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EU-Vietnam Free Trade Agreement

A study of EVFTA's impact on authoritative control in Vietnam's
business environment

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Summary

Vietnam's and the EU's history of regulated trade relations emanates from 1996 when the first bilateral agreement covering trade entered into force between the parties. The bilateral trade relationship has developed ever since. Ratification of the EU-Vietnam Free Trade Agreement is expected in mid-2020, a comprehensive free trade agreement between a developing country and an international organisation. Vietnam is a developing country in which the Communist Party controls the functioning of the state at all levels of society.

The EU-Vietnam Free Trade Agreement is referred to as the most ambitious free trade agreement that the EU has ever concluded with a developing country. National companies, as well as EU-companies in Vietnam, will be affected when the agreement enters into force. This leads to questions on how the agreement will impact Vietnamese authoritative state control of companies in Vietnam.

The European Commission has set out the elements of transparency, civil society engagement, open markets and improvement of legal frameworks as essential elements within trade in their policy from 2015. These elements are pervasive in the EU-Vietnam Free Trade Agreement and permeate many of the agreement's conditions. In this thesis, the agreement's conditions will be examined to determine what conditions and how the four elements can be used to influence state control of companies in Vietnam. Further, the conditions' effect on EU- and national companies in Vietnam will be scrutinised. It will be argued that the four elements can be used to address structural problems in Vietnam as well as challenge the separated roles of the Vietnamese state and companies. Even though the EU-Vietnam Free Trade Agreement can be perceived as too ambitious and unadjusted for companies in Vietnam, the conditions can foster development and be a driving force for positive changes in the long term.

Sammanfattning

Vietnams och EU:s historia av reglerade handelsförbindelser härrör från 1996 då det första bilaterala handelsavtalet mellan parterna trädde i kraft. Sedan dess har det bilaterala handelsförhållandet utvecklats. Ett nytt frihandelsavtal mellan EU och Vietnam förväntas ratificeras i mitten av 2020. Frihandelsavtalet är omfattande och ingås mellan ett utvecklingsland och en internationell organisation. Vietnam är ett utvecklingsland där kommunistpartiet kontrollerar hela statsapparaten på alla samhällsnivåer.

Frihandelsavtalet mellan EU och Vietnam benämns som det mest ambitiösa frihandelsavtal EU någonsin har ingått med ett utvecklingsland. Nationella företag och EU-företag i Vietnam kommer att påverkas när avtalet träder i kraft, vilket leder till frågor om hur avtalet kommer att påverka det vietnamesiska utövandet av statlig kontroll över företag i Vietnam.

Insyn, engagerat civilsamhälle, öppna marknader och förbättring av rättsliga ramar benämns av Europeiska Kommissionen som viktiga handelselement i deras handelspolicy från 2015. De fyra elementen genomsyrar många av frihandelsavtalets villkor. I denna avhandling kommer avtalets villkor undersökas för att utreda i vilka villkor de fyra elementen kan användas för att påverka statskontrollen över företag i Vietnam. Därutöver kommer villkorens effekter på EU- och nationella företag i Vietnam granskas. De fyra elementen kan användas för att ta itu med strukturella problem i Vietnam och utmana de separerade rollerna mellan den vietnamesiska staten och företagen. Även om frihandelsavtalet mellan EU och Vietnam kan uppfattas som för ambitiöst och dåligt anpassat för företag i Vietnam, kan villkoren främja utveckling och vara en drivkraft för positiva förändringar på lång sikt.

Preface

A number of persons have helped make this thesis and field study possible. First, I would like to thank all those who participated in interviews and meetings, for contributing not only with their time and knowledge but also with their experiences and thoughts.

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Ida Köhler

Lund, 26 May 2020.

Abbreviations

EU	European Union
EVFTA	EU-Vietnam Free Trade Agreement
FCA	Cooperation Agreement between the European Community and Vietnam
FTA	Free Trade Agreement
GATT	The General Agreement of Tariffs and Trade
GSP	General Scheme of Preferences
ILO	International Labour Organization
IP	Intellectual Property
IPR	Intellectual Property Rights
NGO	Non-Governmental Organisation
PCA	Framework Agreement on Comprehensive Partnership and Cooperation between the EU and Vietnam
UN	United Nations
WIPO	The World Intellectual Property Organization
WTO	World Trade Organisation

1 Introduction

1.1 Background

Vietnam is a fast-growing and competitive economy which is expected in the near future to ratify a free trade agreement (FTA) with the European Union (EU), the EU-Vietnam Free Trade Agreement (EVFTA). According to EU's former Commissioner for Trade, Cecilia Malmström, the agreement is the most ambitious and comprehensive trade and investment agreement that the EU ever has concluded with a middle-income-country.¹ The comprehensiveness lies in the various covered areas as sustainable development, human rights, environment, worker's rights, open markets, amongst others. Ratification of the EVFTA will benefit the EU and Vietnam in many ways, for example elimination of over 99% of customs duties on export in both directions. It will also limit Vietnam's freedom within economic affairs due to strong commitment to cooperation of the Vietnamese government. For example, the agreement will allow access for EU-companies to compete for Vietnamese government contracts (and vice-versa) and easier for EU-companies to operate within the Vietnamese postal, banking, insurance, environmental and other service sections.²

Increased transparency, engaged civil society, open markets and improved legal frameworks are often discussed in connection with FTAs. In 2015, the European Commission issued a new trade policy strategy named *Trade for All*. A strategy with the purpose to promote and integrate EU values in global value chains and to make trade and investment more effective. The four elements are set out as important values in the strategy and described as following: (i) transparency is fundamental to better regulation and to hinder undermining of EU's trade strategy and public trust (ii) civil society involvement is vital to maximise the potential of trade agreements (iii) open

¹ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 6.

² See European Parliament Legislative Train Schedule (website), Bourgeois, 'EU-Vietnam Free Trade Agreement 2019', accessed 14 February 2020.

markets are important to hinder unfair practices (iv) improve the legal framework is necessary to enforce standards at both domestic and international level that will hinder corruption and weak governance.³ These elements are overreaching in the EVFTA. Open hearings in dispute settlements, advisory groups with representatives from civil society, the opening of government procurement and commitments to International Labour Organization (ILO) Conventions are concrete examples of each of the elements. This means that Vietnam, by ratifying the EVFTA, will agree on conditions integrating on national influence and governance. Mina Mashayekhi, Head of Trade Negotiations and Commercial Diplomacy Branch at United Nations (UN) Conference on Trade and Development, has emphasised that deeper integration in regional trade agreements may constrain developing countries' ability to pursue proactive national development strategies. Mashayekhi further explains that benefiting from regional trade agreements requires resources and infrastructures as well as respect to size and economic conditions.⁴

The EVFTA is described as a clear and transparent legal framework which will enable predictability vital for businesses in order for the parties to make long term plans.⁵ As Vietnam is one of Asia's most authoritarian states⁶, the impact of an FTA with comprehensive regulations and increased transparency can be discussed on many levels. Both EU- and national companies will be affected by the EVFTA conditions in different ways and the Vietnamese government has to adopt and implement the agreement.

³ European Commission, 'Trade for All - Towards a more responsible trade and investment policy' (2015) p. 16, 19, 23, 26.

⁴ United Nations Conference on Trade and Development UNCTAD/DITC/TNCD/2004/7, 'Multilateralism and Regionalism: The New Interface' (2005) p. 1, 7.

⁵ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 25.

⁶ See Utrikespolitiska Institutet (website), 'Landguiden – Demokrati och Rättigheter', accessed 20 February 2020.

The content in EVFTA is comprehensive, which confirms its status of the most ambitious FTA ever concluded between the EU and a developing country. One of the strong commitments for Vietnam after the ratification of the EVFTA is to implement ILO core standards, a significant change for Vietnam as trade unions do not exist at present.⁷ Substantial changes in government control in Vietnam lies ahead. At present, the Vietnamese government, through the Communist Party, controls the functioning of the state at all levels of society.⁸ Giving access to government contracts and allow independent trade unions are unique acts for Vietnam, leading to questions on how the EVFTA will affect the state control of companies within the country.

The EU's *Trade for All* strategy sets out criteria and values as high social and environmental standards and respect for human rights.⁹ The EVFTA is not an exception, and the values are included in the agreement, both as an overreaching principle in the preamble and specified in dedicated chapters. As Chapter 13 of the EVFTA, that requires the parties to respect and effectively implement the principles of the ILO concerning fundamental rights at work and to implement international environmental agreements effectively. The EVFTA focuses on human rights by, inter alia, affirming the party's commitment to crucial international human rights principles and instruments.¹⁰ However, in September 2018, 32 members of the European Parliament signed a public letter to raise concerns on Vietnam's ongoing infringements on human rights, calling Vietnam to make improvements on the area before the ratification of the EVFTA.¹¹ These concerns show

⁷ See European Parliament Legislative Train Schedule (website), Bourgeois, 'EU-Vietnam Free Trade Agreement 2019', accessed 14 February 2020.

⁸ See Utrikespolitiska Institutet (website), 'Landguiden – Demokrati och Rättigheter', accessed 20 February 2020.

⁹ European Commission, 'Trade for All - Towards a more responsible trade and investment policy' (2015) p. 22.

¹⁰ European Commission, 'EU-Vietnam Trade Agreement - Standards and Values' (2019) p. 1-2.

¹¹ See European Parliament Legislative Train Schedule (website), Bourgeois, 'EU-Vietnam Free Trade Agreement 2019', accessed 14 February 2020.

EVFTA's controversiality as questions on state control and infringements on human rights in Vietnam are raised.

The aim of EVFTA is that free trade will make all parties, EU and its Member States as well as Vietnam, better off. Yet, the differences between the parties are many, which consequently will lead to various effects for them. The EU is a political and economic union with 27 Member States¹², and Vietnam is a developing country with a vibrant economy with more than 90 million consumers.¹³ The difference between the EU and Vietnam (henceforth also referred to as 'parties') is vital and will probably result in diverse change and adoption measures for Vietnam than for the EU after the ratification of EVFTA. Some members of the European Parliament are worried that Vietnam will not keep their promises while other members believe in EU's strengthening role in Vietnam.¹⁴

1.2 Purpose and Research Questions

By this thesis, I want to investigate how the EVFTA between the EU as an international organisation and Vietnam as a developing country can be used to affect authoritarian state control of companies in Vietnam. By focusing on the four elements of transparency, civil society engagement, open markets and improvement of legal frameworks, the following research questions will be answered: *Which conditions in the EVFTA can impact state control of EU- and national companies in Vietnam? How are the four policy elements used in these conditions? What effects can these conditions have on EU- and national companies in Vietnam?*

¹² The European Union (website), 'The EU in brief – Goals and values of the EU', accessed 26 March 2020.

¹³ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 6.

¹⁴ See VOA News (website), 'EU Approves Trade Deal With Vietnam', accessed 30 March 2020.

1.3 Previous Research and Limitations

EVFTA has been subject to extensive discussion since the negotiations began between the EU and Vietnam in December 2012. Various countries have analysed the impact EVFTA will have on their economies and trade relations, impacts as access to exports, cheaper imports and more advanced technology that improves productivity.¹⁵ The subject has been debated in media around the globe, mainly with a focus on human rights, labour rights and the economic advantages of the EVFTA. Several EU countries have chambers of commerce in Vietnam working, and publishing information on the EVFTA.¹⁶ Even though the published material and previous research discuss the agreement and its potential impact on trade relations and economies, there seems to be a gap in the literature from the legal perspective in terms of change of government control for Vietnam within the business environment.

Many publications are covering the human rights aspects. Non-Governmental Organisations (NGOs) are raising concerns on the monopoly power of the Communist Party in Vietnam and discuss EU's leverage over Vietnam when the agreement enters into force.¹⁷ These publications tend to focus on how the EU could and should pressure Vietnam to implement a larger number of international agreements and commit to a broader range of reforms, mainly within human and labour rights, than the EVFTA includes at present.¹⁸ This thesis seeks to cover how the present conditions and commitments in the EVFTA can change the Vietnamese control within the business environment. An area that is not covered in current publications where further commitments for Vietnam is the core focus. By examining the conditions within the four elements affecting government control in Vietnam, it enables a discussion on

¹⁵ See Spanish Chamber of Commerce in Vietnam (website), Baker, Vanzetti, 'European Union Signs Free Trade Agreement (EVFTA) With Vietnam', accessed 20 February 2020; German Federal Foreign Office (website), 'European Parliament approves free trade agreement with Viet Nam', accessed 20 February 2020.

¹⁶ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 74.

¹⁷ Amnesty International, 'Prisoners of Conscience in Viet Nam' (2019) p. 1.

¹⁸ See Human Rights Watch (website), 'EU: Press Vietnam on Human Rights Reforms - Upcoming Dialogue Should Focus on Commitments Made in Recent Trade Deals', accessed 27 March 2020.

the impact on companies. Conditions as broadening the dispute settlement scope, increased transparency and demand for ratification of international agreements can affect the Vietnamese influence and control of companies to some extent.

