

SUMMARY REPORT

“IMPLEMENTING THE CPTPP FROM A LAW-MAKING PERSPECTIVE

Review of Current Results and Policy Implications for the future”

1. Amending, supplementing and developing new domestic legal regulations (law-making activities) to implement commitments in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) are among the key tasks in Vietnam's implementation of this Agreement. The main objectives of these law-making activities are to (i) ensure the compatibility of domestic legislations with CPTPP commitments; and (ii) organize the implementation of CPTPP commitments in practice.
2. According to law-making plans for implementing the CPTPP of the National Assembly, the Government and Ministries, there is a total of 07 Laws, 06 Decrees and 06 Circulars that need to be revised or newly developed. These law-making activities are expected to be divided into two phases: the first phase is implemented with CPTPP commitments taking effect immediately and the second phase is implemented with CPTPP commitments with a later schedule. In the period of 2019-2021, a total of 11 legal documents were issued to implement CPTPP commitments with immediate effect and 04 documents were drafted to prepare for the implementation of CPTPP commitments with schedules.
3. ***Regarding the legal documents issued to implement the CPTPP commitments with immediate effect***, the Review shows that there is a total of 11 documents (including 02 Laws, 02 Decrees and 07 Circulars) in this category, in which there are 08 documents to internalize CPTPP commitments on trade in goods and 03 documents to implement commitments on rules. These documents implement a total of 63 groups of CPTPP commitments under 08 Chapters (Market Access for Goods, Rules of Origin, Textile and Apparel Goods, Trade Remedies, Technical Barriers to Trade, Government Procurement, Intellectual Property and Labour) and 02 Bilateral Letters (Textile and Apparel Goods).

4. *Regarding how to incorporate the CPTPP commitments into domestic laws (the way of "internalization"),* there are 07 legal documents that were "internalized" in the way of building a new document with the specific scope and subjects of application (06 documents on trade in goods, 01 document on government procurement); 03 documents amending and supplementing existing legal documents (including 02 documents on trade in goods, 01 document on intellectual property), and 01 case included in the overall amendment draft of a relevant document (regulations to implement CPTPP commitments on labour).
5. *Regarding business consultations during the drafting process,* the Review shows that all legal documents, even those were drafted in a shortened process or at circular-level, were published their drafts on the website of the drafting agency to collect comments from the public (presumably including businesses). However, in many cases, the drafting agency only published the draft of documents, without any attached explanations for policy choices of draft provisions (eg. Statements, Impact Assessment Reports etc.), which causes certain difficulties for relevant stakeholders to understand and give comments. There are 7/11 drafts sent by drafting agencies to VCCI for collecting businesses' comments. In these cases, the drafts were more widely known by businesses (through dissemination and consultation activities of VCCI), and at the same time, collecting more focused and effective comments via VCCI.
6. *Regarding the time of issuance and becoming effective,* there are 08 documents drafted and issued in 2019, 03 documents issued in 2020. Although they were all drafted and issued in a shorter time compared to the normal process under the Law on Promulgation of Legal Documents, if compared with the milestone of January 14, 2019 required by the CPTPP, each of these documents is issued 246 days late on average.

However, all documents are guaranteed its implementing effect from January 14, 2019 in accordance with CPTPP commitments. There are 05 documents that ensure compliance with the effective time of CPTPP through regulations on retroactive effect (effective retroactively to January 14, 2019); 02 documents taking effect later than January 14, 2019 but to enforce Vietnam's rights (not obligations) under the CPTPP; 02 documents guiding the implementation in practice of CPTPP commitments that were directly applied from January 14, 2019; 02 documents taking effect later than January 14, 2019 but there were already documents guiding the temporary implementation since the Agreement came into force, or there late effect did not affect the interests of CPTPP partners or related stakeholders.

Although the effect date required by the CPTPP is still guaranteed, the slow issuance of CPTPP implementation documents has had certain impacts on the ability of Vietnamese businesses to take advantage of this Agreement in the first stage. This may be one of the reasons why the exploitation of the CPTPP by Vietnam in the first 2 years of implementation has not met expectations.

7. *In terms of consistency*, all provisions in Vietnam's CPTPP implementation documents so far are consistent with the Constitution (constitutional), in accordance with higher-level documents, in accordance with the competence, sequence, formality (legally), and basically in harmony, not in conflict with other regulations in the relevant legal system (unity in the legal system).
8. *In terms of compatibility*, except for some rare cases, most of the provisions in these legal documents are compatible with the related CPTPP commitments.

In most cases (tariff preferences, rules of origin, technical measures, etc.), this compatibility is ensured through transferring almost all texts or core content of commitments to domestic regulations, or with only small adjustments to ensure the technical consistency and sequence harmonization in the relevant domestic mechanism.

