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HARMONISATION BETWEEN TRADE LIBERALISATION AND ENVIRONMENTAL PROTECTION – A LONG WAY TO GO? AN ANALYSIS OF VIETNAM'S DEBRIS IMPORTATION CONTROL IN LIGHT OF WTO AND CPTPP RULES

TRAN THI THUY DUONG
Hochiminh city University of Law
Email: tttduong@hcmulaw.edu.vn

Abstract

As in many other countries, Vietnam's integration into the international trade system has accelerated since its participation in the WTO and regional trade agreements. However, widening market access – the consequence of this integration process – risks exacerbating some of Vietnam's existing environmental problems. In this context, the Vietnamese government is adopting measures in order to mitigate negative impacts of trade on the environment, but do these measures risk violating Vietnam's international trade commitments? Can the environmental protection provisions of new generation free trade agreements like CPTPP be a reliable legal basis to justify Vietnamese trade restriction measures? The author will analyse these questions, while focusing on the case of debris importation control – an issue that has been attracting a lot of public attention in Vietnam and in South East Asia in recent years.

Keywords: *trade liberalization and environmental protection; WTO; CPTPP; trade restriction; debris importation control; waste management*

From 2007, Vietnam has been integrating into the World Trade Organization (the WTO). At the same time, Vietnam has been participating actively in regional trade agreements (RTAs).[1] In 2018, it strengthened trade liberalization, while becoming a party of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a free trade agreement signed between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam. This process contributes effectively to Vietnam's economic growth.

1 Until 2019, Vietnam signed already 13 RTAs: ASEAN Economic Community, ASEAN-India Free Trade Area, ASEAN-Korea Free Trade Agreement, ASEAN-Hong Kong Free Trade Agreement, ASEAN-Japan Comprehensive Economic Partnership Agreement, ASEAN-China Free Trade Area, ASEAN-Australia-New Zealand Free Trade Area, the CPTPP, Vietnam-Chile Free Trade Agreement, Vietnam-Korea Free Trade Agreement, Vietnam-Japan Economic Partnership Agreement, Vietnam-Eurasian Economic Union Free Trade Agreement

It is necessary to note that economic growth, protection of human rights and environmental preservation are fundamental pillars of sustainable development.[2] However, harmonising those three elements is always a complex issue.[3] As can be observed in many developing countries, rapid economic growth very often results in alarming environmental degradation.[4] Vietnam is not an exception: despite its economic growth, it has to face many environmental challenges. Among them, the subject of waste management attracts a lot of Vietnamese public concern.[5]

Due to Vietnam's integration to international trade agreements, its market access was widened for imported products, including debris. As a matter of fact, in the context of the recent global waste crisis, Vietnam's importation of waste from the developed world increased alarmingly. This is also the case in many other Southeast asian countries. Some of Vietnam's neighbours, including the Philippines and Malaysia, use radical solutions to face the threat of becoming 'the occidental world's garbage dump': they send back waste to exporting countries.[6] In contrast, Vietnam has adopted trade restriction measures in order to reduce the importation of waste and debris.

2 United Nations Commission on Sustainable Development (1996), *Report of the expert group meeting on identifications of principles of international law for sustainable development*; Maljean, D. and Mehdi, R. (1999), 'Environnement et développement, les Nations Unies à la recherche d'un nouveau paradigm', in *Les Nations Unies et la protection de l'environnement: La protection d'un environnement durable* [Environment and development, the United Nations in search of a new paradigm, in The United Nations and environment protection: Promontion of sustainable development] (Faculty of Law and Political Science of Aix-Marseille and the United Nation's Information Center in Paris); Birnie, P., Boyle, A. and Reddgwell, C. (2009), *International law and environment*, p. 116; Sands, P. (2012), *Principles of international environmental law*, p. 253; Bonanomi, E. B. (2015), *Sustainable development in international law making and trade – International food governance and trade in agriculture*, p. 54

3 Turner, S. J. (2014), *A global environmental right*, pp. 55-61

4 In 2018, according to the Yale centre for Environment law and policy, Vietnam was in 132nd position among 182 countries examined in the Environmental performance index, after Thailand (121st position, Philippines, 82nd position and Malaysia, 74th position). See Yale Centre for Environmental law and Policy (2018), *2018 environmental performance index*, p. 4

5 European Chamber of Commerce in Vietnam (2018), *Evfta report 2018: The EU-Vietnam free trade agreement: Perspectives from Vietnam*, pp. 37-40

6 Le Journal de Montreal (2019), 'Les Philippines renvoient au Canada des tonnes de déchets' [The Philippines send back to Canada tons of waste]. Retrieved from: https://www.journaldemontreal.com/2019/05/31/les-philippines-renvoient-au-canada-des-tonnes-de-dechets [accessed 15 May 2022]; Liberation (2019), 'Les Philippines renvoient plusieurs tonnes de déchets au Canada' [The Philippines send back many tons of waste to Canada]. Retrieved from: https://www.liberation.fr/direct/element/les-philippines-renvoient-plusieurs-tonnes-de-dechets-au-canada_98361/ [accessed 15 May 2022]

In this context, it is important to note that the WTO and new generation RTAs contain provisions promoting environmental protection. For example, the CPTPP has an entire chapter (Chapter 20) to regulate environmental questions. Therefore, while examining Vietnam's measures, one can ask the following questions: Does Vietnam risk violating its commitments related to market access, while restricting debris importation? Can Vietnam refer to the WTO and the CPTPP provisions related to environmental protection to justify its debris importation control measures? Similar questions can also be raised by other countries. Debris importation restriction raises a lot of issues related to liberalization of trade, preservation of environment and protection of health. These issues are of public concern not only in Vietnam, but also many other countries, in particular those that are developing.

In this article, the author will first introduce the waste crisis in Vietnam as well as its response to this crisis (Section 1). After that, the author will evaluate the compatibility of Vietnamese measures with its trade commitments in the WTO and in the CPTPP (Section 2).

1. Waste crisis and Vietnam's restriction of debris importation

The standard of waste management in Vietnam is poor, which causes a lot of public concern. This situation is aggravated due to the recent increase of waste and debris importation in Vietnam (A). In order to respond to this 'waste crisis', Vietnam's government have adopted some debris importation restrictions (B).

