming measures adopted or maintained for sectors, sub-sectors, or activities in the aforementioned Chapters.\textsuperscript{149}

Non-discriminatory Treatment for an SOE engaging in commercial activities shall not apply to the fulfillment of any “Public Service Mandate”\textsuperscript{150}, so long as it does not disadvantage a Covered Instrument in Vietnam territory.\textsuperscript{151}

Non-discriminatory Treatment shall not apply to the purchase or sale of equity by an SOE as a means of its equity participation in another enterprise.\textsuperscript{152}

A service supplied by a Vietnam SOE within Vietnam shall be deemed not to cause adverse effects, except if the service is itself a form of NCA.\textsuperscript{153}

NCA that the GOV or Vietnam SOE provides before signing TPP (4 February 2016) or within 3 years (i.e., by February 2019) after signing pursuant to a pre-signing law or contractual obligation, shall be deemed not to cause adverse effects.\textsuperscript{154} Thus, pre-February 2016 NCA is not a problem.

Other specific exemptions on Non-discriminatory Treatment and NCA for SOEs and Designated Monopolies vary from Party to Party, as indicated in Annex IV. Vietnam-specific exemptions are listed below (Exhibit B-1).

\textsuperscript{141} 17.2.1
\textsuperscript{142} 17.2.2
\textsuperscript{143} 17.2.3
\textsuperscript{144} 17.2.4
\textsuperscript{145} 17.2.5
\textsuperscript{146} 17.2.6
\textsuperscript{147} 17.2.7. Government procurement is covered by TPP Agreement Chapter 15.
\textsuperscript{148} 17.2.8. Articles on Non-discriminatory Treatment, NCA, and Transparency shall not apply to any service supplied in the exercise of governmental authority. 17.2.10
\textsuperscript{149} 17.2.11
\textsuperscript{150} A government mandate pursuant to which an SOE makes available a service – including the distribution of goods or the supply of general infrastructure services – directly or indirectly, to the general public in its territory. 17.1
\textsuperscript{151} 17.4.1
\textsuperscript{152} 17.4.1
\textsuperscript{153} 17.4.1
\textsuperscript{154} 17.7.7
<table>
<thead>
<tr>
<th>Entity</th>
<th>Obligation</th>
<th>Exempted non-conforming activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>All SOEs and Designated Monopolies</td>
<td>17.6.1(a) and (b) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Regarding (a), GOV may provide any financing necessary to restructuring (other than equitization), provided that the financing does not cause (i) a significant increase in market share, or (ii) significant price-undercutting, price suppression, price depression, or lost sales. Regarding (b), GOV may provide assistance in the form of a 1-time purchase of non-performing loans or unused assets, at market value and financing, to settle redundant employees, provided that the assistance is non-recurrent and for the purposes of equitization (i.e., transformation of a 100% SOE into a joint stock company).</td>
</tr>
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<td></td>
<td>17.4.1(a) and 17.4.2 (a); 17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Regarding 17.4.1(a) and 17.4.2 (a), as a means of ensuring economic stability and providing public goods, pursuant to laws or regulations, GOV may require a SOE or Designated Monopoly (i) to sell or purchase goods at a regulated price, quantity, or other terms and conditions; and (ii) produce or sell a good to the public within Vietnam. Regarding 17.6.1(a) and 17.6.2 (a), the GOV or SOEs may provide the Entity with NCA to cover the reasonable costs, including any contributions to employee welfare funds, as a result of the implementation of such measures.</td>
</tr>
<tr>
<td></td>
<td>17.4.1(a) and 17.4.2 (a); 17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Regarding 17.4.1(a) and 17.4.2 (a), to facilitate economic development in lagging regions (i.e., remote and mountainous, borderlands and offshore areas where the standard of living is extremely low or where there is serious under-employment), GOV may require the Entity to consider factors other than commercial considerations in its purchase or goods pursuant to a government measure. Regarding 17.6.1(a) and 17.6.2 (a), GOV or its SOEs may provide the Entity with compensation for implementation of such measures.</td>
</tr>
<tr>
<td></td>
<td>17.4.1(a) and (b); and 17.4.2 (a) and (b)</td>
<td>As a means of promoting small and medium enterprises (SMEs), GOV may direct the entity to (i) consider factors other than commercial considerations and/or (ii) accord preferential treatment to SMEs in its purchase of a good or service pursuant to a GOV measure.</td>
</tr>
<tr>
<td>Petrovietnam</td>
<td>17.4.1(a) and 17.4.2 (a); 17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Regarding 17.4.1(a) and 17.4.2 (a), the Entity may be required to consider factors other than commercial considerations for sales of a good and may give preferential treatment in its purchases of a good or service for domestic Vietnamese investments in the areas of oil/gas exploration, prospecting/exploitation; and flight operation services. Regarding 17.6.1(a) and 17.6.2 (a), GOV or its SOEs may provide NCA to the Entity in order to carry out a project in oil/gas, hydrocarbon or hydrocarbon derivative, and related industries with the objectives of regional development or socio-economic development within Vietnam.</td>
</tr>
<tr>
<td>Entity</td>
<td>Relevant Provisions</td>
<td>Description</td>
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<tr>
<td>EVN, its subsidiaries, and successors</td>
<td>17.4.1(a) and 17.4.2 (a); 17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Regarding 17.4.1(a) and 17.4.2 (a), for its core business, the Entity may accord differential treatment in its purchase of a good or service for various types of power generation. See also Annex I and Annex II. Regarding 17.6.1(a) and 17.6.2 (a), GOV or its SOEs may provide loans or loan guarantees to the Entity for the purpose of establishing power generation facilities oriented toward regional or socio-economic development.</td>
</tr>
<tr>
<td>Vinacomin, and its subsidiaries and successors</td>
<td>17.4.1(a) on sale of a good; 17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Vinacomin, and its subsidiaries and successors 17.4.1(a) on sale of a good; 17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam Regarding 17.4.1(a), the Entity may sell coal or any minerals in Vietnam on terms/conditions other than those based on commercial considerations, pursuant to laws and regulations. Regarding 17.6.1(a) and 17.6.2 (a), GOV and its SOEs may provide the Entity with NCA to maintain its coal/mineral production activities in remote/strategic areas of Vietnam, provided the NCA does not cause (i) a significant increase in market share, or (ii) significant price-undercutting, price suppression, price depression, or lost sales.</td>
</tr>
<tr>
<td>State Capital Investment Corporation (SCIC)</td>
<td>17.4 (a) and (c) (Non-discriminatory Treatment) and 17.6.1 (b) and (c) (NCA)</td>
<td>SCIC asset management, investment and related activities using Vietnam financial assets are exempt until the earlier of (i) SCIC full membership in the International Forum of Sovereign Wealth Funds, or (ii) 5 years after TPP Entry Into Force.</td>
</tr>
<tr>
<td>Vietnam National Financial Switching JVC (Banknetvn); Debt and Asset Trading Corporation (DATC); Vietnam Development Bank (VDB); Vietnam Bank for Agriculture and Rural Development (Agribank) and its subsidiaries; social policy funding entities; co-operative banks; any development financial institution; a mortgage refinance bank; and their successors</td>
<td>17.4.1 (a) and (c); 17.6.1 (b) and (c)</td>
<td>Regarding 17.4 (a) and (c), pursuant to a GOV measure, the Entities (except Banknetvn) may consider factors other than commercial considerations and provide financial services (other than insurance and securities) solely to (or give preferential treatment to) Vietnamese individuals or enterprises in Vietnam. These services are not intended to displace or impede private financing. Regarding 17.6.1 (b) and (c), GOV may provide assistance to Banknetvn to provide financial switching services.</td>
</tr>
<tr>
<td>Entity</td>
<td>17.4. (Non-discriminatory Treatment); 17.6 (NCA)</td>
<td>All existing and future activities</td>
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<td>Any SOE owned or controlled by the Ministry of Defense or the Ministry of Public Security – except Viettel Global JSC and enterprises exclusively engaged in commercial activities not related to national defense, public order, or public security.</td>
<td>17.4.1 (a) and (c); 17.6.1 (b) and 17.6.2 (b)</td>
<td>Regarding 17.4.1 (a) and (c), Airport Corporation may provide ground-handling services to Vietnamese national airlines at preferential rates, pursuant to a GOV measure. Regarding 17.6.1 (b), Vietnam Airlines may receive NCA in the form of a loan guarantee as part of an international financial arrangement or contract, so long as this NCA does not directly cause (i) a significant increase in market share; or (ii) significant price-undercutting, price suppression, price depression, or lost sales. Regarding 17.6.1 (b) and 17.6.2 (b), GOV and SOEs may provide NCA to Vinalines pursuant to a restructuring plan for maritime transportation services.</td>
</tr>
<tr>
<td>Airport Corporation of Vietnam; Vietnam Airlines Corporation; Vinalines; and their subsidiaries and successors</td>
<td>17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>Regarding 17.6.1 (a) and 17.6.2 (a), GOV and SOEs may provide NCA to the Entity pursuant to a restructuring plan.</td>
</tr>
<tr>
<td>Shipbuilding Industry Corporation (SBIC) and its subsidiaries and successors</td>
<td>17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
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<tr>
<td>Vietnam National Coffee Corporation</td>
<td>17.6.1(a) and 17.6.2 (a) on production &amp; sale of a good in competition with a Covered Instrument in Vietnam</td>
<td>GOV and SOEs may provide NCA to the Entity in the production and sale of coffee within Vietnam.</td>
</tr>
</tbody>
</table>
Any SOE in printing, publishing, audio-visual services, mass communication, and telecoms | 17.4.1 (a); 17.6.1 (b) and 17.6.2 (b) | Regarding any SOE in mass communication, printing, or publishing, all activities are exempt. Regarding 17.4.1 (a), a telecom SOE may sell or purchase goods and services at a regulated price or other terms and conditions pursuant to a GOV measure. Regarding 17.4.1 (a), any SOE may consider factors other than commercial considerations and accord differential treatment to the purchase and sale of audio-visual productions and distribution services. See also Annex I and Annex II. Regarding 17.6.1 (b) and 17.6.2 (b), GOV and SOEs may provide NCA with respect to overseas Vietnamese language programming broadcasts.

Application at the sub-central level government of Chapter 17’s four substantive initiatives varies among TPP Parties. These initiatives apply (or not) to Vietnam’s SOEs and Designated Monopolies at the Provincial or Municipal GOV level as indicated below (Exhibit B-2).

### Exhibit B-2: Application to TPP to Provincial or Municipal GOV

<table>
<thead>
<tr>
<th></th>
<th>Applies</th>
<th>Does not apply</th>
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<tr>
<td>17.4 (Non-discriminatory Treatment)</td>
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<tr>
<td>17.5.1 (Courts)</td>
<td>17.5.2 (Administrative, e.g., regulatory, Bodies)</td>
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<tr>
<td>17.6.1(a) and 17.6.2(a) (NCA) regarding production and sale of a good in competition with a like good produced and sold by a Covered Instrument in Vietnam</td>
<td>17.6.1(b), (c), and 17.6.2(b) and (c) (NCA)</td>
<td></td>
</tr>
<tr>
<td>17.6.3 (NCA) to a Covered Instrument in another Party’s territory that causes injury to domestic industry within that territory</td>
<td>17.6.10 (Transparency)</td>
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</table>

Exempt are temporary measures in response to a national or global economic emergency from Article 17.4 and Article 17.6.155

Article 17.4.1 (Non-discriminatory Treatment) shall not apply to an SOE’s supply – pursuant to a government mandate – of trade financing or FDI insurance services, if these services are not intended to displace commercial financing and are offered on terms consistent with those available in the commercial market.156 Under similar conditions, NCA – Article 17.6.1(b), Article 17.6.2(b), Article 17.6.1(c) or Article 17.6.2(c) – shall be deemed not to give rise to adverse effects.157

Article 17.6.1(b) (NCA) shall not apply to an enterprise outside Vietnam over which a Vietnam SOE has assumed temporary ownership as a result of foreclosure, default, or payment of an insurance claim.158

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155 17.13.1
156 17.13.1 and 17.13.2
157 17.13.3
158 17.13.4
In general, Article 17.4, Article 17.6, Article 17.10, and Article 17.12 (Committee) shall not apply to a SOE if, in any of the three previous consecutive fiscal years, the annual revenue from its commercial activities was less than a threshold amount to be calculated according to Annex 17-A.\textsuperscript{159} For Vietnam, this threshold is SDR 500 million, or about $708 million or VND 15.9 trillion.\textsuperscript{160}

D. SUPPLEMENTAL MEASURES

The Parties are encouraged to engage in technical cooperation, including (a) information exchanges on experiences in improving SOE corporate governance and operations; (b) sharing best practices on competitive neutrality and other policies to ensure a level playing field between SOEs and privately owned enterprises; and (c) organizing forums to share technical information on SOE corporate governance and operations.\textsuperscript{161}

A Committee on SOEs and Designated Monopolies, composed of government representatives from each Party, shall (a) review implementation of Chapter 17; (b) as requested, consult on related matters; (c) develop cooperative efforts, including with regional and multilateral institutions; and (d) undertake such other activities as the Committee may decide. The Committee shall meet at least annually, starting within 1 year after Entry Into Force. The Committee shall not apply to NCAs by Vietnam’s State Capital Investment Corporation (for the earlier of 5 years or full membership in the International Forum of SWFs) or SOEs owned or controlled by the Ministry of Defense or the Ministry of Public Security.\textsuperscript{162}
NON-TARIFF MEASURES IN TPP

With the global decrease of tariffs in international trade, policy makers have focused their attention on the role played by Non-Tariff Measures (NTMs) in preventing countries from accruing the full benefit of globalization.

NTMs are defined as policy measures, other than tariffs, that can affect quantity or value of international trade flows. NTMs include a large variety of trade regulations, including sanitary and phyto-sanitary (SPS) regulations, technical (TBT) regulations, rules of origin, licensing, price-control measures, and distribution restrictions (UNCTAD, 2013). Often, the primary NTMs’ objective is not directly trade related but it relays to the achievement of “common goods” for the broader population, such as the protection of environment, human and animal health, etc. Nonetheless, also this type of NTMs can have restrictive or distortionary effects on international trade.

The WTO discipline in this area is not very detailed, although, under GATT Article X and now also under the Trade Facilitation Agreement, Member States are bound to publish their trade laws in a prompt and accessible manner (including on-line in Trade Portals) and to refrain from enforcing measures prior to publication. More specific guidance on NTMs’ legitimacy is provided by WTO only in the areas of SPS, TBT and licenses. Bilateral FTAs and Regional Trade Agreements, therefore, cover in some more detail this matter, although often this is done only on a best endeavor basis.

Under the ASEAN Trade in Goods Agreement (ATIGA), Vietnam has committed to catalog its entire existing stock of NTMs, and get this information on-line and shared in the National Trade Repository, which would eventually interoperate with the ASEAN Trade Repository. NTMs should also be notified to the ASEAN Secretariat which is mandated to maintain a regional database. Moreover, under the ASEAN Work-Program on NTMs, Vietnam has undertaken to set up a National NTM Committee tasked to classify, review and streamline NTMs. Vietnam is also expected to eliminate prohibitions and quantitative restrictions, Non-Tariff Barriers and foreign exchange restrictions on the importation of any goods of other ASEAN Member States, in addition to streamlining import licenses.

1. What is in the TPP

TPP’s Chapter 25 on Regulatory Coherence builds on the WTO discipline, encouraging members to put in place good-regulation principles, although on a “best-endeavors” basis only. While non-binding, its language is consistent with the World Bank’s toolkit on “Streamlining Non-Tariff Measures: A Toolkit for Policy Makers”, which provides practical suggestions both on institutional and technical aspects of NTMs streamlining.

TPP Members affirmed the importance of the following guiding principles in the area of regulatory consistency (art. 25.2.2):

- sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;
• each Party’s sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate;
• the role that regulation plays in achieving public policy objectives;
• taking into account input from interested persons in the development of regulatory measures; and
• developing regulatory cooperation and capacity building between the Parties.

Chapter 25 establishes institutional mechanisms – a Regulatory Coherence Committee – to promote effective interagency consultation and coordination, in view of ensuring that NTMs are no more trade restrictive than necessary to achieve legitimate policy objectives. A set of Core Good Regulatory Practices are proposed, including impact assessments of proposed regulatory measures and practices to ensure that regulations are clearly and concisely written; that the public has access to information on new regulatory measures, if possible online; and that existing regulatory measures are periodically reviewed to determine if they remain the most effective means of achieving the desired objective. Moreover, TPP governments are encouraged to provide public notice annually of all regulatory measures they expect to take the following year.

• Art. 25.3 - Scope of covered Regulatory Measures
  ○ Within one year from the entry into force of the agreement, Vietnam shall make publicly available the scope of its covered regulatory measures

• Art. 25.4 - Committee on Regulatory Coherence
  ○ Vietnam shall set up a Committee to increase interagency consultation and coordination to review and develop regulatory measures

• Art. 25.5 - Core Good Regulatory Practices
  ○ Vietnam’s Regulatory Agencies shall conduct regulatory impact assessment when developing new measures

2. Committee on Regulatory Coherence

Under article 25.6, Vietnam is expected to set up a Committee on Regulatory Coherence (Committee), which shall be responsible for issues covered under Chapter 25. Tasks and responsibilities of the Committee are summarized in the following table:

<table>
<thead>
<tr>
<th>Priorities</th>
<th>The Committee shall identify future priorities in coordination with other working groups and committees established under the TPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordination</td>
<td>The Committee shall avoid duplication with other institutions with a similar mandate, providing value addition on regulatory cooperation</td>
</tr>
<tr>
<td>Contact Point</td>
<td>A contact point to provide information should be designated and notified</td>
</tr>
<tr>
<td>Establishment</td>
<td>The Committee shall meet within one year from the entry into force of the Agreement</td>
</tr>
<tr>
<td>Review</td>
<td>The Committee shall review its performance and mandate every five years to recommend improvements to the Commission on the provisions of this Chapter</td>
</tr>
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</table>

The substantial overlapping between the mandate of this Committee and the National NTM Committee to be established under the ASEAN Work-Program on NTMs suggests to set up one single body responsible for reporting both to TPP and ASEAN Members. Moreover, in line with practices being adopted in other countries, consideration could be given to merging this body with the Trade Facilitation Committee to be established under the WTO Trade Facilitation Agreement.
According to the World Bank Group’s experience in supporting the effort of setting up several NTM Committees around the world, including in other ASEAN countries, Committees have a good chance to succeed if they are set up with a strong mandate from the Prime Minister or the President and if they report directly to the highest political level in the country. Moreover, clear working procedures for the Secretariat should be established, delineating tasks and responsibilities, and the modality of interaction with private sector organization should be established from the outset.

The World Bank’s toolkit on “Streamlining Non-Tariff Measures: A Toolkit for Policy Makers” proposes institutional mechanisms among various stakeholders within government as well as with the private sector to review NTMs, and develops a general framework for assessing the impact of NTMs. In addition, analytical methodologies are being developed to quantify the impact of NTMs (i) on firm competitiveness using sector-level and firm-level data, and (ii) on poverty using household data.

### Best Practices from Brazil, Mexico and South Korea in establishing NTMs Committees

- Importance of staff availability to implement RIA and cost-benefit analysis. Staff size/skills and deadlines to complete the tasks have to be aligned.
- Institutional set up is critical: responsibility, staff and hierarchy of the leading institutions make the difference.
- Importance to have sufficient financial resources
- Cooperation among government institutions and with universities and research institutes. Moreover, importance to involve private sector and set up a pool of experts.

The institutional arrangement to conduct the review has better chances to succeed if:

- it is driven by a high level of the administration with the appropriate mandate (supported by a clear legal text);
- It is supported by a Secretariat with dedicated staff to update inventory, carry out notifications and work on streamlining;
- it involves all stakeholders concerned.
The World Bank can provide two-fold assistance to Vietnam Committee on Regulatory Coherence, in charge of reviewing and streamlining NTMs: 1) Training on the main aspects of streamlining; 2) Technical assistance to review specific NTMs and provide recommendations for their streamlining.

Training on NTMs streamlining
The training will have to be adapted to the experience and technical expertise of the audience. It would typically last 2-5 days, covering the following issues:

1. Measuring the impact on NTMs. NTMs are complex legal instruments, including sanitary and technical regulations. Yet they can have major impacts on the economy. How can we make them amenable to economic analysis? How can we measure the effect they have on the cost of living? Can we measure the similarity of national regulatory systems? What data can we use? The worldwide database on NTMs to analyze national regulatory systems in a systematic, quantitative analysis will be introduced.

2. Streamlining NTMs: Policy perspectives. NTMs can impose costs on businesses and hamper trade. Should they be eliminated through international or regional negotiations? Alternatively, do they play a useful role in a modern economy? Can we think of systematic ways of making them better? What are the “disciplines” imposed by the WTO on the way countries impose? Would it be desirable for a country to go beyond those disciplines? This module will propose a formal, systematic method to analyze the effect of NTMs based on the World Bank’s recent NTM streamlining toolkit.

3. Toward cost-benefit analysis: Estimating regulatory gains. Regulations are typically imposed for non-trade objectives, among which public health is one of the most important. In order to carry out a full cost-benefit analysis of regulatory decisions, a government needs to be able to put a value on health. How can we do this? This module will introduce you to some of the best-practice methods used to put a monetary value on the avoidance of disease outbreaks through SPS regulations.

4. NTM streamlining: Case studies. This final session will confront you with real-life NTMs to streamline taken from the experience of countries in their dialogue with the World Bank. You will be asked to analyze three regulatory reviews in groups and propose and defend publicly a recommendation (to uphold the regulation, to modify it, or to eliminate it). This module will help you put all concepts together and understand how to proceed in practice.

Technical Assistance to review the NTMs’ impact
The World Bank can provide support to Government’s economists to test on real cases the methodologies acquired during the training described above. NTMs could be identified directly in consultation with governmental agencies or by means of a private sector survey which could be designed with support by the World Bank. Typically, the provision of assistance for the finalization of three studies is considered to suffice to ensure future sustainability of the process.
3. Core Good Regulatory Practices
Under TPP, the Government of Vietnam is expected to reach out to all relevant regulatory agencies and to encourage them to conduct regulatory impact assessment when developing new trade rules and regulations. Vietnam will have to develop a set of procedures and methodologies to guide this exercise. Article 25.5 suggests standard principles to be consider when conducting a regulatory impact assessment.

<table>
<thead>
<tr>
<th>Regulatory Impact Assessment</th>
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</thead>
<tbody>
<tr>
<td>Assess the need for a regulatory proposal, describing nature and significance of the problem</td>
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</table>

The World Bank Toolkit provides detailed tools to support this effort.

Vietnam is also expected to ensure that regulations are publicly accessible, possibly online, and to review regularly its measures to make sure that the regulatory regime is effective in achieving its policy objectives. Moreover, Vietnam will have to provide annual public notice of any relevant regulation that it reasonably expects its regulatory agencies to issue within the following 12-month period.

4. Notification on Implementation
Within two years of the date of entry into force of the agreement, Vietnam is expected to notify TPP members on progress achieved with implementing Chapter 25 on Regulatory Coherence. Thereafter, notification shall be made every four years. Notifications shall covered the points summarized in the following table.

<table>
<thead>
<tr>
<th>Notifications are expect to cover efforts to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establish processes or mechanisms to facilitate effective interagency coordination and review of proposed covered regulatory measures</td>
</tr>
</tbody>
</table>

5. Summary of actions to be undertaken by Vietnam to implement Chapter 25 of TPP
A mix of short and mid-term actions shall be undertaken by Vietnam to ensure full compliance with its TPP obligations. Incidentally, TPP undertakings in this area are consistent with ATIGA and TFA commitments, offering the opportunity to achieve synergies across multiple agreements. Eventually, by implementing these obligation, Vietnam can complete import reforms which will substantially improve its trade environment, increasing transparency and accountability.
Hold workshop/s to review options for institutional set up of Regulatory Coherence Committee

Draft a legal mandate for the Regulatory Coherence Committee

Set up a Technical Secretariat for the Regulatory Coherence Committee

Design and implement training program for the Secretariat and the Committee

Establish fully compliant National Trade Repository

Establish Committee and make regulatory stock publicly available

Ensure consistent application of Core Good Regulatory Practices

Notification to TPP members on progress achieved with implementing Chapter 25

- short-term action (by end 2016)
- short-term action (by end 2016)
- short-term action (by end 2016)
- short-term action (by end 2016)
- short-term action (by end 2016)
- mid-term (by end 2017)
- mid-term (1 year from ratification)
- mid-term (about 1 year from ratification)
- mid-term (within 2 years from ratification)
The labor standards chapter in the Trans-Pacific Partnership is an important one for Vietnam because full access to the US market depends on implementing it to the satisfaction of US authorities. Doing so will also involve politically sensitive changes to labor laws and practices, particularly in the area of freedom of association. The substance of the labor provisions in the sustainable development chapter of the trade agreement with the European Union is broadly similar. The International Labor Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work (1998) is the basis for the core provisions in both agreements, though the TPP goes further in several areas and is more detailed in the obligations it imposes. The key difference between the two is that compliance with the labor provisions in the EU agreement is not tied to trade benefits and the sustainable development chapter is not subject to the dispute settlement mechanism that applies to the rest of the agreement.

LABOR PROVISIONS IN TRADE AGREEMENTS

Under World Trade Organization rules, the only reference to labor rights is an exception (Article XX) that permits member countries to ban imports produced with prison labor. Despite increased attention to trade-labor linkages, WTO members have not agreed to any new provisions on labor rights. By contrast, such provisions have become increasingly common in bilateral negotiations, particularly those involving the United States, Canada, and, more recently, the European Union. Except for Chile, developing countries do not generally include labor provisions in their agreements with one another.

The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico was the first to address worker rights, but the labor provisions were in a side agreement, only certain worker rights were subject to the special dispute settlement mechanism, and enforcement does not include trade sanctions. Since then, Canada has continued to include labor provisions in its agreements with developing countries that more or less follow the NAFTA model. The US model evolved to always include labor chapters in the main FTA text, and, eventually, to subject the labor provisions to the same dispute settlement procedures as the rest of the agreement. Since 2007, US FTAs also provide for the use of trade sanctions to enforce the labor chapter. Labor standards language, other than in U.S. trade agreements, is usually either hortatory or only nominally binding, with no or only weak enforcement measures.

Until the late 2000s, EU FTAs included broad language calling for protection for human rights, but not worker rights specifically. Since then, EU negotiators have sought to include chapters on “trade and sustainable development” that cover labor and environmental issues together. US FTAs, including the TPP, have separate chapters on labor and environmental issues. The EU agreements, like those Canada negotiates, are nominally binding but they emphasize dialogue and cooperation over sanctions for enforcement.

