

**DRAFT OF BTA ROAD MAP PHASE III
CHAPTER VI – TRANSPARENCY AND THE RIGHT TO APPEAL**

DRAFT

**U.S.-Vietnam Bilateral Trade Agreement
Commitments Road Map Phase III**

**CHAPTER VI: TRANSPARENCY AND
THE RIGHT TO APPEAL**

Prepared by the
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OVERVIEW

The Ministry of Justice (MOJ) has responsibility for regulating and administering the judicial system in accordance with codes and laws adopted by the National Assembly (NA). In the absence of a law on civil procedure or evidence, the People’s Supreme Court (PSC) provides guidelines on matters of procedure and rules of evidence for the People’s Courts.

Where administrative procedures are concerned, however, the NA legislates on issues regarding citizens’ right to appeal, and most ministries stipulate first instance appeal procedures in Circulars that define the process within their respective areas of competence.

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Phase-in Period	Commitment No. 6.1 (BTA, Chapter VI, Article 1)	Affected Legal Instruments and Primary Responsible Authority	
Upon entry into force	Publication of all laws, regulations and administrative procedures pertaining to any matter covered by the Trade Agreement before they come into effect	<ul style="list-style-type: none"> • Decree No. 101/CP dated 23 September 1997 Setting Forth Detailed Regulations for Implementing a Number of Articles of the Law on Enactment of Statutory Instruments (Decree No. 101 (23 Sep. 1997)); especially Article 5.5 • The Law on Enactment of Statutory Instruments adopted by National Assembly on 12 November 1996 (Enactment Law (12 Nov. 1996)) • Circular No. 145/BT Guiding the Publication of Official Gazette of the Socialist of Republic of Vietnam dated 28 December 1992 (Circular No. 145 (28 Dec. 1992)) • Decision No. 50/1998/QD-TCHQ on the Publication of Books and Customs Declaration Brochures with regards to Goods Imported or Exported (Decision No. 50 (10 Mar. 1998)) • Circular No. 33/BT Providing Guidelines on Forms and for the Issuance of Statutory Instruments by State Administrative Authorities dated 10 December 1992 (Circular No. 33 (10 Dec. 1992)) 	<p>GOV (Ministers, Chief of State Bodies at Ministerial level, Chief of State bodies under the management of GOV, Presidents of PC under the central control)</p> <p>NA, SCNA, GOV (Ministers, Chief of State bodies under the management of GOV)</p> <p>GO</p> <p>GDC</p> <p>GO (Ministries State bodies at ministerial level, PCs under the central control)</p>

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Comment:

The current system for publication of statutory instruments is not consistent with the BTA's requirements. By way of overview:

Statutory instruments issued by State authorities at the central level:

The Enactment Law (12 Nov. 1996) and Decree No. 101 (23 Sep. 1997) govern the publication of statutory instruments issued by the central authorities only.

According to the Enactment Law (12 Nov. 1996), the GO is in charge of the publication of statutory instruments issued by the central authorities by way of the Official Gazette which is now published four (4) issues per month. According to Circular No. 145 (28 Dec. 1992), press agency under the control of the General Department of Post Office shall be in charge of the distribution of Official Gazette. Official Gazette shall publicize the following statutory instruments:

- Laws, resolutions of the NA, ordinances, resolutions of the SCNA, minutes of meetings of the NA and SCNA;
- Orders, decisions of the SP;
- Important declarations of the NA, SP, GOV, PM;
- Resolutions, decrees of the GOV, directives of the PM, decisions, directives, circulars of Ministers, Heads of agencies at the ministerial level and Heads of governmental agencies that function the State management in the relevant fields in the entire country.
- Treaties, international agreements that Vietnam has signed or participated in.
- Decisions relating to high-rank officers of the State, the awarding of honorable State titles, the division of administrative borders for a ward, a district or a city/province etc.

The Official Gazette is to serve all entities inside or outside Vietnam. Article 2 of Circular No. 145 (28 Dec. 1992) stipulates that the Press Distribution Agency of the GDP is in charge of the distribution of Official Gazette. This is to ensure that any entity, inside or outside Vietnam, can subscribe for Official Gazette. In practice, one can easily subscribe for Official Gazette at a post office or a press agency or an office of the GO on a monthly or yearly basis. From 1994 until the present, Official Gazette is published in both Vietnamese and English.

Circular No. 145 (28 Dec. 1992) requires that the issuing bodies at the central level send statutory instruments to the GO for publication purpose in the same date with the issuance of the statutory instrument. Circular No. 145 (28 Dec. 1992) does not govern statutory instruments issued by State local authorities.

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Statutory instruments issued by the State authorities at the local level:

The Enactment Law (12 Nov. 1996) does not stipulate the publication of statutory instruments issued by the PCs, the People's Council and the State authorities at local level nor does it designate a State authority to do so. Circular No. 145 (28 Dec. 1992) does not require Official Gazette to publish decisions, official dispatches issued by the State authorities at local level.

In practice, the State agencies at the ministerial level or the State agencies at the local level may provide/publish statutory instruments. For example: the List of Import and Export Tariffs published by the Statistics Publisher (in Vietnamese and English) or the books containing Statutory Instruments on Tax and The Instruments Guiding the Implementation are published four times per year by the Tax Department of Ho Chi Minh City. In addition, websites such as those of the NA, the MFA, the Drug Management Department and the SPI of Ho Chi Minh City are helpful sources to search statutory instruments issued by the State authorities from central to local level. In addition, the GO sometimes holds press meetings to publicize the issuance of a new law or ordinance.

According to Decision No. 50 (10 Mar. 1998), the Chief of the GDC stipulates the publication of a book and brochures providing guidelines on customs procedures for goods imported/exported. The book to be publicized includes decisions, official dispatches and brochures providing guidances on customs procedures applicable to goods imported or exported. The brochures provide guidance on customs procedures for goods include those for goods imported, goods exported, goods imported/exported by foreign invested enterprises in Vietnam, processed goods imported, processed goods exported. Decision No. 50 (10 Mar. 1998) stipulates that such brochures are posted at the office of customs agencies and one can buy the book guiding customs procedures for goods imported/exported at a customs agency.

In practice, a SOJ may publish the regulations issued by the PCs and the People's Councils by way of books issued monthly, for example, the SOJ of HCMC publishes books of regulations issued by the PC of HCMC¹.