1.1. Vietnam's waste crisis

Due to Vietnam's poor technology and infrastructure, waste management is far from satisfactory, causing negative impacts on the environment, public health and socio-economic development in the country. In 2018, 90% of the solid waste in Hanoi and 76% in Ho Chi Minh City was discharged without prior treatment. Environmental pollution around discharge centres causes a lot of discontent among the local population.[7] In spite of the government's efforts,[8] the control of pollution from plastic waste remains ineffective, harming

7 European chamber of Commerce in Vietnam (2018), *White book: Trade & investment issues and recommendation*, pp. 55-61

8 For example, the Project to amend some provisions of the Law on taxes for environmental protection of Vietnam proposes a 400% increase of taxes imposed on plastic bags.

the environment not only at national, but also international levels. Today, about 60% of plastic waste globally is discharged into oceans, and this comes principally from five countries. Vietnam is fourth in the list, after China, Indonesia and the Philippines. The majority of plastic waste in Vietnam is not biodegradable.[9]

We can argue that Vietnam's environmental situation is worsening due to the country' swider market access, in particular in the context of the global waste crisis.

For many decades, China has been the first destination for debris and waste exported from developed countries. In 2016, Germany alone exported about 560 tons of plastic waste to China.[10] Imported solid waste/debris was used as production materials for Chinese industries. However, recently, according to China, a lot of polluting, even dangerous, substances were found in this waste/debris. Therefore, it was urgent to prohibit their importation, in order to protect the environment as well as people's health and security against 'dirty wastes or even hazardous wastes'. This context explained the notification of the Chinese decision to prohibit the importation of 24 types of solid waste to the WTO's TBT Committee in July 2017.[11]

Chinese prohibition of importation created a global waste crisis. Developed countries, including those from Europe, North America and East Asia have been very dependent on their ability to export heir waste/debris to the Chinese market. As a consequence of Chinese prohibition, they have had to look for other waste/debris exportation destinations.[12] Therefore, the volume of debris/waste exported to other Asian countries (in particular Vietnam,

9 Vietnamnet (2019), 'Vietnam plastic waste problem: one of the worst in the world'. Retrieved from: https://english.vietnamnet.vn/fms/environment/213523/vietnam-plastic-waste-problem--one-of-the-worst-in-the-world.html [accessed 15 May 2022]

10 Crolly, H. and Dierig, C. (2018), 'Que faire de nos déchets si la Chine n'en veut plus?' [What to do with our waste if China doesn't want to import it anymore?] in *Courrier International*. Retrieved from: https://www.courrierinternational.com/article/que-faire-de-nos-dechets-si-la-chine-nen-veut-plus [accessed 15 May 2022]

11 See China's notification to the WTO's TBT Committee G/TBT/N/CHN/1211 (July 18, 2017)

12 Greenpeace (2019), 'Data from the global plastic waste trade 2016-2018 and the offshore impact of China's foreign waste import ban – An analysis of import-export data from the top 21 exporters and 21 importers'. Retrieved from: http://www.greenpeace.org/eastasia/Global/eastasia/publications/campaigns/toxics/GPEA%20Plastic%20waste%20trade%20-%20research%20briefing-v1.pdf [accessed 15 May 2022]

Indonesia, Malaysia and Thailand) increased tremendously.[13] During the first five months of 2018, the volume of plastic debris imported to Vietnam was 200% of that in 2017. Thousands of imported debris containers overwhelmed Vietnamese ports. The population became obsessed by the threat of Vietnam becoming the world's new est garbage dump; this sentiment was reported by the most well-known and credible Vietnamese journals.[14] It was therefore necessary for the government to adopt measures in order to stop the Vietnamese waste crisis and to avoid '*making Vietnam become the world's dumping ground which would incur great costs involved in destruction of waste goods that fail to meet standards of waste substances*'.[15]

1.2. Vietnam's restriction of debris importation

It is important to note that because of the country's poor waste management capability, Vietnamese law does prohibit waste importation.[16] However, for a controlled and limited amount of debris, importation is permitted. For this purpose, imported debris shall satisfy environmental standards and debris importers shall have satisfactory infrastructural and technological capacity.[17]

These exceptions to debris importation can be explained by the fact that debris, if well sorted and exploited, is beneficial for economic development as well as environmental protection. For instance, in the sector of paper fabrication, well-sorted paper scraps can be a source of raw material. The use of paper scraps avoids cutting trees to produce paper, therefore contributes to the preservation of the environment.

13 Crolly, H. and Dierig, C. (2018), *supra* note 10

14 Van, T. and Le, N. (2018), 'Rác thế giới đổ về Việt Nam – Kỳ 1: Lần theo đường dây nhập rác', *Tuổi trẻ* ['Waste from all over the world imported to Vietnam – Episode 1: Following the roads of waste importation', in *Youth*]. Retrieved from: https://tuoitre.vn/rac-the-gioi-do-ve-viet-nam-ky-1-lan-theo-duong-day-nhap-rac-20180910090932276.htm [accessed 15 May 2022]; Van, T. (2018), 'Không thể là bãi rác thế giới', *Tuổi trẻ* ['Vietnam cannot become the world's dumping ground', in *Youth*]. Retrieved from: https://tuoitre.vn/khong-the-la-bai-rac-the-gioi-20180731085159017.htm [accessed 15 May 2022]

15 See Ministry of Finance, General Department of Customs Document No. 2188/TCHQ-GSQL on Promotion of solutions to managing, preventing import of wastes and controlling smuggling and trade fraud upon import of wastes.

