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## The UE-Vietnam Free Trade and Investment Protection Agreements: Legal and Economic Perspectives

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**Abstract:**

**Purpose:** On 1 August 2020, the EU-Vietnam Free Trade Agreement went into force. After completing the EU-Vietnam Investment Protection Agreement's ratification, the two agreements will create the legal basis of strong economic relations between the parties. However, we argue that these agreements are an element of a broader strategy, pursuing the EU's economic and socio-political goals.

**Design/Methodology/Approach:** The research is interdisciplinary, economic, and legal. We analyze the process of establishing the legal framework of EU-Vietnam relations and its context in the New Haven School's application schema, combining it with "rational choice." The research was conducted based on public statistics and analysis of the literature on the subject.

**Findings:** The EU pursues a policy of "change through trade." The agreements deepen Vietnam's participation in the universal economic and social system based on the UN Charter's values. They also strengthen the institutionalization of pluralism in relations in the Asia region and institutions and countries outside the region.

**Practical Implications:** EVFTA and EVIPA represent a new approach of the EU to trade agreements and how to influence international relations in a system where the U.S. have lost their status as the only superpower, and China seeks to become a real global superpower. Realizing this change in EU trade policy is important for all Member States and other international relations actors.

**Originality/Value:** The paper discusses important and current issues related to EU trade and investment policies and can develop future policy scenarios.

**Keywords:** EU trade policy, EU investment policy, change through trade, Vietnam.

**Paper Type:** Research Paper.

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## **1. Introduction**

On 1 August 2020, the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam entered into force. The EU-Vietnam Free Trade Agreement (hereafter: EVFTA) co-creates – together with the EU-Vietnam Investment Protection Agreement (hereafter: EVIPA) – the legal framework for the economic relations of the European Union and its Member States with Vietnam. These are the first EU agreements of this kind signed with a developing Asian country (European Commission, 2020a).

The two agreements are closely linked, which is confirmed, among others, by Article 1.2 of EVFTA, which indicates that the purpose of the agreement is to liberalize not only trade but also investment. The establishment of EVIPA is accompanied by the termination of 21 bilateral investment treaties (BITs) of the member states with Vietnam.

In the paper, we argue that the agreements with Vietnam concluded by the EU are an element of a broader EU strategy, pursuing economic and socio-political goals, and they affect not only relations between the parties but also pluri or even multilateral ones. In this way, the EU pursues a policy of “change through trade”<sup>3</sup> directly implementing the EU political norms expressed in the Treaty on European Union (TEU). A recent statement of German Ambassador to Vietnam, Dr. Guido Hildner confirms this attitude: “The agreement is not just about tariffs. It will modernize the Vietnamese economy” (EVFTA Offers a Way to Post-Pandemic Growth, 2020).

We prove that the agreements strengthen the trend of institutionalization of pluralism in relations both between Asian countries and with institutions and countries outside the region (moving away from the “hub-and-spoke”<sup>4</sup> model of relations), and also sustain a universal system of “free and fair trade” (European Commission and Directorate-General for Trade, 2015) and build trans-regional cooperation for the return of strategic partner (USA) and the stopping of strategic rivals (China and Russia) of both the EU and Vietnam.

The research is interdisciplinary, economic, and legal. We analyze the process of establishing the legal framework of EU-Vietnam relations and its context in the New Haven School’s application schema, combining it with “rational choice” (Druzin, 2014). The research is based on economic methods and conclusions.

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<sup>3</sup>With regard to Vietnam, these activities were initiated in 2001 with the Multilateral Trade Policy Support Project (and continued under MUTRAP’s formulas: I, II, III) (EU-MUTRAP Project Promotes Vietnam’s Deeper Trade Integration, 2017).

<sup>4</sup>Network of bilateral alliances in which one state plays the central role of the “hub” and the other of the “spokes”, with no visible links between them (Cha, 2009).

## 2. The Importance of Agreements – The Global and Regional Perspective

The process of establishing closer economic and investment relations between the EU and Vietnam started in June 2012. In December 2015, the negotiations were completed, and since then, the agreements have been "frozen" for the next two years – they were waiting for political decisions. At that time, the disputes over detailed tariff regulations were ongoing. Finally, on June 30, 2019, the agreements were signed. The European Parliament ratified the agreements on 12 February 2020, Vietnam's National Assembly approved the agreements on June 8, 2020.

Paradoxically, the delay in signing the agreements turned out to be in their favor. On the one hand, the successive EU agreements with the region's countries (including Japan and Singapore) entered into force. On the other hand, partners' importance in mutual relations has increased: Vietnam has been promoted to 2nd place among ASEAN countries as the EU trade partner.

The investment agreement still awaits ratification of the EU Member States. Separating the agreements was aimed at separating their ratification, i.e., treating independently matters falling within the EU's exclusive competence and matters of shared competence (European Commission, 2020b). This separation results from the Lisbon Treaty norms, according to which the investment matter is subject to shared competences between the EU and its Member States (as a result of Opinion 2/15 of the EU Court of Justice issued in the context of the FTA with Singapore).

