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

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INTRODUCTION

This Bilateral Trade Agreement (BTA) Commitments Road Map III attempts to identify the legal instruments possibly affected by, and the primary Vietnamese State body responsible for, each commitment contained in the BTA. For each chapter of the BTA, it identifies (1) the relevant phase-in period, (2) a statement of the actual commitment, and (3) a listing of the legal instruments which might be affected by the relevant commitment, together with the corresponding authority having primary responsibility over that legal instrument.

Following the chart for each commitment in this BTA Commitments Road Map III, we comment briefly on the current status of the laws and regulations affecting the subject of the commitment, as we understand them. The current status is compared with the standards set forth in the BTA, and where relevant, by reference to standards of the WTO and its various agreements (e.g., the WTO Agreements on TRIPS, TRIMS, GATS, etc.).

According to the Ordinance on Signing and Implementing International Agreements, the Vietnamese Government (GOV) and its State agencies are charged with overall State management of the implementation of the BTA within the territory of the country.^{1 2} The Ministry of Trade (MOT) is the State agency that is tasked with this plan.³ In cases where a new National Assembly (NA) level statutory instrument or amendment is required, the NA in its role as supreme lawmaker of the country must exercise its legislative authority on a proposal of the GOV. Official Dispatch No. 5069 (21 Nov. 2000)⁴ issued by the Office of the Government (GO) has appointed the Ministry of Justice (MOJ) to be responsible to coordinate a review of statutory instruments reported by relevant Ministries/State bodies and to prepare a detailed plan of identification of all the statutory instruments affected by the BTA. Therefore, while it may not be stated in each chapter of this Roadmap, we generally understand the NA, the GOV, the MOT and the MOJ as agencies that exercise comprehensive supervision over the systematization of statutory instruments possibly affected by the BTA and the implementation of the same.

We recognize that in many cases a mid-level body might devise and define changes to the law, while its superior body could actually adopt and legislate the actual change. For example, the National Office of Industrial Property (NOIP) may draft and propose amendments to various laws on the protection of intellectual property (except copyright), but the Ministry of Science, Technology and the Environment (MOSTE) would be the body to issue a Circular, or the GOV would issue a Decree, guiding implementation in the desired direction. In these cases therefore, we refer to the issuing authority as the “Primary Responsible Authority”.

¹ Article 31 of the Ordinance on Signing and Implementing International Agreements issued by the SCNA dated 20 August 1998 stipulates that “the GOV conducts uniform State management over the signing and implementing of an international agreement in the entire country.”

² Article 24.1 of the Ordinance on Signing and Implementing International Agreements

³ Official Dispatch 5069 stipulates that “as per the request of the MOT”.

⁴ Official Dispatch No. 5069/VPCP-TCQT Relating to The Preparation for Post-BTA issued by the GO dated 21 November 2000 (“Official Dispatch 5069”)

CAVEATS

1. While we have attempted to identify most of the relevant legal instruments that are affected or potentially affected by the BTA commitments, together with the responsible authorities for the same, we recognize that our listing is in all likelihood not complete. Interested parties should therefore consider this Road Map and its contents merely as a “starting point” and working document, subject to amendment, corrections, and updates.
2. This Road Map is intended to identify only the Laws, Ordinances, Resolutions, Orders, Decrees, Regulations, Directives, and Circulars at the Central Government level (although certain “high profile” Decisions, Notices and Official Dispatches may also be mentioned). There is no attempt to similarly identify provincial and local instruments that may be affected by the BTA commitments. Moreover, official letters and provincial-level decisions are not covered.
3. The analysis undertaken in this Road Map is based on existing Vietnamese legal instruments and the text contained therein. We understand that there may be practices (or even unwritten policies) in Vietnam that are not in compliance with the BTA commitments, but which are not prescribed or, at times, even addressed, by the existing laws. The absence of affirmative legislation disallowing such practice or policy could be problematic, but it is beyond the scope of this Road Map, which focuses on existing legal instruments only. It may be the case, for instance, that such affirmative legislation may need to be written into Vietnamese law to bring about compliance with the BTA commitments