WHAT IS IN THE EVFTA AND TPP?

The TPP labor chapter, in addition to being subject to harsher enforcement provisions than the EU agreement, is also more detailed and somewhat broader in scope with respect to the substantive obligations. The core, enforceable labor provisions in the EVFTA are similar to those that were in US trade agreements between 2000 and 2007. These provisions prohibit parties from waiving or

163 This section draws on Elliott (2011).
derogating from labor laws, or failing to effectively enforce one’s own labor laws, in ways that affect trade or investment between the parties. EVFTA provisions relating to the content of acceptable labor laws and practices are primarily hortatory. By contrast, recent US trade agreements, including the TPP, have enforceable provisions requiring that each party’s laws uphold the core ILO standards, and provide for “acceptable conditions of work.”

**The European Union-Vietnam FTA**

Vietnam’s agreement with the EU reaffirms each party’s commitment as members of the ILO to “respect, promote and effectively implement” the principles associated with the 1998 ILO declaration definition of fundamental worker rights:

- freedom of association and the right to collectively bargain
- elimination of forced labor
- effective abolition of child labor
- elimination of discrimination in employment

It also calls for “continued and sustained efforts” to ratify any of the eight ILO conventions associated with the fundamental rights (two each) that remain unratified, and reaffirms the commitment of each party to “effectively implement in its laws and practices” the ILO conventions that each party has ratified. The EU countries have ratified all eight conventions, while Vietnam has ratified one convention on forced labor and all four conventions relating to nondiscrimination and the abolition of child labor. It has ratified neither of the conventions relating to freedom of association, nor the one on the abolition of forced labor. For reference, the United States has ratified only two conventions, 105 on the abolition of forced labor, and 182 on the elimination of the worst forms of child labor.

The sustainable development chapter calls for transparency in the development and implementation of measures to protect workers (or the environment) and identifies areas where the parties “may cooperate” to achieve the objectives of the chapter. The chapter establishes a Specialized Committee of government officials to oversee implementation. Each party must also create domestic advisory groups that will advise their own governments on implementation, as well as meeting in a joint forum that will report to the specialized committee.

Most of the substantive provisions in the sustainable development chapter involve the parties reaffirming existing commitments, under the ILO or multilateral environmental agreements, for example. When the word “shall” is used, it is most often in the context of calling on parties to encourage or to “strive to ensure” there are improvements in labor or environmental conditions. The only exceptions are the provisions providing that parties “shall not” waive or derogate from or fail to effectively enforce their labor laws in ways that affect trade or investment. Parties also shall not use labor laws as “a disguised restriction on trade.”

In the case of a dispute, if consultations or the specialized committee cannot arrive at a resolution, the parties may appoint a panel of experts to investigate and make recommendations. The chapter explicitly excludes its provision from the dispute settlement procedures governing the rest of the agreement. The expert panel’s report will be released publicly, “unless the Parties mutually decide otherwise.” The parties “shall discuss appropriate actions” to respond to the recommendations in the experts’ report, but there are no further consequences if they do not reach agreement.

**THE TPP**

The TPP is more prescriptive in setting minimum standards for labor laws and provides for more aggressive enforcement measures. The core obligations are the same as those in the EU-Vietnam trade agreement—to not waive or derogate from labor laws or fail to enforce labor laws in a manner affecting trade or investment. The TPP goes beyond the EVFTA, however, in also requiring that each party have labor laws that uphold the core labor standards identified in the ILO’s 1998 declaration on fundamental rights at work. The TPP also requires parties to have laws “governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and
health.” Finally, there is a new provision that calls on parties to “discourage” imports produced with forced labor, though it leaves it to each party to determine the appropriate means for doing so.

Each of these provisions provides for some flexibility in the implementation. First, there is a footnote specifying that the obligation to implement and enforce the core labor standards refers only to the ILO declaration. This provision protects the United States (and other parties) from challenges based on technical provisions of ILO core conventions that it has not ratified.165 Another footnote specifies that acceptable conditions are “as determined by” each party. Thus, each party should have a minimum wage law, for example, but it is free to set the minimum wage at whatever level it deems appropriate. Note, however, that the TPP, unlike previous trade agreements, explicitly bars labor laws or regulations for export processing zones that set lower standards than for the rest of the economy.

The TPP is also more detailed than EVFTA in promoting public awareness regarding labor laws, as well as fairness and due process in the implementation of those laws, including the creation of independent tribunals. While emphasizing cooperation and dialogue to resolve disputes, parties ultimately can invoke the formal dispute settlement mechanism that covers the rest of the agreement and trade sanctions are a possibility if a violation of the labor chapter is not rectified.

THE US-VIETNAM BILATERAL ACTION PLAN

In addition to the provisions in the TPP itself, the US and Vietnamese governments agreed to a bilateral “Plan for the Enhancement of Trade and Labour Relations” that specifies labor law and institutional reforms that Vietnam will take to implement the labor chapter. Moreover, Vietnam must undertake most of these reforms before the TPP enters into force between the two countries. Under the trade promotion authority law that governs US implementation of trade agreements, an agreement cannot go into effect with another party until the president certifies to Congress that the party has taken all steps necessary to come into compliance with the FTA’s provisions. While this process took an average of roughly two years in the 2000s, it was four years in the case of Costa Rica166 In interviews with US government officials, it was emphasized that they will be looking for evidence of effective implementation of policy reforms and that changes to laws and regulations alone will not be enough.

Vietnam has an additional five years to implement one provision of the bilateral agreement, which allows for confederations of unions at the sectoral or regional level. If Vietnam does not meet this deadline, however, US authorities “may withhold or suspend any tariff reductions that are scheduled to come into effect thereafter.” At the five-year point, US authorities have an additional two years to determine whether Vietnamese implementation of the confederation provision is in compliance with the bilateral arrangement. This provision would primarily affect the apparel sector because the final tariff cuts do not occur until well after that point. The detailed requirements of this side agreement are discussed in the following section.

The action plan also creates mechanisms for the two governments to monitor and review progress in implementing the provisions of the plan, preferably with the assistance of the ILO. The plan calls for creation of a senior officials committee that will meet annually for at least the first 10 years and a labor experts committee that will report to them periodically, providing information and data on implementation. The two parties will also seek the ILO’s cooperation in creating a technical assistance program that will report every two years. The parties will also seek funding for technical assistance.

165 The labor chapter and bilateral action plan focus on the ILO Declaration because the United States has ratified so few of the core conventions associated with the declaration. Jurisprudence related to the conventions is nevertheless the natural source for determining compliance with international norms.

GAPS BETWEEN CURRENT VIETNAMESE LAW AND PRACTICE AND REQUIREMENTS THE TPP AND EVFTA

The EVFTA focuses on dialogue and cooperation to improve labor (and environmental) standards in Vietnam, while the TPP, including the bilateral action plan, takes a far more prescriptive approach. Most of the burden of reforming Vietnamese labor laws and institutions will fall on the Ministry of Labour, Invalids, and Social Affairs (MOLISA). But the Ministry of Industry and Trade could also assist with outreach to and training of industry, employer groups, and foreign investors.

Vietnam has been revising its labor laws and regulations in recent years and a new trade union law, as well as changes to the Labor Code, went into effect in early 2013. The biggest remaining gap between current laws and practices and requirements in the TPP labor chapter is in the area of freedom of association. Thus the bilateral action plan principally requires creation of a legal and policy environment where independent trade unions can form and operate without interference from the government, employers, or the party-affiliated Vietnam General Confederation of Labor (VGCL).

Currently, Vietnam permits only unions that are affiliated with the VGCL and most of the legal reforms cover steps that Vietnam needs to take to ensure that workers may have unions of their choosing. The annex table summarizes the changes in law and practice included in the bilateral agreement with the United States. In a few cases, the agreement is quite specific about particular legal provisions that Vietnam must revise to come into compliance with international standards. But many of the details of how to do this are left to Vietnamese authorities, as long as they are consistent with international norms as reflected in the 1998 ILO declaration. For example, the agreement specifies that the government cannot require prior approval for unions to form. But Vietnam can choose whether independent grassroots unions will have to register with the government or not, and whether a majority of workers in an enterprise must vote to approve a union or not. In addition to freedom of association, the bilateral action plan includes commitments to expand protections against forced labor and discrimination in employment, particularly for women who are currently barred from certain types of employment supposedly for safety reasons.

In addition to legal reform, Vietnam agreed to make institutional reforms to ensure the effective implementation of trade union rights and to beef up its labor inspection capacity to ensure its labor laws are effectively enforced. The action plan requires Vietnam to create a mechanism to provide mediation and dispute resolution services and training for worker and employer groups. It also includes specific targets for the number of labor inspectors that the government should add by 2020 that would bring Vietnam to the ratio of inspectors to workers recommended by the ILO. To further support enforcement, the action plan also provides for a mechanism that workers can use to anonymously report violations of worker rights.

Vietnam has had a Better Work program in place for the garment for export sector since 2009 and it is now in nearly 350 factories employing nearly a half million workers. The Better Work compliance reports are one source to identify gaps between international standards and Vietnamese practices, at least in that sector. According to the most recent synthesis report from the program (July 2015), there are relatively few problems with forced or child labor, or with discrimination. The most frequent problem in the freedom of association area, occurring in more than 60 percent of factories monitored, is management interference in unions. Senior managers frequently serve on executive committees where they exert inappropriate influence. Better Work monitors found more frequent violations in areas relating to hours and occupational safety and health.167

CONCLUSIONS AND NEXT STEPS

Implementation of the TPP’s labor chapter will require important, and politically difficult, changes in Vietnam’s approach to freedom of association and trade union rights. Most fundamentally, Vietnam will have to change its labor code to permit workers to freely organize independent unions that need

not affiliate or coordinate with the VGCL. Legal changes need to ensure that grassroots unions can elect officers of their choosing, collect dues, and operate without interference from the government, employers, or the VGCL. After five years, grassroots unions should be able to organize themselves in regional or sectoral confederations, again independently of the VGCL and without government interference. The ILO, with financial support for the US Department of Labor, is working with Vietnam on bringing its labor law into compliance with international standards. The government will also need to increase its capacity to implement and enforce the new labor laws, including hiring and training new inspectors to reach the target of 1200 by 2020.

In addition to bringing laws and regulations into conformity with international standards, US government officials have been clear that they will be monitoring implementation and enforcement for evidence that workers’ rights are protected in practice. Given Vietnam’s limited resources for labor inspection, policy enforcement, and dispute resolution for industrial relations, the government should engage the private sector and civil society in these efforts.

In the action plan, Vietnam specifically commits to ensure that workers and unions have the right to receive assistance and training from any organization “legally operating” in Vietnam. Implementing this provision should be a priority to ensure that new, independent unions are able to operate effectively in representing workers while not unnecessarily disrupting factory operations.

The action plan also calls for a mechanism so that workers can anonymously report violations. The ILO-funded hotline for migrant domestic workers in Lebanon is an example of how this could work.168

To further promote effective implementation, the labor chapter calls for efforts to raise public awareness about the changes. The example from Colombia of community centers focused on helping workers understand and enforce their legal rights could be useful.169

<table>
<thead>
<tr>
<th>Type of reform</th>
<th>Agreement provision</th>
<th>Comments or recommendations</th>
</tr>
</thead>
</table>
| Legal changes to be implemented by amending existing or issuing new laws, decrees, or regulations | Related to freedom of association and collective bargaining:  
Overall:  
Right to form independent, grassroots trade unions, “without prior authorisation” and without having to affiliate with the Vietnam General Confederation of Labour (VGCL)  
Allow for confederation of unions at levels above that of the enterprise | ILO project funded by US Department of Labor helping with legal, institutional reforms related to industrial relations  
Implementation delayed up to 5 years; legal change should not be overly delayed as US authorities will be monitoring implementation and enforcement as well |
| Specific:  
Registered workers’ groups and unions will have the right to request and receive technical assistance and training “from any Vietnamese or international worker organization legally operating” in the country | Currently, NGOs can only work with VGCL on union organizing and collective bargaining issues. Government should consider how NGOs or other groups could advise local civil society or worker groups to help prepare them for the transition to independent unions with minimal disruption |

| Ensure independent unions not affiliated with VGCL have autonomy in their operations, including ability to collect and manage member dues and union share of 2% fee paid by employers (TUL articles 4(8), 6(2), 26, and 27) | Interference by managers serving as union officials has been cited by the Better Work program as one of the areas of substantial noncompliance; in addition to legal change, outreach and education for employers and workers should be a priority |
| Ensure law does not require VGCL to assist grassroots unions with certain functions, and specifies that it will do so, and that that it will represent non-unionized workers, only at the workers request (LC articles 188(3), 210(2)) | Vietnam “shall amend” Decree 41/2013/ND-CP to delete Article 2.1b and allow strikes in oil and gas sector; “shall amend” Decree 46/2013/ND-CP to delete Article 8. |
| Ensure autonomy in electing union officials and employing persons to assist with union activities (TUL 4(4), 4(5)) | The ILO Committee of Experts on the Application of Conventions and Recommendations has raised both these issues in recent years; notes progress on both |
| To ensure protection against interference with union activities, Vietnam “shall revise” Article 24 of Decree 95/2013/ND-CP “to expand protection against anti-union discrimination… and sanctions sufficient to deter violations” | Related to forced labor: |
| Ensure law protects right to strike “consistent with ILO guidance,” including at sectoral level when collective bargaining is allowed at that level (LC 212, 213(1), 215(1), 215(2)) | Clarify definition to include debt bondage (LC article 3(10)) |
| To ensure protection against interference with union activities, Vietnam “shall revise” Article 24 of Decree 95/2013/ND-CP “to expand protection against anti-union discrimination… and sanctions sufficient to deter violations” | Amend penal code to provide “appropriate criminal sanctions” for using FL |
| Ensure law protects right to strike “consistent with ILO guidance,” including at sectoral level when collective bargaining is allowed at that level (LC 212, 213(1), 215(1), 215(2)) | Amend “all relevant provisions” to ensure forced labor not used for rehabilitation of drug abusers |
| Related to forced labor: | Related to nondiscrimination: |
| Clarify definition to include debt bondage (LC article 3(10)) | Clarify discrimination based on color, race or national extraction prohibited; amend law to prohibit discrimination in “all aspects of employment” (LC article 8) |
| Amend penal code to provide “appropriate criminal sanctions” for using FL | Amend code to remove prohibitions on female employment in certain occupations while protecting health and safety (LC article 160) |
| Amend “all relevant provisions” to ensure forced labor not used for rehabilitation of drug abusers | The ILO Committee of Experts on the Application of Conventions and Recommendations notes color has been added as a prohibited basis for discrimination in employment |
| The ILO Committee of Experts on the Application of Conventions and Recommendations notes color has been added as a prohibited basis for discrimination in employment | Issue also raised by ILO Committee; cites more than 70 sectors or occupations where female employment restricted |
| Institutional reforms | Vietnam shall make institutional changes and expand capacity, including hiring additional staff, as necessary to implement the specified changes

Shall designate the competent government body within the Ministry of Labor to oversee the implementation of union registration, the right to strike, and the right to bargain collectively

Shall create industrial relations bodies or mechanisms to provide mediation and conciliation services and provide training programs related to dispute resolution between workers and employers (LC articles 72, 195-198, 203-205, 235(4)) | Worker rights centers in key areas around country as in Colombia [here or below?]

| Enforcement | Revise enforcement procedures and train inspectors to ensure effective enforcement of new provisions

“Shall allocate sufficient resources” for enforcement

Create mechanism for workers to anonymously report violations | Targets for permanent labor inspector positions (up from 500 now):
End-2016: 750-800
End-2020: 1200

For example, hotline for workers to report violations (as in Costa Rica?)

Overall, given limited resources and manpower, government should provide mechanisms for public, workers to assist:

Conduct public awareness campaign re legal, other changes |
This note analyzes the Environment Chapter of the Trans-Pacific Partnership (TPP), mainly from two perspectives: (1) the rules, mechanism and measures established under the Environment Chapter of the TPP (hereinafter “Environment Chapter”) to implement the agreement; and (2) the main domestic legal and administrative rules and procedures needed for Parties to comply with the terms of the Environment Chapter.

OVERVIEW

Broadly, the Environment Chapter has the following overarching objectives: (i) promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation; (ii) enhance cooperation to contribute to sustainable development and environmental governance; and (iii) prevent and address inappropriate use of environmental laws and measures that would constitute a disguised restriction on trade or investment between the Parties.170

While the Environment Chapter recognizes the legitimacy and importance of environment protection, it also prohibits the improper use or establishment of environmental requirements to impede trade or investment. The “General Commitments” of the Chapter under Article 20.3 speak to this balance between environmental protection and market access, as well as the balance between the Parties’ sovereign rights and powers over domestic environmental matters and their obligations under the TPP. In particular, Article 20.3, among other things, recognizes:

(i) “the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly”;

(ii) “[n]o Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties...”;

(iii) “each Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities”; and

(iv) “it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws.”

It is with the backdrop of these “General Commitments” that the Environment Chapter lays out the relevant procedures, rules and mechanisms to address a wide array of environmental issues, as will be discussed in the following sections.

RULES, MECHANISM AND MEASURES UNDER THE ENVIRONMENT CHAPTER

The Environment Chapter describes the general rules, mechanisms, and measures for Signatories of TPP to cooperate, coordinate and resolve issues pertaining to a wide array of environmental subject matters, including ozone protection, marine pollution, biodiversity, invasive alien species, low emission and resilient economy, illegal fishing, and illegal trade of wild fauna and flora.

170 Article 20.2.
a. Consultation and Dispute Resolution

Consultation and dispute resolution are available for Parties to address any matter arising under the Environment Chapter. There are three-levels of formal consultations and, if all failed, the matters can be escalated to be resolved under a dispute resolution pursuant to Article 20.23 and Article 28.

b. Additional Mechanisms

In addition to consultation and dispute resolution, there are additional mechanisms under the Environment Chapter to address specific environmental subject matters, including: (1) public participation; (2) compliance by reference to other existing multilateral agreements; (3) cooperation; (4) consultation; (5) dispute resolution; (6) encouragement; and (7) others.

In particular, certain mechanisms and measures are set up to combat illegal fishing, including the operation of a fisheries management system that regulates marine wild capture fishing and the prohibition of certain subsidies, including those that are within the meaning of Article 1.1. of the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement ("SCM Agreement") that are specific within the meaning of Article 2 of the SCM Agreement.

Table 1 below summarizes the application of these different approaches by environmental subject matter.

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171 The Environment Chapter provides three levels of consultation under Articles 20.20 through 20.22: (i) Environmental Consultations (Art. 20.20); (ii) Senior Representative Consultations (Art. 20.21); and (iii) Ministerial Consultations (Art. 20.22). Parties can request for Senior Representative Consultations only if they have already attempted Environmental Consultations and failed to resolve the matter; likewise, a failed attempt in Senior Representative Consultations is a prerequisite for Parties to request Ministerial Consultations.

172 The Environment Chapter provides the rules for dispute resolution under Article 20.23. If the Parties failed to resolve the matter under all three levels of consultations under Articles 20.20 through 20.22, the requesting Party may request the establishment of a dispute settlement panel under Article 28.7 or consultations under Article 28.5.

173 The contents of cooperation are generally provided in Article 20.12. Although with select subject matters, further contents of cooperation are provided in the relevant sub-articles (e.g. Art. 20.5.3 for ozone; and Article 20.6.3 for ship pollution).
<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Approach Applied</th>
<th>Compliance by Reference to Other Multilateral Agreements</th>
<th>Cooperation (Additional to Article 20.12)</th>
<th>Encouragement</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ozone (Art. 20.5)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ship Pollution (Art. 6)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Social Responsibility (Art. 20.10)</td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Voluntary Mechanism to Enhance Environmental Performance (Art. 20.11)</td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Biodiversity (Art. 20.13)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Facilitating access to genetic resources</td>
<td></td>
</tr>
<tr>
<td>Invasive Alien Species (Art. 20.14)</td>
<td></td>
<td></td>
<td>Coordination with Committee on Sanitary and Phytosanitary Measures (Art. 7.5)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low Emissions and Resilient Economy (Art. 20.15)</td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marine Fisheries (Art. 20.16)</td>
<td></td>
<td></td>
<td>Each Party seeks to operate a fisheries management system (Art. 20.16.3); enforcement of conservation and management measures; no granting or maintaining of certain subsidies and refraining from introducing new or extending or enhancing existing ones 163 See also discussion in the main text.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservation of wild fauna and flora (Art. 20.17)</td>
<td>Yes</td>
<td></td>
<td>Exchange of information and experience; joint activities on conservation issues; implement CITES resolutions; take appropriate measures to protect and conserve at risk wild fauna and flora; maintain or strengthen government capacity and institutional framework; cooperation and consultation with non-government entities; measures to combat and prevent illegal trade; law enforcement networks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental goods and services (Art. 20.18)</td>
<td></td>
<td></td>
<td>Environment Committee to consider issues and address potential barriers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

163 Per Articles 20.16.5 – 20.16.7, these subsidies include certain subsidies that are within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement (“SCM Agreement”) that are specific within the meaning of Article 2 of the SCM Agreement.
DOMESTIC LEGAL AND ADMINISTRATIVE REQUIREMENTS FOR COMPLIANCE

For Parties to the TPP, especially developing countries whose implementation capacity can be strengthened, it would be pertinent to understand how the terms of the Environment Chapter must be converted into domestic legal and administrative rules and procedures to implement and comply with the Environment Chapter.

Certain requirements that pertain to the Parties’ domestic environmental administrative system are clearly delineated in the Environment Chapter: Article 20.7 captures the procedural requirements, including judicial, quasi-judicial or administrative procedures and proceedings for the enforcement of the environmental laws, as well as the relevant sanctions and remedies. Articles 20.8 and 20.9 provide the relevant requirements for public participation and public submissions and Article 20.19 specifies the requirements pertaining to the operation of the Environment Committee, including the need for Parties to designate a contact point to facilitate communication between the Parties in the implementation of the Environment Chapter.

Although the same procedures and rules in the Environment Chapter apply to all parties, their impacts and the necessary responses from each Party could vary greatly because of their different domestic conditions. Accordingly, the Environment Chapter provides much flexibility and autonomy in domestic implementation. First, the Chapter recognizes “the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.” Further, each “Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws a Party is in compliance with . . . if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.” The sovereign rights of Parties to legislate and their discretions in enforcement and allocation of resources provide much flexibility in the ways that Parties meet the requirements under the Environment Chapter of TPP and, as a result, making compliance a highly autonomous exercise. The flexibility and autonomy are further enhanced because many of the clauses of the Environment Chapter are aspirational, which, in practical terms, means that Parties enjoy much freedom in setting the level and pace in meeting these aspirational objectives.

Even with such flexibility and autonomy, the Parties should nonetheless expect to modify or establish their domestic environmental legislations and institutions, although the extent of such an exercise would depend heavily on the existing conditions in each country. It would, for example, depend on whether the existing domestic environmental system is easily compatible with the Environment Chapter, whether certain requirements of the Environment Chapter are already mandated, and whether the environment systems and the administrators have experience implementing similar procedures and requirements. For instance, public disclosure and participation are already existing features in many environmental systems and adding similar features under the Environment Chapter may not entail adopting administrative systems and/or procedures that have not been used or tested in the country.

In any case, even if the Parties already have some level of familiarity with the mechanisms and requirements under the Environment Chapter, compliance with the Environment Chapter will still take careful planning, allocation of resources (human and fiscal), and suitable legal and administrative actions and arrangements.

CONCLUSION

The analysis above has highlighted the relevant mechanisms and requirements under the Environment Chapter of the TPP. This represents, however, only the first step in understanding the implications of the Environment Chapter. Further research and analysis on the Parties’ domestic environmental systems as well as their other international obligations would provide a more complete picture and roadmap for on-the-ground implementation.
INTRODUCTION & METHODOLOGY

The primary objective of this report is to provide a gap assessment and an in-depth comparison between the requirements on Intellectual Property laid out in Chapter 18 of the Trans-Pacific Partnership Agreement (TPP), those provided by Chapter 12 of the EU-Viet Nam Free Trade Agreement (EVFTA), on the one hand, and the current Vietnamese IP legislative framework on the other, with a view to identifying possible gaps, areas of discrepancy and to proposing suitable legislative and policy adjustments.

The secondary objective of this report is to attempt to identify possible institutional, economic and development consequences determined by Viet Nam’s adoption of an enhanced normative framework in line with the new requirements of the TPP and EVFTA.

Where relevant, reference is also made to the specific cases where the TPP and/or EVFTA go beyond the requirements provided by the TRIPS Agreement and other applicable international treaties, such as the Paris Convention, the Berne Convention, the Rome Convention, the WCT and the WPPT.

The methodological approach adopted by this report is as follows:

A. Legal review and analysis of all provisions of Chapter 18 of TPP (the IP chapter).
B. Legal review and analysis of all provisions of Chapter 12 of EVFTA (the IP chapter).
C. Reference to all relevant provisions of the TRIPS Agreement and other pertinent international treaties and conventions (see above).
D. Legal review and analysis of all relevant provisions of the main Vietnamese IP law (Law on Intellectual Property No 50/2005 QH12, as amended in 2009 by Order No 12/L-CTN).
E. Comparison of the results obtained under D with A + B, with specific reference to C, with a view to identifying possible normative gaps and discrepancies between the enhanced requirements of Chapter 18 of the TPP and Chapter 12 of EVFTA on the one hand, and the current Vietnamese IP legislative framework, based on the international conventions to which Viet Nam is currently party, on the other.
F. Identification of possible economic, institutional and development consequences for Viet Nam, following the adoption of a regulatory framework compliant with Chapter 18/TPP and Chapter 12/EVFTA.

SUMMARY OF MAIN FINDINGS

From the outset, it should be noted that both Chapter 18 of the TPP and Chapter 12 of EVFTA represent a substantial step towards a stronger protection for IPRs as compared to the existing international legal framework (and in particular with respect to the Berne and Paris Conventions, and the TRIPS Agreement). The TPP and EVFTA in fact have a significantly wider scope, prescribe higher levels of protection, and are far more precise and prescriptive, as they contain (particularly the TPP) not only several definitions, but also numerous footnotes that provide, also through examples, for the official interpretation of various concepts.

