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LUẬT SƯ

Nguyễn Thị Ngọc Anh

Giám đốc Công ty Luật TNHH Toàn Cầu ATA



THE US - CHINA TRADE WAR - OPPORTUNITIES AND CHALLENGES FOR VIETNAMESE MINNING ENTERPRISES AND ATA LAWYERS' RECOMMENDATIONS

Vietnam is a country endowed with a diverse and abundant mineral resource base, playing a crucial role in socio-economic development. However, mineral extraction and export activities still face numerous challenges, including the need for sustainable management, compliance with legal regulations, and the impact of international trade conditions. At present, as the U.S.-China trade war shows signs of escalating, many experts believe this presents a significant opportunity for Vietnamese mining and export enterprises. Nevertheless, to fully capitalize on this opportunity, Vietnamese mining companies must have a thorough understanding of the current policy and legal framework, as well as their practical application, to develop appropriate and effective investment, mining, and export strategies.

Through the article "[The U.S.-China Trade War – Opportunities or Challenges for Vietnamese Mining Enterprises and Legal Recommendations](#)", ATA Global Law Firm LLC ("[ATA](#)") aims to provide our valued clients and readers with a comprehensive perspective on the legal framework and practical aspects of Vietnam's mineral export activities. Based on this, ATA offers recommendations on key issues and solutions that need to be addressed to enhance the efficiency of mining enterprises in Vietnam, enabling them to seize the opportunities arising from the upcoming U.S.-China trade war.

I. Current Policies and Legal Framework on Mineral Exports in Vietnam

1. Vietnam's Strategy for Mineral Management, Exploitation, and Export

On April 1, 2023, the Prime Minister issued Decision No. 334/QĐ-TTg, approving the "[Geological, Mineral, and Mining Industry Strategy to 2030, with a Vision to 2045](#)" (the "[Strategy](#)"). According to this Strategy, the Government identifies geological resources and minerals as both a crucial resource for the country's socio-economic development and a long-term national reserve that must be centrally and strictly managed.

The Strategy emphasizes the importance of closely integrating mineral extraction and processing to create high-value products instead of merely exporting raw materials. This requires enterprises to adopt and invest in advanced technologies to optimize processing, enhance economic value, and improve product quality. Additionally, the Strategy mandates that businesses utilize modern, environmentally friendly mining equipment to minimize negative impacts on ecosystems, reduce soil, water, and air pollution, and ensure sustainable and efficient mineral exploitation over the long term.

The Strategy also sets forth the principle that mineral use must be balanced and harmonized, prioritizing domestic demand before considering export-oriented mining and processing investments. The goal is to achieve economic efficiency, prevent uncontrolled mineral exports that could harm the national economy, and ensure effective resource and environmental management.

Thus, the Prime Minister's decision has established a fundamental legal framework for the sustainable development of the mineral sector in Vietnam.

2. Conditions for Mineral Exports in Vietnam

Mineral business and export activities in Vietnam are subject to strict legal regulations, specifically:

a) Pursuant to Article 7 and Appendix III of Decree No. 69/2018/ND-CP, minerals fall under the category of conditional export goods and are subject to the management of the Ministry of Industry and Trade. Accordingly, to carry out export activities, in addition to meeting the requirements for an export license, minerals must be included in the designated list of types and meet the quality standards issued by the Ministry of Industry and Trade.

b) Pursuant to Circular No. 23/2021/TT-BCT (as amended and supplemented by Circular No. 45/2023/TT-BCT), exported minerals must comply with the following regulations:

- Legal origin requirements: According to Article 14 of Decree No. 17/2020/ND-CP, only minerals with a legal origin can be traded. Legal sources include:
 - i. *Minerals extracted or recovered from mines, mine sites, and waste dumps within the validity period of the Mining License or Recovery Mining License issued by a competent authority.*
 - ii. *Minerals legally imported based on import declarations certified by customs authorities.*
 - iii. *Minerals confiscated and auctioned by competent authorities.*
- Processing requirements: Exported minerals must undergo processing through one or more methods, such as manual sorting, washing, crushing-screening, roasting, drying, cutting, gravity separation, magnetic separation, electrostatic separation, flotation, hydrometallurgy, metallurgy, or other approved methods. This process must alter the form and properties of the raw minerals, resulting in higher commercial and industrial value. Acceptable forms include concentrates, metals, alloys, chemical compounds, and processed industrial minerals that meet the required standards.
- List of exportable minerals: Domestically sourced minerals for export must be included in Appendix 1 of Circular No. 23/2021/TT-BCT, which primarily covers the following groups:
 - i. *Titanium ore – used in paints, plastics, paper, aerospace, chemicals, ceramics, refractory materials, and weaponry.*
 - ii. *Bismuth ore – used in high-power permanent magnets, low-melting alloys for fire prevention devices, special alloys in aerospace and automotive industries, nuclear reactor materials, petroleum catalysts, ceramics, electronics, food processing, pharmaceuticals, and cosmetics.*
 - iii. *Nickel ore – used in stainless steel production, superalloys, electroplating, and rechargeable batteries.*
 - iv. *Fluorite ore – used as gemstones (ruby, emerald) and jewelry.*
 - v. *Graphite ore – used as fuel.*
 - vi. *Diatomite ore – used as a fuel in cement, steel, and fertilizer industries.*
 - vii. *White marble – used in construction.*
 - viii. *Mica powder – used as a raw material in paint manufacturing.*

