

Viet Nam With Developing A Service Oriented Public Administration To Meet The Requirements Of New Generations Of Free Trade Agreements

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ABSTRACT

Free trade agreements not only offer many opportunities but also pose numerous challenges for Vietnamese businesses. Continuing to operate the current governing administrative system will not promote the initiative, positivity and creativity of businesses. In contrast, businesses will fail to attract foreign investors due to concerns about Vietnamese regulatory agencies interfering, imposing on production and business activities, and extremely protecting the interests of domestic enterprises. It is necessary to build a service-oriented administration, taking the satisfaction of businesses and people as the goal, promoting the ownership and capacity of businesses and people, and ensuring a healthy and equal investment and business environment in the context that Vietnam increasingly participates in the common playing fields created by new-generation free trade agreements.

Key words: service-oriented public administration, administrative reform, integration

INTRODUCTION

Human history has proven that international integration, especially international economic integration, is a global trend. In recent years, following this trend, Vietnam has increasingly expanded economic exchanges and cooperation with other countries through the framework of bilateral and multilateral free trade agreements (FTAs). Among the FTAs that have been in effect and are being implemented, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA) are considered new-generation FTAs, which is in accordance with the development trend of modern trade. The "new" nature of these agreements is reflected in the high degree of liberalization for trade and investment and advanced and reformed trade rules that go beyond the rules of the World Trade Organization that have existed for a quarter of a century. The concept of a new generation of FTAs is broader and has the ability to affect institutions with a larger scope than traditional FTAs¹ (including nontrade areas such as the environment, labor, state-owned enterprises, government procurement, etc., and with a deeper level enhanced by tax commitments of both goods and services and higher enforcement requirements. Therefore, these agreements not only open up potential trade opportunities with developed economies but

also make an important contribution to promoting the process of administrative reform, improving the trade and investment environment of our country. In other words, participation in these common "playgrounds" leads to a new wave of institutional and administrative reforms that are effective and in line with international practices², thereby helping Vietnam adapt to the "law of the common playing field", attract investment and create opportunities for cooperation and development of domestic enterprises. Parties to the agreement must provide a form of investment commitment that lists restrictive measures. Member countries are bound by this level of openness and are not allowed to introduce new, more restrictive measures. In addition, the principle of "only forward, not backward" (ratchet) makes the commercial environment increasingly open. Once a signatory member voluntarily relaxes certain restrictive measures, it will have to maintain the new level of openness and not be allowed to return to apply for more restrictive measures. Therefore, Vietnam's administrative system cannot impose a "private law", setting out the areas in which foreign enterprises are allowed to invest, but must adapt to the "common law" of the new generation free trade agreements, allowing foreign businesses to invest in areas that Vietnam does not prohibit. The problem is that if Vietnam does not follow closely to immediately understand the aspirations

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of domestic enterprises, it is likely that Vietnam may not be able to protect these businesses right at home, let alone help domestic enterprises take advantage of opportunities from new-generation free trade agreements to reach out to foreign markets. The administrative system that features ruling, administering, and imposing must be transformed into a service-oriented public administration to create favorable conditions for domestic and foreign enterprises to compete fairly with each other. Currently, all countries in the world are having a tendency to apply state management from ruling administration to service-oriented administration³.

GENERAL OVERVIEW OF SERVICE-ORIENTED PUBLIC ADMINISTRATION

According to the traditional legal concept, the state is a special political organization of the ruling class in a society of classes with irreconcilable contradictions. Therefore, the state is the autocratic apparatus of the ruling class. Although every state has two functions: the function of managing all aspects of social life (governance) and the function of providing public services to individuals and organizations in society (public service delivery), the former is always considered more important³. Accordingly, although the level of social suitability has been taken into account, the impact of the state on society and the services that the state provides for society bear the subjective will of the state both in terms of its view and the state's recognition, evaluation of problems, goals and methods of implementation.