Overall, the main areas of IP for which the TPP and the EVFTA raise the standards of protection are listed below. Evidently, these are also the provisions of Chapter 18/TPP and Chapter 12/EVFTA that require amendments of the current Vietnamese regulatory and institutional framework (explained in greater level of detail in subsequent sections of this report):
1. **Membership in International Agreements:** the TPP (art. 18.7/TPP) and the EVFTA (art 4.1 and 7.1) requires Parties to join a number of international agreements. Viet Nam is already a member of most of these treaties, with the exception of the WCT, the WPPT, the Budapest treaty and the Geneva Act of the Hague Agreement. Joining these treaties may be challenging in the short term, especially considering the lengthy national legislative and ratification procedures. From a policy point of view, the ratification of the above treaties implies also the amendment of existing regulatory framework, the creation policies, and the organization and delivery of capacity building for all relevant stakeholders. In this regard, Viet Nam has negotiated some transitional periods (see Section on General Provisions below).

2. **Transparency:** the EVFTA but especially the TPP significantly increase the transparency requirements for all Parties (see art. 18.9/TPP and art 5.3/EVFTA). Parties are in fact required to make all relevant information relating to all IPRs available and searchable online. This obligation would represent a potential institutional challenge for Viet Nam, as currently only trademarks applications and registrations are available and searchable on the internet. Adopting a TPP-compliant IP regime would entail substantial financial resources to “automate” the registration and research systems also for all other IPRs. A similar provision exists, for trademarks only, in the EVFTA.

3. **Trademarks:** apart from the transparency requirements above, EVFTA obliges each Party to “simplify and develop its trademark registration procedures using the Trademark Law Treaty and the Singapore Treaty … as reference points”. This could represent a challenge for Viet Nam and for NOIP in particular, also considering that there are no transitional periods attached to this article. The main provisions of TPP section C that would require Viet Nam to amend its existing legal framework are those relating to the types of registrable signs (that should include sound and possibly smell marks) and to well-known marks (that should enjoy protection for dissimilar products even if not registered). More problematic might be the enhancement of a national system for the management of country-code top-level domain names (ccTLD) in line with the procedural requirement of the Uniform Domain-name Dispute-Resolution Policy.

4. **Geographical Indications:** while the current Vietnamese legal framework on GIs can be considered, overall, in line with the main requirements of Section E of Chapter 18/TPP (apart from some of the articles that would have to be amended in order to encompass the additional grounds for refusal, opposition or cancellation provided by the TPP), this is not be the case for the numerous new requirements introduced by art. 6 of EVFTA. Please refer to the Section on GIs for all the legislative and institutional changes that the new system would entail.

5. **Patents:** a number of provisions introduced by the TPP and the EVFTA in relation to patents would require policy and legislative amendments of the Vietnamese IP Law. In particular, the list of non-patentable subject matters would have to be modified and limited; the content of the pre-grant publication (foreseen by art. 110) would have to include a minimum set of information. Finally, the patent term of protection (provided by art. 93(2)) would have to be adjusted in case of “unreasonable delays” by the national patent offices in their grating processes, and/or in case of “unreasonable curtailment” due to delays in the marketing approval process.

6. **Data exclusivity** for agricultural chemical products: Chapter 28/TPP provides for a ten-year exclusive right for undisclosed test and other data concerning the safety and/or efficacy of agricultural chemical products when submitted for the purpose of obtaining marketing approval. The data exclusivity period provided by the EVFTA amounts to five years. Data exclusivity is above and beyond the requirements of the TRIPS Agreement. However, it is not new to Viet Nam whose art. 128 of the Vietnamese IP Law provides for a five-year exclusivity period. In other words, Viet Nam is already in compliance with the requirements of EVFTA but not with those of the TPP and therefore art. 128 above should be amended.
7. **Data exclusivity for pharmaceutical products**: Similar considerations apply to the data exclusivity for pharmaceutical products. Chapter 28/TPP provides for a five-year exclusive right for undisclosed test and other data concerning the safety and/or efficacy of new pharmaceutical products when submitted for the purpose of obtaining marketing approval. This term is reduced to three years for new clinical information relating to a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration; and increased to eight years in the case of new biologics. Art. 128 of the Vietnamese IP law would therefore have to be modified accordingly, as it currently provides only for a five-year exclusivity period for all types of pharmaceutical products. See Section on Data Exclusivity for all legislative, policy, institutional and economic implications.

8. **Copyright and related rights**: the most significant changes that Viet Nam would have to implement relate to the duration of protection that from the current 50 years after the death of the author (as provided by art. 27(2)(b) as amended in 2009) it will have to be increased to 70 years, after the death of the author. In addition, systems for the protection of Technological Protection Measures (TPMs) and Rights Management Information (RMI) would have to be expanded improved.

9. **Enforcement**: most of the existing Vietnamese enforcement normative framework would have to be enhanced to incorporate the higher standards and the great level of details provided by Section I of Chapter 18 and Section C of Chapter 12. Numerous concepts and mechanisms would have to be introduced and regulated, such as: encrypted program-carrying satellite and cable signals and Government use of software; ex officio border measures; criminal procedures for violations of trade secrets and trademarks, etc. please refer to the Section on Enforcement for details of all components that need to be improved and amended in order to comply with the enhanced requirements of TPP and EVFTA.

10. **Internet service providers**: Viet Nam would have to create a system whereby internet service providers are accountable for IP infringements perpetrated by third Parties through their sites.

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**Box 1: List of Main Vietnamese Legislative Provisions that would Require Amendment**

- **Trademarks**: art. 72(1), 74(2)(b) to introduce the vulgarization of marks, 74(2)(c), 129(1) (d), 105, 112 + provisions on enforcement
- **GIs**: art. 79 and 80 (others provisions will have to be created) + provisions on enforcement
- **Patents**: art. 59, 60(b), 93(2), 125(2)(a), 102, + provisions on enforcement
- **Data Protection/Exclusivity**: art. 128(2), create provision on patent linkages + provisions on enforcement
- **Copyright and Related Rights**: art. 2, 3(1)(2)(3)(4), 20, 25, 30, 31, 198(1)(a) + provisions on RMI and enforcement

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**GENERAL PROVISIONS**

**section a/tpp; section a/evfta**

These sections contain a number of fundamental articles and principles, most of which do not represent a major problem for Viet Nam, and would not necessitate major amendments in existing laws to ensure compliance. However, a few provisions would require careful consideration and adequate preparation, in addition to legislative and policy amendments.
- **Objectives, principles and rationale:** Articles 18.2, 18.3 and 18.4/TPP set out the objectives, the principles and the rationale of Chapter 18. Similar provisions can be found in art. 1 and 2 of EVFTA. These provisions stress the importance of a balanced approach among the exclusive rights of IPRs holders, the needs of users, and the expectations of competitors. The wording of art. 18.2 is almost identical to the text of art. 7 of the TRIPS Agreement. None of these provisions are contrary to the current Vietnamese normative framework (art. 7 and 8 in particular). However, in the context of legislative revision, the content of Articles 18.2, 18.3 and 18.4 in particular could be used to enrich the current wording of art. 7 and 8 of the Vietnamese IP law.

- **Standards of protection:** Article 18.5/TPP states that each Party is required to give effect to the provisions of Chapter 18. Exactly like the TRIPS Agreement, it also indicates that Parties may provide for higher standards of protection, and are free to select the methods with which they will operationalize the provisions of this Chapter. A similar provision can be found in art. 6.2(2)/EVFTA, but only referring to GIs.

- **Public health:** Art. 18.6 of the TPP provides for an important exception to the exclusive nature of IPRs in certain cases where Parties adopt measures to protect public health. This article reaffirms the Parties’ commitment to the Declaration on TRIPS and Public Health and states that Chapter 18 does not and should not prevent Parties from taking measures to protect public health, and “the effective utilization of the TRIPS/health solution”. The EVFTA contain a similar provision in art. 8.2. These articles are in line with art. 31 of the TRIPS Agreement, and with articles 146 and 147 on Compulsory Licensing of the Vietnamese IP Law.

- **International Agreements:** Art. 18.7/TPP lists the international treaties and conventions of which each Party must be a member, or to which each Party must adhere before the entry into force of the TPP in its respective territory. In this context, Viet Nam disposes of three years to join the WCT and the WPPT (see art.18.83(4)(f)(i) and (ii)), and two years to accedes to the Budapest treaty. Similarly, art. 4.1/EVFTA requires Viet Nam to become member of the WTC and WPPT, again within three years from the date in which the FTA comes into force. Finally, art 7.1/EVFTA provides for the obligation to access to the Geneva Act of the Hague Agreement, within a period of two year (it should be noted that the accession to the Hague Agreement is not compulsory under the TPP, art. 18.56). These provisions represent a potential challenge for Viet Nam in view of the lengthy legislative and ratification procedures. From a policy point of view, the ratification of the above treaties implies also the amendment of existing regulatory framework, the creation policies, and the organization and delivery of capacity building for all relevant stakeholders. It would therefore be advisable to commence the process as early as possible.

- **National Treatment:** Art. 18.8/TPP does not contain any binding provision that would be in conflict with the existing Vietnamese normative framework. Interestingly, art X (not yet assigned) of the EVFTA refers to the MFN treatment.

- **Transparency:** some of the transparency requirements set out in art. 18.9 of the TPP (e.g.: publish on the internet all registered and applied for trademarks, GIs, patents, industrial designs and plant varieties) would represent a potential institutional challenge for Viet Nam, as at the moment only trademark applications and registrations are available and searchable on the internet (though not on the web site of the National Office for IP, NOIP, but on “TMView”). Adopting a TPP-compliant IP regime would entail substantial financial and technical resources to “automate” the registration and research systems also for all other IPRs, with significant impact on the institutional framework. A similar provision exists, for trademarks only, in the EVFTA (see art 5.3). It seems that at the moment IPRs cannot be registered online.
- **Non-retroactive effect of TPP/Chapter 18**: Art. 18.10 does not contain any provision in conflict with the existing Vietnamese normative framework, or that would entail institutional or development challenges.

- **Exhaustion of IPRs**: in line with the provision of art 6 of TRIPS, both the TPP (art. 18.11) and the EVFTA (art. 3) recognize that Parties are and remain free to determine whether they will adopt a national or international IPRs exhaustion approach. These provisions would not therefore pose problems for Viet Nam, that in art. 125(2)(b) embraced the principle of international exhaustion of IPRs.

**COOPERATION**

section b/tpp; sub-section 4.C/evfta

This section does not contain binding provisions in conflict with the current Vietnamese legal and institutional framework. Most of the articles in fact provide for “best endeavor” and “recognize the importance”-types of obligations.

From the Vietnamese point of view, it may be disappointing that the TPP does not contain any binding provision relating to the protection of traditional knowledge (TK). Art. 18.16 simply provides that Parties “recognize the relevance” of IP systems to protect traditional knowledge and limits its scope to TK associated with genetic resources (leaving outside other forms of traditional knowledge, such as folklore and cultural heritage, often closely linked to international trade).

Similarly, art. 30 of EVFTA lists the areas in which the Parties agree to cooperate, including the exchange of information and best practices, capacity building, etc. However, art. 6.10 and 6.11 go one step further and establish a governance mechanism to ensure the full implementation of Chapter 12/EVFTA. The Parties have agreed to establish a [Joint Committee] and a “Working Group on IPRs, including GIs”, whose functions and functioning are set out in art. 6.11.

**TRADEMARKS**

Section c/tpp; art. 5/Evfta

This section contains numerous obligations that are above and beyond the level and scope of protection mandated by the TRIPS Agreement, and will require some level of legislative amendment and institutional upgrading. However, most of these obligations (with few possible exceptions) would not pose significant compliance challenges to Viet Nam, whose trademarks regime, both institutionally and legislatively, seems quite advanced and in line with most international best practices.

- **Types of registrable signs**: currently Viet Nam, in compliance with art. 15 of TRIPS, only protects visually perceptible signs (see art 72(1) of the Vietnamese IP Law). Art. 18.18 of TPP, on the other hand, provides that Parties cannot refuse a mark only because it consists of a sound, and they shall make best efforts to protect scent marks. In other words, Chapter 18 requires that sound marks must be registrable, while efforts should be made to register also smell marks. Art. 18.83(4)(f)(iv) of Section K of TPP grants Viet Nam a period of two years from the adoption of this obligation and to establish a system to register sound marks (no mention is made of scent marks, as they are not compulsory). This obligation would imply a possible amendment of art. 72(1) of the Vietnamese Law and a minor adjustment of the registration mechanisms. These changes would not entail significant institutional problems or development consequences for Viet Nam.

- **Collective and certification marks**: Viet Nam is in compliance with the requirement of art. 18.19 of TPP. Collective and certification marks are in fact duly protected by art. 4(17) and (18) and by art. 87(3) and (4).

- **Reversal of burden of proof**: in line with art. 16.1 of TRIPS, art. 18.20 of TPP and art. 5.2(a) of EVFTA provide that in case of use of identical marks for identical goods and/or
services by two different undertakings, it will be up to the defendant (and not to the plaintiff in accordance with ordinary procedural rules) to provide evidence to prove that there is no likelihood of confusion. The Vietnamese Trademark Law is currently already in compliance with this reversal of the burden of the proof, as provided by art. 129(1)(a).

- **Exceptions:** Art. 18.21 provides for the possibility to establish limited exceptions to trademark rights “such as fair use of descriptive terms”. The use of the expression “such as …” implies that the indication provided by this article is not exhaustive. Similar considerations are applicable to EVFTA whose art. 5.5 establishes that Parties shall recognize the fair use of descriptive terms as limited exception, and may provide for other limited exceptions. This implies that art. 125(2)(h) of the Vietnamese law, which is broader in scope and more detailed, is in line with these provisions of TPP and EVFTA.

- **Well-known marks:** Art.18.22/TPP provides for a set of rules (see paragraphs 1 and 3 and relevant footnotes) to determine if a mark is well-known. Both the TPP (art. 18.22(3)) and the EVFTA (art. 5.4) make explicit reference to the WIPO Joint Recommendation on Well-Known marks. These provisions are not in conflict with the current legal framework and practice in Viet Nam, and in particular with art. 75. However, par. 2 of art. 18.22 of TPP introduces a significant increase in the protection for well-known marks (above and beyond what is prescribed by art. 6bis of the Paris Convention and art. 16.3 of TRIPS) by stipulating that also unregistered well-known marks enjoy automatic protection also for dissimilar goods and services, if the use of the second mark would indicate a connection with the goods/services of the owners of the well-known mark and provided that the interests of the owner of the well-known mark are likely to be damaged by such use. Viet Nam should amend the existing text of articles 74(2)(i), as it stipulates that only registered well-known marks enjoy protection also for dissimilar products and services. On the other hand, art. 129(1)(d) of the Vietnamese law qualifies as infringement of trademark rights the utilization of signs identical or similar to well-known marks for “any goods or services, including those unidentical with, dissimilar or unrelated to goods or services” covered by the well-known mark. This provision would seem to be already in line with the TPP, as it implies that well-known marks are protected also for dissimilar products and services even if not registered. In any event, we would advise to harmonize the provisions of art. articles 74(2)(i), and art. 129(1)(d) of the Vietnamese law with art. 18.22 of TPP. The development impact of this amendment would not entail significant risks or challenges for Viet Nam, apart from the necessity to train the relevant stakeholders (lawyers, judges and other enforcement agents) on the new legal regime for well-known marks, and the theoretical possibility that in future the owners of well-known marks may not renew their registrations in Viet Nam, as automatically protected also for dissimilar goods and services. More explanations may be provided upon request.

- **Procedures, Electronic systems and Classification:** art. 18.23, 18.24 and 18.25 of TPP provide a number of requirements for the processing of trademark applications and registrations, an obligation to establish electronic filing and research systems and to adopt the Nice Agreement for the International Classification of Goods and Services. Similar provisions are contained in art. 5.1 and 5.3 of EVFTA. However, art. 5.1 goes one step further and obliges Viet Nam to "simplify and develop its trademark registration procedures using the Trademark Law Treaty and the Singapore Treaty … as reference points". This could represent a challenge for Viet Nam and for NOIP in particular, also considering that there are no transitional periods attached to this article, and at the moment trademarks cannot be registered online. Art. 5.3 of EVFTA establishes that Parties have to provide for the possibility to oppose trademark applications. It should be noted that Viet Nam does not provide for the possibility of filing a formal opposition against the registration of a mark. However, art. 112 of the Vietnamese law sets out a procedure whereby third Parties may file observations against the granting of a trademark from the moment in which the application is published in the Gazette. It would have to be ascertain if this simplified system may be considered compatible or not with the EVFTA's requirement of a full-fledged opposition procedure.
- The provisions of art. 18.26 (term of protection,) and of art. 18.27 (licenses,). see art. 93(6), are in line with art. 93(6) and art. 141-144 of the Vietnamese IP law.

- **Revocation of the mark:** art. 5.6/EVFTA provides for the revocation of the mark if it was not used for a continuous period of five years. Art 95(d) of the Vietnamese IP law is in line with this obligation.

- **“Vulgarization” of the mark:** art. 5.6/EVFTA provides for the revocation of the mark if, because of the acts or inactivity of the proprietor, it has become the common name in trade for a product or service. The Vietnamese law does not seem to contain a similar provision that would therefore have to be created.

- **Domain names:** Art. 18.28 of TPP provides for the obligation for Parties to establish a national system for the management of country-code top-level domain names (ccTLD) that should include a disputes settlement mechanism in line with the procedural requirements of the Uniform Domain-name Dispute-Resolution Policy. It also requires countries to create reliable and accurate databases, available on the internet, to facilitate public access to the relevant information on existing ccTLD. In Vietnam, the system is operated by the Viet Nam Internet Network Information Center (VNNIC), the administrative agency responsible for Internet affairs under the Ministry of Information and Communications. VNNIC acts as the National Internet Registry in Vietnam and manages several aspects of Internet operations, including the allocation of IP addresses and AS numbers. From a preliminary analysis of its web site, it would seem that a data bank of domain names is available on internet. On the other hand, the dispute resolution policy available online (http://www.vnnic.vn/en/dispute-resolution-policy?lang=en) may need to be upgraded to comply with the UDRP requirements.

### COUNTRY NAMES

**Section d/tpp**

The current text of art. 73(1), (2) and (5) of the Vietnamese IP Law are in line with the obligation provided by art. 18.29 of Chapter 18 of TPP, and art. 6ter of the Paris Convention. It implies that this requirement would not represent a challenge for Viet Nam. It should be noted, however, that art.18.29 refers only to goods, and not to services.

### GEOGRAPHICAL INDICATIONS

**Section e/tpp; art. 6/Evfta**

Contrary to most of the other areas of IP, the issue of Geographical Indications (GIs) is treated in a very different manner by the TPP and by the EVFTA. This corresponds to a very diverse approach and positions towards GIs adopted by the EU, which is the main promter of GIs, and by the USA, Canada and Australia, which have been traditionally less supportive to a stronger protection for GIs.

Chapter 18 of TPP does not increase the type and level of protection afforded to Geographical Indications, as compared to the TRIPS Agreement. It actually emphasizes that GIs may be protected either through a *sui generis* protection, or through trademarks or other legal means (art. 18.30). Viet Nam opted for the first approach and articles 79 to 83, art. 88, art. 93(7), art. 106, etc. of its IP law specifically deal with the protection of Geographical Indications as such. This part of the law is mostly in line with international best practices and in compliance with the TRIPS Agreement. Therefore, most of the provisions of the TPP/Section E (e.g.: art. 18.31, 18.33, 18.35, etc.) do not pose challenges for Viet Nam as they don’t enhance the existing level of protection, apart from some of the articles that would have to be amended in order to encompass the additional grounds for refusal, opposition or cancellation provided by the TPP to protect earlier marks.

It is interesting to note that the Lisbon Agreement for the international protection of Appellations of Origin is not among the treaties and conventions that Parties have to ratify before joining the TPP (see art. 18.7).
On the other hand, the scope and level of details of art. 6 of EVFTA would require a number of legislative and institutional amendments for Viet Nam. By way of example, Art. 6(3) and 6(4) establish a list of GIs, contained in Annex GI-I, Part A and B, that Parties have to recognize and protect. This list can be amended in due course by adding GIs (following a non-objection procedure) or removing GIs (as they cease to be protected in the country of origin). The content of art. 6.5(1) and (4) is based on art. 22 and 23 of TRIPS and therefore is already incorporated in the Vietnamese law (see art. 79 and 80). However, paragraphs (2) and (3) create a new system that regulates the use of homonymous GIs and names. Such a system does not currently exist in the Vietnamese law and it would have to be created. Similar considerations apply to the content of art. 6.5(5).

Art.6.5(a) provides a number of new exceptions relating to specific EU GIs listed in Annex GI-I. In particular, Vietnamese good faith users that utilized signs identical to the above GIs may continue use them in Viet Nam under certain conditions. Also in this case, the system will have to be created. In addition, persons’ names corresponding to GIs may be used in the course of trade unless they mislead the public.

Contrary to art. 18.32 of TPP that provides numerous instances where GIs may be cancelled if in conflict with trademarks, art.6.7 of EVFTA regulates the relationship between trademarks and GIs simply by indicating that the owners of trademarks filed or registered before the entry into force of the TPP Agreement in relation to a particular GI may continue the use of such mark.

Art. 6.8 of EVFTA requires Parties to ensure the enforcement of GIs protection, possibly through administrative actions, against any person manufacturing, preparing, packaging, labelling, selling or importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.

See also the specific governance and cooperation mechanisms established by art. 6.10 and 6.11 (as described above).

PATENTS AND UNDISCLOSED TEST OR OTHER DATA (INTRODUCTION)

Section f/tpp; art. 8 & 9 Evfta

Section F of TPP, including the three subsections, together with the corresponding provisions in the EVFTA (art. 8 and 9) represent one of the most sensitive parts of these two free trade agreements for Viet Nam, from a legislative, institutional, economic and development point of view. In other words, a number of the new requirements introduced by the TPP and by the EVFTA go beyond the TRIPS requirements and imply the need for amendments of the relevant parts of the Vietnamese IP law, and in particular the provisions relating to patents and trade secrets. Finally, some new provisions might have a direct or indirect impact on selected Vietnamese economic sectors, such as the pharmaceutical, agricultural and agribusiness sectors (see below).

PATENTS

Section f, subsection a/tpp; art 8/evfta

The following provisions may require some legislative amendment and institutional changes.

- **Patentable subject matter**: paragraph 3 of TPP art. 18.37 overall follows the approach laid down by articles 27.2 and 27.3 of TRIPS. Art. 59 of the Vietnamese IP Law, in line with TRIPS, provides for a wider list of subject matters for which patents may not be granted, as compared to art. 18.37. This implies that art. 59 might have to be amended and the list of non-patentable subject matters reduced accordingly, maintaining only the content of art. 59(6) and (7).

- The second paragraph of this article represents a significant turning point in the international debate regarding the patentability of new uses of known products, new methods and processes of using known products. This provision clearly states that Parties must recognize as patentable at least one of the above subject matters, if they comply with the three legal characteristics for the validity of a patent (novelty, inventive step and industrial applicability). While no legislative amendments would be required for Viet Nam, the relevant domestic stakeholders should not only...
have to be trained, but also made aware of possible consequences in terms of access to selected patented products and processes.

- The notions and interpretation of “novelty”, “industrial applicability” and “inventive step” provided by footnote 30 of art. 18.37 of TPP are in line with art. 60, 61 and 62 of the Vietnamese IP law.

- **Grace Period**: Art. 18.38/TPP introduces for all countries the 12-month grace period during which the inventor may disclose its invention to the public without destroying its own novelty, provided that it applies for patent protection within 12 months from the first disclosure. This provision would represent a challenge to Viet Nam, which does not provide for such 12-month grace period. It would be advisable to amend art. 60 (novelty), paragraph (b) that already provides that the novelty is not forfeited if the invention is published in the form of a scientific presentation by the person having the right to register it and if the right holders files the application within six months from this occurrence. Viet Nam will have to carefully assess the policy implications of the adoption of the 12-month grace period, which in practice extends the protection of patents of one addition year. This is clearly welcome to inventors and investors as it could contribute to promoting R&D and innovation. On the other hand, not only it makes patented products more expensive for a longer period, but it also certainly presents some issues in terms of legal “certainty” (more information is available upon request).

- **Exceptions**: the text of art. 18.40/TPP is identical to the wording of art. 30 of TRIPS. Art. 125(2)(a) of the Vietnamese IP Law lists some specific exceptions to patents rights, such as personal use, non-commercial use, use for the purpose of evaluation, research (the so-called “research exception”), teaching, testing, trial production of information collection. It might be advisable to amend this article by adding the content of art. 18.40.

- **Compulsory Licenses**: art. 18.41 does not alter the compulsory licensing regime established by art. 31 of TRIPS, and therefore it does not require legislative changes in relation to articles 146 and 147 on Compulsory Licensing of the Vietnamese IP Law. Also art. 8.2 of EVFTA reiterates the importance of the Doha Declaration and the obligation of the Parties to respect the WTO General Council Decision of August 30, 2003.

- **Amendments, corrections and observations**: the registration procedure outlined in art. 108 and 109 of the Vietnamese IP Law is in line with the requirements of art. 18.43 of Chapter 18/TPP (see in particular, art. 109(3)(d)).

- **Publication of patents**: Art. 18.44/TPP requires Parties to publish patent applications 18 months from the filing date or priority date (i.e.: before the patent is granted), and to provide mechanisms for patent applicants to request an early publication of their inventions. The Vietnamese IP Law currently complies with these requirements. Art. 110(2) stipulates the publication of patents in the 19th month from the filing of priority date, and provides for the possibility for the applicant to request an earlier publication of the application. In addition, art. 18.45 sets out the minimum type of information that should be made available to the public through the publication of patents (applied for and granted). The Vietnamese IP law does not list the type of information to be included in the publication, and it would have to be verified if the current practice complies or not with the enhanced requirements of the TPP.

- Simplification and development of patent registration procedures: art. 8.1 of the EVFTA requires Parties to improve their patent registration process by “using the Patent Law Treaty … as reference points”. This could represent a challenge for Viet Nam and for NOIP in particular, also considering that there are no transitional periods attached to this article, and at the moment patents cannot be registered online.

- **Patent Term Adjustment**: Art. 18.46/TPP represents one of the most significant developments as compared to the current requirements under the TRIPS Agreement. Paragraph 3 of this article requires Parties to provide for means to adjust the term of patent protection in case of “unreasonable delays” by the national patent offices in their grating processes. Paragraph 4, together with footnote
38, furnishes a definition of “unreasonable delays”\textsuperscript{175}. The Vietnamese Patent Law (art. 93(2)) does not contain such a mechanism, and therefore it would have to be created. The economic and development consequences of these provisions are evident: on the one hand, inventors would have a further incentive to develop new products/processes, as they would enjoy a longer period of protection. On the other, patented products may remain more expensive for a longer period, as their falling into the public domain would be postponed. However, we believe that the provision of art. 18.46 of TPP would not be frequently applied in Viet Nam where the delivery of public services in the field of IP (including services relating to patents processing) is strictly regulated by art. 119(1) and (2)(a), as amended in 2009. This article (as amended) provides for a time-limit of 18 months to examine the patent application from the publication date, or the date of request for substantive examination if filed after the publication. In addition, Viet Nam has negotiated a transitional period of three years from the entry into force of the TPP in its territory to comply with this new obligation (see art.18.83(4)(f)(v)). This transitional period is extended to five years in case of patents relating to agro-chemical and pharmaceutical products.

