

## **Towards a stronger EU approach on the trade-labor nexus?**

The EU-Vietnam Free Trade Agreement, domestic labor reforms and social struggles in Vietnam

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# ie.WorkingPaper

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## **Towards a stronger EU approach on the trade-labor nexus?**

### **The EU-Vietnam Free Trade Agreement, domestic labor reforms and social struggles in Vietnam**

Kristoffer Marslev & Cornelia Staritz

#### **Abstract**

The EU-Vietnam Free Trade Agreement (EVFTA) seems to deviate from the poor track record of ‘trade and sustainable development’ chapters in EU FTAs. Ahead of ratification, Vietnam embarked upon pathbreaking reforms, culminating in a new labor code and accession to outstanding ILO core conventions. This article assesses the impact of the EVFTA on these reforms. Building on literatures on the trade-labor nexus and externalization of EU governance, we call for a more comprehensive analysis of power dynamics in partner countries and address the lacunae by embedding FTAs and labor reform in a strategic-relational conceptualization of states. We argue that the success of the EVFTA was the outcome of specific conjunctures of socio-political forces in, and outside of, state institutions on both sides, and their mediation across transnational space. Amid free trade skepticism in the EU, particular members of the Parliament and the Council wielded their veto powers to negotiate with Vietnam and pull the Commission into a stronger position. In Vietnam, the external pressure resonated with internal struggles and empowered reformists to drive forward labor reforms within the party-state. While this outcome supports pre-ratification conditionality in labor clauses, it also stresses the importance of social struggles to leverage such clauses.

**Keywords:** free trade agreements, labor reforms, states, social struggles, EU, Vietnam

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## **Abstract**

Das Freihandelsabkommen zwischen der EU und Vietnam (EVFTA) scheint von der schlechten Erfolgsbilanz der Kapitel zu "Handel und nachhaltiger Entwicklung" in EU-Freihandelsabkommen abzuweichen. Im Vorfeld der Ratifizierung hat Vietnam wegweisende Arbeitsreformen eingeleitet, die in einem neuen Arbeitsgesetz und dem Beitritt zu ausstehenden ILO-Konventionen gipfelte. Dieser Artikel analysiert den Einfluss des EVFTA auf diese Reformen. Aufbauend auf der Literatur über den Nexus zwischen Handel und Arbeitsrechten und der Externalisierung von EU-Governance argumentieren wir für eine umfassendere Analyse der Machtdynamik in Partnerländern und adressieren dies, indem wir Freihandelsabkommen und Arbeitsreformen in eine strategisch-relationale Konzeptualisierung von Staaten einbetten. Wir argumentieren, dass der Erfolg des EVFTA das Ergebnis spezifischer Umstände von sozio-politischen Kräften innerhalb und außerhalb staatlicher Institutionen auf beiden Seiten und deren Vermittlung im transnationalen Raum war. Inmitten steigender Freihandelskepsis in der EU machten bestimmte Mitglieder des Europäischen Parlaments und des Rates von ihrem Vetorecht Gebrauch, um mit Vietnam zu verhandeln und die Kommission in eine stärker verbindliche Position zu zwingen. In Vietnam traf der externe Druck auf langbestehende interne Kämpfe und ermächtigte Reformist\*innen, bestimmte Arbeitsreformen voranzutreiben. Dieses Ergebnis unterstützt die Bedeutung von verpflichteten Arbeitsreformen vor der Ratifizierung von Freihandelsabkommen, aber betont vor allem die Bedeutung sozialer Kämpfe, um solche Reformen durchzusetzen.

**Keywords:** Freihandelsabkommen, Arbeitsreformen, Staaten, soziale Kämpfe, EU, Vietnam

## 1. Introduction

Due to widespread debates and protests related to the social impacts of trade liberalization, free trade agreements (FTAs) have increasingly included labor provisions, typically referring to the International Labor Organization (ILO) core labor standards<sup>1</sup>. This is not just important from a quantitative perspective, as a growing share of global trade is governed by such provisions; it is also qualitatively significant, as labor clauses in FTAs represent a rare *public* governance approach to improving labor standards in a regulatory landscape that has, since the 1990s, been dominated by *private* mechanisms. According to proponents of the approach, states in the Global North can wield their market power to demand that certain labor standards are met by trading partners in the Global South, preventing a race to the bottom and stimulating pro-labor reform. Labor clauses in FTAs have, however, been criticized for having limited impact in practice. Specifically, the EU's promotional approach to the trade-labor nexus, typified by the chapters on 'trade and sustainable development' (TSD) included in EU FTAs, has been widely blamed as ineffective with its focus on dialogue and cooperation, its lack of pre-ratification conditionality and its allegedly toothless sanction-free dispute settlement (for an overview, see Harrison et al. 2018; 2019).

In this perspective, the EU-Vietnam FTA (EVFTA), which entered into force in August 2020, seems to be a puzzling deviation from the EU's poor track record. Ahead of ratification, the Vietnamese party-state embarked upon path breaking reforms of its labor and industrial relations laws. This culminated in the ratification of the first of three outstanding ILO core conventions, No. 98 on the Right to Organize and Collective Bargaining, in June 2019; the adoption of a revised Labor Code in November 2019, for the first time recognizing independent worker representative organizations at the enterprise level; the accession to ILO convention No. 105 on the Abolition of Forced Labor in July 2020; and the scheduled ratification of the last – and most controversial – ILO core convention, No. 87 on Freedom of Association and the Right to Organize, for 2023. Without precedent in a single-party socialist state like Vietnam, these steps are a remarkable departure from the existing trade union structure, where the Vietnam General Confederation of Labor (VGCL), as the only legally permitted worker representative, is subordinated to the Communist Party and not directly accountable to workers.

Against this backdrop, this article assesses the role of the EVFTA in labor reforms in Vietnam, with the aim of uncovering the causal processes underpinning its seemingly unprecedented impact. As the implementation of the agreement is just beginning, we restrict our analysis to its impact at the legal-institutional level, focusing on trade union reform, in the negotiation and, particularly, pre-ratification phases. Conceptually, our point of departure is a critique of literatures on the trade-labor nexus in FTAs and the externalization of EU governance for paying insufficient attention to relations to, and power dynamics in, partner countries in FTAs.

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<sup>1</sup> The ILO core conventions cover freedom of association and collective bargaining (No. 87 and No. 98) forced and compulsory labour (No. 29 and No. 105), child labour (No. 138 and No. 182) and workplace-related discrimination (No. 100 and No. 111).

Building on these literatures, and linking FTAs and labor reform to a strategic-relational theorization of the state, we argue that understanding the impact of labor provisions in FTAs requires analyzing the political economy contexts, state-society relations and geopolitical and -economic positions around FTAs and labor reform in partner countries. A question of particular importance is whether the external pressure brought to bear on the partner country resonates with internal social struggles and can be leveraged by reformist actors to amplify their influence on, and within, the state.

Methodologically, we rely on process tracing to shed light on the causal processes underlying labor reforms in Vietnam, with the aim of disentangling the role of the EVFTA. We draw on official documents, recordings of parliamentary debates, voting records and commentaries to track the decision-making process in the EU, and, similarly, use legal documents, political decisions and administrative directives to map the law-making process in Vietnam. The analysis is further informed by interviews with stakeholders involved in, or having insights into, the negotiation and pre-ratification process of the EVFTA and/or the Vietnamese labor reforms. During fieldwork in Brussels in November 2019, we interviewed representatives of the European Commission, the European Parliament, the European External Action Service, the European Economic and Social Committee, diplomatic missions from selected member states and relevant expert groups, business associations, trade unions, NGOs and researchers. In 2020, online interviews were conducted with civil society organizations and labor experts in Vietnam, as well as with representatives of the ILO in Hanoi and Geneva.