However, this concept has experienced fundamental changes in modern states. The modern state pays more attention to the role of the official representative for the whole society and to the service function of the state. Since then, the concept that the state has the purpose of serving the interests of the people has gradually replaced the concept of the state with the purpose of governing. The modern state places an emphasis on the state's serving role in society but still recognizes the state's management role to a certain extent. The State is considered the responsible entity for providing public services to individuals and organizations (customers). The needs, benefits, and satisfaction of customers are things that service providers must seriously prioritize. These things shape the way the state works. In other words, the State takes the purpose of serving the people and serving society as its main purpose of existence. The state gradually reduces its pressure on society. In the state apparatus, the responsibility of providing public services

is largely assumed by state administrative agencies. Thus, to say that the state serves often implies an administrative orientation. Therefore, the term service-oriented public administration became very popular. "Talking about service oriented public administration is talking about democratic administration that is legitimate, responsible and takes service to citizens as the operating principle"⁴. According to this definition, service administration is essentially people-centered administration. Therefore, from the civil service culture, organizational structure, policies, to the roles of the contingent of cadres and civil servants all show the nature of being by the people and for the people. One of the characteristics of the service administration is that cadres and civil servants serve and perform public services. They are the organizers for businesses, citizens, and social organizations to participate in the policy-making process, thereby ensuring that public policies and public projects are consistent with business interests and other public interests. They are also the ones who listen to the aspirations of businesses and people instead of setting administrative orders to force businesses and people to follow. Cadres and civil servants also explain and guide businesses and people to implement policies and legal regulations.

The views, goals and tasks of administrative reform in Vietnam have been mentioned in the documents of the 8th Plenum of the 7th Central Committee, the 3rd and 7th plenums of the Party Central Committee, and in the resolutions of the 8th, 9th and 10th National Party Congresses. The resolution of the 8th Conference of the Central Committee of the Party (Term VII) on January 23, 1995, on continuing to build and perfect the State of the Socialist Republic of Vietnam, focusing on one-step administrative reform, pointed out that the goal of administrative reform is "to build a clean, competent administration, properly use power and gradually modernize to effectively and efficiently manage the work of the State, promote the healthy development of the society, in the right direction, effectively serve the people's life, build a lawful way of life and work in society." According to the Resolution, the goal of administrative reform is to build an administration that meets the necessary elements to "effectively serve the people's life". This means that the new administration will take the people's lives as the operational goal, and all administrative activities will always aim to serve the interests of the people.

Resolution 30c/NQ-CP dated November 8, 2011, of the government identifies one of the main focuses of administrative reform in the next 10 years as "improving the quality of administrative services and the quality of public services." Next, at the regular government

meeting in April 2016, the prime minister emphasized the following: The newly consolidated government will change the mode of direction and administration from administrative orders to the government of construction and service, taking the satisfaction of businesses and people as a measure of the performance of the government and authorities at all levels; “complete the set of indicators for businesses and people to score the government”; “Clearly, delineating the state management function and the market function, limiting and moving toward abolishing the requesting mechanism. The government will focus on building institutions, mechanisms and policies for investment and development”. It can be seen that the Government and the head of the Government of Vietnam have concretized the policy on administrative reform outlined in the Resolution of the 8th Conference of the Party Central Committee (term VII). The government will focus on building institutions, mechanisms and policies for investment and development, respecting the rules of the market economy, instead of intervening and forcing businesses and people to conform to its subjective will. The administrative service that Vietnam is building will return businesses and people to the position of “owners” of the country, and there will be no more need for them to knock on the door to “ask for” and wait for the administrative agencies to “give” as in the previous administrative administration.

Although the above documents do not introduce the concept of “service-oriented public administration”, through the objectives and tasks of administrative reform mentioned in these documents, it can be understood that service-based administration is an administration that takes people’s wishes as the goal of operation and ensures and promotes people’s mastery rights.

