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The impact of the *EU–Vietnam Free Trade Agreement* on Vietnamese laws related to climate change

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Abstract: The *EU–Vietnam Free Trade Agreement* (*EVFTA*) is considered a historic milestone in the bilateral relationship, particularly in environmental protection. As part of the global trend toward sustainable development, Vietnam must comply with strict environmental regulations under the *EVFTA*. To honor these commitments, Vietnam is required to reform and enhance its environmental legal frameworks to align with international standards. However, challenges such as gaps between Vietnamese laws and the *EVFTA* requirements, weak enforcement and balancing economic growth with environmental protection make this challenging. This article critically examines the environmental provisions under the *EVFTA*, their impact on the Vietnamese environmental legal framework, particularly concerning climate change, and the opportunities and challenges that Vietnam faces in meeting these obligations.

Keywords: *carbon market, climate change, environmental laws,* EVFTA*, sustainable development, Vietnam*

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1. Introduction

The *EU–Vietnam Free Trade Agreement* (hereafter *EVFTA*) is one of the comprehensive agreements that not only facilitates trade but also promotes sustainable development. Facing issues such as pollution, Vietnam is currently grappling with a range of pressing environmental issues and demand for a fundamental reform in approach and governance. Conversely, the *EVFTA* offers considerable opportunities for Vietnam to enhance its environmental legal framework, modernize industrial technologies and cultivate green economic sectors, which would enhance the country's global standing and economic competitiveness. Achieving these goals requires cooperation between the government, businesses and communities.

The need for cooperation among social actors arises from the interconnected and boundless nature of the environment, which requires collective responsible collaboration in a unified approach to environmental protection (Tin, 2020, p. 74). This article analyzes the *EVFTA*'s climate change impacts on Vietnamese laws, exploring the challenges and opportunities in its implementation and offering recommendations for successful adherence to its environmental commitments. The article addresses the following key questions: (1) What responsibilities does the *EVFTA* impose on Vietnam in terms of climate change? (2) What challenges and opportunities emerge from the implementation of these environmental commitments? and (3) How can Vietnam effectively implement the *EVFTA* commitments, while ensuring sustainable development?

2. Regulations related to climate change under the *EVFTA*

Article 13(6) of the *EVFTA* specifically addresses the issue of climate change. Chapter 13, titled 'Trade and Sustainable Development', outlines the objectives of fostering sustainable development by enhancing the contributions of trade and investment sectors to labor and environmental concerns (Duong and Trang, 2024, p. 3). In alignment with this objective, the Article mandates that both parties adhere to key multilateral environmental agreements, including the *United Nations Framework Convention on Climate Change* (*UNFCCC*), the *Kyoto Protocol*, which was signed on 11 December 1997 in Kyoto City and entered into force on 16 February 2005 and the 2015 *Paris Agreement*, which was adopted on 12 December 2015 at the 21st Conference of the Parties (COP21) in Paris, France. Article 13(6), entitled 'Climate Change', outlines the respective obligations of the parties.

1) The parties are not only required to collaborate on the implementation of the *UNFCCC*, the *Kyoto Protocol* and the *Paris Agreement*, but are also bound by the collective responsibility to strengthen global efforts in combating climate change. In this regard, it is imperative for the parties to work in close cooperation to achieve mutual goals, thereby fostering significant and positive contributions that will enhance each party's capacity to transition toward a low-carbon, climate-resilient economy. This collaborative effort is crucial for ensuring that all parties move in full alignment with the ambitious objectives outlined in the *Paris Agreement*, which include limiting global temperature rise, reducing greenhouse gas emissions and ensuring sustainable development in harmony with climate goals. Through this unified approach, each party is encouraged to adopt measures that will not only reduce their carbon footprint but also promote innovation in clean technologies, adaptation strategies and resilience-building to secure a sustainable future for all.
2) The parties shall engage in consultations and exchange information and experiences in priority areas or areas of mutual interest, including: (a) sharing lessons learned and best practices in the development, implementation, and operation of carbon pricing mechanisms; (b) promoting both domestic and international carbon markets, including through mechanisms such as Emissions Trading Schemes and Reducing emissions from deforestation and forest degradation and (c) advancing energy efficiency, low-emission technologies and the use of renewable energy sources to contribute efficiently to an economically sustainable future for the planet. (Scheer, 2006, pp. 3–14)