16 The importation and the transit of waste is prohibited by Article 6.6 of the 2020 Law on Environmental protection of Vietnam

17 Article 71 of the 2020 Law on Environmental protection of Vietnam

However, the line between debris and waste is a fine one. Debris may cause damage to the environment, due to the high percentage of impurities that it contains. If it is not sorted correctly, debris is just waste.[18] Due to this fragile line, market access for debris can be abused for waste importation. In fact, customs officers often find that many of the debris containers imported to Vietnam do not satisfy environmental conditions. Debris is not sorted or treated, because the labour and environmental costs in exporting countries are too high. In addition, although electrical waste importation is prohibited, customs officers regularly discover electric waste chopped into small pieces and hidden in many containers of plastic debris.[19]

Alerted to the threats of pollution linked to debris importation, the Vietnamese government prescribed new restriction measures in a variety of documents:

- On the 14th of September, 2018, the Ministry of Natural Resources and Environment issued the Circular No. 08/2018/TT-BTNMT on Promulgation of national technical regulations on environment. While regulating many issues,[20] this document is stricter than the document that it supersedes.[21] For example, it bans more categories of scraps from import,[22] prohibits more impurities in imported scraps,[23] provides for more procedures for inspection of

18 New York Times (2018), 'Designing the Death of a Plastic'. Retrieved from: https://www.nytimes.com/2018/08/06/science/plastics-polymers-pollution.html [accessed 15 May 2022].

19 Van, T. and Le, N. (2018), *supra* note 14; Van, T. (2018), *supra* note 14.

20 This detailed 25-page document prescribes 3 sets of national technical regulations on environment, imposed on imported steel, plastic and paper scraps for production. It mentions many issues such as: types of scrap to be imported for production purpose, banned scraps, prohibited impurities in imported scraps, undesirable impurities in imported scraps, other technical requirements concerning imported scraps, inspection procedures and determination methods, management requirements and implementation.

21 Before the adoption of this document, related issues were regulated by the Circular No. 43/2010/TT-BTNMT dated December 29, 2010 of the Ministry of Natural Resources and Environment on national regulations on environment

22 Examples of steel scraps banned from import are used iron or steel packings, drums, cans, boxes and other containers pressed and compacted into blocks, briquettes or bales; imported steel scraps having an radio-activity concentration and surface contamination levels exceeding the permissible levels prescribed by Vietnamese related technical regulations (Article 2.3 of the National technical regulation on environment for imported steel scraps for production (QCVN 31:2018/BTNMT))

23 Examples are materials containing or affected by radioactive substances at levels exceeding the exemption ones prescribed by related technical regulations (Article 2.4.3 of the National technical regulation on environment for imported steel scraps for production (QCVN 31:2018/BTNMT))

imported scraps,[24] as well as methods of sampling and determining impurities[25] and methods of determining impurity components.[26]

- On the 17th of September, 2018 the Prime Minister issued Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose. While highlighting the threat that Vietnam has to face ('*becoming a dump for waste and outdated production recycling technology of the world*'), it provides for comprehensive instructions, requiring the participation of many governmental agencies to control scrap import.[27] The main responsibility remains in the hand of the Ministry of Industry and Trade. In particular, it shall: (i) *determine some sorts of "quota" of scrap to be imported*, based on the actual demand for use of scrap for production;[28] (ii) *make sure that the management of scrap imported into Vietnam is in conformity with WTO law*;[29] *working out methods for suspension of temporary scrap*

24 See Article 3.1.1 and 3.1.2 of the National technical regulation on environment for imported steel scraps for production (QCVN 31:2018/BTNMT)

25 See para. a2 of Article 3.2.1 of the National technical regulation on environment for imported steel scraps for production (QCVN 31:2018/BTNMT)

26 See para. b of Article 3.2.4 of the National technical regulation on environment for imported steel scraps for production (QCVN 31:2018/BTNMT)

27 Related agencies are: Provincial People's Committees, Ministry of Natural Resources and Environment, Ministry of Finance, Ministry of Industry and Trade, Ministry of Transport, Ministry of National Defense, Ministry of Public Security, Ministry of Foreign Affairs, Ministry of Science and Technology. In particular, the Ministry of Natural Resources and Environment shall '*continue to review and amend legislative documents on environmental protection applied to scrap import, while tightening the permission for import of scrap for the purpose of processing and re-sale to production facilities', send a report to the PM for consideration and revision of the list of scraps permitted for import 'with the aim of not approving import of scrap that may cause environmental pollution*'. See Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose

28 In particular, the Ministry of Industry and Trade shall '*take charge and cooperate with relevant agencies in reviewing and assessing the actual demand for use of scrap and materials for production of paper, plastic, iron, steel, cement and non-ferrous metal in Vietnam as the basis for determining volume of additional scrap imported as production material which is on the list of scrap permitted for import*'. See Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose

29 The Ministry of Industry and Trade shall '*review international practice to which Vietnam is a signatory in order to work out methods for management of scrap imported into Vietnam in conformity with such international practice and timely publish documents on management enhancement and limit of scrap import into Vietnam in accordance with regulations provided by the WTO*', '*take charge and cooperate with relevant ministries and agencies in studying to adopt safeguard measures in conformity with WTO's regulations on scrap import*'. See Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose

import;[30] *proposing a longer list of scraps to be prohibited*;[31] *managing the control of scrap import*.[32]

- On the 16th of April, 2019, the Ministry of Finance, General Department of Customs issued the Document No. 2188/TCHQ-GSQL on Promotion of solutions to managing, preventing import of scrap and controlling smuggling and trade fraud upon import of scrap. Among different issues,[33] this detailed 24-page document specifies 4 requirements for scrap importation: valid certificate of conformance to environmental protection regulations; certificate of security deposit; the volume of scrap unloaded in ports or transported across inland ports not greater than the remaining volume permitted for import as specified in the certificate; scrap must be in the list of waste permitted for import as production materials.[34] If the

30 In particular, the Ministry of Industry and Trade shall '*take charge and cooperate with relevant ministries and agencies in reviewing and applying or proposing adoption of the method for suspension of temporary import for re-export, transit and transshipment of scrap into the territory of Vietnam according to the reality*'. See Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose

31 The Ministry of Industry and Trade shall '*study, review and amend current regulations with the aim of making a list of scrap prohibited from being temporarily imported for re-exported, transited and transshipped and take over and cooperate and urge ministries in charge of professional management to promulgate and publish the list of goods prohibited for import as per regulations in Article 5 of Decree No.69/2018/ND-CP dated May 18, 2018…*', '*take charge of revisions of Circular No.12/2018/TT-BCT and Decree No.69/2018/ND-CP with the aim of including additional used goods to the list of goods prohibited for import in order to prevent false declaration of goods name, purpose, HS code in pursuit of importing goods not subject to the scrap import policy but such goods may be used as scrap afterwards*'. See Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose

32 The Ministry of Industry and Trade shall '*instruct the market surveillance authority to promote inspection of sale and use of imported scrap as authorized*', '*notify scrap importers through mass media that they are not allowed to import scrap into Vietnam through checkpoints by roads or railroads from October 01, 2018*'. See Directive No. 27/CT-TTg on a Number of urgent solutions for enhancement of management of scrap import and use of imported scrap for production purpose

33 The document No. 2188/TCHQ-GSQL contains instructions to Customs departments of cities and provinces on different issues: (i) receipt, inspection and handling of scraps unloaded in warehouses, storage yards and ports, (ii) implementation of customs procedures for scraps imported as production materials, (iii) imported scraps management software.

