



REPORT 1

(TRACKING INVESTMENT IN EGS IN VIETNAM)

ACTIVITY CODE: INVEN 1
“PROMOTION OF FDIS IN THE SECTOR OF ENVIRONMENTAL GOODS AND SERVICES”

Version: (final)

Ha Noi, 21 January 2015

Prepared by: Dr. David Luff
Dr. Nguyen Hoang Minh
Msc. Lai Van Manh
Msc. Dang Thi Phuong Ha

This document has been prepared with financial assistance from the Commission of the European Union. The views expressed herein are those of the author and therefore in no way reflect the official opinion of the Commission nor the Ministry of Industry and Trade

TABLE OF CONTENT

I.	INTRODUCTION	5
II.	AN ANALYSIS OF THE CURRENT LEVEL OF INVESTMENT IN EGS IN VIETNAM AND THE MARKET FOR EGS IN VIETNAM	8
II.1	The current level of domestic investment in EGS in Vietnam	8
II.2	The current level of foreign direct investment in EGS in Vietnam.....	11
II.3	Overview of the market for EGS in Vietnam	20
III.	A SYNTHESIS OF VIETNAM’S POLICIES AND REGULATIONS RELATED TO EGS	25
III.1	The promotion of EGS as a policy choice of Vietnam.....	25
III.2	Synthesis of regulations in Vietnam related to EGS	26
III.3	Overview of investment policies related to EGS development in Vietnam	30
IV.	STAKEHOLDERS’ VIEWS ON VIETNAM’S POLICIES AND REGULATIONS RELATED TO EGS.....	38
IV.1	Methodology.....	38
IV.2	Synthesis of responses to questionnaires.....	39
IV.3	Additional views.....	42
IV.4	Conclusion: Perceived gaps and shortages of the policies and incentives related to EGS in Vietnam.....	43
V.	AN ANALYSIS OF THE EXISTING INTERNATIONAL FRAMEWORK AFFECTING VIETNAM RELATED TO EGS, INVESTMENT AND ENVIRONMENTAL PROTECTION.....	43
V.1	WTO commitments	44
V.2	ASEAN.....	53
V.3	APEC initiative.....	66
V.4	Bilateral agreements	71
VI.	GENERAL CONCLUSION	73
	BIBLIOGRAPHY	77

FIGURES

Figure 1: Trend of FDI Enterprises in waste treatment services

Figure 2: Distribution of FDI by the detail fields on EGS in 2012

Figure 3: Number of projects and registrations on waste water treatment, waste in Vietnam from 2011 to 2013

Figure 4: The sharing percentage of FDI enterprises in EGS by size of capital resource

Figure 5: the sharing percentage of FDI enterprises in EGS by size of employee

Figure 6 : Total and Average of employee, percentage of female in FDI enterprises in EGS in Vietnam

Figure 7: the distribution of FDI enterprises in EGSs in Vietnam by region in 2012

Figure 8: Average of turnover from business, profit before taxes, profit from business activities, and tax and fee paid per 1 enterprises

Figure 9: Pressure of population increasing in Vietnam (1990 – 2013)

Figure 10: forecast the demand of capital resources on EGS in Vietnam to 2020

TABLES

Table 1: Government budget expenditure from 2004 to 2010 in Vietnam (billion VND)

Table 2: List of projects in renewable energy production in Vietnam

Table 3: Distribution of FDI enterprises in EGS in Vietnam in 2012 by provinces

Table 4: Energy Consumption in 2000, 2005 and 2009 (in Kilotonne of oil equivalent [KTOE])

Table 5: Vietnam: Taxation in Industrial Zones

Table 6: Vietnam: Taxation in selected High-tech & Economic Zones

Table 7: Vietnam: Incentives Related to Corporate Income Tax upon the Amended Law on CIT and its guidelines (2013)

ACRONYMS

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACCSQ	ASEAN Consultative Committee for Standards and Quality
ACFTA	ASEAN-China Free Trade Agreement
ACIA	ASEAN Comprehensive Investment Agreement
ACNNR	ASEAN Agreement on the Conservation of Nature and Natural Resources
AFAS	ASEAN Framework Agreement on Trade in Services
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
AIA	ASEAN Investment Area
AJCEP	ASEAN-Japan Comprehensive Economic Partnership Agreement
AKFTA	ASEAN-Korea Free Trade Agreement
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
ASCM	Agreement on Subsidies and Countervailing Measures
BIT	Bilateral investment treaty
BTA	Bilateral Trade Agreement
CIT	Corporate Income Tax
EGS	Environmental Good and Service
EVSL	APEC's Early Voluntary Sectoral Liberalization
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade I Services
GPA	Government Procurement Agreement
GSO	Government Statistics Office
ICSID	International Center for Settlement of Investment Disputes
ISPONRE	Vietnam's Institute of Strategy and Policy on Natural Resources and Environment
MFN	most favoured nation treatment
MOIT	Ministry of Industry and Trade
MONRE	Ministry of Natural Resources and Environment
MOST	Ministry of Science and Technology
R & D	Research and Development
TBT	Technical Barriers to Trade
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Intellectual Property
USD	Dollar of the United States
VEPF	Vietnam Environmental Protection Fund
VND	Vietnam Dong
WTO	World Trade Organization

I. INTRODUCTION

Competition is growing among countries hoping to capture important new markets for clean energy technologies, products and services. Meanwhile, domestic policy measures in this area often attempt to address multiple policy goals, from environmental protection to job creation and industry competitiveness.

It is clearly a challenge of modern industrial policies to secure complementary, but possibly conflicting objectives at the same time:

- Economic growth,
- Attracting investments, using new technologies,
- Facilitating industry competitiveness,
- Securing sources of energy and acceptable energy prices for industry,
- Mitigating pollution, environmental protection and reduction of carbon emissions.

Adequate policies are those that ensure optimal combinations of tools and measures that concomitantly pursue all these objectives.

The EU-MUTRAP project ordered a research to be conducted for Vietnam's Ministry of Natural Resources and Environment (MONRE) in order to address one aspect of the question. It concerns the means that the Government of Vietnam can use to promote the use of "sustainable goods and services". As stated in the terms of reference, the overall purpose of the research is to "support the upgrading and the adjustment of the policy framework to promote more Foreign Direct Investment in environmental goods and services (EGS)."

EGS are all goods and services, which either directly contribute to reduce air, soil or water pollution, or those the production of which causes less pollution. In the first category, there are products which enable the creation of renewable energy. They include solar panels and turbines, windmills, biofuels, etc. In the services sector, these are services which are generally classified as environmental services, such as waste treatment, cleaning services, water purification, etc. In the second category, there are

the goods and services which are also considered as EGS, even if they do not themselves contribute to clean the environment. This is the case of products manufactured using renewable energy instead of fossil fuels, or the production of which does not create substantial waste. While the precise definition of EGS is still controverted, overall this research will consider both categories of EGS.

This research is to be carried out in two distinct parts. The first part, which is the subject of this study, provides a baseline analysis of the existing investments in Vietnam and the policies Vietnam is currently conducting with respect to EGS. This part also analyses the existing international legal framework under which EGS's policies may be conducted. The second part, which will be the subject of a second study, will highlight the policy tools available to promote EGS and provide recommendations in this regard for Vietnam.

The objective of this first study is to provide a description of the current investments in Vietnam in the area of EGS, the use of EGS in Vietnam, and the policies that are currently in place in Vietnam to promote them. This study also describes the international commitments of Vietnam that affect Vietnam's policies in the area of EGS. It is structured in four distinctive parts.

- The first part provides an analysis of the current level of investment in EGS (international and local) in Vietnam and the market for EGS in Vietnam. It is based on a substantial field research in the two Vietnamese cities in which such investments are made, Hanoi and Ho Chi Minh City. It is also based on investment statistics pertaining to EGS, which are provided by MOIT, MONRE, and FDI management authorities. Existing research is also used in relation to the investments made in the production of renewable energy, which requires the use of environmental goods¹.
- The second part provides a synthesis of all Vietnam's policies and regulations related to EGS. It specifies what are the goods and services which are considered as EGS in Vietnam, and the investment promotion policies that the Government is pursuing in their

¹ Nam, Pham Khanh; Quam, Ngyuen Anh; and Binh, Quan Minh Quoc, "Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam", International Institute for Sustainable Development, Trade Knowledge Network, December 2012.

favour. It is based on an extensive library research of relevant laws, regulations and policy guidelines pertaining to EGS and Vietnam.

- The third part describes the stakeholders' views regarding Vietnam's policies and regulations related to EGS. It addresses the perceived benefits and bottlenecks of these policies and regulations. This part is based on a survey and questionnaires sent to more than 34 companies that are active in the sectors of EGS in Vietnam. Interviews were also made to the owners and managers of domestic and foreign EGS firms in Vietnam and to the owners of utilities in Vietnam and central and provincial-level state agencies. Hence this part provides a good overview of the likely impact of the existing policies and regulations affecting EGS in Vietnam on both the level of investments in these sectors and environmental preservation.
- The fourth part provides an analysis of the existing international framework affecting Vietnam related to EGS, investment and environmental protection. It covers the WTO and other important international agreements to which Vietnam is a party, such as ASEAN or APEC. This part is obviously essential, as it shapes the scope and the possible limitations of Vietnam's policies and regulations affecting EGS in its territory. This part highlights possible difficulties in this regard and the policy space that the international framework stills leaves for the promotion of EGS in Vietnam.

This first study is mainly descriptive. It is based on an extensive documentary research, on surveys and interviews sent to the stakeholders and on a desktop review of the latter. The first three parts are the outcome of a research conducted by the researchers' team led by Dr. Nguyen Hoang Minh, under the auspices of Vietnam's Institute of Strategy and Policy on Natural Resources and Environment, ISPONRE. Dr. David Luff edited and contributed comments to these parts. The fourth part was mainly contributed by David Luff.

At the end of this study, stakeholders should be able to have a clear understanding of the situation in Vietnam related to the existing investments in EGS, and the current laws and policies affecting them. They should also understand the possible benefits and shortcomings of

these policies as well as the external constraints generated by the existing international legal framework.

The second study will then provide recommendations on the optimal policy tools for Vietnam for the promotion of EGS.

II. AN ANALYSIS OF THE CURRENT LEVEL OF INVESTMENT IN EGS IN VIETNAM AND THE MARKET FOR EGS IN VIETNAM

II.1 The current level of domestic investment in EGS in Vietnam

Domestic investment in EGS and Vietnam is very limited. The Government has not really invested itself in enterprises in the sector. Funds are only made available to potential investors in EGS by the Government for the pursuit of sustainable activities. As to private Vietnamese investment, this has grown in the recent past, but appears to be very limited in Vietnam, when compared to domestic investment in EGS in other countries.

a) Government's Funding

The Government sustains substantial budget expenditure for environmental protection, through the Vietnam Environmental Protection Fund (VEPF). Financial support for the VEPF is available to individuals and organizations who want to launch investment projects for conservation and pollution control purposes. Projects supported by VEPF are, among others, improvement of waste treatment, pollution prevention and mitigation, research and technology development, biodiversity conservation and public education.

Government expenditure for environmental protection has increased three times since 2004, from 2000 billion VND to over 6000 billion VND in 2010.

Table 1: Government budget expenditure from 2004 to 2010 in Vietnam (billion VND)

	2004	2005	2006	2007	2008	2009	2010
National budget	55,2	61,2	210	530	580	850	980
Local	1.841.9	2.056.8	2.690	2.970	3.303,2	4.300	5.610

	2004	2005	2006	2007	2008	2009	2010
province							
budget							
Total	1.841,1	2.118	2.900	3.500	3.8883,2	5.150	6.590

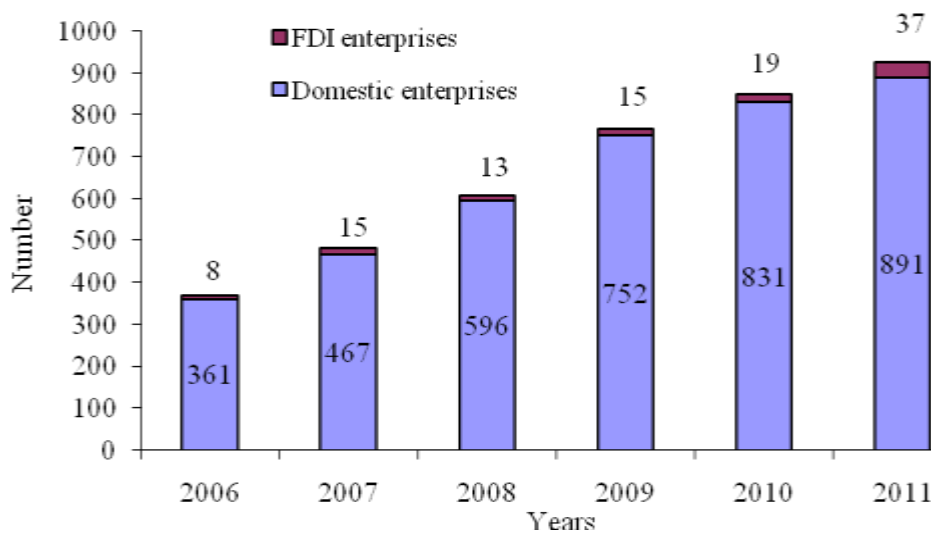
(Source: National environmental protection report, 2011)

However such level of expenditure cannot hide a general lack of sufficient infrastructure for environmental protection in Vietnam and a general absence of capital funding in enterprises active in the sectors of EGS in Vietnam.

b) Private domestic investment

There is an increasing number of enterprises in Vietnam which are active in the sectors of EGS. They concentrate in waste treatment, sewage and water purification. The number of such enterprises grew from 369 in 2006 to 928 in 2011

Number of Enterprises in EGS in Vietnam by Domestic and FDI



(Source: GSO in Vietnam, 2012)

There are also private investments in renewable energy production. The Table below provides the list and levels of such investments made in Vietnam:

Table 2: List of projects in renewable energy production in Vietnam

NO.	INDEPENDENT POWER PRODUCER (IPP)	OWNERSHIP TYPE / INVESTMENT CAPITAL	NAME OF PROJECT	OPERATIONAL DATE
1.	Northern Electricity development and investment JSC. No.2	a. Joint stock company, b. VND1,457 billion	Ngoi Phat hydropower plant (72 MW)	2011
2.	Hoang Anh Hydropower Joint Stock Company	a. Joint stock company b. VND1,497 billion	Ba Thuoc 2 hydropower plant, turbine 1, 2 (80 MW)	2012
3.	Trung Nam Group	a. Joint stock company, b. VND2,500 billion	Dong Nai 2 hydropower plant (70 MW)	2012
4.	Southern Hydropower Joint Stock Company	a. Joint stock company, b. VND1,798 billion	Dam Bri hydropower plant (75 MW)	2012
5.	Hung Hai Group	a. Joint stock Company b. VND2,000 billion	Nam Na 2 hydropower plant (66 MW)	2013
6.	Hung Hai Group	a. Joint stock company b. Bank loan: US\$100 million	Nam Na 3 hydropower plant (84 MW)	2014
7.	Viet–Laos Electricity Joint Stock Company	a. Joint Venture b. US\$166 million	Nam Mo hydropower plant (95 MW) constructed in Lao PDR	2014
8.	Energy and Industry Development Joint Stock	a. Joint Stock company b. US\$66 million	Luc Nam coal-fired thermo power plant (turbine 1)	2015

NO.	INDEPENDENT POWER PRODUCER (IPP)	OWNERSHIP TYPE / INVESTMENT CAPITAL	NAME OF PROJECT	OPERATIONAL DATE
	Company (EIC)			

Source: International Institute for Sustainable Development, Trade Knowledge Network, December 2012

The study from which this table is drawn qualifies these investments as “still limited”².

It would therefore appear that the level of domestic investment in Vietnam in the broad area of EGS remains limited when compared to other countries. In Brazil for instance, the water/wastewater segment, was estimated to total \$2.1 billion already in 2005. The figure has obviously substantially grown since then. In China, the level of domestic investment estimated in the five-year plan, approved in the spring of 2006, ranges from about \$157 billion to \$160 billion. China plans to spend an estimated US\$1.54 trillion on clean energy projects in the next 15 years³. In South Korea as well, investments were massive in all sectors of renewable energy. Between 2008 and 2010 private sector investment rose 34% to KRW 4.7 trillion (USD 421 billion). Only in the Korean wind power industry, private sector investment in 2012 was KRW 760 billion (USD 66 billion)⁴.

The above-mentioned study suggests that some rigid regulatory policies of Vietnam may contribute to this phenomenon, despite the incentives that otherwise exist (see below).

II.2 The current level of foreign direct investment in EGS in Vietnam

Vietnam’s Institute of Strategy and Policy on Natural Resources and Environment, ISPONRE, conducted a survey to identify the foreign direct investment (FDI) in Vietnam in the sectors of EGS. The results of this survey indicate an increasing interest of foreign capital in enterprises that are active in the sectors of EGS.

