

## **CPTPP: Viet Nam's commitments in some key areas<sup>1</sup>**

### **Import duties reduction**

CPTPP members agreed to retain commitments on market access of goods from TPP. Accordingly, all CPTPP members have committed to eliminate import duties for almost all tariff lines. Market access commitments are showed in detail for each tariff line in Members' Import tariff Schedules.

In general, most of CPTPP members apply the same preferential import duties for other CPTPP partners. Those include Australia, Brunei, Malaysia, New Zealand, Peru, Singapore, Viet Nam. Meanwhile, some other countries apply different tariff schedules for different CPTPP Members (including Canada, Chile, Japan, Mexico). However, Chile and Canada only apply different preferential import duties for some tariff lines, while rest is applied using the same preferential tariff.

Basically, commitments on reduction and elimination import duties in CPTPP are divided into three groups:

- Immediate elimination: Import duties will be immediately eliminated while the Agreement enters into force.
- Elimination after a period of time: Import duties will be eliminated after a specific period of time. In CPTPP, most of tariffs will be eliminated after 3 – 7 years, nonetheless, in some cases, the period of time may reach 10 years. In a few special cases, a few tariff lines will be eliminated after more than 20 years.
- Tariff quotas: import duties of such tariff lines will be reduced or eliminated within a specific quantity of imports. For the imports exceeding such quantity, import duties will be higher or not subject to preferential tariffs.

### ***Commitments on import duties from CPTPP members for Viet Nam***

CPTPP members will eliminate import duties of 97% - 100% tariff lines for goods originating from Viet Nam. Most of Vietnamese goods when imported into CPTPP members will be subject to import duties of 0% immediately when the Agreement enters into force. Some preferential import duty commitments of CPTPP members are as follows:

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<sup>1</sup> Original article: [http://cptpp.moit.gov.vn/?page=overview&category\\_id=949337b7-18f7-463d-8016-7c56827c143a](http://cptpp.moit.gov.vn/?page=overview&category_id=949337b7-18f7-463d-8016-7c56827c143a)

- Canada commits to eliminate import duties for 95% of tariff lines, which is equivalent to 78% of exports from Viet Nam to Canada when the Agreement enters into force. Of which, 100% of exports of seafood and wood furniture will be subject to import duties at 0% when the Agreement enters into force.
- Japan commits to eliminate import duties for 86% of tariff lines, which is equivalent to 93.6% of exports from Viet Nam to Japan when the Agreement enters into force, and import duties of 90% tariff lines will be 0% after 5 years. In this Agreement, for the first time, Japan commits to eliminate import duties for most of agricultural and seafood products of Viet Nam.
- Peru commits to eliminate import duties for 80.7% of tariff lines, which is equivalent to 62.1% of exports from Viet Nam to Peru when the Agreement enters into force, and import duties of 99.4% tariff lines will be 0% after 17 years.
- Mexico commits to eliminate import duties for 77.2% of tariff lines, which is equivalent to 36.5% of exports from Viet Nam to Mexico when the Agreement enters into force, and import duties of 98% tariff lines will be 0% after 10 years.
- Chile commits to eliminate import duties for 95.1% of tariff lines, which is equivalent to 60.2% of exports from Viet Nam to Chile when the Agreement enters into force, and import duties of 99.9% tariff lines will be 0% after 8 years.
- Australia commits to eliminate import duties for 93% of tariff lines, which is equivalent to 95.8% of exports from Viet Nam to Australia (about 2.9 billion USD) when the Agreement enters into force. Import duties of other tariff lines will be 0% after a maximum of 4 years.
- New Zealand commits to eliminate import duties for 94.6% of tariff lines, which is equivalent to 69% of exports from Viet Nam to Chile (about 1010 million USD) when the Agreement enters into force, and import duties of other tariff lines will be 0% after 7 years.
- Singapore commits to eliminate import duties for all tariff lines when the Agreement enters into force.
- Malaysia commits to eliminate import duties for 84.7% of tariff lines when the Agreement enters into force while other tariff lines will be subject to import duties at 0% after a period of time. After 11 years, 99.9% of tariff lines of Malaysia will be reduced or eliminated.
- Brunei commits to eliminate import duties for 92% of tariff lines (about 7,639 tariff lines) when the Agreement enters into force. Import duties of 99.9% tariff lines will be 0% after 7 years and 100% tariffs will be eliminated after 11 years.

## **Members' commitments for Vietnam key product groups**

### ***Footwear***

78% of Vietnam's footwear export turnover to Canada will be at 0% when the Agreement enters into force or be reduced by 75% compared to the current duty rate. Particularly, this is the first time Japan commits to eliminated import duties of leather shoes after 16 years. Import duties of footwear exported to Mexico and Peru will be evenly reduced and eliminated in the 16<sup>th</sup> year of the entry into force of the Agreement.

### ***Fishery products***

Fishery products will receive 0% tariff rates exporting to Canada and Japan once the Agreement enters into force. Many tariff lines that are out of scope in Viet Nam – Japan Economic Partnership Agreement and ASEAN-Japan Comprehensive Economic Partnership Agreement will receive 0% rate in CPTPP. For example: cod, surimi, shrimp, crab... will be eliminated after 3 years.

### ***Rice***

By enjoying 0% tariff rate right after the Agreement comes into force, rice will have more chances to access and gain more market share into Canada. Mexico is also a new market where Viet Nam is exporting about 70,000 ton per year and import duties will be 0% in the 11<sup>th</sup> year. Rice exported to Japan is still subject to the tariff quota as committed by Japan in the WTO. Nonetheless, the Ministry of Agriculture and Rural Development of Viet Nam and Ministry of Agriculture of Japan have signed the Agreement on Development of Rice Value Chain to increase chances of winning the WTO tariff quota auctions from Japan.

