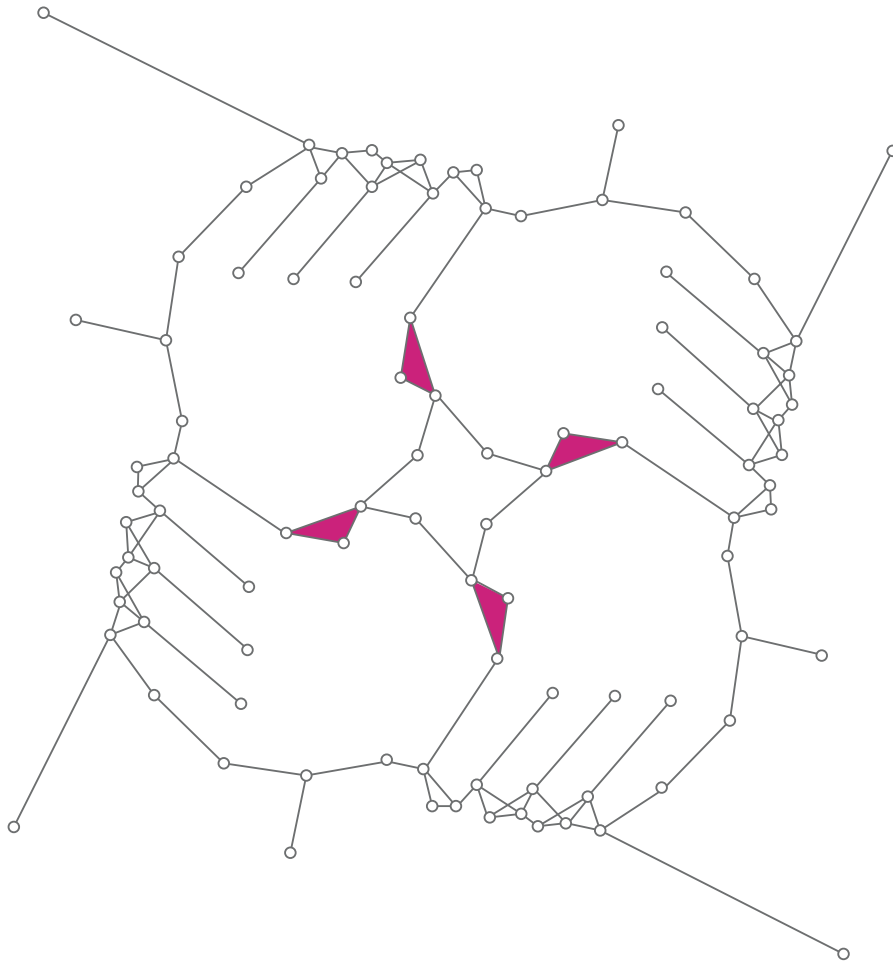




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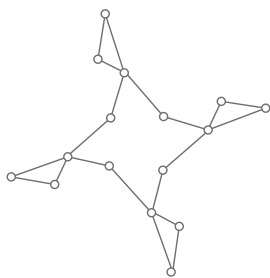
Review of Vietnam legal framework on **specialized inspection on import and export goods** against EVFTA commitments on customs and trade facilitation

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Hanoi 2017



Introduction

The negotiation rounds of the Free Trade Agreement between Vietnam and the European Union (EVFTA) was officially announced to be concluded on the late of December, 2015 and is currently in the process of judicial review in preparation for the official signing. The EVFTA and the Trans-Pacific Partnership Agreement (TPP) are two of the largest new generation free trade agreements that Vietnam's largest ever negotiated. With a wide range of commitments, covering many trade or trade-related areas, including issues both at and beyond the border, EVFTA is forecasted to have major influence to legislation institution and economy of Vietnam in the coming period.

Customs and trade facilitation is among the commitments expected to have a direct impact on the efficiency of EVFTA enforcement in the field of trade in goods. Moreover, while most other commitments apply only to the objects and entities within the trade between parties, the application scope of the commitments on customs and trade facilitation is open to all issues in across-border trade in goods. Therefore the review of the Vietnam legal framework against EVFTA commitments on trade facilitate is essential, not only to prepare for the EVFTA implementation but also to be an important factor to contribute to the reform of administrative procedures in import and export, and promote international movement of goods and trade integration of Vietnam.

Vietnam legal framework on the issues outlined in the EVFTA commitments on customs and trade facilitation includes 02 relatively independent groups: customs law (for all exports and imports) and legislations on specialized management (for exports and imports subject to specialized management).

The Review of Vietnam legislation against EVFTA commitments on customs and trade facilitation prepared by the Chamber of Commerce and Industry of Vietnam (VCCI) in March 2016 showed that this legal system has basically been compatible with the EVFTA commitments. Thus, it is concluded that problems seem to arise from the legal system on specialized management for goods exported and imported.

The review of Vietnam legal framework on specialized inspection on import and export goods against EVFTA commitments on customs and trade facilitation is prepared by the VCCI with the analysis of the compatibility level between the Vietnam legal framework and international commitments from the perspective of the businesses (import-export entities); and therefore, the solutions are proposed to ensure compliance with the international agreement under the most profitable way for businesses and the subject of imports and exports.

This review is in the chain of 09 Review Vietnam legal framework against TPP and EVFTA commitments in the critical institutional areas (including Investment, Government procurement, Intellectual property, Customs and Trade facilitation, Transparency, Service market access) prepared by the Vietnam Chamber of Commerce and Industry (VCCI) within the framework of 02 stages of the Programme of Reviewing Vietnam legal framework with institutional commitments under new generation free trade agreement with the support of the Embassy of the United Kingdom of Great Britain and North Ireland.

Hopefully this report will be a useful information source for the legal review process for TPP approval's preparation and execution of the Government, the National Assembly and relevant authorities.

Vietnam Chamber of Commerce and Industry expresses its thanks to the Embassy of the United Kingdom of Great Britain and North Ireland in Vietnam for their supports in the implementation of this meaningful program./.

**The Vietnam Chamber of Commerce and Industry
The Center for WTO and Economic Integration**

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List of abbreviation

MOIT:	The Ministry of Industry and Trade
MT:	The Ministry of Transport
MOST:	The Ministry of Science and Technology
MARD:	The Ministry of Agriculture and Rural Development
MONRE:	The Ministry of Natural Resources and Environment
MIC:	The Ministry of Information and Communications
EVFTA:	The free trade agreement between EU and Vietnam
EU:	European Union
FTA:	Free Trade Agreement
TFA:	The Trade Facilitation Agreement of the WTO
TPP:	The Trans-Pacific Partnership Agreement
WTO:	The World Trade Organization



Part one

Summary about results of the review

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I. Objectives and reviewing context

On 2nd December 2015, the negotiations of EU – Vietnam Free Trade Agreement (EVFTA) were officially concluded. Containing 24 chapters, the near-final draft of EVFTA published on 1st February 2016 indicates that this pact is a new generation one with a large scope of commitments, covering not only traditional commercial fields (e.g. trade in goods and services,..) but also first-time-committed trade issues (e.g. State-owned enterprises, government procurement...) and non-but-related trade issues (e.g. environment, and sustainable development...). The extent of commitments and liberalization provided in the pact is significantly higher than the previously signed free trade agreements, and nearly equivalent to the Trans-Pacific Partnership (TPP).

With such scope and extent of commitments, EVFTA is predicted to have noteworthy impact on the legal framework and economy of Vietnam in the near future. In order to ensure the provided compliance and implementation under EVFTA, Vietnam legal framework (VLF) is challenged to adapt with EVFTA commitments. In the other hand, the revision of VLF is expected to lead to a wave of institutional reform; as a result, the platform of sustainable development is constructed and brings opportunities to foreign business partners, especially from EU.

One aspect of EVFTA commitment expected to have a direct and major impact to the EVFTA effective implementation and Vietnam's taking advantage of opportunities from EVFTA, especially the international trade in goods between Vietnam and all general trading partners, is commitments on Customs and trade facilitation provided under Chapter 5 of the EVFTA. Formally, this is the set of EVFTA principles and requirements on customs procedures as well as management measures relating to import-export activities between Vietnam and the EU. However, for goods clearance, it is inseparable between customs procedures and the procedures and conditions for imports and exports; therefore, EVFTA commitments in this issue will impact on all customs procedures, and imports and exports procedures.

In the framework of the administrative reform efforts to build a tectonic development government according to the guidance of the Resolution 19 (from 2014 to 2016) and the Resolution 35 in 2016, reforming import-export procedures is also a key priority in Vietnam.

Therefore, the review of the current legal system against specific EVFTA commitments on customs and trade facilitation is essential. It not only contributes to a better preparation for EVFTA enforcement, but also, and more importantly, provides very useful suggestions to the competent ministries to speed up administrative reforms of import-export procedures. The review results will be the basis to determine the incompatible or different regulations and institution of the domestic legal framework. Accordingly, it analyzes the appropriate enforcement measures and proposes solution to revise the legal system to ensure compliance with EVFTA, and at a same time, reform import-export procedures in Vietnam.

Vietnam legal framework on customs and trade facilitation as committed under the EVFTA consists of the legal system on customs and the legal system on specialized management for exports and imports.

The Review of Vietnam legislation against EVFTA commitments on customs and trade facilitation prepared by the Chamber of Commerce and Industry of Vietnam (VCCI) in March 2016 showed that this legal system has basically compatible with the EVFTA commitments. The result shows that the majority of the Vietnam legal regulations on customs is compatible with the EVFTA commitments, even though this Agreement has not been signed.

Reviewing the law on specialized management of export and import goods is the VCCI's next step to assess the current situation and the compatibility of this Vietnam legal framework with the EVFTA commitments. This is not a unitary legal system which is a gathering of many legal systems regulating the authority of specialized management agency for exports and imports. This area is considered by the business community and the public to have many problems and shortcomings in import and export procedures. Therefore, this review is particularly meaningful not only in EVFTA implementation but also in the reforming efforts for the better administrative procedure in this important field.

Reviewing research was prepared in order to (i) develop a detailed comparison between Vietnam legal framework on specialized management of imports and exports with specific EVFTA commitments on customs and trade facilitation, (ii) analysis and assess the current state of legislation (and practical application if possible) in the context of the EVFTA requirements and Vietnam's application principle of current legislation, and the needs of Vietnam including the benefit of Vietnam enterprises, and (iii) develop proposals for EVFTA implementing measures from the perspective and interests of enterprises.

II. Scope of review

1. About EVFTA commitment's on specialized inspection procedures

Under EVFTA, the institution of customs and trade facilitation is mainly regulated in Chapter 5 and Chapter 20 - Protocol on administrative assistance in the customs. However, in relation to the specialized inspection and management for imports and exports (also known as specialized management), only some commitment groups in Chapter 5 are directly related, including:

Group 1: The commitments on the general principles that affect specialized management activities for imports and exports

- Commitment on co-operation for trade facilitation
- Commitment on ensuring state management, aiming to facilitate trade
- Commitment on non-discrimination between the groups of entity
- Commitment to apply effective management methods
- Committed to simplify procedures and review periodically
- Commitment to simplify goods clearance procedures (including specialized management procedures)
- Commitment to ensure clarity in the goods clearance procedures (including specialized management procedures)
- Commitment to attempt to apply information technology on the goods clearance procedures (including specialized management procedures)
- Commitment to dialogue and strengthen the consultation with the business community

Group 2: The commitments on the specific principles on specialized management activities for imports and exports

- Commitment on the application of the HS Convention
- Commitment on fast release of goods, electronic customs declaration and pre-arrival customs declaration
- Commitment on the submission of pre-arrival customs declaration
- Commitment on mode of the post-importing test in specialized management
- Commitment on cooperation between agencies to facilitate the transfer and transit of goods and means of transportation
- Commitment on the application of principles on risk management in goods clearance procedures (including specialized management procedures)
- Commitment on the publishment and the level of fees and charges in the import-export procedures
- Commitment on not requiring consular legalization for import and export documents
- Commitment on not requiring that imported goods must be inspected by a private company before arriving at the departure port and before goods clearance at arrival ports.
- Commitment on the application of the favorable complaint procedures.

The EVFTA commitments on customs and trade facilitation have no specific regulations on the specialized management procedures, and only have the provisions for general application of goods clearance procedures, including a specialized management procedures for some required commodities. The decentralized authority of the goods clearance procedures for imported goods in various competent agencies (including customs offices and specialized management agencies for some specific commodities) is a special feature in the mechanism of imports and exports management in Vietnam. In almost other countries, customs offices are authorized to perform almost all of the goods clearance procedures for imports and exports (including customs procedures and specialized management procedures), except for quarantine procedures. Therefore, although the term used under EVFTA commitments refers only to customs procedures in general, and does not mention the specialized management procedures, however, it includes both types of procedures as mentioned above.

In brief, the EVFTA commitments on customs and trade facilitation are almost similar with the respective provisions under the Trade Facilitation Agreement of the WTO (TFA) and the Trans-Pacific Partnership Agreement (TPP). Therefore, the implementation of the EVFTA commitments is also Vietnam's implementation of the TFA and TPP commitments.

2. About Vietnam legal framework on specialized management

In the Vietnam legal framework, the issues on customs and trade facilitation could be divided into 02 major groups:

- Legislation on customs: This group consists of the Law on customs, the tax legislation on imports and exports and their guiding implementation documents which directly impact the transparency in customs procedures and trade facilitation;
- Legislation on specialized management for specific imports and exports: This group includes the legal documents in different specialized management fields including management mode, procedures, order and conditions... of specialized management for specific commodities.

This review only focuses on the legal documents on the specialized management of exports and imports.

It's not a unitary legal system, it is a collection of regulations related to management of import and export commodities in many different specialized legal systems. According to the result of reviewing the on specialized management provisions on imports and exports performed by the General Department of Customs, there are over 300 documents (including legislations and, in some cases, also other kinds of documents such as official letter, instructions, and notifications ...) regulating this issue, and being prepared, issued and/or executed by many specialized management ministries (Ministry of Trade and Industry, Ministry of Science and Technology, Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Transport, Ministry of Defense, Ministry of Information and Communications, Ministry of Culture, Sports and Tourism, Ministry of Natural Resources and Environment ...).

This review is limited to groups of legislations on specialized management related to the EVFTA commitments. Other documents which are not legislations (e.g., official letter, guidance ...) will be considered in the review to the possible extent. In fact, these kinds of documents have general application and directly affect the specialized management activities for exports and imports. The specialized management legislations irrelevant to EVFTA commitments are not in the scope of this review.

Specifically, the review was conducted on 120 legislations containing effective specialized management provisions on 1st November 2016, including:

- 14 Laws (especially including the Law on Product and Goods Quality, Law on Technical Standards and Regulations, Law on Food Safety, Law on Plant Protection and Quarantine, Law on Effective and Economical Use of Energy);
- 26 Decrees and Decisions of the Prime Minister
- 80 Circulars and Joint Circulars of the Ministries

III. Summary about Results of the Review and Recommendations

The detailed review of Vietnam legal framework on specialized management of exports and imports with Vietnam's specific obligations under the EVFTA commitments on customs and trade facilitation shows that a lot of Vietnam provisions on specialized management are not compatible with EVFTA commitments. This result is quite different from the result of other reviews in the chain of 09 Review of Vietnam legal framework against TPP, EVFTA commitments on important institutional sectors prepared by the VCCI (which conclude that the majority of the domestic provisions are compatible with the respective international commitments, the in-compatible issues are relatively small and scatter in the inessential details).

Specifically, the review showed the following results:

1. Group of EVFTA commitments which Vietnam legislations are compatible with

Review results

Compare the number of mechanics, the provisions of the specialized management PLVN fully compatible with EVFTA commitments on customs and trade facilitation occur the majority of the reviewed content. However, if compared with the customs legislation, the percentage of the provisions of the legislation is compatible with EVFTA specialized management significantly lower.

Specifically, the review shows Vietnam legal framework on specialized management was compatible with the following commitments of EVFTA:

- Commitment to cooperate in trade facilitation (Clause 1 Article 1 Chapter 5 EVFTA)
- Commitment to apply the HS Convention (Clause 1 Article 3 Chapter 5 EVFTA)
- Commitment to release goods faster, electronic declaration and payment of pre-arrival declarations (Clause 1, 2, Article 4 Chapter 5 EVFTA)
- Commitment to make effort to apply information technology in procedures specialized management (Clause 4, Article 5 EVFTA)
- Commitment to coordinate between the competent authorities at the border in order to facilitate the transfer and transit of goods and means of transport (Article 6 of Chapter 5 EVFTA)
- Commitment on the transparency of the provisions relating to the order and conditions of customs procedures and designate focal points to answer relevant questions (Article 8)
- Commitment to publish information on fees and charges (Clause 2, Article 10 of Chapter 5 EVFTA)
- Commitment not to require that goods imported into Vietnam must be tested by private companies before shipment on board at the departure port or before clearance at ports of arrival (Clause 2, Article 10 of Chapter 5 EVFTA)
- Commitment to apply favorable complaints procedure (Article 14 of Chapter 5 EVFTA)
- Commitment to regular dialogue with the business community on issues of customs and trade facilitation (Article 15 of Chapter 5 EVFTA)

Looking at the commitments on the specialized management EVFTA which Vietnam legal framework is compatible, it could be determined that there are mostly the general obligations stipulated in other legal systems that specialized management legislations either do not have specific regulations (e.g. the issue on electronic customs declarations, transshipped transit, transparency, inspection before boarding the train, fees and charges... if the other legislations are compatible, legislation on specialized management is “automatically compatible”) or have separate regulations that is reiterated the other legislations (e.g. the issue of an appeal process). In other words, most of the compatibility of legislation on specialized management with the commitments EVFTA is indirect, based on the compatibility of the different legal systems.

Of course, it must be noted that only the cases of commitments which Vietnam legal framework on specialized management are fully compatible (all the documents on specialized management be reviewed are compatible) is considered. In fact, when reviewing each document on specialized management, there are many cases compatible with many other commitments EVFTA on customs and trade facilitation, however, in the context of Vietnam legal framework on specialized management, these cases will not be counted as compatible.

Conversely, there are cases classified as compatible but compatibility is essentially practical, not necessarily in legal regulations (e.g. in the case of commitment on allowing to submit pre-arrival declarations: in practicing, process of submitting pre-arrival declaration has become customary;

however, but for Article 8 of Circular 52/2015/TT-BYT of Ministry of Health on food safety inspections transparently specifies this procedure, all other legal documents do not mention it, hence, it is concluded that this implementation is only following customary practice).

In addition, there are also cases in which the higher valid/root legislations are compatible, but the guidelines have provisions that can lead to incompatibilities with certain related commitments (e.g. commitment on adopting use of the HS Convention: although Decree 187/2013/ND-CP stipulates that specialized management goods subject to HS code shall be consistent with the Convention, many documents issuing specialized management have not enough or have not updated HS code for items on the list of specialized management...)

Recommendation

In principle, because this group includes the legal provisions which are compatible with EVFTA commitments, it is unnecessary to adjust and modify legislation.

However, in fact, the review shows that in many cases where legal provisions have been determined to be compatible with the commitments (*de jure* compatible), the actual enforcement of these provisions has many problems, which can lead to violate commitments in practical application (*de facto* incompatible).

For example, in relation to commitment on rapid release of goods (Clause 1, Article 4, Chapter 5 EVFTA). In terms of regulations, Vietnam legal framework was fully compatible with the requirements of the Agreement (with the uniform regulations in the direction that the goods will be released as soon as possible, immediately after the applications had been fully submitted or immediately after the test results). However, in fact the time to complete the procedures of specialized management to release cargo is not so fast as such, even too long in many cases, which leads to annoyance of many businesses. According to information from the General Administration of Customs, the Central Institute for Economic Management (CIEM), 72% clearance time for goods requiring specialized management is mainly for performing the procedures of specialized management. Thus, the cause of the current delay in the import and export procedures for such goods are largely attributed to the slow specialized management procedures.

Another example, related to commitments on effort of technology applications in the specialized management procedures. Under Decision 48/2011/QĐ-TTg, the application of technology, electronic data exchange has been gradually implemented by the Government and the specialized management ministries. However, the practical effect of this application is very limited, especially in the scope of application (only piloting in some areas, procedures, and objects).

Therefore, for the cases which are fully compatible in terms of the law, it is still necessary for the specialized management ministries to take effort to implement effectively and widespread these provisions in practice.

2. Group of EVFTA commitments which Vietnam legislation is incompatible with

Although not accounting a majority, the incompatible cases between Vietnam legal framework on specialized management and EVFTA commitments on customs and trade facilitation are still quite significant in comparison with the respective result of the review of Vietnam legal framework on customs (accordingly, most of the relevant provisions of the customs legislation was compatible with the EVFTA commitments).

In fact, while the customs legislation has been put basic effort to revise in the direction of simplification, keeping abreast of international trends on trade facilitation (especially in the Customs Act 2014 and the guiding legislation of this act), the provisions on specialized management has changed not much in accordance with the better practices in the world on this issue.

For about one year, regarding a lot of feedbacks from enterprises and the public about the problems and shortcomings in the specialized management procedures, along with the research, investigation and assessment of the customs office and other institutions¹, specialized management issues have become a hot issue in various forums about the enterprise environment. Reforming specialized management procedure is among focusing issues of government action to improve the enterprise environment. However, so far, these new efforts to improve are mainly in the implementation, legislations in this area have not changed much. However, the review result shows that some new legislations enacted in 2015 and 2016 in this area still continue the same old approach on the relevant issues². Therefore, the review results of Vietnam legislation on specialized management with EVFTA commitments show a remarkable fact: The reform efforts from the perspective of implementation will not be enough unless there are radical and overall reforms from the legal provisions. EVFTA commitments on customs and trade facilitation, in addition to being the pressure to revise the legal framework, implement commitments, could be a set of meaningful oriented standards for the reform process in Vietnam in the coming time, even when EVFTA has not even been signed and not in force yet.

