

# CPTPP COMMITMENTS AND DISTRIBUTION - E-COMMERCE - LOGISTICS SECTORS IN VIETNAM

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# Content



Distribution, E-Commerce and Logistics Sectors?



Relevant CPTPP commitments



Market and sectors' prospects in the context of CPTPP



# **Distribution - E-Commerce - Logistics Sectors in CPTPP negotiations**

# Distribution services?

## WTO CPC System

- Commission agents' services  
(CPC 621, 6111, 6113, 6121)
- Wholesale trade services  
(CPC 622, 6111, 6113, 6121)
- Retailing services  
(CPC 631 + 632, 6112, 6113, 6121)
- Franchising services  
(CPC 8929)



## CPTPP CPC, ISIC System

- Similar to WTO
- Traditional markets,  
commodity exchanges
- Others



# Logistics Services?

There is no service sector and sub-sector called “LOGISTICS”

WTO, CPTPP and other FTAs have no commitment in LOGISTICS services



Services auxiliary to all modes of transport

Services auxiliary to wholesale trade and retailing services

Transport services (maritime, internal waterways, rail, road, air, multimodal)

Technical inspection and analysis services

Vietnamese legislation (Decree No.163/2017/NĐ-CP on business of logistics services) has no definition of “LOGISTICS services” but lists 17 specific services in LOGISTICS service group

# E-commerce?



According to WTO, FTAs:  
E-commerce **is not** a service sector/ sub-sectors

According to Decree No.09/2018/NĐ-CP

“E-commerce services are commercial activities whereby an e-commerce service supplier establishes an e-commerce website to provide a platform for businesses, organizations, individuals and others to carry out trade promotion activities, sell goods or provide services”



Be a commercial mode on the basis of digital technology and the internet

Good transaction

Service transaction

# **CPTPP commitments on Distribution - E-commerce – Logistics**



# CPTPP in Vietnam FTA Roadmap

No.	FTA	Time	Members
<b>FTAs in effect</b>			
1	AFTA	Came into force since 1993	ASEAN
2	ACFTA	Came into force since 2003	ASEAN, China
3	AKFTA	Came into force since 2007	ASEAN, South Korea
4	AJCEP	Came into force since 2008	ASEAN, Japan
5	VJEPA	Came into force since 2009	Vietnam, Japan
6	AIFTA	Came into force since 2010	ASEAN, India
7	AANZFTA	Came into force since 2010	ASEAN, Australia, New Zealand
8	VCFTA	Came into force since 2014	Vietnam, Chile
9	VKFTA	Came into force since 2015	Vietnam, South Korea
10	VN – EAEU FTA	Came into force since 2016	Vietnam, Russia, Belarus, Armenia, Kazakhstan, Kyrgyzstan
11	CPTPP	Came into force since 2019	Vietnam, Canada, Mexico, Peru, Chile, New Zealand, Australia, Japan, Singapore, Brunei, Malaysia
12	AHKFTA	Came into force since 2019	ASEAN, Hong Kong (China)
<b>Signed FTAs, not yet in effect</b>			
13	EVFTA	Signed on June 30th, 2019	Vietnam, EU(28)
<b>FTAs under negotiation</b>			
14	RCEP	Negotiations commenced in March, 2013	ASEAN, China, South Korea, Japan, India, Australia, New Zealand
15	Vietnam – EFTA FTA	Negotiations commenced in May, 2012	Vietnam, EFTA (Switzerland, Norway, Iceland, Liechtenstein)
16	Vietnam – Israel FTA	Negotiations commenced in December, 2015	Vietnam, Israel



# CPTPP Structure

- 00 Preamble
- 01 Initial Provisions and General Definitions
- 02 National Treatment and Market Access for Goods
- 03 Rules of Origin and Origin Procedures
- 04 Textile and Apparel Goods
- 05 Customs Administration and Trade Facilitation
- 06 Trade Remedies
- 07 Sanitary and phytosanitary measures
- 08 Technical Barriers to Trade
- 09 Investment**
- 10 Cross-Border Trade in Services**
- 11 Financial Services
- 12 Temporary Entry for Business Persons**
- 13 Telecommunications
- 14 Electronic Commerce**
- 15 Government Procurement

