



WTO+ and WTO-X provisions in the European Union-Vietnam Free Trade Agreement: a ‘fruit salad tree’ is yet to grow

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Abstract

The European Union-Vietnam Free Trade Agreement (EVFTA) is an ambitious regional trade agreement, signed by both parties in 2019 and ratified by the European Parliament in February 2020. Like many other ‘new-generation’ RTAs, this agreement is well known for its WTO+ and WTO-X provisions. This paper analyzes typical WTO+ and WTO-X provisions of the EVFTA, focusing on their concepts, contents and legal enforceability. This paper argues that environmental and human rights protection provisions, which are ‘grafted’ into the regional trade legal system under the form of WTO-X provisions, do not have the same legal value as WTO+ provisions. As a result, the EVFTA remains mainly a trade agreement and cannot be counted upon as the sufficient condition to establish harmonization between pillars of sustainable development.

‘There. That’s what’s going to happen to us. It’s called grafting. Taking something from one place and fixing it to another until they grow together. We didn’t start from the same tree, but we’re going to grow together like we did.’

(Joan Bauer, *Hope was here*, 2000).

For members of the World Trade Organization (WTO), the *raison d’être* of regional trade agreements (RTAs) is to create for their participants more rights and advantages than those accorded under the WTO framework. This means that trade liberalization through RTAs has, by its very nature, a wider coverage and goes

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deeper than it does under the WTO. Of course, if this were not the case, it would be difficult to justify the establishment of RTAs. Indeed, research has also confirmed this logic.¹ However, while WTO+provisions have existed for a few decades, appearing with the RTAs established after the birth of the WTO in the mid-1990s, the terms ‘WTO+’ (WTO-plus), ‘WTO-’ (WTO-minus), ‘WTO-X’ (WTO-extra) and ‘WTO-more’ have only become popular in recent times, especially with the arrival of the so-called ‘new-generation’ RTAs.²

One example of a new-generation RTA is the European Union-Vietnam Free Trade Agreement (EVFTA). This agreement was signed by the European Union (EU) and Vietnam in June 2019 and was ratified by the European Parliament in February 2020. While ‘(t)he bilateral relationship between the EU and Asian partners is cultivated in a variety of ways and dimensions and with different intensity and depth’,³ the EVFTA has been described by the European Commission as the most ambitious free trade deal ever concluded by the EU with a developing country.⁴ Much like a ‘fruit salad tree’,⁵ the agreement’s framework features WTO+ and WTO-X provisions that derive from various international law disciplines, including trade law, human rights law and environmental protection law.

In this paper, we’ll examine the typical WTO+ and WTO-X provisions in EVFTA, focusing on their content and legal enforceability. We’ll try to answer the following questions: How do these EVFTA’s provisions fit in WTO+ and WTO-X categories? Are they legally enforceable? Do WTO-X provisions have the same legal value as WTO+ provisions? With these WTO+ and WTO-X provisions, how will the EVFTA, alongside the WTO, will contribute to global trade? Can we count on the EVFTA, along with other new-generation RTAs, to guarantee sustainable development?

The EVFTA contains a large number of provisions, with 17 chapters, 18 annexes, 2 protocols, 2 understandings and 4 joint declarations. In this paper, we will focus on selected EVFTA chapters. Attention will be given to chapter 2 (National treatment and market access), which contains typical WTO+ provisions. Also, we analyze chapter 13 (Trade and sustainable development), which contains typical WTO-X provisions.

¹ See Hofmann et al. (2017); Kawai and Wignaraja (2011)

² It is generally accepted that, while the ‘classical’ RTAs focus on tariff cuts and trade in goods, ‘new-generation’ RTAs are often considered as RTAs that aim to open up new markets. They include, among other things, rules on services, public procurement, investment and regulatory cooperation. For definitions and examples of new-generation RTAs, see European Parliament (2017). See also Horn et al. (2008)

³ Park (2019) <https://doi.org/10.1007/s10308-019-00552-4>

⁴ Bourgeois G (2019)

⁵ A ‘fruit salad tree’ is a tree specially grafted to bear many different fruits. It was created by two Australian farmers, James and Kerry West, in the early 1990s. See their website <https://www.fruitsaladtrees.com/>.