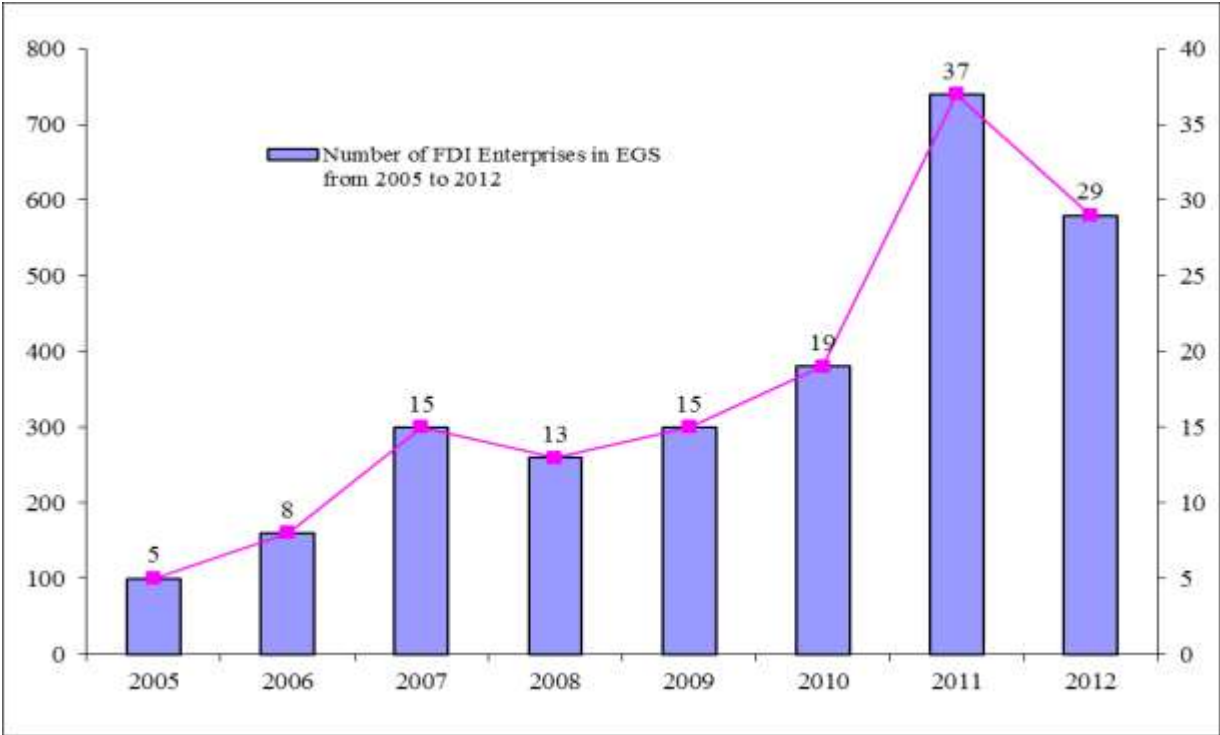
² “Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam”, conducted in December 2012 under the auspices of the International Institute for Sustainable Development and the Trade Knowledge Network.

³ See more at <http://www.china-briefing.com/news/2011/06/16/an-overview-of-chinas-renewable-energy-market.html>.

⁴ See <http://www.investkorea.org/ikwork/iko/eng/cont/contents.jsp?code=1020205>

The number of projects in, for instance, waste treatment and water purification services, substantially increased since 2005 from from 5 in 2005 to 29 in 2012. Despite of a decline in investment in 2012, the number of FDI in this sector projects has reached 31 in 2013.

Figure 1: Trend of FDI Enterprises in waste treatment services

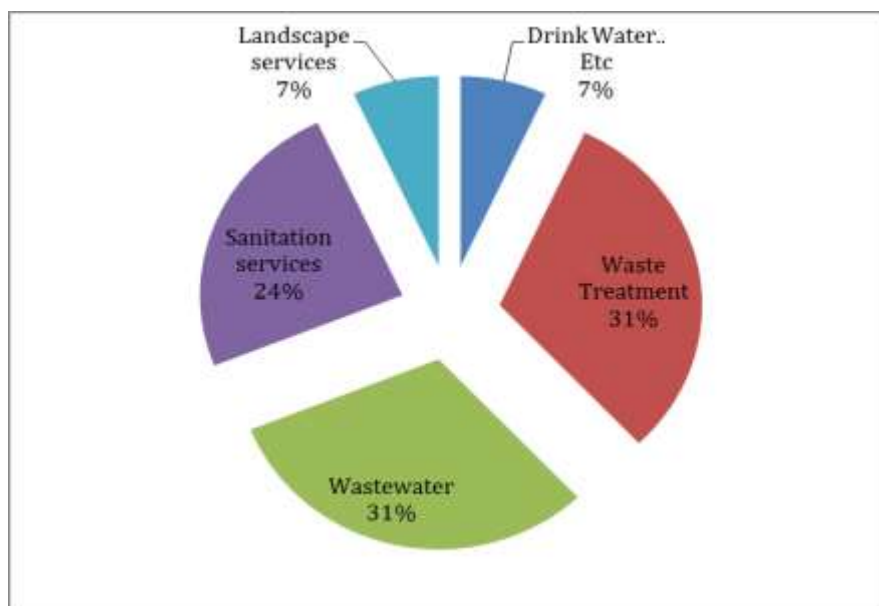


(Source: Extracted from the sources of GSO in Vietnam, 2014)

a) Sectors of concentration

The Vietnam’s Ministry of Planning and Investment indicates that most of the FDI investments in EGS are in the areas of waste treatment and water purification. These services are indeed very important in a country which is gradually more confronted with high levels of pollution due both to increased industrialization and domestic industrial and household consumption.

Figure 2: Distribution of FDI by the detail fields on EGS in 2012



(Source: General Statistic Office in Vietnam, 2012)

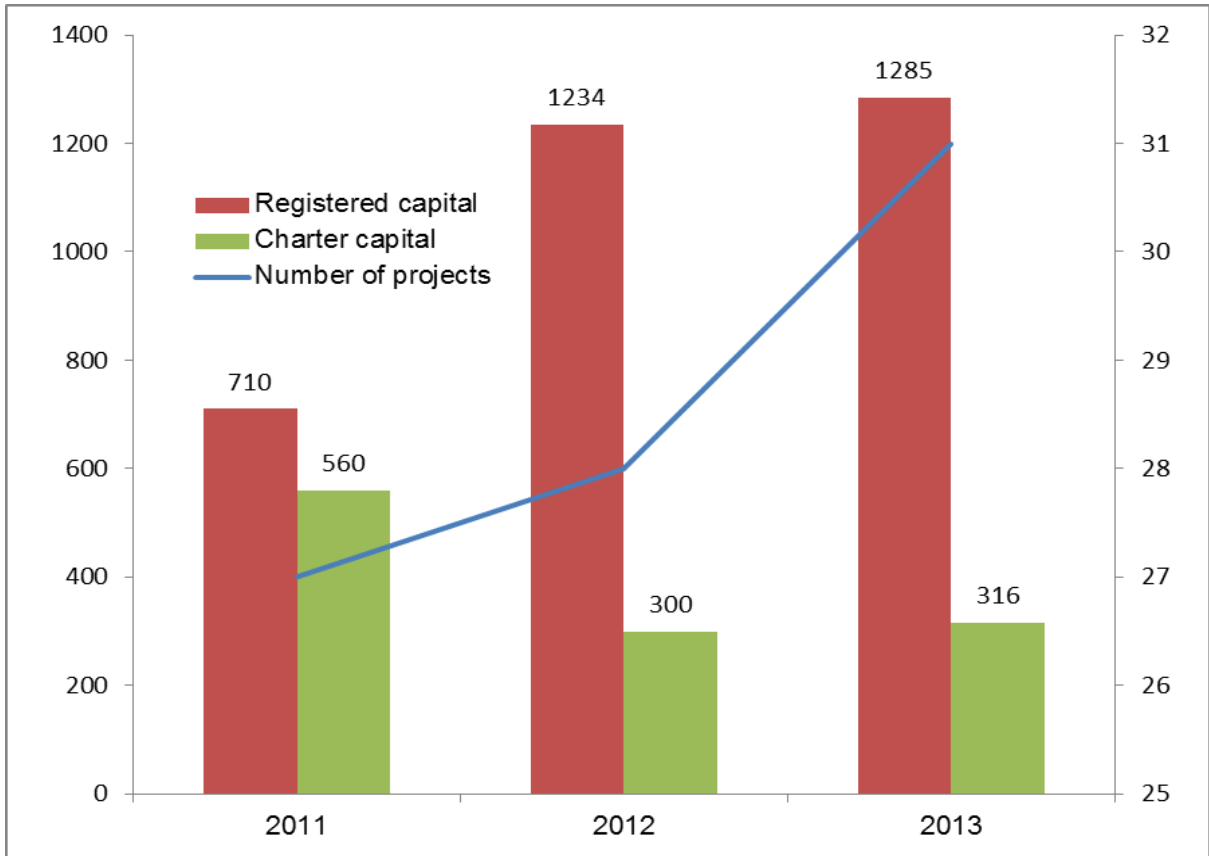
b) Number and volume of FDI in EGS

At the end of 2013, there were 31 FDI projects in waste treatment and water purification services for a total registered capital of 1.285,33 million USD and a charter capital of 315,71 million USD⁵. FDI in the sectors of EGS still remains relatively low in Vietnam compared with the rest of FDI. It represents less than 1% of total FDI in the country in 2013.

Figure 3: Number of projects and registrations on waste water treatment, waste in Vietnam from 2011 to 2013

Unit: Million USD

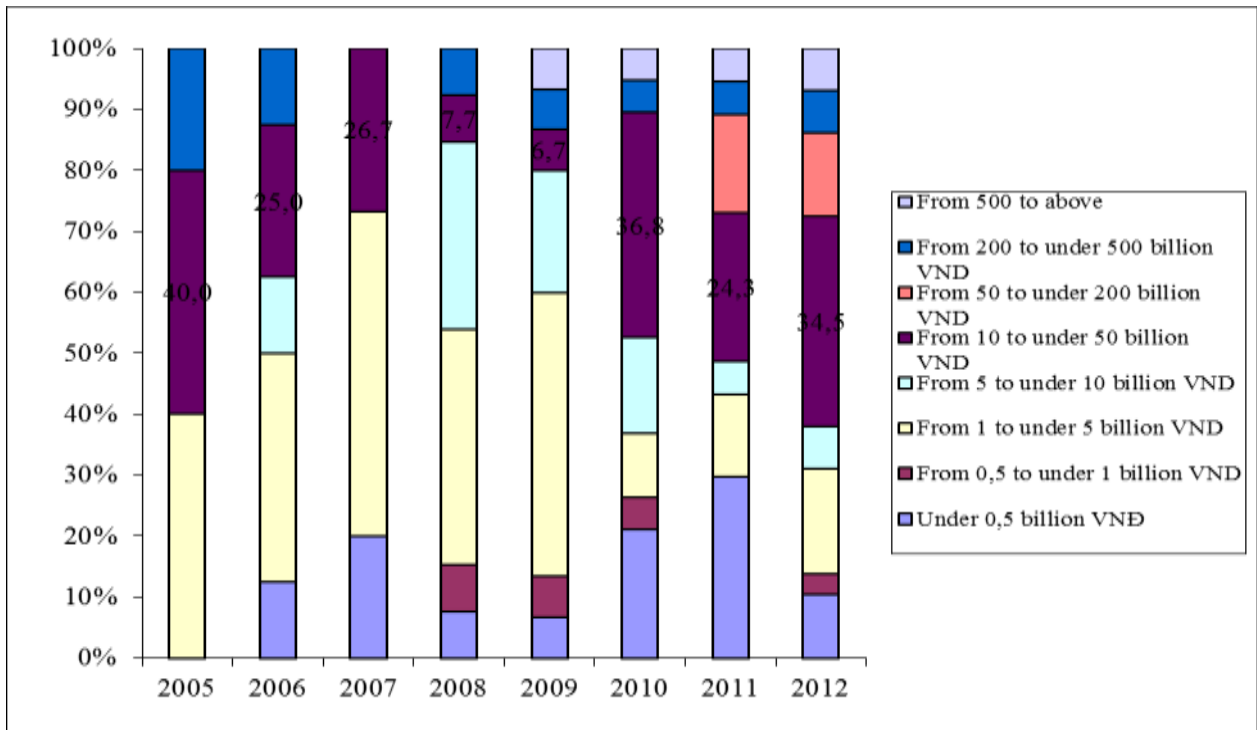
⁵ Source: MPI, Department of Foreign Investment



(Source: Foreign Investment Agency, 2011, 2012, 2013)

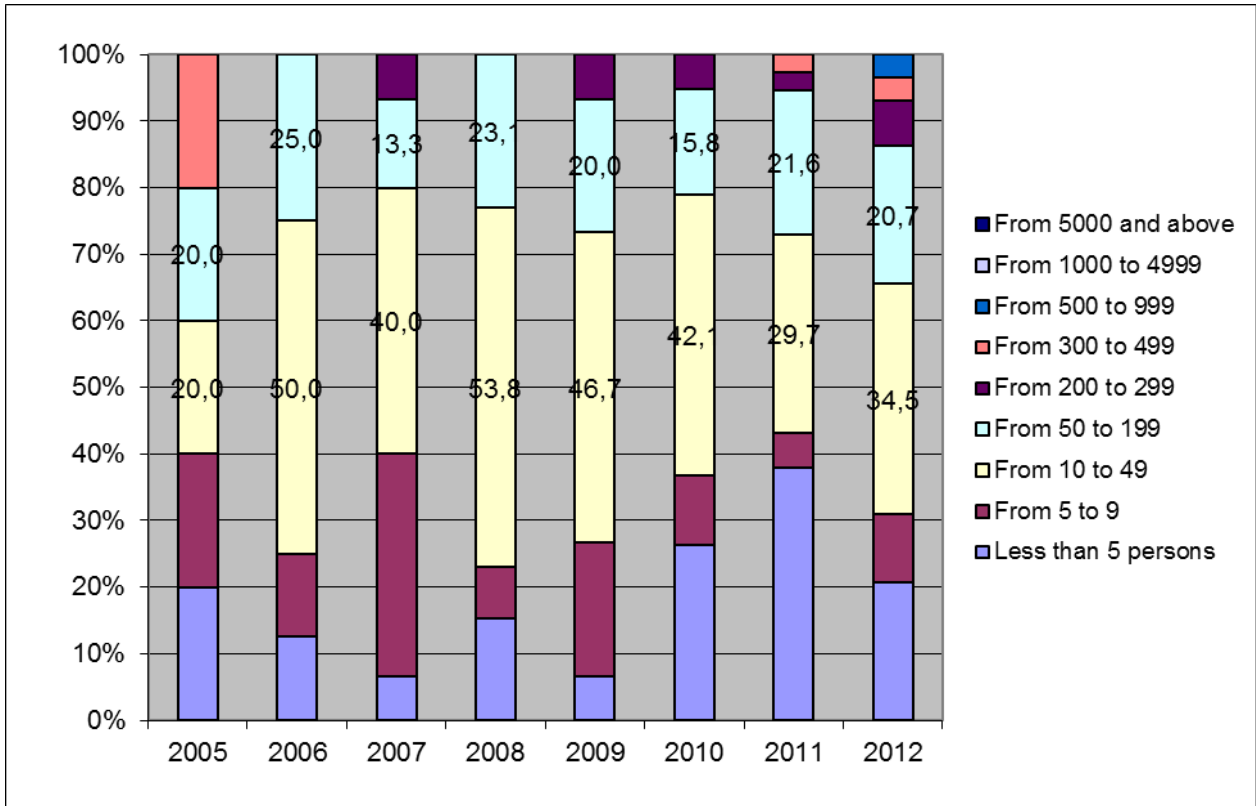
The general trend indicates an increase of invested capital, with new investments emerging in 2011 – 2012 with a capital of between 50 billion VND and 200 billion VND.

