



## General provisions of current Vietnamese law for the system of non-tariff barriers related to the protection of human health and the environment in international trade

Nguyen Thi Thao Anh

Master of International Law, Postgraduate at University of Law, Vietnam National University, Hanoi, Vietnam

### Abstract

Vietnam is one of the countries with a very high level of economic integration, participating in the negotiation, signing, and implementation of many Free Trade Agreements (FTAs). To meet the requirements of the signed agreements, Vietnam has promulgated a system of new legal documents with highly updated regulations. They are expressed in the form of Laws of the National Assembly, Decrees, Circulars, Decisions of the Government, relevant Ministries, and Sectors. In general, the current system of legal documents has updated the development trend of international law on the environment, and at the same time, those legal norms have changed to suit the socio-economic conditions of Vietnam. Since then, Vietnam has set out a pillar principle with the motto: environmental protection is "a condition, foundation, central and prerequisite factor" for sustainable socio-economic development. In addition, environmental protection activities "must be associated with economic development", and "be considered and evaluated during the implementation of development activities".

**Keywords:** environment protection, international trade, environmental barriers to trade, policy

### Introduction

The relationship between trade and the environment at the international level first gained widespread attention in 1991 when the Mexican government sued the United States for a ban on tuna imports from Mexico <sup>[4]</sup>. In 2015, the environment sector officially became important in the new Free Trade Agreements (FTAs) generation. The development and harmonization of environmental policies to limit the negative effects of trade activities must not create barriers to free trade. In contrast, trade policies that promote economic development must work to minimize environmental damage.

Vietnam as well as other countries needs strong and synchronous policies and measures to minimize the level of environmental pollution to ensure the health of the people and improve the competitiveness and reputation of the country's imported and exported goods.

### Materials

Document review based on the study of international law on non-tariff barriers related to the protection of human health and the environment in international trade, and based on the experiences of some countries. It is easy to see that the technical regulations and standards related to the environment, and the conformity assessment process have made certain contributions to the development of international trade, and at the same time serve as a basis and standard to protect human life and the environment. The legal system of regulations and technical standards related to the environment in the world is increasingly being revised to suit the actual and changing situation of the world. However, in practice, there are certain difficulties. Under the provisions of the General Agreement on Tariffs and Trade (GATT, 1994) – envisioned as a general law that includes both Technical Barriers to Trade (TBT) and Sanitary Phytosanitary Measures (SPS), GATT only provides general provisions on environmental issues as in

Articles XX(b) and XX(g) of GATT. Its content on general exceptions addressed this issue by providing the necessary provisions to strike a balance between trade liberalization on the one hand, with the other is the self-determination of countries in enacting domestic policies on environmental protection and human health. The Agreement on Technical Barriers to Trade (TBT, 1979) stipulates Regulations, technical standards, and conformity assessment procedures that should take into account the basic principles of the TBT Agreement including (i) non-discrimination, (ii) removal of unnecessary technical barriers to trade, (iii) harmonization, (iv) mutual recognition and equivalence, (v) transparency, and (vi) technical assistance and special and differential treatment to developing countries. Animal and plant quarantine measures are measures taken to protect the health and life of humans, animals, and plants. Within the framework of the WTO, Article 1.5 of the TBT Agreement specifically stipulates that "The TBT Agreement does not apply to animal and plant quarantine measures". Similarly, Article 1.4 of the SPS Agreement provides that "nothing in this Agreement affects the rights of Members under the TBT Agreement to refer to measures not falling within the scope of this Agreement". Thus, a small part of the technical barriers to trade that regulate product characteristics and product manufacturing processes constitute phytosanitary measures that will be governed by the provisions of a separate Agreement, the SPS, rather than the TBT Agreement.

The ASEAN Trade in Goods Agreement (ATIGA), preceded by the Agreement on Common Effective Preferential Tariffs (CEPT/AFTA) signed in 1992, is the first comprehensive ASEAN agreement governing all trade in goods. internalization. ATIGA builds based on the synthesis of commitments on tariff reduction/elimination agreed in CEPT/AFTA and related agreements and protocols. In addition to tariff commitments, ATIGA also includes many other commitments such as the elimination

of non-tariff barriers, rules of origin, trade facilitation, customs, standards and conformity, and sanitary and epidemiological measures.