We argue that the success of the EVFTA was the outcome of specific conjunctures of political forces and social struggles within, and around, state institutions in the EU and Vietnam. In the context of a wider politicization of EU trade policy, specific members and committees of the European Parliament, and a few member states in the Council, activated their veto powers in trade policymaking to engage in direct negotiations with Vietnamese decision-makers and pull the Commission into a more conditional bargaining position. In Vietnam, the EU's newfound assertiveness was picked up, and encouraged, by a minority faction of reformists, who – after the loss of external reform pressure with the US exit from the Trans-Pacific Partnership (TPP) in early 2017 – strategically used the EVFTA to move forward a reform process that had been underway for decades. In this process, a critical role was played by ‘trans-local actors’ with operations in Vietnam – the EU's diplomatic delegation, the ILO and the Friedrich-Ebert-Stiftung (FES) – which connected reformists on the two sides, brokered access to decision-makers and helped building mutual trust.

Following this introduction, section 2 gives an overview of different approaches to the trade-labor nexus and introduces our conceptual approach, linking the literature on externalization of EU governance with a strategic-relational conceptualization of the state. This is followed by an overview of the development of the EVFTA in section 3, including the content of the TSD chapter. Over the next two sections, our empirical analysis discusses how and why the EU adopted a more assertive approach, stepping up on pre-ratification conditionality (section 4), and how this external pressure from the EU interacted with internal drivers of labor reform in Vietnam (section 5). Section 6 concludes.

## 2. The trade-labor nexus, state power and domestic struggles

This section, firstly, provides an overview of different approaches to labor provisions in FTAs, focusing on the prototypes of US and EU FTAs. This more empirical overview is, secondly, linked to conceptual debates on the externalization of EU governance and the external power of the EU. The limited focus on partner country dynamics is pointed out and provides the basis for, thirdly, developing our own conceptual approach.

### 2.1. FTAs and the trade-labor nexus

After failed attempts to introduce labor provisions at the multilateral level of the WTO in the 1990s, labor clauses have increasingly been integrated into FTAs (ILO/IILS 2013). The US, having included social clauses in its trade regulation since 1983, is considered the pioneer. In 1994, the North American Free Trade Agreement (NAFTA) became the first FTA to regulate labor and environmental aspects, through a dedicated side agreement, and still serves as a prototype for US FTAs<sup>2</sup>. Inspired by the US, the EU included labor standards in its generalized scheme of preferences (GSP) in the mid-1990s and in its FTAs from the late-1990s, albeit with varying scope and content. The use of labor clauses by the EU has widened and deepened, especially after the Treaty of Lisbon in 2009 elevated trade policy to an exclusive EU competence and granted the European Parliament, an institution that has pushed for the inclusion of labor and human rights concerns, a greater role in trade policy-making (Van den Putte et al. 2015). From the 2011 EU-Korea FTA onwards, labor provisions (supplemented by environmental standards) have been included in so-called TSD chapters; and this approach was aligned and made mandatory with the 2015 ‘Trade for All’ strategy (Harrison et al. 2018). TSD provisions have, thus, become an integral part of a new generation of EU FTAs and were, as of January 2021, present in 12 agreements with a total of 22 countries.

The US and EU approaches are often portrayed as opposing paradigms related to their different enforcement mechanisms. The US approach is the classical example of a conditional strategy, where partner countries must meet certain labor standards *before* the agreement comes into effect (pre-ratification conditionality) and/or can be sanctioned for violations after implementation (post-ratification conditionality). As the constitutional competence over trade policy resides with Congress, which insists on the prior fulfilment of certain labor standards by partner countries in the mandates delegated to the President, pre-ratification conditionality is awarded high priority by US negotiators. After ratification, complaints over labor issues are covered by the same dispute settlement procedure as the commercial provisions of the FTA and can unleash penalties if violations are found (ILO/IILS 2013).

The EU approach is the classical example of a promotional strategy and is ‘at once more expansive and more limited’ (Vogt 2015: 849). It is wider in scope, as it refers to a broader set of normative instruments, including the ILO core conventions; but more limited, as the EU has

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<sup>2</sup> The new US-Mexico-Canada Agreement, which replaced NAFTA in July 2020, may become the new prototype though.



– with a few partial exceptions<sup>3</sup> – refrained from imposing pre-ratification conditions on TSD obligations, nor linked compliance to economic sanctions or incentives. As Vogt (2015: 828) notes, ‘the EU has a general institutional predisposition against making demands on trade partners, seeking instead to offer technical co-operation and dialogue’. Post-ratification monitoring is assigned to a set of institutional dialogue mechanisms comprising an inter-governmental committee, and a civil society mechanism involving ‘domestic advisory groups’ within each trading partner (representing business, trade unions and NGOs) and a joint dialogue forum to facilitate transnational cooperation. TSD provisions are exempted from the general sanction-based dispute settlement mechanism, but subject to a separate procedure consisting of government consultations and, if necessary, the establishment of panels of experts, none of which can apply sanctions.

Scholars have criticized the juxtaposition of the EU and US approaches for overshadowing important similarities – the focus on core labor standards, dispute settlement involving inter-governmental dialogue and expert panels, civil society participation in monitoring and development programs to support implementation – and common limitations (Harrison et al 2018). Regarding post-ratification conditionality, research has pointed out limited effectiveness of sanction-based approaches due to excessive standards of proof (ILO/ IILS 2013; Vogt 2015). Of the 47 complaints filed under five US FTAs by the end of 2020 (40 under NAFTA) (Department of Labor 2021), the Department of Labor has formally investigated seven, with only one – the case against Guatemala under CAFTA-DR – having proceeded to a dispute settlement panel; and in this case, the dispute was rejected by the panel, which opined that although Guatemala failed to enforce certain labor laws, this was neither ‘sustained or reoccurring’ nor ‘in a manner affecting trade’ (Congressional Research Service 2020). Summarizing studies on the effectiveness of the EU’s TSD chapters, Harrison et al. (2018) find no evidence of positive impacts on labor standards in neither the EU nor in partner countries and identify a series of weaknesses of practically every aspect of the dialogue-based monitoring and enforcement mechanisms. Up to January 2021, the EU has in only one case, the EU-South Korea FTA – and only after eight years of sustained complaints by trade unions and other civil society actors – requested formal government consultations on the TSD chapter (IndustriAll 2020). The failure of these consultations led to the establishment of a panel of experts, which in January 2021 confirmed that South Korea breached its TSD obligations and recommended that labor laws and practices are adjusted to comply with the freedom of association<sup>4</sup>. But outcomes remain to be seen, as South Korea is not obliged to adopt the recommendations.

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<sup>3</sup> In the Columbia-Peru FTA, the European Parliament called for a binding roadmap on Columbia’s implementation of human, environmental and labour rights. While an action plan was submitted by Columbia in 2012, neither the Parliament nor the Commission demanded any proof of compliance (Vogt 2015). For Malaysia, Garcia and Masselot (2015) argue that the EU’s insistence on core labour standards during FTA negotiations set in motion an internal legal review and procedures aimed at ratification of ILO conventions on freedom of association and discrimination. They were, however, not ratified in the end, and negotiations were put on hold in 2012.

<sup>4</sup> The report is accessible online: [https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159358.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf)  
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In the context of broad critique of the EU's TSD chapters, and pressure from the Parliament, member states and civil society, the Commission in July 2017, published a 'non-paper' to open a debate on its approach (European Commission 2017). After a period of consultation, a 15-point action plan towards a 'revamped' TSD approach was presented in February 2018 (European Commission 2018). Although the overall tenets remained intact, the Commission promised to 'more assertively enforce' TSD commitments and to 'encourage early ratification of core international agreements', including ILO conventions, 'using all available tools' (see Harrison et al. 2018 on the detailed changes proposed). This recognition of pre-ratification conditionality is, likely, related to the effectiveness of the prospect of market access as a carrot for gaining concessions from trading partners. As the ILO and ILS (2013: 42) conclude, 'the available evidence suggests that addressing labor standards at the pre-ratification stage can contribute to significant improvements, ranging from triggering legislative action to speeding up ongoing legislative proposals in the country concerned'.