34 The requirements are the following:
'a. *Consignee specified in the sea cargo e-manifest or the declaration of freight carried by inland waterways (hereinafter referred to as cargo declaration) must hold the certificate of conformance to environmental protection regulation upon import of waste used as production materials (hereinafter referred to as waste import certificate) which remains valid;*
b. Consignee specified in the cargo declaration must hold the certificate of security deposit for imported waste referred to in the cargo declaration;
c. The volume of waste unloaded in ports or transported across inland ports must not be greater than the remaining volume of waste permitted for import as specified in the certificate of import of waste (…);
d. Waste specified in the cargo declaration must be in the list of waste permitted for import as production materials into Vietnam in accordance with the Prime Minister's regulations'.

requirements are not met, the loading of the scrap shipment will be prohibited, and the shipping line shall be requested to carry the cargo out of Vietnam's territory.

- On the 15th of November, 2019, the Ministry of Industry and Trade issued the Circular No. 27/2019/TT-BCT Regulating list of wastes subject to temporary suspension from temporary import, re-export or merchanting business.[35] This document adds some wastes subject to temporary suspension from temporary import, re-export or merchanting business, most of which are plastic wastes (chapter 39, codes 3919, 3920, 3921, 392321, 392329).

To sum up, measures provided for by Vietnamese authority in order to control scrap importation are essentially non-tariff ones. They can be under different forms:

- imposition of a 'quota' for scrap importation, based on the actual demand for use of scrap for production.[36] In fact, the volume of scrap to be imported is conditioned by the design capacity of manufacturers who import scrap. From 2025 this volume cannot exceed 80% of a manufacturer's design capacity, the remaining 20% shall be local;[37]

- imposition of conditions for scrap importation. In particular, scrap can only be imported to be used as production materials; importation of scrap for pre-processing and resale is prohibited.[38]

- prohibition of importation of some categories of scrap and wastes;[39]

- application of conditions related to impurities in imported scrap;[40]

35 This document replaces the Circular No.41/2018/TT-BCT of the Ministry of Industry and Trade on the List of wastes subject to temporary suspension from temporary import, re-export and merchanting business (dated the 6th of November, 2018).

36 This measure is mentioned in Directive No. 27/CT-TTg of the Prime Minister

37 These measures are imposed by Document No. 2188/TCHQ-GSQL of the General Department of Customs

38 These measures are imposed by Document No. 2188/TCHQ-GSQL of the General Department of Customs

39 This measure is provided by Circular No. 08/2018/TT-BTNMT of the Ministry of Natural Resources and Environment, Directive No. 27/CT-TTg of the Prime Minister and Circular No. 27/2019/TT-TCT of the Ministry of Industry and Trade

40 This measure is prescribed by Circular No. 08/2018/TT-BTNMT of the Ministry of Natural Resources and Environment

One can ask if these measures are compatible with Vietnam's trade liberalisation commitments. That is the reason why in the Directive 27/CT-TTg, the Vietnamese Prime Minister invites the Minister of Industry and Trade to examine the compatibility of Vietnamese measures with the requirements of trade agreements of which it is a member, as well as the possibility of applying trade defense measures related to debris importation compatible with WTO rules.[41]

The above-mentioned question, related to the compatibility of Vietnamese measures with the requirements of trade agreements, is appropriate. In fact, following China's notification in the WTO of its waste importation prohibition, related industries in main exporting countries deplored Chinese measures out of procedural as well as substantive aspects. In particular, they argued that China's measures didn't respect free trade principles and agreements between China and its partners, in addition to WTO rules.[42]

Nothing can guarantee that Vietnam will not face similar allegations. Therefore, one can ask: do Vietnam's measures risk violating the country's trade liberalisation commitments? As trade agreements of which Vietnam is a member often contain provisions related to environmental protection, how useful can those provisions be in order to justify Vietnamese measures?

2. Vietnamese importation restriction measures: Are they compatible with Vietnam's international trade commitments?

2.1. The WTO rules: between the obligation to liberalize trade and the right to protect the environment

Under the WTO law, opening the market for debris importation is not only a right, but also an obligation for Vietnam.

41 See the Vietnamese Prime Minister's Directive 27/CT-TTg on Some measures to reinforce the management of debris importation and debris use as raw material (17 September 2018).

42 See for example: European Recycling Industries' Confederation (2017), *Comments on Notification G/TBT/N/CHN/1211 and G/TBT/N/CHN/1212 of 18 July 2017 to the WTO Committee on Technical Barriers to Trade*. Retrieved from: https://www.fnoi.nl/uploads/Bestanden/EuRICComments_CN%20Notification%20to%20WTO.PDF [accessed 15 May 2022]; United States' institute of scrap recycling industries sent to the WTO/national notification and enquiry center of the People's Republic of China and the ministry of environmental protection of the People's Republic of China (2017), 'Statement'. Retrieved from: https://www.isri.org/docs/default-source/default-document-library/isri-comments-to-the-wto-re-notification-gtbtnchn1211-august-18-2017.pdf?sfvrsn=2&sfvrsn=2 [accessed 15 May 2022]

Firstly, Vietnam is bound by the duty to reduce tariff barriers imposed on debris importation. We note that during its negotiation for access to the WTO, Vietnam didn't obtain any right to restrict debris importation. Tariffs applied on imported debris are prescribed in Vietnam's Schedule of Concessions. Among them, waste, parings and scrap of plastics (HS 3915) may be imposed a modest maximum bound rate of 10%. Unsorted paper waste and scrap may be imposed a maximum bound rate of 2%. Heavy metal debris tariff reduction is also in the Schedule: waste and scrap containing chromium (HS811222) is imposed a maximum bound rate of only 3%. Vietnam committed not to apply other charges or duties on these products. Surely, those rather low tariffs do not dissuade trade partners from exporting debris to Vietnam.

