

RESEARCH ARTICLE

New generation free trade agreements as a driver of institutional change: A case of Vietnam

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Abstract

According to new institutional economics, institutional change is a precondition to economic change and is caused by multiple forces. In addition to path dependence, and strategic policy direction of the country, there are external forces which might have a path-breaking effect. This paper investigates the role of new generation free trade agreements (NGFTAs) in the process of institutional change using the case of Vietnam. It focuses on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA) as the most advanced trade agreements ever concluded between developed and developing economies. The findings are based on selected new generation provisions of the CPTPP and EVFTA that confirmed limited success in formal institutional change, no visible impact on the informal part of the institutional setting, and a lack of enforcement incentives. However, institutional change might be achieved by market shifts that activate businesses. These entities, for example, enforce intellectual property rights, modern corporate governance standards or labor rights protection that might cause the spill-over effect into a broader spectrum of economic actors. Thus, they might cause a shift in informal norms triggering incremental changes leading to successful institutional change. NGFTAs might be considered indirect facilitators of this process because they promote a friendly business environment and increase Vietnam's investment attractiveness.

Keywords

Vietnam, institutional change, New Generation Free Trade Agreements (NGFTAs), EU-Vietnam FTA (EVFTA), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

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Introduction

Evaluation of the impact of free trade agreements (FTAs) during the past two decades has focused primarily on tariff reduction or, at best, on trade facilitation elements. As other reviewers of FTAs' impact in the literature, e.g., 1, and the current author have observed, the conventional belief was that this impact was positive for the FTA signatories. However, most publications do not provide convincing arguments to prove this assertion. One widespread problem is that of attributing causality to the *ex-post* evaluations. Since no convincing evidence supports the direct, positive impact of FTAs, researchers suggest indirect effects through other channels, often without proper analysis of the whole economy or the country's institutional setting. A common mistake in the analyses of FTAs is a narrow approach focusing solely on trade-related issues. However, according to more advanced studies, FTAs might have an impact on various aspects of the economy (e.g., 2). Social or environmental impact is often indirectly connected with economic performance and developmental output. Moreover, more complex FTAs might have an impact on the institutional setting of the country and, through this channel, on economic performance and development. Vietnam serves as the case study for this paper.

The research question "What are the forces that can drive the institutional change in Vietnam?" investigates the role of selected FTAs in an institutional environment and argues that they might under certain conditions influence the power and direction of institutional change.

Theoretical framework

This paper follows the new institutional economics (NIE) approach, which emphasises the importance of institutions and institutional change in economic performance.³ Explaining change in economic performance requires integrating the theories on change into the demographic, stock of knowledge or institutional

¹ C. Stevens *et al.*, *The Impact of Free Trade Agreements between Developed and Developing Countries on Economic Development in Developing Countries: A Rapid Evidence Assessment* (London: Overseas Development Institute, 2015), https://assets.publishing.service.gov.uk/media/57a0897740f0b649740000c4/REA_FreeTradeAgreements_publish.pdf.

² ADB - Asian Development Bank, *Asian Economic Integration Report 2019/2020. Demographic Change, Productivity, and Role of Technology* (Manila: Asian Development Bank, 2019), <https://www.adb.org/publications/asian-economic-integration-report-2019-2020>; S.J. Barkin, "Trade and Environment," in *The Oxford Handbook of the Political Economy of International Trade*, ed. L.L. Martin (Oxford and New York: Oxford University Press, 2015), 439–456; H. Herr, E. Schweisshelm and T.M. Vu, *The Integration of Vietnam in the Global Economy and its Effects for Vietnamese Economic Development* (Geneva: International Labour Organization, 2016), https://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.44.pdf; B. Tröster *et al.*, "Combining trade and sustainability? The Free Trade Agreement between the EU and Vietnam," *ÖFSE Policy Note* (29/2019), 2019, <https://www.econstor.eu/handle/10419/192973>.

³ D.C. North, *Institutions, Institutional Change, and Economic Performance* (Cambridge: Cambridge University Press, 1990).

setting. As the key to improving economic performance is humans' control over their environment, thus the latter element needs to be examined.⁴

Placing institutions at the center of attention needs more elaboration. According to North,⁵ institutions are a mix of "formal rules, informal norms and the enforcement characteristics". Thus, effective institutional change must contain changes in a formal and informal institutional setting with the enforcement ability of the organizations (certain actors involved in the process). The essential fact to understand institutional change is the recognition that formal rules might be changed in one day. Informal norms need a long time to adjust, sometimes a generation. Moreover, the same formal rules applied in the environment of different informal norms might produce utterly different outputs.

It is commonly agreed (e.g., 6) that institutional change is largely path-dependent, which is the consequence of the informal constraints mentioned above, although it might be redirected by endogenous or exogenous forces. The former might be driven by strategic and goal oriented stakeholders.⁷ The latter is more complex and includes reactions to political or economic factors, e.g., changes in price and transaction costs. Radical changes, however, have a lower chance to persist, as Vietnam's example proves. A stable force causing incremental changes in an institutional setting, adequately managed by the stakeholders who try to fit the changes into the existing pattern, is more likely to succeed.⁸ International agreements, including FTAs, are examples of forces that might be used to initiate institutional change.

To sum up, several concepts classify drivers of institutional change from which the conclusion is that the process is led by path dependence, strategic choice, that is, the set of policies and directions a country has chosen, and external forces which,

⁴ D.C. North, *Understanding the Process of Economic Change* (Princeton and Oxford: Princeton University Press, 2005), <https://press.princeton.edu/books/paperback/9780691145952/understanding-the-process-of-economic-change>.

⁵ D.C. North, "The New Institutional Economics and Third World Development," in *The New Institutional Economics and Third World Development*, 2nd ed., eds. J. Harriss, J. Hunter and C.M. Lewis (London and New York: Routledge, 2003), 17–26, 25, <http://ebour.com.ar/pdfs/North.pdf>.

⁶ J.L. Campbell, *Institutional Change and Globalization* (Princeton and Oxford: Princeton University Press, 2004), <https://www.degruyter.com/document/doi/10.1515/9780691216348/html>; North, *Institutions, Institutional Change*; P. Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94, no. 2 (2000): 251–267.

⁷ North, *Institutions, Institutional Change*; D.C. North, "Five Propositions about Institutional Change," Economic History Working Paper No. 9309001, 1993, <https://dlc.dlib.indiana.edu/dlc/handle/10535/3876>.

⁸ P.A. Hall, "Conclusion: The Politics of Keynesian Ideas," in *The Political Power of Economic Ideas: Keynesianism across Nations*, ed. P.A. Hall (Princeton: Princeton University Press, 1989), 361–392; R.C. Lieberman, "Ideas, Institutions, and Political Order: Explaining Political Change," *American Political Science Review* 96, no. 4 (2002): 697–712.

depending on their power, might redirect the development path.⁹ In this paper, NGFTAs are considered potential pathbreakers for Vietnam.

Historical drivers of Vietnam's institutional change

Without a doubt, over the past 30 years, Vietnam has earned recognition as one of the most successful developing economies, becoming elevated from one of the poorest in the world to a middle-income level. It can be argued that the initial success was achieved not thanks to the state's policy direction but despite it; this view is consistent with Malesky and London.¹⁰

The communist experiment in Vietnam and the changes in the formal institutions connected with it were too revolutionary for local informal institutional arrangement (e.g., norms and values) and extremely hard to implement, e.g., collectivization. Thus, effective resistance to the state direction, known as “fence-breaking” (a term translated and popularized by Adam Fforde) emerged in the 1970s, breaking the rules aimed at improving economic output. Successful attempts were implemented in the formal system.¹¹ Thus, in contrast to common belief (e.g., 12), the informal part of the institutional setting started to change the formal one. This change brought institutions closer to their historical path, practiced for generations before. Adopted elements were initially beneficial for the country and its development, surpassing the shortcomings of the communist system. In the later stages, this method exhausted its reformist power.

In the next stage, in the late 1980s, Vietnam introduced a much more pragmatic approach to its strategic policy direction and changed its ideological propaganda under the slogan of *Đổi Mới* (English: ‘renovation’). The move was forced by the deteriorating economic situation, mostly caused by external shocks, e.g., the sharp reduction in Soviet aid. Adam Fforde¹³ claims that the SOEs managers

⁹ R.M. Abrami, “Pictures of the Past. Historical Influences in Contemporary Asian Business Systems,” in *The Oxford Handbook of Asian Business Systems*, eds. M.A. Witt and G. Redding (Oxford, New York: Oxford University Press, 2014), 589–610.

¹⁰ E. Malesky and J.D. London, “The Political Economy of Development in China and Vietnam,” *Annual Review of Political Science* 17 (2014): 395–419.

¹¹ A. Fforde, “Myths in the Understanding of the Process of *doi moi*,” in *Mythbusting Vietnam: Facts, Fictions, Fantasies*, ed. C. Earl (Copenhagen: NIAS Press, 2018); A. Fforde, *Vietnamese State Industry and the Political Economy of Commercial Renaissance: dragon tooth or curate's egg?* (Oxford: Chandos Publishing, 2007), <https://www.sciencedirect.com/book/9781843342205/vietnamese-state-industry-and-the-political-economy-of-commercial-renaissance>; A. Fforde, “Policy ethnography and conservative transition from plan to market: The construction of policy rationalities and the “intellectual limitations of leading comrades”,” *Int J Soc Econ* 36, no. 6 (2009): 669–678.