Certain other State agencies at the local level, e.g. the Public Notary and the Customs Department of HCMC, do, at their option, post new relevant statutory instruments at their office for public reference. The posting of statutory instruments, however, does not meet the requirement of publication all statutory instruments as provided in commitment No. 6.1 of the BTA given the fact that only a small number of statutory instruments are selected to be posted.

The distribution of the above publications, as such, is not as large as that of Official Gazette, given the fact that the law does not require the General Department of Post Office be in charge of the distribution of such publications.

¹ *The law does not specify an authority entitled to publicize the legal documents issued by the local authorities e.g. PCs under central authorities. Given the issuance of the books of regulations of the PC of Ho Chi Minh City are under the title of the Service of Justice, we assume that the Services of Justice are responsible to publicize all the regulations of the PCs*

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Article 7 of the Enactment Law (12 Nov. 1996) stipulates that in cases where a piece of law/ordinance needs to be elaborated by another instrument, such law/ordinance must specify the time for issuing the implementing instrument and the State agency responsible for doing so. However, it is likely that not many statutory instruments comply with this formal requirement. In other words, one is not able to know exactly when a detailed instrument guiding the implementation of a new law will be issued.

There is no sanction for failure to comply with publication requirements. In other words, a statutory instrument takes effect whether or not it is properly published.

Except the Official Gazette, the law does not stipulate that a publication of statutory instruments issued by a State local agency must be distributed through the Press Department of Post Office so that such publication can be easily subscribed and distributed everywhere. As such, there might be a situation that a regulation/administrative procedure is issued and published but is not distributed to anywhere.

Commitment No. 6.1 requires that the laws, regulations and administrative procedures of general application be published in a manner that enables people to get acquainted with them before they come to effect. However, the Enactment Law (12 Nov. 1996) and Decree No. 101 (23 Sept. 1997) do not require that a legal instrument be published before its effective date. It further requires that: “each such publication shall include the effective date of the measure, the products (by tariff line) or service affected by the measure, and all authorities that must approve or be consulted in the implementation of the measure, and provide a contact point within each authority from which relevant information can be obtained”. However, Circular No. 33 (10 Dec. 1992) does not require that the content of a statutory instrument include information such as the authorities that must approve or be consulted in the implementation of the new laws/regulations or contact points of the authorities to seek relevant information, as required in the commitment. Further, it only governs the statutory instruments issued by the State authorities at the ministerial level, the PCs and the People’s Councils.

Decree No. 101 (23 Sept. 1997) stipulates that statutory instruments must be published in the Official Gazette within 15 days from the date of issue. As such, there is the possibility that statutory instruments that have come into effect immediately on the date of issue are only published after their effective date. In practice, the Official Gazette does not always update the statutory instruments in a timely manner, due to the large amount of statutory instruments issued within a same period of time, or because the issuing bodies do not provide the GO with the instruments issued in the same date of issuance for the GO to publish the statutory instruments before the effective date as required in the commitment, notwithstanding the fact that Circular No. 145 (28 Dec. 1992) requires that the sending of statutory instruments to the GO be in the same date with the issuance of the statutory instrument.

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Furthermore, although Enactment Law (12 Nov. 1996) and Decree No. 101 (23 Sep. 1997) requires that all statutory instruments issued by the central authorities must be published in the Official Gazette, certain instruments considered to be less important, those that have a narrow scope of application and those that are too long, are not published in the Official Gazette (For example, the Tariffs and List of Imports – Exports issued together with Decision No. 280 (28 May 1994)² was not put in the Official Gazette). This would not meet the requirement of the publication of all laws, regulations and administrative procedures of general application pertaining to the matters covered by Commitment No. 6.1 on a regular and prompt basis, due to the fact that a statutory instrument considered to be less important may fall within the definition of “general application” provided in the commitment.

None of the State authorities, even the GO, is required to or responsible for the collection of information regarding all of statutory instruments issued by the Vietnamese State authorities from central to local level in a certain period of time e.g., a day/a week/a month. As such, it is difficult to have a system of overall management of all legal publications in the entire country in order to meet the requirement of publication of all new statutory instruments before their effective date.

In addition, according to current relevant Vietnamese law, the concept of “publication” of a statutory instrument may be understood at the level of a notification of the issuance of a statutory instrument only. While the requirement of “publication” provided in Commitment No. 6.1 would be interpreted to the extent that making a statutory instrument issued available to any concerned entity and pointing out the date and time of the publication containing the statutory concerned as well as the State authority in charge of the delivery/sales of such publication in the entire country.

Notwithstanding the fact that certain State authorities that are not the GO publish statutory instruments pertaining to their governing area by ways of books, websites etc., there is nothing to ensure that such publication of these authorities is made in a regular, prompt and accurate basis due to the lack of a governing law on the responsibility of such authorities on the matter.

² *Decision No. 280/TTg promulgating the Tariffs and List of Imports – Exports dated 28 May 1994.*

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Phase-in Period	Commitment No. 6.2 (BTA, Chapter VI, Article 2)	Affected Legal Instruments and Primary Responsible Authority	
Upon entry into force	Provide access to economic and sectoral data, including foreign trade information. Not required to provide confidential information that may impede the law or that is contrary to State or private interests, but must be able to provide information mentioned in the agreement administered by the WTO	<ul style="list-style-type: none"> • Ordinance on Accounting and Statistics issued by the State Council dated 10 May 1988 • Decree No. 23/CP on the Functions, Duties, Powers and Organization of the Structure of the General Department of Statistics dated 23 March 1994 (Decree No. 23 (23 Mar. 1994)) • Decision No. 96/TCTK-TMGC on the issuance of the Regulations on the Report of the Statistics of the Import, Export of Goods and Settlement Balance dated 17 March 1997 (Decision No. 96 (17 Mar. 1997)) • Decision No. 25/1999/QD-BTC Promulgating the Regulations on the Establishment, Storage, Use and Keeping of State Budget Database Confidential dated 9 March 1999 (Decision No. 25 (9 Mar. 1999)) 	<p>SCNA (GOV, GDS, Ministries, State authorities at ministerial level, PC)</p> <p>GOV (Chief of the DGS, Ministers, Chief of State bodies at ministerial level, Chief of State bodies under the management of GOV, PCs under central control)</p> <p>GDS; GDC; SBV; MPI; MOF; MOT</p> <p>MOF; Chief of State Budget Department; Chief of the Board of computer management and appliance; Chief of the office of the MOF; Chief of State bodies under the management of the MOF control</p>

