

# **Towards a stronger EU approach on the trade-labour nexus? Pre- and post-ratification impacts, domestic labour reforms and social struggles in the context of the EU-Vietnam Free Trade Agreement**

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# The trade-labour nexus, the EU TSD approach and its critique

## The EU's Trade and Sustainable Development (TSD) chapters

- EU: labour standards in FTAs since late 1990s
- Introduced in EU-South Korea FTA (2011)
- Since 2015 (*Trade for All* strategy), TSD mandatory in all EU FTAs
- Market access linked to respect for...
  - International labour standards – 1998 ILO Declaration, ILO CCs
  - International agreements on environment and climate

- Promotional approach:
  - Generally, no pre-ratification conditionality
  - Post-ratification, monitoring through institutional dialogue mechanisms, including civil society mechanisms (DAGs and joint CS forum)
  - TSD subject to separate dispute settlement mechanism with no sanctions (in contrast to commercial chapters).

## Critique

- Lack of conditionality, dialogue-based approach and (allegedly) toothless dispute settlement mechanisms.
- Poor track record – limited impact

# The EU-Vietnam Free Trade Agreement – a deviant case?

## EU-Vietnam Free Trade Agreement (EVFTA)

- Negotiated 2012-2015, in force August 2020.
- ‘most ambitious and comprehensive FTA that the EU has ever concluded with a developing country’ (European Commission)
- Eliminates 99% of tariffs + NTBs
- TSD chapter (Ch. 13)

## Vietnam as a deviant case?

- Authoritarian party-state led by the Vietnam Communist Party (VCP)
- Vietnam General Confederation of Labour (VGCL) as only permitted worker

- Revised labour code (Nov 2019)
- Ratification of ILO CCs: C98 (Jun 2019) and C105 (Jun 2020), plan to ratify C87 in 2023.
- Groundbreaking changes: *independent* worker representative organizations + CSMs

## Our research question(s)

- *What explains the seemingly unprecedented impact in the pre-ratification phase of the EVFTA?*
- *What are the potentials and limitations of post-ratification impacts?*

# Conceptual framework

## Literature on the EU and the trade-labour nexus

- Focus political economy dynamics at EU level + details of legal texts and institutional mechanisms
- We call for comprehensive analysis of power dynamics in partner countries

## Our approach

- FTAs are inter-state agreements; but states exist in dialectic relation to society

- Strategic-relational conceptualization of the state (Poulantzas, Jessop, Smith)
- State interests and strategies formed through socio-political struggles in, and outside of, state institutions
- Five factors key to understanding impact of labour clauses in FTAs
  1. Political economy and state-society relations in EU
  2. Political economy and state-society relations in VN
  3. Geopolitical/-economic conjuncture and perceived interests of states in it
  4. Nature of transnational linkages
  5. Multiscalar labour regimes in GPNs

# Methods and data

## **Interviews in the EU** (Brussels November 2019)

- Commission (DG Trade, DG Emplo...)
- Parliament (INTA members)
- European External Action Service
- European Economic and Social Committee
- Trade unions, business associations, NGOs
- Diplomats – EU and member states
- TSD expert group

## **Interviews in Vietnam** (online 2020-2021)

- Labour experts
- Local NGOs
- International NGOs
- ILO Vietnam
- Advisors in the law-making process

## **Other sources**

- Legal and policy documents (in EU and VN)
- Administrative directives
- Recordings of parliamentary debates
- Access to information request on meetings between DG Trade and external stakeholders

# Key findings – pre-ratification impact

## The EU

- De-facto shift to pre-ratification conditionality on labour reforms. Why?
- Contestation and politicization of trade policy
  - TTIP, CETA, Brexit, Trump – shift in public opinion
  - Channeled through democratic pillars of the EU (Parliament and Council) – veto under ToL
- Strategic action of specific MEPs and member states
  - Parliament: Role of chair of INTA committee – turned new labour code + ratification of ILO CCs into pre-ratification conditions (veto threat)
  - Council: TSD provisions high priority for a few member states incl. Belgium
- These dynamics pushed the Commission into more assertive position

## Vietnam

- External pressure from the EU was leveraged by reformist minority faction in party-state
- Long trajectory of internal contestation over union reform + wildcat strike wave as catalyst – but VGCL monopoly retained
- External pressure in latest round of reforms: The rise and fall of TPP.
- In TPP vacuum, reformists turned to the EU
- Internal drivers: (1) economic slowdown since 2008 and shift to ‘performance legitimacy’; (2) regional assertiveness of China; (3) employer pressure

# Key findings – pre-ratification impact

## **‘Trans-local’ facilitators**

- FES: Putting reformists in Vietnam in contact with EU staff
- EU diplomatic mission: Inviting delegations + using threat of veto as bargaining instrument
- ILO: Facilitating access to top decision-makers – co-organized high-level meeting in Sep. 2019 + technical assistance + important legitimizing role as IO (international standards)
- Facilitators and brokers – ‘translating expectations and interpreting realities’

# Key findings – post-ratification impact

## Implementation of 2019 labour code

- Gaps and limitations – WROs must authorize with government, cannot federate, are not represented in tripartite bodies etc.
- Provisions on WROs are the only part of the LC where MoLISA has *not issued implementing decree*

## Implementation of the CSMs

- EU DAG is up and running
- No functioning DAG in Vietnam yet – call of expression of interest in Oct 2020, but limited number of applicants
- Why?
  - January 2021 VCP Congress
  - Loss of pre-ratification leverage of the EU – VN may be re-evaluating the situation
- Postponement of first JCSF and intergovernmental meeting – taken seriously by

## Can the CSMs properly function in Vietnam?

- Limited civil and political rights; tightly regulated civic space
- The emergence of a nascent ‘civil society’.
  - But closely monitored/controlled by the state.
  - Especially so for labour/human rights NGOs
- Last 3-4 years: Intensified scrutiny → DAG implemented in a shrinking civic space
- Risk that DAG will not be independent (“a government-run DAG”)
  - Independent CSOs fear that DAG participation will jeopardize their wider work



# Conclusions

- Pre-ratification impact:
  - EU/EVFTA as external reform catalyst
  - But: can only understood in interaction with VN political economy dynamics and context of the TPP vacuum
- Post-ratification impact:
  - Implementation is dragging out (signs that VN is stepping back on its commitments?)
  - Will the CSMs be effective in Vietnam?
- Future FTAs?
  - Outcome in the case of the EVFTA is context-dependent – but does not easily lend itself to replication
  - A more assertive position on the TSD chapters by the Commission – but unlikely to block FTAs over TSD commitments
  - How far is the Parliament willing to go in terms of consolidating its expanded role?