### ***Coffee, tea, pepper, cashew nuts***

Those goods will receive 0% tariff rate when the Agreement enters into force. Except for Mexico, import tariff of Robusta coffee bean will be 0% in the 16<sup>th</sup> year. Import tariff of Arabica coffee beans and processed coffee will be reduced by 50% compared to the current tariff rate in the 5<sup>th</sup> or 10<sup>th</sup> year.

### ***Wood furniture***

Export of exterior wooden furniture exported to Peru and Canada will be subject to 0% duty when the Agreement enters into force.

## **Vietnam's commitments on import duties**

Viet Nam applies one Tariff Schedule for all CPTPP members. Accordingly, Viet Nam will eliminate 66% of tariff lines after the Agreement enters into force and 85.6% after 3 years. Other tariff lines will be eliminated after 5 to 10 years.

For some “very sensitive” goods, Viet Nam will eliminate tariffs after 10 years, such as beer, wine, chicken, iron and steel, cars under 3,000 Cc. Viet Nam will apply tariff quotas for sugar, eggs, salt (within the quota) and used cars.

## **Textile**

Different from other FTAs signed by Viet Nam, CPTPP has a separated chapter on textile. In addition to general provisions like other goods, textile goods are also subject to their own specific rules. Commitments on textiles are as follows:

- Product - specific rules of origin regulate the use of yarn and fabric from CPTPP areas to enhance the establishment of supply chains and investment within the area and to enhance the value of textile goods produced inside the area.
- Flexible provision on “Short supply list of product” allows the use of some types of yarns and fabric which are not available in the area.
- Commitments on customs cooperation and implementation aim at preventing tax evasion, smuggling and trade fraud.
- Special safeguard mechanism is applied in the situation of serious injury or risk of serious injury when there is a surge in imports of one good (which is different from common provision of the Agreement)

### ***Textile market access***

CPTPP will eliminate tariff for textile goods originating from Viet Nam when exported to CPTPP member (immediately or after a period of time). For countries that Viet Nam has not signed FTA with, such commitments on market access for textile goods are very important as tariffs for textile goods are often much higher than other industrial goods.

For Canada market, tariffs of textile goods majorly exported of Canada will be 0% after the Agreement enters into force or after 3 years. 42.9% of exports from Viet Nam to Canada will be subject to 0% tariff in the first year and 57.1% of exports from Viet Nam to Canada will be subject to 0% tariff in the forth year. Meanwhile, Japan will reduce tariffs for 98.8% tariff lines when the Agreement enters into force, equal to 97.2% of exports of textile goods from Viet Nam to Japan.

### ***Rules of origin for textile goods***

For rules of origin for textile goods, “yarn forward”, or “three-stage” provision is applied, which means that all processes, from spinning, weaving, dyeing to finishing and sewing must be conducted within the CPTPP areas. This principle encourages the vertical development of supply chains of textile industry, as well as investment in fiber and fabric industries, creating chances for Viet Nam to deeply participate in supply chains within CPTPP areas.

Compared to other FTAs signed by Viet Nam, this is a high – level requirement. Nonetheless, CPTPP members agree on some flexibilities:

- 3 groups of products are applied one-stage provision (cut and sew): suitcases, bags, women’s bras, children’s wear made of synthetic fibers;
- The Short Supply List with 194 types of fabric and fiber outside the CPTPP areas, of which 186 items will be in force permanently and 8 items will be in force within 5 years.

### **Rules of origin**

The Agreement regulates three methods to identify origin of a good, including: (i) wholly obtained or produced entirely in the territory of one or more of the Parties; (ii) produced entirely in the territory of one or more of the Parties, exclusively from originating materials; (iii) Product-Specific Rules of Origin (PSR)

Besides, the provision on accumulation regulates that Each Party shall provide that an originating good or material of one or more of the Parties that is used in the production of another good in the territory of another Party is considered as originating in the territory of the other Party.

### **Origin procedures**

To facilitate trade, reduce transaction time and import and export cost, CPTPP allows exporters, producers and importers to certify origin themselves. This is a new provision which is not regulated in other FTAs signed by Viet Nam.

For Viet Nam, certification of origin by the importers has not been applied widely so Viet Nam can have a transitional period to help Vietnamese state agencies and enterprises get used to such methods. Some regulations on the transitional period are as follows:

- *For imported goods*: Viet Nam reserves the right to apply certification of origin by the importers after 5 years of entering into force.
- *For exported goods*: There are two methods which are applied flexibly: (a) certification of origin issued by a competent authority; and (b) certification of origin issued by an approved exporters within a maximum of 10 years. After 10 years, Viet Nam will apply only self certification of origin.

### **De Minimis**

#### ***Definition and reasons***

In the context of international economic integration, FTAs will lead to tariff reduction and elimination. There will be a large gap between MFN tariff rates and preferential tariff rates under FTAs, therefore, all FTA must regulate a set of rules of origin to ensure that goods are originated from FTA partners and avoid freer riders.

For processed goods, there are normally two basic criteria to identify originating goods: CTC - Change in Tariff Classification and RVC – Regional Value Content. These criteria mean that non-originating materials, after undergoing basic changes during production to be conferred originating status. According to CTC, for a good to be originating, HS codes of non-originating materials classified in chapter, heading and sub-heading the harmonized system of classification must be different from HS codes of final products. For example, the rule of origin applied for costumes in some FTA is Change in Chapter. It means that HS codes of materials (fabrics, accessories...) imported outside FTA regions must be classified differently from the HS code of clothing products at the 2-digit level (Chapter level).