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		<ul style="list-style-type: none"> • Ordinance on the Protection of State Secrets on 11 January 2001, which will into force on 1 April 2001 and replaces the Ordinance on the Protection of State Secret dated 28 October 1991 (Ordinance on the Protection of State Secrets (11 Jan. 2001)) SCNA, GOV (Relevant State Bodies) • Decree 84/HDBT Providing the Regulations on the Protection of State Secrets dated 9 May 1992 GOV () • Decision No. 446-BYT/QD Providing the Regulations on the Protection State Secrets in Medical Field dated 6 May 1993 (Decision No. 446 (6 May 1993)) MOH • Decision No. 500/TTg providing the List of State Secrets in the Field of Tourism dated 3 August 1996 (Decision No. 500 (3 Aug. 1996)) PM (GDT) • Decision No. 15/1999/QD-TTg providing the List of State Secrets in the Field of Civil Aviation dated 5 February 1999 (Decision No. 15 (5 Feb. 1999)) PM (DCA) • Decision No. 681/TTg issued by the Prime Minister providing the List of State Secrets in Banking Area dated 15 November 1994 (Decision No. 681 (15 Nov. 1994)) PM (SBV)
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Comment:

All entities including foreign invested enterprises in Vietnam are subject to the Ordinance on Accounting and Statistics (10 May 1998) which requires that all entities and individuals be responsible to provide relevant numeral data in a timely and accurate manner in statistical surveys. According to the same Ordinance, the GDS, within its scope of authorization, decides and instructs periodical statistics investigation surveys in order to collect eco-socio information.

Article 1 of Decree No. 23 (23 Mar. 1994) stipulates that the General Department of Statistics is responsible to provide numeral data to the agencies, organizations and individuals in accordance with the regulations of the Government.

According to Decision No. 96 (17 Mar. 1994):

- The GDC is responsible to collect, check and combine initial numbers on import and export. The GDC is responsible to let the GDS and other relevant agencies to exploit the initial data on import and export. (On this point, however, it is likely that other agencies means other State agencies only).
- The SBV is responsible to establish the international settlement balance, report to the GOV of the same and provide the same to the GDS, the MPI the MOF and the MOT.

Decision No. 96 (17 Mar. 1994) also stipulates the provision of information as follows:

- The GDS is responsible to report to the GOV, publicize and provide official statistical data to the Ministries, international organizations and other information users in accordance with the regulations of the GOV.
- The Ministries and other organizations are allowed to provide information that the GDS has officially publicized on Statistical Book, Statistical number books, the books providing statistics results and other statistical publications.
- The Ministries can provide their partners with statistical numeral data as well as special information respectively relating to their area but the Ministries must comply with the State regulations on national's secrets and the information provided must not inconsistent with the ones publicized by the GDS.

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According to Decision No. 25 (9 Mar. 1999), the Confidential State Budget Database, and the provision of data from the State budget database to an entity of the MOF or any other entity, must be in compliance with the regulations of the PM and the Minister of the MOF on the list of State secrets in the field of finance. With regard to the provision of State budget data to the Ministries, authorities that are not the MOF, international organizations, countries that have economic, financial – relations with Vietnam from the source of the database established, the Chief of the Management of State Budget Department, the Board of the Management and Application of Computer and other relevant Departments (e.g. the Department of Finance Matter Relating to Foreign Affairs, the Administration Department, the General Department, the State Treasurer) are responsible for preparing the data and submitting to the Minister of the MOF for his approval on a periodical basis. The State Budget Department as well as other relevant agencies under the control of an authority at the ministerial level are entitled to provide the data approved and are responsible for such action.

Decision No. 25 (9 Mar. 1999) also stipulates that the access from any personal computer to the State Budget database must be approved by the Chief of the State Budget Department and the Chief of the Board of Management the Application of Computers.

Commitment No. 6.2 requires the possibility for nationals and companies of the US to access to data on the national economy and individual sectors of Vietnam and vice versa, except when the data that is considered “confidential information” under the laws of the countries. Notwithstanding the exception for confidential information, it is required that Vietnam as well as the US provide the information required to be disclosed under the agreements administered by the WTO.

Some of the data relating to the national economy, foreign trade and individual sectors such as “information required to be disclosed under the agreements administered by the WTO” may fall within the scope of information defined as State secret of any of the following levels: “absolute secret”, “top secret” and “secret” in the Ordinance on the Protection of State Secrets (11 Jan. 2001). The use, provision or publication of such information must be in compliance with the provision of the same Ordinance.

The Ordinance provides a list of information that is defined to be “absolute secrets” and “top secrets”. However, the same Ordinance does not specify the type of information that is considered “secrets” of the State. Article 1 of the Decree 84 (9 Mar. 1992) detailing the implementation of an old Ordinance on the protection of State secrets stipulates that the Heads of the State agencies or authorized persons are responsible to suggest lists of State secrets including “absolute secret”, “top secret”, “secret” in their respective area to the Minister of the MOP for his decision. However, Ordinance on the Protection of State Secrets (11 Jan. 2001) does not require the Ministries as well as State agencies at the central level is responsible to the publication of the lists of “absolute secret”, “top secret”, “secret” .

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As such, it is unclear if every State agency at the central level has largely publicized a list of confidential information in their respective area so that they can be able to provide the information required to be provided under Commitment No. 6.2, which does not fall within the scope of confidential information under Vietnamese law. At present, there is only a number of statutory instruments providing lists of State secrets in certain fields, for example, Decision No. 446 (6 May 1993) providing the Regulations on the Protection of State Secrets in Medical Field, Decision No. 500 (3 Aug. 1996) providing the List of State Secrets in the Field of Tourism and Decision No. 15 (5 Feb. 1999) providing the List of State Secrets in the Field of Civil Aviation or Decision No. 681 (15 Nov. 1994) providing the List of State Secrets in Banking Area. It is likely that the list of confidential information of other areas are not made available.

Notwithstanding the exception for confidential information, and given the requirement of Commitment No. 6.2, to comply with the BTA, Vietnam is required to provide all information/data required to be disclosed under the agreements administered by the WTO with no exception of confidential information in this stage.