Chapter 2 of EVFTA: WTO + provisions

Chapter 2 of the EVFTA includes commitments related to national treatment and market access. Its content is a combination of the rules of the General Agreement on Tariffs and Trade (GATT), the WTO's Agreement on Import Licensing Procedures and the Agreement on Agriculture, and the deeper commitments of both parties. The majority of its articles are concerned with the reduction of tariffs, as well as other issues related to the import and export of goods between two partners.

To determine that chapter 2 of the EVFTA contained WTO + provisions, it was necessary to define first what WTO + provisions are. Many experts have offered answers to this question. Gabrielle Marceau suggests WTO + provisions make RTAs go deeper than WTO rules.⁶ Claudia Hofmann, Alberto Osnago and Michele Ruta suggest WTO + provisions regulate areas that fall under the current mandate of the WTO, such as customs regulations, export taxes, antidumping, countervailing measures, technical barriers to trade and sanitary and phytosanitary measures.⁷ Henrik Horn, Petros C. Mavroidis and André Sapir propose that WTO + provisions entail commitments that build on those already agreed to in the WTO.⁸ In summary, it is widely accepted that WTO + provisions are those that regulate areas already covered by WTO law, but require a deeper level of commitment from the parties to a RTA.

The WTO + elements of EVFTA's chapter 2 are reflected in three ways. Firstly, while this chapter confirms WTO rules related to trade barriers' reduction, the tariff and non-tariff barriers are to be made lower in the EVFTA than those permitted in the WTO framework. Specifically, under the WTO, Vietnam has committed to reduce 35.5% of tariff lines on the import schedule from 2007 to 2019.⁹ In comparison, in the EVFTA framework, Vietnam is to eliminate 48.5% of tariff lines upon signature, and 98.3% tariff lines after a 10-year transition period.¹⁰ These commitments, which are wider and higher than those agreed to by Vietnam in the WTO,¹¹ open the market for many European goods, in particular car parts, pharmaceutical products, food products (including wine, spirits, frozen pork meat, dairy products).¹²

Secondly, the obligation to reduce trade barriers applies to more products in the EVFTA than in the WTO. For instance, chapter 2 of the EVFTA contains provisions related to the substantial reduction of trade barriers that are imposed on specific products, in particular agricultural goods¹³ and remanufactured goods.¹⁴

⁶ Marceau G (2009) News from Geneva on RTAs and WTO-plus, WTO-more, and WTO-minus. Multilateralizing Regionalism and the Future Architecture of International Trade Law as a System of Law, ASIL Proceedings

⁷ Hofmann et al. (2017) pp. 2-3

⁸ Horn et al. (2008)

⁹ Le et al. (2017)

¹⁰ VCCI (2019)

¹¹ World Bank (2020)

¹² Eurocham (2019) Read also the opinion of Tran Tuan Anh, Minister of Industry and Trade, interviewed by Vietnam News Agency (2019)

¹³ See EVFTA's chapter 2, Article 10 on Agricultural export subsidies

¹⁴ See EVFTA's chapter 2, Article 5 on Remanufactured goods

Thirdly, in comparison to WTO law, EVFTA's chapter 2 imposes more detailed requirements related to obligations of notification and information. Some examples include: notification and information obligations applied to import and export licensing procedures (Article 15); information and consultation obligations before applying general exceptions; and the possibility to impose precautionary measures in case immediate actions are required (Article 20).

Having identified WTO+ provisions in EVFTA chapter 2, we must now consider their legal enforceability. In many cases, the existence of WTO+ provisions in an RTA doesn't make much difference for the participants as they are not legally enforceable.¹⁵ Therefore, we may ask if this is the case with the WTO+ provisions in EVFTA's chapter 2.