Specifically, it is possible to categorize incompatible cases of Vietnam legal framework on specialized management into the following groups:

1/ In which, the research activities of the Central Institute for Economic Management (CIEM) supported by GIG Project is noticeable.

2/ According to information from the Ministry of Finance, in November 2016, the Finance Ministry has hosted, cooperated with a number of specialized units under the Ministry to review legal documents in relation to management activities and specialized management of import and export goods. Review results of the Ministry of Finance show that concerning the requirements specified Resolution 19-2016/NQ-CP and Decision 2026/QĐ-TTg of the Prime Minister, there are a total of 76 groups of legal documents relating to the management and specialized management activities that should be amended and supplemented. In which, the Ministry of Agriculture and Rural Development has 28 documents requiring amendment and supplementation; Ministry of Industry and Trade has 12 documents; The Ministry of Health has 9 documents; The Ministry of Transport has 7 documents; Ministry of Science and Technology has 6 documents; The Ministry of Construction has 4 documents; Ministry of Information and Communications has 3 documents; each of 3 Ministries: Natural Resources and Environment, Public Security, and National Defense has 2 documents that should be amended and supplemented; Ministry of Culture, Sports and Tourism has 1 document requiring amendment and supplementation.

2.1. Group of totally incompatible commitments

As a review result, there are 04 groups of Vietnam regulations on specialized management that are absolutely not compatible with EVFTA commitments on customs and trade facilitation, including:

- Commitment to apply modern management methods (Article 1.2, Chapter 5 of EVFTA)
- Commitment to use an administrative document (Article 5.2, Chapter 5 of EVFTA)
- Commitment to use inspection mode after importation in specialized management (Article 5.2, Chapter 5 of EVFTA)
- Commitment to apply risk management methods (RMD) in specialized management (Article 7.1, Chapter 5 of EVFTA)

In terms of quantity, the number of completely incompatible cases are small (compared to the total number of the commitments issues under review) but the nature and extent of the impact of this problem is enormous, if not saying that it is the core part in specialized management procedures. Specifically, the 04 issue groups incompatible Vietnam legislation on specialized management are related to the content of modern management methods in goods clearance procedures (including the filing of paperwork, management practices, goods clearance time of the goods subject to specialized management). Therefore, only with the shortcomings arising from these incompatible regulations, the efficiency of Vietnam's specialized management system has been largely restricted.

For example, according to Article 7, Chapter 5 of EVFTA, the Parties commit to apply risk management methods (in all steps from inspecting procedures, goods clearance to post-clearance inspection). Accordingly, the goods inspection is based on the risk level of each case, focused on key shipments (with a high or relatively high level of risk), not applied on all shipments. Risk level is based on criteria specified by the specialized management agency, mainly based on legal compliance history of all shipments and some other objective factors which can affect the compliance in each period (e.g. epidemics, smuggling, trade fraud ...). The application of risk management methods in specialized management will basically reduce the number of inspecting cases, improve the quality of specialized management, and ensure effective administrative management of the State, save a huge amount of resources for the State, significantly reduce the time, procedures and costs for enterprises. This principle has been clearly defined in the legislations on customs and effectively applied in practice by the customs authorities of Vietnam, creating an important turning point in the reform of administrative procedures in this field.

Meanwhile, legislations and practices on specialized management still apply the principle of inspecting all shipments, and not apply the risk management methods. In details, so far, in all the specialized management areas, only the field of food safety has regulation in the trend of applying risk management methods (classifying goods, circumstances and the level of compliance with food safety legislations of importer to apply one of three test methods including summary

inspection, normal inspection and strict inspection). However, this is only a small part of the risk management methods, not the proper risk management methods itself, because food safety inspection is still applied on all imported consignments.

That the inspection of all shipments instead of applying risk management methods is the basic cause leading to major gaps in the practice of specialized management in Vietnam (goods clearance time is prolonged, the cost specialized management is too high...).

It is emphasized that the cases of the group “absolutely incompatible” are regulated under the legislation on all specialized management sectors (not just a few among many specialized management fields), also are the core aspects of specialized management, have an important influence on the efficiency of specialized management in particular, and exports and imports in general.

Recommendation

In principle, for the case of being completely incompatible, the proposed solution is to amend legal documents in order to ensure compatibility. However, for the case of Vietnam legislation on specialized management, to achieve the target effect, the amendment should pay attention on at least 02 following issues:

- The amendment of legislations on specialized management must be wholly and simultaneously conducted
 As mentioned, for the 05 cases absolutely in-compatible with the commitments, all the specialized management procedures (not just a few specialized management procedures) fails to meet the requirements and needs to be appropriately adjusted and amended. Meanwhile, the number of legal documents on specialized management is huge (at least 120 documents to be reviewed). Incompatible issues (05 issue groups) are not concentrated in a few documents on specialized management field but scatter in many documents. Therefore, the identification of the documents that need amending, modifying and determining the unified direction for all specialized management sectors are a challenging task. Therefore, the support of a unified focal point with experience in management methods, modern customs clearance, reform of administrative procedures and capable of gathering information about the inadequacies of specialized management legislations as well as international practice (e.g. Ministry of Finance) is essential. Moreover, the promotion of all specialized management ministries to focus on amending legal documents under its management is not entirely straightforward. The involvement of the Government - the highest administrative body which is able to operate simultaneously this activity of the specialized management Ministries - is very important in order to implement effectively this job.
- The amendment of the law on specialized management should be conducted as soon as possible
 In principle, if only to enforce the EVFTA commitments, Vietnam shall just amend the

legislation to be compatible when the Agreement takes effect. EVFTA is still undergoing regulatory review, has not been officially signed yet, and it is considered to take probably some years for the deal to take effect.

However, as mentioned, the issues that are not compatible with EVFTA of Vietnam legislation on specialized management are the core ones, basically affect to the performance of specialized management in Vietnam. So, with the goal of reforming the system in Vietnam to meet the needs of the internal development of Vietnam³, overcoming aspects of obstacles and shortcomings in import and export procedures in Vietnam, the amendment of specialized management legislations according to international practice recognized under the EVFTA must be immediately conducted (not until the pressure of EVFTA when this Agreement takes effect).

Specifically, the Review recommends that the competent authorities (including the heading agencies as the Government, Ministry of Finance, and the specialized management ministries) should review all regulations on specialized management and specifically amend at least 02 important issues including (i) application of risk management methods in specialized management; and (ii) application of post-clearance inspection mode in specialized management.

The amendment needs wholly and thoroughly conducting to all the related regulations. However, first of all, the Review recommends to amend and supplement the provisions in the main/root legislations, including:

- Article 34 and 35 of the Law on Product and Goods Quality
- Article 38 of the Law on Food Safety
- Article 29 of the Law on Quarantine and Plant Protection
- Article 34 and 37 of the Law on Customs

The application of risk management methods in specialized management, amending regulations on the time of specialized inspection from pre-clearance (as current regulations) to post-clearance are solutions provided in the Government's Resolution 19⁴, so these are completely plausible recommendations which can be immediately conducted.

3/ Resolution 19/2016/NQ-CP sets ambitious goals of business environment and comparativeness to reach the overall level of ASEAN-4 in 2017 and ASEAN-3 in 2020; reduce immediately the percentage of imported shipments subject to specialized inspection from 30-35% down to 15% in 2016.

4/ Resolution 19-2016/NQ-CP of the Government:

- Item 1, Section II of the Resolution: "Comprehensively reform regulations on business conditions, specialized management with respect to exported and imported goods and services in accordance with international practice; substantially change to post-inspection..."

- Item 1d, Section III of the Resolution: "Change the time of specialized inspection, checking the quality of goods, energy efficiency, food safety in clearance phase to after clearance (except for cases of import quarantine goods posing high risk as stipulated by the Ministry of Agriculture and Rural Development). Regarding imported raw materials for production for domestic consumption, time of specialized inspection is at the production phase and before putting products into circulation; regarding exported goods produced from imported materials, location of specialized inspection is in the production facility prior to shipment."

2.2. Group of partially incompatible commitments

According to review result, there are 04 groups in EVFTA commitments on customs and trade facilitation that Vietnam legislation on specialized management has been considered as “partially incompatible.” These are the cases that some Vietnam regulations in one or some specialized management areas are incompatible with EVFTA commitments (whereas the corresponding provisions in other specialized management fields are compatible).

Specifically, Vietnam legislation on specialized management has one/some provisions that are partially incompatible with the following EVFTA commitments:

- Commitment to ensure both state management and trade facilitation (Article 1.1, Chapter 5 of EVFTA)
- Commitment not to discriminate between the entity groups (Article 1.2, Chapter 5 of EVFTA)
- Commitment to apply effective management method (Article 1.2, Chapter 5 of EVFTA)
- Commitment to simplify and ensure the clarity of specialized management procedures (Article 5.1, Chapter 5 of EVFTA)
- Commitment to ensure fees and cost for conducting import and export procedures not exceeding service costs and not calculated in the value of shipments (Article 10.1 of Chapter 5 of EVFTA)
- Commitment not to require consular legalization for export and import documents (Article 10.1 of Chapter 5 of EVFTA)

Considering the nature of the EVFTA commitments on customs and trade facilitation to which Vietnam provisions on specialized management are partially incompatible, it can be seen that besides some cases of detailed commitments (e.g. about charging costs/fees, not requesting for consular legalization), the majority of commitment group is about trade facilitation, aiming to the result, not the specific implementation method (e.g., commitments to simplify the procedures, records and documents, effective management methods, non-discrimination, trade facilitation, costs/fees not exceeding reasonable costs...). The advantage of this format of commitments is that Vietnam has open space to choose the measure to implement specific commitments, not bound by the “strict” compulsory obligation. However, these commitments set out the requirements for the final overall effect, so the level of demand is also higher (depending on the interpretation of the relevant Parties, e.g. how is simple, efficient, modern...), the coverage of measures is also much broader (including not only the domestic legislations but also practical/customary implementation).

In the context that Vietnam’s legal provisions on specialized management are still relatively fragmented, scattered in too many legislations in many different levels and almost have no

systematic consistency in terms of content, the commitments on effective result poses difficult task for Vietnam to ensure enforcement. The difficulty can come from the understanding and interpretation of the commitments to legalize into domestic legislations by the competent authorities among different specialized management fields, even among the competent agencies in specialized management of a certain commodity.

Detailed results of the review on the partially incompatible commitments show this picture clearly.

In some cases, the legal principles were compatible but specified provisions in the relevant fields are not compatible. For example, in relation to its commitment to non-discrimination in specialized management, although Vietnam legislation does not have any explicit provisions regarding the discrimination between domestic goods and imported goods, but regulations on specialized management provide some requirements that leads to this discrimination. To be more specific, under the Law on Food Safety, a food item domestically produced only needs conformity announcement and periodical inspection carried out 1-2 times per year, while regarding an imported food item, the conformity announcement applies each importer, therefore, a commodity imported by numerous importers will be subject to conformity announcement by several times, by all importers. A similar procedure also applies to all items on the list of goods of Group 2 according to the Law on Product and Goods Quality.

In some cases, the targets set in the commitments are associated with practical efficiency and therefore, even though many specialized management areas make effort to improve but results still fail to meet the requirements. For example, in relation to its commitment to simplify administrative procedures, while some specialized management ministries have made adjustments to reduce the amount of documents or procedures to minimize the time of specialized inspection in total specialized management procedure, it remains troublesome mainly in specialized management. Specifically, the following circumstances in specialized management are still common:

- The number of documents to be submitted and presented when applying for licenses and specialized inspection procedures are still very big, especially including the documents that do not contain information on the quality of goods (which is not helpful for specialized management), such as B/L, invoice, packing list ...
- The specialized management procedures are still mostly manual (digitization is only conducted in a few stages in some specialized management areas)
- It still remains a common situation in which requiring for notarization, authentication of documents, especially the document that cannot be notarized, certified such as electronic commercial transaction documents with no signature, the live stamp (bill of lading, detailed list, contract...)
- In some cases, the specialized management system is overlapping, complex, makes it difficult for importers (when importing rice cooker, the importer must conduct 03 types

of specialized inspection procedures in accordance with of the Ministry of Industry and Trade, the Ministry of Science and Technology, Ministry of Health)

There are some cases where domestic legal provisions are unclear or contradictory, and therefore, incompatible with the commitments. For example, in relation to the commitment to ensure transparency in the specialized management procedures, the field of specialized management on information and communication provides for many goods code subject to specialized management outside jurisdiction, and specialized management areas on industry and commerce provides for mandatory testing of samples required for all shipments while the Law on Product Quality and Goods only regulates commodity testing “when necessary”...

Recommendation

Because cases of Vietnam legislation that are not compatible with the EVFTA commitments can be classified into various groups therefore the recommendations for each group are different. Derived from the intrinsic demands of reforms in Vietnam, in accordance with the Government’s Resolution 19 on improving the business environment, including trade facilitation, one thing in common among these recommendations is that the adjustments are recommended to conduct with the law in general (not limited only to the objects or entities under EVFTA) and conduct immediately (without waiting until EVFTA takes effect).

Regarding the groups of cases in which Vietnam legislation on specialized management are not compatible with the commitment to implementing efficiency, the adjustment should be conducted on the basis of a review with all relevant regulations, assessing the practices of efficiency and adjusting in a tendency to be compatible with commitments. For example, concerning the commitments to simplify procedures, the Review recommends specialized management ministries to focus on (i) simplifying the documents in the dossier for specialized management procedures, eliminating documents non-related to quality of goods subject to specialized management, eliminating the requirement for notarization of unnecessary/impossible documents, connecting information among state agencies to remove the submission of unnecessary papers; (ii) application of electronic procedures instead of manual procedures; (iii) unifying the focal points of specialized management and one-time procedures for specialized management for goods that are subject to specialized management separately by different specialized management ministries.

For the cases in which specific legal provisions are reviewed and considered incompatible (due to conflict with the commitments, different from other with superior legislations...), the amendment needs to be made for each indicated regulation. Specifically, reviewing 120 legal documents indicates that it is necessary to modify relevant legislation in 15 specific legal documents as follows:

- Law on Product Quality and Goods
- Law on Food Safety
- Law on Economical and Efficient Use of Energy

- Law on Quarantine and Plant Protection
- Law on Customs
- Decree 26/2011 / ND-CP
- Decree 38/2012 / ND-CP
- Circular 41/2015 / TT-BTNMT
- Circular 07/2012 / TT-MOIT
- Circular 40/2011 / TT-MOIT
- Circular 48/2011 / TT-MOIT
- Circular 28/2012 / TT-BKHCN
- Circular 09/2016 / TT-MOD
- Circular 223/2012 / TT-BTC
- Circular 19/2012 / TT-BYT

Specific legal provisions that need to be amended and the approach for amending are specified in the Second Section (Review Summary) and Third Section (Review Details) of this Report.

In general, the provisions that need to be edited in the documents in the superior level (such as laws, decrees) are root/main regulations, creating the framework for the guiding regulations of the specialized management ministries, therefore it is necessary to amend and adjust as soon as possible.

For the regulation stipulated in Circular level, this is the group having the affect localized in specific items, can be modified quite easily by the action of the relevant specialized management ministries. The problem is that these documents scatter in different specialized management areas (Industry and Trade, Health, Finance, Agriculture and Rural Development ...), so the amendment of these provisions requires proper awareness and timely action of the specialized management ministries.

The Review has conducted an important step that shows specific provisions need to be amended and adjusted within the specialized management documents. This has a significant meaning in the context of the legislation on general specialized management reflecting many problems and shortcomings, and the Government's request for administrative reform only pointing out the name of legislations without specific provisions. The essential problem is a common understanding and commitment of the specialized management ministries in recommending amendments (to the superior legal documents drafted by competent ministries on specialized management) or deciding to modify (for the Circular level documents).

Conclusion

Review of Vietnam legislation on specialized management with EVFTA commitments on customs and trade facilitation shows that in overall, the majority of Vietnam legislation is compatible with the requirements of EVFTA on this issue. However, in comparison with the general customs law, the percentage of EVFTA commitments with which Vietnam legislation on specialized management fully or partially incompatible is very high. It is noticeable that most of incompatible institutions are important institutions deciding the core efficiency of specialized management activities (e.g. commitment to simplify procedures, the risk management principles, on post-clearance inspection, commitment on one administrative document...). This also means that the core procedures for specialized management in Vietnam currently do not follow the practices of modern international standards that are reflected, recognized in EVFTA (similar in the TPP and TFA Agreement of WTO). This may be an important reason leading to the situation in which specialized management practice in Vietnam is still evaluated as troublesome.

Based on the findings, pointing out the specific regulations as well as general trends in Vietnam legislation on specialized management that are partially and wholly incompatible with the EVFTA commitments, the Review has made specific recommendations in order to (i) amend the provisions in specific documents; (ii) review and orient modification of legislation in general to effectively implement specialized management; (iii) emphasize that practical activities should be focus on reforms to improve the efficiency of specialized management.

In particular, the Review emphasizes that the adjustment, recommended amendment should be implemented immediately, in accordance with specialized management ministries as in form for initially reforming specialized management procedures, actualizing reform goals regarding the objectives of Resolution 19 of the Government (not just revise to implement EVFTA commitments, with EU partners and in the validity period of EVFTA).



Part two

The summary review table

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Article 1 – Objectives			
Commitment on Cooperation on trade facilitation	Vietnam legal framework on specialized management for exported, imported goods in all areas clearly regulates the state policies of Vietnamese Government which strengthen and expand international cooperation on trade facilitation. Therefore, Vietnam legal framework on specialized management is fully compatible with the commitments in Clause 1, Article 1 of EVFTA. However, in practice, the implementation of the provision on “mutual recognition” is not considerable	Regarding the Law: No recommendation to modify Regarding the practice: It is recommended to apply proactive measures in order to recognize the results of the quality inspection from advanced countries, recognize the quality of the goods bearing the well-known trademarks.	
Commitment on ensuring state management and trade facilitation (Clause 1, Article 1, Chapter 5 of EVFTA)	The legislations on specialized management do not have specific Articles regulating trade facilitation.	It is recommended to supplement to the legislations on specialized management (Law on Product and Goods quality (PGQ), Law on Food Safety, the Law on Plant Quarantine (PQ), Law on Veterinary, Law on Energy) articles that specify measures to facilitate trade (similar to provisions in Law on Customs).	- National Assembly. - Presiding to amend: .The Ministry of Science and Technology: Law on PGQ .The Ministry of Health: Law on Food Safety .The Ministry of Industry and Trade: Law on Energy .The Ministry of Agriculture and Rural Development: Law on Plant Quarantine, Law on Veterinary
	Clause 1, Article 59 of Decree 38/2015/ND-CP provides that the depositing period of importing discarded materials must be at least 15 days prior to customs clearance procedures	It is recommended to amend regulations on depositing period of importing discarded materials in Clause 1, Article 59 of Decree 38/2015 / ND-CP in the direction that the deposit shall be conducted immediately after the bill of lading is issued or before the customs procedures for importing goods.	- Government - Presiding: The Ministry of Natural Recourses and Environment
	It is inconsistent between Circular 41/2015/TT-BTNMT and National Technical Regulation No. 31:2010/BTNMT on whether imported steel scrap is allowed to be compressed into blocks, bales or bundles or not	It is recommended to amend Circular 41/2015/TT-BTNMT in the direction that eliminates the provision “... it is prohibited to compress into blocks, bales or pieces	The Ministry of Natural Resources and Environment
	Clause 4 of Article 2 and Article 11 of Decree 60/2014 / ND-CP regulates that the head of the printing establishment must “have a collegial or higher degree in printing or granted a certificate on professional training on printing management by Ministry of Information and Communications.”	It is recommended to amend in the direction that this condition will not be applied in case that manufacturing establishments import printing devices to print for decoration on the surface of the products.	-Government - Presiding to amend: The Ministry of Information and Communications
	The overlap between specialized management ministries (The Ministry of Industry and Trade, The Ministry of Agriculture and Rural development, The Ministry of Health, The Ministry of Transport, The Ministry of Science and Technology, The Ministry of Labor – Invalids and Social affair, The Ministry of Public security...) on the list of specialized inspection good	It is recommended that specialized management Ministries coordinate to review the list of specialized inspection goods to thoroughly rectify the situation in which a commodity is subject to management of several Ministries, a commodity is subject to various specialized management laws.	Ministries: Industry and Trade, Agriculture and Rural Development, Health, Transportation, Science and Technology, Labor – Invalids and Social Affair, Public Security...