Figure 4: The sharing percentage of FDI enterprises in EGS by size of capital resource



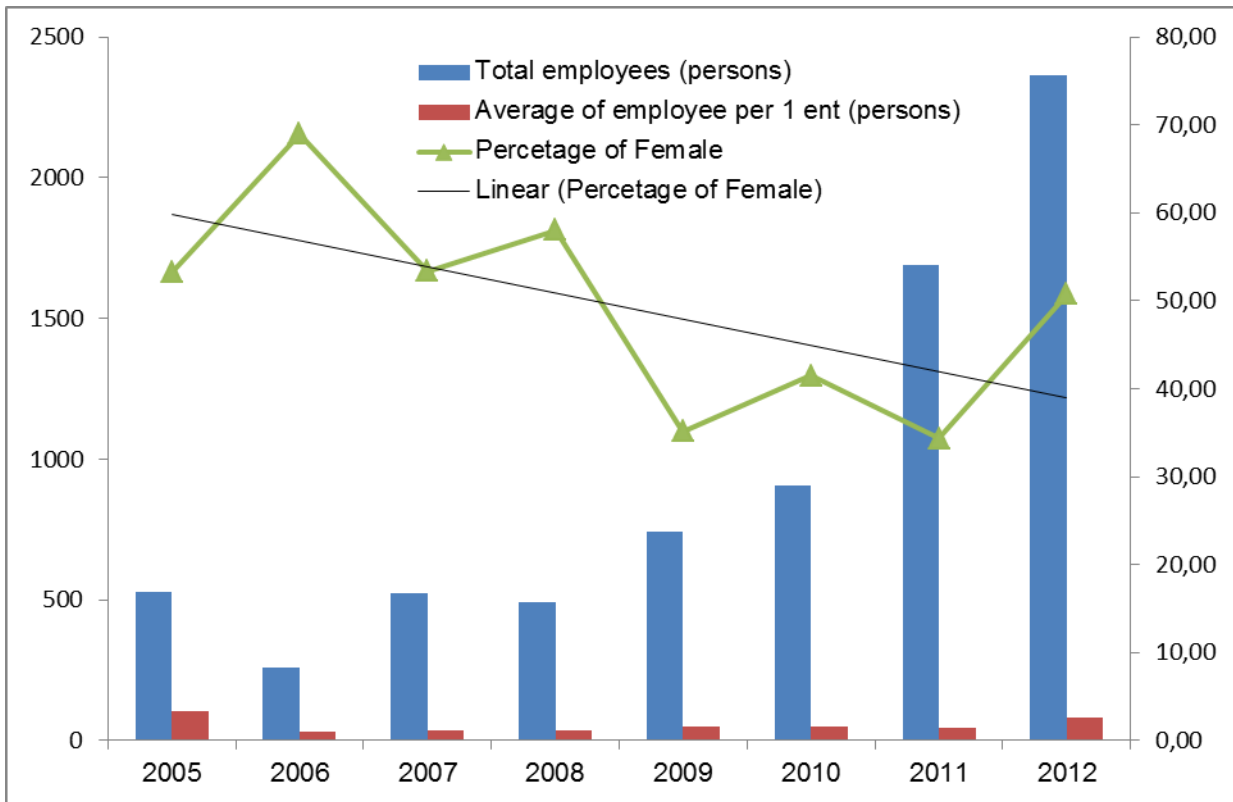
The gradual increase in investment in the sectors of EGS is also reflected in the number of employees recruited by the new enterprises. Figure 5 below illustrates an increase in the number of enterprises recruiting more than 200 employees. Figure 6 below shows a general increase of the average number of employees in companies that are active in the sectors of EGS.

Figure 5: the sharing percentage of FDI enterprises in EGS by size of employee



(Source: extracted from GSO sources in Vietnam)

Figure 6 : Total and Average of employee, percentage of female in FDI enterprises in EGS in Vietnam



(Source: extracted from GSO sources in Vietnam)

c) Geographical distribution of FDI in the areas of EGS

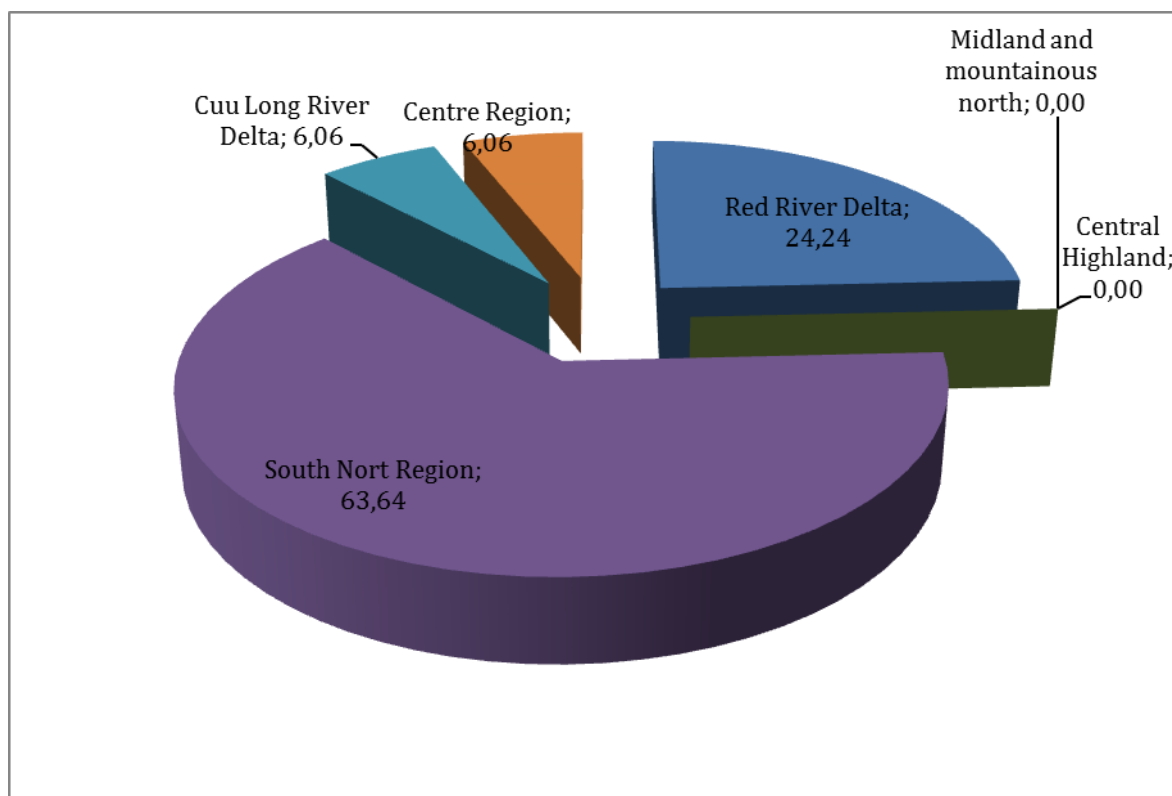
Unsurprisingly, most of the FDI in the sectors of EGS in Vietnam is concentrated in the urban cities of Hanoi and Ho Chi Minh City (HCMC). Indeed, this is where there is the biggest concentration of population and where the needs for waste treatment and water purification are the greater. Hence return on investment is expected to be higher in these urban areas.

Table 3: Distribution of FDI enterprises in EGS in Vietnam in 2012 by provinces

City/province	Number (enterprise)	Percentage (%)
Ha Noi	6	20.69
HCM city	15	51.72
Ba Ria - Vung Tau	2	6.90
Binh Duong	1	3.45
Binh Phuoc	1	3.45
Dong Nai	1	3.45
Dong Thap	1	3.45
Long An	1	3.45
TT Hue	1	3.45
	29	100.00

(Source: extracted from GSO sources in Vietnam)

Figure 7: the distribution of FDI enterprises in EGSs in Vietnam by region in 2012

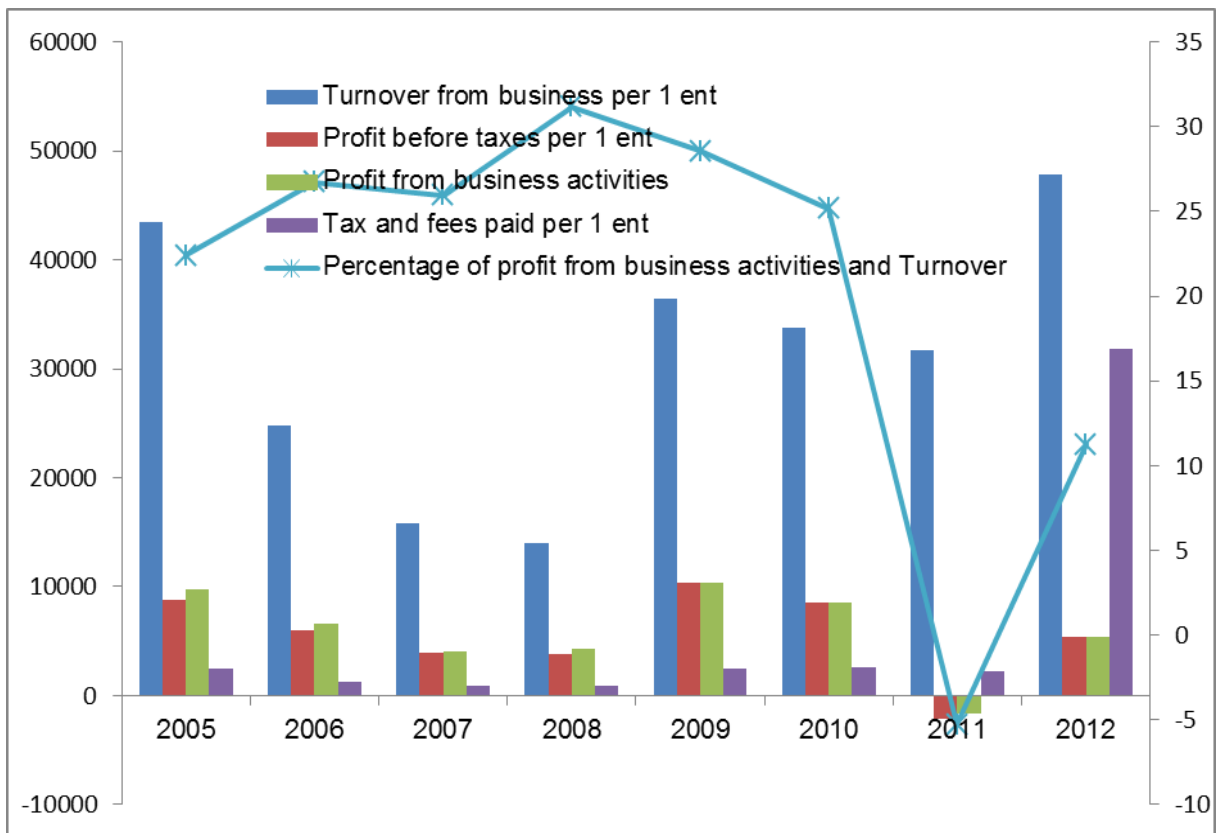


(Source: extracted from GSO sources in Vietnam)

d) The business results of FDI enterprises in EGS in Vietnam

The figure below shows reasonably stable profits for FDI enterprises in the sectors of EGS, despite an obvious crisis in 2011. In 2012, not only profits, but also taxes received from these FDI enterprises increased substantially.

Figure 8: Average of turnover from business, profit before taxes, profit from business activities, and tax and fee paid per 1 enterprises



(Source: extracted from GSO sources in Vietnam)

e) Conclusion

It clearly results from the facts and analysis above that Vietnamese and foreign investors increasingly realize the potential benefits of investments in Vietnam in the sectors of EGS.. Economic growth and industrial progress already confront enterprises and the population with

higher levels of pollution, which may affect their long term capacity to either source clean products or to sustain quality of life and health. Unsurprisingly, the more pressing needs are in waste treatment and water purification. The Vietnamese and foreign investors increasingly grasped this trend and the associated opportunities. They started offering their services in these sectors in the two largest cities of Vietnam. Their investment became profitable and it has already increased, despite total investment in the sectors of EGS remains relatively low in relation to the total investment in the country.

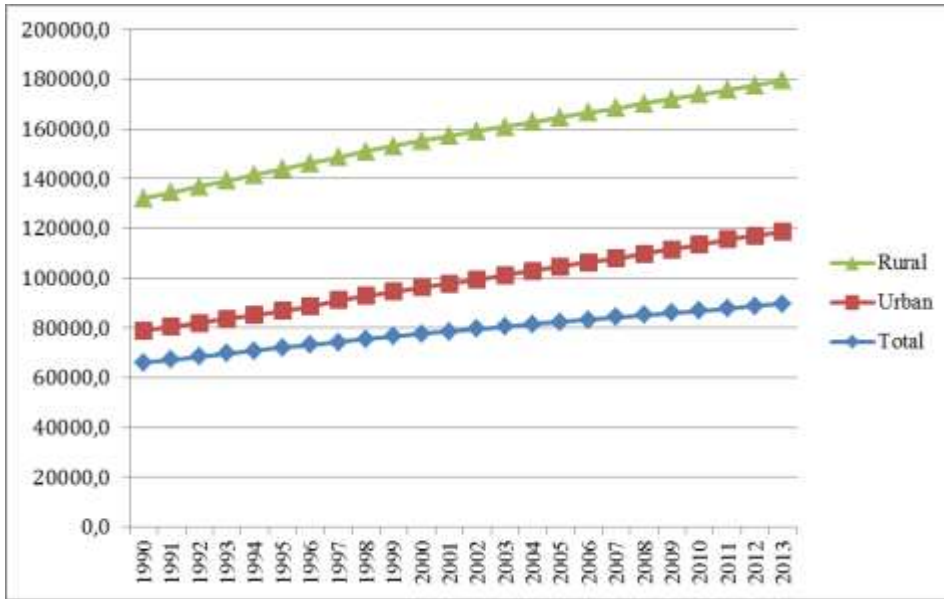
As further indicated below, EGS is a profitable sector which has already generated substantial profits for the investors and interesting tax return for the Government. It remains to be seen whether it can be extended beyond waste treatment and water sanitation services, as well as in other locations than the two main cities of Vietnam.

II.3 Overview of the market for EGS in Vietnam

There is an obvious increased demand for a better environment in Vietnam and the associated pollution mitigation technologies. ISPONRE produced the tables below showing the factors that contribute to such increased demand.

Firstly, the population in Vietnam has been increasing very fast, thus creating a huge challenge related to environmental pollution in Vietnam. Especially, the population in urban areas.

Figure 9: Pressure of population increasing in Vietnam (1990 – 2013)



(Source: GSO in Vietnam)

The increase of Industrial Parks in Vietnam also contributes to the environmental pollution pressures in Vietnam.

Map: Pressure on environmental pollution by increasing the Industrial park in Vietnam

LIST OF ESTABLISHED INDUSTRIAL PARKS



Finally, energy consumption is increasing strongly in the country. The above-mentioned study on “Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam”, shows that such consumption doubled between 2000 and 2009. Consumption of renewable energy, however, did not increase at the same speed.

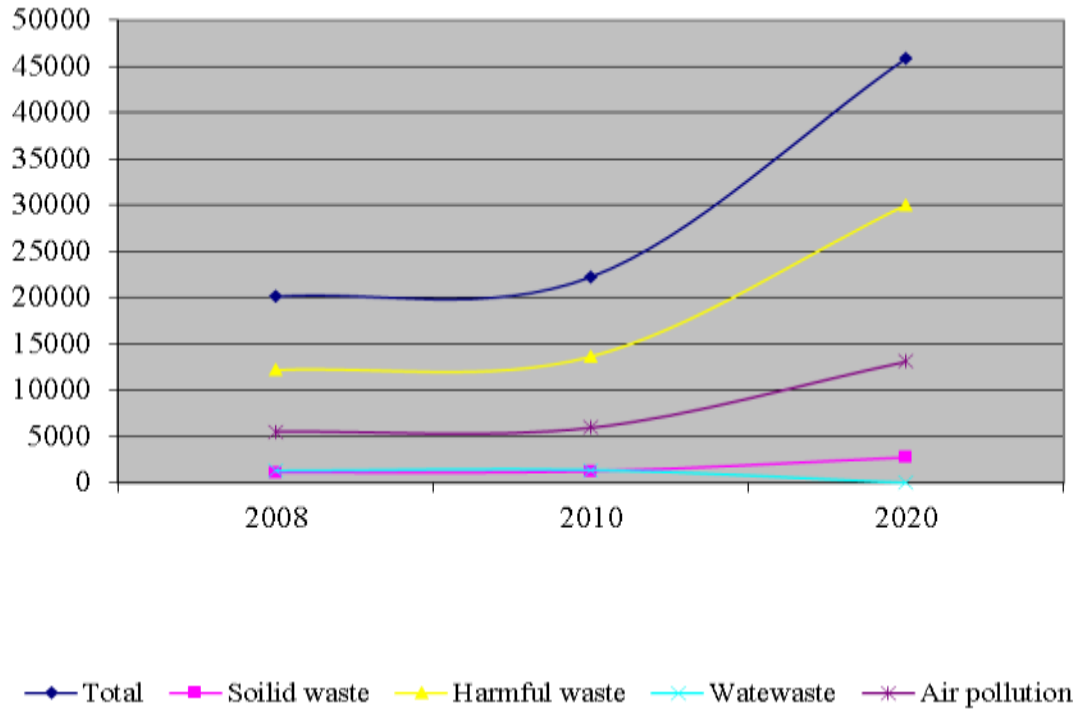
Table 4: Energy Consumption in 2000, 2005 and 2009 (in Kilotonne of oil equivalent [KTOE])

ENERGY CONSUMPTION*	2000	2005	2009	AVERAGE ANNUAL GROWTH RATE (%) 2000–2009
a. Solid**	4,372	8,342	12,645	12.5
b. Liquid***	7,917	12,336	16,607	8.6
c. Gas	1,441	4,908	7,290	19.7
d. Hydro electricity	4,314	3,835	6,785	5.2
e. Renewable energy	14,191	14,794	17,732	0.4
Total	32,235	44,215	61,059	6.8

Source:

ISPONRE produced the tables below showing that the demand for clean services is expected to more than double in relation to the current levels.

