State Practice of Asian Countries in International Law

Vietnam

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ENVIRONMENTAL LAW – WATER SECURITY – MANAGEMENT OF MEKONG RIVER BASIN – REGIONAL COOPERATION

Vietnam has taken efforts to push the development of the Mekong River Commission (MRC) in the capacity of the MRC Chair in 2018. Prime Minister Nguyen Xuan Phuc, in his capacity as the MRC chairman, called upon the participants at the MRC Leaders' Meeting held in Phnom Penh on 4–5 April 2018 to pay special attention toward the issue of security of water resource and to increase cooperation between MRC members and its dialogue partners (including China and Myanmar) as the MRC cannot fulfil its mission without the active collaboration with them. The international relations issue of the Mekong River needs to be expanded beyond the four MRC member countries.

Vietnam's Prime Minister also emphasized the necessity for the countries to observe the MRC Guidelines for conducting Transboundary Environmental Impact Assessment (TbEIA). It is argued that the balanced and flexible approach of TbEIA would help countries to promote the sustainable development, utilisation, conservation and management of the Mekong River Basin water and related resources.

The security of water resources from international rivers is highly dependent on international cooperation between the countries involved in the exploitation and use of this water resource. The Mekong River is a “transnational resource” exploited and managed by six countries, including Cambodia, China, Laos, Myanmar, Thailand and Vietnam. However, the national vision and interests of the countries are different, leading to instability in security for water resources from this river, causing impacts on the national security of Vietnam: China and Laos are making the most of hydropower exploitation for economic development; Thailand has extensively developed and exploited their irrigation infrastructure to serve its northeastern region; Cambodia wants

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to maintain great water level in Tonle Sap Lake to keep the seafood source; Vietnam is the country which has the last flow before exposing sea, is strongly affected by security of water resources. Vietnam does not want saltwater intrusion to be more serious, affecting food and seafood in the Mekong Delta, which shows that adjustment for exploitation and management activities of any country that the river crosses has impacts on the national security for the remaining countries.

The Mekong Delta of Vietnam is the last region of the Mekong basin, which is Vietnam's rice basket, providing rice and export aquatic resources. However, 95% of the water flow to the Mekong Basin is from the upstream region of the Mekong River. Due to great dependence on external sources, security of water resources in Vietnam may be threatened by neighboring countries, especially those in the upstream region of Mekong. The thorough exploitation of resources from the Mekong River without the close cooperation between countries has led the Mekong Delta in Vietnam to a serious reduction in water flow, sediment residue, aquatic resources and threatens food security that is an important source of national security. Given the current development, arguably, upstream countries may use water source as a "weapon" against Vietnam. For Vietnam, water resources of the Mekong River has a direct impact on its national security and therefore, the government is very active in seeking and developing appropriate international cooperation mechanism amongst the countries that share the Mekong River for socio-economic development.

Vietnam has been advocating the use of an international legal mechanism to facilitate the cross-boundary collaboration in managing the water resource of the Mekong River. It signed the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (which officially came into force in August 2014) and became the first MRC member to accede to the Convention. Currently, it is actively discussing with other ASEAN members to access the Convention, thereby contributing to strengthening international legal mechanisms, facilitating the sustainable management and development of Mekong River water resources. Since 2014, Vietnam has been strongly supporting the MRC Basin Development Strategy 2016–2020 which focuses on strengthening international cooperation on the Mekong River not only through the MRC framework and but also through the Greater Mekong Sub-region (GMS) with the participation of the six countries sharing the Mekong River (despite the fact the later only prioritizes the economic cooperation rather than water security in the Mekong River). Arguably, strengthening the six-party contact between the countries of the Mekong River will bring the two upstream countries of China and Myanmar into the MRC mechanism.

**HUMAN RIGHTS – TREATIES AND COVENANTS – VIETNAM’S
FIRST NATIONAL REPORT ON THE IMPLEMENTATION OF
THE UNITED NATIONS CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

On November 14 and November 15, in Geneva, Switzerland, Vietnam's inter-sector delegation led by Senior *Lieutenant General Le Quy Vuong*, Member of the Party Central Committee and Deputy Minister of Public Security, delivered a presentation and made defense in the discussion session on the initial Report on Vietnam's implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/VNM/1). The report was adopted at the 1708th meeting (CAT/C/SR.1708), held on 29 November 2018.