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Commitment on non-discrimination between the groups (Clause 2, Article 1, Chapter 5 of EVFTA)	<p>- Clause 1, Article 38 of Law on Food Safety regulates on certificate, conformity announcement for imported food on the list of goods in Group 2: “a) Having their technical regulation-conformity announcements registered at a competent state agency before import” leading to the fact that all importers that import the same products must conduct the procedures for certification and conformity announcement; “b) Having obtained “a notice of satisfaction of import requirements” for each goods lot” and Point b, Clause 1 of Article 40 regulates imported goods that “customs clearance shall only be effected when there is a written certification of satisfaction of import requirements” leading to the situation that all imported shipments must be inspected.</p> <p>- Similarly, Article 34 of the Law on PGQ regulates that imported goods of Group 2 must have conformity announcement, certification of conformity; and are subject to quality inspection when importing.</p> <p>- According to Circular 27/2012/TT-BKHCN detailing above provisions, certificate of conformity applies to each importer and the quality control is applied to each shipment.</p>	<p>- It is recommended to amend Article 34 of Law on PGQ, Article 38 of Law on Food Safety in the direction: the procedures for certification, conformity announcement are applied to each imported commodity (model), accordingly this procedure should only apply for the first imported product. Accordingly, if the results of conformity is compatible with technical regulations, the results will be used for all later shipments of the same model of imported commodities (of all importers), and the importers will not have to conduct the procedures for conformity announcement/certification for that product line anymore.</p> <p>- Similarly, it is recommended to amend the regulations on state inspection of quality in above Articles in the direction that this procedure is performed for each commodity, according to which, the examination of food safety/quality must be only conducted for the first imported product. If the test results are qualified for import quality, that results shall apply to all later shipments of the same imported goods (of all importers), the subsequent shipments of any importers will not have to re-conduct the procedure for examination of food safety/quality of each shipment. The examination of food safety/quality for later imported shipments is conducted pursuant to the principles of risk management and/or post-import inspection.</p>	<p>- National Assembly.</p> <p>- Presiding: The Ministry of Science and Technology: Law on PGQ</p> <p>.The Ministry of Health: Law on Food Safety</p> <p>- The Ministry of Science and Technology: amending Circular 27/2012/TT-BKHCN.</p>
	Article 8 of Circular 07/2012/TT-BCT regulates: for manufacturers “certificate of energy labeling has the term up to 03 (three) years, for the import goods, certificate is only valid for each import shipment.	It is recommended to amend Circular 07/2012/TT-BCT in the direction that energy efficiency testing, the granting of certification of energy labeling for imported products are applied to each commodity (model), whereby, this procedure must be performed only for the first imported product. If the test results meet the requirements, the results shall apply to all later imported shipments of this product model (of all importers) without conducting inspection procedures, application for labeling certificate one more time.	The Ministry of Industry and Trade

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Commitment to apply effective management method (Clause 2, Article 1, Chapter 5 of EVFTA)	Articles 47, 48 Law on Standards and Technical regulations (STR) provides that products and goods that are subject to technical regulations must be announced to be in conformity with the relevant technical regulations; however, there is no specific provisions for imported goods on this issue, resulting in the fact that an imported product line (code) is subject to certification procedures, conformity announcement for each import shipment	It is recommended to supplement Articles 47, 48 Law on STR in the direction that if a importing commodity/model of one foreign manufacturer is subjected to technical regulations, it shall only be required to obtain conformity announcement/certification once for the first imported shipment, and if it is compatible with Vietnam technical regulations, the following imports of the same model (of all importers) are not required to perform this procedure anymore.	National Assembly (The Ministry of Science and Technology presides)
	Circular 28/2012/TT-BKHCN regulates procedures for Notice to receive the dossier for conformity announcement and validity period of this Notice is 3 years. This regulation is not compatible with Law on PGQ and Decree 127/2007/ND-CP, and has lower legal validity, therefore, causing redundant difficulties for enterprises.	It is recommended to review to eliminate the procedures for issuing Notice to receive the dossier for conformity announcement and validity period of this Notice as stipulated in Article 10 and Article 15 of Circular 28/2012/TT-BKHCN.	The Ministry of Science and Technology
	Clause 15, Article 3 of PGQ Law stipulates: “State inspection of the quality of products, goods ... is that the state agencies re-evaluate the quality of products, goods ... which was evaluated by institutions of conformity assessment...” The above provision is guided by Circular 27/2012/TT-BKHCN, under which, in order to complete the procedures for checking the quality of imported goods, the importer must complete the procedures in 2 agencies/ units which are assessment organizations or state agencies for quality inspection: the assessing organization performs the assessment and conclusions about the quality of goods; quality inspection agency will issue a notice indicating the shipments have passed/failed the quality imports based on the above results	It is recommended to revise the definition of “state inspection of quality” in the direction of canceling the requirement that the quality assessment must be performed in 2 steps, by 2 agencies/units, and that the assessing agency/unit also have authority to issue the notice indicating the shipments have passed or failed the quality imports. This notice is sent straight to the National Single Window portal (NSW) in the case that the assessing/ inspecting organizations have joined NSW; or transferred directly and electronically to the customs offices at the gate in case that the assessing/inspecting organizations have not joined NSW.	- National Assembly amends Clause 15, Article 3 of Law on PGQ (The Ministry of Science and Technology presides) - The Ministry of Science and Technology amends Circular 27/2012/TT-BKHCN
	- Law on Chemicals does not stipulate, but Clause 11, Article 1 of Decree No. 26/2011/ND-CP provides the confirmation of declaration on chemical and the Circular 40/2011/TT-BCT further guides the procedure for this confirmation. - Circular 40/2011/TT-BCT regulates to declare the importing chemicals “before clearance” - Law on Chemicals regulates that the enterprises only have to report annually on the production, import and use of chemicals on the list of banned chemicals, but Circular 40/2011/TT-BCT regulates that the enterprises importing chemicals in the form of direct chemical declaration must report all imported chemicals during the year, even though they had to declare each import shipment.	- It is recommended to deregulate the chemical declaration before clearance stipulated in Decree 26/2011/ND-CP; - It is recommended to deregulate the compulsory declaration of chemicals before clearance, the confirmation on declaring the chemical and annually reporting regime for the import of chemicals which are not banned pursuant to Circular 40/2011/TT -BCT.	- Government amends ND 26/2011/ND-CP (The Ministry of Industry and Trade presides to amend). - The Ministry of Industry and Trade amends Circular 40/2011/TT-BCT.
	- Article 39 of the Law on Energy regulates that the imported means and equipment that are subject to energy labeling must obtain two types of procedures: testing procedures in eligible assessing organizations appointed by the Ministry of Industry and Trade; and the procedures for applying for a certificate of energy labeling at an agency of the Ministry of Industry and Trade. - Many commodities subject to energy labeling are also on the list of Group 2, therefore, along with implementing energy labeling procedures, it is required to carry out procedures for conformity certification prescribed Law on STR, quality control as stipulated in Law on PGQ and/or food safety inspection pursuant to Law on Food Safety.	- It is recommended to amend Article 39 of the Law of Energy in the direction: Amending the two-step procedure including “testing” (Clause 3) and “labeling certification” (Clause 2) into a one-step procedure, remaining the step “testing”, eliminating the step “labeling certification”. The result of the “testing” is the basis for enterprises to print and label. Testing organizations are responsible before the law for their test results. - It is recommended to coordinate specialized management laws (Law on PGQ, Law on STR, Law on Food Safety, Law on Energy), to rectify the situation in which a commodity is simultaneously subject to multiple types of testing, inspection as present.	-National Assembly amends Law on Energy (The Ministry of Industry and Trade presides to amend). -The Ministry of Science and Technology presides to coordinate specialized management laws.
	- Article 39 of the Law on Energy stipulates that “recognition of the energy labels of imported means and equipment”, Article 7 of Circular 07/2012/TT-BCT regulates that “only recognizing the test results of foreign organizations” - Article 39 of the Law on Energy stipulates that «energy label must be labeled before being put on the market; whereas Clause 4, Article 8 of Circular 07/2012/TT-BCT of the Ministry of Industry and Trade regulates that “The Certificate is only valid for each imported shipment” (which can be understood that it is compulsory to label before clearance)	- It is recommended to guide the “recognition of the energy label of imported means and equipment” under Clause 4 of Law on Energy. - It is recommended to eliminate the provision according to which energy labeling before clearance is compulsory and the provision that “certificate is only valid for each imported shipment” (in fact, the Ministry of Industry and Trade has revised this provision , but in the form of an Official Dispatch which is incompatible with the principles of promulgating legal documents).	The Ministry of Industry and Trade
	International agreement on mutual recognition in specialized management laws.	Implementing efficiency is very limited. Recommendation: on the one hand, it is important to have solutions to improve the qualifications and competence of experimenting and testing facilities, as a basis for promoting the negotiation and signing mutual recognition on certification for goods quality with other countries, foreign experimenting and testing facilities; on the other hand, implementing the measures of actively recognizing quality announced by the manufacturers, well-known trademarks and the test results of foreign inspecting organizations as defined in Clause 4, Article 39 of the Law on Energy and Point 1.d part III of Resolution 19 / NQ-CP 2016.	Specialized management ministries

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Article 3 – Customs and legislative procedures			
Commitment to simplify procedures and periodic review	Specialized management legislations has been fully compatible with the commitments	Regarding the Law: No recommendation Regarding the practice: Specialized management ministries should have measures to improve the implementing efficiency of these provisions.	
Applying HS Convention (Clause 1. Article 3, Chapter 5 of EVFTA)	Vietnamese specialized management law has been compatible with EVFTA commitment regarding principles, however detailed guiding provisions cause problems in the implementation process.	<ul style="list-style-type: none">- Currently there are still some Ministries which have not fully enacted HS code of the goods on the specialized management list of their respective fields, it is recommended to conduct this as soon as possible.- On their specialized management lists, specialized management Ministries have defined a “back-up” provision on a code of “Others”. This is an unclear code which can explain freely, causing controversy among management agencies and enterprises. It is recommended that specialized management ministries should remove “Others” code in the management category. In the process of implementation, if there is any arising need for goods management, additional legal documents will be issued with specific provisions on relevant item codes. Specialized management ministries are recommended to promptly adjust and supplement categories, HS code of commodities that are subject to specialized management their respective fields when the Ministry of Finance amends and supplements the general list of goods	Specialized management ministries.
Article 4 – Goods clearance			
Commitment to fast release of goods, electronic declaration (Clause 1, Article 4, Chapter 5 of EVFTA)	Vietnam specialized management legislations on exported and imported goods has been fully compatible. However, in fact, the period of time to complete specialized management procedures is still relatively long.	Regarding the law: No recommendation Regarding the practice: Recommending Ministries to promote administrative reforms, fully participating in National Single Window Portal.	
Commitment to allow submitting declaring dossier before the delivery of goods (Clause 2 Article 4 Chapter 5 of EVFTA)	In the field of specialized management, the submission of declaration before the delivery of goods has become standard practice, but only the Ministry of Health has official provisions written in Article 8 of Circular 52/2015/TT-BYT on food safety inspection	Specialized management ministries are recommended to issue formal regulations on allowing enterprises to declare before goods’ arrival (to meet the requirements of transparency and to ensure stability, predictability, and avoid the situation in which specialized management agencies suddenly change the actual practice).	Specialized management ministries
Article 5 – Simplifying customs procedures			
Commitment to simplify specialized management procedures (Clause 1 Article 5 Chapter 5 of EVFTA)	In general, the current specialized management procedures are not simplified: many papers, inappropriate form of some kinds of documentation, receiving and returning the files are mostly manually, with the procedures that have numerous steps, multiple windows, long period, high cost.	<ul style="list-style-type: none">- It is recommended to significantly reduce the number of papers to be submitted, presented when applying for licenses and specialized inspection procedures, particularly abolishing the documents that do not contain information about the quality of goods, such as B/L, invoice, packing list...- It is recommended to apply electronic procedures instead of manual procedures- Restricting to the minimum level regarding the requirement to notarize and authenticate documents, especially the papers that cannot be notarized, certified such as the electronic commercial transaction documents, no signature, live seal (bill of lading, a detailed list, contract ...)- Restricting to the minimum level regarding the situation in which a work is conducted by numerous different agencies/organizations- It is recommended to shorten the time for specialized management and inspection specialized as required in Resolution 19-2016/NQ-CP of the Government	Specialized management ministries

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Commitment on ensuring the clarity of specialized management procedures (Clause 1 Article 5 Chapter 5 of EVFTA).	Decree 187/2013 / ND-CP regulates the specialized management scope of the Ministry of Information and Communications including only one (01) categories of exported goods, and five (05) types of imported goods. However, the Annex attached to Circular No. 15/2014/TT-BTTTT has hundreds of product lines, in which the majority of the goods is not on the list of goods under specialized management of The Ministry of Information and Communications specified in Decree 187/2013 / ND-CP.	It is recommended to amend the list of goods issued together with Circular 15/2014/TT-BTTTT in the direction of eliminating all commodity codes outside 5 types of goods which the Ministry of Information and Communications are assigned to manage in Decree 187/2013/ND-CP.	The Ministry of Information and Communications
	Point b Clause 2 Article 27 Law on PGQ regulates: “b. Testing samples according to announced applicable standards or relevant technical regulations <u>when necessary</u> ”, however, Clause 4 Article 21 Circular 48/2011/TT-BCT of the Ministry of Industry and Trade stipulates: “b. Tests samples according to announced applicable standards or relevant technical regulations”. According to Law on PGQ, the “testing” only applies “when necessary”, while pursuant to Circular 48/2011/TT-BCT, all circumstances must be tested. These two provisions are significantly different when it comes to application.	Amending Clause 4 Article 21 Circular 48/2011/TT-BCT in the direction of supplementing the phrase “when necessary” to be compatible with the Law on PGQ.	The Ministry of Industry and Trade
	Regarding the inspection and supervision of exports and imports: According to the Law on Customs, these are the functions and jurisdiction of the customs authorities. However, Clause 2, Article 12 of Circular 09/2016 / TT-BQP stipulates that the Border Guard at border gate check the documents relating to the goods and the actual inspection of goods. This regulation has caused confusion for border units, after the customs authorities have checked the documents and the goods, the border forces are subject to check again.	It is recommended to amend the regulation at Article 12 of Circular 09/2016/TT-BQP in the direction of abolishing the duty to inspect, supervise the documents and exported/imported goods of Border Guards.	The Ministry of National Defense.
	Many provisions are unclear, inconsistent with the provisions in the Law on Energy and Circular 07/2012/TT-BCT: regarding how to apply; “a realistic assessment of the enterprises”; the period of time to grant certificate of energy labeling; regarding the fact of having no direct guidance on compliance with requirements of Law on Energy: The law requires guidance regarding the “recognition of energy labels of imported means, equipment”, the Circular only guides “to recognize the results of the test conducted by foreign organizations”; The law stipulates that “energy label must be labeled before being put on the market”, Circular 07/2012/TT-BCT stipulates that labeling must be performed before clearance.	Modifying a wide range of issues of Circular 07/2012/TT-BCT on energy labeling in the direction of deregulating the testing, labeling of efficiency energy of means, imported equipment before clearance; supplementing guidance regarding “the recognition of energy label of imported means, equipment” as defined in Clause 4, Article 39 of Energy Act; specifying the content of “enterprise capacity assessment” and “ enterprise reality assessment”, period of time to evaluate and grant labeling certification; assigning additional testing organizations; establishing more agencies granting labeling certification in the South, Central.	The Ministry of Industry and Trade
	Law on Food Safety only regulates “conformity announcement” according to the respective technical regulations. In addition to the above case, Article 3 of Decree 38/2012/ND-CP regulates additional circumstances regarding “Product with no technical regulations are subject to announce in conformity with food safety regulations and register announcements in accordance with food safety regulations to competent state agencies before being put into circulation on the market until the respective technical regulations are promulgated and take effect”. This regulation are specified in Articles 2, 3, 5 of Circular 19/2012/TT-BYT.	It is recommended to deregulate Clause 2, Article 3 of Decree 38/2012/ND-CP and the relevant provisions in Circular 19/2012/TT-BYT on conformity announcement on food products with no technical regulations. If this regulation is necessary, the supplement into the Law on food safety will be recommended.	Government (The Ministry of Health presides).
	According National Technical Regulation No. 31:2010 on steel scrap, there is no provision prohibiting the compression into blocks, bales or pieces, but in Point 8, Annex 1 of Circular 41/2015 / TT-BTNMT stipulates that : “Scrap and fragments of iron or steel: metal shavings, wood shavings, debris, mill scale, chip cutting and burrs not pressed into blocks, bales or bundles” which leads to different understanding, interpretations between those who implements, resulting in different practices in different places, causing many difficulties for enterprises.	It is recommended to amend the Point 8, Annex 1 of Circular 41/2015/TT-BTNMT in the direction of not restricting the import of steel scrap compressed into blocks, bales to optimize delivery and to reduce transportation costs for enterprises.	The Ministry of Natural Resources and Environment

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Commitment to apply the regime of post-import inspection in specialized management field (Clause 3 Article 5 Chapter 5 EVFTA)	Specialized management legal documents provide that the specialized inspection for imported goods must be conducted before the goods are cleared.	It is recommended to amend and supplement provisions regarding specialized management (first of all, Article 34 and 35 of the Law on PGQ, the Law on Food safety, Article 38, Article 29 of the Law on Plant Quarantine, Article 34 and 37 of the Law on Customs) in the direction of regulating that the specialized inspection for imported goods (in case that regarding risk management criteria, it is compulsory to check) is mainly conducted after the goods have been cleared, except for some areas, commodities must be checked before the clearance.	National Assembly (Relevant Specialized management ministries preside to amend respective laws, however Law on Customs will be presided by The Ministry of Finance).
Commitment on effort to attempt to apply information technology in specialized management procedures (Clause 4, Article 5 of EVFTA).	The information technology applications, electronic data exchange have been and are being deployed by Government and specialized management Ministries. However, the efficiency is very limited.	It is recommended to formally regulate the application of NSW replacing the pilot pursuant to Decision 48/2011/QĐ-TTg, to be more specific, it is recommended to supplement testing and inspecting organizations as the entities which perform this mechanism.	Prime Minister Government (The Ministry of Finance presides).
Article 6 – Transit and Transshipment	Vietnam legal framework in general and specialized management laws in particular have been fully compatible with the commitments on coordination between the competent agencies at the gate to facilitate the transfer and transit of goods and means of transport.	No recommendation	
Article 7 – Risk Management			
Commitment to apply risk management principles in specialized management (Clause 1 Article 7 Chapter 5 of EVFTA).	Specialized management laws and documents detailing the implementation of the specialized management laws regulate the specialized inspection applying to each shipment, there is no regulation on the application of risk management. Especially Law on Food safety contains provisions on 3 levels of food safety inspection, however, this provision is not in terms of risk in accordance with the full meaning of this management principle (still inspecting each shipment and applying risk management methods only at a fraction of the process of selecting inspection criteria).	Amending Articles 34 and 35 of the Law on PGQ, Article 38 of Law on Food Safety, Article 29 of the Law on Plant Quarantine, Article 34 and 37 of the Law on Customs and supplementing other laws and specialized management documents detailing these laws in the direction of applying risk management principles in the specialized inspection, deregulating inspection of each shipment in the current legislation.	National Assembly (Relevant Specialized management ministries preside to amend respective laws, however Law on Customs will be presided by The Ministry of Finance
Article 8 – Transparency	Vietnam legal framework has been compatible with the commitments on transparency of provisions regarding the order and conditions of customs procedures and designating focal hubs to answer related questions.	No recommendation	
Article 10 – Fees and charges			
Commitment on the charges and fees for conducting import and export procedures that should not exceed service costs and should not be calculated in the value of shipments (Clause 1 Article 10 Chapter 5 of EVFTA)	<ul style="list-style-type: none">- In general, the specialized inspection fee is quite high, and the work content is unclear.- Circular 223/2012/TT-BTC regulates the phytosanitary fees for export and import of goods by volume with no maximum limit, which leads to the fact that quarantine fees for a shipment may be up to several tens of million VND, while the common method is to check quarantine by sense (which means the costs of the inspection services is not high). With such a large amount, it is difficult to say that it does not exceed the cost of providing services.- Circular 223/2012/TT-BTC regulates: the fee for inspecting the quality of imported plant protection products is 0.05% of the shipment value, the minimum is 1.2 million VND/shipment, up to 10 million VND/shipment; the charges for inspecting food safety criteria for exported and imported agricultural products (vegetables, fruits...) is 1% of the shipment value, with the minimum of 3 million VND/shipment, and the maximum of 10 million VND/shipment	<ul style="list-style-type: none">- Modifying the calculation of the fee for inspecting the quality of imported plant protection drug, the fee for inspecting food safety criteria in exported and imported agricultural products (vegetables, fruits...) of the provisions in Section III of the attached Appendix of Circular 223/2012/TT-BTC in the direction of prescribing the absolute fee which does not depend on the shipment value;- Amending the method to calculate the fee for phytosanitary for imported and exported plant in Clause 3, Section VI of the attached Appendix in Circular 223/2012/TT-BTC in the direction of specifying maximum ceiling for one shipment.	The Ministry of Finance

EVFTA Commitments (Chapter 5)	Assessment of compatibility	Recommendation	Competent authority
Commitment on not requiring consular legalization for exported and imported documents (Clause 1 Article 10 Chapter 5 of EVFTA)	Articles 5 and 6 of Decree 38/2012/ND-CP regulate the consular legalization of some documents in the dossier of regulation conformity announcement and conformity announcement with food safety for imported products with no technical regulations, functional foods and fortifying micronutrients foods. The provisions above are restated in Point b, Clause 2, Article 4 of Circular 19/2012/TT-BYT.	It is recommended to amend Point c, Clause 2, Article 5; Point c, Clause 1, and d, Clause 3, Article 6 of Decree 38/2012/ND - CP of the Government, Point b, Clause 2, Article 4 of Circular 19/2012/TT-BYT in the direction of abolishing the requirement for consular legalization of conformity announcement dossier and announcement dossier of food safety for products with no technical regulations, functional foods and imported fortifying micronutrients foods.	The Ministry of Health
Commitment to public information on fees and charges (Clause 2 Article 10 Chapter 5 of EVFTA)	Specialized management law on fees and charges is fully compatible with the commitments	No recommendation	
Article 13 – Pre-shipment Inspections	Specialized management legislations on exported or imported goods do not have any provision regulating that imported goods into Vietnam must be inspected by private companies before loading the goods onto ships at ports of departure or before clearance at ports of arrival. Therefore Vietnamese specialized management legislations are completely compatible with the commitments	No recommendation	
Article 14 – Review and Appeal			
Commitment to apply favorable complaints procedure (Article 14, Chapter 5 of EVFTA).	Overall, Vietnam legal framework is compatible because of having the law on complaints and a number of specialized management regulations provided for complaint mechanism. In particular, the Law on Plant Quarantine and the Law on PGQ contain provisions on complaint procedures (with content similar to the complaint procedures under the Law on Complaints), especially the Law on Food safety does not contain provisions on the issue of complaints (presume to apply common complaint procedures under the Law on Complaints).	In principle, it is unnecessary to revise Vietnam legal framework to ensure compatibility with the EVFTA. However, to synchronize the system of specialized management legislations on this issue, it is recommended to: - Plan 1: To supplement provisions on procedures of complaints and resolving complaints in the export and import of goods subject to inspection of food safety into the Law on Food Safety (corresponding to other laws such as Law on PGQ, Law on Plant Quarantine ..) Although this alternative unnecessarily creates many provisions in specialized management documents (because basically, procedures are similar like in the Law on Complaints), but the advantage is that it only needs to amend the Law on Food Safety, not numerous documents; - Or to eliminate this provision in other specialized management laws (Law on PGQ, Law on Plant Quarantine...); the complaint and settlement are agreed to follow the provisions of the Law on Complaints. This option ensures the uniformity of the law on complaints (only applying the Law on Complaints) but requires to repair specialized management legal documents to abolish the provisions of the existing complaints	Plan 1: The Ministry of Health Plan 2: Specialized management ministries (The Ministry of Science and Technology, The Ministry of Agriculture and Rural Development)
Article 15 – Relations with the Business Community	Vietnam legal framework is compatible with the commitments.	No recommendation	