Both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Free Trade Agreement between Vietnam and the European Union (EVFTA) has a separate chapter regulating environmental protection, and sustainable development, specifically, Chapter 20 on the Environment from Articles 20.1 to Article 20.23 in the CPTPP and Chapter 13 on Trade and Sustainable Development of the EVFTA from Articles 13.1 to Article 13.17. The requirements on environmental protection are committed by the two Agreements to a high degree of binding to promote mutually supportive policies in trade and the environment. Technical regulations on environmental protection are specified in the “European Union Environment Product Legislation” to protect public health and the environment. Regulations can be divided into those that directly affect the environment such as eco-labels and those that have an indirect impact on the environment but are related to human health such as the content of substances in food and pharmaceutical products. The CPTPP does not provide specific environmental technical regulations and standards in any field; however, the CPTPP has some specific requirements on some environmental protection measures that Commitments on transparency and strengthening the role of stakeholders in environmental protection and Commitments on some specific environmental issues.<sup>[1]</sup>

In addition, Vietnam has signed commitments and agreements in the field of trade in goods, services, investment, and economic cooperation with the United States and Japan, and several countries to promote the system of non-tariff barriers related to the protection of human health and the environment in international trade.

## Results and discussions

As a developing country, Vietnam is facing many opportunities as well as challenges that the process of international economic integration and free trade agreements brings. According to the general trend, the use of non-tariff barriers to protect the domestic market is also becoming increasingly popular. It can be seen that observing the experiences of other countries has brought valuable lessons to Vietnam. The promulgation of a system of legal documents related to international trade activities and focusing on the non-tariff barrier system related to the protection of human health and the environment is an indispensable requirement.

Several important legal documents have been promulgated to replace, amend and supplement previously issued documents, which can be mentioned as the Law on Standards and Technical Regulations dated 10/12/2018; Law on Environmental Protection dated 17/11/2020; The Government's Decree No. 78/2018/ND-CP dated 16/05/2018 amending and supplementing several articles of the Government's Decree No. 127/2007 detailing the implementation of several articles of the Law on Standards and Technical Regulation...

In Vietnam, the Law on Standards and Technical Regulations stipulates the general institutional framework and procedures. These contents are detailed in Decision No. 46/2017/QĐ-TTg dated 24/11/2017 promulgating the *Regulation on the organization and operation of Vietnam's*

*network of notification agencies and inquiry points on technical trade barriers.* In the field of environment, the Law on Environmental Protection adds several adjustment contents.

In the Government's Resolution No. 03/NQ-CP dated January 06, 2023, on the December 2022 law-making symposium, in 2022, the number of legal documents on import and export issued by the Government, the Prime Minister and ministries and ministerial-level agencies is nearly 40<sup>[2]</sup>. It can be seen that Vietnam pays great attention to the fields of international trade, including the system of non-tariff barriers related to the protection of human health and the environment.

While other trade measures such as tariff, anti-subsidy, anti-dumping measures. To limit unfair competition from outside, at the same time protect domestic industry, and help domestic production development in the context of increasing trade liberalization, environmental measures both help protect domestic production and protect the environment. Given this nature, if the measures are applied on target, they will not contradict the trend of trade liberalization, however, when these measures are abused and used as disguised tools to protect the domestic market, they will be a barrier to restricting free trade. With the strong development of export activities, foreign trade remedies for Vietnam's exports have also increased rapidly. Although the number of investigations related to environmental defense in the world is decreasing, on the contrary, Vietnamese goods tend to increase although the number of investigations related to environmental defense in the world is decreasing, on the contrary, Vietnamese goods tend to increase. According to statistics from the Trade Remedy Agency, by the end of December 2022, Vietnam's export goods have undergone 226 investigations related to environmental defense. In 2022, there were 17 new foreign-initiated cases, in addition to many cases that are under investigation, or subject to annual review, end-of-cycle review<sup>[7]</sup>, in which, goods belonging to the groups of iron, steel, fertilizers, plastics, textiles, and food are subject to application of trade remedies. These are all commodities that play an important role, being the backbone of each country's economy. Currently, the number of cases and anti-evasion of trade remedy measures against goods exported from Vietnam is showing signs of increasing. It is expected that this trend will continue to increase shortly<sup>[3]</sup>.

According to Decision No. 450/QĐ-TTg dated April 13, 2022, approving the National Strategy for Environmental Protection to 2030 with a Vision to 2050, it expresses views and orientations related to international trade of Vietnam that: the environment is a condition, foundation, and prerequisite for sustainable socio-economic development; the environmental protection is both a goal and a task, should be placed at the center of development decisions; Economic development must be in harmony with nature, respect the laws of nature, and not trade the environment for economic growth; environmental protection must take the protection of people's health as the top goal; Investment in environmental protection is an investment in sustainable development;...