The published materials by Vietnam are included: (1) Plan for implementing the Convention against Torture by the Prime Minister (issued together with Decision No. 364/QĐ-TTg dated on March 17, 2015); (2) The first national report of Vietnam on the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”) with 14 appendices attached; (3) Speech by Senior *Lieutenant General Le Quy Vuong* and annexes attached. These are documents that have been approved by competent authorities, directly related to the implementation of the Convention against Torture in Vietnam and showing the State's policies and laws against torture and other cruel, inhumane or humiliating treatment or punishment.

Of which, between 2017 and 2018, Vietnam had adopted three new laws in order to better implement the Convention against Torture: the amended Law on Legal Aid, the amended Law on State Compensation Liability, and the Law on Denunciations. The Government of Vietnam has promulgated a Project on disseminating the content of the Convention and Vietnamese law on anti-torture to cadres, civil servants, officials and the people. The objective is to raise the awareness and understanding of officials, public servants, officials and people on the contents of the Convention and relevant Vietnamese laws on torture prevention and combat. In addition, *the Ministry of Public Security* had *piloted* a project of *audio-video recording in criminal procedure* in 45 *facilities*. Vietnam has continued to actively cooperate with foreign partners in the prevention and control of torture, through the exchange of information and experience on the organization and implementation of the Convention as well as practical measures, means and effective use of equipment to

prevent torture; to participate in and organize international conferences and seminars related to anti-torture, contributing to strengthening the capacity of Vietnamese officials, especially the police force, in implementing the Convention against Torture.

The Vietnamese government delegation answered questions raised by members of the Anti-Torture Committee in the dialogue and also highlighted difficulties in implementing the Convention; seriously noting the recommendations to have better directions for implementing the Convention.

In its concluding observations on the initial report of Vietnam, amongst the other proposals, the UN Committee against Torture suggested the Government to amend national legislation, including the 2015 Criminal Code, in order to introduce and explicitly criminalize acts of torture, to ensure that both the crime of torture and the attempt to commit such a crime are punishable with appropriate penalties that are commensurate with the gravity of their nature compliant with the applicable Convention, to acknowledge and publicly and unequivocally condemn at the highest level all acts of torture and ill-treatment of any persons deprived of their liberty, as well as to take urgent measures to render the material conditions of detention of persons sentenced to death equivalent to those of other prisoners.

INTERNATIONAL ECONOMIC LAW – INTERNATIONAL ECONOMIC COOPERATION – THE EU-VIETNAM FREE TRADE AGREEMENT SPLIT INTO TWO SPECIFIC AGREEMENTS

In June 2018, the EU and Vietnam officially concluded the EU-Vietnam Free Trade Agreement (EVFTA) and the EU-Vietnam Investment Protection Agreement (EVIPA), which were initially negotiated as a single EU-Vietnam Free Trade Agreement. The parties completed the negotiation of the FTA since 2015, but could not conclude due to disagreement amongst the EU members about the scope of the EU free trade agreement with its external trading partners. To overcome the issues, the EU and Vietnam have agreed to split the investment protection content and the mechanism of investor-state dispute settlement (ISDS) from the EVFTA to form a separate agreement, following the approach chosen by the EU for the trade and investment agreements with Singapore.

The EVFTA, upon the time it becomes effective, will facilitate the tariff reductions on 99% of goods between the European Union and Vietnam. The agreement is seen as a comprehensive, high quality and balanced agreement of interests for both Vietnam and the EU, as well as compliant with the provisions

of the World Trade Organization (WTO). The FTA consists of 17 Chapters, 2 Protocols and a number of memorandum of understanding attached with the main contents: trade in goods (including general provisions and market access commitments), rules of origin, customs and trade facilitation, food safety and hygiene measures (SPS), technical barriers to trade (TBT), trade in services (including general provisions and market access commitments), investment, trade remedies, competition, state-owned enterprises, government procurement, intellectual property, trade and sustainable development, cooperation and legal institution.