According to the agreements administered by the WTO, Vietnam may consider to provide with the US information/data such as:

- Statistical Data:
 - (a) Main economic indicators: GNP; GNP per capita; State budget; production and consumption of the basic goods; annual changes in prices; employment in different sectors; levels of employment; balance of payments; foreign exchange.
 - (b) Foreign Trade Statistics: foreign trade (aggregates at the two-digit HS level); export statistics; import statistics; imports from main suppliers, preferably at a tariff line level; trade by geographic areas (main trade partners).
 - (c) Government procurement statistics: volume of government procurement broken down by central government, sub-central government and other entities and within each of these headings; supplies, construction and services.
- Publications related to statistics
- Foreign trade statistics for goods and services, responsible agencies

The Civil Code in Vietnam protects the rights of an individual with respect to information relating to his privacy which is currently subject to a broad legal definition.

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Phase-in Period	Commitment No. 6.3 (BTA, Chapter VI, Article 4)	Affected Legal Instruments and Primary Responsible Authority
Upon entry into force	Make readily and quickly available unpublished laws, regulations and administrative procedures	<ul style="list-style-type: none"> <li data-bbox="856 402 1478 461">• Official Dispatch No. 5069/VPCP/TCQT on the Preparation for Post-BTA, dated 21 November 2000 GO (MOJ; other relevant Ministries)
<p><i>Comment:</i></p> <p>There is presently no source providing information about statutory instruments which are issued but not published in the entire country. Official Dispatch No. 5069 requests the ministries and relevant authorities to review the statutory instrument systems for the purpose of the post-BTA period, the current law on the publication of statutory instruments in Vietnam, as such, may also be reviewed and amended to comply with the requirements of the BTA.</p>		

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Phase-in Period	Commitment No. 6.4 (BTA, Chapter VI, Article 5)	Affected Legal Instruments and Primary Responsible Authority
Upon entry into force	Designate and publish an official journal on all measures of general application	<ul style="list-style-type: none"> • Decree No. 101/CP dated 23 Sept. 1997 Setting Forth Detailed Regulations for Implementing a Number of Articles of the Law on Enactment of Statutory Instruments; Articles 6 and 7 <p style="text-align: right;">GOV (MOJ)</p>
<p><i>Comment:</i></p> <p>Article 6 of Decree No. 101 (23 Sept. 1997) requires that statutory instruments must be published using telecommunications means. Press agencies, Television Stations and Radio Stations from central to local level are responsible for the publication of the entire content or the major content of the statutory instruments issued.</p> <p>Article 7 of Decree No. 101 (23 Sept. 1997) provides that statutory instruments issued can be translated into foreign languages. The MOJ will cooperate with the MOCI to select publishers to publish the translated versions of statutory instruments issued.</p> <p>However, there is presently no law governing and no State agency in charge of the publication and distribution of an official journal on all measures of general application.</p>		

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Phase-in Period	Commitment No. 6.5 (BTA, Chapter VI, Article 8)	Affected Legal Instruments and Primary Responsible Authority
Upon entry into force	Ensure that all import-licensing procedures both automatic and non-automatic are implemented in a transparent and predictable manner, in accordance with the WTO Agreement on Import Licensing Procedures	<ul style="list-style-type: none"> <li data-bbox="877 435 1717 526">• The Law on Foreign Investment in Vietnam dated 12 November 1996 and amended on 9 June 2000 (Foreign Investment Law (12 Nov. 1996)) NA (GOV; MPI) <li data-bbox="877 565 1654 656">• Commercial Law of the Socialist Republic of Vietnam on 10 May 1997 (Commercial Law (10 May 1997)) NA (MOT) <li data-bbox="877 695 1885 883">• Decree No. 57/1998/ND-CP detailing the Implementation of the Commercial Law with respect to the Activities of Import, Export, Processing and Age, Purchasing and Selling Goods with Foreign Partners (Decree No. 57 (31 Jul. 1998)) GOV (GDC; MOT; MOF; PCs under central control, Ministers, Chief of State bodies under the management of GOV) <li data-bbox="877 922 1661 1045">• Decree 24/2000/ND-CP Setting Forth Detailed Regulations for Implementing the Law on Foreign Investment in Vietnam dated 31 July 2000 (Decree No. 24 (31 July 2000)) GOV (MPI) <li data-bbox="877 1084 1591 1370">• Circular No. 22/2000/TT-BTM dated 15 December 2000 Guiding the Implementation of Decree No. 24/2000/ND-CP issued by the Government dated 31 July 2000 Detailing the Implementation of the Foreign Investment Law of Vietnam in respect of Import, Export activities as well as other Commercial Activities of Foreign Invested Enterprises in Vietnam (Circular No. 22 (15 Dec. 2000)) MOT

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		<ul style="list-style-type: none"> • Decree No. 45/2000/ND-CP Promulgating the Regulations on Representative Offices and Branches of Foreign Merchants and Foreign Tourism Enterprises in Vietnam dated 6 December 2000 • Decision No. 242/1999/QD-TTg on the Management of Import and Export of Goods in the Year 2000 dated 30 December 1999 (Decision No. 242 (30 Dec. 1999)) • Circular No. 05/2000/TT/BTM Providing Guidelines for Implementing Decision No. 242 (30 Dec. 1999) on Import, Export of Goods and Other Activities of Foreign Invested Enterprises dated 15 December 2000 (Circular No. 05 (30 Dec. 1999)) • Circular No. 20/2000/TTLT-BTM-TCDL dated 20 October 2000 Guiding the Implementation of Decree No. 45 (6 Sept. 2000) issued by the Government on the Representative Office, Branches of Foreign Merchants and of Foreign Tourism Enterprises in Vietnam (Circular No. 20 (20 Oct. 2000)) • Regulation No. 295/TMDL-XNK dated 9 April 1992 on the Import and Export of Goods Managed by Quotas 	<p>GOV (MOT, GDT)</p> <p>PM (MOT; Ministers, Heads of State bodies at ministerial level, Chief of governmental bodies, President of PCs under central control)</p> <p>MOT</p> <p>MOT; GDT</p> <p>MOT; GDT</p>
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		<ul style="list-style-type: none"> • Official Dispatch No. 3735/KTTH relating to the Addition to Import Quota for Automobile in the Year 1996 dated 9 April 1996 GOV () • Official Dispatch No. 2912/VPCP-KTN relating to the Addition to Import Quota for Fertilizer in Vinh Long Province dated 30 July 1998 GOV ()
<p><i>Comment:</i></p> <p>At present, the import-related laws in Vietnam are distinguished between those applicable to foreign invested enterprises established in accordance with the Foreign Investment Law (9 Jun. 2000) and those applicable to the entities not established under the Foreign Investment Law (9 Jun. 2000) and apply merchants (including Vietnamese and foreign merchants) in accordance with the Commercial Law (10 May 1997).</p> <p>With regard to foreign invested enterprises established in accordance with the Foreign Investment Law (9 Jun. 2000); the import/export activities of the same are governed by the Foreign Investment Law (9 Jun. 2000), Decree No. 24 (31 Jul. 2000), Circular No. 22 (15 Dec. 2000), as well as Decree No. 57 (31 Jul. 1998) and other relevant laws.</p> <p>Article 8(1) of Decree No. 57 (31 Jul. 1998) stipulates that merchants that are enterprises of all economic sectors, established in accordance with the law, are allowed to import, export goods in accordance with the scope of business provided in the investment licence.</p> <p>According to the Foreign Investment Law (9 Jun. 2000), foreign invested enterprises are allowed to import machinery, equipment, spare parts, materials to establish their fixed-assets, broaden their scope of production, renew the technology as well as to import goods (with respect to service projects) or materials (with respect to production projects) for the purpose of production, or providing services in accordance with the investment licence.</p> <p>There is currently no law allowing a foreign invested enterprise established in accordance with the Foreign Investment Law (9 Jun. 2000) to import goods to conduct trading such as importing goods to sell in Vietnam market without any production or provision of services in Vietnam. This is, however, not to the exclusion of some special cases where a foreign investor in Vietnam may apply for the function of importing good to directly sell in Vietnam market without any requirement of production. Such exceptions are considered on a case by case basis.</p>		