## **2.2. EU external power and externalization of EU governance**

The literature on labor provisions in EU FTAs draws on conceptualizations of the role and power of the EU in global governance. The concept of the 'regulatory state' (Majone 1994) captures the ways in which the EU does not simply aim to liberalize trade and investment flows, but to pursue an externalization of its regulatory regimes, including economic and social rules and regulations, which can either liberalize or restrict market activity (Orbie/Khorana 2015; Smith 2015). FTAs, in this perspective, are prominent tools for promoting 'behind the border' regulations, covering trade in goods, services and investment, public procurement, protection of intellectual property rights, trade-related 'barriers', and labor and environmental standards, among other things.

While various concepts have been used to describe the external power of the EU, two stand out, considering what the EU *is* for understanding *how* and *why* it seeks to externalize governance: the EU as a 'market power' (Damro 2012) and a 'normative power' (Manners 2002). Damro (2012) perceives the EU as an internal market that is bound to externalize its (economic and social) market-related policies and regulatory frameworks based on material interests. In contrast, the concept of the EU as a 'normative power' focuses on the ethical and ideational dimensions of European foreign policy, assessing the normative distinctiveness of the EU as a global player (Manners 2002). These concepts are often interpreted as 'norms versus interests'. This, however, neglects their interrelations, as market norms are neither 'objective categories' that 'can be separated from ideas, identities and ideologies' (Orbie/Khorana 2015: 225), nor necessarily 'neoliberal', but often involve market interventions and social regulations (Rosamond 2014). Rather, the EU's externalization of rules through trade policy responds both to interest-led motivations to open and regulate markets *and* to normative aspirations arising from the EU as a distinctive social model, including the external promotion of labor standards. But there is a clear asymmetry in how the EU pursues commercial interests through a 'hard'

approach, backed by a sanction-based dispute settlement mechanism, and labor rights through a ‘soft’, dialogue-based approach.

Continuing with the question on what the EU *is*, van Apeldoorn (2009) argues that the EU has, since the relaunch of the integration process in the 1980s, evolved into a form of ‘embedded neoliberalism’, in which a neoliberal project, premised on internal and external market liberalization and pushed by an increasingly transnational capitalist class, has subsumed elements of two contending visions, neo-mercantilism and social democracy. As a ‘hegemonic project’, embedded neoliberalism ‘seeks to advance neoliberalism through a strategy of incorporating [...] rival projects’ for the purpose of ensuring popular support and legitimacy (van Apeldoorn 2009: 22). Such understanding suggests that the EU’s promotional approach to the trade-labor nexus has ideological and political motivations, representing a weak compromise in favor of powerful interests against effective labor provisions in FTAs with the objective to legitimize and increase support for FTAs (Sicurelli 2015; Orbie et al. 2016).

Even if TSD chapters may serve this legitimizing role, they can still have positive impact on labor laws and practices of trading partners. Damro (2012) outlines three factors that predispose the EU’s ability to wield its ‘market power’ for material and/or normative objectives: (1) its *relative market size*, which affects the material incentives and beliefs of external actors, and, as such, is both an effective bargaining chip and a potent basis for coercion through (implicit) threats of market barriers or closures; (2) the *institutional capacities* needed to develop and implement regulations with extra-territorial effects, which not just requires regulatory expertise, coherence and sanctioning authority, but depends on the roles and positions of EU institutions and member states in decision-making; and (3) the relative influence of *competing interest groups* on EU institutions, each trying to steer regulation to their own favor.

While these points are useful for understanding the ways in which the EU acts in external relations, a weakness of the literature on EU external governance is that it tends to portray partner countries as mere recipients. The substance and mechanisms of governance externalization are derived exclusively from within the EU, while relations to, and dynamics in, partner countries are side-lined; a weakness that is equally evident for literature on the trade-labor nexus (Orbie/Khorana 2015; Barbu et al. 2018). As Harrison et al. (2019) argue, countering such ‘diffusionist’ approaches to external governance, it is important to interrogate the ways in which TSD chapters are translated into, and articulate with, contexts and struggles in partner countries.

### **2.3. State power, social struggles and geopolitical conjunctures**

In refocusing on partner country contexts, our approach to analyzing the trade-labor nexus integrates insights from the literatures reviewed above, but embeds them in an understanding of FTAs as agreements between states, whose interests, priorities and strategies are formed through socio-political struggles within particular geopolitical and geo-economic conjunctures. Drawing on the strategic-relational approach of Poulantzas (1978) and Jessop (1990), we conceptualize the state as an *institutional ensemble* that is, at once, imbued with distinctive

logics, resources and procedures *and a site of contestation* between socio-political forces, who ‘seek to deploy its various institutions and capacities for specific purposes’ (Jessop 1990: 366). Existing in a dialectical relationship with society, state power is always *relational* and *conditional*, shaped by the ‘action, reaction and interaction of specific social forces located both within and beyond’ state institutions and the ‘diverse structural and conjunctural factors that determine their relative weight’ (Ibid. 366). As crystallizations of past struggles, state institutions are inherently biased, privileging certain actors, strategies and interests and involving different forms of representation and intervention (Ibid. 117).

The capacity of social groups to influence state power is not formed merely at the national level, but in the context of transnational relations. FTAs are state-state regulations that mainly serve to integrate economic spaces for the expansion of global production networks, by setting rules and regulations determined largely by states in the Global North and, thereby, restricting policy space of states in the Global South (Smith 2015; Young 2015). In so doing, they institute a set of economic and, more recently labor, governance structures that influence, but are also shaped by, domestic struggles and reform processes. Such transnational governance structures can be used in domestic struggles in partner countries to influence the state and its actions (Barbu et al. 2018). We, therefore, need to analyze the interactions between external pressures around labor provisions and domestic struggles for pro-labor reform.

Within this broader conceptualization of states, FTAs and domestic policy reform, we highlight five factors that shape the impact of labor clauses – in our case the EU’s TSD chapters – on partner countries. Firstly, the approach pursued towards partner countries is influenced by the *political economy contexts and state-society relations of the EU*, in particular the relative influence of competing social forces on the key institutions involved in trade policymaking: the Commission, which *negotiates* FTAs; the Parliament, which *approves* FTAs; and member states, which, via the Council, *authorize* negotiations, *approve*, and, in the case of mixed-agreements, unanimously *ratify* FTAs (Damro 2012). These dynamics affect the *priorities* of the EU (including demands on labor reform), the *strategies* it pursues (including the question of conditionality) and its *commitment* (how far it is willing to go in terms of resources, costs and compromises). Whether the EU seeks to exploit its leverage in the pre-ratification phase and/or to make use of monitoring and enforcement mechanisms in the post-ratification phase crucially hinge on these questions, no matter which approach it formally follows.

Secondly, and correspondingly, the *political economy contexts and state-society relations of partner countries* influence the priorities, strategies and commitments *they* bring to the table. The external pressure for labor reform is more likely to succeed, if it resonates with internal social struggles; if the push for pro-labor reform emanating from the FTA is picked up by domestic actors with at least *some* capacity to influence state action. For this to happen, the labor issues raised by the FTA, and the strategies pursued by the party pushing for labor reform, must be relevant to progressive forces at the local level (see also Barbu et al. 2018).

A third set of factors relate to the *geopolitical and -economic context and perceived interests of states therein*. Presumably, the concessions and compromises that each party is ready to make in the field of labor reform depends on its wider interests in, and expected benefits from, the

FTA – including the concrete commercial interests in gaining preferential access to foreign markets, and the more abstract role of the FTA for geopolitical and -economic positioning (Barbu et al. 2018). Presiding over the largest single market in the world is, in this regard, an effective bargaining chip for ‘market power Europe’ (Damro 2012). How states navigate in specific geopolitical and -economic conjunctures, however, is strongly influenced by their domestic political economies and, hence, linked to the first two points above.

Fourthly, the *nature of transnational linkages* connecting actors within the countries in the FTA can decisively shape the outcome of labor clauses. Such transnational connections can be used to trigger a ‘boomerang effect’ (Keck/Sikkink 1998), in which reformist actors with otherwise limited voice provoke the intervention of external actors to back their demands on the state. But for such a mechanism, relationships between pro-labour actors in both countries are required. Diplomatic ties and links to international organizations, NGOs or other ‘trans-local’ actors with a ‘foot in both camps’ can facilitate such relationships as well as access to key decision-makers, help synchronize expectations and foster mutual trust and understanding.

