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## TABLE OF CONTENTS

<b>ABSTRACT .....</b>	<b>8</b>
<b>ACKNOWLEDGMENTS .....</b>	<b>9</b>
<b>LIST OF ACRONYMS.....</b>	<b>10</b>
<b>LIST OF CASES .....</b>	<b>12</b>
<b>INTRODUCTION.....</b>	<b>13</b>
<b>PART 1: THE ANALYTICAL FRAMEWORK FOR THE DISCUSSION OF NORMATIVE CONFLICTS AMONG MULTIPLE PTAs.....</b>	<b>27</b>
<b>CHAPTER 1: THE CONCEPT OF CONFLICTS OF NORMS AMONG MULTIPLE PTAS FROM A PTA PERFORMANCE PERSPECTIVE .....</b>	<b>29</b>
<b>1.1. Various approaches to concept of normative conflicts in the global context of public international law (PIL).....</b>	<b>29</b>
<i>1.1.1. Contradiction Test .....</i>	<i>29</i>
<i>1.1.2. Impossibility-of-Joint-Compliance Test or Narrow Definition.....</i>	<i>30</i>
<i>1.1.3. Violation Test or Broad Definition .....</i>	<i>34</i>
<b>1.2. The definition of multiple-PTA normative conflicts tailored to the research objective.....</b>	<b>38</b>
<i>1.2.1. Research Objective – Implementation of Multiple PTAs.....</i>	<i>40</i>
<i>1.2.2. The “conflict” notion in PTA conflict clauses .....</i>	<i>46</i>
<i>1.2.3. Which definition is adequate to the research objectives? .....</i>	<i>54</i>
<b>1.3. Satisfaction of necessary and sufficient conditions to conflicts of norms by multiple PTAs .....</b>	<b>59</b>
<b>1.4. Relations between norms in different PTAs.....</b>	<b>66</b>
<b>CHAPTER 2: INTERPRETATIVE TOOLS TO AVOID APPARENT NORMATIVE CONFLICTS AMONG PTAS.....</b>	<b>69</b>
<b>2.1. Customary rules of interpretation of PIL .....</b>	<b>71</b>

2.1.1.	<i>Article 31 of the VCLT</i> .....	72
2.2.	Consideration of relevant interpretation in WTO DSB decisions .....	75
2.3.	No change in rights or obligations of the parties .....	76
2.4.	Other rules of interpretation .....	77
<b>CHAPTER 3: SOLUTIONS TO REAL PTA NORMATIVE CONFLICTS</b> .....		<b>78</b>
3.1.	Conflict clauses/rules for real conflicts under PTAs .....	78
3.1.1.	<i>Termination of either conflicting PTAs</i> .....	81
3.1.2.	<i>Non-application of either conflicting PTAs</i> .....	82
3.1.3.	<i>Prevalence of either conflicting PTAs</i> .....	82
3.1.4.	<i>Co-existence of multiple PTAs</i> .....	97
3.1.5.	<i>Consultations</i> .....	107
3.2.	Customary rules on normative-conflict resolution under PIL .....	117
3.2.1.	<i>Lex superior principle</i> .....	117
3.2.2.	<i>Lex posterior principle</i> .....	118
3.2.3.	<i>Lex specialis principle</i> .....	118
3.3.	Drawbacks of the existing conflict-solving tool box .....	119
3.3.1.	<i>Unavailability of PTA conflict clauses to inter-PTA normative conflict resolution</i> 119	
3.3.2.	<i>Inapplicability of customary conflicting-solving rules to inter-PTA conflict of norms</i> 124	
<b>CHAPTER 4: IMPLEMENTATION OF MULTIPLE PTAS UNDER THE EFFECT OF UNSOLVED CONFLICTING NORM RELATIONS</b> .....		<b>128</b>
4.1.	Choosing which norm to perform... ..	128
4.2.	... at the expense of either violating the other obligatory norm – State Responsibility.....	129
4.3.	... or waiver of rights under the other permissive norm .....	134

<b>CONCLUSION OF PART 1 .....</b>	<b>136</b>
<b>PART 2: A CASE-STUDY OF INTER-PTA INTERACTIONS: THE RELATIONSHIP BETWEEN THE CPTPP AND THE EVFTA.....</b>	<b>137</b>
<b>CHAPTER 5: CONFLICTS AMONG NORMS ON SUBSIDIES .....</b>	<b>143</b>
<b>5.1. Interpretation of subsidies regulations under the CPTPP.....</b>	<b>144</b>
<b>5.2. Interpretation of subsidies regulations under the EVFTA .....</b>	<b>149</b>
<i>5.2.1. Scope of application.....</i>	<i>151</i>
<i>5.2.2. Definition of subsidies .....</i>	<i>152</i>
<i>5.2.3. The condition of specificity .....</i>	<i>152</i>
<i>5.2.4. Principles on and categories of subsidies .....</i>	<i>152</i>
<b>5.3. Comparison and conflicts between the CPTPP and the EVFTA on subsidy norms</b>	<b>163</b>
<i>5.3.1. The scope of application.....</i>	<i>163</i>
<i>5.3.2. Definition of subsidies .....</i>	<i>165</i>
<i>5.3.3. The “specificity” requirement.....</i>	<i>165</i>
<i>5.3.4. Categories of subsidies .....</i>	<i>165</i>
<b>5.4. Reasons for the accumulations and conflicts between the CPTPP and the EVFTA</b>	<b>173</b>
<b>5.5. Conflicts-solving: Conflict clauses regarding subsidies in the CPTPP and the EVFTA</b>	<b>179</b>
<b>CHAPTER 6: CONFLICTS AMONG TRADE-IN-SERVICES NORMS.....</b>	<b>183</b>
<b>6.1. Potential conflicts ensuing from EVFTA-plus provisions in the CPTPP .....</b>	<b>192</b>
<i>6.1.1. Business services.....</i>	<i>192</i>
<i>6.1.2. Communication services.....</i>	<i>208</i>
<i>6.1.3. Construction services.....</i>	<i>214</i>
<i>6.1.4. Distribution services .....</i>	<i>215</i>

6.1.5.	<i>Educational services</i> .....	217
6.1.6.	<i>Environmental Services</i> .....	220
6.1.7.	<i>Health related and social services</i> .....	220
6.1.8.	<i>Tourism and travel related services</i> .....	221
6.1.9.	<i>Recreational, cultural and sporting services</i> .....	222
6.1.10.	<i>Transport services</i> .....	226
6.2.	<b>Potential conflicts ensuing from EVFTA-minus provisions in the CPTPP.....</b>	<b>239</b>
6.2.1.	<i>Business services</i> .....	239
6.2.2.	<i>Communication services</i> .....	248
6.2.3.	<i>Construction and related engineering services</i> .....	248
6.2.4.	<i>Distribution services</i> .....	248
6.2.5.	<i>Educational services</i> .....	250
6.2.6.	<i>Environmental services</i> .....	251
6.2.7.	<i>Health related and social services</i> .....	251
6.2.8.	<i>Tourism and travel related services</i> .....	253
6.2.9.	<i>Recreational, cultural and sporting services</i> .....	253
6.2.10.	<i>Transport services</i> .....	253
<b>CHAPTER 7: CONFLICTS AMONG NORMS ON INTELLECTUAL PROPERTY RIGHTS .....</b>		<b>267</b>
7.1.	<b>Interpretation of rules on GIs and TMs in the CPTPP.....</b>	<b>269</b>
7.1.1.	<i>TMs under the CPTPP</i> .....	269
7.1.2.	<i>GIs under the CPTPP</i> .....	274
7.2.	<b>Interpretation of rules on GIs and TMs in the EVFTA.....</b>	<b>279</b>
7.2.1.	<i>TMs under the EVFTA</i> .....	280
7.2.2.	<i>GIs under the EVFTA</i> .....	281

<b>7.3. Comparison and potential conflicts between IP rules in the CPTPP and the EVFTA</b>	<b>291</b>
<i>7.3.1. Definition of GIs</i> .....	<i>292</i>
<i>7.3.2. Scope of application</i> .....	<i>292</i>
<i>7.3.3. GI protection</i> .....	<i>293</i>
<b>7.4. Reasons for CPTPP-EVFTA conflicting norms on GIs and TMs</b> .....	<b>300</b>
<b>7.5. Conflict-solving: Conflict clauses</b> .....	<b>306</b>
<b>CONCLUSION OF PART 2</b> .....	<b>309</b>
<b>CONCLUSION</b> .....	<b>312</b>
<b>LEGAL DOCUMENTS</b> .....	<b>319</b>
<b>BIBLIOGRAPHY</b> .....	<b>320</b>
<b>ANNEX 1: COMPILATION OF PROVISIONS RELEVANT TO CONFLICTS OF NORMS IN PTAs</b> .....	<b>330</b>
<b>ANNEX 2.2: CPTPP COMMITMENTS MORE LIBERALIZED THAN EVFTA COMMITMENTS</b> .....	<b>459</b>
<b>ANNEX 2.3: CPTPP COMMITMENTS LESS LIBERALIZED THAN EVFTA COMMITMENTS</b> .....	<b>489</b>

## ABSTRACT

The interaction between multiple preferential trade agreements (PTAs), i.e. two or more PTAs concluded by a certain state, can be problematic when it comes to conflicts among their norms. Although being an active player in trade regionalism, Vietnam is not a rule-maker, but a rule-taker in preferential trade negotiations, which exacerbates the challenges imposed by multiple PTAs, especially by their conflicting norms. Conflicting norms in PTAs between Vietnam and developed countries seem more prevalent and costlier in legal terms. This dissertation addresses the questions of whether the implementation of multiple PTAs produces any legal problems or challenges to a common state party, for example to Vietnam, in consideration of inter-PTA conflicts, and how to solve them (if any).

The dissertation is structured in two parts. Part 1, in order to provide an analytical framework for the inter-PTA conflict discussion, studies conflict clauses and other relevant provisions in some 200 PTAs notified by WTO Members to the WTO as being concluded following the year 2000 and still effective. Since it is impossible to have a look at every pair of multiple PTAs, Part 2 of the dissertation focuses on only one pair of multiple PTAs concluded by Vietnam which are the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA) for the quest of examples of real conflicting norms. The choice of Vietnam and its two specific treaties as a case-study is attributable, firstly, to a higher likelihood of PTAs involving Vietnam to give rise to conflicts than those involving other states and, secondly, to the economic and legal magnitude of the two trade deals. The exploration of inconsistencies among legal norms in three areas of subsidies, services trade and intellectual property (IP) is highlighted in light of, *inter alia*, their critical significance to Vietnam in both economic and legal terms.

Given that literature has, to date, highlighted normative conflicts from the global, multilateral or regional perspective and in the light of general principles of public international law, this dissertation bridges the existing research gap by shifting to the inter-PTA linkage, to a national angle of a state obligated to observe its contradictory commitments under PTAs and to the perspective of treaty interpretation. Several key observations and conclusions have been drawn. *First*, PTA conflict clauses adopt a broad conception of normative conflicts by making a reference to the nexus among multiple PTAs in their totality as well as to all of their provisions as a whole. In view of the research objective featuring the PTA implementation, neither the narrow nor the broad approach to the “conflict” notion is judged as adequate; instead, a new tailor-made definition is constructed. Conflicts, in theory, can arise among PTAs as far as their necessary and sufficient pre-conditions are met. While interpretative rules can be useful to avoid apparent conflicts, this is not always the case for the existing toolbox to solve real conflicts of which the consequences take the forms of either state responsibility for international obligation violations or waiver of legitimate rights. *Second*, established illustrations of conflicting norms on subsidies, trade in services and IP are nuanced in terms of their nature and frequency. While no conflict is found among services-trade norms in the two trade pacts, some right-obligation collisions may arise from subsidy regulations since certain subsidies excluded or permitted under the CPTPP can be prohibited or challenged under the EVFTA and vice versa. Meanwhile, the mutually-exclusive-obligation conflict concerning the trademark-geographical indication interaction is the most severe due to its irresolvability. Notwithstanding the above divergences, the discovered inconsistencies share their root in the exposition of Vietnam to clashes between developed PTA co-signatories, especially between the United States and the European Union, over ideologies, domestic regulatory models, PTA negotiation strategies and objectives, let alone their norm-setting roles in PTAs.



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## LIST OF ACRONYMS

AoA	Agreement on Agriculture of the WTO
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
ASCM	Agreement on Subsidies and Counter-vailing Measures of the WTO
ASEAN	Association of Southeast Asian Nations
BCCs	Business Cooperation Contracts
CBTS	Cross-border Trade in Services
CETA	Comprehensive Economic and Trade Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRS	Computerized reservation system
DDR	Doha Development Round
DSB	WTO Dispute Settlement Body
DSU	WTO Dispute Settlement Understanding
EC	European Communities
EU	European Union
EUR	Euro
EVFTA	EU-Vietnam Free Trade Agreement
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GI	Geographical Indication
GIs	Geographical Indications
ILC	International Law Commission
IPs	Intellectual Properties
IPR	Intellectual Property Right

IPRs	Intellectual Property Rights
JVs	Joint ventures
JVFTA	Japan-Vietnam Free Trade Agreement
MA	Market access
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NT	National Treatment
PIL	Public International Law
PTA	Preferential Trade Agreement
PTAs	Preferential Trade Agreements
RCEP	Regional Comprehensive Economic Partnership Agreement
SCM	Subsidies and Countervailing Measures
SDR	Special Drawing Rights
SMEs	Small and medium-sized enterprises
TFEU	Treaty on the Functioning of the European Union
TM	Trademark
TMs	Trademarks
TPP	Trans-Pacific Partnership Agreement
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership Agreement
UN	United Nations
US	United States
VCLT	Vienna Convention on the Law of Treaties 1969
VND	Vietnam Dong
WTO	World Trade Organization

**LIST OF CASES**

<i>Short titles</i>	<b>Full titles</b>
<i>EC – Bananas III</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/R/USA.
<i>Turkey – Textiles</i>	Panel Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/R.
<i>Indonesia – Automobiles</i>	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R, WT/DS59/R, WT/DS64/R.
<i>Guatemala – Cement</i>	Appellate Body Report, <i>Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico</i> , WT/DS60/AB/R.
<i>United States - Hot Rolled Steel</i>	Panel Report, <i>United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom</i> , WT/DS138/R, WT/DS138/AB/R.
<i>EC – Trademarks and Geographical Indications</i>	Panel Report, <i>European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs</i> , WT/DS174/R.

## INTRODUCTION

The term “Multiple Preferential Trade Agreements” (PTAs) describes the participation of a country in at least two PTAs. This phenomenon also leads to other related tendency such as double PTAs, parallel PTAs/parallelism, overlapping PTAs and fragmentation of PTAs. Double PTAs denote two or more PTAs governing the same bilateral trade relation while PTA fragmentation indicates that there is no relation among PTAs concluded by the same country, leaving them co-exist, overlap or even conflict.

The existence of the “multiple PTAs” phenomenon is not new in trade relations but recently has gained attention from legal academia. Several factors have contributed to this turn. The first is the booming of PTAs and the active involvement of a majority of countries in the twenty-first century, especially in the context of the stalemate of multilateral trading negotiations. The second is the recent noticeable expansion of the scope and depth of PTAs, making the problems caused by multiple PTAs more prevalent in frequency and more serious in implications. Both of these quantitative and qualitative shifts have given considerable significance to PTAs and therefore caught more attention from the academic world.

While the consolidation relation between multiple PTAs is less thorny, their co-existence interaction is more problematic. The status-quo of multiple PTAs and the absence of coordination mechanisms among them may give birth to the incoherence or even conflicts of norms. The issue of multiple-PTA conflicts and their potential outcomes can lead to economic and legal costs. In economic terms, multiple PTAs can increase transaction costs and trade diversion. Businesses have to pay expenses in finding relevant and applicable rules while governments pay for the compliance with overlapping commitments. In legal terms, multiple PTAs may lead to the problem of international law incoherence and inconsistency. Divergent regulations under different PTAs cause overlapping, or even conflicting, rights and obligations in substantive and procedural law. The performance of one set of rules may take sacrifice of other rules, which in turn costs state legal responsibility and compensation.

Although being an active player in trade regionalism, Vietnam is not a rule-maker, but a rule-taker in preferential trade negotiations, which exacerbates the challenges imposed by multiple PTAs, especially by their conflicting norms. Up to 2019, Vietnam has finished negotiating 16

PTAs.<sup>1</sup> Among 163 bilateral trade relations which can be theoretically covered by PTAs between Vietnam and other WTO State Members, Vietnam has put 56 under the regulation of PTAs.<sup>2</sup> If counting 28 Member States of the European Union (EU) as one, then 29 out of 136 bilateral trade relations, equivalent to around 21%, have been governed by PTAs involving Vietnam. This rate is more than double the average among WTO Members,<sup>3</sup> showing its active participation in the PTA wave. Among these PTAs, the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP) – the replacement of the Trans-Pacific Partnership Agreement (TPP) and the European Union – Vietnam Free Trade Agreement (EVFTA) are the deepest and highest-standard agreements with the largest and most demanding liberalization commitments.

Conflicting norms in PTAs between Vietnam and developed countries seem to be more prevalent and costlier in legal terms. Having, *inter alia*, the EU, Canada and Japan as its main developed trading partners, Vietnam, as a developing country, has way lower bargaining power and gives demandeur roles to these partners in many novel trade issues. On the other side, the EU, Canada and Japan are among the most powerful players in the preferential trade context but have divergent approaches in many trade issues. With their strong leverage positions, it is easier for these players to make provisions harmonious in their PTAs, whereas the same does not hold true for Vietnam. Being exposed to different trade agreement templates in negotiating with Canada, Japan and the EU, Vietnam will soon face the aftermath of its decisions. Prior to these two agreements, Vietnam has no experience in performing two high-standard PTAs at the same time and may fail to foresee the problem of conflicting PTAs at the negotiation stage resulting in obstacles in the execution stage. In the context that Vietnam has moved or will move from the negotiation stage to the ratification and

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<sup>1</sup> Including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), ASEAN Economic Community, ASEAN – India FTA, ASEAN – Australia/New Zealand FTA, ASEAN – Korea FTA, ASEAN – Japan FTA, ASEAN – China FTA, Japan- Vietnam FTA, Chile- Vietnam FTA, Korea-Vietnam FTA, Vietnam – European Asian Economic Union FTA, ASEAN – Hong Kong FTA, Regional Comprehensive Economic Partnership, EU- Vietnam FTA, Vietnam – European Free Trade Association FTA, Vietnam – Israel FTA.

<sup>2</sup> Including Canada, Mexico, Chile, Peru, 28 Members of the EU, 4 EFTA States, Australia, New Zealand, Japan, Korea, China, India, Hong Kong, Israel, 9 ASEAN Members, Russia, Kazakhstan and Armenia.

<sup>3</sup> For the average rate among WTO Members, see Joost Pauwelyn and Wolfgang Alschener, ‘Forget about the WTO: The Network of Relations between PTAs and Double PTAs’, in Andreas Du`r and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements*, Cambridge University Press, 2015, p. 504.

implementation stages, it is imperative to take the issue of multiple PTAs into legal consideration.

## 1. Literature review

A large pool of writings have delved into the contentious concept of conflict of norms as well as other related notions but none have put their discussion within the context of inter-PTA interactions. Some seminal treatises can be named. Pauwelyn (2003), for example, in view of the “unitary of international law” objective, clarified two scenarios of interactions, i.e. accumulation and conflict, among international law norms in general and between WTO norms and other international law norms in particular.<sup>4</sup> The author discussed different aspects of approaches to normative conflicts, including, *inter alia*, their contents, main features, rationales and illustrative examples, and expressed his disapproval on the narrow approach based on his analysis of pros and cons of each approach. Further discussion was given on how to address normative conflicts.<sup>5</sup> Hafner (2004) studied the phenomenon of fragmentation in international law after the World War II, in particular, its characteristics, causes and effects exemplified by six instances of inter-international-law-branch and intra-international-law-branch conflicts and the shortcomings of the existing solutions thereto.<sup>6</sup> The International Law Commission (ILC) (2006), in its report for the purpose of reinforcing the coherence of international law, discussed the term “fragmentation” and its inherent positives and negatives.<sup>7</sup> In view of the avoidance of conflicts between norms in public international law, Adarsh (2009) argued for the significant contribution of the development or adoption of a concept of conflict.<sup>8</sup> To make a case for his conclusion, the author applied two different definitions of conflict proposed by Pauwelyn (2003) and the ILC (2006) to three constructed and hypothetical examples of potentially conflicting norms in different branches of international law, condemning the approach proposed by Pauwelyn for its exacerbating the conflicting situation. In other words, Adarsh made a choice of a certain definition of conflict in view of its supportiveness for his pre-determined research objective. Michaels and

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<sup>4</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

<sup>5</sup> *Ibid.*

<sup>6</sup> Gerhard Hafner, *Pros and Cons Ensuing from Fragmentation of International Law*, Michigan Journal of International Law, 2004, 25: 849, 854.

<sup>7</sup> ILC, *Fragmentation of International Law*, 2006.

<sup>8</sup> Adarsh Ramanujan, *Conflicts over “Conflict”: Preventing Fragmentation of International Law*, 1(1) Trade, Law and Development 171 (2009).

Pauwelyn (2012), in order to determine the applicability of conflict-of-law rules and conflict-of-norm rules to address conflicts in public international law, discussed both set of rules with respects to their solutions, pre-conditions as well as the judicial review and the comparison between domestic and international law, between private and public international law.<sup>9</sup> Jeutner (2017) introduced a new concept of a legal dilemma in his discussion of irresolvable and unavoidable conflicts of norms.<sup>10</sup> By denoting a legal dilemma as a situation in which “an actor confronts an irresolvable and unavoidable conflict between at least two legal norms so that obeying or applying one norm necessarily entails the undue impairment of the other”,<sup>11</sup> the author further differentiated it from other relevant phenomena such as “moral dilemmas”, “conflict of norms”, “indeterminacy”, “gaps”, “paradoxes”, “disagreement” and “hard cases”. Especially, three theories on the notion of conflict of norms were reviewed in order to figure out the pros and cons of each of them. In the end, the author targeted the attributes, outcomes of as well as pre-conditions to a legal dilemma. For illustration, five examples of legal dilemmas within branches of international law were thoroughly analyzed.

Although interactions between different branches of international public law have been the focal point of a sea of literature, a gradual shift of academic discussion therefrom as well as from the WTO-PTA relation to inter-PTA relations has been witnessed lately. However, these works constrain themselves to the exploration of similarities, dissimilarities, co-existence or fragmentation of PTAs, rather than taking one step towards the conflict discourse. Initially, with the rise of PTAs, a great deal of contributions has taken the WTO multilateral legal framework as the center and PTAs as periphery and elaborated on such linkage.<sup>12</sup> To date, researchers have focused on the relationship among PTAs themselves. Johnston and Trebilcock (2013), for instance, proposed the use of two mechanisms available in the international investment regime which are the cross-treaty interpretation in dispute settlement and the most-favoured-nation clause inclusion to reduce the fragmentation and increase the

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<sup>9</sup> Ralf Michaels, Joost Pauwelyn, *Conflict of Norms or Conflict of Laws?: Different Techniques in the Fragmentation of International Law*, 22 *Duke Journal of Comparative & International Law* 349-376 (2012).

<sup>10</sup> Valentin Jeutner, *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma*, Oxford: Oxford University Press, 2017.

<sup>11</sup> *Ibid*, Part I.

<sup>12</sup> Panagiotis D. (2011), *The Fragmentation of International Trade Law*, *Journal of World Trade* 45, no. 1: 87–116.



harmonization among PTAs.<sup>13</sup> Pauwelyn and Alschener (2015) studied the network of PTAs and discussed the phenomenon of double PTAs in which a bilateral trade relation between two countries in general is governed by at least two PTAs.<sup>14</sup> The two authors explained the circumstance and provided some legal solutions to interrelate multiple PTAs. In addition, Lo (2016) focused on one type of inter-PTA relations which includes inner- and outer-PTAs, contending that traditional substantive and procedural approaches applicable to inter-PTA conflicts can harm the outer-PTAs and thereafter proposing new solutions ranging from the priority of outer-PTA dispute settlement procedures (DSP) to the participation of outer-PTA third parties in DSP under inner PTAs and to platform functions of outer-PTAs in substantive terms.<sup>15</sup>

Furthermore, many researchers have delved into the issue of multiple PTAs, taking into account one (or some) particular sector and/or a particular country or group of countries. Some articles have revolved around the comparative analysis of cross-PTA provisions on specific trade sectors, without classifying them as conflict or accumulation. On the list is Naumann (2006) comparing rules of origin in several PTAs between the European Union and its trading partners.<sup>16</sup> In the intellectual property field, Viju C. *et al* (2013) concerned consequences caused by potential conflicts between commitments made by Canada in two PTAs which are Comprehensive Economic and Trade Agreement (CETA) with the European Union and North American Free Trade Agreement regarding intellectual property protection in general and geographical indications in particular.<sup>17</sup> Regarding investment, Alschner (2014) discussed several solutions adopted in investment treaties to deal with overlaps between intra-, inter-regional and bilateral investment treaties and proposed some guidance on this issue taking from international trade law by analogy.<sup>18</sup> Andrew D. Mitchell, Jennifer K.

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<sup>13</sup> Johnston A. M. and Trebilcock M. J. (2013), *Fragmentation in international trade law: insights from the global investment regime*, World Trade Review, 12: 4, 621–652.

<sup>14</sup> Joost Pauwelyn and Wolfgang Alschener, 'Forget about the WTO: The Network of Relations between PTAs and Double PTAs', in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements*, Cambridge University Press, 2015, pp. 497-532.

<sup>15</sup> Chang-fa Lo, *Coordinative Approach to Resolve Normative and Operational Conflicts between Inner and Outer-FTAs*. Journal of World Trade 50, no. 1 (2016): 147–166.

<sup>16</sup> Eckart Naumann, *Comparing EU Free Trade Agreements - Rules of Origin*. (InBrief 6I). Maastricht: ECDPM, 2006, available at <http://ecdpm.org/publications/comparing-eu-free-trade-agreements-rules-of-origin/> visited 14/12/2016.

<sup>17</sup> Crina Viju, May T. Yeung and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, Journal of International Economic Law 16(2), 2013, 409–437.

<sup>18</sup> Wolfgang Alschner, *Regionalism and Overlap in Investment Treaty Law: Towards Consolidation or Contradiction?*, Journal of International Economic Law 17(2), 2014, 271–298.

Hawkins and Neha Mishra (2016), for instance, pointed out the commonalities and uncommonalities in prudential regulations in financial services in different PTAs such as the NAFTA, EU-Korea FTA, the EU-Canada CETA, TPP and Transatlantic Trade and Investment Partnership Agreement.<sup>19</sup> By comparing investment treaty texts in some 2100 treaties with 24,000 articles, Alschner and Skougarevskiy (2016) reached four main conclusions of four-level novel knowledge regarding international investment treaties without a clear concentration on the discovery of investment-norm conflicts.<sup>20</sup>

In the global context, to the best of my knowledge, no research focuses on comparing comprehensively two PTAs to clarify the potential conflicting relation between them. Similarly, internationally, there are few studies on PTAs involving Vietnam and, to date, there have been no studies on the interplay between PTAs to which Vietnam is a party. The same holds true in the domestic context. Furthermore, no case law exists to shed light on the issue. Taking into consideration the fact that most of the scholarship highlights the issue of normative conflicts from the global, multilateral or regional perspective, this dissertation shifts to a look from a national angle of a state obligated to observe its contradictory commitments under PTAs in view of filling the above research gaps.

## 2. Research questions

Main research questions are: Shall the implementation of multiple PTAs cause any legal problems or challenges to Vietnam? If any, how to solve the problems?

More specifically, the dissertation addresses the following issues:

- What is the inter-PTA relation from the perspective of one common state party? How do multiple PTAs link to each other? How should inter-PTA relations be conceived?
- Are frictions among inter-PTA norms so severe that they are conflictual? Why do scholars seem reluctant to refer to the term “conflict” in the discussion of inter-PTA relations? Because inter-PTA conflict does not exist at all or only exist in theory, not in reality? Or because conflict does exist in reality but the topic is under-discussed and under-theorized?
- If yes, which pairs of norms are in conflict? How to determine their existence?
- How are inter-PTA norm conflicts different from those in public international law?

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<sup>19</sup> Andrew D. Mitchell, Jennifer K. Hawkins and Neha Mishra, *Dear Prudence: Allowances under International Trade and Investment Law for Prudential Regulation in the Financial Services Sector*, *Journal of International Economic Law* 19(4), 2016, 787–820.

<sup>20</sup> Wolfgang Alschner and Dmitriy Skougarevskiy, *Mapping the Universe of International Investment Agreements*, *Journal of International Economic Law* 19(3), 2016, 561–588.

- What are the extent, frequency and severity of conflicts? Are they commonplace or rare?
- What legal consequences await a state in the execution of conflicting norms? What are substantive effects of inter-PTA conflicting norms?
- Is there any relevant excuse/exemption for a state in case of violating either of conflicting norms?
- How to solve conflict of norms in multiple PTAs? How to make two PTAs mutually supportive rather than conflictual?
- Is there any chance that a state, e.g. Vietnam, finds itself stuck in a situation where its measure which is alleged to be inconsistent with one PTA is justified under another PTA? In particular, do normative conflicts really exist between the CPTPP and the EVFTA?
- In face of conflicting norms, how should a country, e.g. Vietnam, react?

### **3. Scope of research**

In terms of the temporal scope, rather than looking at all PTAs, the research focuses on PTAs concluded during the 2000-2018 period. Five years after the WTO establishment, some states took a turn away from multilateralism towards regionalism, marking the starting point of a new wave of PTAs. The new wave of regionalism, together with the adoption by states of new trade strategies, for example, the EU with its 2006 “Global Europe” strategy, yields a “new generation” of PTAs of which some are considered as “high-standard” in covering WTO-extra trade-related issues and in pushing for WTO-plus undertakings in addition to other WTO-minus ones (collectively referred to as WTO-deviating commitments) which may cause clashes among their provisions in the end. With that limit in mind, the first part of the dissertation, in view of providing an analytical framework for the inter-PTA conflict discussion, studies some 200 PTAs notified by WTO Members to the WTO as being concluded from 2000 until 2018 and still effective.<sup>21</sup>

When it comes to geographical or membership overlaps among PTAs, the dissertation does not deal with PTAs with no geographical or membership overlap, namely PTAs concluded by two totally different sets of countries. PTAs under discussion are comprised of (1) double PTAs (i.e. two or more PTAs governing the same bilateral trade tie or concluded by at least two same countries) and (2) the “single PTAs” (in the author’s own terms) (i.e. PTAs having

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<sup>21</sup> <https://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=1029> visited on 27<sup>th</sup> January 2018.

only one state party in common, or PTAs concluded by one state party with sets of completely different third-parties). Added to that, conflicts of norms within a PTA, i.e. intra-PTA norm conflicts, are also out of the sphere of this research.

The research just looks at reciprocal preferential trade agreements, thereby setting aside unilaterally preferential ones. Additionally, only substantive norms are covered in the conflict discussion; jurisdictional conflicts are excluded. Although conflicts of norms can take place in relations among norms in three or more PTAs, i.e. conflicts can arise among three or more norms, the research concentrates on those between every two norms in consideration of the fact that the discourse on dual-norm conflicts is applicable to triple- or multiple-norm conflicts.

For the quest of examples of real conflicting norms, since it is impossible to have a look at every pair of multiple PTAs, the second part of the dissertation focuses on only one pair of multiple PTAs concluded by Vietnam which are the CPTPP and the EVFTA. The ensuing question is why the case of Vietnam, rather than other states, is chosen or more relevant for the conflict discussion. It is predicted that PTAs involving Vietnam are more likely to be in conflict than those involving other states. The reasoning will be based on the potential of Vietnam's PTAs for the satisfaction of pre-conditions to conflicts that will be discussed in Chapter 1 of the dissertation, including the overlaps over subjects, subject-matters and temporal scope of application and the conflictual substantive contents of PTAs norms. Firstly, as above-mentioned, since Vietnam is an active player in trade regionalism, PTAs to which Vietnam is a party are multiple PTAs meeting the conditions of the three overlaps. Secondly, it is more likely to witness inconsistency or incompatibility in the subject-matter or substantive contents of norms in PTAs concluded by Vietnam. Vietnam plays a passive, rather than active, role in PTA-law-making; in contrast, trade partners of Vietnam, including the United States, the EU, Japan, Canada, China, play the role of big players or even rule makers. For the United States and the EU, they act as rule-setters and PTAs are clearly a channel for them to export their external trade rules.<sup>22</sup> For instance, it has been proven that

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<sup>22</sup> For the EU's use of PTAs to export its external trade policies, see, for example, Leonardo Borlini and Claudio Dordi, *Deepening International Systems of Subsidy Control: The (Different) Legal Regimes of Subsidies in the EU Bilateral Preferential Trade Agreements*, 2017, 23 Colum. J. Eur. L. 551, p. 2. Jean-Christophe Maur, *Exporting Europe's Trade Policy*, 28(11), World Economy 1565(2005).

developed countries, including the United States, are rule-makers in investment.<sup>23</sup> The United States dominated the formation of the investment chapter in the TPP. Resultantly, rule-makers can ensure the consistency in their PTAs, including investment provisions. The consistency in UK treaties, for example, is double that of Egypt and Pakistan.<sup>24</sup> Or the CPTPP and the US-Columbia FTA investment chapters are 81% similar textually.<sup>25</sup> Additionally, Vietnam has no clear-cut PTA objectives, strategy, template and tactics especially with regards to multiple PTAs. Neither does it have well-established experience, expertise or high-skilled human resources in negotiating and drafting PTAs. On the contrary, the United States and the EU, as pioneers in the PTA wave, are well-equipped with the above and have actively taken into account their pre-existing PTAs, leading to well-drafted new-PTA texts to avoid potentials for inconsistency or incompatibility among PTA provisions. For other states having finished or undergoing negotiations with the United States and the EU such as Canada, Korea, Singapore, they have better bargaining power and well-developed trade negotiation strategies. Another reason for the consideration of the case of Vietnam is the absence, to the knowledge of the author, of literature on conflicts among provisions involving its PTAs.

Why are the CPTPP and the EVFTA more relevant in this discussion than other PTAs to which Vietnam is a signatory? The consideration of the CPTPP and the EVFTA in the second Part of the thesis is justified by two main legal and economic reasons. In the first place, these two treaties involve the most important rule-makers or big powers in international trade law with the most diverging viewpoints, strategies and templates in trade negotiations bilaterally, plurilaterally and multilaterally. Beside the United States and the EU - the two most important rule-makers of international trade law are Canada and Japan. In spite of the United State withdrawal from the TPP, its external trade ideology, viewpoint and template are still deeply embedded in the existing CPTPP text given few variations of the CPTPP compared to the TPP. The stiff combat between the United States and the EU in international trade law evolution is reflected in the stalemate of the WTO Doha Development Round (DDR) and the TTIP negotiations. On the other side, although Vietnam is an active player in trade regionalism as stated above, it is not a rule-maker, but a rule-taker in preferential trade

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<sup>23</sup> Wolfgang Alschner and Dmitriy Skougarevskiy, *Mapping the Universe of International Investment Agreements*, *Journal of International Economic Law* 19(3), 2016, 561–588.

<sup>24</sup> *Ibid*, p. 562.

<sup>25</sup> *Ibid*.

negotiations, which exacerbates the challenges imposed by multiple PTAs, especially by their conflicting norms. Among PTAs to which Vietnam is a party, the CPTPP – the replacement of the TPP and the EVFTA are the most recent, deepest and highest-standard agreements with the largest and most demanding liberalization commitments. The inclusion of the most WTO-deviating provisions in these two PTAs promises a higher probability of conflicts among their norms. In the second place, the CPTPP and the EVFTA involve the most important trade partners to Vietnam, including the EU, Japan, Canada, Australia and New Zealand. As a result, conflicts, if any, among these two agreements and their consequences will affect Vietnam the most economically. Added to that, given the possibility that the CPTPP can open accession to new parties in the future, this economic impact of the potential conflicts can be even expanded.