The ruling administration emphasizes the state’s management role in society rather than the role of providing public services and serving businesses and people. Before the renovation period, the economic management mechanism in Vietnam was a centralized planning mechanism with the following characteristics. First, the state managed the economy mainly by administrative orders based on the system of detailed normative ordinances imposed from top to bottom. Enterprises operated on the basis of decisions of competent state agencies and assigned ordinances. Second, administrative agencies interfered too deeply in the production and business activities of enterprises but did not take any material and legal responsibility for their decisions. The material damage caused by decisions of administrative agencies would be borne by the state budget. Enterprises had no autonomy

in production and business, nor were they bound to take responsibility for their production and business results.

Obviously, the ruling administration causes the state to intervene or impose on businesses and people, making these subjects unable to promote their initiative, positivity and creativity. Moreover, the ruling administration serves the management position of the state, so it is not attractive to foreign investors due to fears that the state will protect group interests and national interests and not ensure a fair and transparent competitive business environment - something that the new generation free trade agreements must eliminate. In addition, state administrative management activities depend greatly on the will and capacity of state administrative agencies. If the capacity of these agencies is limited, they will not be able to grasp the laws of society and the ever-changing market economy in a timely manner. Simultaneously, the ruling administration inevitably leads to the beg-for-give mechanism, bureaucratic attitude, authoritarianism, bossiness and corruption of officials and civil servants. In the service-oriented administration meeting the requirements of new-generation free trade agreements, the management role of the State has not been lost. Service-oriented administration needs state management for the economy to operate uniformly, synchronously and effectively on the basis of protecting sovereignty, stabilizing politics-economy-society, ensuring the rights and interests of domestic and foreign enterprises, and ensuring the compatibility of Vietnamese law with new-generation free trade agreements. Only the unified management of the state can set out guidelines, strategies and policies for economic, fiscal and monetary development to help increase the competitiveness of domestic enterprises in the context of increasing international economic integration and trade liberalization.

WHAT IS THE BASIS FOR BUILDING A SERVICE-ORIENTED ADMINISTRATION IN VIETNAM?

The commitments in the THM FTAs have two types of impacts on the administrative reform of Vietnam. First, direct impacts are impacts directly related to commitments that Vietnam must meet, including a review of institutions and policies (these are terms that Vietnam must commit to comply with, which are the challenges of administrative institutional reform in the context of implementing THM FTAs). Second, indirect effects are those that are not necessarily from the provisions of the FTA THM, but Vietnam needs to

pay attention if it wants to take advantage and wants to limit the possible negative impacts (these are opportunities for Vietnam's administration to proactively adjust administrative institutions to embrace the THM FTAs)⁵.

Thus, administrative reform in the context of Vietnam's implementation of THM FTAs is seen from two angles, namely, traction (challenges) and thrust (opportunities) from new generation FTAs. This means that there is pressure to innovate both from external requirements and internal requirements within the administration. Therefore, administrative institutional reforms in the context of Vietnam's implementation of THM FTAs are viewed from both perspectives, institutional reform as required by commitments and institutional reform outside of commitments, according to the requirements of our own country.

In the current period, the new-generation free trade agreements require the State to remove trade barriers and maximize the opening of the economy for foreign enterprises to invest in and compete fairly with Vietnamese enterprises. It is the requirements of new-generation free trade agreements and the constant movement of international economic relations that make the identification of the central subject of the economy a business, not a state. The country has set a requirement to build an administrative system that focuses on business. However, state administrative agencies still need to maintain their management role to a certain extent, both to ensure the ownership of businesses and people and to ensure socialist legislation, all organizations and individuals operating within the framework of the Constitution and the law. Legally, the ruling administration is not in accordance with the provisions of the Constitution of the Socialist Republic of Vietnam. Article 2 of the 2013 Constitution affirms: "1. *The State of the Socialist Republic of Vietnam is a socialist state of law that is of the People, by the People, for the People.* 2. *The Socialist Republic of Vietnam is owned by the People; All state power belongs to the People, whose foundation is the alliance between the working class and the peasantry and the intelligentsia.*" Thus, the Constitution clearly defines that the people are the masters of Vietnam. All state power belongs to the people. The State has the responsibility to ensure and promote people's mastery rights (Article 3 of the Constitution). The State, which includes state administrative agencies, is organized and operated by the people and for the people. Therefore, no state administrative agency is allowed to interfere