Secondly, Vietnam has the duty to eliminate non-tariff barriers imposed on debris importation. Quantitative restrictions constitute a main category of non-tariff barriers,[43] therefore the Article XI of GATT related to general elimination of quantitative restrictions should be paid attention to.

According to paragraph 1 of Article XI, *'No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.'* In the case *Turkey – Restrictions on Imports of Textile and Clothing Products,* the Panel confirmed that because '*quantitative restrictions usually have a trade distorting effect, their allocation can be problematic and their administration may not be transparent'*, their prohibition ' *forms one of the cornerstones of the GATT system'*.[44] However, while quantitative restrictions refer to all '*prohibitions or restrictions other than duties, taxes or other charges'*, which can be '*made effective through quotas, import or export licences or other measures*', the WTO Secretariat notes that Article XI.1 of GATT doesn't provide a definition of

43 See Bossche, V. D. (2005), *The law and policy of the world trade organizaiton, text, cases and materials*

44 Panel's Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/R (31 May 1999), p. 9.63

the term 'quantitative restriction'.[45] According to Van den Bossche and Prévost,[46] a measure risks being considered as violating Article XI of GATT if 2 elements are gathered: this measure is a non-tariff measure and it affects the imports from or exports to other WTO Members. Besides, Van den Bossche[47] cited 4 types of quantitative restrictions: (i) an (absolute or conditional) prohibition or ban of a product; (ii) a quota indicating the quantity that may be imported or exported; (iii) automatic and non-automatic licensing; and (iv) other quantitative restrictions.[48]

On one hand, Vietnam's measures are by nature non-tariff, and they affect the importation of debris from other WTO members. On the other hand, at least some of Vietnam's above-mentioned measures can be classified as prohibitions or quotas imposed on debris that may be imported. The wording of XI.1 of GATT is comprehensive, it applies '*to all measures instituted or maintained by a contracting party prohibiting or restricting the importation, exportation and sale for export of products other than measures that take the form of duties, taxes or other charges*'.[49] Therefore, it is reasonable to argue that Vietnamese restriction of debris importation risks being considered as violating Article XI.1 of GATT.

Thirdly, the obligation of debris importation cannot be waived by the application of trade defense measures, for three reasons. First, trade defense instruments, by nature, can only be applied if imported products cause or threaten to cause material injury (in the case of antidumping or countervailing measures) or serious injury (in case of safeguard measures) to an industry of the importing country.[50] This is not the case in Vietnam. Second, antidumping and countervailing measures shall only be tariff measures. In Vietnam's case, rules on antidumping and countervailing measures cannot justify the additional control and restriction of debris importation – which are

45 WTO Secretariat, WTO analytical index – GATT 1994 – Article XI (practice). Retrieved from: https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_jur.pdf [accessed 15 May 2022]

46 For analyzes related to GATT Article XI interpretation, see Bossche, V. D., Peter and Prévost, D. (2016), 'Rules on market access', in *Essentials of WTO Law*

47 Bossche, V. D. (2005), *supra* note 43

48 Bossche, V. D. (2005), *supra* note 43, pp. 441-442

49 Panel's Report, *Japan – Trade in Semi-conductors*, L/6309 – 35S/116 (04 May 1988), p. 104

50 See Article VI (Anti-dumping and Countervailing Duties) and XIX (Emergency Action on Imports of Particular Products) of GATT.

by nature non-tariff measures. Third, this control and restriction does not aim to protect some local industries: their objective is to preserve the environment as well as human health or life. Therefore, WTO rules on trade defense are not appropriate justification for Vietnamese measures.

However, one can argue that some WTO provisions permit Vietnam to limit and control debris importation.

Firstly, Vietnam can invoke Article XI.2 of GATT, which authorizes import prohibitions '*necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade*'. '*Grading*' (in the French version: '*le contrôle de la qualité*') can be defined as '*the process of judging the quality of a product*'.[51] Considering the need to control the quality of imported debris in Vietnam, one can argue that the importation restrictions are necessary.

Secondly, Vietnam may justify its restriction by invoking GATT Article XX.b or TBT agreement. GATT Article XX.b authorises WTO Members to apply restrictions '*necessary to protect human, animal or plant life or health*', provided that these restrictions satisfy the conditions prescribed in this article. The TBT agreement contains a similar rule in its Preamble: '*No country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, or the environment (…)*', provided that those measures satisfy the conditions prescribed in the agreement.

One cannot deny that debris importation is dangerous for human health or life, in particular if Vietnam's poor debris treatment infrastructure and technology are to be taken into consideration. Nevertheless, one may note that the conditions of application of exceptions to WTO rules are difficult to satisfy. While invoking Article XX.b to justify a measure which is otherwise GATT-illegal, it is necessary to prove (i) that the importation restriction measure is established to protect human health or life, (ii) that this measure is 'necessary' in order to obtain this objective, and (iii) that the conditions prescribed in the introductory text of Article XX are

51 See Cambridge University Press (2019), *Cambridge Dictionary*.

satisfied. Related to the introductory text, the measure shall not be '*applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail*' and '*a disguised restriction on international trade*'. We can state that the conformity with the introductory text is determined based on the way a measure is applied. For example, '*measures should allow foreign governments to contest their application, and international negotiations should be pursued before trade restrictions are imposed on other countries*'.[52]

In order to justify its measures according to the TBT agreement, Vietnam shall prove that its measures (i) are necessary to protect people's health and life, or the environment; (ii) satisfy the non-discrimination principle, including the MFN treatment and national treatment;[53] (iii) are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade[54]; and (iv) are in accordance with the provisions of the TBT agreement.[55]

It is not easy to satisfy all those conditions. The sole 'necessity' test is already very complex. While Article XX.b and the TBT Agreement mention the criteria of 'necessity', Robert Howse insisted that the 'necessity test' in the TBT Agreement '*is not couched in exactly the same language as the necessity test that pertains to Article XX exceptions in the GATT*'. However, he stated that '*it is unlikely that a measure found to meet the necessity test in GATT would fail this requirement in TBT*'.[56] According to the WTO jurisprudence, the 'necessity' test imposed by GATT Article XX.b requires that

52 Fickling, M. and Hufbauer, G. (2012), 'Trade and the Environment', in *The oxford handbook on the world trade organization* (Daunton, Martin, Narlikar, Amrita and Stern, Robert M. ed.), DOI: 10.1093/oxfordhb/9780199586103.013.0033.