For the interest of time and space, the research is devoted to addressing the topic of normative conflicts among regulations on subsidies, services trade and IP. Rather than being a subjective choice, the highlight given to these three trade and trade-related issues is justified by certain rationales. In the *first* place, according to the in-depth discussion below, no matter what concept of “conflict” is introduced, one side of the conflictual relation must be an obligatory norm. Therefore, in areas where Vietnam plays a defensive role and suffers from more requests from other PTA co-signatories is there a more likelihood of conflicting norms. In order to secure access to foreign markets for its exported goods, Vietnam has to give concessions in other trade and trade-related issues, especially in trade in services and IP, thereby being extremely vulnerable to requests of concessions from its trade partners. In trade in services, for instance, other developed PTAs partners of Vietnam are net exporters and would like to gain undertakings of trade liberalization from Vietnam. Likewise, in both the CPTPP and the EVFTA, developed trade partners of Vietnam are IPR net exporters. Therefore, substantive norms on IPRs in these two agreements are to protect their strategic economic interests by ensuring market power and technology-based competitiveness of their goods and service exporters and investors. In addition, these are concurrently areas where other PTA developed partners of Vietnam not only are more active and offensive in exporting their WTO-deviating approaches to Vietnam but also hugely differ from each other, which means an increase in the chances of inter-PTA normative conflicts. Having competitiveness in services- and IP-intensive industries, developed signatories use PTAs to better protect their

economic interests and to export their legal ideology and regulations. Vietnam is subject to not only more stringent but also potentially mutually clashing obligations due to divergent template/models/systems/approaches adopted by other developed PTA signatory countries, particularly in IP as proven in detail in the substantive content of this dissertation. The same reasoning holds true for subsidies rules.

In the *second* place, obligatory commitments in these three areas are of crucial significance to Vietnam in triggering not only tremendous costs in economic terms but also drastic and seminal reforms in its economic functioning and model that prove to be costly in legal, political and social terms. In economic terms, the implementation and enforcement of IPR undertakings can go hand in hand with creating labour division and position change in the global value chain.<sup>26</sup> In legal terms, all of the three issues deal with behind-the-border measures which will have significant influences on the policy and legal construction models in Vietnam. The most severe challenges that Vietnam has to encounter, as determined by itself, include, among others, the implementation of rules on trade in services, intellectual property (IP) and subsidies.<sup>27</sup> More specifically, in order to implement the CPTPP, Vietnam is conducting the review of some 265 legal documents<sup>28</sup> for their amendment, supplementation in view of the compliance therewith.

#### 4. Methodology

By means of theoretical review, two main divergent legal doctrines on conflict of norms are encapsulated. In addition, this method is supportive of the analysis of basic rules in international law governing the interactions between multiple treaties, state responsibility for wrongful acts in public international law and the equivalent in the context of PTAs... As a tool to avoid apparent conflicts, the legal interpretation method is wielded to read relevant international law rules in general and rules in PTAs in particular. Among the most important research tools is critical analysis to examine different doctrines on the conflict concept as well as their pros and cons on this contentious issue.

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<sup>26</sup> Thomas Cottier, Dannie Jost, and Michelle Schupp, 'The Prospects of TRIPS-Plus Protection in Future Mega-Regionals', in Thilo Rensmann, *Mega-Regional Trade Agreements*, Springer International Publishing AG, 2017, pp. 192-193.

<sup>27</sup> Report on the Inspection of the CPTPP presented by the President of the Committee on External Affairs of the National Assembly of Vietnam presented on 02/11/2018 at the Session of the National Assembly on the Ratification of the CPTPP, see <http://vneconomy.vn/chinh-phu-chua-dinh-luong-muc-do-anh-huong-cua-cptpp-20181102111452318.htm> visited on 05/11/2018.

<sup>28</sup> Including 8 Laws such as the Law on IP, see <http://baochinhpheu.vn/Thoi-su/Pho-Thu-tuong-bao-cao-giai-trinh-ve-3-van-de-lon-lien-quan-den-phe-chuan-CPTPP/351246.vgp> visited on 05/11/2018.

The research utilizes the illustrative method in view of providing exemplary instances of conflicting rules. Multiple pairs of potentially conflicting norms from PTAs (one norm from each PTA) will be cited to illustrate the theoretical concepts and conflicting norms. As far as judicial review is concerned, an analysis of case-law sheds light on the application of abstract legal rules on normative conflicts among PTAs involving Vietnam. The aim of the method is not only to provide examples of normative conflicts, but also to vindicate the application of basic theoretical rules of international law on the relevant definitions and conflict-solving techniques to concrete cases.

In search for conflictual norms is the methodology of comparative analysis adopted. Rather than directly comparing every two norms from every double PTAs, the research resorts to WTO norms as comparators. As it is argued that there are no absolute conflicts among WTO rules,<sup>29</sup> this approach eases the quest for norms in conflict. Furthermore, since the overlap or conflict of norms is not unique to inter-PTA relations but also existent in public international law in general and its specific areas in particular, such as international trade law (WTO-PTA relations, WTO and trade-related issues) and international investment law, the cross-disciplinary comparative approach will be exploited to give guidance on the research. Likewise, the participation in multiple PTAs is the prevalent practice exercised not only by Vietnam but also by other countries; accordingly, some references will be made to the reactions or strategies by these countries in the same circumstances and facing the same scenarios.

## 5. Research Structure

Besides the table of contents, abstract, acknowledgements, lists of acronyms and cases, introduction and conclusion, bibliography and annexes, the dissertation is structured in two parts. Part 1 sets up an analytical framework for the discussion of interactions between PTAs as a whole and among their provisions. Given that the quest for illustrative conflicting norms among PTAs in Part 2 must be preceded by the exploration of their existence, Chapter 1 of Part 1 is dedicated, first and foremost, to defining normative conflicts and pre-conditions to their existence tailored to the pre-determined research targets. Chapter 1 features the two main approaches to the concept “conflict of norms” together with their own rationales, pros and cons. A choice among the available approaches to the concept of normative conflicts is made

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<sup>29</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.



to support the objective of the subsequent Part of procurement for exemplary instances of normative conflicts. Chapter 2 delves into interpretative tools in PTAs to avoid apparent normative conflicts among PTAs, which is followed by the exploration of solutions to real PTA normative conflicts in Chapter 3. This chapter also sheds light on the weaknesses of the existing toolbox. Chapter 4 presents rules on violation of international treaties, its legal consequence (state responsibility) and excuses/exemption/exceptions.

The relationship between the CPTPP and the EVFTA is elaborated in Part 2 as a case study of inter-PTA interactions. The two treaties are referred to as an example of two PTAs having only one state party in common. Particularly, Part 2 offers cases of sector-specific conflicts between the CPTPP and the EVFTA: subsidies (Chapter 5), trade in services (Chapter 6) and intellectual property rights (Chapter 7). This Part also determines the relevance of conflict rules in public international law to these PTA-specific conflicting norms.

## **6. Research Outcomes**

Against the background of in-depth elaborations in Chapters 1-7, the following findings have been made. PTA conflict clauses adopt a broad conception of normative conflicts in making reference to such nexus of multiple PTAs in their totality as well as to all of their provisions as a whole. Taking account of the research objective featuring the PTA implementation stage, neither the narrow nor the broad approach to the “conflict” notion is judged as adequate; rather, a new tailor-made definition is constructed as follows: “Inconsistency or incompatibility among norms from multiple PTAs in which (the application or implementation of) one norm in one PTA has the effect of altering or alter or circumvent (that of) another in other multiple PTAs.” Furthermore, conflicts, theoretically, can arise among PTAs as far as their necessary and sufficient pre-conditions are met. While interpretative tools can be useful to avoid apparent conflicts, this is not always the case for the existing toolbox to solve real conflicts of which the consequences take the forms of either state responsibility for international obligation violations or waiver of legitimate rights. Second, with respect to illustrative cases of conflicting norms, the observations are nuanced in terms of the nature and frequency of conflicts among disciplines on subsidies, trade in services and IP. Whereas no conflict can be found among services-trade norms in the two trade pacts, some right-obligation collisions may arise from subsidy regulations since certain subsidies that Vietnam is free to grant under the CPTPP can be prohibited or challenged under the EVFTA and vice

versa. In the meantime, mutually exclusive obligations concerning the trademark-geographical indication interaction in IP norms are the most severe due to their irresolvability. Notwithstanding the above divergences, the established inconsistencies share their root which resides in the exposition of Vietnam to clashes between developed PTA co-signatories, especially between the United States and the EU, over ideologies, domestic regulatory models, PTA negotiation strategies and objectives, let alone their norm-setting roles in PTAs.

## **PART 1: THE ANALYTICAL FRAMEWORK FOR THE DISCUSSION OF NORMATIVE CONFLICTS AMONG MULTIPLE PTAs**

This Part attempts to answer the questions of whether relations between provisions in multiple PTAs concluded by the same state can be conceptualized, in any case, as conflictual and, if so, how to solve/decide such conflictual interactions and what are legal consequences? All of the questions take into account the national perspective in multiple PTA implementation. In particular, the research questions can be furthered as “Can normative conflicts exist among multiple PTAs?” What is the inter-PTA relation from the perspective of one common state party? How do multiple PTAs link to each other? How should inter-PTA relations be conceived? Are frictions among inter-PTA norms so severe that they are conflictual? Why do scholars seem reluctant to refer to the term “conflict” in the discussion of inter-PTA relations? Because inter-PTA conflicts do not exist at all or only exist in theory, not in reality? Or because conflicts do exist in reality, but the topic is under-discussed and under-theorized? If yes, which pairs of norms are in conflict? What are benchmarks for their existence determination? How are inter-PTA norm conflicts different from those in public international law? What are the extent, frequency and severity of conflicts? Are they commonplace or rare? What legal consequences await a state in the execution of conflicting norms? What are substantive effects of inter-PTA conflicting norms? Is there any relevant excuse/exemption for a state in case of non-performance of either conflicting norms?

Part 1 is structured into four chapters. Chapter 1 is dedicated, first and foremost, to advancing a tailored understanding of the concept of normative conflicts which is adequate to support the teleology of the research. Besides, pre-conditions to their existence tailored to the pre-determined research targets are also defined. For apparent conflicts which can be avoided by interpretation, interpretative rules are covered in Chapter 2. Afterwards, conflict clauses and customary rules to address real conflicts are the focal point of Chapter 3. Clarification is given to shed light on limitations of the existing conflict-solving tool box. Against this background, Chapter 4 presents legal consequences of irresolvable conflicts in the forms of either state responsibility for PTA violation or non-exercise of legitimate rights.

In the light of the research objective of the domestic performance of PTAs, Chapter 1, after providing an in-depth discussion of the concept of norm conflicts within the public international law framework, proffers a tailored definition of conflicts among multiple PTAs

and their characteristics, legal analyses of available normative-conflict-solving mechanisms as well as unwanted legal aftermaths of irresolvable conflicts. The concept of conflicts is adopted in pursuit of the research's aims/targets. The proposed conceptualization is elucidated in key elements to differentiate from other confusing concepts. Added to that, Chapter 3 points out both merits and shortcomings/ limitations/ limits/ unavailability/ applicability of traditional means/mechanisms to address normative conflicts. Albeit being diverse in forms, normative-conflict-solving means, including PTA conflict clauses and customary rules (*lex superior*, *lex posterior* and *lex specialis*), fail to tackle certain conflicts.

## **CHAPTER 1: THE CONCEPT OF CONFLICTS OF NORMS AMONG MULTIPLE PTAS FROM A PTA PERFORMANCE PERSPECTIVE**

The concept of conflicts should be under consideration beforehand on two main grounds. In the first place, it is possible to avoid, to some extent, conflicts by formulating a definition of conflicts that has the result of avoiding conflicts between treaty provisions.<sup>30</sup> In the second place, it is unreasonable to solve conflicts without identifying them in advance. In other words, the formation of a conflict notion is the first stepping-stone in assessing apparently conflicting norms. It is impossible to solve conflicts of norms between treaties without the prior identification of their existence.<sup>31</sup> The definition is also a ground for how to detect a conflict of norms.

On the one hand, the perusal of norms in conflicts in PTAs, as international treaties, is part of that in public international law and the discussion of such concept in the public international law arena is supportive of the existing effort. On the other hand, PTAs, being part of the international trade law branch of the international economic law sub-system of international law, have their own typical characteristics which are decisive in the applicability of general principles and rules of international law to their normative conflicts.

### **1.1. Various approaches to concept of normative conflicts in the global context of public international law (PIL)**

What is a conflict of norms? The definition has attracted both legal academic and judicial attention; different scholars and jurists have approached to the notion in different manners.<sup>32</sup> Most literature did not mention the definition of conflicts in their discussion; hence, their adopted concept must be inferred from their covered illustrative instances or examples. Among those defining the notion, some gave a very general or obscure one while others gave a technical or very strict definition of conflicts. Regardless of diverse approaches, different viewpoints base their justifications mainly on one of the three tests proposed to construct the definition of norm conflicts.

#### ***1.1.1. Contradiction Test***

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<sup>30</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>31</sup> *Ibid.*

<sup>32</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003, pp. 158.

According to the contradiction test, if two norms require contradictory conducts, then they contradict with each other.<sup>33</sup> If Norm 1 obligates a certain conduct while Norm 2 obligates the negative of the conduct then the two norms are in conflict.<sup>34</sup> This test provides the simplest and most straight-forward definition and covers the most unambiguous cases of norm conflicts.<sup>35</sup>

### ***1.1.2. Impossibility-of-Joint-Compliance Test<sup>36</sup> or Narrow Definition***

According to this test, a conflict is a situation in which it is impossible for a state to comply with two obligations simultaneously; or a situation in which obligations under two treaties cannot be complied with by a state at a time.<sup>37</sup> In other words, two norms conflict if they require/ result in mutually exclusive obligations. Accordingly, besides three preconditions to conflicts, including overlaps over the subject-matter (i.e. the treaties or provisions have the same subject-matter), overlaps over parties (i.e. two treaties have at least one party in common) and overlaps over time, for a conflict to emerge in reality, the two provisions/norms must conflict by imposing mutually exclusive obligations. As a result, this definition is only applicable to relations between two obligatory norms and does not extend its scope of application to relationships to which one side is rights/permissive norms. In other words, no conflict exists if it is possible to conform to an obligation under a certain treaty by waiving rights or privileges conferred by another.<sup>38</sup> Given this characteristic, this definition is referred to as conflicts of obligations. Furthermore, this definition is not extended to two obligations which are divergent, but not mutually exclusive (i.e. parallel obligations). Put differently, no conflict exists between two obligations in which one is stricter than, but not inconsistent with, the other.<sup>39</sup> Not every divergence is conflict and pure divergence/ difference is not enough to determine conflicts. Among the essential elements of conflicts is the incompatibility. Accordingly, this notion involves the exclusion from the conflict definition of collision between rights and obligation as well as of parallel obligations. Due to these two exclusions/

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<sup>33</sup> Dirk Pulkowski, *The Law and Politics of International Regime Conflict*, Oxford University Press, 2014, p. 148.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>39</sup> Ibid.

limits, this definition is hence referred to as a narrow/ strict/ technical definition. Regarding parallel obligations as non-conflicts, this definition gives preference to the most stringent obligation. Thanks to features of this definition, there is no application of conflict principles (e.g. *lex posterior*) in case of parallel obligations or right-and-obligation collisions.

This test is proposed and then supported by many scholars and judicial bodies and now prevailing in international law. Among scholars, Jenks is the first author to adopt the strict approach to conflicts in international law. The definition was first proposed in his work in 1953 as follows: “Conflict in the strict sense of direct incompatibility arises only where a party to the two treaties cannot simultaneously comply with its obligations under both treaties.”<sup>40</sup> Supporting him are other authors; some can be named, including Karl,<sup>41</sup> Czaplinski and Danilenko,<sup>42</sup> Wolfrum and Matz,<sup>43</sup> Vierdag,<sup>44</sup> Jennings and Watts,<sup>45</sup> Fitzmaurice,<sup>46</sup> Sinclair,<sup>47</sup> Klein,<sup>48</sup> Wilting<sup>49</sup> and Kelsen<sup>50</sup> and especially Marceau.<sup>51</sup> Karl, in the 1984 writing, argued that “technical speaking, there is a conflict between treaties when two or more treaty instruments contain obligations which cannot be complied with simultaneously.”<sup>52</sup> Kelsen, Klein and Wilting also endorsed an understanding of conflicts in a narrow sense to cover solely mutually exclusive obligations.<sup>53</sup> For Marceau, the term “conflict” can be construed in narrow or broad terms, but the former should be prioritized

<sup>40</sup> C. Wilfred Jenks, *The Conflict of Law-Making Treaties*, British Yearbook of International Law 30 (1953): 426-427.

<sup>41</sup> Wolfram Karl, *Conflict between Treaties*, in 4 Encyclopedia of Public International Law 467 (Rudolf Bernhardt ed., 2000).

<sup>42</sup> Wladyslaw Czaplinski and Gennadii M. Danilenko, *Conflict of Norms in International Law*, Netherlands Yearbook of International Law, 1990, pp 3-42.

<sup>43</sup> Rüdiger Wolfrum and Nele Matz, *Conflicts in International Environmental Law*, Springer Verlag, Berlin, 2003.

<sup>44</sup> E.W. Vierdag, *The Time of the "Conclusion" of a Multilateral Treaty: Article 30 of the Vienna Convention on the Law of Treaties and Related Provisions*, British Yearbook of International Law, 1988, at 100.

<sup>45</sup> Robert Jennings and Arthur Watts (ed.), *Oppenheim's International Law*, Vol. I., Parts 2 to 4, 1992, at 1280.

<sup>46</sup> Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, British Yearbook of International Law, 1957, at 237.

<sup>47</sup> Ian Sinclair, *The Vienna Convention on the Law of Treaties*, 1984, at 97.

<sup>48</sup> Friedrich Klein, *Vertragskonkurrenz*, in: Karl Strupp / H.-J. Schlochauer (eds.), *Wörterbuch des Völkerrechts*, Berlin 1962, p. 555.

<sup>49</sup> Wilhelm Wilting, *Vertragskonkurrenz im Völkerrecht*, Cologne 1996, p. 2.

<sup>50</sup> Hans Kelsen, *Théorie Générale des Norms*, Paris 1996, p. 166.

<sup>51</sup> Gabrielle Marceau, *Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties*, 35 Journal of World Trade 1081-1131 (2001).

<sup>52</sup> Wolfram Karl, *Conflict between Treaties*, in 4 Encyclopedia of Public International Law 467 (Rudolf Bernhardt ed., 2000).

<sup>53</sup> Hans Kelsen, *Théorie Générale des Norms*, Paris 1996, p. 166. Friedrich Klein, *Vertragskonkurrenz*, in: Karl Strupp / H.-J. Schlochauer (eds.), *Wörterbuch des Völkerrechts*, Berlin 1962, p. 555. Wilhelm Wilting, *Vertragskonkurrenz im Völkerrecht*, Cologne 1996, p. 2.

given its better pursuit of objectives of international law coherence and more reflection of parties' intention or agreements.<sup>54</sup> Following Jenks are not only legal scholars but also judicial bodies. Among judicial bodies, the World Trade Organization (WTO) Dispute Settlement Body (DSB) has cited and made use of the narrow definition. In the *Indonesia - Automobiles* case, a measure by Indonesia – the respondent was alleged to violate Article III of the General Agreement on Tariffs and Trade (GATT) on National Treatment. In its defence, Indonesia counter-argued that the WTO Agreement on Subsidies and Countervailing Measures (ASCM) permits to provisionally maintain certain subsidies.<sup>55</sup> To settle the dispute, in its ruling, the Panel applied a strict definition of conflicts, according to which, conflicting provisions must impose mutually exclusive obligations, i.e. obligations cannot be complied with simultaneously.<sup>56</sup> The Panel excluded conflicts between permissions and duties, thereby explaining the Panel's no consideration of whether the permissive norm invoked by Indonesia (i.e. *lex specialis*) should have prevailed.<sup>57</sup> In this lawsuit, the definition of conflicts determined the outcome of the dispute.

In the *Turkey – Textiles* case, the respondent - Turkey was sued by the complainant – India against its quantitative restrictions on Indian textiles and clothing at the Turkey-EC Custom Union establishment.<sup>58</sup> India claimed violations of the GATT and WTO Agreement on Textiles and Clothing.<sup>59</sup> In its counter-claims, Turkey argued that its measure was justified by Article XXIV of the GATT on regional trade agreements.<sup>60</sup> In the viewpoint of Turkey, Article XXIV of the GATT is “*lex specialis* for rights and obligations of WTO Members at the time of formation of a custom union”.<sup>61</sup> The Panel rejected this argument by adopting a conflict definition similar to that proposed by Jenks in that there was no conflict if one obligation was stricter but not incompatible with another.<sup>62</sup> This reasoning was repeated in the *Guatemala - Cement* and *United States - Hot Rolled Steel* cases. Likewise, in the view of the

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<sup>54</sup> Gabrielle Marceau, *Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties*, 35 *Journal of World Trade* 1081-1131 (2001).

<sup>55</sup> WTO Panel Report, *Indonesia-Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS59/R, WT/DS64/R (*Indonesia-Automobiles*), adopted on 23 July 1998.

<sup>56</sup> *Ibid.*, at footnote 649.

<sup>57</sup> *Ibid.* Erich Vranes, *The Definition of 'Norm Conflict' in International Law and Legal Theory*, *European Journal of International Law*, (2006) 17 (2): 395-418.

<sup>58</sup> Panel Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/R.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*



WTO DSB, conflicts arise when the adherence to one provision leads to a violation of the other.<sup>63</sup>

The adherence to the strict/technical definition of normative conflicts by many eminent scholars and judicial bodies can be attributable to two reasons.<sup>64</sup> Firstly, for some, conflicts are judged as an anomaly. In other words, conflicts of norms in a legal system imply an imperfection/shortcoming of that system.<sup>65</sup> Conflicts have a negative connotation to them which must be avoided. As a consequence, conflicts “should be defined strictly and cover situations only where the legal system does not offer clear solutions to apparent” contradictions.<sup>66</sup> Kelsen, although later on changing his opinion, even extremely contended that a legal system could not have conflicts of norms as any legal system is grounded on “one Grundnorm which explains and justifies all other norms”; therefore “it cannot simultaneously accord validity to two norms which are contradictory without threatening the unity of the legal system.”<sup>67</sup> The first reason persists regardless of its objections. One of the counter-arguments is that supporters of the strict definition confused between a definition of conflicts and tools available to solve conflicts by recognizing conflict only when it cannot be solved. There are, of course, different types of conflicts. Some can be solved much more easily than others: such cases as explicit conflict clauses are inserted while some are impossible for judges to decide for or against either clause, like conflicts constituting a lacuna in the law.<sup>68</sup> In the view of opponents, for a majority of conflicts of norms, there is no anomaly/abnormality about them. Another counter-argument is that the legal system can cope with normative conflicts in different ways/solutions, including *lex priori*, *lex posterior* (Article 30(3) of the Vienna Convention on the Laws of Treaties 1969 (VCLT), or giving “unambiguous preference to rules of jus cogens in the event of treaty conflicts” (Article 53) or in conflict with jus cogens (Article 64).<sup>69</sup> No matter what solution, determining conflicts will be crucial to determining the solution. If an explicit conflict clause is in favour of the earlier treaty, the

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<sup>63</sup> Appellate Body Report, *Guatemala — Anti-Dumping Investigation Regarding Portland Cement from Mexico*, WT/DS60/AB/R. Panel Report, *United States — Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, WT/DS138/R, WT/DS138/AB/R.

<sup>64</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003, pp. 158.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

*lex posterior* (Article 30(3)) / *jus cogens* (in Article 53/64) are at stake. In that case, the use of Jenks' strict definition of conflicts would lead to absurd situations. The reasoning can be worded as follows: Under the strict approach, there is no conflict, leading to non-application of Article 30, so the earlier treaty prevails. But it may be “the intention of the later treaty to detract from the earlier prohibition” and to outlaw such prohibition in certain circumstances.<sup>70</sup> Under the strict rule, the later permission only takes effect provided that it “explicitly states that it terminates or derogates from the earlier treaty.”<sup>71</sup>

The second reason originates from conflicts in domestic law. Authors adhering to the strict definition “seem to be influenced by domestic law where individuals are subject to national legislations.”<sup>72</sup> In domestic law, “a prescription/command and prohibition imposed by a state prevails over individual freedom and prohibitions prevail, at least according to some authors, over prescription/commands.”<sup>73</sup>

### ***1.1.3. Violation Test or Broad Definition***

Based on the violation test, a conflict is construed as a situation in which the compliance with one norm triggers the violation of the other norm. According to this definition, conflicts include inconsistencies between rights and obligations, i.e. conflicts cover cases of collusion between rights and obligations. In other words, when one treaty prohibits what provisions in another explicitly allow or when prohibition under one treaty constitutes permission under another, conflicts arise. As this definition covers more types of conflicts, it is also called broad/wide definition of conflicts.

This approach is favoured by many scholars, although different scholars define the term broadly in different ways, constituting diverse nuances in the broadness of the notion. Rousseau (1932) and Bartels (2001) contended that one treaty conflicts with the objects and purpose of another and that rights should be fully respected by referring to Articles 18 and 41 of the VCLT as two legal bases.<sup>74</sup> Article 18 of the VCLT is “the obligation not to defeat the object and purpose of a treaty prior to its entry into force,” requiring a state that “has signed

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Charles Rousseau, ‘De la Compatibilité des Normes Juridiques Contradictoires dans l’Ordre International’ (1932) 39 RGDIP 133. Lorand Bartels, *Applicable Law in WTO Dispute Settlement Proceedings*, *Journal of World Trade* (2001) 35 499.

but not ratified a treaty to refrain from acts that would defeat the object and purpose of the treaty.”<sup>75</sup> Article 41 of the VCLT imposes a prohibition of bilateral amendment of multilateral treaties, banning parties to multilateral treaties from conclusion of any treaty incompatible with effective execution of objects and purpose of the main treaty as a whole.<sup>76</sup> Lauterpacht (1937) argued that “inconsistency in Article 20 of the Covenant of the League of Nations covers not only patent inconsistency appearing on the face of the treaty but also what may be called potential/latent inconsistency” whereas Aufricht (1952) supported that “a conflict between earlier and later treaties arises if both deal with same subject-matter in a different manner”.<sup>77</sup> Perelman (1965) did not limit conflicts to obligations.<sup>78</sup> Waldock (1964), in the preparation of Article 30 of the VCLT, stated that “[...] conflict was [...] a comparison between two treaties which revealed that their clauses/some of them could not be reconciled with each other.”<sup>79</sup> Capotorti furthered incompatibility between norms by differentiating conflicts between obligation clauses from divergence.<sup>80</sup> Other proponents can be cited, including Neumann (2001)<sup>81</sup> and Kelly (2001).<sup>82</sup> Pauwelyn (2003) is the one who has adopted the most open and non-dogmatic approach to the term. In his stance which is different from those of some authors, the term “conflict” is interchangeable with inconsistent/ incompatible/ contradictory norms.<sup>83</sup> In addition, the definition of conflicts is different from how to solve an alleged conflict. Therefore, he objected the narrow definition which is based on Jenks’ definition and refers to only norms imposing mutually exclusive obligations. This is because, in the first place, a strict definition indirectly addresses a number of conflicts “in favour of the strictest norm by refusing to recognize certain situations as conflicts, such as a contradiction

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<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Hersch Lauterpacht, ‘The Covenant as the “Higher Law”’(1936) 17 BYIL 54. Hans Aufricht, Supersession of Treaties in International Law, *Cornell Law Quarterly* (1952) 37 655.

<sup>78</sup> Chaim Perelman, ‘Les Antinomies en Droit, Essai de Synthèse’, in Chaim Perelman (ed.), *Les Antinomies en Droit* (Brussels: Bruylant, 1965), 392.

<sup>79</sup> The International Law Commission on Drafting the VCLT: “[t]he idea conveyed by that term was that of a comparison between two treaties which revealed that their clauses, or some of them, could not be reconciled with one another.” United Nations, *Yearbook of the International Law Commission* (Vol.I) 125 (1964).

<sup>80</sup> Francesco Capotorti, ‘Interférences dans l’Ordre Juridique Interne entre la Convention et d’autres Accords Internationaux’, in *Les Droits de l’Homme en Droit Interne et en Droit International* (Brussels: 1968), 123.

<sup>81</sup> Jan Neumann, ‘Die Koordination des WTO-Rechts mit anderen völkerrechtlichen Ordnungen -- Konflikte des materiellen Rechts und Konkurrenzen der Streitbeilegung’, Münster, 2001.

<sup>82</sup> Claire Kelly, ‘The Value Vacuum: Self-enforcing Regimes and the Dilution of the Normative Feedback Loop’, *Michigan Journal of International Law* (2001) 23 673.

<sup>83</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

between a prohibition to do something and a permission to do something.”<sup>84</sup> The strict approach favours the prohibition to do something by ignoring the right to do it under permissive norms, thereby avoiding conflicts between prohibitive and permissive norms. In this way, an alleged conflict is not resolved by a rule on how to solve conflicts, but by the very definition of conflicts.<sup>85</sup> In the second place, the strict/technical definition should be repealed since it focuses on just one type of conflicts only, therefore ignoring the diversity of potential forms of interplays between norms. This definition, thereby, solves part of the problem by ignoring it.<sup>86</sup> Additionally, rights under international law, including permissions and exceptions, are as important as obligations.<sup>87</sup> The equality between rights and obligations has been proved in different circumstances. In the draft history of Article 30 of the VCLT, Article 63(1) (now Article 30(1) of the International Law Commission (ILC) Draft 1964) referred to obligations only while Article 26(1) (now Article 30(1) of the ILC Final Draft) referred to obligations and rights of state parties.<sup>88</sup>

On the side of judicial bodies, the WTO DSB is seemingly inconsistent in its view on the definition of conflicts. The *EC - Banana III* case is the first time the WTO Panel was faced with the issue of defining conflicts. The Panel contended that conflicts of norms cover conflicts between two obligations which are mutually exclusive (i.e. obligations WTO members cannot comply with simultaneously) and conflicts when one norm at issue prohibits what another norm explicitly permits. The rationale behind the Panel’s extended approach is the rule for effective interpretation. More specifically, the Panel was interpreting a single treaty and must ensure that explicit rights provided in another part of the WTO law are respected.

Different from the narrow definition, the broad approach has an advantage over the recognition/consideration of rights provided in treaties. Apart from its advantage, compared to the narrow definition, the broad approach is disadvantageous<sup>89</sup> in that it does not help to retain most of the intention/agreement between parties. An expanded definition allows a third party

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<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Gabrielle Marceau, *Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties*, 35 *Journal of World Trade* 1081-1131 (2001), at 1108.

(adjudicators/interpreters) to set aside a provision that has been voluntarily negotiated by states.<sup>90</sup> Meanwhile, “the objective of interpretation is to identify the intention of parties, so conflicts should be interpreted narrowly.”<sup>91</sup>

Among the strongest opponents is Marceau who claimed that there is no need to expand the definition of conflicts to respect and enforce rights in international law.<sup>92</sup> *Firstly*, regarding the advantage of the broad approach, this is not its unique feature as other rules of interpretation also allow to consider rights/permissive rules in treaties. For example, the *lex specialis* allows the exercise of an express and more specific right although being inconsistent with late and more general rules. The *second* justification comes from the “primacy of provisions allowing rights over other provisions imposing obligations.”<sup>93</sup> *Thirdly*, there is no principle of effective interpretation between treaties. The principle of effective interpretation is not applicable to norms from different treaties, but just norms within one treaty. For example, “effective interpretation ensures that rights of Article XX and Article XXIV of the GATT are enforced and not reduced to inutile provisions.”<sup>94</sup> The inapplicability of the effective interpretation principle to inter-treaty norms comes from changes in governments as do their political ideologies; furthermore, when time passes, “a state may end up signing two different treaties with contradictory obligations/provisions.”<sup>95</sup> *Fourthly*, “the main objective of interpretation is to identify the intention of parties.”<sup>96</sup> The board definition permits a third party (e.g. adjudicators), not “states themselves, to set aside a previously negotiated provision in favour of exclusive application of a superseding provision.”<sup>97</sup> *Fifthly*, due to the broad approach, it is difficult to know which rule supersedes in case of conflicts, i.e. it is difficult to solve conflicts. Among conflict-of-norm rules, ranging from a “presumption against conflicts, effective interpretation, *dubio mitius* to *lex posterior/ lex specialis* and presumption against

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<sup>90</sup> Ibid.

<sup>91</sup> Erich Vranes, *The Definition of ‘Norm Conflict’ in International Law and Legal Theory*, European Journal of International Law, (2006) 17 (2): 395-418.

<sup>92</sup> Gabrielle Marceau, *Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties*, 35 Journal of World Trade 1081-1131 (2001).

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Erich Vranes, *The Definition of ‘Norm Conflict’ in International Law and Legal Theory*, European Journal of International Law, (2006) 17 (2): 395-418.

<sup>97</sup> Gabrielle Marceau, *Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and other Treaties*, 35 Journal of World Trade 1081-1131 (2001).

violation of jus cogens, there is no single rule which provides an absolute/simple indication of which norm is to prevail.”<sup>98</sup>

In sum, there is no consentient answer to the definition of normative conflicts and each approach is supported by a certain reasoning or teleology. For example, the WTO adjudicator changed between narrow and broad definitions. But there is a way to explain the difference in the definitions of conflicts adopted by the WTO DSB. In the *Indonesia – Automobiles* case, the Panel explicitly stated that even if it accepted the broad definition of conflicts adopted by the Panel in the *EC - Bananas III* case, “there could be no conflict because the SCM Agreement does not explicitly permit local content subsidies”.<sup>99</sup> To put it differently, the broad definition of norm conflicts justified by the Panel in the *EC - Bananas III* case works if an explicit conferred right in fact exists.<sup>100</sup> In addition, the Panel Report in the *Indonesia - Automobiles* case was not reviewed by the Appellate Body while the Panel Report in the *EC - Bananas III* case was appealed.<sup>101</sup> Although “the Panel's broad definition of conflicts was not directly scrutinized by the Appellate Body, the Panel's recognition of conflicts between rights and obligations was upheld.”<sup>102</sup>

In short, the above Section has briefly discussed the three mainstreams in conceptualizing normative conflicts and, in the international law framework, the narrow approach seemingly prevails over the broad one.

## **1.2. The definition of multiple-PTA normative conflicts tailored to the research objective**

When it comes to inter-PTA conflicts of norms in view of the objective of multiple-PTA implementation from the stance and for the sake of the implementing state, is the narrow or broad sense of conflicts in public international law preferable or should a novel approach be introduced?

The fact that the “conflict” concept is not a new issue as being discussed by scholars, jurists and the ILC<sup>103</sup> does not deprive its definition and substantive coverage of uncertainty. The

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<sup>98</sup> Ibid.

<sup>99</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> 1969 and 1986 VCLTs.

existence of many different definitions turns it into a complex issue and the lack of one single definition of conflicts can be attributed to the following. Firstly, different definitions are used for different purposes/ disciplines/ situations.<sup>104</sup> Secondly, there are different modes of establishment of a definition of a term, which yields various types of definitions.<sup>105</sup> A definition can be analytical/ lexical. An analytical/lexical definition is a definition which “examines and explains the actual way a term is used in a given language/context.”<sup>106</sup> To put it differently, this definition is an assertion concerned with past/present usages and possesses true value.<sup>107</sup> Another type is synthetic/ stipulative definitions which establish a meaning of terms and take the “form of a command/ proposal on the meaning of a given term.”<sup>108</sup> This type of definition is characterized as an arbitrary choice but no virtually unrestricted discretion.<sup>109</sup> It is bound by teleological considerations and the system/ theory within which the definition is formed. Furthermore, it must not be misleading, that is, it is based on the main aim of the definition which is an increase in precision and clarity.