The agreements are the legal and institutional basis of cooperation between the parties, and at the same time, may significantly affect their mutual relations (and relations with other countries). Many internal and external factors determine Their importance. Among them, the issues mentioned below cannot be omitted.

First of all, the agreements are created in turbulent conditions that undermine the multilateral system of international economic cooperation. The shocks include both standards and institutions. The freezing of negotiations at the WTO (in the Doha Round formula) was accompanied by further actions, mainly from the USA. These are: enforcing changes in NAFTA<sup>5</sup>, breaking negotiations on the Transatlantic Trade and Investment Partnership (TTIP), abandoning the Trans-Pacific Partnership (TPP), terminating the Paris Climate Agreement, blocking the WTO dispute settlement mechanism<sup>6</sup>, and Brexit. They all make up the indicated process. States and

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<sup>5</sup>NAFTA's renegotiations led to its amendments and the signing of a new agreement on November 30, 2018, i.e. the United States-Mexico-Canada Agreement. USMCA changes, in line with the official position of the U.S. Ministry of Commerce, the win-win formula replaces the win-lose formula: "mutually beneficial win for North American workers, farmers, ranchers, and businesses" (USTR, n.d.).

<sup>6</sup>From December 2019, as a consequence of Trump administration's refusal to appoint new members, the Appellate Body does not function and it cannot resolve appeals against reports of the panel resolving the dispute in the first instance (Bown & Keynes, 2020).

international institutions are faced with the Manichaeian alternative: multi- or unilateralism, and the choice can be made either through a procedure of universal agreement (maintaining the modified system) or through *facta concludentia* (collapse of the existing order).

Secondly, these are the first EU agreements after the UK withdrew from it. Therefore, they reflect the perception of the EU in international economic relations after Brexit and will be the starting point for the legal framework of relations between the UK and Vietnam. Of course, it is not easy to see them in the category of potential substitution for Great Britain with Vietnam, but the factors that contribute to Vietnam's economic and social potential cannot be underestimated. According to data for 2020, Vietnam has a population of over 97 million (vs. 65 million in the UK), including about 51 million working people (the UK about 30 million), covers an area of 331,210 km<sup>2</sup> (the UK – 243,610 km<sup>2</sup>) and has a GDP per capita (in PPP) of 7463 USD (vs. 46 782 USD in the UK). The Vietnamese armed forces have 412,000 soldiers (British: about 400,000), while the military outlays oscillate around 5.5 billion USD (UK – 55.1 billion USD) (Global Firepower, 2020).

Thirdly, as subsequent ones that have already been concluded between the EU and Asian countries, these agreements are an important element of building a bridge between the EU and Asia. This is particularly important given the EU and the West's challenges in the Asia-Pacific region by their strategic rivals, i.e., Russia and China, and the uncertainty caused by the USA's policy (the EU's strategic partner).

Fourthly, by concluding agreements with Asian countries, the EU can build a new institutional architecture for security cooperation in the Asian region. In this way, the EU is broadening the circle of its Asian partners (the core of this circle are the participants of the “Democratic Security Diamond,” i.e., Australia, India, and Japan) and strengthening cooperation between ASEAN countries<sup>7</sup>. The creation of such a new architecture of cooperation in the region is a strategic objective of the EU. It is confirmed by the UE Commissioner for Trade, Cecilia Malmström: “After Singapore, Vietnam is the second ASEAN country with which the EU has concluded trade and investment agreements. Therefore, the agreements are also an important step towards the EU’s ultimate goal of securing trade and investment agreements with the whole ASEAN region.” (*Guide to the EU-Vietnam Trade and Investment Agreements*, n.d., p. 7).

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<sup>7</sup>*EU negotiations with ASEAN are suspended, but agreements with Malaysia, Thailand, the Philippines, Indonesia, Vietnam and Singapore, among others, are being considered as a step towards a comprehensive EU-ASEAN interregional agreement.*

In turn, the U.S., like China, has based regional security on asymmetrical bilateral agreements (rather than plurilateral ones, as the Washington Treaty<sup>8</sup>). It is a system of “hub-and-spokes” alliances. In this system, the USA has assigned a strategic partner to Japan, and the EU does the same. This ensured that the United States had a maximum influence on the countries of the region while minimizing the risk of the USA being drawn into the conflict provoked by the allies in the region<sup>9</sup>. By building cooperation in a plurilateral regime, the EU is convinced that the policy of the region's countries under the new leadership is/will be rational and predictable, respecting universal values and standards.

Fifthly, the agreements are embedded in a socio-political context, but at the same time, the parties point to mutual economic benefits, so they are win-win agreements. By concluding *traité-loi* agreements (and not *traité-contrat*), the parties have demonstrated the mutual trust that results from the same system of values. The agreements and their implementation are correlated with the determinants of the socio-political-economic systems in terms of their common sets. Trust and (limited) community of values were prerequisites for the conclusion of agreements. The implementation of agreements both increases the level of trust and extends the catalog of these common values.