¹² D. Stark, “Rethinking Internal Labor Markets: New Insights from a Comparative Perspective,” *Am Sociol Rev* 51, no. 4 (1986): 492–504.

¹³ A. Fforde, “The Political Economy of ‘Reform’ in Vietnam: Some Reflections,” in *The Challenge of Reform in Indochina*, ed. B. Ljunggren (Cambridge: Harvard University Press, 1993), 293–326.

played a role in adopting this approach as one of the leading “fence-breakers” putting pressure on the authorities. As a result, the institutional change was more profound and led to a substantial improvement in economic performance.

One of the next impulses for institutional change came from outside and was a result of adopted policies of economic openness and liberalisation. Foreign policy switched to being more pragmatic and oriented on economic cooperation, which enabled the economic integration and development of trade agreements.

Vietnam’s economic integration and FTAs

Trade liberalisation was preceded by selective import-substitution policies to develop its industrial capacity. Lifting the sanctions imposed during the turmoil of war and normalization of relations with the USA opened new trade opportunities and gradually changed the development strategy to an export-oriented one. Signing the Bilateral Trade Agreement with their former enemy cemented the new direction of Vietnam’s economic policy and allowed Vietnam to begin accession negotiations with the World Trade Organization (WTO), which were completed in 2007. However, the lack of a WTO integration progress after the Doha Round in 2008, disappointment with the ASEAN integration pace, and the quest to attract more foreign investors initiated a new chapter in Vietnam’s reform agenda that was oriented towards greater involvement in the separately negotiated trade agreements. As such, Vietnam joined the first-generation FTAs in Asia. However, their chaotic approach was driven by political factors without carefully managed assessment and preparation processes. One of the arguments supporting this assumption is the fact that the strategy of international integration issued by the government (Decision No. 40/QD-TTG) was formulated in 2016 after Vietnam had initiated or concluded FTA negotiations with its vital economic partners (e.g., the European Union (EU), Japan, South Korea, China, and the USA through multilateral agreements) and other non-essential partners (e.g., Chile, Israel, the Eurasian Economic Community, or European Free Trade Area).

The diversity of traditional free trade agreements (FTAs) in the region is the most probable cause of the so-called ‘noodle bowl effect’, in which overcrowded FTAs divert or neutralize the expected benefits of the agreements.¹⁴ Asian Development Bank researchers Kawai & Wignaraja¹⁵ noticed that the usage level of the FTAs by the ASEAN business sector is just 25%. Another quantitative model shows the low utilisation of the first-generation FTAs in Asia, at around 30%.¹⁶ Other studies

¹⁴ J. Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford: Oxford University Press, 2008).

¹⁵ M. Kawai and G. Wignaraja, “The Asian “Noodle Bowl”: Is It Serious for Business?,” ADBI Working Paper Series No. 136, 2009, <https://www.adb.org/publications/asian-noodle-bowl-it-serious-business>.

¹⁶ M. Pangestu and S. Armstrong, “Asian economic integration: The state of play,” in *Asian Economic Integration in an Era of Global Uncertainty*, eds. S. Armstrong and T. Westland (Acton: ANU Press, 2018), 15–62, https://www.jstor.org/stable/j.ctt20krz01.9#metadata_info_tab_contents.

confirmed no sufficient economic benefits from the agreements in many cases. Their effects vary depending on the FTA and the country's range of influence.¹⁷ Moreover, these agreements mostly covered only trade-related issues, without broader consideration of development incentives.

More profound and comprehensive free trade deals appeared at the end of the 2000s when the EU proposed ASEAN and South Korea economic cooperation that was broader than ever. At the same time, the Trans-Pacific Strategic Economic Partnership Agreement expanded as the Trans-Pacific Partnership (TPP) into twelve negotiating parties, with the most developed economies like the USA, Canada, Japan, and Australia, and developing ones like Vietnam among them. TPP contained the most advanced commitments beyond the WTO agenda and traditional trade and investment agreements. After the withdrawal of the USA in January 2017, the new generation provisions were narrowed down and the deal was renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The second such bottomless trade deal with a developed economy was the EU-Vietnam Free Trade Agreement (EVFTA). Both agreements are considered new-generation free trade agreements (NGFTAs).

New generation free trade agreements (NGFTA)

In general, the NGFTA is the EU's concept of new economic relations with other countries; it was mentioned in an EU policy document for the first time in 2006.¹⁸ However, other developed countries such as the USA proposed more comprehensive trade deals with their potential partners. In short, new generation FTAs cover a much broader scope than other regular trade deals, including so-called "behind-the-border" rules, e.g., domestic laws, procedures, and administrative tools.¹⁹ The reasons for widening the scope of FTAs include:

- technological progress and widening the scope of economic activities,
- more attention to public goods with global importance like environmental issues and sustainable development,
- soft power to promote human rights, including labor rights.

The first partners selected by the EU for the NGFTA, were ASEAN, Mercosur, and South Korea.²⁰ The inability of some ASEAN members to meet EU expectations

¹⁷ K.A. Nawrot, "Assessing the effects of trade regionalism in East Asia – evidence from augmented gravity models," *Applied Economics* (2022): 1–13.

¹⁸ Commission of the European Communities, *Global Europe: competing in the world. A Contribution to the EU's Growth and Jobs Strategy* (Brussels: Commission of the European Communities, 2006).

¹⁹ S.Y. Kim, "19 Deep Integration and Regional Trade Agreements," in *The Oxford Handbook of the Political Economy of International Trade*, ed. L.L. Martin (Oxford and New York: Oxford University Press, 2015), 360–379.

²⁰ S.S. Guerin, *Prospects for the EU's New Generation of FTAs* (Brussels: Centre of European Policy Studies, 2008), retrieved May 13, 2020, <https://www.ceps.eu/ceps-publications/prospects-for-the-eus-new-generation-of-ftas/>.

encouraged the European Commission (EC) to start bilateral negotiations with the ASEAN members who declared their readiness. Among them, only Singapore and Vietnam concluded NGFTAs with the EU.

Literature review

Vietnam and institutional change

Institutional explanation of economic changes became more popular after two events from economic history. The first was the collapse of the communist system in Europe and the transition of Central-Eastern European and post-Soviet economies into the free market.²¹ The second was the Asian financial crisis of 1997–98.²² Consequently, this approach expanded into overall transition issues of developing countries (e.g., 23), including comparative studies gathering Central-Eastern Europe and Asia (e.g., 24).

The institutional approach was used in Vietnam's context, as it can be classified as both, post-communist and developing economy. For example, institutional change was mentioned as a crucial element in sustaining growth and development in Vietnam,²⁵ and as necessary in allowing the market to play the biggest role in the economy.²⁶ Informal institutions complemented formal ones where the latter were still emerging. For example, social networks guaranteed the flow of information and trust between business partners.²⁷ In the same manner, the lack of a

²¹ M. Lissowska, "New Research Problems for Institutional Economics Arising from the Experience of Transition to a Market Economy: The Evolution of Institutions," *East-West Journal of Economics and Business* 9, no. 2 (2006): 53–80, <https://www.u-picardie.fr/eastwest/fichiers/art54.pdf>.

²² World Bank, *East Asia: The Road to Recovery* (Washington D.C.: World Bank Group, 1998).

²³ P.S. Aulakh and M. Kotabe, "Institutional changes and organizational transformation in developing economies," *J Int Manag* 14 (2008): 209–216; J. Harriss, J. Hunter and C.M. Lewis, "Introduction. Development and Significance of NIE," in *The New Institutional Economics and Third World Development*, 2nd ed., eds. J. Harriss, J. Hunter and C.M. Lewis (London and New York: Routledge, 2003), 1–16; North, "New Institutional Economics," 17–26.

²⁴ B. Chavance, "Why National Trajectories of Post-Socialist Transformation Differ?," *East-West Journal of Economics and Business* 5, no. 1 (2002): 47–56, <https://www.u-picardie.fr/eastwest/fichiers/art13.pdf>; H.W. Hoen, "Globalization and Institutional Change: Are Emerging Market Economies in Europe and Asia Converging?," *Economics, Management, and Financial Markets* 9, no. 4 (2014): 44–66, <https://research.rug.nl/en/publications/globalization-and-institutional-change-are-emerging-market-econom>.

²⁵ C.L. Gates, "Foreign Direct Investment, Institutional Change, and Vietnam's Gradualist Approach to Reform," *Southeast Asian Affairs* (1995): 382–400, <https://www.jstor.org/stable/27912137>; G. Irvin, "Vietnam: Assessing the achievements of *Doi Moi*," *J Dev Stud* 31, no. 5 (1995): 725–750.

²⁶ H.M. Knutsen and D.T. Khanh, "Reforming State-Owned Enterprises in a Global Economy: The Case of Vietnam," in *The Socialist Market Economy in Asia. Development in China, Vietnam and Laos*, eds. A. Hansen, J.I. Bekkevold and K. Nordhaug (Singapore: Palgrave Macmillan, 2020), 141–166.