In the discussion of the notion of conflicts, the term “adequate definition” is proposed.<sup>110</sup> An adequate definition is a definition regarded as correct/ appropriate. To form adequate definitions, one can resort to tools and these tools are only applicable to simulative definitions.<sup>111</sup> The first one is the teleological consideration which requires simulative definitions to be adequate to the pursued aim.<sup>112</sup> In addition, the constructed definition must fit the system or “theory within which the definition is meant to operate” and must not be misleading. Besides, the definition must meet the requirement of commensurateness. “A definition must be in particular commensurate with that which is to be defined.”<sup>113</sup> Otherwise, “a definition is too narrow if the definiens is a sub-class of the definiendum or a definition is too broad if the reverse is true.”<sup>114</sup> This requirement can mean that the definiens is equivalent to the definiendum.

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<sup>104</sup> Erich Vranes, *The Definition of ‘Norm Conflict’ in International Law and Legal Theory*, *European Journal of International Law*, 2006, 17 (2): 395-418.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

Given the above-mentioned meaning of an “adequate definition”, the next part is dedicated, firstly, to the clarification of the objective or aim of the research which makes use of the term “conflict of norms”, secondly, to the provision of an insight on the “conflict” term in PTA conflict clauses, and, lastly, to the construction of such definition.

### ***1.2.1. Research Objective – Implementation of Multiple PTAs***

#### *a. Multiple PTAs*

Preferential trade agreements (PTAs) are trade agreements between two or more state parties in which parties give reciprocal preferential treatments to each other. Trade agreements can be independent or part of a broader arrangement. The PTAs under research do not include trade agreements in which just one party unilaterally grants preferential treatment to other parties. Neither are agreements establishing custom unions accounted as PTAs in this research.

The term “Multiple Preferential Trade Agreements” (Multiple PTAs) describes the participation of a country in at least two PTAs. This phenomenon also leads to other related tendencies such as single PTAs, double PTAs, parallel PTAs/parallelism, overlapping PTAs and fragmentation of PTAs. Within the framework of this research, the term “single PTAs” is used by the author to refer to PTAs which have only one state party in common or PTAs which one state party concludes with completely different groups of other countries. Double PTAs denote two or more PTAs governing the same bilateral trade relation while PTA fragmentation indicates that there is no relation among PTAs concluded by the same country, leaving them to co-exist, overlap or even conflict. In other words, “single PTAs” are multiple PTAs which are not double PTAs.

While the existence of multiple PTAs is not new in trade relations, recently this phenomenon has experienced some notable development. The first is the booming of PTAs and the active involvement of a majority of countries in the twenty-first century especially in the stalemate of the multilateral trading negotiations. The second is the dramatic expansion of the scope and depth of PTAs, making the problems caused by multiple PTAs more prevalent in frequency and more serious in implications.

#### *b. Implementation of multiple PTAs*



To implement, according to the Oxford Dictionaries, is the “performance of an obligation” or to “put (a decision, plan, agreement, etc.) into effect”.<sup>115</sup> The two definitions give narrow and broad understandings to the term. The term “implementation”, *lato sensu*, is broader than “compliance”, “conforming” or “observation”. Defined as “being in accordance with contractual obligations,”<sup>116</sup> conforming is limited to obligations or obligatory norms, duties or responsibilities whereas implementation is relevant to both right(s) and obligation(s). Implementation can be elucidated as (a series of) actions or conducts with the aim of execution of a plan, decision, etc.<sup>117</sup> Or “implementation in broad sense means the process through which international agreements are put into effect in the jurisdiction in which it is implemented or incorporated into the domestic legal order.”<sup>118</sup>

In legal documents, in public international law, the term “implementation” cannot be found in the VCLT, however, the opposite is true for some other similar terms. The VCLT does not make use of the term “implementation”, instead it has regards to other terms, including “observation”,<sup>119</sup> “performance”,<sup>120</sup> “application”<sup>121</sup> or “operation”<sup>122</sup> of treaties. According to the principle of *pacta sunt servanda*,<sup>123</sup> a PTA contracting party is legally bound by PTAs to which it is a party to domesticate and enforce. The article refers to “perform” not to “implementation” and to “treaty”, not to “norms” or their subset of “obligatory norms”. Furthermore, a state has to transpose and implement a treaty or PTA “in a complete, correct and timely manner.”<sup>124</sup> The three requirements on the performance of treaties, or more specifically of PTAs, are correctness, completeness and timeliness.<sup>125</sup> Completeness refers to the performance of a PTA as a whole, including rights and obligations while correctness connotes performing PTAs without changing rights and obligations or adding or diminishing

<sup>115</sup> <https://en.oxforddictionaries.com/definition/implement> visited on January 7th, 2018.

<sup>116</sup> The Black Law Dictionary, Thomson West, 10th edition, 2014.

<sup>117</sup> <https://en.oxforddictionaries.com/definition/implementation> visited on January 7th, 2018.

<sup>118</sup> Mitsuo Matsushita, *Implementing International Trade Agreements in Domestic Jurisdictions*, Journal of International Economic Law 19(2), 2016, 355–358.

<sup>119</sup> Article 26 of the VCLT.

<sup>120</sup> Articles 26 and 61 of the VCLT.

<sup>121</sup> Article 28 of the VCLT.

<sup>122</sup> Articles 54, 57-60; Part IV, Article 42; Section 5, Articles 69, 72 of the VCLT.

<sup>123</sup> Article 26 of the VCLT.

<sup>124</sup> Simona Milio, *From Policy to Implementation in the European Union: The Challenge of a Multi-level Governance System*, London; New York: I. B. Tauris, 2014, p. 3.

<sup>125</sup> Ibid.

those rights and obligations.<sup>126</sup> In other words, treaty parties have to “take all necessary measures to give effect to”<sup>127</sup> all norms of the treaty. Timeliness requires that treaty provisions be executed without undue delay.

Many PTAs refer to the term “implementation” in their text<sup>128</sup> or contain a separate clause on “implementation”<sup>129</sup> or even a whole agreement on the implementation of the PTAs at issue.<sup>130</sup> However, to the knowledge of the author, none of these PTAs give definitions to the term “implementation”; on the other hand, when it comes to implementation, most of them refer to PTAs as a whole, not to individual provisions or any specific type of provisions. So, it is inferred that the implementation of a treaty in general and a PTA in particular covers all types of treaty or PTA provisions, without discriminating between permissive and obligatory norms or between exempting and prohibitive norms. It is necessary to mention the fact that virtually every PTA has its own provision equivalent to the *pacta sunt servanda* principle under general public international law.<sup>131</sup> In similar lines to the *pacta sunt servanda* principle, these clauses require PTA parties to adopt measures to fulfil their obligations under the relevant PTAs. Added to that, under several of the provisions, PTA parties have further committed to ensuring the attainment of objectives of the relevant PTAs.<sup>132</sup> Furthermore, there are a plenty of PTAs containing clauses, although being named differently, equivalent to provisions on the implementation of PTAs.<sup>133</sup> In particular, some PTA clauses, titled “Enforcement”, impose obligations on their parties to take measures to comply with all provisions of PTAs regardless of the nature of obligatory or permissive norms. Several other PTAs clauses, in spite of being named “Extent of obligations”, can be cited also thank to their substantive requirement on necessary measures to observe/give effect to provisions under PTAs; few even explicitly refer to all provisions.<sup>134</sup> Similarly, few PTAs insert articles on “Observance” to imply the implementation of PTAs in general and all their provisions in particular. Other PTA clauses, equivalent to implementation provisions, bear the name of

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<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> For further details, see Annex I, Table 1.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid. Most PTAs involving Japan have an accompanying Implementing Agreement.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

“Application”.<sup>135</sup> Again, the bottom line or common denominator of these regulations is the requirement of application of all PTA provisions without any discrimination among types of norms.

In national law, each state has its own legislation on matters relevant to international treaties, including negotiation, conclusion and performance of international treaties to which such state is a party. For states belonging to monism, international law and domestic law are part of the same legal system; therefore, international treaties have the direct applicable effect and are implemented or performed immediately as domestic law. For states advocating dualism, international law and domestic law are two separate legal systems and performing international treaties is divided into two steps: (1) domestication of international treaties and (2) enforcement/execution/putting the result of the first step into practice. Regardless of the school, the question is how to domesticate/incorporate and/or enforce two conflicting norms in a domestic legal system. By analogy, performing PTAs at the level of contracting states is comprised of two phases. The first phase refers to the transposition or incorporation of PTAs into national or domestic law. The second phase is the implementation of the transposed PTA law in a manner of completeness, correctness and punctuality. Transposition means the incorporation of treaties or PTAs into the national legal system to make the former an internal part of the latter and have the direct effect application. For monist countries, there is no need for the first step as international treaties are part of domestic law. For dualist countries, PTAs are not directly applicable and, therefore, need to be incorporated into domestic legal systems. The second step – implementation – involves putting treaties or PTAs into practice by state executives to make them legally effective. In other words, the performance of a treaty, or a PTA in particular, consists of two steps: legal implementation (for dualist countries) or incorporation or transposition and final or effective implementation or application or administration of the treaty into practice. The first step predetermines the second step. The focus of the research is on the first step of implementation, more specifically how to incorporate or transpose PTAs into national law of states taking into account conflicting norms. The choice of the first step has a shaping effect on the second step and on the difficulties of evaluation of the second. Overall, domestic laws of states tend to give

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<sup>135</sup> Ibid.

precedence to international treaties, with some exceptions, when they conflict with domestic law; whereas, most of them avoid settling inter-treaty conflicts.

For Vietnam, its Law on International Treaties 2016 contains several provisions<sup>136</sup> in connection with international treaty implementation but none of them provide for the definition of the term except for the related concept of “provisional suspension of international treaty performance.”<sup>137</sup> Treaty implementation can be defined as a step/ phase consequential to/ subsequent to/ depend on/ result from two previous phases of negotiation and conclusion. Treaty implementation requires the involvement of every single state party to the treaty and can be unilateral or collective act(s)/conduct(s). The Law of International Treaties 2016 of Vietnam establishes the supremacy, in case of conflicts, of international treaties,<sup>138</sup> or PTAs in particular, over domestic law of Vietnam, except for its Constitution;<sup>139</sup> however, it is silent in the event of conflicts among international treaties themselves. Put differently, no domestic rules guide Vietnam on how to choose or give priority to which PTA norms when two norms from two PTAs conflict with each other, leaving itself stuck in a dilemma on how to react.

In common, domestic laws, when making reference to the implementation or performance of international treaties, make no difference between rights and obligations or permissive norms and obligatory norms.

This research does not aim at joining the discourse over conflicts of norms to favour or disfavour any approach, but just refers to the topic as a road to address the pre-determined research question pertaining to the implementation of multiple PTAs by a single state party. Put differently, the “conflict” concept discussed here is not for its own sake, but for the interest of a state in the phase of performing multiple PTAs. Hence, the research just considers the “conflict” concept topic as relevant and contributable, through constructing an appropriate approach/definition, to cracking the research questions and achieving the research goals.

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<sup>136</sup> Law of International Treaties of Vietnam 2016, Article 2 – Definition, Article 3.4 – Principles of international treaty performance, Article 7 – Surveillance of International Treaty Performance and Article 55 – Provisional Suspension of International Treaty Performance.

<sup>137</sup> Article 2, Law of International Treaties of Vietnam 2016.

<sup>138</sup> Article 3.4 of Law on International Treaties of Vietnam 2016.

<sup>139</sup> Article 3.1 of Law on International Treaties of Vietnam 2016.

Previous literature adopting the narrow approach looks from the angle of international law, particularly in the phases of treaty negotiation, conclusion or dispute settlement, and concentrates on the objective of enhancing the coherence and avoiding the fragmentation of international law. The research shifts the focus away from the foregoing towards the national perspective and the performance phase. This is the innovative aspect of the current research.

Why does the objective of PTA implementation matter? From the international law perspective, the effective application of a treaty or PTA depends upon its domestic performance; accordingly, the latter has a significant influence on the former. If a treaty or PTA is not performed in its completeness, correctness and punctuality/timeliness in domestic/national legal systems of state parties due to irreconcilable conflicting norms from another treaty or PTA, the effectiveness of the former will be affected. A state party opting to implement either of the two irreconcilable conflicting norms is confronted with either violating obligations or foregoing rights under the other and vice versa. From the national law perspective, while a treaty or PTA is *prima facie* merely text, how it is transposed into the domestic legal system shapes the latter. Indeed, for a treaty or PTA to be transposed or incorporated into domestic law, domestic legislations of states have to be enacted, amended or removed. The domestic performance of clashing PTA norms is decisive in which domestic law has to be legislated, mutated or repealed.

Initially, the perusal of conflicting norms is seemingly irrelevant to performing/implementing multiple PTAs as the latter is governed by the principle of *pacta sunt servanda* according to which every treaty, including PTAs, has to be performed by its parties. However, performing a treaty can be thorny in light of irresolvable conflicting norms. Research findings have proven different variables having a hold upon treaty performance by states, including the match or fitness between international and national law, domestic implementation capacity/deficiency, international and domestic implementation political will/willingness/attitude, the efficiency of international institutions responsible for enforcing international law, time spans for treaty implementation and other variables relating directly to treaty texts, such as their length, complexity and equivocality.<sup>140</sup> The inconsistency between

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<sup>140</sup> Simona Milio, *From Policy to Implementation in the European Union: The Challenge of a Multi-level Governance System*, London; New York: I. B. Tauris, 2014, pp. 8-11. Charlotte Sieber-Gasser, *Developing Countries and Preferential Services Trade*, Cambridge University Press, 2016, Chapter 5, p. 165, ft. 1.

treaties is listed, *inter alia*, as a contributing factor that can adversely affect/harm/undermine the domestic treaty performance by state parties.<sup>141</sup> Some researchers have pointed out that inconsistency between treaties, among others, is a variable that can affect the quality of treaty performance in terms of correctness, completeness and punctuality. Delay or defection in the domestic performance may have a root in, *inter alia*, inter-PTA norm conflicts. Hence, this research reflects on the topic of norms in conflicts in view of smoothening multiple-PTA performance by a certain state party.

Writings on these two topics tend to deal with them separately, i.e. no mention of the puzzle of conflicts of norms as a determinant of the proper PTA domestic performance by states. The heart of literature on domestic implementation of treaties in general or PTAs in particular often revolves around other factors, but conflicting norms. Especially, when it comes to the performance of international treaties by developing countries, a widely-cited contributing factor is the lack of capacity. They do not point to the reason of conflicting norms in PTAs. However, in sharp contradiction, as rule-takers in trade deals, developing countries must accept diverse, or even inconsistent, templates and rules of the game as well as are under pressure exerted by other powerful and aggressive contracting parties in PTA-rule-making processes. This research puts an emphasis on the inconsistency among international treaties, more specifically PTAs, as a factor hindering their own implementation, in lieu of considering the former in isolation from the latter. Neither does it highlight the performance of every single treaty separately but the simultaneous performance of two or more PTAs. While normative conflicts are neither new to international law nor unique to inter-PTA relations,<sup>142</sup> putting the phenomenon in the context of the performance of different PTAs at a time by a single state is a fresh effort.

### ***1.2.2. The “conflict” notion in PTA conflict clauses***

In order to develop an adequate definition, references will be made to dictionaries, legal documents and judicial decisions. Firstly, the notion can literally find some support in

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<sup>141</sup> Simona Milio, *From Policy to Implementation in the European Union: The Challenge of a Multi-level Governance System*, London; New York: I. B. Tauris, 2014, pp. 8-11.

<sup>142</sup> The phenomenon can be found in other branches of law such as intra-branch conflicts or inter-branch conflicts, including clashes between international environment law and international trade law, international humanitarian law and human right law, international humanitarian law and international trade law, international labour law and international trade law, etc.

dictionaries. In the Oxford Dictionaries, a conflict is “a serious disagreement or argument, typically a protracted one” or “a serious incompatibility between two or more opinions, principles or interest.”<sup>143</sup> The definition associates/equates conflicts with/to disagreement or incompatibility. But not every disagreement or incompatibility is conflict; the former must be serious to become the latter. The Black Law Dictionary, however, does not define the term “conflict” separately. Neither is the term “conflict of norms” compiled in the dictionary. Instead, it gives definitions of other related terms of “conflict of authority”, “conflict of interest”, “conflict of law”, “conflict of personal law”, “false conflict of law” and “conflict-of-laws rules”. Conflict of authorities is denoted as disagreement between two sides which are two courts, authors or scholars.<sup>144</sup> Likewise, conflict of interests is featured by “incompatibility” between “two sides” of either interests or duties which is of “real or seeming” nature<sup>145</sup> while conflicts of law involve differences between two sides which are two laws of two different states or countries.<sup>146</sup> In the same vein, the requirement of difference between two sides, namely two laws, is also applicable to conflict of personal law. The two elements of “difference” and “two sides” are echoed in the definitions of “false conflict of law” and “conflict-of-laws rules”.<sup>147</sup> Different definitions of terminologies related to conflicts reveals several convergences, including (i) the presence of two sides/parts/elements rather than one side, (ii) the classification of relations between them as “difference” or “incompatibility” and (iii) two types of conflicts, namely, real/actual conflicts and seeming/false conflicts. As is it clearly shown, the terms “difference” and “incompatibility” are interchangeable with “conflict”.

The term “conflict” is virtually completely absent from PTA texts.<sup>148</sup> In terms of their structure, conflict clauses are composed of, generally speaking, two parts: (1) an assumption

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<sup>143</sup> <https://en.oxforddictionaries.com/definition/conflict> visited on January 7, 2018.

<sup>144</sup> The Black Law Dictionary, Thomson West, 10th edition, 2014, p. 363.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Indeed, the term “conflict” is used in few trade agreements. For example, Article 6.3 and 6.4 of the Treaty on the Eurasian Economic Union (EAEU) states that “In case of *conflict* [emphasis added] between international treaties within the Union and this Treaty, this Treaty shall prevail” and that “In case of *conflict* [emphasis added] between decisions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, or the Eurasian Economic Commission [...]”. However, the latter is irrelevant to the discussion here as not dealing with conflicts of norms between treaties but just those between different bodies within the EAEU. As far as the first instance is concerned, as the Agreement concerns a customs union, it is out of the scope of this research. Nevertheless, it is to show that the term “conflict” is used but in rare cases.

of a conflict existence and (2) a way to solve the conflict. Regarding the constituting part of a PTA conflict clause assuming the existence of conflicting PTAs, the terms of “inconsistency”/ “inconsistent”, “incompatibility”/ “incompatible”, “have the effect of altering”/ “has the effect of altering”/ “alter”, “being affected” or “negatively affect” supersede the term “conflict” to refer to the same phenomenon. Among a variety of just-mentioned terms, the terms “inconsistency”/ “inconsistent” appear in conflict clauses in a large proportion of PTAs.<sup>149</sup> It is inferred that the term “inconsistency” is equivalent to the term “conflict”. PTA conflict clauses use the term “inconsistency” with rights and obligations, thereby recognizing conflicts in a broad sense. A far smaller number of PTAs employ the terms “incompatibility”, “incompatible” or “compatible”.<sup>150</sup> Meanwhile, the others such as “have/has the effect of altering” or “alter” are less common.<sup>151</sup> Of no difference are the terms “negatively affect”, “adversely affect” or “being affected” in PTA conflict clauses.<sup>152</sup> However, quite many PTAs do not refer to any of the above terms or any relevant terms indicative of the existence of

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<sup>149</sup> For further details, refer to Annex I, Table 2. Some 71 out of 198 PTAs under consideration make use of “inconsistency”, “inconsistent” or “consistent” in their conflict clauses. Among these PTAs, the term “inconsistency” seems to take the domination while appearing in 67 PTAs, whereas the term “inconsistent” is only used in conflict clauses of 3 PTAs: Article 1.2.2, CPTPP, Article 1.3.2, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) and Article 27.2, Southern African Development Community (SADC) - Accession of Seychelles. Likewise, the term “consistent” appears in the conflict clauses of only one PTA which is the Ukraine-Tajikistan FTA. Furthermore, among the 69 PTAs, quite many are concluded by Japan (13 PTAs), China (12 PTAs), Singapore (11 PTAs), Korea (8 PTAs) and Australia (8 PTAs).

<sup>150</sup> For further details, refer to Annex I, Table 3. Only some 17 out of 198 PTAs under consideration make use of terms “incompatibility”, “incompatible” or “compatible” in their conflict clauses. Of those several involve Panama (8 PTAs), Peru (3 PTAs) and Mexico (4 PTAs). Out of these 17 PTAs, 12 make use of the term “incompatibility”, while 3 mention the term “compatible”, including Article 5.2, Ukraine-Montenegro FTA; Article 23, GUAM; Article 9, Ukraine-Tajikistan FTA). Meanwhile, only one PTA refers to the term “incompatible” in its conflict clauses (See Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement); one PTA refers to the term “compatibility” (See Article 33, El Salvador-Cuba FTA).

<sup>151</sup> For further details, refer to Annex I, Table 4. About 24 out of 198 PTAs under consideration make use of terms “have the effect of altering”, “has the effect of altering”, “alter” or “negatively alter” in their conflict clauses. In particular, 12 PTAs make use of the term “have the effect of altering” or “has the effect of altering”, of which 9 PTAs involving the EFTA, 1 concluded by each of the EU, Switzerland and Ukraine. The other 12 PTAs refer to the term “alter” in their conflict clauses, out of which 7 relating to the EU, another 4 to Turkey and 1 to the EFTA. The number of PTAs with the participation the EFTA, the EU and Turkey is 10, 8 and 4 respectively.

<sup>152</sup> For further details, refer to Annex I, Table 5. Around 18 PTAs under consideration indicate the existence of conflict through the terms of “negatively affect”, “adversely affect” or “being affected”. Among them, 11 PTAs involve Turkey and 3 involve the EFTA. Besides, 15 PTAs use the term “negatively affect” in their conflict clauses (10 and 3 are the numbers of PTAs relating to Turkey and the EFTA respectively). Two PTAs, all of them involving Turkey, mention the term “being affected”. The term “adversely affect” shows up in only one PTA.



conflict clauses.<sup>153</sup> This absence can be attributable to several factors. In the first place, several PTAs do not have any conflict clause at all. In the second place, not every conflict clause follows a general template of containing a component stating the pre-condition of occurrence of a conflict for it to apply. This holds true especially for conflict clauses either acknowledging the co-existence of or giving prevalence to other multiple PTAs. Therefrom, conflict can be interpreted as inconsistency or incompatibility.

While being dissimilar to some extent in the terms indicative of the conflict phenomenon, PTA conflict clauses, however, converge in endorsing a broad conception of the “conflict” notion. In the *first* place, conflict clauses in PTAs refer to inconsistent/incompatible relations between PTAs in general or its provisions in particular, without limiting such relation to mutually exclusive obligations. More specifically, among 69 PTAs using the terms of “inconsistency” or “inconsistent” in their conflict clauses, 60 PTAs refer to the “inconsistency” or “inconsistent” relation between them as treaties as a whole and other agreements.<sup>154</sup> Besides, 4 refer to relations between provisions of the PTAs at issues and provisions in other agreements; three PTAs make regards to relations between provisions of the PTAs at issue and other multiple PTAs in their entirety. Only two PTA regulate the relation between their provisions and obligations under other multiple PTAs.

Similarly, among 14 PTAs using the terms of “incompatibility”, “incompatible” or “compatible”, 10 mention the relation between provisions of the PTAs at issue and provisions in other multiple PTAs; 3 tackle the interaction between the PTAs at issues in their entirety and other multiple PTAs in their entirety.<sup>155</sup> Just one PTA refers in its conflict clause to the relation therebetween and provisions under other multiple PTAs.

As far as the PTAs containing the terms “have the effect of altering”, “has the effect of altering”, or “alter” are concerned, their conflict clauses revolve on the fact that the maintenance or establishment of other multiple PTAs may affect the trade regimes/trade arrangements provided by the PTAs at issue or their rights and obligations.<sup>156</sup> The trade regimes provided by a trade deal consist of both legal and institutional aspects and the legal

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<sup>153</sup> For further details, refer to Annex I, Table 6. More or less 76 PTAs have no term indicative of conflict existence in their conflict clauses. Among them, some relate to the EU (16 PTAs), the United States (11 PTAs), China (11 PTAs), Chile (10 PTAs) and the EFTA (8 PTAs).

<sup>154</sup> For the full list, refer to Annex I, Table 2.

<sup>155</sup> For the full list, refer to Annex I, Table 3.

<sup>156</sup> For the full list, refer to Annex I, Table 4.

aspect thereof covers all substantive norms including permissive and obligatory norms. Similarly, these conflict clauses make no differentiation between rights and obligations under other multiple PTAs. In other words, their conflict concept does not intend to exclude any of legal norms from their scope of application.

When it comes to PTAs containing the term “affect” or “being affected” in their conflict clauses, most of them target the relation with other PTAs whose maintenance or establishment either negatively affects the trade regimes (and provisions on rules of origins) provided by the former or adversely affects the rights and obligations under the former.<sup>157</sup> Few others clearly point out their focuses on circumstances whether other multiple PTAs are going to affect both rights and obligations under the PTAs at issue. Based on that, the same conclusion can be drawn on the unlimited coverage of these PTA conflict clauses in covering interactions among all types of norms or provisions under multiple PTAs.

Among the 78 PTAs using none of the terms above to indicate the conflict phenomenon, 36 PTAs refer to both rights and obligations arising from other multiple PTAs.<sup>158</sup> Conflict clauses in 9 other PTAs mention relations between the whole PTA and other multiple PTAs in their entirety rather their individual provision components. Along similar lines, 3 PTAs unambiguously orientate their conflict clauses to interactions with preferences arising from other PTAs, which can be meant to cover both rights and obligations. Dealing solely with obligations under other multiple PTAs, the 5 PTAs of this group eminently provide in line therewith. Similarly, one PTA states that its provisions shall interact with obligations under other multiple PTAs. To wrap up, any limitation on the scope of application of conflict clauses in these PTAs is clearly worded.

Approximately 26 PTAs do not have conflict clauses relevant to inter-PTA relations, including those bearing no conflict clause at all and those having a conflict clause but such clauses being irrelevant to inter-PTA relations.<sup>159</sup>

Some other PTAs make reference to neither rights nor obligations but to the whole of other PTAs. In principle, every PTA as a whole comprises of all of its constituent provisions, including permissive and obligatory norms. Dealing with interactions with other PTAs as a

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<sup>157</sup> For the full list, refer to Annex I, Table 5.

<sup>158</sup> For the full list, refer to Annex I, Table 6.

<sup>159</sup> For the complete list, see Annex I, Table 18.

whole, the PTAs stipulating such conflict clauses literally aim at tackling relations of provisions of all kinds.

Some PTA conflict clauses refer to terms of “rights”, “obligations” and “provisions” in general.<sup>160</sup> For such PTAs, like PTAs with reference to the two terms of “rights” and “obligations” in their conflict clauses, the broad definition of the “conflict” concept is supported by their very inclusion of the three terms in their conflict clauses.

There are other variations when some PTAs refer in their conflict clauses to terms of “rights”, “obligations” and “undertakings”.<sup>161</sup> Likewise, such clear-cut inclusion is supportive of the broad sense of the “conflict” concept.

Besides, some PTAs refer to the term “provisions” in general in their conflict clauses.<sup>162</sup> Regardless of the variation, the “conflict” term understood in broad terms is found in more solid support.

So far, PTA conflict clauses dealing with only interaction with obligations in other PTAs are few in number and such limitation will be clearly presented in words.<sup>163</sup> Only one PTA refers to the term “commitments” in its conflict provision.<sup>164</sup>

Overall, almost all of PTAs of this category concern the relations between themselves in their entirety or between their constituent provisions and other PTAs in their entirety or their provisions, without differentiating or excluding certain provision categories. As it is rare for two treaties in general or two PTAs in particular to conflict with each other in their entirety, these clauses indeed refer to conflicts between provisions of the two treaties in general or between provisions of PTAs at issue and those in other multiple PTAs. And shall PTA conflict clauses limit their scope to relations with obligations under either or both PTAs therein, they will clarify straightly that as analyzed above.

In the *second* place, conflicts between parallel obligations are inherently/ of course included in the definition of “conflict”; otherwise, there would be no need for PTAs to expressly

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<sup>160</sup> (1) EFTA – Montenegro FTA; (2) Mexico – Uruguay FTA; (3) GUAM FTA

<sup>161</sup> Most of the reference to term “undertakings” is present at the Preamble to PTAs: (1) Australia – China FTA; (2) India – Singapore Comprehensive Economic Cooperation Agreement; (3) Thailand - New Zealand Closer Economic Partnership Agreement; (4) US – Singapore FTA; (5) Singapore – Australia FTA; (6) New Zealand – Singapore Closer Economic Partnership Agreement; (7) Pacific Island Countries Trade Agreement (PICTA).

<sup>162</sup> They include South Asian Free Trade Agreement (SAFTA) and Ukraine – Tajikistan FTA.

<sup>163</sup> So far only six PTAs have the conflict clauses dealing with “obligations” in other PTAs, namely EFTA-Egypt FTA, Central European FTA, EFTA-Lebanon FTA, Ukraine – Tajikistan FTA, United States – Jordan FTA, EFTA - The former Yugoslav Republic of Macedonia FTA.

<sup>164</sup> Ukraine – Moldova FTA.

exclude parallel obligations from the scope of the “conflict” term. Conflict clauses in most PTAs when dealing with the relation with other PTAs frequently refer to both “rights” and “obligations” in the latter,<sup>165</sup> including the permissive provisions, exempting provisions, obligatory provisions and prohibitive provisions. It is possibly inferred that there can be conflicts between permissive provisions in one PTA and obligatory provisions in another. When they clearly touch upon both “rights” and “obligations” in conflict clauses which address interlinks with other PTAs, such inclusions much indicate some legal consequences, that is, the potential interaction of conflictual natures with both permissive and obligatory norms in other PTAs. Otherwise, if PTA parties’ intent is to limit the “conflict” conceptualization to relations among obligations only, they should explicitly stipulate that in their conflict clauses. Some PTAs expressly state that, within the framework of their text, parallel obligations are excluded from the conflictual relation understanding<sup>166</sup> on the condition that the stricter obligation on liberalizing trade is imposed by the other PTA in the relation. Put it differently, if the other PTA is more trade liberalized than the PTA at issue, there is no conflict at all. Such exclusion can be attributable to the preference of progressive trade liberalization stated in the preamble to those PTAs including such provisions. Consequentially, it is also inferred from such exclusions that if one PTA prescribing such exclusion imposes on its parties more demanding trade liberalization requirements, conflicts do arise as other PTAs with their less ambitious liberalization goal are not in line with the objective of the PTA in question. In other words, such clarification of the term

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<sup>165</sup> 111 out of 198 PTAs under consideration have the conflict clauses referring to both “rights” and “obligations” under other PTAs.

<sup>166</sup> So far, three PTAs give clarification to the term “inconsistency” to straightly remove certain types of parallel obligations from the scope of the “conflict” concept. These agreements are Singapore-Australia FTA, New Zealand-Korea FTA and Pacific Alliance Additional Protocol to the Framework Agreement.

Footnote 7 of Article 9, Chapter 17 – Final Provision, Singapore-Australia FTA (SAFTA) favours more trade liberalization by adding that “For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this Article.”

Footnote 1 to Article 1.2.2, New Zealand-Korea FTA clearly states that conflict between PTAs does not cover parallel obligations when the other PTAs stipulate stricter obligations as to trade liberalization: “For the purposes of the application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments, or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this paragraph.”

Footnote 1 to Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement follows suit by providing that: “For the purposes of the application of this Additional Protocol, the Parties recognize that the fact that an agreement grants more favorable treatment to goods, services, investments or persons than the one granted in accordance with this Additional Protocol, does not constitute a case of incompatibility in the sense of paragraph 2.”

“inconsistency” does not exclude “parallel obligation” relations of all kinds or altogether but just part of them which meet the requirement as stated above. Such explicit exclusion is required in the conflict clause due to, among others, the fact that parallel obligations are presumably to be covered inherently in conflict relations and conflict clauses. Therefore, the exclusion of certain parallel obligations must be expressly stipulated; otherwise, the opposite is true.

In the *third* place, the broad approach to the "conflict" notion is further supported by the finding that some PTA conflict clauses are devoted solely to tackling parallel-obligation conflicts.<sup>167</sup> If parallel obligations were excluded from the notion of conflicts pursuant to the narrow approach, such conflict clauses would not be introduced in these PTAs. Let alone the recognition of the existence of conflicts between parallel obligations, the common resolution of such conflicts adopted by these PTAs is to give the dominance to the more stringent obligations arising from other multiple PTAs. Although being indifferent from the narrow notion of conflicts in terms of the legal consequence in that the stricter obligation prevails, this broad approach is strictly adverse to the former in that such prevalence is not as a matter of course but is the logical and contingent aftermath of, firstly, the recognition of the conflict presence and, secondly, the conflict-addressing tactic favouring progressive trade liberalization.

Based on the survey of existing PTAs, it is clear-cut that if it is the intent of PTA parties to narrow the conflict concept or scale down the scope of application of PTA conflict clauses, they will unequivocally stipulate accordingly. Drawn from that is a conclusion that the contour of the conflict concept is inherently unlimited, except when being clearly stated otherwise. In other words, unless the conflict definition is restrained purposefully in words, the opposite is true.

In conclusion, conflicts of norms among PTAs can be understood broadly as inconsistency or incompatibility between two or more norms of any types.

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<sup>167</sup> So far, 16 PTAs fall into this group, including Article 1.11.4, Japan-Australia Economic Partnership Agreement. Article 9.5, Japan-Vietnam Economic Partnership Agreement. Article 1.2.2, Peru-Singapore FTA. Article 10.2, ASEAN-Japan Comprehensive Economic Partnership Agreement. Article 1.3, United States-Jordan FTA. Article 1.2.2, United States-Oman FTA. Article 1.2.2, United States-Bahrain FTA. Article 1.1.3, United States-Australia FTA. Article 1.2.2, United States-Morocco FTA. Article 1.1.3, United States-Singapore FTA. Article 8.4, Chapter 8, Eurasian Economic Union (EAEU)-Viet Nam FTA. Article 1.3.2, Korea-Vietnam FTA. Article 1.2.2, Korea-Australia FTA. Article 1.2.2, Korea-United States FTA. Article 1.2.3, Panama-Singapore FTA. Article 1.1.3, Jordan-Singapore FTA. As stated, the United States (7 PTAs), Singapore (4 PTAs), Korea (3 PTAs), Japan (3 PTAs) and Australia (3 PTAs) seemingly favour this approach.

### ***1.2.3. Which definition is adequate to the research objectives?***

Although the narrow approach to the “conflict” concept is dominating at present, it is not suitable to be adopted in view of revolving on PTA implementation. As explained above, the term “conflict” can be understood *stricto sensu* or *lato sensu* depending on different underlying rationales; whether the former or the latter should be exploited depends upon the research objectives at issue. The strict approach takes the perspective of international law and is for the purpose of its coherence, whereas this research takes the perspective of a single state who is just party to international law and at the same time against whom the international law is enforced.