It is apparent that the *EVFTA* does not introduce new regulations or solutions but merely reaffirms the commitments made in prior international climate change treaties to which both parties are member states (Dung, 2020, p. 40). However, it should be acknowledged that the *EVFTA* provides greater clarity regarding the obligation to consult and exchange information and best practices on the development, implementation and operation of carbon pricing mechanisms—a field that has only recently emerged in Vietnam. In this context, the agreement stipulates that the EU will share its expertise in operating the European Union Emission Trading System (EU ETS) with Vietnam. This cooperation is expected to further promote both the domestic and international carbon markets.

It is noteworthy that the issue of emissions pricing and trading has long been established within the European Union, with the EU ETS being the first and largest international system designed to reduce emissions across all industries. This scheme forms the cornerstone of the EU's climate change and global warming mitigation policy by enabling Member States to purchase and trade emissions allowances (OECD, 2017, pp. R(25)-9). Additionally, the *EVFTA* encourages parties to promote energy efficiency, low-emission technologies and the use of renewable energy. To fulfil these requirements, member states are required to implement measures that promote the effective, economical and purposeful use of energy for economic development while ensuring a commitment to combating climate change. This includes addressing the environmental impact of polluting energy sources such as thermal power and hydroelectric dams. Also, member states should adopt measures to harness renewable energy sources, including wind, solar and hydropower (Tin and Anh, 2021).

3) The *EVFTA* stipulates the responsibility to combat deforestation and forest degradation as part of broader environmental commitments. While addressing this issue, the Reducing Emissions from Deforestation and Forest Degradation, or REDD and REDD+ mechanisms are particularly relevant, as both the European Union and Vietnam are member states joining the UNFCCC and are active participants in the COP conferences held within its framework. These mechanisms play a vital role in addressing climate change by incentivizing efforts to reduce emissions through the preservation of forests, which act as critical carbon sinks. Specifically, REDD refers to actions aimed at reducing greenhouse gas emissions by curbing deforestation and forest degradation, whereas REDD+ goes further by incorporating forest conservation, sustainable management and enhancement of forest carbon stocks. These initiatives, which are primarily implemented in developing countries such as Vietnam, serve as essential strategies for mitigating climate change, protecting biodiversity and promoting sustainable land use practices, aligning with both national and international environmental objectives.

3. The *EVFTA*'s impacts on climate change in Vietnamese legislation

Laws related to climate change in Vietnam are regulated across various sectors, either directly or indirectly, encompassing water resources, biodiversity, agriculture, forestry, construction, irrigation, transportation, energy, industry, health and more. Article 63 of the *Constitution of the Socialist Republic of Vietnam 2013* stipulates that "[t]he State has policies to protect the environment, manage and use natural resources effectively and sustainably, conserve nature and biodiversity, proactively prevent and combat natural disasters, and respond to climate change". Building on this constitutional foundation, numerous laws, including those on water resources, biodiversity, agriculture, forestry, construction, irrigation, transportation, energy, industry, health and the environment, address climate change issues. Notably, the *Law on Environmental Protection 2020* dedicates an entire chapter to climate change response, ensuring consistency in state management across related sectors, as outlined in laws such as the *Law on Hydrometeorology*, the *Law on Natural Disaster Prevention* and the *Law on Dikes*. Specifically, Chapter VII of the *Law on Environmental Protection 2020* comprises nine articles (Articles 90–96), reflecting significant legislative advancement. In contrast, the 1993 version of the law contained no provisions on climate change. The 2005 revision introduced two articles (Articles 33 and 84) addressing emission reduction and greenhouse gas management, whereas the 2014 revision marked further progress by dedicating an entire chapter (Chapter IV, Articles 39–48) to climate change mitigation and adaptation. The *Law on Environmental Protection 2020* further clarifies the approach to greenhouse gas emission mitigation in line with international standards and Vietnam's commitments under the *Paris Agreement* on climate change. It also outlines the responsibilities of ministries, sectors and local authorities as well as the obligations of production and business establishments in inventorying and reducing greenhouse gas emissions. These regulations provide a foundation for the introduction of carbon pricing mechanisms and the development of a greenhouse gas emissions trading market in Vietnam (Tin, 2022, p. 99).