UNDISCLOSED TEST OR OTHER DATA: MEASURES RELATING TO AGRICULTURAL CHEMICAL PRODUCTS
Section f, subsection b/tpp; art. 9 EvFTA

Art. 18.47 of TPP goes beyond the scope of TRIPS and, in practice, establishes a new type of intellectual property right: a ten-year exclusive right for undisclosed test and other data concerning the safety and/or efficacy of agricultural chemical products, when submitted for the purpose of obtaining a marketing or sanitary approval. A similar provision exists also in the EVFTA, where art. 9(1)(B) establishes that this exclusive period must be of at least five years. It is interesting to note that this type of exclusive right already exists in the Vietnamese legislative framework. Art. 128(2) provides for an exclusive right of five years for this kind of undisclosed test and data. Therefore, Viet Nam would have to simply amend this article to increase the duration of data exclusivity from five to ten years in order to comply with the TPP requirements (considering that it already fulfills its obligations under the EVFTA). In this context, Viet Nam has successfully negotiated a transitional period of five years from the entry into force of the TPP in its territory to comply with this new obligation (see art.18.83(4)(f)(vi)).

The potential impact of this provision on the Vietnamese domestic agricultural and agri-business sector is evident: while on the one hand, an increased data exclusivity period would certainly act as incentive for further R&D in the agri-business field, as well as for foreign investors in this sector, on the other hand, some chemical products linked to agriculture will remain more expensive or less accessible for a longer period, even in the absence of a patent. For this purpose, we would advise the Government of Viet Nam to insert into its national IP law a provision based on the wording of TPP art. 18.47(3) and its footnote, whereby a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party concerned.

More information and explanations are available upon request.

UNDISCLOSED TEST OR OTHER DATA: MEASURES RELATING TO PHARMACEUTICAL PRODUCTS
Section f, subsection c/tpp; art. 9 EvFTA

The provisions relating to the protection of pharmaceutical products are probably the most controversial and sensitive of the two free trade agreements. The following paragraphs attempt to identify and describe the main features introduced in this regard by the TPP and by EVFTA.

\textsuperscript{175} It should be noted that art. 8.3 of EVFTA which provides for the extension of the patent term of protection in case of "unreasonable delays" in the granting of the first marketing authorization, may be better placed under art 9, rather than art. 8, as it does not refer to delays in the patent granting procedures by national IP offices, but to delays attributable to the national institution in charge of granting marketing authorizations on the basis of clinical tests and undisclosed information.
Patent Term Adjustment: in line with art. 18.46 of Chapter 18, art. 18.48/TPP requires Parties to “make available an adjustment of patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process”. No definition of “unreasonable curtailment” is provided. On the other hand, Art. 8.3 of EVFTA contains a similar provision requiring the extension of the patent term of protection in case of “unreasonable delays” in the granting procedure of the first marketing authorization. In this case, footnote 23 defines the notion of “unreasonable delay” as a delay in the first response to the applicant of more than 24 months from the date of filing of the application. Art. 8.3 quantifies also the “compensation” in terms of time that should be recognized to the patent owner: two or five years (and more in particular, in the case of a delay of more than five years, the compensation will amount to the difference between the date of granting and the date of applying for the authorization, minus five years\textsuperscript{176}).

The Vietnamese Patent Law (art. 93(2)) does not contain possibility to extend the patent term of protection, and therefore it would have to be created, with the consequences outlined above. In this regard, it should be noted that the time limits provided by art. 119 only refer the service delivery duration relating to the granting and processing of IP rights (patents, trademarks, etc.), and not also to the duration of the procedure to obtain marketing approval. However, from a preliminary desk review, it would seem that the Food and Drug Administration of Viet Nam operates in an efficient and timely manner. In any event, Viet Nam has negotiated a transitional period of five years from the entry into force of the TPP in its territory to comply with this new obligation (see art.18.83(4)(f)(viii)).

In this context, it is interesting to note that while the EVFTA provides for an extension of patent protection in case of delays in the procedure to grant marketing approval, the TPP protects patent applicants and owners both against delays in the patenting process (at the national IP office) and in the procedure to grant marketing approval, carried out in the case of Viet Nam by the Food and Drug Administration. As a result, the overall term of patents protection could be significantly increased. In terms of consequences of the extension of patent protection term, please refer to the above Section on agro-chemical products, with the additional consideration that, in this case, the human life could be at stake. More information is available upon request.

Data exclusivity: in line with art. 18.47 of TPP and art. 9 of EVFTA, art. 18.50 and 18.52 of TPP go beyond the scope of TRIPS and, in practice, establish a new type of intellectual property right that protects pharmaceutical products, in addition to patents, and independently of patents. This exclusive right lasts:

i. Five years from the first marketing or sanitary approval for undisclosed test and other data concerning the safety and/or efficacy of new pharmaceutical products (as defined in art. 18.53/TPP).

ii. Three years in the case of new clinical information relating to a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration.

iii. Eight years from the first marketing or sanitary approval in the case of undisclosed test and other data concerning the safety and/or efficacy of new biologics (i.e.: a product that is or contains a protein produced using biotechnological processes for use in human beings for the prevention or cure of a disease). In alternative, Parties are given the option to limit the data exclusivity period to five years. However, this period would have to be accompanied by other regulations and market measures to ensure a comparable period of protection against generic entry into the market. See art. 18.52 for more details.

Parties are free to grant longer periods of protection to each category above, and this is the case in numerous developed countries. By way of example, in the US the data protection period for biologics amounts to 12 years. This is arguably the main reason why the US pharmaceutical companies complain about the outcome of the TPP.

\textsuperscript{176} It is challenging to fully understand the content of this provision as the reference to footnote 15 is incorrect.
As in the case of agro-chemical products, this type of exclusive right already partially exists in the Vietnamese IP legislative framework. Art. 128(2) provides for a five-year exclusivity for the data and clinical tests submitted to obtain the marketing approval of pharmaceutical products. However, this provision would have to be amended to take into consideration the three categories of pharmaceuticals and corresponding exclusivity periods.

Considering that the EVFTA does not provide for the shorter three-year exclusivity period for new clinical information relating to a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration, it would seem logical that Viet Nam could only comply with the obligations laid out by the two FTAs by providing a five-year data exclusivity also for this kind of undisclosed information.

**Patent Linkage:** Art. 18.51 of TPP requires Parties to establish the so-called “Patent Linkage” system. This system is designed to further strengthen the protection accorded to pharmaceutical products, in parallel to the patent protection, after the expiry of the data exclusivity period. The Patent Linkage system is based on the US Hatch-Waxman Act and it requires that, if a generic producer, after the expiration of the data exclusivity period, wishes to enter a given market where an original comparable product is still protected by a patent, it has the obligation to inform the patent holder and solve any potential dispute relating to the possible infringement of the patent by the generic product. Under the Hatch-Waxman Act, if the patent owner alleges that its patent is being infringed by the generic, the US FDA will order an automatic stay of 30 months on the generic entry into the relevant market. Only following a court ruling declaring that the infringement is not taking place, will the generic producer be entitled to enter the market in question. A similar but less detailed system exists under the USA Biologics Price Competition and Information Act for biologics. Also in this case, the generic producer wishing to enter a market has to notify the patent holder and solve all possible disputes before it can actually place its generic products on the market. Japan, Canada and Singapore possess a similar system. Art. 18.51 of TPP requires Parties to establish a simplified “Patent Linkage” system, whereby the patent holder is notified of the intention of the generic producer to enter the market where its patent is protected, and procedures exist for the expeditious resolution of patent disputes. Viet Nam currently does not possess a comparable Patent Linkage system and it would have to create it. In this context, Viet Nam has negotiated a transitional period of three years from the entry into force of the TPP in its territory to establish its own Patent Linkage system (see art.18.83(4)(f)(viii)).

In addition, it should be noted that, as provided by art. 18.54, the durations set out by art. 18.47 (for chemical agricultural products), 18.50 (for pharmaceutical products) and art. 18.52 (for biologics) are not altered or shortened in case patent protection terminates (e.g.: the patent is abandoned or cancelled) before its expiry. In this context, it should also be borne in mind that, contrary to patents, this new IP right (data exclusivity) is not subject to compulsory licensing, in case of national health-related emergency.

Art.18.83(4)(f)(xxiii) and (xxvi) of Section K provides that Viet Nam disposes of a transitional period of ten years from the entry into force of the TPP in its territory to comply with the new obligations to modify its data exclusivity regime, as set out by art. 18.50 and 18.52. This transitional period might be further extended in accordance with the mechanism described in the footnote of this article.

Other provisions that relate to the protection of pharmaceutical and agrochemical products are contained in Section I/TPP and Section C/EVFTA (see later) relating to enforcement of IPRs. In this regard, it is worth noting that the TPP requires criminal measures for the misappropriation of trade secrets (i.e.: data protection and data exclusivity). In addition, it provides for civil, administrative, criminal and border measures for trademark infringement. Similarly, the 12-month grace period (described above) during which inventors can disclose the results of their research without forfeiting the novelty of their invention, would represent a valuable tool for pharmaceutical companies to prolong by one year the protection of their patented pharmaceutical products.
The Vietnamese Government would have to carefully assess the impact of this provision not only on its existing pharmaceutical sector, but also on the overall accessibility and affordability of pharmaceutical products and their generic versions. More explanations are contained in the Section “Conclusions and Recommendations”. More information is available upon request.

The graph below illustrates the various mechanisms set out by the EVFTA, and especially by the TPP, to strengthen the protection of pharmaceutical products.

INDUSTRIAL DESIGNS
Section g/tpp; art. 7 Evfta

As in the case of GIs, also the issue of industrial designs is covered in a very different manner by the TPP and by the EVFTA. While the former only has two short articles in this regard (one of which provides for a non-binding obligation), the latter provides a very detailed and extensive set of rules that may require legislative and institutional changes for Viet Nam.

As far as the TPP is concerned, the only substantive issue that the Vietnamese Government should bear in mind is that art. 18.55 provides that industrial design protection is available for designs embodied “in a part of an article”. This provision, which seems to imply that spare parts are therefore protectable (to be double-checked), is in conflict with the current wording of art. 64(3) of the Vietnamese IP Law, and with art. 7.2(2) of EVFTA, that provides that spare parts are protectable only if they remain visible during normal use, and only if the visible features comply with the requirements of validity for industrial designs. This apparent discrepancy between the TPP and EVFTA requirements may represent a challenge for Viet Nam.

In addition, art. 18.56 of TPP requires Parties to “give due consideration” to the accession to the 1999 Geneva Act of The Hague Agreement. On the contrary, art. 7.1 of EVFTA makes the accession to The Hague Agreement compulsory for all Parties (with a transitional period of two years). Viet Nam is not yet party to this Agreement. However, like all ASEAN countries, has started discussions that should lead to the accession to this treaty in the near future.

Art. 7.2 of EVFTA stipulates that designs are protected if 1) independently created, 2) new, and/or 3) original. Art. 63 of the Vietnamese IP law lists the following legal characteristics of industrial designs: 1) new, 2) creative, and 3) being susceptible of industrial application. It would have to be established if the notions of “independently created” and of “creative” are to be considered as equivalent. Should this be
the case, the Vietnamese IP law may not have to be amended in this regard. However, from a preliminary analysis, it might be argued that the two concepts are not equivalent and therefore the Vietnamese IP law (art. 63) might have to be modified.

Art. 7.3(4) lists the exclusive rights attached to industrial design protection. This list seems to correspond to the content of Art. 124(2) of the Vietnamese law, which therefore would not have to be amended.

COPYRIGHT AND RELATED RIGHTS
Section h/tpp; art. 4/Evfta

With a few exceptions, most of the provisions relating to copyright and related rights may not pose significant challenges for Viet Nam. However, some of the following provisions of the Vietnamese IP law are not in line with the enhanced requirements of Chapter 18 of TPP and 12 of EVFTA in relation to copyright and related rights:

- **Definitions:** Art. 18.57 of TPP provides for a wide list of definitions. These definitions are more numerous and often more precise as compared to those provided by art. 4 (items (7) to (11)) of the Vietnamese law. By way of example, the definition of “broadcasting” in art. 18.57 would require a minor amendment of the corresponding definition contained in art. 4(11) of the Vietnamese law, to include transmission of encrypted signals. Similarly, the definitions of “communication to the public” and “performers” in the TPP should be introduced in the Vietnamese IP law.

- **Fixation:** footnote 63 of art. 18.58/TPP leaves Parties free to determine whether copyright and related rights protection is dependent on the fixation of the work in a tangible/material support or not. Viet Nam, like all civil law countries, does not require fixation and as such, it does not contravene the requirements of Chapter 18.

- **Right of communication to the public and distribution:** The Vietnamese IP law is in line with these provisions of TPP. Art. 20(e) is broad enough to encompass the requirements of art. 18.59 of TPP, and art. 20(d) specifically mentions the right of distribution.

- **Hierarchy:** art. 18.61 of TPP establishes that if an authorization is needed both from the author of a work embodied in a phonogram and from the producer of said phonogram or from the performer, the interested person must obtain all the relevant authorizations from the various stakeholders. Nothing in the text of the Vietnamese law contravenes this requirement. However, it would be important to ensure that this approach is followed in practice through specific capacity building initiatives.

- **Term of protection of copyright and related rights:** article 18.63 of TPP represents one of the most significant changes as compared to the TRIPS Agreement, which provides for a minimum protection of 50 years after the death of the author (or 50 years from the end of the calendar year of authorized publication, in case of moral persons). This approach is also adopted by art. 4.7 of the EVFTA and by the Vietnamese IP law, in art. 27(b). On the other hand, art. 18.63 of TPP increases the duration of protection of copyright and related rights to 70 years after the death of the author (or 70 years from the end of the calendar year of authorized publication, in case of moral persons). This provision would evidently have an impact on the price of items protected by copyright and related rights, as they would fall in the public domain 20 years later. In this context, Viet Nam has negotiated a transitional period of five years from the entry into force of the TPP in its territory to comply with this new obligation (see art.18.83(4)(f)(ix)).

- **Exclusive rights:** while art. 20 of the Vietnamese IP law contains a broad list of economic rights linked to copyright, we would advise amending this article to take into account and incorporate

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177 In this context, it should be noted that the only change introduced by the EVFTA as compared to the TRIPS Agreement is the duration of exclusivity for related rights of broadcasting organizations which is increased from a minimum of 20 years (see art. 14(5) of TRIPS) to 50 years (see art. 4.7(5) of EVFTA). In addition, a specific duration for related rights on the first fixation of films is established (50 years from the fixation or publication).
the greater level of detail provided by art. 18.58, 18.58 and 18.60 of TPP and, especially, of art 4.2 to 4.5 of the EVFTA.

- **Limitations and exceptions**: art. 18.65 of TPP and art. 4.10 of EVFTA confirm the approach towards limitations and exceptions as provided by art. 13 of TRIPS and by the Berne Convention. This implies that art. 25 of the Vietnamese IP Law (as amended in 2009) may not have to be amended to comply with chapter 18 of TPP and chapter 12 of EVFTA. Similar considerations are applicable to art. 18.66. However, in the context of legislative amendment, it might be advisable to add some of the “legitimate purposes” listed in art. 18.65 as well as the specific exception outlined in art. 4.10(2) in the text of art. 25.

- **Technological Protection Measures (TPMs)**: the five paragraphs of art. 18.68 of TPP and art. 4.8 of EVFTA introduce a very detailed system, including criminal measures, for the protection TPMs (see also art. 18.74 par. 17). Also considering that Viet Nam is not member to the WTC and the WPPT, currently such a system only partially exists in Viet Nam. This implies that art. 198(1)(a) would have to be amended and expanded. The development of such a system would not have negative consequences on the economic development of Viet Nam. In addition, under the TPP (but not under the EVFTA), Viet Nam has a transitional period of three years from the entry into force of the TPP in its territory to comply with this obligation (see art.18.83(4)(f)(xix)).

- **Rights Management Information (RMI)**: similar considerations are applicable to RMI, as art. 18.69 of Chapter 18 and art. 4.9 of Chapter 12 require Parties to put in place systems to prevent the removal and alteration of Rights Management Information (see also art. 18.74 par. 17). These include information relating to the author, to the terms and conditions to use the work, etc., as affixed on the work (whether electronically or physically). Also in this case, the existing legal system set up by art. 198(1)(a) of the Vietnamese IP Law would have to be enhanced and expanded to take into account the greater level of details set out by art 18.69 and art. 4.9. This would not bear negative consequences on the social and economic development of Viet Nam. In addition, under the TPP (but not under the EVFTA), Viet Nam has a transitional period of three years from the entry into force of the TPP in its territory to comply with this obligation (see art.18.83(4)(f)(xx)).

- **Collective Management**: art.18.70 only requires Parties to recognize the importance of collective management societies for copyright and related rights. As provided by art. 56, Viet Nam already possess this type of institution to collect and distribute royalties. From a preliminary research on the internet, it seems that a collective management society named “Viet Nam Center for Protection of Music Copyright” (VCPMC) exists and operates in Viet Nam (http://vcpmc.org/vcpmc/?ngon_ngu=en). Art. 4.12 of EVFTA provides an obligation for the Parties to endeavor to promote dialogue and cooperation between their respective collective management organizations.

**ENFORCEMENT**

**Section i/tpp; section c/evfta**

Both these sections are extremely extensive in scope: they build upon Part III (art. 41 to 61) of the TRIPS Agreement by encompassing all its substantive provisions, but they expand the level of protection in selected instances. Considering that, at present, the enforcement of IPRs is probably the weakest component of the Vietnamese IP eco-system, the rapid adoption of provisions in line with Section I of Chapter 18 and of Section C of EVFTA may entail significant institutional and financial efforts for the Vietnamese Government. The following provisions may not only require legislative changes, but also possibly pose implementation challenges to Viet Nam (particularly in terms of capacity of the relevant stakeholders), at least in the short term:

- **General obligations**: Art. 18.71 of TPP and art. 12 of EVFTA describe the general characteristics that a national enforcement system should have (e.g.: expeditious, constitute a deterrent, fair and equitable, not costly, etc.). These criteria are based on art. 41 of TRIPS and therefore were taken into consideration when the Vietnamese IP Law was drafted. However,
it can be argued that, at present, the enforcement system put in place by the Government of Viet Nam, like 90% of the countries around the world, does not meet all these criteria. By way of example, the duration of court proceedings cannot be qualified as “expeditious”; some of the fines and sanctions provided are not sufficiently high to "constitute a deterrent". Significant efforts are being made to enhance capacity of all relevant stakeholders (including the various enforcement agents), and the situation is expected to improve in the future. In order to comply with art. 18.71/TPP and 12/EVFTA, Viet Nam would have to amend numerous provisions relating to the enforcement of IPRs (including in its 24/2004/QH11 of June 15, 2004 Civil Procedure Code) and continue its efforts to enhance the capacity of the relevant stakeholders, particularly in the judicial sector. Finally, this provision of the TPP expressly states that the various enforcement measures are also available for trademarks and copyright infringements in the digital environment.

- Presumptions: art. 18.72/TPP establishes a system of presumptions, most of which are de facto applied in Viet Nam. Also art. 23/EVFTA establishes a presumption of authorship or ownership.

- Publication: Art. 18.73/TPP requires Parties to publish final judicial decisions and information on their efforts to provide effective enforcement of IPRs. Neither of these requirements is currently met in full by Viet Nam, that would have to put a system in place and identify financial resources to cover the corresponding costs. From a legislative point of view, this result could be achieved by amending art. 99 of the Vietnamese law, that provides for the publication of the final (administrative) decisions relating to the validity of titles. In this context, it should also be noted that art. 22 of EVFTA provides that judges must have the right to order the publishing at the expenses of the infringer, of appropriate information relating to the final judicial decision.

- Civil and Administrative measures and remedies: Viet Nam complies with most of the requirements established by art. 18.74/TPP. However, the article includes some obligations that would require amending the IP law. By way of example:
  - Art. 204(1) and (2) and art. 205 of the Vietnamese law encompass most but not all the criteria provided by paragraphs from 3 to 9 of art. 18.74 and art. 20 of EVFTA, that set out the criteria to assess and quantify damages adequate to compensate the right holder. Both these new FTAs, by asking Parties to base the quantification of damages on the actual economic suffered the IP owner, attempts to address the problem of the often too lenient civil penalties (see art. 205(1)(c) and (2)) and art. 214(4) as amended in 2009). Interestingly, art. 20 of EVFTA provides also that in specific cases, judges may order statutory damages (in case the infringer is in good faith), or quantify damages in the form of a lump sum on the basis of the amount of royalties that the infringer would have had to pay if he had negotiated a licensing agreement.
  - Paragraph 10 of TPP and art. 21 of EVFTA require Parties to establish a system whereby judges can order the losing party to pay for attorney’s fees and other expenses borne by the plaintiff. Art. 205(3) of the Vietnamese law already provides that courts can compel infringers to pay “reasonable costs for hiring attorneys”. Art. 17 of EVFTA provides also that judges can order that the cost to implement some of remedies (at least in the case of the destruction of infringing items and of the machineries and tools to manufacture them) be borne by the infringer.
  - Paragraph 12/TPP indicates that the simple removal of a mark unlawfully affixed is not sufficient to permit the release of the goods into the channels of commerce.
  - Paragraph 13 of TPP and art. 16 of EVFTA require Parties to establish a system whereby judges can require infringers to furnish names of persons involved and information relating to the infringement.
  - See above in relation to the new requirements relating to the enforcement aspects of Technological Protection Measures (TPMs) and Rights Management Information (RMI).

- Provisional measures: in line with of art. 18.75 of TPP and art. 14 of EVFTA, art. 206 to 210 of the Vietnamese IP law provide for the possibility for judges to issue provisional measures
(including seizures), also inaudita altera parte. These articles may not need to be profoundly amended. However, art. 14(1)(a)(ii) sets out that in the case of an alleged infringement carried out on a commercial scale, the judges may order the precautionary seizure or blocking of movable and immovable property of the alleged infringer, including the blocking of his bank account and other assets. In this context, Viet Nam will have to amend art. 207.

- **Border measures:** border and customs measures are provided by the Vietnamese IP law (art. 216 to 219 of the IP Law). However, the text of the Vietnamese law will have to be amended to accommodate the significantly greater level of detail provided by the nine paragraphs of art. 18.76. In particular, contrary to what established by TRIPS (art. 51), par. 5 of art. 18.76 requires the application of ex officio border measures also to goods in transit (that were not mentioned by TRIPS) and to goods destined for export (for which the application of border measures was facultative under TRIPS). Viet Nam has a transitional period of three and two years respectively to comply with these enhanced requirements of TPP (see art. 18.83(4) (f)(x) and (xi)). The EVFTA adds some specific provisions relating to border measures that should be reflected in the Vietnamese legislation. In particular, art. 26 requires parties to set up a system whereby IP holders can record their IPRs directly with the custom authorities. Art. 27 obliges custom authorities to be “active in targeting and identifying shipments … on the basis of risk analysis techniques. Finally, art. 28 identifies areas of cooperation in the custom enforcement sector and establishes a [Special Committee on Customs]. These provisions will have to be reflected in the Vietnamese IP law.

- **Criminal measures:** Art. 18.77/TPP creates a very detailed mechanism for judges to order criminal measures and provide criminal sanctions. The system includes, in addition to what provided by art. 61 of TRIPS, specific measures for cinematographic works (par. 4), detailed criteria to assess penalties and damages (par. 6), more precise norms and conditions to seize and forfeit infringing goods and equipment (par. 6 and 7), the extension of the criminal liability to importation and exportation of infringing goods (par. 2), to third Parties aiding and abetting the infringement (par. 5), and to individuals or companies that import and/or use infringing labels or packaging (par. 3). It also offers a broader notion of acts carried out “on a commercial scale” (par. 1). Article 212 of the Vietnamese law providing for criminal measures would need to be amended and expanded to incorporate the above provisions. In addition, domestic judges and other enforcement officials would have to be trained on how to apply the enhanced criminal measures and mechanisms. More in particular, some of the provisions that Viet Nam will have to adopt to comply with the TPP are the following:
  - Provide the possibility for ex officio criminal enforcement for all IPRs (in this context, Viet Nam has a transitional period of three years to comply with the enhanced requirements of TPP (see art. 18.83(4)(f)(xiii)).
  - Provide for the criminal procedures and sanctions for pirated goods (in this context, Viet Nam has a transitional period of three years - see art. 18.83(4)(f)(xiv).
  - Provide for the criminal procedures and sanctions for exported goods (in this context, Viet Nam has a transitional period of three years - see art. 18.83(4)(f)(xvii).
  - Provide criminal measures for the violations of trade secrets and of encrypted program-carrying satellite and cable signals (see below).

- **Trade Secrets:** Paragraph 1 of art. 18.78/TPP follows the approach and wording of art. 39 of TRIPS. On the other hand, the second paragraph significantly expands the scope of protection of trade secrets by providing specific cases where criminal measures must be available at national level (particularly in cases of violations of trade secrets contained in a computer system and/or carried out via a computer system). The Vietnamese IP law covers trade secrets in articles 84, 85, 124(4), 125(3), 127(d) and, as mentioned before, art. 128. However, these articles will have to be modified in order to accommodate the new requirements provided by par. 2 of art. 18.78. In this context, Viet Nam has a transitional period of three years to comply with the enhanced requirements of TPP (see art. 18.83(4)(f)(xvii)).
- **Encrypted program-carrying satellite and cable signals**: art. 18.79/TPP provides for criminal (and civil) measures for violations linked to the decoding, use and distribution of encrypted program-carrying satellite and cable signals without the authorization of the right holder/s. At the moment encrypted program-carrying satellite and cable signals are only mentioned in art. 3 of the Vietnamese IP law as subject matter falling within the notion of IP. Specific provisions would have to be drafted and included in the IP law. Viet Nam has a transitional period of three years to comply with the enhanced requirements of TPP in this regard and provide for criminal measures also for the violation of encrypted Program-Carrying Satellite and Cable signals (see art. 18.83(4)(f)(xv)).