The incompleteness or incorrectness in performing PTAs resulting from the narrow sense refrains a state from legally exercising its privileges or rights or exposes a state to state responsibility for wrongful conducts and hence undermines the cumulative utility a state enjoys from a treaty or PTA. The narrow understanding of “conflicts” does not give effect to permissive provisions in PTAs in conflict with other obligatory provisions. It may yield to the automatic and obvious inapplicability/inactivity of permissive provisions in a certain PTA, thereby producing the incompleteness in performing such PTA. For instance, in the event of inconsistency between a permissive norm setting out a right under one PTA, let’s say, PTA<sub>1</sub>, and an obligatory norm setting a duty under another PTA, namely PTA<sub>2</sub>, under the narrow definition as elaborated above, no conflict arises and an expected response from the PTA party facing the inconsistency, let’s say, State A, to escape from the dilemma, is to unilaterally and voluntarily give up its right under PTA<sub>1</sub> in exchange of compliance with the obligation under PTA<sub>2</sub>. Hence, the dilemmatic situation is not problematic from the narrow normative conflict angle. In sharp contrast, the case/reaction is badly troublesome regarding the implementation of PTA<sub>1</sub> from the viewpoint of State A. If State A waives its right thereunder unilaterally due to the right-obligation collision, it receives no trade-off/return to offset the lost benefit resulting from such inconsistency. Such right abolishment will change hostilely the balance of cost-benefit calculation envisaged by a PTA party as a result of a reduction in benefits expected therefrom. Initially, at the time of negotiation and conclusion/ratification of/accession to PTA<sub>1</sub>, State A’s consent may be deeply rooted in the fact that its utility/advantages accrued from PTA<sub>1</sub> can counter-balance its cost in cumulative economic, political and legal aspects. Thereafter, the PTA<sub>1</sub> right waiver makes the cost-

benefit equilibrium imbalanced in economic, legal and political terms, threatening the domestic performance of obligations under PTA<sub>1</sub> in State A, which in turn, makes State A more inclined to violating of those obligations. Put differently, such mutation in the cost-and-benefit analysis mitigates the domestic willingness in State A to act in accordance with the PTA<sub>1</sub> from which a right is waived ensuing from the normative conflict, thereby impacting implementation of such PTA<sup>168</sup> due to dissatisfaction with the benefit therefrom. Although the choice of abandoning the conflicting right under PTA<sub>1</sub> is unilateral and voluntary, such leeway advanced by the narrow definition is very likely to substitute the violation of the obligation under PTA<sub>2</sub> with the infringement of another obligation under PTA<sub>1</sub>. At the end of the day, PTA<sub>1</sub>, rather than PTA<sub>2</sub>, is breached.

In addition, assumptions on which the narrow approach is based can be rebutted. The aim of the narrow approach is for the preservation or maintenance of the coherence, closeness and completeness of international law. Indeed, the very question of whether international law is a united legal system is still controversial, triggering divergent stances.<sup>169</sup> The narrow approach is based on the claim that the introduction of the broad definition entails undesirable consequences of exacerbating the fragmentation and incoherence of international law.<sup>170</sup> However, such avoidance is not the target of this research. Furthermore, from the performance objective perspective, the utilization of the undesirability of consequences as a ground for the rejection of the recognition of conflict existence does not work for this research as the conflict is already existent and problematic in the PTA implementation.

Moreover, the broad definition of conflicts seems to better reflect the PTA implementation by states. In the first place, as well-discussed above as to conflict clauses in PTAs – the norms which expressly regulate conflicts or inconsistent relations among PTAs or their component provisions, these PTA conflict rules straightly refer to (inconsistency with) both rights and obligations of other treaties or PTAs without any differentiation. In other words, these clauses implicitly support a broad approach and it is the intention of state parties to PTAs to broadly define the term. In the second place, if the strict approach to the conflict concept is adopted, it

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<sup>168</sup> See implementation-influencing factors in Simona Milio, *From Policy to Implementation in the European Union: The Challenge of a Multi-level Governance System*, London; New York: I. B. Tauris, 2014, pp. 8-11. Charlotte Sieber-Gasser, *Developing Countries and Preferential Services Trade*, Cambridge University Press, 2016, Chapter 5, p. 165, ft. 1.

<sup>169</sup> Proponents include the ILC, see ILC, *Fragmentation of International Law*, 2006.

<sup>170</sup> Ibid.

will limit the freedom of reactions/ responses from the state party facing such conflicts. Let's say, in case of potential incompatibility between a permissive norm and an obligatory norm, there is, according to the strict approach, no conflict arising; hence, conflict rules are not applicable and the state facing the incompatibility has no choice but to observe its obligation and to waive its right, i.e. a *de facto* loss of rights. Contradictorily, if the broad approach is adopted then a conflict does emerge; and conflict clauses are applicable. Provided that the conflict is solvable by giving prevalence to the obligatory norm, this loss of rights can be considered a cost in multiple-PTA implementation. Likewise, so long as the conflict is settled by giving prevalence to the permissive norm and the state party in question, however, decides to forgo its right to comply its obligation, it suffers the same cost in implementing the multiple PTAs. On the other hand, if the state exercises its right and ignores its obligation, it has to pay the cost in the form of potential remedies imposed by non-PTA state parties whose rights are breached by such choice. Pursuant to the present regulations in PTAs on remedies, the violating party has some discretion to the form of remedies against obligation-violating measures, such as compliance, compensation or suspension of obligations/benefits/concessions, etc. Along this reasoning, the state party facing normative conflicts in the multiple-PTA implementation, when the broad interpretation of the term "conflict" is adopted, has quite many options at its disposal and is free, to some extent, to choose the cost of multiple-PTA implementation among several available options based on its own assessment of the balance of costs and benefits. This discretion is an advantage of the broad approach over the narrow one, especially in consideration of the fact that the participation of multiple PTAs permeates across the globe, stimulating further state involvement in the new PTA wave. The same sequence of reasoning holds for conflicts among parallel obligations. This approach also preserves better the intention of parties in drafting PTA remedial clauses. Added to that, this understanding mirrors closely multiple-PTA implementation practice.

Against the backdrop of the perusal of the norm conflict concept, the broad approach is preferable; however, the broad approach has its own limitations unsuitable to the research objectives. Particularly, this notion considers as unilateral conflicts the collisions of rights vis-à-vis obligations and less-stringent obligations vis-à-vis stricter ones. In other words, pursuant to this approach, conflicts neither arise at all from relations of obligations vis-à-vis rights nor



from interactions of stiffer obligations vis-à-vis less-demanding obligations. Due to the absence of conflicts in these situations according to the broad sense, no conflict rules are applicable; accordingly, the state stuck in this situation has no choice but to conform to the former in each relation. However, in reality, it is up to that state to decide which norm to follow, of course, at its own expense. To put it differently, this broad approach is even not wide enough in view of the research objective.

Considering all of the above evaluations, the concept of conflicts of norms is introduced as follows: “Inconsistency or incompatibility among norms from multiple PTAs in which (the application or implementation of) one norm in one PTA has the effect of altering or alters or circumvents (that of) another in other multiple PTAs.” For inherent conflicts of norms between multiple PTAs, the inconsistency is so serious that the application of one norm obviously alters that of another norm. However, for normative conflicts in the application of law, such causal link is not definite.

Indeed, the conceptualization of conflicts proffered in this research is even broader than the broad approach. On the one hand, it is noteworthy that, resembling the latter, the former consists of three types of conflicts, namely right-versus-obligation collisions, parallel obligations and mutually exclusive obligations. On the other hand, while the latter recognizes right-and-obligation collisions and parallel obligations as unilateral conflicts of permissive norms vis-à-vis obligatory norms and of less-stringent obligatory norms vis-à-vis more stringent obligatory norms, the tailor-made conception in this research views all three conflict types as bilateral ones. In particular, for parallel obligations, even when one PTA norm adds/complements rights or obligations to pre-existing rights or obligations under another PTA norm, the former clashes with the latter. In other words, providing that two norms quoted from two PTAs concluded by at least one common party concern the same subject-matter, they can still conflict if one PTA norm adds rights or obligations to those in another PTA norm without causing contradiction.<sup>171</sup> Additionally, the broad conceptualization only recognizes unilateral conflicts in which permissive norms conflict with obligatory norms, while the reverse is not true. In other words, the exercise of a right can conflict with/violate an obligation while the reversal is not treated as conflict in accordance with the broad understanding. Whereas, the newly proposed definition acknowledges bilateral conflicts

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<sup>171</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

between the performance or observation of obligations and the exercise of rights, i.e. obligatory norms can conflict with permissive norms. Hence, conflicts do happen in both ways between contradicting rights and obligations.

In light of the concept proffered above, the determination of conflict existence necessitates the classification of norms according to their functions. There are different types of norms, based on their functions: obligatory norms, prohibitive norms, permissive norms and exempting norms. In principle, every two classes of these norms can clash with each other. Nevertheless, if the definition of normative conflicts is narrow, it covers only mutually exclusive obligations and then conflicting norms must impose obligations. In other words, conflicting norms must be either prohibitive or prescriptive norms. Otherwise, if the definition is broad, it covers not only mutually exclusive obligations but also parallel obligations and the collision of rights and obligations. For parallel obligations, both conflicting norms must be either prescriptive or prohibitive norms. For the collision of rights and obligations, one norm must grant rights and the other norm must impose obligations. In other words, one is a permissive or exempting norm and the other is a prescriptive or prohibitive norm. Regarding the introduced concept, three types of bilateral normative conflicts are covered, including right-obligation collisions, parallel obligations and mutually exclusive obligations. As a result, both permissive and obligatory norms fall within the scope of the research. For the purpose of clarification, permissive norms should be interpreted broadly to cover both permissive norms as such and exempting norms; obligatory norms similarly include both obligatory norms as such and prohibitive norms.

In conclusion, to answer the puzzle of whether the broad or narrow approach or none of them is adequate to define the “conflict” notion for the reflection on inter-PTA normative conflicts in light of multiple-PTA implementation, it is useful to take into consideration how the term is built up in PTA conflict clauses as well as to elucidate the research goals. Drawn is a finding that the approach to the definition adopted in the research (i) covers not only incompatibilities between obligations and prohibitions; (ii) but also incompatibilities between obligations and permissions, between prohibitions and permissions; and (iii) extends to bilateral incompatibility between two obligations. The definition constructed in this part of the research should be classified as a synthetic or stipulative definition, putting forth a sense of the “conflict” term adequate to the research goals of the thesis. Furthermore, as there are

divergences in stances over the topic, it necessitates the discourse on the objective of the research to which the potentially chosen approach is to opt for an adequate definition.

In conclusion, Sections 1.1 and 1.2 above first gave an overview of diverging approaches to the notion of conflicts of norms and then picked one approach as an “adequate” definition which is evaluated against the benchmark of the purpose of the research.

### **1.3. Satisfaction of necessary and sufficient conditions to conflicts of norms by multiple PTAs**

The puzzle of “Can norm conflicts exist among multiple PTAs?” is contentious. Some conclude that normative conflicts or conflicts between norms are not likely to occur in international trade law for three reasons;<sup>172</sup> therefore, it is held that inter-PTA normative conflicts hardly arise. Others against (the possibility of) the existence of inter-PTA normative conflicts base their arguments on the presumption against conflict in international public law and other common principles shared among PTAs such as progressive liberalization, national treatment, transparency, etc. PTAs are often classified as WTO-plus/WTO-minus agreements in that they take the WTO Agreement as their foundation. In other words, PTAs incorporate multiple rules from the WTO Agreement, turning them into “WTO-elements”/“WTO-ethos” in PTAs. Furthermore, many PTAs include rules on interpretation entailing the consideration of interpretation by the WTO DSB to enhance harmonization. Added to that, the assumption of non-conflictual relations among WTO norms further advocates the absence of norm conflicts from inter-PTA interactions. Given these two elements, many PTAs are comprised of similarly-worded provisions and entail the inclusion of cross-treaty interpretation. In other words, the fact that identical or substantially identical provisions are interpreted consistently precludes the emergence of norms conflicting among PTAs.

Furthermore, sometimes one PTA consolidates another PTA<sup>173</sup> in different manners, such as termination, incorporation, thereby eradicating the potential for conflicts between them. Some PTAs declare the termination of other multiple PTAs to avoid conflicts.<sup>174</sup> Other PTAs incorporate other earlier PTAs. Put differently, besides WTO-equivalent elements, multiple

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<sup>172</sup> Wolfgang Alschner, *Regionalism and Overlap in Investment Treaty Law: Towards Consolidation or Contradiction?*, *Journal of International Economic Law* 17(2), 2014, 271–298.

<sup>173</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003, pp.5-18.

<sup>174</sup> For details, see Annex I, Table 12.

PTAs also contain elements similar to other PTAs. Few PTAs manifestly state that they will not apply at the same time as other multiple PTAs.<sup>175</sup>

In sum, opponents of the existence of inter-PTA conflicts base their findings on similarities in the text and interpretation among PTAs and prefer to characterize inter-PTA relations as consolidation or non-conflictual co-existence than as conflicts.

However, this research takes an opposite view and this part is devoted to making cases for the possibility of norm conflicts among PTAs. The latest development in the network of PTAs prompts their interactions more likely to meet conditions to normative conflict occurrence. Among the four conditions for inter-PTA norm conflicts to arise, three can be classified as the necessary conditions and the other is the sufficient condition. Although being in conflict, conflicting norms are not contradictory in all aspects. On the one hand, they share certain similarities in their scope of application in terms of membership/subjects, subject-matters and temporal application which in turn facilitate the fulfilment of the necessary conditions. On the other hand, they compete in a significant aspect, namely their substantive regulatory content which in turn leads to the satisfaction of the sufficient condition.

*Firstly*, as regards to *overlaps over the subject/membership*, PTAs are more susceptible to increasing geographical coverage. At present, one state can be party to multiple PTAs for the purpose of further trade liberalization in the context of the WTO stalemate. There are more common parties in different PTAs. For example, ten Members of the Association of Southeast Asian Nations (ASEAN) are parties firstly to the ASEAN Free Trade Area (AFTA), secondly to the FTA between the ASEAN, Australia and New Zealand, thirdly to FTAs between the ASEAN and China, India and South Korea, not to mention some FTAs between Australia and certain ASEAN Members, such as Malaysia, Singapore and Thailand. Added to that is the advent of mega-PTAs with a large number of countries, wide geographical coverage and large volumes of trade affected reflecting the economically and politically heavy weight of parties, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership Agreement (RCEP) and the Transatlantic Trade and Investment Partnership Agreement (TTIP). The degree of subject/membership overlaps among PTAs may vary. Some PTAs have a *full geographical overlap* in which one PTA is fully geographically embraced by another PTA. The former is

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<sup>175</sup> For the full list, see Annex I, Table 13.

called the inner PTA or geographically embraced PTA and the latter is called the outer PTA or geographically embracing PTA. Nevertheless, in multiple PTAs, it is more often that one PTA is partially geographically embraced by another PTA, or so-called a partial geographical overlap. For instance, the North American Free Trade Agreement (NAFTA) and the CPTPP have a partial geographical overlap; the Australia – New Zealand FTA and the CPTPP have full geographical overlap with the former called the inner PTA and the latter the outer PTA. Geographical overlaps of PTAs have even given birth to new terms indicating relevant phenomena, such as double PTAs and single PTAs. Double PTAs indicate a situation where one bilateral trade relation is governed by two or more PTAs. For example, the Japan – Vietnam FTA, the ASEAN – Japan FTA and the ASEAN+6 FTA are double PTAs in that they all govern the bilateral trade relation between Vietnam and Japan. Single PTAs involve PTAs with only one state party in common, or PTAs without common bilateral trade relations. Notwithstanding various kinds of geographical overlaps, the practice of multiple PTAs requests the observance with more than one PTA by a specific state party pursuant to the *pacta sunt servanda* principle. While it is foreseeable that conflicts may arise between norms under double PTAs as these trade deals have at least two parties in common whose relations *inter se* fall within the scope of these PTAs which can regulate the same trade issue in contradictory manners, it is hardly conceivable such situation arising from single PTAs with only one common state party whose relations with completely different parties are within the ambit of two or more different trade arrangements. For the purpose of illustration, several instances of conflicting norms among single PTAs can be discussed here. Let's say, pursuant to one provision in PTA<sub>1</sub> between State A and State B, domestic subsidies are permitted in the automobile industry; in contrast, another norm in PTA<sub>2</sub> between State A and State C strictly prohibits subsidies in the same sector. The two PTAs at issue are single PTAs from the perspective of State A as having only State A as a common party. Subsidies granted by State A to its domestic auto manufacturers may give rise to a normative conflict between these two norms as this measure is regulated by both trade pacts. In other words, this requirement of membership overlap is very lax and can be met by the existence of one single common state party.

*Secondly*, there are *overlaps over the subject-matter* among multiple PTAs. The scope of application of PTAs in the 21<sup>st</sup> century is broader than that of the WTO law; more

specifically, PTAs cover trade issues, investment issues and trade-related issues. This increases the complexity of trade measures as one measure can simultaneously affect rights and obligations under multiple PTAs and fall under their scope of application at the same time. As a result, a state bears an obligation of cumulative and simultaneous compliance with all PTAs to which that state is party.

*Thirdly*, there are *overlaps over time* among multiple PTAs. The deadlock of multiple trade liberalization talks in the WTO has driven efforts and priorities of many Member States to plurilateralism and regionalism. For saving the latter from the problematic tremendous membership coverage which has blocked multiple negotiations, each state has tried to divide their trade partners into multiple groups containing contracting parties with certain familiarities in trade liberalization pursuit. One state may conclude multiple PTAs with another state in different international settings, including bilateral, plurilateral and regional arrangements, leaving them to exist side by side at the same time. With regards to double PTAs, bilateral trade relations of two certain PTA signatories fall under the governance of two different PTAs, leading to prospects of the concurrent application of two or more PTAs to a single action/conduct/measure taken by a party. With respect of single PTAs, in theory, only one PTA is applicable to every single bilateral trade relation; however, the intricacy of measures/actions/conducts by a contracting party and their behind-the-border nature in many instances make a single state conduct to affect the trade of more than one trade partner, thereby causing it to be subject to more than one PTA, i.e. calling for the simultaneous application of more than one PTA at a time.

The three above overlaps give rise to an overlap over the scope of application of PTAs. The presence of all the above-mentioned conditions confirms the overlap of PTAs over subjects, subject-matters and time. These three factors trigger a certain measure to fall within the scope of application of two or more PTAs at a time, namely, a measure by a state may be exposed to two or more PTA norms.

*Lastly*, diverging substantive regulations under multiple PTAs enhance the likelihood of satisfaction of the sufficient condition for clashing norms. There are divergences in templates of negotiations and levels of commitments on the same subject-matter by one state in different PTAs, ranging from WTO(-equivalent) commitments, WTO-plus commitments to WTO-minus commitments and WTO-extra commitments. From a legal angle, the substantive

incoherence among PTAs can be ascribed to different driving factors. In the *first* place, there are no uniform law makers across different PTAs. Each PTA has its own set of state parties as its law makers. For example, the CPTPP law is made by eleven states while the EVFTA is drafted only by two state law-makers, namely the European Union (EU) and Vietnam. The ultimate PTA text draft is the outcome of negotiations, exchange of offers and requests and concessions among parties, reflecting the collectively reconciled will/intent of multiple state parties rather than of a single party. As a result, substantive regulations in different PTAs which reflect the collectively reconciled outcome above can contradict each other.

The question is, even though before concluding a PTA, a state party has already expected aspects in which PTAs differ from state national law and what states have to do in order to perform PTAs, why do they still leave potentially unresolvable PTA conflicts to retard, even harm, or ruin their proper PTA implementation? While states often take into account economic, political and legal costs of PTAs, conflicting norms among PTAs are often unduly appreciated as part thereof. Furthermore, while states are makers of PTA law that later on they are due to perform, it is doubtful that they are for sure capable of drafting PTAs to not conflict with one another. In principle, states, as law-makers of respective PTAs, can formulate PTAs to avoid conflicts among PTAs to which they are parties, thereby easily escaping from inter-PTA conflicts. In practice, this is not always the case. Not all states have the voice or bargaining power equal to each other; consequently, the intent of PTA weak parties to ensure reconciled relations among their PTAs is threatened or even undermined by conflicting ambitions of their powerful counter-partners. For these states, PTAs at odds with each other are unwanted or unintentional consequences and the manipulation or navigation of PTA drafting in accordance with previously negotiated PTAs is out of their control. Consequentially, sometimes, inter-PTA conflicts are hard to envisage at the time of negotiation or conclusion. On the other hand, for powerful actors, they often take advantage of PTAs as an avenue to export or impose their external trade policies to formulate future international trade rules; inconsistency among PTA norms are, in some instances and in some measure, deliberate and desirable. Powerful players, such as the United States or the EU, bring to multilateral trade deal talks their own ideologies, ambitions and mandates which are so wildly diverging that they, among others, have brought about the deadlock in the WTO's multilateral negotiations and that the multilateral framework cannot reconcile their

disagreements. Likewise, afterwards, as they turn their preferences/priorities to bilateral or plurilateral preferential trade and adopt the same strategies by repeatedly manipulating the discussion with huge gaps in their well-drafted PTA templates, differences or even annoying contradistinctions among PTA norms are easily foreseeable. This is especially the cases for relations between PTAs driven by the United States and the EU.

In the *second* place, no single executive is responsible for implementing PTAs. Each PTA can set up its own institutional bodies and/or mechanisms to assure its implementation or performance after its entry into force. Neither the existence of any inter-PTA cooperation between individual PTA executing bodies or mechanisms for the implementation nor the efficiency of such cooperation in place (if any) is without doubt.

In the *third* place, there is no united adjudicator among PTAs. Each PTA sets up its own institutional and procedural dispute settlement mechanism. Even if different PTA adjudicators follow certain common rules of PTA interpretation, including customary rules on interpretation pursuant to the VCLT and the consideration of the WTO DSB interpretation, etc., whether the application of these rules renders consistent articulations is not obvious. While it is understandable to read divergently-stated PTA provisions differently, the consistent interpretation of analogously-worded PTA provisions is not assured, giving birth to competing norms. In particular, not all PTAs which contain WTO-equivalent or WTO-analogous provisions require their PTA dispute adjudicators to ensure cross-treaty interpretation by adopting interpretation by the WTO DSB when it comes to reading such WTO-equivalent clauses in PTAs.<sup>176</sup> For PTAs requiring cross-treaty interpretation for WTO-equivalent or WTO-analogous provisions through the reference to the WTO DSB's interpretation as part of their interpretation rules or principles, what exact role the WTO DSB's interpretation plays in the reading and clarification of PTAs' provisions is diverse and ambiguous. These PTAs use such different terms in their interpretation rules as "adopt", "consider", "taking into account", "shall have regard to", etc.<sup>177</sup> Regarding disputes relating to WTO-equivalent or WTO-minus commitments, PTA parties can bring to the WTO DSB; whereas, for conflicts relating to WTO-plus or WTO-extra commitment, the WTO DSB has no jurisdiction.

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<sup>176</sup> For further details, see Annex I, Table 9. Only 9 PTAs under consideration provide for a rule of interpretation requiring cross-treaty interpretation.

<sup>177</sup> Ibid.



At present, none PTAs are called 100% or purely WTO-mimic or WTO-resembling agreements; nevertheless, all PTAs are classified as WTO-plus, WTO-minus or WTO-extra, that is, besides WTO-equivalent norms, PTAs have other WTO-deviating elements and conflicts can emerge from such deviations. In principle, conflicts among PTAs can take place in different ways: (WTO-minus) PTA norm v. (WTO-minus) PTA norm, (WTO-minus) PTA norm v. (WTO-equivalent) PTA norm, (WTO-minus) PTA norm v. (WTO-plus) PTA norm, (WTO-minus) PTA norm v. (WTO-extra) PTA norm, (WTO-equivalent) PTA norm v. (WTO-equivalent) PTA norm, (WTO-equivalent) PTA norm v. (WTO-plus) PTA norm, (WTO-equivalent) PTA norm v. (WTO-extra) PTA norm, (WTO-plus) PTA norm v. (WTO-plus) PTA norm, (WTO-plus) PTA norm v. (WTO-extra) PTA norm, (WTO-extra) PTA norm v. (WTO-extra) PTA norm.

For double PTAs, disparities among their prescriptions have their roots, in the first place, in the *deeper integration* intention of the parties.<sup>178</sup> This intent can be concretized in three ways. In the first way, among the two bilateral PTAs, the later PTA is more liberalized than the earlier one. In the second way, there is one earlier and bilateral PTA and one later plurilateral/ mega-regional PTA, and the latter is more liberalized. For example, the ASEAN-Australia-New Zealand FTA increases investment liberalization compared to the Australia-New Zealand FTA. Another example is the ASEAN-Japan FTA consisting of WTO-plus, WTO-extra commitments which are higher than those under FTAs between individual ASEAN Members and Japan. In the third way, an earlier and regional PTA is less liberalized than a later and bilateral PTA. As an example of this relation, the ASEAN-China FTA (2005) is the former and the Singapore-China FTA (2008) is the latter with WTO-plus, WTO-extra commitments. The inconsistency among double PTAs can also be attributable, in the second place, to the *minimum floor expansion* teleology, i.e. one later and mega-regional PTA extends/sets a minimum floor of liberalization/ rule convergence/ lowest common denominators/ one-size-fit-all approach to a larger group of countries.<sup>179</sup> The mega-regional PTA can be less or no more liberalized while the earlier one is more liberalized. In other words, the later PTA is broader in membership but not deeper in trade liberalization

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<sup>178</sup> Joost Pauwelyn and Wolfgan Alschener, 'Forget about the WTO: The Network of Relations between PTAs and Double PTAs', in Andreas Du'r and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements*, Cambridge University Press, 2015.

<sup>179</sup> Ibid.

commitments than the earlier PTA. The lower liberalization of the later PTA is attributed to the fact that it regroups countries with very different levels of development or expands to include new members of different levels of development. As a result, instead of furthering international trade law fragmentation as normal PTAs in relation to WTO law, the later PTA contributes to multilateralizing regionalism. In the third place, for *backsliding* teleology, a later PTA between two countries is less liberalized than earlier PTAs.<sup>180</sup> The later PTA revives limitations or conditions that were previously proscribed under the earlier PTA.<sup>181</sup> In the fourth place, for *legal innovation* teleology, it is ambiguous to determine whether a provision in which PTA is more liberal or in favour of deeper integration than other PTAs as later PTAs define/address an issue differently accidentally or deliberately.<sup>182</sup> For instance, investment chapters in recent PTAs define such terms as investment, fair and equitable treatment and expropriation in a divergent way compared to those in earlier BITs.<sup>183</sup>

In other words, thanks to the above factors, all pre-conditions to conflicts of norms among PTA are met. Added to the above four factors is a lack of (operative/effective) conflict clauses. As analyzed above, there is an absence of conflict clauses in many PTAs partly because PTA parties hesitate or are reluctant at handling the issue. In other cases where conflict clauses are inserted in PTAs, they fail to settle real conflicts due to their inapplicability or ineffectiveness or even conflicts *inter se*. This factor will be elaborated in detail in Section 3.3. of Chapter 3. At the end of the day, relations between PTAs are either undefined or unsolved in case of norm conflicts among PTAs.

#### **1.4. Relations between norms in different PTAs**

What happens if at least one of the above-analyzed prerequisites to inter-PTA conflicts of norms is not present? In these cases, interactions between norms from different PTAs should be classified as accumulation rather than as conflict. Like norms from different treaties in general, norms in two PTAs can either accumulate or conflict.<sup>184</sup> If two norms do not

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<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003, p. 158.

accumulate, they are in conflict and vice versa.<sup>185</sup> So, there are two types of interactions among norms in PTAs.

It is inferred, from the definition of normative conflicts among multiple PTAs introduced above, that two PTA norms can *accumulate* when their application at a time produces no contradiction in any situation or the implementation of or reliance on either norm cannot lead to the breach of the other. There are five scenarios of accumulating PTA norms. In the *first* scenario, one PTA norm adds/complements another PTA norm without contradicting the latter, i.e. forming a complementary relation to another.<sup>186</sup> The complementary interaction can arise in two different ways. If two PTAs are concluded by two different sets of contracting parties, the two norms from these PTAs also accumulate as two PTAs in general and their two norms in particular share no common state parties in common, i.e. they have no overlap over parties. For instance, the NAFTA and the EVFTA have no common state party; consequentially, norms quoted from these two PTAs accumulate. Furthermore, two PTA norms accumulate when covering completely different subject-matters, i.e. lack of overlaps over subject-matters.

In the *second* scenario, two PTA norms can also accumulate when one PTA norm either reiterates or confirms already pre-existing rights or obligations under the other PTA norm, without either addition to or detracting from rights/obligations of the latter.<sup>187</sup> For instance, Article 21, Chapter on Dispute Settlement of the EVFTA and Article 28.12.3 of the CPTPP accumulate in that they consistently confirm the pre-existing rule that provisions in the corresponding PTAs must be read and clarified in accordance with the customary rules of interpretation of public international law. In addition, these two clauses are further compatible in terms of their recognitions of decisions by the WTO DSB and the requirements of no change in substantive rights and obligations under the relevant PTAs.

The *third* scenario of accumulation is called explicit termination.<sup>188</sup> If one PTA norm explicitly terminates the other PTA norm, without surrogating the latter by another, then two PTA norms accumulate. This scenario is so called since the application of the former will lead

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<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid.

to termination of the latter, so both norms in no case apply at the same time and there is no conflict.

Called explicit exemption, the *fourth* scenario of accumulation involves two PTA norms of which one setting a general rule and the other manifestly prescribing for an exception to the general rule, i.e. the latter is a permissive or exempting norm.<sup>189</sup> In this scenario, conflicts do not emerge between norms setting general rules under one PTA and norms enclosed under another PTA but constituting exceptions under the former. The accumulating interaction between a general rule and its explicit exception can be explained in the following way. “At first sight, there is always an apparent conflict between a general rule and an express carve-out to that general rule.”<sup>190</sup> Then when an express exception provides that the general rule is precluded in exceptional circumstances, the apparent conflict disappears.<sup>191</sup> In other words, the exception can even be considered as a conditional right, declined from the general rule.<sup>192</sup> “Since both norms have a different scope of application, they can in all circumstances apply side by side. In other words, in each and every circumstance, only one of the two norms applies; they accumulate and no conflict arises.”<sup>193</sup> It should be noted that the above reasoning is of no validity if the exception is not *express*. So, there is accumulation and no genuine conflicts between the obligation and permission/exemption arise. The third and fourth scenarios are characterized by the common absence of an overlap of time in the application of the two PTA norms at issue.

In the *last* scenario called *explicit reference/incorporation*, when one PTA norm regulates a matter differently from another PTA norm and one of the two PTA norms explicitly refers to/incorporates the other PTA norm, the two PTA norms accumulate.<sup>194</sup> As a consequence, different rights or “obligations must be applied cumulatively so that both norms accumulate.”<sup>195</sup> Only if two norms are mutually exclusive, conflict arises.

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<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

## **CHAPTER 2: INTERPRETATIVE TOOLS TO AVOID APPARENT NORMATIVE CONFLICTS AMONG PTAS**

Apparent conflicts are conflicts alleged to occur between two provisions of two treaties but can be resolved not by conflict rules but by interpretation rules or, put differently, conflicts that can be avoided or reconcilable. In other words, they are conflicts where contents of two norms are at first glance contradictory, yet the conflict can be avoided, most often by interpretative means.<sup>196</sup> Apparent conflicts are also called alleged conflicts. Among the interpretative means available to avoid apparent conflicts are Articles 31 and 32 of the VCLT. For example, the adoption of the positive list by the EVFTA in trade in services<sup>197</sup> is seemingly conflictual with the negative list in the CPTPP services trade.<sup>198</sup> These two techniques in inscribing commitments are apparently conflictual given their name of “positive list” and “negative list”. However, through interpretative tools, it is clear that such difference in scheduling techniques does not necessary indicate conflicts in specific commitments by the parties as such norms on scheduling templates must be read in their context of specific commitments or specific limitations or conditions inscribed in the relevant Schedules and the actual liberalization by the parties is independent of the scheduling technique.

Given their definition, apparent or alleged conflicts must be interpreted to avoid conflicting reading. For similarly- or identically-worded or -phased provisions, different interpretation rules may result in different understandings; even worse is for differently-worded provisions. Even when similar or analogous rules of interpretation are confirmed throughout different PTAs, the result of reading similarly-worded substantive provisions can be indeterminate due to a different application of the interpretative rules in question by numerous interpreters (state parties and PTA adjudicators).

Clauses containing interpretative rules posit in different parts of PTAs and are named differently. Interpretative rules in some PTAs are stipulated in the first chapter; others reside in chapters on dispute settlement. Various names given to PTA interpretative clauses are “Rules of interpretation”, “General rule of interpretation”, “Interpretation principles”,

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<sup>196</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>197</sup> Articles on Market Access and National Treatment in Chapters II and III of Chapter 8 on Trade in Services, Investment and E-commerce, the EVFTA.

<sup>198</sup> Articles 9.4 and 9.12, Chapter 9 and Articles 10.3, 10.5 and 10.7, Chapter 10 of the CPTPP.

“General Provisions” and “Objectives”. In many cases, interpretative rules are included in articles on “Arbitration”, “Role of the Panel”, “Function of Panels”, “Functions of Arbitral Panels”, “Functions of an Arbitral Panel”, “Rulings of the Arbitration Panel”, “Arbitration Panel Ruling”, “Panel Reports”, “Arbitration Panel Report”, “Report”, “Scope”, “Scope and Coverage”, “Dispute Settlement Procedure”, “Procedures of the Arbitration Panel”, “Proceedings of the Arbitration Panel”.

In terms of rules of interpretation included in PTAs, there are two mainstreams. Some do not set out clearly rules of interpretation of PTAs while others do. The latter seem to dominate the former as only some one third of surveyed PTAs do not straightly provide for any interpretation rules in their texts.<sup>199</sup> For PTAs belonging to the former, they do not stipulate expressly the rules or principles of interpretation of the PTAs at issues and their dispute settlement adjudicators have more discretion to (resorting to different) means of interpretation. Even in such cases, customary rules of interpretation come into play due to their nature, except otherwise clearly provided by parties in treaties which is not the case for these PTAs. In other words, parties to and adjudicators of these PTAs will turn to customary rules of interpretation which are applicable to PTA interpretation even in the absence of the mention thereof.

For PTAs belonging to the latter, they stipulate the issues in different manners. A large portion of PTAs refer to the interpretation rules established in customary law<sup>200</sup> through different wording.<sup>201</sup> Few mention their own objectives as a benchmark for their interpretation.<sup>202</sup> Interpretation made by the WTO DSB contributes to PTA interpretation in only 9 PTAs according to their express regulation.<sup>203</sup> Furthermore, quite many PTAs request interpretation not to increase, decrease or change rights and obligations under the relevant PTAs. Only two PTAs have other rules of interpretation besides the three rules above-mentioned.

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<sup>199</sup> For the list of such PTAs, see Annex I, Table 7. Some 70 out of 198 PTAs under consideration fall into this category. Among them, quite many relate to Turkey (12 PTAs), China (8 PTAs), the United States (7 PTAs) and the EU (7 PTAs).

<sup>200</sup> For the full list, see Annex I, Table 8. 119 out of 198 PTAs (equivalent to around 60%) under consideration take customary interpretative rules as their rules of interpretation. Many are concluded by the EFTA (18 PTAs), the EU (18 PTAs), Singapore (13 PTAs), Korea (13 PTAs), Japan (13 PTAs) and China (13 PTAs).

<sup>201</sup> Simon Lester, Bryan Mercurio and Lorand Bartels, *Bilateral and Regional Trade Agreements: Commentary and Analysis*, Cambridge University Press, 2015.

<sup>202</sup> Ibid.

<sup>203</sup> For the full list, see Annex I, Table 9. 6 out of these 9 PTAs are concluded by the EU.