Vietnam's environmental policy system does not distinguish between enterprises producing for consumption or importing. The State has promulgated policies on financial and technical support for products granted environmental certifications. Specifically, the Law on Environmental

Protection 2020 provides incentives for environmentally friendly production and business activities, construction of recycling facilities, and treatment of common solid waste, hazardous waste, and landfill sites. The Ministry of Finance has issued Circular 06/2021 regulating export tax exemption and reduction for environmentally friendly products, products from recycling and waste treatment activities. The Investment Law No. 61/2020/QH14 was promulgated on June 17, 2020, by the National Assembly promulgating import tax incentives for energy-saving, recycled, used, and waste products. Decree No. 21/2022/ND-CP dated March 10, 2022, of the Government amending and supplementing some articles of Decree No. 57/2019/ND-CP dated June 26, 2019, of the Government, The content mentioned about the Preferential Export Tariff and the Special Preferential Import Tariff for the implementation of the CPTPP Agreement for the period of 2019 - 2022; Decree No. 53/2021/ND-CP dated May 21, 2021, of the Government on Vietnam's preferential export tariff and special preferential import tariff for the implementation of the UKVFTA Agreement in the 2021-2022 period. Although these supports are very small compared to those of developed countries, the issuance of these incentives shows that the Vietnamese government has been making efforts to protect human health and the environment in the field of international trade.

Besides, Vietnam also has regulations prohibiting the import of outdated machinery, equipment, and technological lines, causing environmental pollution. In 2021, the Prime Minister issued Decision No. 130QD-TTCT on the National Hi-tech Development Program to 2030, In particular, related to the environment, the focus is on energy-saving technology. According to Decision No. 493/QD-TTg dated 19/0, 4/20, 2, 2 on the strategy of import and export of goods to 20, 30, with the guiding view that posing sustainable import and export development based on harmonizing the structure of goods, market structure, and trade balance with each market sector; harmonizing short-term and long-term goals; harmonizing opportunities to participate in and enjoy the fruits of import and export growth; associated with green trade and fair trade, with environmental protection, biodiversity and adaptation to climate change. Decision No. 889/QD-TTg of the Prime Minister issued on 24/0, 6/20 20 on the national action program on sustainable production and consumption in the period of 2021 - 2030 clearly stated the view on sustainable production and consumption to protect the environment; attach importance to innovation, creativity, application of environmentally friendly technologies, reduce waste generation, create stable jobs and green jobs, promote sustainable lifestyles and improve the quality of people's lives, aiming to develop a circular economy in Vietnam. Thus, with the policy focusing on environmentally friendly goods and services, priority will be given to products, from the time of exploitation to the disposal of products with little impact on the environment.

International economic integration has posed a great challenge for Vietnam, which is the increasingly fierce and fierce competition in both domestic and export markets due to trade barriers, In particular, technical environmental barriers are increasingly being applied by countries instead of tariff measures. Participating in bilateral and multilateral trade agreements, opening the door for goods of FTA partner countries to enter Vietnam, on the one hand, will

create a more competitive environment in terms of quantity of goods as well as more reasonable prices and also create great pressures on domestic production, as well as protecting domestic production.

In TBT, to protect targets related to human health, animals, and plants, Vietnam is entitled to promulgate technical measures to control the import of goods. However, due to limited capacity and resources, up to now, Vietnam has only issued several legal documents, including contents related to technical environmental measures to control imported goods, such as The Law on Foreign Trade Management 2017, Circular No. 38/2015/TT-BTC of the Ministry of Finance stipulates the contents of checking goods names and codes of goods when checking customs documents. As a result, many goods that pollute the environment, are difficult to handle and are difficult to decompose are still imported and compete with domestically produced goods, seriously affecting production and consumption, as well as the environment of Vietnam.

To guide trade and environmental policy, there exist two conflicting ways of looking at trade and environmental issues. One side argues that the more modern commercial and commercial development is, the more environmentally destructive it is. The other side believes that the more trade development and trade liberalization on a global scale are, the more conditions there are to protect the ecological environment. How does the above recognition and evaluation of the problem lie in the orientation of "commercial development"? If we develop trade in breadth, exploit the advantages of available resources, cheap labor, and use unprincipled packaging, it will lead to environmental destruction. On the contrary, if the trade is developed in a sustainable way, associated with environmental protection by raising awareness, a strong legal system and international commitments, and applying technology appropriately in the production and trading of goods, it will protect the ecological environment well. Moreover, at a higher level, once the natural environment is protected and sustainably developed, it is the foundation for sustainable commercial development. Sustainable trade growth will certainly contribute to protecting the ecological environment when combined with raising consumer awareness, and consumer awareness in the discharge and use of plastic bags. These will be effective measures to protect the ecological environment. International integration is also opening up conditions and urgent requirements for environmental protection. The problem is our attitude and consumer consciousness. This attitude must be reflected in a sufficiently strong legal system, regular inspection and control of handling, and above all, raising the awareness of consumers, and raising the social responsibility of enterprises in commercial activities<sup>[5]</sup>.