There are many discussions on legal enforceability of WTO+ provisions, and they usually integrate those concerning hard law and soft law.¹⁶ Often, three criteria are proposed in order to evaluate the legal enforceability of an RTA provision. The first criterion goes to the precision of the provision.¹⁷ The second criterion refers to the implementation of the provision and, in particular, the possibility to submit violations to a dispute settlement procedure.¹⁸ The third criterion concerns the nature of the provision.¹⁹

By the first criterion, it would seem that WTO+ provisions in EVFTA's chapter 2 are legally binding due to the detailed schedules of the parties and the precision of articles and their language. As for the second criterions, violations of WTO+ obligations are examined under the dispute settlement mechanism provided

¹⁵ See Hofmann et al. (2017)

¹⁶ For more discussions on soft law and hard law, see Klabbers (2009)

¹⁷ Golzalo Villalta Puig emphasizes precision in terms of the language used. Provisions containing negative obligations, specific timelines, actionable items and measurable obligations are considered to be enforceable. Those, for example, that commit parties to 'cooperate' and 'enter into dialogue', or that utilize the term 'may' instead of 'shall', are not considered to be enforceable. Kenneth Abbott, Duncan Snidal, Hofmann, Osnago and Ruta also use this criterion to evaluate legal enforceability of WTO+ provisions. They consider that a provision might be not legally enforceable due to unclear or loosely formulated legal language. See Puig (2016); Hofmann et al. (2017) p. 7; Abbott and Snidal (2000)

¹⁸ According to Hofmann, Osnago and Ruta, a provision is considered legally enforceable if it has not been excluded from a dispute settlement procedure. This idea is also adopted by Puig, who states that provisions are unenforceable if they exempt the concerned measures from a dispute settlement procedure under the agreement. In his research, Nicolas Croquet advanced some criteria for determining the legal enforceability of WTO+ provisions. In assessing whether provisions could be considered as hard or soft, he noted: (i) the degree of its precision with regard to the dimensions of clarity, detailed nature and self-sufficiency; (ii) the degree of delegation to a third party for enforcement and, in particular, their submission to the jurisdiction of a dispute settlement mechanism. Kenneth Abbott and Duncan Snidal also insist on the level of delegation to a third-party entity detached from and unrelated to the parties to the dispute related to the application of the provision. For this third point, a high degree of delegation is associated with dispute settlement mechanisms involving judicial and arbitral institutions, while a low degree of delegation is associated with dispute settlement mechanisms involving political institutions. Christine Chinkin agrees that soft law norms are not naturally conducive to an adjudicatory dispute settlement. They lend themselves instead to non-judicial forms of dispute settlement and to 'self-regulation between interested participants'. See Hofmann et al. (2017), *idem*; Puig (2016). See also Croquet NAJ (2015); Abbott and Snidal (2000); Chinkin (1989)

¹⁹ Kenneth Abbott and Duncan Snidal consider that one of the 'yardsticks' to examine the enforceability of a particular norm is the formally binding or non-binding nature of the obligation. See Abbott and Snidal (2000)

in EVFTA's chapter 15. The term 'shall' is used 81 times in chapter 2. Although this number is not a determinant element in deciding whether provisions in the chapter are binding, it is an indicator that the third criterion is satisfied. The very few examples of non-binding provisions are those related to the unilateral acceleration of reduction in customs duties (Article 7.5) and the consultations between parties over accelerating and widening the scope of duties reduction (Article 7.6).

Finally, another element of note is the regular referencing to WTO law in chapter 2. At least 23 references to it can be found within that chapter.²⁰ Therefore, it can be reasonably argued that an effective interpretation of this chapter and implementation of its provisions shall be made in light of WTO law. In other words, the provisions in EVFTA chapter 2 satisfy the 3 criteria to be identified as WTO+ and maintain direct links with WTO provisions and cannot be understood in isolation from them.

Chapter 13 of the EVFTA: WTO-X provisions

Claudia Hofmann, Alberto Osnago and Michele Ruta define WTO-X provisions as those that regulate areas outside the WTO mandate, including investment, environmental law and nuclear safety.²¹ Henrik Horn, Petros C. Mavroidis and André Sapir also state that WTO-X provisions contain commitments dealing with issues beyond the WTO mandate.²² In other words, WTO-X provisions can be defined as those that regulate areas not yet covered by WTO law.