In the desired scenario of the evolution of international relations, in which the USA will move away from the America First concept, the new architecture will not mean a new building erected on the previous one's ruins. A patchwork that considers various elements (norms and institutions) and accepts the consequences of cultural differences seems possible and desirable. The patchwork model's strategic character in the case of the EU manifests itself in combining relations and bilateral agreements with pluri- and multilateral ones.

### 3. The Origins of UE-Vietnam Relations

Analyzing EU-Vietnam relations, it is impossible to escape the recent past (Ostaszewski, 2000). France colonized Indochina in the second half of the 19th century. This presence was interrupted by Japanese aggression in 1941. France then sought to recover the “French Indochina” after the end of World War II. The USA did not support this idea. Indochina's international armed conflict began in 1946, and the First Indochina War lasted until 20 July 1954 (Daloz, 2015). The beginning of this

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<sup>8</sup>The equivalent of the 1949 treaty structure was initiated in Asia only in 2006 under the East Asia Summit formula. However, the USA indicated its readiness for an evolutionary change in the United States Security Strategy for the East Asia-Pacific Region (the so-called Nye Initiative) of 1995 (United States Security Strategy for the East Asia-Pacific Region, 1995).

<sup>9</sup>The USA wanted to protect the region from communism, but also the world from the Third World War. Politicians at the head of the allied governments, such as Syngman Ree (South Korea), Chiang Kai-shek (China) or Ngô Đình Diệm (South Vietnam) were irrational (from a Western perspective) and unpredictable and prone to violence. This was common to them and the „communist” antagonists.

conflict was caused by the failure to accept the Potsdam Conference's findings (1945) to establish a line of zones of influence in Indochina to the north and south of the 16<sup>th</sup> parallel. After a period of low-intensity internal conflict, it escalated from 1949 to war between France and Vietnam (the antagonists benefited from military aid from the U.S., the USSR, and China). The war in Korea (1950) became a factor that intensified this war and directly involved the USA. The military action included Laos and Cambodia, and Vietnam, which resulted in the West recognizing Indochina's war as a crusade against communism. France's failure in the war was concluded by the defeat at the Battle of Dien Bien Phu. During the 1954 peace conference, it was agreed that Indochina would be divided along the 17<sup>th</sup> parallel.

The next stage of the war began on November 1, 1955 and ended with Saigon's fall on April 30, 1975. This Second Indochina War – formally between North Vietnam and South Vietnam – was de facto a war between the Eastern Bloc<sup>10</sup> and the West<sup>11</sup> – and became a “Hot War” (a component of the “Cold War”) fought by their representatives (the so-called *proxy war*<sup>12</sup>). In the war, millions of residents of Vietnam, Laos and Cambodia and over 58,000 US citizens were killed and injured.

An important factor influencing the course of the wars in Indochina was their perception of world public opinion. Already the First Indochina War was described by propaganda as a dirty war. Aversion to Western policy increased during the Second Indochina War, and the Eastern Bloc won Western society's sympathy. Indochina's conflicts contributed to social change in the West, and it seems that these were the only lasting changes.

After the reunification of Vietnam, the real face of the communists in the region and the world became more and more visible. Mass repression, which directly claimed more than 300,000 victims and the collapse of the economy, caused about one million people (so-called boat people) to flee Vietnam (UNHCR, 2000, p. 98). In neighboring, also communist, Cambodia, genocide took place between 1975 and 1979, resulting in the murder of between 1.5 and 2 million people, or ¼ of the population. The crime victims were different population groups, the selection was based on social, ethnic, religious, etc. criteria, but generally, the crime was mass, systemic and systematic

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<sup>10</sup>The USSR, China and other countries of the bloc participated directly and indirectly in various forms on the side of North Vietnam.

<sup>11</sup>South Vietnam was supported mainly by the USA, but also by South Korea, the Philippines, Thailand, Australia and other Western countries. It is impossible to overestimate the financial assistance from Western Europe (especially Germany and Great Britain), which accepted the overvalued American currency in trade exchange (Dickens, 2005, pp. 213–216).

<sup>12</sup>These are wars in which non-state military groups benefit from direct assistance from external powers (Hughes, 2012, p. 11). During the Cold War, this term was used to describe regional wars as a substitute for direct confrontation between the great powers (Bar-Siman-Tov, 1984). More on the case of the Vietnam War in: (Axelrod, 2009, pp. 336–380).

(Jones, 2006, pp. 185–206)<sup>13</sup>. Vietnam did not react until Cambodia directly attacked it – in response, in 1978, the Vietnamese army defeated Cambodian forces and began its occupation (which lasted till 1989).

The Sino-Vietnamese alliance quickly broke up, which is symbolized by the Sino-Vietnamese war (referred to as the Third Indochina War), which began on February 17, 1979, with the attack on Vietnam and lasted less than a month, until March 16 (Gompert *et al.*, 2014, pp. 117-127). The USSR was relatively neutral in this conflict – it helped Vietnam with military equipment. The Chinese attack was a reaction to the persecution of the Chinese people (Hao) in Vietnam and the Vietnamese invasion of Cambodia in 1978.

