

TRANS-PACIFIC PARTNERSHIP (TPP) - CHALLENGES AND OPPORTUNITIES FROM THE INSTITUTIONAL ASPECT

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FTA TREND

- The development of science and technology and internationalization of production entail investment and trade liberalization for more extensive and intensive integration of economies.
- The stalled progress of the Doha Round (the negotiation of bilateral and regional Free Trade Agreements (FTAs) is a way countries respond to the failure of the Doha Round but also motivates its negotiations).
- The story of APEC 2006.
- This trend is driven by transnational companies for their own benefit

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I. Bilateral, regional and global trade agreements Vietnam acceded to

- Vietnam has joined the following trade agreements:
- ASEAN FTA
- ASEAN +
- + ASEAN - China FTA
- + ASEAN - Korea FTA
- + ASEAN - Japan FTA
- + ASEAN - India FTA
- + ASEAN - Australia - New Zealand FTA
- Vietnam - Japan Economic Partnership Agreement
- Vietnam - Chile FTA
- The World Trade Organization (WTO)

II. Vietnam's FTA negotiations underway

- Trans-Pacific Partnership (TPP) - 12 Pacific country members
- Vietnam - EU FTA
- Vietnam and Russia - Belarus - Kazakhstan Customs Union FTA
- Vietnam - European Free Trade Association EFTA (Norway, Switzerland, Iceland and Liechtenstein) FTA
- ASEAN +6 FTA (China, Korea, Japan, India, Australia and New Zealand)
- Features of the new FTAs:
- Generally, aim at higher level of liberalization than current FTAs. Particularly, TPP and Vietnam-EU FTA are seen as high standard agreements (usually referred to as Agreements of the new generation)
- Vietnam's FTA negotiations underway cover more than 90% of Vietnam's trade volume and nearly most of its investment markets

III. TPP – a new generation FTA

1. TPP requires more extensive and intensive commitments with a faster liberalization roadmap with regard to the issues already covered by the WTO and committed on by Vietnam.
2. TPP negotiations will cover those issues that are neither covered by the WTO nor committed on by Vietnam under the WTO (i.e. investment, government procurement, competition policies and State owned enterprises (SOEs) etc.)
3. TPP will also cover those issues which are not of trade nature but are trade-related (though very indirectly) (such as workers' rights, civil society organizations, labor-union, environment etc.)
4. TPP requires a higher level of transparency, stringent dispute resolution procedures, strict enforcement measures and penalties
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TPP Negotiation Framework

TPP has 30 Chapters (Below are only some of the main Chapters)

1. Trade in Goods - Goal of negotiations

- A zero percent rate will apply to 90% of tariff lines and trade volumes as soon as TPP takes effect, and shall be phased in for the rest with the longest phase-in period of 10 years (but not for all).
- Export duty will be eliminated.
- Import of used and refurbished items will be permitted.
- Strict rules of origin and self-certification mechanism will be applied.
- Textiles: the “Fiber-forward” rule of origin will be applied (i.e. textiles exported to TPP members must be made of TPP-originating fibers, if not, they are not entitled to the TPP tariff).

TPP Negotiation Framework

2. *Investment* (including investments in non-productive sectors. Financial services and Electronic commerce and telecommunications now become two separate Chapters)

- Broader and deeper liberalization. “Negative-list” approach (i.e. the sectors not to be committed on must be negotiated with and approved by member States). The rest will not be excluded. Risks?
- Ratchet mechanism (policies will only be changed to become better and more favorable for investors).
- New complaint mechanisms:
- Investor to State; State to State; Pre-project complaints; Non-violation complaints; compensation and trade sanctions for violations.
- Participation of civil society organizations in dispute settlement process by arbitration will be permitted (by way of engagement and challenging).

TPP Negotiation Framework

3. *Government procurement (GP)*

- Procurement of goods and services (e.g. construction works, irrigation works, turn-key contracts etc.) using State budget funds must be done through bidding (as the United States does not provide sub-federal level commitments, Vietnam does not make any provincial/municipal-level commitments)
- To set out a value threshold of goods and services that triggers bidding obligations.
- Transparency of tender procedures including regulations on bid documents, duration of a bid and e-bidding system etc.
- Labor-related clauses in GP

TPP Negotiation Framework

4. *Competition policies and SOEs*

- To adopt competitive policies to create a fair and equal business environment for enterprises
 - To eliminate all forms of discrimination in laws and practices concerning access to resources for businesses of all kinds.
- To define SOEs and a threshold (e.g. turnover threshold) at which an SOE shall be subject to regulation. Scope of competition of SOEs shall be governed in all 3 markets.
 - The State is not permitted to allocate capital, instruct credit extension, provide guarantees to or write off debts for SOEs.
 - Those SOEs with monopoly or exclusive rights that do business in the sectors beyond the scope of such monopoly or exclusive rights shall be subject to rules of the TPP.
- Subsidies are prohibited during the operations of SOEs
- To apply a transparent reporting regime to SOEs.