In fact, in many cases, with a small amount of materials not meeting rules of origin, a good will be considered non-originating and not be subject to preferential tariff treatment. For example, according to rules of origin in the ASEAN Korea Free Trade Area (AKFTA), the rule of origin for jackets HS 6201) is “Change in Chapter, cut and sewn in any member countries; or RVC 40%”. If one company wants to apply CC criteria, shoulder pads (HS 6217) imported from China will not meet the requirement as shoulder pads are classified in the same chapter of final products - Chapter 62.

Therefore, FTAs often set out a maximum flexible rate of non-originating materials and materials not meeting CTC requirement that can be considered to be originating when used in production of a good. This rate is called De Minimis (a Latin term), which is the amount of materials whose hs codes do not change but still considered originating. This provision is added to facilitate enterprises to meet CTC requirements to be granted preferential tariff treatment in FTAs.

#### ***How is De Minimis applied***

De Minimis is only applied for goods subject to CTC criterion, not RVC criterion. Overall, De Minimis in most of FTAs will not exceed 10% of FOB of a good. 10% is called De Minimis threshold. For example, an exported good whose FOB price is 100 USD can use a maximum of 10 USD of non-originating materials not meeting CTC requirement in its production.

Different commitments have different De Minimis rates. De Minimis can be calculated on FOB price in case of ASEAN FTA, or on Exworks-EXW in case of GSP or EVFTA. By type of goods, De Minimis will be a maximum of 7% for processed agricultural products in AJCEP or VJEPA, or a maximum of 5% (car parts and spare parts) in case of CPTPP.

Particularly for textile goods in Chapter 50 to 63, in multilateral FTAs, De Minimis is calculated on weight of exported goods, not on prices as some textile materials have a small weight but accounting for a large value of products. Accordingly, producers can flexibly use non-originating materials to product textile goods as long as such materials' weight does not exceed 10% of exported goods' weight. In the above example of jackets, producers can flexibly use Chinese shoulder pads if their weight is lower than 50 gram, compared to the weight of 500 gram of jackets.

CPTPP also regulate De Minimis threshold in a more complicated way than other FTAs. For example, the rule of origin for male jackes in CPTPP (HS 6201.12) is “CC, except

for Heading 62.04 to 52.12...” [1]. It means that (1) HS code of non-originating materials used in the production of such jackets must be classified in a different chapter from chapter of final product (chapter 62) and (2) HS code of textile materials being classified from Heading 52.04 to 52.12 must be originating. For example, if main fabric to produce jackets is classified in HS 52.08, such fabric must be produced within CPTPP areas. If it is non-originating fabric as it is woven from filament yarns (HS code 54.06) imported from outside CPTPP, such fabric will be originating if the producer use filament yarns whose weight is less than 10% weight of fabric. In such case, jacket is originating as filament yarns account for less than 10% of weight of fabric.

The table belows shows differences on De Minimis thresholds in some FTAs.

***Comparison of De Minimis rates in some FTAs.***

<b>FTA</b>	<b>Goods</b>	<b>De Minimis rate</b>	
ATIGA	All goods	10% of FOB price	
AKFTA AANZFTA	Goods not classified in Chapter 50 - 63	10% of FOB price	
	Textile goods from Chapter 50 to 63	10% of weight	
AJCEP	Goods classified in Chapter 16,19, 20, 22, 23, 28-49, 64-97	10% of FOB price	
	Goods classified in Chapter 18 to 21	7% or 10% of FOB price	
	Textile goods from Chapter 50 to 63	10% of weight	
AIFTA	No regulated		
ACFTA	No regulated		
CPTPP	Goods (except for some milk products and products from milk, juice, cooking oil)	10% of transaction value	
	Car parts and spare parts	5% or 10% of transaction value	
	Textile goods	Not classified from Chapter 61 to 63	10 per cent of the total weight of the good
		Classified from Chapter 61 to 63, using non-originating fibres or yarns	Weight of non-originating fibres or yarns not exceeding 10% of materials mainly affecting classification of products
		elastomeric yarn in the component of the good that determines the tariff classification of the good	Elastomeric yarns are wholly formed in the territory of one or more of the Parties

*Source: Agency of Trade, Ministry of Industry and*

## *Trade*

Applying De Minimis is an essential skill for enterprises in the production process to meet the requirement on ROO and receive preferential tariff treatment. De Minimis provisions in different FTAs are not the same so enterprises should study carefully and store dossiers for goods origin verification. If enterprises need support, enterprises can consult authorized state agencies and organizations in charge of issuing certificate of origin or send emails to co@moit.gov.vn.

### *Abbreviations:*

- *ATIGA: ASEAN Trade in Goods Agreement*
- *ACFTA: Agreement for the ASEAN–China Free Trade Area*
- *AKFTA: ASEAN Korea Free Trade Area*
- *AJCEP: ASEAN Japan Comprehensive Economic Partnership*
- *AANZFTA: ASEAN-Australia-New Zealand Free Trade Agreement*
- *AIFTA: ASEAN-India Free Trade Area*
- *CPTPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership*
- *FTA: Free Trade Area*

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[1] Rules of origin in CPTPP of goods coded 62.01 - 62.08: CC, except from 51.06 to 51.13, 52.04 to 52.12 or 54.01 to 54.02, 5403.33 to 5403.39 or 5403.42 to 5403.49, or 54.04 to 54.08 , 55.08 to 55.16, 58.01 to 58.02 or 60.01 to 60.06, provided that the product is cut or woven into shapes, or both, and sewn or stitched in the territory of one or more member countries.