Finally, when it comes to *implementation* of labor reform, a fifth factor is important: the multi-scalar labor regimes, in which actual work takes place. Concrete worker outcomes are shaped in a complex interplay of historically constituted workplace relations, political economies and regulatory frameworks at local, regional and national levels, as well as of power dynamics in global production networks (Smith et al. 2018; Barbu et al. 2018). Ultimately, the impact of labor clauses in FTAs depends on their encounter and articulation with these multi-scalar labor regimes, which often entail counterproductive pressures. Important to consider in this regard are the broader implications of FTAs, including trade liberalization, for the context of work, working conditions and labor rights.

Summing up, we argue that *in the pre-ratification phase* – our main frame of analysis in this article – the impact of labor clauses in FTAs depends on the extent to which (1) the EU has the political will and institutional capacity to effectively impose pre-ratification conditions upon the partner country; (2) the external pressure resonates with, supplements and amplifies internal labor struggles; (3) the FTA is, for whatever domestic, geo-political and geo-economic reasons, awarded high priority, opening a space for compromise by actors who would otherwise oppose labor reform; and (4) transnational linkages facilitate cooperation between pro-labor forces. The manifestation of these factors is linked to political economy contexts and state-society relations on both sides, and to the geopolitical and -economic conjunctures, in which FTAs are negotiated and implemented.

### **3. History and content of the EVFTA**

Bilateral relations between the EU and Vietnam are governed by the EU-Vietnam Partnership and Cooperation Agreement (PCA), signed in June 2012. The day before the signing, negotiations of a preferential trade agreement (PTA) were launched to flesh out the trade pillar of the PCA. Both agreements were preceded by failed attempts by the EU to reach a joint trade deal with the ASEAN bloc, launched in 2007 and broken down in 2009. In December 2015,

after 14 rounds of talks, negotiations of the EVFTA were formally concluded. While the original timeline aimed towards ratification in 2018, the process was delayed (Table 1), not least due to a verdict by the European Court of Justice (ECJ) on the EU-Singapore FTA in 2017, ruling that the EU does not have the mandate to conclude agreements on certain investment-related issues on its own. After being split into separate trade and investment agreements, the EVFTA was adopted by the Commission in October 2018, approved by the Council in June 2019 and, a week later, signed in Hanoi. After a green light from the Parliament in early 2020 – from the Committee on International Trade (INTA) in January and the Plenary in February – the EVFTA was concluded by the Council in March, ratified by the National Assembly of Vietnam in June and entered into force on 1 August 2020.

**Table 1: Timeline of the EVFTA**

<b>Date</b>	<b>Event</b>	<b>Date</b>	<b>Event</b>
Oct 2010	EU and VNM agree to negotiate FTA	Jun 2018	VNM agrees to split agreements
Jun 2012	Negotiations officially begin	Oct 2018	Commission adopts EVFTA
Aug 2015	Agreement on broad lines of EVFTA	Jun 2019	Council approves signing
Dec 2015	Negotiations conclude, legal review starts	Jun 2019	EVFTA officially signed in Hanoi
Feb 2016	Final draft made public	Jan 2020	INTA gives its consent
May 2017	ECJ ruling on EU-Singapore; implications for the EVFTA	Feb 2020	Parliament gives its consent
Sep 2017	EU requests VNM to split agreement	Mar 2020	EVFTA concluded by Council
		Jun 2020	Ratified by National Assembly, VNM
		Aug 2020	Enters into force

Source: Authors; Russell (2018).

In terms of content, the EVFTA entails an almost full and reciprocal liberalization of merchandise trade, eliminating 99% of tariffs, as well as provisions on non-trade barriers, international standards, competition policy and public procurement, among others (Grumiller et al. 2018). As such, it is considered ‘the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country’ (European Commission 2016: 7). With regard to the TSD chapter, as in other EU FTAs, the parties reaffirm their commitments to and obligations under the ILO 1998 Declaration, including ‘the freedom of association and the effective recognition of the right to collective bargaining’ (Art. 13.4.2d). The agreement, however, is notably vague on the ILO core conventions, requiring each party to ‘make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions’ (13.4.3a) and to ‘effectively implement in its domestic laws and regulations and practice’ the content of those conventions (13.4.4). In terms of enforcement, the TSD chapter follows the usual dialogue-based design laid out above.

The negotiations of the EVFTA took place in parallel to talks over the TPP, an FTA between 12 countries along the Pacific Rim, including the US. TPP negotiations began in 2008, were joined by Vietnam in 2010 and concluded in October 2015; and the agreement was signed in February 2016. While the TPP was scrapped with the decision of President Trump, soon after assuming office in January 2017, to withdraw from the agreement, the groundwork of US

negotiators is key to understanding the impact of the EVFTA on labor reform in Vietnam. As the EVFTA, the TPP contained a labor chapter, requiring each party to ‘adopt and maintain in its statutes and regulations’ the labor rights enshrined in the 1998 ILO Declaration. In parallel to the main agreement, the US negotiated a bilateral ‘Consistency Plan’, signed in February 2016, detailing the legal-institutional reforms that Vietnam needed to make *prior* to the entry into force of the TPP. Unlike the EVFTA, hence, the side-agreement with the US imposed *pre-ratification conditions*. Compliance with the most controversial issue, granting Vietnamese workers the right to freely form and join unions of their own choosing, was, nonetheless, given a grace period of five years (Tran et al. 2017). After the US exit, negotiations continued and in March 2018, Vietnam and ten other countries signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which retained the labor chapter, but – without the Consistency Plan – placed significantly weaker demands on Vietnam.

#### **4. The EU: Politicization and parliamentary activism**

While the EU’s position on TSD provisions in the EVFTA did not substantially differ from other FTAs during negotiations (section 4.1), the *pre-ratification* phase saw it adopt a stronger, more conditional, strategy towards Vietnam. We argue that this shift was driven by the general politicization of, and intensified social mobilization against, the EU’s free trade agenda (section 4.2) and strategic action by the Parliament and specific member states in the vacuum left by the US exit from the TPP (section 4.3).

##### **4.1. Economic interests and social biases in the negotiation process**

The Commission’s negotiating position on the EVFTA was shaped by two opposing coalitions: exporters and import-dependent interests were pushing for market opening, supported by most member states, while import-competing industries at the risk of losing out, critical civil society organizations and trade unions and a minority of member states (including France, Benelux and Scandinavian states) were more skeptical and advocated for the inclusion of clauses on human and labor rights (Sicurelli 2015). That DG Trade, in the making of the EVFTA was more receptive to business interests is indicated in its meeting activities. Via an access to information request, we have obtained a list of all meetings at which DG Trade discussed the EVFTA with external stakeholders. Of 144 meetings held between October 2012 and October 2019, eight in ten were with business actors and only one tenth with trade unions and other civil society organizations engaged in labor and social issues (the remaining tenth including environmental NGOs, government, academia and others). During negotiations, this bias was even greater, with business interests representing 92% of all meetings and labor/social NGOs representing just 2%. The data indicates that the sectors with the greatest access to DG Trade were textile, apparel and footwear (22%), wines and spirits (10%), pharma (8%) and automobiles (7%), all sectors with strong export or import interests in the EVFTA.

Sicurelli (2015: 238) emphasizes the reluctance of the Commission to include labor standards in the negotiations of the EVFTA, pushing an approach where ‘human rights would be mainly

discussed in the context of the PCA negotiations, while trade and investment matters would lead the negotiations for a PTA'. In a leaked declaration in 2010, then Trade Commissioner De Gucht made clear that the negotiations of the EVFTA would solely focus on trade and investment. Testifying to these priorities, the Commission never conducted a human rights impact assessment for the EVFTA, but only referred to the impact assessment for the ASEAN FTA (which superficially touched upon human and labor rights); an omission that the European Ombudsman judged a 'maladministration' (European Ombudsman 2015). The Parliament, however, pushed for binding labor standards. In April 2013, it passed a resolution on the human rights situation in Vietnam, which was negatively received by the Vietnamese government and threatened to undermine negotiations; an event that strengthened the Commission's caution (Sicurelli 2015). In April 2014, the Parliament adopted a resolution on the EVFTA, declaring that it 'expects the FTA to include a binding and enforceable sustainable development chapter', recalling that its 'consent to the FTA is mandatory' (European Parliament 2014). Notwithstanding these efforts, the overall strategy of DG Trade echoed previous trade negotiations, downplaying the TSD chapter during negotiations while being preoccupied with the commercial aspects. The sentiment, according to fieldwork informants, was to leave the labor question to US negotiators, who pursued it strongly in the context of TPP negotiations. Some informants observed that the lack of political will was also reflected in the composition of the EU negotiation team, which included trade economists and lawyers, but no specialists on neither labor rights, specifically, or sustainability more generally.