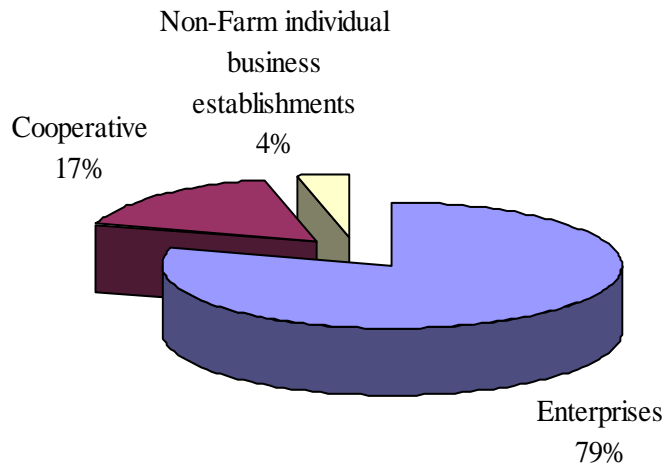
Figure 10: forecast the demand of capital resources on EGS in Vietnam to 2020



(Source: ISPONRE, 2012)

Given the above and the expected increased demand for a cleaner environment, there is an obvious market for EGS and the associated technologies. The challenge therefore is to attract sufficient (and more) investments in these sectors.

Figure: Number of economic sectors by water supply, sewerage, waste, management and redeviation activities in 2012



Sources: Extracted from GSO in Vietnam

III. A SYNTHESIS OF VIETNAM'S POLICIES AND REGULATIONS RELATED TO EGS

III.1 The promotion of EGS as a policy choice of Vietnam

The Vietnam's Socio-economic Development Strategy for 2011-2020 underlines the challenges that are ahead of the country: environmental protection should be integrated into development strategies, schemes and plans for industries. Legal system on environmental protection needs to be completed and adjusted to address new rising issues.

The development of environmental goods and services (EGS) has become an important issue for Vietnam's Government. Promoting EGS is one of the solutions mentioned in the National Green Growth Strategy adopted in September 2012. MONRE also recently formulated a strategy for the development of environmental services to 2020 and a vision toward 2030, in accordance with WTO commitments. The Prime Minister has also approved a scheme for development of the environmental industry (Decision No. 1030/QĐ-TTg of Prime Minister on scheme of development of environmental industry until 2015 and vision toward 2025). Finally, the Directive N°1617/CT-TTg of 06 September 2011 calls for an increase of FDIs in modern

and environmentally friendly technologies and efficiently using natural, mineral and land resources.

Attracting more investment, particularly foreign investment in EGS will benefit Vietnam's environment and assist the country in achieving its goals for green growth. EGS is a sector which can promote both the economic development and environmental protection. The policy framework has been formulated. However, it must be refined to effectively attract more FDIs in the sector of EGS. This implies developing specific regulations that will create incentives for investments in EGS.

III.2 Synthesis of regulations in Vietnam related to EGS

1. List of EGS

In Viet Nam, there is no separate list of EGS. The list below is established from two sources: (i) the Decision No. 39/2010/QĐ-TTg, promulgating the system of Vietnamese product categories and; (ii) the Article 150 of the Law on Environmental Protection (LEP) 2014 on classification of environmental services.

Classification of environmental goods and services in Vietnam⁶

CODE4	CODE2	man	Environmental fields
E3600	E36	36000	Exploitation, purification, supply water
E3700	E37	0	Waste waster treatment
E3700	E37	0	Water drain and Waste water treatment
		37001	Water drain
		37002	Waste water treatment
E3800	E38	0	Waste Collection, treatment, recycle
E3810		0	Waste collection
E3811		38110	Collection and treatment of unharful waste
E3812		0	Harmful waste collection and treatment

⁶ Environmental industry was defined as an economic sector which provide technologies, equipment, services and products to support for the requirements of environmental protection; (ii) system of product classification by Prime Minister in Vietnam in Decision Number: 39/2010/QĐ-TTg.

CODE4	CODE2	man	Environmental fields
		38121	Health waste collection
		38129	Other harmful waste collection
E3820		0	Waste Treatment waste disposal
E3821		38210	Waste treatment and unarmful waste disposal
E3822		0	Waste treatment and harmful waste disposal
		38221	Treatment and disposal for health waste
		38229	Treatment and disposal for other harmful waste
E3830		0	Recycle waste material
		38301	Recycle metallic waste
		38302	Recycle nonmetallic waste
E3900	E39	39000	Pollution treatment and management of other waste
F4322		0	Provide the system of water (inflow and outflow), air conditional, ...
		43221	System of water (inflow and outflow)
N8120		0	Sanitation services
N8121		81210	Sanitation of general building
N8129		81290	Sanitation of other
N8130		81300	Landscape services

(source: Decision by Primer minister, No: 39/2010/QĐ-TTg)

2. Laws and regulations affecting EGS in Vietnam

There are several laws, regulations, ordinances and directions provided in the Vietnamese regulatory framework aimed at supporting enterprises that are active in the sectors of EGS.

Below is a list of the most important ones. Their purpose is to:

- support organizations and individuals to establish environmental service enterprises through bidding, public-private partnership in EGS (Environmental Protection Law (LEP) no. 55/2014/QH13, Article 150);

- provide general support from the State for listed environmental protection activities (Environmental Protection Law (LEP) no. 55/2014/QH13, Article 151);
- provide benefits to organizations and individuals who develop an environmental industry which is capable of providing technologies, equipment, services, and environmental products for pollution control and treatment, degradation remediation, limitation of increasing levels of pollution and improvement in environmental quality. The establishment of environmental service consultancy organizations is encouraged (The Decision 1030/QĐ-TTg of July 20th 2009 approved by the Prime Minister on “Proposal for the Development of Vietnam Environmental Industry up to the year 2015, vision of 2025”);
- identify the tasks to carry out in the near future for the development of environmental service enterprises and the environmental service market in Vietnam. The idea is to facilitate the establishment of state-owned enterprises on environmental services entrusted to tackle complex issues pertaining to environmental protection in Vietnam (Decision 249/QĐ-TTg of February 10th 2010);
- improve and complete the legal documentation requirements for the development of environmental services, with particular emphasis on handling, waste and recycling technologies, and environmental treatment solutions (Decision 166/QĐ-TTg of 21st January, 2014 on the implementation plan of the national strategy to protect environment towards 2010, with a vision towards 2030 issued by the Prime Minister);
- support the development of environmental services, in order to gradually meet the demand for environmental services in the country, thereby creating favorable conditions for organizations and individuals to implement better environmental protection obligations (still in progress - The framework formulation is detailed in Decision no. 249, Decision 1030 and Decision 166);
- encourage all forms of investment in the domain of solid waste, including: business cooperation contract (BBC), build-operate-transfer (BOT), build-transfer-operate contract (BTO), build-transfer contract (BT), acquisition of enterprises, purchase of bonds, investment in securities and other investment forms under the Investment Law (Decree 59/2007/NĐ-CP of April 09th 2007, Articles 12 and 13). Under this Decree, the State grants exemptions from land use fee, financial support for ground clearance

compensation, import levy exemption for equipment and materials of investment projects, exemption and reduction for enterprise income duty, support for technical infrastructure investment including transportation, electricity, energy, communications, water supply and drainage and construction fence, etc (See also the Decree 04/2009/ND-CP of January 14th 2009 Section I, II, III, IV and the Circular 101/2010/TT-BTC of July 14th 2010 guiding its implementation – see also Law 45/2005/QH11 on Import-Export Tax, Article 16.6 and Decree 149/2005/ND/CP on December 8th 2005 on detailed implementation of the Import-Export Tax Law);

- provide tax incentive schemes for new investments (Law on Corporate Income Tax in 2008 and the revised Law no. 32 in 2013; Decree No.218/2013/ND-CP guiding on Corporate Income Tax);
- exempt land rents and water surface rents in the domains where investment is encouraged (Decree 46/2014/NĐ-CP dated 15/5/2014, Article 19);
- define the conditions of operation in relation to environmental monitoring services (Decree 27/2013/ND-CP of March 29th 2013);
- define the conditions for treatment of life-cycle-based solid wastes in construction (Decision No. 322/QĐ-BXD);
- impose standards and technical regulations on EGS and user industries (Circular 47/2011/TT-BTNMT dated 28/12/2011 on the National Technical Regulation on Environment: QCVN 40:2011/BTNMT - Circular 41/2010/TT-BTNMT dated 28/12/2010 on National technical regulation on the emission of health care solid waste incinerators - Circular No. 10/2012/TT-BTNMT dated October 12, 2012 regulating national technical regulations on the environment in relation to sediment quality and water offshore quality - Circular 25/2009/TT-BTNMT dated November 16, 2009 on wastewater of the solid waste landfill sites - Circular 25/2009/TT-BTNMT dated November 16, 2009 on industrial emission of organic substances – Circular 19/2009/BTNMT on industrial emissions for dusts and inorganic substances – Circular 07/2009/BTNMT on industrial emissions for dusts and inorganic substances);

The list above is rather long and non-exhaustive. The Vietnamese domestic regulatory framework is rather extensive. It is further explained in the sections below. It offers substantial

incentives to enterprises investing in the sectors of EGS. It also provides detailed technical regulations and standards in the sectors of construction and industrial activities, thus generating demand for goods and services to meet them.

III.3 Overview of investment policies related to EGS development in Vietnam

1. General Framework and Policy orientations

All investment activities in Vietnam are regulated by the Law on Enterprise, the Law on Investment (both of which passed the National Assembly on 29 November, 2005 and became effective on 1 July, 2006) and the Law on Corporate Income Tax (CIT) in 2008 and the amended CIT Law in 2013, which entered into force in 01/1/2014. The Law on Enterprise and the Law on Investment are being amended and new drafts will be submitted to National Assembly of Viet Nam in 2015.

The Law on Enterprises regulates the types of companies and business establishments permitted to operate in Vietnam, their governance, liability and ways of operation. The Law on Investment contains provisions on investment activities, rights and obligations of investors, registration and evaluation of investment projects, investment incentives, investment guarantees, and state management of investment. Besides these, investment and business activities are also regulated by other laws, such as the Law on Corporate Income Tax, the Law on Import and Export Duties, the Law on Value-Added Tax, the Land Law, the Law on High Technology, and the Law on Intellectual Property Rights.

According to the Law on Investment, foreign investors are encouraged to invest in the following sectors, among others:

- Manufacture of new materials and new energy; manufacture of products of high-technology, bio-technology;
- The use of high technology and advanced techniques; protection of ecological environment; and research, development and creation of high-technology;
- Labor-intensive industries;

- Construction and development of infrastructure facilities and important industrial projects with a large scale

Foreign investors are also encouraged to invest in specific geographical areas as below:

- Areas with difficult socio-economic conditions; and areas with specially difficult socio-economic conditions;
- High-tech zones and economic zones.

By contrast with the above, the Law on Investment prohibits foreign investors from investing in, among others:

- projects harmful to public health, natural resources, and environment;
- projects for the treatment of toxic waste brought into Vietnam; and
- projects for the manufacture of any type of toxic chemicals or for the use of chemical agents prohibited by provisions of international treaties

2. Instruments favouring and promoting investments related to EGS in Vietnam⁷

The current laws of Vietnam offer several investment privileges and incentives to investors who develop projects in encouraged investment sectors and/or geographical areas. Incentives are scattered in many laws and regulations, but mainly comprise of (i) tax incentives, (ii) incentives on land use, and (iii) accounting incentives, which are discussed in more detail below.

a) Incentives related to corporate income tax (CIT)

In the period of 2008 to 2013, the CIT rates were regulated by the Law on CIT 2008. CIT were classified into various rates corresponding to project types. The standard CIT rate in Vietnam, effective from January 2009, was 25%. The rate could be 10% for the companies investing in

⁷ For sections 2 and 3 below, the author refers to and updates the report of Ministry of Planning and Investment, 2013

the list of encouraged sectors or geographical areas. In general, the CIT for the firms are as below:

Table 3. Vietnam: Incentives Related to Corporate Income Tax (CIT Law 2008)

	CIT rate	Duration of incentive	Duration of exemption	Duration of 50% reduction
New projects included in the list of encouraged investment	20%	10 years	2 years from generating taxable revenue	3 years following exemption period
New projects included in the list of encouraged geographical areas	20%	10 years	2 years	6 years
New projects included in the list of encouraged investment and encouraged areas	15%	12 years	3 years	7 years
New projects included in the list of special encouraged investment and/or special encouraged areas	10%	15 years	4 years	9 years

Source: Law on Corporate Income Tax, 2008

Furthermore, there was a complete CIT exemption (0%) in the following cases, which may be relevant for EGS:

- Performance of R&D contracts or information services in science and technology;
- Sale of products during the test production period in accordance with the correct production process, with a maximum of six months;
- Sale of products whose technology is applied for the first time in Vietnam, with a maximum of twelve months.

The Vietnamese government also encouraged foreign and domestic investors to invest in industrial zones by providing CIT incentives as shown in Table 4 below.

Table 5. Vietnam: Taxation in Industrial Zones

	CIT rate	Duration of incentive	Duration of exemption	Duration of 50% reduction
Service projects	20%	10 years	2 years from	3 years following

	CIT rate	Duration of incentive	Duration of exemption	Duration of 50% reduction
			generating taxable revenue	exemption period
Manufacturing projects	15%	12 years	3 years from generating taxable revenue	7 years following exemption period
Special encouraged manufacturing projects	10%	15 years	4 years from generating taxable revenue	9 years following exemption period

Source: Law on Corporate Income Tax, 2008.

Additionally, firms located in high-tech zones and economic zones could receive even greater incentives, as follows.

Table 6. Vietnam: Taxation in selected High-tech & Economic Zones

	Duration of incentive	Duration of exemption	Duration of 5% CIT	Duration of 10% CIT
Hoa Lac, Da Nang and Sai Gon Hi-tech parks; Chu Lai Open Economic Zone	15 years	4 years from generating taxable revenue	9 years following exemption period	2 years following reduction period

Source: Adapted from Hoa Lac, Da Nang, Sai Gon Hi-tech parks' websites

Finally, in order to encourage foreign and domestic investors to invest in high technology and supporting industries, the government has promulgated the Law on High Technology that came into effect from 1 July 2009, as well as the implementing Prime Minister's Decision 12/2011/QĐ-TTg. According to the Law, high-tech enterprises are given the most favorable CIT incentives, namely, a CIT rate of 10% for 15 years which can be extended to 15 additional years.

In order to benefit from these incentives, enterprises must satisfy strict requirements regulated by the Ministry of Science and Technology (MOST) to be certified as high-tech enterprises.

Until now, the number of enterprises recognized by MOST as high-tech enterprises is less than ten, and most of them are FDI enterprises.

Incentives can also be provided to enterprises producing supporting products for high-tech industry. Only two projects by Vietnamese enterprises have been granted this incentive so far.

According to the Amended Law on CIT 2013, the standard CIT rate in Vietnam, effective from 1st January 2014, is 22% (excluding of the rate of 20% for enterprises whose turnover is below 10 billion VND per year). This rate will be 20% from 1 January 2016. An incentive rate of CIT of 10% and 20% is offered for business investment in encouraged sectors and/or areas (i.e disadvantaged socio-economic areas, economic zones or hi-tech parks listed in the Annex of Decree no. 218/ND-CP dated 26/12/2013, as shown in Table 6). When a sector is no longer encouraged, which may happen after the revision of priorities in the five-year plan, CIT will revert to the standard rate.

Table 7. Vietnam: Incentives Related to Corporate Income Tax upon the Amended Law on CIT and its guidelines (2013)⁸

	CIT rate	Duration of incentive	Duration of exemption	Duration of 50% reduction	
New projects included in the list of special encouraged investment and/or special encouraged areas	10%	15 years	4 years	9 years	In particular, the rate of 10% applied for some new projects related to R&D, high technology and environmental protection could be extended to 30 years decided by the Prime Minister
New socialization projects included in the list of encouraged	10%		4 years from generating taxable revenue	9 years following exemption period	

⁸ The incentives identified in the Decree no. 218 dated 26/12/2013

	CIT rate	Duration of incentive	Duration of exemption	Duration of 50% reduction	
geographical areas					
New socialization projects excluded in the list of encouraged geographical areas	10%	Full project life	4 years from generating taxable revenue	5 years following exemption period	
New projects included in the list of encouraged geographical areas an/or encouraged investment	20%	10 years	2 years	4 years	The rate will be 17% from 01/1/2016

Source: Amended Law on Corporate Income Tax, 2013.

b) Incentives related to import duties

Foreign invested enterprises (FIEs), which invest in encouraged or special encouraged sectors and/or geographical areas, are permitted to import products without paying duties. This exemption applies only to imports of raw materials and components needed in the production process of products on these lists. Imports used for export activities (such as raw materials needed in the production of goods for exportation) are not subject to an import tax or duty if the FIE is located within an economic zone.

Furthermore, goods imported for direct use in scientific research and development of new technology previously unavailable in Vietnam are also given an exemption of import duties.

c) Incentives related to land use

In principle, the duration of land use for an investment project cannot exceed fifty years. However, in certain cases this duration can be extended to seventy years. This concerns:

- Projects with a large amount of invested capital and a slow rate of capital recovery,

- Projects in geographical areas with difficult socio-economic conditions.