²⁷ L. Steer and K. Sen, "Formal and Informal Institutions in a Transition Economy: The Case of Vietnam," *World Development* 38, no. 11 (2010): 1603–1615.

well-functioning legal system, contract enforcement and financial market produced incentives for informal relationships between companies based on mutual trust. Trust was built over time based on companies' business networks, personal meetings and geographical location.²⁸

Another example shows the successful development of Vietnam's export-oriented garment industry based on a joint venture with the unreformed state sector. Macroeconomic policy direction ensuring a stable macroeconomic environment, and a reasonable exchange rate regime with a relatively friendly approach to foreign investments were the keys to success.²⁹ The above proves that at the beginning of the economic boom the formal institutional change did not keep pace with rapidly expanding business opportunities. In terms of economic integration's impact on institutions, Dang Duc Anh³⁰ found a correlation between trade liberalisation and the quality of institutions, especially in the Northern provinces.

Another local case study in the Central and Northern Highlands showed that the transfer of legal property rights to local communities did not result in the transfer of actual rights and practices used by local actors, so the intended institutional change did not follow the formal change because of the informal constraints and stakeholders' conflicting interests.³¹ Similarly, collectivization failed in Vietnam, as new formal rules were rejected by the rural population.³² As a result, de-collectivization started before the departure from central planning was initiated.³³

Although the first stage of Vietnam's reforms was mainly driven by internal forces (e.g., 34), some publications examine the impact of external forces, of which the WTO accession is the most prominent. Early assessments show the positive

²⁸ J. McMillan and C. Woodruff, "Interfirm Relationships and Informal Credit in Vietnam," *Q J Econ* 114, no. 4 (1999): 1285–1320.

²⁹ H. Hill, "Export Success Against the Odds: A Vietnamese Case Study," *World Development* 28, no. 2 (2000): 283–300.

³⁰ D.D. Anh, "Trade Liberalization and Institutional Quality: Evidence from Vietnam," MPRA Paper No. 31485, 2010, <https://mpra.ub.uni-muenchen.de/31485/>.

³¹ F. Clement and J.M. Amezcaga, "Conceptualising context in institutional reforms of land and natural resource management: the case of Vietnam," *Int J Commons* 7, no. 1 (2013): 140–163; T.N. Thanh and T. Sikor, "From legal acts to actual powers: Devolution and property rights in the Central Highlands of Vietnam," *For Policy Econ* 8, no. 4 (2006): 397–408.

³² T. Dang, *Vietnam's Post-1975 Agrarian Reforms. How local politics derailed socialist agriculture in southern Vietnam* (Canberra: Australian National University Press, 2018).

³³ B.J.T. Kerkvliet, *The Power of Everyday Politics: How Vietnamese Peasants Transformed National Policy* (Ithaca and London: Cornell University Press, 2005); A.M. Kim, "Seeds of Reform: Lessons from Vietnam about Informality and Institutional Change," *Int Econ J* 26, no. 3 (2012): 391–406.

³⁴ A. Fforde, *Coping with Facts. Skeptic's Guide to the Problems of Development* (Sterling: Cumarian Press, 2009).

effect of economic liberalisation triggered by the WTO requirements on the socioeconomic development of Vietnam.³⁵ Others point out that WTO increases Vietnam's investment attractiveness and might help to upgrade its position in the global value chains.³⁶

However, skeptical voices about WTO accession point out its failure to improve the corporate governance of the state sector. Moreover, the overall productivity and competitiveness of the economy improved only thanks to the private sector. State-owned enterprises (SOEs) remained stagnant.³⁷ The lack of effectiveness of external forces such as the WTO to implement their SOE reform agenda is, according to Martin Painter,³⁸ the result of the power-sharing system in Vietnam with certain pluralism within the ruling elite.

Similarly, the lack of an external force effect in the form of the WTO was detected by Vu Thanh Tu Anh³⁹ in the example of the state sector. Tu Anh argues that external observers underestimated the decision-makers' political agenda. From the outset, their intentions did not converge with the expectations of foreign partners, who overlooked this possibility.

The few examples mentioned here do not exhaust the institutional approach to Vietnam's development. Nevertheless, as was often indicated (e.g., 40), the gap is still significant in the proper understanding of the process of institutional

³⁵ V.T. Thanh, "Vietnam's Trade Liberalization and International Economic Integration: Evolution, Problems, and Challenges," *ASEAN Economic Bulletin. Revisiting Trade Policies in Southeast Asia* 22, no. 1 (2005): 75–91, <https://www.jstor.org/stable/25773845>; V.T. Thanh and N.A. Duong, "Vietnam after Two Years of WTO Accession: What Lessons Can Be Learnt?," *ASEAN Economic Bulletin* 26, no. 1, Vietnam: Coping with Domestic and External Challenges (2009): 115–135, <https://www.jstor.org/stable/41317022>.

³⁶ J.R. Chaponnière and J.P. Cling, "Vietnam's export-led growth model and competition with China," *Économie Internationale* 2, no. 118 (2009): 101–130; J.P. Cling, M. Razafindrakoto and F. Roubaud, "Vietnam's WTO Accession and Export-Led Growth-Introduction," *Économie Internationale* 118 (2009): 5–12, <https://ideas.repec.org/a/cii/cepiei/2009-2intro.html>.

³⁷ L. Baccini, G. Impullitti and E.J. Malesky, "Globalization and state capitalism: Assessing Vietnam's accession to the WTO," *J Int Econ* 119 (2019): 75–92.

³⁸ M. Painter, "Marketisation, Integration and State Restructuring in Vietnam: The Case of State Owned Enterprise Reform," Southeast Asia Research Centre Working Papers Series, No. 39, 2003.

³⁹ V.T. Tu Anh, "WTO Accession and the Political Economy of State-Owned Enterprise Reform in Vietnam," GEG Working Paper, No. 2014/92, University of Oxford, Global Economic Governance Programme, 2014, <https://www.econstor.eu/bitstream/10419/196352/1/GEG-WP-092.pdf>; V.T. Tu Anh, "The political economy of industrial development in Vietnam: Impact of state-business relationship on industrial performance, 1986–2012," GEG Working Paper, No. 2015/107, University of Oxford, Global Economic Governance Programme, 2015; V.T. Tu Anh, "Does WTO Accession Help Domestic Reform? The Political Economy of SOE Reform Backsliding in Vietnam," *World Trade Review* 16, no. 1 (2017): 85–109.

⁴⁰ T.T. Minh *et al.*, "Niche action and system harmonization for institutional change: Prospects for demand-driven agricultural extension in Vietnam," *J Rural Stud* 36 (2014): 273–284.

change in Vietnam, the role of formal rules and informal norms and complex organizations' constellations. Moreover, institutional explanations left untouched the question of the FTAs' domestic consequences.

Vietnam and FTAs effect

Trade liberalisation, FTAs and customs unions' impact on the economy and welfare have been widely investigated and discussed in the literature. However, this is not the case for NGFTAs, a relatively new phenomenon, partly because they are much more complex. Moreover, the assessment of FTAs between developed and developing economies is rare, mainly because of the scarcity of such agreements. Hence, examination of the CPTPP and EVFTA, the NGFTAs between developed and developing economies, fills the existing knowledge gap. In the Asia-Pacific region, the existing NGFTAs are less than five years old (as of 2022), which does not allow us to construct an *ex-post* evaluation. Thus, all the reviewed literature from this area includes *ex-ante* analyses.

Academics whose research can be taken into consideration include Nguyen Binh Duong and Nguyen Thu Trang⁴¹ and Nguyen Binh Duong.⁴² By using a gravity model, they confirmed the positive impact of the EVFTA on Vietnam's exports to the EU and EU investments in Vietnam. Similar to most publications assessing Vietnam's participation in mega-regional FTAs, Kikuchi, Yanagida, and Vo Huong⁴³ estimate a robust positive effect on gross domestic product (GDP) caused by the EVFTA and CPTPP, equal to 8.1% and 6.5% respectively. Moreover, the effect of other agreements such as the Regional Comprehensive Economic Partnership (RCEP) appears to be positive, adding substantial value to Vietnam's GDP (9.2%). Another computable general equilibrium (CGE) approach, by Le Trung Ngoc Phat and Nguyen Kim Hanh,⁴⁴ shows a positive overall impact of the EVFTA on GDP, household consumption (9.13%), production in all sectors, agriculture (9.61%), industry (9.74%), and services (8.21%). The Vietnamese Ministry of Industry and Trade Think Tank confirmed the beneficial role of NGFTAs for the economy but noted that these might cause institutional change.⁴⁵

⁴¹ N.B. Duong and N.T. Trang, *Future Vietnam-EU Free Trade Agreement (Vietnam-EU FTA): An Analysis of Trade Creation and Trade Diversion Effects* [Hiệp định thương mại tự do Việt Nam-EU trong tương lai (FTA Việt Nam-EU): Phân tích hiệu ứng tạo thương mại và đa dạng hóa thương mại] Tạp chí Kinh tế Đối ngoại, 72, 2015, http://www.doanbrother.com/papers2014/94_Nguyen Binh Duong.pdf.