#### **4.2. Contestation and politicization of EU trade policy**

Over the past decade, however, EU trade policy has become increasingly contested (LeBlond/Viju-Miljusevic 2020). This trend reached a climax soon after the conclusion of the EVFTA, during negotiations of the Transatlantic Trade and Investment Partnership (TTIP), a far-reaching but now deferred FTA between the EU and the US, and the Comprehensive Economic and Trade Agreement (CETA), a similar agreement with Canada. A shift in public opinion is discernible in Eurobarometer data, according to which the share of Europeans with negative views on free trade grew from 17% in 2009 to 24% in 2016; a tendency that was more pronounced in core member states such as Germany, where it more than doubled (from 11% to 24%), and France, where it nearly doubled (20% to 36%)<sup>5</sup>. Skepticism against TTIP, specifically, was even greater, with more than half the citizens in Germany and Austria declaring to be against it. Coupled with the Brexit vote and the election of Trump as US President, both in 2016, and the qualification of national-conservative Le Pen for the second round of the French presidential election in 2017, these developments fueled fears within the EU, not least the Commission, of a backlash against its free trade agenda.

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<sup>5</sup> Eurobarometer Interactive, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/index> (15.12.2020)



The contestation of trade policy was channeled through the two democratic pillars of the EU, the Parliament and the Council. The Parliament has, since becoming a co-legislator on trade policy with the Treaty of Lisbon, demonstrated a willingness to use the threat of a veto, as evident in a sequence of events that coincides with the timeline of EVFTA negotiations – from the burial of the Anti-Counterfeiting Trade Agreement in 2012 (Van den Putte et al. 2015) to the successful push for transparency and an amended position on investor protection in TTIP and CETA in 2015/16 (Roederer-Rynning 2017a). This threat gained credibility with a weakening of the political majority behind free trade. With the three major groups on the liberal-conservative wing of the Parliament – the EPP, ECR and ALDE – favoring free trade, and both extremes of the spectrum habitually voting against it (GUE/NGL and Greens/EFA on the left; EFDD and ENF on the right), EU FTAs largely depend on the support of the social-democratic group (S&D). However, TTIP and CETA exposed deep divisions within S&D. In the final vote on the latter in February 2017 (passing it by a comfortable majority), 66 of the 175 MEPs from S&D voted no; the lowest level of cohesion among all political groups, and within S&D in *any* vote on international trade<sup>6</sup>.

Similar observations have been made regarding member states in the Council. Although the widening of exclusive EU competence in trade policy formally reduced their influence, ambiguities in the definition of competences enabled some member states to carve out a more assertive role. Several parliaments (and some governments) argued that TTIP, CETA and other ‘deep and comprehensive’ FTAs required ratification by all member states. In October 2016, after the Commission had agreed to present CETA as a ‘mixed agreement’, the risk of a member state block became concrete, when Belgium – that needed the consent of all six sub-national parliaments – (temporarily) derailed the deal due to opposition from the parliament of Wallonia (Roederer-Rynning/Kallestrup 2017). To gain clarity, the Commission in July 2015 asked the ECJ to give its opinion on the allocation of competences, using the EU-Singapore FTA as a test case. The Court delivered its opinion, with important implications for the EVFTA, in May 2017, stating that while the EU *does* have exclusive competence in several areas, others – notably portfolio investment and investor-state dispute settlement – fall under *shared competences* with member states (European Commission 2017).

In this context of growing public dissatisfaction and social mobilization, crystallized through the Parliament and the Council, the Commission took steps to improve the legitimacy of FTAs (Orbie et al. 2016). The decision to make TSD chapters mandatory in October 2015 and initiate a public debate on the approach in July 2017, which led to the 15-point action plan towards a more ‘assertive’ TSD chapter, should be seen in this light. A shift in rhetoric is also corroborated by a content analysis of 79 speeches by trade commissioners from 2013 to 2017, showing that, since late 2016, the Commission has invoked a discourse on ‘managed globalization’, subordinating trade policy to objectives such as social justice and sustainable development (Garcia-Duran et al. 2020).

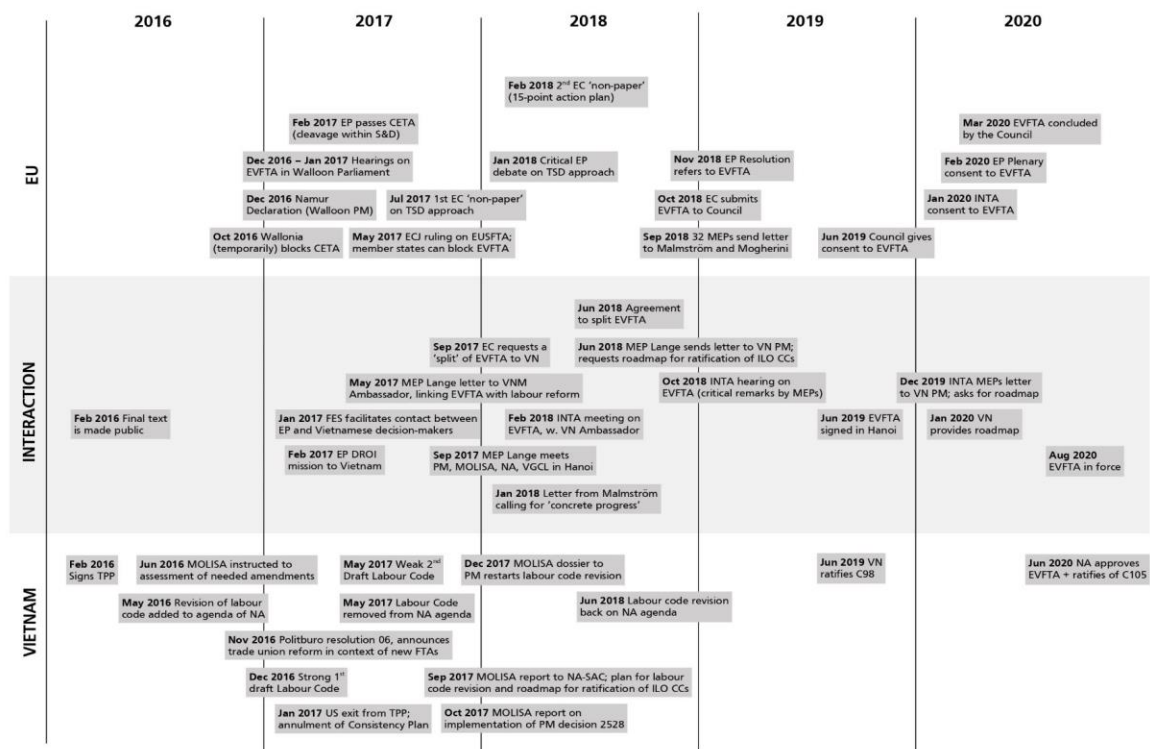
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<sup>6</sup> According to votewatch.eu data (09.01 2021)  
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### 4.3. The Parliament and few member states pick up pre-ratification pressure

While the EU's turn to a conditional strategy *after* the EVFTA had been concluded was informed by these broader developments, it can only be understood as the outcome of strategic action by specific members of the Parliament, supported by a few member states, in the vacuum left by the US withdrawal from the TPP, as shown in Figure 1.