- **Government use of software**: the second paragraph of art. 18.80/TPP requires Parties to adopt laws, regulations, policies and guidelines to provide that central government agencies can only use non-infringing computer software protected by copyright. From a preliminary desk review, it seems that Viet Nam has established a policy entitled “Free and Open Source Software in Viet Nam” aiming at promoting the use of software copyrighted under the open-source modality. Should this not be the case, Viet Nam would have to be established it. Alternatively, the above provisions may be included by amending the provisions of the IP law in the parts referring to copyright. It is interesting to note that this provision does not seem to apply to regional and provincial public institutions.

- **Codes of Conduct**: art. 29 of EVFTA requires Parties to encourage the development of codes of conduct by professional associations and organizations to ensure adequate respect and enforcement of IPRs.

**INTERNET SERVICE PROVIDERS**

*Section j/tpp; art. Xx [tbd]/evfta*

This section J of TPP contains only two articles that require Parties to create a system whereby internet service providers may be accountable for IP infringements perpetrated by third Parties through their sites. Similar provisions are contained in art. XX (to be determined) of the EVFTA. These may include the obligation to expeditiously remove or disable access to material residing on their sites upon becoming aware of the infringement (art.18.82 par. 3), and to provide information on the alleged infringer (par. 7). Parties are requested to provide incentives for internet service providers to cooperate with copyright owners (art. 18.82(1)(a)) and limitations to the possibility to preclude monetary relief against internet providers (art. 18.82(1)(b)). The mere transmission of information, caching and hosting should be considered as illegal, unless carried out within the scope of the exceptions laid down by this article.

The Vietnamese IP law does not seem to regulate this issue, and it would have to be created. This new system may have an impact on the overall accessibility of information, as internet providers may be obliged to become much stricter on the type, quality and quantity of information and documents that are displayed through their services. See also Annex 18-E that provide for transitional measures which however are not applicable to Viet Nam. More explanations are available upon request.
FINAL PROVISIONS
Section k/tpp
This section contains a number of limitations and transitional periods applicable to certain member Parties to comply with specific sections or individual provisions of Chapter 18. The provisions relating to Viet Nam are in paragraph (f) of art. 18.83(4).

BOX 2: Summary of Main Compliance Challenges for the Vietnamese Government

- Accession to four international treaties
- Transparency and Automation requirements
- Marks:
  - More types of registrable signs
  - Enhanced protection for well-known marks
  - Improvement of registration system in line with TLT / Singapore treaty
  - Creation of system for "vulgarization" of marks
- Country-code top-level domain names (ccTLD) system
- GIs:
  - Add grounds to cancel GIs if prior marks
  - Enhanced system provided by art. 6/EVFTA
- Patents:
  - Reduced list of non-patentable subject matters
  - Extension of patent protection if "unreasonable delays"
  - Extension of patent protection if unreasonable curtailment due to marketing approval process
  - Data exclusivity for agricultural chemical products (10 years)
  - Data exclusivity for pharmaceutical products (5, 3 or 8 years)
  - Patent linkage
  - Improvement of registration system in line with PLT
- Industrial Designs:
  - Review issue of protection of spare parts and legal characteristics of validity
  - Review issue of “creative” vs. “independently created”
- Copyright and Related Rights:
  - Increased duration of protection (70 years)
- Technological Protection Measures (TPMs)
- Rights Management Information (RMIs)
- Numerous enforcement procedures and their implementation
- Encrypted program-carrying satellite and cable signals
- Rules on Government use of software
- Liability for Internet service providers

CONCLUSIONS AND RECOMMENDATIONS
As mentioned in the introduction of this report, Chapter 18 of the TPP and Chapter 12 of EVFTA represent a substantial step towards a stronger protection for IPRs as compared to the existing international legal framework (and in particular with respect to the Berne and Paris Conventions, and the TRIPS Agreement). Not only is their scope larger, but they also prescribe higher levels of protection. The TPP in particular is also far more precise and prescriptive, as it provides for definitions, examples and official interpretations of various concepts.

Despite the fact that Viet Nam can legitimately claim quite an advanced IP system (especially in terms of granting of IPRs), significant work needs to be commenced as soon as possible to comply with the often stringent deadlines linked to the implementation of the TPP and the EVFTA. This includes:

1. the amendment of the existing regulatory framework, including the drafting and adoption of new laws and regulations;
2. the adoption of the new, streamlined and automated processes;
3. the strengthening of relevant institutions and stakeholders (by enhancing their human and institutional capacity, and by creating new instruments and tools, etc.), and
4. the awareness raising initiatives aiming at familiarizing the public with the new systems.

In order to ensure the successful implementation of Chapter 18/TPP and Chapter 122/EVFTA, it is recommended that an IP Working Group be established as early as possible with a view to setting priorities in terms of the four areas identified above. The prioritized task-based workplan may support the Working Group in this endeavor (see Annex I).

From a policy point of view, the Government of Viet Nam will need to make a number important strategic choices. These are linked to the fact that the new FTAs require the adoption of a normative and institutional framework suitable for countries with vibrant and innovative economies, where significant funds are available for domestic R&D, and with flourishing high value-added industries (as opposed to basic manufacturing or assembling), in innovation-rich sectors such as IT, entertainment, design and fashion, pharmaceutical and health, agro-business, renewable energies, etc. In other words, only countries with these characteristics will be able to fully reap the benefits of the enhanced IP regime brought about by the TPP and by the EVFTA. The Government of Viet Nam will have therefore to decide the sectors that it wants to promote, those in which it wishes to invest by raising R&D and by facilitating and protecting innovation.

By way of example, the pharmaceutical industry in Viet Nam is in the early stage of its growth. However, while the recent crisis has undermined almost all economic sectors, the pharmaceutical industry in Viet Nam has recorded an annual growth rate of 18.8% during the period of 2009-2013. The potential of this sector is very significant, particularly if the Government decides to adopt policies to promote R&D and to facilitate protection of its outcome at domestic and international level. Should this be the case, and Vietnamese companies start producing innovating pharmaceutical products and protecting them through patents and data exclusivity, the adoption of a TPP/EVFTA-compliant legislative and institutional framework will certainly favour the development of this sector.

On the other hand, if the Vietnamese pharmaceutical sector remains essentially based on the production of generics, or should the Government of Viet Nam opt to promote the use of generic drugs, then the new and enhanced IP regime would not support this policy decision as it would undoubtedly delay the entry of generics on the market, and render the business of generic production more difficult and certainly less successful. Their costs and therefore their price would become more expensive, and this would entail negative consequences in terms of accessibility and affordability of drugs for ordinary people.

In order to promote its pharmaceutical sector, the Government of Viet Nam may wish to tackle a number of policy and strategic issues, such as:

- counterfeit drugs are still pervasive in Viet Nam due to relatively lenient control policy and enforcement of IPRs;
- local companies in the industry have limited access to capital, and remain small in size;
- few local companies engage in R&D;
- most pharmaceutical companies are not fully aware of how to effectively exploit IPRs to generate wealth;
- Viet Nam pharmaceutical import is still considerable (more than 60% of total domestic pharmaceutical demand), and pharmaceutical input materials still have to be imported from abroad, greatly limiting the potential of the Vietnamese pharmaceutical industry.

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179 In this context, it is interesting to notice that Ministry of Health has been encouraging companies to borrow new funds with preferential interest rates for facilities development.
Similar considerations are applicable to the agricultural sector. Considering the significance of agriculture for Vietnam, currently, economic development depends on both quantity and quality to meet the demand of the national and global market. Rise, coffee, cotton, peanuts, rubber, sugar, and tea are among the most important agricultural products of Viet Nam. The recent liberalization of production in agriculture, especially rice production, helped Vietnam become one of the world leaders in rice production and export. In 2013, agriculture contributed around 18.4% of GDP of Vietnam, and its GDP’s growth rate for agriculture was 2.67%. Looking at the future, also in this case, the Government will have to adopt policies to further support innovation in the agri-business sector with a view to reaping the benefits of the enhanced IP protection provided by the adoption of a TPP and EVFTA-compliant regulatory framework. Should this not be the case, and innovation in the agricultural sector remains at the current level, Vietnamese people and domestic agricultural companies would only “pay the price” of the enhanced IP framework, in terms of higher costs of the necessary chemical products for their agricultural development.

Comparable analysis would have to be conducted for all other relevant sectors of innovations.

As indicated above, the adoption of a TPP/EVFTA-compliant regulatory and institutional framework would imply challenges and opportunities for Viet Nam. The Government could capitalize on the implementation of a regulatory framework that ensures higher levels of protection of IPRs, by “marketing” this factor as a tool to attract FDIs, predominantly in strategic sectors that the Government intends to target and promote (and in particular in innovative sectors). This could be achieved, inter alia, through promotional events, investors forums, media advertisement, etc.

While the key determinants in a decision to undertake an investment in a foreign country remain, in most cases, the market size, the labour costs and the availability of skilled workers, raw materials and good infrastructure, IP considerations increasingly play a significant role not only in the decision to invest (or not) in a given country, but also in any subsequent determination to remain in such a country or to move elsewhere. It is intuitive that multinational companies, particularly those operating in IP-intensive sectors (such as ITC, innovation, entertainment, pharmaceutical/chemical, etc.) would not feel comfortable to bring their valuable technologies into countries where IPRs are not adequately protected and enforced.

Literature demonstrates (see, by way of example, the 2013 study prepared by ERIA\textsuperscript{180} entitled “Reforming IP System for Promoting FDIs in ASEAN”) that EU and USA multinational companies consider IP as a crucial element before they take the final decision on where to invest. Asian companies, on the contrary, rarely place significant importance on IP considerations before investing. However, IP becomes a fundamental issue after commencing operations, once their products or services are copied and counterfeited. In these cases, the companies often resort to reshoring and move their investment to another country where their IPRs are better protected.

The above study also indicates the specific rights that are particularly relevant for the various types of industries and investors. In particular, sales-based companies are mainly concerned with trademarks protection and enforcement, while a technology-based companies are more interested in patents, trade secrets and know-how.

\textsuperscript{180} The Economic Research Institute for ASEAN and East Asia.
### Annex i: prioritized task-based workplan

<table>
<thead>
<tr>
<th>TOPIC</th>
<th>TASK/s</th>
<th>BEFORE ENTRY INTO FORCE</th>
<th>&gt; 1 and &lt; 3</th>
<th>&gt; 3 and &lt; 5</th>
<th>&gt; 5</th>
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<tbody>
<tr>
<td>Accession to four international treaties</td>
<td>Accession to WTC and WPPT</td>
<td>3 years</td>
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<tr>
<td></td>
<td>Accession to Budapest treaty</td>
<td>2 years</td>
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<td></td>
<td>Accession to The Hague Agreement</td>
<td>2 years</td>
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<tr>
<td></td>
<td>Organize and deliver capacity building to all relevant stakeholders on consequences of accession / use of above systems</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>Transparency</td>
<td>Publish all IPRs online</td>
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<td></td>
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<tr>
<td>Trademarks</td>
<td>Protect sound marks</td>
<td>2 years</td>
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<tr>
<td></td>
<td>Extend protection of well-known marks</td>
<td>X</td>
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<td></td>
<td>Improve registration procedure</td>
<td>X</td>
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<tr>
<td></td>
<td>Vulgarization of marks</td>
<td>X</td>
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<tr>
<td></td>
<td>Organize and deliver capacity building to all relevant stakeholders</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td></td>
<td>Possible creation of policies to support branding (particularly for SMEs)</td>
<td>X</td>
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<tr>
<td>CC-TLD</td>
<td>Enhance protection/UDRP</td>
<td>X</td>
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<tr>
<td>GIs</td>
<td>Amend grounds for cancelation v. earlier marks</td>
<td>X</td>
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<tr>
<td></td>
<td>Establish system as per art. 6 EVFT</td>
<td>X</td>
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<tr>
<td></td>
<td>Organize and deliver capacity building to all relevant stakeholders</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>PATENTS</td>
<td>Reduced list of non-patentable subject matters</td>
<td>X</td>
<td></td>
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<tr>
<td></td>
<td>Extension of protection if “unreasonable delays”</td>
<td>3 years</td>
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<tr>
<td></td>
<td>Extension of protection if unreasonable curtailment</td>
<td>5 years</td>
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<tr>
<td></td>
<td>Data excl. agricultural chemical products</td>
<td>5 years</td>
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<td></td>
<td>Data excl. pharma products</td>
<td>10 years</td>
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<tr>
<td></td>
<td>Create Patent linkage system</td>
<td>3 years</td>
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<td></td>
<td>Improvement of registration system</td>
<td>X</td>
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<tr>
<td></td>
<td>Possible creation of policies to support target sectors</td>
<td>X</td>
<td>X</td>
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<tr>
<td></td>
<td>Organize and deliver capacity building to all relevant stakeholders</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>INDUSTRIAL DESIGNS</td>
<td>Review protection of spare parts</td>
<td>X</td>
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<tr>
<td>COPYRIGHT AND RELATED RIGHTS</td>
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<tr>
<td>Review legal characteristics: “creative” v. “independently created”</td>
<td>X</td>
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<tr>
<td>Organize and deliver capacity building to all relevant stakeholders</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Possible creation of policies to support design and fashion sectors</td>
<td>X</td>
<td>X</td>
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<tr>
<td>COPYRIGHT AND RELATED RIGHTS</td>
<td>Revise definitions</td>
<td>X</td>
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<tr>
<td></td>
<td>Increase duration to 70 years</td>
<td>5 years</td>
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<td></td>
<td>Expand list of exclusive rights</td>
<td>X</td>
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<tr>
<td></td>
<td>Strengthen system of TMPs</td>
<td>3 years</td>
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<td></td>
<td>Create system for RMIs</td>
<td>3 years</td>
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<tr>
<td></td>
<td>Organize and deliver capacity building to all relevant stakeholders</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>ENFORCEMENT</td>
<td>Revise and amend Civil Procedure Code (possibly)</td>
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<td></td>
<td>Create a system to public IP judgements and information on IP enforcement efforts</td>
<td>X</td>
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<td></td>
<td>Modify criteria for quantification of damages</td>
<td>X</td>
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<td></td>
<td>Expand type of provisional measures</td>
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<td></td>
<td>Provide ex officio border measures for goods in transit</td>
<td>3 years</td>
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<tr>
<td></td>
<td>Provide ex officio border measures for goods for export</td>
<td>2 years</td>
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<td></td>
<td>Creation of a IP register at Border</td>
<td>X</td>
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<td></td>
<td>Capacity building on risk analysis techniques for custom officials</td>
<td>X</td>
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<td></td>
<td>Modify art. 61 on criminal measures (see page 21)</td>
<td>X</td>
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<tr>
<td></td>
<td>Provide criminal measures for pirated goods and create ex officio criminal measures for all IPRs</td>
<td>3 years</td>
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<td></td>
<td>Provide criminal measures for exported goods and for camcording</td>
<td>3 years</td>
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<td></td>
<td>Provide criminal measures for violation of trade secrets and encrypted program-carrying satellite and cable signals</td>
<td>3 years</td>
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<td></td>
<td>Adopt Government policies and laws on use of non-infringing software</td>
<td>X</td>
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<td></td>
<td>Drafting and adoption of codes of conduct</td>
<td>X</td>
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<td></td>
<td>Capacity building for all enforcement agents and awareness raising events for public</td>
<td>X</td>
<td>X</td>
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<tr>
<td>INTERNET SERVICE PROVIDERS</td>
<td>Create a system to establish their liability</td>
<td>3 years</td>
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<tr>
<td></td>
<td>Capacity building for all relevant stakeholders</td>
<td>X</td>
<td>X</td>
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</table>
The TPP chapter on dispute settlement includes provisions present in the WTO’s Dispute Settlement Understanding and the dispute settlement chapters of other prior bilateral and regional trade agreements such as the North America Free Trade Agreement (NAFTA). It also introduces some new provisions which aim to make it a faster and more transparent system. The provisions are more comprehensive than previous agreements, including labor and environment chapters that are subject to the dispute settlement mechanism. However, it excludes some important chapters of the TPP such as competitiveness and regulatory coherence.

**WHAT’S IN THE TPP?**

Chapter 28 provides a process for the settlement of disputes between governments arising under the TPP. The process begins with consultations between the parties. Should the consultations fail to resolve the dispute, a three-person panel will be established to resolve the matter. If the panel finds that the measure at hand is inconsistent with the agreement, that a party failed to carry out its obligations under the agreement, or that the measure causes nullification or impairment to the complaining party, the non-conformity, nullification, or impairment must be eliminated within a reasonable period of time. In the case the responding party refuses to comply, there are provisions for compensation, retaliation, or payment of a fine.

TPP negotiators aimed to achieve a dispute settlement system allowing for predictability and effectiveness. Understanding that when given a choice most parties take their disputes to the WTO rather than bilateral or regional trade tribunals, Article 28.4 gives parties choice of forum, but once that choice is made the parties cannot go to any other tribunal. Under Article 28.12, TPP panels must consider prior relevant WTO interpretations when assessing WTO-like provisions incorporated into the TPP.

**WHAT’S INCLUDED?**

The scope of Chapter 28 is limited to certain chapters of the TPP. Additionally, the provisions of chapter 28 are limited to disputes regarding the interpretation or application of the agreement, disputes regarding inconsistent measures, and disputes regarding the nullification or impairment of benefits under the agreement.

### Box 1: Matters subject to dispute resolution

- Chapter 2—National Treatment and Market Access
- Chapter 3—Rules of Origins and Origin Procedures
- Chapter 4—Textiles and Apparel
- Chapter 5—Customs Administration and Trade Facilitation
- Chapter 10—Cross Border Trade in Services
- Chapter 13—Telecommunications
- Chapter 15—Government Procurement
- Chapter 16—Competition Policy
- Chapter 17—State- Owned Enterprises
- Chapter 18—Intellectual Property
- Chapter 19—Labor
- Chapter 20—Environment

**Modifications**

The provisions of Chapter 28 are modified for certain matters:

- Chapter 7—Sanitary and Phytosanitary Measures: disputes must to go through the SPS Cooperative Technical Consultations (CTC) before the complaining party can begin Chapter 28 proceedings.
- Chapter 8—Technical Barriers to Trade: access denied to Chapter 28 proceedings regarding provisions of the WTO TBT Agreement incorporated into the TPP.
• Chapter 11—Financial Services: Chapter 9 on investor-state dispute settlement applies to disputes over investments. Disputes over noninvestment financial services can be heard under Chapter 28 with certain modifications to ensure that the panelists have expertise or experience in the subject matter. Also, if prudential exceptions under Article 11.11 are brought up by the responding party in an investment dispute and the two parties are unable to agree on the validity of the defense within 120 days, Chapter 28 procedures can be initiated by either party to make the determination.

• Chapter 14—Electronic Commerce: Malaysia and Vietnam obtained a two-year extension for the applicability of Chapter 28 to certain obligations. Additionally, Vietnam has a delay of three or more years for certain IP protection obligations.

• Chapter 26—Transparency and Anticorruption: issues regarding the application and enforcement of anticorruption law and transparency and fairness for pharmaceutical products and medical devices are not subject to dispute settlement under Chapter 28. Other matters are subject to Chapter 28 provided the measure is inconsistent with the agreement or of the responding party failed to carry out an obligation under the agreement. The participation of affected third parties is permitted in the consultation phase the presence of officials of the relevant anticorruption authorities is required.

Non-violation disputes

If a party believes that it is being deprived of benefits to which it is entitled under the Agreement as a result of another country’s measure, it can bring a non-violation claim in certain cases even if the measure is not inconsistent with the TPP. This applies for disputes under Chapter 2 on national treatment and market access, Chapter 3 on rules of origin procedures, Chapter 4 on textiles and apparel, Chapter 5 on customs and trade facilitation, Chapter 10 on cross-border trade in services, and Chapter 15 on government procurement. The parties are required to take into consideration the inclusion of chapter 18 on intellectual property to this provision after the end of the moratorium on non-violation complaints under the TRIPS Agreement.

WHAT’S NOT INCLUDED?

Although the TPP dispute settlement chapter is more comprehensive in some respects, it excludes some important issues, including some of the TPP’s innovative chapters.

<table>
<thead>
<tr>
<th>Box 2: Matters not subject to dispute resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Chapter 6—Trade remedies</td>
</tr>
<tr>
<td>• Chapter 9—Investment</td>
</tr>
<tr>
<td>• Chapter 12—Temporary entry for business persons</td>
</tr>
<tr>
<td>• Chapter 21—Cooperation and capacity building</td>
</tr>
<tr>
<td>• Chapter 22—Competitiveness and business facilitation</td>
</tr>
<tr>
<td>• Chapter 23—Development</td>
</tr>
<tr>
<td>• Chapter 24—Small and medium-sized enterprises</td>
</tr>
<tr>
<td>• Chapter 25—Regulatory Coherence</td>
</tr>
<tr>
<td>• The joint declaration on currency manipulation</td>
</tr>
<tr>
<td>• The Annexes to the TPP</td>
</tr>
<tr>
<td>• A number of related instruments</td>
</tr>
<tr>
<td>• Interpretations of New Zealand’s Treaty of Waitangi</td>
</tr>
</tbody>
</table>

WHAT IS NEW?

The TPP chapter on dispute settlement covers more issues than previous dispute settlement systems, including the environment, labor, cross-border data flows, and state-owned enterprises. As opposed to the WTO, which has a Dispute Settlement Body to ensure compliance, the TPP has no such political body. Instead, all issues regarding compliance should be settled among the Parties to the dispute. The Agreement’s panel appointment process seeks to ensure that responding parties cannot block the appointment of panelists.

Its compliance review mechanism aims to avoid sequencing issues where parties are already parties
to a dispute under another forum. Additionally, the Agreement introduces a choice of forum provision, but once the complaining party has made a selection, the dispute cannot be heard elsewhere. One main difference with the WTO's dispute settlement system is that the TPP does not provide for appeals which may drive parties to take their disputes to the WTO. Adding to the transparency of the agreement, all proceedings must be open to the public including submissions, hearings and final reports.

Similarly to the Korea-United States Free Trade Agreement, the Agreement provides a method of compliance through which the responding party can pay compensation to the complaining party for the trade benefits lost as a result of the violating measure. The amount of compensation is to be agreed between the parties. Also, it introduces a method of compliance through which violators can pay fines that will go towards a fund that promotes trade between the disputing parties. However, as with the WTO and NAFTA, the preferred method of compliance is through the removal or amendment of the violating measure. Retaliation is still available, where the complaining party can suspend benefits it provided to the responding party under the Agreement.

Table 1: Comparison of dispute settlement mechanisms in the TPP, WTO, and NAFTA

<table>
<thead>
<tr>
<th>Feature</th>
<th>TPP</th>
<th>WTO</th>
<th>NAFTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of panel members</td>
<td>3</td>
<td>3, unless the parties agree otherwise</td>
<td>5</td>
</tr>
<tr>
<td>Panel composition</td>
<td>Each party appoints 1 member and endeavors to agree on the appointment of the chair. The roster is used in where panelist are not nominated or the parties cannot agree on a chair</td>
<td>The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties shall not oppose nominations except for compelling reasons. If there is not agreement on the panelists, the Director General shall determine the composition of the panel</td>
<td>Panelists shall normally be selected from the roster</td>
</tr>
<tr>
<td>Limitations on composition</td>
<td>Cannot be a national of any of the disputing parties or a third party</td>
<td>Citizens of members who are parties or third party shall not serve on the panel, unless parties to the dispute agree otherwise</td>
<td>Party-appointed panelists chosen shall be citizens of the other party or parties</td>
</tr>
<tr>
<td>Voting</td>
<td>Ideally by consensus; if consensus cannot be reached, decisions are by majority vote</td>
<td>Not applicable</td>
<td>Not disclosed</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Disputes regarding the interpretation or application of the agreement; actual or proposed measure that is or would be inconsistent with the obligations of the agreement or failure of a party to carry out its obligations under the agreement; instances in which a party considers that a benefit it could reasonably have expected to accrue is being nullified or impaired</td>
<td>Situations in which a member considers that any benefits accruing to it are being impaired by measures taken by another member</td>
<td>Interpretation or application of the NAFTA instances in which a party considers that an actual or proposed measure of another party is or would be inconsistent with the obligations of the agreement. Disputes regarding any matter arising under both NAFTA and the GATS, any agreement negotiated thereunder, or any successor agreement may be settled in either forum at the discretion of the complaining party.</td>
</tr>
</tbody>
</table>
### Appeals

| None | To the Appellate Body. Appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel | None |

### Binding nature of results

| Binding on the parties | Adopted at the Dispute Settlement Body meeting by reverse consensus unless a party appeals. The Appellate Body reports adopted by reverse consensus are binding on the parties to the dispute | Upon receipt of the final report, parties must agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel |

### Applicable law

| The Agreement | WTO Agreement and other covered agreements | The Agreement, GATT, and related subsequent agreements |

### Choice of forum (if violation under other international trade agreement to which disputing parties are party)

| Complaining party may select the forum | WTO exclusive jurisdiction for alleged violations of WTO Agreement and other covered agreements | Discretion of the complaining party. If the third party requests or the dispute involves specified environmental agreements; SPS measures; or environmental, health, safety, or conservation standards, it must be resolved through the NAFTA dispute settlement mechanism |

### Confidentiality

| Open to the public, unless disputing parties agree otherwise | Panel deliberations shall be confidential; proceedings of the Appellate Body shall be confidential | Panel hearings, deliberations, initial reports, and all written submissions to an communications with parties shall be confidential |

**Based on: Peterson Institute TPP Impact Vol. 2**

### Time Frames

One main goal of the negotiators was to provide a quicker process than the previous ones. The process is meant to take, at most, 350 days in total. This process can take almost two years under the WTO. Even when responding parties spend the maximum amount of time allowed to implement the panel’s ruling (15 months), the process should take about 26-27 months. This is still quicker than the WTO suggestion of 25 months.