⁴² N.B. Duong, "Vietnam-EU Free Trade Agreement: Impact and Policy Implications for Vietnam," SECO/WTI Academic Cooperation Project Working Paper Series 2016/07, 2016.

⁴³ T. Kikuchi, K. Yanagida and H. Vo, "The effect of Mega-Regional Trade Agreements on Vietnam," *J Asian Econ* 55 (2018): 4–19.

⁴⁴ L.T.N. Phat and N.K. Hanh, "Impact of removing industrial tariffs under the European-Vietnam free trade agreement: A computable general equilibrium approach," *J Econ Dev* 21, no. 1 (2019): 2–17.

⁴⁵ P.N. Minh *et al.*, "Impacts of New Generation of Free Trade Agreements (FTAs) on the Development of Export - Import Markets of Members — Vietnam Case Study," *Вьетнамские исследования* 2, no. 3 (2018): 18–31.

In summary, the papers mentioned above follow the mainstream trend of mathematical calculations taking into consideration one element of the EVFTA or CPTPP (tariffs) and drawing general conclusions regarding the positive impact on the whole economy and people's welfare.

As publications proved, economic liberalisation and the growing number of trade agreements did not solve the problem of economic structure with the dominant state sector and the uncompetitive private sector.⁴⁶ Moreover, traditional methods of researching the FTAs impact such as econometric modelling proved inconclusive. Thus, in the search for new assessment methods, economists turned to institutionalism, especially NIE.

Methods and data

This political economy analysis is based on NIE, thus it seeks an institutional explanation of the NGFTAs' impact on the economy. According to the framework, this impact might be found through the process of institutional change, which might be caused by the NGFTAs' provisions. Hence this study seeks the link between NGFTAs and institutional settings.

Ethical approval

The Human Research Ethics Committee of the Education University of Hong Kong gave ethical approval for this study (approval number 2019-2020-0441). Data are restricted due to data protection issues and required as part of the ethical approval. Written informed consent was obtained from participants before the study.

Data collection

The analysis is understood as primary and secondary data research with elements of the meta-analysis, which involves existing books, articles, reports, and other publications connected to FTAs impact evaluation. Journal articles and other scientific publications were selected through search machines such as Google Scholar, ResearchGate, and JSTOR, where the main keywords used were "Vietnam development", "Vietnam FTA", "EVFTA", "Vietnam CPTPP", "Vietnam economic reforms", "Vietnam institutions", "Vietnam policy", "Vietnam trade and investment", and a range of related terms. Publications were selected based on the frequency of their citations and the reputation of the journal in which they were published.

The primary data used in this paper are legal documents, especially texts of FTAs, and semi-structured, in-depth interviews with representatives of the stakeholders involved in the process of FTA implementation and affected by the implemented FTAs.⁴⁷ They are from the government and private sectors, both local Vietnamese

⁴⁶ M. Busch, *The missing middle: A political economy of economic restructuring in Vietnam* (Sydney: Lowy Institute of International Policy, 2017), <https://www.think-asia.org/handle/11540/7748>.

⁴⁷ M.G. Plummer, D. Cheong and S. Hamanaka, "Methodology for Impact Assessment of Free Trade Agreements," *American Political Science Review*, 2010, https://aric.adb.org/pdf/FTA_Impact_Assessment.pdf.

and foreigners. The interviews have the character of elite or expert, which limits the available pool of potential participants. However, this interview character allows us to conclude despite the small number of interviewees.⁴⁸ These interviews aim to collect information about stakeholders' interests and approaches to the FTAs. The interviews reveal how organizations function in the institutional setting of Vietnam, what their opinion is about institutions, their facilitating or hindering role in economic development, and economic liberalisation in line with FTAs adjustment.

The number of interviewees and their choice were limited by the resources and the coronavirus pandemic and the consequent inability to travel between Hong Kong (where the author resides) and Vietnam. Thus, the interviews were conducted online, using internet communicators: Zoom, WhatsApp, and Zalo. Interviews took place in 2021, on May 20, May 26, May 28, June 3, July 22, and October 29. They lasted 37, 31, 88, 33, and 45 minutes respectively (confidential interviews with the former Senior Diplomat at the EU Delegation to Vietnam; the Vietnamese entrepreneur trading with the EU; the Senior Officer of the United Nations (UN) Office in Vietnam; a researcher from the Vietnamese Government Think Tank, 2021; and the Senior Management of the EU Investor in Vietnam). No additional software was used to analyse the collected data. Interviews were recorded and then transcribed into English. Any non-English interviews were translated into English by the author when transcribed. According to guidelines (e.g., 49), all interviews were triangulated with the knowledge derived from literature and the author's experience. A list of questions was prepared for each interview as a guide, but this was not strictly followed as each interview developed during the discussion (Attachment).

Finally, the author's personal experience as one of the EU member state diplomats responsible for economic affairs serving in Hanoi from 2008 to 2011 and from 2015 to 2017 is a valuable source of data used in this research. During the author's second term, one of the main topics in the working agenda was the EVFTA consultation and preparation processes. The wide range of fields covered by the author when serving in Hanoi allowed him to become familiar with Vietnamese political and business elites and their methods of dealing with various problems.

The key research question is exploratory, indicating a qualitative approach to the problem.⁵⁰ A case study approach was chosen as the most relevant to undertake this

⁴⁸ C. Herzog and C. Ali, "Elite interviewing in media and communications policy research," *International Journal of Media and Cultural Politics* 11, no. 1 (2015): 37–54.

⁴⁹ P.H. Davies, "Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of the Intelligence and Security Services," *Politics* 21, no. 1 (2001): 73–80; D.T. Griffee, "Research Tips: Interview Data Collection," *J Dev Educ* 28, no. 3 (2005): 36–37, <https://eric.ed.gov/?id=EJ718580>.

⁵⁰ B.F. Shareia, "Qualitative and Quantitative Case Study Research Method on Social Science: Accounting Perspective," *International Journal of Economics and Management Engineering* 10, no. 12 (2016): 3849–3854; M. Skovdal and F. Cornish, *Qualitative Research for Development: A guide for practitioners* (Rugby: Practical Action Publishing, 2015), <https://practicalactionpublishing.com/book/1755/qualitative-research-for-development>.

research.⁵¹ Nevertheless, quantitative data are used for comparison in the discussion and a better understanding of the processes in the findings part concerning institutional assessment.⁵² These data include widely used World Bank's Worldwide Governance Indicators (WGI), available on <https://databank.worldbank.org/source/worldwide-governance-indicators>⁵³ and the World Economic Forum's Global Competitiveness Index (GCI), last full edition available on https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.⁵⁴

Data analysis

Data analysis contains the application of deductive and inductive logic to the data. Content analysis is used for secondary sources and narrative analysis for the interviews, all based on the grounded theory of NIE. Finding the patterns that connect institutions with FTAs provisions helps to separate changes in an institutional setting largely triggered by FTAs. Triangulation between collected secondary sources, interviews and the author's experience is used to minimise bias.

Desk study of collected data is divided into stages:

1. Review of literature and existing analysis of the impact of NGFTAs on Vietnam and other traditional trade agreements. Analyses of texts of NGFTAs. Preparation and summary of statistical data and indexes collected from publicly available sources (literature review and Vietnam's institutional setting sections).
2. Brief assessment of the institutional setting of Vietnam and its background (Vietnam's institutional setting section).
3. Selection and analysis of new generation provisions present in Vietnam's NGFTAs that challenge existent institutional settings in Vietnam (new generation provisions in free trade agreements section).
4. Discussion of the role of NGFTAs in pushing forward reforms initiating institutional change (summary section).

⁵¹ R.E. Stake, *The Art of Case Study Research* (Thousand Oak London, New Delhi: SAGE Publications, 1995), <https://us.sagepub.com/en-us/nam/the-art-of-case-study-research/book4954>.

⁵² A. Bryman, *Social Research Methods*, 4th ed. (Oxford, New York: Oxford University Press, 2012), https://books.google.co.in/books/about/Social_Research_Methods.html?id=vCq5m2hPkOMC&redir_esc=y; Shareia, "Qualitative and Quantitative," 3849–3854.

⁵³ World Bank, *Worldwide Governance Indicators* (retrieved from World Bank, 2021), <https://databank.worldbank.org/source/worldwide-governance-indicators>.

⁵⁴ K. Schwab, *The Global Competitiveness Report 2019* (Geneva: World Economic Forum, 2019), https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.

Results

Vietnam's institutional setting

This section provides a review and assessment of Vietnam's institutions that are mostly formed by path-dependent internal factors and major policy direction, with little influence from outside and before the country engaged in preparation for the NGFTAs. It begins by selecting formal institutions' classifications and applying them in the Vietnamese context. Quantitative data including WGI and GCI indexes are used to illustrate the quality of Vietnam's institutional setting.