Part three

Detailed review of Vietnam
legal framework against EVFTA
commitments on specialized
inspection

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
Article 1. Objectives		
<p>1. The Parties recognize the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties agree to reinforce cooperation in this area with a view to ensuring that the legislation and procedures fulfill the objectives of promoting trade facilitation while ensuring effective customs control.</p>	<p>1. Regarding international cooperation on management, specialized inspection for exported goods, imported goods, laws on specialized inspection stipulate:</p> <ul style="list-style-type: none"> - Law on Products and Goods Quality 05/2007/QH12 dated 21 November 2007 stipulates on Point 7 of Article 6 (Policy of the State on activities relating to quality of products, goods) - Law on Food Safety 55/2010/QH12 stipulates on Point 5 of Article 4 (Policy of the State on food safety) - Law on Standards and Technical Regulations 68/2006/QH11 stipulates on Article 8 (International cooperation on standards and technical regulations) - Decree 127/2007/NĐ-CP Detailing the implementation of several provisions of Law on standards and technical regulation stipulates on Point 4 of Article 4 - Law on Plant Protection and Quarantine 41/2013/QH13 (Law on PPQ) stipulates on point 4 of Article 5 (Policy of the State on plant protection and quarantine activities) - Law on Veterinary Medicine 79/2015/QH13 stipulates on Article 11 <p>2. Regarding ensuring state management, as well as facilitate trade, laws on specialized inspection stipulate:</p> <ul style="list-style-type: none"> - Law on Products and Goods Quality stipulates on point 3 of Article 5 (Principles of managing the quality of products, goods) <p>And:</p> <ul style="list-style-type: none"> - Law on Products and Goods Quality regulates on point 12 of Article 8 (Prohibited acts) - Law on Standards and Technical Regulations stipulates on point 1 of Article 9 (Prohibited acts) - Law on Veterinary Medicine stipulates on point 4 of Article 4 (Principles on activities of veterinary medicine) - Law on Food Safety stipulates on point 4 of Article 68. 	<p>Commitment analysis:</p> <p>In this provision, Parties commits to improve cooperation in trade facilitation, to ensure all Parties' regulations and procedures adopted to aim at two targets: enhancing trade facilitation, and keeping administration effective.</p> <p>1. Commitment on trade facilitation:</p> <p>Assessment:</p> <p>This issue is stipulated in Article 6, Law on Product and Goods Quality, Article 4, Law on Food Safety, Article 8. Law on Standards and Technical Regulations, Article 5, Law on Plant Protection and Quarantine, Article 11, Law on Veterinary Medicine, Article 4, Circular 127/2007/TT-BKHCN as mentioned in (2) Column. The cited regulations in the (2) column indicates that Vietnam legal framework (VLK) on specialized inspection of export and import goods in every sectors clearly defines Vietnamese State's policy that is to enhance and promote international cooperation with the aim of facilitation. Thus, Vietnamese legal framework on specialized inspection completely meets the requirements under Article 1.1 of the EVFTA. However, in the real circumstances, the implementation of mutual recognition is almost inconsiderable. The main cause is that the technical standards of Vietnam, and that technical measures and qualification of domestic inspection organization is quite low in comparison with developed countries. Consequently, mutual recognition is hard to implement.</p> <p>Recommendation:</p> <p>Concurrently with the course of improving the qualification of domestic organization, it is recommended that inspection results of developed countries' inspection organizations are recognized, that qualification of well-known brand goods. This recommendation is based on the following precedents:</p> <ul style="list-style-type: none"> - Article 39.4.(d) of Law on economical and efficient use of energy No. 50/2010/QH12 (Law on energy) provided that: "Ministry of industry and trade shall provide the recognition of energy labels of imported devices and equipment" - Part III, Point 1.d of Resolution Resolution 19-2016/NQ-CP dated 28th April 2016 of the Government. <p>2. Commitment to ensure state administration, and improve trade facilitation:</p> <p>Assessment:</p> <ul style="list-style-type: none"> - The citation of column (2) (Article 5.3, Article 8.12 of Law on Product and goods quality, Article 4.4 of Law on Veterinary medicine) dedicates a principal issue of specialized inspection under which the state shall ensure the administration right, improve trade facilitation, protect customer rights, and forbid the abuse of authority.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>Provisions that are not conducive to trade:</p> <ul style="list-style-type: none"> - Decree 38/2015/NĐ-CP dated 24 April 2015 on waste and scraps management (NĐ 38/2015/NĐ-CP) stipulates on point 1 of Article 59 (Process of secure deposits for imported scraps): <ul style="list-style-type: none"> “1. Organizations and individuals importing discarded materials must deposit prior to customs clearance procedures for imported discarded materials at least 15 working days.” - Import clean steel scraps, compress into cake-shapes or blocks for convenient transportation: The National Technical Regulations on environment with respect to import steel scrap, number code: QCVN 31:2010/BTNMT (issued together with Circular No. 43/2010/TT-BTNMT) prohibits the importation of “shell barrels, packaging, cans ... which have not been cleaned” yet does not prohibit the compression into cake-shapes or blocks, however Circular 41/2015/TT-BTNMT on environmental protection in import of scrap for use as raw production materials (Thông tư 41/2015/TT- BTNMT) stipulates “...not to press into blocks, not to compress into bales” which troubles enterprises. - Decree 60/2014/NĐ – CP on print activities (Decree 60/2014/ND-CP) stipulates on point 4 of Article 2 (Definitions) 	<p>However, the regulations on trade facilitation in the sector of specialized inspection only contain principles, being general and ineffective. Meanwhile, the inspection measures are regulated in details, especially in circulars. Therefore, with regard to real circumstances, trade facilitation is less concerned than improvement of state control.</p> <ul style="list-style-type: none"> - As cited in the column 2, not mentioning trade facilitation, there are a lot of unreasonable provisions, for examples: <ul style="list-style-type: none"> + Article 59.1 of Decree 38/2015/ND-CP provided that Organizations and individuals importing discarded materials must deposit prior to customs clearance procedures for imported discarded materials at least 15 working days. This regulation is not suitable when the exporting countries are close, and shipment time is short (from Hong Kong: about 3 days, from Japan: about 8 days). These provisions enhance the debt period of importing enterprises. + The conflict between Circular 41/2015/TT-BTNMT and Technical regulations QCVN 31:2010/BTNMT on steel scrap causes difficulties, confusion in implementing process of enterprises and Customs agencies. + Unreasonable provisions: Article 2.4 and Article 11 of Decree 60/2014/ND-CP stipulate that head of printing establishment or photocopying service establishment subject to “possess a collegial or higher degree in printing, or a certificate of training in printing management granted by the Ministry of Information and Communications”. This provision is consistent with the establishments printing publications, but inconsistent with the cases where the products are not publications, such as establishments producing textiles and decoratively printing on canvas, establishments producing facilities construction and decoratively printing on bricks, establishments producing plastic things and printing on plastic..., which has caused many difficulties for these enterprises. + The overlap of provisions on assigning inspection authorities between ministries leads the situation that one item is regulated by a lot of legislations, and examined by a lot of inspection procedures. <p>For examples, cooks, electronic fan, is regulated to check energy performance (under Decision 51/2011/QĐ-TTg promulgating the list of devices and equipment subject to energy labeling and application of the minimum energy efficiency, and the implementation roadmap of the Prime Minister), and, at the same time, regulated by the national technical regulations on electric equipment safety (under QCVN 4:2009/BKHCN issued together with Circular 21/2009/TT-BKHCN dated on September 30th, 2009 by Head of Minister of Science and Technology - MOST); air conditioner, refrigerator, washing machine is regulated to check energy performance (under Decision 51/2011/QĐ-TTg), and, at the same time, regulated by national technical regulation on quality (QCVN 9: 2012/BKHCN issued together with Circular 12/2012/TT-BKHCN dated on April 4th, 2012 by Head of MOST)... The mentioned above items is followed the inspection procedures to check performance, energy label regulated by Ministry of industry and trade, and the requirement of testing (one sample for test per one procedure)</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>And a series of overlap between ministries on the list of specialized inspection goods, causing barriers to trade, such as:</p> <ul style="list-style-type: none"> . Between Ministry of industry and trade - MOIT (Circular 08/2012/TT-BCT) and Ministry of and Ministry of Transport - MT (Circular 63/2011/TT-BGTVT): Self-propelled cranes, hoists, cranes, gantry crane, forklift . Between MOIT and Ministry of and Ministry of Labor – Invalids and Social affairs (MOLISA): Modulation system and air intake, sales of liquefied gas, dissolved gases, pressure cylinders over 0.7 bar pressure, boiler, winch . Between MOLISA and Ministry of Public security - MPS: fire extinguisher . Between Ministry of Industry and Trade and Ministry of Science and Technology - MOST: PVC covered operating cables . Between MT and MOST: Car xitec; . Between Ministry of Agriculture and Rural development - MARD and Ministry of Health - MOH: Starch – phytosanitary by MARD and food safety by MOH; Fresh milk: animal quarantine (MARD), and food safety (MOH); . Between MARD and MOIT: milk powder, cheese: animal quarantine (MARD), and food safety (MOH). . Between units of MARD: exporting aquatic animals is accorded to both of animal quarantine (conducted by veterinary authority), quality inspection (conducted by Nafiquad)... <p>The assignment of inspection organization under Law on product and goods quality, Law on food safety, Law on energy causes some exporting/importing difficulties, for examples:</p> <ul style="list-style-type: none"> . Inspection of agriculture machine quality (farm tractor ...): That Department of processing and trade for agro-forestry-fisheries products and salt production – MARD assigns only one inspection organization in Hanoi causes difficulties and increase fees for importing enterprises located in middle and south provinces. <p>With regard to the energy performance inspection of “motor”, MOIT provides only one center called Quatest 1. However, Quatest 1 does not have enough abilities to do the inspection, and must have a different motor factory in Dong Anh, Hanoi to do this performance. Therefore, the cost increases, especially enterprises located in middle and south provinces.</p> <p>General assessment: legislations on specialized inspection have a lot of compatible provisions under the EVFTA, and also have a considerable number of incompatible provisions in the aspect of trade facilitation. For overall assessment, regarding this commitment, Vietnamese legislation on specialized inspection is partially compatible with commitment under the EVFTA.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend to review and revise/supplement specific provisions on facilitation for import and export goods to, improve trade facilitation stated in the legal documents on specialized inspection, which is not only appears in legislation but also implements in practice. <p>To reference, hereinafter is a good practice: Previously, Law on Customs No. 29/2001/QH10 and Law No. 42/2005/QH11 on amendment of and addition to a number of articles of the Law on Customs also regulated Vietnamese State’s policy is to facilitate export, import, transit activities. Nevertheless, because of intransparency, this provision could not apply in practice, customs procedure was still the most difficult task for enterprises. Learning from such practice, the Law on Customs No. 54/2014/QH13, besides declaring facilitation for export, import, transit activities (Article 3), there is a series of specific provisions on facilitation such as: applying principles of risk management in professional customs operations (Article 17); predetermination of HS codes, origin and customs value of goods (Article 28); privilege given to enterprises (Articles 42-45); post-customs clearance inspection (Articles 77-82)... Continuously, these provisions are specified by Decree No. 08/2015/ND-CP dated January 21, 2015, providing specific provisions and guidance on enforcement of the customs law on customs procedures, examination, supervision and control procedures of the Government (Decree No. 08/2015/ND-CP), Circular No. 38/2015/TT-BTC dated March 25, 2015, on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods of Minister of Finance (Circular No. 38/2015/TT-BTC). With a series of specific regulations, customs procedures fundamentally changed in the direction of facilitating the export and import activities. In present, customs procedures are no longer the main difficulties for enterprises.</p> <ul style="list-style-type: none"> - Recommend to revise the regulations on deposit periods under Article 59.1 of Decree 38/2015/ND-CP so that deposit is completed right after issuing bill of lading, or before the customs procedures for imports. - Recommend to revise Circular 41/2015/TT-BTNMT by erasing the provision prohibiting pushing scrap into blocks, because scrap is huge, and block of package is space-saving, cost-saving, especially when using container. - Recommend to revise the conditions of importing equipment under Article 2.4, Article 11 of Decree 60/2014/ND-CP and Circular 16/2015/TT-BTTTT in order to not apply this provision on producers importing printer for decorations on the goods surface. - Recommend ministries having authorities of specialized inspection to review the list of specialized inspection goods to reduce the overlap of authorities as stated above.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>2. To this end, the Parties agree that legislation shall be non-discriminatory and that customs procedures shall be based upon the use of modern methods and effective controls to combat fraud and to promote legitimate trade.</p>	<p>1. Regarding “non-discrimination”</p> <p>“Non discrimination” is always one of the fundamental principles of management on specialized inspection laws. Specifically, the laws stipulate:</p> <ul style="list-style-type: none"> - Law on Products and Goods Quality stipulates on point 3 of Article 5 (Principles of managing products, goods quality) - Law on Standards and Technical Regulations stipulates on point 3 of Article 6 (Fundamental principles of activities on standards and technical regulations) - Law on Standards and Technical Regulations stipulates on point 3 of Article 40 (Basic requirements of assessing conformity) <p>However, specialized inspection laws have provisions consisting discrimination signs (refer to quotes and assessment in column 3)</p> <p>2. Regarding modern management methods</p> <p>With content as analyzed in column 3, most of current QLCN laws (including laws on Products and Goods Quality, Standards and Technical Regulations, Plant Quarantine Act, Veterinary Medicine, Energy) do not contain provisions regarding the modern management methods.</p> <p>Particularly, food safety legislation has a number of provisions in the direction of applying risk management principles in inspecting food safety, which are:</p> <ul style="list-style-type: none"> - Point 2 of Article 40 of Law on food safety stipulated 3 inspection methods; and: - Article 6 (Inspection indicator) of Circular 12/2015/TT- BNNPTNT regulates historical ground of enterprises’ law-abiding for inspection, <p>More details shall be mentioned in Article 7 below.</p>	<p>Commitment analysis:</p> <p>In this points, Parties commit to:</p> <ol style="list-style-type: none"> 1. Ensure no discrimination between groups of subjects. 2. ensure customs procedures being implemented on the base of applying modern management measures, in order to both of trade frauds control, and trade facilitation <p>(Note: under this Agreement, “customs procedures” will be interpreted in the general conception, and as “clearance procedure” under VLF, including customs formalities and related procedures (especially specialized inspection). Reasons: By this interpretation, trade facilitation has real impact. If “customs procedures” is narrowly interpreted as procedure conducted only by customs authorities when specialized inspection is the main cause of customs obstacles, this trade facilitation is meaningless. Quick procedures conducted by customs authority is nonsense when goods is not clear from storage at border)</p> <p>1. Commitment on non-discrimination:</p> <p>Assessment:</p> <p>Provision cited in the column 2 (Article 5.3 Law on Product and goods quality, Article 6.3 and Article 40.3 Law on Standards and technical regulations) indicates that non-discrimination between these entities is among the fundamental principles.</p> <p>Regulations on specialized inspection include some provision which could be considered as sign of discrimination between domestic and foreign goods, specifically:</p> <ul style="list-style-type: none"> - Law on food safety provided that (under Chapter III, Chapter IV), domestic goods is only required to be announced that these goods is legitimate, that producers and seller meet standards, no need for inspection of each package of goods. Meanwhile, Article 38.1.(a) regulates that exported goods must have technical regulation-conformity announcements registered at a competent state agency before import (all importers must follow this conditions), Article 38.1.(b) provides that exported goods must obtain a notice of satisfaction of import requirement issued by a designated inspection agency for each goods lot as prescribed by line ministers. Article 40.1. (b) Provides that customs clearance shall only be affected when there is a written certification of satisfaction of import requirements. - Law on product and goods quality (Article 29) provides that: Examination of product quality in production shall be conducted in one of the following cases: <ul style="list-style-type: none"> a/ Exported goods fail to ensure the quality as prescribed in Article 32 of this Law;