Regarding trade in goods, for Vietnamese exports, as soon as the FTA comes into effect, the EU will eliminate import duties on 85.6% of tariff lines, equivalent to 70.3% of Vietnam's exports to the EU. After seven years from the date of entry into force of the Agreement, the EU will eliminate import duties on 99.2% of tariff lines, equivalent to 99.7% of Vietnam's exports. So far, this is the highest level of commitment a partner gives to Vietnam through signed FTAs. This benefit is especially meaningful when the EU is one of the two largest export markets of Vietnam. For EU exports, Vietnam commits to eliminate tariffs as soon as the Agreement comes into effect with 48.5% of tariff lines (accounting for 64.5% of import turnover). Subsequently, after seven years, 91.8% of tariff lines equivalent to 97.1% of EU exports were removed from Vietnam by import taxes.

For other issues related to trade in goods, Vietnam and EU also agree on contents related to customs procedures, SPS, TBT, trade remedies, etc., creating a legal framework for the two sides to cooperate. Regarding trade in services and investment, Vietnam's commitments go beyond those within the WTO, so are the EU's commitments. Notably, the EU's commitments are equivalent to the highest EU commitments under the recent EU FTAs. EVFTA also includes chapters related to competition, state-owned enterprises, sustainable development, cooperation and capacity building, legal and institutional. These contents are in line with Vietnam's legal system, creating a legal framework for both sides to strengthen cooperation and to promote the development of mutual trade and investment.

The EVIPA, meanwhile, regulates the investments between the parties, including both direct and non-direct, and investor-state dispute settlement mechanisms. Under EVFTA, both the EU and Vietnam pledge to accord national treatment and most favored nation treatment to the investments of investors of the other Party, with a few exceptions, as well as to apply fair and equitable treatment, to allow the free transfer of capital and profits from investment abroad, as well as to not expropriate and to compensate appropriate damages for investors. Most importantly, the parties have agreed to

establish an International Investment Court, with two levels of settlement (Panel and Appellate Body), to resolve investor-state disputes. The EVIPA's dispute settlement mechanism possesses most distinctive trait learning from the WTO quasi-judicial dispute settlement model, which is the establishment of a semi-permanent adjudicatory body similar to an investment court in replacement of the arbitration model envisaged by the vast majority of investment treaties over the past decades.

It is expected that the EVFTA and EVIPA will help not only to promote the trade and investment relationship between the signing parties, but also create a premise towards the discussion of an FTA between the EU and ASEAN in the future. Vietnam and Singapore, the two ASEAN members having FTAs with the EU, have brought the issue to discussion at the ASEAN ministerial meetings and received positive responses from other ASEAN members.

INTERNATIONAL ECONOMIC LAW – ASIA-PACIFIC MEGA TRADE DEAL – REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP

On 14 November 2018 in Singapore, on the occasion of the 2nd RCEP Summit, Vietnam, together with the ASEAN Member States and ASEAN's free trade agreement (AFTA) partners: Australia, China, India, Japan, Korea, and New Zealand, delivered the Joint Leaders' Statement on the Regional Comprehensive Economic Partnership (RCEP) Negotiations (Joint Statement).

The Joint Statement reflects "the task to conclude the RCEP negotiations is becoming more urgent and significant given the current headwinds faced by the global economy" and describes the status of the RCEP negotiations in November 2018, mainly including market access negotiations and rules negotiations. Although a few gaps remain, concluding market access negotiations are considered to be "within reach" to meet the goals in the Guiding Principles and Objectives for Negotiating the RCEP. Furthermore, Chapters on Customs Procedures and Trade Facilitation (CPTF); Government Procurement; Institutional Provisions; Sanitary and Phytosanitary (SPS) Measures; and Standards, Technical Regulations, and Conformity Assessment Procedures (STRACAP); which, added to the earlier concluded chapters on Economic and Technical Cooperation (ECOTECH) and on Small and Medium Enterprises, bring the total number of concluded chapters in RCEP to seven.

Launched in 2012 with the goal to deepen economic relationship among the 16 Asia-Pacific nations, the RCEP talks were originally planned to be finished by 2015 but the parties have not been able to complete the negotiation in accordance with the set deadline. The talks encountered many difficulties including

a lack of an existing comprehensive economic agreement among some participating nations, a wide gap in political and economic conditions between the negotiating nations and some countries' conservative attitude towards market access. A total of 28 rounds of talks have been held up to 2018 since the leaders of the 16 countries declared the start of negotiations on the sidelines of the 21st ASEAN Summit in Phnom Penh, Cambodia in November 2012.