On 7 January 2022, the Vietnamese government issued 'Decree No. 06/2022/ND-CP', which regulates greenhouse gas emission mitigation and ozone layer protection. This Decree provides detailed provisions on several articles of the *Law on Environmental Protection* concerning greenhouse gas emission mitigation, ozone layer protection and the organization and development of the carbon market. The regulations on carbon market organization and development were first introduced in the *Law on Environmental Protection 2020* and are further elaborated in 'Decree No. 06/2022/ND-CP'. The Decree clearly outlines the entities allocated to greenhouse gas emission quotas and their rights to trade and exchange these quotas on the domestic carbon market. It also specifies the criteria for determining greenhouse gas emission quotas, the responsibilities of management agencies and related organizations in allocating these quotas, and a roadmap for implementing the domestic carbon market. This timeline is designed to align with the country's socioeconomic conditions and international treaties to which the Socialist Republic of Vietnam is a member state.

On 24 January 2025, the Prime Minister issued 'Decision No. 232/QD-TTg', approving a scheme to establish and develop a carbon market in Vietnam. The primary objective of this initiative is to advance the development of the carbon market, supporting the achievement of greenhouse gas emissions reduction targets set out in the Nationally Determined Contributions (NDC). This will be accomplished with minimal costs to businesses and society, while generating new financial flows for emission reduction activities. In addition, the scheme aims to foster green transformation, facilitate the development of low-emission technologies and enhance the competitiveness of Vietnamese enterprises, both domestically and internationally. It will also contribute to the creation of a low-carbon economy and serve as a proactive measure in addressing climate change, with the ultimate goal of achieving net-zero emissions by 2050.

The first phase (until June 2025) focuses on gradually developing and finalizing the legal framework for the exchange of greenhouse gas emission quotas, carbon credits and carbon credit trading and offsetting mechanisms. This phase will ensure a solid legal foundation for the pilot implementation of carbon credit trading platforms. Infrastructure will also be built to support the functioning of the carbon market. In parallel, the capacity of government agencies to manage and operate the carbon market will be strengthened, while businesses, organizations and individuals will be equipped with the knowledge and readiness to participate in the carbon market.

During the second phase (from June 2025 to December 2028), efforts will continue to develop and complete the necessary infrastructure for the carbon market. The domestic carbon credit trading platform will enter the pilot phase. Legal frameworks will be further refined to support the effective operation of the carbon market and the management capacity of relevant state agencies will be further enhanced. Additionally, businesses, organizations and individuals will be continuously educated and prepared to meet the requirements for full participation when the carbon market is officially launched.

The final phase (from 2029 onwards) will see the official operation of the domestic carbon credit trading platform, marking the full implementation of Vietnam's carbon market.

Climate change is progressing at an unprecedented rate and in increasingly complex ways with profound impacts on Vietnam's environment. It poses a significant threat to food security and agricultural development while also endangering efforts to reduce poverty. Furthermore, it undermines the achievement of millennium development goals and the pursuit of sustainable development (Ministry of Natural Resources and Environment, 2020, p. 48). Since Vietnam signed and approved the *EVFTA*, there have been some noticeable challenges.

