

Advantages and legal barriers when Vietnam participates in new generation free trade agreements

Nguyen Tran Huyen Tran, Bui Thi Thuy Hang, Mai Nguyen Anh Thu

Faculty of Economic Law, University of Finance and Accountancy, Quang Ngai, Vietnam

Abstract

Signing and participating in new-generation free trade agreements (FTAs) will have a positive impact on Vietnam's economy through developing import-export activities, consolidating traditional markets, and opening up many potential markets on the basis of promoting relations with important economic strategic partners. Therefore, to be proactive in the context of integration, Vietnam needs to plan policies to match the new context. Therefore, in this paper, the author focuses on analyzing the advantages and legal barriers when Vietnam participates in new generation FTAs, thereby proposing some recommendations.

Keywords: Legal barriers, new generation fta, Vietnam

Introduction

In recent years, Vietnam has achieved many important achievements in economic development through promoting openness and integration into the world economy. Our country's active participation in free trade agreements is an inevitable trend. As of May 2024, Vietnam has signed, implemented and been negotiating a total of 19 FTAs, of which 15 FTAs have been signed and come into effect, 01 FTA has been signed but not yet come into effect, and 03 FTAs are currently being negotiated. Among the 15 FTAs that have come into effect and are being implemented, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is the first new-generation FTA that Vietnam has participated in, followed by the European Union-Vietnam Free Trade Agreement (EVFTA). These agreements have many new regulations and commitments that will create many opportunities for Vietnam to develop its economy and trade, but also pose many barriers that need to be overcome. The paper focuses on analyzing the advantages and legal barriers when Vietnam participates in new generation FTAs and proposes some recommendations to take advantage of the opportunities that these agreements bring, as well as limit negative impacts in the integration process.

New generation free trade agreements

"New generation free trade agreements (FTAs)" is a term used to refer to FTAs with extensive and comprehensive commitments, including commitments on free trade in goods and services like "traditional FTAs"; the deepest level of commitment (tax reduction to almost 0%, possibly with a roadmap); with a strict enforcement mechanism and moreover, these agreements include areas considered "non-traditional" such as: labor, environment, state-owned enterprises, government procurement, transparency, investment dispute resolution mechanism...

Currently, Vietnam has participated in a number of new generation FTAs, notably the CPTPP Agreement and the EVFTA Agreement, specifically:

- **CPTPP Agreement:** Countries commit to eliminating import taxes on 65-95% of tax lines and completely eliminating 97-100% of tax lines as soon as the Agreement comes into effect. The remaining items will

have a roadmap to eliminate tariffs within 5-10 years. In CPTPP, Vietnam commits to eliminating a number of high tariff lines. Accordingly: 65.8% of tax lines have a 0% tax rate immediately when the Agreement comes into effect; 86.5% of tax lines have a 0% tax rate in the 4th year when the Agreement comes into effect; 97.8% of tax lines have a 0% tax rate in the 11th year when the Agreement comes into effect. Regarding export tax, Vietnam commits to eliminating most of the items currently subject to export tax according to a roadmap of 5-15 years after the Agreement comes into effect.

- **EVFTA Agreement:** The main contents of the Agreement include: trade in goods, trade in services, rules of origin, customs and trade facilitation; food safety and phytosanitary measures, technical barriers to trade, investment, trade defense, competition, intellectual property, sustainable development; legal issues, cooperation and capacity building. In the EVFTA, Vietnam and the EU commit to eliminating import tariffs on 99% of tariff lines within 7 years for the EU and 10 years for Vietnam. Accordingly, Vietnam commits to eliminate tariffs as soon as the Agreement comes into effect with 48.5% of tariff lines, after 3 years for 58.7% of tariff lines, after 5 years for 79.6% of tariff lines, after 7 years for 91.8% of tariff lines and after 10 years for 98.3% of tariff lines. Regarding export taxes, Vietnam commits to eliminating most export taxes on goods to the EU over a period of up to 15 years.

Advantages of participating in new generation FTAs

The positive impacts on the economy when Vietnam participates in new generation FTAs have been conducted by many studies and some basic impacts can be mentioned as follows:

First, participating in new generation FTAs helps promote export growth, increase trade surplus as well as change the structure of export goods. One of the basic requirements of FTAs is to reduce tariffs on most tariff lines to 0% and many non-tariff measures also need to be eliminated according to a roadmap. This is a good opportunity for

Vietnamese enterprises to promote export growth to markets where Vietnam has signed new generation FTAs, thereby contributing to increasing trade surplus as well as changing the structure of export products.

Second, participating in new-generation FTAs helps Vietnam attract FDI capital from member countries. With some new-generation FTAs dedicating a chapter to regulate investment, including Vietnam's strong commitments on investment encouragement and protection, as well as investment dispute resolution mechanisms, Vietnam can become a destination for foreign investment flows from member countries of new-generation FTAs.

Third, participating in new-generation FTAs helps accelerate the process of economic institutional reform, growth model innovation, and business environment improvement. Many new-generation FTAs that Vietnam participates in contain chapters, with different levels of commitment, to regulate these issues. Good implementation of regulations in new-generation FTAs will help Vietnam ensure transparent economic institutions and promptly respond to global economic impacts.