As of May 2023, Vietnam has joined and is negotiating 19 FTAs, of which 16 agreements have entered into force and are implementing commitments, and 03 agreements are under negotiation [6]. Vietnam is gradually improving the legal system related to import and export activities to meet integration requirements. It can be said that these standard systems have created both positive and negative sides for environmental protection, protecting human and animal health. Positive effects such as (1) *Reducing the use of chemicals in agricultural production*; (2) *Sustainable exploitation of aquatic resources* and (3) *Reducing waste in the environment*. At the same time, these technical standards

inadvertently create barriers and hinder international trade. However, the extent of the damage to trade, and the impact on the environment, requires careful assessment. So far, Vietnam has not used general technical and environmentally related technical measures as a non-tariff barrier. Although, there are a few imported goods that need to be controlled by specialized ministries such as toxic chemicals, intermediate materials for production, wildlife, and pesticides for production.

Vietnam does not yet have a non-tariff barrier on the environment, although it has issued several environmental technical regulations and standards and conformity assessment procedures. However, these regulations, standards, and conformity assessment procedures only apply to domestic production activities. Therefore, these regulations, standards, and conformity assessment procedures are not barriers to imported goods. The system of technical regulations and technical standards is not in conformity with the orientation of socio-economic development and environmental protection. In the socio-economic development orientation towards sustainable development, Vietnam focuses on developing the high-tech industry and building a green economy, towards sustainable production and consumption. However, there are no specific environmental technical regulations and standards, as well as conformity assessment procedures. Environmental technical regulations and standards for products and processes control the satisfaction of such environmental regulations and standards.

The continuous change in legal documents also significantly affects all aspects of business activities. Since 1998, Vietnam has issued regulations on the management and sale of ships. The general designation for goods was continuously replaced in 2006, 2009, 2013, 2016, and 2020. Many other sectors of trade are in a similar situation.

The actual situation that occurs today is a commodity because many agencies jointly issue their management regulations. The system of technical standards of Vietnam is issued by specialized ministries, leading to the same management but many ministries participate in the management. For example, related to genetically modified products, with the management participation of the Ministry of Agriculture and Rural Development, the Ministry of Natural Resources and Environment, the Ministry of Science and Technology, and the Ministry of Industry and Trade. when a product is circulated on the market in Vietnam, it is necessary to go through many ministries and branches by the law. This also leads to the fact that management agencies do not have a unified understanding of the field under management, Therefore, there will be many limitations to handling issues related to the promulgation and application of technical standards in general and environmental technical standards in particular. Incentives and incentives for products meeting environmental technical standards and standards do not create competitive advantages for Vietnamese goods in the domestic market. For businesses or chemicals with environmental certification, there are support incentives such as Vietnam green label or energy saving label, However, the important issue is that the competitiveness of this commodity in the market is not affected by environmental factors that the business or the commodity achieves. Consumers pay little attention to the environmental friendliness of goods circulating on the market or the management process of the enterprise. For

imported goods that have environmentally related certificates from reputable certification bodies, they are allowed to be imported into Vietnam. And goods with lower technical standards than TCVN are not allowed to be imported. So far, no goods imported into Vietnam have been rejected because they are lower than Vietnam's environmental requirements. This may be because TCVN is still at a low level, which means that goods that have environmental advantages of Vietnam do not have any market advantages compared to imported goods.

Antennas meet technical regulations and technical standards on the environment of enterprises, at present, some large enterprises have taken advantage of the environment to meet technical regulations and technical standards on the environment to receive incentives and incentives from the State as well as enhance the brand of enterprises in the market. Some large businesses, and most small and medium-sized manufacturing facilities, often do so in a way that, or even fails to complete environmental procedures. Inspections of compliance with environmental regulations or environmental standards have found that many businesses have not followed environmental procedures or violated the statements they have made.