Many approaches can be used to select a set of good institutions. This paper is based on the classification proposed by the World Bank's economists in the aftermath of the Asian financial crisis of 1997–98. Following this approach, the set includes (1) democracy, (2) efficient bureaucracy and judiciary, (3) property rights protection, (4) efficient corporate governance, (5) the financial market, (6) well-managed public finances, and (7) social welfare and labor rights protection.⁵⁵ Except for democracy, all the mentioned elements are referred to in the NGFTA provisions Vietnam signed in the 2010s.

Following the World Bank's approach and its WGI, constructed by the authors mentioned above, the quality of Vietnam's institutions might be seen as low and improvement as insignificant. However, improvement in the quality of the regulations (blue diagram in [Figure 1](#)), which is closely related to an institutional setting, was significant in 2017 and 2020. This might relate to reforms undertaken due to the pressure of enforcing the NGFTAs. The rule of law (green diagram in [Figure 1](#)) improved in 2017, similar to the improvement of the previously described indicator. Last, the 2020 deterioration is undoubtedly connected with COVID-19 restrictions, when decisions violated existing domestic laws and even international agreements Vietnam had voluntarily signed.

Constructed using similar standards by neo-classical economists Sala-i-Martin and Artadi,⁵⁶ the World Economic Forum (WEF) GCI shows the low quality of Vietnam's institutions, which continued to deteriorate even after joining the WTO. Regaining institutional quality, according to the GCI, started in 2015, as it is visible in [Figure 2](#). At the same time, Vietnam concluded both NGFTA negotiations and made promises of increased commitments to deep reforms. Unfortunately, in 2018, the WEF changed its ranking methodology. Hence the later results are not comparable with the former ones. However, the improvement between

⁵⁵ D. Kaufmann, A. Kraay and P. Zoido-Lobaton, *Aggregating Governance Indicators* (Washington D.C.: World Bank Group, 1999), <http://info.worldbank.org/governance/wgi/pdf/govind.pdf>; D. Kaufmann, A. Kraay and P. Zoido-Lobaton, *Governance Matters* (Washington D.C.: World Bank Group, 1999), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=188568.

⁵⁶ X. Sala-i-Martin and E.V. Artadi, "The Global Competitiveness Index," in *The Global Competitiveness Report 2004–2005*, ed. K. Schwab (Geneva: World Economic Forum, 2004), 51–80.

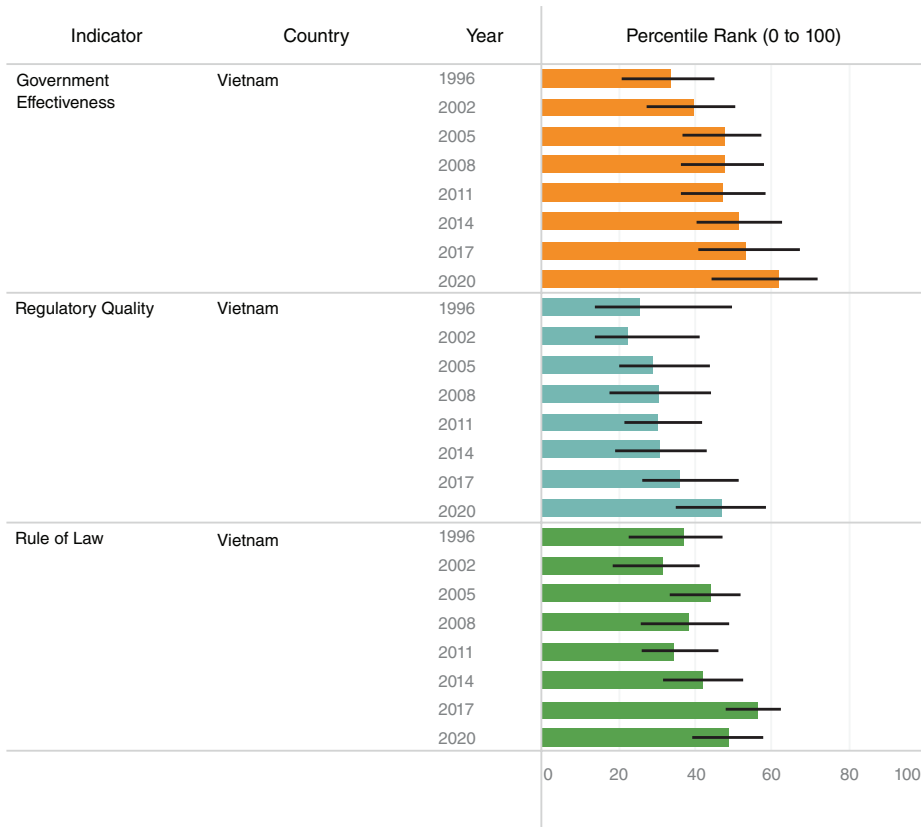


Figure 1. Vietnam’s three elements of WGI dynamism from 1996 to 2020. Source: World Bank’s WGI.⁵⁷

the 2018 and 2019 rankings (not shown in the graph of Figure 2) is noticeable, suggesting that the country is still undergoing institutional change.

In general, before the NGFTA negotiations in 2008, all the previously mentioned elements of institutional setting defined by the World Bank’s standards represented a low level of adjustment to the international level. The exercise mentioned is presented for reference, as no convincing argument exists that might prove the assumption presented and because the author is aware of the biases and limitations that can burden listed rankings.

New generation provisions in free trade agreements (FTAs)

This section presents findings from an in-depth analysis of selected new-generation provisions: intellectual property rights, SOEs, and labor rights protection. Three

⁵⁷ World Bank, *Worldwide Governance Indicators*.

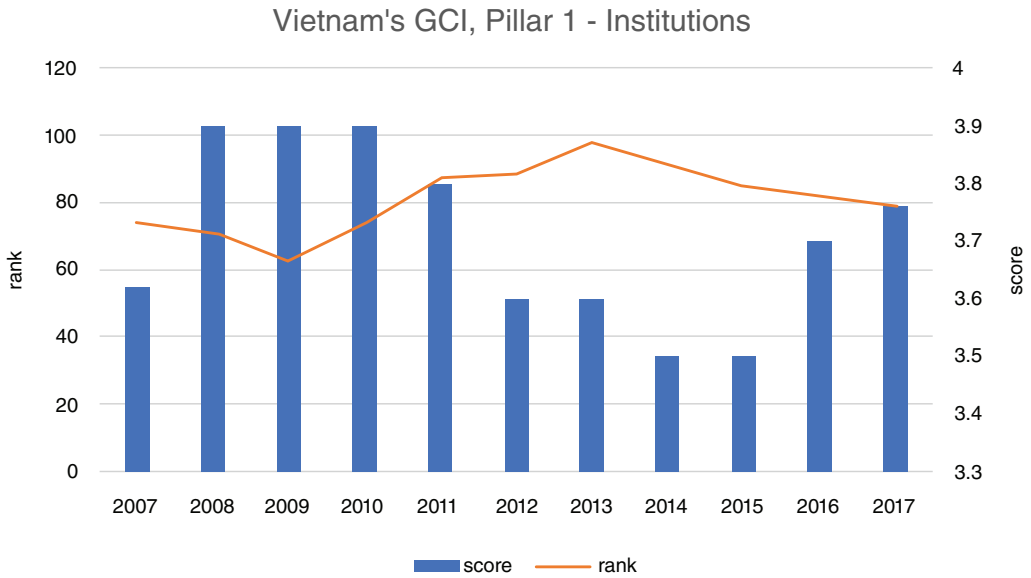


Figure 2. Vietnam's Pillar 1 institutions' GCI scores and ranks 2007–2017. Source: Author's calculation based on GCI reports 2007–2017.⁵⁸

selected elements, according to the author's communication (2015–2018) and his interviewees (e.g., 59), posed a considerable challenge for the Vietnamese FTA negotiators, lawmakers and enforcing bodies.

⁵⁸ K. Schwab and M.E. Porter, *The Global Competitiveness Report 2006–07* (Geneva: World Economic Forum, 2007), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2006-07.pdf; K. Schwab and M.E. Porter, *The Global Competitiveness Report 2007–08* (Geneva: World Economic Forum, 2008); K. Schwab and M.E. Porter, *The Global Competitiveness Report 2008–09* (Geneva: World Economic Forum, 2009), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2008-09.pdf; K. Schwab, *The Global Competitiveness Report 2009–10* (Geneva: World Economic Forum, 2010), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2009-10.pdf; K. Schwab, *The Global Competitiveness Report 2010–11* (Geneva: World Economic Forum, 2011), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf; K. Schwab, *The Global Competitiveness Report 2011–12* (Geneva: World Economic Forum, 2012), https://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf; K. Schwab, *The Global Competitiveness Report 2012–13* (Geneva: World Economic Forum, 2013), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf; K. Schwab, *The Global Competitiveness Report 2013–14* (Geneva: World Economic Forum, 2014), https://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf; K. Schwab, *The Global Competitiveness Report 2015* (Geneva: World Economic Forum, 2015), https://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf; K. Schwab, *The Global Competitiveness Report 2015–16* (Geneva: World Economic Forum, 2016), <https://reports.weforum.org/global-competitiveness-report-2015-2016/>; K. Schwab, *The Global Competitiveness Report 2016–17* (Geneva: World Economic Forum, 2017), https://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf.