Fourth, the most obvious benefit when our country participates in new generation FTAs is the opportunity to improve domestic laws according to new commitments. The developing countries when participating in new generation FTAs often have legal systems that are not commensurate with the requirements of common rules of the game. Thanks to that, through participating in new generation FTAs, developing countries have the opportunity to perfect their domestic legal systems according to the common requirements and standards of the world. New regulations in the fields of intellectual property, labor, environment, rules of origin, transparency, state-owned enterprises, anti-corruption, etc. included in new generation FTAs will force Vietnam to amend and supplement its domestic legal system, thereby helping the Vietnamese legal system ensure compatibility and conformity with the provisions of FTA agreements.

Some Legal Barriers

Participating in the new generation FTA brings many opportunities for our country's enterprises, helping them expand their markets not only regionally but also globally. However, these Agreements always place high demands on the improvement of related institutions and laws. Our country's current Trade Law has a number of barriers to participating in new generation FTAs such as: traders; trade in goods and technical barriers. Specifically:

- According to Clause 1, Article 6 of the 2005 Commercial Law: "Traders include legally established economic organizations and individuals conducting commercial activities independently, regularly and with business registration." This does not cover many activities in the informal sector that are also for profit but are not regularly operated. In addition, this regulation is also ignoring commercial entities that do not register with the management agency.
- According to Article 3 of Decree 39/2007/ND-CP, the concept of trader explains individuals engaged in commercial activities such as "street vending", "petty trading", "selling snacks". Thus, the concept of trader in our country's Commercial Law is talking more about the factor of form than the content of the activities and principles of the traders.

- The provisions of the Commercial Law on international goods sale contracts have some shortcomings that hinder the choice of applying Vietnamese law in commercial practice, specifically:
- Provisions on the time of risk transfer (from Article 57 to Article 61 of the Commercial Law)
- This provision makes it easier to determine when the risk passes to the buyer. However, practice shows that this is not really suitable. Because the risk may arise from the moment the goods are no longer under the control of the seller, that is, the moment the goods are handed over by the seller to the carrier and the goods may be damaged before the contract is signed.
- Regulations on the time of transfer of ownership of goods (Article 62 of the Commercial Law)
- Ownership of goods is transferred from the seller to the buyer from the time the goods are delivered. It can be understood that when the goods arrive at the port, ownership is automatically transferred to the buyer. This is disadvantageous to the buyer and inconsistent with international practice. International practice provides that ownership is transferred to the buyer from the time he receives the documents of the goods.
- Regulations on trade sanctions (Article 292 of the Commercial Law)
- Specifically, there are sanctions on specific performance of contracts, contract fine, temporary suspension of contract performance, suspension of contract performance, and contract cancellation. The practice of implementing commercial contracts shows that applying the sanction of "enforcing proper performance of the contract" is difficult to implement, especially in cases of contract violations in time limits. The fine for breach of contract stipulated in Article 301 of the 2005 Commercial Law and the agreed fine level in the 2015 Civil Code for civil relations are creating risks for the parties when choosing the fine level.
- The signing of the CPTPP and EVFTA Agreements has removed tariff barriers between our country and EU member countries and 10 CPTPP member countries, including key franchise markets such as Canada, Australia, and Japan. However, the Commercial Law was issued a long time ago (2005), so the concepts of "franchise" and "commercial rights" have not been fully defined. In addition, regulations on the rights and obligations of the franchiser and franchisee in the franchise relationship; procedures, formalities, and costs related to this activity are all unclear issues.

Recommendations and Conclusions

Participating in new generation FTAs means Vietnam is entering a big playground, accepting to face new difficulties and challenges to compete with big countries. To successfully integrate internationally, it requires smooth and close coordination between central and local levels and sectors with businesses and associations. At the same time, promote linkages and cooperation, proactively respond to situations, exchange experiences to find appropriate innovative solutions, and promote sustainable development in all aspects. Specifically:

- Continue to perfect the legal system to meet the requirements of a modern market economy, international integration and commitments in new-generation FTAs with the spirit of comprehensive

innovation, synchronizing both economy and politics. In particular, it is necessary to review and complete the legal framework that is not suitable for the conditions of application, as well as incompatible with the commitments in the new generation FTA. Accordingly, it is necessary to carefully study and review the requirements in new generation FTAs to establish a list of institutional issues that need to be addressed.

- Strengthen popularization and dissemination of information through various forms about the new generation FTAs that Vietnam is participating in, especially for small and medium enterprises; organize the training for officials of state management agencies at all levels and the business community on specific related commitments, ensuring clear and correct understanding. This will help to fully and effectively implement new generation FTA agreements.
- Perfecting investment policies to develop the import and export market of goods; as well as innovating trade and investment promotion work. Strengthening supervision and management in attracting foreign direct investment.
- Enterprises need to regularly update information on the implementation of commitments in the new generation FTAs that Vietnam participates in, along with increasing investment in technology imports for production and business activities, improving the competitiveness of products and enterprises.
- Expanding the network and strengthening domestic, regional and international business connections through the formation of international integration departments within the enterprise to prepare and improve the ability to handle new issues. Strengthening connections and cooperation with foreign enterprises to expand participation in the value chain. Ready to overcome technical barriers on quarantine, environment, food safety, labor and trade unions. Businesses need to be prepared for issues arising related to trade defense and intellectual property.

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