in the production and business activities of the people through the imposition of unilateral and mandatory orders on the people. In contrast, administrative agencies and each cadre and civil servant working in these agencies must "respect the People, devote themselves to serving the People, stay in close contact with the People, listen to their opinions and accept supervision of the People" (Article 8 of the Constitution). This means that these entities are responsible for serving the people, taking people's satisfaction as a measure for their activities. Obviously, the service-oriented administration is completely consistent with the provisions of the Constitution.

SOME RECOMMENDATIONS TO BUILD SERVICE-ORIENTED ADMINISTRATION IN VIETNAM IN THE CURRENT PERIOD

The elements constituting the service-oriented administration are not different from those constituting the governing administration. Their nature is an administrative system with the main constituent elements including administrative apparatus, staff, civil servants and the means used to operate that apparatus, such as the legal system, finance, facilities, and so on. The difference between service-oriented administration and governing administration is in the nature and purpose of the administration, which is serving businesses and people or ruling, intervening, and obligating them. Whether the administration is service oriented or governing depends on the influence on the constituent elements constructing the administration. Therefore, to transform the governing administration into a service-oriented one, one must start by affecting the constituent elements of the administration. Some solutions to build a service-oriented administration in Vietnam today are as follows:

First, perfecting the organization and operation of the system of state administrative agencies

The organization of the administrative apparatus in Vietnam is currently considered to be quite cumbersome, taking up most of the resources, reducing the efficiency of state management and affecting the economic restructuring process. Recurrent expenditure accounted for 62.6% of total budget expenditure due to the large number of beneficiaries. According to the Central Institute for Economic Management (CIEM) in the Report "Monitoring and evaluating the implementation process of the overall economic restructuring project", it is necessary to radically restructure the apparatus of Vietnamese administrative agencies that are organized from the village to the central government because part-time cadres at the commune and

village level alone account for more than 900,000 people⁶.

Thus, to build a clean service-oriented administration and create trust for businesses and people, it is first necessary to reorganize the state administrative apparatus in the direction of streamlining and following the law, avoiding cumbersomeness and ensuring effective use of people's budget money. To achieve this, it is of great importance to focus on the following solutions:

First, it is necessary to complete the planning of public nonbusiness unit networks in terms of industries and fields. Classification of nonbusiness units is to implement appropriate forms of transformation (operating under the enterprise model, public-private partnership, etc.) Promoting the socialization of public nonbusiness units capable of self-funding all operating expenses (universities, academies, research institutes, vocational training institutions, hospitals, and so on) is done by assigning autonomy and self-responsibility for the performance of tasks, finance and personnel. It is also imperative to encourage the establishment of public service-providing organizations from nonstate actors, especially in the fields of education - training, health, and science. It is possible to separate public nonbusiness units from ministries, both reducing payrolls and pressure on the state budget and helping ministries focus on management activities and develop socioeconomic development policies serving businesses and their people.

Second, there is a need to persistently implement the policy of streamlining the staffing of cadres, civil servants and public employees; to promote the implementation of part-time duties for a number of titles held by cadres and civil servants from central to commune levels, especially for positions of part-time cadres at the commune level and in villages and residential areas; and to allocate funds to pay allowances to encourage the gradual reduction of the number of part-time workers and increase the incomes of commune-level cadres and civil servants. It is also significant to attach this responsibility to the heads of competent administrative agencies in formulating plans and roadmaps for downsizing and implementing them. Only then does the process of downsizing the new staff take place quickly and effectively, avoiding the situation of respect and fear of collision as well as evaluating the leaders with integrity, prestige and operating capacity.