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According to the Foreign Investment Law, foreign invested enterprises have the right to import machinery, equipment, spare parts, materials and raw materials etc. for the purpose of project construction from the date of issuance of their investment license. Decree No. 24 (31 Jul. 2000) stipulates that in order for a foreign invested enterprise to execute such a right, it must submit an “import plan” to the MPI within 60 days from the date of being licensed for its approval. Within 15 days from the date of receipt of fully prepared dossier, the MOT will grant its approval on the import plan. In terms of import goods to produce products or provide services, a submission of an import plan is also required. Having attained the approval of the MPI, foreign invested enterprises can import the listed goods without any further requirement of an import license.

If foreign invested enterprises established in accordance with the Foreign Investment Law (9 Jun. 2000) import goods for the purposes not falling within the scope of activities defined in the investment licence, they may be required to seek approval from the MPI on a case by case basis.

Article 8(3) of Decree No. 57 (31 Jul. 1998) stipulates that an enterprise must register for its import/export code at the Customs Department in the provinces/cities before conducting its import and export activities.

It is noteworthy that the concept of “import license” in the above type of import activities has been removed. Instead, the GOV controls and supervises the import activities of foreign invested enterprises in Vietnam by way of its requirement and approval on an “import plan”. This may be considered “automatic import licensing” procedure under the Agreement on the Import Licensing Procedures of the WTO.

With regard to entities related to foreign elements that are not established in accordance with the Foreign Investment Law (9 Jun. 2000), such as branches of foreign companies, the import/export activities procedures are governed by the Commercial Law (10 May 1997), Decree No. 45 (6 Dec. 2000) and Decree No. 57 (31 Jul. 1998).

According to Decree No. 45 (6 Dec. 2000), branches of foreign company are entitled to import goods, such as machinery and equipment serving exploitation of minerals, processing of agricultural and aquatic products; raw materials for production of medicines for medical treatment for humans and for the production of veterinary medicines; and raw materials for production of fertilizer and insecticide, after they have obtained a certificate of business registration and their company’s code. No import licence is required. The procedure for such importation has not been stipulated yet.

However, given that the currently applicable Decree No. 57 (31 Jul. 1998) stipulates that merchants that are enterprises of all economic sectors, established in accordance with the law, are allowed to import, export goods in accordance with the scope of business provided in the investment licence, it may be implied that the import procedures for the business entities governed by Decree No. 45 (6 Dec. 2000) are the same to the ones provided in Decree No. 57 (31 Jul. 1998). This means that no import licence is required if the business entity import goods to conduct business within the scope of its business licence and with respect to the goods mentioned above. In practice, a branch of a foreign company such as tobacco company can import goods to conduct its production in Vietnam, notwithstanding the fact that the procedure to do so is unclear. In other words, this can also be considered “automatic import licensing procedure.”

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In term of “non-automatic” import licensing procedures, the following is noteworthy:

Vietnam still maintains the “non-automatic” import licensing procedures which apply to goods falling within the Lists of Goods Imported or Exported in accordance with a Certain Number of Conditions. According to Decree No. 57 (31 Jul. 1998), goods imported/exported conditionally are those imported/exported in accordance with quotas and or subject to an import licence issued by the MOT or other specific Ministries with respect to goods specifically managed in accordance with List(s) of Specific Goods approved by the GOV. Such Lists are subject to change on a periodical basis. Article 4 of Decree No. 57 (31 Jul. 1998) stipulates that the MOT, in its major role, together with the MPI and other relevant Ministries will submit to the PM a plan on the management of import and export on a yearly basis for his approval.

The current applicable plan has been issued together with Decision No. 242 (30 Dec. 1999). According to Article 9 of the same Decision, after reaching an agreement with the MOT, the relevant Ministries are designated to publicize as well as introduce a list of import/export goods subject to a special management in principal. In addition, it stipulates that the other relevant Ministries only provide stipulations on technical standards, conditions for import/export, they are not engaged in the granting of an import licence or an approval on the types, quantity, value of import/export goods.

Decision No. 242 (30 Dec. 1999) provides a list of goods prohibited from import, goods prohibited from export and goods imported in accordance with an import licence issued by the MOT. Decision No. 242 (30 Dec. 1999) does not provide any procedure to obtain an “import licence” when necessary.

In addition, although Decree No. 57 (31 Jul. 1998) provides a list of goods imported/exported within quotas granted, such list, except for rice, does not specify the name of the goods subject to quotas. The same list only mentions “goods subject to quotas imposed by foreign countries or economic organizations to Vietnam” but does not actually list down everything in specific. At present, there is no law providing a comprehensive list of goods subject to quotas and official procedure for a business entity to apply for quotas in a specific field.