ABBREVIATIONS

BTA	:	US - Vietnam Bilateral Trade Agreement
CLHD	:	Cadastral, Land and Housing Department ⁵
DCA	:	Department of Civil Aviation
DCI	:	Department of Culture and Information
DNR	:	Department of National Reserves
DPI	:	Department of Planning & Investment
DT	:	Department of Trade
E&BC	:	Economic and State Budget Committee
GDC	:	General Department of Customs
GDLA	:	General Department of Land Administration ⁶
GDP	:	General Department of Posts
GDS	:	General Department of Statistics
GDT	:	General Department of Taxation
GDTR	:	General Department of Tourism
GO	:	Office of the Government
GOV	:	Government (Specifically, the cabinet style body under the Prime Minister as provided for in Article 109 of the Constitution.)
GVN	:	Government of Vietnam (Generally, as in the State of Vietnam)
The Constitution:	:	The Constitution of the Socialist of Vietnam adopted by the National Assembly in 1992.
Joint Commission:	:	The Joint Commission provided for under Chapter VII, Article 5 of the BTA

⁵ This Department was established recently by merging the Cadastral Department and the Land and Housing Department

⁶ This is the official name used by the Department itself. However, a better translation based on the Prime Minister's establishment decision should be "General Cadastral Department".

JV	:	Joint Venture, a form of foreign direct investment involving at least one Vietnamese party and at least one foreign party, as provided for under the LFI
LC	:	Legal Committee
LFI	:	Law on Foreign Investment in Vietnam, adopted by the NA on June 9, 2000
LDI	:	Law on Encouragement of Domestic Investment (Amendment) by the NA, dated May 20, 2000
MARD	:	Ministry of Agriculture and Rural Development
MMB	:	Market Management Bureau
MOA	:	Ministry of Aquaculture
MOC	:	Ministry of Construction
MOCI	:	Ministry of Culture and Information
MOET	:	Ministry of Education and Training
MOF	:	Ministry of Finance
MOFA	:	Ministry of Foreign Affairs
MOH	:	Ministry of Health
MOI	:	Ministry of Industry
MOJ	:	Ministry of Justice
MOLISA	:	Ministry of Labor, War Invalids and Social Affairs
MND	:	Ministry of National Defense
MPS	:	Ministry of Public Security
MOSTE	:	Ministry of Science, Technology and the Environment
MOT	:	Ministry of Trade
MOTR	:	Ministry of Transportation
MPI	:	Ministry of Planning & Investment
NA	:	National Assembly
NAO	:	Office of the National Assembly
NOC	:	National Office of Copyright
NOIP	:	National Office of Industrial Property
PB	:	Politburo

PC	:	People's Committee
PCourt	:	People's Court
PIPP	:	People's Institute of Public Prosecution
PM	:	Prime Minister
PSC	:	People's Supreme Court
SA	:	State Auditors
SBV	:	State Bank of Vietnam
SCNA	:	Standing Committee of the National Assembly
SI	:	State Inspectorate
SP	:	State President
SPC	:	State Pricing Commission
SSC	:	State Securities Commission
VNA	:	Vietnam News Agency
VNTS	:	Vietnam Television Station
VVN	:	Voice of Vietnam

Line Ministries: Means more than one ministry each with its own vertical field of administrative competence over entities operating in such field.

Relevant Issuing Authorities: Means relevant authorities that formulate laws, regulations and administrative procedures.

State Administrative Bodies: Means State administrative bodies that issue administrative decisions concerning activities of entities.