## **Labour**

### **Labour criteria of ILO**

Employees are those who directly produce goods and services in international trade so they deserve the right to enjoy the fruits of this process. In 1998, ILO issued a Declaration on principles and basic rights in labour and approved Joint Declaration on promoting and ensuring benefits of employees in a fair globalisation. It is also the approach of new-generation FTAs and gradually becomes a global trend (when WTO was established, there were only 4 FTA containing labour issue, by January 2015, there were 72 FTAs regulating labour issue).

CPTPP is a new-generation FTA with commitments on labour, however, such commitments are not new but based on labour criteria set out in Declaration on principles and basic rights in labour of ILO in 1998, with 8 fundamental Conventions, including: (1) freedom of association and collective bargaining of employees and employers (Convention 87 and 98); (2) abolition of forced and compulsory labour (Convention 29 and 105); (3) the effective abolition of child labour (Convention 138 and 182); and the elimination of discrimination in respect of employment and occupation (Convention 100 and 111).

Viet Nam has been a member of ILO since 1992 and has ratified 5 out of 8 conventions of ILO (including 29, 100, 111, 138 and 182) and is going to submit dossiers to

competent agencies for ratification of the rest of 3 conventions (Convention No. 87, 98, 105). Accordingly Declaration 1998 of ILO, member countries not ratifying the above Conventions are obliged to respect, promote and implement labour standards set out in such Conventions. Therefore, in practice, Viet Nam has implemented ILO standards in its active way.

### **Major provisions on labour in CPTPP**

- Regarding provisions on abolition of force labour, child labor and labour discrimination, fundamentally, Viet Nam's domestic legal documents have complied with ILO standards and commitments of the Agreement. Viet Nam has conducted some national action plans to implement these standards in practice. Commitments on ensuring working conditions related the minimum wage, working hours and labour safety have been basically regulated in Vietnamese domestic legal documents, therefore, there are no requirements on amendment or supplement.

- Regarding the right on establishing representative organization of workers, under the CPTPP Agreement and in accordance with the provisions of the ILO, Viet Nam and all member countries must respect and ensure employees' rights on establishing and participating in labour representative organizations in enterprises.

- CPTPP, as well as ILO, state that all labour representative organizations must abide by the Constitution and regulations of one member country and ILO standards.

- CPTPP also has provision on protecting employees from the intervention and discrimination of employees to nullify or impair the ability to represent or protect rights and benefits of employees. It complies with ILO standards.

### **Commitments on connection of labour organization**

In CPTPP, Viet Nam reserves a transitional period of 5 years from the enforcement of the Agreement (about 7 years from the signing date) to allow labour representative organizations at grassroot level to associate or form a higher-level organization (for example, at industrial level, regional level) in a legal procedure and in a transparent way. The principles, objectives, procedures of establishment and operation methods of organizations at such level must comply with domestic regulations and ILO standards. The transitional period allows Viet Nam to amend its legal documents and state management organization to ensure the best benefits for employees.

The right on freedom of association is mentioned in two conventions and only includes rights of employees and employers to establish and participate in their representative organizations for interaction in labour relationship. These two conventions do not regulate associations or other activities not related to labour relationship.

### **Services and Investment**

CPTPP regulates four major obligations as follows:

- *National treatment (NT)*: Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers

- *Most-favored-nation treatment (MFN)*: Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party
- *Market access (MA)*: No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that: (i) impose limitations on the number of service suppliers, (ii) impose limitations on the total value of service transactions or assets, (iii) impose limitations on the total number of service operations or the total quantity of service output, (iv) impose limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.
- *Local presence (LP)*: No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service

### **Major obligations on Investment**

#### ***Major obligations***

Besides obligations on National treatment (NT) and Most-favoured-nation treatment (MFN) as Chapter on Trade in Services, Chapter on Investment of CPTPP also provides some major obligations as follows:

- *Minimum standard of treatment*: Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.
- *Expropriation*: When necessary, for example, for a public purpose, government of one country has the right to expropriate foreign investors. Nonetheless, such right must be applied on a non-discriminatory manner and on payment of prompt, adequate and effective compensation in accordance with due process of law and provisions of CPTPP.
- *Transfer*: Foreign investors have the rights to freely transfer their capital contributions or profit of investment. Nonetheless, in some cases, governments of CPTPP member countries can prevent or delay such transfers of foreign investors for the purpose of control capital in case of balance of payment crisis or economic crisis.
- *Not impose “performance requirement” (PR)*: One country shall not maintain performance requirements as a condition for investors to gain investment licenses or other preferential investment treatment.
- *Not impose requirement on appointing senior management position (SMBD)*: One country shall not require an enterprise to appoint to a senior management position a natural person of any particular nationality.

#### ***Investor-State Dispute Settlement (ISDS)***

To protect interests of foreign investors, CPTPP allows foreign investors to initiate a lawsuit in International Arbitration center in case interests of foreign investors are infringed by one member country (for example, expropriation, nationalization, minimum standard of treatment...), except in case disputes arising from the implementation of commitments or obligations of investment agreements and investment authorization.

Nonetheless, the initiation must comply with provisions and procedures regulated in Investment Chapter. Main provisions are as follows:

- *Transparency of arbitral proceedings*: The tribunal shall conduct hearings open to the public and related documents shall be made available to the public.

- *Participation of a third party*: Interested parties, such as trade unions or civil organizations can submit documents expressing their opinions to the tribunal.

- *Participation of unrelated parties*: The government of foreign investors and other CPTPP member countries can submit documents expressing their understandings or interpretation of commitments of CPTPP.