1) The majority of Vietnamese enterprises are small and medium-sized businesses, and their understanding and awareness of new-generation free trade agreements (FTAs) remains limited (Luan, 2020, p. 47). A 2016 study by the Vietnam Chamber of Commerce and Industry (VCCI) revealed that many Vietnamese enterprises are either unaware of, or do not fully comprehend the details of FTAs. Specifically, 33% of enterprises were unaware of the *Korea Free Trade Agreement*, while 51% did not fully understand its content. The figures were similarly concerning for other FTAs: 40% for the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP) and 56% for the *EVFTA* (Long, 2020).
2) The process of internalizing the *EVFTA* faces several challenges. Many of the climate change commitments in this Agreement are not directly applicable but will need to be internalized into national laws. This is explicitly outlined in Article 2(1) of 'Resolution No. 102/2020/QH14', dated 8 June 2020, by the National Assembly, which approves the *EVFTA*, and in 'Decision 1201/QD-TTg', dated 6 August 2020, by the Prime Minister, which approves the *EVFTA* Implementation Plan. The process of internalizing environmental and climate change commitments presents numerous issues, such as a lack of consensus on the appropriate forms of documents to internalize commitments in new-generation FTAs, challenges in determining the scope of application for these documents and the sporadic and inconsistent timing of

commitment transformation. Furthermore, after internalization, there are instances where domestic legal regulations do not align with the commitments made in FTAs, complicating the implementation process.

3) Compliance with the new regulations included in the *EVFTA* presents a risk of legal challenges. The Agreement incorporates mechanisms to ensure its implementation, including a dispute resolution process. However, many existing national legal regulations, both prior to and after domestication, do not align with the commitments outlined in the *EVFTA*. This misalignment may result in Vietnam failing to meet its obligations. Among the climate change commitments under the *EVFTA*, a key requirement is ensuring transparency in information and conducting public consultations, which poses a significant challenge if domestic regulations are not adjusted to meet these standards.

4) The necessary conditions for Vietnam to operate a carbon market—an essential solution to fulfilling its climate change commitments—are still in the "startup" phase. To date, the carbon market in Vietnam has primarily seen limited carbon credit trading activities and greenhouse gas reduction or absorption projects undertaken by the Ministry of Agriculture and Rural Development as well as by businesses and emission-reducing facilities. Furthermore, Vietnam's first voluntary carbon credit exchange, the ASEAN Carbon Credit Exchange, has been established. Although this exchange operates within the private sector and is not managed by state authorities, as outlined in 'Decree 06/2022/ND-CP', its presence provides valuable insights. The voluntary trading platform enables government agencies to assess the demand for carbon credit trading and evaluate the effectiveness of the carbon credit exchange. This can help gather crucial experience for the operation of the domestic carbon credit market in the future (Tin, 2024, pp. 140–141).

5) Sanctions for violations of climate change-related laws in Vietnam remain insufficient. Legal responsibilities imposed on the breach of environmental law depend on the level of such breach and include administrative responsibility, civil liability, disciplinary responsibility and criminal responsibility. Accordingly, it is common to apply administrative sanctions to deal with environmental breaches. The Vietnamese Government has issued many decrees on administrative sanctions for breaches on environmental protection, exploitation of natural resources, environmental hygiene and destruction of heritage sites. However, the application thereof is not thorough (due to lack of

a mechanism to ensure the enforcement of law, there are no effective measures in dealing with violations of environmental law—especially in dealing with administrative violations) (Tin, 2019, p. 69). The maximum administrative fine for individuals is 1 billion VND, and for organizations, it is 2 billion VND (equivalent to 42,500 to 85,000 US dollars). However, this penalty is insufficient to deter offenders, as in many cases, the fine is still lower than the illicit gains obtained from committing a violation. Moreover, *Penal Code (Vietnam) 2015* does not currently stipulate criminal penalties for climate change-related offenses.

4. Some recommendations

Based on the challenges analyzed above, to effectively comply with environmental commitments under the *EVFTA* in terms of climate change, Vietnam should continue researching and considering implementing the following recommendations.