Chapter 13 (Trade and sustainable development) insists on a 'horizontal coherence'²³ while synchronizing three objectives: economic development, social development and environmental protection.²⁴ Notable WTO-X issues addressed by

²⁰ Article VII of GATT is referenced in Article 6 related to customs valuation; Article III of GATT is referenced in Article 12 related to national treatment; Article XI of GATT is referenced in Article 13 related to import and export restriction; WTO Agreement on Import Licensing is referenced in Article 15 on import and export licensing procedures; Article VIII of GATT is referenced in Article 16 on administrative fees and other charges on import and exports and formalities; Article XVII of GATT is referenced in Article 18 on state trading enterprise; Article XX of GATT is referenced in Article 20 on general exceptions.

²¹ See Hofmann et al. (2017)

²² See Horn et al. (2008)

²³ See Croquet (2015)

²⁴ See for example in EVFTA chapter 13: Article 1.1 ('reaffirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development'); Article 1.2 ('The Parties reaffirm their commitment to pursue sustainable development, whose pillars – economic development, social development and environmental protection – are inter-dependent and mutually reinforcing'); Article 1.3 ('They underline the benefit of cooperating on trade-related labor (...) and environmental issues as part of the global approach to trade and sustainable development'); Article 4.4 ('Nothing in this Agreement shall prevent Parties from adopting or maintaining measures to implement the MEAs to which they are party provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade'); Article 2.d ('Promote the development of sustainable aquaculture, taking into account its economic, social and environmental aspects'); Article 9 ('The Parties confirm their commitment to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions...'); Article 10.4 ('A Party shall not apply labor or environmental laws in a manner that would constitute a disguised restriction on trade or unjustifiable discrimination between the Parties').

chapter 13 of the EVFTA are multilateral labor standards and agreements, multilateral environmental agreements, climate change, biological diversity, sustainable forest management and trade in forest products, trade and sustainable management of living marine resources and aquaculture products. Therefore, we can argue that this chapter regulates an area beyond the mandate of WTO law.

One of the most remarkable characteristics of this chapter is the absence of any direct reference to WTO law. Whilst this may be considered logical, as WTO-X provisions, by nature, cover areas that are beyond the scope of WTO law, we can still argue that an effective interpretation of WTO-X provisions cannot be made in isolation to WTO law. Even if it is considered through the perspective of harmonization with non-trade preoccupations, trade remains one of the fundamental pillars of EVFTA's chapter 13, the title of which is '*Trade and sustainable development*'. The trade liberalization obligations within this chapter must, therefore, be interpreted as being coherent with EVFTA's many other chapters, which, in turn, shall be interpreted in light of WTO law. Therefore, it is reasonable to conclude that WTO-X provisions maintain a link with WTO provisions.

WTO-X provisions shall also be interpreted in relation to international environmental law and international human rights law, especially the multilateral environmental agreements (MEAs) and the principles of the International Labor Organization (ILO). Many '*renvoi* clauses' which reaffirm the parties' obligations according to MEAs or ILO principles²⁵ can be found in chapter 13.²⁶ Thus, the authors of these clauses did not invent WTO-X provisions from scratch. Commenting on this phenomenon, Nicolas Croquet states that, even though '*renvoi* clauses' have little substantive added value, their merit lies in the fact that, by integrating the pre-existing commitments into a free trade agreement and by reasserting them, implementation may be reinforced.²⁷ However, Lorand Bartels considers that the obligation to implement the sustainable development agreements '... amounts to no more than a

²⁵ For the term '*renvoi* clauses', see Croquet (2015)

²⁶ Examples are: Article 1.1 on context, objectives and scope (referring to the Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on full employment and decent work on 2006, the ILO Decent Work Agenda, the outcome document of the UN Conference on Sustainable Development of 2012 entitled 'The future we want', the outcome of the UN Summit on Sustainable Development of 2015 entitled 'Transforming Our World: the 2030 Agenda for Sustainable Development'); Article 3.2 and 3.5 on multilateral labor standards and agreements (referring to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, as well as the ILO conventions ratified by both parties); Article 8 on trade and sustainable management of living marine resources and aquaculture products (referring to the UN Convention of the Law of the Sea of 1982 (UNCLOS), the UN Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU, the FAO Code of Conduct for Responsible Fisheries of 1995); Article 9 on trade and investment favoring sustainable development (the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy).