Communist propaganda long denied the facts and treated genocide as a propaganda war against the Eastern Bloc countries. The change occurred only after the victory of Vietnam over Cambodia. The Eastern Bloc (USSR) supported Vietnam's actions and admitted that genocide took place. However, disputes between anti-Western states involved in the Indochina wars, the disclosure of their internal policies, and the evolution towards post-communist dictatorships<sup>14</sup> with a private non-market economy deprived these states of external public support.

The ideological conflicts between the ex-allies are still ongoing. China's withdrawal from the Vietnamese territories (1992) has not ended the border disputes. In its policy and towards the countries of the region, Russia combines expansionism with the pursuit of unilateral benefits (not guided by any values)<sup>15</sup>.

To Vietnam, one can refer to the saying, “everything had to change so that nothing would change.” On the one hand, the Vietnamese lost the image of a small brave nation that resisted the imperialists independently. On the other hand, Vietnam now functions as a predictable partner in international relations, which respects the principles and norms of international law, so that trade and investment agreements can be concluded with it.

#### **4. The Justification of “Change through Trade” Policy**

American involvement in Vietnam and the Indochina region was derived from adopting the "domino theory." According to this theory, the effect of the communists (representing the USSR) taking over one country was to dominate the entire region

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<sup>13</sup>Referring to this work is not tantamount to sharing the authors' views with regard to other cases.

<sup>14</sup>Economic reforms in Vietnam are carried out within the framework of the *doi moi* policy (restoration), which does not include changes in socio-political life; Vietnam is not a democracy, but the level of respect for human rights and freedoms is increasing.

<sup>15</sup>Russia has abandoned the rhetoric of “warrant officer of progress” popular in Third World countries.

and then the rest of the world. As a result, the U.S. and its allies set up "firewalls" in individual regions to stop the march of communists. In Asia, the West decided to set up a firewall on Vietnamese territory<sup>16</sup>. A separate issue (from the "domino theory") is the determination of the line of defense, which neither had to run in Vietnam nor was Vietnam predisposed to fulfill this role (for geopolitical reasons).

The "domino theory" can now manifest itself in the fact that Vietnam's transformation is co-existing with international relations changes, radiating outwards. In January 2007, Vietnam was admitted to the WTO. Between 2015 and 2016, it concluded several free trade agreements<sup>17</sup>, including – politically symbolic – with South Korea in 2015 (Viet Nam - South Korea (VKFTA), 2015) and the Eurasian Economic Union in 2016 (Free Trade Agreement between the Eurasian Economic Union and Vietnam, 2016). The EU's agreement was preceded by Vietnam's ratification on November 15, 2018, of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (CPTTP Text and Resources, n.d.).

The process of normalization of relations between the West and Vietnam has been slow. There were many reasons for this, both bilateral<sup>18</sup> and those resulting from Vietnam's policies (Vietnamese attack on Cambodia). The advocates of openness in American policy towards Vietnam were veterans, American war heroes, senators John McCain and John Kerry. It was not until 20 years after Saigon's fall, on July 11, 1995, that US President Bill Clinton announced a formal normalization of relations; liaison offices were elevated to embassies, and two consulates were opened. Regular political dialogue on security has been established, and a dialogue on human rights is ongoing. The 2006 agreement regulated trade relations. Since 2017, a Permanent Normal Trade Relations Act has been in force for Vietnam, under which Vietnam is a beneficiary of the Most Favoured Nation (MFN) clause. At the same time, since 2020, Vietnam has lost its status as a "developing country" in the U.S., which subjects it to the requirements of not harming the American industry and depriving it of its preferences.

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<sup>16</sup>See the statement by President D.D. Eisenhower at the April 7, 1954 press conference: "Finally, you have broader considerations that might follow what you would call the "falling domino" principle. You have a row of dominoes set up, you knock over the first one, and what will happen to the last one is the certainty that it will go over very quickly. So you could have a beginning of a disintegration that would have the most profound influences." (Quotes of President Dwight D. Eisenhower, n.d.). The implementation of a strategy in line with this theory was the joint work of Presidents Truman and Eisenhower (continued by their successors) and developed by George Kennan and Dean Acheso. See more: (Cha, 2009).

<sup>17</sup>They were preceded by the Economic Partnership Agreement with Japan (entered into force in 2009) and the FTA with Chile (2014).

<sup>18</sup>It is about prisoners of war and graves of soldiers – according to official American data, the fate of 1763 Americans in Southeast Asia is undetermined, including 1353 in Vietnam; there are also no data on 31 prisoners out of 883 captured in the region, including 627 in Vietnam. According to the Report of the Select Committee on POW/MIA Affairs United States Senate of 13 January 1993 there are no prisoners of war held in Vietnam (Report of the Senate Select Committee on POW/MIA Affairs, 1993).