## 2.1. Customary rules of interpretation of PIL

Different PTAs have distinct ways to make reference to customary rules of interpretation of public international law. Such customary rules are referred to through diverse terminologies. Some use wordings of “rules of interpretation of public international law” or “customary rules of interpretation of public international law” without clarifying what such rules<sup>204</sup> are while others do specify customary rules of international law to be complied with by giving a non-exhaustive list of customary rules of interpretation and mentioning explicitly the VCLT 1969 as an illustration. Among PTAs belonging to the latter, several refer to the whole of VCLT 1969 without pointing out any specific rules of interpretation stipulated therein<sup>205</sup> and many PTAs manifestly cite Articles 31, 32 and 33 of the VCLT.<sup>206</sup> Apart from that, quite many PTAs use the term of “applicable rules of international law” and indirectly refer to Articles 31 and 32 of the VCLT by partially echoing one or some decisive factors in interpretation under Article 31 of the VCLT.<sup>207</sup> Few of them use the terms “(applicable) norms of international (public) law”, “(applicable) rules of interpretation under international law” or “general principles of international law”.<sup>208</sup>

There are variations in how PTAs take customary rules of interpretation under public international law as their own interpretative rules. Some PTAs refer to themselves wholly while others refer to their provisions as being subject to such interpretative rules. Several PTAs say that such interpretative rules apply to their interpretation, while other put their application under the scope of such rules too.<sup>209</sup> Some PTAs generally request disputes arising therefrom to be *settled*<sup>210</sup> or *decided*<sup>211</sup> pursuant to those rules while some declare that *awards* of PTA adjudicators shall be made *based* on such rules.<sup>212</sup> The other PTAs stipulate that they

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<sup>204</sup> For details, see Annex I, Table 8.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Article 37.5, EFTA-SACU FTA. Article 31.6, EFTA-The former Yugoslav Republic of Macedonia FTA. Article 34.4, EFTA-Lebanon FTA. Article 31.6, EFTA-Jordan FTA. Article 2.3, Annex 7A Arbitral Tribunals to Jordan-Singapore FTA.

<sup>211</sup> Article 96.14, Japan-India Comprehensive Economic Partnership Agreement. Article 98.3(b), China-Singapore FTA.

<sup>212</sup> Article 120.1(b), Japan-Vietnam Economic Partnership Agreement. Article 19.12.1, Japan-Australia Economic Partnership Agreement. Article 111.1(b), Brunei Darussalam-Japan Economic Partnership Agreement. Article 143.1(b), Japan-Indonesia Economic Partnership Agreement. Article 163.1(b), Japan-Thailand Economic Partnership Agreement. Article 144.1(b), Japan-Singapore New-Age Economic Partnership Agreement. Article

will be *considered* in line with the same rules.<sup>213</sup> A wide range of PTAs state specifically that they shall be *interpreted* (and *applied*) in accordance with customary rules while others require PTAs to be *clarified* according to the same rules.<sup>214</sup> Few clearly state that they will *observe* such rules.<sup>215</sup> Notwithstanding the terms used in the PTA interpretative rules, customary rules of interpretation under public international law are still tools that PTA adjudicators must employ.

Beside the customary rules of international law, some PTAs also take into account, for interpretation, other elements such as PTA Preambles,<sup>216</sup> principles,<sup>217</sup> objectives thereof,<sup>218</sup> good faith in PTA performance<sup>219</sup> or avoidance of PTA circumvention.<sup>220</sup> Such additions are redundant as elements of PTA Preambles or objectives are taken into consideration in PTA interpretation according to customary interpretation rules, more specifically Article 31 of the VCLT.

The following part is purported to discuss customary rules of interpretation under public international law. Customary rules of interpretation are set out in Articles 31 and 32 of the VCLT.

### ***2.1.1. Article 31 of the VCLT***

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1806.1(b), Thailand-Australia FTA. Article 17.6.1(b), Thailand-New Zealand Closer Economic Partnership Agreement. Article 19.12.1, Agreement between Japan and Australia for an Economic Partnership.

<sup>213</sup> Article 20.11.3, China-Korea FTA. Article 20.9.2, Korea-Colombia FTA. Article 28.12.3, CPTPP. Article 21.9.2, United States-Australia FTA. Article 28.12.3, TPP. Article 21.9.2, United States-Australia FTA

<sup>214</sup> Article 190.3, China-New Zealand FTA. Article 1.5, Singapore-Australia FTA. Article 1.5, Chapter 16 – Dispute Settlement, SAFTA. Article 190.3, China-New Zealand FTA.

<sup>215</sup> Article 2.1(b), Mauritius-Pakistan Preferential Trade Agreement.

<sup>216</sup> For example: Article 17.1.2, Hong Kong, China-Chile FTA. Article 1.3, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>217</sup> Article 1.3, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>218</sup> Article 2.2, Iceland-China FTA. Article 15.2.5, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership. Article 14.2.5, Korea-India Comprehensive Economic Partnership Agreement. Article 2.2, Costa Rica-China FTA. Article 2.2, Costa Rica-China FTA. Article 2.2, Chile-China FTA. Article 1.2.2, Chile-Peru FTA. Article 1.2.2, US-Panama Trade Promotion Agreement. Article 1.2.2, US-Chile FTA. Article 1.2.2, Peru-Mexico Commercial Integration Agreement. Article 1.02.2, El Salvador-Honduras-Chinese Taipei FTA. Article 1.02.2, Panama-Honduras FTA. Article 1.02.2, Panama-El Salvador (Panama-Central America) FTA. Article 1.2.2, Panama-Chile Treaty of Free Trade. Article 1.2.2, Chile-Colombia FTA. Article 1.2.2, Korea-Chile FTA. Article 1.02.2, Nicaragua-China Taipei FTA. Article 1-03.2, Israel-Mexico FTA. Article 2.1(a), Mauritius-Pakistan Preferential Trade Agreement. Article 1.2.2, Canada-Honduras Free Trade Agreement. Article 1.3, Pacific Alliance Additional Protocol to the Framework Agreement. Article 58.2, New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>219</sup> Article 15.9.5, Korea-Vietnam FTA. Article 322.1, Association Agreement between EU and Central America. Article 46.3, Turkey-Chile FTA.

<sup>220</sup> Article 15.9.5, Korea-Vietnam FTA. Article 322.1, Association Agreement between EU and Central America. Article 46.3, Turkey-Chile FTA.



Article 31.1 of the VCLT prescribes interpretative components, including the ordinary meaning, context, objective and purpose, and good faith. These elements apply to the entire process of interpretation. Components of the context of a term to be interpreted are the whole treaty, including the preamble, annexes, footnotes, side letters signed by parties connecting with the treaty conclusion, etc. Good faith should be construed as requiring that states, “when concluding an agreement, take into account all their other international obligations including general principles, customs and treaty obligations.”<sup>221</sup> Applied to PTA interpretation, Article 31.1 of the VCLT requires a PTA term to be read in accordance with (1) the ordinary meaning given to that term, (2) in the context of such PTA term, (3) in light of the PTA objectives and purpose and (4) in good faith. The ordinary meaning of PTAs can be found in dictionaries or other sources such as specialized industrial materials. The context of a PTA term to be interpreted includes other terms or phrases in the same provision, other sub-provisions belonging to the same article, the chapeau and title of the provision, (sub-)sector covering such term, other PTA provisions, the PTA Preamble, etc. For many PTAs, their objectives are explicitly defined in a separate article in the first chapter; for others, their objectives are ambiguously phrased or scattered in different provisions throughout the PTAs.

In addition, Article 31.3 adds actions subsequent to the conclusion of a treaty as part of the treaty interpretation. Actions subsequent to the treaty conclusion include subsequent agreement, subsequent practice and any relevant rule of international law applicable to the relationship between parties.<sup>222</sup> Subsequent agreement, as implied by its name, must be formed after the conclusion of the treaty to be interpreted.<sup>223</sup> Regarding subsequent practice, the practice is a sequence of facts/acts and, therefore, cannot be in general established by one isolated fact/act or several individual acts/pronouncements.<sup>224</sup> Added to that, the practice must be concordant, common and consistent.<sup>225</sup> Although there is no “need to be exercised by all parties to a treaty, it is difficult to establish a practice” based on acts/pronouncements of

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<sup>221</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

<sup>222</sup> Article 31.3(c) of the VCLT.

<sup>223</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

one/very few parties.<sup>226</sup> The practice of only one party can be relevant but of limited value than that of all parties.

Regarding any relevant rule of international law applicable to the relationship between parties, there is no requirement of time of formation, i.e. it can be formed at the time of treaty conclusion or at the time of interpretation. Furthermore, the scope of the regulation is broader; any relevant rules of international law applicable. This regulation is equivalent to the principle of systemic integration “to ensure that international obligations are interpreted by their normative environment, not only in their own context but also in the wider context of international law.”<sup>227</sup> This factor contributes to solving conflicting obligations arising under different treaties. It relates to any rule of international law, including international customs, general principles of international law, general principles of law accepted by nations and some treaties.<sup>228</sup> However, not any rule of international law is utilized in interpretation, but just one which is relevant. The relevance of international law rules is determined on a case-by-case basis, taking into account subjects to disputes and the content (i.e. subject-matter) of the rules under consideration. The relevance requirement will be addressed in relation to a treaty norm/provision subject to interpretation and does “not envisage incorporating the entire substance of international law on a topic not mentioned in a particular case.”<sup>229</sup> In addition, the relevant rule of international law must be applicable to the relationship between parties. A different interpretation is proposed for the term “parties”. One stance construes this as covering all parties to the treaty. In other words, all parties to the treaty to be interpreted must be party to the treaties used for interpretation or parties to the treaties used for interpretation include all the parties to the treaty to be interpreted. For example, general principles of international law are rules of international law applicable to all parties as they apply to all parties. WTO Agreements, WTO decisions (e.g. the Doha Declaration) and rulings of the WTO DSB are guidance in PTA disputes to increase coherence.<sup>230</sup> The other stance reads the term “parties” as covering a subset of parties. As a result, treaty law is considered as rules of international law applicable to only a group of parties.

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<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Article 38 of the International Court of Justice Statute.

<sup>229</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

<sup>230</sup> Ibid.

The objective of Article 31.3 is to promote coherence in the interpretation of treaty obligations; the treaty being interpreted by other relevant international law is read in a way which is mutually supportive and avoids conflicts.

## 2.2. Consideration of relevant interpretation in WTO DSB decisions

As stated above, only a few PTAs have a tendency towards the consideration of the WTO DSB interpretation as a means of interpretation especially in regards of their WTO-incorporated provisions. Remarkably, all those PTAs are recently concluded by the EU and by Australia. A large part (6 out of 9 PTAs) involves the EU and the others relate to Australia;<sup>231</sup> all of them have been signed since 2010.

It is not PTA parties but PTA adjudicators<sup>232</sup> who are responsible for settling disputes regarding PTA interpretation will take the WTO DSB's ruling as their own guidance. Some PTAs refer generally to rulings of the WTO DSB, or its rulings and recommendations; others refer more specifically to the Panel Reports and the Appellate Body Reports adopted by the WTO DSB. Regardless of the differences, not the whole decisions by the WTO DSB are taken into consideration but only their interpretative portion. This rule is equivalent to cross-treaty interpretation, but just applicable to the WTO-PTA relation to avoid inconsistency in interpretation of equivalent norms in PTAs and WTO. The rationale behind such cross-treaty interpretation is commitments by PTA parties to confirming and being bound by their obligations and rights under WTO law.

However, the role of the WTO DSB jurisprudence is limited in many aspects. In the first place, not all interpretations by the WTO DSB will come into play as far as PTA interpretation is concerned. The WTO DSB's ruling must meet the condition of "relevance". Some PTAs belonging to this group do not clarify the "relevance" criterion.<sup>233</sup> The other give an explanation that the WTO DSB's ruling is relevant when it assists in interpreting PTAs' *provisions* (1) incorporated from the WTO Agreement<sup>234</sup> or (2) identical to WTO provisions<sup>235</sup> or when PTAs' *obligations* are either identical or substantially identical to those

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<sup>231</sup> See Annex I, Table 9.

<sup>232</sup> PTA adjudicators can be name differently, such as the Panel, the Arbitration Panel or the Arbitration Tribunal.

<sup>233</sup> EU-Canada Comprehensive Economic and Trade Agreement (CETA). Australia – China FTA. EU – Georgia Association Agreement. EU - Moldova Association Agreement.

<sup>234</sup> See the CPTPP.

<sup>235</sup> EU-Central America Association Agreement.

under the WTO law.<sup>236</sup> Such requirement limits the involvement of the WTO DSB's interpretative ruling to only WTO-equivalent provisions under these PTAs, including PTAs' WTO-incorporated and WTO-(substantially) identical provisions. This WTO-based interpretative tool is only available to "WTO-equivalent" clauses inserted into these PTAs, not to "WTO-plus", "WTO-minus" or "WTO-extra" provisions in PTAs.

In the second place, the degrees of roles played by interpretative findings from the WTO DSB's rulings are not the same across the PTAs of this group. The manners in which the WTO DSB's interpretations or rulings play a role in the interpretation of the relevant PTAs vary. To guide their adjudicators on how to introduce the WTO DSB rulings into their interpretation tasks, different PTAs use distinct phrases, including "consider",<sup>237</sup> "have regard to",<sup>238</sup> "take into account"<sup>239</sup> or "adopt an interpretation which is consistent with [...]".<sup>240</sup> The three first phrases of "consider", "have regard to" or "take into account" are ambiguous and the weight given to the WTO DSB interpretations depends on the PTA dispute settlement adjudicators and may vary from PTAs to PTAs. Nevertheless, the phrase "adopt an interpretation which is consistent with [...]" seems to give more decisive roles to the WTO DSB's interpretation and ensures a higher level of interpretative consistency or similarity.

For PTAs without any clear introduction of the WTO DSB interpretation into their interpretative tasks, their PTA adjudicators have discretion over whether or not to take into consideration such multilateral interpretation in the bilateral, plurilateral or regional interpretative tasks as well as how much the contribution of the former to the latter is.

### **2.3. No change in rights or obligations of the parties**

Approximately one quarter of PTAs (51 out of 198) impose the requirement of no increase or decrease in rights and obligations of PTA parties ensuing from an interpretation. PTAs concluded by some countries are more likely to include such interpretative rules than PTAs involving other countries.<sup>241</sup> In spite of some slight mutations in the models of the rules, all

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<sup>236</sup> EU-Korea FTA. EU-Ukraine Association Agreement. Korea-Australia FTA.

<sup>237</sup> Article 28.12.3 of the CPTPP.

<sup>238</sup> Australia-China FTA, Article 15.9.3.

<sup>239</sup> Article 29.17, Section D, Chapter Twenty-nine – Dispute Settlement, EU-Canada Comprehensive Economic and Trade Agreement (CETA). Article 265, EU-Georgia Association Agreement. Article 401, EU-Moldova Association Agreement.

<sup>240</sup> Article 20.5, Korea-Australia FTA. Article 320, EU-Ukraine Association Agreement. Article 322.1, EU-Central America Association Agreement. Article 14.16, EU-Korea FTA.

<sup>241</sup> These countries include the EU (14 PTAs), China (8 PTAs), Singapore (8 PTAs), Peru (6 PTAs), Korea, Australia and Chile (5 for each). For further details, see Annex I, Table 10.

PTAs having such interpretative rule prevent PTA adjudicators, including Panels, Arbitration Panels or Arbitration Tribunals, by means of their decisions or rulings (including findings, determinations, recommendations or awards), from adding to/increasing or subtracting from/diminishing or altering either rights or obligations of parties under PTA laws. Such requirement finds its equivalence in Article 3.2 of the WTO Dispute Settlement Understanding (DSU).<sup>242</sup> This requirement originates from the fact that any rights or obligations under PTAs are outcomes of the PTA law-making process, including steps of negotiation, conclusion, ratification or approval, not from the judicial proceeding. As a result, the alteration, amendment or removal of substantive PTA provisions (if any) must go through the law-making procedure as stipulated in PTAs, not through an adjudicative avenue.

#### **2.4. Other rules of interpretation**

Only two PTAs stipulate interpretative rules other than those above-mentioned. They are Stabilization and Association Agreements concluded by the EU with Serbia and Bosnia and Herzegovina. They all require that no interpretation be given to the *acquis communautaire* and that the fact of a provision “identical in substance to a provision of the Treaty establishing the European Communities shall not be decisive in the interpretation of that provision.”<sup>243</sup>

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<sup>242</sup> WTO DSU, Article 3.2 reads that: “Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.”

<sup>243</sup> Article 13, Protocol 7 on Dispute Settlement, EU-Serbia Stabilization and Association Agreement. Article 13, Protocol 6 on Dispute Settlement, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

### CHAPTER 3: SOLUTIONS TO REAL PTA NORMATIVE CONFLICTS

If normative conflicts are not apparent, they are absolute or real. Absolute conflicts are conflicts which are irreconcilable even after the application of interpretation rules. They are irreconcilable divergences “between norms which cannot be interpreted away and can only be solved by the application of conflict rules.”<sup>244</sup> In other words, the assistance of the applicable interpretative rules cannot solve actual conflicts between norms or provisions. Hence, absolute conflicts are also called real or actual conflicts. Real conflicts can be settled pursuant to treaty law, customary law or during dispute settlement procedures. According to the way which conflict clauses define the relation between the PTA in question and another PTA, there are various nuances. In PTAs where conflict clauses are introduced, they can define the relation in different manners. Some set a priority by letting the PTA in question to take precedence<sup>245</sup> or requesting such PTA to give way to the other PTAs.<sup>246</sup> Many pave the way for inter-PTA normative-conflict-cracking by taking advantage of consultations while quite a lot PTAs leave themselves to co-exist with their multiple PTAs. In the other PTAs where there is no relevant conflict clause, reference will be made to customary rules on conflict resolution as an avenue to tackle the issue.

#### 3.1. Conflict clauses/rules for real conflicts under PTAs

For addressing conflicts, a treaty may include conflict clauses – express clauses on how to solve conflicts between that treaty and others, generally by giving a priority to either of them. They are clauses on what to do with prior or subsequent conflicting treaties. Accordingly, conflict clauses in a PTA are clauses therein that define the relation between the PTA at issue and another treaty, determining which treaty prevails in conflicts, or setting a priority in case of conflicts between the PTA containing such conflict clauses and international treaty(ies). The real conflicts of norms in multiple PTAs need to be addressed by determining which PTA norm will trump another in a different PTA, whether norms in a later PTA prevails those in earlier PTAs or whether a more trade-liberalizing norm prevails another less trade-liberalizing? The result depends on the intention of parties in concluding conflicting norms in different PTAs in particular and in concluding different PTA provisions in general.

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<sup>244</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>245</sup> See Annex I, Table 14.

<sup>246</sup> See Annex I, Table 15.

Conflict clauses in PTAs can be classified in different ways. According to the other international treaty(ies) of which the relations are governed by such conflict clauses in the PTAs, conflict clauses may govern relations between PTAs and international treaties in general, those between PTAs and international treaties in a particular field, relations between PTAs and WTO law, and those between such PTA and one (or more) PTA(s). PTA conflict clauses regulating the relation between the PTA in question and WTO law do not fall within the scope of research. Neither do those governing the link between PTAs and treaties in non-trade branches of international law such as international environmental law, international taxation law, international human right law, law of the sea, etc. In contrast, conflict clauses addressing the interaction between PTAs and international treaties in general or one or several multiple PTAs in particular are the subject of this research.

PTA conflict clauses may be posited in different parts. Many PTAs refer in their Preamble to relations among PTAs. In many other PTAs, conflict clauses are often present in the first Chapter – Chapter 1 on General Provisions of PTAs, after provisions on the establishment of an FTA and objective of a PTA or in the very provision on “Objectives” of PTAs. In a few PTAs, conflict clauses are stipulated in the last Chapter.<sup>247</sup> Besides, some PTAs are special in having conflict clauses in both their first and last chapters. However, several PTAs are exceptional in positioning their conflict clauses in the middle.

Conflict clauses in treaties can be formulated in different ways. Some treaty conflict clauses have clear meaning/effect while others have obscure meaning/effect. There are three ways of giving a *clear meaning* via conflict clauses. In the *first* way, straight-forward conflict clauses providing which norms prevail in the event of conflicts as a result of which the adjudicator must follow the subsequent order: (1) determination of whether there is a conflict based on the adopted definition of conflicts and the extent of the conflict and (2) determination of the prevailing norm. In the *second* way, a conflict clause states that its treaty explicitly abrogates another norm. Hence, the “two norms are never in operation at the same time and there is no conflict.”<sup>248</sup> In the *third* way, a conflict clause is worded as “a treaty provision explicitly

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<sup>247</sup> Titles of the last chapters containing conflict clauses vary by PTAs, including “Chapter on Final Provisions”, “Chapter on General Provisions”, “Chapter on Common Provisions”, “Chapter on General and Final Provisions”, “Chapter on Other provisions” or without any name.

<sup>248</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

deviating from another one (in the form of general-rule exception).”<sup>249</sup> In this case, the conflict clause explicitly carves out the scope of application of another norm. For example, Article XX of the GATT carves out all other GATT norms. Given the conflict clause, “the scope of application of the two norms (mostly in the general-rule exception) are simply different and do not overlap and there is no conflict.”<sup>250</sup> The exceptional norm stating that it deviates from “the general rule cannot be seen as a conflict clause” in a strict sense.<sup>251</sup>

For conflict clauses with *obscure meaning/effect*, they require adjudicators to decide more than the question of whether there is a conflict.<sup>252</sup> For example, under Article 22(1) of the United Nations Convention on Biodiversity 1992, adjudicators must give way to rights and obligations under other treaties only if “the exercise of those rights and obligations would not cause a serious damage/threat to biological diversity.”<sup>253</sup> Likewise, Article 104 of the NAFTA gives way/prominence to certain multilateral environment agreements but it does so “provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.”<sup>254</sup> Some conflict clauses may clash with each other. Another illustration of this type of conflict clauses is the statement that one treaty should not be read as “implying in any way a change in the rights and obligations of parties under other international treaties.”<sup>255</sup> This clause is not intended to create any hierarchy between the treaty containing it and other international treaties.<sup>256</sup> Conflict clauses with obscure meanings/effects are reluctant to decide how exactly norms in one treaty should be related to those in another. It is unclear which is overridden by the other by these formulations.

There are some rationales behind this type of clauses. Firstly, these formulations imply the willingness of negotiators to confirm the potential presence of conflicting norms. Secondly, it may have its root in the principle of systemic integration which sets out that “relevant

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<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.



instruments should always be read as compatible with each other”<sup>257</sup> within the overall obligation to cooperate. Hence, there is no indication of what should be done in case conflicts emerge and it is essential to recourse to compromise formulas that push the resolution of problems to the future.<sup>258</sup> In the face of this type of conflict clauses, treaty partners can resolve the conflict through further negotiation and appreciation with a view of mutual accommodation. Otherwise, conflicts can be solved by referring to general principles of conflict resolution.

Similarly, PTAs are diverse in how they address conflicts with each other. Some provide for clear and absolute or effective solutions, while the other offer unclear and ineffective leeway. Clear-cut and effective approaches consist of the termination of either PTA, the non-application of the PTA at issue and the prevalence of either PTA.

### ***3.1.1. Termination of either conflicting PTAs***

Only two PTAs under survey have conflict clauses which settle the conflict by terminating the other multiple PTA. They are the Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS) and the Japan-Mexico Agreement for the Strengthening of Economic Partnership.<sup>259</sup> However, these conflict clauses are limited in terms of scope as they are only valid for terminating other previous and existing multiple PTAs with exactly identical or narrower geographical overlap or membership. More specifically, with regards to the two above-said PTAs, the former terminates other existing multiple PTAs among all CIS parties or between two of the parties whereas the latter only regulates the relation between itself and the Japan-Mexico Commerce Convention 1969. Besides, given the termination of the earlier PTA when the subsequent PTA takes effect, there is, indeed, no conflict at all between the two PTAs as the earlier PTA ceases to exist and only one PTA (i.e. the later PTA) exist at a time. In other words, one of the necessary conditions for inter-PTA conflicts fails to be met as there is no overlap over time between the two PTAs. Indeed, the name of this conflict-solving solution is a bit misleading as it is actually an avenue to prevent normative conflicts from arising beforehand, rather than a road to solve already-arisen/present/existing conflicts.

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<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

<sup>259</sup> For details, see Annex I, Table 12.

### ***3.1.2. Non-application of either conflicting PTAs***

Another absolute conflict-solving method is the non-application of either of the two PTAs with conflicting norms. Several studied PTAs fall into this group.<sup>260</sup> In principle, there are two ways to stipulate non-application: either the PTA containing such non-application conflict clauses or the other PTA with conflicting provisions in the relation will not apply to certain trade relations between state parties in certain circumstances. However, in practice, all PTAs on the relevant list provide for their own non-application instead of that of other PTAs in the conflictual interlink. Therefore, dissimilar to the conflict-solving method of termination, this method does entail neither the identical state membership nor the fully geographical overlap between relevant PTAs. Added to that, different from the above method, non-application conflict clauses leave the multiple PTAs at issue to exist and valid at the same time. However, similar to termination, the non-application solution prevents multiple PTAs from being applied concurrently. A certain measure by one state party falls under the scope of application of one PTA at a time, or more specifically of the other PTA instead of the PTA with such non-application conflict clause. Put differently, one necessary condition to inter-PTA conflicts, namely an overlap of time, is not satisfied and no conflict arises. Analogous to the termination solution, this non-application tactic is in fact not a conflict-solving but conflict-preventing mechanism.

### ***3.1.3. Prevalence of either conflicting PTAs***

#### *a. Prevalence of the PTA containing conflict clauses at issue*

The other way to solve real normative conflicts among multiple PTAs is to give prevalence to (the provisions in) one of the two PTAs in conflict. Among the PTAs under consideration in this research, 69 give themselves the prevalence in case of conflicts with other multiple

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<sup>260</sup> For details, see Annex I, Table 13. Only 7 PTAs set out their own non-application in relation with other multiple PTAs. All of these conflict clauses stipulate their application to relations with both existing and future multiple PTAs. 3 PTAs limit their effect to inter-links with other multiple PTAs with narrower membership (See Article 2.5, Chapter 18, ASEAN-Australia-New Zealand FTA; Article 16.4, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation and Article 1.5.2, Gulf Cooperation Council (GCC)-Singapore FTA.) Another 3 cover PTAs with partially overlapping membership only (See Article 13, South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan; Article 7, Mauritius-Pakistan Preferential Trade Agreement; Article 13, South Asian Free Trade Agreement (SAFTA).) The other PTA concerns its ties with other multiple PTAs having partially overlapping membership (See Article 22.4.2, United States-Oman FTA.)

PTAs.<sup>261</sup> Among them, various PTAs use diverse templates for the conflict clauses as well as different terms to grant the priority to themselves. More specifically, several PTAs manifestly use the term “prevail” and phrase their clauses as follows:

“In the event of any inconsistency between” the PTA at issue and other multiple PTAs, the former “(shall) *prevail(s)* [emphasis added] (to the extent of the inconsistency), except as otherwise provided in” the former.<sup>262</sup>

Or

“In the event of any inconsistency between the provisions of this Agreement and (the provisions of) [...] other agreements to which both/the Parties are party, the provisions of this Agreement shall *prevail* [emphasis added] to the extent of the inconsistency, except as otherwise provided in this Agreement.”<sup>263</sup>

Or

“In case of any inconsistency between the provisions of this Agreement and the provisions of the agreements” to which the Parties are party, “the provisions of” the PTA “shall *prevail*, [emphasis added] unless otherwise agreed.”<sup>264</sup>

Or

“In the case of any incompatibility between” the PTA at issue and other multiple PTAs, the former “shall *prevail* [emphasis added] to the extent of the incompatibility, unless otherwise provided” by/in the former.<sup>265</sup>

Or

“In case of incompatibility between the provisions of” other multiple PTAs and “the provisions” of the PTA at issue, “the latter shall *prevail* [emphasis added] to the extent of the incompatibility, (unless otherwise provided)” in the latter.<sup>266</sup>

<sup>261</sup> For further details, see Annex I, Table 14. Many of them are PTAs involving Turkey (14 PTAs), Panama (10 PTAs) and the EFTA (9 PTAs).

<sup>262</sup> Article 1.2.2, Korea-Colombia FTA. Article 1.3.2, Canada-Honduras Free Trade Agreement. Article 1.3.2, Singapore-Costa Rica FTA. Article 1.2.2, Canada-Ukraine FTA, Article 1-2.2, Canada-Jordan FTA. Article 1.04.2, Canada-Panama FTA. Article 102.2, Canada-Peru FTA. Article 102.2, Canada-Columbia FTA. Article 1.3.2, Korea-Chile FTA. Article 1.3.2, Canada-Costa Rica FTA. Article 1-04.2, Israel-Mexico FTA.

<sup>263</sup> Article 1.03, Nicaragua-China Taipei FTA. Article 1.03.2, Panama-China FTA.

<sup>264</sup> Article 1.03.2, El Salvador-Honduras-Chinese Taipei. Article 1.03.2, Guatemala-Chinese Taipei FTA.

<sup>265</sup> Article 1.3.2, Panama-Peru FTA. Article 1.3.2, Costa Rica-Peru FTA. Article 1.2.2, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>266</sup> Article 1.3.2, Peru-Mexico Commercial Integration Agreement. Article 1.3.2, Mexico-Panama FTA. Article 1.04.2, Panama-Guatemala FTA. Article 1.04.2, Panama-Nicaragua FTA. Article 1.04.2, Panama-Honduras FTA. Article 1-03.2, Mexico-Uruguay FTA. Article 1.04.2, Panama-El Salvador (Panama-Central America) FTA.

Or

“The provisions of the present Agreement shall *prevail* over the provisions of bilateral agreements concluded earlier between the Parties to the extent when the latter are either *not compatible* [emphasis added] with the first or identical to them, except for the provisions of bilateral and multilateral agreements in the area of transports, which set out the procedure and terms of carriage.”<sup>267</sup>

Generally speaking, PTAs containing such conflict clauses with the term of “prevail” contend that, in case or in the event of inconsistency or incompatibility between themselves and other relevant multiple PTAs, they themselves take the privilege when it comes to inconsistency or incompatibility.

Other PTAs do not explicitly refer to the “prevail” term, but formulate their conflict clauses with the term “prevent” divergently in some variations as follows:

“This Agreement shall *not prevent* the maintenance or establishment of customs unions, free trade areas or arrangements for cross-border/frontier trade (and other preferential agreements) (of the Parties) (with third countries) *to the extent* that these do *not negatively affect* the *trade regime* [emphasis added] (of the Parties) (and in particular the provisions concerning rules of origin) provided (for) in/by this Agreement.”<sup>268</sup>

Or

“This Agreement shall *not prevent* the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade and other preferential agreements, *to the extent* that they do *not adversely affect* [emphasis added] the rights and obligations provided for by this Agreement.”<sup>269</sup>

Or

“This Agreement shall *not prevent* the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade and other preferential

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<sup>267</sup> Article 9, Ukraine-Tajikistan FTA.

<sup>268</sup> Article 16, Turkey-Serbia FTA. Article 15.1, Turkey-Montenegro FTA. Article 12.1, Turkey-Georgia FTA. Article 15.1, Turkey-Albania FTA. Article 36.2, Central European Free Trade Agreement. Article 13.1, Egypt-Turkey FTA. Article 38, EFTA-Lebanon FTA. Article 16.1, Turkey-Morocco FTA. Article 16.1, Turkey-Tunisia FTA. Article 15.1, Turkey-Palestinian Authority Interim FTA. Article 32.1, Turkey-Bosnia and Herzegovina FTA. Article 36, EFTA-Jordan FTA. Article 36, EFTA-The former Yugoslav Republic of Macedonia FTA.

<sup>269</sup> Article 8.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

agreements, *except insofar as they alter the trade arrangements* [emphasis added] provided for in this Agreement.”<sup>270</sup>

Furthermore, other PTAs make use of the term “preclude” and design their model conflict clauses as follows:

“This/The Agreement shall *not preclude* the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade(,) *except insofar/ in so far as they alter* [emphasis added] the trade arrangements provided for in this/the Agreement.”<sup>271</sup>

Or

“This Agreement shall *not preclude* the maintenance or establishment of customs unions, free trade areas and/or arrangements for frontier trade (and other preferential agreements) *insofar as they do not have the effect of altering* [emphasis added] the trade arrangements provided for in this Agreement.”<sup>272</sup>

Or

“This Agreement shall *not preclude* the maintenance, establishment or enlargement of customs unions, free trade areas, arrangements for frontier trade and other preferential agreements of the Parties *to the extent that these do not interfere with the fulfillment of obligations* [emphasis added] under this Agreement.”<sup>273</sup>

One PTA deploys the term “prohibit” in its conflict clause which reads:

“This Agreement shall *not prohibit* creation or administration of customs unions, free trade areas or cross-border trade agreements, provided that such unions do *not negatively affect* [emphasis added] the trading regimes of the Contracting Parties

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<sup>270</sup> Article 45, EFTA-Egypt FTA.

<sup>271</sup> Article 37.1, EU-Bosnia and Herzegovina Stabilization and Association Agreement. Article 39.1, EU-Montenegro Stabilization and Association Agreement. Article 36.1, EU-Albania Stabilization and Association Agreement. Article 15.1, Turkey-Syria FTA. Article 22.1, EU-Lebanon Euro-Mediterranean Association Agreement. Article 35.1, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement. Article 21.1, EU-Egypt Euro-Mediterranean Association Agreement.

<sup>272</sup> Article 4.1, Ukraine-Montenegro FTA. Article 1.3.2, EFTA-Ukraine FTA. Article 39.2, EFTA-Albania FTA. Article 41.2, EFTA-Serbia FTA. Article 42.1, EFTA-Tunisia FTA. Article 21.1, EU-Algeria Euro-Mediterranean Association Agreement.

<sup>273</sup> Article 5, EFTA-SACU FTA.

and, in particular, this Agreement does not contain provisions concerning rules of origin.”<sup>274</sup>

Other less popular conflict clauses with other terms such as “without prejudice to” the PTA at issue, “may enter into” new PTAs “provided that such arrangements are not inconsistent [...]”. Some provide:

“The Parties, *without prejudice* to the rights and obligations provided for in” the PTA at issue “*preserve the right to maintain or establish*” [emphasis added] PTAs “with third countries.”<sup>275</sup>

Or

“Member States may *enter into new* preferential trade arrangements between themselves, provided that such arrangements are *not inconsistent* [emphasis added] with the provisions of this Protocol.”<sup>276</sup>

Or “Nothing ... preclude ... insofar as ... not alter ...”, for example,

“*Nothing in*” the PTA at issue “shall *preclude* the maintenance or establishment of customs unions, free trade areas or other arrangements between either of the Parties and non-parties/ third countries, *insofar as* they do *not alter* [emphasis added] the rights and obligations provided for in” the PTA at issue.<sup>277</sup>

Or “Nothing ... prevent ... to the extent ... consistent ...”:

“*Nothing* in this Agreement shall *prevent* Parties from entering into any other agreements relating to the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade *to the extent* that those agreements are *consistent* [emphasis added] with the terms and objectives of this Agreement.”<sup>278</sup>

Or the PTA at issue shall “not hinder” the other PTA provided the latter does “not negatively affect” the former. For example,

“The present Agreement shall *not hinder* the Parties for establishing other free trade areas, or their participation in other forms of economic integration (in

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<sup>274</sup> Article 16.1, Ukraine-The former Yugoslav Republic of Macedonia FTA.

<sup>275</sup> Article 4.1, Turkey-Moldova FTA.

<sup>276</sup> Article 27.2, Southern African Development Community (SADC)-Accession of Seychelles.

<sup>277</sup> Article 6.6.1, Agreement on Trade in Goods between Turkey and Korea. Article 1.4, Turkey-Malaysia FTA. Article 56.1, EU-Chile Association Agreement.