²⁷ Croquet (2015)

reaffirmation of obligations already binding on the parties under those agreements. It seems, then, that the provisions are not as original as they first appear.²⁸

From our point of view, the WTO-X sustainable development provisions in chapter 13 contribute to balance trade and non-trade issues, while taking into consideration non-trade preoccupations and the interests of stakeholders. Through the WTO-X provisions, the authors of the EVFTA have made an effort to ‘graft’ the provisions of environmental and human rights agreements into a trade agreement. However, the question remains whether this grafting will have an important impact on the parties’ attitude. Will it contribute effectively to the harmonization of trade and sustainable development? Since the traditional environmental and human rights rules are, in general, relatively ‘soft-enforced’, will this grafting help to create rules that are ‘hard-enforced’²⁹ in the field?

On the one hand, it is difficult to deny that, in comparison with other RTAs of which Vietnam is a member, chapter 13 demonstrates a step forward in the harmonization between trade and sustainable development.³⁰ Through the binding nature of the language in some provisions, the two parties’ international commitments related to the environment and human rights are reiterated in the framework of this trade agreement.³¹ Article 10 prohibits a ‘race to the bottom’ in which parties would attempt to weaken the levels of protection afforded in domestic environmental law or labor law in order to encourage trade or investment. Article 12, meanwhile, aims to ensure transparency. Articles 13–17 establish an implementation mechanism to guarantee adherence to these commitments.

On the other hand, the majority of chapter 13’s provisions are non-binding. Firstly, non-binding formalities such as ‘The Parties recognize that...’, ‘The Parties agree to promote...’ and ‘Each Party takes into account...’ are frequently used throughout the chapter. Secondly, the WTO-X provisions that make reference to MEAs and ILO principles are less precise than WTO+ provisions. In fact, in the WTO, many rules are interpreted clearly due to the significant amount of reports

²⁸ Bartels (2012)

²⁹ Terms used by Holger Hestermeyer when commenting on human rights in Hestermeyer (2008).

³⁰ See Tran (2017)

³¹ For example, Article 3.5 provides for the commitment to effectively implement the ILO Conventions; Article 4.2 provides for the commitment to effectively implement MEAs; Art 4.3 concerns the exchange of information and experience with regard to ratification of MEAs; Art 4.4 stipulates the right to adopt or maintain measures to implement the MEAs to which they are party; Art 6.3.c concerns the exchange of information related to initiatives to conserve the biodiversity; Art 6.3.D provides for the obligation to adopt and implement appropriate measures to reduce illegal trade in wildlife; Art 7.2.b related to exchange of information on measures to promote consumption of timber and timber products from sustainably managed forests; Art 10.2 stipulates that the Parties shall not waive or derogate from, or offer to waive or derogate from environmental or labor laws in a manner affecting trade and investment between Parties; Art 10.3 provides that the Parties shall not fail to effectively enforce environmental and labor laws as an encouragement for trade and investment; Art 10.4 states that the Parties shall not apply labor or environmental laws in a manner that would constitute a disguised restriction on trade or unjustifiable discrimination between the Parties; Art 12 stipulates that the Parties shall ensure that measures aimed at protecting environment and labor conditions that may affect trade and investment are developed, introduced and implemented in a transparent manner; Art 15 is related to institutional set-up and overseeing mechanism; Art 16 provides for consultation to solve matters arising under the chapter.

produced by the Appellate Body and panels. This is not the case for ILO principles and for MEAs. Thirdly, even if a dispute settlement mechanism is established in order to examine adherence to obligations in this chapter, no sanction is prescribed for non-conformity to the final reports and recommendations of the panels. Therefore, we can agree with recent research conducted by Katerina Hradilová and Ondrej Svoboda which concluded that sustainable development chapters in EU free trade agreements ‘have limited influence in respect of enforcement possibilities’.³² Obviously, the EVFTA’s chapter 13 is no exception.