The cooperation covers various areas of interest to the parties<sup>19</sup>. However, these relations are now among the USA's closest in the region (Albert, 2019). The U.S. considers Vietnam to be an important partner in the region in resisting the strategic challenge posed by China (Kurlantzick, 2015). The Vietnamese side similarly assesses relations with the U.S., as expressed directly by Vietnamese Prime Minister Nguyen Tan Dung on May 31, 2013, in the opening speech of IISS Asia Defense Summit (Shangri-La Dialogue)<sup>20</sup>.

It can be considered – especially in the conditions of the “trade war” between the U.S. and China that Vietnam can influence the global game as a domino effect. While the victory of the communists as a result of the collapse of the non-communist government in Vietnam did not lead to a defeat for the West, neither in Asia nor in the world, Vietnam’s accession to the family of free nations can significantly influence the development of global social relations. In this case, the EU’s consistent policy strategy of “change through trade” may prove more effective than any other strategy (Wouters *et al.*, 2015).

## 5. The Economic Determinants of EU-Vietnam Agreements

Regardless of the importance that the parties attribute to non-economic values and objectives, their decision to conclude the agreements, assess their impact, and their implications for the international environment had/have/will have economic effects. Therefore, the starting point is an analysis of the parties' quantified economic potentials in comparative terms.

While analyzing the economic position of Vietnam, we notice huge changes that have taken place in the last three decades and resulted in a reduction of the distance between Vietnam and other countries in the region and the European Union (Figure 1). On average, since 1990 till 2019, the GDP growth rate of Vietnam has been 6.8% per year, while in countries with similar income (lower-medium according to the World Bank classification), it was 4.7%, and in the countries of East Asia and the Pacific in

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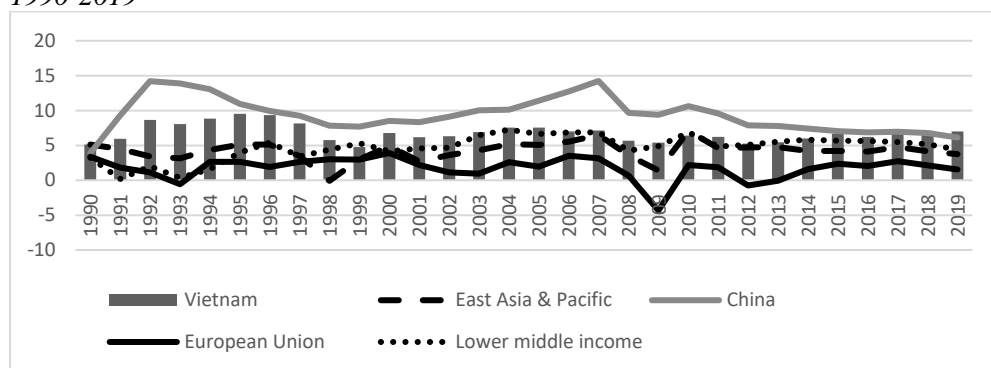
<sup>19</sup>Among them is cooperation against drug production and trafficking.

<sup>20</sup>He said: „I believe that no regional country would oppose the strategic engagement of extra-regional powers if such engagement aims to enhance cooperation for peace, stability and development. We could expect more in the roles played by major powers, particularly the United States and China , the two powers having the biggest roles (I underline the biggest) in and responsibilities to the future of their own as well as that of the region and the world. What is important is that such expectation should be reinforced by strategic trust and such strategic trust must be reflected by concrete and constructive actions of these nations. We attach special importance to the roles played by a vigorously rising China and by the United States - a Pacific power. We would expect and support the United States and China once their strategies and actions conform to international law, respect the independence and sovereignty of nations, not only bringing about benefits to them but also contributing genuinely to our common peace, cooperation and prosperity.” (Vietnam PM’s Keynote Address at 12th Shangri-La Dialogue, 2013). Such openness (or even brutality) is rare in Asian culture.

general – 4.2%. The GDP growth rate in the EU during this period averaged 1.8% per year. Although China was growing faster (9.3% per year on average) than Vietnam at the time, the two Asian economies have been growing at an even pace in recent years. In 2019 the Vietnamese economy grew even 1 pp faster than the Chinese one, and the IMF forecasts for 2020 1.2% of GDP growth in China and 2.7% in Vietnam (IMF, 2020).

Importantly, both in the years of the Asian crisis (1997-1998) and the recent financial crisis (2008-2009), Vietnam proved to be more resilient to shocks, neither experiencing such a sharp slowdown in GDP growth (see Figure 1) nor recording an absolute decline in per capita income (which occurred in the countries of East Asia and the Pacific in 1997-1998 and the EU in 2008-2009).