In addition, there is an assessment of the environmental impact of imported goods as the basis for building a green fence system. The development of international trade brings many benefits to participating countries. However, the expansion of international trade also has negative environmental impacts on both global, regional, and national levels. In particular, there are problems of greenhouse gas emissions, unsustainable use of land and water resources, threatening biodiversity, increasing depletion of natural resources, especially non-renewable natural resources, illegal trade in goods that pose a high environmental hazard (Science for Environment Policy, 2013)

Vietnam currently imports a lot of goods from developing countries, which also have low environmental standards, so logically, these goods when imported into Vietnam also cause environmental problems. Although the Government has regulations on the import of modern machinery and equipment, ensuring standards and regulations on discharge. However, in reality, Vietnam still imports outdated machinery and equipment, causing environmental pollution. The risk of trade disputes of environmental measures against Vietnam is great. In fact, environmental pollution in Vietnam is increasing. Sources of pollution are not only from production and processing facilities but also from waste removal. Trade liberalization is an inevitable trend. Vietnam has signed many multilateral and bilateral trade cooperation agreements in the region as well as with many different territories. Trade disputes related to environmental issues in the world are increasing. Although Vietnam has only one dispute that is considered to use environmental factors, the risk of environment-related trade disputes will inevitably occur: (1) If litigating a lawsuit related to environmental factors, the responsibility of the Government is very large, so it is necessary to have corresponding compensation for the country to which commercial measures are applied. (2) Vietnam cannot take the initiative in inputting materials for the production process, even for key export goods, currently Vietnam also has to import a lot of raw materials for processing and production activities. When environmental regulations and standards are fully applied, it will lead to trade conflicts.

## Conclusion

The positive impact of non-tariff barriers established in countries can be seen in such points as protecting national security; protecting the health and safety of people and plant life; protecting the environment; protecting domestic production, etc... Facing the trend of world economic integration, Vietnam has promulgated a legal policy system governing those relations, but it must still be recognized that Vietnam's legal and policy system has not caught up with reality, which is still quite "late" compared to the actual development of society. Solving this problem is not easy, it requires, first of all, raising the responsibilities of competent state agencies in making policies and promulgating policies in a synchronous, timely, and effective way. Vietnam is still reliant on dealing with environmental pollution, so businesses still repeat a lot of offenses. Most state agencies currently only focus on considering the immediate benefits of projects while ignoring environmental issues. The pre-inspection stage has not tightened until a violation occurs and is difficult to handle. The current pre-inspection regulations on environmental protection are still sketchy, lacking strictness and synchronization. Therefore, when completing the legal policy framework on international trade, Vietnam urgently needs to tighten regulations on non-tariff barriers related to human health and environmental protection.

## References

1. Dung, Tran. Viet (ed.): "Environmental regulations in EVFTA and CPTPP – Some recommendations to improve environmental legislation". Hong Duc Publishing House, 2020, 30.
2. Government. Resolution No. 03/NQ-CP, Resolution of the Symposium on legislation, 2022.
3. Hue, Pham. Thi. Strengthen trade remedies to protect domestic production and markets against the requirements of international integration, Communist Magazine, 2018. Retrieved from: <https://www.tapchicongsan.org.vn/web/guest/kinh-te/-/2018/824485/tang-cuong-phong-ve-thuong-mai-de-bao-ve-san-xuat-va-thi-truong-trong-nuoc-truoc-yeu-cau-hoi-nhap-quoc-te.aspx>
4. Ministry of Industry and Trade of the social republic of Vietnam & United States Agency for International Development. Environmental issues in international trade, 2017. Retrieved from: [https://pdf.usaid.gov/pdf\\_docs/PA00TNSD.pdf](https://pdf.usaid.gov/pdf_docs/PA00TNSD.pdf)
5. Thang, Pham. Tat. Trade development and environmental protection issues in the era of international economic integration. 2019. Retrieved from: <https://congnghiepmoitruong.vn/phat-trien-thuong-mai-va-van-de-bao-ve-moi-truong-trong-thoi-dai-hoi-nhap-kinh-te-quoc-te-5102.html>
6. Vietnam Chamber of Commerce and Industry (VCCI). Summary of Vietnam's FTAs as of 05/2023, 2023. Retrieved from: <https://trungtamwto.vn/thong-ke/12065-tong-hop-cac-fta-cua-viet-nam-tinh-den-thang-112018>.
7. WTO Center. Vietnam Import and Export Report 2022. Retrieved from: <https://trungtamwto.vn/file/22356/bao-cao-xuat-nhap-khau-viet-nam-nam-2022.pdf>.