The EVFTA was accompanied by the Investment Protection Agreement between the EU and Vietnam, promoting high-quality investment between the parties. However, the two agreements were split in 2018 due to different ratification procedures. Since the EVFTA and the investment agreement are rather broad and comprehensive, two forms of limitations have been made in this thesis. Firstly, the investment agreement will be omitted since it requires ratification from all EU Member States and is therefore not expected to be ratified in the near future. By focusing on the EVFTA, the research questions will be answered as they concern companies and not investors. Investors' rights are a different and important area of law that has been saved for subsequent research.

Secondly, limitations with regards to the EVFTA have also been made as the agreement is comprehensive and covers broad areas, as well as specific areas on a detailed level. Sustainable development and human rights are examples of broad areas, while renewable energies and alcoholic beverages are examples of more specific areas. The conditions investigated are those within the elements of transparency, civil society engagement, open markets and improvement of legal frameworks. As the subject state control is comprehensive in its entirety and can be discussed from countless angles, the discussion needs to be narrowed to relevant elements to enable a fruitful discussion. The abovementioned elements are chosen since they are set out in EU's trade strategy, but also frequently discussed in the legal doctrine on free trade. Consequently, to avoid a too narrow approach, technical and specific conditions within the detailed areas have been omitted. This means that the conditions as those on alcoholic beverages and renewable energies will not be discussed in this thesis.

1.4 Method and Material

Two different methods are used in this thesis, the legal-dogmatic method and field research. Firstly, the legal-dogmatic method is a method where the generally accepted legal sources are studied to analyse and draw conclusions on what recognised law is and how it should be interpreted.¹⁹ Thus, the legal-dogmatic method has a two-pronged approach. To describe the recognised law and to identify connections and principles based on the description. This thesis focuses on *de lege lata*, the current legal environment rather than *de lege ferenda*, suggestions on how the legal environment should be.²⁰ The thesis focuses on the current legal environment in Vietnam since it permits an understanding of how the conditions in the EVFTA can affect the Vietnamese government control, which is crucial to fulfilling the purpose of the thesis. The legal-dogmatic method is used in the descriptive parts of the thesis, whereas the Vietnamese legal environment and the relevant EVFTA conditions are examined. In order to properly discuss the change in control for the Vietnamese state on companies, the legal-dogmatic method has been used to investigate and systemise the conditions in EVFTA. The systematisation has been done to examine the structure of the relevant EVFTA conditions and provide an understanding of how they can affect the Vietnamese control.²¹

Secondly, the study has permitted a field research in Vietnam, enabled by a scholarship program financed by the Swedish International Development Cooperation Agency.²² The field research has enabled interviews and dialogues with companies, legal academics and employees at international corporations in Vietnam. The interviews and dialogues have led to an understanding of the comprehensive legal system in Vietnam and the hierarchy of laws and norms, as a complement to the legal-dogmatic method.

¹⁹ Nääv, Zamboni (2018) p. 21, 26.

²⁰ Ibid. p. 36.

²¹ Peczenik (2005) p. 1.

²² See Universitets- och högskolerådet (website), ‘Minor Field Studies, MFS’, accessed 12 February 2020.

By discussing the legal system with national legal professionals, relevant legal material could be ascertained, and the discussions led to a critical approach towards the system as a whole. The critical approach towards the Vietnamese legal system was essential to fulfil the purpose of this thesis. The level of state control is high in Vietnam and the freedom of press and freedom of speech is strongly restricted.²³ As the purpose of the thesis is a discussion on impacts on state control, relying solely on the Vietnamese state's published material would be adversarial. Conversations behind closed doors enabled an understanding of how written published material can be manipulated and controlled by the Communist Party, which is of importance to understand the function of the state and legal documents in Vietnam. Further, the critical approach towards the legal system was vital in regard to the interviews as well. The interviewed companies are operating in an authoritative state where laws and state control have a different signification than in more developed and democratic countries. Therefore, an understanding of their reality enabled adapted questions to avoid misunderstandings.

Relevant Vietnamese law has been used as a source to enable an understanding of the national legal system and the present government control. It would be impossible to examine the EVFTA conditions effect on companies in Vietnam without an understanding of the legal system and government control in the country. A great number of translated domestic laws can be found on the internet, to be consistent and ensure qualitative translations Lawsoft²⁴ (Thư viện pháp luật) have been used. Lawsoft is an online law library with translated documents, used and recommended by Vietnamese legal professionals. Further, EU documents on free trade, in particular documents and guides on EVFTA have been used to gather information on the agreement and the conditions as such. Articles from scholars and international organisations, as the World Trade Organisation (WTO) and the World Bank, have been used to broaden the view on the four

²³ See Utrikespolitiska Institutet (website), 'Landguiden – Demokrati och Rättigheter', accessed 18 February 2020.

²⁴ See Thư viện pháp luật (website), accessed 21 February 2020.

elements in international trade agreements and their effect on government control.

The field research has been crucial to the developing of a nuanced picture on the change in control of the Vietnamese state on companies when the EVFTA enters into force. The interviews were conducted in March 2020 in Hanoi. As Vietnamese legal material is difficult to attain from abroad and increased controls on internet use in the country, the field study made it possible to access information from companies that are otherwise challenging or impossible to attain. The collected material is of qualitative nature and the results give insight to the companies' situation and anticipation on effects on the change in government control within the EVFTA. It is important to keep in mind that the interviews were held with the company leaders and are therefore not representative of the companies as a whole. The material is representative only for the views of the respondents. It gives indications on the effects in this context, but it does not intend to represent the Vietnamese business sector in its entirety. Thus, the material is crucial to understand the present government control of companies and to enable a comparison to the EVFTA conditions.

The interview respondents explained that the frequent wording 'in accordance with the law' in the domestic regulations is a loophole for the government to implement legal documents without notice. Law is described by the interviewees to be whatever the government decides it to be. Therefore, it would be impossible to interpret the present government control without inside information from companies in the country. Thus, also impossible to examine the potential impact of EVFTA without direct dialogues with affected companies. The interviewees and company names are anonymised due to the risk of reprisals on freedom of speech and criticising the government in Vietnam. All participants received information on the thesis and its purpose before the interviews.

1.5 Outline

Following the introduction, the second chapter provides an insight into the Vietnamese legal system and an overview of the EVFTA. This chapter aims to give the reader relevant background information to enable an understanding of the legal status of the EVFTA and Vietnam's legal capacities on companies in the country at present. The third chapter will set out the relevant EVFTA conditions with potential effects on the Vietnamese government control of companies. Chapter four continues with an examination of the conditions' connection with the four elements together with an explanation of the elements (transparency, civil society engagement, open markets and improvement of legal frameworks) in the context of trade agreements. The examination is done to provide an understanding of how the elements are used in the EVFTA to change the Vietnamese state control of companies. Further, the fifth chapter connects the practical experience from the field research to the academic research. This connection will give indications and tendencies on how the conditions and change in government control can impact Vietnamese companies in its national context. Chapter six will provide an analysis of the conditions and use of the four elements. Finally, chapter seven will present the author's conclusions on how the EVFTA can be used to affect state control of companies in Vietnam.

2 Vietnam and International Trade Law

2.1 Introductory Remarks

Vietnam has a history of three decades of war in the 20th century.²⁵ Reforms, called *Doi Moi* (renewal), were introduced in the 1980s, five years after the end of the Vietnamese war. Inflation on more than 700% kick-started the reform process, a new generation of politicians took over, and the reforms contributed to economic growth and reduced poverty.²⁶ This has led the country to a transformation from one of the poorest countries in the world to a lower-middle-income country in 25 years.²⁷ Article 69 of the Vietnamese Constitution states that the National Assembly is the highest representative organ of the people and the highest organ of state power.²⁸ The National Assembly is the only body that has the supreme supervisory power over the implementation of the constitutions and laws, and by law, the Communist Party's policies are transformed into legal regulations applicable to the entire society.²⁹ There is no share in power between legislative, executive and judicial authorities. The only political party allowed is the Communist Party. This has resulted in widespread corruption and strong political influence in the legal system, which leads to a lack of legal certainty.³⁰

A sovereign state, like Vietnam, has rights and obligations and is free to enter agreements that may limit its autonomy. As in this case, within international trade. Consent is the legal basis of treaty obligations and a legally binding

²⁵ See Utrikespolitiska Institutet (website), 'Landguiden Vietnam', accessed 14 February 2020.

²⁶ See Utrikespolitiska Institutet (website), 'Landguiden Modern Historia', accessed 14 February 2020.

²⁷ See Embassy of Sweden Vietnam (website), 'Vietnams ekonomi', accessed 14 February 2020.

²⁸ The Constitution of the Socialist Republic of Vietnam, Hanoi, 28 November 2013, art. 69.

²⁹ Hồng Quỳ et al. (2015) p. 31.

³⁰ Regeringskansliet, Utrikesdepartementet, 'Vietnam – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2018' (2019) p. 5.

agreement only creates legal obligations for the parties.³¹ A treaty is defined as an international agreement governed by international law and concluded by two or more international subjects with treaty-making capacity. The EVFTA is a bilateral trade agreement between two international subjects, EU as an international organisation and Vietnam as a sovereign state. The EVFTA reflects the will between the two international subjects to apply international law as a means of regulating their trade interests. A sovereign state cannot be forced to enter into a legally binding agreement.³² Accordingly, the EVFTA needs to be ratified by Vietnam to be binding under international law.³³

The International Court of Justice has stated that ‘A state is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligations...’.³⁴ By becoming a party to an FTA Vietnam will be bound to particular trade relations with the EU and limit their freedom in trade and economic affairs. Strong commitments on fundamental labour rights, environmental protection and respect for human rights are described as significant for the EVFTA. The EU underlines its effort to support and further enhance economic growth and development for the Vietnamese people.³⁵

The international law of trade is one of the fundamental areas of international economic law. The modern international economic system originates in the Bretton Woods conference 1944. The General Agreement of Tariffs and Trade (GATT) was created at the conference, an international organisation for the regulation of trade. The GATT was meant to establish an international trade organisation but failed, and it took many years until the GATT system

³¹ Henriksen (2019) p. 41.

³² Ibid.

³³ See European Parliament (website), ‘Parliament approves EU-Vietnam free trade and investment protection deals’, accessed 17 February 2020.

³⁴ ‘Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)’, Merits Judgement 27 June 1986, ICJ Rep 14, para. 276.

³⁵ Delegation of the European Union to Vietnam, ‘Guide to the EU-Vietnam Trade and Investment Agreements’ (2019) p. 25.

was replaced. In 1995 the WTO, as an international trade organisation, replaced the 1944 system.³⁶

Vietnam became the WTO's 150th member in 2007, after eight years of negotiations. The membership negotiations were closely accompanied by the Vietnamese economic reforms, ensuring Vietnam's constant economic growth. The WTO membership was described to help Vietnam refine its reforms and create openings for trade expansion.³⁷ The government of Vietnam has settled a socio-economic development strategy for the years 2011-2020, aiming to make the country modern and industrialised. Legal reforms under this strategy are still undertaken. Since Vietnam became a member of the WTO, the process of reforming its domestic legislation to align with international standards has continued to be a priority.³⁸ One example of domestic reforms is a decree³⁹, issued by the government in June 2015 to resolve problems like corruption and state interference in the economy. The decree included the abolishment of certain limitations on foreign ownership in state-owned companies in approximately 150 social sectors. This was an important step for Vietnam towards adopting the Vietnamese economy to the international context.⁴⁰

2.2 Vietnam - an Authoritative State?

Several legal reforms have been undertaken since the beginning of *Doi Moi* and the number of legal documents has increased. The Vietnamese economy changed from centrally planned into a market economy after the introduction of *Doi Moi* and the legal documents thereby increased to adapt the laws and regulations to the new economy. As laws and guidelines on civil and commercial relations. The Vietnamese legal system constitutes a civil law

³⁶ Henriksen (2019) p. 213.

³⁷ See World Trade Organization (website), 'General Council approves Viet Nam's membership', accessed 31 March 2020.

³⁸ European Chamber of Commerce in Vietnam, 'Whitebook Trade & Investment Issues and Recommendations' (2019) p. 19.

³⁹ Guidelines for some Articles of the Law on Investment, No. 118/2015/ND-CP.