Application for extension of the term of land use, in accordance with the approved land use zoning, can be granted to investors who can demonstrate they properly complied with the law on land and still need to use it.

Investors who invest in encouraged sectors and geographical areas are entitled to an exemption or a reduction of the land rent and land use fees in accordance with the relevant laws.

d) Accounting incentives

Special accounting incentives affecting EGS concern the depreciation of fixed assets. Investment projects in encouraged sectors and geographical areas, as well as projects with high economic efficiency, benefit from an accelerated depreciation of their fixed assets. However, the maximum rate of depreciation cannot exceed twice the rate of depreciation of fixed assets as stipulated in the relevant regulations on depreciation.

3. Regulations affecting investments in the sectors of EGS

Irrespective of the above-mentioned incentives, investments in the sectors of EGS are subject, like any other investment, to the general laws of Vietnam affecting investments. We only highlight below the laws pertaining to environmental protection and intellectual property rights.

a) Environmental protection

Investments projects cannot be polluting. They are subject to environmental impact assessments. The Ministry of Natural Resources and the Environment (MoNRE) uses two different standards to measure the impact of an investment project on environment: quality standards on the surrounding environment and waste quality standards.

Quality standards on surrounding environment include (i) soil quality, (ii) surface and underground freshwater used in business activities, (iii) costal water used for aquaculture and entertainment, (iv) air quality, and (v) noise, light and radiation in residential areas.

Standards on waste include (i) waste water, (ii) industrial gas emissions from equipment used in waste disposal and incineration, (iii) gas emission from transport, machinery and special equipment, (iv) hazardous waste, and (v) noise and vibrations caused by industrial activities.

According to Decree 80 implementing the Law on the Protection of Environment, depending on the nature and scale of the project concerned, a foreign investor must submit an Environmental Impact Assessment Report (EIAR) and an Environmental Protection Undertaking (EPU), before an investment project can begin.

In principle, for EGS, these documents should not pose a problem or constitute any barrier to investment. They may instead build an interesting market composed of the user industries which would need to purchase EGS in order to comply with the relevant environmental standards.

b) Protection of intellectual property rights

Investors in EGS, like any other investor, are protected by and must respect intellectual property rights. The Law on Intellectual Property, protects, among other rights, industrial property including inventions, industrial designs, business secrets, trademarks, and trade names. Investors in EGS bringing new technologies would stand to benefit from such protection under the conditions established by the law.

4. Conclusion

As indicated above, the Vietnam's regulatory environment regarding investments in the sectors of EGS is favourable to such investments.

Investments in EGS are indeed encouraged, hence entailing substantial tax exemptions, incentives on import duties and reduced fees for land use. Benefits can even be higher if the investments involve the creation or transfer of new technologies, especially if they are considered as high-tech.

Benefits would be maximal if the investments, in addition to the above, are made in encouraged geographical areas, which are not the two main cities of Hanoi and Ho Chi Minh City.

Finally, while investments in EGS should easily pass the environmental impact assessment tests, technical regulations and standards imposed on all industries create an interesting market for them. Investments in EGS would also benefit from intellectual property protection in relation to transferred technology.

IV. STAKEHOLDERS' VIEWS ON VIETNAM'S POLICIES AND REGULATIONS RELATED TO EGS

In order to assess the effectiveness of Vietnam's policies and regulatory framework concerning investments in the sectors of EGS, ISPONRE carried out a field research. The views of the stakeholders in these sectors were gathered. Their perceptions of the benefits and possible shortcomings of Vietnam's incentives for investments in EGS are identified and described below.

IV.1 Methodology

1. Questionnaires and Interviews

ISPONRE sent questionnaires to more than 34 foreign companies that are active in the sectors of EGS in Vietnam. A copy of the questionnaires sent is attached as **Annex 2** hereto. Ten responses were received and processed.

In addition, interviews were made to the owners and managers of six EGS firms in Vietnam, active in the sectors of EGS, whether as providers or as users:

- Ever Young Co. Ltd : Waste and water treatment systems

- Unicare Co. Ltd : Building cleaning services
- Vietstar JCS : Waste treatment, waste recycle compost products
- Vietnam Waste Solutions, Inc. (VWS) : Landfill, compost products
- Samho Construction Co., Ltd: Construction
- Goshu Kohsan (Vietnam) Co., Ltd: Water treatment installation, chemical supply, maintainance supply, water analysis

2. Indicators

The surveys and questionnaires asked each companies to first describe their lines of business activities in the environmental goods and services field and the types of technologies and equipment they use. They also asked the companies to describe their target customers and their location. They then requested the companies' feedback on the following questions:

- The companies' assessment of the potential development of environmental goods and services market in Vietnam;
- The EGS for which each company could consider and/or invest in for next-five-year-period;
- The companies' opinions on the incentives the Vietnamese Government is implementing to attract FDI for the development of EGS;
- The specific challenges that each company has been facing during its business operations in the field of EGS in Vietnam;
- The companies' recommendations/suggestions to attract more enterprises in the field of EGS in Vietnam and to improve the business environment for them.

IV.2 Synthesis of responses to questionnaires

1. Sectors of activity and targeted clients

The companies who replied the questionnaires and who were interviewed are mainly active in the sectors of solid waste treatment (landfill, compost, recycling or other), and in water sanitation. One company specializes in construction cleaning services.

The target customers of waste treatment services are the Ho Chi Minh, Long An, and other municipalities. Customers of water sanitation services are industrial users and the municipalities. The company that provides construction cleaning services works for the Ho Chi Minh municipality and the industrial parks in Dong Nai.

2. Potential development of EGS market in Vietnam and investments in the next five years

The companies who replied the questionnaires or participated to the survey generally confirmed that they expect the market in Vietnam for the services they supply to grow. In the next five years, they plan to increase their investments in their areas of activity, while also expanding into other geographical areas, and complementary sectors, such as incineration power generation systems, development of various compost types and compost market promotion, termiticide and pest control services.

3. Comments on incentives provided and challenges the companies have been facing during their business operations in the field of EGS in Vietnam

Generally, the companies who responded to the questionnaires or participated to the survey recognize the benefits of the incentives offered.

However, the companies also stressed the following difficulties (besides the difficult market conditions following the financial crisis and the competition suffered from other companies):

- Companies complain about the lack of transparency of the applicable laws and regulations and it is too difficult to access the laws due to language barrier Hence it is difficult for them to orient themselves in the rather complex regulatory framework affecting their activities;
- Companies complain that corporate tax exemptions vary from one location to the other, thus creating substantial planning difficulties for them;
- Companies complain that administrative procedures are complex and time-consuming (business registration, work permit, environmental authorisation, etc). They also involve too many authorities;

- One company complains that the technical specification of the tender documents were unsuitable, thus unduly hiding the real nature of the costs of operation;
- One company complains that they are not consulted on the development of new legislation.
- One company indicates that the incentives are no longer applicable to new projects dealing with the treatment of water supplies.

4. Recommendations/suggestions to attract more FDI enterprises in the field of EGS in Vietnam and to improve the business environment for them

The companies who replied the questionnaires and who were interviewed recommend of course to address the difficulties they have encountered. They also provide specific suggestions to improve the environment in which they operate:

- Companies would like to be able to address all issues of interest to them to a single governmental agency through a hotline;
- Companies suggest to provide channels of communication between the government and the companies with respect to all official information emanating from the Government;
- Companies demand that all relevant legislation and standards are published and made easily available;
- Companies would like to receive training on the application of new environmental regulations;
- Companies call for unified procedures related to authorization and environmental regulations throughout the country;
- Companies insist that the same control systems apply to FDIs and local companies;
- Companies demand that applicable laws and regulations are prepared in a way that is easy to understand and implement;
- Companies would like to be consulted when the Government plans to develop and introduce new legislation;
- Companies demand to have a transparent bidding law on construction of environmental protection projects;

- One company suggested that subsidies should be provided to users and consumers of compost services. Another one indicated the need to create more public awareness regarding EGS and increase incentives for their use;
- One company suggested that the government should reduce the CIT at 16% for all projects in EGS.

IV.3 Additional views

In addition to the above, feedback was also provided to the authors of the above-mentioned study “*Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam*”⁹ by companies investing in the production of renewable energy. While this study fully describes the incentives available, it also provides comments in the investment and regulatory framework of Vietnam, which can be summarized as follows:

- *“Viet Nam still does not have a clear legal framework guiding policies on renewable energy projects”.*
- *“The policies are separately stipulated in different laws leading to confusion in their application. In many cases, these laws and regulations are contradictory and generate red tape and unofficial fees”.*
- *“Procedures for establishing and operating renewable energy projects often require the involvement of a number of authorities, resulting in high transaction costs as project developers must submit the same information to several government authorities at different points of time”.*
- *“The low price of renewable electricity is a major hurdle for investors in production units of such energy”.*
- *“Some investors have encountered difficulties in seeking loans for their renewable power projects although legal documents confirm that they are eligible to access available soft loans”.*

⁹ See Nam, Pham Khanh; Quam, Ngyuen Anh; and Binh, Quan Minh Quoc, “Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam”, International Institute for Sustainable Development, Trade Knowledge Network, December 2012.

IV.4 Conclusion: Perceived gaps and shortages of the policies and incentives related to EGS in Vietnam

While Vietnam's incentive mechanisms put in place are obviously positively perceived by the companies operating in the sector of EGS, there is a general call for simplified and harmonized administrative procedures, transparency of rules and regulations and public-private dialogue. 'One-stop-shop' governmental services accompanying investments ventures and their registration, business licenses and authorizations would be highly welcome. Favourably responding to the companies' demands would certainly facilitate the consolidation of the investments in place, while perhaps attracting additional investments in new geographical areas or new EGS. Generally speaking, "trust in government guarantees is a critical issue when foreign investors evaluate investment opportunities"¹⁰.

V. AN ANALYSIS OF THE EXISTING INTERNATIONAL FRAMEWORK AFFECTING VIETNAM RELATED TO EGS, INVESTMENT AND ENVIRONMENTAL PROTECTION

The existing international framework affecting Vietnam related to EGS, investment and environmental protection is of course relevant in the determination of the optimal policies Vietnam may adopt to promote investments in the sectors of EGS.

Vietnam's commitments under the World Trade Organisation (WTO) condition Vietnam's conduct of trade policies in this regard. In particular, in the area of services, WTO commitments may also encompass an obligation to accept investments of foreign services and service providers, and to avoid adopting domestic regulations that are nullifying or impairing the commitments taken.

The ASEAN and the APEC are also providing a relevant framework governing Vietnam's policies in the sectors of EGS. The APEC in particular has launched a specific initiative for EGS.

¹⁰ "Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam", p. 21.

V.1 WTO commitments

1. Environmental goods

Environmental goods are subject to the tariff commitments of each WTO member and to the general obligations of the GATT and the agreements contained in Annex 1A of the Marrakesh Agreement establishing the World Trade Organisation (WTO). Among the most relevant agreements which may affect domestic policies in the area of environmental goods are the Agreement on Subsidies and Countervailing Measures (ASCM), the Agreement on the Trade-Related Investment Measures (TRIMs) and the Agreement on Technical Barriers to Trade (TBT). Reference is made to the MUTRAP publications which extensively explain the contents of these agreements. Specific reference will also be made to them in the second study which will address the specific policy measures that WTO Members may adopt to support EGS.

It is important to mention at this stage that WTO rules generally recognise the need for environmental protection and may allow trade restrictive environmental measures under specific conditions. For example Article XX GATT allows a WTO member to adopt measures that are necessary to protect national security or human, animal or plant life or health. It also allows trade restrictive measures if these are related to the conservation of natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption. Trade restrictive measures for environmental purposes, however, cannot be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade”.¹¹

In the areas of standards and technical regulations, pursuant to the TBT Agreement, WTO Members may adopt them to pursue environmental objectives provided they are not useless or unduly burdensome. Ideally they should be based on existing international standards and constitute the least trade restrictive measure available to achieve the environmental objective sought.

¹¹ Article XX of GATT

As to investment measures, while the WTO rules pertaining to trade in goods do not directly regulate the conditions of foreign direct investments, they do prevent that such rules are unduly trade distortive. These are for instance the conditions imposed on an investor to use local content as opposed to imported material or to export at least a certain quantity of the products manufactured. The WTO TRIMs agreement specifies at length the type of prohibited trade distortive investment measures.

Finally, with respect to subsidies, the WTO SCM Agreement provides for the actions that can be taken against trade distortive subsidies. These may encompass incentives, such as tax incentives, that are specific to certain sectors of industry. While not all subsidies are prohibited or even actionable, environmental subsidies may be actionable under certain conditions. The second study will elaborate more at length on these rule, since of course they are critical for the assessment of Vietnam's possible incentive measures favouring EGS.

2. Environmental services

The WTO rules affecting environmental services are those contained in the General Agreement on Trade in Services (GATS). GATS provides for four modes of supply of a service :

- Cross-border supply (Mode 1) (the possibility for non-resident service suppliers to supply services cross-border into the Member's territory, e.g. online banking),
- Consumption abroad (Mode 2) (the freedom for the Member's residents to purchase services in the territory of another Member, e.g. tourism services),
- Commercial presence (Mode 3) (the opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the Member's territory, such as a branch, agency, or wholly-owned subsidiary),
- Presence of natural persons (Mode 4) (the possibilities offered for the entry and temporary stay in the Member's territory of foreign individuals in order to supply a service e.g. services supplied by professionals temporarily delegated abroad).

In services sectors, such as environmental services, trade liberalisation obligations apply only for those services sectors which are subject to specific commitments taken by each Member

separately, per mode of supply. Members' commitments are inscribed in their Schedule of Services Commitments.

WTO Members can make special commitments on market access¹² and national treatment¹³. Market access commitments imply that a Member must abolish quantitative and qualitative restrictions on the supply of a service (e.g. quotas). By making commitments on national treatment, Members must treat foreign services and service suppliers not less favourably than their own domestic services and service suppliers.

Commitments may be limited by specific conditions indicated in a Member's schedule of services commitments. Furthermore WTO Members can make horizontal commitments which apply to all sectors. Thus, understanding Vietnam's schedule of commitments is essential to assess the scope of its obligations under GATS in environmental services.¹⁴

Vietnam has scheduled commitments regarding the following environmental services: sewage services, refuse disposal services, sanitation and similar services, cleaning services and exhaust gases, noise abatement services, nature and landscape protection services, and other environmental protection services.

The table below provides a summary of Vietnam's specific commitments related to environmental services under GATS:

¹² Article XXVI GATS

¹³ Article XVII GATS

¹⁴ Vietnam's schedule of specific commitments is available at: [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20gats/sc/*\)%20and%20\(\(%20@Title=%20viet%20nam%20\)%20or%20\(@CountryConcerned=%20viet%20nam\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20gats/sc/*)%20and%20((%20@Title=%20viet%20nam%20)%20or%20(@CountryConcerned=%20viet%20nam))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

6. ENVIRONMENTAL SERVICES¹⁵

Access to certain geographic areas may be restricted for national security reasons¹⁶.

	Market access	National treatment	Additional commitments
A. <u>Sewage Services</u> (CPC 9401)	<p>(1) Unbound, except related consulting services.</p> <p>(2) None.</p> <p>(3) None, except: Confirming that services supplied in the exercise of governmental authority as defined in Article I:3(c) may be subject to public monopolies or exclusive rights granted to private operators.</p> <p>Upon accession joint ventures with foreign capital contribution not exceeding 51 % are allowed during 4 years after accession. After that, none.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) Unbound, except related consulting services.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>Foreign companies are allowed to do business activities in Viet Nam in the form of build-operate-transfer (BOT) and build-transfer-operate (BTO).</p>

¹⁵ WTO Secretariat 2008 and Survey of APEC Trade Liberalization in Environmental Services, APEC Group of Services and APEC Committee on Trade and Investment, 2010.

¹⁶ For greater transparency, this commitment allows the maintenance or adoption of limitations or restrictions for national security reasons that would be justified under Article XIV and Article XIV bis of the GATS.

6. ENVIRONMENTAL SERVICES¹⁵

Access to certain geographic areas may be restricted for national security reasons¹⁶.

	Market access	National treatment	Additional commitments
B. <u>Refuse disposal services</u> (CPC 9402) ¹⁷	<p>(1) Unbound, except related consulting services.</p> <p>(2) None.</p> <p>(3) None, except: Confirming that services supplied in the exercise of governmental authority as defined in Article I:3(c) may be subject to public monopolies or exclusive rights granted to private operators. Foreign ownership is limited to 51 % during 4 years after accession. After that, none. For the purpose of ensuring public welfare, foreign-invested enterprises are restricted from collecting refuse directly from households. They are only permitted to provide services at the refuse collection points as specified by local municipal and provincial authorities.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	Foreign companies are allowed to do business activities in Viet Nam in the form of build-operate-transfer (BOT) and build-transfer-operate (BTO).
D. <u>Other services</u> - Cleaning services of exhaust gases (CPC	<p>(1) Unbound, except related consulting services.</p> <p>(2) None.</p> <p>(3) None, except: Confirming that services supplied in the exercise of governmental authority as defined in Article I:3(c) may be subject to public monopolies or exclusive rights granted to private operators. Foreign ownership is limited to 51 % during 4 years after</p>	<p>(1) Unbound, except related consulting services.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) Unbound, except as</p>	

¹⁷ Import of refuse is forbidden by law. Treatment and disposal of hazardous waste is regulated by Law.