**Figure 1** Annual GDP growth in Vietnam and selected countries and regions (%), 1990-2019

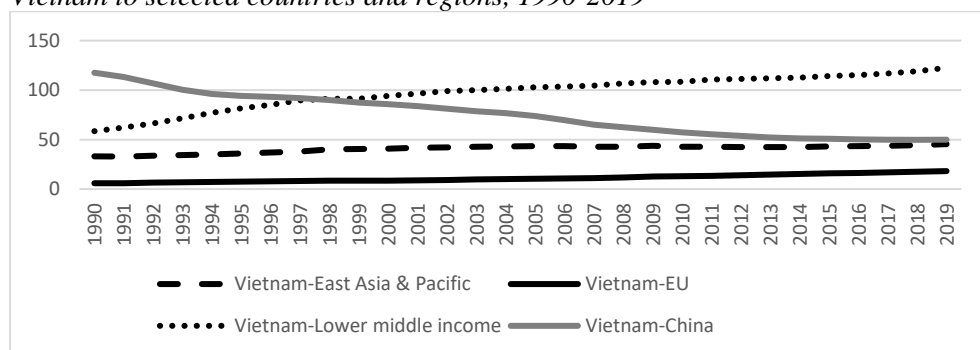


**Source:** Own study based on (World Bank, 2020a).

As a result, the relative wealth of the Vietnamese has increased greatly. While in 1990, income per capita in Vietnam (in PPP, constant 2017 international dollars) accounted for about 33% of GDP per capita of the East Asia and Pacific countries, 58% of GDP of lower-middle-income countries, and 6% of the EU's GDP per capita, in 2019 these values were 45%, 122%, and 18% respectively (see Figure 2). An exception is the relation of Vietnamese GDP per capita to the Chinese one.

In 1990, the GDP per capita in Vietnam was above China's level, while in 2019, it was half that of China. Given the IMF's forecasts of much higher GDP growth in Vietnam in the coming years than in the reference groups of countries, the distance between Vietnam and they should be decreasing. Moreover, Vietnam is among few countries that achieved positive growth during the COVID-19 pandemic (World Bank estimates 2.8% growth in 2020, while in the whole East Asia and Pacific region 0.5%, in China 1%, in the Euro Area -9.1%) (World Bank, 2020b, p. 207).

**Figure 2** Ratio of real GDP per capita (PPP, constant 2017 international \$) of Vietnam to selected countries and regions, 1990-2019



*Source:* Own study based on (World Bank, 2020a).

In recent years, many multinational companies have moved production facilities from China to Vietnam in response to rising labor costs in China and diversifying locations. The truce concluded in early 2020 between the United States and China on trade policy has only briefly reduced the risk of global and regional tensions. However, this risk is still high, making other countries more attractive in the region (including Vietnam). As shown in Figure 3, there is a link between the volume of FDI inflows to Vietnam and the uncertainty of economic policy in China<sup>21</sup>.

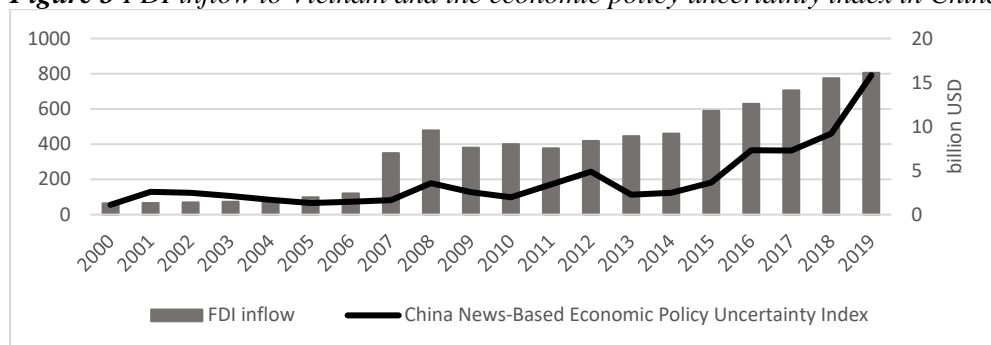
In turn, the 2020 COVID-19 pandemic has significantly reduced business activity in China and disrupted global supply networks (Gereffi, 2020; Ivanov, 2020), which speaks against the current strategy of corporations concentrating investment in one place and increases the chances of Vietnam to attract even more foreign capital (FDI Data Shows Vietnam's Steady Performance in First Half of 2020, 2020).

However, it is difficult to predict how the experience of disrupting supply chains will affect future economic decisions, i.e., the extent to which institutional regulators and companies will be willing to diversify their sources of supply, to reduce, as far as possible, dependence on geographically distant suppliers; to what extent and for how long higher prices will be accepted in exchange for higher supply chain security. It can be assumed that the risk weights will be changed about the price weights when making decisions on production chains.

One way to minimize the risks associated with a potential increase in protectionism in the world and the disruption of the supply network in the region is Vietnam's participation in trade and investment liberalization agreements. Numerous trade agreements to which Vietnam is a party serve this purpose.

<sup>21</sup>The index is based on the analysis of articles in the *South China Morning Post (SCMP)*, Hong Kong's leading English language newspaper. Methodology of the index can be found in: (Baker et al., 2016).