53 Article 2.1 of the TBT agreement: '*Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country*.'

54 See Article 2.2 of the TBT agreement. And for this purpose, '*technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plan life or health, or the environment. In assessing such risks, relevant elements of considerations are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products*.'

55 See TBT Agreement's preamble.

56 Howse, R. (2012), 'Regulatory Measures', in *The oxford handbook on the world trade organization* (Daunton, Martin, Narlikar, Amrita and Stern, Robert M. ed.), DOI: 10.1093/oxfordhb/9780199586103.013.0021

(i) the concerned measure produces the least restrictive effect on international trade; (ii) it is impossible to use another solution, which is compatible or less incompatible with WTO rules in order to obtain the objectives of protection of human life and health; (iii) the public interests or values to be protected is important; the more important these interests or values are, the more it would be easy for the 'necessity' of the concerned measure to be accepted; (iv) the contribution of the measure to the realization of the objective must be important, in particular if the concerned measure is radical (such as prohibition of importation).[57] The necessity of a measure is determined through a rather complex "three-pronged test".[58] Until today, in quasi-totality of WTO cases related to Article XX, the measures applied were not considered as satisfying the conditions prescribed in Article XX.[59] One can ask how a developing country like Vietnam can satisfy the conditions stipulated in Article XX.b and in the TBT agreement to justify its prohibition of importation of debris.

Besides, using measures to protect the environment or human life and health is a *right*, not an *obligation* of importing countries who are WTO members. The mentioned provisions state simply that rules on trade liberalisation do not stop states from applying measures to protect human health or life. Therefore, as an importing country, Vietnam can decide to adopt or not to adopt measures to restrict debris importation, in order to protect the environment and human life or health.

2.2. The CPTPP rules: Opportunities for Vietnam's environmental protection?

Similar to the WTO, the CPTPP prescribes Vietnam's obligation to open market access for debris. Vietnam's market access commitments in the CPTPP, which are often characterized as

57 See Lanfranchi, M. and Truilhe-Marengo, E. (2013), *Droit de l'omc et protection de l'environnement* [WTO law and environmental protection], pp. 25-26.

58 Howse, R. (2012), *supra* note 56.

59 The only exception is the measure applied by the European Community to prohibit the importation of asbestos products coming from Canada. See documents related to the case *European Communities – Measures affecting asbestos and products containing asbestos*, in particular the Appellate Body's Report, *European Communities – Measures affectif asbestos and products containing asbestos*, WT/DS135/AB/R (March 12, 2001)

'WTO+' commitments,[60] are even 'deeper' than those in the WTO. According to this agreement, tariffs imposed on debris, already low according to the WTO commitments, shall be reduced even more. For example, the binding tariffs of 10% imposed on plastic debris (HS391510, HS391520, HS391530, HS391590) committed in the WTO shall be eliminated totally upon CPTPP's entry into force for Vietnam.[61] The rule relating to general elimination of quantitative restrictions, prescribed by GATT Article XI.1, is integrated in the CPTPP.[62] WTO's rules on trade defense measures are also applied in the CPTPP.[63]

In the relation with its CPTPP partners, in order to justify its control of debris importation, Vietnam can also invoke exceptions similar to those in the WTO. Article 2.10 of CPTPP Chapter 2 integrates the exception prescribed by GATT 1994 Article XI.2, which permits importation restrictions in order to control the quality of imported products. Article 29.1 of CPTPP Chapter 29 acknowledges parties' rights to general exceptions, in conformity with GATT 1994 Article XX.[64] CPTPP's chapter 8 on TBT acknowledges some rights of parties according to WTO's TBT agreement, including those that apply to measures to protect the environment.[65]

However, as a 'new generation free trade agreement', the CPTPP includes 'WTO-X' provisions covering issues that go beyond those regulated by the WTO.[66] Environmental protection is an example of those issues. Deng Haifeng, Huang Jie Jeanne rightly state that the chapter 20 of the CPTPP on Environment contributes

60 For more details on 'WTO+' measures, read Bartels, L. (2013), 'Human rights and sustainable development obligations in EU free trade agreements', 40 *Legal Issues on Economic Integration* 297; Pauwelyn, J. (2009), 'Multilateralizing regionalism: What about an MFN clause in preferential trade agreements?', in *Multilateralizing regionalism and the future architecture of international trade law as a system of law* (ASIL Proceedings); Marceau, G. (2009), 'News from Geneva on RTAs and WTO-plus, WTO-more, and WTO-minus', in *Multilateralizing regionalism and the future architecture of international trade law as a system of law* (ASIL Proceedings).

61 See CPTPP Chapter 2 and Section 2D

62 See CPTPP Chapter 2, Article 2.10 of the CPTPP

63 See CPTPP Chapter 6, Articles 6.2 and 6.8

64 See CPTPP Chapter 29, Article 29.1 and Article 29.2

65 See CPTPP Chapter 8, Article 8.4

66 For definitions of WTO-X provisions, see Marceau, G. (2009), *supra* note 65; Hofmann, C., Osnago, A. and Ruta, M. (2017), 'Horizontal depth: A new database of the content of preferential trade agreements', *Policy research working paper 7971*, World Bank Group, pp. 2-3

effectively to environmental protection from many perspectives: it '*establishes a close connection between environmental protection and trade*', it offers '*a source of international environmental law*', while '*enhancing the implementation mechanisms of multilateral environmental agreements*', '*triggering new green trade barriers*' and '*increasing public participation and information disclosure*'.[67] Article 20.2 of this chapter highlights the objectives '*to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues*'. With many binding provisions,[68] it offers Vietnam more legal bases to establish and apply environmental protection measures. Some provisions of chapter 20 can be of particular interest:

- *Firstly*, the sovereign right of members in the environmental protection field is confirmed. It is acknowledged that members have the right to determine their level of environmental protection and their environmental priorities. Vietnam therefore has the right to establish, adopt or modify its laws and policies in the environmental field, related to debris importation control.[69]

67 Deng, H., Huang Jie, J. (2018), 'What Should China Learn from the CPTPP Environmental Provisions?', in 13:51 *Asian Journal of WTO and International Health Law and Policy*, pp. 511-550.