- 16 Competition Policy
- 17 State-Owned Enterprises
- 18 Intellectual Property
- 19 Labor
- 20 Environment
- 21 Cooperation and Capacity Building
- 22 Competitiveness and Business Facilitation
- 23 Development
- 24 Small and Medium-sized Enterprises
- 25 Regulatory Coherence
- 26 Transparency and Anti-corruption
- 27 Administrative and Institutional Provisions
- 28 Dispute Settlement
- 29 Exceptions and General Provisions
- 30 Final Provisions
- And **Annexes**, Side letters



# The method of negotiating service

Mode of supply of market-opening services



## Investment

Similar to Mode 3 - Commercial presence in WTO:

- Representative offices
- Branches
- Joint venture enterprises (with Vietnamese partners)
- 100% foreign-invested enterprises

## Cross-border Trade in Service

Similar to Mode 1, 2 and 4 in WTO

- Mode 1: Cross-border trade
- Mode 2: Consumption abroad
- Mode 4: Movement of natural persons

# The method of negotiating service (continued)



## Market-opening Sectors/Sub-sectors

Principle: Negative list



Step 1: A list of basic market-opening principles (background obligations)

### Step 2:

#### Scenario 1:

“Select to exclude”- Some services are “selected” (listed/reserved) to “exclude” (not have to comply with a/some/all background obligation)

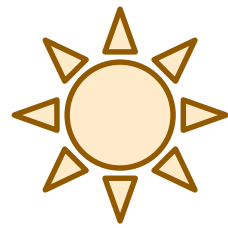
#### Scenario 2:

The remaining services (not be selected/listed/reserved) – shall comply with all background principles.

# Basic market-opening principles/obligations in CPTPP

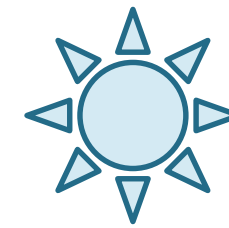
Market-opening principles in investment	Market-opening principles in cross-border trade in services
<p><b><i>Non-discrimination (NT-MFN)</i></b>            Exception:</p> <ul style="list-style-type: none"> <li>• Specific procedures and/or reporting requirements separately for foreign investors</li> <li>• MFN shall not be applied to (i) other Agreements before CPTPP, (ii) ASEAN, (iii) Agreements on maritime, seafood and aviation</li> </ul>	<p><b><i>Non-discrimination (NT-MFN)</i></b>            Exception:</p> <ul style="list-style-type: none"> <li>• MFN shall not applied to (i) other Agreements before CPTPP, (ii) ASEAN, (iii) Agreement on maritime, seafood and aviation</li> </ul>
<p><b><i>Performance Requirements</i></b></p> <ul style="list-style-type: none"> <li>- A list of prohibited measures in restricting/interfering investment or business activities</li> <li>- Exception: requirements of employing local workers, requirements for public purpose</li> </ul>	<p><b><i>Market Access</i></b></p> <ul style="list-style-type: none"> <li>- A list of quantitative restrictions being prohibited</li> <li>- Prohibit restrictions / requirements on legal entity</li> </ul>
<p><b><i>Senior Management and Boards of Directors</i></b></p> <ul style="list-style-type: none"> <li>- Prohibit requirements regarding particular nationality of a natural person for senior management position</li> <li>- Exception: require a majority of the board of directors to be of a particular nationality or resident in the territory of the Party.</li> </ul>	<p><b><i>Local presence</i></b>  <b><i>Prohibit to impose requirements in:</i></b></p> <ul style="list-style-type: none"> <li>- Establishing representative offices or any form of enterprise in its territory</li> <li>- Being resident in its territory</li> </ul>

# Levels of services opening commitments



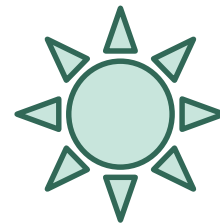
## *Reserve all/almost market-opening obligations*

- Listed services/activity groups?
- Listed reserved obligations?



## *Reserve a/some market-opening obligations*


- Listed services?
- Listed reserved obligations?