⁴⁰ See Utrikespolitiska Institutet (website), 'Landguiden Vietnam', accessed 9 March 2020.

system, in which legislation adopted by the National Assembly is the most important source of law in Vietnam. Policies are set out by the Communist Party, the only political party in Vietnam, which can lead to legal changes in the country. An example of such policy is the *Doi Moi* renovation, which enabled changes in many legal areas. Changes as amending the Constitution and implement new Company Laws were enabled through the *Doi Moi* policy to meet the policy's requirement on the economic renovation.⁴¹ The superior legal documents are the Constitution, together with Acts and Resolutions authorised by the National Assembly. These normative legal documents are applied widely and considered to be the best basis for law and also sufficient to regulate social relations. Other sources as customary law and precedents are disregarded to a large extent, meaning that customary law is generally not recognised in Vietnam. The only exception has been within the social field of marriage, family and the civil fields where customary law has limited recognition. The limited recognition of customary law within this field is a result of the changes in economic and social relations after the *Doi Moi*. The reason for this is that recognised legal documents in this field have been insufficient after the changes, which provided some space for customary law. However, the application of the customary law is limited since there is no legal framework provided for its recognition.⁴²

There are insufficiencies in the Vietnamese legal system, such as uncoordinated and overlapping legal documents. The legal documents are many and issued in different forms as acts, resolutions, decrees, decisions and directions. The number of legal documents leads to overlapping and difficulties in understanding of their legal status. This results in legal uncertainty for the population, which have effects in the field of business as well as the private sphere.⁴³ Scholars have criticised the Vietnamese system of law as it addresses general patterns of behaviour and may be unusable to real situations. This can be explained by the fact that social relations are too

⁴¹ Hồng Quỳ et al. (2015) p. 31, 34.

⁴² Ibid. p. 27.

⁴³ Ibid. p. 16-17.

complex to anticipate, and real-life events may consequently disclose gaps in the law. These gaps are especially within the social field, where complex relations are more common than in the business field.⁴⁴

International treaties are also a source of law in Vietnam and play an important role in the development of the legal system. International treaties become a source of law after ratification of the National Assembly. Legal documents are issued for interpretation of international treaties into domestic law and created to replace prevailing and contradictory regulations.⁴⁵

As the Vietnamese economy changed from centrally planned into a market economy, it required a renovation within the state-owned sector. During the first years after the reforms and renovation, more than a third of the state-owned companies disappeared and millions of workers lost their jobs. The reduction of state-owned companies led to the set-up of many thousands' new private companies, which lead to the growth of a new branch of business.⁴⁶ Although the state-owned companies have been reduced and reforms have been enforced, the Communist Party still controls the functioning of the state at all levels of society.⁴⁷ The Vietnamese state keeps part of the state budget undisclosed, leading to increased corruption and economic neglect. Vietnamese exports have increased since the reforms were introduced, but economic state interference and unprofitable state-owned companies are still addressed as structural problems in the country.⁴⁸

Vietnam's involvement in 16 bilateral and multilateral FTAs with 56 economies has led to further reforms on administrative procedures and improvements on the legal framework. The government is still working on

⁴⁴ Hồng Quỳ et al. (2015) p. 31.

⁴⁵ See Oxford Business Group (website), 'A look at Vietnam's legal system', accessed 1 April 2020.

⁴⁶ See Utrikespolitiska Institutet (website), 'Landguiden Vietnam', accessed 18 February 2020.

⁴⁷ See Utrikespolitiska Institutet (website), 'Landguiden – Demokrati och Rättigheter', accessed 20 February 2020.

⁴⁸ See Utrikespolitiska Institutet (website), 'Landguiden Vietnam', accessed 3 April 2020.

these reforms to reach a more favourable business climate, transparent administration and reorganisation of state-owned companies.⁴⁹

2.3 Current Status on State Control in Vietnam

According to the Montevideo Convention on the Rights and Duties of States, a state must have a government.⁵⁰ However, the Convention is not ratified by and binding for Vietnam but contains the most accepted criteria for statehood.⁵¹ Someone must exercise control over the territory and the population of the state to some extent and with a minimum of law and order.⁵² There are no requirements on the form of the government or the form of governing, which means that governing in accordance with the wishes of the population is not required.⁵³ There is no generally accepted view on to what extent the government of a state should control the territory and the population, nor any formula on how government control should be combined with self-determination. In this thesis, state and government control of companies implies the influence and impact that the Vietnamese state, through the Communist Party, has on the companies and their activities. Influences such as the Vietnamese state's provisions on administration and controls on market shares within different sectors.

As the Communist Party controls the functioning at all levels of society, the business sector and companies in Vietnam are not excluded from government control and authoritative acts.⁵⁴ The Constitution of 1992, the first constitution after the renovation, illustrated the newfound importance of business freedoms in Vietnam. Article 57 stated 'Citizens have the right to

⁴⁹ European Chamber of Commerce in Vietnam, 'Whitebook Trade & Investment Issues and Recommendations' (2019), p. 23-24.

⁵⁰ Montevideo Convention on the Rights and Duties of States, Montevideo 26 December 1933, art. 1(c).

⁵¹ Henriksen (2019) p. 63.

⁵² Linderfalk (2012) p. 15.

⁵³ Henriksen (2019) p. 64.

⁵⁴ See Utrikespolitiska Institutet (website), 'Landguiden – Demokrati och Rättigheter', accessed 20 February 2020.

freely do business in accordance with the law'.⁵⁵ Years later, when the Constitution was amended in 2001, new articles on private sectors and economic development were added. The purpose was to encourage business freedoms but also to give foreign investors better conditions, such as providing favourable conditions and attracting investors with modern and environmentally friendly technology.⁵⁶

Even though state-owned companies have been reduced since the reforms, they have still been a backbone of the Vietnamese economy and have in recent years created around 40% of the country's gross domestic product.⁵⁷ The process of privatisation of state-owned companies is still ongoing and state-ownership develops into concentrated areas, such as service and the military.⁵⁸ This process demonstrates that Vietnam is heading towards less state interference within business and influence on companies. Thus, private companies in Vietnam are subject to comprehensive administrative procedures governed by the state, and the system is often criticised for its lack of transparency.⁵⁹

Civil society engagement is strongly restricted in Vietnam. NGOs are allowed, but Vietnamese law provides extensive requirements for registration. This leads to complications for non-registered NGOs to operate since they are not allowed to receive support from international organisations if they are not registered in Vietnam. Activities that are deemed to be harmful to national security, public order or the country's traditions are prohibited. These activities are not clearly defined, but referred to in Vietnamese criminal law as propaganda against the state or exploitation of democratic freedoms and rights to violate the state's interests. Digitalisation has led to civil society engagement online. Bloggers, journalists, human right defenders and other

⁵⁵ The Constitution of the Socialist Republic of Vietnam, Hanoi 15 April 1992, art. 57.

⁵⁶ Hồng Quý et al. (2015) p. 59-60.

⁵⁷ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 63.

⁵⁸ See Utrikespolitiska Institutet (website), 'Landguiden – Ekonomisk översikt', accessed 18 February 2020.

⁵⁹ European Chamber of Commerce in Vietnam, 'Whitebook Trade & Investment Issues and Recommendations' (2019), p. 24.

activists reach and engages a wide range of the population through the internet. Questions on the environment, human rights and corruption are raised. Meanwhile, the state has intensified its surveillance of civil society, and the authorities are exercising greater control than before and placing restrictions on organisations' operations. A national law on cyber security entered into force in Vietnam in 2019.⁶⁰ The law is expected to further tighten the government control of the internet by imprecise wording and criminalisation of spreading false information online.⁶¹

2.4 Vietnam and the European Union

Formal diplomatic relations between the EU and Vietnam were established in 1990 and the EU has had diplomatic representation in the country since 1996. Bilateral trade and investment links have increased from the start of the diplomatic relations between the parties. EU has been the second-largest foreign market for Vietnamese products for years, and Vietnam's fourth most important two-way trading partner after China, South Korea and the US. The trend started in 2004 when the EU and Vietnam concluded the bilateral negotiations of Vietnam's accession to the WTO. Making the EU first of the big WTO members conclude a bilateral agreement with Vietnam, which enabled mutual market access on both sides three years before Vietnam became a member of the WTO.⁶²

As abovementioned, the EU *Trade for All* strategy sets the EU values for trade. The strategy leads off with trade being described as one of EU's top political priorities since it is an instrument for boosting the economy without burdening state budgets. Moreover, the trade policy, in combination with development cooperation, is described as a great instrument to promote growth in developing countries. One of EU's aims is to ensure that economic growth corresponds with social justice, respect for human rights, high labour

⁶⁰ Cyber Security Law, No. 24/2018/QH14.

⁶¹ Regeringskansliet, Utrikesdepartementet, 'Vietnam – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2018' (2019) p. 6, 9-10.

⁶² Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 13.

and environmental standards, health and safety protection. These aims are demanded to be promoted in EU-treaties, as stated in article 21(e) in the Treaty on European Union as a general provision on the EU's external action and required within trade action as well. Trade agreements are a way to give political momentum to the promoting of high standards and EU standards.⁶³

Today, the bilateral relationship is governed by the Framework Agreement on Comprehensive Partnership and Cooperation between the EU and Vietnam (PCA).⁶⁴ The PCA has expanded the bilateral relation in the area of trade, environment, energy, science, technology, good governance, human rights, culture, tourism, migration, corruption and organised crime since it entered into force in October 2016.⁶⁵ However, trade relations between the parties started in 1996 when the Cooperation Agreement between the European Community and Vietnam (FCA) entered into force.⁶⁶ Objectives as promoting the increase and development of bilateral trade were introduced in the FCA preamble and stated as one of the principal objects in the agreement's second article.⁶⁷ The EVFTA will include a legally binding link to the PCA to ensure that human rights, democracy and the rule of law are essential elements of the future bilateral trade relations. Thus, the PCA will still be in force and function as a framework agreement between the EU and Vietnam.⁶⁸

The fourth chapter in PCA consists of 11 articles regulating the trade relations between the EU and Vietnam. Working towards the elimination of barriers to trade and promoting the parties' development and diversification of commercial exchanges are general principles set out in the PCA. The parties

⁶³ European Commission, 'Trade for All - Towards a more responsible trade and investment policy' (2015) p. 7, 20, 22.

⁶⁴ Framework agreement on comprehensive partnership and cooperation between the European Union and its Member States, of the one part, and, the Socialist Republic of Vietnam, of the other part [2016] OJ L 329/8 (PCA).

⁶⁵ Council of the European Union, Press Release 191/20 30/03/2020, 'EU-Vietnam: Council gives final green light to free trade agreement', p. 1.

⁶⁶ Cooperation Agreement between the European Community and Vietnam COM/2013/0924 final, Hanoi, 14 May 1996.

⁶⁷ Council of the European Union, Press Release 191/20 30/03/2020, 'EU-Vietnam: Council gives final green light to free trade agreement', p. 1.

⁶⁸ See Delegation of the European Union to Vietnam (website), 'Vietnam and the EU', accessed 27 March 2020.

are reaffirming their existing obligations under the WTO membership in the framework agreement. Besides those obligations, the only specified area within trade in the chapter is intellectual property rights (IPR). However, the article on IPR does not contain any binding obligations for the parties.⁶⁹

Accordingly, the PCA will not be replaced by the EVFTA as they are of different character, the PCA a framework agreement and the latter a detailed FTA. Yet, many areas in the PCA are covered in the EVFTA. The conditions on changes in government control of companies in Vietnam will be examined further in the next chapter. The EVFTA text at present and used in this thesis is the text agreed on at the end of negotiations.⁷⁰ The agreement is not yet binding under international law and will not be until ratification by each party according to its internal legal procedures have been done.⁷¹

⁶⁹ PCA, ch. 4, art. 12-22.

⁷⁰ See EVFTA text at present: European Commission (website), 'EU-Vietnam trade and investment agreements Free Trade Agreement', accessed 22 May 2020.

⁷¹ See European Commission (website), 'EU-Vietnam trade and investment agreements', accessed 4 April 2020.

3 The EU-Vietnam Free Trade Agreement

3.1 Introductory Remarks

The negotiations of the EVFTA started in December 2012 and were completed in 2018. The EVFTA was initially combined with the Investment Protection Agreement between the EU and Vietnam, but the parties decided to split them in 2018. This decision enables the EVFTA to be ratified by the EU alone, without involving the Member States, since trade policy is an EU exclusive competence. Areas in which the EU alone is able to legislate and adopt binding acts are exclusive competences.⁷² Conversely, the investment agreement covers shared competences, the non-direct investment and investor-state dispute settlement mechanism are mixed responsibilities on which the EU share decision-making powers with the Member States. Therefore, the Investment Protection Agreement requires ratification by all Member States.⁷³ Both agreements were signed by the EU and Vietnam in June 2019.⁷⁴ The European Parliament gave its consent to both agreements in February 2020 and the ratification of EVFTA is expected by the Vietnamese National Assembly in mid-2020.⁷⁵

The EVFTA will enter into force one month after the parties have notified each other that their legal procedures are completed. International treaties are recognised as international law in article 38(1) Statute of the International Court of Justice. Although the article is directed to the International Court of Justice, it is considered of general relevance.⁷⁶ As for Vietnam, the EVFTA

⁷² Consolidated Version of the Treaty on the Functioning of the European Union [2012] C 326/01, art. 3(1).