- *Handling nullification complaints and compensation of payment for attorneys*: CPTPP allows a panel to quickly identify and handle nullification complaints and decide payment for attorneys for responding government.

- *Temporary determination and appealing*: Parties participating in the case can review and comment on determination of the panel before proposition and the two parties have the right to appeal determination of the panel.

## Commitments in some other service – investment areas

Regarding to the service - investment field, the CPTPP member states are entitled to take reservation measures that are contrary to the four main obligations of the Service chapter (including National Treatment, Most-Favoured-Nation Treatment, Market Access and Presence in Host Country) and the four main obligations of the Investment chapter (including National Treatment, Most-Favored-Nation Treatment, Implementation Requirements, Board of Directors and Senior Personnel Management), in the form of a category called “List of non-conforming reservation measures with the main obligations of the Service and Investment chapter” (hereinafter referred to as the NCM list of Service - Investment). In addition, if there are no discriminatory, any measure of management may be maintained without reservation in the Agreement.

The NCM list of service - investment includes of two Annexes:

Annex I: the Annex reserves existing measures, including those that are not compatible with the investment and trade service obligations stipulated in the current legal documents and policies of a member country. Regarding the measures in this Annex, countries may continue to apply in accordance with the description. However, it should be noted that:

- Countries are entitled to amend the reservation contents provided that amendment is not less favorable than those in the Annex. This principle is called the “standstill” principle.
- Countries are entitled to unilaterally amend the reservation contents in a more favorable way, but once given, they are not allowed to withdraw such modified contents. This principle is called the "ratchet" principle.

**Note:** Vietnam does not need to comply with the ratchet principle within 3 years upon entry into force. This is a flexibility that the CPTPP members dedicate to Vietnam.

Annex II: the Annex reserves the long-term measures, including those that are not compatible with the investment and trade service obligations that countries *do not want to eliminate at the current stage but want to reserve for long-term*. Regarding to this Annex, countries are fully entitled to give content that is inconsistent with the main obligations of the Agreement or restrict foreign investors in the preserved field.

***The particular commitment of some service - investment fields:***

- The Most-Favored-Nation Principle (MFN): Vietnam agrees with the MFN principle, it means that Vietnam treats CPTPP member states no less favorably than others. However, Vietnam reserves the right to take and maintain any discriminatory measure for: (i) countries that have bilateral or multilateral international agreements currently in force or signed before the date of entry into force and (ii) the ASEAN member states under any ASEAN agreement to which ASEAN member states may enter, currently in force or signed before the date of entry into force. Furthermore, Vietnam also reserves the right to take and maintain any discriminatory measure for countries under the bilateral or multilateral international agreements currently in force or signed before the date of entry into force in the areas of maritime operations including salvage, seafood and aviation.

- Telecommunication services:

+ The CPTPP member states are allowed to establish joint ventures with capital contribution of no more than 49% for basic telecommunication services attached to the network infrastructure. Regarding the valued-added telecommunication services related to the network infrastructure Vietnam agrees to set up joint ventures with capital contribution of no more than 65% after 5 years the Agreement comes into force. Regarding services that are not attached to the network infrastructure, Vietnam allow the CPTPP member states to establish enterprises with 100% foreign capital.

+ Regarding to services that are not attached to the cross-border network infrastructure (such as: phone calls or messaging via Viber, Skype and other internet-based telecommunication services): Vietnam reserves the right to require providers to register, apply for licenses or make treaties with carriers.

+ Regarding to the sale of capacity of undersea fiber optic cables: fiber optic cables must be connected via landfall stations and equipments under Vietnam's administration; the CPTPP fiber optic investors are only allowed to sell the capacity of fiber optic cable to telecommunication services providers and internet services providers (ISP) licensed in Vietnam.

- Banking services: Vietnam commits to open market with new contents including providing new financial services and electronic payment services for card transactions. In addition, Vietnam continues to maintain the licensing rights of financial management agencies and ensure the Vietnam's rights and interests while participating the Agreement.

- Distribution service: Vietnam commits to remove restrictions on "expanding the number of retail locations" after 5 years upon entry into force. In terms of goods, Vietnam

continues to make reservation of not allowing foreign countries to participate in the distribution of petroleum, pharmaceutical and video-recording products.

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## **GOVERNMENT PROCUREMENT**

Government Procurement (GP) refers to a payment made by a government agency or a government-authorized agency for governmental purposes; therefore, it is a market in which the purchaser is associated with the State such as state agencies and state-owned enterprises.

Similar to the Law on Bidding, the GP Chapter of the CPTPP sets out rules and procedures in the contractor selection process, but at a higher level of requirements on fairness, publicity and transparency. The main regulations of the GP chapter include: non-discrimination, no incentive for domestic commodities and contractors and commitments to open GP market determining the scale of openness of each country.

Accordingly, Vietnam commits to open and implement the following subjects:

(i) The procuring agencies, or the offerees including the units listed in the offer, are 21 Central agencies; no commitment is given for the agencies of the National Assembly, the Office of President, the Supreme People's Court and the Supreme People's Procuracy of Vietnam. Regarding to the Ministry of Transport and the Ministry of Defense, Vietnam only commits to open the procurement packages for some certain types of goods and services. Vietnam also commits to open procurement for 38 public non-business units, including hospitals under the Ministry of Health, the Academy of Social Sciences, the Academy of Science and Technology, the Ho Chi Minh National Academy of Politics and the Vietnam News Agency.

(ii) The opening threshold of package is specified for each type of procuring agency, including the threshold of the package procurement of goods and services in general and the threshold of procurement of construction services. Take an example of central government agencies, after 15 years of conversion, the opening threshold is 8.5 million [1] SDR [2] for the construction and installation package, and the opening threshold of goods and services package is 130,000 SDR [3] after 25 years.