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>3. Regarding the effective application of management methods</p> <p>Effective provisions:</p> <ul style="list-style-type: none"> - Overall, the current specialized inspection laws have fulfilled the needs to strengthen the state management, met the objectives of economic, society development, ensured public health, consumer protection, environmental protection, social security, held the trade deficit, maintained and expanded export markets, prevented smuggling and trade fraud. This is reflected in the entire contents of the law, not some articles therefore it is difficult to cite here, please find the reference of some provisions brought remarkably effectiveness that can be measured: <p>- Article 6 of Circular 33/2014/TT-BNNPTNT of Ministry of Agriculture and Rural Development on Regulating the sequence, procedures for phytosanitary import, export, transit and after the importation of objects subject to plant quarantine. regulations on the registration dossier of phytosanitary import is quite simple, the dossier consists of only 2 -3 documents which are: plant quarantine registration certificate ; Copy or original of the quarantine phytosanitary Certificate granted by authorized agencies of the export country; Original or certified copy of the phytosanitary import license (in cases that require licenses). In comparison with 9 papers stipulated in Circular 65/2012 / TT-BNN (quarantine registration certificate ; Affidavit quarantine plant quarantine certificate issued by the plant quarantine authorities of the exporting country authorities; plant quarantine import permits; Lading; packing list; attorney; trade contract; Letter of credit L / C) the effectiveness of this new regulation can be seen clearly.</p>	<p>b/ Goods circulated on the market fail to conform to announce applicable standards or relevant technical criteria specified in Clause 3, Article 40 of this Law.</p> <p>Under Article 5.3. (c) Of Decree 132/2008/NĐ-CP dated 31st Dec 2008, “The examination under this Point shall be conducted by a designated conformity evaluation organization when signs of failure to ensure quality are detected”.</p> <p>Under the mentioned above provision, domestic goods are under inspection only in some specific case, not being checked each package.</p> <p>Meanwhile, with regard to importing goods, Article 34 provides that Conditions for ensuring imported goods quality</p> <ol style="list-style-type: none"> 1. Imported goods must have their applicable standards announced according to Article 23 of this Law and be labeled according to the labeling law. 2. Imported group-2 goods must be announced in terms of regulation conformity and certified in terms of conformity with relevant technical regulations related to the production process and end products by designated or accredited certification organizations according to Article 26 of this Law. 3. When imported, group-2 goods which fail to comply with Clause 2 of this Article must be inspected at the border gates of export or import by designated or accredited inspection organizations. 4. When imported, group-2 goods must have quality examined according to the contents specified in Clause 2 of Article 27 and the order and procedures specified in Article 35 of this Law. <p>This requirement is guided by Circular 27/2012/TT-BKHCHN dated 12 Dec 2012 (from Article 5 to Article 9), regulating that conformity certification applies on each importers, and inspection applies on each importing goods. MOST is the agency in charge of building and implementing Law on product and goods quality, therefore Circular 27/2012 issued by MOST plays the role of a model circular. Therefore, the guiding circular of other competent ministries also have the similar guiding (E.g., Article 18 Circular 27/2012/TT-BKHCHN).</p> <p>- Law on energy does not have direct regulations on this issue, however Article 8 Circular 07/2012/TT-BCT dated 4/4/2012 of Ministry of industry and trade regulates that conformity certification has the maximum period is three years with regards to producers, and only has valid for each package with regards to importing goods.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>- Official Letter 1950 / PPD-KD 29 September 2015 issued by Plant Protection Department of Ministry of Agriculture and Rural Development set guidelines on quarantine procedures for export, re-export, in which state that “ object owner registers with the agency for quarantine and issuance of Phytosanitary certificates in accordance with the provisions. Customs Authority does not require object owner to submit Phytosanitary certificates in the export shipment records. “According to these guidelines, quarantine of exported plant is not a mandatory procedure as before, but depending on the request of the exporter. Since it is not a mandatory procedure, the Customs authority does not require object owner to submit Phytosanitary Certificate. Even though it is only an Official Letter, it has removed a very large and popular problem at that time which is enterprises always owed the customs authority Phytosanitary Certificate, when due more than 10 days (commonly happened), object owner shall be subject to administrative penalties. At the same time, this reduces phytosanitary fees for enterprises, in many cases the fees is very high (e.g. exported phytosanitary fees for wood chips, cassava chips ... can be up to some dozen of million).</p> <p>- Circular 52/2015/TT-BYT of the Ministry of Health regulating the state inspection on food safety for imported food and granting certification procedures dossier to exported food under the management of Ministry of Health stipulates that the agencies, units appointed by Ministry of Health to inspect food safety for imported, exported food are both direct inspection units and units issuing the Notice to confirm the results of whether the food is qualified or not to import. This regulation abolished one of the two steps of previous regulations (the inspection is done by one appointed organization, the Notice to confirm the results of whether the food is qualified or not to import is done by another competent agencies of Ministry of Health. Meanwhile Ministry of Science and Technology and many other specialized management ministries still apply 2-step process to inspect the quality of imported and exported goods).</p>	<p>- Circular 28/2012/TT-BKHCH regulates that: within 3 years (the valid period of the receipt notification of under Circular 28/2012/TT-BKHCH), one domestic producing item only needs to do the conformity announcement/certification procedure once, meanwhile, one imported item needs to do this conformity announcement/certification procedure many times (as much as the number of importers). Under many Vietnam technical regulation, the common inspection for imports is method no.7 (under Circular 28/2012/TT-BKHCH, this method applies on each package) and under the Form of the receipt notification (accordingly, including clearly the name of announcer, which means that conformity announcement is only valid for this person’s respective imports)</p> <p>Recommendation:</p> <p>To avoid the risk of discrimination between domestic and imported goods, recommend to revise the mentioned above legislation so that one model importing goods only have to be accorded to one specialized inspection for the first importing package. If the result is conformity, it shall be updated in the database of General Department of Vietnam Customs and Vietnam National Single Window, to apply the result on all following importing packages without specialized inspection.</p> <p>2. Commitments on modern management method in the specialized inspection:</p> <p>1. Under World Customs Organization (WCO), modern management means the methods based on the main processes: summarizing, information analysis, risk management and post-clearance checks.</p> <p>Under the structure of this Agreement, Article 1 provides the general principles which require Parties to apply modern management during good clearance process. The content of modern management will be specified in the below articles. Our assessment and analysis also will follow this structure. Accordingly, the general analysis and summary is mentioned in the column (2), specific analysis and assessment is showed under point 3 (post-clearance checks); Article 5 (simplification of good clearance), and Article 7 (risk management).</p> <p>3. Commitment on applying effective management methods:</p> <p>It should be mentioned about the reasonable need of applying and comparison method between fees (of all interested parties, including importers, exporters, and state authorities) and results. The real circumstances indicate that it is very hard to assess the performance of one procedure if only considering the legal documents. Although there are some exceptions, almost procedures need factual survey for effectiveness assessment.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>- Decree 21/2012/ND-CP of the Government and Circular 54/2015 / TT-BGTVT of Ministry of Transport regulating the appliance of electronic declaration in entry and exit procedures for ships also brought great efficiency, simplified the procedures, reduced a very large volume of documents (formerly, the volume of documents each ship must submit can be calculated in sacks).</p> <p>- Dossier for issuing quality certification of technical safety and environmental protection for imported motor vehicles, motorcycles, electric bicycles being done through Vietnam National Single Window as stipulated by the Ministry of Transport is also a very effective regulation.</p> <p>Regulations that have limited effects:</p> <p>3.1 Regarding certification, announcement of conformity:</p> <p>Law on Standards and Technical Regulations stipulates on point 1 of Article 47, point 1,2 of Article 48.</p> <p>Regarding the validity period of announcing standards and conformity:</p> <p>Circular 28/2012/TT-BKHCHN stipulates on Article 10.2a and Article 15.2a.</p> <p>3.2 Law on Standards and Technical Regulations specifies in paragraph 4 of Article 34: “Imported goods in group 2 must be inspect quality when importing”. Article 5 to Article 9 of Circular 27/2012 / TT-BKHCHN specifies the inspection of goods quality applicable to each import shipments.</p> <p>Point 1b of Article 38 of Law on food safety regulates imported goods “must be issued the “Notice of the result confirming the food is qualified for import” for each shipment”; Point 1b of Article 40 stipulates that imported goods “Can only be good clearance upon confirmation of the test result confirming the food is qualified for import”</p> <p>Article 8 of Circular 07/2012 / TT-BCT of the Ministry of industry and trade on energy labeling regulates “the Certificate is only valid for each imported shipment”.</p>	<p>Assessment:</p> <p>In addition to the performing assessment of some provisions as stated in the column (2), the structure of specialized inspection indicates that in almost sectors in need of state administration, there are necessary regulating legal documents. Therefore, basically, the real management is equipped with full regulating documents, and therefore, ensure the state management in each sector, and create trade facilitation in a determined level.</p> <p>However, there are some unreasonable or unnecessary provisions; therefore, its effectiveness is limited, does not meet the management target, and do cause the trade difficulties.</p> <p>3.1 Assessment of Law on standards and technical regulations and Circular 28/2012/TT-BKHCHN</p> <p>Under Law on standards and technical regulations, specifically Article 47 and Article 48, each item, goods included in the application scope of technical regulations shall have conformity announcement indicating that this item is suitable with the equivalent technical regulation.</p> <p>This requirement is good, but lack of some necessary conditions, therefore it becomes burden for imports. With regards to domestic goods, this requirement is reasonable; because one item is made by a producer, and therefore needs only one conformity-announcement (have valid period of three years under Article 15.2. (A) Circular 28/2012/TT-BKHCHN). With regard to imports, one item is imported by many Vietnam importers; consequently, one item with one producer, one set of production, and same technical index; and, therefore, it needs more than one conformity announcement. To receiving conformity announcement, the model need to be put under inspection which could lead the item to be destroyed, and causing huge waste. This requirement even applies on the high technical items with high technique, made by big producer, and having global famous brand name, which could not be produced and tested in Vietnam.</p> <p>With the validity period of conformity-announcement: Law on standards and technical regulations, Decree 127/2007/ND-CP do not provide the validity period of conformity-announcement. However, Circular 28/2012/TT-BKHCHN provides that Announcement on receiving application dossier has the same validity period with that of conformity-announcement adopted by the assigned organization, or have three year validity period (as cited in the column (2)). This requirement is unreasonable, and causes high cost for enterprises.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>3.3 Article 3.15 of Law on Standards and Technical Regulations stipulates: “Inspecting the state of the quality of products, goods ... is the act where the state agency considers and evaluates the quality of products, goods ... which have been evaluated by the organizations assessing conformity ...”</p> <p>3.4 Another regulation which does not pursuant to the law, and at the same time, ineffective is the declaration procedures for certifying chemicals specified in point 11 Article 1 of Decree 26/2011 / ND-CP dated 8 April 2011 of the Government amending and supplementing some articles of Decree 108/2008 / ND-CP dated 7 October 2008 of the Government detailing and guiding the implementation of some articles of the Law on Chemicals and Circular 40/2011 / TT-BCT dated 14 November 2011 of the Ministry of industry and trade regulating on declaring chemical:</p> <p>Point 1, 2, 4 of Article 43 of Law on Chemicals No.06/2007/QH12 stipulates on “Chemicals notification”.</p> <p>Article 1. 11.2.(c) Decree 26/2011/ND-CP quy định:</p> <p>“2. c) Importers of chemicals shall declare chemicals to the Ministry of Industry and Trade before enjoying customs clearance for these chemicals;</p> <p>d/ The time limit for the Ministry of Industry and Trade to certify the declaration of imported chemicals is 7 working days after the receipt of a complete and valid dossier specified at Point b, Clause 2 of this Article.</p> <p>Article 8, Article 9.4 Circular 40/2011/TT-BCT</p> <p>With reporting method, Article 52 Law on chemicals</p> <p>Article 18 Circular 40/2011/TT-BCT</p> <p>3.5 Article 39 (Energy labeling) Law on energy</p> <p>Article 8 Circular 07/2012/TT-BCT</p>	<p>Recommendation:</p> <ul style="list-style-type: none"> - To improve the effectiveness, recommend to supplement Law on standards and technical regulations so that one item produced by one foreign producer (if required to have specialized inspection) need conformity-announcement for only one time, for the first importing package, and applying on all importers. - Recommend to annul the provisions on conformity-announcement under Article 10 and Article 15 Circular 28/2012/TT-BKHCN. <p>3.2 Assessment of implementation performance on quality test on importing goods by package</p> <p>Under Article 34 Law on Product and goods quality, Circular 27/2012/TT-BKHCN, Article 38 Law on food safety, Circular 07/2012/TT-BCT (as cited under column 2), quality test on importing goods must be performed package by package which leads to the repetition of one procedure. Meanwhile, according to the survey of some customs units supported by USAID-GIG project, for the continuous three years (from 2014 to 2016), the percentage of uncomfortable goods does not exceed 1 percentage of total importing goods under inspection. By this result, it should be concluded that specialized inspection on each package is ineffective and unnecessary.</p> <p>Recommendation:</p> <p>Recommend to revise the mentioned above requirement in the direction of applying risk management in the sector of specialized inspection as Article 7 analyses as following.</p> <p>3.3. Assessment of the implementation performance of Article 3.15 Law on product and goods quality</p> <p>Under Article 3.15 Law on product and goods quality, and the guiding Circular 27/2012/TT-BKHCN, to fulfill the quality test of importing goods, importers have to follow the procedure in two different entities, one is an inspection organization, and the last is an inspection state authority. Accordingly, the inspection organization carries on the inspection, and concludes the good quality; inspection state authority bases on this conclusion to issue conformity/ non-conformity announcement. Almost customs units and enterprises consider that the issuance of good quality is redundant, because the quality conclusion of inspection organization is clear enough. Some ministries (e.g. MOH with Circular 52/2015/TT-BYT and MOIT with Circular 37/2-15/TT-BCT) also agree with this determination and provide to use the conclusion of inspection organization for good clearance.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>Recommendation:</p> <p>Recommend to revise the definition of “state inspection on quality” so that quality inspection shall not divided into two steps carried on by two different entities, instead, it shall be performed by one inspection organization to conclude goods quality and issue conforming announcement. This conforming announcement will be directly submitted to the National Single Window (NSW) in the case the inspection organization is in NSW; otherwise, to the customs authorities in the case the inspection organization is not in NSW.</p> <p>3.4 Assessment of effective performance on chemicals declare requirement:</p> <p>Law on chemicals no. 06/2007/QH12 only provides about declare requirement, not about confirmation of chemicals declare (Decree 108/2008/NĐ – CP also does not provide this issue).</p> <p>The purpose of chemicals declaration is to help authorities have knowledge of the amount of each chemical within Vietnam’s border. Declaration is not a procedure to get permit of importing. Chemicals declaration shall be confirmed by MOIT as provided under Article 1.11 Decree 26/2011/NĐ-CP and Circular 40/2011/TT-BCT. Consequently, the requirement makes chemicals declaration becomes a kind of permit in reality. According to survey conducted by CIEM and GIG in 2015 and 2016, it is not easy to get receipt of declaration (about 10 – 12 days without intermediation). This procedure is not and necessary, and lack of effectiveness.</p> <p>Law on chemicals does not regulate, but Circular 40/2011/TT-BCT provides that chemicals declaration must be done “before good clearance” which adds to the good clearance period about 7 working days, about 9 calendar days (as provided under Circular 40/2011/TT-BCT).</p> <p>Under Law on chemicals, enterprises annually report the production, and usage of chemicals falling in the forbidden list, but Circular 40/2011/TT-BCT requires enterprise to directly report all imported chemicals which are declared for each imported package</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend to annul the provision on chemicals declare confirmation as provided under Decree 26/2011/NĐ-CP; - Recommend MOIT to annual the provision requiring to perform chemicals declare before good clearance, annul the annual report and chemicals declare on chemicals not falling in the forbidden list.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>3.5 Assessment of performance of energy label procedure: Under Article 39 (Energy label) Law on energy, imported vehicles, equipment in the list of compulsory energy label shall follow two procedures: one is the inspection in a qualified organization assigned by MOIT; and the other is to receive energy label certification in an MOIT authority. The procedure of energy label certification is guided under Article 8 Circular 07/2012/TT-BCT with 8 different documents, 2-step procedure (assessment and issuance) and 10 working days (equal to 12 calendar days) for assessment. It remains unknown about the period for issuance of certification. Ahead to this procedure, many items falling in the scope of energy assessment and labeling also fall in the scope of law on products and goods quality, and, need checking to receive conformity announcement. This research indicates a fact that the issuance for energy labeling is based on a different entity's inspection result and needs at least 12 days. In addition, under Article 8.4, "certification is only valid for each package of imports"; consequently, one item is put under inspection many times. It is unnecessary, less effective, especially with regard to high technical equipment which are not able to be produced and inspected in Vietnam.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend to revise Article 39 Law on energy in the direction: revising two-step procedure "testing" (point 3), and "issuance of labeling certification (point 2) into one-step procedure. According, the only remaining step is testing; the step "issuance of labeling certification" is no longer required. The result of testing could be a base for enterprise to print and label. The inspection organization has legal responsibility for its inspection result. - Recommend for co-operation among the three-mentioned laws, to reduce the cases where one item has to follow many kinds of inspections at the same time. <p>3.6 Assessment of implementation performance under Article 7 and Article 8.4 Circular 07/2012/TT-BCT on energy labeling procedure:</p> <p>Article 39 Law on energy provides to recognize energy label of imported vehicles, equipment. Article 7 Circular 07/2012/TT-BCT provides to only recognize the inspection result of foreign organization". This conflict causes many difficulties, and limits the implementation performance.</p> <p>Article 8.4 Circular 07/2012/TT-BCT adopted by MOIT provides that "Certification is only valid with package by package of importing goods" which means that label shall be made before good clearance, and conflicts with Article 39 Law on energy requiring labeling before putting on the market.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend MOIT to accelerate issuance of the guidance on recognition of energy label of imported vehicles, equipment under point 4 Law on energy. - Recommend MOIT to annul provision requiring that label must be made before good clearance, and that certification is only valid with package by package of importing goods (In fact, MOIT has revise these provisions by an administrative documents which is not in compliance with law on legislation promulgation) <p>3.7 Assessment of implementation performance on mutual recognition:</p> <p>A common regulation in the legal framework on specialized inspection is the one on accelerate international agreement on specialized inspection mutual recognition (almost laws have the provision as cited in the Article 1 in the column 2). However, this provision is not much efficient. The technical ability, technology, equipment in Vietnam is not up-to-date and has a huge gap in comparison with developed countries, and famous brands. Therefore, it is hard for developed countries to recognize Vietnam inspection organization's results.</p> <p>Recommendation:</p> <p>In this context, in one hand, recommend accelerating the international agreement with other countries and foreign inspection organizations; in the other hand, actively recognize the quality announcement of producers, famous brands, and results of foreign inspection organization as provided under Article 39.4 Law on energy and Point 1.d Part III Resolution 19 – 2016/NQ-CP.</p> <p>3.8 The overlap among lists of inspection goods of more than one legislations on specialized inspection causes one items under many compulsory specialized inspection procedures. This circumstance is attributed to many enterprises' difficulties in time and money.</p> <p>Recommendation:</p> <p>All specialized ministries co-operate to review and revise all specialized inspection legislations so that one item is regulated by only one legislation and under control of only ministry, which would help to reduce the overlapping situation of legislations on specialized inspection.</p> <p>3.9 Assessment on implementation performance:</p> <p>Implementation is a must-mentioning issue when assessing performance of any legislation. Not mentioning the above provisions which have problems in their own context, some simple and reasonable provisions become complex and lack of effectiveness during implementation, e.g.:</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>With regard to conformity announcement procedure, Article 9, Article 10, Article 14, Article 15 Circular 28/2012/TT-BKHCN provide from 3-6 documents, the provided maximum period is 8 days, but in fact, the real period for this procedure would last more than provided under law. The interdisciplinary survey on August 2016 performed by the Central Institute for Economic Management (CIEM), with the support of USAID – GIG project shows that conformity announcement procedure is very complex, submitted dossiers are often insufficient, invalid, and need supplemented, revised many times. Therefore, the total time for this procedure could last for months. It should be noted that it is the only conformity announcement procedure after item already is determined to meet required quality by assigned inspection organization under very strict conditions and procedure.</p> <p>Similarly, after receiving inspection certification of assigned inspection organizations, goods still need to pass a lot of time to receive energy labeling certification.</p> <p>In general, the legal application of VLF has been a weak point for a very long time.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend competent ministries to enhance internal examination, and inspection to improve the behavior and attitude of public officers. - Recommend competent ministries accelerate the application of electronic procedure, especially specialized inspection procedure via NSW with the purpose of reducing arbitrary attitude of public officer. <p>3.10 Comparison between specialized inspection cost and performance:</p> <p>The limitation of many specialized inspection is clearer when comparing the percentage of unqualified goods (not exceeding 1% as mentioned above) with the total time and cost enterprises have to pay to fulfill specialized inspection procedure.</p> <p>With regard to cost: it is hard to determine the total cost enterprise have to pay. Based on the summarizing result of Department of Customs of Ho Chi Minh city in the last 6 months of 2015, the numbers of specialized inspection cases is 830 486, each costs at least 200,000 VND/quarantine case, and 2 million VND/case of quality test, food safety, and energy performance. It could be estimated that enterprises in Ho Chi Minh city have to pay about 1,091 billion VND for specialized inspection (not mentioning the cost of conforming announcement, and other specialized inspection procedure). Assuming that the number of specialized inspection case in other 32 provinces (including provincial-level cities) is as half as Ho Chi Minh City, the total cases in all country is 1,245,729 cases, and the total cost is assumed to be 1,636 billion VND in 2015.</p> <p>With regard to time: the minimum time to fulfill the specialized inspection for one package is two days in 2015. The total time for specialized inspection in Ho Chi Minh City is 830 486 cases x 2 days = 1 660 972 days, in all country is (830 486 x 50% x 2 days) + 1660 972 days = 2 491 458 days.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
Article 3. Customs and legislative procedures		
<p>1. The Parties agree that their respective customs provisions and procedures shall be based upon:</p> <p>(a) international instruments and standards applicable in the area of customs and trade, including the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System (hereinafter referred as “HS Convention”), the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization and the Customs Data Model of the World Custom Organization;</p> <p>((b) the protection of legitimate trade through effective enforcement and compliance of legislative requirements;</p> <p>(c) legislation that avoids unnecessary or discriminatory burdens on economic operators, that provides for further facilitation for operators with high levels of compliance, and that ensures safeguards against fraud and illicit or damageable activities;</p> <p>(d) measures, procedures and remedies shall be proportionate and nondiscriminatory and in their application shall not unduly delay the release of goods;</p>	<p>Article 8.1 Decree 187/2013/ND-CP detailing implementation of the Commercial Law with respect to international purchases and sales of goods; and activities of agency for sale and purchase, processing and transit of goods involving foreign parties</p> <p>Article 26 Law on customs 54/2014/QH13.</p> <p>Point 1.d part III Resolution 19-2016/NQ-CP</p> <p>Point 1.c part III Decision 2026/QĐ-TTg dated 17/11/2015 of the Prime Minister</p> <p>A series of legal document adopted by some specialized management ministries. E.g.:</p> <ul style="list-style-type: none"> - Circular 41/2015/TT-BCT of Ministry of industry and trade - Decision 4758/QĐ-BNN-TY dated 18/11/2015 of MARD - Decision 5481/QĐ-BNN-CN dated 30/12/2015 - ... 	<p>Commitment analysis:</p> <p>In this sector, Parties commit to ensure good clearance procedure in compliance with: international standard (Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System); the protection of legitimate trade through effective enforcement and compliance of legislative requirements; no discrimination; avoids unnecessary or discriminatory burdens on economic operators, that provides for further facilitation for operators with high levels of compliance; measures, procedures and remedies shall be proportionate and nondiscriminatory and in their application shall not unduly delay the release of goods</p> <p>Assessment:</p> <p>Under Article 3.1 of EVFTA, the related commitments on specialized inspection includes: compliance with HS Convention, no discrimination, and application of risk management.</p> <p>Discrimination is assessed in Article 1. Specialized inspection is assessed in Article 7. This analysis is going to assess HS Convention compliance in the sector of specialized inspection.</p> <p>As cited in the column (2), it is indicated that Vietnam legal framework on specialized inspection provides enough and clear list of forbidden importing and exporting goods, list of imports and exports under license, list of goods under specialized inspection, and that item must have HS code.</p> <p>Hence, VLF on specialized inspection totally meets requirement under Article 3.1 EVFTA.</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - There are some ministries have not yet issued HS code of their list of specialized inspection goods, recommend implementing this requirement. - In the list of specialized inspection goods, besiding goods with specific HS code, there is code named “others”. This circumstance could cause confusion and arbitrary interpretation between authorities and enterprises. Recommend competent ministries to annul “others” code in their list of specialized inspection goods. During implementation, if some new items need to be managed, recommend to supplement regulating documents. - WCO often has revision, and supplement HS code in the good list. In compliance with HS Convention and based on the real circumstance of implementation, the list of imports and exports of Vietnam is often updated, and supplemented. <p>Whenever these update and supplementation happen, recommend competent ministries to timely update, and supplement theirs list of specialized inspection to ensure unification, transparency, and facilitate implementation.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:</p> <p>(a) Simplify and review requirements and formalities wherever possible; in respect of the rapid release and clearance of goods, inter alia allowing the release of goods, without the payment of customs duties, subject to the provision of a guarantee, if required, according to legislation of the Parties, in order to secure the final payment of customs duties.</p> <p>(b) work towards the further simplification and standardization of data and documentation required by customs and other agencies;</p>	<p>Article 170 Law promulgation of legislative documents 2015.</p> <p>Article 170. Reviewing, systemizing legislative documents</p> <p>1. Every regulatory agency, within their competence, has the responsibility to review and systemize legislative documents; suspend, annul, amend, replace legislative documents that are found illegitimate, inconsistent, expired, or no longer applicable with regard to socio-economic, or issue new legislative documents; they may do these tasks themselves or request a competent authority to do so.</p> <p>Every organization and citizen are entitled to request competent authorities to consider suspending, annulling, amending, replacing legislative documents, or issuing new legislative documents.</p> <p>2. Legislative documents must be review as frequently as possible. The systemization of legislative documents must be carried out periodically in order to publish the collection of systemized effective legislative documents in a timely manner.</p> <p>3. Standing Committee of the National Assembly shall decide overall review of the system of legislative documents; other regulatory agencies shall review legislative documents by topic, field, or geographic areas as demanded.</p> <p>4. The Government shall elaborate this Article.</p> <p>Article 19.1, Article 35 .1 Law on Standards and technical regulations:</p> <p>Article 25. 2 Law on plant protect and quarantine:</p> <p>Article 8 Decree 187/2013/NĐ-CP</p> <p>Article 23.3 Circular 52/2015/TT-BYT:</p> <p>Article 4.2 Circular 41/2015/TT-BCT:</p> <p>Article 1 Circular 23/2016/TT-BCT:</p>	<p>Commitment analysis:</p> <p>In this sector, commitments on specialized inspection includes: to ensure simplification, and usually review and revise specialized inspection procedure; to simplify and standardize data, documents and dossier in specialized inspection procedure.</p> <p>Assessment:</p> <ul style="list-style-type: none"> - With regard to simplification of procedure and dossier is specifically analyzed in Article 1. - With regard to usual review and revision related regulations and procedures to meet the requirement on nondiscrimination, transparency, effectiveness, unification could be assessed: <p>Law on promulgation of legal documents 2015 provides this requirement (Article 170). VLF on specialized inspection also complies with this requirement. In addition, this issue is also regulated in some legislation as cited in the column (2) of this sector and Point 1.c part III Decision 2026/QĐ-TTg.</p> <ul style="list-style-type: none"> - With regard to simplification and standardization of specialized inspection data, documents, and dossier, application of technology, electronic data exchange, this issue will be analyzed and assessed in Article 5.4 <p>General assessment: VLF on specialized inspection totally meet requirement in this sector.</p> <p>Recommendation: Competent ministries suppose solution to enhance the implementation performance of this requirement.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 4 release of goods.</p> <p>Each Party shall ensure that its customs shall apply requirements and procedures that:</p> <ol style="list-style-type: none"> 1. Provide for the release of goods within a period no greater than that required to ensure compliance with its customs and other trade-related laws and formalities. Each party shall work to further reduce release times and release the goods without undue delay; 2. Provide for advance electronic submission and eventual processing of information before physical arrival of goods, so-called pre-arrival processing, to enable the release of goods on arrival. 	<p>Resolution 19 – 2016/NQ-CP: good clearance period is not more than 10 days for exports, and 12 days for imports; and, in 2020, 36 hours for exports, and 41 hours for imports.</p> <p>Article 18 Circular 12/2015/TT-BNNPTNT</p> <p>Article 7, Article 8. 2, Article 33.1 Decree 08/2015/NĐ-CP:</p> <p>Article 19 Joint Circular 89/2016/TTLT-BCT-BTC:</p> <p>Article 8.1 Circular 52/2015/TT-BYT:</p>	<p>Commitment analysis:</p> <p>In this sector, Parties commit to apply solution for quick good clearance, allow the submission of electronic customs declaration, and handle declaration before good arrival to enable good clearance at arrival.</p> <p>Assessment:</p> <ul style="list-style-type: none"> - With regard to good clearance period: the citation of column (2) indicates that VLP on specialized inspection and law on customs have specific provision on good clearance period, so that good will be released as soon as possible (right after submission of full dossier or inspection result). In addition, the Government adopts three Resolutions in three continuous years to regulate this issue (Resolution 19-2014/NQ-CP, Resolution 19-2015/NQ-CP, Resolution 19-2016/NQ-CP). The purpose is to meet the requirement of good clearance period as provided in the new-generation international agreements, such as TPP and EVFTA. In these resolutions, not mentioning high objectives, the Government outlines a series of specific solution to reach these objectives, such as risk management principle, post-clearance check, application of international customary, active mutual recognition of quality certification issued by developed countries and producer having high technology ... These Government resolutions express the high concern and determination of the Government with this issue. In fact, by following the content of these resolutions, some ministries adopted some circulars, such as Circular 12/2015/TT-BNNPTNT, Circular 52/2015/TT-BYT... Other ministries also actively revise the current requirement to meet these resolutions' objectives. - With regard to electronic submission: This issue is regulated under Decision 48/2011/QĐ-TTg dated 31st August 2011 by the Prime Minister on piloting the implementation of nation single window customs mechanism and Decree 08/2015/NĐ-CP providing specific provisions and guidance on enforcement of the customs law on customs procedures, examination, supervision and control procedures. At present, there are 9 competent ministries perform some specialized inspection procedure via NSW. The application of technology in specialized inspection procedure is a general direction of some ministries. Some are in the piloting stage; some have official regulations in some circulars such as MOIT in the Joint Circular 89/2016/TTLT-BCT-BTC between MOIT and Ministry of Finance, and Circular 52/2015/TT-BYT adopted by MOH. - With regard to handle custom declaration before good arrival: With regard to customs declaration, Article 25 Law on customs provides that customs declarants could submit declaration before good arrivals which have valid within 15 days. In the sector of specialized inspection, submission of customs declaration is a customary, however, only MOH has official provision on this issue under Article 8 Circular 52/2015/TT-BYT.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>General assessment: VLF on specialized inspection fully meet requirements on good clearance, electronic declaration, and submission before good arrival as provided under Article 4 EVFTA.</p> <p>Although regulated under legislations, in fact, the period of specialized inspection procedure is still very long and far from the objective of Resolution 19-2016/NQ-CP (exception phytosanitary). According to interdisciplinary survey conducted by CIEM, the period of specialized inspection procedure in some provinces (Ho Chi Minh city, Da Nang, Binh Dinh, Can Tho...) is from 13 to 19 working days. The fulfillment of specialized inspection via NSW is very limited (this issue will be specifically analyzed and assessed in Article 5.4)</p> <p>Recommendation:</p> <p>Recommend competent ministries to:</p> <ul style="list-style-type: none"> - Improve the specialized inspection to meet the objectives of Resolution 19-2016/NQ-CP on procedure and period of good clearance. - Have official regulation allowing customs declaration before good arrival to meet transparency requirement; - Be active in performing customs procedures via NSW - Enhance internal examination, and inspection to improve the behavior and attitude of public officers.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
Article 5 Simplified Customs Procedures		
<p>1. Each Party shall provide for simplified customs procedures that are transparent and efficient in order to reduce costs and increase predictability for economic operators, including for small and medium sized enterprises. Easier access to customs simplifications shall also be provided for authorized traders according to objective and non-discriminatory criteria.</p>	<p>Article 35.1 Law on Standards and technical regulations</p> <p>Article 6 Circular 27/2012/TT – BKHCN</p> <p>Article 8 Circular 27/2012/TT – BKHCN</p> <p>Article 9.2 Circular 27/2012/TT – BKHCN</p> <p>Annex attached to Circular No.15/2014/TT-BTTTT</p> <p>Article 40 Law on food safety</p> <p>Article 4 Decree 38/2012/NĐ-CP guiding Law on food safety</p> <p>Article 5 Decree 38/2012/NĐ – CP</p> <p>Article 6 NĐ 38/2012/NĐ – CP</p> <p>Article 7 Circular 52/2015/TT-BYT</p> <p>Article 8 Circular 52/2015/TT – BYT</p> <p>Circular 12/2015 / TT-BNN stipulates the task, procedure quite specific and clear:</p> <ul style="list-style-type: none"> - Article 3. Imported goods that are not subject to food safety inspection (including 6 categories, specifically listed); - Article 6 inspection criteria; - Article 7. The inspection agency; - Article 8: Fees, charges and expenditures; - Article 16: Registration of import shipment inspection - Article 17. Content inspection: Specifying the connotation of each inspection form, such as «records inspection », «sample inspection»; - Article 18 Issuance of certificates of food safety inspection; <p>Article 22. Responsibilities of the inspection agencies;</p> <p>Article 23. Powers of inspection bodies;</p> <p>Article 24. Responsibilities of import organizations and individuals;</p> <p>Article 25. Rights of import organizations and individuals...</p>	<p>Commitment analysis:</p> <p>In this sector, the commitment requires good clearance procedure to be simple, clear, and effective so that enterprises, including small and medium enterprises and preferential enterprises, could reduce and predict the cost of this procedure.</p> <p>1. With regard to customs simplification:</p> <p>Customs simplification means that customs procedures shall have only a few steps, a few documents, and dossier is submitted and result is received in the most convenient way with less handling unites, less time, and less cost...</p> <p>Assessment:</p> <p>As cited in the column (2) on the specialized inspection procedures in 4 main inspection sectors which are quality control, food safety, quarantine, and energy label. The citation shows that:</p> <ul style="list-style-type: none"> - With regard to application dossier: Only a few legislations provide simple application dossier, e.g. only one kind of declaration (Article 16 Circular 12/2012/TT-BNNPTNT); or 2 - 3 kind of declarations (Article 6 Circular 33/2014/TT-BNNPTNT), and almost the rest often requires multiple kind of documents (from 7 -10 kinds) (Article 6 Circular 27/2012/TT – BKHCN, Article 8 Circular 07/2012/TT-BCT...). - With the document form: Multiple forms (Article 6 Circular 27/2012/TT – BKHCN, Article 9 Circular 28/2013/TT-BCT, Article 8 Circular 07/2012/TT-BCT, Paragraph 3 Article 16 Circular 48/2011/TT-BCT, Article 7 Circular 52/2015/TT-BYT...) are required to submit notarized copy, authenticated copy, including some commercial documents which could not be notarized or authenticated such as e-commercial transaction without hard signatory or seal (e.g. bill of lading, contract, detailed list,...) - With regard to submission method: Almost is hard submission, directly or via post office. - With regard to procedure: In general, not simple. Under law on product and goods quality, for each importer, imported goods falling in Group 2 shall need conformity announcement certification. Therefore, one item needs to pass this procedure many times. Not mentioning conformity announcement, this kind of goods also need quality check for each imported package. Quality check includes two periods: inspection period performed by inspection authorities, and announcement period conducted by competent ministries.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>Article 9 of Circular 28/2013 / TT - BTC Article 6 of Circular 33/2014 / TT-BNN of the Ministry NNPTNT on “registration dossier for import, export and transit plant quarantine” includes 2-3 documents (compared with 9 documents stipulated in Circular 65 / 2012 / TT-BNN previously):</p> <ol style="list-style-type: none"> 1. Registration for plant quarantine. 2. Certificate of plant quarantine of export country. 3. License of import plant quarantine (cases that require licenses). <p>Article 8 of Circular 07/2012 / TT-BCT of Ministry of Industry and Trade on energy labeling for vehicles and equipment using energy stipulates “Procedure of assessment and certification of energy labeling “:</p> <ol style="list-style-type: none"> 1. Inspecting the typical pattern; 2. Compile a dossier and filing to the Directorate of Energy, includes 10 documents: <ol style="list-style-type: none"> a) Certificate of energy labeling attached with list of vehicles and equipment; b) Business registration (notarized copy); c) A copy of the contract with the supplier of the goods abroad (for importers); d) A declaration of imported goods; e) Trademark registration; e) Announcement of standards quality of products, goods (copies stamped and certified by the head of the enterprise); g) A brief description of the basic characteristic parameters of vehicles and equipment; h) Inspection results; h) Records, documents and process of quality management of enterprises; i) Relevant documents of records and certificates of quality management. k) In case that dealer paid on behalf of overseas manufacturers, dealers must present Letter of authorization. <p>In case that the dossier and documents above are in a foreign language, they must be translated into Vietnamese and notarized.</p>	<p>Under Article 8 Circular 27/2012/TT – BKHCN cited in the column (2), to fulfill the procedure to import one package, enterprises have to pass 7 steps (not mentioning conformity announcement procedure, because conformity is applying on the first package and has three-year validity) as follow:</p> <ol style="list-style-type: none"> 1) Register for quality checked in competent authorities. 2) Register for customs declaration. 3) Submit model to assigned inspection organization for testing 4) Receive inspection results. 5) Submit inspection results to the competent authority as mentioned in step 1. 6) Receive the conclusion of competent authority on package’s quality 7) Submit this conclusion to customs authorities for good clearance. <p>The mentioning above indicates that three steps are related to competent authorities.</p> <p>- With regard to time:</p> <p>Excepting the phytosanitary (quite short about 1-2 days) and summary procedure which only a few enterprises have right to use (two days under Article 8.2 Circular 52.2015/TT-BYT, 3 days under Article 8.2 Circular 27/2012/TT-BKHCN), other procedures such as quality check, food safety, energy performance need very long periods, not mentioning conformity announcement is very long (7 to 30 days under Article 4 Decree 38/2012/ND-CP).</p> <p>- With regard to cost: Recommend seeing assessment of Article 10 EVFTA below.</p> <p>General assessment: With requirements as cited, it is very hard to straightly determine whether the simplicity of current specialized inspection meets EVFTA requirements. However, if based on the targets of these commitment are to create trade facilitation, it could be said that specialized inspection procedure is not simple as required.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>Circular 37/2015/TT-BCT of Ministry of industry and trade on limits and inspection of content of formaldehyde and aromatic amines derived from azo colorants in textile products</p> <ul style="list-style-type: none"> - Pursuant to: “Law on product and goods quality dated November 21, 2007; Decree 132/2008/NĐ-CP detailing the implementation of a number of articles of the Law on product and goods quality”. - Paragraph 2 Article 70; Point B, Paragraph 1 Article 21 <p>Regarding the management of scrap steel imports:</p> <ul style="list-style-type: none"> - Article 2.3.1 of QCVN 31:2010/ BTNMT attached to Circular 43/2010/ TT-BTNMT dated 29th December 2010 on stipulating national technical regulation on environment only prohibits the import of “package, can... which have not been cleaned” Categories 8, Annex 1 Circular 41/2015 / TT-BTNMT <p>On “Publication of regulation conformity or publication of conformity with the provisions on food safety”: Article 30f Decree 38/2012/NĐ-CP detailing the implementation of a number of articles of the law on food safety:</p>	<p>Recommendation:</p> <p>Recommend competent ministries to revise regulations to simplify complex and unnecessary procedures, specifically:</p> <ul style="list-style-type: none"> - Recommend to reduce kinds, number of submitting documents, and specialized inspection procedures, especially annul some document not containing good quality information such as bill of lading invoice, packing list... under Article 6 Circular 27/2012/TT – BKHCN, Article 7 Circular 52/2015/TT-BYT, Article 9 Circular 28/2013/ TT – BCT, Article 11 Circular 37/2105/TT-BCT..., There are some precedent indicating that this proposal is possible: Until 2014, in phytosanitary procedure, there are 9 kinds of documents (also including document not containing good quality information). In 2015, Circular 33/2014/TT-BNNPTNT adopted by MARD annul these kinds of documents, the dossier only includes two kinds of documents. Similarly, Article 16 Circular 12/2015/TT - BNNPTNT provides that food safety dossier for normal goods contain only one kind of document, named “Registry for food safety inspection”; for GMO and irradiated goods need some other documents, but totally do not include document not containing good quality information. - Recommend to apply electronic procedure instead of hard procedure, accordingly, dossier and documents are submitted in soft forms and via electronically way. Limiting the requirement of notarized and authenticated documents, especially documents being unable for notarization and authentication. Only a few kinds of documents, cases need original version, and notarized and authenticated documents (e.g. permit) - Reduce the circumstances where one job conducted by more than one authorities/organization, or one authority/ organization conducts many jobs but in different steps, to reduce the number of steps and transportation of enterprises. Specifically, many enterprises and even customs authorities determine that one inspection organization tests and one competent authority to issue conclusion notification is unnecessary. In other hand, the notification does not add value for the state control of good quality, and bring one more step for enterprises. Therefore, based on Article 27.4 Law on product and goods quality, recommend annul all step of issuing conclusion notification on good quality, food safety, and issuance of energy labeling. Specifically, annul this requirement in Article 6, Article 7 Circular 27/2012/TT-BKHCN, and other related and reference legal documents. (In fact, some ministries did annul this step, e.g., MOH in Circular 52/2015/TT-BYT; MARD’s requirement on quarantine and food safety, organic fertilizer ...).