68 Examples of binding obligations prescribed in the CPTPP chapter 20: (i) not to effectively enforce environmental laws in a manner affecting trade or investment (Article 20.3.4 on General commitments); (ii) not to waive or derogate from (or offer to do so) its environmental laws to encourage trade or investment (Article 20.3.6 on General commitments); (iii) to take measures to control the production and consumption of and trade in substances that deplete and modify the ozone layer (Article 20.5 on Protection of the ozone layer); (iv) to make publicly available appropriate information about its programs and activities related to ozone layer protection; (v) to take measures to prevent pollution of the marine environment from ships and make publicly available appropriate information about its programs and activities (Article 20.6 on Protection of the marine environment from ship pollution); (vi) to respect procedural matters related to promotion of environmental laws (Article 20.7 Procedural matters); (vii) to provide opportunities for public participation (Article 20.8 on Opportunities for public participation); (viii) to allow public submissions (Article 20.9 on Public submissions); (ix) to designate the authority or authorities responsible for cooperation (Article 20.12 on Cooperation frameworks); (x) to review periodically the implementation and operation of Art 20.12; (xi) to make publicly available information about its programs and activities (Article 20.13 on Trade and biodiversity); (xii) not to grant or maintain subsidies for fishing that negatively affect fish stocks, review their disciplines, notify their subsidy (Article 12.16 on Marine capture fisheries); (xiii) to adopt, maintain and implement laws, regulations and any other measures to fulfill its obligations under the CITES and exchange their information (Art 20.17 on Conservation and trade), (xiv) to designate and notify contact points (Article 20.19 on Environment committee and contact points).

69 See CPTPP Chapter 20, Article 20.3

- *Secondly*, the obligation for members to protect the environment is highlighted. As a member, Vietnam has the obligation to maintain and improve its laws and policies of environmental protection. It shall not reduce levels of environmental protection prescribed in its domestic law in order to encourage trade and investment.[70] It also shall implement MEAs in which it participates. Among those agreements, we can note in particular the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, of which Vietnam has been a member since 1995. It is to be noted that one of the aims of this Convention is the '*restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management*'.[71]

- *Thirdly*, the CPTPP establishes a mechanism to monitor the respect of the mentioned rights and obligations. In particular, it prescribes a dispute settlement mechanism to examine issues covered by Chapter 20.[72] The disputes related to environmental issues may be solved thanks to consultations between parties; if consultations fail, the disputes may be examined by working groups. The decisions of those working groups will bind parties. One may expect that the working groups, while examining disputes under the light of Chapter 20, will be more sensible to environmental considerations than the dispute settlement working groups of the WTO.

In other words, in comparison to the WTO, the CPTPP facilitates and encourages consideration of environmental issues – it even imposes an obligation to do so. In the framework of the CPTPP, Vietnam can therefore invoke CPTPP provisions in order to justify its debris importation control measures.

Having said that, one should not be over-optimistic about the role of the CPTPP in environmental protection. *Firstly*, this role is to be proved in practice, during the agreement's implementation

70 See CPTPP Chapter 20, Article 20.3

71 Secretariat of the basel convention (2011), 'Basel convention on the control of transboundary movements of hazardous wastes and their disposal'. Retrieved from: https://wedocs.unep.org/bitstream/handle/20.500.11822/8385/-Basel%20Convention%20on%20the%20Control%20of%20Transboundary%20Movements%20of%20Hazardous%20Wastes%20-20113644.pdf?sequence=2&amp%3BisAllowed= [accessed 15 May 2022].

72 See CPTPP Chapter 20, Articles 20.20 and 20.23

and in particular during the dispute settlement process. In particular, one can worry about the legal enforceability of chapter 20, due to the low level of precision of many substantive provisions, including the 'renvoi-clauses'.[73] These clauses, which serve principally to reaffirm the Parties' obligations according to MEAs, can only be well understood in light of referred environmental legal instruments and their interpretation. Unluckily, there is not an abundant environmental 'case law' to help to interpret many aspects of environmental protection provisions. The binding obligations are stipulated, but we cannot see yet how to implement them exactly and effectively. Therefore, their implementation depends largely on the political will of the parties.

Secondly, one can worry about the risk of 'jurisdictional overlap', as well as the relative effect of CPTPP provisions.

On one hand, as the dispute settlement mechanisms of the WTO and the CPTPP co-exist, a 'jurisdictional overlap' may occur: a dispute can be brought to the multilateral *and* the regional forums. Therefore, based on their short or long-term strategies, complainants can choose to file to the CPTPP, and/or to the WTO.[74] According to Pauwelyn and Salles, this '*sequential or overlapping proceedings*' can raise party-related concerns and society or system-related concerns. Among these concerns, the biggest one is related to inconsistent rulings.[75] Molina and Khoroshavina also warn that this situation may '*lead to a conflict of rulings if the WTO Member does bring the dispute to both the RTA DSM (under RTA law) and WTO DSM (under WTO law) and obtains inconsistent or contradictory rulings*'.[76] According to

73 For more analyses of 'renvoi-clauses', see Croquet, N. A. J. (2015), 'The climate change norms under the EU-Korea Free Trade Agreement: between soft and hard law', in *Global governance through trade, Eu policies and approaches* (Wouters Jan, Marx Axel, Geraets Dyland and Natens Bregt ed.), pp. 132-141

74 Busch, Marc L. (2007), 'Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade', in *International Organisation* 61, Fall 2007, pp. 735-761, DOI: 10.1017/S0020818307070257