#### Table 2: Time required to settle disputes under the dispute settlement systems of the TPP and the WTO

<table>
<thead>
<tr>
<th>Procedural step</th>
<th>TPP Chapter 28</th>
<th>WTO’s Dispute Settlement Understanding</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial Dispute</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultations</td>
<td>60 days (30 for perishable goods)</td>
<td>60 days (20 for perishable goods)</td>
</tr>
<tr>
<td>Establishment of panel</td>
<td>60 days from request for consultations</td>
<td>Second meeting for DSB (usually no more than 50 days)</td>
</tr>
<tr>
<td>Request for appointment of panelist</td>
<td>20 days from establishment of panel</td>
<td>20 days from establishment of panel</td>
</tr>
</tbody>
</table>
Table 2: Time required to settle disputes under the dispute settlement systems of the TPP and the WTO

<table>
<thead>
<tr>
<th>Procedural step</th>
<th>TPP Chapter 28</th>
<th>WTO’s Dispute Settlement Understanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of panelists (or panel chair) if parties do not agree</td>
<td>20-65 days</td>
<td>10 days (director general appoints)</td>
</tr>
<tr>
<td>Panel Consideration and issuance of preliminary report</td>
<td>150-180 days (120-150 for perishable goods)</td>
<td>6-8 months</td>
</tr>
<tr>
<td>Issuance of final panel report</td>
<td>30 days to parties, 45 to public</td>
<td>3 weeks</td>
</tr>
<tr>
<td>Total time excluding appeal</td>
<td>350 days</td>
<td>12-15 months</td>
</tr>
<tr>
<td>Appeal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals report</td>
<td>Not applicable (no appeals process)</td>
<td>60-90 days</td>
</tr>
<tr>
<td>Adoption of final report</td>
<td>Not applicable</td>
<td>30 days</td>
</tr>
<tr>
<td>Total time including appeal</td>
<td>350 days</td>
<td>16-20 months</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arbitration over reasonable period of time</td>
<td>90 days from referral (60 days after final report)</td>
<td>90 days after adoption of report</td>
</tr>
<tr>
<td>Implementation</td>
<td>15 months maximum</td>
<td>8-15 months</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time between request for consultation and end of reasonable period of time for compliance</td>
<td>26-27 months</td>
<td>More than 35 months</td>
</tr>
</tbody>
</table>

Based on: Peterson Institute TPP Impact Vol. 2

IMPLICATIONS FOR VIETNAM

As a member of the TPP, Vietnam will have to make institutional and structural adjustments in order to comply with its obligations under the agreement. Transparency International gave Vietnam a score of 31 percent under its corruption perceptions index. The government will need to take measures to improve transparency and the rule of law. Specifically, Vietnam will need to implement new standards for labor and environment. Since the substance of the TPP includes de facto measures, the assessment of compliance should not be limited to actual laws and regulations, but it should include a review of administrative practice. The review and streamlining of regulatory measures and the establishment of a body of best practice for future regulations would not only ensure compliance with TPP disciplines but it would support a greater engagement in international trade in both goods and services. Additionally, in order to prepare for possible disputes under the Agreement, Vietnam should compile a roster of experts in the different obligations of the TPP, implement a program for capacity building for the government lawyers, and a program for technical assistance going forward.

On February 4, 2016, Vietnam and the United States signed a Plan for Enhancement of Trade and Labor. This consistency plan gives Vietnam five years to adjust its legal regime to the obligations under the Agreement. The government must reform its legal framework to allow members to organize into unions, allow protections against employment discrimination, and increase penalties for forced labor. After the five years pass, the United States can determine whether Vietnam has abided by the agreed terms of the plan. If the United States determines this is not the case, tariff phase outs can be suspended. Although the United States also has consistency plans with Malaysia and

181 https://www.transparency.org/country/#VNM
Brunei, this one does not require the United States to go through the dispute settlement mechanism. Vietnam has the recourse to Chapter 28 if the country believes that the United States’ determination that Vietnam has not complied with the plan is unfounded.

Certain related instruments under the TPP involve Vietnam. Some of these are subject to dispute settlement while some are not.

<table>
<thead>
<tr>
<th>Table 3: Vietnam’s related instruments</th>
<th>Subject to Dispute Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.—Vietnam letter exchange on the market access of distinctive products of U.S.</td>
<td>No</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchange on the market access of distinctive products of Vietnam</td>
<td>No</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchange on registered textile and apparel enterprises</td>
<td>Yes</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchanges on SPS measures related to catfish and offals</td>
<td>No</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchange on biologics (IP related)</td>
<td>Yes</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchange on geographical indications (IP related)</td>
<td>No</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchange on pharmaceutical distribution (services, financial services and e-commerce)</td>
<td>Yes</td>
</tr>
<tr>
<td>U.S.—Vietnam letter exchange on electronic payment services (services, financial services and e-commerce)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

EU-Vietnam FTA

The European Union and Vietnam recently concluded more than three years of negotiations for “the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country”183. The text of the agreement is currently under legal review and after being translated into the EU’s official languages and Vietnamese it will be presented for approval and ratification. The EVFTA contains a chapter setting the rules for the settlement of disputes. The EU claims that this system will be more efficient than the WTO’s.184 Article 4 provides an option for mediation for the resolution of disputes about the interpretation and implementation of the agreement. Chapter 15 on trade and sustainable development is only subject to dispute resolution or mediation under limited circumstances. The chapter on trade remedies is excluded from the mediation and dispute settlement provisions of the agreement. Investment claims are subject to a separate dispute mechanism, described in chapter 8 of the agreement.

184 Id.
1. Introduction

Regardless of whether trade promotes growth or vice versa, the link between them is undeniable. The rapid growth of East Asia through an export-led strategy bears testimony to this link. A widely held prescription for export promotion is trade liberalization through reduction of tariffs and other barriers. Again, East Asia's low average tariffs relative to other regions appears to support this strategy. However, this endorsement needs to be qualified. The earlier years of export promotion by both Japan and Korea were accompanied by high protection for exports. For these countries, export promotion was supported by strong proactive government policies that would not be permitted under WTO rules today. Similarly, China's export success has been allegedly built upon a deliberately suppressed exchange rate, with trade liberalization implemented only gradually.

Highlighting these departures from the standard prescription is not intended to stress that the alternatives are superior, but to show that there can be a strong proactive role for government in promoting exports that extends well beyond the reduction of tariffs. This role consists of creating an environment -- physically as well as regulatory -- in which exports are facilitated. This translates into creating and/or strengthening physical infrastructure as well as an institutional framework conducive to exports.

The importance of an enabling environment highlights a second, but less heralded, component of trade. Contrary to the assumption behind theories that trade is frictionless as it flows between nations or regions, costs are incurred in preparing goods for export. This points to the importance of trade facilitation, defined by the World Trade Organization (WTO) as “the simplification and harmonization of international trade procedures, including the activities (practices and formalities) involved in collecting, presenting, communicating and processing the data required for movement of goods in international trade” (ESCAP 2002). Broadly, this covers not only management and administrative procedures as goods move from shore to ship or vice versa (across the border) but also transportation, logistics, insurance and other financial services (behind the border).

Critical to trade facilitation is the role of domestic supply chains for goods produced for export. A well-functioning supply chain reduces facilitation cost while control of the chain contributes significantly to value addition of an export. The government has a role in ensuring that both benefits are reaped by the country, its firms and citizens. This role requires collaboration among all key stakeholders.

The need to deal with these issues provides the rationale for and forms the organizing themes of this report. Since these issues are closely related, a coherent trade policy that incorporates trade facilitation requires dealing with all these issues simultaneously.

This report explores the role of trade facilitation and logistics in driving export and ultimately national competitiveness. It posits that this area of trade consists of three interrelated pillars: (i) transport infrastructure and logistics services; (ii) regulatory procedures for exports and imports; and (iii) supply chain organization. Transport infrastructure and logistics services relate to the physical aspects of trade flows. Logistics services include a variety of services, the most important of which are transportation, storage and consolidation. Regulatory procedures are those that need to be complied with for movement of goods across borders. Supply chain organization involves the selection and sequencing of operational services for production and other export activities involved in the flow of goods from source to customer, including processing, assembly and customization.

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185 This report is a product of a project under Trust Fund TF097373 which was conceptualized in May 2010 to support activities that help fill the policy gap in trade facilitation and support the formulation of a national action plan for trade facilitation and competitiveness.
Behind these pillars is the institutional framework within which they function. This framework has three levels -- policies and strategies at the macro-level, the organizational and the legal framework for enabling trade at the mezzo-level, and economic activities structured along the three pillars at the lowest level. The strengths and weaknesses of this framework have a material bearing on how well these pillars function, as well as on the business environment in general. This discussion is supported by evidence from several industry case studies. Each of these industries has exhibited high historical growth and appears to be a candidate to drive future export growth.

It should be noted that the theme of this report is trade facilitation. Insofar as it affects value addition and competitiveness, the latter also need to be brought into the discussion. It is not intended that these latter two themes be considered equally important as trade facilitation, or that all aspects of importance of these themes need to be addressed.

This summary is organized into nine sections. After the introduction, Section 2 presents the conceptual framework for this study. The economic context under which trade facilitation is discussed is outlined in Section 3. It describes Vietnam’s evolving structure of trade and competitiveness. The country’s trade logistics is part of this structure and this is germane to understanding the key issues and solutions proposed. This is followed by discussion of the three pillars of trade facilitation in Sections 4 to 6 and then Section 7 presents the institutional framework underpinning these pillars. Section 8 then pulls together the diverse roles of government, such as setting policies, acting as regulator, and being the facilitator working in collaboration with key stakeholders. The conclusion, Section 9, suggests a set of recommendations.

2. The conceptual framework

The conceptual framework for this study uses the World Bank’s definition of trade facilitation. This includes both the hard and soft infrastructure needed to support trade but extends this definition to include the role of supply chains. These three “pillars” function within a multi-level institutional framework to reduce time and expense, improve reliability and capture higher value added for export activities -- all of which ultimately enhance the country’s trade competitiveness. This framework elaborates the export-led growth model highlighted in the Social and Economic Development Strategy 2011-2020 and the World Bank’s Vietnam Country Partnership Strategy 2012-2016.

This study assumes the World Bank’s view that trade facilitation includes not only factors such as reducing and abolishing tariffs and simplifying customs procedures, as well as regulations on origin and quality, but also factors such as enhancing the business environment, improving the quality of infrastructure, and increasing the transparency of the legal system. All these factors have an impact on the export capacity of a country by reducing the production cost of goods exported. Trade facilitation measures can be considered in two dimensions: (i) investment in “hard” infrastructure (including highways, railroads, ports, and information infrastructure) and (ii) investment in “soft” infrastructure (including transparency, customs efficiency, border management, business environment and other institutional reforms).186

This approach is relevant to Vietnam because (i) export-led growth remains one of the key directions in the Social and Economic Development Strategy 2011-2020; (ii) Vietnam consistently follows a policy of openness, joining in international economic organizations and signing Free Trade Agreements with many international trading partners; and (iii) while recently passing the threshold of becoming middle-income economy, Vietnam faces new challenges. The next section explains why, despite enjoying healthy growth, Vietnam’s export competitiveness will no longer be able to rely on existing levers, especially liberalization. Trade facilitation needs to become a more important policy to implement.

As Figure 1 shows, the three pillars collectively affect trade competitiveness. It also shows that, despite being referred to as “pillars,” these themes are closely related. Also, the structure of supply chains adds a new dimension to the World Bank’s definition of trade facilitation.

Figure 1 shows these pillars functioning within an institutional framework. This framework exists at the macro-, mezzo- and firm-level. Macro-level strategies need to frame the organizational structure

and rules at the mezzo-level. At the firm-level are the institutions that carry out the activities of trade facilitation.

Figure 1: Trade Competitiveness Three Pillars of Trade Logistics and Facilitation

![Diagram showing the three pillars of trade logistics and facilitation: Improved Regulatory Procedures for Trade, Improved Transport and Logistics Services, and Restructured Supply Chain Organization.]

Note: C/T/R: Cost/Time/Reliability
Source: Authors.

This framework shows the importance of including trade competitiveness in any discussion of trade facilitation. This study takes this approach and competitiveness is discussed in the context of trade facilitation only. The report therefore combines the key elements of the Trade and Transport Facilitation Assessment (TTFA) methodology developed by the World Bank, with the supply-side factors and business environment components of the Bank’s Trade Competitiveness Diagnostics (Reis and Farole, 2011) and the discussion of supporting industries in the Vietnam Competitiveness Report (Porter, 2010). Further, within the TTFA concept, the restructuring of supply chains is discussed in relation to trade facilitation. However, as will be shown, this has a much wider significance.

This framework also elaborates on the competitiveness pillar of the World Bank’s Country Partnership Strategy 2012-2016 (CPS) for Vietnam and articulates the key issues to be implemented to improve quality and efficiency of infrastructure services to capture value addition highlighted in the CPS.

3. Setting the competitive context: trade dynamics in Vietnam

Vietnam’s spectacular growth since Doi-Moi -- the 1986 reforms intended to create a market-socialist economy -- has resulted largely from economic liberalization, in which trade has played a vital role. Vietnam has become one of the most trade-oriented countries in the world. The rapid growth of exports in Vietnam was underpinned by the removal of trade barriers, both tariff and non-tariff, during the reform process. While this positive development is to be lauded, evidence is emerging that its continuation cannot be guaranteed. Existing drivers of export growth are mostly depleted and new proactive efforts to boost export competitiveness must now be established. With Vietnam becoming increasingly trade-dependent, trade facilitation has become a vital determinant of Vietnam’s export competitiveness. Indicators of trade facilitation, while mixed, do leave significant scope for improvement. These messages are conveyed through the statistical evidence of this section. They also provide the rationale for this study.

3.1. Trade Structure and Dynamics

Economic liberalization has led to the country’s international trade growing steadily each year over the past two decades. This growth was particularly rapid after 2003, although the global financial crisis of 2009 interrupted this advance briefly (Figure 2). Exports expanded at an annual rate of 17 percent from 2000 to 2010, but imports grew even faster, at an average rate of 18 percent. This growth has been driven mainly by the “push” effect as opposed to geographical and sectoral effects. The result has been a dramatic rise in Vietnam’s trade openness, typically measured by the ratio of the sum of exports and imports to the country’s GDP. At 147.5 percent of GDP (2010) this is third behind Singapore and Malaysia, but ahead of all other countries in Southeast Asia. Vietnam’s trade
openness has increased in contrast with negative trends faced by other economies in Southeast Asia but this needs to be balanced against its heightened vulnerability to external shocks.

Several milestones have marked this growth. The first is Vietnam’s participation in the ASEAN Free Trade Area (AFTA) on June 1, 1996, after the country’s admission as a member of the Association of Southeast Asian Nations (ASEAN) in July 1995. The second is the Bilateral Trade Agreement between Vietnam and the United States (US BTA), which became effective on December 10, 2001. The third is Vietnam’s accession to WTO membership on January 11, 2007.

**Figure 2: Growth of Vietnam's Trade, 1996-2011**


Trade growth has been accompanied by changes in trade structure. In terms of product groups, the export of primary commodities, including crude oil, although still accounting for a large share of exports, has declined over the past decade from 51.7 percent in 2000 to 30 percent in 2010. Manufactures, mostly low-and medium-tech products, have increased from 42.9 percent in 2000 to 59.8 percent over the same period. This is a reflection of the success achieved during Vietnam’s industrialization process. In terms of technology, Vietnam’s exports have been markedly low-tech. Indeed, the diminution of the primary products share has been largely compensated by low-tech manufactured goods exports and the share of medium and high-tech exports has not increased significantly.

Vietnam’s share of total exports of the world’s 20 most dynamic products (measured by highest import growth) has been insignificant, in terms of competitiveness. However, in 13 of these products, Vietnam’s growth rate of exports sometimes exceeds considerably the global export growth rates. This is one indication of growing competitiveness.

Another indication of increased competitiveness is the global market share of manufactures of different technological intensity in Vietnam’s total exports. Among Asian countries, Vietnam has a higher than average growth rate for hightech exports, second only to China, but did not gain in terms of market share and has a low value of per-capita high-tech exports. This also applies to Vietnam’s medium-tech exports. In the low-tech sector, Vietnam is performing relatively well, with a growth rate for exports higher than most other countries, as well as some gain in market share. Taken together, these figures show Vietnam to have comparative advantage in low-tech manufactures and resource-based and primary exports. This is consistent with Vietnam’s current growth model, which is based on extensive rather than intensive growth.

This positive view of trade is tempered by several challenges. First, Vietnam faces serious deficits in its trade with major partners (Figure 3). Until 2000, Vietnam’s trade had been relatively balanced, but since then, the balance of trade has been increasingly negative. The source of this imbalance varies between countries. Vietnam runs trade surpluses with the United States and the European Union, has a relatively balanced trade with Japan, but has significant deficits with China and the ASEAN countries.
Second, in terms of the composition of products, Vietnam’s exports have remained primarily low value goods. This structure of exports contrasts sharply to the performance of China, where the share of high-tech exports rose from 21 percent to 32 percent between 2000 and 2010.

**Figure 3 : Vietnam’s Trade Balances with Its Major Trading Partners, 1995-2010**


Third, Vietnam’s exports are relatively concentrated. The top ten exported categories -- textiles and garments, footwear, fishery products, crude oil, electronics and parts, wooden products, rice, rubber, coffee, and coal -- account for two-thirds of the total export value. Apparel and footwear, both labor-intensive industries, comprise most of Vietnam’s manufacturing exports. Imports are less concentrated. The top five imported items, including iron and steel, petroleum, textile fabrics, electronics, and plastic constitute about 50 percent of the total imports. Vietnam has relatively few trading partners, and its main export destinations are the United States, the European Union, Japan and Australia -- accounting for 60 percent of Vietnam’s total exports in 2010. Vietnam’s imports by source country are equally concentrated and originate mostly from the Asian region. More than 60 percent of its imports come from China, Singapore, Taiwan (China), Japan and South Korea. However, in a positive development, the product and market concentration of Vietnam’s exports has reduced in recent years.

Fourth, Vietnam still produces and exports products of modest technology and/ or design (Figure 4). While the share of manufactured goods in total exports has increased considerably over the past decade, there has been limited improvement in technology intensity. Although growth has been observed in all types of exports, only low-tech exports have increased their global market share and as a result this export model has generated little valueadded for the economy. Low-technology products are clearly responsible for this situation. However, this is not the only reason for the low value added of Vietnam’s exports. Another is the low quality positioning of its major exports.

**Figure 4: Composition of Vietnam’s Exports, by Level of Technology Embodied, 2000-2010**

Source: UN Comtrade.

187 While a large share of high-technology manufactured exports does not guarantee high value added from these exports, a large share of low-technology manufactured exports invariably means low value addition.
Finally, with trade liberalization already advanced, the scope for increasing trade through this avenue is reaching its limits. Much will increasingly depend on the country’s export competitiveness. This highlights the theme of this study -- trade facilitation -- and the role of government to ensure export costs are minimized and value addition maximized.

3.2. Trade Logistics Performance

Vietnam has had a mixed record in trade logistics performance. The World Bank’s Logistics Performance Indicator (LPI) places Vietnam in a relatively good position, ranking it among the top ten lower-middle economies with a better than expected logistics performance given its level of per-capita income (Table 1). However, Vietnam’s overall ranking has not improved over the past five years while Indonesia and the Philippines have seen major gains, and the already highly ranked China and Malaysia continued to achieve modest gains. Within this index, customs efficiency, logistics competence and infrastructure have experienced progressive deterioration but international shipments, tracking and timeliness have improved.

Table 1: Vietnam’s Trade Logistics Performance, Selected Years and Selected Indicators

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2010</th>
<th>2012</th>
</tr>
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<tbody>
<tr>
<td>1. Logistics Performance Index (LPI)</td>
<td>53</td>
<td>53</td>
<td>53</td>
</tr>
<tr>
<td>1.1 Customs</td>
<td>37</td>
<td>53</td>
<td>63</td>
</tr>
<tr>
<td>1.2 Infrastructure</td>
<td>60</td>
<td>66</td>
<td>72</td>
</tr>
<tr>
<td>1.3 Timeliness</td>
<td>65</td>
<td>76</td>
<td>38</td>
</tr>
</tbody>
</table>

Source: LPI, World Bank.

Nonetheless, the Enabling Trade Index (ETI) of the World Economic Forum (WEF) gives a lower overall ranking to Vietnam than the LPI, and again, contrary to the latter, shows considerable improvement with Vietnam rising from 89th in 2009 to 68th in 2012. However, Vietnam’s poor transport infrastructure was also noted in the WEF’s Global Competitiveness Report 2011-2012. It ranked Vietnam below most of the countries in the region and hence below the regional average for all transport modes (Figure 5).

Figure 5: Vietnam Infrastructure Compared with Regional Average


Despite difficulties with port infrastructure, Vietnam’s ocean shipping services have improved according to UNCTAD’s Liner Shipping Connectivity Index (LSCI). This index is based on the number and size of vessels calling at a country’s ports. Between 2004 and 2011, Vietnam overtook Thailand and Indonesia while understandably lagging well behind major transport hubs like Singapore, Hong Kong SAR (China), Malaysia and China.

Finally, the World Bank’s Doing Business Survey includes measures of the time and cost (excluding tariffs) associated with exporting and importing a standardized cargo of goods by ocean transport.
This is used to compute an index for “trading across borders.” In 2012, Vietnam ranked 68th out of 183 economies for this index even though its overall ranking in the Doing Business Index was 98th. However, this performance is still below its neighbors and, notably, in the time required for imports and exports, is the highest in the region (Figure 6).

Figure 6: Comparative Logistics Cost

![Comparative Logistics Cost](image)


The overall picture from these indexes, despite sometimes conflicting results, is that while improvement has occurred in some aspects of trade logistics and facilitation, there has been deterioration in others, and therefore scope remains for improvement. Arguably, the biggest impediments for Vietnam are inadequate physical infrastructure and inefficient customs, over which the government has major responsibility. These, as well as other constraints, are discussed in the context of this study’s thematic issues.

4. Transport and logistics services as pillar 1

Vietnam has recorded substantial increases in public investment in infrastructure. These increases notwithstanding, its trade-related infrastructure has not maintained pace with the growth of its exports. From a trade competitiveness perspective, Vietnam’s growth potential is being constrained severely by weak infrastructure and transport links. Weak corridors connecting major growth poles to main international gateways, high transport costs, poor quality of transport and logistics services are among key impediments. The over-reliance on public investment, which is clearly “unaffordable, inefficient and therefore unsustainable” should be changed. To be more efficient, improve the public investment regime, shift to private sector financing, and establish a clear priority for essential investment are all key to enhance competitiveness.

The spatial organization of economic activities shows these to be centered on three major and several secondary development clusters. Figure 7 shows the major clusters located in the south, centered on Ho Chi Minh City (HCMC) and the surrounding Binh-Duong and Dong-Nai provinces, the north, centered on Ha-Noi, Hai-Phong and Quang-Ninh province, and the less developed central region, centered around DaNang and Quang-Nam province. These clusters also contain the major international gateways of sea, air and land.

The transport infrastructure needed to support Vietnam’s major exports depends on the nature of the products. As already discussed, Vietnam exports a variety of products as follows:

- **Raw materials** -- mainly crude oil and petroleum in the south and coal in the north. These are transported as dry or liquid bulk cargoes and require dedicated transport infrastructure.

- **Manufactured goods** -- mainly textiles and garments, footwear, electronics, and wood products. These require substantial imports of raw material and intermediate goods. They are produced in all three clusters and transported primarily as containerized cargo to the major international seaports.

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• Agricultural goods -- mainly rice, coffee, rubber and marine products. These are exported primarily in ocean containers but also in truckloads to neighboring countries. They are produced in the rural areas surrounding the clusters and processed in factories usually located near the international gateways.

Figure 7: Development Clusters and Corridors, and Trade Flows

Source: Freight flows data provided by TDSI.
Despite public investment in upgrading the transport infrastructure, capacity has not kept pace with the rapid growth of exports. Some specific examples of deficiencies are:

- NH1A is the backbone of the highway system for both goods and passengers. The Ha-Noi – Thanh-Hoa segment in the northern cluster carries 32,000 vehicles a day, causing heavy congestion as well as high road wear. However, the DongNai to HCMC segment serving traffic from all three clusters carries three times this amount of traffic.

- The railway system, although well suited to transport bulk goods, has played a very limited role in the transport of goods for export, and has experienced an average drop in traffic of five percent a year between 2006 and 2010.

- Inland waterways carried 18 percent of the country’s goods traffic in 2010, and are particularly important in the Mekong area. However, limited investment in berthing and handling facilities as well as limited capacity and congestion has increased the risk of accidents. These problems add to the disadvantage of a longer travel time compared to roads.

- About 90 percent of Vietnam’s international trade is transported by sea. Existing port capacity appears able to cope with current demand, but the planning for new facilities is not always based on sound demand projections. An example is the newly developed Cai-Mep port, which in 2011 had a designed loading capacity of 6.4 million TEUs a year, although the current demand is only 0.5 to 0.7 million TEUs.

- Port efficiency plays a dominant role in export competitiveness. The problem, however, is not simply inadequacy of infrastructure but more the limitations of land connectivity and the lack of support from modern and efficient logistics services. Ha-Noi – Hai-Phong, HCMC – Saigon Port and HCMC – Cai-Mep could become more efficient and effective multimodal transport corridors if they were served by better highways, railways and even Inland Waterway (IWT) connections. It is also important to develop high quality clusters for logistics near the two main ports.

Figure 8 illustrates how weak infrastructure undermines growth potential. Despite falling into the group of countries that have large markets, Vietnam is potentially compromised by barriers to entry. Efforts to improve connectivity, both to global market and for domestic input-output linkages, would clearly yield dividends.

Figure 8: Weak Infrastructure Undermines Growth Potential

Source: Transport Intelligence.

In summary, Vietnam clearly needs to upgrade its deteriorating infrastructure simply to maintain export competitiveness, yet the current level of investment has been inadequate. More importantly, the only source of public investment in infrastructure has not always been efficiently allocated.
Existing transport modes, in addition to being overloaded in the major clusters, cannot effectively link these clusters with their trade gateways. Inefficient allocation of resources has arisen from politically rather than economically driven decision-making and there are three causes for this situation.

First, investment in physical infrastructure does not appear to have taken into account the vital role of this infrastructure in Vietnam’s exports. Although SEDS (2011–2020) mentions establishing “a comprehensive system of infrastructure with some modern projects” as “a strategic breakthrough” no clear vision linking infrastructure development with national trade competitiveness has been articulated. Transport infrastructure did not receive explicit treatment in this document but instead was categorized along with energy and irrigation. The Transport Master Plan for the period to 2020 received only scant attention in SEDS (2011–2020).

Second, the Transport Master Plan did not link transport infrastructure with trade. Trade competitiveness was not clearly articulated as an objective of the Plan, and specific policies for enhancing competitiveness are conspicuous by their absence. The initiatives that do exist appear not to have taken into consideration financial feasibility. Indeed, with each province making claims for resources, not only was there no prioritized framework for investment but the potential for politically driven projects that lead to duplication and waste is substantial. Finally, the heavy infrastructural focus of the plan has not prevented huge investments in ports, but with inadequate provision for access road infrastructure.

Third, development of zones and corridors are not part of a coordinated effort to improve trade-related infrastructure for export growth. This lack of coordination has created bottlenecks, with traffic congestion made worse by the ban on trucks in urban areas. Vietnam has almost 100 designated export processing zones, but only a small proportion has been successful in generating significant export trade. The principal corridors connect the production clusters near Ha-Noi and HCMC with their main seaports, Hai-Phong Port and Sai-Gon Port respectively. Although the quality of the transport services on these corridors has improved, investment in infrastructure has lagged behind the growth in demand. While some of these problems are being addressed, insufficient attention is being given to the impact on the performance of the trade corridor. This is especially true for road networks where priority is given, quite understandably, to the movement of people rather than freight.