The role of EVFTA in the reform of global trade system

Since the establishment of the WTO in 1994, the world has changed significantly. Different crises of the multilateral trade system, including the Appellate Body’s blockage and dormant negotiations, indicate that ‘ongoing WTO reform efforts will be crucial to restoring confidence in the system’s ability to meet the needs of its users and adapt to changing economic realities’.³³

In order to make a WTO fit for the twenty-first century, from a procedural perspective, it will be necessary to find a solution to the crisis with the WTO’s dispute settlement function, and compliance with WTO’s requirements on notification and transparency must be improved.

From the substantive perspective, many things should be done. First, the WTO should develop rules to deal with digital trade and e-commerce to adapt to the modern digital economy in the context of the 4th industrial revolution. Second, it should handle state-owned enterprises and subsidies (including fisheries subsidies), and limit the use of domestic support for agriculture in order to reduce distortions in agricultural trade. This will also involve establishing rules on investment facilitation and reducing domestic regulations which are an unnecessary obstruction to services trade.³⁴ Finally, it should align trade policy and environmental sustainability,³⁵ something which was addressed by WTO Deputy Director-General Alan Wolff when he stated ‘If the WTO does not engage fully with environmental issues, with the existential threat of climate change, along with making the WTO central to the framework for global digital commerce, and does not address the suite of issues affecting well-being, the institution will move deep into the shadows of irrelevance’.³⁶

With all of this in mind, we must ask, how does the EVFTA contribute to the reform of the WTO in particular, and to the development of the global trade system

³² Hradilová and Svoboda (2018)

³³ See the opinions of WTO’s Deputy Director-General Wolff A (2020c)

³⁴ Wolff (2020c), *idem*

³⁵ Schneider-Petsinger (2020). See also Wolff (2020a)

³⁶ Wolff (2020b) The WTO must not continue as it is. Speech during the discussion on trans-Atlantic cooperation on WTO reform on 10 December 2020. https://www.wto.org/english/news_e/news20_e/ddgaw_10dec20_e.htm. Accessed 20 January 2021

in general? This question concerns the discussion of whether RTAs are building blocks or stumbling blocks in the development of the multilateral trade system.³⁷ It is certainly true that the proliferation of RTAs may threaten the coherent development of international trade system, and it is also true that a sole reliance on RTA 'cannot be a valid response to the current Doha negotiation'.³⁸ However, the RTAs' contribution to the reinforcement of the global trade system is also undeniable. Of this, the EVFTA is an clear example.

Firstly, this agreement promotes respect for WTO law. Policy makers are well aware that coherence between RTAs and multilateral rules is necessary for the national, regional and multilateral systems.³⁹ As such, the recognition of WTO rules and jurisprudence may contribute to the rationalization of WTO-RTA relations.⁴⁰ With 23 references to WTO law and at least 9 articles which require the respect of different WTO provisions in chapter 2 of the EVFTA alone, indications of this recognition are clear.⁴¹ In this way, the relation between regionalism and multilateralism is harmonized: regional rules shall be conform with multilateral rules; multilateral rules shall help to interpret and implement regional rules.

Secondly, the EVFTA contributes to the development of the WTO law system. While it is true that the EVFTA cannot deal effectively with inherently multilateral issues,⁴² a situation that is seen elsewhere with other RTAs, it contains different provisions which help to further WTO negotiations. An example is Article 2.12.1 of EVFTA's chapter 2, which prescribes that both parties share the same objective and shall work together in the multilateral context 'with the aim of enhancing multilateral disciplines on agricultural exporting state enterprises, international food aid and export financing support'. This type of clause encourages RTA members to create an 'alliance' in order to influence on, and contribute to, the development of the WTO law. The 'bottom up approach', at the end of the day, will contribute to the development of the multilateral system.