## *Almost no reserve*

- “Covering” all remaining services
- Reserved obligation: Market Access

# Commitments to open Distribution market

Level of Commitment	Specific services	Rules of openness
<p>Reserving most <u>investment obligations</u></p> 	<p>Traditional markets Commodity exchanges</p>	<p>Vietnam reserves the following rights with respect to CPTPP service investors:</p> <ul style="list-style-type: none"> <li>• Implementing discriminatory measures (between domestic and foreign parties, between foreign parties);</li> <li>• Requiring local presence;</li> <li>• Requiring manager to be of Vietnamese nationality or resident in Vietnam</li> <li>• Imposing performance requirements (requirements to satisfy some conditions to have a license or preference)</li> </ul>
<p>Reserving a part of obligations  (limited opening commitments)</p>	<p>Commission agent Wholesale trade Retailing Franchising</p>	<p>Vietnam shall open to investments and cross-border services from CPTPP members at least equal to the reserve level.</p> <p>Specifically, Vietnam has 02 reserves with respect to:</p> <ul style="list-style-type: none"> <li>• Types of distributed products (excluding rice and cane/beet sugar compared to the list of products not allowed to distribute by foreigners under the WTO and EVFTA)</li> <li>• Economic Needs Test regarding the establishment of outlets for retail services (open morel than WTO and equal to EVFTA)</li> </ul>
<p>No reserve for most openness's obligations and rules</p>	<p>Other distribution services (if any)</p>	<ul style="list-style-type: none"> <li>• Regarding to market access: Vietnam has the right to open only at the same level of that in WTO</li> <li>• Regarding to other aspects: Vietnam shall open market to CPTPP investors in accordance with general principals in investment and cross-border services under CPTPP.</li> </ul>

# Commitments to open Logistics market





# Commitments to open maritime transport and its auxiliary services market

Level of commitment	Specific services	Rules of openness
Reserving all obligations in investment and cross-border services	<ul style="list-style-type: none"> <li>- Maritime cabotage services</li> <li>- Sea Ports construction, operation and management services</li> </ul>	<p>Vietnam reserves the following rights to CPTPP service investors:</p> <ul style="list-style-type: none"> <li>• Implementing discriminatory measures (between domestic and foreign parties, between foreign parties);</li> <li>• Requiring local presence;</li> <li>• Requiring manager to be of Vietnamese nationality or resident in Vietnam</li> <li>• Imposing performance requirements (requirements to satisfy some conditions to have a license or preference)</li> </ul> <p>Similar to WTO, EVFTA</p>
Reserving some <u>investment obligations</u>	Passenger and freight transportation services under the national flag of Viet Nam	Establishing a joint venture or purchasing shares in a Vietnamese enterprises with foreign equity not exceeding 49% (similar to WTO, lower than 70% in EVFTA)
	<b>Shipping agency services</b>	Establishing a joint venture or purchasing shares in a Vietnamese enterprises with foreign equity not exceeding 49% (similar to EVFTA; WTO has no commitment to open this field)
<u>Reservations on market access only</u>	<p><b>Providing cross-border transportation services by ships under Vietnam flag, shipping agency services</b>  <b>All other services</b></p>	<ul style="list-style-type: none"> <li>• Regarding to market access: Vietnam has the right to open only at the same level of that in WTO</li> <li>• Regarding to other aspects: Vietnam shall treat CPTPP investors/ service providers in accordance with basic principals/obligations in investment and cross-border services chapters of CPTPP</li> </ul>

# Commitments to open rail - road transport market

Level of commitment	Specific services	Rules of openness
Reserving all obligations in investment and cross-border services	<ul style="list-style-type: none"> <li>Rail infrastructure business services</li> <li>Rail passenger transport services</li> <li>Internal rail and road transport, (except for the following services)</li> </ul>	<p>Vietnam reserves the following rights to CPTPP service investors:</p> <ul style="list-style-type: none"> <li>Implementing discriminatory measures (between domestic and foreign parties, between foreign parties);</li> <li>Requiring local presence;</li> <li>Requiring manager to be of Vietnamese nationality or resident in Vietnam</li> <li>Imposing performance requirements (requirements in satisfying some conditions to have a license or preference)</li> </ul> <p>Similar to WTO, EVFTA</p>
Reserving some investment obligations	Rail freight transport services	Establishing a joint venture or purchasing shares in a Vietnamese enterprises with foreign equity not exceeding 49% (similar to WTO, EVFTA)
	Road freight and passenger transport services	Establishing a joint venture or purchasing shares in a Vietnamese enterprises with foreign equity not exceeding 49% - especially with freight transport, it can be up to 51% depending on Vietnam's needs (similar to WTO, EVFTA)
Reservations on <u>market access</u> only	<ul style="list-style-type: none"> <li><b>Providing cross-border rail freight and road transport services</b></li> <li><b>All other road and rail services</b></li> </ul>	<ul style="list-style-type: none"> <li>Regarding to market access: Vietnam has the right to open only at the same level of that in WTO</li> <li>Regarding to other aspects: Vietnam shall treat CPTPP investors/ service providers in accordance with basic principals/obligations in investment and cross-border services chapters of CPTPP</li> </ul>