<sup>278</sup> Article 24.2, Pacific Island Countries Trade Agreement (PICTA).

particular, with the participation of the European Union) of special agreements on border trade, provided they do *not negatively affect* [emphasis added] the existing trade regime between the Parties and, specifically, the provisions related to the rules of the commodities' origin, as provided for by the present Agreement.”<sup>279</sup>

Or the PTA at issue shall “not hinder” the other PTA if the latter is “consistent with” the former.

“The present Agreement shall *not hinder* any of the Parties from establishing relations with third countries, perform the undertaken obligations in compliance with any other international agreements, to which this Party is or may be a signatory, *if* these relations and obligations are *consistent with* [emphasis added] the provisions and the purpose of the present Agreement.”<sup>280</sup>

Or the other PTA “shall be applied only to the extent” it is “compatible with” the PTA at issue:

“Bilateral free trade agreements currently in force between” PTA parties “shall be *applied only to the extent* to which their provisions are *compatible with* [emphasis added] the provisions of this Agreement.”<sup>281</sup>

Regarding the validity of conflict clauses granting prevalence of the PTAs providing for such conflict clauses, two factors need to be taken into account: the comparative time point of enforcement and the comparative geographical/state membership of the other multiple PTAs in relation with the PTAs at issue. More specifically, quite many PTAs belonging to this group govern their relations with other PTAs both existing and future with partially, identical or broader geographical overlaps or state membership.<sup>282</sup> This provision may be valid in relation with other pre-existing PTAs having identical geographical overlaps or state membership and stipulating the prevalence of the former pursuant to the principle of *lex*

<sup>279</sup> Article 29.1, Ukraine-Moldova FTA.

<sup>280</sup> Article 10, Ukraine-Tajikistan FTA.

<sup>281</sup> Article 23, GUAM.

<sup>282</sup> 24 PTAs include the EFTA-Ukraine FTA, EFTA-Albania FTA, EFTA-Serbia FTA, Turkey-Serbia FTA, EU-Bosnia and Herzegovina Stabilization and Association Agreement, EFTA-Egypt FTA, EU-Montenegro Stabilization and Association Agreement, EU-Albania Stabilization and Association Agreement, EFTA-SACU FTA, Central European Free Trade Agreement, Egypt-Turkey FTA, EFTA-Lebanon FTA, EFTA-Tunisia FTA, Turkey-Syria FTA, Turkey-Morocco FTA, EU-Algeria Euro-Mediterranean Association Agreement, EU-Lebanon Euro-Mediterranean Association Agreement, Turkey-Bosnia and Herzegovina FTA, EFTA-Jordan FTA, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement, EU-Egypt Euro-Mediterranean Association Agreement, Pacific Island Countries Trade Agreement (PICTA), Ukraine-The former Yugoslav Republic of Macedonia FTA, EFTA-The former Yugoslav Republic of Macedonia FTA.

*posterior*. Nevertheless, this provision may be invalid with other later PTAs having identical geographical overlaps or state membership and stipulating the prevalence of the latter. In addition, this provision may be contrary with other later PTAs having partially or broader geographical overlaps or state membership and stipulating the prevalence of the latter.

Quite many PTAs have conflict clauses as to the hierarchy between the PTAs at issue and other existing and future PTAs with identical or broader geographical overlaps/membership.<sup>283</sup> Likewise, the rule is not effective against PTAs with broader membership or future PTAs with identical membership. Only two PTAs assign the prevalence to themselves in cases of conflict with other existing and future PTAs with identical geographical overlap.<sup>284</sup> Fewer PTA conflict clauses cover other existing and future PTAs with broader geographical membership.<sup>285</sup> These clauses can be in conflict with conflict clauses in other PTAs which give the prevalence to the latter. Several PTAs concern their relations with existing and future multiple PTAs with partially geographical overlap only.<sup>286</sup> This type of conflict clauses can conflict with those in other existing and future multiple PTAs with partially geographical overlap and may be not valid as the state membership is not identical and non-party states are not bound by the former.

Some PTAs settle their interaction with only other existing PTAs with narrower state membership.<sup>287</sup> Only two PTAs tackle their relations with other existing PTAs with identical geographical overlap/membership.<sup>288</sup> These two types of conflict clauses are valid. Few PTAs contain conflict clauses regulating the relation with other existing PTAs with identical or

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<sup>283</sup> Article 1.3.2, Mexico-Panama FTA. Article 1.2.2, Korea-Colombia FTA. Article 1.3.2, Costa Rica-Peru FTA. Article 4.1, Ukraine-Montenegro FTA. Article 1.3.2, Panama-Peru FTA. Article 1.3.2, Peru-Mexico Commercial Integration Agreement. Article 1.04.2, Canada-Panama FTA. Article 1.04.2, Panama-Guatemala FTA. Article 1.04.2, Panama-Nicaragua FTA. Article 102.2, Canada-Peru FTA. Article 1.04.2, Panama-Honduras FTA. Article 1.03.2, El Salvador-Honduras-Chinese Taipei. Article 1.03, Nicaragua-China Taipei FTA. Article 1.03.2, Guatemala-Chinese Taipei FTA. Article 1-03.2, Mexico-Uruguay FTA. Article 1.03.2, Panama-China FTA. Article 1.04.2, Panama-El Salvador (Panama-Central America) FTA. Article 1-04.2, Israel-Mexico FTA.

<sup>284</sup> Article 1.2.2, Canada-Ukraine FTA. Article 5.2, Ukraine-Montenegro FTA.

<sup>285</sup> Article 16, Turkey-Serbia FTA. Article 15.1, Turkey-Montenegro FTA. Article 12.1, Turkey-Georgia FTA. Article 15.1, Turkey-Albania FTA. Article 13.1, Egypt-Turkey FTA. Article 16.1, Turkey-Tunisia FTA. Article 15.1, Turkey-Palestinian Authority Interim FTA.

<sup>286</sup> Article 1.4, Turkey-Malaysia FTA. Article 4.1, Turkey-Moldova FTA. Article 6.6.1, Agreement on Trade in Goods between Turkey and Korea. Article 4.1, Turkey-Chile FTA. Article 56.1, EU-Chile Association Agreement. Article 10, Ukraine-Tajikistan FTA.

<sup>287</sup> GUAM FTA.

<sup>288</sup> Article 9, Ukraine-Tajikistan FTA. Article 1.11.5, Japan-Australia Economic Partnership Agreement.



broader geographical overlap or membership.<sup>289</sup> The clauses are valid for PTAs with identical geographical overlap but not valid for PTAs with broader geographical overlap if the latter provides otherwise. Only one PTA addresses its tie with other existing PTAs with narrower, identical or broader geographical coverage.<sup>290</sup> Similarly, this clause holds true for existing PTAs with narrower or identical geographical coverage only, but it is the not case for existing PTAs with broader state membership.

One PTA aims at its relations with other future PTAs with either identical or broader state membership and gives itself the priority in case of conflict.<sup>291</sup> This regulation is against the principle of contractual freedom of states and does not automatically apply if the latter stipulates to the contrary. Another PTA targets solely at future PTAs with identical state membership<sup>292</sup> and gives itself the priority. However, such regulation can be repealed by future PTAs with identical state membership.

In general, a PTA conflict clause granting priority to the PTA containing itself may not extend its validity to relations with other future PTAs with whatever membership or existing PTAs with either partially identical or broader geographical coverage.

*b. Prevalence of the other multiple conflicting PTAs*

At the other extremity, many PTAs give prevalence to the other conflicting multiple PTAs.<sup>293</sup> However, contrary to the wording of conflict clauses giving prevalence to the very PTAs containing such provisions, the term “prevail” is completely absent from all of the PTA conflict clauses falling into this group. Instead, other terms are in use to confirm the priority of other multiple PTAs in conflict. For instance, some PTAs contain conflict clauses saying that they “shall not derogate from” or “Nothing in” the PTAs at issue “shall derogate from” other multiple PTAs. Other phrases convey the same intent such as “without prejudice to”, “nothing ... prejudice”, “in no way prejudice”, “by no means prejudice” other multiple PTAs. Some other templates are formulated as follows: “Nothing [...] be regarded/interpreted as

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<sup>289</sup> Article 1.2.2, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Article 1.3.2, Canada-Honduras Free Trade Agreement. Article 1.3.2, Singapore-Costa Rica FTA. Article 102.2, Canada-Columbia FTA. Article 102.2, Canada-Columbia FTA. Article 1.3.2, Korea-Chile FTA. Article 1.3.2, Canada-Costa Rica FTA.

<sup>290</sup> Article 1-2.2, Canada-Jordan FTA.

<sup>291</sup> Article 29.1, Ukraine-Moldova FTA.

<sup>292</sup> Article 27.2, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>293</sup> 51 PTAs give prevalence to other multiple conflicting PTAs. See the full list in Annex I, Table 15. Many have as signatories the EFTA (11 PTAs), China (8 PTAs), the United States (7 PTAs), Singapore (6 PTAs) and Australia (6 PTAs).

exempting [...]”, “not exempt”, “not exempt [...] or abrogate [...]” the other multiple PTAs. Likewise, several other terms conveying the same meaning can be listed, including “not affect”, “not affect or nullify” or “not prevent” other PTAs or other PTAs shall “not be affected”.

In fact, PTAs falling into this classification are diverse in their conflict clause models. Many PTAs give way to the other multiple PTAs in case of conflicts by configuring their conflict clauses as follows:

“(Unless otherwise provided for in any Chapter of this Agreement,) this Agreement shall *not* be construed to *derogate from* any (international) legal obligation(s) between the Parties that *entitles* (a) good(s) or (a) service(s), or ((the) supplier(s) of (a) good(s) or service(s))/(persons), (or investors or investments of investors,) to *treatment more favo(u)rable* [emphasis added] than that accorded by this Agreement.”<sup>294</sup>

In drafting this conflict clause template, it is the intent of the parties to favour more trade liberalization. In other words, the prevalence of the other conflicting PTA is contingent on their achievement of higher trade liberalization compared to that of the PTAs containing the conflict clause in question. Only to the extent that/insofar as other multiple PTAs are more trade-liberalized, they prevail. In sharp contrast to several PTAs not regarding parallel obligations as conflicts and excluding them from the very definition of the “conflict” term, these conflict clauses confirm the existence of conflicts of norms for parallel obligations between multiple PTAs and cope with the conflict by giving way to other PTAs with stricter obligations as to trade liberalization. PTAs introducing this clause are common in supporting better liberalization in trade in goods and/or trade in services and/or investments and/or for persons. Nevertheless, not all of the PTAs share the same aim in fostering less restrictions imposed on services suppliers, persons and investments or investors since some of these qualifications are absent from the clauses.

A slight variation of the above conflict clause template reads:

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<sup>294</sup> Adopting this template are mainly PTAs concluded by the United States: Article 1.2.2, United States-Oman FTA; Article 1.2.2, United States-Bahrain FTA; Article 1.1.3, United States-Australia FTA; Article 1.2.2, United States-Morocco FTA; Article 1.1.3, United States-Singapore FTA; Article 1.3, United States-Jordan FTA; Article 1.2.3, Panama-Singapore FTA; Article 1.1.3, Jordan-Singapore FTA; Article 1.11.4, Japan-Australia Economic Partnership Agreement; Article 1.2.2, Peru-Singapore FTA.

“This Agreement shall *not* be construed to *derogate from* any international legal obligation between the Parties that *provides for more favo(u)rable treatment* [emphasis added] of goods, services, investments, or persons than that provided for under this Agreement.”<sup>295</sup>

Similar to the above conflict clause type, this clause applies to cases of parallel obligations, and the stricter obligations, when it comes to trade liberalization, imposed by other multiple PTAs will take precedence.

Another template of conflict clauses of this type is:

“*Nothing* in this Agreement shall (be construed to) *derogate from* [emphasis added] (any)/(the) (existing) right(s) (or)/(and) obligation(s) of a Party under [...] (any) other (multilateral or bilateral) agreement(s) to which (the)/(both)/(these) Parties are party.”<sup>296</sup>

Or its variation of:

“*Nothing* in this Agreement shall *derogate* [emphasis added] from the existing rights and obligations of a Party under ([...]) any other (international)/(multilateral or bilateral) agreement(s) to which it is a party.”<sup>297</sup>

And other versions are:

“*Nothing* in this Agreement shall *derogate from* [emphasis added] the existing rights and obligations of either Party under the WTO Agreement or any other international agreement to which it is a party or which is applicable to its Area.”<sup>298</sup>

Or

“*Nothing* in this Agreement shall be construed to *derogate from* any obligation of a Party vis-à-vis another Party under agreements to which these Parties are

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<sup>295</sup> Article 1.3.2, Korea-Vietnam FTA. Article 1.2.2, Korea-Australia FTA. Article 1.2.2, Korea-United States FTA.

<sup>296</sup> Article 21.2.2, Malaysia-Australia FTA. Article 1.2.2, Australia-China FTA. Article 2.2, Chapter 18, ASEAN-Australia-New Zealand FTA

<sup>297</sup> Article 1.3, Turkey-Malaysia FTA. Article 3.1, Costa Rica-China FTA. Article 18.2, New Zealand-Malaysia FTA. Article 23, Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN. Article 3.1, China-New Zealand FTA.

<sup>298</sup> Article 1.2.1, Hong Kong, China-Chile FTA. Article 3, Chapter 18, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

parties, *if* such an obligation *entitles* the latter Party to *treatment more favourable* [emphasis added] than that accorded by this Agreement.”<sup>299</sup>

Or

“*Nothing* in this Agreement shall be construed to *prejudice* fulfillment of obligations undertaken by any Contracting Party under any other international agreement to which such Contracting Party is or will become a party. This provision shall *by no means prejudice* [emphasis added] the rights of the Contracting Party to independently determine the regime of foreign economic relations with states that are not parties to this Agreement.”<sup>300</sup>

Or

“*Nothing* in this Agreement shall be construed so as to *derogate from* any of obligations of a Party under the BIT, *if* such an obligation *entitles* the other Party to *treatment more favorable* [emphasis added] than that accorded by this Agreement.”<sup>301</sup>

As argued above, the term “prejudice” is referred to in many conflict clauses giving priority to other multiple PTAs. The following is one example of such clauses:

“The provisions of this Agreement shall be (applied) *without prejudice to* [emphasis added] the rights and obligations of the Parties under the WTO Agreement and (the other agreements negotiated thereunder (,) to which they are a party (,) and any other international agreement (,) to which they are (a) party.”<sup>302</sup>

Or its slight variation is that:

“The provisions of this Agreement shall be *without prejudice* [emphasis added] to the rights and obligations of the Parties under the Marrakesh Agreement Establishing the World Trade Organization and the other agreements negotiated thereunder (hereinafter referred to as “the WTO Agreement”) to which they are a party and any other international agreement to which they are a party.”<sup>303</sup>

Other configurations of the clause are:

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<sup>299</sup> Article 10.2, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>300</sup> Article 22.1, GUAM.

<sup>301</sup> Article 9.5, Japan – Vietnam Economic Partnership Agreement. This conflict clause applies to investment issue only.

<sup>302</sup> Article 1.4, EFTA-Peru FTA. Article 39.1, EFTA-Albania FTA. Article 1.5, EFTA-Korea FTA.

<sup>303</sup> Article 4, EFTA-Singapore FTA.

“This Agreement shall apply *without prejudice to* [emphasis added] the rights and obligations of the Parties arising from bilateral and multilateral agreements to which the Parties are party [...]”<sup>304</sup>

Or

“The provisions of this Agreement shall be *without prejudice to* [emphasis added] the interpretation or application of rights and obligations under any other international agreement relating to investment to which [...]”<sup>305</sup> and one or several EFTA States are parties.”<sup>306</sup>

Or

“This Agreement shall *in no way prejudice* [emphasis added] the obligation of the Parties arising from their participation in the regional or sub-regional unions and entities, and multilateral treaties as well as in international organizations.”<sup>307</sup>

The term “affect” is exploited as well:

“*During the transitional period(s)* [...], this Agreement shall *not affect* [emphasis added] the implementation of the specific preferential arrangements governing the movement of goods either laid down in frontier agreements previously concluded between one or more Member States and [...]”<sup>308</sup> or resulting from the bilateral agreement(s) specified in Title III concluded by [...]”<sup>309</sup> in order to promote regional trade.”<sup>310</sup>

This conflict clause is limited in the temporal scope of application, i.e. the prevalence of the other multiple PTAs lasts for the stipulated transitional period(s) only. When such period lapses, it is inferred that the reversal is true, i.e. the other multiple PTAs have to give way to the PTA at issue.

Other clauses are present in such PTAs:

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<sup>304</sup> Article 1.12.1, Chapter 1, Eurasian Economic Union (EAEU)-Viet Nam FTA.

<sup>305</sup> The other party to the PTA is either Bosnia and Herzegovina or Montenegro.

<sup>306</sup> Article 3.2, EFTA-Bosnia and Herzegovina FTA. Article 3.2, EFTA-Montenegro FTA. These conflict clauses apply to investment agreements only.

<sup>307</sup> Article 5.1, Ukraine-Montenegro FTA.

<sup>308</sup> The other party to the PTA, i.e. either Bosnia and Herzegovina or the former Yugoslav Republic of Macedonia.

<sup>309</sup> The other party to the PTA, i.e. either Bosnia and Herzegovina or the former Yugoslav Republic of Macedonia.

<sup>310</sup> Article 37.2, EU-Bosnia and Herzegovina Stabilization and Association Agreement. Article 35.2, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

“The provisions of this Agreement shall *not affect* [emphasis added] the rights and privileges of the Contracting Parties granted by the Contracting Parties within the framework of economic associations, border trade, preferences for developing countries, free economic or trade areas regulated by internal legislations or international agreements.”<sup>311</sup>

Or

“Except as otherwise provided [...], (this Agreement or) any action taken under it shall *not affect* or *nullify* [emphasis added] the rights and obligations of (either side)/ (a Party) under (the)/ (other) existing agreements to which it is a (contracting) party.”<sup>312</sup>

Or

“In case an international agreement to which both Parties to this Chapter are party, including the WTO Agreement, provides for *more favourable treatment* in respect of matters covered by this Chapter for their persons (service suppliers) and/or their commercial presences, services or investments, *such more favourable treatment shall not be affected* [emphasis added] by this Agreement.”<sup>313</sup>

Likewise, this conflict clause is drafted to favour more trade liberalization in services and investment.

Using the term “exempting”, some PTAs follow suit in prioritizing other conflicting multiple PTAs.

“*Nothing* in this Agreement shall be regarded as *exempting* any Party from its existing obligations, or *abrogating* [emphasis added] the rights of any Party, under any existing international agreement, unless a contrary intention is expressly stated.”<sup>314</sup>

Or

“*Nothing* in this Agreement shall be regarded as *exempting* [emphasis added] either Party to this Agreement from its obligations under any international, regional or bilateral agreements to which it is a party and any inconsistency with

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<sup>311</sup> Article 22.2, GUAM.

<sup>312</sup> Article 31.1, Hong Kong, China-Macao, China Closer Economic Partnership Agreement. Article 18, ASEAN-Korea FTA.

<sup>313</sup> Article 8.4, Chapter 8, Eurasian Economic Union (EAEU)-Viet Nam FTA.

<sup>314</sup> Article 75, Interim Partnership Agreement between EU and Pacific States.

the provisions of this Agreement shall be resolved in accordance with the general principles of international law.”<sup>315</sup>

This conflict clause gives two ways to solve the same conflict at the same time: prevalence of the other multiple PTAs and compliance with general principles of international law.

Or

“(Considering that) *no* provision of this Agreement may/shall be interpreted as *exempting* [emphasis added] the Parties from the/their obligations (which are incumbent on them) under other international agreements, (especially the Marrakesh Agreement establishing the WTO and the other agreements negotiated thereunder)”<sup>316</sup>

Or

“This Agreement shall *not exempt* any Party *from* its *obligations*, or *abrogate* the *rights* [emphasis added] of any Party, under any existing international agreements to which it is a Party.”<sup>317</sup>

The term “prevent” is deployed in only one PTA making reference to other PTAs in trade in goods as follows:

“This Agreement shall *not prevent* [emphasis added] the extension or ratification of other agreements setting up [...] free trade areas, or the institution of other arrangements concerning cross-border trade, in accordance with Article 24 and Section 4 of the General Agreement on Customs Tariffs and Trade of 1994, and obligation to which this agreement gives rise.”<sup>318</sup>

Although being consistent in giving ways to other multiple PTAs, the PTA conflict clauses of this category differ from each other in the type of PTAs on the other side of the relations governed thereby. Few conflict clauses giving prevalence to other multiple PTAs cover both pre-existing and future multiple PTAs with partially overlapping, narrower, identical or

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<sup>315</sup> Article 80, New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>316</sup> Mainly stated in Preamble to PTAs: Preamble to the EFTA-Serbia FTA. Preamble to the EFTA-Egypt FTA. Article 4.2, EFTA-SACU FTA. Preamble to the EFTA-Lebanon FTA. Preamble to the EFTA-The former Yugoslav Republic of Macedonia FTA. Preamble to the Central European Free Trade Agreement. Preamble to the Turkey-Bosnia and Herzegovina FTA.

<sup>317</sup> Article 24.1, Pacific Island Countries Trade Agreement (PICTA).

<sup>318</sup> Article 32, Agadir Agreement.

broader state membership.<sup>319</sup> Likewise, there are several conflict clauses covering both pre-existing and future multiple PTAs with partially overlapping, identical or broader state membership<sup>320</sup> and they are valid in regulating that. The number of PTA conflict clauses giving prevalence to other multiple PTAs and putting under their coverage both pre-existing and future multiple PTAs with partially overlapping or larger state membership<sup>321</sup> is minimal and valid in regulating that. By contrast, a quite great number of conflict clauses giving prevalence to other multiple PTAs cover both pre-existing and future multiple PTAs with identical or broader state membership<sup>322</sup> and is effective in this prescription. Only one PTA has a conflict clause covering existing and future multiple PTAs with broader membership.<sup>323</sup> Two PTAs target at other pre-existing multiple PTAs with partially overlapping, narrower, identical or broader membership.<sup>324</sup>

Some conflict clauses crack the relation with pre-existing PTAs having partially overlapping, identical or broader state parties.<sup>325</sup> On the other hand, some conflict clauses cover only pre-existing PTAs with identical or broader state membership.<sup>326</sup> Similarly, just few conflict clauses concern pre-existing PTAs with partially overlapping state membership<sup>327</sup> and other

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<sup>319</sup> Article 80, New Zealand-Singapore Closer Economic Partnership Agreement. Preamble to the EFTA-Serbia FTA. Preamble to the EFTA-Egypt FTA. Article 4.2, EFTA-SACU FTA. Preamble to the EFTA-Lebanon FTA. Preamble to the EFTA-The former Yugoslav Republic of Macedonia FTA. Preamble to the Central European Free Trade Agreement. Preamble to the Turkey-Bosnia and Herzegovina FTA. Article 32, Agadir Agreement.

<sup>320</sup> Article 10.2, ASEAN-Japan Comprehensive Economic Partnership Agreement. Article 22.1, GUAM. Article 9.5, Japan-Vietnam Economic Partnership Agreement. Article 1.5, EFTA-Korea FTA. Article 1.12.1, Chapter 1, Eurasian Economic Union (EAEU)-Viet Nam FTA. Article 5.1, Ukraine-Montenegro FTA. Article 22.2, GUAM.

<sup>321</sup> Article 1.4, EFTA-Peru FTA. Article 39.1, EFTA-Albania FTA. Article 4, EFTA-Singapore FTA. Article 3.2, EFTA-Bosnia and Herzegovina FTA. Article 3.2, EFTA-Montenegro FTA.

<sup>322</sup> Article 1.11.4, Japan-Australia Economic Partnership Agreement. Article 1.2.2, Peru-Singapore FTA. Article 1.2.2, United States-Oman FTA. Article 1.2.2, United States-Bahrain FTA. Article 1.1.3, United States-Australia FTA. Article 1.2.2, United States-Morocco FTA. Article 1.1.3, United States-Singapore FTA. Article 1.3, United States-Jordan FTA. Article 1.2.3, Panama-Singapore FTA. Article 1.1.3, Jordan-Singapore FTA. Article 1.3.2, Korea-Vietnam FTA. Article 1.2.2, Korea-Australia FTA. Article 1.2.2, Korea-United States FTA. Article 2.2, Chapter 18, ASEAN-Australia-New Zealand FTA. Article 16.2, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>323</sup> Article 8.4, Chapter 8, Eurasian Economic Union (EAEU)-Viet Nam FTA.

<sup>324</sup> Article 75, Interim Partnership Agreement between EU and Pacific States. Article 24.1, Pacific Island Countries Trade Agreement (PICTA).

<sup>325</sup> Article 1.3, Turkey-Malaysia FTA. Article 3.1, Costa Rica-China FTA. Article 18.2, New Zealand-Malaysia FTA. Article 23, Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN. Article 3.1, China-New Zealand FTA. Article 1.2.1, Hong Kong, China-Chile FTA. Article 3, Chapter 18, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>326</sup> Article 21.2.2, Malaysia-Australia FTA. Article 1.2.2, Australia-China FTA.

<sup>327</sup> Article 31.1, Hong Kong, China-Macao, China Closer Economic Partnership Agreement. Article 18, ASEAN-Korea FTA.



conflict clauses take into account solely pre-existing PTAs with narrower state membership.<sup>328</sup>

In sum, quite many PTAs give ways to other conflicting multiple PTAs and, among them, several give superiority to other PTAs unconditionally. Others grant such priority not on an absolute basis, but on a conditional basis, taking into account trade- (and investment-) freeing comparison. The rationale behind such regulation is that the objective of the PTAs at issue is to push for progressive trade (and investment) liberalization. Another observation is that some have a quite broad scope in including trade in goods, services, persons and investments while other have a divergent and more restricted scope. Moreover, generally speaking, PTA parties are free to give way to other conflicting multiple PTAs and such regulation is valid.

Opposite to the above conflict-solving techniques, equivocal and ineffective approaches comprise of the confirmation of co-existence relations among multiple PTAs with conflicting norms and consultations.

#### ***3.1.4. Co-existence of multiple PTAs***

120 surveyed PTAs so far have their conflict clauses confirming the existence of other multiple PTAs.<sup>329</sup> Of which quite many involve the EFTA (15 PTAs), Singapore (14 PTAs), Japan (14 PTAs), China (14 PTAs), Panama (14 PTAs), Korea (13 PTAs), Chile (13 PTAs), the United States (12 PTAs) and Canada (10 PTAs). In contradiction, the EU and Switzerland, *inter alia*, have few trade deals (only 2 for each) of this kind. Rather than setting a hierarchy among multiple PTAs, this kind of conflict clauses leaves two or more multiple PTAs in question to co-exist and, in case of conflicts, their relations are not solved at all but remain intact.

Although the substantive content of these clauses is to confirm the co-existence of other multiple PTAs, surprisingly, the terms “co-existence” and “co-exist” have been so far absolutely absent from every conflict clause of this type.<sup>330</sup> Taking their place are, among

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<sup>328</sup> Article 37.2, EU-Bosnia and Herzegovina Stabilization and Association Agreement. Article 35.2, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>329</sup> For the full list, see Annex I, Table 16.

<sup>330</sup> Except for Article 1.2.1, the CPTPP which provides: “Recognising the Parties’ intention for this Agreement to coexist with their existing international agreements, each Party affirms:

- (a) in relation to existing international agreements to which all Parties are party, including the WTO Agreement, its existing rights and obligations with respect to the other Parties; and
- (b) in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.”

others, phrases of “*Build on*”, “*BUILD on*”, “*Building on*”, “*BUILDING ON*”, “*DETERMINED to build on*”, “*affirm*”, “*reaffirm*”, “*reaffirming*”, “*confirm*”, or “*confirming*”. Other terms are also utilized but in less frequency, to list some: “*Develop*”, “*Recognizing*”, “*Bearing in mind*”, “*Believing not*”, “*Considering*”, “*Desiring to act consistently*”, “*respect*”, “*not prevent*”, “*may maintain*” other multiple PTAs, or other multiple PTAs are “*not superseded or terminated*”.

The above-stated terms are not present in quite many formats of conflict clauses of this type.

The following part lists templates of the relevant conflict clauses existing so far in PTAs.

Among the most common templates is:

“*BUILD/Build/BUILDING/Building on their respective rights and obligations [emphasis added] under [...] other multilateral, (regional) and bilateral instruments of cooperation ([...]) (to which both Parties are party)*”<sup>331332</sup>

Its slight modification reads:

“*BUILD on their respective rights and obligations [emphasis added] under [...] other bilateral and multilateral instruments of integration and cooperation to which are party states*”<sup>333</sup>

These clause templates are featured by their common location and terms. All of them are stated in the Preambles of the relevant PTAs and refer to both rights and obligations under other multiple PTAs.

Another quite common phrase is:

“*BUILDING/Building on their (respective) rights and obligations [emphasis added] under [...] (other) (multilateral, regional (,) and bilateral) agreements (and arrangements) (to which both/the Parties are party)*”<sup>334</sup>

Its slight deviations are:

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<sup>331</sup> Using the phrases of “*BUILD*” or “*Build*” are the Preamble to the Canada-Ukraine FTA, Preamble to the Canada-Peru FTA, Preamble to the EFTA-Chile FTA, Preamble to the Canada-Honduras Free Trade Agreement, Preamble to the Nicaragua-China Taipei FTA, Preamble to the United States-Chile FTA, Preamble to the Canada-Costa Rica FTA, Preamble to the Canada-Korea FTA.

<sup>332</sup> Using the phrase of “*BUILDING*” or “*Building*” are the Preamble to the Korea-India Comprehensive Economic Partnership Agreement, Preamble to the Korea-Chile FTA, Preamble to the EFTA-Mexico FTA, Preamble to the EFTA-Tunisia FTA, Preamble to the Pakistan-China FTA, Preamble to the Chile-China FTA.

<sup>333</sup> The Preamble to the Mexico-Panama FTA.

<sup>334</sup> Preamble to the Korea-Vietnam FTA. Preamble to the United States-Oman FTA. Preamble to the Switzerland-China FTA. Preamble to the New Zealand-Korea FTA. Preamble to the Korea-Australia FTA. Preamble to the Turkey-Malaysia FTA.

“*Building/BUILD/DETERMINED to build*<sup>335</sup> on their (respective) *rights* and *obligations* [emphasis added] under [...] (other) (multilateral, regional, and bilateral) agreements (and arrangements) to which they are both parties ([...])”<sup>336</sup>

Or

“[...] *building* on their respective *rights* and *obligations* [emphasis added] under the Marrakesh Agreement establishing the World Trade Organization (hereinafter referred to as the “WTO Agreement”) and the other agreements negotiated thereunder [...]”<sup>337</sup>

Or

“*BUILDING* on their respective *rights* and *obligations* [emphasis added] under the Marrakesh Agreement Establishing the World Trade Organization/WTO, (done on 15 April 1994) and (the) other agreements negotiated thereunder ((hereinafter referred to as “the WTO Agreement”)) and other multilateral and bilateral instruments of co-operation (to which they are both parties)”<sup>338</sup>

One variation with some additions reads:

“*BUILDING/Building* on their (respective) *rights, obligations* and *undertakings* [emphasis added] ([...]) under ([...]) other (relevant) (multilateral, regional/plurilateral and bilateral) agreements (and arrangements) (applicable to them)”<sup>339</sup>

Some distinct templates even appear in just one PTA for each:

“*Desiring to act consistently* [emphasis added] with their respective *rights, obligations* and *undertakings* under [...] other multilateral, regional and bilateral agreements and arrangements to which they are party [...]”<sup>340</sup>

And

<sup>335</sup> Only one PTA uses the phrase “DETERMINED to build on”: Preamble to the Japan-Australia Economic Partnership Agreement.

<sup>336</sup> Preamble to the Korea-Colombia FTA. Preamble to the United States-Morocco FTA. Preamble to the United States-Peru FTA. Preamble to the United States-Australia FTA. Preamble to the Australia-Chile FTA. Preamble to the Japan-Australia Economic Partnership Agreement.

<sup>337</sup> Preamble to the EFTA-Georgia FTA. Preamble to the EFTA-Bosnia and Herzegovina FTA. Preamble to the EFTA-Central America (Costa Rica and Panama) FTA.

<sup>338</sup> Preamble to the Iceland-China FTA. Preamble to the EFTA-Korea FTA. Preamble to the EFTA-Singapore FTA. Preamble to the EFTA-Canada FTA.

<sup>339</sup> Preamble to the Australia-China FTA. Preamble to the China-New Zealand FTA. Preamble to the Thailand-New Zealand Closer Economic Partnership Agreement. Preamble to the Panama-Singapore FTA. Preamble to the Singapore-Australia FTA. Preamble to the India-Singapore Comprehensive Economic Cooperation Agreement. Preamble to the Hong Kong, China-Chile FTA.

<sup>340</sup> Preamble to the Pacific Island Countries Trade Agreement (PICTA).

“*DEVELOP* their respective *rights* and *obligations* [emphasis added] derived from [...] other treaties of which they are a party”<sup>341</sup>

And

“[...] *recognising* [emphasis added] their existing and future rights and obligations arising from other bilateral, regional and multilateral agreements [...]”<sup>342</sup>

And

“*Bearing in mind* their *rights* and *obligations* [emphasis added] under other international agreements to which they are parties ([...])”<sup>343</sup>

And

“*believing* that *not* a single provision of the present Agreement shall be *interpreted* as a *departure* of the Parties from their *commitments* [emphasis added] concerning other international bilateral and multilateral agreements in this area [...]”<sup>344</sup>

And

“*Considering* the commitment of the EFTA States and Jordan to free trade, *building on* their respective *rights* and *obligations* [emphasis added] [...] under other multilateral, regional and bilateral instruments of co-operation”<sup>345</sup>

Indeed, among the most frequent model of conflict clauses is the following:

“The Parties *affirm* [emphasis added] their (existing) rights and obligations with respect to each other under ([...]) (any) (other) (existing) (multilateral and bilateral) agreements (related to trade) to which the/such/both Parties/they are party/parties ([...]).”<sup>346</sup>

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<sup>341</sup> Preamble to the Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>342</sup> Preamble to the Mauritius-Pakistan Preferential Trade Agreement.

<sup>343</sup> Preamble to the Japan-Thailand Economic Partnership Agreement. Preamble to the Japan-Philippines Economic Partnership Agreement. Preamble to the Japan-Singapore New-Age Economic Partnership Agreement.

<sup>344</sup> Preamble to the Ukraine-Moldova FTA.

<sup>345</sup> Preamble to the EFTA-Jordan FTA.

<sup>346</sup> Article 1.5, Section B, Chapter 1, General Definitions and Initial Provisions, the CETA. Article 1.2.1, Canada-Ukraine FTA. Article 1.3, China-Korea FTA. Article 1.2.1, Australia-China FTA. Article 1.2, Canada-Korea FTA. Article 1.2.1, Korea-Colombia FTA. Article 1.3.1, Canada-Honduras Free Trade Agreement. Article 4.1, Iceland-China FTA. Article 1.2, Chile-Vietnam FTA. Article 16.2.1, India-Malaysia Comprehensive Economic Cooperation Agreement. Article 1.04.1, Canada-Panama FTA. Article 1.2.1, Malaysia-Chile FTA. Article 1-2.1, Canada-Jordan FTA. Article 3.1, Peru-China FTA. Article 102.1, Canada-Peru FTA. Article 102.1, Canada-Columbia FTA. Article 1.2, Australia-Chile FTA. Article 1.3.1, US-Panama Trade Promotion

And its minor variation of:

“The Parties *affirm* their (existing) *rights* and *obligations* [emphasis added] with respect to each other (in accordance with) [...] other (international) agreements to which both Parties are party.”<sup>347</sup>

It has its own variation of:

“Each Party *affirms* its existing *rights* and *obligations* [emphasis added] with respect to each other under existing bilateral and multilateral agreements to which both/the Parties are party [...]”<sup>348</sup>

The following template appears once only:

“The Contracting Parties *affirm* their existing *rights* and *obligations* [emphasis added] with respect to each other under [...] other Treaties/Agreements to which such Contracting Parties are signatories.”<sup>349</sup>

Nonetheless, the following is present in many PTAs; among them lot involve Japan.