With respect to requirement of standard or quality applicable to import/export goods, the General Department of Standards - Quality - Measures sets all the standards in all specific fields/ministries. The same Department is able to provide all kind of Vietnamese standards as well as specific standards of different ministries by way of a comprehensive book containing all types of standards in Vietnam issued on a yearly basis or by way of separate documents. Although such publications are available at the office(s) of the General Department of Standards - Quality - Measures, they are not distributed largely in the entire country. Therefore, one may have to go to the office of the General Department of Standards - Quality - Measures to buy a copy of them because it is impossible to find such documents in a bookstore in Vietnam.

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Commitment No. 6.5 requires that both automatic and non-automatic import licensing procedures be implemented in a transparent and predictable manner and in accordance with the WTO Agreement on Import Licensing Procedures.

Under the Agreement on the Import Licensing Procedures of the WTO, import licensing procedures include automatic import licensing and non-automatic import licensing. Automatic import licensing is defined as “import licensing where approval of the application is granted in all cases” and shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing”. Non-automatic import licensing is defined as import licensing not falling within the definition of automatic import licensing.

The legal language used in the laws relating to import export activities in Vietnam does not distinguish the terms of “non-automatic” or “automatic” import licensing procedures. However, it is likely that “automatic” and “non-automatic” import licensing procedures do actually exist in Vietnam notwithstanding the fact that they are not named in the same way as they are under the Import Licensing Procedures Agreement of the WTO.

In general, according to the Agreement on Import Licensing Procedures of the WTO, “the rules and all import licensing procedures shall be neutral in application and administered in a fair and equitable manner”. There is currently no Vietnamese law on import/export licensing procedure containing such language.

In term of publication, the Agreement on Import Licensing Procedures of the WTO requires as follows:

“the rules and all information concerning procedures for the submission of application, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, ..., in such a manner as to enable to the government and traders to become acquainted with them. Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of procedures subject to import licensing shall also be published in the same manner and within the same periods as specified above”.

The current law relating to the publication of statutory instruments in Vietnam does not require an issuing body to publicize the same 21 days prior to the effective date of a statutory instruments. With regard to a statutory issued by a local State agency, Vietnamese law does not govern the publication of the same and, in general, does not stipulate a State agency in charge of doing so either.

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Further, the above regulations of the WTO require the publication of any exception relating to the licensing procedures. This may be to the extent of meaning that if there is an exception that a foreign investor is granted the right to import goods for selling in Vietnamese market while other investors of the same status are not granted the same right/licence, such exception is required to be publicized 21 days prior to the effective date of the licence, together with details of the reason or conditions for the same.

With respect to the responsibility of notification, it is required that the notification of the institution of import licensing procedures include the following information:

- list of products subject to licensing procedures;
- contact points for information of eligibility;
- administrative body(ies) for submission of applications;
- date and name of publication where licensing procedures are published;
- indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3 which define “automatic” and “non-automatic” import licensing procedures;
- in the case of automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and
- expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.

At present, Decree No. 57 (31 Jul. 1998) does provide a list of goods imported/exported in accordance with an import licence. However, such list does not specify the goods that are specifically managed by specific Ministries, which has been approved by the GOV. This is due to the fact that goods specifically managed by specific Ministries are subject to change on a periodical basis. Therefore, Decree No. 57 (31 Jul. 1998) does not provide the name or date or code of a current applicable statutory instrument that reflects the approval of the GOV nor does it point out where and when such document can be obtained.

In addition, although it is implied that a plan of management of import and export of a year is applicable to that sole year, in practice, a statutory instrument containing a new plan on the management of import export of a new year does not stipulate the repeal of the plan of the previous year.

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For example, Decision No. 242 (30 Dec. 1999) on the management of import and export of goods in the year 2000 does not stipulate the repeal of Decision No. 254 (31 Dec. 1999)³ on the management of import and export of goods in the year 1999. In addition, Circular No. 05 (21 Feb. 1999) issued by the MOT guiding the implementation of Decision No. 242 (30 Dec. 1999) does not repeal Circular No. 07 (25 Mar. 1999)⁴ issued by the MOT guiding the implementation of Decision No. 254 (31 Dec. 1999).

Part III of Circular No. 07 (25 Mar. 1999) guiding the implementation of Decision No. 254 (31 Dec. 1999) allows the import export goods in the mode of goods exchanging to goods. Decision No. 242 (30 Dec. 1999) as well as Circular No. 05 (21 Feb. 1999), however, does not mention about import/export in the mode of goods exchanging to goods but does not repeal the relevant previous laws. This has made it ambiguous in term of meaning of the law and unclear as to whether or not Decision No. 242 (30 Dec. 1999) allows the mode of import/export to exchange goods. As such, the current laws governing the import/export activities/procedures in Vietnam may not meet the requirement of transparency and predictability provided in Commitment No. 6.5.

With respect to the “automatic import licensing procedures”; the Vietnamese law related to import/export activities are transparent in term of goods imported/exported in accordance with the business licence or investment licence and not fall within the scope of list of goods imported/exported subject to certain conditions. Such laws, therefore, meet the requirements of Commitment No. 6.5, except the procedure for the importation of those entities governed by Decree No. 45 (6 Dec. 2000).

As noted above, Decree No. 45 (6 Dec. 2000) does not provide any procedure for the import activities of a branch of a foreign company in Vietnam, notwithstanding the fact that a foreign company’s branch can actually import goods for their business activities purposes. In addition, Circular No. 20 (20 Oct. 2000) guiding the implementation of Decree No. 45 (6 Dec. 2000) does not stipulate the procedure for import activities of a branch either.

With respect to the “non automatic import licensing procedures”, and as said, according to Decree No. 57 (31 Jul. 1998), goods imported/exported in accordance with certain conditions are those imported or exported in accordance with quotas or an import licence. However, there is currently no law providing a comprehensive list of goods subject to quotas and official procedure for a business entity to apply for quotas in a specific field.

³ *Circular No. 254/1998/QĐ-TTg on the Management of Import, Export of Goods in the year 1999*

⁴ *Circular No. 07 (25 Mar. 1999) [full citation needed]*

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Article 3(5)(a) of the Agreement on Import Licensing Procedures of the WTO requires provision of following information, among other, which relates to non-automatic import licensing:

- the administration of the restrictions to the goods (on this point, Vietnam provides the plan of import/export management reflecting the restrictions on a periodical basis.)
- the import licence granted over the recent period (Vietnam has not had any official publication containing information relating to the import licence granted. And the current Vietnamese law does not cover this issue.)

