

CHALLENGES AND OPPORTUNITIES UNDER THE TRANS-PACIFIC PARTNERSHIP (TPP)

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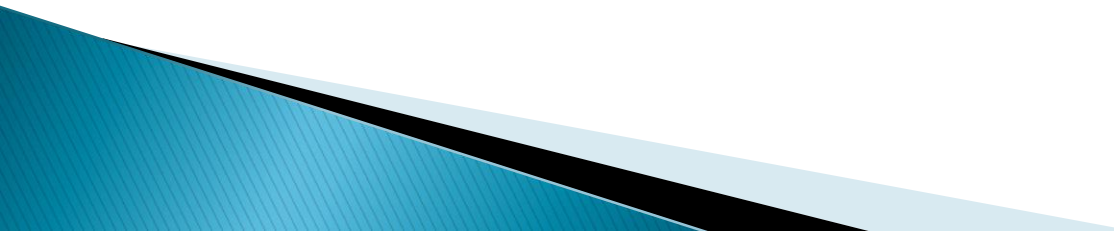
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HISTORY OF NEGOTIATION

- ▶ End of 2005: Brunei, Chile, New Zealand and Singapore signed Trans-Pacific Partnership Agreement (so called TPP or P4)
 - ▶ Sep. 2008: United States and the new beginning of TPP
 - ▶ Nov. 2008: Australia and Peru
 - ▶ Early 2009: Vietnam joined as an associate member, officially from Nov. 2010, after 3 rounds of talks.
 - ▶ Oct. 2010: Malaysia.
 - ▶ Dec. 2012: Canada and Mexico
 - ▶ July 2013: Japan, 12th member
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Trans-Pacific Partnership (TPP) is a free trade agreement. What the United States and several partners have not achieved under the WTO accession agreement will be incorporated in the TPP negotiations. Examples of specific issues include investment, equitization of State owned enterprises, labor standards and government procurements. The following will be key areas of negotiation under TPP

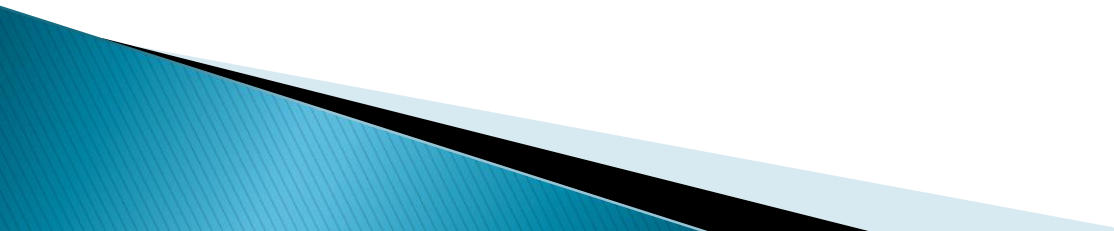


TRADE IN GOODS

WTO Plus (+)

- ▶ Towards **full liberalization**: eliminate 100% of import tariffs (of which over 90% will come into force upon TPP taking effect)
 - ▶ Deal with import tariffs on used goods
 - ▶ Deal with export tariffs
 - ▶ Propose opening of the market access to a number of refurbished goods
 - ▶ Impose stricter rules of import and export licensing; monopolies, import-export privileges (focal points); goods in transit etc.
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TEXTILES

- ▶ **One of the key benefits for Vietnam**
 - ▶ **Proposal from the US and several parties:**
 - To reduce tariff following long phase-in periods
 - The “Fiber forward” rule of origin; and
 - Safeguard measures and separate customs partnership
 - ▶ **Two facets of the rules of origin**
 - Cut and Sewn
 - Fiber forward
 - ▶ A multi-variation equation
 - ▶ Towards an ultimate result of equity
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OPENING OF MARKET ACCESS TO SERVICES AND INVESTMENT

- ▶ **6 key categories of obligations:**
 - Most-favored nation treatment (MFN)
 - National treatment (NT)
 - Presence in the host country
 - Opening of market access
 - Removal of some licensing requirements
 - Reasonable requirement of senior personnel
- ▶ Negotiation of the **“List of incompatible measures”**
- ▶ A member that wants to reserve a measure which is incompatible with its obligations under the TPP **must prove its necessity and negotiate the reservation of such measure** (negative list)
- ▶ **Policies will only be adjusted to become better and more favorable (ratchet)**

GOVERNMENT PROCUREMENTS

This is an issue of concern by many countries as government procurements in the developing countries like Vietnam often account for around 40% of GDP. The WTO Government Procurement Agreement (GPA) is now only applied to developed countries but it is suggested under FTAs that this is applied to all countries whether they are developing or developed.