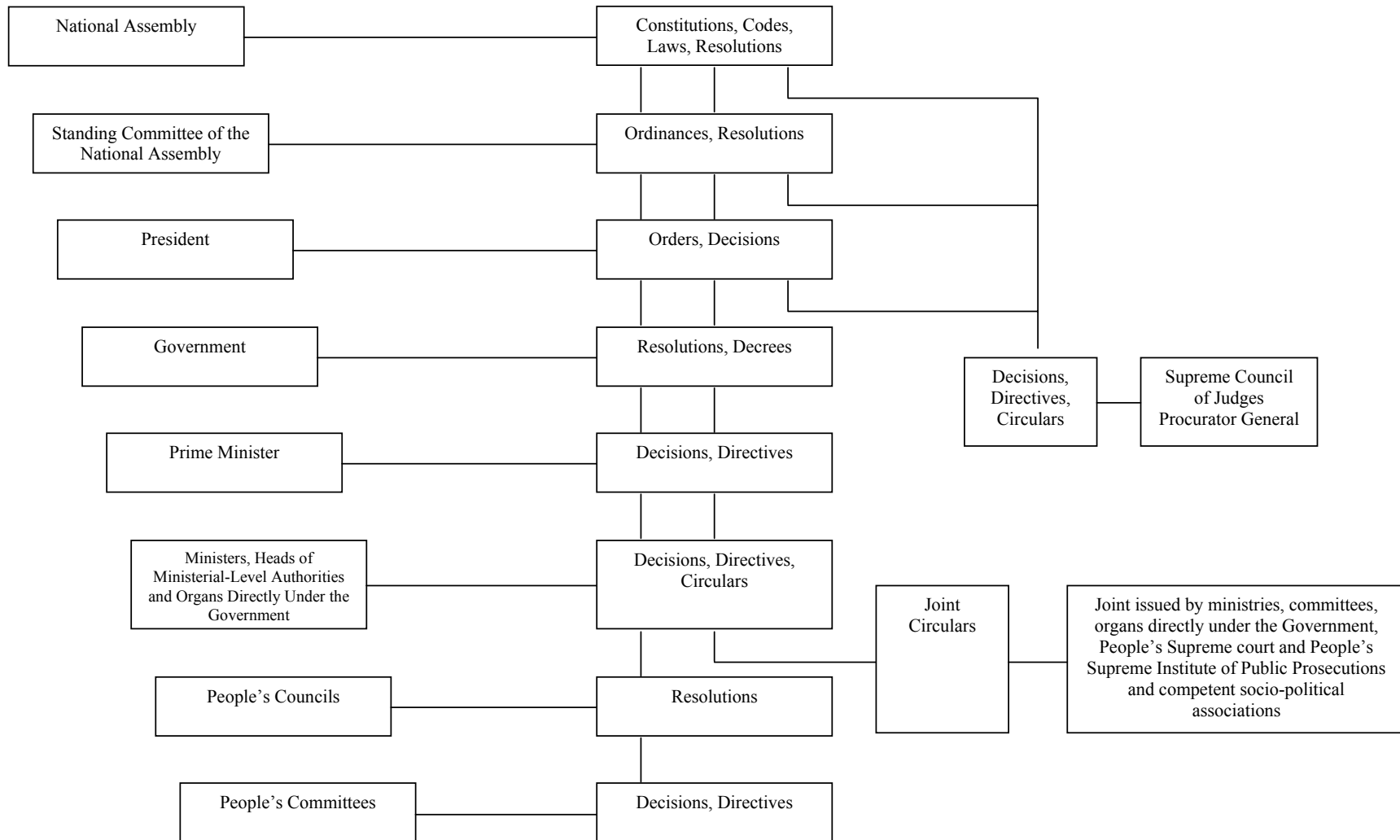
TERMINOLOGY

For the sake of clarity, the nomenclature for Vietnamese legislative and administrative materials referred to in this Road Map, in descending order of importance, is as follows:

Laws – <i>Luật</i> :	Basic laws (include: “Codes”) enacted by the National Assembly.
Ordinances – <i>Pháp lệnh</i> :	Promulgated by the Standing Committee of the National Assembly, and proclaimed by the President.
Resolutions – <i>Nghị quyết</i> :	Adopted by the National Assembly and the Standing Committee of the National Assembly.
Orders – <i>Lệnh</i> :	Issued by the President.
Decrees – <i>Nghị định</i> :	Promulgated by the Government, a cabinet-like organization to which the National Assembly delegates certain administrative law-making function.
Regulations – <i>Quy định</i> :	Promulgated by the Government to implement Law and Codes.
Directives – <i>Chỉ thị</i> :	Issued by the Prime Minister.
Circulars – <i>Thông tư</i> :	Issued by the various Ministries and other state bodies with ministerial-level status.
Inter-Ministerial Circulars – <i>Thông tư liên bộ</i> :	Jointly issued by various ministries.
Decisions – <i>Quyết định</i> :	Issued by Ministries and the People’s Committee (generally not addressed in this Road Map)
Notices – <i>Thông báo</i> :	Issued by various government departments (generally not addressed in this Road Map)

A schematic diagram depicting the hierarchy of State bodies involved in the promulgation of Vietnamese legal instruments is set forth below.

VIETNAMESE LEGISLATION AND ITS PROMULGATION



CITATIONS

The form of citation established for purposes of this Road Map III is intended to provide a simple reference system for legal materials cited. Each citation consists of three parts:

- (1) The type of legal document cited (For example: Law, Decree, Circular, etc);
- (2) The ordinal number of legal document (For example: No. 18, No. 12 or No. 24 and GOV, MOT, MOJ, etc);
- (3) The date of adoption or promulgation (For example: (18 Oct. 2000)).