⁷³ See European Parliament Legislative Train Schedule (website), Bourgeois, 'EU-Vietnam Free Trade Agreement 2019', accessed 21 February 2020.

⁷⁴ See European Commission (website), 'In Focus – EU-Vietnam Trade Agreement Investment Protection Agreement', accessed 17 February 2020.

⁷⁵ See European Parliament (website), 'Parliament approves EU-Vietnam free trade and investment protection deals', accessed 17 February 2020.

⁷⁶ Henriksen (2019) p. 22-23.

will thereby become binding under international law since Vietnam recognises international treaties as a source of law.⁷⁷

A 99% elimination of tariffs on both sides is described by the EU as one of the main benefits with the EVFTA. 65% of EU exports to Vietnam will become duty-free from day one and the remaining trade, with an exception for a few products, will be liberalised and duty-free after ten years.⁷⁸ Vietnam transformed from being one of the world's poorest countries to become a lower-middle-income country in 2010.⁷⁹ Since Vietnam became a lower-middle-income country, the foreign development assistance has been reduced.⁸⁰ The change of Vietnam's economic status has had effects on trade since Vietnamese products benefit from unilaterally offered trade preferences by the EU under the General Scheme of Preferences (GSP). These preferences remove import duties from products coming to the EU market from vulnerable developing countries which generates additional export revenue and fosters growth in the vulnerable countries income as well as supporting economic growth and job creation.⁸¹ As the GSP applies to vulnerable developing countries, the change of economic status in Vietnam no longer justifies a favoured treatment reserved for developing countries. However, the rules of origin negotiated in the EVFTA share main features with those of the GSP.⁸² This has led to the EVFTA allowing maintenance of previous GSP advantages that removes import duties from Vietnamese products when entering the EU market.⁸³

⁷⁷ See Oxford Business Group (website), 'A look at Vietnam's legal system', accessed 1 April 2020.

⁷⁸ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 26.

⁷⁹ See United Nations Development Programme (website), 'About Viet Nam', accessed 4 March 2020.

⁸⁰ Regeringskansliet, Utrikesdepartementet, 'Vietnam – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2018' (2019) p. 7.

⁸¹ European Commission, 'The EU's Generalised Scheme of Preferences (GSP)' (2015), p. 1.

⁸² European Commission, 'The Economic Impact of the EU - Vietnam Free Trade Agreement' (2017) p. 23.

⁸³ European Commission, 'EU-Vietnam Trade Agreement – Main Benefits' (2019) p. 1.

The EU has set out main benefits for companies on both sides within the EVFTA. These benefits will, according to the EU, increase trade and support jobs and growth for both parties. Ambitious controls on state-owned companies, state aids to avoid biased advantages to local companies, better protection for EU innovations and brands from being unlawfully copied are some of the main benefits described by the EU. As earlier mentioned, improved access for EU-companies to a broader range of service sectors in Vietnam is also described as a main benefit within the agreement.⁸⁴

3.2 The Relevant EVFTA Conditions

The elements of transparency, civil society engagement, open markets and improvement of legal frameworks are recurrent in the EVFTA conditions, but the elements as such are not specified in the conditions. The following subheadings will set out the relevant conditions where the four elements are pervasive. However, the conditions' connection to the four elements will be categorised, further explained and discussed in the following chapter.

3.2.1 Intellectual Property

It is challenging for intellectual property (IP) holders to take action against IPR infringements in Vietnam. EU reports show that infringements are frequent across the country, and the effect of sanctions against infringers are insufficient in combination with a lack of trained IP officials. The most frequent IPR infringements are in street markets where the level of counterfeit and pirated goods is alarming. The sanctions are not deterrent enough to lower the levels of IPR infringements as the Vietnamese enforcement system is highly complex, which results in insufficient actions against the infringers. Through the EVFTA, Vietnam will agree to extensive changes to its domestic legal framework on IPR, which is of specific importance for the EU business interests. These extensive changes have to be done since Vietnamese IP

⁸⁴ European Commission, 'EU-Vietnam Trade Agreement – Main Benefits' (2019) p. 3-4.

regulations do not comply with the requirements in the EVFTA, but the EVFTA does not put requirements on domestic legal changes as such.⁸⁵ Chapter 12 of the EVFTA contains four sections and 12 comprehensive articles on IPR whilst the area is covered in one article in the PCA.⁸⁶ The separate chapter and number of articles in the EVFTA indicate on a broader regulation on IP and better protection for EU innovations, brands and artwork from being unlawfully copied. These have been described above as being main benefits.⁸⁷

A notable change for trademarks in the EVFTA is the definition of ‘genuine use’ condition for protection against non-use cancellation action. Meaning that trademarks that are not genuinely used by the owners can be liable to revocation if not been put to genuine use in a continuous period of five years. The trademark can also be liable to revocation if it has become the common name in the trade for a product or service of which it is registered.⁸⁸

Geographical indications are another change to be seen if both parties ratify the agreement. Geographical indications are marks to identify a product as originating in a specific country, region or locality and its quality, reputation, or other characteristic has to be linked to its geographical origin.⁸⁹ The parties agreed on ‘enhance cooperation’ on IP and ‘appropriate means to facilitate protection and registration of the other party's geographical indications in their respective territories’ in the PCA.⁹⁰ A change in this field can be seen in the EVFTA, which provides each party to have a system on the registration and protection of geographical indications. The EVFTA also provides a register with a listing of the party's geographical indications, and an

⁸⁵ European Commission, ‘The Economic Impact of the EU - Vietnam Free Trade Agreement’ (2017) p. 17, 21.

⁸⁶ PCA, ch. 4, art. 20.

⁸⁷ European Commission, ‘EU-Vietnam Trade Agreement – Main Benefits’ (2019), p. 3-4.

⁸⁸ Delegation of the European Union to Vietnam, ‘Guide to the EU-Vietnam Trade and Investment Agreements’ (2019) p. 45; EU-Vietnam Free Trade Agreement (EVFTA), ch. 12, art. 22(1).

⁸⁹ Delegation of the European Union to Vietnam, ‘Guide to the EU-Vietnam Trade and Investment Agreements’ (2019) p. 45.

⁹⁰ PCA, ch. 4, art. 20(2).

administrative process verifying the links to the geographical origin.⁹¹ This will result in protection against imitation for 169 traditional European drink and food products from a specific geographical origin in Vietnam.⁹²

Another significant change in the EVFTA is the copyright changes since Vietnam will accede to The World Intellectual Property Organization (WIPO) Internet Treaties, consisting of the Copyright Treaty and the Performances and Phonogram Treaty. The Internet Treaties sets out rules aiming to prevent unauthorised access to and use of copyright material on digital networks. Further, they ensure protection for the owners of those rights when their works are distributed through new technologies and communications systems.⁹³

Two requirements for Vietnam to ensure effective use of technology for right holders to protect their rights are stated in the Internet Treaties. Firstly, the obligation of adequate legal protection and effective remedies against encryption. Secondly, prohibiting the deliberate alteration or deletion of electronic rights management information. Information as the protected materials creator, performer or owner and the terms and conditions for its use. By this, Vietnam is required to enforce effective remedies against circumvention of technological measures and ensure prohibition of alteration and deletion of information.⁹⁴

At present, Vietnam has 20 Laws and 65 Regulations covering IPR to different extents.⁹⁵ The Vietnamese IP system has been criticised for its complexness, and the enforcement system makes it challenging for IPR holders to take effective actions against IPR infringements.⁹⁶

⁹¹ EVFTA, ch. 12, art. 24.

⁹² European Commission, 'EU-Vietnam Trade Agreement – Main Benefits' (2019) p. 2.

⁹³ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 45.

⁹⁴ Ibid.

⁹⁵ See The World Intellectual Property Organization IP Portal (website), 'Viet Nam', accessed 6 April 2020.

⁹⁶ European Commission, 'The Economic Impact of the EU - Vietnam Free Trade Agreement' (2017) p. 17.

The International Chamber of Commerce has stated that Vietnam can benefit from a robust IP enforcement regime in the same way as more developed countries. They need to establish an appropriate legal and institutional framework, create awareness on the subject and protect industries reliant on patents and trademarks to enable production of products that can improve quality of life in Vietnam. For instance, within the textile, pharmaceutical and software industry.⁹⁷

3.2.2 State-Owned and Private Companies

The EVFTA will equal the playing field between state-owned and private companies when state-owned companies are involved in commercial activities. Furthermore, the rules on transparency and consultations on domestic subsidies in the EVFTA are the most ambitious Vietnam has ever agreed to in an international agreement.⁹⁸ Chapter 11 in the EVFTA applies to three categories of companies: (i) state-owned companies (ii) companies granted special rights or privileges (can be private or public) (iii) selected monopolies engaged in a commercial activity.⁹⁹ ‘Commercial activities’ are defined as activities where the end result is the production of a good or supply of a service, being sold in the relevant market in quantities at prices given by the company and are assumed to be profit-making.¹⁰⁰

Chapter 11 Article 4 in the EVFTA equals the playing field between Vietnam and the EU with provisions on non-discrimination in commercial activities. It is stated, inter alia, that a good or service supplied by a company of one party should be treated equivalent as the good or service supplied by a company of the other party.¹⁰¹ Transparency is provided by a new instrument

⁹⁷ International Chamber of Commerce Bascap, ‘Promoting and Protecting Intellectual Property in Vietnam’ (2019) p. 3.

⁹⁸ See European Commission (website), ‘EU-Vietnam Trade Agreement’, accessed 4 March 2020.

⁹⁹ EVFTA, ch. 11, art. 2(2).

¹⁰⁰ Ibid. art. 1(a).

¹⁰¹ Ibid. art. 4 (b)(i).

whereas the parties may request the other party in writing to provide information about unfavourable operations in commercial activities by any of the three categories of companies set out above. The request must include the company, the product or service and markets concerned as well as indications showing the unfavourable treatment the party has suffered.¹⁰² Information in this regard includes material on ownership, organisational structure, which government departments or public bodies regulating in case of a state-owned company, annual revenue and special rights if there are any.¹⁰³ This demonstrates the equal playing field since the instrument provides the same opportunities for transparency, whether the companies involved are state-owned or private.

3.2.3 Government Procurement

Access for EU-companies to a broader range of service sectors in Vietnam is empowered by rules on government procurement in the EVFTA. Vietnamese service and public procurement markets will be open to EU-companies after the ratification of the agreement.¹⁰⁴ The government procurement chapter of the EVFTA reaches a new level of transparency and fairness compared to other FTAs that the EU has concluded with developed and developing countries. The agreement is particularly valuable since Vietnam has not agreed to the WTO Government Procurement Agreement. The fundamental aim of the WTO Government Procurement Agreement is to open government procurement markets among its parties mutually, this agreement has 20 parties at present and Vietnam is not one of them.¹⁰⁵ However, the EVFTA rules on government procurement are in line with the WTO agreement as EU-companies will have the ability to bid for public procurement contracts under the same conditions as Vietnamese companies within certain fields when the

¹⁰² EVFTA, ch. 11, art. 6(1).

¹⁰³ Ibid. art. 6(2).

¹⁰⁴ See European Council (website), 'EU-Vietnam: Council adopts decisions to sign trade and investment agreements', accessed 5 March 2020.

¹⁰⁵ See World Trade Organization (website), 'Agreement on Government Procurement', accessed 14 May 2020.

EVFTA enters into force. The fields are Vietnamese ministries at central level, two key utility-related state-owned companies in the electricity branch, 34 public hospitals, two major universities and research institutes, specific entities in Hanoi and Ho Chi Minh City. These fields stand for 50% of procurement on a sub-contract level.¹⁰⁶

Transparency will be improved by reinforced market consultations and publication of notice. Current Vietnamese law does not require consultations between procurement parties with the private sector.¹⁰⁷ Conditions in the EVFTA encourages market consultation to prepare the procurement before launching and requires consultation with the private sector to assess the procurement party's needs. As seek advice from market participants that can be used in the planning and conduct of the procurement.¹⁰⁸

Returns are expected since Vietnam is currently making public investments to improve its underdeveloped infrastructure. Poor transport infrastructure is often described as a holdup for the maintenance of economic modernisation within the country. A more open and transparent public procurement market will benefit EU-companies as it will give them a possibility to tender for Vietnamese infrastructure contracts. Vietnam will also be benefited since they will get access to goods and services from EU-companies, which often have better price and quality within the infrastructure sector.¹⁰⁹

Vietnam has agreed on evolving a central web portal for procurement advertising within ten years from the agreement enters into force. Content will be made in English. The Vietnamese Law on Bidding, regulating public procurement at present in Vietnam only requires English in cases where the bidding is international.¹¹⁰ Thus, future EVFTA requirement on content in

¹⁰⁶ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 55.

¹⁰⁷ European Commission, 'The Economic Impact of the EU - Vietnam Free Trade Agreement' (2017) p. 40.

¹⁰⁸ EVFTA, ch. 9, art. 10.