5. **Regulatory procedures for cross border trade as pillar 2**

Vietnam’s regulatory procedures also need improvement. While major attention to customs reform has produced some strengthening in border management, many agencies continue to rely on outmoded procedures that are time-consuming, opaque and susceptible to corruption. Business processes remain complex, inconsistent, and based on manual procedures with very little IT application. With trade growing rapidly, the setback these procedures cause to export competitiveness cannot be overemphasized.

Vietnam’s integration into the world trading system has progressed steadily over the past three decades. Over the past decade and half, economic growth and transition to a market economy in Vietnam has produced a considerable increase in cross-border transactions, but greater international integration has meant that the share of tariff revenue in the total tax revenue has been reduced. As a result, the primary role of customs has gradually shifted from revenue mobilization to border security with a resulting impact on trade facilitation. More recently, customs has sought to meet new challenges arising from the global financial crisis. Increasing security concerns have encouraged a more control-focused approach that increases costs to traders. A return to protectionism, in particular the introduction of non-tariff barriers, is the government’s response to the financial crisis. Neither development is helpful to trade facilitation.

Recent revisions in customs conventions have introduced a range of international standards and practices that have dramatically improved border management. Streamlining procedures was afforded high priority in Vietnam’s ongoing customs reform and modernization program. However, information technology applications remain in a pilot stage. They replicate manual processes and are used only for processing declarations. Application of risk management is in its early stages and does not guide most of decision-making processes.

The other ministries and agencies involved in border management continue to rely on time-consuming and resource-intensive procedures based on paper forms and manual processing. They have yet to
embrace a more facilitative approach to managing compliance risk. As a result, Vietnam’s regulatory procedures for imports and exports are still slow, inconsistent, and vulnerable to administrative corruption. Furthermore, they fail to keep pace with improvements in business practices adopted by private sector traders. The inevitable increase in transactions as trade grows has not been matched by improvements in staffing and procedures with the result that Vietnam still lags far behind its regional peers (Malaysia, Thailand and China) in border clearing times and physical inspection rates.

Client perceptions of customs performance are likewise negative. A World Bank survey undertaken in 2006 revealed that clients viewed customs procedures as complex, lengthy, neither clear nor consistent, and therefore costly to comply with. In addition, personnel were unqualified and inefficient, and brokerage firms were frequently unaware of the improvements in the customs modernization program.

A survey on corruption, jointly conducted by the State Inspectorate and the World Bank in 2005 and repeated in 2012, indicates that customs is among three most corrupt agencies in Vietnam. Two other corrupt agencies that are also involved in trade facilitation are the traffic police and the transport/mineral management agency (Table 2).

Table 2: Most Corrupt Organizations

<table>
<thead>
<tr>
<th></th>
<th>2005 Survey</th>
<th>2012 Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cadastral and Housing Agency (CHA)</td>
<td>Traffic Police</td>
</tr>
<tr>
<td>2</td>
<td>Customs /Import-Export Agency</td>
<td>Land Administration (CHA in 2005)</td>
</tr>
<tr>
<td>3</td>
<td>Traffic Police</td>
<td>Customs</td>
</tr>
<tr>
<td>4</td>
<td>Public Finance and Tax Agency</td>
<td>Construction</td>
</tr>
<tr>
<td>5</td>
<td>Entities in Construction Industry</td>
<td>Transport / Mineral Management</td>
</tr>
</tbody>
</table>


Multiple agencies are involved in implementing the regulatory framework for cross-border trade. They include the Ministries of Finance, Industry and Trade, Agriculture and Rural Development, Culture and Information, Health, Post and Telecommunications, Public Security, and the State Bank of Vietnam. However, attention has been focused on reforming and modernizing customs systems and procedures and there is weak coordination among key stakeholders. Although significant progress has been achieved, much work remains to bring border management procedures and institutions up to global good practice standards.

The General Department of Customs (GDC) has been appointed the lead agency to implement the ASEAN Single Window (ASW). However, progress on the National Single Window (NSW) and ASW has been hampered by the lack of dedicated human and financial resources as well as a degree of uncertainty associated with the future customs information system. Although this has been settled in favor of the Japanese system\textsuperscript{189}, bringing this system to full operation will take time, requiring the cooperation of all stakeholders. This is an example where a cooperative partnership with the private sector is essential.

In addition to customs and the NSW/ASW, border management also covers compliance with the WTO’s Technical Barriers to Trade (TBT) and Sanitary and Photo-sanitary measures (SPS) -- the SPS agreement -- as well as rules of origin and intellectual property rights (IPR). While much attention has been given to SPS and TBT, the government’s priority has been to strengthen controls and institutional capacities with little attention paid to the resultant administrative burden from the implementation of these agreements and measures.

6. Supply chain restructuring as pillar 3

Weaknesses in Vietnam’s supply chains for manufactures and agricultural products have prevented the country from lowering export costs in capturing much needed value added. Key constraints facing the former include a heavily passive dependence on imported materials and weak capacity

\textsuperscript{189} Nippon Automated Cargo and Port Consolidated System (NACCS).
for sourcing materials. This negatively affects the ability to reduce leadtime and meet the flexibility of global markets change. The latter faces regulatory constraints for large-scale agro-industrial development. In particular, the dominance of government-to-government rice export discourages production of high quality and differentiated rice. Development of supporting industries, though a longer-term endeavor, can help relieve many of these constraints. Yet little attention has been paid to restructuring these or developing clusters and supporting industries to reduce cost and capture more value added.

The efficiency of supply chains affects the cost of exports -- a poorly structured or inefficient supply chain can add substantially to the cost of the exported good. Ensuring that supply chains operate efficiently is therefore vital to trade facilitation. Different segments of these chains embody varying shares of value added. Therefore, restructuring these chains to capture as much value added as possible provides a second justification for considering these chains as one of the pillars of trade facilitation.

An important strategy for both supply chain restructuring and value added capture is to develop a viable supporting industries subsector. Vibrant supporting industries enable export processors to reduce time and costs by sourcing inputs locally and increase reliable delivery and flexibility in response to international vendors, which are key factors to improve supply chain performance. They also attract Foreign Direct Investment (FDI) and technology transfer, and make the country an attractive subcontracting destination and an integral part of global supply chains. In addition, increasing localization and reducing the proportion of imported materials for export processing reduces trade imbalance. Moreover, the development of supporting industries, which are usually small-scale production and performed by small and medium businesses, contributes to private sector development appropriate to the level of technology absorptive capacity of Vietnamese small- and medium-sized enterprises (SMEs).

Nonetheless, supporting industries in Vietnam remain fragmented and underdeveloped, the result of an unfocused vision and weak legal framework. Although these industries are at an early stage of development, they suffer from outdated technology. State-owned enterprises (SOEs) are dominant in the sector, but lack cohesion with FDI and private SMEs. Current policies, including those for transport and SME development, are piecemeal and lack a clear vision targeting trade competitiveness enhancement. While developing supporting industries has huge payoffs, it will be a medium- to long-term endeavor. In the short-term, it is also important to reexamine the effectiveness of existing supply chains. While supply chains are specific to the particular goods that are exported, those in Vietnam can be broadly classified by type of major exports -- agricultural and manufactured.

The low-tech manufacturing firms in the garments and footwear industries are generically referred to as Original Equipment Manufacturers (OEMs), Original Design Manufacturers (ODMs) and Original Brand Manufacturers (OBMs). However, OEMs can be foreign-owned vendor factories, and may engage in manufacturing only, manufacturing and procurement, or manufacturing, procurement and sourcing of materials (Figure 9 illustrates the garment industry). The supply chain is defined by the sequence of activities with value creation rising moving up and down the chain from manufacturing. Value addition comes from enhancing the value of the final product and restructuring the supply chain to capture more of the upstream and downstream activities.
In Vietnam, most of the firms in the garment industry are involved only in manufacturing, with 60 percent of them foreign-owned vendor factories. The remaining firms are either contract manufacturers that also undertake procurement or a smaller number engaged in manufacturing, procurement and sourcing. Only two percent of the firms are Original Design Manufacturers (ODMs). There is, therefore, considerable scope to restructure this industry’s supply chain to increase value added.

The structure of the footwear industry is similar to the garment industry shown in Figure 9. Foreign-owned vendor factories make up 45 percent of the factories, with local Original Equipment Manufacturers (OEMs) making up another 40 percent. The remaining are ODMs and Original Brand Manufacturers (OBMs). As with garments, about 60 percent of the raw materials are imported, mainly from Asian countries. The value added can be raised by increasing the proportion of highvalue footwear -- for example, men’s and women’s dress shoes and athletic shoes with leather components -- especially among locally owned firms. This also requires strengthening Vietnam’s image as a supplier of quality footwear. Conversely, increasing local production of raw materials and reducing delivery times for both input and exports would allow this industry to capture more value added from the supply chain.

The electronics and electrical equipment (E&E) industry in Vietnam produces components for complex electronic products that will be assembled in other countries, mainly China. This industry’s structure is broadly similar to other manufacturing industries, except that the levels below the OEM are contract manufacturers that produce components (electronic manufacturing services EMS). Below these firms are the producers of basic materials used to produce the components.

The electronics industry is dominated by foreign firms, especially large brand manufacturers like Canon and Panasonic that moved to Vietnam in order to reduce production costs. Initially, nearly all the components required for production were imports, but increasingly international firms have been sourcing these inputs locally to simplify their logistics. Electric equipment for power generation is produced by both foreign and domestic firms operating as contract manufacturers or brand manufacturers.

Vietnam’s electronics industry is at an early stage of development compared to its neighbors Malaysia, Thailand and the Philippines and previously, Korea and Taiwan (China). The experience of these countries shows local sourcing to be a major opportunity for local firms not only to capture value along the supply chain but also to acquire the technology needed for production of components. Working with international firms will encourage partnerships with the prospect of further technology transfer. As these firms absorb technology, they will move into higher value addition activities,
creating opportunities for other local firms. A strong supporting and subcontract industry subsector will encourage further FDI from international companies and strengthen learning effects. The key challenge to the success of this process is having adequate quantity and quality of human capital to absorb technology.

The case studies show that major constraints facing manufacturing supply chains include: (i) reliance on primary supply chain structures from which very low value added is captured; (ii) heavy dependence on imported materials that negatively affect the ability to reduce lead-time and meet the flexibility of global market changes; (iii) weak capacity for sourcing materials; (iv) dependence on intermediaries (through their buyers’ agents and vendors) for both finding the supplies and receiving market signals; (v) the zones/clusters located near major cities are crowded and have difficulties expanding and providing access to labor, while reallocation will require access to the land, cater specifically to the needs of the light industries, offer efficient connectivity to the major seaports, as well as skilled labor; and (vi) lack of working capital.

Vietnam has achieved several milestones in its agricultural exports including becoming the largest exporter of Robusta coffee and catfish and the second largest exporter of rice, globally. However, after more than a decade, this rapid growth is expected to taper off due to limitations on both land and labor. As a result, future increases in the value of trade will depend as much on increases in the unit value of the exports as on increases in volume. Supply chains are again important in these efforts.

Major constraints facing agricultural supply chains include: (i) rice exports dominated by G2G sales that encourage production of relatively low quality, undifferentiated rice; (ii) more than 70 percent of rural households farms under 0.5 ha in size do not use modern farming methods; (iii) regulatory constraints on the development of largescale agro-industry; (iv) significant seasonal fluctuation in prices for all commodities; (v) ineffective regulation of health and sanitary conditions in transporting products from the fish farms to the markets (seafood); and (vi) lack of working capital.

Agricultural supply chains in Vietnam have some unique features. The best example is rice. Rice is not only a traded commodity but also a political commodity. This is partly because of food security concerns, but also because of dominant government-to-government (G2G) sales. Although there are more than 200 registered exporters, most of these export less than 1,000 tons per year. State-owned corporations accounted for 80 percent of rice exports in 2009. While private rice exporting is moderately encouraged and some shift to different varieties and branding is welcomed, there are few indications that the government wants to reduce the role of SOEs in the rice trade. There has been absolutely no receptivity to efficiency arguments. Yet, with ample supply and stagnant domestic demand, food security is not an issue. Rising exports is another testimony to this situation.

The rice supply chain for export has five components -- the farm, the collector, small local rice mill, large modern mill, and the exporter. The participants in these components vary depending on whether the sales are G2G or private-to-private (B2B). Although exported in large volumes, the rice trade remains a small-scale activity.

Fragmentation of the rice trade is due in part to limitations on working capital, which constrain the size of transactions. The supply chain is also not designed to maintain the integrity of the rice but mixes qualities indiscriminately, especially for G2G sales. The small farmers are disconnected from foreign market requirements with the result that there is little incentive for the former to improve quality.

As with rice, the supply chain for coffee exports extends from farm to buying agent or collector, then to processor before moving to international trader or distributor. Nearly all of the exports are Robusta coffee, which is dry processed and shipped as green beans of relatively low grade. The international trader is primarily foreign, with Nestle dominating. However, there are a few integrated coffee companies with entire supply chains extending to the production and sale of coffee products.

Problems in this chain include simple post-harvest processing and milling using domestically produced processing equipment. This results in a high proportion of broken beans and impurities. Working capital is also a problem for processors. Trade financing is available, but mainly for large growers.
Remedying the above problems requires a four-component strategy. The components are: (i) increasing the quality of coffee plants by planting more Arabica; (ii) improving the quality of processing of coffee beans; (iii) increasing the returns to farmers; and (iv) enhancing the performance of the trade corridor.

Vietnam's highly competitive seafood industry consists of several thousand aquaculture farmers, a large number of purchasers and an extensive maritime fishing fleet. Processing plants, many state-owned, have excess capacity due to limited local supply. The supply chains extend from the sources of inputs (aquaculture, marine fishing) through the collector to the processor, which is often the exporter with various intermediates. Some of the processors are foreign-owned enterprises. The principal constraint on the performance of the supply chains is the shortage of inputs. This can be addressed through greater use of contract-farming arrangements to ensure a regular supply and supply contracts for exports rather than individual shipments. The contract farming arrangements could also be used to promote good practices and improve monitoring of quality and hygiene, which would continue throughout the supply chain.

Overall, in agricultural/aquaculture products, a number of issues need highlighting that appear to have eluded the government's strategic planning.

- The supply chains include very little agro-industrial processing. Some of the reasons are (i) restrictions/transaction costs associated with land acquisition; (ii) small-scale production of raw materials; (iii) limited horizontal integration (for example through cooperatives) and restrictions on direct procurement from farmers (inhibiting cost-effective procurement); and (iv) a proliferation of state farms and SOEs (especially in rice, rubber, and forestry).

- Related to this are constraints on the development of large-scale farming and the benefits of economies of scale and bargaining power (e.g. for rice, coffee, and rubber). The extent of fragmentation of rice farms has rendered farming uneconomic. To date, efforts such as the “large sample field” experiment for rice have achieved some success.

- Vietnam’s agricultural exports embody minimal processing. For example, more than 90 percent of coffee exports are green beans sold to large Multi-National Enterprises (MNCs) like Nestle. This is an area where public-private partnerships can assist in restructuring supply chains to Vietnam’s advantage.

- Quality issues have been important for coffee and rice and both require restructuring of supply chains. It is also particularly important for seafood, where a combination of disguised protection and health safety concerns is rendering access to potential markets increasingly problematic. Vietnamese quality certification is not currently recognized internationally, in particular for seafood. The establishment and enforcement of quality standards benchmarked against international norms is needed as an integral part of establishing Vietnam as a producer of quality goods.

- In all the case studies, trade finance, in particular for supporting working capital of processors and exporters, is an issue, given the lack of attention by private financial institutions. Public-private partnerships could provide significant benefits in this area. In addition, the development of financial instruments could help mitigate the impacts of fluctuations in prices and weather conditions.

7. The institutional framework

The institutional environment for trade facilitation suffers at the macro-level. There are too many strategic plans with overlapping plans and activities and none has trade facilitation as an area of focus, or is integrated with other programs of trade, industrial and human resource development. International agreements covering this area have been signed but not yet implemented. At the mezzo-and firm-level, multiple agencies at different levels of government carry out trade facilitation activities with no coordination. This situation, as much as deficiencies in the supply chains themselves, creates inefficiency in trade facilitation.

The institutional framework, including rules and regulations, that governs the functioning of trade facilitation, has three levels (Figure 10). At the macroeconomic level policies and strategies have an impact on trade competitiveness, both national and international. The mezzo-level has regulations...
and systems for managing trade facilitation and these regulations are embodied in laws, decrees, and directives governing the conduct of trade, business, logistics, customs and border management. In this section, only the organizational structure will be discussed. At the lowest level are the economic activities structured along the three pillars discussed previously.

The Policy Framework

The macroeconomic policy framework has two dimensions -- one national and the other international. The national dimension consists of strategies laid out in several major documents. These are: (i) the 2011–2020 Socio-Economic Development Strategy with its focus on breakthroughs in creating a competitive environment, developing human resources and building a strong infrastructure system; and (ii) a series of sectoral strategies:

- Vietnam’s Export-Import Strategy 2011-2020 and vision to 2030;
- Customs Modernization Strategy 2011-2020;
- Transport Development Strategy 2011-2020 and vision to 2030; and

Figure 10 : Structure of Institutional Model for Trade Facilitation in Vietnam

In addition, in transportation infrastructure alone, about 40 strategies on national and local infrastructure have been formulated and promulgated. However, despite its stated importance, insufficient attention has been paid to developing the logistics business. It is also obvious from the above documents that “trade facilitation” and “trade competitiveness” have not been addressed systematically in the strategic planning process. Indeed, the concept of trade facilitation is often mistakenly referred to as the regulatory framework for the export and import regime. Similarly, the strategies for development of infrastructure and transport services are silent on trade competitiveness enhancement. The concept of commercial logistics is also seldom mentioned. Above all, there is a lack of a vision as to how trade facilitation can contribute to national competitiveness.

Internationally, Vietnam is signatory to a number of agreements with trade facilitation components. These are: (i) the WTO’s GATT 1994 Agreement, which has regulations covering freedom of transit, fees and formalities connected with importation and exportation of goods, and publication and administration of trade regulations; (ii) APEC, the members of which have implemented two Trade Facilitation Action Plans (TFAPs); (iii) the ASEAN Europe Meeting (ASEM), with its TFAP between ASEAN and the European Union; and (iv) ASEAN, in which Vietnam is signatory to the following agreements and programs on trade facilitation:

• ASEAN Trade in Goods Agreement (ATIGA);
• ASEAN Customs Modernization;
• ASEAN Single Window (ASW);
• Mutual Recognition Arrangements in ASEAN; and
• Harmonization of Standards & Technical Regulations.

Vietnam is also part of several ASEAN initiatives:

• The ASEAN Single Window;
• Mutual Recognition Agreements (MRAs); and
• Harmonization of Standards and Technical Regulations.

Vietnam has been proactive in formulating, negotiating, approving and making commitments as well as implementing rules on trade facilitation and logistics as a part of international agreements. The combined impact of signing and observing these bilateral and multilateral agreements has fostered an institutional environment for enhancing trade facilitation and logistics between Vietnam and other members of the international community. However, the extent to which improvements in trade facilitation can be achieved remains unclear because many commitments have yet to be translated into action. In terms of those rules relating to bi-lateral and multilateral agreements with which Vietnam has begun to comply, the effectiveness of implementation depends on the efficacy of the institutions at the lower tiers.

**Organizational Infrastructure**

Currently, Vietnam does not have an agency in overall charge of trade facilitation. Governance of trade facilitation policies is implemented autonomously by different ministries. The following ministries and branches oversee activities in the three trade facilitation pillars.

- **Transport Infrastructure Development Management:** The Ministry of Transport (MOT) is responsible for developing, upgrading, and implementing transport infrastructure plans to meet the industrialization and modernization needs of the country. It does not have a body in charge of tracking integration of transport infrastructure development.

- **Border Management:** The Ministry of Finance, through its General Department of Customs, enhances state management effectiveness for exports and imports by simplifying customs clearance procedures at border gates.

- **Trade Logistics:** The Ministry of Industry and Trade (MOIT) is responsible for monitoring the policy environment, and for supervising imports and exports as well as logistic service activities. Its functions related to planning and developing transport infrastructure are not coordinated with the functions of the Ministry of Transport and other related line ministries.

- **Supply Chain Organization:** Many other line ministries play important roles in trade facilitation. These include the Ministries of Agriculture and Rural Development, Planning and Investment, and Resources and Environment although there is no formal avenue of cooperation among them.

Responsibility for trade facilitation is decentralized -- horizontally with ministries and their branches undertaking management and implementation in their respective areas of responsibility, and vertically from central government ministries to lower levels of government. Horizontal decentralization has led to a lack of coordination between areas while vertical decentralization affects how well activities are implemented. The overlapping authority and responsibility among ministries and their branches often cause difficulties in managing and instructing localities in the deployment of the strategy at the grassroots level. However, as there has not been a general national orientation on trade facilitation, the management and development of trade facilitation in each locality is often local, asynchronous and inconsistent with other localities.

Two interdisciplinary economic mechanisms have the potential to monitor trade facilitation. These are the National Council on Sustainable Development and Competitiveness Enhancement and
the National Committee for International Economic Cooperation. While the former already has a
monitoring role, the latter has considerable experience in monitoring interdisciplinary issues and
advising on economic policies. However, the selection of either, or creation of a new body, needs to
be carefully considered.

This review of institutional infrastructure reveals that policy has not been translated into effective action.
There are a number of reasons for this. First, at the policy level, there has been neither a uniform
approach to nor common understanding of trade facilitation and its important role. Trade facilitation
is not yet recognized as a decisive factor in enhancing the competitiveness of Vietnam’s exports.
Nor have there been common and consistent guidelines on trade facilitation. Second, while Vietnam
has a common policy for development, it lacks concrete programs and methods of implementation.
This results in many enterprises having no investment strategy to develop supporting industries.
Third, due to challenges facing the institutional framework, the business environment in general
and import-export environment in particular has been slow to improve. Fourth, the infrastructure for
developing import-export trades and logistics services remains outdated, weak, uncoordinated and
unable to keep pace with the high growth of trade. Fifth, Vietnam lacks the capital and other crucial
resources to implement its strategies. Finally, high-quality human resources are in very short supply.

8. The role of government

Although trade facilitation is primarily a private sector activity, the role of government is important
both in terms of supporting activities that have externalities, and providing much needed assistance
that spurs the flow of trade, but also in terms of removing impediments and withdrawing from areas
where the private sector can better contribute. The Vietnamese government can do more in each
of these roles. Of the various initiatives, attention to restructuring supply chains has benefits that
extend beyond trade facilitation.

Why is Government important?

The above review suggests major areas in which a government role is important even though trade
facilitation is typically a private sector activity and the familiar refrain of “leave it to the private sector”
is heard from many policy specialists. Apart from the specifics, which will be discussed below, there
are several general arguments in favor of a public sector role.

First, even if Vietnam was to become a full market economy, the government has a legitimate role
in the provision of public goods. Transport infrastructure and border management, among other
components of trade facilitation, are public goods. Second, Vietnam has for decades been an
economy gradually transitioning to a greater market role. This transition, from a system in which
the government role is pervasive, is not yet complete, and market signals are not able to ensure
efficiency in any economic endeavor. Third, the successes of East Asian models of governance,
from the developmental states of Japan and Korea, to the mixed models of Southeast Asia, speak
to a legitimate proactive role of government beyond that postulated by neo-liberals and economics
textbooks. China began its transition a decade before Vietnam and has been deploying the resources
of the state to strengthen specifically its trade facilitation in what is arguably the world’s first model of
state-led growth. Despite the apparent similarities with China, Vietnam needs the public sector even
more than China. Vietnam, with its overwhelming presence of state enterprises, has a legacy of a
weak and fragmented private sector. “Leaving it to the private sector” is not viable in Vietnam, and
the government must play a nurturing role.

The Government and Trade Facilitation

The government’s role for each of the three pillars can be broadly summarized. For the first pillar,
upgrading trade-related infrastructure, government strategists should prioritize improvements
according to their impact on corridor performance. Improvements in the coordination and the scale
of the logistics services provided in the trade corridor, especially road transport, port cargo handling
and border management services, can have a greater impact on corridor performance. This
coordination can be achieved through encouraging greater use of information and communication
technology (ICT) for exchange data between the services and processing the data to minimize the
physical interaction between the service providers. Scale can be achieved through the development
of collection and distribution hubs.
Concrete measures are presented in Section 9 but here the government’s broad role with respect to each pillar of trade facilitation is briefly outlined.

**Pillar One:** Measures are needed to revise the transport sector strategy to recognize explicitly its role in export competitiveness. This means paying attention to development clusters, international gateways and corridors, including coordination between activities of each. More focused investments in infrastructure are needed. The private sector has an important role to play, but cannot be expected to lead initiatives like cluster development and corridors which generate substantial externalities. While taking the initiative, the government’s role should again be to strengthen public-private partnership initiatives. The policy matrix in Section 9 provides further details.

**Pillar Two:** In streamlining procedures for cross-border trade, the government has a direct role. It can implement the revision of customs laws and regulations that shorten clearance times and eliminate the need for informal payments. Adoption of IT will be crucial to this endeavor, as will be the application of risk management to improve compliance management. The National and ASEAN Single Windows proposals must be fully implemented, while an action plan must tackle the serious issue of corruption. These measures are more clearly described in the policy matrix.

**Pillar Three:** Restructuring supply chains requires a comprehensive strategic plan to be developed in consultation with key stakeholders, and an adequate policy framework to be completed. The criteria for selecting subsectors on which to focus government efforts should be carefully reviewed based on comparative advantage of the primary industries and the potential for future growth. Spatial development and input-output linkages between key primary and supporting industries are integral parts of cluster planning for the overall strategy. A national action plan implemented under the leadership of a strong body appointed to coordinate cross-cutting undertakings is vital for this vision to be achieved.

**Beyond Trade Facilitation – An Interim Development Paradigm**

This requires a government role that is related but operates clearly beyond the confines of trade facilitation -- achieving sustainable growth. The prevailing discourse on avoiding the middle-income trap has been framed in terms of moving into higher value added activities through technology enhancement. This involves, in the main, focusing on industries or products that embody at least a moderate level, but preferably a high level of technology that will permit continuous upgrading. This upgrading takes the form of starting out as an original equipment manufacturer (OEM), taking orders from larger foreign firms that provide all equipment design. Once the production technology is acquired, the local firm then moves into design, becoming in the process an original design manufacturer (ODM). The final phase of technology upgrading is when the local firm’s production and design capabilities are internationally recognized to the point it no longer depends on foreign firms to become an original brand manufacturer (OBM).