# Commitments to open internal waterways transport market

Level of commitment	Specific services	Rules of openness
Reserving all obligations in investment and cross-border services	Cabotage services Rental of vessels with crew services (CPC 7223) River Ports construction, operation and management services	Vietnam reserves the following rights to CPTPP service investors: <ul style="list-style-type: none"> <li>• Implementing discriminatory measures (between domestic and foreign parties, between foreign parties);</li> <li>• Requiring local presence;</li> <li>• Requiring manager to be of Vietnamese nationality or resident in Vietnam</li> <li>• Imposing performance requirements (requirements in satisfying some conditions to have a license or preference)</li> </ul> Similar to WTO, EVFTA
Reserving some <u>investment obligations</u>	Internal waterways freight and passenger transport services	Establishing a joint venture or purchasing shares in a Vietnamese enterprises with foreign equity not exceeding 49% (similar to WTO, EVFTA)
Reservations on <u>market access</u> only	<b>Cross-border internal waterways freight and passenger transport services</b>  <b>Other internal waterways transport services</b>	<ul style="list-style-type: none"> <li>• Regarding to market access: Vietnam has the right to open only at the same level of that in WTO</li> <li>• Regarding to other aspects: Vietnam shall treat CPTPP investors/ service providers in accordance with basic principals/obligations in investment and cross-border services chapters of CPTPP.</li> </ul>

# Commitment to open air transport market

Level of commitment	Specific services	Rules of openness
Reserving all/most obligations in investment and cross-border services	<ul style="list-style-type: none"> <li>- Specialty air services (except for commercial flight training)</li> <li>- Ground handling services</li> <li>- Airport operation services</li> <li>- Airports construction, operation and management services</li> </ul>	<p>Vietnam reserves the following rights to CPTPP service investors:</p> <ul style="list-style-type: none"> <li>• Implementing discriminatory measures (between domestic and foreign parties, between foreign parties);</li> <li>• Requiring local presence;</li> <li>• Requiring manager to be of Vietnamese nationality or resident in Vietnam</li> </ul> <p>Particularly for airport construction, operation and management services, Vietnam also reserves the right to set operational requirements.</p> <p>Similar to WTO, EVFTA</p>
<u>Limited opening for investment</u>	<b>Air transport services (of airline)</b>	<p>Establishing a joint venture or purchasing shares in a Vietnamese airline with conditions as follows:</p> <ul style="list-style-type: none"> <li>• Aggregate foreign capital contribution or equity is restricted to no more than 30% of chartered capital or shares of a Vietnamese airline.</li> <li>• A Vietnamese individual or legal person who is not a foreign invested enterprise must hold the largest percentage of chartered capital or shares in the airline.</li> </ul> <p>Higher level than WTO and EVFTA (unbound)</p>
Reservations on market access only (both investment and cross-border services)	<ul style="list-style-type: none"> <li>- Aircraft repair and maintenance services when aircraft are not operated (except for runway maintenance)</li> <li>- Selling and marketing of air transport services</li> <li>- Computer reservation system services</li> <li>- Commercial flight training services</li> </ul>	<ul style="list-style-type: none"> <li>• Regarding to market access: Vietnam is allowed to only enable CPTPP investors/ service providers to access market in the maximum level similar to that in WTO</li> <li>• Regarding to other aspects: Vietnam shall treat CPTPP investors/ service providers in accordance with basic principals/obligations in investment and cross-border services under CPTPP.</li> </ul> <p>Similar to WTO, lower level than EVFTA</p>
Opening for investment, reserving all cross-border services	<b>All of the remaining air transport services</b>	<ul style="list-style-type: none"> <li>- Regarding to investment: Reserve on market access only</li> <li>- Regarding to cross-border services: All reserved</li> </ul>