⁵⁹ Confidential Interview with former Senior Diplomat at the EU Delegation to Vietnam, interview by M. Boguszewski (Brussels: online, 2021), May, 20.

Intellectual property rights (IPR). As a part of property rights, IPRs are considered critical drivers of progress and economic development. This view is presented by most economic historians, the neo-classical school, and NIE (e.g., 60). Vietnam's NGFTAs, the CPTPP, and EVFTA (Chapters 18 and 12, respectively), contain some of the most sophisticated IPR protection regulations from any FTAs ever signed.⁶¹

Intellectual property (IP) covers patents, trademarks, copyrights, industrial designs, plant varieties, trade dress, and trade secrets. While physical property rights are not controversial and are relatively well protected in most developing, middle-income countries, including Vietnam, for IPR this is not always the case. Even though the value of IP is considerable in many companies, technologically advanced, developing countries have little interest in protecting IPR, and without proper incentives, it would not be easy to convince them to do so. One of the reasons is that copying and imitating global leaders in producing certain goods allows less advanced economies to catch up with the frontiers, as happened in Japan and South Korea post-World War II and in the 1960s–1980s, respectively. The world has changed, however, and the methods used by the first wave of high-performance Asian economies to acquire modern technologies are no longer available. After the Cold War ended (1991) and the WTO with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) emerged (1994), IPR became more protected and the consequences of breaking the rules more severe. Nevertheless, intelligent management of foreign investments' attraction might produce the opportunity for technological upgrading without breaking other companies' IPR. This applies to technologies and managerial techniques, business strategies, and other intellectual resources.

Vietnam is a production base, transit and target market for counterfeit products, for which a range of factors are responsible. The size of the grey market and weak control over corruption, slow updating of the legislation, and weak enforcement of existing laws all demonstrate a weakness in the institutional setting. Growing purchasing power, overall demand, general social consent, and low awareness of the harmfulness of this phenomenon are all significant. Another aspect of weak IPR protection in Vietnam and other Asian countries observed by researchers (e.g., 62) links it with cultural traits embedded in an informal institutional setting,

⁶⁰ D.C. North and R.P. Thomas, *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973), <https://www.cambridge.org/core/books/rise-of-the-western-world/5F1DE6B987979B86D94DCA2C1C4FFE31>.

⁶¹ "Comprehensive and Progressive Agreement for Trans-Pacific Partnership," 2018, <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership>; EVFTA, "Free Trade Agreement between the Socialist Republic of Viet Nam and European Union," 2016.

⁶² A. De Meyer, "National R&D Systems and Technology Development in Asia," in *The Oxford Handbook of Asian Business Systems*, eds. M.A. Witt and G. Redding (Oxford, New York: Oxford University Press, 2014), 465–486.

for example, the lack of a sense of the value of intangible things such as a brand or design.

Vietnam adopted its first law on IPR in 2005, and this law was further amended and supplemented in 2009. The sanctions for IPR violations were tightened in 2010 to adjust to the TRIPS rules. However, these changes were still insufficient to meet NGFTA requirements. To fulfil Vietnam's obligations, 2018 Decree No 22/2018/ND-CP updated articles connected to copyrights in the Civil Code. In 2019, Vietnam introduced other amendments to the law on IPR, followed by Official Letter No 5360/SHTT-NDHT on patent application guidelines.

Consequently, formal IPR protection has new features and dimensions in Vietnam. New regulations provide an opportunity to complete applications for establishing IPR online, which significantly simplifies and speeds up the process. The new law introduced the advanced concept of geographical indicators (GI) with all its outputs in protecting holders' rights regarding GI certificates. This may help Vietnamese producers gain recognition for their unique products, especially in the agricultural sector. Changes based on CPTPP and EVFTA provisions gave the IPR holder unlimited options to formulate the claim if they can prove the claim in law, and the grace period for a utility patent has been more precisely defined.⁶³

How did the formal changes mentioned influence the execution of IPR protection? For example, GCI assessed IPR protection in Vietnam in 2007 with a score of 2.7 and ranked it 100th among 125 economies. In 2012, the score was even lower (2.5), and Vietnam was positioned 127th on a list of 142 countries. In 2015, when Vietnam pledged to tighten IPR protection following the conclusion of CPTPP and EVFTA, the country's score jumped to 3.1, and its ranking rose to 105th out of 144. In 2018 and 2019, the score continued to rise, reaching 3.6 and 3.7 respectively, indicating slow progress.⁶⁴

This reflects other findings indicating that formal institutional change, although relatively substantial, did not cause deeper changes in institutional arrangement. IP is still an alien concept for most Vietnamese. This perception is substantially better among entrepreneurs, especially the younger generation and the educated middle class. However, the bureaucratic matrix of IPR enforcement entities (e.g., the National Office of Intellectual Property under the Ministry of Science and Technology, the Market Management Bureau of the Ministry of Industry and Trade, and the Economic Police) and their overlapping competences make the

⁶³ E. Barbour-Lacey, "A Guide to Intellectual Property in Vietnam," *Vietnam Briefing*, 2020, <https://www.vietnam-briefing.com/news/guide-to-intellectual-property-vietnam.html/>; Law on Intellectual Property No. 50/2005/QH11, 2005, <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/vn/vn003en.pdf>.

⁶⁴ Schwab and Porter, *Global Competitiveness Report 2006–07*; Schwab, *Global Competitiveness Report 2011–12*; Schwab, *Global Competitiveness Report 2015*; K. Schwab, *The Global Competitiveness Report 2018* (Geneva: World Economic Forum, 2018), <https://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>; Schwab, *Global Competitiveness Report 2019*.

process of dispute resolution ineffective. Moreover, the procedures are lengthy and costly.⁶⁵

However, two elements might help to change IPR perception and enforcement. One is the growing number of companies with considerable IP value (innovations, brand name). The second relates to foreign-invested companies and their local suppliers. Foreign companies bring both their IP the IPR protection standards to Vietnam. Enforcement power on the company or industry level is usually more effective than on the national scale. A supportive regulatory framework may accelerate incremental changes in an institutional setting. The second process, connected to foreign investments, is surely enhanced by the NGFTAs participation.

State-owned enterprises (SOEs). The ideological position occupied by SOEs and their accorded special status and protection by the government have been among the most challenging negotiation points in the CPTPP and EVFTA. The leading role of SOEs is confirmed in Article 51 of Vietnam's Constitution.⁶⁶ The privileged position of SOEs in Vietnam distorted important formal institutions considered essential by the mentioned World Bank economists for maintaining economic development, for example, property rights (preferential access to land), the financial market (preferential access to credit), efficient bureaucracy, and especially corporate governance.

The mentioned elements did not reach the form expected by the foreign donor community and FTA partners, despite constant SOE reforms dating back to the 1970s. These reforms were driven by internal factors without broader macro-level consideration. Many of them were formalized after informal attempts carried out by SOEs managers, known as “fence-breaking”, proved successful. As such, SOEs and their managers had a considerable impact on the state's economic policies and secured the protective umbrella of the Party. At the same time, many Communist Party of Vietnam (CPV) officials were keen to keep state ownership of these entities, despite growing external pressure for privatization and restructuring (in Vietnam called equitization). The explanations include fear of losing control over state resources, growing unemployment as a result of changing managerial patterns, and national security concerns. Yet another reason played a significant role: SOEs were treated as a pool of jobs that could be traded and offered to extended family members and other cronies (e.g., 67).

⁶⁵ Confidential Interview with the Senior Management of the EU Investor in Vietnam, interview by M. Boguszewski (Ho Chi Minh City: online, 2021), October, 29.

⁶⁶ Constitution of the Socialist Republic of Vietnam, 2013, https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf.

⁶⁷ Confidential Interview with the Vietnamese Entrepreneur trading with the EU, interview by M. Boguszewski (Hanoi: online, 2021), May, 26; M. Gainsborough, *Vietnam: Rethinking the State* (London: Zed Books, 2010); N. Lan, *Guerilla Capitalism: The state in the market in Vietnam*, ed. C. Butler (Oxford, Cambridge, New Delhi: Chandons Publishing, 2009), <https://www.sciencedirect.com/book/9781843345503/guerilla-capitalism>; Tu Anh, “WTO Accession”; Tu Anh, “Does WTO Accession,” 85–109.

Vietnam's FTA partners made the SOE issue quite clear, refusing to accept any unequal treatment of companies. Hence, NGFTAs contain detailed chapters (CPTPP – Chapter 17, EVFTA – Chapter 11) ensuring fair competition among all economic entities in agreements. The above applies to equal rules for foreign (members of FTA) and Vietnamese companies and means the same rules apply to Vietnamese companies, thus giving a huge incentive to the development of private small and medium-sized enterprises (SMEs) in Vietnam, which at best had previously been treated as an untrustworthy or suspicious element of the Vietnamese economy. However, studies have demonstrated the dynamism and profit-making abilities of these economic entities (e.g., 68).