The third solution is strictly implementing the direction stated in Resolution 39-NQ/TW dated April 17, 2015, of the Central Committee on downsizing and restructuring the contingent of cadres, civil servants

and public employees and the measures provided in Decree No. 123/2016/ND-CP dated September 1, 2016, of the government in which the functions, tasks, powers and structure of ministries and ministerial-level agencies are defined. It also stated that there is no department in the department unless the department has many fields of work or has a large workload, ensuring that the department operates under the mode of head in association with the experts. The government needs to clearly stipulate that if the department has many fields of work and many jobs and employs many civil servants, it is allowed to set up departments to manage and monitor work more easily. It must avoid the situation in which there are only 3-4 people, but there is a head and a deputy. In the author's opinion, only when each department takes on many fields of work and each job requires at least 7 civil servants is it necessary to set up departments.

In addition to organizational consolidation, to improve the operational efficiency of the administrative apparatus, which is to ensure convenience and quickness for businesses, people need to replicate the one-stop-shop model, the interagency one-stop-shop model at administrative management levels in the locality on the basis of the application of science and technology in the 4.0 era. This model will reduce troubles for businesses and people and help them not to travel many times. They can make phone calls and look up information on the internet to keep track of the progress of their records and procedures. They may not need to go directly to the administrative agencies but can operate on the computer right at home or work. This model also helps to raise the awareness and responsibility of cadres and civil servants, ensuring a clean, fast and efficient administration in terms of time, effort and cost. To effectively implement the replication of the one-stop-shop model and interagency one-stop-shop as well as electronic one-stop-shop models, it is necessary to expand and publicize the list of administrative procedures to be carried out under this model; invest in modern facilities, equipment and technology such as computers, printers, voltage stabilizers, CCTV systems, software to evaluate officials and civil servants and attached assessment machines, etc.

Furthermore, it is necessary to continue to build centralized administrative centers at the provincial and district levels. This will contribute to creating favorable conditions in the process of providing public administrative services and settling administrative procedures according to the one-stop mechanism, which helps people and businesses save time and travel costs

when dealing with work and carrying out administrative procedures. To do this, each locality needs to carefully calculate the construction and design costs of the administrative centers. At the same time, there must be a plan to sell the old headquarters or have a plan to effectively use these headquarters, avoiding waste and causing frustration for businesses and people.

Second, build a contingent of cadres and civil servants to meet the requirements of working in the service-oriented administration.

State administrative management is essentially the activity of execution-administration and law enforcement. Therefore, people, specifically the contingent of cadres and civil servants working in the administrative apparatus, are an important factor that determines the operation of the administrative system. If the legal and institutional system has been perfected and the administrative apparatus is organized appropriately, but each cadre and civil servant is unaware or incompetent to serve businesses and people, it is impossible for the service administrative system to be built. Therefore, it is necessary to have solutions to build a contingent of cadres and civil servants to meet the requirements of working in the service-oriented administration, specifically:

First, the communication and behavioral culture of officials and civil servants toward businesses and people must be improved. Businesses and people also have to bear a great deal of life pressure and contribute a large amount of their income to maintain the operation of the administrative apparatus and pay salaries to cadres and civil servants to receive services. Therefore, each cadre and civil servant should have a positive attitude and behavior to serve businesses and people instead of being bossy, authoritarian and causing difficulties as they do in the ruling administration. To do this, administrative agencies in Vietnam need to regularly remind the communication culture and behavior of officials and public servants toward businesses and people (this can be learned from the experience of Da Nang). At the same time, on the basis of downsizing the payroll, properly assessing job positions, and increasing part-time, it is necessary to ensure the welfare of cadres and civil servants and to ensure salaries for cadres and civil servants in accordance with the requirements of the government. Therefore, the quality of life of cadres and civil servants should be taken care of, helping them to be more dedicated in serving businesses and people, which helps to move toward eradicating the phenomenon of "corruption", "lubrication", "one foot in, one foot out" currently existing.