Regarding the 34 hospitals directly under the Ministry of Health, the opening threshold of good package is applicable to the medicine procurement package for each hospital with the contract performance period of one year or more, or the medicine procurement package for

the Ministry of Health to choose contractors on behalf of hospitals. If the hospitals' medicine package has contract performance period of less than one year, the opening threshold for this package is 500,000 SDR. And if the package consists of only one medicine, the opening threshold is 180,000 SDR.

(iii) Regarding the goods, services, construction field that need to be purchased within the scope of opening, Vietnam only reserves the essential contents, such as the procurement of petroleum, a part of medicine, rice, books and newspapers market, etc. The services section only lists the types of services that are open for the CPTPP member states contractors participating in procurement. Vietnam also commits to opening medicine packages procurement, but the opening itinerary is quite long, 15 years after entry into force, Vietnam opens up to 50% of the total contract value for packages in the category of adjustment. The medicines that Vietnam must prioritize for procurement are in the following order: the generic medicine belongs to group 1, group 2, group 3, group 4, group 5 and etc... until medicine procurement matches the opening percentage of that year.

(iv) The member states can follow eliminations, apply exceptions and take measures during the transition period. For instance, Vietnam is allowed to eliminate the package for construction of martyrs cemeteries, the procurement of petroleum within the goods and services section, domestic shopping for consumption outside the territory, the procurement packages of national reserves, procurement for the purpose of health promotion, welfare and socio-economic development of ethnic minorities, the package for small and medium enterprises and the package for security and defense reasons.

The CPTPP allows developing countries to take some measures during the transition period. For example, within 5 years upon entry into force Vietnam will not be subject to the dispute settlement mechanism attached to its obligations in the GP chapter. During this period, Vietnam only consults with the CPTPP member states concerning about the implementation of obligations of Vietnam.

(v) Vietnam is allowed to request, consider, apply or implement any domestic preference at any stage of the contractor selection process within 10 years upon entry into force, including preferential price mechanism is at maximum of 40% of the total contract value for packages under the scope of annual adjustment; this rate drops to a maximum of 30% from the 11th year to the end of the 25th year. Domestic preferential measures will be eliminated from the 26th year upon entry into force for Vietnam.

[1] 8.5 million SDR is equivalent to about 260 billions VND

[2] SDR: Special Drawing Rights

[3] 130.000 SDR is equivalent to 4 billions VND

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## **ENVIRONMENT**

The Environment chapter promotes a reciprocal relationship between trade and environmental policies; strengthens environmental protection at a high level and effectively enforces environmental laws; strengthens the capacity of the parties to address trade-related environmental issues, including through cooperation.

The Environment chapter consists of about 25 pages with 23 Articles and 02 Annexes, regulates activities in many areas and environmental issues related to trade. These provisions have been incorporated into binding commitment obligations and oblige member countries to implement them through the use of economic instruments, particularly the application of consultation mechanisms and dispute settlement mechanisms (with trade remedies applicable) for arising issues or environmental disputes relating to trade and investment between two or more Parties.

In addition, the Environment chapter contains provisions to increase transparency and seriousness in the implementation of the chapter's obligations, specifically the obligation to facilitate public participation in the implementation procedure; the obligation to share and disclose information relating to the implementation and the obligation to encourage and allow the public to participate in monitoring the implementation procedure of environmental commitments. The main contents of this chapter include:

### **Domestic policies and laws on the environment**

*Formulating policies and laws:* Each CPTPP country must try to ensure full environmental laws and policies, encourage high levels of environmental protection and continue to raise levels of environmental protection.

*Enforcement of policies and laws:* Each CPTPP country must effectively and seriously enforce its environmental laws without affecting trade and investment amongst CPTPP countries. At the same time, it is not permissible to ignore, or somehow diminish the legal effects of its environmental laws and regulations to encourage trade or investment amongst CPTPP countries.

## **International commitments on environment**

The CPTPP countries affirm their effective implementation of commitments in the multilateral agreements about environment that they have participated in. In addition, the Environment chapter emphasizes the obligation to implement 03 international treaties on environment: MONTREAL Protocol on substances depleting the ozone layer, International Convention for the Prevention of Pollution from Ships (MARPOL Convention) and the International Convention on the Trade of Endangered Species of Wild Fauna and Flora (CITES Convention).

## **Increase transparency and implementation efficiency**

The CPTPP countries agree to publicize information, increase the participation and supervision of the public during the implementation procedure. In addition, the Environment chapter encourages the participation of the private sector (enterprises) in protecting the environment such as encouraging the application of voluntary mechanisms to enhance environmental protection.

## **Fishery allowance**

Regarding the content of subsidies for natural fishing, fighting against illegal trade of wild-caught seafood is one of the important contents of the Environment Chapter, the CPTPP countries have committed to:

- Eliminate subsidies for fishing activities that have been identified as causing adverse impacts on fisheries resources that have been over-fished; And eliminate all forms of subsidies for illegal, unregulated and unreported fishing vessels.
- Commit to make all policies and data related to fishing subsidies transparent.
- Commit to implement national port and flag ship state measures as well as regional and international anti-illegal fishing action plans to prevent and address illegal fishing and commercial actions of such products.

In order to implement the commitments related to the elimination of subsidies as mentioned above, countries have a period of 3 years from the date of the Agreement comes into effect for each Party to harmonize all related policies. Vietnam, particularly, will be extended for 2 more years if there is a proof showing the need for more transition time.

## **Conserve**

In TPP Agreement, countries must implement measures to combat and prevent the exploitation and trade of wild animals and plants contrary to its laws or another applicable law.