For example, both agreements require their members to adjust to specific corporate governance rules similar to those defined by the OECD Principles of Corporate Governance that function in developed countries. They secure fair competition among economic entities and include transparency rules.⁶⁹ Although Vietnamese legislators fulfilled these formal expectations, the reality turned out to be more complicated. Local businesses continued to operate according to old rules or informal norms. Shareholders seldom used their statutory rights, e.g., participation in the decision-making process, and the Control Board was often treated as something which was only on paper.⁷⁰ Similarly, Martin Gainsborough's⁷¹ study on equitized SOEs shows that most managers continued to report to government authorities, despite being formally outside their control.

The sources mentioned refer to the response to the WTO requirements. In terms of NGFTAs, this record is slightly better, as a new generation of managers entered the labor market but is still far from what is expected.⁷² As is visible in the GCI, Vietnam was classified at the bottom of the scale, 104th out of 141 economies in 2019 in overall corporate governance standards. In previous editions, the ranking had no such category but various elements of corporate governance, e.g., 'strength of auditing and reporting standards', 'efficacy of corporate boards' and 'protection of minority shareholders' interests' were assessed. In the years from 2012 to

⁶⁸ "Comprehensive and Progressive Agreement"; EVFTA, "Free Trade Agreement"; H. Herr and Z.M. Nettekoven, *The Role of Small and Medium-sized Enterprises in Development* (Berlin: Friedrich-Ebert-Stiftung, 2017), <https://library.fes.de/pdf-files/iez/14056.pdf>; OECD, *Enhancing the Contributions of SMEs in a Global and Digitalised Economy* (Paris: OECD, 2017), <https://www.oecd.org/industry/C-MIN-2017-8-EN.pdf>.

⁶⁹ OECD, *G20/OECD Principles of Corporate Governance* (Paris: OECD Publishing, 2015), <https://www.oecd.org/corporate/principles-corporate-governance/>.

⁷⁰ B.X. Hai and C. Nunoi, "Corporate Governance in Vietnam: A System in Transition," *Hitotsubu J Commerce Manage* 42, no. 1 (2008): 45–65, <https://www.jstor.org/stable/43295015>; Lan, *Guerilla Capitalism*; L.M. Toan and G. Walker, "Corporate Governance of Listed Companies in Vietnam," *Bond Law Review* 20, no. 2 (2008): 1–80.

⁷¹ M. Gainsborough, *Vietnam: Rethinking the State* (London: Zed Books, 2010).

⁷² Confidential Interview with Senior Management.

2018, Vietnam was usually ranked outside the top hundred, with exceptions, especially in the protection of minority shareholders, where scores were higher. Moreover, the trend was quite stable, with slight improvement in the last edition.⁷³

A relatively poor record of reform implementation is paired with exemptions concerning SOEs, which Vietnamese negotiators were able to gain in the CPTPP and EVFTA. For example, sectors excluded from the general rules of the agreements include developmental activities (building infrastructure), public services (electricity, waterworks), and strategic importance (energy, security, including financial security). The Airport Corporation of Vietnam and all mass transport, publishing, printing, and audio-visual sectors are included.⁷⁴ Moreover, Vietnam gained a transitional period in both NGFTAs to adjust to modern corporate governance rules, such as those defined by the OECD.

Though efforts have been made to bring the Vietnamese state sector closer to international standards, the process is still far from over. NGFTAs put additional pressure on the CPV to make the SOEs' operation transparent and market based. Successes have been achieved, for example in reducing state protection of the sector, allowing more SMEs to develop. Equitization, although slow, reduced the number of SOEs, and their power has shifted to private business empires, with VinGroup as the most infamous example.⁷⁵

Labor rights. Labor rights were not included in the scope of traditional FTAs, and absorption of this element is one of the main achievements of NGFTAs. Labor matters are present in the CPTPP Chapter 19 and EVFTA Chapter 13.4 as part of sustainable development.⁷⁶

In general, labor rights standards have a long history in developed countries. They were included in the Treaty of Versailles in 1919, which set the new world order after the First World War, including establishing the International Labour Organization (ILO), which later became the first specialised agency of the UN. The ILO administrated the Declaration on Fundamental Principles and Rights

⁷³ Schwab, *Global Competitiveness Report 2011–12*; Schwab, *Global Competitiveness Report 2012–13*; Schwab, *Global Competitiveness Report 2013–14*; Schwab, *Global Competitiveness Report 2015*; Schwab, *Global Competitiveness Report 2015–16*; Schwab, *Global Competitiveness Report 2016–17*; Schwab, *Global Competitiveness Report 2018*; Schwab, *Global Competitiveness Report 2019*.

⁷⁴ “Comprehensive and Progressive Agreement”; EVFTA, “Free Trade Agreement”; S. Miner, “Commitments on State-Owned Enterprises,” in *Trans-Pacific Partnership: An Assessment*, eds. C. Cimino-Isaacs and J.J. Schott (Washington D.C.: Peterson Institute for International Economics, 2016), 335–348, https://www.piie.com/publications/chapters_preview/7137/19iie7137.pdf.

⁷⁵ Confidential Interview with a Researcher from the Vietnamese Government Think Tank, interview by M. Boguszewski (Hanoi: online, 2021), July, 22; S. Sakata, “Has Nguyen Phu Trong’s Leadership Curbed Economic Reform? Economic Reform Trends in Vietnam,” *Asian Economic Policy Review* 15, no. 2 (2020): 305–322.

⁷⁶ “Comprehensive and Progressive Agreement”; EVFTA, “Free Trade Agreement.”

at Work,⁷⁷ which set the core labor standards: 1) freedom of association, 2) the right to collective bargaining, 3) the abolition of forced labor in any form, 4) the elimination of child labor, and 5) no discrimination policy in terms of employment and occupation.⁷⁸

However, labor rights have been largely neglected in the developing world, despite many countries having ILO membership. Industrial development started to change this approach. Nevertheless, governments and the private sector were not prone to adopt them without external incentives. This is the case even for countries with ideologies that professed equality and adopted a socialist economic model, as observed in Vietnam. Reported incidents of forced labor camps are examples.⁷⁹

One of the critical issues in terms of labor protection is the unofficial sector of the economy. Without formal employment, the workforce is not covered by the legal protection of labor rights. Most developing countries, including Vietnam, have a fairly large part of the economy without formal recognition. According to various data, nearly half of the working population does not have formal employment. It is widespread in such professions as housekeeping – 98.7%, construction – 90.2%, and hotels and restaurants staff – 80.7%.⁸⁰

Vietnam does not offer sufficient incentives to legalize employment, and external mechanisms to help achieve this goal are lacking. Consequently, in the 2019 GCI ‘workers’ rights’ category, Vietnam was ranked 93rd out of 141 economies.⁸¹ The most effective way of increasing the share of formal employment in Vietnam seems to be an expansion of foreign-invested companies, many of which obey the law.

Social welfare, including labor rights protection, is one of the institutions that most institutional economists consider to be a core element of a good institutional setting, as confirmed by the World Bank. The importance of labor rights made them included in NGFTAs, creating an equal playground for all economic entities in the free trade area by eliminating market distortion and securing social

⁷⁷ ILO - International Labour Organization, *Core Labour Standards. Declaration on Fundamental Principles and Rights at Work* (Geneve: ILO, 1998).

⁷⁸ ILO - International Labour Organization, *Core Labour Standards*.

⁷⁹ A. Marshall, “From Vietnam’s Forced-Labor Camps: ‘Blood Cashews,’” *Time*, 2011, retrieved December 16, 2020, <http://content.time.com/time/world/article/0,8599,2092004,00.html>.

⁸⁰ A. Demenet, M. Razafindrakoto and F. Roubaud, “Do Informal Businesses Gain From Registration and How? Panel Data Evidence from Vietnam,” *World Development* 84 (2016): 326–341; GSO - General Statistics Office of Vietnam, *Statistical Yearbook of Viet Nam* (Hanoi: Statistical Publishing House, 2020); N.T. Hoa, “How large is Vietnam’s informal economy?,” *Economic Affairs* 39, no. 1 (2019): 81–100; ILO - International Labour Organization, *2016 Report on Informal Employment in Viet Nam* (Hanoi: Hong Duc Publishing House, 2016), https://www.gso.gov.vn/wp-content/uploads/2019/05/Bao-cao-phi-chinh-thuc-2016_Eng_in.pdf; N. Thang, T.N. Tam and L.D. Trung, *Employment and Social Protection in Viet Nam* (Hanoi: International Labour Organization, 2011), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_171758.pdf.

⁸¹ Schwab, *Global Competitiveness Report 2019*.

order. The other reason for including labor rights chapters is that the EU and the USA are democratically controlled, which makes the politicians subject to the vagaries of public opinion and the public vote in their constituencies.⁸²

Despite the lack of a democratic mandate, Vietnamese politicians are judged by other CPV members, as bringing prosperity has become the central element of its legitimacy in the exercise of power. Thus, Vietnam has joined most ILO conventions, and it was not a controversial issue during the NGFTAs negotiations.⁸³ No decisive proof exists of what role, if any, introducing these conventions was played by the international pressure or NGFTAs. The important exception, however, is the Convention 87 on Freedom of Association and Protection of the Right to Organise. The CPV strongly opposed adopting the law allowing independent unions and freedom of assembly.⁸⁴ Even though ratification of Convention 87 is announced to take place in 2023,⁸⁵ the true intention of the CPV may be misleading, judging by the information noise that this topic causes.