- Construction material minerals: The export of minerals used for construction materials must comply with the specifications and technical standards outlined in Appendix I of Circular No. 04/2021/TT-BCT.

Thus, Vietnam currently does not permit the export of raw minerals. The list of exportable minerals remains highly restricted and strictly controlled. Particularly, rare minerals such as uranium, cobalt, and beryllium, as well as scarce minerals like copper, gold, tin, and tungsten, are not included in the list of allowed exports to safeguard national mineral resources.

II. Current Status of Mineral Export Activities in Vietnam

Recently, the General Department of Customs has recorded several fraudulent activities by mineral enterprises attempting to export minerals abroad, specifically: (+) Forging, modifying, reusing, and circulating documents, invoices, and sales contracts to export minerals of unclear origin or those extracted from mines that have not been licensed by competent authorities;

(+) Misreporting quantities, product names, classifications, and commodity codes to evade taxes, bypass management policies, or export minerals that do not meet the quality, specifications, and conditions set by the Ministry of Industry and Trade;

(+) Misusing documents issued by the Ministry of Natural Resources and Environment or provincial People's Committees that provide guidance on exploration and reserve assessments but do not permit mineral exploitation and recovery, to illegally justify mineral exports.

As a result, the situation of illegal mining, smuggling, trade fraud, and unlawful transportation of minerals in key routes, regions, and maritime areas remains complex, leading to tax revenue losses and affecting national security, political stability, and public order.

Alongside identifying these fraudulent acts, the General Department of Customs has provided guidance to customs units on investigating, verifying, and handling violations related to mineral exports. Additionally, pursuant to Article 5 of Circular 23/2021/TT-BCT (as amended by Circular 45/2023/TT-BCT), exporters are required to submit periodic reports or provide information upon request to competent state authorities regarding their mineral export activities.

In the coming period, if China's mineral supply decreases, global demand for minerals will rise, leading to a further increase in domestic mineral export activities. Consequently, violations in mineral extraction, processing, and exports are also expected to escalate, resulting in significant environmental and resource-related consequences.

For this reason, regulatory agencies will undoubtedly exercise greater caution and implement stricter measures to prevent and mitigate violations. Exporting enterprises must be fully aware of these regulations and prepare accordingly to avoid unexpected risks or compliance failures.

III. Impact of the U.S.-China Trade War on Vietnam's Mineral Extraction and Export Activities

1. Impact on the Global Mineral Market

The trade war between the United States and China has significantly influenced the global mineral market. According to various media reports, the U.S. announced a 10% tariff increase on all imported goods from China, including minerals. In retaliation, China imposed up to a 15% tariff on many imported goods from the U.S. and tightened export controls on critical minerals such as

tungsten, tellurium, ruthenium, and molybdenum—key raw materials for the U.S. high-tech industry.

2. Opportunities and Challenges for Vietnam

The increase in tariffs on Chinese goods by the U.S. and China's tightened mineral export policies will inevitably reduce trade volumes between the two countries. As a result, the U.S. and its allies may seek alternative sources of minerals, including Vietnam. However, to meet the stringent export standards set by the U.S., Vietnamese enterprises must ensure compliance with strict regulations on mineral origin, extraction technology, and processing as mandated by Vietnamese law.

It is important to note that the minerals China is restricting for export are rare or already in short supply in Vietnam. Many of these minerals are not listed for export under Vietnam's regulations. Therefore, if U.S. enterprises or other foreign companies wish to secure a stable supply of these raw materials, they must consider suitable investment strategies. Instead of importing minerals from Vietnam, American businesses and investors should explore direct investment options, such as establishing enterprises or developing projects to produce finished or semi-finished products using non-exportable minerals as raw materials.

One notable international cooperation project in this sector is the partnership between Hung Hải Group (Vietnam) and Trident Global Holdings (South Korea), established in May 2024, to exploit rare earth mines in Lai Châu province. By August 2024, this alliance had also attracted Zoetic Global (U.S.), a company specializing in renewable energy solutions, aiming to implement environmentally friendly technologies, reduce carbon emissions, and optimize the efficiency of rare earth mining and production in Vietnam.