Korean firms such as Hyundai Motor Company started out as assemblers and then moved into higher value added activities to become OBM powerhouses in their own right. More recently, China’s Huawei began as an OEM for other brand name electronics equipment manufacturers but eventually established itself as the second largest electronics equipment maker (ODM) in the world. It is now in the process of establishing itself as an OBM. However, not all industries and firms make the full transition. Thailand’s automotive industry is one of the largest in ASEAN and ranked 10th worldwide in terms of output, yet there is not a single Thai-branded car. Instead, a wide range of cars carrying major brand names are produced in Thailand.

How does technology acquisition occur in this process? In Korea and Thailand, this has taken the form of the growth of supporting industries that produce for the local OEM/ODM/OBM. In the 1960s, Korea developed a strong support subsector, producing many parts and components and sewing products for clothing, footwear, handbags, purses and stuffed animals. Thai support industries have localized production of domestic wire, plastic details, cooker spare parts before moving up to higher tech products such as automobiles and TV tube lights etc. The vibrancy of a supporting industry sector is, of course, predicated on the availability of a human capital pool equipped with the skills to affect technology transfer.

Despite its record in East Asia, this strategy poses a particular challenge for Vietnam. First, Vietnam currently has comparative advantage in cheap labor for low-and medium-technology manufactures.
and natural resource endowment for agricultural products. Moving out of this manufacturing implies not only losing its current comparative advantage but also incurring the risks of entering a new field of manufacturing and competing against more established and experienced competitors. Second, it lacks a pool of human capital of a quality capable of taking on any technology transferred and its current education system is in urgent need of reform. Third, its institutional framework for effective technology absorption is not well developed.

Fortunately, as Ohno (2009) has argued in his discussion of Malaysia, and as case studies of Vietnam’s high export growth industries show, value addition can be achieved not only by moving to higher value products with improved technology but also by moving along the supply chain and, in essence, restructuring it to capture more of the value addition. As Figure 11 shows, a move to higher value products would raise the value creation curve upwards, while restructuring the supply chain would encompass the higher value addition part of the curve. As an exporter of primarily unprocessed resource-based products, Vietnam’s exports occupy the lowest part of the value added curve.

**Figure 11: Capturing Value Added Through Value Chain and Supply Chain Moves**

Source: Ohno (2009).

The strategy of supply chain restructuring to drive growth has several advantages for Vietnam. First, because it involves existing exports with high growth potential, it preserves Vietnam’s current comparative advantage. This makes it more feasible and a lot less risky than changing the structure of production, which cannot be quickly accomplished and can disrupt labor markets. Second, WTO rules have now made it harder to emulate the strategies that Japan, Korea and Taiwan (China) adopted successfully to upgrade their industrial sectors. In any case, Vietnam lacks a vibrant private sector to which these industrial policies could be applied successfully. Third, it is less taxing than the strategy of moving to higher value products, through technology enhancement, which, though essential, will take careful planning and time. Thus, the supply chain restructuring strategy argues that:

- Technology upgrading is not the only avenue to capturing more value added, especially in the short-term.
- The move from OEM to OBM is applicable and beneficial for products other than those that embody substantial technology.
- For primary exports, national leverage in restructuring supply chains is stronger the larger the country’s share of global supply. For example, Malaysia’s dominance as a producer and exporter of natural rubber allowed it to set quality standards for that product. These standards continue in use today despite Malaysia’s reduced importance as a producer.

The two strategies are not mutually exclusive, and the government plays an essential role to ensure the success of both strategies.

It should also be noted that value creation through supply chains strategies is important for trade facilitation even as economies make the transition from low- to middle- and finally to high-income.
As the mode of production moves up the technology ladder from primary production to technology-based production, the role of supply chains also change, and with that the lever for value addition capture. These levers are shown schematically in Figure 12.

The above strategy does not mean ignoring opportunities for participating more deeply in global high-tech supply chains. It does mean capturing in the short- to medium-term opportunities for value added while allowing time for the industry to move up the technology ladder.

**Figure 12: Value Creation Through Supply Chains as An Economy Develops**

<table>
<thead>
<tr>
<th>Value Creation Strategies</th>
<th>Stage Of Economic Development</th>
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</thead>
<tbody>
<tr>
<td>Customize and Personalize</td>
<td>Stage 1</td>
</tr>
<tr>
<td>Increase Reliability</td>
<td>Breakthrough Performance</td>
</tr>
<tr>
<td>Accelerate Flow</td>
<td>Breakthrough Performance</td>
</tr>
<tr>
<td>Lower Operating Cost</td>
<td>Breakthrough Performance</td>
</tr>
<tr>
<td>Shape Capacity</td>
<td></td>
</tr>
<tr>
<td>Industrial/Labor-Intensive</td>
<td>Stage 2</td>
</tr>
<tr>
<td>Knowledge/Capital Substitution</td>
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<tr>
<td>Service/Technology-Based</td>
<td>Stage 3</td>
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<td></td>
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</tbody>
</table>

Source: Boston Strategies International.

9. **Conclusion: policy imperatives for trade facilitation**

All these constraints and deficiencies can be addressed and this section contains suggested policy recommendations. Success will require considerable and sustained effort by all stakeholders, with the government playing a facilitative and coordination role. Political commitment will be needed from the leadership, given the vested interests such recommendations will affect. Nevertheless, unless preemptive action is taken immediately, Vietnam’s future competitiveness will be jeopardized as other countries move ahead with their trade facilitation agendas.

Although it falls to the private sector to maintain trade competitiveness, the government has a major role to play both in terms of providing the requisite policy, regulatory and institutional frameworks at the macroeconomic level, as well as the supporting infrastructure. This report has identified major constraints and bottlenecks that adversely affect the flow of exports and ultimately Vietnam’s trade competitiveness. This impact is particularly damaging when trade competitors are taking steps, including substantial investments in infrastructure upgrading, to enhance their competitiveness.

This report has made recommendations on the various dimensions of trade facilitation. These recommendations, together with specific actions needed, are distilled into four key messages.

**Message 1:** The first policy imperative is to build a sound policy framework and institutional capacity to implement a national action plan for trade competitiveness enhancement. This plan, aligning an export-led growth model to the changing global and domestic context, would focus on enabling trade and capturing higher value addition.

Much stronger policy coordination is needed to ensure effectiveness in the use of multiple policy levers on the above-mentioned pillars of trade facilitation. Coordination implies selectivity and sequencing of policy actions, given the size and complexity of the trade competitiveness agenda, the multiple policy levers needed, and limited human resources available (Figure 13). To achieve this goal, a national-level coordinating body should be appointed with specific terms of reference. These terms include coordination of ministries and branches, provinces and PPP projects in setting up an overall trade facilitation strategy, supervision of the trade facilitation process, and reporting on the progress of trade facilitation programs. The body should include leaders of governmental agencies as well as representatives from business. To ensure effectiveness, the body should be chaired by the Prime Minister or the Deputy Prime Minister in charge of economics.
Further, the plan must link trade competitiveness with industrial policy, as successful East Asian economies have done. The experience of these economies has shown that successful industrial policy requires institutional as well as human resource capability, both of which Vietnam currently lacks. The development of both is a medium- to long-term endeavor. In the short-term, an alternative strategy is needed that capitalizes on the country’s existing comparative advantage, while extracting greater value added. Vietnam’s current comparative advantage comes from low labor costs -- an advantage made greater by China’s orchestrated move up the technology ladder. Vietnam’s existing exports are driven by this advantage and, as already mentioned, extracting value addition by restructuring supply chains is a viable interim strategy.

Message 2: The second policy need is to develop infrastructure and transport services. This will improve domestic production linkages and international connections for export growth and strengthen Pillar 1. With countries like China moving assertively to provide infrastructure to support trade, Vietnam risks losing its export competitiveness if it fails to commit more resources for development of transport infrastructure and to ensure that these resources are effectively deployed. For this to occur, the strategy must shift away from complete reliance on state funding to mobilize resources from outside the state budget for transport infrastructure investment. Incorporating private sector sources of financing investment in infrastructure should be through appropriate PPP tools. With resources mobilized, initiatives to improve corridors and access to main international gateways should be framed with a focus on trade competitiveness. Port efficiency plays a dominant role in the process of export competitiveness. Hai-Phong and HCMC – Sai-gon Port and Cai-Mep should become more efficient and effective multimodal transport corridors with highways, railway and even IWT providing improved connections. Simultaneously, a strategy must be articulated to overcome the weaknesses of logistics services. It is also important to develop in partnership with the private sector, top-grade logistics centers near the two main ports. This will require policy research to produce recommendations to improve trade logistics. This should include measures that improve the legal framework to develop logistics services and logistics operators in Vietnam.

Message 3: The third policy imperative is to simplify regulatory procedures to reduce time and cost and improve reliability of cross border trade. A sound legal framework should be developed for the customs modernization program. The Customs Law should be further amended to establish an overall framework for business process simplification and risk management practices to meet
international customs standards. A risk management system should be put in place to improve compliance management. Given the pervasiveness of corruption, it is crucial to develop and implement a customs anti-corruption strategy to improve customer perception of customs services and the integrity of customs staff. However, even as simplification of the customs process develops, the need for the coordination of many agencies, not just customs, should not be overlooked.

Specifically, customs and other border management agencies need to:

• Simplify customs procedures in order to shorten clearance time and cost for both customs and clients;

• Overcome difficulties in the application of risk management to improve compliance;

• Implement an anti-corruption plan to improve customers perception toward customs service and the integrity of customs staff;

• Apply IT to improve customs efficiency and promote transparency. IT systems have been used to support declaration processing in customs since the late 1990s and have been progressively updated by local officials and contractors. However, they do not offer the range of functionality necessary to support adequately the adoption of modern approaches to customs administration; and

• Implement the National Single Window (NSW) to coordinate all the border agencies and harmonize all the customs and non-customs processes and procedures.

Message 4: The final policy change is to restructure supply chains to capture value and to participate proactively in global value chains. It should be recognized that not all supply chains are alike and restructuring these chains needs to take into account their particular characteristics. In the manufacturing sector overall, the government’s role is larger than simply making minor changes to the existing supply chains to reduce costs. It can restructure these by:

• Promoting domestic production of raw materials to reduce dependence on imports;

• Working with industry to develop a common vision that combines increasing the value of final products with value addition through supply chain restructuring with changes in order cycles and business models;

• Developing production clusters to capture agglomeration economies;

• Providing transport infrastructure to link these clusters and production centers to transport/ trade corridors, with these links as an integral part of a transport master plan;

• Enhancing availability of trade finance especially to local firms; and

• Formalizing public-private partnerships to support the above activities.

In the electronics and electrical equipment sector, for example, the government should promote industrial clusters, ensuring logistics support and providing transport infrastructure, not on a piecemeal basis, but as part of a national master plan. Additionally, policies are needed to encourage learning for technology acquisition, with an education sector providing the requisite quantity and quality of human capital the medium-term goal. A Master Plan for the Electronics Industry has already been in place since 2007, although it is uncertain whether the implementation of that plan will produce the desired results.

To improve the supply chain for rice the government should incentivize an increase in the scale of farming and quality of rice cultivated, segregation of the varieties of rice, modernization of processing technology, and an increase in the proportion of B2B sales. These should not only increase the unit value at locations along the supply chain but also allow the pass-through of reward incentives from higher quality output. The government’s role should also consist of making financing available for working capital, establishing a legal framework to enforce contracts between farmers and enterprises, in particular in accordance with a public-private partnership, in order to improve productivity of rice production and quality of rice produced. The government could also establish better storage facilities and strengthen transport infrastructure. The pilot model “large fields” is a positive development and
should be expanded. These initiatives are taking on increasing urgency with growing competition from emerging rice exporters such as Cambodia and Myanmar.

It is critical that the portion of G2G versus B2B mode of rice export be adjusted to achieve product diversification and increase the value addition of rice exports. Decree No 109/2010/ND-CP needs to be revised to encourage rice companies to find partners and commercial contracts. Policies need to remove the regime of allocation of G2G contract by the Vietnam Food Association and introduce more transparent auction/bidding for rice companies to acquire G2G sub-contracts.

Restructuring the supply chain for coffee is primarily a private sector role, but the government can support this through a sector policy focused on (i) value addition and coordination with the private sector in providing financing for capital investment and working capital; (ii) selection of land suitable for coffee growing; (iii) development and enforcement of internationally acceptable standards for coffee exports; and (iv) efficient transport movement through the trade corridors.

Development of spot and futures markets with well-functioning commodity exchange floors can help farmers deal with seasonal global price fluctuation of agricultural products. This allows agricultural products in general and coffee in particular to be produced and exported with better planning, on a larger scale, and with less costs (by reducing the need for intermediaries). It helps increase capital for production, enhance quality of export goods, and modernize agricultural supply chains for higher value added.

Seafood faces challenges from environmental degradation and increasingly complex health and other standards imposed by importing countries. In cases that blur the line between food safety and disguised trade protection, the government’s efforts must also be focused on promoting contract-farming arrangements, which could also be used promote good practices as part of supply chain restructuring. Again, public-private partnerships should provide inspections that comply with international standards. Internationally certified private laboratories should conduct the testing and the government should carry out the inspections.

Finally, investment in processing plants would enhance downstream processing and diversification of distribution channels to serve specific market niches. The introduction of higher value added products, market diversification, and promotion of Vietnam brands would help manage the above challenges.

All these specific reforms must be framed within detailed sector development strategies, which in turn must be integrated into, and made consistent with, the national action plan proposed by Message 1.

Key policy priorities for capturing value addition discussed above are summarized in a policy matrix (Table 3). This matrix links objectives to actions, their expected output, and identifies the agencies involved in implementation.
<table>
<thead>
<tr>
<th>Objective</th>
<th>Policy Action</th>
<th>Lead Agency</th>
<th>Time</th>
<th>Outputs</th>
</tr>
</thead>
</table>
| 1. Build sound policy framework and institutional capacity to implement the national action plan for trade competitiveness enhancement | **Develop a National Action Plan (NAP) for Trade Competitiveness**  
Formulate the National Action Plan (NAP) based on: (i) SEDS 2011-2020; (ii) The Import and Export of Goods Strategy in 2011-2020, with orientations toward 2030; (iii) Transport Development Strategy until 2020, Vision to 2030; (iv) Various Industrial Sector Strategies; (v) Customs Strategy until 2020. The Plan should be based on policy priorities of transport and logistics infrastructure and services, regulatory procedures, supply chain (as in Objective 2, 3 and 4). | NCIEC / MOT / MOIT                    | 2014       | The national action plan for trade competitiveness enhancement                                                                                                                                                                                                                                                                                                    |
|           | **Strengthen Policy Coordination and Implementation Capacity**  
Appoint a body at national level to effectively manage the NAP implementation. The body should be empowered to ensure national competitiveness and interests will be top of criteria for selective national industrialization priorities.                                                                                                                                                                                                                                                                                                                                                                                                                                    | MOIT / MOF / MPI / NCIEC / MOT / OOG | 2014-2016  | Appropriate institutional mechanism to manage, effectively formulate and implement NAP.                                                                                                                                                                                                                                                                   |
|           | **Linking trade competitiveness to industrial policy.**  
Select strategic priority and spearhead areas for carrying out industrialization.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | MOIT / MPI                            | 2016-2017  | NAP with selected prioritized areas.                                                                                                                                                                                                                                                                                                                       |
<table>
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<th>Objective</th>
<th>Policy Action</th>
<th>Lead Agency</th>
<th>Time</th>
<th>Outputs</th>
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<tbody>
<tr>
<td>2. Develop transport and logistics infrastructure and services to improve domestic production linkages and international connections for export growth</td>
<td>Set clear connection between transport infrastructures and logistics services with trade competitiveness Review and revise transport sector strategy to include long-term vision on development clusters, international gateways and corridors, and internal interfaces to effectively support and enhance trade competitiveness.</td>
<td>MOT / MOIT / NCIEC</td>
<td>2013</td>
<td>Revised Transport Strategy.</td>
</tr>
<tr>
<td>Improve transport corridors to connect major development clusters with major international gateways</td>
<td>Priority given to develop and implement a plan to improve transport corridors for port complex in Ho Chi Minh City (HCMC), Hai Phong, and Ba Ria – Vung Tau.</td>
<td>MOT</td>
<td>2013-2016</td>
<td>Efficient and effective transport corridors linking majors ports in HCMC, Hai Phong, and Ba Ria – Vung Tau.</td>
</tr>
<tr>
<td>Strengthen Public and Private Sector Partnership</td>
<td>Improve legal framework and revenue guarantee policy for BOT, BTO, PPP projects in transport infrastructure investment in order to mobilize financial resources outside the state budget to invest more effectively in improvement of transport and infrastructure and logistics services.</td>
<td>MOT / MOF</td>
<td>2013-2014</td>
<td>Legal support framework for effective PPP in transport infrastructure &amp; logistics services.</td>
</tr>
<tr>
<td>Develop trade logistics strategy and policy framework for logistics services</td>
<td>Project to improve logistics with clear definition of logistics service, logistic service business conditions and responsibility limitation for logistic business entities; Improve legal framework for development of logistics services and logistics operators in Vietnam.</td>
<td>MOIT / MOT / MARD</td>
<td>2013-2014</td>
<td>Implementation of Project on Trade Logistics.</td>
</tr>
<tr>
<td>Multimodal transport Development</td>
<td>Provide legal support for multimodal transport development</td>
<td>MOT</td>
<td>2013</td>
<td>Improved multimodal transport.</td>
</tr>
<tr>
<td>Objective</td>
<td>Policy Action</td>
<td>Lead Agency</td>
<td>Time</td>
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<tr>
<td>Provide ICD or Logistic Centers in support of port operations and industrial development</td>
<td>Review ICDs location and services and encourage establishment of ICDs becoming real Logistic Centers near ports and as support of future nearby industrial development</td>
<td>MOT, private investors and Global Logistics Companies, Other government agencies concerned</td>
<td>2014-2015</td>
<td>New set of effective ICDs and Logistic Centers located near international gateways.</td>
</tr>
<tr>
<td>3. Simplify regulatory procedures to reduce time and cost for cross border trade</td>
<td>Revise the Customs Law and Implementing regulations to set overall framework for business process simplification to meet international customs standards by: (i) applying the single stop inspection at border; (ii) using the advance ruling system; (iii) launching the priority enterprises program; (iv) setting up a system of customs performance indicators; (v) improving the current service of customs brokers and post clearance audit; and (vi) using the non-instructive detection devices.</td>
<td>GDC (MOF)</td>
<td>2013</td>
<td>Amended Customs Law and implementing regulations.</td>
</tr>
<tr>
<td></td>
<td>Issue Decree on IT Customs to apply electronic declaration and clearance as soon as practicable.</td>
<td>GDC (MOF)</td>
<td>2012</td>
<td>Decree on IT Customs.</td>
</tr>
<tr>
<td></td>
<td>Complete development IT systems for Customs (VNACCS) for implementing a paperless customs clearance process that minimizes the interaction between shippers and customs officers.</td>
<td>GDC (MOF)</td>
<td>2013-2014</td>
<td>VNACCS expedited.</td>
</tr>
<tr>
<td>Objective</td>
<td>Policy Action</td>
<td>Lead Agency</td>
<td>Time</td>
<td>Outputs</td>
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<tr>
<td>Apply risk management to improve compliance management</td>
<td>Amend Customs Law and implementing regulations to apply fully and consistently principles of risk management instead of provisions case-by-case specified or exempted inspection.</td>
<td>GDC (MOF)</td>
<td>2013</td>
<td>Amended Customs Law and implementing regulations.</td>
</tr>
<tr>
<td></td>
<td>Complete computerized risk management with a central department for developing and maintaining risk profiles; sharing of intelligence from other customs organizations and incorporating scanning into the risk assessment process.</td>
<td></td>
<td>2014-2015</td>
<td>Organizational restructuring with full-functional RM department.</td>
</tr>
<tr>
<td></td>
<td>Organization of separate units dealing with RM at central and local customs departments; apply RM in all border management agencies.</td>
<td>GDC (MOF)</td>
<td>2014-2015</td>
<td>Risk Management applied in all border management agencies.</td>
</tr>
<tr>
<td>Implement customs anti-corruption strategy to improve customer perception of Customs services and integrity of customs staff.</td>
<td>Develop and implement anti-corruption action plan for Vietnam Customs; specify a set of integrity standards on performance for customs staff; and create the mechanism of cooperation and partnership between customs and traders.</td>
<td>GDC (MOF)</td>
<td>2013-2016</td>
<td>Anti-corruption action plan developed and implemented.</td>
</tr>
<tr>
<td>Implement National Single Window (NSW) and ASEAN Single Window (ASW)</td>
<td>i) issues regulatory framework (Decree) for coordinated processes and procedures for the NSW; (ii) set up an institutional mechanism to coordinate relevant agencies through the NSW National Steering Committee; (iii) develop a single electronic window for submission of documents required for cargo clear and an integrated database for coordinating the activities of various agencies involved in border management.</td>
<td>MOF / MARD / MOIT / MOT / MOH / MOFA</td>
<td>2013-2014</td>
<td>NSW and ASW implemented.</td>
</tr>
<tr>
<td>Objective</td>
<td>Policy Action</td>
<td>Lead Agency</td>
<td>Time</td>
<td>Outputs</td>
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<tr>
<td>4. Restructure supply chains to capture value and proactively participate in global value chains</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1. Restructuring manufacturing supply chains toward development of strong supporting industries</td>
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</tr>
<tr>
<td>Develop Clusters to attract FDI for production of goods for exports.</td>
<td>Revise current program for establishing export-processing zones. Develop zones as part of a program for developing industrial clusters and providing more catered supplies and efficient logistics services. Determine the value proposition to be offered to the target market, and select and design sites so as to maximize the value proposition.</td>
<td></td>
<td>2014</td>
<td>Increase economic activity and level of employment in the manufacturing sector.</td>
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<tr>
<td>Develop supplier networks and supporting industries.</td>
<td>Assess opportunities for improving the quality of inputs currently supplied to export manufacturers and for diversifying into more sophisticated inputs and prepare a strategy, jointly with the private sector for realizing these opportunities. Based on this assessment, develop an action plan for development of supporting industries.</td>
<td></td>
<td>2013-2016</td>
<td>Increased local production of inputs to enhance competitiveness of industrial products; higher value added, support private sector development; reduced trade deficit.</td>
</tr>
<tr>
<td>Develop local contract manufacturing industry.</td>
<td>Prepare a strategy and marketing plan for diversification and improvement in quality of the products exported by each manufacturing sector, e.g. garments, footwear, electronics. Strengthen supply chain management including sourcing of inputs and developing new distribution channels for products. Identify opportunities for backwards integration to reduce the time and cost for delivering products to market and for downstream processing to increase the value of products.</td>
<td></td>
<td>2014</td>
<td>Increase quality of exports and the value addition.</td>
</tr>
<tr>
<td>Objective</td>
<td>Policy Action</td>
<td>Lead Agency</td>
<td>Time</td>
<td>Outputs</td>
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<tr>
<td>Increase portion of rice exported on a B2B basis.</td>
<td>Strengthen mechanism for contract enforcement, specifically related to the sale of agricultural commodities in order to reduce counterparty risk. Develop pro forma documents for allocating obligations and liabilities together with a mechanism for adjusting the price paid to reflect changes in commodity prices between when the contract is signed and when the transaction is completed.</td>
<td></td>
<td>2013-2014</td>
<td>Improve reliability of supply, better utilization of processing capacity.</td>
</tr>
<tr>
<td>Develop contract farming arrangements and strengthen role of farmers' associations.</td>
<td>Develop systems for traceability and certification of crops to allow differentiation and identity preservation. Create PP institutions to set and enforce grading standards for rice and coffee.</td>
<td>MOIT / MOT</td>
<td>2013-2016</td>
<td>Increase value of agricultural products which are exported.</td>
</tr>
<tr>
<td>Diversify exports of agricultural commodities based on quality and variety.</td>
<td>Develop a legal and financial framework to support the formation of a network of third-party rice storage facilities to act as an intermediary in transactions between farmers, rice mills and exporters. Provide a legal framework for warehouse receipts and enforcement of forward contracts in order to reduce counterparty risk. Establish an independent agency to document and disseminate rice market information. Harmonize rice quality and grading standards for use in forward contracts and link to price indices for Thai rice.</td>
<td></td>
<td></td>
<td>Increase income to farmers, improve quality of rice and reliability of supply, improve utilization of mills.</td>
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<tr>
<td>Establish a network of 3rd party storage facilities for rice.</td>
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<tr>
<td>Objective</td>
<td>Policy Action</td>
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<td>Build and develop trade marks for Vietnam agricultural products.</td>
<td>Analyze the situation of the branding of Vietnam’s agricultural products and develop a program to create stronger brands.</td>
<td>MARD</td>
<td>2014-2016</td>
<td>Program for strengthening branding of agricultural products.</td>
</tr>
<tr>
<td>Establish policy environment to support agro-industrial investment.</td>
<td>Assess factors inhibiting agro-industrial investment including restrictions/ transaction costs for land acquisition (inhibiting vertical integration); fragmentation of existing production structures that limit horizontal integration (i.e. cooperatives) and constraints on competition due to presence of state farms and SOEs. Develop a program to overcome these impediments and facilitate agro-industrial development.</td>
<td>MARD / MOIT / MOF</td>
<td>2013-2016</td>
<td>Create opportunities for realizing economies of scale and scope in production and processing of agricultural commodities.</td>
</tr>
<tr>
<td>Extend the PPP model in investment for large farming and the model “cánh đồng mẫu lớn”.</td>
<td></td>
<td>MARD</td>
<td>2013-2014</td>
<td>PPP model expanded.</td>
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<tr>
<td>Improve the quality of agricultural products to meet international standards.</td>
<td>Review related legislative documents and propose appropriate revised regulations to improve SPS controls (Viet GAP, NAFIQAD etc.) on seafood export.</td>
<td>MOIT / MOST / MARD</td>
<td>2013-2016</td>
<td>Agricultural products up to international standards.</td>
</tr>
<tr>
<td>Develop spot and forward/futures market(s) / transaction floors to help farmers deal with seasonal production and global price fluctuation.</td>
<td>Project to learn lessons from the failure of piloted transaction floor for coffee in Daklak, analyze efficiency of spot markets and main factors for their successful operation, and recommend policies to promote this model and regulatory framework for management.</td>
<td>MARD / MOIT</td>
<td>2013-2016</td>
<td>Establishment of transaction floor.</td>
</tr>
</tbody>
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