Some provisions "internalizing" CPTPP commitments in Vietnam's implementation documents have contents exceeding the standards of commitments, implementing commitments at a higher level than required or with an earlier roadmap (eg. requirements on transparency in bidding procedures).

In some cases, the "internalization" provisions have made certain adjustments compared to the requirements of the original commitments (in terms of scope, conditions, etc.) in order to ensure the harmony, rationality and consistency in the context of Vietnam domestic legislations.

In addition, there are still a few cases where regulations/mechanisms are not enough to ensure the implementation of CPTPP commitments in practice and therefore they need to be adjusted to ensure the compliance with CPTPP commitments (eg. requirement on price step in auctions of used car quota) or need to be developed timely (eg. specific mechanism on employee representative organizations in enterprises in labour law).

9. *In terms of transparency and feasibility*, almost all regulations are designed reasonably, clearly, closely, and feasibly. However, there are still some obstacles and difficulties in the implementing process of these documents in practice, especially in terms of rules of origin and tariff quotas under the CPTPP. For example, a regulation uses technical words/terms without clear explanations (rules of origin), a regulation that is inconsistent in procedures (customs verification of origin), a regulation providing unreasonable conditions (for importing used cars). A part of these obstacles has been handled by the management agencies through the issuance of guiding documents or by amending and supplementing relevant regulations. However, there are still some shortcomings that need to continue to be adjusted and revised.

Although the above shortcomings have not affected the implementation of Vietnam's obligations under the CPTPP or the interests of CPTPP partners, they may negatively affect the exploitation of the Agreement by Vietnamese businesses and therefore they should be considered for appropriate adjustment.

10. *In terms of gender impact*, out of 11 legal documents implementing the CPTPP that have been issued, there is only one document (Labour Code 2019) containing regulations that have gender impacts. The Review shows that there are 13 groups of new regulations amended/supplemented in the Labour Code 2019 related to CPTPP commitments on labour that have impact on gender. All of these regulations are designed towards better gender efficiency, creating more facilitated, equal and favorable conditions for female workers than the previous regulations.
11. ***Regarding law-making activities to prepare for the implementation of CPTPP's scheduled commitments***, the Review shows that there has been a total of 04 legal documents drafted to implement 11 groups of CPTPP commitments scheduled during 2022-2024 under 3 Chapters (Market Access for Goods, Intellectual Property, and Labour). These documents include 03 draft Laws (revised Intellectual Property Law, revised Criminal Procedure Code, revised Trade Union Law) and 01 draft Decree (draft Decree on Management of Refurbished Goods). In terms of content, a review of these four draft legal documents in September 2021 shows that all their regulations "internalizing" CPTPP commitments are compatible with the Agreement requirements. In terms of time, with the progress achieved up to the time of review, it is expected that all these documents will be considered and/or issued by the end of 2021.

12. Vietnam is also in the process of implementing other new-generation FTAs with high standards, and with similar requirements to the CPTPP in terms of legal and institutional development. *Lessons learned from the law-making activities to implement the CPTPP in the period of 2019-2021 and policy implications therefrom* are very important.

First of all, the review of compatibility with FTA commitments and building a law-making plan to implement the commitments should be carried out in a way that is more comprehensive (with documents reviewed at all levels), cross-sectoral (review all regulations related to commitments without being limited in the scope of management competence by each ministry), transparent and with adequate consultation with all relevant stakeholders.

Regarding the drafting process, in order to promulgate as soon as possible implementing documents, the drafting of contents should be done as soon as possible, even from the time the FTA is officially signed without waiting for the ratification. At the same time, the law-making plan implementing the FTA should clearly state which documents are issued according to a shortened procedure, thereby creating the condition for the drafting agency to accelerate the process of issuance.

Regarding the content of regulations to internalize FTA commitments, in order to ensure that the regulations not only comply with commitments but also best suit the interests of Vietnamese businesses, the drafting agencies should pay special attention on consulting the businesses and affected stakeholders in the drafting process. Information provided to the businesses should include not only draft documents but also explanations to help increase the quality of consultation comments.

The process of implementing commitments needs to be regularly monitored by the drafting and implementing agencies, implementing propaganda activities to disseminate information widely, and establishing focal points for specific guidances and consultancies (especially on rules of origin). At the same time, these agencies need to maintain a mechanism to quickly receive practical feedbacks, immediately handle problems as well as amend, and adjust regulations when necessary.

Finally, the law-making activities implementing FTAs need to be considered to broaden their objectives, not only to fulfill the "promises" with FTA partners, but also to go beyond that - developing legislation to meet our own internal needs in the process of FTA integration, thereby supporting businesses and the economy to take full advantage of FTAs, for the comprehensive and sustainable development of Vietnam./