“The Parties/Countries<sup>350</sup> *reaffirm* [emphasis added] their (existing) rights and obligations (with respect to each other) under ([...]) (any) other (existing) (bilateral and multilateral) A(a)greement(s) to which both/the (Parties)/(Countries) are party/parties.”<sup>351</sup>

And its slight deviations are:

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Agreement. Article 1.3, United States-Chile FTA. Article 1.03.1, Panama-China FTA. Article I.3.1, Canada-Costa Rica FTA. Article 112, China-Singapore FTA. Article 16.5.1, India-Singapore Comprehensive Economic Cooperation Agreement. Article 1.2.1, Korea-United States FTA. Article 1.1.2, United States-Australia FTA. Article 1.2, United States-Colombia FTA. Article 1.2, United States-Peru FTA. Article 1.03, Nicaragua-China Taipei FTA. Article 3, Pakistan-China FTA. Article 3, Chile-China FTA.

<sup>347</sup> Article 1.3.1, Korea-Chile FTA. Article 1-04.1, Israel-Mexico FTA.

<sup>348</sup> Article 1.2.1, New Zealand-Korea FTA. Article 1.2.1, Korea-Australia FTA. Article 1.2.1, United States-Oman FTA. Article 1.2.1, United States-Bahrain FTA. Article 1.2.1, United States-Morocco FTA.

<sup>349</sup> Article 2.2, Mauritius-Pakistan Preferential Trade Agreement.

<sup>350</sup> Only one PTA use the term “Countries”: Article 11.1, Japan-Malaysia Economic Partnership Agreement.

<sup>351</sup> Article 1.11.1, Japan-Mongolia Economic Partnership Agreement. Article 1.11.1, Japan-Australia Economic Partnership Agreement. Article 1.3.1, Singapore-Costa Rica FTA. Article 1.3, Chapter 1, Chile-Thailand FTA. Article 2.1, Japan-Peru Economic Partnership Agreement. Article 12.1, Japan-India Comprehensive Economic Partnership Agreement. Article 7.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership. Article 1.2.1, Peru-Singapore FTA. Article 9.1, Japan-Vietnam Economic Partnership Agreement. Article 133.1, Pakistan-Malaysia Closer Economic Partnership Agreement. Article 1.03.1, El Salvador-Honduras-Chinese Taipei. Article 9.1, Brunei Darussalam-Japan Economic Partnership Agreement. Article 12.1, Japan-Indonesia Economic Partnership Agreement. Article 11.1, Japan-Thailand Economic Partnership Agreement. Article 3, Chile-Japan Strategic Economic Partnership Agreement. Article 11.1, Japan-Philippines Economic Partnership Agreement. Article 1.03.2, Guatemala-Chinese Taipei FTA. Article 11.1, Japan-Malaysia Economic Partnership Agreement. Article 1.3.1, Korea-Vietnam FTA. Article 1.4.1, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

“The Parties *reaffirm* [emphasis added] their existing/respective rights and obligations with respect to each other under existing bilateral, (regional) and multilateral agreements to which both Parties are party [...]”<sup>352</sup>

And the following is used once:

“*REAFFIRM* [emphasis added] the rights and obligations derived from [...] free trade agreements and integration agreements between the Parties”<sup>353</sup>

Other formats available in PTAs are:

“Each Party *reaffirms* [emphasis added] its (existing) rights and obligations (vis-à-vis another Party) under [...] other agreements to which both/the/these Parties are party.”<sup>354</sup>

And

“Each Party *reaffirms* [emphasis added] its rights and obligations under [...] other agreements to which any one or more of the GCC Members States and Singapore are party thereto.”<sup>355</sup>

The phrasing below can be found in few PTAs:

“*REAFFIRMING/Reaffirming* [emphasis added] the/their (respective) rights(,) (and) obligations (and undertakings) (of each Party/ the (respective) Parties) under [...] other (existing) (international) (multilateral, regional and bilateral) agreements and arrangements (to which they are both Parties).”<sup>356</sup>

Two other forms of conflict clauses available in PTAs of this group are:

“The Parties *confirm* [emphasis added] their rights and obligations under the WTO Agreement/ the Marrakesh Agreement establishing the World Trade Organization (hereinafter referred to as “the WTO Agreement”) (,) (and) the other agreements negotiated thereunder to which they are (a) party/parties, and (under)

<sup>352</sup> Article 1.2.1, Korea-India Comprehensive Economic Partnership Agreement. Article 1.2.2, Panama-Singapore FTA. Article 1.3.1, Korea-Singapore FTA. Article 1.1.2, Jordan-Singapore FTA. Article 1.1.2, United States-Singapore FTA. Article 1.2, United States-Jordan FTA.

<sup>353</sup> Preamble to the Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>354</sup> Article 21.2.1, Malaysia-Australia FTA. Article 2.1, Chapter 18, ASEAN-Australia-New Zealand FTA. Article 16.1, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>355</sup> Article 1.5.1, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>356</sup> Preamble to the ASEAN-Australia-New Zealand FTA. Preamble to the ASEAN-India Framework Agreement on Comprehensive Economic Cooperation. Preamble to the ASEAN-Japan Comprehensive Economic Partnership Agreement. Preamble to the United States-Singapore FTA.

any other international agreement to which they are (a) party/parties/applicable between them.”<sup>357</sup>

And

“The Parties *confirm* [emphasis added] their rights and obligations under the Marrakesh Agreement establishing the WTO/ the WTO Agreement (,)/(and) the other agreements negotiated thereunder/under the WTO to which they are a party(,) and any other international agreement to which they are a party.”<sup>358</sup>

Several other templates are also just used in few PTAs:

“The Parties *confirm* [emphasis added] their (existing) rights and obligations ([...]) under ([...]) (any) other (international) agreements to which they are (a) party/parties (or which are applicable to a Party).”<sup>359</sup>

And

“The Parties *confirm* [emphasis added] the (existing) rights and obligations (in force) between them in accordance with [...] other (international) (treaties or/and) agreements to/of which they/the/both Parties are (a) Party/parties.”<sup>360</sup>

And

“*Confirming* their *rights, obligations and undertakings* [emphasis added] under the Marrakesh Agreement Establishing the World Trade Organisation/ the WTO Agreement (,) (and) other multilateral, regional and bilateral agreements and arrangements”<sup>361</sup>

And

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<sup>357</sup> Article 1.4.1, Chapter 1, EFTA-Georgia FTA. Article 3.1, EFTA-Bosnia and Herzegovina FTA. Article 1.5.1, EFTA-Central America (Costa Rica and Panama) FTA. Article 1.3.1, Switzerland-China FTA. Article 4.1, EFTA-SACU FTA. Article 4, EFTA-Chile FTA. Article 3, Turkey-Chile FTA.

<sup>358</sup> Article 1.3.1, EFTA – Ukraine FTA. Article 1.4, EFTA – Columbia FTA. Article 42.2, EFTA – Tunisia FTA.

<sup>359</sup> Article 3.1, EFTA-Montenegro FTA. Article 1.4.1, EFTA-Hong Kong, China FTA. Article 1.2.1, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Article 6.5, Agreement on Trade in Goods between Turkey and Korea.

<sup>360</sup> Article 1.3.1, Mexico-Panama FTA. Article 1.3.1, Panama-Peru FTA. Article 1.3.1, Costa Rica-Peru FTA. Article 1.3, Peru-Mexico Commercial Integration Agreement. Article 1.04.1, Panama-Guatemala FTA. Article 1.04.1, Panama-Nicaragua FTA. Article 1.04.1, Panama-Honduras FTA. Article 1.3.1, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras). Article 20.2, Chile-Colombia FTA. Article 1.3, Panama-Chile Treaty of Free Trade. Article 1-03.1, Mexico-Uruguay FTA. Article 1.04.1, Panama-El Salvador (Panama-Central America) FTA.

<sup>361</sup> Preamble to the Hong Kong, China-New Zealand Closer Economic Partnership Agreement. Preamble to the New Zealand-Singapore Closer Economic Partnership Agreement.

“*RESPECT* their/the (respective) *rights* and *obligations* [emphasis added] derived from/under [...] other bilateral and multilateral (integration and) cooperation instruments.”<sup>362</sup>

Some templates of conflict clauses appear only one time in PTAs. For instance:

“Member States *may maintain* [emphasis added] preferential trade and other trade related arrangements existing at the time of entry into force of this Protocol”<sup>363</sup>

And

“This Agreement shall *not prevent* [emphasis added] the maintenance or establishment of customs unions, free trade areas or arrangements for cross-border trade of the Parties with third countries.”<sup>364</sup>

And

“Unless specified otherwise, previous agreements between the Member States of the European Union and/or the European Community and/or the European Union and Korea are *not superseded* or *terminated* [emphasis added] by this Agreement.”<sup>365</sup>

And

“The Parties, as far as they are prepared, shall accede to the international agreements that ensure the establishment and operation of the SES. Each Party shall abide by a concerted consistency in acceding to such international agreements. *None* of the Parties may *hinder* the other Party *from advancing more rapidly to a higher level of integration*. The difference in the level and pace of integration means that each Party shall *independently determine* [emphasis added] in what areas of development of integration or individual integrative actions it takes part and to what extent.”<sup>366</sup>

Parallel to conflict clauses of other types, those on the recognition of the state of co-existence among multiple PTAs vary in terms of the other multiple PTAs in the relation governed thereunder, in particular, in regards of their comparative temporal scope of application and

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<sup>362</sup> Preamble to the Panama-Honduras FTA. Preamble to the El Salvador-Honduras-Chinese Taipei FTA. Preamble to the Panama-China FTA. Preamble to the Panama-El Salvador (Panama-Central America) FTA.

<sup>363</sup> Article 27.1, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>364</sup> Article 16, Turkey-Jordan FTA.

<sup>365</sup> Article 15.14.1, EU-Korea FTA.

<sup>366</sup> Article 5, Common Economic Zone (CEZ).



membership. One clause limits its application to existing multiple PTAs with narrower membership.<sup>367</sup> Several others, however, aim at other existing multiple PTAs with larger membership.<sup>368</sup> In contradiction, lots of conflict clauses recognize the co-existence of the PTAs at issue only with other existing multiple PTAs having either identical or broader state membership.<sup>369</sup>

A negligible number of PTAs target other existing PTAs with whatever membership, including partially identical, narrower, identical or even broader geographical coverage.<sup>370</sup> Other existing and future PTAs with identical membership are included by the conflict clauses under the fewer PTAs at issue.<sup>371</sup> Only one single PTA conflict clause tackles the relation with both existing and future PTAs with narrower geographical coverage.<sup>372</sup> Likewise, few PTAs of this type are concerned about other existing and future PTAs with broader membership.<sup>373</sup> This also holds true for PTAs with clauses on relations with other existing

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<sup>367</sup> Article 15.14.1, EU-Korea FTA.

<sup>368</sup> Article 1.04.1, Panama-Guatemala FTA. Article 1.04.1, Panama-Nicaragua FTA. Article 1.04.1, Panama-Honduras FTA. Article 1.3.1, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras). Article 1.04.1, Panama-El Salvador (Panama-Central America) FTA.

<sup>369</sup> Article 2.2, Mauritius-Pakistan Preferential Trade Agreement. Article 1.2, United States-Colombia FTA. Article 1.2, United States-Peru FTA. Article 1.03, Nicaragua-China Taipei FTA. Article 3, Pakistan-China FTA. Article 3, Chile-China FTA. Article 1.2.1, Canada-Ukraine FTA. Article 1.3, China-Korea FTA. Article 1.2.1, Australia-China FTA. Article 1.2, Canada-Korea FTA. Article 1.2.1, Korea-Colombia FTA. Article 1.3.1, Canada-Honduras Free Trade Agreement. Article 4.1, Iceland-China FTA. Article 1.2, Chile-Vietnam FTA. Article 1.04.1, Canada-Panama FTA. Article 1.2.1, Malaysia-Chile FTA. Article 1-2.1, Canada-Jordan FTA. Article 3.1, Peru-China FTA. Article 102.1, Canada-Peru FTA. Article 102.1, Canada-Columbia FTA. Article 1.2, Australia-Chile FTA. Article 1.3.1, US-Panama Trade Promotion Agreement. Article 1.3, United States-Chile FTA. Article 1.03.1, Panama-China FTA. Article 1.3.1, Canada-Costa Rica FTA. Article 112, China-Singapore FTA. Article 16.5.1, India-Singapore Comprehensive Economic Cooperation Agreement. Article 1.2.1, Korea-United States FTA. Article 1.1.2, United States-Australia FTA. Article 1.2.1, New Zealand-Korea FTA. Article 1.2.1, Korea-Australia FTA. Article 1.2.1, United States-Oman FTA. Article 1.2.1, United States-Bahrain FTA. Article 1.2.1, United States-Morocco FTA. Article 1.3.1, Singapore-Costa Rica FTA. Article 1.3, Chapter 1, Chile-Thailand FTA. Article 1.2.1, Peru-Singapore FTA. Article 1.3.1, Korea-Vietnam FTA. Article 1.4.1, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership. Article 1.3.1, Korea-Chile FTA. Article 1.3, Peru-Mexico Commercial Integration Agreement. Article 20.2, Chile-Colombia FTA. Article 1.3, Panama-Chile Treaty of Free Trade. Article 1.2.1, Korea-India Comprehensive Economic Partnership Agreement. Article 1.2.2, Panama-Singapore FTA. Article 1.3.1, Korea-Singapore FTA. Article 1.1.2, Jordan-Singapore FTA. Article 1.1.2, United States-Singapore FTA. Article 1.2, United States-Jordan FTA. Article 1.2.1, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Article 21.2.1, Malaysia-Australia FTA.

<sup>370</sup> Article 27.1, Southern African Development Community (SADC) - Accession of Seychelles. Preamble to the ASEAN-Australia-New Zealand FTA.

<sup>371</sup> Preamble to the Iceland-China FTA. Preamble to the EFTA-Korea FTA.

<sup>372</sup> Article 1.5.1, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>373</sup> Article 1.3.1, Mexico-Panama FTA. Article 1.3.1, EFTA-Ukraine FTA. Article 1.4, EFTA-Columbia FTA. Article 42.2, EFTA-Tunisia FTA. Article 1.5.1, EFTA-Central America (Costa Rica and Panama) FTA. Article 3, Turkey-Chile FTA. Article 6.5, Agreement on Trade in Goods between Turkey and Korea.

and future multiple PTAs with narrower or identical state membership since only one PTA is of this group so far.<sup>374</sup>

In severe contradistinction, quite many PTAs proclaim their co-existence tie with other both existing and future PTAs with identical or broader geographical overlap.<sup>375</sup> Nevertheless, only one PTA has its conflict clauses covering other trade arrangements with partially identical or broader state parties.<sup>376</sup> Besides, not many PTAs have their clauses on relations with other existing and future PTAs with partially overlapping, identical or broader state signatories.<sup>377</sup> This is also the case for PTAs stipulating their co-existence interaction with existing and future PTAs regardless of the geographical application of the latter.<sup>378</sup>

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<sup>374</sup> Preamble to the Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>375</sup> Preamble to the Pacific Island Countries Trade Agreement (PICTA). Preamble to the Hong Kong, China-Chile FTA. Preamble to the Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Preamble to the Japan-Thailand Economic Partnership Agreement. Preamble to the Japan-Philippines Economic Partnership Agreement. Preamble to the Japan-Singapore New-Age Economic Partnership Agreement. Preamble to the Mexico-Panama FTA. Preamble to the Korea-Vietnam FTA. Preamble to the United States-Oman FTA. Preamble to the New Zealand-Korea FTA. Preamble to the Korea-Australia FTA. Preamble to the Korea-Colombia FTA. Preamble to the United States-Morocco FTA. Preamble to the United States-Peru FTA. Preamble to the United States-Australia FTA. Preamble to the Australia-Chile FTA. Preamble to the Japan-Australia Economic Partnership Agreement. Article 1.5, Section B, Chapter 1, General Definitions and Initial Provisions, the CETA. Article 16.2.1, India-Malaysia Comprehensive Economic Cooperation Agreement. Article 1.11.1, Japan-Mongolia Economic Partnership Agreement. Article 1.11.1, Japan-Australia Economic Partnership Agreement. Article 2.1, Japan-Peru Economic Partnership Agreement. Article 12.1, Japan-India Comprehensive Economic Partnership Agreement. Article 7.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership. Article 9.1, Japan-Vietnam Economic Partnership Agreement. Article 133.1, Pakistan-Malaysia Closer Economic Partnership Agreement. Article 1.03.1, El Salvador-Honduras-Chinese Taipei. Article 9.1, Brunei Darussalam-Japan Economic Partnership Agreement. Article 12.1, Japan-Indonesia Economic Partnership Agreement. Article 11.1, Japan-Thailand Economic Partnership Agreement. Article 3, Chile-Japan Strategic Economic Partnership Agreement. Article 11.1, Japan-Philippines Economic Partnership Agreement. Article 1.03.2, Guatemala-Chinese Taipei FTA. Article 11.1, Japan-Malaysia Economic Partnership Agreement. Preamble to the Canada-Korea FTA. Preamble to the Korea-India Comprehensive Economic Partnership Agreement. Article 1-04.1, Israel-Mexico FTA. Article 1.3.1, Panama-Peru FTA. Article 1.3.1, Costa Rica-Peru FTA. Article 1-03.1, Mexico-Uruguay FTA. Article 2.1, Chapter 18, ASEAN-Australia-New Zealand FTA. Article 16.1, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation. Preamble to the United States-Singapore FTA. Article 1.4.1, Chapter 1, EFTA-Georgia FTA. Article 3.1, EFTA-Bosnia and Herzegovina FTA. Article 1.3.1, Switzerland-China FTA. Article 4.1, EFTA-SACU FTA. Article 4, EFTA-Chile FTA.

<sup>376</sup> Article 1.4.1, EFTA-Hong Kong, China FTA.

<sup>377</sup> Preamble to the Ukraine-Moldova FTA. Preamble to the Australia-China FTA. Preamble to the China-New Zealand FTA. Preamble to the Thailand-New Zealand Closer Economic Partnership Agreement. Preamble to the Panama-Singapore FTA. Preamble to the Singapore-Australia FTA. Preamble to the India-Singapore Comprehensive Economic Cooperation Agreement. Preamble to the Mauritius-Pakistan Preferential Trade Agreement. Preamble to the Pakistan-China FTA. Preamble to the Chile-China FTA. Preamble to the Panama-Honduras FTA. Preamble to the Panama-El Salvador (Panama-Central America) FTA. Preamble of the Hong Kong, China-New Zealand Closer Economic Partnership Agreement. Preamble to the New Zealand-Singapore Closer Economic Partnership Agreement. Article 3.1, EFTA-Montenegro FTA.

<sup>378</sup> Preamble to the EFTA-Singapore FTA. Preamble to the EFTA-Canada FTA. Preamble to the EFTA-Jordan FTA. Preamble to the Korea-Chile FTA. Preamble to the EFTA-Mexico FTA. Preamble to the EFTA-Tunisia FTA. Preamble to the Switzerland-China FTA. Preamble to the Turkey-Malaysia FTA. Preamble to the EFTA-

In spite of the above different phrasing, all conflict clauses of this type, at the end of the day, confirm the intent of the parties to the PTAs at issue to respect the rights and obligations under other multiple PTAs. The differences among these clauses are in their scope of application, depending on whether they refer to either or both of pre-existing and future PTAs with partially overlapping, narrower, identical or broader membership.

### *3.1.5. Consultations*

The terms “consultation(s)” or “consult” are present in quite many PTA conflict clauses but none of them denotes the interpretation of these concepts. However, it can be understood as the process of formal exchange of information, discussions and negotiations between relevant PTA parties. During consultations, PTA parties can determine if there is any real or potential impact of other multiple PTAs on the PTA at issue; if yes, whether it is a (real) conflict and, if yes again, how it is solved, and if the conflict is not solved without affecting either of the two conflicting norms, which resolution acceptable to all relevant parties is. Different from other above-mentioned ways to solve conflicts which involve only the party in face of the conflict to find the way out by itself, this method requires efforts and goodwill from all Parties to the PTAs in opposition with each other and all have to contribute opinions to the ultimate conflict-solving outcomes.

So far, some surveyed 81 PTAs have their conflicts with other multiple PTAs to be solved through consultations.<sup>379</sup> Among them, many involve Turkey (15 PTAs), Japan (12 PTAs), the EFTA (10 PTAs), China (10 PTAs), Singapore (9 PTAs), the EU (8 PTAs) and Australia (8 PTAs). Although a relatively great deal of PTAs have clauses on consultations to solve normative conflicts and each has its own form of existence, their conflict clauses can be grouped in several clusters according to their substantive contents.

*Firstly*, several PTAs indicate solely the element of consultations in their conflict clauses.<sup>380</sup>

Hence, the subsequent provisions can be found in these PTAs.

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Georgia FTA. Preamble to the EFTA-Bosnia and Herzegovina FTA. Preamble to the EFTA-Central America (Costa Rica and Panama) FTA. Preamble to the ASEAN-India Framework Agreement on Comprehensive Economic Cooperation. Preamble to the ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>379</sup> For the full list of PTAs, see Annex I, Table 17.

<sup>380</sup> *Ibid.*

“When a Party enters into a customs union or free trade agreement with a third party it shall, upon *request* by (any) other Party, be prepared to enter into *consultations* [emphasis added] with the requesting Party.”<sup>381</sup>

The following article is found in one PTA as a slight departure from the above:

“In case a Party establishes a customs union with a non-Party, it shall inform the other Party. Upon request of the other Party, the Parties shall enter into *consultations* with a view to *examining the possible impact* of the customs union on the *implementation* [emphasis added] of this Agreement.”<sup>382</sup>

*Secondly*, adding to the element of “consultations”, some PTA conflict clauses strictly burden the obligation to afford an adequate opportunity for consultations on the other side of PTAs.<sup>383</sup> To cover both factors, some conflict clauses read:

“If a Party considers that the maintenance or establishment of (a) customs union(s), (a) free trade area(s), (an) arrangement(s) for frontier trade or another/other preferential agreement(s) by another Party has the effect of altering the trade regime provided for by this Agreement, it may request *consultations* (with that Party). The/that Party (concluding such agreement) shall *afford adequate opportunity* [emphasis added] for consultations with the requesting Party.”<sup>384</sup>

Other clauses provide:

“When a Party enters into a customs union or free trade agreement with a third party it shall, upon request by any other Party, afford *adequate opportunity* for *consultations* [emphasis added] with the requesting Party.”<sup>385</sup>

And

“If a Contracting Party concludes a preferential agreement with a non Party, it shall upon request from the other Contracting Party, afford *adequate opportunity*

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<sup>381</sup> Article 2.2, Ukraine-Montenegro FTA. Article 1.3.3, EFTA-Ukraine FTA. Article 39.3, EFTA-Albania FTA. Article 42.3, EFTA-Tunisia FTA.

<sup>382</sup> Article 8.2, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>383</sup> For the full list of PTAs, see Annex I, Table 17.

<sup>384</sup> Article 1.4.2, EFTA-Georgia FTA. Article 3.3, EFTA-Bosnia and Herzegovina FTA. Article 1.5.2, EFTA-Central America (Costa Rica and Panama) FTA. Article 3.3, EFTA-Montenegro FTA. Article 1.4.2, EFTA-Hong Kong, China FTA.

<sup>385</sup> Article 41.3, EFTA-Serbia FTA.

for *consultations* [emphasis added] on any additional benefits as granted therein.”<sup>386</sup>

*Thirdly*, some PTAs instead supplement the objective of a mutually satisfactory solution to their conflict clauses on consultations.<sup>387</sup> For example,

“If either Party considers there is any inconsistency between this Agreement and any other Agreement to which both Parties are parties, the Parties shall *consult* each other with a view to *finding a mutually satisfactory solution* [emphasis added].”<sup>388</sup>

Few conflict clauses refer not only to the consultation measure but also to its objective as a way out of conflicts.

“If a Party considers that a provision of this Additional Protocol/Agreement is incompatible/ inconsistent with a provision of another/one other agreement in/to which that Party/it and at least another Party are parties/party, upon request, said Parties/the relevant Parties to the other agreement shall hold *consultations/consult* in order to *reach/with a view to reaching a mutually satisfactory solution* [emphasis added].”<sup>389</sup>

*Fourthly*, quite distinct from the preceding cases, there are also PTAs with conflict clauses on consultations and their institutional framework.<sup>390</sup> All of these PTAs, except for one, are concluded by Turkey and their clauses provide:

“In case the rights and obligations provided for under this Agreement are being affected, any Party may request to hold *consultations within the Joint Committee* [emphasis added] concerning agreements establishing or adjusting customs unions or free trade areas and, where required, on other major issues related to the Parties’ respective trade policies with third countries.”<sup>391</sup>

Another model of the clauses is:

“(On/At the request of a Party,) *consultations* between the Parties/them shall take place *within the Joint Committee/ the Association Council/ the Association*

<sup>386</sup> Article 8, MERCOSUR-India PTA.

<sup>387</sup> For the full list of PTAs, see Annex I, Table 17.

<sup>388</sup> Article 18.6, Thailand-New Zealand Closer Economic Partnership Agreement. Article 1906, Thailand-Australia FTA.

<sup>389</sup> Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement. Article 1.2.2, CPTPP.

<sup>390</sup> For the full list of PTAs, see Annex I, Table 17.

<sup>391</sup> Article 4.1, Turkey-Moldova FTA. Article 3.2, Mauritius-Turkey FTA.

*Committee* concerning agreements establishing (or adjusting) customs unions or free trade areas and, where required/appropriate, on other major issues related to their/the Parties' respective trade policy/policies with non-parties/third countries. ((In particular, in the event of accession,) such *consultations* shall take place so as to ensure that account can be/is *taken* of the *mutual interests* of the Parties (stated in this Agreement).)"<sup>392</sup>

All of the above indicate clearly the institutional framework within which the consultations must take place which is the institute established by the relevant PTAs. Their names vary by PTAs, including the Joint Committee, the Association Council or the Association Committee. In other words, the PTA parties cannot hold the consultation outside such institutes. Divergent from these PTAs, for the above-mentioned PTAs, PTA parties are free to conduct consultations among themselves without referring to a third-party. Only two PTAs<sup>393</sup> count mutual interests of Parties as factors to be taken into consideration during consultations; but such mention is redundant as, in its absence, mutual sakes of Parties are still the bottom line of such discussions.

Nevertheless, the following templates are employed in several PTAs concluded by the EU.

"*Consultations* between the Parties shall take place *within the Stabilisation and Association Council* [emphasis added] concerning the Agreements [...] and, where requested, on other major issues related to their respective trade policies towards third countries."<sup>394</sup>

Its slight variation is formulated as follows:

"*Consultation(s)* between the Parties shall take place *within the Association Committee/Council* concerning agreements establishing (such) customs unions or free trade areas and, where requested, on other major issues related to their respective trade policy/policies with third countries."<sup>395</sup>

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<sup>392</sup> Article 6.6.2, Agreement on Trade in Goods between Turkey and Korea. Article 4.2, Turkey-Chile FTA. Article 15.2, Turkey-Syria FTA. Article 13.2, Egypt-Turkey FTA. Article 16.2, Turkey-Tunisia FTA. Article 56.2, EU-Chile Association Agreement.

<sup>393</sup> Article 13.2, Egypt-Turkey FTA. Article 16.2, Turkey-Tunisia FTA.

<sup>394</sup> Article 37.3, EU-Bosnia and Herzegovina Stabilization and Association Agreement. Article 39.3, EU-Montenegro Stabilization and Association Agreement. Article 36.3, EU-Albania Stabilization and Association Agreement. Article 35.3, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>395</sup> Article 21.2, EU-Algeria Euro-Mediterranean Association Agreement. Article 22.2, EU-Lebanon Euro-Mediterranean Association Agreement. Article 21.2, EU-Egypt Euro-Mediterranean Association Agreement.

*Fifthly*, it can be said that most PTAs have their conflict clauses referring to not only consultations but also setting the timing and consultation objectives.<sup>396</sup> Broadly speaking, such clauses request “immediate” consultation without clarifying what is meant by “immediacy”; however, literally, such consultations should be held without any undue delay. Besides, these clauses also set forth that consultations must arrive at a solution which is satisfactory to all relevant parties. However, the two additions of the timing and goal of consultations seem to be redundant as, in their absence, the consultation by parties will inherently meet these two elements. Unlike the above template, no indication of where to convene the consultation is made. Maybe between the relevant parties only or within a certain institutional framework, it is up to the parties.

Interestingly, all of the PTAs belonging to this classification adopt a more or less similar template for their clauses:

“(Unless otherwise provided in this Agreement,) in the event of any inconsistency between this Agreement and ([...]) (any) other (existing) (multilateral or bilateral) agreement(s) to which both/two or more/the Parties are party/parties, the/such Parties shall *immediately consult* (with each other) with a view *to finding a mutually satisfactory solution* [emphasis added].”<sup>397</sup>

*Sixthly*, at the other end of the extremity, only two PTAs on the list have conflict clauses on only the consultation measure, its objectives and the legal principles governing the measure. Analogous to the above templates, the aim of consultations set forth in the clauses of this type is also an escape from conflicts which pleases all parties relevant to the conflicts at issue. Additionally, these two PTAs also point out the principles of public international law guiding the consultation process, which are customary rules of interpretation. By making reference to customary rules of interpretation, these conflict clauses seem to direct mainly at tackling apparent, rather than absolute, conflictual relations. These conflict clauses provide:

“In (the) case of any inconsistency between (the provisions of) this Agreement and (any) other agreements ([...]) (to which both Parties are parties), the Parties shall *consult* (with each other) *to arrive at/with a view to finding a mutually satisfactory (re)solution in accordance with (customary rules of interpretation of)*

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<sup>396</sup> For the full list of PTAs, see Annex I, Table 17.

<sup>397</sup> Ibid.

*public international law* [emphasis added], (unless otherwise provided in this Agreement).”<sup>398</sup>

*Seventhly*, likewise, only a single PTA squeezes the four elements of (1) consultations, (2) provision of adequate opportunity, (3) consultation objectives and (4) legal principles into its conflict clauses and reads as follows:

“If a Party considers that the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade or other preferential agreements by the other Party has the effect of altering the trade regime provided for by this Agreement, or that there is inconsistency between this Agreement and other agreements to which both Parties are parties, it may *request consultations*. The other Party shall afford *adequate opportunity* for consultations with the requesting Party with a view *to finding a mutually satisfactory solution* in accordance with *customary rules of interpretation of public international law* [emphasis added].”<sup>399</sup>

Customary rules of interpretation of public international law are once again quoted as the principles guiding the consultation procedure. As mentioned above, interpretation rules are only applicable to false conflicts not to absolute conflicts to interpret them away. So, the conflict clauses with above-stated principles are quite limited in the scope of application in that they are applicable to apparent conflicts only, not expanded to true conflicts.

*Eighthly*, other conflict clauses are structured based on elements of (1) consultations, (2) the timing, (3) objectives and (4) legal principles thereof.<sup>400</sup>

“In the event of any inconsistency (arising) between this Agreement and ([...]) (any) (other) (international) agreement(s) (other than the WTO Agreement)(,) to which the/both Parties/ more than one (1) Party are party/parties (or which is applicable to the Areas of the Parties/ the Parties’ Areas), the/these Parties shall *immediately consult* with each other with a view *to finding a mutually satisfactory solution, taking into consideration/in accordance with general principles of*

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<sup>398</sup> Ibid.

<sup>399</sup> Ibid.

<sup>400</sup> Ibid.



*international law/ customary rules (of interpretation) of public international law* [emphasis added].<sup>401</sup>

Some of the PTAs in this group have regards to principles on consultations in a different way from the above rules, namely “general principles of international law”. They must be “taking into consideration” by the parties or the consultation must be “in accordance with” them.

The above clauses have some minor variations:

“In the event of any inconsistency between this Agreement and any agreements other than the WTO Agreement, to which both Countries are parties, the Countries shall *immediately consult* with each other with a view *to finding a mutually satisfactory solution, taking into consideration general principles of international law* [emphasis added].<sup>402</sup>

And

“In the event of any inconsistency between this Agreement and any agreements other than the WTO Agreement and the Treaty of Amity, Commerce and Navigation between Japan and the Republic of the Philippines, to which both Parties are parties, the Parties shall *immediately consult* with each other with a view *to finding a mutually satisfactory solution, taking into consideration general principles of international law* [emphasis added].<sup>403</sup>

And

“Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and (any) other agreement(s) to which both Parties are party/parties, the Parties shall *immediately consult* with each other with a view *to finding a mutually satisfactory solution taking into consideration/in accordance with general principles of international law/customary rules of public international law* [emphasis added].<sup>404</sup>

And

“If a Party considers that there is an inconsistency between this Agreement and any other international agreements to which they are a party or which are

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<sup>401</sup> Ibid.

<sup>402</sup> Article 11.3, Japan-Malaysia Economic Partnership Agreement.

<sup>403</sup> Article 11.4, Japan-Philippines Economic Partnership Agreement.

<sup>404</sup> SAFTA, Chapter 17 – Final Provision, Article 9. Article 1.2.2, New Zealand-Korea FTA. Article 1.2.3, Korea-Australia FTA. Article 9, Chapter 17 on Dispute Settlement, Singapore-Australia FTA.

applicable to a Party, the Parties shall *immediately consult* with each other with a view to *finding a mutually satisfactory solution* in accordance with *customary rules of public international law* [emphasis added].<sup>405</sup>

*Ninthly*, in bold contrast, only one PTA even further complicates the situation by covering all of the five components of (1) consultations, (2) the timing, (3) the institutional framework within which the consultations are held, (4) objectives of consultations and (5) legal principles governing consultations. Its clause takes the following form:

“In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall *immediately consult* with each other *within the Joint Committee* with a view to *finding a mutually satisfactory solution, taking into consideration general principles of public international law* [emphasis added].<sup>406</sup>

*Lastly*, the few remaining PTAs, although utilizing consultations as a channel to solve inter-PTA normative conflicts, do not directly refer to the term “consultations” or “consult”; instead, they often have regards to the same measure as “exchange of information”.<sup>407</sup> All of them involve Turkey.

“*Exchange of information* (between the Parties) shall take place, on/upon request (of either Party), *within the Joint Committee* [emphasis added] concerning agreements establishing such customs unions or free trade areas.”<sup>408</sup>

It has one deviation as follows:

“*Exchange of information* between the Parties shall take place *within the Joint Committee* concerning agreements establishing customs unions or free trade areas and, where appropriate, on other major issues related to their respective trade policies with third countries. Such an exchange of information shall take place so as to ensure that account is *taken of the mutual interests* [emphasis added] of the Parties stated in this Agreement.”<sup>409</sup>

The term “inform” subrogates the term “consultations” in only two PTAs:

<sup>405</sup> Article 1.4.1, EFTA-Hong Kong, China FTA.

<sup>406</sup> Article 1.3, Turkey-Malaysia FTA.

<sup>407</sup> For the full list, see Annex I, Table 17.

<sup>408</sup> Article 16.2, Turkey-Serbia FTA. Article 15.2, Turkey-Montenegro FTA. Article 15.2, Turkey-Albania FTA. Article 16.2, Turkey-Morocco FTA. Article 15.2, Turkey-Palestinian Authority Interim FTA. Article 32.2, Turkey-Bosnia and Herzegovina FTA.