**Figure 1: Chronological overview of key events in pre-ratification phase of EVFTA**



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While high US pressure during TPP negotiations was leveraged by reformists in Vietnam, the momentum was halted when Trump pulled out in January 2017 (Tran et al. 2017). As director of the ILO in Vietnam, Chang-hee Lee, recalled, ‘when the US withdrew from TPP in early 2017, most people in Hanoi thought the reform agenda had died, together with the incentive of US market access’<sup>7</sup>. In this situation, the European Parliament stepped in, pushing the boundaries of its institutional mandate by leveraging the threat of non-consent to engage in direct negotiations with Vietnamese decision-makers and pull the Commission into a stronger bargaining position.

<sup>7</sup> Public hearing in INTA, 2 Dec 2019. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting\\_20191202-1500-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting_20191202-1500-COMMITTEE-INTA_vd). ieWorkingPaper No. 12, 2021

Although the sub-committee on human rights (DROI) was also engaged<sup>8</sup>, it was the involvement of the chairman of INTA, Bernd Lange (S&D), presiding over the first bottleneck in the Parliament's two-step consent procedure, that most decisively drew the EU towards pre-ratification conditionality. In a letter in May 2017, Lange congratulated the Vietnamese government on the ongoing labor code revision, stressing its relevance for the EVFTA and the keen interest of the Parliament in the process. In September 2017, he headed a mission to Vietnam. In meetings with the Prime Minister, the Ministry of Labor, Invalids and Social Affairs (MOLISA), the National Assembly and VGCL, among others, Lange stressed that Vietnam's ratification of the outstanding ILO core conventions was a precondition for getting the EVFTA through the Parliament. Speaking to the press in Hanoi, he told reporters that human and labor rights are 'really at the heart of the discussion' and 'unless satisfactory solutions are found, the agreement will be in troubled water' (BBC 2017). From then on, this was the message that Lange consistently communicated to Vietnamese decision-makers, making the autumn 2017 a critical moment in the EU's shift to a conditional approach.

The parliamentary pressure on Vietnam and the Commission continued throughout 2018. Important actions include an INTA meeting in February, where MEPs – in the presence of the Vietnamese ambassador – voiced concerns over the labor rights situation<sup>9</sup>; a letter to the Vietnamese Prime Minister in June 2018, in which Lange requested a roadmap for the ratification of ILO conventions 87, 98 and 105; and a working trip to Hanoi in July, where he reiterated that concrete movement on the labor reform was needed for him 'to sell the deal' (VietnamPlus 2018). The risk of a parliamentary veto was exposed at a public hearing in INTA in October, attended by Malmström and the Vietnamese chief negotiator, where several MEPs from S&D (and even the center-right EPP) joined the call for pre-ratification conditions on labor standards<sup>10</sup>. A few weeks later, the Parliament passed a resolution that, with direct reference to the prospective ratification of the EVFTA, urged Vietnam to join all relevant UN human rights treaties and ILO conventions (European Parliament 2018).

Also, the second veto mechanism in EU trade policymaking was activated. In the Council, the influence of member states was particularly strong in the pre-ratification phase of the EVFTA, linked to the 'window of leverage' that emerged when the ECJ in May 2017 delivered its opinion, clarifying that the EVFTA was a 'mixed agreement' that needed *unanimous* ratification by all, and *could be blocked by any* of, the member states (Russell 2018). This window closed in June 2018, when the Commission convinced Vietnam to split the EVFTA, despite its promise not to use the 'possibility to split trade agreements to avoid submitting them to national ratification' (European Commission 2017b). Some member states – most strongly Spain and Belgium – used this leverage to pose questions over Vietnam's human rights record

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<sup>8</sup> In February 2017, a delegation from DROI visited Vietnam, making clear that the passing of the EVFTA by the Parliament would need tangible improvements in the human and labour rights situation.

<sup>9</sup> Meeting in INTA, 20 February 2018. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade\\_20180220-0900-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade_20180220-0900-COMMITTEE-INTA_vd).

<sup>10</sup> Meeting in INTA, 20 October 2018. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting\\_20181010-1500-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting_20181010-1500-COMMITTEE-INTA_vd).

and push for concessions on labor reform. While the opposition of Spain most likely reflected the influence of import-competing interest groups in the textile and apparel industry (Sicurelli 2015), the Belgian position was aimed at preventing having to block another agreement. In the wake of CETA, the Walloon parliament stepped up its scrutiny of FTAs in the pipeline, including three hearings on the EVFTA (VietnamPlus 2017); and the Walloon Prime Minister, Paul Magnette, presented a ‘Namur Declaration’, calling for the obligatory ratification of key human and labor rights instruments in EU FTAs<sup>11</sup>. Faced with such internal disagreement, the Belgian federal government made the TSD provisions a top priority. In the Council, according to interview partners, Belgium put a reserve on signing the agreement over the three ILO conventions; and in bilateral relations with Vietnam, diplomats actively pointed to CETA and their pressure in the Council. As an informant remembered, ‘we put it in all our bilateral meetings, and it was one of the biggest speaking points for our ministers: “we want you to ratify the three conventions”’.

With the Parliament ‘holding a gun to Malmström's head over Vietnam’, as a journalist put it, and tensions in the Council, the Commission responded. In January 2018, Malmström sent a letter to Hanoi, requesting ‘concrete progress’ on ‘freedom of association and the right to collective bargaining’ and warning that the Commission would ‘pay close attention to the reform of the labor code’ (Politico 21 Jan 2018). Rather than resisting the pull, the Commission ‘simply hopped on board’, as described by an informant. The Commission needed to show results, generally in the area of FTAs but particularly regarding its increasingly criticized TSD approach. Particularly for staff in the TSD unit of DG Trade, hence, the EVFTA became a critical case for proving that a ‘revamped’ TSD approach, as proposed in the 15-point plan, could deliver results, thereby pre-empting demands for a more sanction-based model by the Parliament. For these internal drivers, the activation of veto powers in the policymaking apparatus was convenient, as it bolstered their leverage within the Commission and towards the Vietnamese government.

Once Vietnam agreed to the split, turning the EVFTA into an ‘EU-only’ deal that could be voted through the Council by a qualified majority, the Commission in October 2018 submitted the text to the Council. In June 2019, despite a letter from 14 MEPs urging the EU to ‘do everything in its power to secure at least some tangible human rights improvements in Vietnam before signing and ratifying the EVFTA’, the Council endorsed the EVFTA; and five days later, Malmström and the Vietnamese Minister for Industry and Trade signed the deal (Reuters 2019). With the agreement through the first veto mechanism, MEPs made a last attempt to gain further concessions from Vietnam. In mid-December 2019, Lange and other INTA members sent a letter to the Vietnamese Prime Minister, asking for further commitments, including a roadmap for the implementation of the TSD commitments (S&D 2019). After Vietnam had ratified Convention 98 (June 2019), passed a new labor code (November 2019) and submitted a written

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<sup>11</sup> <https://www.bilaterals.org/?namur-declaration&lang=en>  
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and binding roadmap (January 2020) did INTA, in January 2020, pass the EVFTA, paving the way for the Plenary vote the following month, where the Parliament finally gave its consent.

## **5. Vietnam: External pressure as an amplifier of internal struggles**

The EU's shift to a more conditional strategy in the pre-ratification phase of the EVFTA is, however, less than half the story. In Vietnam, the pressure from the EVFTA linked up with internal reform processes that had been ongoing since the 1980s and was used by a minority faction of reformists to drive forward their agenda within the party-state. After a brief overview of the historical trajectory of labor reform in Vietnam (section 5.1), we examine how internal reformists, in the context of the US pull-out from TPP, turned to the EU (section 5.2), and how this process was facilitated by 'translocal' actors with operations in the EU and Vietnam (section 5.3).

### **5.1. The responsive-repressive party-state and the long road to labor reform**

While authoritarian states are often interpreted in monolithic terms, the Vietnamese party-state has long been an arena of negotiation and intermediation between competing interests and factions (Vuving 2017) and proven responsive to grassroots pressure, in particular if emanating from workers or peasants, the two primary constituencies and sources of political legitimacy for the Vietnamese Communist Party (VCP) (Kerkvliet 2010; Dixon 2004). The VCP, however, is intolerant when its supremacy is challenged, and demands for fundamental political reforms – including independent unions – have been suppressed. To capture this, Kerkvliet (2010) argues that Vietnam can best be understood as a 'responsive-repressive party-state'.