1) The country should take several key steps to effectively fulfil its commitment to reducing greenhouse gas emissions. It is essential to finalize the legal framework for a competitive bidding mechanism within the electricity sector, ensuring that the market operates transparently and efficiently. This step is essential to promote a competitive and sustainable energy market. Additionally, the Vietnamese government should strengthen its legal infrastructure to attract both domestic and foreign investment, particularly by fostering public-private partnerships (PPPs) in climate change mitigation initiatives, with a focus on the energy sector. These collaborations will provide the financial resources and innovations needed for large-scale climate action. Another critical measure is the preservation of existing forests and development of new forest plantations, which contribute to carbon sequestration. Beyond forestry, Vietnam must implement robust systems to monitor and evaluate climate change adaptation activities. In tandem, the establishment of a comprehensive greenhouse gas inventory system is necessary to accurately track emissions across various sectors, ensuring transparency and accountability in emission reduction efforts. Rapid and coordinated development of the public transport system is also necessary, with a focus on encouraging private sector participation. Revisions to tax policies, including resource

and environmental protection taxes, are needed to create financial incentives that support climate change mitigation efforts. Collectively, these actions form a comprehensive strategy to reduce emissions and address climate change challenges.

2) It is required that Vietnam should effectively manage and inventory greenhouse gas emissions by establishing a comprehensive list of sectors and facilities that are obligated to conduct greenhouse gas inventories. Strengthening the monitoring of greenhouse gas emissions from relevant organizations and individuals is also essential to ensure compliance. Administrative sanctions should be applied to those who fail to implement the required measures or provide false reporting. In parallel with the development and dissemination of the Measurable, Reportable and Verifiable (MRV) Process Guide, Vietnam should support companies and organizations that are implementing greenhouse gas reduction strategies. This support can be facilitated by helping these entities demonstrate their efforts through specific, verifiable reductions in greenhouse gas emissions, as certified by competent authorities. Additionally, the regulations outline the responsibilities of competent state agencies to prepare reports, yet many fail to do so. They also highlight the government's failure to ensure the timely progress of greenhouse gas (GHG) inventories and the implementation of reports submitted to the UNFCCC.

   To ensure the effective implementation of this activity, Vietnam should provide targeted support through various measures, such as: (a) assisting companies and organizations that are already implementing solutions to reduce GHG emissions by verifying the amount of emissions they have reduced; (b) encouraging companies and organizations that have not yet taken action to participate in GHG reduction efforts, the verified emission reductions through the MRV process, which can help these entities access international financial support; (c) monitoring the emission reductions achieved by programs and projects in specific sectors to inform the development of policies that incentivize businesses and individuals to engage in GHG reduction initiatives (IGES, 2010, p. 52). GHG inventory activities should focus more on large cities and urban areas with high emissions and emission reduction potential, such as Hanoi and Ho Chi Minh City. These actions will ensure more accurate and transparent reporting, contributing to the effective management of emissions.

3) Vietnam should take proactive steps alongside support from the European Union with the aim of effectively implementing commitments

toward building and developing a carbon market and transitioning to a low-emission, fast-recovery economy. A key priority is the development and refinement of a legal framework for carbon pricing and the carbon market. In particular, establishing and ensuring transparency in the database system for greenhouse gas emissions is crucial. This system should encompass results from greenhouse gas inventories, emissions monitoring and reporting and appraisal mechanisms at national, sectoral, subsectoral and production facility levels. Given the complexity of this task and Vietnam's initial progress through the biennial update reporting process, further advancements are needed. To facilitate this, Vietnam should prioritize issuing a decree to guide the implementation of greenhouse gas inventories and establish systems for measuring, reporting and verifying emission reduction activities at both national and sectoral levels. Additionally, mechanisms to support the functioning of the carbon market, such as the Clean Development Mechanism, Joint Implementation Mechanism, and projects aimed at climate change mitigation tailored to Vietnam's national context, must continue to be institutionally strengthened. Addressing the existing limitations will ensure the successful implementation of these mechanisms and maximizing their benefits.

Vietnam must prioritize the establishment of a robust legal framework for managing revenues generated from the carbon market, especially in light of ongoing concerns about corruption within the country. If these funds are not effectively allocated and utilized, there is a significant risk that they will fail to address the critical environmental and climate change challenges. Furthermore, without proper management, the revenue will not provide the necessary incentives for key stakeholders or contribute to solving urgent social issues. Properly allocated funds are essential for supporting the development of a low-carbon and circular economy. Without this strategic investment, the effectiveness of such initiatives would be severely compromised, ultimately undermining the potential positive outcomes that Vietnam aims to achieve in its climate and economic development goals.