**Figure 3** FDI inflow to Vietnam and the economic policy uncertainty index in China



**Source:** Own study based on (*Economic Policy Uncertainty Index, n.d.*) and (*UNCTADstat, n.d.*).

The importance of the trade and investment agreements (EVFTA and EVIPA) concluded by the EU and Vietnam for each party is different and is largely due to differences in their economies' size. The EU economy is about 59 times larger than Vietnamese, the average European is 5.5 times more affluent than Vietnamese (according to purchasing power parity), the population of Vietnam is over five times lower than the EU. The structure of Vietnam's GDP is outdated, characteristic of low-income countries, with agriculture having 14% of the value-added (but it is decreasing, from 39% in 1990 and 24% in 2000, mainly for the benefit of industry) with almost 40% of working force employed in this sector (see Table 1).

Since 1986, Vietnam has been undergoing an economic transformation. The government elected in 2016 has declared to modernize the country further and reduce the role of the state in the economy, fight against corruption, and speed up administrative reforms to promote sustainable growth based on the private sector. Therefore, there is a potential to shift production factors to manufacturing and services and use them there more efficiently. It also provides opportunities for EU actors to exploit these opportunities profitably.

**Table 1.** Share of sectors in value-added and employment in 2019 in Vietnam, the lower-middle income countries and the EU (in %)

		UE	Vietnam	Lower-middle income countries
Agriculture	Value added	1.6	14.0	15.1
	Employment	4.4	37.4	39.5
Industry	Value added	22.2	34.5	27.0
	Employment	24.9	27.6	22.4
Services	Value added	65.5	41.6	50.6
	Employment	70.7	35.0	38.1

**Source:** Own study based on (*World Bank, 2020a*).

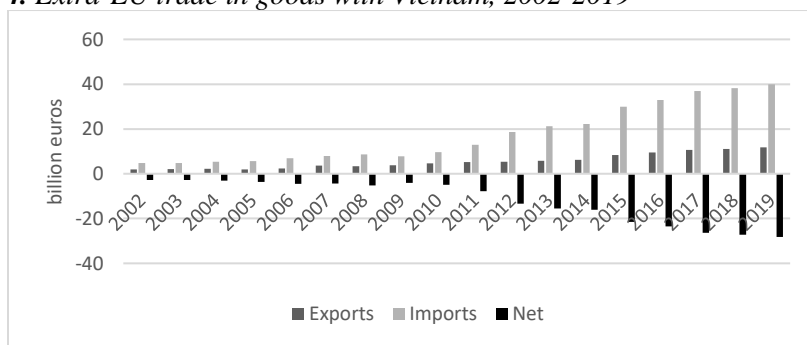
## 6. The Economic Linkages between Vietnam and the UE

Bilateral trade and investment links between the EU and Vietnam have been steadily strengthening, from the establishment of diplomatic between the two sides in 1996, through concluding in 2004 the bilateral negotiations of Vietnam's accession to the WTO and signing The Agreement on Market Access<sup>22</sup> and finally to Vietnam's accession to the WTO in 2007.

There is different importance of the EU and Vietnam in their mutual trade, reflecting the differences in the size of their economies. The European Union is Vietnam's second most important market for goods, after the USA. In 2018 Vietnam exported goods worth about 35.5 billion euros to the EU, which accounted for almost 18% of its total exports. According to the EU statistics, EU imports from Vietnam amounted to EUR 38 billion at that time, putting the country in 10th position among suppliers of goods to the EU market, with a share of almost 2%. In the same year, the EU exported goods worth about 11 billion euros to Vietnam, which gave Vietnam the 31<sup>st</sup> position with a share of 0.6% in the EU's external exports. In turn, the EU ranked 4th (after China, South Korea, and Japan) among the most important importers to Vietnam<sup>23</sup>, with a share of 6% (European Union).

In 2017 Vietnam was for the first time among the ten largest exporters to the EU. The total value of mutual goods trade in 2019 was almost 53 billion euros, with Vietnamese exports to the EU outweighing imports (Figure 4).

**Figure 4.** Extra-EU trade in goods with Vietnam, 2002-2019



**Source:** Own study based on (Database - Eurostat, 2020).

The European Union exports mainly machinery and transport equipment, chemicals, and agricultural products to Vietnam. The import is dominated by telecommunication

<sup>22</sup>This agreement suspended the quotas for exports of clothing from Vietnam to the EU as of January 1, 2005, three years before its formal accession to the WTO. In return, Vietnam committed to increase market access for EU suppliers in various industries (Guide to the EU-Vietnam Trade and Investment Agreements, n.d., p. 12).

<sup>23</sup>The top 10 import partners include 8 countries from Asia, the EU and the USA.

equipment, clothing, and food products (European Union, Trade in Goods with Vietnam. Detailed View, n.d.).

Vietnam participates in the world trade in services to a minimal extent (it reaches about 0.3% of the world turnover), exporting mainly tourist services, and importing — transportation services. Similarly, low is its trade in services with the EU. One of the obstacles to the development of trade in services in Vietnam is the low level of servicing of the economy, associated with a shortage of skilled workers and good infrastructure, as well as an inefficient business environment in which many internal regulations hinder international trade (Alejandro *et al.*, 2012). Rising salaries, urbanization of the country, and the dynamic development of private entrepreneurship, combined with technological changes in the world and services trade liberalizing agreements, provide opportunities to accelerate the Vietnamese economy's servicization.