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>- Recommend to reduce the specialized inspection period under requirement of Resolution 19-2016/NQ-CP dated 28 April 2016 adopted by the Government, good clearance period is not more than 10 days for exports, and 12 days for imports; and, in 2020, 36 hours for exports, and 41 hours for imports.</p> <p>2. With regard to an obvious specialized inspection procedure:</p> <p>An obvious procedures should have specific requirement on process, and order; kinds, forms and amount of submitting documents; receiving address, and handling, completing time and receiving results; cost; and under the law.</p> <p>Assessment of the obviousness of current specialized inspection procedure:</p> <p>In comparison with citation in the column (2) of Article 5.1 and other articles, in general, VLF on specialized inspection meet EVFTA requirement. e.g. Circular 12/2015/TT-BNNPTNT adopted by MARD providing guidance on food safety inspection of goods originating from imported plants</p> <p>However, there are some confused provisions, in two ways: first is conflict between higher legislation and its guiding legislations; and second is unclear in steps, and timing, The following is some examples.</p> <p>About Circular 37/2015/TT-BCT:</p> <p>As citation in the column (2), Law on product and goods quality and Decree 132/2008/NĐ-CP do not assign MOIT to control, inspect quality of imported textiles, and this kind of good does not fall in the list of Group 2. However, in the reference for issuance, MOIT uses these legislation to issue Circular 32/2009/TT-BCT and Circular 37/2015/TT-BCT providing the amount of formaldehyde and perfume Amin in textile products and apply the control measure for Group 2 goods. These circulars are attributed to the confusion of performer, especially textile industry for a long time (about 7 years, from 5th November 2009 to 26th November 2016) with huge difficulties, cost, and time. This mistake lasts for a very long time without discovery.</p> <p>About Circular 15/2014/TT-BTTTT dated 17th November 2014 adopted by Ministry of Information and Communications (MIC) “promulgating list of goods sorted by HS code under line management of the Ministry of Information and Communications”:</p> <p>There is conflict between this Circular and its reference decree, Decree 187/2013/NĐ-CP dated 20th November 2013 of the Government “detailing implementation of the Commercial Law with respect to international purchases and sales of goods; and activities of agency for sale and purchase, processing and transit of goods involving foreign parties”.</p> <p>Under Annex I and Annex II of Decree 187/2013/NĐ-CP, the scope of specialized management of MIC includes one groups of exports, and five groups of imports. However, Annex of Circular 15/2014/TT-BTTTT has hundreds of items, almost not falling in the MIC’s list of specialized inspection goods under Decree 187/2013/NĐ-CP.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>This circular meets strong disapproval from enterprises and customs authorities. However, until now, this Circular is not revised by MIC, and there is only one interpretation document provides that this Circular does not apply on import and exports. This document is not reasonable because (1) Decree 187/2013/ND-CP is cited as it reference document, (2) Circular provides HS code as required under Decree 187/2013/ND-CP; and (3) Article 3 of this Circular provides that "... foreign organizations and individuals operating manufacturing, trading, import-export business of information and communications products in Vietnam are responsible for the implementation of this Circular".</p> <p>In fact, this circular is not implemented. This article also indicates the implementation limitation of this circular.</p> <p>- With regard to procedure "testing" in good quality inspection under Circular 48/2011/TT-BCT:</p> <p>Article 27.2. (b) Law on product and goods quality provides: "b. Testing samples according to announced applicable standards or relevant technical regulations when necessary.", but Article 21.4 Circular 48/2011/TT-BCT provides that: "b. Tests samples according to announced applicable standards or relevant technical regulations". According to Law on product and goods quality, testing is applied "when necessary", Circular 48/2011/TT-BCT provides testing for all case. The gap between this legislation is huge, and leads to conflict of law.</p> <p>- Provisions on time for importing chemicals declaration, procedure of receipt importing chemicals declaration, and report mechanism for importing chemicals under Decree 26/2011/ND-CP and Circular 40/2011/TT-BCT are not in compliance with Law on chemicals. This issue is analyzed in Article 1.2 EVFTA.</p> <p>- With regard to specialized inspection under Circular 09/2016/TT-BQP: Under Law on customs, this is under responsibility of customs authorities. However, Article 12.2 Circular 09/2016/TT-BQP (Responsibility to coordinate in inspecting and supervising goods exported or imported through land border gates or crossings) provides that: "2. Inspection and supervision of imported or exported goods by border-gate border guards</p> <p>a/ Inspection of imported or exported goods:</p> <p>In order to ensure import or export procedure clearance before goods are transported out of border-gate areas, border-gate border guards shall inspect papers related to goods owners, importing or exporting enterprises and imported or exported goods in accordance with law.</p> <p>b/ Physical inspection of goods to ensure national security:</p> <p>- Checking the consistency between the actual state of goods and their dossiers; focusing on detecting signs of infringement upon national security, social order and safety, smuggling and trade frauds, and detecting and handling import- or export- related violations;</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>- Goods in the cases specified in Clause 1, Article 33 of the Customs Law shall be exempted from physical inspection (unless when signs of violation are detected).".</p> <p>This provision leads to mistake in border unit's interpretation, in which border unit re-examines customs dossier and goods after they are checked by customs authorities. This situation is attributed to many difficulties for enterprises.</p> <p>- Some unclear provision under Circular 07/2012/TT-BCT of Ministry of industry and trade defining the energy labeling for means and equipment using energy:</p> <p>.With regard to dossier application for issuance of energy labeling: Article 8.2 provides: "2. compiling dossier and sending to the General Department of Energy", but on its website www.tcnl.gov.vn, the General Department of Energy guides that: "Process and procedure to handle application dossier:</p> <p>. Step 1: Enterprises submits dossier to Room 502, General Department of Energy Building, 23 Ngô Quyền, Hoàn Kiếm, Hà Nội</p> <p>. Step 2: The receiving application unit checks the dossier, input application information and print receipt</p> <p>. Step 3: The receiving application unit transfer to competent departments.</p> <p>. Step 4: When dossier is solved, the receiving application unit issues the result for the applicant".</p> <p>With the mentioned above guidance, enterprises get confuses. Therefore, many enterprises face difficulties when submitting dossier and follow results.</p> <p>. With regard to issuance of energy labeling: Article 8.3. (b) Provides that General Department of Energy "evaluate in reality enterprises registered" without providing the content of evaluation. In addition, "evaluate in reality enterprises registered" is only suitable with producers, not with importers. Even with producers, this "evaluate in reality" could only be conducted once or periodically, not for each package. In fact enterprises states not to observe MOIT conducts this inspection, and not sure when MOIT conducts this inspection, therefore they always in the circumstance of worrying not compliance with required procedure (there is case when enterprise actively invites MOIT to inspect but not receiving any response for 6 months)</p> <p>. With regard to time of issuance of energy labeling, Article 8.3.(b) provides that: "After the dossier evaluating results meet the requirements, the General Department of Energy evaluate in reality enterprises registered to participate in energy labeling and issue decision on certifying means, equipment of energy saving".</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>This provision does not provide the maximum period between the time when dossier assessment is completed and the time when factual assessment is conducted . In fact, according to the survey, to receive this labelling certification, normal period is months or longer (without intermediate)</p> <p>That assigning only unit in Hanoi for this issuance causes many difficulties in time, cost for all enterprises located far from Hà Nội. Similarly, MOIT provides only one inspection organization for some items (e.g., motor, TV...), causes difficulties, and costly for enterprises. Not mentioning, the assigned inspection organization does not have ability to conduct inspection (e.g. With regard to the energy performance inspection of “motor”, MOIT provides only one center called Quatest 1. However, Quatest 1 does not have enough abilities to do the inspection, and must have a different motor factory in Dong Anh, Hanoi to do this performance.)</p> <p>The confusion also appears in some Circular’s provisions which are similar to law’s requirement with some difference: e.g., Article 39 Law on energy provides that “recognize energy label of importing vehicles and equipment”, Article 7 Circular 07/2012/TT-BCT provides that “recognize inspection result of foreign organization”; Law on energy provides “energy label must be made before put into the market”, but Circular 07/2012/TT-BCT provides energy labeling before good clearance.</p> <p>- There is another case related to Article 3.2 Decree 38/2012/ND on “Conformity announcement and conformity announcement on food safety”.</p> <p>Law on food safety provides “conformity announcement” under respective technical regulation. In addition, this Decree provides some more cases where “items do not have technical regulation, it shall have conformity announcement on food safety and register conformity announcement on food safety with competent authorities before put on the market until respective technical regulation is issued and valid”.</p> <p>This provision could lead to arbitrary application</p> <p>- With regard to imported steel scrap:</p> <p>Import clean steel scraps, compress into cake-shapes or blocks for convenient transportation: QCVN 31:2010/BTNMT prohibits the importation of “shell barrels, packaging, cans ... which have not been cleaned” yet does not prohibit the compression into cake-shapes or blocks, however List 8, Annex 1 Circular 41/2015/TT-BTNMT stipulates “...not to press into blocks, not to compress into bales” which troubles enterprises.</p> <p>- In the list of specialized inspection goods, besides goods with specific HS code, there are code named “others”. This circumstance could cause confusion and arbitrary interpretation between authorities and enterprises.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>General assessment:</p> <p>In one hands, VLF on specialized inspection meet EVFTA requirement on obviousness, but there are some unclear provisions (2 provisions of Decree, the rest included in circulars).</p> <p>Recommendation:</p> <ul style="list-style-type: none"> - Recommend annul Article 3.2 Decree 38/2012/NĐ-CP on conformity announcement for foods which do not technical regulation. Or if these provisions are necessary, recommend being included under Law on food safety. - Issues related to Decree 26/2011/NĐ-CP and Circular 40/2011/TT-BCT as analyzed in Article 1 - Recommend revision List of goods under Circular 15/2014/TT-BTTTT to annul all assigned items in 5 groups under MIC authority as provided under Decree 187/2013/NĐ-CP. - Recommend revision provides in Article 12 Circular 09/2016/TT-BQP to annul the responsibility to examine dossier and imports and exports. - Recommend to revise Circular 41/2015/TT-BTNMT by erasing the provision prohibiting pushing scrap into blocks, because scrap is huge, and block of package is space-saving, cost-saving, especially when using container. - With regard to documents under authority of Ministry of industry and trade: <ul style="list-style-type: none"> . Revision Article 21.4 Circular 48/2011/TT-BCT to supplement “when necessary” to be compliance with Law on product and goods quality. . Revision some issues of Circular 07/2012/TT-BCT on energy labeling as following: (1) annul provisions on testing, and energy performance labeling imported equipment before good clearance; supplement the guidance of “recognize energy label of importing vehicles and equipment” as provided under Article 39.4 Law on energy; clearly provides the conception of “evaluate enterprises” and “evaluate in reality enterprises”, period for assessment and issuance of labeling; assigns more inspection organization; organizes more authorities for issuance of labeling in the Middle and the South. - Recommend competent ministries to annual code “Others” from their list of specialized inspection goods. <p>3. With regard commitment to effectively apply specialized inspection procedure:</p> <p>This issue is analyzed in Article 1.2 EVFTA.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>2. A single administrative document or electronic equivalent shall be used for the purpose of completing the formalities connected with placing the goods under a customs procedure.</p>		<p>Commitment analysis:</p> <p>In this paragraph, the Parties commit to regulate that, to complete all customs clearance procedures, only require to submit a single administrative document or electronic document.</p> <p>Assessment:</p> <ul style="list-style-type: none"> - Regarding the application of a-single-administrative-document procedure: As analyzed, evaluated in Paragraph 1, Article 5, current specialized inspection procedure is mostly manual, with a lot of paperwork. Assessment: current specialized inspection procedure is not compatible with the commitment. - Regarding the application of electronic procedure: This matter is associated with the commitment on the application of information technology, electronic data exchange in paragraph 4 of this Article, therefore the evaluation, recommendation will be mentioned in that provision .