6. ENVIRONMENTAL SERVICES¹⁵

Access to certain geographic areas may be restricted for national security reasons¹⁶.

	Market access	National treatment	Additional commitments
94040) and noise abatement services (CPC 94050)	accession. After that, none. (4) Unbound, except as indicated in the horizontal section.	indicated in the horizontal section.	
- Environmental impact assessment services (CPC 94090*)	(1) None. (2) None. (3) None, except that foreign ownership is limited to 51% during 4 years after accession. After that, none. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	

Mode 1 - Vietnam is unbound for all specified environmental services sectors except for environmental impact assessment services. This means Vietnam is free to introduce or maintain measures inconsistent with market access or national treatment (except for related consultancy services). With respect to environmental impact assessment services Vietnam cannot impose limitations on market access and national treatment¹⁸.

With respect to mode 2 – consumption abroad, no limitations have been provided by Vietnam to market access and national treatments in the above-mentioned environmental services sectors. These commitments, however, are of little importance with respect to the promotion of investments in EGS in the territory of Vietnam.

¹⁸ . When the term “none” appears in the sector-specific part of the schedule it means that there are no limitations specific to this sector but there may exist relevant horizontal limitations in the first part of the schedule. Vietnam did not schedule any horizontal commitments for mode 1 – cross border supply.

Concerning mode 3 – commercial presence, Vietnam’s limitations to market access and national treatment have lapsed. Hence, for those services which are in commerce, foreign services suppliers are free in principle to establish themselves in Vietnam and respond to local demand for the services concerned. However, Vietnam’s mode 3 commitments for specific environmental sectors should be read in conjunction with Vietnam’s horizontal commitments for mode 3. In this respect, additional conditions related to market access are imposed: representative offices of foreign service suppliers are permitted to be established in Vietnam, but they shall not engage in any direct profit-making activities and the establishment of branches is unbound. Regarding national treatment, relevant horizontal commitments state that eligibility for subsidies may be limited to Vietnamese service suppliers, i.e. to juridical persons established within the territory of Vietnam, or a part thereof. The granting of one-time subsidization to promote and facilitate the process of equitisation is not in breach of this commitment. Vietnam remains unbound for subsidies for Research and Development and for subsidies in the Health sectors.¹⁹

Concerning Mode 4 – presence of natural persons, work permits and visa requirements constitute regulations which restrict trade in environmental services. In the case of Vietnam there are restrictions indicated in the horizontal section. In this respect Vietnam remains free to adopt measures that are inconsistent with market access and national treatment except for measures related to the entry and temporary stay of intra-corporate transferees, sales persons, persons responsible for setting up commercial presence and contractual service suppliers. The text specifies that the entry of these persons is allowed among others for engineering services which may be relevant for environmental services.

Additionally, Vietnam’s commitments must be read in conjunction with exemptions to most favoured nation (MFN) principle. Vietnam scheduled a general exemption concerning mode 3 – commercial presence, which applies to measures extending preferential treatment pursuant to

¹⁹ Vietnam’s schedule of specific commitments is available at: [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20gats/sc/*\)%20and%20\(%20@Title=%20viet%20nam%20\)%20or%20\(@CountryConcerned=%20viet%20nam\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20gats/sc/*)%20and%20(%20@Title=%20viet%20nam%20)%20or%20(@CountryConcerned=%20viet%20nam))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

bilateral investment treaties (BIT).²⁰ This means in practice that Vietnam reserves itself the possibility to discriminate in favour of FDI originating in the countries with which it concluded BITs.

It should be noted that across all modes of supply, Government procurement is exempted from Most Favoured Nation treatment, market access and national treatment obligations under GATS.

Finally, irrespective of commitments taken, like in trade in goods, GATS allows Members to take trade restrictive measures if these are necessary for the national security or human, animal or plant life or health. Trade restrictive measures, however, cannot be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services”.²¹

3. Government Procurement

The WTO Government Procurement Agreement (GPA) contains rules that provide a framework for openness, non-discrimination, and transparency in government procurement. The GPA was intended initially to apply to all WTO members but this proved impossible; thus, the GPA constitutes one of the few plurilateral agreements within the WTO legal framework. The GPA creates obligations and rights only for those WTO members that have signed it.

Only 42 of the WTO’s 157 members have signed the GPA, with developed countries constituting the majority of the GPA’s parties. Vietnam is not a party to the GPA. Hence, it is not bound by its obligations.

4. Negotiations on EGS

²⁰ Vietnam’s list of Article II (MFN) exemptions; available at: [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20gats/el/*\)%20and%20\(%20@Title=%20viet%20nam%20\)%20or%20\(@CountryConcerned=%20viet%20nam\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20gats/el/*)%20and%20(%20@Title=%20viet%20nam%20)%20or%20(@CountryConcerned=%20viet%20nam))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

²¹ Article XIV GATS

EGS are specifically concerned by the new round of negotiations which was launched in 2001 by the WTO Ministerial Conference in Doha. Paragraph 31 (iii) of the Doha Ministerial Declaration provides for the “reduction, or as appropriate, elimination of tariff barriers on environmental goods and services”. However, the negotiations on EGS have been paralyzed due to lack of progress of The Doha Round as a whole.

Independently from the Doha Round, there are several obstacles for the negotiations on EGS. They concern the definition of “environmental goods” and their classification within the existing harmonised system of customs codes. There is also an issue with the classification of dual-use goods, i.e. those goods which fulfil both an environmental purpose and non-environmental functions, which constitute a large part of environmental goods. Classification of EGS is of course a critical issue as it involves a determination as to whether or not certain goods and services will be able to benefit from the improved market access commitments that are expected to result from the negotiations.

Additionally the WTO members differ on how to liberalize environmental goods. While they generally agree on the need to facilitate trade of EGS, they would also like to be able to withdraw their commitment in case a new product or technology reveals itself not to fulfil the original anticipated environmental goal.

The special session of the WTO Committee on Trade and Environment initiated its works on these issues on 8 July 2014 in Geneva. Negotiators represent Members that are responsible for more than 90 % of the global trade in EGS. During the early phases of the negotiations, the negotiators agreed that they will base their work on a list of 54 goods put together under the auspices of APEC (see below).

The second phase of the negotiations concerns the elimination of tariffs and customs duties on a wide range of environmental goods. Non-tariff barriers to trade in this sector will also be proactively addressed.

It should be noted that Vietnam is also negotiating a Trans-Pacific Partnership Agreement (TPP). These negotiations also address environmental goods and services and consistency in both negotiations is expected.

5. Limits of the WTO with respect to EGS

WTO rules may present several shortcomings with respect to EGS.

A major complaint concerns the extensive use of trade remedies that certain WTO members, such as the EU or the US, have made against environmental goods. The antidumping duties that the EU and US have imposed on solar panels originating in China is a good example in this regard. Furthermore, environmental subsidies under the WTO are actionable. In other words, it is possible for a WTO Member to impose a countervailing duty on the imports of environmental goods which benefit from subsidies. The sale of clean energy at preferential prices can constitute such a subsidy. Several commentators regret that the use of trade remedies may unduly hamper the dissemination of EGS.

Another complaint concerns the taxes certain countries impose on embedded carbon in order to encourage the use of clean energy. These countries may be tempted to protect domestic manufacturers that are subject to such a tax, by also taxing the embedded carbon in directly competitive imported products. Questions remain as to how such taxes, also named border tax adjustments, would be handled under WTO law. A WTO panel may indeed consider they constitute an undue distortion to trade. Such case-law may have detrimental effects on certain domestic policies promoting the use of EGS.

The second study, which will address the policies that Vietnam can pursue to promote the use of and investments in EGS, will address these issues in more detail.

V.2 ASEAN

1. Overview

The Association of Southeast Asian Nations (ASEAN) cooperates on environment promotion since 1997. Vietnam has become a part of ASEAN in 1995.

ASEAN environmental cooperation concentrates on ten priority areas of regional importance as stated in the Blueprint for the ASEAN Socio-Cultural Community (ASCC Blueprint) 2009-2015:

- Addressing global environmental issues,
- Managing and preventing trans boundary environmental pollution (trans boundary haze pollution and trans boundary movement of hazardous waste),
- Promoting sustainable development through environmental education and public participation,
- Promoting environmentally sound technology,
- Promoting quality of living standards in ASEAN cities /urban areas,
- Harmonizing environmental policies and databases,
- Promoting sustainable use of coastal and marine environment,
- Promoting sustainable management of natural resources and biodiversity,
- Promoting sustainability of freshwater resources,
- Responding to climate change and addressing its impacts ,
- Promoting sustainable forest management.

Vietnam is actually a lead country for the climate change priority area.

Given this overall policy framework, the ASEAN overall encourages its members to adopt policies that promote the use of EGS.

2. Trade in Goods

The ASEAN is also a trade agreement. Regarding trade in goods, ASEAN Members aim at creating an ASEAN Free Trade Area (AFTA) and an ASEAN Economic Community (AEC) by 2015. The AFTA and AEC would liberalise trade in goods for substantially all products

exchanged between the ASEAN member States. This concern environmental goods, which would therefore not be subject to intra-ASEAN customs duties.

One can also expect a substantial level of regulatory convergence in standards and technical regulations applicable to such goods among ASEAN Members. ASEAN has indeed developed a Policy Guideline on Standards and Conformance which provides the guiding principles for “*the implementation of joint efforts of ASEAN Member Countries in the area of standards and conformance both in regulated and non-regulated sectors as one of the measures for accelerating economic integration towards the AEC*”. There also exists an ASEAN Consultative Committee for Standards and Quality (ACCSQ), whose mandate is to deal with TBTs and to assist ASEAN member states in their harmonization efforts. While no specific working group was established with respect to environmental goods yet, this is a possibility to consider in a not too distant future.

ASEAN rules, however, by contrast with those of the WTO, do not address subsidies, such as tax breaks and investment incentives. Hence ASEAN does not restrict governments’ capacity to extensively use such tools.

3. Trade in Services

Concerning trade in services, an ASEAN Framework Agreement on Trade in Services (AFAS) was adopted in Bangkok in December 1995. Under AFAS, ASEAN Member States enter into rounds of negotiations to liberalise trade in services with the aim of submitting increasingly higher levels of commitments. The negotiations result in commitments that are set forth in schedules of specific commitments annexed to the Framework Agreement. These schedules are often referred to as packages of services commitments. At present, ASEAN has concluded eight packages of commitments under AFAS. These concern a wide range of services sectors, including environmental services. ASAF provisions are generally consistent with the multilateral rules for trade in services contained in GATS.

Vietnam's most recent commitments in environmental services are included in the eighth package of commitments dated 15 May 2012.²² Vietnam's commitments absorb those made under the GATS, while they also somehow extend them.

Vietnam's commitments are made partly in the same environmental services as under GATS: "sewage services", "refuse disposal services", "other services: cleansing services, noise abatement services and environmental impact assessment services". Vietnam also made commitments in additional environmental services sectors, such as "sanitation and similar services", and "nature and landscape protection services". AFAS' scope of environmental sectors concerned is therefore slightly larger than the one under the GATS. The horizontal commitments Vietnam scheduled under AFAS are the same as those under the GATS.

Concerning "sewage services", Vietnam did not bind the market access for Mode 1, except for consulting services, for obvious reasons due to the technical impossibility to provide sewage services at a distance. Unlike in the GATS case, there are no limitations for national treatment concerning Mode 1. Like the GATS, there are no limitations of market access and national treatment for Mode 2, also for obvious reasons, since mode 2 concern the delivery of the services abroad. Limitations do not apply any longer for Mode 3 – commercial presence, except the same horizontal limitations as those specified in the GATS. Vietnam AFAS's commitment however adds the commitment that Foreign-invested enterprises shall be permitted by competent authorities of Vietnam to lease the land to carry out their investment projects. The land leasing period must correspond to the time of operation of those enterprises and must be stipulated in their investment licenses. It must be extended whenever the time of operation of those enterprises is extended by competent authorities. Finally, in relation to Mode 4 – presence of natural persons, Vietnam made the same commitments and limitations as those under the GATS.

²² Available at: <http://www.asean.org/communities/asean-economic-community/item/member-countries-horizontal-commitments-schedules-of-specific-commitments-and-the-list-of-most-favoured-nation-exemptions-Annexes-to-the-Protocol-to-Implement-the-Eighth-Package-of-Commitments-under-the-ASEAN-Framework-Agreement-on-Services>

Concerning “refuse disposal services”, the market access for Mode 1 is unbound except for consulting services, for reasons similar to those applicable to “sewage services”. Vietnam did not schedule limitations for the national treatment. There are also no limitations for mode 2 for both market access and national treatment. Concerning Mode 3 – commercial presence, the same condition as for sewage services are imposed and, like in the GATS, Vietnam’s commitment excludes the service of collecting refuse directly from households. The same conditions as for sewage services also apply for mode 4 – presence of natural persons.

Concerning “sanitation and similar services” and “nature and landscape protection services”, Vietnam made full liberalisation commitments. Its schedule does not contain any limitation related to market access and national treatment, except the horizontal limitations which apply to all sectors in mode 3 and mode 4, like under the GATS.

Vietnam made similar commitments as under GATS in relation to “other services” (i.e. cleaning services of exhaust gases and noise abatement and environmental impact assessment services).

Vietnam’s MFN exemptions are also the same as under the GATS agreement (see above).

In practice the commitments Vietnam made under AFAS, as under the GATS, require it to ensure that domestic regulations which may affect the trade and investment opportunities of foreign services and service suppliers cannot nullify or impair the commitments taken. One can expect that very few issues may arise in this regard with respect to the regulatory tools available to promote the use of and investments in EGS in Vietnam. These will be addressed in the second study.

The commitments under AFAS are binding. Article VII of the agreement stipulates that the Protocol on Dispute Settlement Mechanism for ASEAN applies with respect to any disputes or any differences between Member States concerning the interpretation or application of the AFAS.²³

²³ Article VII of the AFAS Agreement; available at: <http://investasean.asean.org/files/upload/Doc%2008%20-%20AFAS.pdf>

4. Government Procurement

ASEAN does not provide a framework for the liberalisation of public procurement.

5. ASEAN Comprehensive Investment Agreement

In addition to the trade arrangements, ASEAN also provides for the protection of investments. The ASEAN Comprehensive Investment Agreement (ACIA; 2009) was concluded with a view of improving and merging the existing investment agreements, namely: the ASEAN Investment Area Agreement and the Agreement for the Promotion and Protection of Investments (called ASEAN IGA). The ACIA entered into force on 29 March 2012²⁴.

The objectives stated in Article 1 of the ACIA are:

- Progressive liberalization of the investment regimes of Member States;
- Provision of enhanced protection to investors of all Member States and their investments;
- Improvement in transparency and predictability of investment rules, regulations and procedures conducive to increased investment among Member States;
- Joint Promotion of the region as an integrated investment area, and
- Cooperation to create favourable conditions for investment by investors of a Member state in the territory of the other Member States.

The guiding principles, stated in Article 2 of ACIA are the following:

- Forward looking, reaffirming, improving and building upon the existing AIA and ASEAN IGA;
- Disallow back-tracking of commitments except with compensation;

²⁴ See, ASEAN Secretariat: ASEAN Comprehensive Investment Agreement, A Guidebook for Businesses and Investors, July 2013; See also Yap Lai Peng, *"The ASEAN Comprehensive Investment Agreement 2009: Its Objectives, Plan and Progress"* in S Tiwari (ed), ASEAN: Life after the Charter (Institute of Southeast Asian Studies 2010).

- Balanced in its focus: incorporating liberalisation, promotion, facilitation, and protection;
- Progressive liberalisation to achieve free and open investment environment, in line with AEC;
- Benefit ASEAN-owned investors and companies and foreign-owned ASEAN based investors;
- Consider granting special and differential (S&D) treatment for the newer ASEAN Member States;
- Flexible treatment taking into account individual countries sensitivities;
- Reciprocal treatment in the enjoyment of concessions as in AIA;
- Preservation of ASEAN preferential treatment; and
- Allow expansion to cover other sectors in the future

The ACIA covers almost all types of investments, except those that are specifically excluded by Members. Its provisions address four pillars of investment: liberalization, protection, facilitation and promotion.

Bindings under the ACIA concern several sectors, namely: manufacturing, agriculture, fishery, forestry, mining and quarrying, and services incidental to these sectors. Although the ACIA does not mention investment in environmental services and goods as such, it is relevant in these sectors as long as they enter into the scope of the enumerated sectors.