Additionally, during former U.S. President Joe Biden's visit to Vietnam in September 2023, the two countries signed an Agreement on Semiconductors and Rare Minerals. Analysts suggest that this agreement is part of the U.S. effort to establish supply chains independent of China. Furthermore, at an event hosted by the U.S. Chamber of Commerce on January 24, 2024, the U.S. Deputy Secretary of State reaffirmed the Memorandum of Understanding between Vietnam and the U.S. on semiconductors, rare earths, and Vietnam's potential as a key focus area for future collaboration.

With its abundant mineral resources, Vietnam is receiving significant attention and cooperation from developed countries such as Japan, South Korea, and the United States. In particular, the impact of the U.S.-China trade war has created opportunities for Vietnamese enterprises to access and master technologies in the mining and mineral processing sector. Additionally, the shift of investment from China to Vietnam presents a valuable opportunity to strengthen international cooperation and attract investment in mineral processing.

IV. Legal Recommendations for Mining Enterprises

Given China's tightening of mineral exports and the growing international interest in Vietnam's mineral extraction, processing, and export industries, mining enterprises must clearly and deeply understand the importance of legal compliance. At the same time, they must seize international market opportunities and leverage Vietnam's policies and market development strategies.

Below are key legal recommendations to help mining enterprises improve efficiency and achieve sustainable success in the extraction and export of minerals:

1. Compliance with the Law

One of the fundamental conditions for mining enterprises to export minerals is that the mining license of the extraction unit must be valid and within its expiration date. Accordingly, the mining entity must ensure compliance with all regulatory conditions during the mining process and must not have its license revoked or its operations suspended due to violations in mineral extraction activities.

To meet this requirement, mining businesses have no choice but to enhance their awareness of legal compliance. This includes adhering to Vietnam's mineral export regulations and international agreements or treaties between Vietnam and importing countries. Currently, legal provisions governing mineral exploration, extraction, and processing are highly stringent and complex. Therefore, in addition to having a skilled and experienced technical team, mining enterprises must also build and maintain a team of legal experts with deep knowledge of the regulatory system. This will allow them to receive appropriate legal advice, mitigate risks, and ensure smooth business operations.

2. Adopting Advanced Technology

As previously mentioned, the national mining strategy mandates that mining enterprises adopt and apply advanced, environmentally friendly technologies to promote sustainable and efficient long-term mineral extraction.

Therefore, beyond merely complying with the law and fulfilling environmental protection commitments during mining and processing, mining enterprises must swiftly integrate and upgrade advanced mining and processing technologies. This not only enhances the value of mineral resources and improves business efficiency but also serves as a crucial and mandatory requirement for maintaining mining operations in Vietnam in the long run.

3. Preparing and Maintaining Complete and Strict Legal Documentation:

According to regulations, minerals can only be exported if they have a legal origin. Therefore, businesses must ensure they prepare and store all necessary legal documents covering the entire process from mining, processing, and transportation of minerals. These documents must be available for inspection by the relevant authorities when seeking export approval.

If a mineral exporting company is not directly involved in mining, it must carefully review and assess the documents proving the rights and mining capabilities of its mineral suppliers before signing a purchase contract. These documents include the supplier's business legal records, mining project legal documents, and mineral extraction permits. Additionally, the mineral export contract should include binding conditions requiring the supplier to take responsibility for the minerals' legal origin and cooperate in completing necessary procedures until the minerals are officially approved for export.

To minimize risks, mineral exporters should use a Letter of Credit (L/C) as the payment method to ensure obligations between the buyer and seller are clearly defined.

4. Leveraging Opportunities to Attract Foreign Investment

The U.S.-China trade war is expected to make certain rare minerals highly attractive to the U.S. and its allies. Vietnam is known to possess large reserves of rare minerals. However, these minerals are mostly absent from Vietnam's list of permitted export items. Therefore, businesses can seize

the opportunity to attract foreign investment in their own companies or in projects related to mineral exploration, high-tech mineral processing, and/or high-tech product manufacturing that requires rare minerals from Vietnam. This strategy not only helps businesses secure investment capital and enhance their market position but also contributes to Vietnam's growing role in the global high-tech supply chain, particularly in collaboration with the U.S. and other developed nations.

However, to take advantage of these opportunities, mining companies must be well-prepared and undergo significant transformations in management, operations, technology, and technical expertise. Successfully implementing the three recommendations above will be a key factor in convincing foreign investors to invest in mining projects and businesses in Vietnam.

Amidst global market fluctuations, especially the impact of the U.S.-China trade war, Vietnamese businesses have many opportunities to grow. Equipping themselves with strong financial, technological, and legal foundations will allow Vietnamese mining companies to effectively turn opportunities into value and maintain stable, long-term, and sustainable business operations.

ABOUT US

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- Hotline: 091.4645.112
- Email: contact@ata-legal.com
- Website: <https://ata-legal.com>
- Address: 184 Nguyen Tuan street, Nhan Chinh ward, Thanh Xuan district, Hanoi.

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