¹⁰⁹ European Commission, 'The Economic Impact of the EU - Vietnam Free Trade Agreement' (2017) p. 39.

¹¹⁰ Law on Bidding, No. 43/2013/QH13, art. 9.

English together with no distinction between national and international bidding will increase transparency for foreign bidders. The extensive time limit of ten years was motivated by Vietnam's status as a lower-middle economy. Equally, Vietnamese companies will get access to the EU procurement market, both central and local entities in the EU Member States will open up to Vietnamese bidders.¹¹¹ The transparency obligations will not only benefit the parties, but firms from non-EU countries with access to the Vietnamese public procurement market will also gain from the new rules.¹¹²

3.2.4 Human Rights

EU considers that human rights in trade policy initiatives should be seen as one component of a wider approach to involve policies and actions to direct or indirect address the subject of human rights. Political dialogues, development aid and support are examples of such policies and actions.¹¹³ In the context of the EU's trade policy, the protection of human rights is pursued by the EU as an integrated approach in FTAs. This is in line with Article 21 of the Treaty on the EU and Article 207 of the Treaty on the Functioning of the EU. One of the EU's objectives is to ensure that any EU agreement on a favoured trade relationship with a third country is based on a specific level of human rights commitments. Article 1 of the PCA will remain a standard human rights clause which the EVFTA makes a legally binding link to. The agreement is a part of the common institutional framework as set out by the PCA, which means that the EVFTA will be a part of the overall bilateral relation stipulated in the PCA.¹¹⁴

¹¹¹ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 55.

¹¹² European Commission, 'The Economic Impact of the EU - Vietnam Free Trade Agreement' (2017) p. 40.

¹¹³ European Commission, SWD(2016) 21 final, 'Commission Staff Working Document- Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement', p. 2-3.

¹¹⁴ Ibid. p. 7.

The human rights stated in the UN Charter were addressed and an essential element in the FCA which remained under the PCA. The principle of the rule of law was included in the PCA and intended to be promoted as it is one of the principles on which the EU is founded. A much broader and comprehensive wording of human rights were carried out in the PCA than in the FCA. The comprehensive wording was enabled by the addition of a human rights clause in the PCA, instead of only referring to human rights in the preamble and the first article of the FCA. The PCA specifies how the parties shall cooperate on human rights and refers to other relevant human rights instrument than solely the UN Charter. Malmström, the former EU Commissioner for Trade, has expressed that the EVFTA will protect human rights more broadly.¹¹⁵

Both the EU and Vietnam recognise common principles and values reflected in the PCA in the EVFTA preamble. By reaffirming their commitment to the UN Charter and the principles in the UN Universal Declaration of Human Rights of 1948. Article 1 of the PCA is the human rights clause and has been fundamental for the PCA. In case of material breach appropriate measures as a last resort suspension of the PCA, as a whole or parts, can be initiated. Measures like these are set out to put the commitment to respect human rights as essential of the bilateral relationship between the two parties.¹¹⁶ The EVFTA link to the PCA human rights clause is described to be strengthened by stating that a party may unilaterally take appropriate measures with respect to the EVFTA when the other party has committed a material breach of the PCA. Such a material breach can consist of violating the human rights clause. In this way, the EU maintains its discretion to take these measures within the EVFTA in case Vietnam violates its commitment to respect fundamental human rights obligations.¹¹⁷

¹¹⁵ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 6.

¹¹⁶ European Commission, SWD(2016) 21 final, 'Commission Staff Working Document-Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement', p. 7.

¹¹⁷ Ibid. p. 8.

Human rights are addressed in the EVFTA by recognising, reaffirming and committing to the same obligations as set out in the PCA. The conditions within this area will not be different when EVFTA enters into force and the parties measures to confront material breaches within the human rights clause will remain.

3.2.5 Sustainable Development

All UN Member States adopted the 2030 Agenda for Sustainable Development in 2015. The agenda contains 17 Sustainable Development Goals stating an urgent call for action by all countries, whether developed or developing, in a global partnership. The goals recognise that efforts to end poverty must cooperate with strategies that build economic growth and address social needs like education, health, equality and job opportunities. Tackling climate change and preserve oceans and forests are also included in the 17 goals.¹¹⁸

The EU has set out three basic elements in their trade policy, in line with the Sustainable Development Goals. These are economic growth, social development and environmental protection. The EVFTA includes a binding chapter (Chapter 13) on trade and sustainable development covering labour and environmental matters relevant in the trade relationship between the EU and Vietnam. Trade policies can have great effects on an economy, labour standards, social cohesion and the environment, which is the reason to EU's objective of ensuring sustainable development within the EU and its partner countries.¹¹⁹

Chapter 13 of the EVFTA includes obligations for both parties in the field of labour and environment issues. The chapter has a two-fold aim, firstly to

¹¹⁸ See Sustainable Development Goals Knowledge Platform (website), 'Sustainable Development Goals', accessed 9 March 2020.

¹¹⁹ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 58.

promote mutual supportiveness between trade and investment, labour and environmental policies, secondly to ensure that protection of workers and the environment not will be harmed by increased trade.¹²⁰ A prohibition on derogating from, or weakening the protection level within domestic labour and environmental laws to encourage trade and investment, are stated in the EVFTA.¹²¹ Further, the parties are allowed to regulate these areas as they consider appropriate, but only beyond the ILO standards and environmental conventions, not below.¹²²

An institutional set-up to ensure the full implementation of Chapter 13 is established in the EVFTA. A specialised Committee on Trade and Sustainable Development will monitor the implementation at the domestic level.¹²³ Furthermore, both parties shall convene a new or consult an existing Domestic Advisory Group. The group shall comprise independent civil society representatives, employer- and workers organisations, business groups and environmental organisations. Each group are allowed to submit views or recommendations to its respective party on the implementation of the chapter.¹²⁴

3.2.6 Labour Commitments

Chapter 13 in the EVFTA contains commitments on the effective implementation of the four ILO core labour standards set out in the ILO Declaration on Fundamental Principles and Rights at Work. These are Freedom of association and Right to Collective Bargaining, Forced Labour, Child Labour and Non-Discrimination (in respect of employment and occupation). These core standards are also set out in ILO's eight fundamental

¹²⁰ European Commission, SWD(2016) 21 final, 'Commission Staff Working Document- Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement', p. 8.

¹²¹ EVFTA, ch. 13, art. 3(1).

¹²² Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 58.

¹²³ Ibid.

¹²⁴ EVFTA, ch. 13, art. 15(4).

Conventions. Chapter 13 also contains obligations on implementation of the already ratified ILO Conventions and for each party to effectively implement these in its domestic laws and regulations. Further, the EVFTA includes commitments on progress towards ratification of non-ratified fundamental ILO Conventions.¹²⁵

Vietnam has ratified six of the eight fundamental ILO Conventions. Five of them have entered into force, namely the conventions on Forced Labour, Equal Remuneration, Non-Discrimination, Minimum Age and Worst forms of Child Labour. In addition, Vietnam has ratified the ILO Convention on Right to Organise and Collective Bargaining that will enter into force in July 2020. Consequently, two of the fundamental conventions are not yet ratified by Vietnam. These are the ILO Convention on Freedom of Association and Protection of the Right to Organise and the ILO Convention on Abolition of Forced Labour.¹²⁶ Vietnam and the EU reaffirm its commitments to promote and effectively implement the abovementioned four ILO core labour standards. Further, each party shall make continued and sustained efforts to ratify the so far non-ratified fundamental ILO Conventions.¹²⁷

The Convention on Right to Organise and Collective Bargaining that Vietnam has ratified, introduces principles on freedom of association. Workers and enterprises will have the right to join or form representative organisations of their choosing.¹²⁸ This is a significant change as Vietnam does not have such unions at present.¹²⁹ The Convention entitles adequate protection for workers and employers against anti-union discrimination, which means that workers' and employers' organisations shall be protected from acts of interference by

¹²⁵ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 58; EVFTA, ch. 13, art. 4(4).

¹²⁶ See International Labour Organization (website), 'Ratifications for Viet Nam', accessed 8 April 2020.

¹²⁷ EVFTA, ch. 13, art. 5.

¹²⁸ See International Labour Organization (website), 'Ratifications for Vietnam', accessed 9 April 2020.

¹²⁹ See European Parliament Legislative Train Schedule (website), Bourgeois, 'EU-Vietnam Free Trade Agreement 2019', accessed 9 April 2020.

each other.¹³⁰ However, Vietnam has trade unions at present, but they are governed by the Vietnam General Confederation of Labour, an umbrella organisation under the Communist Party. No other trade unions are allowed, gatherings and strikes are severely limited and require approval from the General Confederation of Labour.¹³¹

Vietnam has been criticised for prohibiting establishment and operation of independent labour unions. Human Rights Watch stated in their report 2018 that workers and employers trying to establish independent unions faced harassment, intimidation and retaliation. Authorities convicted and sentenced labour activists to more than ten years in prison.¹³² Problems have been reported even though Vietnam at the time had ratified five of the fundamental ILO Conventions and are formally allowing trade unions in their domestic Labour Code, but the Communist Party indirectly governs the allowed trade unions.¹³³

Chang-Hee Lee, Director of the ILO Country Office for Vietnam, stated that ratification of the two fundamental ILO Conventions that Vietnam has not yet ratified would result in that the country will be '...entering the most politically challenging phase of the labour law reform. The EU-Vietnam Free Trade Agreement presents a unique opportunity to drive reform in the labour relations area...'.¹³⁴

3.2.7 Environmental Commitments

In environmental matters, the EVFTA provides commitments to the effective implementation by the EU and Vietnam of all the ratified multilateral

¹³⁰ Convention on Right to Organise and Collective Bargaining (ILO Convention No. 98), Geneva 8 June 1949, art. 2(1).

¹³¹ Regeringskansliet, Utrikesdepartementet, 'Vietnam – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2018' (2019) p. 13.

¹³² See Human Rights Watch (website), 'Vietnam – Events of 2018', accessed 9 April 2020.

¹³³ Labour Code, No. 10/2012/QH13, art. 5(1)(c).

¹³⁴ See International Labour Organization (website), 'European Parliament discusses EU-Vietnam Free Trade Agreement', accessed 9 April 2020.

environmental agreements into each party's domestic laws and regulations.¹³⁵ For instance, the UN Framework Convention on Climate Change, the UN Convention on Biological Diversity and the UN Convention on International Trade in Endangered Species.¹³⁶ The EVFTA provides for specific action to improve the protection and sustainable management of natural resources. Actions on biodiversity as strengthened cooperation under UN Convention on International Trade in Endangered Species, previously ratified by the parties.¹³⁷ Similar commitments to those in the EVFTA can be found in the PCA where the parties agreed on cooperation to accelerate the fight against climate change. However, the commitments in the EVFTA are more specific as the multilateral environmental agreements are not set out in the PCA.¹³⁸

The cooperation is strengthened by conditions in the EVFTA on recognition of the sovereign rights of each party over their natural resources and the authority to determine access over their genetic resources as stated in the UN Convention on International Trade in Endangered Species. By the EVFTA, the parties are encouraged to trade in products that are contributing to sustainable use and conservation of biological diversity.¹³⁹ The specialised Committee on Trade and Sustainable Development will monitor the implementation of the environmental commitments, and the Domestic Advisory Groups will enable active involvement from civil society on this subject.¹⁴⁰

3.2.8 Dispute Settlement

Another main benefit for both Vietnam and the EU with the EVFTA, is described by the EU to be the set out of a dispute settlement method. A

¹³⁵ EVFTA, ch. 13, art. 5(1).

¹³⁶ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 58.

¹³⁷ Ibid.

¹³⁸ PCA, ch. 6, art. 31(1).

¹³⁹ EVFTA, ch. 13, art. 7(2), art. 7(3).

¹⁴⁰ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 58.

method that is aiming to be more efficient than the WTO framework. The dispute settlement within the EVFTA is a formal state-to-state dispute resolution mechanism that enables fast and favourable solutions through voluntary mediation, instead of strict dispute resolution procedures.¹⁴¹ If the parties have diverse views on the agreement, they should avoid disputes by using the institutional committees set up under the agreement, as the specialised Committee on Trade and Sustainable Development. Consultations between the parties are the first step in case of disagreement. The parties can enter into mediation procedure at any time, but in cases where it is impossible to avoid a dispute, the EVFTA dispute settlement mechanism stipulates a way to settlement through binding decisions of an arbitration panel. The party that sought consultations may request the establishment of such a panel.¹⁴²

Each party shall establish a list of 15 independent arbitrators with expertise and experience of law and international trade, the use of the list is mandatory. The arbitrators shall be independent and serve in their individual capacity, meaning that they shall not take instructions from any government or organisation.¹⁴³ This system will be less exposed to litigation tactics and the arbitrators will enjoy support from both parties. Compared to the WTO system, panel hearing will generally be open to the public and private parties are allowed to submit relevant information to the panel.¹⁴⁴

Chapter 13 of the EVFTA on trade and sustainable development are excluded from the agreement's dispute settlement mechanism described above. Instead, there is an independent Panel of Experts that shall be composed of three members chosen by the Committee on Trade and Sustainable Development. If the Committee on Trade and Sustainable Development cannot resolve a matter or a dispute under Chapter 13, the parties can request an examination by the Panel of Experts. The Panel of Experts shall issue a final report to the

¹⁴¹ European Commission, 'EU-Vietnam Trade Agreement – Main Benefits' (2019) p. 4.