In the Vietnamese system, the only workers' representation has been affiliated with the CPV Vietnam General Confederation of Labor (VGCL) so far. This did not change, despite the Vietnam News Agency English-language announcement that the new Vietnamese Labor Code would allow the formation of independent unions. Nor was any change observed when a pro-government English-speaking vlogger confirmed this statement in November 2021.⁸⁶ At the same time, the Vietnamese-language media are silent about this issue. Moreover, *Công an Nhân dân*, a Ministry of Public Security newspaper, published several articles in Vietnamese in April 2021 claiming that the VGCL was the only legal representative of workers. In addition, anyone who denied this or suggested that an independent union could be set up was to be considered an enemy of the government, intending to overthrow it. The new Labor Code indeed permits the establishment of so-called Workers' Organizations (WO) not affiliated with the CPV, but these are not independent unions. They can be formed at an individual company level with extremely limited rights. Moreover, authorities do not specify the formal requirements for WO to be created. At the same time, the new Labor Code confirmed the position of the

⁸² Confidential Interview with the Senior Officer of the UN Office in Vietnam, interview by M. Boguszewski (Hanoi: online, 2021), May, 28.

⁸³ Confidential Interview with Senior Officer; Marshall, "Vietnam's Forced-Labor."

⁸⁴ J. Buckley, "The Limits of Vietnam's Labor Reforms," *The Diplomat Magazine*, no. 86 (2022), <https://thediplomat.com/2021/12/the-limits-of-vietnams-labor-reforms/>.

⁸⁵ MOLISA - Ministry of Labour, War Invalids and Social Affairs, "International Labour Standards - ILO's Labour Standards," retrieved October 18, 2022, from Ministry of Labour, War Invalids and Social Affairs - the Viet Nam Labour Code 2019: 2021, http://boluatlaodong2019.molisa.gov.vn/lang_en/topic/united_nations_labour_standards/index.

⁸⁶ J. Buckley, "Freedom of Association in Vietnam: A Heretical View," *Global Labour Journal* 12, no. 2 (2021): 79–94.

unions as entities affiliated with the CPV and as part of the nationwide structures of the VGCL.⁸⁷

It is clear that the Vietnamese authorities aimed to fulfil the CPTPP/EVFTA requirements by allowing WO to be formed (announcement in English only) but at the same time did not change the *status quo*, meaning that independent associations were not allowed to operate. Thus, Vietnam still has this task to fulfil, and the solution is relatively simple to achieve, for example, by issuing a decree clarifying the requirements of WO establishment and allowing them to be genuinely independent. However, all of this is dependent on the CPV's real intentions. The genuine implementation of Convention 87 might be a big step forward in the institutional change of labor union standards in Vietnam, associated with the external pressure of NGFTAs.

Findings summary

The three examples above of FTA new generation provisions certainly do not exhaust the topic but give an initial idea about the role of NGFTAs in the process of institutional change and their long-term economic impact. They illustrate Vietnam's specificity, where informal arrangements are more respected and persistent than formal rules. The power of informal institutions in Vietnam has already been observed in the earlier stages of reforms. The examples above confirm their path dependence.

NGFTAs seem to be a powerful force because of their scope. They indeed influence formal changes in Vietnam's institutional setting. For example, the IPR has never had such firm formal protection in Vietnam as recently. The amendments that go beyond the TRIPS rules might be credited to NGFTAs impact. However, the enforcement of this protection is still questionable. The incentive to invest resources in this element is not strong enough. Similarly, SOE reforms were not properly enforced, and existing informal arrangements still prevail. Nevertheless, NGFTAs contributed to the foreign donors' pressure on equitization, which resulted in limiting the number of SOEs and weakening their government protection. It did not solve all the problems, but changes have been initiated that improved the business climate for SMEs. NGFTAs have not possessed direct power to push for the implementation of adopted labor rights regulations. Informal employment is still persistent in Vietnam, which excludes workers from the formal labor rights umbrella. On the other hand, parts of regulations protecting labor rights met resistance from the CPV, despite NGFTAs commitments. It is linked with loosening the power grip of CPV over unions, and as such, it has a political connotation that showed the real intention of the CPV when initiating the reforms requested by the NGFTAs.

⁸⁷ Buckley, "Vietnam's Labor Reforms."

Thus, all three examples show limited success in formal institutional change. The impact on the informal part of the institutional setting is not visible, and enforcement incentives are lacking. However, while the state fails in proper implementation, this might be achieved by market shift which activates other actors such as businesses, including foreign-invested companies. Those that possess physical resources and can attract high-quality human resources are free from the state's shortcomings. These entities, by enforcing, for example, IPR, modern corporate governance standards or labor rights protection, might cause a spill-over effect into the broader spectrum of economic actors. Thus, they might cause a shift in informal norms causing incremental changes leading to successful institutional change.⁸⁸ NGFTAs might be considered indirect facilitators of this process because they promote a friendly business environment and increase Vietnam's investment attractiveness.

Conclusion

Vietnam started its rapid development with little influence from the outside. Formal changes introduced by authorities were often in response to internal demands from various stakeholders, e.g., SOE managers or sanctioning existing informal practices. A limited institutional change occurred that contributed to outstanding economic performance. This formula, however, empowered interest groups, especially at the interface between politics and business, encouraged opportunistic behaviors and hindered further reforms. A new impulse was needed to discipline CPV members and push for more profound institutional change.

In the search for further credibility, the CPV switched to performance-based power legitimacy.⁸⁹ Moreover, partly in the quest for international recognition and partly to increase Vietnam's investment attractiveness, the CPV pushed for more trade agreements, especially with the developed world, at the same time binding the reforms with international obligations. This move, however, came at the expense of accepting external forces pushing for internal reforms, which brings Vietnam closer to global standards in economic activities and relations. As such, NGFTAs became a potentially powerful external force in Vietnam's institutional change agenda.

The potential of NGFTAs as an external force causing institutional change has been examined in this paper with mixed results. Informal institutional change does not keep pace with formal change, and empowerment in the enforcement ability is lacking. Thus, profound institutional change, although potentially possible, has still not been achieved. However, as previously indicated, informal institutions need more time to adjust to formal changes. As such, the power of the NGFTAs

⁸⁸ N. Hamilton-Hart and H.W. Yeung, "Institutions under pressure: East Asian states, global markets and national firms," *Rev Int Polit Econ* 28, no. 1 (2021): 11–35.

⁸⁹ L.H. Hiep, "Performance-based Legitimacy: The Case of the Communist Party of Vietnam and "Doi Moi"," *Contemp Se Asia* 34, no. 2 (2012): 145–172, <https://www.jstor.org/stable/41756339>.

as a path-breaking external force should not be underestimated, especially in the case of the EVFTA, which has a greater potential to impose effective enforcement monitoring. Thus, NGFTAs might continue to put pressure on authorities to improve the provisions' implementation and trigger more profound institutional change. At the same time, foreign companies present in Vietnam largely function in an institutional environment convergent with the one promoted by the NGFTAs. As such, their standard might influence other economic actors, initiating broader institutional change.

To conclude this discussion, it should be noted that Japan, Singapore, and Vietnam are the only countries in the region that are engaged in two NGFTAs (FTA with the EU and CPTPP). Malaysia and Brunei joined CPTPP but did not ratify their membership. South Korea has an NGFTA with the EU. Hence, Vietnam has found itself a member of this elite club of successful Asian economies (Japan, South Korea, and Singapore), which are at the same time members of the NGFTAs. Will Vietnam be the next equally successful economy? Time will tell. It is not an exaggeration to say that Vietnam is on the right track.

List of abbreviations

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
CGE	Computable general equilibrium
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CPV	Communist Part of Vietnam
EC	European Commission
EU	European Union
EVFTA	EU-Vietnam Free Trade Agreement
FTA	Free trade agreements
GCI	Global Competitiveness Index
GDP	Gross domestic product
GI	Geographical indicators
ILO	International Labour Organization
IP	Intellectual property
IPR	Intellectual property rights
NGFTA	New generation free trade agreements
NIE	New institutional economics
RCEP	Regional Comprehensive Economic Partnership
SME	Small and medium-sized enterprises
SOE	State-owned enterprises

TPP	Trans-Pacific Partnership
TRIPS	Trade-Related Aspects of Intellectual Property
UN	United Nations
VGCL	Vietnam General Confederation of Labor
WEF	World Economic Forum
WGI	Worldwide Governance Indicators
WO	Workers' Organizations
WTO	World Trade Organization

Data availability

The underlying data of the interviews is restricted due to data protection issues. The participants reserved anonymity and confidentiality as the interview data contains politically sensitive and identifying information. This data consists of the English transcripts of the interviews, as the recordings were destroyed once translated and transcribed. Hence, the data cannot be published or publicly shared. Data might be shared with relevant Institutional Review Board (IRB) or equivalent under the condition that the data is not cited nor published. Requests for access to the underlying data are to be sent the author at s1129845@s.eduhk.hk with the details on the intended use of the data and the approval from the relevant Institutional Review Board (IRB) or equivalent.