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>3. The Parties shall apply modern customs techniques, including risk assessment and post-clearance audit methods in order to simplify and facilitate the entry and the release of goods.</p>	<ul style="list-style-type: none"> - The application of risk management principle in specialized management on imported goods will be mentioned in Article 7 - Post-clearance inspection in specialized management on imported goods: specialized inspection law in all sectors has not regulated to apply this management mechanism. 	<p>Commitment analysis:</p> <p>In this paragraph, the Parties commit to apply the modern clearance techniques, including the application of risk management principle (RMD) and post-clearance inspection to simplify the procedure and facilitate the import and release of goods.</p> <p>Assessment:</p> <ul style="list-style-type: none"> - The application of risk management principle will be taken into account when analyzing and assessing the SP law's compatibility with the commitment in Article 7 of the Agreement. - The application of post-clearance inspection regime in SP on imported goods: <p>Post-clearance inspection (pCI) in SP sector has certain differences compared to pCI in the customs sector. Regarding customs sector, pCI is a professional operation mode, it is not intended to the goods inspection but mainly to inspect the books, documents, records system, storage condition, economic data of enterprises therefore it is very close to the auditing profession (Post Clearance Audit – PCA in English), the primary goal is to assess the compliance with the law (firstly tax law) of the import and export entities as the basis for the application of appropriate management level at the customs clearance step. In other words, instead of inspecting each consignment at the time of importation which often delays the process of customs clearance, pCI in the field of customs inspects the business accounting in a period of business operation which would facilitate the customs clearance of goods, and ensure the management of customs.</p> <p>In contrast, pCI in the field of specialized inspection still means inspecting the goods, not at the time of customs clearance procedures, but at the time after the customs authorities have approved the clearance of goods, the goods is allowed to check out the inspection, supervision area to avoid the storage of goods which increase costs for enterprises. Depending on the type of risk which imported goods might cause, the pCI in each field of specialized inspection can be compulsory to implement immediately after customs clearance of goods (for inspecting food safety on a number of goods; quality of imported second-hand facilities and equipments); or inspection during circulation of goods (for quality control, inspecting the energy labeling, food safety on a number of goods; or inspecting at the stage of other procedures (for quality inspection of motor vehicles - registry) or inspection at the production stage (for raw materials, food additives ...).</p> <p>With the connotations as above, specialized inspection law does not have any regulations which apply this management method.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>Recommendation:</p> <p>Recommending that specialized inspection law (primarily Law on Product and Food Quality, Law on Food safety, Law on Plant Quarantine, Law on Energy) provides specialized inspection (SP) on imported goods (in the case, according to risk management criteria, must inspect) primarily after the goods have been cleared, except for some sectors, items which need checking before clearance.</p> <p>Recommendation based on requirements in Resolution 19-2016 / NQ-CP of the Government:</p> <ul style="list-style-type: none"> - Point 1, Part II the Resolution stipulates: “comprehensive reform of regulations on business conditions, specialized management of exported and imported goods, services, in accordance with international practice, basically changing to the post-inspection ... “ - Point 1đ Part III of Resolution 19-2016 / NQ-CP stipulates: “Move the time of professional inspection, inspection of goods quality, energy efficiency, food safety in clearance period to after the goods have been cleared (except for cases of quarantine of high-risk imports under the regulations of the Ministry of Agriculture and Rural Development). Imported raw materials for domestic consumption are inspected at the production stage and before putting the product into circulation; exported goods produced from imported materials are inspected at the production facility before shipment. “

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>4. The Parties shall promote the progressive development and use of systems, including those based upon Information Technology, to facilitate the electronic exchange of data between traders, customs administrations and other related agencies.</p>	<p>Decree 08/2015/NĐ-CP:</p> <p>Article 7. Implementation of national single-window system</p> <p>Article 8. Responsibility of Ministries and agencies for implementing the national single-window portal</p> <p>Decision 48/2011/QĐ-TTg dated 31/8/2011 on piloting the implementation of national one-stop shop (oss) customs mechanism:</p> <p>Article 1. Piloting implementation of national OSS customs mechanism with the main contents as follows:</p> <p>1. Mechanism of national OSS customs is the permitted system of integration:</p> <p>a) The parties participating in the export or import file or submit information and standardized documents to a single receiving place;</p> <p>b) The State agencies process data, information and make the decisions based on system of processes and united and synchronous procedures; make the decisions and send them to the system agreed the supply and the unified exchange of information between state agencies; and</p> <p>c) The customs authorities shall make a final decision on the clearance, release of exports, imports, goods in transit or transport means of exit, entry, or transit based on the decisions of the concerned State agencies that are promptly delivered by the system in accordance with the provisions of supply of public services.</p> <p>2. Scope of application:</p> <p>Mechanism of national OSS customs is piloted application for the exports, imports, goods in transit and transport means of entry, exit, transit (hereinafter referred to as goods, means of import and export) under the provisions of the Customs Law.</p>	<p>Commitment analysis:</p> <p>In this paragraph, the Parties commit to accelerate the information technology application, electronic data exchange between enterprises, Customs agencies and relevant organizations related to customs clearance procedures.</p> <p>Assessment:</p> <p>To 30th September 2016, according to the Department of Information Technology and Statistics - General Administration of Customs:</p> <ul style="list-style-type: none"> - In addition to the Ministry of Finance with the 81 customs procedures, there are 09 specialized inspection (Specialized management) ministries participating NSW with 36 (out of 100) the procedures for licensing and similar documents, including: Ministry of Transport with 11 procedures (while 3 procedures include Ministry of Defense); MARD with 9 procedures; MOH with 5 procedures; Ministry of Industry and Trade with 5 procedures; Ministry of Natural Resources and Environment with 4 procedures; Ministry of Culture, Sports and Tourism with 1 procedure; Ministry of Science and Technology with 1 procedure; MIC with 1 procedure; Ministry of Defense with 3 immigration procedure (implementing with the Ministry of Transport therefore it cannot be counted separately). - There are 7860 enterprises participating with 170,000 records which are implemented through NSW. <p>Studying the list of procedures, number of enterprises, number of dossiers participating NSW found:</p> <ul style="list-style-type: none"> - The majority of these procedures implemented through NSW are uncommon procedures. For example: Ministry of Industry and Trade have 5 participation procedures: (1) Procedure of import and export licensing for industrial explosives; 2) Procedure of import licensing for substances depleting the ozone layer; 3) Procedure of granting certificate for Kimberley process on rough diamonds; 4) Procedure of granting certificate of Form D origin 5) Procedure for automatic import licensing for large cylinder motorcycles), 4 procedures (including procedures 1, 2, 3, 5) are procedures which are rarely implemented so the efficiency for enterprises is low. Among the participated procedures, immigration procedure for vessels and registration procedures for motor vehicles (Ministry of Transport) have the most significant number of participating enterprises and records. - The percentage of participating enterprises compared to the total number of export/import enterprises is extremely small. - The percentage of participating export/import records compared to the total number of export/import records (about 8 million returns / year) is extremely small.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>3. Agencies, units implementing the pilot:</p> <p>a) The agencies and units of the Ministry of Finance, Ministry of Industry and Trade, Ministry of Transport, Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment and local state agencies with the functions, duties of licensing or dealing with the administrative procedures as prescribed by law (hereinafter referred to as administrative procedures) related to the customs clearance of goods, means of import and export;</p> <p>b) The enterprises having goods, import and export means participated in e-customs procedures and met the conditions for implementing the pilot of mechanism of national OSS customs;</p> <p>c) Customs Departments of provinces and cities directly under the Central Government have implemented the E-customs procedures.</p> <p>4. The contents of piloting implementation of mechanism of national OSS customs, including:</p> <p>a) Selecting and publishing the list of administrative procedures applying the pilot of mechanism of national OSS customs;</p> <p>b) Declaring and receiving declaration information of the administrative procedures through electronic means;</p> <p>c) Providing feedback of information and returning the results to the agencies, the units implementing administrative procedures through electronic means together with returning paper records (for procedures not recognized electronic records);</p> <p>d) Exchanging information on the agencies and the units implementing administrative procedures and outcomes of decision-making of agencies and units through electronic means;</p> <p>đ) Making electronic payment for taxes, fees and charges through the commercial banking system based on exchange agreements and processing of information of collection, payment of taxes, charges and fees between the concerned State agencies and the commercial banks;</p>	<p>Overall Assessment: Although the level of automation and efficiency in specialized inspection operation in fact is still limited compared to the overall specialized inspection activities, the requirements in commitments only demand at “effort” level, so with the achieved results, Vietnamese Law on specialized inspection has fully met the commitment on the application of information technology, electronic data exchange between enterprises, customs agencies and other organizations involved in customs clearance procedures.</p> <p>Commitment analysis:</p> <p>In this paragraph, the Parties commit to accelerate the information technology application, electronic data exchange between enterprises, Customs agencies and relevant organizations related to customs clearance procedures.</p> <p>Recommendation:</p> <p>- The matter of the application of information technology, electronic data exchange in specialized inspection procedure stipulated in Resolution 19-2016 / NQ-CP as follows: “Electronically computerizing procedures (filing, returning results ...) specialized inspection; sharing information between administrative agencies, organizations, specialized inspection with NSW and NSW ASEAN to minimize paperwork, aims to paperless, shorten the duration of implementing specialized inspection procedures”. Therefore, recommending that Ministry of specialized inspection quickly puts this provision into practice.</p> <p>- In the specialized inspection procedure, the specialized inspection procedure is the one that has considerable impact on time, cost and effort of enterprises in the process of customs clearance procedures. The implementation of specialized inspection procedure is partly done by state agencies, and it is primarily by organizations that experiment, inspect, evaluate. Currently, most of specialized inspection procedures do not participate in NSW; therefore the time and cost of clearance have not been improved significantly. According to Point 3 of Article 1 of Decision 48/2011 / QĐ-TTg, the organizations that experiment, inspect, evaluate have not participated. Therefore, it is recommended to complete this decision to the next step, to complement that inspecting organizations are the entities to implement this mechanism. The participation of these organizations in NSW will create a groundbreaking step; basically alter the appearance of specialized inspection procedures.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
	<p>e) Electronic documents exchanged between state agencies together on the system of national OSS customs in implementing the administrative procedures have legal validity as paper documents;</p> <p>g) Preparing the necessary conditions to implement the exchange of information on certificates of origin (C/O) under the ATIGA Agreement in ASEAN and toward recognizing electronic C/O between the Member countries of ASEAN;</p> <p>h) Willing to exchange basic information on the customs declaration with customs of the ASEAN member countries in the unified format.</p> <p>Article 3. Responsibilities of the enterprises participating in the pilot to implement the mechanism of national OSS customs</p> <p>1. To declare and implement the administrative procedures through the system of processing electronic data of national OSS customs electronic information portal.</p> <p>2. To declare and submit documents and provide information relating to goods, means of transport of import and export and pay tax, fees and charges, other revenues as prescribed by law.</p> <p>Implementing Decision 48/2011 / QĐ-TTg, there are 36 specialized inspection procedures for import and export goods, vehicles and immigrating individuals specified in the previous Decrees, Circulars and some Joint Circular issued by the Ministry of specialized inspection and Ministry of Finance recently issues: Joint Circular 89/2016 / BTC-BCT TTLT Ministry of Industry and Trade; Circular 54/2015 / TT-BGTVT; Circular 50/2014 / TT-BNN dated 12/24/2014; Circular 33/2014 / TT-BNN dated 30/10/2014; Circular 04/2015 / TT-BNN dated 12/02/2015; Circular 48/2013 / TT-BNN; Circular 28/2014 / TT-BVHTDL 31/12/2014 of the Ministry of Culture, Sports and Tourism...</p> <p>Decree 21/2012/NĐ-CP dated 21/3/2012 on management of seaports and navigable channel.</p> <p>Article 62; Article 63.2;</p>	