NEGOTIATION OF PRINCIPLES

▶ **Basically under the WTO GPA:**

- MFN and NT treatment;
- Basically, to apply open bidding procedures to select contractors
- Remove the bidding conditions favorable to domestic bidders (such as requirement to use domestic products or suppliers), technology transfer requirement, requirement of counter-trade or investment etc.
- Transparency of information and procedures at all stages
- Rules of assurance of the integrity and settlement of appeals

▶ **Reserved right no to open market access** for the national defense and security interest purpose

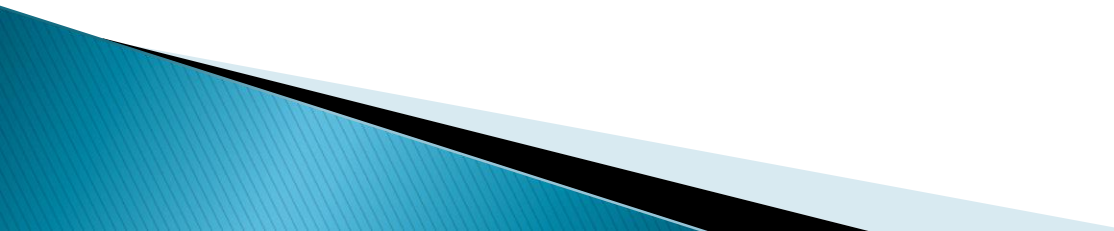
▶ **Exceptions:** leases or purchases of land or real estates; procurements for the subsidy purpose; procurements within an economic stimulus package; procurement of services relating to issuance of public bonds; procurement for foreign aid purpose etc

GOVERNMENT PROCUREMENTS

NEGOTIATIONS OF THE MARKET ACCESS OPENING

- ▶ **Each member has its own Schedule of commitments**
 - Authority-level commitments
 - Commitments on the scope of goods and services
 - Commitments on the threshold that triggers the participation of TPP members in the bidding process
- ▶ National and local issues
- ▶ Negative vs. Positive List approach with regard to the authority-level commitments and commitments on the scope of goods and services

REGULATIONS ON INVESTMENT MANAGEMENT

- ▶ Remove several licensing requirements (TRIMs+, also applicable to services)
 - ▶ Removal of several licensing requirements also applies to third party investments
 - ▶ Not impose the requirement to use certain technology except for the **public interest**
 - ▶ Offer the „minimum treatment under international practices“ to investors
 - ▶ Apply Investor-State Dispute Settlement (ISDS) mechanism
 - ▶ Ensure the transparency of ISDS procedures
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STATE OWNED ENTERPRISES (SOEs)

- ▶ **Starting point:** To create an equally competitive environment
- ▶ **Recognize the role of SOEs to serve the public interest, not require the elimination of SOEs**
- ▶ **Key obligations:**
 - Participating in competition, SOEs should operate with commercial considerations and in accordance with the market principles
 - Transparency of operations
 - Reduce subsidies and minimize interference to adversely affect competition
- ▶ **Identified problems:** enforcement burden, reverse discrimination, differences in the level of development
- ▶ **Complexity** of negotiations: this is the first time a set of rules governing operations of SOEs and their relationship with the State is developed

INTELLECTUAL PROPERTY

Broader commitments than those under the WTO

Key obligations:

- ▶ Improved level of protection for patents and pharmaceuticals
- ▶ Improved level of protection for test data of pharmaceutical and agrochemical products
- ▶ Improved level and extended term of protection for copyright and related rights
- ▶ Strengthened enforcement (protection) of IPRs particularly copyright and related rights in the cyber environment (responsibility of ISPs).
- ▶ Criminalization of violations and administrative remedies

This is the most difficult area of negotiation.



TRADE AND LABOR

- ▶ **Protection of workers' basic rights under the 1998 Declaration of ILO:**
 - Freedom of association and the right to collective bargaining
 - Prohibition of forced or child labor
 - Non-discrimination of workers
- ▶ The United States asks for **sanctions** for violations of commitments
- ▶ Vietnam is a member of ILO and has been protecting workers' basic rights properly in accordance with the 1998 Declaration of ILO
- ▶ Share the common vision, but take different approach
- ▶ Towards cooperation other than sanctions

TRADE AND ENVIRONMENT

▶ **Key obligations:**

- Environmental goods and services (EGS)
- Deal with subsidies in the fishery sector that might lead to overfishing
- Combat illegal fishing
- Combat illegal logging, protect wildlife
- Promote social participation in policy development
- Impose sanctions for violations of commitments

▶ **Share the common objectives, but take different approach**


▶ **Towards cooperation other than sanctions**

ELECTRONIC COMMERCE

Key recommendations

- ▶ Develop a definition of digital products
- ▶ Not collect import duty on e-commercial transactions
- ▶ Not discriminate against digital products
- ▶ Freedom of information flow
- ▶ Not require the equipment location in the host country
- ▶ Cooperate in the network security sector

Reserved rights:

- ▶ For the purpose of national defence, security, public order, privacy
 - ▶ Possible requirement to locate servers in the host country for the public interest
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OPPORTUNITIES UNDER TPP

Major opportunities:

- ▶ Attract capital and technologies for the national industrialization and modernization purpose.
 - ▶ Improve the structure of the import-export market
 - ▶ Expand markets for Vietnam's goods
 - ▶ Participate in regional and international production chains
 - ▶ Facilitate economic restructuring and renovate the growth model
 - ▶ Improve the institutional environment
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CHALLENGES IN THE TPP

Challenges for businesses:

- ▶ High level of economic opening not backed up by an adequate system of technical barriers to protect domestic productive sectors would require that businesses have to expeditedly enhance competitiveness of their goods and services in the domestic and the ASEAN markets and to produce more competing products to boost exports. There is a great pressure on businesses as Vietnam, in parallel with the TPP negotiations, is going to join the ASEAN Economic Community in December 2015 while the WTO commitment schedule is still ongoing and the roadmap of the ASEAN +6 will not be completed until end of 2020.

Challenges for the society as a whole:

- ▶ Social pressure
 - ▶ Pressure of the improved legal system
 - ▶ Management mindset and capacity
 - ▶ Pressure on managers
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