¹⁴² Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 65.

¹⁴³ EVFTA, ch. 15, art. 23(3).

¹⁴⁴ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 65.

parties on the relevant provisions brought up before them. The report shall include findings of facts, the applicability of relevant provisions and recommendations.¹⁴⁵

To sum up, there are three steps within the area of dispute settlement in the EVFTA, with an exception for disputes under Chapter 13. The first step to avoid disputes is dialogues in the institutionalised committees set up under the agreement. The second step is the voluntary mediation system. The third step and last resort are the panel hearings with arbitrators and binding decisions on the parties.

3.2.9 Transparency

The concept of transparency embodies the EVFTA in many of the agreement's 17 chapters. It sets off in the preamble where transparency is recognised as important in international trade to the benefit of all stakeholders.¹⁴⁶ Transparency has been given a specific chapter in the EVFTA, beginning with the objective that each party shall promote a foreseeable regulatory environment and efficient procedures for economic operators.¹⁴⁷ Laws, regulations, judicial decisions, procedures and administrative rulings that may have an impact on matters within the EVFTA shall be published promptly. The parties are responsible for the official publication of such matters within a sufficient time frame from the decision to its entry into force.¹⁴⁸

Furthermore, the concept of transparency is stated within customs procedures. The parties shall provide for simplified and transparent customs procedures that are predictable.¹⁴⁹ Transparency shall be ensured as regards to import

¹⁴⁵ EVFTA, ch. 13, art. 17.

¹⁴⁶ Ibid. Preamble.

¹⁴⁷ Ibid. ch. 14, art. 1.

¹⁴⁸ Ibid. art. 3(1).

¹⁴⁹ Ibid. ch. 4, art. 5.

procedures of sanitary and phytosanitary measures¹⁵⁰, the parties competition policies shall be applied in a transparent matter.¹⁵¹ The parties affirm their transparency under Technical Barriers to Trade Agreement¹⁵², a WTO-agreement aiming to ensure that technical regulations are non-discriminatory and do not create unnecessary obstacles to trade.¹⁵³ As abovementioned the specific chapters on intellectual property, government procurement and sustainable development have requirements on transparency as well.

3.3 Concluding Remarks

As this chapter shows, many of the EVFTA conditions have impacts on the Vietnamese legal environment and consequently the control of the Vietnamese state as there is no share in power between legislative, executive and judicial authorities. This is done by enforcing changes in the domestic legal system, reaffirming conventions, accede to treaties and agree to new systems and procedures that will enable transparency. To summarise the conditions: registers for IPR-holders, accession to Internet Treaties, non-discrimination on private companies in commercial areas, opening of public procurement and creating a central web for procurement, implementation of institutional and advisory groups under the agreement, allowance of independent trade unions, transparent dispute settlement and reaffirmation to already ratified treaties on the area of human rights and environment. These conditions are connected to the four elements in various ways, and the elements can be used to impact state control of companies in Vietnam. In this chapter, the relevant conditions in the EVFTA where the four elements are pervasive have been set out, but the elements as such and the conditions' connection to the elements will be discussed further in the following chapter.

¹⁵⁰ EVFTA. ch. 6, art. 6.

¹⁵¹ Ibid. ch. 10, art. 3.

¹⁵² Ibid. ch. 5, art. 7.

¹⁵³ See World Trade Organization (website), 'Technical Barriers to Trade', accessed 15 April 2020.

4 The Four Elements and the EU-Vietnam Free Trade Agreement

4.1 Introductory Remarks

Companies in Vietnam are affected by authoritarian governance. Complex administrative procedures in combination with corruption and the lack of transparency hinder companies from operating freely without state interference. As earlier mentioned, Vietnam's involvement in bilateral and multilateral FTAs have led to a more favourable business climate, and the EVFTA can potentially lead to a change in state control of companies in Vietnam.¹⁵⁴ The elements of transparency, civil society engagement, open markets and improved legal frameworks as envisaged in the EVFTA can affect the Vietnamese state control of companies. The elements and their meaning in the context of the EVFTA will be investigated in the following subheadings to examine how they are used in the conditions.

4.2 Transparency

A generally agreed definition of transparency is hard to find. The enforcement of public access to information is a common explanation of transparency in connection with trade and international trade agreements. Accountability is often associated with the concept of public access to information. Transparency and accountability are crucial for people to become drivers of development as information accessible to the population of a state contributes to a better basis for decision-making. Improved decision-making strengthens

¹⁵⁴ European Chamber of Commerce in Vietnam, 'Whitebook Trade & Investment Issues and Recommendations' (2019), p. 23-24.

the conditions for participation, and when populations are involved in decision-making, corruption and misuse of resources can be limited.¹⁵⁵

Transparency is often used as a political argument and connected to human development. When politicians know that they are subject to public scrutiny and will be rewarded with public support for eventual success, the incentives to ensure the populations' needs can increase. This can be described as a social contract between the state and its citizens where the latter grants power to the executive power and accountability is demanded in return. This relation is often labelled as the core of the development process for a state.¹⁵⁶ Lack of transparency in political institutions and deficiencies in citizens knowledge of their rights and obligations hinders citizens from making informed political choices.¹⁵⁷

In authoritative states, where predatory leadership exists, transparency reforms are likely to be opposed by the ruling powers themselves. One reason for this is that authoritative governments can be fearful that their authority will be threatened through greater citizen awareness.¹⁵⁸ An open and transparent government can be measured in whether basic laws and information on legal rights are publicly available, presented in simple language and made available in all languages. The World Justice Project, an independent organisation working to advance the rule of law worldwide, is measuring governments transparency and openness around the world. Vietnam was ranked 78 of 128 countries in 2020 on the factor of open and transparent government. The ranking places Vietnam within the category 'weaker' on the scale on adherence to the rule of law.¹⁵⁹

¹⁵⁵ Swedish International Development Cooperation Agency, 'Accountability, Transparency and the Rule of Law as Drivers for Inclusive Growth and Development', (2013) p. 2.

¹⁵⁶ Bellver, Kaufmann, 'Transparenting Transparency - Initial Empirics and Policy Applications' (2005) p. 4.

¹⁵⁷ Swedish International Development Cooperation Agency, 'Accountability, Transparency and the Rule of Law as Drivers for Inclusive Growth and Development', (2013) p. 3.

¹⁵⁸ Bellver, Kaufmann, 'Transparenting Transparency - Initial Empirics and Policy Applications' (2005) p. 2.

¹⁵⁹ World Justice Project, 'Rule of Law Index 2020' p. 22.

The WTO has stated that transparency in international commercial treaties normally includes three requirements: (i) to make information on relevant laws and regulations publicly available (ii) to notify interested parties of changes in laws and regulations (iii) to ensure a uniform, impartial and reasonable administration of laws and regulations.¹⁶⁰ Transparency has been a well-established requirement in the trading system before WTO was formed. Article X in GATT states that laws, regulations, judicial decisions and administrative rulings of general application on matters related to trade 'shall be published promptly in such a manner as to enable governments and traders to become acquainted with them'.¹⁶¹ Many of the developing countries struggle to comply with the requirements on transparency due to high costs and administrative problems on notification requirements. As the cost of publishing, translating and monitor questions of an FTA. In some trade agreements, identification of single central government authority for publishing and monitoring the agreement is required. The failure to comply with notification requirements do not have to be the most serious problem on transparency within an agreement. Still, it is one important component in the compliance of requirements on transparency.¹⁶²

Transparency is not only important for citizens and within politics, but it is also a vital element for companies' development and growth. As demands for transparency is originating from consumers, investors, suppliers, NGOs, amongst others, companies need to be proactive in disclosure of information.¹⁶³

¹⁶⁰ Bellver, Kaufmann, 'Transparenting Transparency - Initial Empirics and Policy Applications' (2005) p. 4.

¹⁶¹ General Agreement on Tariffs and Trade, Geneva, 30 October 1947ra (GATT), art. X.1.

¹⁶² United Nations Conference on Trade and Development, 'Trade Policy Frameworks for Developing Countries: A Manual of Best Practices' (2018) p. 46.

¹⁶³ Bellver, Kaufmann, 'Transparenting Transparency - Initial Empirics and Policy Applications' (2005) p. 9.

4.3 Transparency in the EVFTA

Transparency is given its own chapter in EVFTA but is also recurrent throughout other parts of the agreement. Chapter 14 Article 3 in EVFTA is in line with the GATT principle on transparency by requiring promptly publishing of laws, regulations, judicial decisions, procedures and administrative rulings that may have an impact on matters within the EVFTA.¹⁶⁴ The abovementioned WTO statement (i), to make information on relevant laws and regulations publicly available¹⁶⁵, is also confirmed in the EVFTA Chapter 14 Article 3, whereas the parties are responsible for the official publication of referred material.

Specific official publication is set out in the EVFTA. One example of transparent publication is the central web portal for procurement advertising.¹⁶⁶ Requirements on administration can be seen in the EVFTA on the registration of geographical indications within IPR.¹⁶⁷ These requirements are in line with abovementioned WTO statement (iii), to ensure a uniform, impartial and reasonable administration of laws and regulations.¹⁶⁸ Laws and information will in these areas be subject to publication and create greater awareness for citizens and companies.

Since the parties in the EVFTA are allowed to request for information about unfavourable operations in commercial activities by state-owned companies¹⁶⁹, a new level of transparency will be reached in two ways. Firstly, the EVFTA will provide a possibility to get insight in the state-owned sector, which constitutes a backbone of the Vietnamese economy.¹⁷⁰ Secondly, the EVFTA entails an increased possibility for public scrutiny in

¹⁶⁴ EVFTA, ch. 14, art. 3(1),

¹⁶⁵ Bellver, Kaufmann, 'Transparenting Transparency - Initial Empirics and Policy Applications' (2005) p. 4.

¹⁶⁶ EVFTA, ch. 9, art. 4(6).

¹⁶⁷ Ibid. ch. 12, art. 24.

¹⁶⁸ Bellver, Kaufmann, 'Transparenting Transparency - Initial Empirics and Policy Applications' (2005) p. 4.

¹⁶⁹ EVFTA, ch. 11, art. 6(2).

¹⁷⁰ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 63.

the political area as the parties may request for information on the state-owned companies that were not available to the public prior to the EVFTA.¹⁷¹ In this way, the requested information on companies will lead to an increased disclosure for other companies.¹⁷² Disclosure of information will foster the development and growth of companies as transparency is a vital component for this.¹⁷³

Panel hearings generally open to the public within the EVFTA dispute settlement will increase the transparency since the public will be able to access information on disputes within the EVFTA.¹⁷⁴ Open hearings will also contribute to a wider knowledge for the parties to their rights and obligations under the agreement.

4.4 Civil Society Engagement

Civil society can be described as ‘the space for collective action around shared interests, purposes and values, generally distinct from government and commercial for-profit actors.’¹⁷⁵ Social movements, NGOs, trade unions and advocacy groups are some examples of representatives of civil society. The line between government and civil society is not completely clear since different actors can have various views on the definition of civil society. Civil society actors deal with similar problems of legitimacy and representativeness as other actors, which contributes to the sometimes blurred line between public governance and civil society.¹⁷⁶ However, civil society organisations have been a significant force in international development in the past 30 years.¹⁷⁷ Influencing policies, holding public authorities accountable and

¹⁷¹ EVFTA, ch. 11, art. 6(2).

¹⁷² Bellver, Kaufmann, ‘Transparenting Transparency - Initial Empirics and Policy Applications’ (2005) p. 9.

¹⁷³ Ibid.

¹⁷⁴ Delegation of the European Union to Vietnam, ‘Guide to the EU-Vietnam Trade and Investment Agreements’ (2019) p. 65.

¹⁷⁵ See World Health Organization (website), ‘Social determinants of health- Civil society’, accessed 26 April 2020.

¹⁷⁶ Ibid.