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 6. Transit and Transshipment</p> <p>1. Each Party shall ensure the facilitation and effective control of transshipment operations and transit movements through their respective territories.</p> <p>2. Each Party shall ensure cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit.</p>	<p>Article 35. Law on Customs. Decree 08/2015/NĐ-CP: Article 33.1... Decree 21/2012/NĐ-CP dated 21/3/2012 on management of seaports and navigable channel: Article 59; Article 61; Article 63; Article 88; Article 89. Article 7 Law on Plant protection and Quarantine on “Responsibilities of the Government and Ministries”. 3. d) The Ministry of Finance shall direct and cooperate with the Ministry of Agriculture and Rural Development to carry out the enforcement of regulations on requirements for the completion of customs procedures, the cooperation of customs authority with agencies specializing in the plant protection and quarantine to adhere to required customs procedures, examination and surveillance over plant quarantine articles and pesticides for importation and exportation; stipulate plant quarantine contents that must be clearly stated in the declaration of incoming or outgoing passengers; Article 8 Law on Veterinary Medicine on “Responsibilities of the Government and the Ministries in state management”. 6. The Minister of Finance shall preside over and cooperate with the Minister of Agriculture and Rural development in promulgating regulations on conditions for completion of customs procedures in the inspection and supervision of animals/animal products subject to quarantine, pathology specimens, veterinary drugs that are exported, imported, temporarily imported, temporarily exported, moved to another custom post/bonded warehouses, transited through Vietnam’s territory; in the prevention of smuggling, illegal transport of animals, animal products and/or veterinary drugs across the border; in providing local governments with guidelines for distribution and use of the annual budget, ensuring the sufficient funding for the prevention and fighting against animal diseases. 8. The Minister of National Defense shall cooperate with the Minister of Agriculture and Rural development in ensuring the National defense and security relating to the prevention and fighting against animal diseases and quarantine of animals/animal products; direct the Border guard and the Coastguard to cooperate with the concerned agencies in the prevention and fighting against the smuggling, illegal transport of animals, animal products and/or veterinary drugs across the border.</p>	<p>Commitment analysis: In this Article, the Parties commit to closely coordinate the administrative agencies and forces at the border to facilitate transport operations, goods transit and means of transport.</p> <p>Assessment: The quotations in column 2 show that Vietnamese law, including maritime law, customs law, the specialized inspection law stipulates that administrative agencies and forces at the border, including specialized inspection agencies on export/import goods, transit, should closely cooperate under the chairmanship of an assigned agency or force to facilitate transport operations and goods transit and means of transport.</p> <p>Overall Assessment: Vietnamese law in general, specialized inspection law on export/import goods in particular have fully met the commitments in Article 6 of the Agreement on facilitating the transport operations and transit of goods, means of transport.</p> <p>Recommendation: No recommendation on amendments and complementation.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 7. Risk management.</p> <p>1. Each Party shall base its examination and release procedures and its post-clearance audit procedures on risk assessment principles and audits, rather than examining each shipment in a comprehensive manner for compliance with all import requirements.</p> <p>2. The Parties agree to adopt and apply their import, export; transit and transshipments control requirements and procedures for goods on the basis of risk management principles, to be applied to focus compliance measures on transactions that merit attention.</p>	<p>As indicated under Article 1.3 EVFTA, almost no documents of specialized inspection law having provisions using risk management.</p> <p>Exception is Article 40.2 Law on food</p> <p>Related specialized management ministries implements this provision as follow:</p> <p>With regard to strict inspection:</p> <p>MOH provides under Article 5.2, Article 6.3, Article 6.4 Circular 52/2015/TT-BYT</p> <p>MARD provides under Article 10 Circular 12/2015/TT-BNNPTNT</p> <p>MOIT provides under Article 5 Circular 28/2013/TT-BCT</p> <p>With regard to normal inspection:</p> <p>MOH provides under Article 5.1, Article 6.1 Circular 52/2015/TT-BYT</p> <p>MARD provides under Article 9 Circular 12/2015/TT-BNNPTNT</p> <p>MOIT provides under Article 6 Circular 28/2013/TT-BCT</p> <p>With regard to summary inspection:</p> <p>MOH provides under Article 5.3, Article 6.2 Circular 52/2015TT-BYT</p> <p>MARD provides under Article 11 Circular 12/2015/TT-BNNPTNT</p> <p>Ministry of industry and trade provides under Article 7 and Article 8 Circular 28/2013/TT-BCT</p> <p>In all legislations on food safety, only Circular 12/2015/TT- BNNPTNT has one article providing that legal compliance history of enterprise is used (Article 6,)</p> <p>With regard to each package inspection, although, scrap could cause environment pollution, effect community health in big scale and for a long term, Ministry of Natural resources and environment, under Circular 41/2015/TT- BTNMT dated 9/9/2015 (Article 10.4), does not provide requirement of each package inspection, only provides about conditions and certification issuance (with two year validity, and could be re-issued when due-date), inspection in reality is conducted by customs authorities, and no need for quality check in a different assigned inspection organization.</p>	<p>Analyzing the commitment in Article 7:</p> <p>In this Article, the Parties commit to apply risk management principle, focus on inspecting key shipments, not to apply measures to inspect every shipment during the inspection procedure, release the goods and inspect post-clearance.</p> <p>Risk management is a method based on information analysis to assess the risks that may occur, as the basis for the decision to apply appropriate management measures with highest efficiency, and lowest cost (of all stakeholders).</p> <p>Sources of information for the analysis include the information available or at the time of the decision. Among all kinds of information, information on the history of the law compliance of exporters is the most important. Other information includes information on the characteristics of the nature, type, quality, brand, origin, transport routes ... This information is collected by administrative agency and updated regularly in a long time, which creates the database.</p> <p>The risk of this approach in specialized inspection is the risk of imported goods that do not ensure quality standards, stipulated technical regulations, which are detrimental to public health, social security, consumers, environmental pollution, and the development of the economy in general, for a specific economic sector in particular.</p> <p>These risks can occur due to numerous reasons, but the most important and common cause is the deliberate violation and ignorance about the goods, market of the importers. These factors are disclosed in the process of export and import operations, monitored and updated the database by administrative agencies. Based on the risk analysis, administrative agencies construct a set of risk management criteria to apply to each type and severity of the specific inspection. Inspection forms can include many types, such as exemption of inspection; just inspect the records, no trials; sampling / inspecting/ experimenting one or numerous standards, technical regulations; before clearance or post-clearance inspection. Based on risk management criteria and the information available in the database, administrative agencies decide on the form and severity of inspection for import and export goods of each entity. At the time of import/export procedure for a specific shipment, if new information is so important that it is necessary to adjust the form and severity of inspection (e.g. information on the disease, quality goods, smuggling, trade fraud ...), the administrative agency will decide to adjust.</p> <p>Assessment:</p> <p>The commitment in this Article requires the Parties not to apply measures to inspect each shipment at customs clearance procedures and post-clearance inspection, but to apply risk management approach, according to which, based on the assessment of the law compliance of importers and other relevant information to decide appropriate inspection measures.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>Based on the connotation of risk management measure and the quotation of specialized inspection provisions in column 2 as well as the analysis and evaluation in Article 1, it is indicated that in general, current specialized inspection operation is basically inspecting each shipment.</p> <p>In the field of SM, only food safety inspection has a number of provisions that have the tendency to apply risk management, such as the classification of goods, situation, and law compliance with food safety regulation of importers to apply 3 different inspection methods. However, it only shows tendency, just a small part of the risk management approach, not the risk management approach with full connotation. The inspection still applies to all imported consignments. In other words, basically, specialized inspection operation for goods import and export in Vietnam has not applied risk management approach. Specialized inspection agencies have not built a database of ex-importers and ex-imported goods. The decision on the form and severity of inspection has not been based on the analysis of information, risk management. In all cases, specialized inspection must be implemented before the goods are cleared.</p> <p>Even three food safety inspection approaches temporarily considered as following the risk management application tendency, each Ministry of specialized inspection understands and applies differently. For example: regarding Reducing inspection approach, (as quoted in column 3): Ministry of Health (Clause 3, Article 5 of Circular 52/2015 / TT-BYT) stipulates: Reducing inspection approach is to “only inspect the records”, applied maximum period of 12 months since the application of reducing inspection approach; MARD (Article 11 Circular 12/2015 / TT-BNN) generally stipulates to comply with international treaties on mutual recognition and apply to cases in which the goods have been inspected by exporting country ;MOIT (in Article 7, Article 8 of Circular 28/2013 / TT-BCT) has more complex regulations, reducing inspection approach consists of two categories: Type that must have representative sample to inspect the labeling and documents reference (Article 7); Type that only need record inspection, no sample, but only applied 1 time per year and passing 5 times of inspecting similar goods with same origin (Article 8).</p> <p>General assessment:</p> <p>Basically, Vietnamese law on specialized inspection is not compatible with the commitment to apply risk management approaches in this Article.</p> <p>Recommendation:</p> <p>Amending Article 34 of Law on Product and Goods quality, Article 38 Law on Food safety, and supplement other specialized inspection law with the tendency to apply risk management principles in specialized inspection, deregulate the provision on inspecting each shipment in current legislation (relatively as defined in Article 17 of the Customs Act No. 54/2014 / QH13).</p> <p>On the application of risk management principles in specialized inspection has also been specified in Resolution 19-2016 / NQ-CP: “Changing the basis of management approaches, specialized inspection, implementing management principles on the basis of risk assessment ... “This is a policy as well as the basis to put this modern management principle into specialized inspection law.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 8. Transparency</p> <p>1. Each Party shall ensure that its customs and other trade-related laws, regulations and general administrative procedures and other requirements, including fees and charges, are readily available to all interested parties and where feasible and possible, official website.</p> <p>2. Each Party shall designate or maintain one or more inquiry or information points to address inquiries within a reasonable time by interested persons concerning customs and other trade-related matters.</p>	<p>Article 150 Law promulgation of legislative documents No. 80/2015/QH13</p> <p>Now, Parliament, Government, all Ministries and specialized inspection authorities have its official website which publishing all legislations, administrative procedure, even administrative official letter, official letter on each case to solve difficulties in applying law and procedure. All these websites have A&Q section, and even fanpage for discussion</p>	<p>Commitment analysis:</p> <p>In this Article, the Parties willingly commit to provide those interested provisions and procedures, including the provisions on charges and fees, in the field of customs and other related field; if there are any conditions available, those will be posted on the official website.</p> <p>The Parties also commit to maintain the focal point to receive, reply and provide information on customs issues and other related issues for whom it may concern.</p> <p>Assessment:</p> <p>Vietnamese law on specialized inspection has fully met the commitments in Article 8 of the Agreement.</p> <p>Recommendation: not to propose any amendments</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
Article 10. Fees and charges		
<p>1. Fees and charges shall only be imposed for services provided in connection with the importation or exportation in question. They shall not exceed the approximate cost of the service provided; and shall not be calculated on an ad valorem basis.</p>	<p>Article 12.15, Article 14.4, Article 37 Law on Standards and technical regulations: Article 9.2, Article 9.3 Circular 27/2012/TT-BKHCHN: Article 1.2, Article 2 Circular 231/2009/TT- BTC Circular 223/2012/TT-BTC</p>	<p>Commitment analysis: According to the commitment in this paragraph, the charges and fees for conducting import/export procedures shall not exceed the cost of services and not be calculated as the value of the shipment.</p> <p>Assessment: - Regarding fees and charges: While the charge is considered as clear and relatively low, the fee for some services (the costs of inspection and certification of conformity, inspection of goods quality, ...) are evaluated as relatively high (can invoke GIG report at a seminar dated 3rd October in HCM) and it is difficult to say whether it exceeds the cost of services or not. Exporters and importers find it difficult to know what are the real activities of the provided services, due to the current regulation on the management, specialized inspection requires the certification of conformity of each importer, the quality control, food safety inspection ... are implemented for all import shipments in group 2 which result in the back and forth repetition of inspection.</p> <p>- Regarding the calculation method: While the charge calculation method is completely compatible with the Agreement, however the fee calculation method is not fully compatible: + There are some services that the charge is calculated according to the percentage of the value of goods. To be more specific: Section III of the Appendix attached with Circular 223/2012 / TT-BTC of Ministry of Finance stipulates: Fee for inspection of quality of imported plant protection drugs is 0.05% of the shipment value, the minimum is 1.2 million VND/shipment, up to 10 million VND/shipments; Fee for inspection of food safety criteria in agricultural products (vegetables, fruits ...) export and import of 1% of the shipment value, the minimum is 3 million VND/shipment, the maximum is 10 million/shipment.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
		<p>+ There are areas, the fee is calculated according to the volume of goods which lead to cases of significantly high fee, and it is not plausible to say whether it is adequate with the provided service or not. Specific:</p> <p>Point 3 of Section VI of Appendix attached to Circular 223/2012 / TT-BTC stipulating the fee of export and import plant quarantine regulates that the fee is calculated according to the volume, in which “Shipment that has volume over 500 (tons, m³) are assigned in accordance with the ship holds, warehouse for quarantine and calculating fee for quarantine, or plus the fee for quarantine of the rest of with the fee for quarantine of 500 (tons, m³)”, not limiting the maximum. Under this provision, the massive shipments (some thousand tons), the fee can go up to millions.</p> <p>Recommendation: The current provisions of the Vietnamese law on fees and charges in specialized inspection have mostly met the commitments in paragraph 1 of Article 10 of the Agreement except for some specific cases below and therefore it is necessary to be adjusted to ensure compatibility:</p> <ul style="list-style-type: none"> - Amending the calculation method of fee for quality inspection of imported plant protection drug, fee for inspection of food safety criteria in export/import agricultural products (vegetables, fruits ...) stipulated in Section III of the Appendix attached to Circular 223/2012 / TT-BTC with the tendency to stipulate a fixed fee which is not calculated with the value of shipments; - Amending the calculation method of the fee of export and import plant quarantine in Point 3 of Section VI of Appendix attached to Circular 223/2012 / TT-BTC with the tendency to specify maximum ceiling for one shipment.
<p>2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of or exportation to of goods to the other Party. After three years of entry into force of this Agreement, a Party may not require consular authentication for the importation of goods covered by this Agreement.</p>	<p>Article 5.2.(c), Article 6 Decree 38/2012/NĐ-CP:</p>	<p>Commitment analysis:</p> <p>According to the commitment in this Article, neither of the Parties shall request the other Party to implement procedures for consular legalization and pay fees, consular legalization fees for the documents to import, export goods. If there is such request at the time being, it shall be suppressed after three years of this Agreement entry into force.</p> <p>Assessment:</p> <p>Generally, the current law on professional management of import – export goods has no requirements on the consular legalization of import – export documents (expect for Decree 38/2012/ND-CP regulates consular legalization in conformity publication record and regulates appropriate food safety for products with no technical regulations, functional foods and imported fortified foods with micronutrients). Therefore, Law on Specialized Management is compatible with the commitment in the Agreement (expect for the case above).</p> <p>Recommendation:</p> <p>To request to change point 2c, Article 5; point 1c, point 3c and 3d of Article 6 Decree 38/2012/ND – CP of the Government in the direction of declining the request to legalese consular dossier announcing legitimacy and dossier announcing food safety for products with no technical regulations, functional foods and imported fortified foods with micronutrients.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>3. The information on fees and charges shall be published via an officially designated medium, and where feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made.</p>	<p>Article 150.1 Law promulgation of legislative documents Article 6, Article 7, Article 8, Article 9, Article 14.1 Law on fees and charges Article 12.15, Article 14.4, Article 19, Article 37 Law on Standards and technical regulations: Article 46.2, Article 49.2, Article 56.2 Law on Standards and technical regulations Article 12 Article 48, Article 46. 2 Law on food safety: Article 1, Article 2.1 Circular 223/2012/TT-BTC: Article 12 Law on veterinary medicine No. 79/2015/QH13:</p>	<p>Commitment analysis: According to the commitment in this Article, regulations on fees and charges must be announced on official media and, if possible, on official websites. Fees, charges information shall include reasons to collect, entitled agencies, collecting rates, time and mode of submission.</p> <p>Assessment: Quotations in column 3 showed Vietnamese Law has fulfilled the commitment in point 3 of Article 10 of the Agreement on publicly announcing regulations on fees, charges; on reasons to collect, entitled agencies, collecting rates. Submission time and mode have not been detailed in these documents, but customarily, fees and charges shall be collected after the completion of providing service.</p> <p>In the field of professional management, apart from the Electronic Portals of the National Assembly, the Government, specialized inspection Ministries, most of Expertised Departments of Ministries have official websites, posting all regulations in general, regulations of fees, charges management, specialized checks on goods exports and imports in particular.</p> <p>Besides, to navigate the completion of specialized inspection fees, charges regulations, Resolution 19-2016/NQ-CP regulates: “Amending the regulations on SP fees, transparency about how costs are calculated, the person responsible for paying expenses ... ”</p> <p>Recommendation: Vietnamese Law on specialized inspection has completely fulfilled the commitment in point 3 Article 10 of the Agreement, not to propose any amendments of supplements.</p>
<p>4. New or amended fees and charges shall not be imposed until information in accordance with paragraph 3 is published and made readily available.</p>	<p>Article 151 Law promulgation of legislative documents 2015 :</p>	<p>Commitment analysis: According to the commitment in this Article, changes on fees and charges shall only be applied after being publicly announced.</p> <p>Assessment: Regulations on fees and charges (including specialized test fees and charges of import – export goods) have been issued in the form of Circular by Ministry of Finance. The amendments, supplements have also been issued in the form of Circulars. As quoted in Article 151 of Law on Issuing Legal Documents in column 3, legal documents promulgated by central agencies shall take effect no sooner than 45 days from the date of signing, if such documents is enacted in accordance with the order of summarized procedures, it must be posted immediately on the Electronic Portal of the issuing agency and must be reported on the mass media; Official Gazette.</p> <p>Recommendation: Vietnamese Law has fulfilled the commitments, not to propose any amendments, supplements.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 13. Pre-shipment inspection</p> <p>The Parties agree that their respective customs provisions and procedures shall not require the mandatory use of preshipment inspections as defined in the WTO Agreement on Preshipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.</p>	<p>- With regard to inspection before boarding: no specialized inspection legislation</p> <p>- With regard to private-owned companies inspecting good quality on arrival board:</p> <p>Article 3.9 Law on Standards and technical regulations</p> <p>With regard to inspection organization, Article 25.5 Law on Standards and technical regulations regulates:</p> <p>With regard to conformity, Article 3.5 Law on standards and technical regulations</p> <p>With regard to state inspection on quality, Article 3.15 Law on Standards and technical regulations</p> <p>With regard to goods inspection for state control, Article 25.2 (b) Law on Standards and technical regulations</p> <p>. Article 4.2 Circular 37/2015/TT-BCT</p> <p>. Article 3 Circular 52/2015/TT-BYT</p>	<p>Commitment analysis:</p> <p>In this Article, committing Parties regulated customs clearance procedures not require goods to be inspected prior to loading goods onto ships at ports of departure (according to the definition in WTO Agreement), not to assign private companies to conduct any form of inspection of goods prior to customs clearance at ports of arrival.</p> <p>Point 3 of Article 1 of WTO Agreement on Inspection before loading the goods on board defines: “Inspection before loading the goods on board” is to check the quality, quantity, commodity prices, exchange rates, the financial statements, as well as the classification of goods which will be exported to the importing country”¹.</p> <p>Assessment:</p> <p>- On the Inspection before getting in line on board</p> <p>According to above definitions, currently Law on specialized inspection on import – export goods do not have any regulations forcing that Vietnam importing goods must be checked quality before getting in line to load on board at departing port. To put it another way, Vietnamese law has fulfilled this commitment.</p> <p>- On private companies inspecting import goods on arrival port:</p> <p>According to the quotations in column 3, the inspection of the quality of the goods serving the State management requirement (including checking, assessing the conformity of goods quality to technical regulations, state inspection for quality) in the arrival port is conducted by organizations qualified under Article 5 of Law on the Quality of Products and Goods and being appointed by Ministry of SP. According to the above regulation, any organizations, regardless of state bodies, technical career organizations or private companies, as long as they meet the conditions, they all can be appointed to inspect the state of the quality of import goods at the port of entry. In reality, apart from the state bodies, technical career organizations, some private companies such as Vinacontrol, Davicontrol which have been appointed to inspect the state of the quality of import goods. Therefore, Vietnamese law still has regulations incompatible with this commitment.</p> <p>Recommendation:</p> <p>To request to change the regulations in Point 9 Article 3, point 15 Article 3, point 2b Article 25, point 5 Article 25 of Law on the Quality of Products and Goods, point 5 Article 3 Law on Standards and Technical Regulations, Article 3 of Circular 52/2015/TT-BYT of Ministry of Health to the direction of appointing competent agencies to perform inspection the quality of import goods at arrival port.</p>

1/ Reshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user Member.

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 14. review and appeal</p> <p>Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against customs and other agency administrative actions, rulings and decisions affecting import or export of goods or goods in transit.</p>	<p>Article 2.2, Article 2.5, Article 3.1, Article 4, Article 5, Article 7, Article 12, Law on complaint 2011</p> <p>In the sector of specialized inspection, besides law on complaint, appeal rights are also provided in some specialized inspection legislations, as follow:</p> <p>Article 11.7, Article 13, Article 64, Article 65 Law on Standards and technical regulations:</p> <p>Article 47.1(d) Law on plant protect and quarantine 2013</p>	<p>Commitment analysis:</p> <p>In this Article, each Parties commit to ensure the right to complain against the actions of the customs authorities and other government agencies, regulations and decisions affecting the importation, exportation, transit being done efficiently and resulting quickly, easily, without discrimination.</p> <p>Assessment:</p> <p>As quoted in column 3, complaint and complaint solving have been specified in Law on Appeal No. 02/2011/QH13. This Law has been applied generally to every object within the regulating scope of this Law, regardless of national organizations, person or foreign organizations, person in Viet Nam.</p> <p>Law on Complaint also applies for complaint and complaint solving to import, export activities in SM, at the same time, complaint and complaint solving to import, export activities in specialized inspection is specified more on each specialized inspection Law. Law on Food Safety applying for import, export has no specify regulations on complaint and complaint solving complying with the regulations of Law on Complaints and Denunciation.</p> <p>Although the law has stipulated quite adequately as above, the effective implementation is very low. It is very rare (almost not found) any occasion where importer, exporter complain about the conclusions and decisions of agencies and organizations in charge of inspecting the quality of goods or provisions of the bylaws are not consistent with the law (there is in reality). The general psychology of the enterprises is to fear of offending the managing, inspecting agencies in order to avoid being victimized.</p> <p>Recommendation:</p> <p>The current regulations of Vietnamese Law on Complaint and Complaint solving in general, in import, export goods in specialized inspection in particular are quite adequate and compatible with Article 13 of the Agreement.</p> <p>However, in order to synchronize the system specialized inspection laws, to propose to supplement additional regulations on complaint and complaint solving in export and import of goods subject to the inspection of food safety under Law on Food Safety.</p>

EVFTA Commitments	Vietnam legal framework	Assessment – Recommendation
<p>Article 15. relations with the Business Community.</p> <p>The Parties agree:</p> <p>(a) on the need for timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation issues. To that end, appropriate consultation between administrations and the business community shall be established by each Party;</p> <p>(b) to publish or otherwise make available, as far as possible through electronic means, and new legislation and general procedures related to customs and trade facilitation issues prior to the application of any such legislation and procedures, as well as changes to and interpretations of such legislation and procedures. They shall also make publicly available relevant notices of an administrative nature, including agency requirements and entry procedures, hours of operation and operating procedures for customs offices at ports and border crossing points, and points of contact for information enquiries;</p> <p>(c) on the need for a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force;</p> <p>(d) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.</p>	<p>Article 17, Article 32 Law on Standards and technical regulations</p>	<p>Commitment analysis:</p> <p>Commitments in Article 15 relating to SP includes: SP agencies to establish a consult enterprise community mechanism on law projects and procedures relating to SP for import, export goods; post publicly new regulations, changes and explanations of that regulations in a reasonable time before the entry into force of these regulations; listen to the needs of the enterprise community, acquire good practices, limit to the lowest level of prohibitions in commercial activities.</p> <p>Assessment:</p> <p>As previously quote, analyze, evaluate in Article 8, Article 12, Vietnamese law in general, SP law in particular have met the requirements of publish new documents; effect time; explanations, guidance of legal documents...</p> <p>On consulting enterprise community with law projects, all of the website of Ministries post law projects for those interested to comment. The time for consultation usually takes months.</p> <p>In the field of standards, technical regulations, the consultation is provided in very specific and detailed as quoted in column 2.</p> <p>General assessment:</p> <p>Vietnamese Law on specialized inspection is completely compatible with the commitment in Article 15 of the Agreement.</p> <p>Recommendation: not to propose any amendments.</p>

**CENTER FOR WTO AND ECONOMIC INTEGRATION
VIETNAM CHAMBER OF COMMERCE AND INDUSTRY**

The WTO Center is set up under the auspices of the Vietnam Chamber of Commerce and Industry (VCCI) to provide legal supports for Vietnamese businesses on international trade issues.

Our mission is to improve awareness, capacity and voice of the Vietnamese business community to actively participate into negotiations and gain the most benefits from WTO and other trade agreements of Vietnam, as well as to prevent and deal with their possible negative impacts.

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