Since Vietnam embarked on the *doi moi* ('renovation') reforms and the transition to a 'socialist market economy' in the 1980s, labor reforms have been ongoing, fluctuating with the vicissitudes of internal factionalism, domestic struggles and geopolitical shifts. An early attempt to carve out a space of autonomy for the VGCL was halted by the events of 1989-90 – the Tiananmen protests in China and the fall of communism in Central and Eastern Europe, not least Poland where the first independent union was instrumental in bringing down the regime (Schweissheim/Chi 2018). In the second half of the 2000s, a wildcat strike wave, sweeping through Vietnam's export sectors, reenergized the reform process. Bypassing the formal union, the surge in labor activism challenged the legitimacy of both the VGCL (as a worker representative) and the VCP (as 'vanguard of the working class'); and although strikes were mainly concerned with material conditions and forced the government to raise minimum wages, they also became a catalyst for union reform (Chi/van den Broek 2013). In a 2008 landmark directive, the Politburo, the highest authority in the political system, called on enterprise unions to 'become actual representatives to protect workers' legitimate rights and interests' (Politburo 2008). In the following year, a comprehensive revision of the Labor Code – after smaller amendments in 2002 and 2006 – was initiated.

The making of the new law, however, exposed the cleavages within the party-state. While the push for union reform came from the government (especially MOLISA), reformists in the VCP, the National Assembly and the strike-ridden provinces of the South, it was opposed by conservatives in the Party and the VGCL, among others. When the new law arrived, hence, it was a compromise between reformist and conservative factions. On the one hand, it introduced quarterly labor-management meetings and for this purpose (only) permitted workers to elect representatives. On the other hand, it gave upper-level VGCL branches the right to represent workers in non-unionized enterprises in collective bargaining and disputes (Schweisshelm/Chi 2018). Although the 2012 labor code is ‘frequently interpreted as the introduction of “social dialogue” into the Vietnamese context’ (Tran et al. 2017: 407), it maintained the subordination of the VGCL to the VCP and did little to change its monopoly.

## **5.2. FTAs as reform catalysts and the turn to the EU as external leverage**

In the latest round of reforms, labor clauses of the TPP and the EVFTA were instrumental in breaking internal resistance on union reform (Tran et al. 2017; Evans 2018). Especially the pre-ratification pressure linked to TPP provided crucial leverage for reformists, as it legitimised open discussions on old taboos related to independent unions, shifted domestic discourses and incentivized policy experimentation (Evans 2020). In this context, the VGCL hesitantly embraced the calls for reform, shifting from being an outright opponent of independent unions to more proactively engaging in the process and preparing itself for future competition. In 2012, the VGCL announced that it no longer opposed the TPP; an announcement that enabled the Vietnamese negotiating team to move forward in the reform discussions with the US (Evans 2018). As Evans (2018) highlights, this switch was motivated by the VGCL wanting to make union reform an internally-driven process rather than externally imposed. Two developments further helped reformists convince conservatives that independent unions were a necessary evil. First, Vietnam had since 2008 found itself in an economic slowdown, with GDP growth falling below 6% in 2008-09 and 2012-14 (World Bank 2021). Reviving the economy was critical, not least due to waning loyalty to socialist ideas and the shift to ‘performance legitimacy’, based on continuous improvements in living standards, as the key source of legitimacy for the VCP (Hiep 2012). Second, the growing assertiveness of China, including aggressions in the South China Sea, which culminated in mid-2014 in a six-week naval standoff and anti-Chinese protests across Vietnam (Thayer 2017), revealed the need to diversify foreign relations. This episode convinced many conservatives that the rewards of joining the new FTAs – in commercial and geopolitical terms – outweighed the costs, paving the way for a new reform consensus (Evans 2020).

The importance of the TPP in pushing ahead union reform is indicated by the decision of the Prime Minister in December 2015 to approve MOLISA’s plan for accession to ILO conventions in the period 2016-20, instructing Ministries to bring laws in line with ratified conventions and study the possibilities for joining additional ones, including ILO conventions 87, 98 and 105 (Prime Minister 2015). The strongest signal of change, however, came in November 2016 with

Resolution 06 by the Politburo, setting out the priorities for the implementation of the new-generation FTAs, including a reform of the VGCL and a revision of the legal framework to allow for (and manage) independent grassroots unions (Politburo 2016; Chi 2017). This new direction was expressed in the first draft labor code released by MOLISA in December 2016. The US withdrawal from TPP, however, obstructed the reform process, as evident in the ‘erosion of the right to form independent trade unions’ in the second draft issued in March 2017 (Tran et al. 2017: 410); and in May 2017, the Standing Committee of the National Assembly entirely removed the labor code revision from the law-making agenda (Nhan Dan 2017). As a Vietnamese labor expert remembered, ‘everyone here was so depressed – there was nothing going on, after two years where we had been working like crazy, pushing and hoping and everything’.

In this situation, reformists – particularly from VGCL and MOLISA – were actively seeking new external drivers to boost their internal influence, and, from early 2017 onwards, turned their attention to the EU. A high-ranking EU diplomat remembered how ‘we were now left alone with a lot of requests from all sides and felt we had a bigger responsibility than before’. A political advisor to INTA recalled how, during a fieldtrip in January 2017, a VGCL official proposed the idea that the EU could take up the role as ‘outside catalyst of change’; and a bureaucrat from DG Trade described how, later that year, a ‘lonely warrior’ in MOLISA was asking the EU to help garner domestic support. In the EU – and especially in the INTA committee – they found a group of allies with converging interests. The chronology of events, and our interviews, support the argument that the EU’s newfound assertiveness was instrumental in reinvigorating the labor reforms. But, also, the heightened domestic and geopolitical/-economic importance of the EVFTA in the wake of the loss of TPP and an escalating trade war between the US and China boosted leverage on the Vietnamese party-state. The turning point that tilted the balance in favor of the reformist faction was the September 2017 visit by Bernd Lange. Two weeks ahead, MOLISA delivered an official report to the Social Affairs Committee of the National Assembly, outlining its plan for the labor code revision and a new roadmap for ratification of the three outstanding ILO conventions; a document that, according to an independent evaluation for the ILO, ‘restart[ed] the process with renewed and stronger commitment’ (ILO 2019a: 10). In December, MOLISA formally reopened the rewriting of the labor code with the observation that the existing law was incompatible with ILO conventions and, therefore, Vietnam’s commitments under the new FTAs (Government of Vietnam 2017); and the following summer, the labor code revision returned on the law-making agenda (Nhan Dan 2018). As the ILO director in Vietnam later stressed at a hearing in the European Parliament, the pressure from the EU ‘boosted the voice of champions of reform in the system, who have always recognized the freedom of association and collective bargaining for effective labor market functioning in Vietnam. The EVFTA

enabled them to gain influence inside the system and make the progress we witnessed this year, in 2019'<sup>12</sup>.

The 2019 labor code, which entered into force in January 2021, brings substantial changes to the industrial relations framework of Vietnam. The law for the first time granted workers the right to form and join 'worker representative organizations' (WROs) at the enterprise level, and to be represented by these in workplace dialogue and collective bargaining<sup>13</sup>. The law also provides for better protection against anti-union discrimination and employer interference in union activities, in accordance with ILO convention 98 (ILO 2019b). Despite these improvements, significant gaps remain. Among other things, the new WROs must authorize with the government (that can also revoke authorization); are excluded from forming or joining federations at sectoral or regional levels; are not represented in tripartite bodies; are funded solely via membership fees (in contrast to VGCL unions that are co-funded by a 2% union tax on the employer); and cannot include persons facing criminal charges (under an elastic Criminal Code) in leadership positions. For these reasons, the new WROs face a highly uneven playing field, making the new labor code incompatible with ILO convention 87 and necessitating further amendments ahead of its planned ratification in 2023.