The Agreement grants immediate benefits to ASEAN investors and to ASEAN-based foreign investors and specifies that year 2015 is the deadline to achieve free and open investment. It also incorporates prohibitions of trade distortive investment measures similar to those that are addressed in the WTO TRIMS agreement.

The ACIA overall contains 50 articles, 2 annexes and a single Schedule (reservation list of Member States). Reservations are only possible with respect to national treatment and to the composition of senior management and board of directors. The Vietnam's schedule contains a

list of 26 reservations²⁵. Some of them are specifically relevant to environmental protection. For example, Vietnam does not take any commitment on environment protection and management services related to mining and quarrying. The services concerned are: environmental background studies, establishing oil spill response plan, including environmental sampling and analysis measuring water and air quality, obtaining onsite spectrum, collecting and assessing data on nature, environmental background study, environmental impact assessment, proposing environmental management plan in oil and gas activities, particularly for offshore environment and sensitive coastline areas. Vietnam's schedule even specifies that no investment license may be issued to foreign investors in these sectors.

In addition to the possibility to schedule reservations, Article 17 of ACIA enables restrictions to investments when these are justified by one of the general exceptions similar to those of article XX of the GATT:

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member states or their investors where like conditions prevail, or a disguised restriction on investors of any other Member State and their investments, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures:....

- *“(b) necessary to protect human, animal or plant life or health;”*
- *“(f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption.”*

Finally, the ACIA provides for Investor to State Dispute Settlement procedures, in addition to the State-to-State dispute settlement mechanism provided under the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.²⁶

²⁵ Also available at: [http://www.asean.org/images/2012/Economic/AIA/Agreement/Viet%20Nam%20Rsv%20List%20\(Final%201982010\).pdf](http://www.asean.org/images/2012/Economic/AIA/Agreement/Viet%20Nam%20Rsv%20List%20(Final%201982010).pdf)

²⁶ See M. Sallehuddin; *“Critical Issues on Investment Law Harmonization under ASEAN”*, 15.02.2012

In summary, while the ACIA does not make any reference to environmental goods and services as such it is relevant insofar as these goods and services are part of one of the wider groups of sectors the ACIA covers. However, Vietnam listed some restrictions related to environmental protection in its schedule of commitments. Furthermore, the ACIA allows in some circumstances the adoption of investment-restrictive measures if these are necessary or related to environmental protection. This being said, the scope of ACIA remains open and it enables the Contracting Parties to include environmental services in the future. Overall, because it creates a highly favourable environment for investment between ASEAN countries, the ACIA is a relevant instrument to enhance and facilitate the promotion of investment in EGS in Vietnam.

6. ASEAN Agreement on the Conservation of Nature and Natural Resources

The ASEAN Agreement on the Conservation of Nature and Natural Resources (ACNNR) was signed in 1985 and ratified by Vietnam in 1997. It contains the Contracting Parties' commitments to adopt in their jurisdiction the measures necessary to maintain essential ecological processes and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources. The Agreement also requires the Contracting Parties to develop national conservation strategies and to co-ordinate such strategies within the framework of a conservation strategy for the Region.

Article 10 of the Agreement specifically requires the Contracting Parties to promote adequate economic and fiscal incentives to, firstly, promote: *“environmentally sound agricultural practice by, inter alia, controlling the application of pesticides, fertilizers and other chemical products for agricultural use, and by ensuring that agricultural development schemes, in particular for wetland drainage or forest clearance, pay due regard to the need to protect critical habitats as well as endangered and economically important species”* and secondly: *“to promote pollution control and the development of environmentally sound industrial processes and products”*.

The ACNNR clearly provides a relevant context in ASEAN encouraging the Contracting Parties, Vietnam included, to develop trade and fiscal instruments to promote the use in their jurisdictions of environmental goods and services.

7. Other ASEAN Agreements affecting Vietnam

Vietnam, as a member of ASEAN, has concluded and implemented 6 regional free trade agreements: the ASEAN-China Free Trade Agreement (ACFTA), the ASEAN-Korea Free Trade Agreement (AKFTA), the ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP), the ASEAN India Free Trade Agreement (AIFTA) and the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA). All these agreements provide for liberalization measures among the parties, according to individual tariff schedules and services schedules of commitments. In certain agreements, investment-specific rules were also agreed.

a. ASEAN-China Free Trade Agreement

Pursuant to the ACFTA, the Parties must eliminate tariffs for goods under a “Normal Track” not later than 1 January 2015. Customs duties can be maintained for certain products, which cannot represent more than 250 tariff lines. Customs duties on these products must be eliminated by 1 January 2018. Certain other products have been placed in sensitive track or highly sensitive track for which the elimination of customs duties is not requested at this stage. The Agreement does not specifically address environmental goods. Hence reference must be made to the parties’ tariff schedules..

Regarding services, Vietnam has scheduled specific commitments for environmental services under the ACFTA.²⁷ Vietnam’s schedule is almost identical to its schedule under the GATS. The difference stands that in the case of GATS, Vietnam can still subject foreign contributions in a joint venture to a maximum threshold of 51% , whereas this is no longer the case under ACFTA.

ASEAN and China have also signed an Investment Agreement in 2009. The Agreement aims at creating a favorable environment for the investors and their investments from ASEAN and China. It provides for fair and equitable treatment of investors, non-discriminatory treatment

²⁷ Available at: <http://www.asean.org/news/item/asean-china-free-trade-area-2>

with respect to nationalization or expropriation and compensation for losses. The Agreement also allows transfers and repatriation of profits.

b. ASEAN – Japan Comprehensive Economic Partnership

The AJCEP covers trade in goods, trade in services, investment, and economic cooperation. However the specific commitments on trade in services and investment are currently being negotiated.

Specifically concerning the environment, article 53 of the Agreement provides that the parties shall undertake economic cooperation activities on the basis of mutual benefit.

c. ASEAN - Korea Free Trade Agreement

The AKFTA liberalizes 90% of tariff lines among the parties. Vietnam must comply by 2018. Like the other agreements, the AKFTA does not specifically address environmental goods. Hence reference must be made to the parties' tariff schedules.

Regarding trade in services, the ASEAN – Korea specific agreement on trade in services covers 112 sectors including environmental services. Vietnam's sectoral and horizontal commitments' are identical to those scheduled under the GATS.

Regarding investments, the ASEAN Korea Investment Agreement aims at:

- Creating conducive environment for ASEAN and Korean investors and their investments; promoting cooperation on a mutually beneficial basis;
- Encouraging and promoting the flow of investments and cooperation between ASEAN and Korea;
- Improving transparency of investment rules; and,

- Providing for the protection of investments.

The Agreement incorporates a review mechanism to improve the transparency of investment rules and to discuss progressive liberalization of the investment regimes of ASEAN and Korea. While the Investment agreement does not mention environmental goods or services it may indirectly benefit these sectors.

d. ASEAN – New Zealand Australia Free Trade Agreement

The AANZFTA, signed in 2009, provides for the progressive removal by 2020 of 99% of the parties' tariffs.

The AANZFTA also covers trade in services. The services chapter of the AANZFTA mirrors the GATS structure. Vietnam has scheduled similar commitments regarding environmental services under the AANZFTA that it has under the GATS.

The AANZFTA also contains a chapter on investments which provides for:

- *“Fair and equitable treatment, and full protection and security,*
- *Non-discriminatory treatment in relation to compensation for losses arising from armed conflict, civil strife or state of emergency,*
- *Provisions that freely allow transfers relating to covered investments,*
- *Non-discriminatory expropriation of investments that is done only for public purpose and carried out with due process of law, and receives prompt, adequate and effective compensation”²⁸*

The parties are expected to offer specific market commitments on investments within five years from the date of entry into force of the AANZFTA, based on a negative list approach.

e. ASEAN – India Free Trade Agreement

ASEAN countries and India signed a Framework Agreement on Comprehensive Economic Cooperation on 8 October 2003.

²⁸ See <http://aanzfta.asean.org/index.php?page=investment>

In the context of the Framework Agreement, the parties concluded an Agreement on Trade in Goods, which provides for a progressive reduction and/ or elimination of tariffs imposed on goods originating in the parties to the agreement. The commitments are divided into different kinds: goods subject to normal track and goods subject to sensitive and highly sensitive tracks. Under the normal track, Vietnam has until 2024 to eliminate tariffs. Under the sensitive track, MFN rates above 5% should be reduced to 5%. For the goods in the highly sensitive track, a different reduction schedule applies. The Agreement does not create separate rules for environmental goods as such.

Regarding services, the ASEAN-India Agreement on Services and Investment was signed in September 2014. Both India and ASEAN Member States have taken GATS plus commitments in various services sectors and modes of supply. In environmental services, however, Vietnam did not take more commitments than those it took under the GATS.

f. The negotiation of EU-ASEAN Free Trade Agreement

The EU-ASEAN Free Trade Area is being negotiated. Although the liberalization of environmental goods and services is included in the EU draft proposals, this is not a specific negotiating issue. Furthermore, given the difficult nature of the negotiations, the EU is now negotiating a FTA with each country separately. Negotiations with Vietnam are ongoing (see below).

8. Conclusion regarding ASEAN

The ASEAN provides a wider, yet more precise, framework for the protection of the environment than the WTO.

Furthermore, ASEAN members agreed on more trade liberalization measures affecting EGS. While trade in EGS does not seem to have been specifically addressed in the negotiating framework, EGS overall benefit from the wider liberalization efforts generally undertaken under ASEAN patronage.

This is also the case with respect to the protection of investors and their investment. There are deeper commitments in this respect in the ASEAN Comprehensive Investment Agreement and in the ASEAN bilateral FTAs with third countries than in any other WTO Agreement. The ASEAN framework for investment is certainly of a benefit for regional investments in the area of EGS.

However, like the WTO, the ASEAN remains an incomplete agreement with respect to some of the policies that may affect EGS (these policies will be addressed in the second study). This concerns the possible use of trade remedy cases as applied to EGS and the use of border tax adjustments. Furthermore, by contrast with the WTO, rules governing subsidies and public government are non-existent in the ASEAN legal framework.

Overall, the ASEAN is a more comprehensive agreement than the WTO with respect to the liberalization effort, the protection of investments and the specific attention that is given to the protection of the environment and the conservation of nature and natural resources. It may suffer from some of the same shortcomings as those of the WTO with respect to non-tariff barriers to trade and the possible abuse of subsidies and public procurement. These shortcomings may create unnecessary and ineffective distortions to the trade and investments in the sectors of EGS. It will remain a challenge for ASEAN to provide, in addition to its existing provisions, a coherent set of rules for EGS.

V.3 APEC initiative

Asia-Pacific Economic Cooperation (APEC) is an economic forum aiming at supporting sustainable growth and prosperity in the Asia-Pacific region promoting free and open trade and investment. Vietnam joined the APEC in November 1998.

APEC is based on “voluntarism” which constitutes an important difference as compared to the WTO and ASEAN. Consequently, Vietnam, as well as other APEC economies, establishes its own timelines and goals and acts on a voluntary and non-binding basis. Hence there are no

penalties for non-compliance. The APEC member economies submit biennially Individual Action Plans and Collective Action Plans reporting progress in achieving APEC objectives.

The environment and climate change recently became APEC's central preoccupations.

In 2007 in Sydney, APEC Members made a commitment to avoid barriers to trade and investment to enable clean and sustainable development. Concomitantly, they launched an action agenda promoting Environmental Goods and Services (EGS). In 2009 they endorsed the APEC Work Programme on EGS. It aims at facilitating an agreement on the actions to support sustainable growth in the region, increase utilization and dissemination of EGS, reduce barriers to trade and investment in EGS and enhance capabilities of countries to advance their EGS sector.²⁹

The APEC Honolulu Declaration (2011) states the objective to promote green growth and to speed the transition towards a global low carbon economy. The Honolulu Declaration enumerates the following steps to promote the green growth goals³⁰:

- *“Rationalize and phase out inefficient fossil-fuel subsidies that encourage wasteful consumption, while recognizing the importance of providing those in need with essential energy services, and set up a voluntary reporting mechanism on progress, which we will review annually;*
- *Aspire to reduce APEC's aggregate energy intensity by 45 percent by 2035;*
- *Promote energy efficiency by taking specific steps related to transport, buildings, power grids, jobs, knowledge sharing, and education in support of energy-smart low carbon communities;*
- *Incorporate low-emissions development strategies into our economic growth plans and leverage APEC to push forward this agenda, including through the Low-Carbon Model Town and other projects; and*

²⁹ Annex C to 2011 APEC Honolulu Declaration “Trade and Investment in Environmental Goods and Services”

³⁰ 2011 APEC Honolulu Declaration, available at: http://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011_aelm.aspx

- *Work to implement appropriate measures to prohibit trade in illegally harvested forest products and undertake additional activities in APEC to combat illegal logging and associated trade.”*

In 2011 leaders agreed to reduce by the end of 2015 tariff rates on environmental goods to 5 percent or less, without prejudice to APEC economies’ positions in the WTO.

Moreover, the APEC economies resolved to eliminate non-tariff barriers, including local-content requirements that distort environmental goods and services trade. Other actions which were agreed upon require member economies to³¹:

- *“Ensure that all government support and incentive programs aimed at promoting environmental goods and services are transparent and consistent with economies’ WTO obligations.*
- *Ensure that all government procurement policies pertaining to environmental goods and services are transparent, consistent with the 1999 APEC Non-Binding Principles on Government Procurement.*
- *Promote regulatory coherence and cooperation in areas affecting environmental goods, including by better aligning approaches to standards and conformance in the environmental goods sector.*
- *Affirm our commitment to pursue liberalization of environmental goods and services in the World Trade Organization (WTO), including by exploring creative and innovative solutions to advance the Doha mandate to reduce and, as appropriate, eliminate tariff and non-tariff barriers to these goods and services.*
- *Pursue progressive liberalization of trade in environmental goods and services in our Free Trade Agreements.”*

³¹ Annex C to Honolulu Declaration “*Trade and Investment in Environmental Goods and Services*”, available at: http://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011_aelm/2011_aelm_annexC.aspx

The Annex C of the APEC Honolulu Declaration instructs officials to undertake capacity-building activities to implementing actions stated above such as exchanging views, experiences, and best practices to promote EGS trade and investment.

In 2012 leaders endorsed the APEC list of environmental goods³². Under APEC, a good can be considered as an “environmental good” if at least one of the product applications contribute to green growth. Each APEC country may obviously liberalize tariffs for a larger product scope³³.

The APEC list of environmental goods contains 54 sub-headings of the Harmonized System at the 6-digit level. In practice however in most cases tariffs will be reduced only for “environmental goods”, which in jargon are included in so called “ex-outs”. The term “ex-out” means that only part of a particular sub-heading is considered as an “environmental good”.³⁴ For some of the ex-outs a clear description can be found in Annex C. For other sub-headings Annex C enumerates optional “ex-outs” which “may include” a wider scope of products. Only ex-outs benefit from tariff reductions.

If Vietnam wishes to implement tariff reductions under APEC it should decide if existing tariff lines may be used or if there is a need for new ones. The new tariff lines would serve to apply reduced tariffs to “environmental goods” (“ex-outs”) and not to inadequate “non-environmental” products under the existing tariff line. This however may be a difficult exercise.³⁵

Regarding environmental services, they are covered in APEC’s Early Voluntary Sectoral Liberalization (EVSL) initiative. At the end of 2008 Vietnam made concrete commitments on trade liberalization in environmental services in its Individual Action Plan.

³² Annex C to 2012 Vladivostok Leader’s Declaration, available at: http://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC.aspx

³³ APEC PSU Policy Brief No. 5

³⁴ *“The APEC List of Environmental Goods. An Analysis of the Outcome and Expected Impact”*, ICTSD’s Global Platform on Climate Change, Trade and Sustainable Development; Rene Vossenaar; June 2013

³⁵ Idem.

The table below shows the commitments Vietnam made for Environmental Services under its Individual Action Plans³⁶. These commitments follow the same sub-classifications as those that were made under the GATS under “Environmental Services”, namely “sewage services”, “refuse disposal services”, “sanitation and similar services”, and “other services”.

Operational requirements	Enterprises wishing to operate in environmental services must meet the following requirements: <ul style="list-style-type: none"> - business operation licences for domestic enterprises, - investment licenses for foreign companies, - regulations on investment incentives for environment protection, environment pollution disposal, advanced technology transfers, - regulations on capital, - regulations relating to trading in hazardous chemicals, and product containing hazardous capitals - regulations related to standard transportation and burial of solid waste, destruction of some prohibited chemicals.
Licensing and qualification requirements for services providers	No specific requirements
Foreign entry	The area of environment protection falls under the category of special encouragement investment projects (in producing equipment of waste and pollution treatment, environment protection enjoys tax exemption and tax reduction (enterprise tax income is 10% in the first 15 years while the common tax rate is 25%. Income tax of enterprises in this area is exempted in their first 4-profit making years, reduced by 50% in the next 4 years).
Discriminatory treatment/MFN	No discriminatory treatment in environment services.

Vietnam’s commitments in its Individual Action Plan confirms Vietnam’s willingness to pursue its Environmental Services Development Programme up to 2020 with a vision toward 2030.