Once signed, the RCEP will form a free-trade area covering about half of the world's population, and accounting for 32.2 percent of global GDP, 29.1 percent of global trade and 32.5 percent of global investment inflows.

INTERNATIONAL ECONOMIC LAW – IMPORT-EXPORT – TRADE REMEDIES – WTO DISPUTE SETTLEMENT

Decision No. 3877 on Investigation into the Imposition of Anti-Dumping Measures for Products of Chinese and Korean Origins (Case No. AD04)

On October 15, 2018, the Vietnamese Ministry of Industry and Trade issued Decision No. 3877/QĐ-BCT on the investigation and imposition of anti-dumping measures on flat-rolled alloy or non-alloy steel products, varnish painted or scanned or coated with plastics or other covers originated from the People's Republic of China and the Republic of Korea (case number AD04).

The petitioners are four colored steel manufacturers representing the domestic manufacturing industry, which include: Dai Thien Loc Joint Stock Company, Ton Phuong Nam Corporation, Nam Kim Steel Joint Stock Company and Steel Joint Stock Company. Goods alleged to be dumped are colored steel products classified by the following HS codes: 7210.70.11, 7210.70.19, 7210.70.91, 7210.70.99, 7212.40.11, 7212.40.12, 7212.40.19, 7212.40.91, 7212.40.92, 7212.40.99. Dumping rate of investigated goods from China is 25.5% and that from Korea is 19.25%. The alleged dumping of goods is proved to be the main cause leading to significant losses of domestic manufacturing industry, which is reflected by the decline in such indicators as utilization, output, revenue, profit and inventory. After initial analyses on the dossier submitted by the petitioners, the Investigation Authority recommended the Minister of Industry and Trade to proceed the investigation. The details of investigation are conducted pursuant to Article 80 of the Law on Foreign Trade Management on contents of an anti-dumping measures imposition investigation and Article 32 of the Decree No. 10/2018/ND-CP on deciding to conduct anti-dumping measures imposition investigation.

Vietnam Investigates the Application of Anti-Customs Evasion Measures of Trade Remedies (Case No. AC01.SG04)

On July 26, 2018, the Ministry of Industry and Trade of Vietnam issued a decision to initiate an investigation to apply *prevention measures of trade remedies evasion* for wire/rolled steel products with HS codes 7213.91.90, 7213.99.90, 7217.10.10, 7217.10.29, 7229.90.99, 9839.10.00 and 9839.20.00, which are imported into Vietnam from other countries.

This is the first anti-customs evasion investigation for imports into Vietnam. This case is based on suspicion of evading trade remedies from the original case code SG04 after Vietnam applied an official safeguard measure on steel and long steel products imported into Vietnam. After the 6-month investigation period, on May 13, 2019, the Ministry of Industry and Trade issued Decision No. 1230/QĐ-BCT on the application of measures to avoid evasion of trade remedies for wire and rolled steel products imported into Vietnam. Measures against evading trade remedies are applied in the form of additional import duties with a tax rate of 10.9% from May 28, 2019 to the end of March 21, 2020.

Evading trade remedy measures is an action of businesses to avoid part or all of the obligation to enforce trade remedies measures, mostly relating to evading the trade remedy tariffs. According to the Vietnam's Trade Remedies Authority, in recent years, many forms of customs evasion have taken place in Vietnam, of which, the most common is the activity of transporting goods to a third country to obtain a new source of origin, misrepresenting the origin, and re-labeling goods. The fraudulent acts of origin, illegal goods transportation from other countries to Vietnam may seriously distort the trade remedy measures applied by Vietnam against foreign imports and cause increased losses for domestic producers. Until recently, due to a lax legal framework, Vietnam has yet to initiate an investigation into customs-evasion by foreign firms. However, Vietnamese exports have been faced increasingly with anti-customs evasion investigations, mainly by the EU, US, Turkey and Brazil.

With the introduction of the Law on Foreign Trade Management in 2017, Vietnamese authorities now have a legal basis for the initiation of action against the evasive behavior by foreign firms. The trade authorities of Vietnam shall strengthen inspection and verification of the origin of goods, and coordinate with competent authorities of the importing country to control imported goods.