75 Pauwelyn, J and Salles, L. E. (2009), 'Forum Shopping before International Tribunals: (Real) Concerns, (Im)Possible Solutions', in *Cornell International Law Journal*, Vol. 42, Issue 1. Retrieved from: http://scholarship.law.cornell.edu/cilj/vol42/iss1/4 [accessed 15 May 2022]

76 Molina, A. C. and Khroshavina, V. (2018), 'How regional trade agreements deal with disputes concerning their tbt provisions?', *Staff Working Paper* ERSD-2018-09, World Trade Organization, Economic Research and Statistics Division

Pauwelyn and Salle, this issue can be best addressed by states, while elaborating their treaties' provisions related to dispute settlement.[77] As we mentioned, chapter 20 of the CPTPP (Environment) gives the requesting party the opportunity to bring environment-related cases to a panel, established in conformity with chapter 28 (Dispute Settlement).[78] If these disputes concern trade issues covered by WTO agreement, they can be heard by the WTO DSM or/and by the CPTPP DSM. To avoid the 'forum shopping', Article 28.4 prescribes the choice of forum: '*1. If a dispute regarding any matter arises under this Agreement and under another international agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute. 2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora*'. In other words, when an environment-related dispute arises under both agreements, the complaining party can use the WTO DSM or the CPTPP DSM, and once it has initiated the dispute under a forum, another forum will be excluded.

However, these above-mentioned provisions do not resolve the 'forum shopping' problem completely, due to the following reasons. First, the CPTPP consists of 11 members. In a virtual case, it is possible that many members are not satisfied with a Vietnamese debris importation restriction measure. Those members may initiate different proceedings under different forums, such as those of the CPTPP and of the WTO. Second, CPTPP parties, who are also WTO members, have the right to file a dispute under the WTO DSM, and nothing in the WTO law prevents them from doing so, even if the case is already examined by the CPTPP DSM. An example of this possibility is the case *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*,[79] where Brazil brought the

77 Pauwelyn, J and Salles, L. E. (2009), *supra* note 75.

78 CPTPP Article 20.23 (Dispute Resolution): '*1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and Article 20.22 (Ministerial Consultations) within 20 days after the date of receipt of a request under Article 20.20, or any period as the consulting Parties may agree, the requesting Party may request consultations under Article 28.5 (Consultations) or request the establishment of a panel under Article 28.7 (Establishment of a Panel)*'.

79 See Panel's report, *Argentina – Defitinite Anti-dumping Duties of Poultry from Brazil*, WT / DS241/R (May 19, 2003).

dispute to the WTO after bringing it to the MERCOSUR forum. Besides, it is possible that in order to solve a dispute between Vietnam and another CPTPP party, the WTO dispute settlement mechanism is selected by the complainant. In this case, the WTO law, which is less demanding about environmental protection, is to be applied.

On the other hand, the CPTPP is not opposable against third countries. Therefore, in their relation, CPTPP members may be bound by stricter environmental protection provisions than those regulating relation between them and third countries. The diversity of environmental protection regimes in different international trade agreements may have a discriminative impact on goods/services/service providers of different partners. It may also complicate the implementation of these regimes. For instance, Vietnamese debris importation restriction measures may be covered *at least* by the rules of the CPTPP, the rules of the WTO (in which all CPTPP Parties are members), the rules of the RCEP (in which 7 CPTPP Parties[80] are members) and the rules of ASEAN Economic Community (in which 4 CPTPP Parties[81] are members). This 'spaghetti bowl' doesn't facilitate the Vietnamese task of respecting its international trade commitments.

In brief, to a certain limit, environmental provisions in the CPTPP may help to justify Vietnam's measures which restrict debris importation. In case of a dispute related to these measures, according to CPTPP chapters 20 and 28, complainants can choose to bring the case to the CPTPP DSM. However, the risk of 'forum shopping' remains and it is possible that other forums, including that of the WTO, could be selected. Besides, the relative effect of the CPTPP and the diversity of environmental regimes may enable the discrimination in international relations, as well as complicate Vietnam's efforts to harmonise trade liberalization and environmental protection. Therefore, in the long term, it is necessary to promote and strengthen universal provisions protecting the environment. Global environmental solutions require global and inclusive approaches.

80 Australia, Brunei Darussalam, Japan, Malaysia, New Zealand, Singapore, Vietnam.
81 Brunei Darussalam, Malaysia, Singapore, Vietnam.

Finally, one may ask: what should we do with waste and debris? Waste and debris trade is not the problem that only Vietnam has to tackle, while bad waste/debris management in Vietnam is harmful to the environment on national and global levels. At this moment, while waiting for an effective universal mechanism, we believe that provisions aimed at the environmental protection of new-generation FTAs like the CPTPP encourage partners to find better solutions to this issue – collect, sort, recycle, treat, reduce debris and waste. They encourage stakeholders to think of innovative solutions for sustainable elimination of the causes of the waste/debris crisis, in reforming their living and production models.

Needless to say, like many other rules, international trade rules can only contribute a small part to the solution of the waste problem in particular and of sustainable development issues in general. The solution will depend mainly on the mindset of people. There is, therefore, a long way to go, before arriving at a harmonisation between trade liberalisation and environmental protection. ●

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[45] Vietnam's General Customs Administration's Document No. 4202/TCHQ-PC on Management of debris imported in Vietnam (July 17, 2018)

[46] China's notification to the WTO's TBT Committee G/TBT/N/CHN/1211 (July 18, 2017)

[47] Vietnam's Government's Decree 38/2015/NĐ-CP on Waste and debris management (April 24, 2015)

[48] Vietnam's Government's Decree 19/2015/ND-CP on Detailing the implementation of a number of articles of the Law on Environmental protection (February 14, 2015)

[49] Vietnam's Prime Minister Decision No. 73/2014/QD-TTg on List of scraps allowed to be imported for production materials (December 19, 2014)

[50] Vietnam's government's Decree 80/2014/ND-CP on Waste water drainage and treatment (August 06, 2014)

[51] Vietnam's Ministry of Natural Resources and Environment's Circular No. 43/2010/TT-BTNMT on National regulations on environment (December 29, 2010)