4) Promoting education, training and public awareness on climate change, along with fostering public consultation, will be essential in achieving a comprehensive and effective response to climate change challenges. In addition to measures such as revising and designing curricula to include climate change content at all educational levels and developing relevant learning and promotional materials, it is crucial to strengthen both human and financial resources to support effective implementation

mechanisms. The *Law on Environmental Protection 2020* and the *Law on Access to Information 2016* have acknowledged the public's right to access environmental information and outlined the responsibilities of competent state agencies to provide such information regarding environmental and climate change issues. This is a significant step toward raising public awareness. However, it is essential to broaden the scope of those entitled to access this information, including foreign nationals and stateless individuals residing in Vietnam. Additionally, regulations need to be expanded to cover the businesses required to conduct greenhouse gas inventories and those producing products containing these substances. The responsibility of competent state agencies extends beyond merely disseminating information; it must also ensure its accuracy, transparency and effectiveness.

International treaties universally recognize community consultation as a critical commitment; however, in the current context, Vietnam has only incorporated community consultation in the realm of environmental impact assessments. Broader consultation activities, including the right of communities to be consulted and the role of competent state agencies in decisions related to climate change response, are not explicitly addressed in a specific legal document. To rectify this, it is crucial for Vietnam to establish comprehensive regulations that define key elements such as the principles and scope of consultation, the rights and obligations of stakeholders, the roles of participants and the order and procedures for conducting community consultations. Additionally, the responsibilities of competent state agencies should be outlined, particularly in cases where consultation is not conducted or is improperly implemented in accordance with the regulations. A well-executed commitment to community consultation will enable competent state agencies to develop and implement effective response strategies, particularly for climate change adaptation initiatives that adopt a community-based approach to addressing climate-related challenges. This legal framework is essential for ensuring a more inclusive and transparent approach to decision-making regarding climate change.

5) It is essential to increase administrative fines and establish provisions for the criminal prosecution of climate change-related offenses. According to the author, administrative fines must be set at a level higher than the illegal benefits gained by violators, ensuring they serve as a genuine deterrent to prevent future infractions. The increase in fines should not be based on subjective recommendations or merely adjusted for currency depreciation but should be informed by research

and surveys of social conditions for each type of violation, ensuring a reasonable and effective penalty system. The *Vietnamese Penal Code 2015* should include additional provisions for climate change-related offenses under Chapter XIX on environmental crimes, particularly violations related to greenhouse gas emission reduction, such as failure to submit inventory reports or greenhouse gas reduction data to the relevant authorities or providing inaccurate or incomplete information. This is particularly important, as the carbon credit market is expected to grow and trade more actively in the near future. Given that Vietnam is a developing nation with relatively low greenhouse gas reduction costs, it could become a hub for non-transparent trading unless strict regulations and effective sanctions are implemented.

5. Conclusion

Climate change is a global phenomenon with far-reaching impacts that necessitate close cooperation among countries to address the issue in a unified manner. This aligns with the principle of cooperation and obligation not to cause harm, as outlined in international environmental laws. While the *EVFTA* reaffirms the provisions of applicable international conventions to which the parties are member states, it represents a significant step forward in promoting trade, alongside efforts to solve climate change. As a party under the *EVFTA*, Vietnam not only enhances its internal capacity to respond to the rapidly evolving and unpredictable global and regional political and security landscape, but also strengthens its position in implementing an independent, autonomous and multilateral foreign policy. Additionally, this agreement fosters deeper relationships with *EVFTA* member states, particularly those with strategic partnerships with Vietnam. Despite the numerous benefits, Vietnam having entered the *EVFTA* presents several challenges, particularly in fulfilling commitments related to climate change. To overcome these obstacles, it is crucial that Vietnam adopt a proactive approach, invest in innovation and continue refining its legal frameworks and management systems to ensure compliance with international treaties, while simultaneously safeguarding the nation's political and social stability.

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