¹⁷⁷ See The World Bank (website), ‘Civil Society - Overview’, accessed 27 April 2020.

complementing state delivery of services are examples of practices and objectives of civil engagement.¹⁷⁸ Some concrete examples are the anticorruption movements in India and the Arab Spring where anti-government protests started in Tunisia, both in early 2010.¹⁷⁹

Governments around the world are making efforts to restrict the civic space in which civil society operates. By implementation of new laws, policies and practices, various governments are limiting people's possibilities to gather and improve their everyday lives.¹⁸⁰ The cyber security law, extensive requirements on registration and support for NGOs are examples of this in Vietnam.¹⁸¹

The private sector and businesses are often an important source and contributor to information in civil society. Dialogue between the government and civil society should be comprehensive. The public sector would both be informed but also give accountable information to parties in civil society. This could lead to an important exchange of information between the public sector and companies, trade unions and other interested parties. Businesses are often the vital source of information on other countries trade barriers and apparent violations of trade agreements. Yet, there needs to be a balance between the governments responds to the different private sectors and parties. There is a risk that the most organised and connected groups in civil society can be dominant in connection with government agencies. This dominance could lead to an unbalanced representation of civil society interests in policies.¹⁸²

¹⁷⁸ See United Nations Development Programme (website), 'Civic engagement', accessed 27 April 2020.

¹⁷⁹ The World Bank, 'World Bank– Civil Society Engagement - Review of Fiscal Years 2010–2012' (2013), p. xi.

¹⁸⁰ See Organisation for Economic Co-operation and Development (website), 'Civil Society Engagement in Development Co-operation', accessed 27 April 2020.

¹⁸¹ Regeringskansliet, Utrikesdepartementet, 'Vietnam – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 31 december 2018' (2019) p. 6, 10.

¹⁸² United Nations Conference on Trade and Development, 'Trade Policy Frameworks for Developing Countries: A Manual of Best Practices' (2018) p. 60.

4.5 Civil Society Engagement in the EVFTA

Civil society representatives are mentioned in the EVFTA conditions regarding Domestic Advisory Groups. The groups shall comprise independent civil society representatives, employer- and worker's organisations, business groups and environmental organisations. As the Domestic Advisory Groups are allowed to submit their views and recommendations, the possibility to influence policies and to hold public authorities accountable can increase.¹⁸³ As NGOs are raising concerns on the monopoly power of the Communist Party in Vietnam¹⁸⁴, the Domestic Advisory Groups can serve as a legally accepted forum for civil society engagement and critique.

Allowing trade unions not governed by the Communist Party in the EVFTA will lead to increased space for civil society.¹⁸⁵ The harassment and sentenced of labour activists will be confirmed to be illegal acts through the EVFTA, which is another example on the involvement of the private sector and companies. As workers and employers will be entitled protection against anti-union discrimination¹⁸⁶, they could be contributing with information to civil society.

The open panel hearings and the allowance of private parties to submit information to the panel will not only foster transparency.¹⁸⁷ The civil society engagement will increase by letting private actors and the citizens get insights into the disputes of EVFTA, but also by letting companies contribute with information to the disputes. This information can be vital in the hearings since

¹⁸³ EVFTA, ch. 13, art. 15(4).

¹⁸⁴ Amnesty International, 'Prisoners of Conscience in Viet Nam' (2019) p. 1.

¹⁸⁵ See International Labour Organization (website), 'European Parliament discusses EU-Vietnam Free Trade Agreement', accessed 9 April 2020.

¹⁸⁶ ILO Convention No. 98, art. 2(1).

¹⁸⁷ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 65.

companies often have information on apparent violations and trade barriers.¹⁸⁸

By equalising the playing field between state-owned and private companies with provisions on non-discrimination in commercial activities, the private sector is given more space.¹⁸⁹ Important information can be exchanged through the new instrument regarding unfavourable operations and enable information exchanged between the public and private sector. This mechanism will also allow a way to criticise the Vietnamese state's interference in an accepted way since the internet is restricted through the cyber security law.

4.6 Open Markets

Open markets are characterised by the absence of tariffs, subsidies, licensing requirements, taxes and other regulations interfering with naturally functioning processes. Better economic performance has historically worked together with trade and market openness. Open markets have created opportunities for workers, consumers and businesses which have led to lifting millions of people out of poverty. Openness encourages market innovation and competition by giving companies access to bigger markets.¹⁹⁰

The EU believes that open markets lead to decreased compromising on core principles like human rights and sustainable development. Open market access provides equal terms leading to fewer restrictions and discrimination for foreign companies in markets abroad. The European Commission advocates accession of government procurement as one component towards open markets.¹⁹¹

¹⁸⁸ United Nations Conference on Trade and Development, 'Trade Policy Frameworks for Developing Countries: A Manual of Best Practices' (2018) p. 60.

¹⁸⁹ EVFTA, ch. 11, art. 4.

¹⁹⁰ See Organisation for Economic Co-operation and Development (website), 'Why open markets matter', accessed 27 April 2020.

¹⁹¹ European Commission, 'Trade for All - Towards a more responsible trade and investment policy' (2015) p. 1, 10.

4.7 Open Markets in the EVFTA

As Vietnam is not a party to the WTO Government Procurement Agreement, the opening of the Vietnamese procurement market is significant. It will give EU-companies access to areas that so far only have been open for Vietnamese companies and in some cases, even only accessible for state-owned companies in the country. Therefore, the EVFTA chapter on public procurement is groundbreaking and in line with the European Commission's prioritisations.

For the realisation of the EU's belief, that open markets lead to decreased compromising on core principles, the contracting parties to an FTA need to respect the core principles within the agreement. If the parties do not comply with the core principles, the EU's belief would not be met. In the case of EVFTA, Vietnam is reaffirming its commitment to the UN Charter and the principles in the UN Universal Declaration of Human Rights of 1948. The reaffirmation indicates that the EU continues with their belief on the open market's connection to core principles in the EVFTA.

4.8 Improvement of Legal Frameworks

The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations is an international agreement adopted to regulate treaty obligations of international organisations. The agreement is not yet in force, but it is relevant for the understanding of the treaty as a concept under international law.¹⁹² Article 26 enshrines the principle of *pacta sunt servanda*, 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'¹⁹³. International law usually leaves it to each state to determine how they meet their international commitments and how they give effect to their treaty

¹⁹² Henriksen (2019) p. 41, 45.

¹⁹³ The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations A/CONF.129/15, Vienna 21 March 1986, art. 26.

obligations within the domestic legal field. How national and international law is applied can be analysed in many ways, the two approaches of monism and dualism have dominated the legal theory. They illustrate the complexity of this subject. Monism holds that international and national law form a single legal order that is presumed to be coherent. Therefore, international law can be applied directly in the national legal system, and international norms prevail in case of conflict. The other approach, dualism, holds that international and national law are separate and forms independent legal systems. Independent since national law regulates relations between citizens or the citizens and the state, while international law regulates the relationship between states. Neither monism nor dualism can explain the various interpretations of international law but illustrates the discussion on interpretation.¹⁹⁴

Article 27 of The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations states that a state cannot invoke its internal law as justification for failure to perform international treaty obligations.¹⁹⁵ Genuine domestic reforms are described in the EU trade strategy to be crucial to fulfil the aims with FTAs, meaning that it lies in the hands of the country in question to implement its commitments while the EU can offer its support effectively.¹⁹⁶

4.9 Improvement of Legal Frameworks in the EVFTA

By ratification of the EVFTA, Vietnam will agree on the accession of the Internet Treaties and will by this be required to enforce effective remedies within the IPR arena. Vietnam will also agree to commitments on the effective implementation of the ratified ILO Conventions and multilateral

¹⁹⁴ Henriksen (2019), p. 14.

¹⁹⁵ Ibid. p. 3.

¹⁹⁶ European Commission, 'Trade for All - Towards a more responsible trade and investment policy' (2015) p. 9.

environmental agreements into its domestic laws and regulations.¹⁹⁷ These commitments are examples of how the EVFTA puts international obligations on Vietnam. It is of significance that the IPR requirements do not have to be implemented into domestic laws while there are requirements on implementation of the ratified ILO Conventions and multilateral environmental agreement into domestic laws.

This shows how the parties are not given the opportunity to decide exclusively on how they give effect to their treaty obligations. EVFTA does not indicate precisely how the ratified conventions shall be implemented into domestic law, but there is no choice of not implement them into domestic law. At the same time, EVFTA prohibits derogations or weakening protection levels below the ILO standards and environmental conventions.¹⁹⁸ This can be interpreted as repeating the requirement of domestic implementation. Stating prohibitions on protection levels below the ratified conventions is a way of repeating the requirement of implementation into domestic laws, and this because the implementation of the conventions will also prohibit protection levels below what is stated in the conventions. By these EVFTA requirements, the Vietnamese laws will be affected and thereby the state's interference in these areas.

¹⁹⁷ Delegation of the European Union to Vietnam, 'Guide to the EU-Vietnam Trade and Investment Agreements' (2019) p. 45, 58.

¹⁹⁸ *Ibid.* p. 58.

5 The Conditions in the Vietnamese Business Reality

5.1 Introductory Remarks

A total of five interviews with private companies in Vietnam were conducted in the field study.¹⁹⁹ All the respondents held leading positions within the different companies. These positions were CEO, CFO, founder and head of department. The companies will be referred to in numbers, from 1 to 5. All companies are active in Vietnam and have between 30-100 employees in the country. The selection of companies was based on language, connections with the EU and the respondents' willingness to be interviewed. Since the interviews were held in English, an essential factor was to choose companies where the respondents had knowledge in English. Further, in order to get an insight into the Vietnamese business reality and the potential effects of the EVFTA, the chosen companies had connections (as trade relations) with the EU to some extent. Finally, the interviews contained questions on authoritarian state control of companies in Vietnam and therefore the selected respondents had to be chosen carefully to select respondents who were willing to discuss the controversial subject of authoritarian state control. Thus, the five respondents were chosen upon these terms, which do not intend to represent the Vietnamese business environment as a whole. Still, the interview material was crucial to enable an understanding of the present government control of companies.

Company 1-3 are importing goods from the EU and distributes these in Vietnam. Company 4 and 5 are service providers in Vietnam and do not sell or buy any goods. However, they have connections with the EU as their parent companies are EU-based. Company 1 is importing gardening tools, company 2 is importing beauty products and company 3 is importing cars. Company 4 provides technical service to other companies and company 5 provides

¹⁹⁹ More interviews were scheduled but had to be cancelled due to Covid-19.

consulting and tax services. The following subheadings will present the interview material and thereby connect the practical experience to the academic research. The interview material will provide an understanding of how the conditions can be perceived in its national context.

5.2 Interviews on Transparency

When asking about the comprehensiveness and administrative procedures for companies in Vietnam, the five interviewed respondents agreed on it as being a problem for their businesses. However, the respondents perceived the problem in various ways. The interviewee at company 1 described the administrative procedures as a problem since they were unpredictable, especially within the process of getting EU-imported products approved by the Vietnamese government. In some cases, the products got approved within a few working days and no additional documents were required, but in other cases, the government required additional documents months after the company filed the application.²⁰⁰ The respondent at company 2 had also experienced problems with the registration of imported products from the EU, but the process had in recent years improved and they can basically get their products self-declared after filing the application. However, the interviewee believed that the self-declaring only applies to beauty products since there has been extensive pressure on the Vietnamese government from the EU beauty branch on this matter.²⁰¹ The government contact was described by the respondent at company 3 as vital for ease of the administrative procedures. As long as the company had a reliable contact at the authority of registration, they did not experience any problems. The interviewee described it as impossible to understand the regulation and approval process of products without a reliable authority contact, especially within the car business as the environmental requirements are rather extensive and in constant change.²⁰²

²⁰⁰ Company 1.

²⁰¹ Company 2.

²⁰² Company 3.

Three of five interviewees were positive on increased transparency through the EVFTA but also worried for the opening of government procurement to EU-companies.²⁰³ The respondent at company 4 explained fear of EU-companies being prioritised since they are more developed and thereby also have economic advantages.²⁰⁴ This fear can be connected to the balance between the government's response to the different parties described in section 4.3 above. The risk of an unbalanced procurement process when more organised companies, or representants of civil society, gets a better connection with the Vietnamese government.

Further, the interviewee at company 4 was particularly worried about the requirement on promptly publishing within the EVFTA (Chapter 14 Article 3) as it could impact the personal relationship with the governing authorities they have at present. Whenever there is a new decision or regulation within their field of business, they rely on that their contact person from the authority informs them. However, the respondent expressed fear of losing that contact and thereby the information when EVFTA puts requirements on central webs and new administrative routines for the authorities.²⁰⁵

When transparency is enforced, the respondent at company 3 hopes for more effective business. The state can put administrative burdens and checks on the company's products on an irregular basis. The new requirements on transparency within IPR and registration of geographical indications give hopes on less irregular burdens and more organised administration. This could, according to the respondent, lead to predictability which would make it easier for business planning.²⁰⁶

²⁰³ Company 1, 3, 4.

²⁰⁴ Company 4.

²⁰⁵ Company 4.

²⁰⁶ Company 3.