# Commitment to open services auxiliary to transport market

Level of commitment	Specific services	Rules of openness
Reserve some <u>investment obligations</u>	Container handling services	Establishing a joint venture or purchasing shares in a Vietnamese enterprises with foreign equity not exceeding 50% (similar to WTO, EVFTA)
Reserve on <u>market access</u> only	<b>Cross-border container handling services</b>	<ul style="list-style-type: none"> <li>- Regarding to market access: Viet Nam has the right to open at the same level of that in WTO</li> <li>- Regarding to other aspects: Viet Nam shall open market to CPTPP investors in accordance with general principals in investment and cross-border services under CPTPP</li> </ul>
	<b>Other services auxiliary to all modes of transport</b>	
	<b>Services auxiliary to rail, road, internal waterways transport</b>	

# Commitments on E-commerce



# Policy for E-commerce



- ➡ **Tariff policy on electronic transactions:**  
No import and export duties (still have the right to apply domestic taxes and fees)
- ➡ **Policy on digital products measures:**  
No discrimination between domestic and foreign digital products
- ➡ **Policy on electronic authentication and digital signatures:**  
Recognizing the legal validity of electronic authentication and digital signatures
- ➡ **Requirements on software source code:**  
Foreign entities must not be forced to transfer or allow access to software source code in order to be licensed to import, distribute, sell or use such software

Protection from spam advertisements (unsolicited commercial electronic messages)

Protecting consumers from fraudulent activities: Domestic laws must have regulations

There must be the acceptance of the recipient in agreeing to receive "spam messages" (according to specific laws)



The provider of "spam messages" must enable the recipient to refuse continuously receiving spam messages

There must be regulations in minimizing "spam messages"

Protection of personal information: Domestic laws must have regulations (refer to international guidelines)

# Consumer protection in E-commerce



# Ensuring the environment for E-commerce

Commitment group	Content
<p>The right to access, use the internet for e-commerce</p>	<p><u>Recognize consumer's benefits</u> from having the following rights:</p> <ul style="list-style-type: none"> <li>• The right to access and use services and applications on the Internet at the consumer's choice;</li> <li>• End users' right to connect to the Internet of their choice, provided that such devices do not damage the network.</li> <li>• Access information about network management measures from consumers' Internet connection suppliers</li> </ul>
<p>The right to transfer information across borders by electronic means</p>	<p>Information must be allowed to be transmitted on the internet across borders, including personal information, for business activities.</p> <p>Exception:</p> <ul style="list-style-type: none"> <li>• Management requirements in transferring information can be imposed</li> <li>• Take any measures for public policy purposes</li> </ul>
<p>About establishing the server system</p>	<p>It is prohibited to force foreign investors / service providers to use or place server systems on the Vietnamese territory.</p> <p>Exception: The above condition may be imposed for public purposes and without discrimination, without restriction higher than necessary.</p>

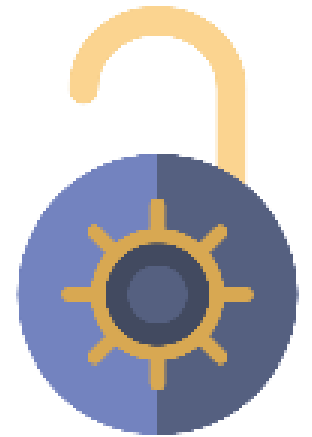
# CPTPP impacts on Distribution - E-commerce - Logistics Sectors





# Direct impacts from CPTPP

Impact from opening market:  
No significant



**Policy impact:**

- No significant change
- Stable and predictable



## From the favorable environment

The market is vibrant and attractive for investment due to:

- Business environment is improved by implementing CPTPP commitments
- Attractive markets from CPTPP

# Indirect impacts from CPTPP

## From other commitments

- Commitments to eliminate tariffs and non-tariff barriers will create conditions to increase the supply of goods for distribution - e-commerce sectors; and increase the demand for logistics services
- Commitments in custom - trade facilitation, non-tariff measures: Opportunities to reduce business costs
- Commitments to open market of services supporting production (finance, telecommunications...): Opportunities to reduce business costs



# What are the considerable risks from CPTPP for these sectors?





# THANK FOR LISTENING!

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