Thirdly, as many issues discussed in the context of WTO reform are mentioned in the EVFTA framework,⁴³ it is the 'multilateralization' of regional trade liberalization rules that is perhaps the most encouraging to see. This multilateralization occurs in particular 'when existing preferential agreements are extended in a non-discriminatory manner to additional parties'.⁴⁴ Many concessions in the EVFTA are by nature extended to all third countries. For instance, WTO + provisions related to intellectual property protection in chapter 12 shall be extended to all WTO members. In addition, the EVFTA motivates domestic institutional and legal reforms,

³⁷ See Tran (2008)

³⁸ Marceau (2009)

³⁹ OECD (2015)

⁴⁰ Pauwelyn (2009)

⁴¹ See EVFTA's chapter 2, articles 2.1, 2.4, 2.13, 2.14, 2.16, 2.17, 2.18, 2.20, 2.22

⁴² Marceau (2009)

⁴³ See, for example, the EVFTA's chapter 8 on Liberalization of Investment, Trade in Services and Electronic Commerce, chapter 13 on Trade and Sustainable Development, chapter 14 on Transparency.

⁴⁴ Pauwelyn (2009)

which contribute to strengthen and standardize rules, promote transparency, support the creation of modern institutions,⁴⁵ reinforce environmental preservation or labor rights protection. While ratifying the EVFTA, Vietnam had to amend different laws and by-laws related to these legal reforms, in particular those related to intellectual property, labor, trade union, environment. Once these legal instruments have been amended, they will affect not only the trade relation with EU members, but also that with all WTO members.⁴⁶

Finally, it is necessary to note that some developed countries negotiate RTAs with the intention of setting precedent for future multilateral rule-making. As negotiations have been carried on between the EU with Singapore, South Korea, Japan, Malaysia, Thailand, China, it is reasonable to argue that the EVFTA will not be the sole and final trade liberalization project of the EU. Indications are that the EVFTA is one of Union's steps to radiate its 'trade for all' philosophy and rules to the world, including Asia, which means its role in the reform of global trade systems should not be underestimated.

To summarize, this paper illustrates how WTO+provisions maintain a close link with WTO provisions and how WTO-X provisions have their roots in international environmental law and human rights law, with the intention of harmonizing the pillars of sustainable development. However, WTO+provisions are more legally binding than WTO-X provisions due to their precision, their language and their mechanisms for implementation.⁴⁷ This provokes some thoughts about trade and sustainable development priorities in the EVFTA. As the WTO-X provisions focus only on 'trade-related aspects of labor and environmental issues',⁴⁸ many other aspects of human rights or environmental protection are not ruled by those provisions. As a result, the EVFTA, even with its best efforts to harmonize trade liberalization with non-trade preoccupations, is far from balanced.

The result of grafting human rights and environmental protection provisions to the system of RTAs is that they are still not given the same value as trade provisions. Thus, the EVFTA can be viewed as being mainly a trade agreement. While its contributions to the reform of the global trade legal system are undeniable, we cannot yet reasonably expect it to establish a perfect harmonization between the pillars of sustainable development. The journey towards sustainable development remains a long one and at this point in time, the case of the EVFTA suggests that new-generation RTAs cannot be relied upon to be the sole vehicle for delivering sustainable development goals.

⁴⁵ World Bank (2020)

⁴⁶ World Bank, *idem*

⁴⁷ Of course, the legal enforceability will still depend on the strength of the regional dispute settlement mechanism. See OECD (2015)

⁴⁸ Article 1.3 of EVFTA chapter 13 confirms this idea. According to Article 1.3, 'They (the Parties) underline the benefits of cooperating on trade-related labor (...) in environmental issues as part of the global approach to trade and sustainable development. Accordingly, the scope of this Chapter is on trade-related aspects of labor and environmental issues.'

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