### **5.3. 'Translocal' facilitators: the EU delegation, FES and ILO**

The EU's stepping into the TPP vacuum was facilitated by 'trans-local' actors with on-the-ground operations in Vietnam. Watching the reform process stagnate after the removal of US leverage, these actors activated their contacts in the EU and facilitated interaction with key decision-makers in Vietnam. One informant described their role as facilitators, 'translating expectations and interpreting realities', while another saw their function as enabling the parties to 'resonate and echo rather than infringe upon each other', which they did through close coordination and contact on a weekly – and, in certain periods, daily – basis.

First, members of the EU's own diplomatic delegation in Vietnam, hosted by the EEAS, early on anticipated the risk that the EVFTA could be blocked by the Parliament or the Council and had, for some time, advocated a more assertive strategy. Diplomats interested in progress on labor reforms were also worried that ratification would mean an end to the EU's leverage, and that DG Trade and its negotiators, a relatively small team, would shift focus elsewhere and lose sight of implementation. For these reasons, members of the EU delegation, especially the Ambassador, were instrumental in bringing parliamentary delegations to Vietnam, seeking, as described by one informant, to 'turn the Parliament into some sort of Congress', actively using the risk of a veto as a bargaining instrument. An EU diplomat explained how the delegation 'was using the European Parliament as *the* main argument against the Vietnamese government,

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<sup>12</sup> Public hearing in INTA, 2 Dec 2019. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting\\_20191202-1500-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting_20191202-1500-COMMITTEE-INTA_vd).

<sup>13</sup> An English translation of the 2019 labour code is available on: <http://nhankiet.vn/vi/r2579/The-Labor-Code-2019--Effective-Jan-01-2021.html>



to get leverage and make the Vietnamese move forward on a lot of things. We consistently pointed to the Canadian example, saying that “you shouldn’t take anything for granted”.

Second, the Friedrich-Ebert-Stiftung (FES), associated with the German labor movement and one of the first international non-profit organizations to open in Vietnam in 1990, had for years been supporting the VGCL in redefining its role in the context of the transition to a market economy (Chan 2019). According to our interviews, FES played a critical role in inviting INTA into the vacuum, putting staff from Lange’s office in touch with high-ranking VGCL officials at a conference in Hanoi in January 2017. Lange and FES also collaborated on the drafting of a ‘progressive and ambitious’ model labor chapter for EU FTAs, proposing stronger pre-ratification conditionality and sanction-based dispute settlement, which they presented at a joint event in Brussels in June 2017 (FES 2017).

Third, the ILO, in Vietnam since 2003, had been deeply involved in reforms of labor laws and industrial relations, providing technical assistance to Vietnamese authorities on building a legal-institutional framework in line with international labor standards, with a focus on the ILO conventions 87 and 98. When the US pulled out, our interviews suggest, the ILO in Vietnam was also looking for actors who could replace the US as external driver and shifted focus to the EVFTA. Facilitating access to top decision-makers, the ILO co-organized the high-level meeting in September 2017, where Lange met with leaders from the National Assembly, MOLISA and VGCL, among others (ILO 2019a). In addition, throughout the pre-ratification phase, the ILO assisted MOLISA in drafting the legal documents needed to satisfy the requirements of the Parliament and later the Commission. More generally, the ILO played an important role through its status as international organization. Evans (2018) argues that Vietnamese leaders would not have accepted demands coming too directly and prescriptively from the EU – or the US – and that reference to the ILO core labor standards was critical. The ILO, moreover, played a strategic role in presenting options to the Vietnamese government, thus increasing ‘ownership’ (Evans 2018).

## 6. Conclusions

In this article, we assessed the role of the EVFTA in the ground-breaking labor reforms initiated by Vietnam in the run-up to ratification. We argue that the EVFTA *did* play a crucial role as an external reform catalyst and that this impact was the outcome of social struggles within and around state institutions in the EU and Vietnam, as well as their mediation across transnational space. It was shown how the EU, after the conclusion of negotiations, adopted a more assertive approach to the TSD chapter. This shift played out against the backdrop of a wider politicization of EU trade policy but was driven by specific MEPs and member states in the vacuum left by the US exit from TPP. While this turn to *de facto* pre-ratification conditionality is key, however, the impact of the EVFTA can only be understood in its interaction with longstanding struggles over labor reform *within* Vietnam. These struggles, in conjunction with prior external pressure through the TPP, prepared the ground for union reform, and the EU effectively ‘entered an open door’ or, more accurately, was drawn into it by reformists seeking new external leverage. Rather

than fundamentally changing the internal dynamics, the EU's stepping-up on pre-ratification conditions tilted the balance in favor of the reformist faction in the party-state. The impact of the EVFTA should, therefore, be seen more as a 'catalyst' of change than a root cause, as has also been argued for the TPP (Chi 2017; Chan 2019).

Our analysis suggests that the impact of the EVFTA was contingent upon the historical conjunctures, in which it occurred. These conjunctures play out in concrete political economy contexts and state-society relations and are formed by the geo-political and -economic interests linked to FTAs and the nature of transnational linkages. In stressing the importance of multi-scalar and interrelated conjunctures in explaining the effect of labor clauses in FTAs, we transcend the distinction between promotional and conditional approaches. Our point is not that the formal design of labor clauses is irrelevant, but that how they play out and impact is formed in the context of struggles and power dynamics within and between the signatory parties. Extending Vogt's (2015: 859) observation that 'agreements will only be as useful as the politicians desire them to be', we would add – in the tradition of strategic-relational state theory – that such desires are related to evolving social struggles and state-society relations.

This approach also emphasizes that the 'success' of the EVFTA, context-dependent as it was, does not easily lend itself to replication. Although the van der Leyen Commission has taken steps towards a stronger position on the trade-labor nexus – including the appointment of a Chief Trade Enforcement Officer in July 2020, tasked with strengthening the enforcement of TSD commitments on labor rights, among other things (European Commission 2020), and the announcement of *An Open, Sustainable and Assertive Trade Policy* in February 2021 (European Commission 2021), it is doubtful whether the EU has the political will to prioritize pre-ratification conditionality on labor standards in future FTAs. Ongoing negotiations of an FTA with Indonesia, for instance, seem to indicate that this is not the case. Under influence of export-oriented and import-dependent factions of European capital, DG Trade is unlikely to allow TSD provisions to obstruct market-opening instruments. The critical question is whether the Parliament is ready to consolidate its expanded role by placing demands on partner countries as a condition for its consent to FTAs. Even in that case, however, our analysis shows that conditions in Vietnam were particularly conducive to EU intervention. In other countries, a similar complementarity between TSD provisions, EU strategy and domestic labor struggles may not be there. Indeed, as Harrison and colleagues (2019: 273) sum up previous research, while the EU has hitherto not 'sought to 'aggressively' export labor standards through its trade agreements', 'neither have state officials in trading partners readily imported them'.

Concluding, it needs to be stressed that – as path-breaking as the new labor code and ratification of ILO core conventions are *on paper* – they are no guarantee for improvements for Vietnamese workers *in practice*. The effect of these legal-institutional initiatives depends on their implementation, which relates to both domestic politics and to the efficacy of the dialogue-based mechanisms that are, just now, being established to monitor the TSD chapter. The workings of these institutional mechanisms may prove challenging in the context of the limited independent civil society in Vietnam and will be contingent on EU involvement and pressure. Moreover, the EVFTA arguably has the contradictory effect of promoting respect for core labor

standards, while expanding and deepening the integration of Vietnam into labor-intensive global production networks, such as apparel and electronics, widely seen to undermine those same standards. In this sense, there may be contradictions between the TSD provisions and the broader commercial chapters of the EVFTA. Finally, it is uncertain whether independent enterprise-level unions will aid workers in improving their situation. Over the past two decades, wildcat strikes have become an effective instrument for Vietnamese workers to gain higher wages and other material concessions. If the new WROs end up curbing such informal labor activism by co-opting workers into institutionalized – but ineffective – channels of dispute settlement, they may, in fact, weaken their bargaining power vis-à-vis employers.

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