Vietnam attracts more and more foreign direct investment (especially since its accession to the WTO), including from the EU, ranked 5th among Vietnam's 80 investors (Guide to the EU-Vietnam Trade and Investment Agreements, n.d., p. 18). According to the Vietnamese Foreign Investment Agency, FDI in 2019 in Vietnam attracted 38.2 billion of FDI (7.2% more than in 2018). EU investors account for 50.1% of total FDI projects and 50.6% of pledged capital (Deshmukh, 2020).

## **7. The Content of EVFTA**

The analysis of the agreement's content covers the elements relevant to the verification of the research hypothesis. Thus, the scope of the research includes the analysis of provisions not only relating to achieving economic goals but also the socio-economic ones, such as evoking values, regulating a broadly defined scope of human rights and freedoms (including labor and social rights), sustainable development and the establishment of a new regime for settling international investment disputes.

EVFTA is a new<sup>24</sup> generation agreement, which means that it covers: 1) the matter establishing a free trade area (liberalization of tariff and non-tariff barriers), providing for — like the classic FTA — the gradual elimination of tariffs, elimination or reduction of technical barriers to trade (i.e., recognition of standards), as well as sanitary and phytosanitary barriers (but without decreasing the level of health and consumer protection); 2) elimination of restrictions on the provision of services (liberalization of market access to financial, telecommunications, transport, postal and courier services, etc.); 3) standards directly related to the economy (but absent from earlier FTAs), such as those governing the protection of intellectual property,

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<sup>24</sup>However, this is a relative novelty, as this matter — albeit to a limited extent — was already present in the Framework Agreement on Comprehensive Partnership and Cooperation Between The European Union and Its Member States (concluded in 2012, entered into force in 2016) (Framework Agreement, 2016).

geographical indications, access to the public procurements and facilitation of public-private partnerships (PPP), etc.

The standards governing sustainable development (about the environment, the protection of human rights, workers' rights and "fair and ethical trade" are new to the existing FTAs, although they are viewed by the EU primarily through the prism of the value system represented and promoted in external relations. The parties agreed that institutions and civil society organizations would be jointly responsible for monitoring the implementation of these obligations. The solutions adopted in EVFTA in sustainable development co-create the implementation scheme of regulations in trade agreements of the European sustainable development model. According to this model, in EVFTA, sustainable development has been separated in the Trade and Sustainable Development Chapter (TSD)<sup>25</sup>. The following regulations constitute the three pillars of the FTA: 1) the FTA commitments are closely linked to multilateral international agreements (including, what is an important novelty, ILO conventions); 2) the agreement provides for the operation (and in Vietnam, de facto, the authorities' consent to the establishment) of civil society institutions<sup>26</sup> implementing and monitoring the implementation of sustainable development; 3) the establishment – under EVFTA – of a dispute settlement mechanism for disputes relating to the implementation of commitments.

## 8. EVIPA – A Model of Investor-State Dispute Resolution

The agreement creates a new model for an institutional investor-state dispute settlement system. Together with the relevant EVFTA standards, EVIPA can be considered the third generation of International Investment Agreements (Recent Developments in the International Investment Regime, 2018; Titi, 2018). The agreement will establish a Permanent Investment Court, composed of nine permanent and independent judges, and a three-person panel will resolve the dispute.

The proceedings will be two-instance, the judgments will be subject to appeal to the six-person Permanent Court of Arbitration, which will be sitting in three-member panels. An appeal may be based not only on a classic basis, such as violation of the law and interpretation of the law, but also on "failure to establish the facts." The agreement provides for transparency of the procedure.<sup>27</sup> The parties have committed themselves to the enforcement – recognition of the final settlement<sup>28</sup>. The agreement prohibits investors from practicing *forum shopping*. The costs of the proceedings are generally regulated in a loser-pay principle. The adopted solution is treated by the EU

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<sup>25</sup>It is the UE objective to separate a section on TSDs in each EU FTA.

<sup>26</sup>These institutions are eligible for EU support programmes, including financial assistance.

<sup>27</sup>A certain paradox from this perspective is the fact that no EU Member State is bound by the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration of 2014 (United Nations Treaty Collection, 2020).

<sup>28</sup>In this respect, a five-year transitional period is provided for in favour of Vietnam.

as a model, according to which a universal system is to be formed (Negotiating Directives, 2018).

## **9. Conclusions and Practical Implications**

The conducted research allowed for positive verification of the formulated hypothesis. By signing trade and investment protection agreements, the EU is pursuing a “change [Vietnam] through trade” policy. Vietnam is in the process of finding a balance between socialism and capitalism, between “self-reliance” (Galtung, 1976) and cooperation between regionalism and universalism. The agreements integrate Vietnam into the system of international relations based on the values of the UN Charter. Cooperation between the parties to the agreements brings added value to each party (win-win effect) through direct relations and through diversification of their partners in economic relations. The institutionalization of ties between Asian countries themselves and between them and the EU is becoming increasingly dynamic.

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