Other applicable law is understood as the law of a country where the exploitation and trafficking of wild animals and plants occurs and only concerns whether the wild animals and plants that have been harvested and traded are contrary to the law there.

The CPTPP countries have agreed to postpone the obligation to take measures to combat and prevent wildlife exploitation and trade in contrary to another applicable law. This means that countries must only take measures to deal with wildlife exploitation and trade in contravention of the laws of their countries in accordance with the provisions of the International Convention on Trade in Wildlife. endangered wildlife species (CITES).

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## **STATE-OWNED ENTERPRISES**

### **The primary obligations**

The primary obligations under the Agreement include: (1) State-owned enterprises (SOEs) must operate under the market mechanism; (2) SOEs must not act anticompetitively when they have the monopoly position, affecting trade and investment; (3) Ensure transparency of some information such as the State's ownership rate, audited financial statements and being allowed to publish; and (4) The State does not provide excessive subsidies, greatly affecting the interests of other countries.

### **Commitments of Vietnam**

The Agreement's obligations only apply to SOEs that exceed certain revenue thresholds. Accordingly, SOEs with annual revenue of less than VND 16,000 billion (at the time when the Agreement comes into force) and less than VND 6,500 billion (when the Agreement takes effect for 5 years) will not have to implement most obligations of the Agreement.

Vietnam reserves the exclusion from the implementation of the Agreement's provisions on SOEs for all public utility enterprises, the activities of implementing strategically important programs and enterprises with activities relating to defense and security. Particularly, for some enterprises of the Ministry of Defense or the Ministry of Public Security participate in ordinary business in the market and compete with ordinary enterprises of the CPTPP countries, they still have to comply with the commitments.

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## INTELLECTUAL PROPERTY

### General commitments

CPTPP countries continue to affirm the goals of the WTO's TRIPS Agreement, affirming the need to protect and enforce intellectual property rights to contribute promoting technology innovation, transfer and dissemination in order to enhance social and economic benefits. States are free to decide the appropriate methods of implementing the provisions of the Chapter in accordance with their legal system in practice.

### Brand

- *Protected subjects*: In addition to those protected under the WTO's TRIPS Agreement, the CPTPP Agreement also provides additional protection for trademarks in the form of sound. In addition, countries must attempt to permit the registration of a scent mark.

- *Duration of protection*: Countries must protect trademarks for a minimum of 10 years and may be extended several times.

- *Reform of administrative procedures*: The CPTPP countries ensure simple and transparent administrative procedures in registration, extension of trademarks and the use of e-commerce trademark registration systems to increase the transparency of this process.

### Geographical indications

CPTPP countries have the right to choose the protection mechanisms for geographical indications, either according to their own mechanism only applied to geographical indications, or under the general mechanism with trademarks. However, countries have to comply with some obligations relating to transparency, grounds for recognition and the starting time of protection.

### Patents

The CPTPP Agreement has postponed the implementation of the provisions of the TPP Agreement on the issue of protection of inventions that were publicized, if the publication was due to the applicant or the person having direct or indirect information from the patent applicant, and if the publication is made within 12 months immediately before the date of the application, and suspends a number of other obligations.

## **Protection of intellectual property for agro-products**

The Intellectual Property Chapter requires the CPTPP countries to protect test results and confidential data regarding the safety and effectiveness of products considered to be agro-products.

## **Regulations related to pharmaceuticals**

The provisions on Intellectual Property for pharmaceutical products in the CPTPP balance between (i) the requirement to increase the level of protection and the rights of pharmaceutical patent holders of some strong CPTPP countries on the manufacture, produce and export of pharmaceuticals. and (ii) the desire to better protect public health by maintaining public access to pharmaceuticals at reasonable prices in the remaining countries.

## **Industrial Designs**

CPTPP countries must protect industrial designs with respect to designs contained in a part of a product or a part of a design separating from the whole product and ensuring compliance with the provisions of the TRIPS Agreement.

## **Copyright and related rights**

- Owners' rights: CPTPP countries must protect the exclusive rights of authors, performers and producers in authorizing or prohibiting copying, communicating to the public, distribute and broadcast their works, their productions, performances and sound recordings in any manners or forms, including electronical.

- Terms of protection: In the case the right owner is an individual, the terms of protection is the whole life of that individual plus 70 years from his/her death. For non-individual cases, the term of protection is 70 years from the date of the first publication of the work. If the work was not published within 25 years of the date in which it was produced, the time limit is 70 years from the date of producing. Vietnam commits to fulfill this obligation 5 years after TPP comes into effect. However, these obligations have been postponed in the CPTPP Agreement.

- Technology protection measures: Technology protection measures in the Intellectual Property Chapter are understood as any effective technology, equipment or components, used and operated to control access to a work, performance, or protected sound recording,

or the rights with respect to them. Countries are required to have regulations, criminal proceedings and penalties to handle intentional violations.

### **Enforcement and protection of intellectual property rights**

- General principles and exceptions: The CPTPP countries are entitled in determining how to implement measures to enforce and protect IP rights but must establish a legal system on measures to handle acts of violating IPR or ensure implementing equitable enforcement measures, simple, quick, inexpensive procedures, not creating barriers to trade and having ways to limit overuse.
- Procedures for dealing with IPR violations: The CPTPP countries are obliged to ensure that judicial judgments and administrative decisions related to the enforcement of intellectual property rights must be issued in writing.
- Special requirements related to border control measures: CPTPP countries must have enforcement measures to protect intellectual property rights for trade marks, copyrights and related rights at the border.
- Criminal remedies: Mandatory criminal penalties for IPR infringement focus on trade mark, copyright and related rights.