Second, officials' and civil servants' content knowledge, professional skills and IT skills also need to be improved. To build a service-oriented administration that satisfies businesses and people, in addition to building a team of cadres and civil servants rich in ethical, dedicated and diligent qualities, it is also necessary to build a set of elite civil servants who work effectively and professionally. Only in this way can the law be properly perceived and applied, as well as reduce businesses' and people's waiting time for administrative procedures. Accordingly, it is necessary to define a pretest and posttest mechanism for the capacity of cadres and civil servants. The pretest mechanism can be understood that in the recruitment stage, it must be conducted objectively and honestly, ensuring the selection of candidates with professional training, informatics and foreign languages suitable for the vacancy. The postinspection mechanism is that during the process of using cadres and civil servants, it is necessary to periodically foster, train and exchange experiences on professional expertise and skills in using new computer software (if any) for this team and organize examinations for cadres and civil servants.

In addition, it is necessary to uphold the role of the head of the agency employing cadres and civil servants in building a contingent of "virtuous and talented" cadres and civil servants to serve businesses and people to ensure receiving and objectively and legally handling complaints, denunciations and reflections of enterprises and people related to official activities of the contingent of cadres and civil servants.

Third, the legal system should be improved to build a service-oriented administrative system to meet the requirements of integration into new-generation free trade agreements.

Law is the main and effective tool to help the state carry out management activities. To build a service administration, the first means of management, "law", must contain the content and purpose of serving the people. The legal system must be regulated to create maximum conditions for businesses and people to exercise their rights, moving toward eliminating regulations that cause troubles and difficulties for these subjects.

First, it is important to amend the legal provisions related to administrative procedures. The issue of administrative procedure reform has always been identified as the central content of administrative reform, which features building an administration that serves and creates the best conditions for people, especially the business community, to produce. In the context that other countries in the region and the world are constantly attracting investors through preferential

policies and quick and effective administrative procedures, many administrative procedures of Vietnam are still considered lengthy, do not create favorable conditions for domestic enterprises and are not attractive to foreign investors.

Second, it is necessary to perfect specialized legal regulations, especially those on investment, business, finance, banking and tax. At the same time, the legitimacy and rationality of normative documents issued by administrative agencies must be controlled. Currently, the Vietnamese legal system still has many normative documents promulgated by state administrative agencies that do not guarantee legitimacy and rationality, hindering the activities of enterprises and individuals and causing public outrage. Decree 65/2022/ND-CP on individual corporate bonds is a salient example of this. This decree sets too many conditions for enterprises to change the conditions and terms of the bond contract, leading to the situation of being unable to extend the payment period when enterprises face difficulties and temporarily cannot pay principal and interest to bond buyers on time as committed in the contract. In fact, in the above situation, the problem can be solved if the bond buyer and the bond issuer negotiate to agree to an extension of principal and interest payment or instead of receiving money, the bond buyer can receive other assets of the enterprise, such as real estate or shares. Regulations in this direction will help remove difficulties for businesses, ensure the interests of domestic and foreign bond buyers, and at the same time be consistent with the nature of civil relations, which is the freedom of agreement between the bondholders.

Facing challenges and requirements from the new generation of FTAs, it is important to build an open legal corridor, ensuring a healthy competitive environment for businesses and supporting domestic enterprises as well as attracting foreign investors.

In short, new-generation free trade agreements have been bringing more business investment opportunities to Vietnamese enterprises as well as Vietnam's socioeconomic development. To attract foreign investment as well as support domestic enterprises to develop and be competitive enough in these common "playgrounds", it is necessary to build a service-oriented administration to replace the ruling administration in the past. It is also essential to respect the rules of the market economy and international trade commitments, to take businesses and people as objects to be served, and to care about the wishes of businesses and people. Favorable conditions must be

created for them to develop production and business within the framework of the Constitution and the law. Promoting their ownership rights, the active and creative role of enterprises and people is the essence of a service-oriented administration. Only with the right awareness and strong determination about building a service-based administration can Vietnam attract foreign investment, develop domestic production, and truly become a "State of the people, by the people and for the people".

ABBREVIATIONS

CIEM: Central Institute for Economic Management
CPTPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EVFTA: EU-Vietnam Free Trade Agreement
FTA: Free trade agreement
THM: The new generation

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COMPETING INTERESTS

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