In addition, Article 3(5)(b) requires the publication of overall amount of quotas to be applied by quantity or value. Currently, Vietnam does not have laws that provide a comprehensive list of overall amount of quotas of all fields. The procedure of allocation of quota to enterprises may also not largely published.

According to Regulation No. 295/TMDL-XNK issued by the Ministry of Trade and Tourism (now divided into the MOT and the GDT) dated 9 April 1992, the Ministry of Trade and Tourism is the sole State agency with authority to directly allocate quotas to enterprises. Given the old date of issuance of the same Regulation and the fact that there is currently no other law governing the allocation of quotas and the procedure of the same is publicized, it is unclear if Regulation No. 295 (9 Apr. 1992) is still applicable. On the other hand, one may note that there are certain Official Dispatches providing the direction of the GOV or the GO on the additional quotas, e.g.. Official Dispatch No. 3735/KTTH issued by the Government relating to the Addition to Import Quota for Automobile in the Year 1996 dated 9 April 1996, and Official Dispatch No. 2912/VPCP-KTN issued by the Government Office relating to the Addition to Import Quota for Fertilizer in Vinh Long Province dated 30 July 1998. The above shows that due to the lack of a relevant transparent law, it is unclear if it is the MOT or the GOV or the GO has the authority to allocate quotas to enterprises.

Article 3 of the Agreement on the Import Licensing Procedures stipulates that “non-automatic licensing shall not have trade-restrictive or distortive effects on imports additional to those caused by the imposition of the registration.” In order to meet the requirement to “not have trade-restricting effects”, Vietnam would need to meet the requirements mentioned in Article 2(2)(a) of the Agreement on the Import Licensing Agreement Procedures as follows:

- (i) any person, firm or institution which fulfils the legal requirements of the importing Member for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licenses;
- (ii) application for licences may be submitted on any working day prior to the customs clearance of the goods;

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- (iii) applications for licenses when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days.

At present, the laws related to import/export activities do not use the language of the WTO's agreement. Also, the current applicable law does not stipulate the time limit of "10 working days" for the granting of quotas or import licences or does it stipulate the provisions about equal eligibility.

In addition, the Agreement on the Import Licensing Procedures requires the following, inter alia:

- application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application;
- applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies;
- no application shall be refused for minor documentation errors which do not alter basic data contained therein;
- no penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence; and
- licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated to the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

The above language has not been included in any import/export related law of Vietnam and as such, the implementation of import-export licensing procedure in Vietnam would appear to be currently not in compliance with the requirements of Commitment No. 6.5.

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Phase-in Period	Commitment No. 6.6 (BTA, Chapter VI, Article 3)	Affected Legal Instruments and Primary Responsible Authority
Upon entry into force	Allow U.S. companies to comment on formulations of laws, regulations and administrative procedures	<ul style="list-style-type: none"> • Enactment Law (12 Nov. 1996); especially Articles 39, 40 NA (MOJ) • Decree No. 101/CP dated 23 September 1997 Setting Forth Detailed Regulations for Implementing a Number of Articles of the Law on Enactment of Statutory Instruments, especially Article 16 GOV (MOJ)
<p><i>Comment:</i></p> <p>In the stage of <i>planning</i> the establishment of law projects, Vietnamese law does not mention the collection of comments from private business sector. In practice, such commitments are solicited on an ad hoc, informal basis.</p> <p>In the stage of <i>drafting</i> laws, according to Article 39 of the Enactment Law (12 Nov. 1996), the NA or the SCNA decides on the obtaining of comments of people on any law/ordinance projects as well as the content, measure, time and scope of the same. The SCNA provides instructions on the obtaining and recording of people’s comments on the law/ordinance projects. Article 16 of Decree 101 (23 Sept. 1997) stipulates that during the drafting of law, ordinance, resolution and decree projects, the authorities in charge of the draft work shall obtain comments of relevant agencies, organizations and individuals. The agencies, organizations and individuals consulted are responsible to send their comments in writing to the State authorities mainly in charge of the drafting work. Comment of the Ministries, the authorities at the ministerial-level must be signed by the heads of such authorities or organizations.</p> <p>In the stage of <i>evaluating</i> laws/regulations, only the Ministries, State authorities at the ministerial level and relevant agencies under the control of the GOV are entitled to comment on the law.</p>		

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Commitment No. 6.6 furnishes US companies and US nationals with the right to comment on the formulation of laws, regulations and administrative procedures of general application.

The Enactment Law (12 Nov. 1996), however, only mentions obtaining people's comments on law and ordinance projects when the NA or the SCNA decides to do so. The Enactment Law (12 Nov. 1996) does not stipulate the obtaining of people's comments on the draft of other statutory instruments that are not law or ordinance such as the statutory instruments issued by the SP, the GOV, the authorities at the ministerial-level. Although Article 16 of Decree 101 (23 Sept. 1997) requires that in the draft of law, ordinance, resolution and decree, the authorities in charge of the drafting work obtain comments of relevant agencies, organizations and individuals, it is unlikely that such "relevant agencies, organizations and individuals" includes business entities that are not State-related entities. In other words, as "people's comments" is not mentioned, it is implied that the "relevant agencies, organizations and individuals" provided in Article 16 of Decree 101 (23 Sept. 1997) are only relevant State authorities.

In addition, with regard to the obtaining of people's comments on the law/ordinance projects, Article 40 of the Enactment Law (12 Nov. 1996) stipulates that "citizens comments on law or ordinance projects through their agencies or organizations." According to Article 49 of the 1992 Constitution (15 April 1992), "citizens" are those who have Vietnamese nationality. Strictly speaking, this means that a US national is currently not entitled to comment on a law/ordinance project as stipulated in Article 39 and 40 of the Enactment Law (12 Nov. 1996).

Further, none of the law, including the Enactment Law (12 Nov. 1996), Decree 101 (23 Sept. 1997) or any other law/regulation, governs a right for an entity, even US national or Vietnam national, to comment on statutory instruments such as regulations or administrative procedures which are issued by an authority at the ministerial/local-level or the PCs of provinces/cities in Vietnam.