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## **ECOMMERCE**

Key regulations related to e-commerce include:

### **No import tax is to be imposed on e-commerce transactions**

CPTPP countries are not allowed to levy import taxes on trading digital products online. The object to which the non-import duty regime applies is the digital product defined above. However, CPTPP countries have the right to impose local taxes, fees and charges on "electronically transmitted content", provided that such taxes, fees or charges are in accordance with provisions of the Agreement.

### **Digital products are to be treated in a non-discriminatory manner (except subsidies for the implementation of government programs, radio and television programs)**

Obligation of non-discriminatory treatment of digital products will establish a trade facilitation mechanism, removing discrimination against digital products created,

produced, released, contracted, ordered or appeared for the first time on the basis of a commercial contract in the territory of another CPTPP country, or against digital products by authors, producers, performers, or owners from other CPTPP countries. However, this obligation does not apply to subsidies or government grants from a CPTPP country, including loans, government guarantees for digital products serving public purposes such as cultural preservation and national identity with the exception of broadcasting.

### **Cross-border transfer of information by electronic means is to be allowed**

Obligations in the e-commerce chapter excludes application for information and data held or processed by governments or authorized to be held or collected by an agency or organization. The cross-border transfer of information, data by electronic means is only for business activities or a legal entity. Countries have the right to have separate requirements for data transfer by electronic means and take necessary measures to implement legitimate public policies, but on the condition that the policies does not create disguised barriers to trade or are applied in a discriminatory or arbitrary manner.

### **Data localization requirements is not mandatory**

CPTPP countries are not allowed to require the use or location of servers in the host country as a business condition. However, CPTPP countries have the right to make specific management requirements regarding the use or location of servers, including requirements to ensure communications security and confidentiality; and take necessary measures to implement legitimate public policies, but on the condition that the policies does not create disguised barriers to trade or are applied in a discriminatory or arbitrary manner.

*Note: CPTPP countries agree not to sue Vietnam if Vietnam's cybersecurity regulations are deemed to be inconsistent with the CPTPP Agreement (specifically, two obligations of free cross-border information flow and server localization in the E-Commerce Chapter) within 5 years after the date of entry into force of the CPTPP Agreement.*

### **Cooperation in cybersecurity**

Due to the emergence of dangerous online fraud that may harm to electronic transactions, countries recognize the importance of strengthening national capacity to respond to computer incidents and the importance of cooperation mechanisms to coordinate in identifying, minimizing dangerous intrusion acts or spreading malicious code affecting electronic information networks of CPTPP countries.

## **Reserving measures related to national security and defense, public order and privacy**

Countries have the right to have separate management requirements for cross-border transfer of data or information by electronic means, using or locating servers (including requirements to ensure communications security and confidentiality); have the right to take necessary measures to implement legitimate public policies, but on the condition that they do not create a disguised trade barrier or are applied in a discriminatory or arbitrary manner.

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## **COOPERATION AND CAPACITY BUILDING**

### **Promote cooperation and capacity building**

The CPTPP countries recognize the importance of cooperation and capacity building activities; and implement and strengthen these activities, between two or more countries on a mutually agreed basis, to support the implementation of the Agreement and enhance the benefits gained from the Agreement in order to promote economic growth and development.

### **Process of cooperation and capacity building**

CPTPP countries will establish a Cooperation and Capacity Building Committee to identify and review areas requiring cooperative effort or having potential capacity building on the basis of voluntariness and resources availability.

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## **SMALL AND MEDIUM ENTERPRISES**

The chapter on Small and Medium Enterprises (SMEs) sets out regulations to facilitate these enterprises to participate and take advantage of the opportunities provided by the CPTPP. The main contents of this chapter include:

### **Obligation to share information**

The SMEs Chapter requires CPTPP countries to establish or maintain a public web portal or website providing information about the CPTPP Agreement, including information

designed exclusively for SMEs. Countries will also list in their websites the same web portal of other CPTPP countries.

### **Establishment of an SMEs Committee**

The CPTPP countries agree to set up an SMEs committee to ensure the participation of SMEs in the implementation of the CPTPP Agreement as well as support SMEs to take advantage of the benefits of the Agreement.

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## **DEVELOPMENT**

The CPTPP is an Agreement between countries with very different levels of development. Therefore, the Development Chapter is designed to help the developing member countries of the CPTPP to make the most of the opportunities that the Agreement brings to the development focus. The main contents of this chapter include:

- *The role of development:* The CPTPP countries recognize the importance of development issues in promoting comprehensive economic growth and promoting regional economic integration set by the CPTPP.
- *Development priorities:* The CPTPP countries offer three areas to be considered for cooperation as soon as the CPTPP Agreement comes into force, including: (i) Wide-ranging economic growth, (ii) Participation of women on economic growth, (iii) Education, Science and Technology, Research and Innovation
- *Development Committee to promote joint development activities:* The CPTPP Countries establish a Development Committee to promote voluntary cooperation activities to support developing economies in the CPTPP to take advantage of opportunities brought about by the CPTPP Agreement.

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## **CONVERGENCE OF POLICY-MAKING METHODS**

Through the Convergence of Policy Planning Methods chapter (Policy Convergence), CPTPP countries commit to maintaining an open, fair and predictable regulatory environment for domestic and foreign businesses.

This chapter does not affect the right of CPTPP countries in adjusting policies for the sake of public health, environmental protection and workers, ensuring national defense - security, financial stability and purposes for other public benefit.

The basic contents of this chapter include:

- i. The importance of policy convergence;
- ii. Apply good practices on policy and;
- iii. Promote CPTPP cooperation framework