5.3 Interviews on Civil Society Engagement

None of the respondents was familiar with the Domestic Advisory Groups in the EVFTA and the allowance of independent trade unions. When asking about the companies' thoughts of independent trade unions, the respondent at company 1 was more engaged than the other four respondents. The respondent underlined that when EVFTA improves and put light on labour rights, the motivation for the employers to engage in their labour rights would increase. The interviewee described that the company is already trying to demonstrate and enlighten the authorities on how important social activities and discussions on labour rights are at the workplace. When the EVFTA enters into force, they are hoping for more support from the authorities on this matter. Further, the respondent explained that it is easier for a company that already has trade relations with the EU to discuss labour rights since they have insight into how the EU focuses and regulates labour rights. For national companies in Vietnam without connections and trade relations with the EU, labour rights can be a forbidden subject of discussion.²⁰⁷

The other respondents were positive on the subject of labour rights and company 4 and 5 particularly expressed their hope in change within the manufacturing business, which they have insight in since they have clients in the manufacturing sector. Vulnerable groups as women and minorities are often employed in factories and they will benefit from stronger commitments to labour rights. The respondents explained the benefits as requirements on non-discrimination that hopefully will lead to raising salaries and decreased discrimination against women. Particularly discrimination against women when they have children and often have to leave their jobs to take care of the children.²⁰⁸ However, the interviewee at company 5 expressed fear for labour rights not reaching the most vulnerable groups and that the richest and most successful companies will be leading within trade unions. The fear stems from

²⁰⁷ Company 1.

²⁰⁸ Company 4, 5.

experiences that laws and regulations do not always reach the poorest and most vulnerable groups in society, which can lead to the more developed companies in big cities taking the lead in trade unions and benefits from the EVFTA.²⁰⁹

In regard to the companies' possibility to engage in Domestic Advisory Groups, the interviewees at the companies were sceptical. The respondent at company 4 explained that the company's management is satisfied with the power and influence they already have on their business and that an additional forum for engagement is unnecessary.²¹⁰ The interviewee at company 2 thought that the EVFTA parties' authorities should be monitoring the agreement alone and without influence from civil society and business groups. With the explanation that authorities are better suited for that task, companies should not be involved in the implementing of sustainable development goals that the government are responsible for and have decided on.²¹¹

5.4 Interviews on Open Markets

The subject of open markets was by far the most discussed in every interview. FTAs are often connected with open markets. The discussions were two-pronged, the hope for better access to the EU-market but also the fear of EU-companies conquering large parts of the Vietnamese market. The respondent at company 1 explained that their business was already influential on the EU-market and hoped to see more Vietnamese businesses take steps towards international opportunities. The respondent saw the EVFTA as a great opening for Vietnam as a developing country to reach new levels of export and imports.²¹² The respondent of company 5 was afraid that EU-companies would steal too large market shares in Vietnam and thereby hinder the

²⁰⁹ Company 5.

²¹⁰ Company 4.

²¹¹ Company 2.

²¹² Company 1.

development of Vietnamese businesses, especially with regards to opening the government procurement. The interviewee was positive on the opening of procurement for Vietnamese companies since today's regulations gives state-owned companies advantages and market shares that are closed to private companies. By opening the procurement, the respondent explained that they would be able to tender for the contracts and thereby increase its turnover. Although, the company would want to see different rules for domestic companies than EU-companies to avoid Vietnamese companies falling behind. Rules as prioritisation on Vietnamese companies over EU-companies within certain fields of procurement contracts.²¹³

The respondent at company 3 argued the opposite and did not agree on the fear of open markets leading to an unfair balance between Vietnamese and EU-companies in Vietnam. The interviewee emphasised that despite new commitments and regulations in the EVFTA, money and liable contacts at the authorities in Vietnam are crucial to succeed in the country. Money is particular important sometimes to bribe when the company needs more extensive advice and help from the authorities to interpret the law and regulations. Since EU-companies do not have the same connections in Vietnam, it would be hard for them to succeed in the long run.²¹⁴

The respondent at company 2 gave a different view on the subject of open markets. As an importer, most of the international cooperation's Vietnam has entered have been positive for the company. Lower import tax brackets and more international business practices have led them to better turnovers and thriving international business. Some scepticism was shown though, the EVFTA could be a too big step for Vietnam, and it is hard for a developing country with structural problems and corruption to build an advantageous position in the global value chain.²¹⁵

²¹³ Company 5.

²¹⁴ Company 3.

²¹⁵ Company 2.

5.5 Interviews on Improvement of Legal Frameworks

When discussing the improvement requirements that EVFTA puts on Vietnam and its domestic legal order, all respondents except the one at company 4 expressed disappointment towards the increased number of laws.²¹⁶ The disappointment took hold in the already comprehensive legal system, which the companies have difficulties in both understanding and following. The interviewees at company 1, 3 and 5 feared that Vietnam agreed on too comprehensive international obligations compared to the country's capacity.²¹⁷ The respondent at company 1 clarified that view and explained that Vietnam has grown and developed in a high speed on short time within the business and economic standard, but the politicians view on human rights are the same as 30 years ago. The respondent further explained that human rights had been excluded while the economic reforms have been prioritised, and the population's opinions on the state's governance are not very welcome, as can be seen in the cyber security law. The respondent did not anticipate any change in this field just because the EVFTA includes new and strengthened obligations in international treaties.²¹⁸

The respondent at company 4 stressed a fear of violating the EVFTA conditions by mistake. Partly due to the risk that the government will not implement all the relevant provisions to domestic law, which will make it hard for companies in Vietnam to find out how they shall comply with the new conditions. As for example the new IPR requirements that will be of relevance for company 4 as they provide services within IT, there is a risk that the government would not implement these into domestic laws. Therefore, the respondent feared that they would not know how to comply with the requirements since they consider it hard to interpret international treaties.²¹⁹ The interviewee at company 5 followed the same track and feared

²¹⁶ Company 1, 2, 3, 5.

²¹⁷ Company 1, 3, 5.

²¹⁸ Company 1.

²¹⁹ Company 4.

insufficient translation in all relevant matters, even though the EVFTA as such will be translated into Vietnamese. The respondent was afraid of the absence of translated material on how to interpret the conditions.²²⁰

²²⁰ Company 5.

6 Analysis

6.1 Introductory Remarks

The purpose of this thesis was to investigate how the EVFTA between the EU as an international organisation and Vietnam as a developing country can be used to affect authoritarian state control of companies in Vietnam. In this regard, the EVFTA conditions within four elements that generally have effects on domestic governance and state control were examined together with inputs and views from companies that will be affected by the conditions. In this chapter, the conditions and use of elements will be analysed. The analyse will lead to conclusions, presented in the following chapter, on how the elements can be used to impact state control of EU- and national companies in Vietnam and what effects the conditions can have on these companies.

6.2 Impacts on Vietnamese State Control

As the thesis has shown, change in state control can be done in various ways. It can be ascertained that every condition that has effects on the legislative, executive and judicial powers, which is the Communist Party in Vietnam, can have effects on state control. All conditions described in Chapter 3 have impacts on state control. The conditions where transparency and civil society engagement are apparent have effects on state control since it will increase public scrutiny and therefore will enable stronger monitoring on the Vietnamese state, both for the EU but also the Vietnamese population and companies. Open markets will enable more insight in the state-owned sector and also potentially decrease the state-owned companies by letting private- and EU-companies compete for government procurement contracts. Improvement of legal frameworks at domestic and international level will also affect the state control as it requires the Vietnamese state to accept new international conditions and change or improve their domestic laws. This has impacts on state control as it puts requirements on how the Vietnamese state

shall exercise control over the territory and the population through their domestic laws.

6.3 Challenging Roles and Reality

The four elements are set out in the EU's trade strategy and trade agreements are described as instruments for boosting the economy without burdening state budgets. By examining the conditions of the EVFTA, it is shown that the conditions within the four elements can have other burdens than on the state budget. As shown in the interviews, companies in Vietnam fear several burdens connected to the elements. An example of this is the fear of losing their connections with the authorities. These connections are vital for the companies to keep up with the legal changes and administrations in Vietnam at the same time as EVFTA is promoting transparent systems and improved administrating arrangements. The difference between the interviewees' perception compared to the requirements of the EVFTA shows that the conditions in the agreement are not constructed and formulated from the reality that Vietnamese companies operate within. A too big step into the international business field can do more harm than good to the Vietnamese companies, but in the long run, perhaps contribute to reduced corruption. Good connections with the authorities and specific government contacts can lead to corruption as a close and personal connection can result in acceptance of bribery. This shows that what today can be experienced as a too big step for companies in Vietnam can, in the long run, decrease the corruption level.

Another example of different realities is the civil society engagement in Domestic Advisory Groups that the interviewees were sceptical towards. Vietnam is evidently a country where freedom of speech is restricted, and companies have to rely on the information they get from the authorities due to lack of transparency and administration in the legal system. When the EVFTA invites companies to have an opinion and impact on how the EVFTA shall be implemented, scepticism is a reasonable reaction since this is far from what the companies in Vietnam are used to. The interviewees clearly

distinguish their tasks within the companies from the government's. The companies shall manage their business and the government shall govern the state. This shows how the engagement of civil society in EVFTA can affect an authoritative government in Vietnam by challenging the present roles in society and give more space to other actors. The roles are not challenged only by letting civil society interfere in Domestic Advisory Groups, but also by the conditions on opening public procurement to the private companies and allowing submission of relevant information to panels in the dispute settlement processes. While the roles of private companies and civil society are changed and expanded, the Vietnamese state's role is decreased within the same areas. The state will no longer have exclusive rights and sole control within areas as dispute settlement and regulating civil society, at least not within the EVFTA. Even though the cyber security law still exists and the restrictions on freedom of speech probably would not disappear as soon as EVFTA enters into force, challenging the role of the Vietnamese state will open up for companies' awareness. The awareness of the power of their impact and their possibility to affect society.

6.4 Different Perceptions and Priorities

The EVFTA can be a way for the EU to reach the Vietnamese state and impact the state control to prioritise and benefit their own interests. One can interpret this as all four elements listed by the EU in their strategy can be found in many of the EVFTA's 17 chapters. The downside of this can be a way too ambitious agreement. An agreement that puts Vietnamese companies in a more difficult situation than before the EVFTA. More difficult since they need to share their market with EU-companies, and at the same time risk losing their important government contacts. As explained in the interviews, Vietnam will still have their structural problems and corruption will not disappear just because the agreement demands more transparency and insight into the Vietnamese control of companies. However, to reach the structural problems of an authoritative state and to impact the high level of state control of companies, an ambitious FTA might be a step in the right direction. Even

though Vietnam has structural problems and an outdated view on human rights as one interviewee explained, an ambitious agreement can be a strategy to reach the most important areas. By choosing areas where a change in domestic law is demanded, as in this case, ILO Conventions and environmental agreements, small steps towards a better business environment can be taken. At the same time, the commitments to human rights are only reaffirmed in the EVFTA and not forced to be changed in domestic law but can nevertheless be improved by commitments in other areas, like those on strengthening labour rights. The stronger commitments in the EVFTA can thereby be a driving force for domestic reforms in other areas. Areas which are not subject to as strict restrictions as the ones forcing changes in domestic laws.

The interviews contributed to a deeper understanding of authoritative governing on companies. The positive view and focus on good connections with national authorities to understand laws and avoid administrative burdens were surprising. The interviewees' perception of roles in society were also unpredicted, authority was discussed and was set out to be a problem for the interviewed companies, as for example administrative burdens and unpredictable check-ups in imported goods. Meanwhile, the interviewees did not appreciate their increased possibility to influence within the EVFTA due to the opinion that the government should handle those parts. This shows that the elements that the EU perceive as fundamental to better regulation, effective trade, and to hinder unfair practices are not only perceived as good solutions for companies in Vietnam. Focus on business development and the fear of EU-companies stealing market shares were prominent in the interviews and the elements were not perceived the same way as in the EU's trade policy. However, the interviewees were all representatives at a high level and in big cities which might have contributed to that the answers were focused on easier procedures when importing EU-products rather than increased labour rights. Focus on better regulation and unfair practices may have been more prominent if the interviewees represented companies in the countryside without present trade connections with the EU.

7 Conclusions

After a comprehensive review on conditions in the EVFTA and elements with effects on state control, the following three conclusions can be drawn.

Firstly, the four elements set out by the EU in their trade policy are pervasive in the EVFTA but not used to adapt to the Vietnamese reality. However, what is shown to be unadjusted to the reality for companies in Vietnam can be an effective solution to reach state control within structural problems. Problems as corruption and thereby benefit the companies in the long term.

Secondly, the elements can be used to challenge the separated roles of the state and companies in Vietnam, which opens up for new roles and increased influence for companies. Even though the change in roles can be interpreted as negative for companies with a focus on business development and increased trade, it can be a positive change for less developed companies to reach new areas as international trade and labour rights.

Thirdly, the four elements in the conditions reach and put requirements on domestic change within certain areas as IPR, labour rights and environmental commitments. In contrast, other areas as human rights are not subject to the same requirements. Nevertheless, the EVFTA can still function as a driving force to changes in those areas as well.

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