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Phase-in Period	Commitment No. 6.7 (BTA, Chapter VI, Article 6)	Affected Legal Instruments and Primary Responsible Authority
Upon entry into force	Administer laws in uniform and impartial manner	<ul style="list-style-type: none"> <li data-bbox="863 435 1843 500">• Official Dispatch No. 5069/VPCP/TCQT on the Preparation for post-BTA, dated 21 November 2000. GOV (MOJ; MOT) <li data-bbox="863 532 1843 597">• Ordinance on the Signing and Implementation of International Agreements; especially Article 24 SCNA (PSC, PIPP)
<p><i>Comment:</i></p> <p>Article 8 of the Enactment Law (12 Nov. 1996) provides that State agencies are, within the scope of their authorities, responsible to review the legal instrument system, to discover statutory instruments that are conflicting, contradictory or no longer appropriate for the actual state of development of the country and appeal to an authorized State body for amendment, supplement, replacement, revocation.</p> <p>Although every authorized body has the obligation to review the legal instrument system, many enacted statutory instruments are still in conflict and contraction to each other.</p>		

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Phase-in Period	Commitment No. 6.8 (BTA, Chapter VI, Article 7)	Affected Legal Instruments and Primary Responsible Authority
Upon entry into force	Maintain administrative and judicial tribunals and procedures for prompt review and correction of administrative action relating to matters covered by the Agreement. Procedures are to include the right to appeal a decision to a judicial body	<ul style="list-style-type: none"> <li data-bbox="877 435 1671 496">• Article 114.3 of the 1992 Constitution of the Socialist Republic of Vietnam on 15 April 1992 NA <li data-bbox="877 532 1751 594">• Article 18.1 of the Law on the Organization of the Government on 2 October 1992 NA (GOV) <li data-bbox="877 630 1835 659">• The Law on Claims and Appeals on 2 December 1998 NA (PSC, PCourt) <li data-bbox="877 695 1871 756">• The Ordinance on the Procedures for Resolving Administrative Cases on 21 May 1996 SCNA (PSC, PCourt) <li data-bbox="877 792 1772 886">• Official Dispatch No. 39-KHXX issued by the People’s Supreme Court guiding the Implementation a Number of the Administrative Case Ordinance dated 6 July 1996 PSC, PCourt
<p><i>Comment:</i></p> <p>The Appeal Law (dated 2 Dec. 1998) and the Administrative Cases Ordinance (21 May 1996) stipulate the rights to appeal against an administrative decision/act issued/conducted by a State authority/State official that illegally causes damage to his legitimate interests or rights at an administrative court of a People’s Court.</p>		

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According to Article 4 (1) of the Administrative Cases Ordinance (21 May 1996), an administrative decision is defined to be “a decision in writing of the Ministries, State agencies at the ministerial-level, agencies under the management of the GOV, the GO, the Office of the NA, State agencies at the local level, PCourts, PIPPs which has been applied once to one or a number of specific entities in a specific matter”.

According to Official Dispatch No. 39 (6 Jul. 1996), only those relating to the forced resignation of their employees are subject to the government of the Administrative Cases Ordinance (21 May 1996). Other decisions of the PCourts, the PIPP will be solved in accordance with the legislation on the procedures

According to Commitment No. 6.8, if the initial right to appeal is to an administrative body, there shall also be the opportunity for appeal of the decision to a judicial body. Under the Administrative Cases Ordinance (21 May 1996), one must appeal an administrative decision to a State administrative body or an official who has believed to have granted the decision illegally before appealing it to a court. Also, Article 30 of the Appeal Law (dated 2 Dec. 1998) stipulates that “the appellant shall have to first appeal to the official who has issued the administrative decision or to the body that has its officials and/or the employee having actions that the appellant believe to damage his lawful interest”. This means that the “initial right to appeal to an administrative body” is the sole first choice for an appellant because a Vietnamese court is not entitled to take an administrative case before it has been solved once by an authorized State body.

Commitment No. 6.8 requires the maintenance of administrative and judicial tribunals and procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to matters covered by the BTA.

According to Article 4(2) of the Administrative Cases Ordinance (21 May 1996), an administrative action is “an action of conducting or not conducting a State assignment of State officials”.

In its Article 11, the Administrative Cases Ordinance (21 May 1996) stipulates that a Court has the authority to resolve the following cases only:

1. Appeal against decisions imposing fines on administrative violations or applying compulsory measures to dismantle illegal constructions with respect to houses, projects or firmly-structure objects;
2. Appeal against decisions on administrative measures in the forms of education at communes, wards or township, sending to education school, educational establishments, medical establishments or administrative custody;
3. Appeal against decision on forced resignation, except those relating to the People’s Army and decisions on the dismissal in accordance with the provisions of the Labor Code in Vietnam;

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4. Appeal against administrative decisions or administrative action relating to the grant, withdrawal of licences in the field of basic construction, production, business and land management.
5. Appeal against decision on the forcible requisition, purchase and confiscation of assets;
6. Appeal against decisions on tax collection and tax recovery;
7. Appeal against decisions on charges and fees;
8. Appeal against other administrative decisions and administrative actions in accordance with the regulations of the law.

According to Official Dispatch No. 39 (6 Jul. 1996), a PCourt is only entitled to take cases listed from Point No. 1 to No. 7 above. With regard to cases fall within Point No. 8, a PCourt is entitled to take them only when the NA or the SCNA authorize it to do so.

Given the Commitments provided in the BTA, Vietnam may have a general commitment on the compliance with all of its Commitments in the BTA. The Administrative Cases Ordinance (21 May 1996), however, does not grant a PCourt in Vietnam the authority to resolve a case that considered an administrative action under the BTA but not fall within the scope of authority of a PCourt.

For instance, if a commitment provided in the BTA furnishes an entity with the right to obtain an investment licence or an import licence in Vietnam but due to the possibility that relevant Vietnamese laws might have not amended to be in compliance with the requirements in the BTA, such entity may not be granted the investment licence or import licence as stipulated in the BTA. This case means that the administrative action of not granting the licence to the entity may be in compliance with Vietnamese law but not in compliance with the commitments provided in the BTA, notwithstanding the very likely fact that Vietnam has committed with the implementation of the BTA. Would the concerned entity be entitled to log an appeal relating to the above assuming case against a relevant State official/agency to a PCourt in Vietnam in accordance with Article No. 8, Chapter VI of the BTA (or Commitment No. 6.8) and would such Court be entitled to resolve such a case? At present, the answer would probably be NO for the current relevant laws on the resolution of administrative cases do not govern such a situation. As such, it is likely that the current relevant Vietnamese law does not meet the requirements provided in Commitment No. 6.8 of the BTA.