³⁶ Survey of APEC Trade Liberalization in Environmental Services, APEC Group of Services and APEC Committee on Trade and Investment, 2010.

They are consistent both with its domestic policy goals and seem to go beyond Vietnam's binding commitments under GATS and ASEAN.

V.4 Bilateral agreements

Vietnam has concluded over 100 bilateral agreements including 20 Free Trade Agreements and over 40 bilateral investment treaties. All of them condition and shape investment and trade environment in Vietnam but none of them expressly mentions the EGS and very few make a reference to environment protection

Of note is the 2007 Trade and Investment Framework Agreement between Vietnam and the United States.³⁷ The agreement's Preamble states the desire of both contracting parties "*to ensure that their trade and environment policies mutually promote sustainable development*".

There is also the case of the US-Vietnam Bilateral Trade Agreement, which is based in large part on the WTO Agreements. Many of the key WTO provisions are incorporated either directly or by a reference, such as those contained in the WTO Import Licensing Agreement or those in the TRIPs Agreement. The US-Vietnam agreement contains extensive obligations regarding trade in goods and services, the protection of intellectual property rights, investment, business facilitation, transparency and the right of appeal. The Agreement also contains general exception provisions mirroring Article XX of GATT.

In the field of investments the US-Vietnam BTA has a much wider scope than the WTO. It encompasses not only commercial presence but also portfolio investment, tangible and intangible property, contractual rights and other rights conferred pursuant to law. The investment-related provisions the BTA contains both replicate WTO law and they go beyond. The WTO related investment commitments include:

- the elimination of trade related investment measures (WTO-TRIMS);
- Trade in services liberalisation commitments;
- Non-discrimination obligations and the elimination of dual pricing systems;

³⁷ The US – Vietnam Trade and Investment Framework Agreement is available at: http://www.ustr.gov/sites/default/files/uploads/agreements/tifa/asset_upload_file81_12935.pdf

- Transparency in the promulgation and implementation of investment policies.

The provisions beyond WTO include:

- the elimination of export performance requirements (which are not covered by TRIMs);
- Commitments to license or register foreign-invested projects in non-sensitive sectors;
- Removal of restrictions regarding equity participation and the establishment and management of U.S.-invested enterprises;
- Commitments to allow U.S. investors to set up joint stock companies and to issue securities in Vietnam; and,
- Provision of improved investment protection procedures and dispute settlement mechanisms between investors and the State, including access to international arbitration under the World Bank's International Center for Settlement of Investment Disputes (ICSID).

However, the US Vietnam BTA does not contain the Vietnam's GATS commitments on environmental services. Even more, US directly-invested ventures are not permitted to carry out, among others services, environmental investigations unless otherwise authorized by the Government of Vietnam.

Finally, the Vietnam-Japan BIT should be highlighted as well, as it is one of the few bilateral agreements that contains environment related language. Its article 21 states:

*“The Contracting Parties recognize that it is inappropriate to encourage investment by investors of the other Contracting Party by relaxing environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion in its Area of investments by investors of the other Contracting Party.”*³⁸

³⁸ Full text available at: <http://www.mofa.go.jp/region/asia-paci/vietnam/agree0311.pdf>

In summary, Vietnam's BTAs and BITs may also condition the use of EGS or investments in these sectors. These agreements must be considered as well in the assessment of the policies Vietnam can adopt for the promotion of EGS.

VI. GENERAL CONCLUSION

There is no doubt that with economic growth, Vietnam is increasingly challenged by environmental degradation and the need to foster the use of clean sources of energy. The promotion of the use of environmental goods and services (EGS) is part of the policies that may be employed to achieve that end.

The demand for EGS is growing in Vietnam, particularly in the sectors of waste management and water purification. This has already entailed an increased number of investments in these sectors and higher profitability levels. Yet, the overall level of domestic investment in Vietnam in the sectors of EGS remains somehow limited both in absolute terms and compared with the investments made in other countries.

Vietnam has already inserted in its Socio-economic Development Strategy the need to attract sufficient (and more) investments in the sectors of EGS. While the policy framework has been formulated, it must be improved to effectively attract more FDIs in the sector of EGS. This implies developing specific regulations that will create incentives for investments in EGS.

Vietnam has already provided for several investment privileges and incentives to investors who develop projects in encouraged investment sectors and/or geographical areas. Incentives are scattered in many laws and regulations, mainly comprising of (i) tax incentives, (ii) incentives on land use, and (iii) accounting incentives.

Vietnam's incentive mechanisms put in place are generally positively perceived by the companies operating in the sector of EGS. However, they may not be sufficient. Investors also demand simplified and harmonized administrative procedures, transparency of rules and regulations and public-private dialogue. Suggestions are made to implement 'one-stop-shop' governmental services accompanying investments ventures and their registration, business

licenses and authorizations. Trust in government guarantees regarding investments is also strongly needed.

When shaping national policies and incentives for the promotion of environmental goods and services, Vietnam must consider a wide range of international agreements, whether at multilateral, plurilateral or bilateral levels. This concerns both binding international instruments, such as the WTO and ASEAN, and non-binding ones which have a symbolic dimension and carry significant moral and political weight, such as the APEC.

Among all discussed agreements, only few directly concern EGS. All of them however, affect national policies related to EGS. Indeed, their provisions encompass investment, environment protection, and trade in goods or trade in services in general, which are at the core of the policies fostering the production and use of EGS.

The WTO agreements first and foremost condition the adoption of domestic measures promoting EGS. Most of the other agreements Vietnam has signed are built on the WTO existing obligations or make a reference to WTO rules. Environmental goods are subject to Vietnam's tariff commitments under the WTO and general obligations under the GATT. Various other WTO agreements are relevant such as the ASCM, the TRIMs and the TBT agreements. Negotiations on environmental goods are also ongoing under the WTO. Regarding services, Vietnam has taken liberalization commitments on key environmental services, such as sewage services, refuse disposal services, cleaning services of exhaust gases, noise abatement, and environmental impact assessment services. As a consequence of these commitments, Vietnam cannot implement national policies that would impair the commitments taken unless justified by general GATS exceptions. Vietnam may of course adopt more liberal rules than those subject to commitments or extend them to other environmental services sectors.

The WTO, however, does not provide all solutions and some of its provisions may be counter-productive. The WTO does not provide, as yet, optimal guidance on the use of trade remedies, subsidies, local content requirements, border tax adjustment and safeguards. Yet, the use of these instruments, if ill conceived, may lead to undesired outcomes.

Obligations streaming from Agreements concluded under the ASEAN cannot be ignored either. While they do not specifically address EGS, they are entirely relevant. The ASEAN Agreement on Conservation of Nature and Natural Resources calls the Contracting Parties to employ economic and fiscal instruments to promote environmentally sound industrial processes and products. This provides relevant context for EGS. The AFTA and several Agreements between ASEAN and third countries liberalize trade in goods between ASEAN Members or between ASEAN Members and the third countries concerned, thus enhancing the liberalization of trade in environmental goods. As to environmental services, Vietnam scheduled liberalization commitments for them in various ASEAN Agreements generally mirroring those made under the GATS. This is the case, for instance, of the ASEAN agreements with China and Korea. Finally, in the context of ASEAN, there is an ASEAN Comprehensive Investment Agreement, which protects foreign investors, and intends to establish free and open investment by 2015. Such international context is inevitably conducive to the adoption of domestic policies which open the door for investors interested in EGS.

It is under APEC that most progress has been achieved in relation to the promotion of EGS. This includes the elaboration of an action agenda promoting EGS, providing for reduction of tariffs on environmental goods, eliminating non-tariff barriers to trade in environmental goods and finally establishing a definition and a concrete list of 54 environmental goods concerned. Under the APEC's Early Voluntary Sectoral Liberalization, Vietnam also scheduled liberalisation commitments for environmental services beyond the commitments it made under the GATS and ASEAN. The APEC however relies on voluntary and non-binding commitments which, if not complied with, do not entail any immediate adverse consequence. The commitments made under the APEC, despite their non-legally binding character, nevertheless have a significant political and moral weight. A country that has signed the APEC rules and would want to violate them jeopardizes its credibility before the International Community.

Finally, the bilateral trade agreements that Vietnam concluded with its preferential trade partners contain provisions which are relevant to the promotion of the EGS in Vietnam. None of the Agreements however makes a direct reference to EGS. The most relevant among the bilateral agreements is the one signed between the US and Vietnam since it aims at achieving extensive liberalization of trade in goods and services and it creates a favorable environment for

investment between two countries. However Vietnam did not schedule any commitments directly related to environmental services.

To sum up, in a context of increasing demand for a clean environment and techniques that foster sustainable economic activities, the role of the State in the encouragement of investments in these techniques and the use of EGS is undeniably important and recognized. While attention must be brought to the needs of the economic operators and the possible investors in these areas, the international legal environment also conditions the policies that may be adopted in this regard. It was the purpose of this first study to describe the general context under which the policies that will be addressed in the second study must be realised.

BIBLIOGRAPHY

Primary sources:

Vietnam National Sources:

- Laws

Vietnam Law No. 45/2005/QH11 on Import Tax and Export Tax, 14 June 2005

Vietnam Law on Enterprises, 29 November 2005

Vietnam Law on Investment, 29 November 2005

Vietnam Law No. 32/2013/QH13 amending and supplementing some articles of Law on Corporate Income Tax No. 14/2008/QH12 (“amended Law on CIT”), June 2013

Vietnam Law of Environmental Protection (LEP), 2014

- Decrees

Decree No. 149/2005/ND/CP on detailed implementation of the Import-Export Tax Law, 8 December 2005

Decree No. 59/2007/NĐ-CP of Vietnam Government on solid waste management; 9 April 2007

Decree No. 04/2009/ND-CP of the Government providing for incentives and supports for environmental protection activities, 14 January 2009

Decree No. 27/2013/ND-CP of the Government promulgating the conditions for environmental observation service’s organizations, 29 March 2013

Decree No. 218/2013/ND-CP of the Government Detailing and Guiding the Implementation of the Law on Enterprise Income Tax, December 26, 2013

Decree No. 46/2014/ND-CP of the Government on collection of land rental and water surface rental, 15 May 2014

- Government Decisions

Prime Minister's Decision No. 1030/QĐ-TTg on scheme of development of environmental industry; 20 July 2009

Prime Minister Decision No. 249/QĐ-TTg on Certificates of Free Sale for Exports and Imports, 10 February 2010

Prime Minister's Decision No. 39/2010/QĐ-TTg promulgating the system of Vietnamese product categories, 11 May 2010

Prime Minister Directive No. 1617/CT-TTg on strengthening of implementation and correcting of management of foreign direct investment in the coming days, 06 September 2011

Decision No. 322/QĐ-BXD of the Government announcing the capital for construction investment and the cost for solid waste treatment activities, 6 April 2012

Decision No. 166/QĐ-TTg of the Prime Minister approval of the Action Plan on National Environmental Protection Strategy to 2020 and vision to 2030, 21 January 2014

▪ Circulars and National Technical Regulations

Circular No. 25/2009/TT-BTNMT prescribing the national technical regulation on Environment, 16 November 2009

Circular No. 101/2010/TT-BTC, guiding the exemption from import duty under the government decree No.04/2009/ND-CP of January 14, 2009, on incentives and supports for environmental protection activities, 14 July 2010

Circular No. 41/2010/TT-BTNMT providing for the national technical standards on environment, 28 December 2010

Circular No. 10/2012/TT-BTNMT of the Ministry of Natural Resources and Environment regulating national technical regulations on the environment, 12 October 2012

Circular 47/2011/TT-BTNMT on national technical regulation on environment, 28 December 2012

National Technical Regulation on hazardous waste threshold, No. QCVN 07: 2009/BTNMT, 16 November 2009

National Technical Regulation on Environment No. QCVN 40:2011/BTNMT, 28 December 2012

General Statistic Office, Statistical Yearbook of Vietnam 2006, 2007, 2008, 2009, 2010, 2011, 2012.

General Statistic Office, Results of the 2012 establishment census, 2014.

General statistic Office, The enterprises in Vietnam in 9 years at the beginning of century 21, 2010.

General Statistic Office, The development of Vietnam enterprise in the period of 2006 – 2011);

General Statistic Office, Foreign Investment Enterprises in the period of 2006 – 2011.

Foreign Investment Agency (MPI), the report of Foreign Direct Investment of Germany in Vietnam, 28/02/2011.

Foreign Investment Agency (MPI), the report of Foreign Direct Investment of Taiwan Vietnam, 03/2011.

Foreign Investment Agency (MPI), the report of Foreign Direct Investment in Vietnam, 2011, 2012, 2013.

Vietnam Environmental Agency, national environmental report, 2010.

International Sources:

ASEAN Agreement on the Conservation of Nature and Natural Resources, 1985

Agreement on Government Procurement, World Trade Organization, 1994

General Agreement on Tariffs and Trade, World Trade Organization, 1994

General Agreement on Trade in Services, World Trade Organization, 1994

Agreement on Trade-Related Investment Measures; World Trade Organization, 1994

Agreement on Technical Barriers to Trade, World Trade Organization, 1994

ASEAN Framework Agreement on Services, 1995

Agreement on Trade-Related Aspects of Intellectual Property Rights, World Trade Organization, 1996

ASEAN-China Free Trade Agreement, 2002

ASEAN – Japan Comprehensive Economic Partnership, 2003

Agreement between Japan and the Socialist Republic of Viet Nam for the Liberalization, Promotion and Protection of Investment, 14 November 2003

ASEAN - Korea Free Trade Agreement, 2006

Trade and Investment Framework Agreement between Vietnam and the United States, 2007

ASEAN Comprehensive Investment Agreement, 2009

ASEAN – New Zealand Australia Free Trade Agreement, 2009

Asia-Pacific Economic Cooperation, Honolulu Declaration, 2011

Annex C to Asia-Pacific Economic Cooperation Honolulu Declaration “Trade and Investment in Environmental Goods and Services”, 2011

ASEAN-India Agreement on Services and Investment, 2014

Secondary sources:

ASEAN Socio-Cultural Community Blueprint, ASEAN Secretariat, Jakarta, 2009

Yap Lai Peng, “*The ASEAN Comprehensive Investment Agreement 2009: Its Objectives, Plan and Progress*” in S Tiwari (ed), ASEAN: Life after the Charter; Institute of Southeast Asian Studies; 2010

Asia-Pacific Economic Cooperation, APEC Group on Services, APEC Committee on Trade and Investment, “Survey on Trade Liberalization in Environmental Services”; 2010

Dezan Shira and Associates; “*Overview of China’s Renewable Energy Market*”, China Briefing, June 2011

M. Sallehuddin; “*Critical Issues on Investment Law Harmonization under ASEAN*”, February 2012

„The APEC List of Environmental Goods”, APEC PSU Policy Brief No. 5, November 2012

International Institute for Sustainable Development, Trade Knowledge Network, December 2012

Nam, Pham Khanh; Quam, Ngyuen Anh; and Binh, Quan Minh Quoc; “*Investment Incentives for Renewable Energy in Southeast Asia: Case study of Vietnam*”, International Institute for Sustainable Development, Trade Knowledge Network, December 2012.

R. Vossenaar; “*The APEC List of Environmental Goods. An Analysis of the Outcome and Expected Impact*”, ICTSD’s Global Platform on Climate Change, Trade and Sustainable Development; June 2013

ASEAN Secretariat; “*ASEAN Comprehensive Investment Agreement. A Guidebook for Businesses and Investors*”, July 2013

Vietnam Ministry of Planning and Investment Report

Internet sources:

“*New and Renewable Energy*”; Invest Korea, available at:
<http://www.investkorea.org/ikwork/iko/eng/cont/contents.jsp?code=1020205>

Vietnam’s schedule of specific commitments, WTO, available at:
[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20gats/sc/*\)%20and%20\(\(%20@Title=%20viet%20nam%20\)%20or%20\(@CountryConcerned=%20viet%20nam\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20gats/sc/*)%20and%20((%20@Title=%20viet%20nam%20)%20or%20(@CountryConcerned=%20viet%20nam))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

Vietnam’s list of Article II (MFN) exemptions; available at:
[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20gats/el/*\)%20and%20\(\(%20@Title=%20viet%20nam%20\)%20or%20\(@CountryConcerned=%20viet%20nam\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20gats/el/*)%20and%20((%20@Title=%20viet%20nam%20)%20or%20(@CountryConcerned=%20viet%20nam))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

Annex C to 2012 Vladivostok Leader’s Declaration, available at: http://www.apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm/2012_aelm_annexC.aspx

The US – Vietnam Trade and Investment Framework Agreement is available at: http://www.ustr.gov/sites/default/files/uploads/agreements/tifa/asset_upload_file81_12935.pdf

ASEAN, AFAS Member Countries Horizontal Commitments, Schedules of Specific Commitments and the list of Most favoured Nation Exemptions including Annexes to the Protocol to Implement the Eighth Package of Commitments under the ASEAN Framework Agreement on Services, available at: <http://www.asean.org/communities/asean-economic-community/item/member-countries-horizontal-commitments-schedules-of-specific-commitments-and-the-list-of-most-favoured-nation-exemptions>