TPP Negotiation Framework

5. *Labor and Union*

- Freedom of association by a group of workers.
- Freedom of alignment or non-alignment of local unions (*we have confirmed that there is only one labor union system in Vietnam under the Vietnam General Confederation of Labor, this is an institutional issue which cannot be changed and no-one can change*).
- Business managers cannot be members of the union executive committee (*we have argued that they are also employees*)
- Where a labor union does not exist, workers have the right to appoint their representatives in bargaining with employers without having to involve higher level labor union to act as their representative, unless they request so.
- The independence of labor unions in their internal operations, property and financial management should be assured.
- Restrict the sectors where strikes are banned.
- Combat forced labor and child labor.

TPP Negotiation Framework

6. *Environment*

- Accession to multilateral environmental agreements (MEAs).
- Trade and biodiversity.
- Trade and climate change.
- Fishing and conservation: bans on excessive catching of endangered fishes (*it is difficult for us to define “excessive” since catching activities in our waters target at multiple species*)
- Ban on subsidy for fishing activities. (*Vietnam is opposing this*)
- Rules of origin applicable to caught fishery products.
- Dispute resolution.

TPP Negotiation Framework

7. *Electronic commerce and telecommunications*

- Expand the definition of electronic commerce (which means any digital transactions)
- Ensure freedom of information flows and storage without being controlled or blocked, except for the information pertaining to national defense, security, social order or safety.
- Not impose tax on trans-border e-transactions.
- Not impose a requirement of server location in an identified place including one's own country.
- Right to access landing station (marine optical cables)
- Independent telecommunications administration agency.

TPP Negotiation Framework

8. *Intellectual Property*

- Expand the scope of protection and protection responsibility (protection of cable signals; expanded responsibility for IPR protection to ISPs etc.)
- Extend the term of protection of patents, copyright and related rights. Compensate for the delayed term of protection caused by late registration of pharmaceuticals.
- Protect exclusive rights to pharmaceutical test data.
- Strengthen enforcement measures against IPR violations (including border measures, criminal remedies, administrative remedies are undeniable but cannot replace criminal ones etc.)

TPP Negotiation Framework

9. Legal and institutional issues

- High level of transparency.
- Stringent enforcement and dispute resolution mechanisms for punishable violations.

IV. TPP impact on economic institutions and the management mechanism

- Create a more open investment environment.
- Offer a higher level of transparency and stability.
- Adopt stricter-binding protection measures for investors.
- Strengthen IPR protection.
- Create more equal and competitive business environment.
- Enhance civil society participation in the policy making process and uphold the accountability of State bodies.
- Separate policy-making entities from State-owner agencies with regard to SOEs.
- Eliminate conflicts of interest during the policy making.
- Adopt stricter enforcement and monitoring mechanisms.
- Adopt more stringent dispute resolution mechanisms.

1. Vietnam needs to improve its market-based economic institutions (1)

1.1 Strongly reform SOEs, create a fairly competitive environment for enterprises of all economic sectors including FDI enterprises

- Eliminate all forms of incentives for SOEs.
- Ensure transparency and openness of SOEs' operations.
- Separate the State-owner function from the policy making function.

1.2 Consistently follow the market price mechanism, eliminate all forms of subsidies contrary to the WTO rules

1. Vietnam needs to improve its market-based economic institutions (2)

1.3 Create a clear, transparent and predictable business environment and a fairly competitive market.

- Ensure transparency and openness of management mechanisms and economic policies.
- Ensure the participation of all stakeholders in the policy making process. Promote the accountability of management agencies.
- Ensure that every business has equal opportunities to access to information, market and resources. To grant MFN and NT treatment in market access.
- Protect investors.

1. Vietnam needs to improve its market-based economic institutions (3)

1.4 Strengthen enforcement institutions and remedies; ensure the participation of stakeholders in the dispute settlement process.

- To improve the legal framework for enforcement, Vietnam will need to revise and improve its legal system, including amending and supplementing several legislations including the enterprise law (also covering SOEs), investment law, public procurement law, IP law and possibly criminal law etc.

2. Vietnam will have to redetermine the roles of 3 structural pillars of a modern market-based economy including the market, State and society

- Where: (1) the market plays a decisive role in the distribution of resources; (2) the State, by using its regulatory tools, addresses the market “failures” and functions as the designer of development and the inclusive growth strategy; (3) the society plays the criticism and monitoring role.

V. Challenges and opportunities from the institutional perspectives

1. *Challenges*

- Enforcement obligation is very heavy, particularly in the initial period (including obligations to modify the legal system, enhance the enforcement mechanism and improve the responsibility for monitoring the implementation of commitments etc.)
- State employees are required to change their legislative and management mindsets.
- It is required to further SOE restructuring and improve governance.
- TPP also requires better expertise and language competency of the expert team particularly legal experts in order to deal with all types of disputes
- We need to understand not only ourselves but also others (including information of all levels and from all sides)

V. Challenges and opportunities from the institutional perspectives

2. Opportunities

- ***Challenges as the driving force for reforms***

- *Negotiating a new generation FTA leads to institutional reform pressure but offers an opportunity to shape a consistent and coherent institutional framework towards a market-based economy and thereby guarantees more effective distribution of resources.*
- *It should be noted it is the institutional framework not natural advantages (such as natural resources, geographical locations etc.), that decides the rapid and sustainable development. It is also the institutional framework that creates dynamic comparative advantages. This is the long-term benefit of the TPP. Export growth and investment attraction are only specific results of the above institutional reform efforts.*