<sup>409</sup> Article 12.2, Turkey-Georgia FTA.

“The Parties shall *inform* [emphasis added] each other in the Joint Committee established in accordance with Article 33 (hereinafter referred to as “the Joint Committee”) about such agreements with third countries.”<sup>410</sup>

And

“The Contracting Parties shall *immediately inform* [emphasis added] each other of any agreement establishing a customs union or a free trade area, as well as of accession to the European Union.”<sup>411</sup>

However, while the term “consultations” indicates two-way dialogues, the term “inform” seems to refer to only one-way communication from the informing Party to the informed Party. In addition, such clauses do not set forth any conflict-cracking objectives and the channel of information is seemingly just for the purpose of security of awareness of the other PTA parties about the existence of another multiple PTA. Therefore, the information obligation imposed by such clauses apparently not to be intended by the Parties to the relevant PTAs as a conflict-solving resolution but just as information-providing means.

Whether inter-PTA normative conflicts can be solved thanks to consultations is an open question. Although, as mentioned above, mutually satisfactory resolutions are manifestly put forth by many PTAs, an absolute or secured solution to inter-PTAs conflicts triggered by consultations is undetermined beforehand and depends heavily on the nature of conflicts and the willingness of relevant parties. As the principles governing consultations relate more to interpretation, consultations should be logically classified as an apparent-conflict-preventing avenue in lieu of real-conflict-solving resolution.

Indifferent from other conflict clauses featuring other groups, conflict clauses on consultations are diverse in the scope of other PTAs with which their relations are governed. Just one PTA aims at its relation with other existing PTAs with identical or broader membership.<sup>412</sup> Furthermore, also few PTAs direct their conflict clauses on consultations towards other future PTAs with partially overlapping membership.<sup>413</sup> Similarly, not many PTAs can be listed when it comes to their relations with other future trade deals with partially

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<sup>410</sup> Article 5, EFTA-SACU FTA.

<sup>411</sup> Article 16.2, Ukraine-The former Yugoslav Republic of Macedonia FTA.

<sup>412</sup> Article 21.2.3, Malaysia-Australia FTA.

<sup>413</sup> Article 41.3, EFTA-Serbia FTA. Article 8, MERCOSUR-India PTA. Article 8.2, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

overlapping, identical or larger geographical coverage.<sup>414</sup> Along the same line, the number of conflict clauses on consultations in PTAs, however large the coverage of other future PTAs in their ties, is negligible.<sup>415</sup>

On the other hand, several PTAs have their conflict clauses on consultations concerning both existing and future PTAs with partially overlapping membership only.<sup>416</sup> In contrast, the widest range of conflict clauses on consultations in PTAs take into consideration both pre-existing and potential PTAs with identical or larger membership.<sup>417</sup> Once again, the quantity of PTAs with conflict provisions on consultation regulating relations with other pre-existing and prospective trade arrangements with partially overlapping, identical or broader state membership is minimal.<sup>418</sup> The same is true for PTA conflict provisions on relations with other existing and future PTAs with whatever type of state membership.<sup>419</sup>

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<sup>414</sup> Article 15.2, Turkey-Syria FTA. Article 13.2, Egypt-Turkey FTA. Article 16.2, Turkey-Tunisia FTA. Article 16.2, Turkey-Serbia FTA. Article 15.2, Turkey-Montenegro FTA. Article 15.2, Turkey-Albania FTA. Article 16.2, Turkey-Morocco FTA. Article 15.2, Turkey-Palestinian Authority Interim FTA. Article 32.2, Turkey-Bosnia and Herzegovina FTA.

<sup>415</sup> Article 21.2, EU-Algeria Euro-Mediterranean Association Agreement. Article 22.2, EU-Lebanon Euro-Mediterranean Association Agreement. Article 21.2, EU-Egypt Euro-Mediterranean Association Agreement.

<sup>416</sup> Article 2.2, Ukraine-Montenegro FTA. Article 1.3.3, EFTA-Ukraine FTA. Article 39.3, EFTA-Albania FTA. Article 42.3, EFTA-Tunisia FTA. Article 1.4.2, EFTA-Georgia FTA. Article 3.3, EFTA-Bosnia and Herzegovina FTA. Article 1.5.2, EFTA-Central America (Costa Rica and Panama) FTA. Article 3.3, EFTA-Montenegro FTA. Article 1.4.2, EFTA-Hong Kong, China FTA.

<sup>417</sup> Article 18.6, Thailand-New Zealand Closer Economic Partnership Agreement. Article 1906, Thailand-Australia FTA. Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement. Article 1.2.2, CPTPP. Article 1.2.3, Australia-China FTA. Article 1.11.2, Japan-Australia Economic Partnership Agreement. Article 16.2.2, India-Malaysia Comprehensive Economic Cooperation Agreement. Article 1.2.2, Korea-India Comprehensive Economic Partnership Agreement. Article 112.2, China-Singapore FTA. Article 18.7, Panama-Singapore FTA. Article 16.5.2, India-Singapore Comprehensive Economic Cooperation Agreement. Article 1.3.3, Korea-Vietnam FTA. Article 19.4, Peru-Singapore FTA. Article 1.11.3, Japan-Mongolia Economic Partnership Agreement. Article 1.4.2, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership. Article 1.2.2, Hong Kong, China-Chile FTA. Article 1.2.2, Peru-Korea FTA. Article 2.2, Japan-Peru Economic Partnership Agreement. Article 12.2, Japan-India Comprehensive Economic Partnership Agreement. Article 3, Chapter 18, Hong Kong, China-New Zealand Closer Economic Partnership Agreement. Article 1.2.2, Malaysia-Chile FTA. Article 3.2, Costa Rica-China FTA. Article 18.2, New Zealand-Malaysia FTA. Article 3.2, Peru-China FTA. Article 7.2, Japan-Switzerland Agreement on Free Trade and Economic Partnership. Article 3.2, China-New Zealand FTA. Article 9.3, Japan-Vietnam Economic Partnership Agreement. Article 133.2, Pakistan-Malaysia Closer Economic Partnership Agreement. Article 9.2, Brunei Darussalam-Japan Economic Partnership Agreement. Article 12.3, Japan-Indonesia Economic Partnership Agreement. Article 1.3.2, Korea-Singapore FTA. Article 6.1, Japan-Singapore New-Age Economic Partnership Agreement. Article 11.4, Japan-Philippines Economic Partnership Agreement. Article 11.3, Japan-Malaysia Economic Partnership Agreement. SAFTA, Chapter 17 – Final Provision, Article 9. Article 1.2.2, New Zealand-Korea FTA. Article 1.2.3, Korea-Australia FTA. Article 9, Chapter 17 on Dispute Settlement, Singapore-Australia FTA. Article 1.3, Turkey-Malaysia FTA.

<sup>418</sup> Article 4.1, Turkey-Moldova FTA. Article 3.2, Mauritius-Turkey FTA. Article 6.6.2, Agreement on Trade in Goods between Turkey and Korea. Article 4.2, Turkey-Chile FTA. Article 56.2, EU-Chile Association Agreement. Article 16.3, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on

The above conflict-solving approaches can also be classified into substantive and procedural solutions. The former consists of de facto and de jure silence, termination, non-application, prevalence of either of the conflicting PTAs and co-existence while the latter involves only consultations.

### **3.2. Customary rules on normative-conflict resolution under PIL**

General principles of conflict resolution under customary law are codified in the VCLT. Pursuant to Article 30.2 of the VCLT, “specific provisions in treaties governing conflicts with other treaties must be respected and when a treaty specifies that it is subject to/it is not considered as incompatible with an earlier/later treaty,”<sup>420</sup> the provision of that other treaty prevails. This confirms that, only when conflict clauses in treaties fail to settle the conflict, customary law comes to play. In other words, a pre-condition to apply customary law on normative conflicts is the failure of treaty conflict clauses. Parallel to this, the resort to customary rules under PIL to address inter-PTA conflicts of norms is ready so long as either the relevant PTAs lack appropriate or valid conflict clauses or the relevant PTA conflict clauses are unsuccessful in relieving conflictual situations.

#### **3.2.1. *Lex superior principle***

Pursuant to this principle, superior norms prevail over other subordinate norms. To be applicable to inter-treaty relations, the *lex superior* principle entails a certain hierarchy among treaties or treaty norms. So far, the highest or most superior ranking is given to jus cogens norms and other obligatory norms under the United Nations (UN) Charter. Albeit non-exhaustive, the following principles are repeatedly on the list of jus cogens norms: slavery prohibition, torture, genocide and aggression.<sup>421</sup> Furthermore, these jus cogens norms are understood as “peremptory norms of general international law recognized in international practice, in the jurisprudence of international and national courts and tribunals and in legal

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Comprehensive Economic Cooperation. Article 2.23 Chapter 18, ASEAN-Australia-New Zealand FTA. Article 4.1, Iceland-China FTA. Article 1.3.2, Switzerland-China FTA. Article 1.4.1, EFTA-Hong Kong, China FTA.

<sup>419</sup> Article 37.3, EU-Bosnia and Herzegovina Stabilization and Association Agreement. Article 39.3, EU-Montenegro Stabilization and Association Agreement. Article 36.3, EU-Albania Stabilization and Association Agreement. Article 35.3, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement. Article 10.4, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>420</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>421</sup> Valentin Jeutner, *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma*. Oxford: Oxford University Press, 2017, p. 48.

doctrine.”<sup>422</sup> Nevertheless, other remaining norms in public international law and under treaties are not ranked according to their superiority. To put differently, their hierarchical ranking is indeterminate.

### **3.2.2. *Lex posterior principle***

Article 30.3 and 30.4 of the VCLT set out the *lex posterior* principle, i.e. “treaties later in time prevail over earlier ones on the same subject-matter.”<sup>423</sup> There are four conditions to apply the principle: (i) actual conflicts, (ii) no specific treaty prescriptions, (iii) no application of Article 59 and (iv) a difference in time. The first condition that the interpretation of two treaties/treaty provisions cannot be reconciled to avoid conflicts, i.e. irreconcilable conflicts, is common to any real-conflict resolution methods. Regarding the second condition, Article 59 prescribes that when two treaties between same parties deal with the same matter, the earlier treaty is abrogated/suspended. If two treaties are so absolutely inconsistent that their simultaneous application is impossible, then the earlier treaty is abrogated. Different from Article 59, Article 30 applies when the inconsistency between two treaties is less important and their simultaneous application is possible. As a result of Article 30, both treaties remain in force, but some priority is given to the provision of the treaty later in time. “Inconsistent provisions are divisible and their specific application is suspended or abrogated.”<sup>424</sup> In contrast, under Article 59, two treaties are in opposition and parties clearly wanted to terminate the earlier treaty or the earlier treaty clearly states so. Regarding the fourth condition, treaties must be successive treaties.

### **3.2.3. *Lex specialis principle***

This principle is not mentioned in Article 30 but recognized in jurisprudence<sup>425</sup> and the use of *lex specialis* to solve normative conflicts is supported by a great majority of international legal experts<sup>426</sup> in both domestic and international law.

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<sup>422</sup> Ibid.

<sup>423</sup> Claude S. K. Chase, *Norm Conflict between WTO Covered Agreements - Real, Apparent or Avoided?*, *International and Comparative Law Quarterly*, (2012) 61(4) 791.

<sup>424</sup> Ibid.

<sup>425</sup> ICJ 1996 advisory opinion on legality of the Threat/Use of Nuclear Weapons case and 2004 advisory opinion on legal consequences of the Construction of the Wall in the Occupied Palestinian Territory.

<sup>426</sup> Jean d’Aspremont and Elodie Tranchez, ‘The Quest for a Non-Conflictual Coexistence of International Human Rights Law and Humanitarian Law: Which Role for the Lex Specialis Principle?’, in Robert Kolb and Gloria Gaggioli, *Research Handbook on Human Rights and Humanitarian Law*, Edwar Elgar, 2013.

According to this principle, the rule considered more special has a trumping effect over the rule considered more general. As a result, the general rule is not terminated or ceases existence but continues to apply as far as it does not contradict the special rule. The special rule prevails over the general one to the extent of the *lex specialis*. The *lex specialis* is adopted for the reasons that, firstly, the special law regulates the subject-matter more effectively and that, secondly, the special rule is more in line with the actual will of the parties.

Theoretically, the principle is effective against conflicts between customary rules and treaty rules, conflicts among customary rules and conflicts among treaties. However, the principle is used most frequently for conflicts between customary rules and treaty rules; treaty rules, as a result of the principle, prevail over customary rules, that is, customary international law only applies if there is no conventional regime applicable between the parties. The priority of treaty law over customary law is neither from the hierarchy between the two (as there is no informal order *inter se*) nor from their scope of application regarding the number of parties (more specifically, treaties have narrower scope of application *ratione personae*), but attributable to special subject-matters of treaties regulating more specific situations.

### **3.3. Drawbacks of the existing conflict-solving tool box**

As far as absolute or real conflicts are concerned, they must be tackled by exploiting normative conflict clauses under treaty law, customary law and in dispute settlement as stated above. However, the above means have many shortcomings, leaving lot of inter-PTA normative conflicts intact and irresolvable.

#### **3.3.1. Unavailability of PTA conflict clauses to inter-PTA normative conflict resolution**

It should be noted that explicit PTA conflict clauses have some limitations, that is, (“expression of state intent) (in any of these) conflict clauses must be accepted as valid and decisive”<sup>427</sup> except for several cases. Before coming to these cases, it is noteworthy that, although PTA conflict clauses are theoretically invalid if they result in conflicts with *jus cogens*, this is not the case for inter-PTA ties as no PTA norms are classified as *jus cogens* as such.

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<sup>427</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003, pp. 327.

As mentioned above, the first shortcoming is that many PTAs do not have conflict clauses relevant to inter-PTA relations. Not every PTA has its own conflict clauses.<sup>428</sup> Among the PTAs under consideration, conflict clauses are completely absent from 19 PTAs,<sup>429</sup> out of which 5 are PTAs involving China and another 5 PTAs involving India. As for the other PTAs having their own conflict clauses, these provisos suffer from their own limitation. Some PTAs have conflict clauses, but they are inapplicable to inter-PTA relations as those provisions target either PTA-WTO relations or relations between PTAs and treaties in other branches of international law, such as international environment law, international taxation law, etc.<sup>430</sup> For PTAs having no conflict clauses relevant to inter-PTA conflict of norms, real conflict between those PTAs and other relevant multiple PTAs are not solved. When at least one of the conflicting PTAs does not have a conflict clause, the relation/priority among them is ambiguous.

The *second* constraint relates to the scope of application of PTA conflict clauses relevant to inter-PTA relations. Some take effect against either double PTAs or single PTAs. In cases of PTAs with conflict clauses solving double PTAs only,<sup>431</sup> only double-PTA relations are solved and the relation of conflict between single PTAs is untouched. In other cases of PTAs with conflict clauses applicable to single PTAs only,<sup>432</sup> the reverse is true. Likewise, some, on the other hand, have their application limited only to either existing or future multiple PTAs.<sup>433</sup>

The *third* limitation of conflict clauses relates their validity and effectiveness. For PTAs with conflict clauses applicable to both double and single PTAs,<sup>434</sup> existing and future PTAs, in general, inter-PTA relations fall under the scope of such clauses and will be solved. However, PTAs, as well as their conflict clauses, only apply to the state parties thereto. Among conflict-

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<sup>428</sup> For further details, see Annex I, Table 18.

<sup>429</sup> Ibid.

<sup>430</sup> In particular, 9 PTAs have conflict clauses irrelevant to inter-PTA relations and all of them are PTAs concluded by the EU.

<sup>431</sup> 93 PTAs have conflict clauses applicable to double PTAs only. Many are PTAs concluded by Singapore (13 PTAs), Korea (13 PTAs), Japan (12 PTAs), the United States (11 PTAs), Panama (12 PTAs), Peru (10 PTAs), Chile (10 PTAs), China (10 PTAs), etc. For details, see Annex I, Table 19.

<sup>432</sup> So far, only 1 PTA has conflict clauses applicable to single PTAs only which is MERCOSUR-India PTA, Article 8.

<sup>433</sup> 27 PTAs having conflict clauses applicable to existing multiple PTAs only. Some are concluded by China (9 PTAs), the United States (5 PTAs), Singapore (5 PTAs) and Chile (5 PTAs). For details, see Annex I, Table 21.

<sup>434</sup> Only 69 PTAs have their conflict clauses applicable to both double and single PTAs. Many of them are concluded by Turkey (15 PTAs), the EFTA (15 PTAs) and the EU (9 PTAs). For details, see Annex I, Table 20.



solving strategies above mentioned, termination can be classified as the most effective way to solve inter-PTA conflicts as it, indeed, leaves only one PTA to exist at a time and therefore prevent conflicts altogether even well before their occurrence. In spite of its effectiveness, this method has its own weakness in its limitation on the scope of application ensuing from its pre-requisites of (1) applicability to pre-existing PTAs with narrower or identical state membership and (2) the intention of the parties to the PTA at issue to stop the existence of the other earlier PTA. Consequentially, this approach is adopted to neither relations with future PTAs nor PTAs with partially overlapping or broader membership. The number of PTAs concluded by the exactly same group of states is limited and, in reality, only two PTAs have so far utilized this solution as indicated above.

Parallel to termination, non-application can also be counted as the second-most efficient way in addressing conflicts. Its own shortcoming, however, also roots in the fact that the non-application of the PTA at issue makes itself inoperative, thereby going against the will of the parties in concluding the PTA. Hence, only few PTAs follow this direction.

The third most effective conflict-solving mechanism is granting prevalence to either of the two conflicting preferential trade deals in that it gives priority to one of the two PTAs in conflict. Once again, its effectiveness is scaled down due to its application pre-requirements. This is the case firstly for PTAs claiming their prevalence over future PTAs with narrower, identical, broader or partially overlapping membership. This is also the case for PTAs claiming their prevalence over existing PTAs with broader or partially overlapping membership. As well developed above, based on PTAs that the relations *inter se* are governed under conflict clauses, there are two types of PTA conflict clauses: those relating to other pre-existing PTAs and those relating to future PTAs.<sup>435</sup> According to PTA conflict clauses relating to other pre-existing PTAs, a new PTA can state that it prevails over pre-existing PTAs as analyzed above. Such PTA conflict clauses are backed up by a legal basis of contractual freedom of states (Articles 59 and 30(3) of the VCLT) and have a limitation of no imposition of the new PTA on third parties without their consent pursuant to the *pacta tertiis* principle. Therefore, in principle, conflict clauses in later PTAs can clearly provide that, among their state parties, they override earlier PTAs. However, as displayed above, none of the PTA conflict clauses belonging to this typology clearly stipulate as such. These conflict

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<sup>435</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003, pp. 327.

clauses can be invalid in that they go against Article 41 of the VCLT by violating third-party rights pursuant to the *pacta tertiis* principle. Anyway, these conflict clauses do not extend their derogation effect to rights/obligations of third states under pre-existing PTAs in light of the *pacta tertiis* principle.

In the meantime, as mentioned above, a new PTA can state that it is subject to pre-existing PTAs, i.e. giving priority to earlier norms. In other words, in case of conflict with a pre-existing PTA, the earlier PTA prevails.<sup>436</sup> The mentioned pre-existing PTAs can be between one or some of state parties to the new PTA and third states or between all state parties to the new PTA and third states.<sup>437</sup> Although being inconsistent with Articles 59 and 30(3) of the VCLT on *lex posterior*, this conflict clause can find some legal justification in Article 30.2 of the VCLT which allows conflict clauses in favour of pre-existing PTAs, notwithstanding *lex posterior*.<sup>438</sup>

Likewise, regarding PTA conflict clauses relating to future PTAs, a PTA can state that it will *prevail over subsequent PTAs*.<sup>439</sup> The effect of such clauses is limited. If a PTA conflict clause claims priority over future PTAs which would affect third-party rights, such clause is the confirmation of the principle of *pacta tertiis*.<sup>440</sup> If a PTA conflict clause claims priority over any future treaties, not just future treaties adversely affecting third-party rights, such clause is contradictory to contractual freedom of states and contradiction of Article 30.3 of the VCLT.<sup>441</sup> This type of conflict clauses is overruled by a later expression of state intent as to contractual freedom of states.<sup>442</sup> For instance, States X, Y, Z agreed that PTA<sub>1</sub> prevails over PTA<sub>2</sub> and, later, the three states changed their mind and agreed in another treaty that PTA<sub>2</sub> prevails over PTA<sub>1</sub>.

Co-existence is to the contrary the second least ineffective in cracking inter-PTA normative conflicts as it constitutes *de facto* silence on how to deal with conflictual relations between multiple PTAs, leaving their ties to practically untouched. The same holds true for PTAs adopting the silence tactic. The absence of any conflict clauses relevant to inter-PTAs interlinks in certain PTAs may be judged as the least-effective approach.

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<sup>436</sup> Ibid.

<sup>437</sup> Ibid.

<sup>438</sup> Ibid.

<sup>439</sup> Ibid.

<sup>440</sup> Ibid.

<sup>441</sup> Ibid.

<sup>442</sup> Ibid.

The *fourth* defect resides in conflicts between conflict clauses within the same PTA and, even worse, conflicts between conflict clauses under different multiple PTAs. In the first place, conflict clauses under a certain PTA may give adverse directions on how to sort out the issue. For instance, Articles 1.3 and 1.4 of the Turkey-Malaysia FTA are in opposition in encountering normative conflicts. Let's assume that any PTA existing prior to the FTA at issue and to which either or both Turkey and Malaysia are party prohibits a certain action or measure that the Turkey-Malaysia FTA permits or vice versa. Pursuant to Article 1.3 of the Turkey-Malaysia FTA, the other PTA takes priority; nevertheless, under Article 1.4, the Turkey-Malaysia FTA itself prevails. Although every of these two rules, taken into account separately, gives a clear-cut solution, the puzzle of which trade deal dominates remains unsolved due to the conflict of these two very conflict clauses *inter se*. Another conflictual interaction is between Articles 4.1 and 5.1 of the Ukraine-Montenegro FTA when any other existing or future PTA involving either or both Ukraine and Montenegro obligates either party to perform a certain conduct that the Ukraine-Montenegro FTA prohibits. Again, under Article 4.1, the latter prevails; in contradiction, under Article 5.1, the former takes precedence. Another relevant instance is Article 80 of the New Zealand-Singapore Closer Economic Partnership Agreement stipulating that “*Nothing* in this Agreement shall be regarded as *exempting* either Party to this Agreement from its obligations under any international, regional or bilateral agreements to which it is a party and any *inconsistency* with the provisions of this Agreement shall be *resolved in accordance with the general principles of international law* [emphasis added].” This conflict clause provides for two ways to solve the same conflict at the same time: the prevalence of the other multiple PTAs and the general principles of international law. This conflict clause becomes problematic when, let's say, the general principles of international law give prevalence to the New Zealand-Singapore Closer Economic Partnership Agreement itself. Regarding the interaction between two certain multiple PTAs, conflict clauses under either of them may set the prevalence of the other PTAs while those under the other PTA stipulates in the opposite direction or vice versa. These shortcomings turn normative conflicts among PTAs irresolvable.

Last but not least, another limitation of PTA conflict clauses is that, albeit many PTAs have their conflict clauses, many of them are ambiguous or even absurd. For example, Article 5.2, Ukraine-Montenegro FTA stipulates that “The rights and obligations arising from treaties

concluded between the Parties before or after entry into force of this Agreement *shall not be affected* by the provisions of this Agreement, except that their provisions are *compatible* [emphasis added] with those of this Agreement.” This clause goes against a common logic or sense in prescribing that provisions in other PTAs shall be affected by the provisions of the Ukraine-Montenegro FTA provided that the former is compatible with the latter according to the conflict clause at issue.

### **3.3.2. Inapplicability of customary conflicting-solving rules to inter-PTA conflict of norms**

The applicability of the above-analyzed conflict rules in customary law to inter-PTA conflicting norms depends on four main conditions. First, conflicts of PTA norms *inter se* must be of absolute, rather than apparent, nature. Second, conflicting norms must belong to the same legal system. The principle applies to neither norms belonging to two different systems, for example moral system and legal system, nor norms belonging to two different legal systems based on two different sets of fundamental norms. However, whether international law is a unitary system is a controversial issue. If international law is not recognized as a single legal system, this very second condition fails to be met and the customary rules are inapplicable to normative conflicts in PTAs *inter se*. Otherwise, multiple PTAs, as treaties in public international law, belong to the same legal system and their conflicts are subject to these customary conflict rules.<sup>443</sup> As the dissertation prefers to describe the conflicts among norms under multiple PTAs as normative conflicts rather than conflicts of laws, it inherently accredits international law with the unity.

Third, all disputants must be subjects of both conflicting norms. This pre-requisite turns into one shortcoming of conflict resolutions under customary law in that they do not hold for conflicts between norms in single PTAs concluded by one state and different subjects of international law, e.g. when the obligation is not owned to the identical parties. Take an example of a conflict between a norm in a PTA concluded by State A and State B and another norm in another PTA concluded between State A and State C, as only one state disputant – State A – is a subject of both conflicting PTA norms, none of the three customary rules applies. In other words, this conflict is unaddressed by *lex superior*, *lex posterior* or *lex specialis* principles. More specifically, conflicts between norms in the CPTPP and the EVFTA are irresolvable by the three principles since only Vietnam is party to both PTAs.

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<sup>443</sup> ILC, *Fragmentation of International Law*, 2006.

This kind of conflicts is denoted by some authors as AB/AC conflicts.<sup>444</sup> Broadly speaking, conflicts of norms among single PTAs (i.e. PTAs with only one common state common party) are immune from this type of conflict solutions. The inapplicability of these customary law rules to certain conflicts of norms reflects their shortcoming. Nevertheless, if all disputant parties are subjects to both PTA conflicting norms, the conflict can be solved by the customary law conflict-solving rules. Put differently, if State A and State B are in a dispute over an inconsistency between two norms in two certain PTAs to which both are parties, conflict-solving mechanisms under customary law are relevant. More concretely, a dispute between Vietnam and Japan over conflicts of norms between the CPTPP and the JVEPA can be addressed by the three customary law principles. This kind of normative conflicts is sometimes referred to as AB/AB conflicts<sup>445</sup> or, generally speaking, conflicts between double PTAs (i.e. two PTAs governing the same bilateral trade relation). In sum, while single-PTA conflicts of norms fall out of the scope of application of customary law conflict-solving principles (See details in Chapter 2), the reverse is true for double-PTA conflicts of norms (See details in Chapter 3).

Finally, for a conflict to be solved under the customary rules of international law, one of the two PTA conflicting norms must be superior or subsequent in time or more specific. Even if conflicts of norms arise between double PTAs, rather than between single PTAs *inter se*, they cannot be dealt with by customary law conflict-solving principles unless the two PTA conflicting norms meet the requirement of superiority or temporal subsequence or specificity. In terms of the *lex superior* principle, its application to conflicts of norms in treaties (or PTAs in particular) depends on the answer to the question of whether there is any hierarchy among the norms in question. If the answer is yes, then the principle is applicable; otherwise, it is not. Therefore, the issue turns out to be if there is any (conflicting) norm in one PTA enjoying the supreme position over norms in another PTA. While the coverage of rules granted superior positions under *lex superior* has not been settled altogether and the list of higher-ranked norms is non-exhaustive but just indicative, most-frequently cited are *jus cogens* and Article 103 of the UN Charter and UN Security Council.<sup>446</sup> Other than the UN Charter, the *lex*

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<sup>444</sup> Valentin Jeutner, *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma*, Oxford: Oxford University Press, 2017, p. 58.

<sup>445</sup> Ibid.

<sup>446</sup> Ibid, p. 48.

*superior* principle is silent on conflicts among treaties in general, and on interactions among PTAs in particular. None of the PTA norms can be classified as *jus cogens* according to the above-stated definition or covered by Article 103 of the UN Charter. Furthermore, in instances of the absence of effective PTA conflict clauses to give way to customary rules, none of PTA norms successfully claim a higher rank than those in other PTAs; instead, PTA norms are of equal or non-hierarchical standing. None of the norms in a certain PTA are subordinate to those under other multiple PTAs. Then it is inferred that norms in different PTAs are of the equal or indeterminate ranking; consequentially, *lex superior* cannot come into play in the context of double-PTA conflicting norms, thereby leaving them intact. That conflicts between norms under multiple PTAs remain unaddressed by the *lex superior* principle manifests properly the inapplicability of this principle to these relations.

As to *lex posterior*, the principle may be the one whose prerequisite of differences in temporal application is most likely to be satisfied by double PTAs. That several time points, including the timing of PTA conclusion, ratification or entry into force, can be exploited to figure out the differences in the starting points of temporal application across multiple PTAs can complicate the matter. In an extreme case, for example, PTA<sub>1</sub>, on the one hand, is concluded on date  $T+t_1$  and takes effect since date  $T+t_1+t_2$ ; PTA<sub>2</sub>, on the other hand, is concluded on date  $T$  and comes into effect on date  $T+t_1+t_2+t_3$ . Then which one is subsequent to the other? If the signing point is taken into account, PTA<sub>1</sub> is later in time; whereas, if the starting point of PTA validity counts, PTA<sub>2</sub> is later. As a result, no clear-cut answer is given in this case. In other, but extreme, cases, which PTA comes after in time is relatively straight-forward.

As for *lex specialis*, its adoption to sort out PTA norm interactions is conditional on whether any of the two PTA conflicting norms is either more specific or general than the other. Nonetheless, no criteria are unanimously undisputed to determine the degrees of speciality of two international law norms in general and two PTA norms in particular. As is it difficult to point out which treaties in different branches of international law are more specific, it is evenly problematic to showcase differences in speciality among PTAs – treaties belonging to the same branch of international trade law – as well as the norms thereof. Even if some benchmarks, such as PTA/norm subject-matters and their geographical coverage/membership, are introduced to evaluate the levels of particularity of PTAs and their norms, the *lex specialis* principle is unavailable either in the context that the relevant norms under multiple PTAs are

determined to be of same specificity. This scenario is very likely to happen to double PTAs *inter se*. For instance, a conflict arises between a norm in trade in services in PTA<sub>1</sub>, let's say the CPTPP, and another also in services trade in PTA<sub>2</sub>, let's say the Japan-Vietnam Free Trade Agreement (JVFTA). In this instance, it may be impracticable to rank them according to their specific or general essence. Likewise, in a scenario of a conflict between a norm in trade in services in PTA<sub>1</sub> and a norm in investment in PTA<sub>2</sub>, it is neither determinable whether the former is more specific than the latter or vice versa. As to PTA membership, is a PTA with narrower membership more specific than another with broader geographical coverage because the former is designed exclusively or specially to meet the preferences/needs of a smaller group of state parties? Whether the number of PTA signatories is decisive in judging particularity of their norms, i.e. the fewer the PTA signatory parties, the more particular their norms, is still an open question. In the end, with respect to a pair of any norms from different PTAs, it is indeterminate which one is higher-ranked, subsequent in time or more specific in the subject-matter.

To conclude, the three principles are inapplicable to inter-PTA conflicts. For single PTAs, the three principles are not deployed as no two disputants are governed by the two conflicting norms. Alongside, for double PTAs, albeit two disputants are governed by the two conflicting norms, the three customary means do not work because of the absence of superiority, temporal sequence and speciality from inter-PTA norm conflicts.

## **CHAPTER 4: IMPLEMENTATION OF MULTIPLE PTAS UNDER THE EFFECT OF UNSOLVED CONFLICTING NORM RELATIONS**

At the end of the conflict resolution procedure, the conflict is either solved or unsolved and left intact. For a solved conflict, the way in which it is dealt with and the outcome may vary. In the first case, either of two conflicting norms is terminated or disappears due to its invalidity as the conflict is inherently normative. In the second case, one conflicting norm is illegal as a result of an inherent normative conflict. In both cases, as a consequence of invalidity or illegality of one norm, the other norm exists without clashing. In the third case, none of the two conflicting norms is invalid or illegal as the conflict is not of inherent nature but just in the applicable law. Both norms still exist at the same time, but one norm takes precedence and applies to a certain situation. Notwithstanding the manner in which a conflict is solved, the state party under the duty to perform conflicting norms just gives priority to the norm which prevails and bypasses the other without paying the cost for norm violation in the form of state responsibility. Nevertheless, for conflicts in the applicable law, when unsolved, the two conflicting norms are completely equal and state responsibility may follow. Then the logical sequence happens to the state encountering conflicting norms as follows: the state party in this situation will choose either of the two conflicting norms to perform at its own cost of either infringing its obligations (if the other conflicting norm is obligatory or prohibitive) or waiving its right (if the other conflicting norm is permissive or exempting). The following part centers on the course of action by the state itself in the face of conflicting norms, instead of holding the view of PTA adjudicators with the jurisdiction of handling the relevant disputes.

### **4.1. Choosing which norm to perform...**

In this every first step, the PTA state party in the face of irresolvable normative conflicts must make a choice among the two conflictual norms in question. The PTA party encountering the situation needs to take into consideration costs and benefits of each option and then balance them. The relevant costs and benefits shall be assessed from different perspectives of politics, law, economy, etc. As stated above, the three types of normative conflicts covered in this research are conflicts between permissive norms and obligatory norms, conflicts between parallel obligations and conflicts between mutually exclusive obligations. This very first step in the course of conducts leads to different scenarios. Regarding the first type of right-vis-à-



vis-obligation conflicts, the state may choose between the exercise of its right and the performance of its obligation. If the former is picked, then the state party suffers the consequence of its disregard of its obligations (See Item 4.2). Whereas, if the opposite is true, i.e. the obligation is respected and the right is given up, the state pays the cost of its own right waiver (See Item 4.3). When it comes to conflicts of parallel obligations, the decision to perform the laxer obligation triggers the cost of state responsibility for the stricter obligation impairment (See Item 4.2). The other way round, the performance of the more stringent obligatory norms leads the state to pay an extra cost equivalent to the difference between the two obligations to third parties. In the last scenario of mutually exclusive obligations, as the concurrent performance of the two obligatory norms is impossible, no matter what option the state makes, the consequence of obligation infringement awaits (See Item 4.2).

#### **4.2. ... at the expense of either violating the other obligatory norm – State Responsibility**

It is crucial to review remedies in this part as they represent the legal consequences a state faces ensuing from irresolvable inter-PTA normative conflicts. In the event a PTA party is found infringing thereupon, PTAs have different rules on the imposition of remedial measures. Most PTAs empower the PTA Panel to make recommendations in case of PTA violations. In other words, the PTA Panel is not obligated but discretionary to do so. Even in this instance, recommendations by PTA Panels can vary by substance. Some stick to the compliance. In some PTAs, the Panel is tasked to make recommendations. In few PTAs, recommendations by PTA Panels are only given on demand by PTA disputants.

In terms of forms of remedial measures, there are two mainstreams. The first tendency is comprised of PTAs prescribing explicitly available remedies in case of non-compliance. The second tendency involves some PTAs making no express reference to concrete remedies but including general provisions on the confirmation/affirmation of the availability/probability of remedies.<sup>447</sup> The similarity between the two mainstreams is that the remedies, apart from compliance, are just temporary.

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<sup>447</sup> Simon Lester, Bryan Mercurio and Lorand Bartels, *Bilateral and Regional Trade Agreements: Commentary and Analysis*, Cambridge University Press, 2015, p. 424.

25 PTAs do not explicitly state their remedies in case of PTA violation.<sup>448</sup> As no treaty rules on remedies are included in these PTAs, customary rules on state responsibilities for internationally wrongful acts come into play.

When it comes to *compliance*, a majority of PTAs under consideration adopt compliance as one type of remedies in case of PTA infraction.<sup>449</sup> The respondent whose measure is found inconsistent with a certain PTA provision has to make the measure comply therewith by repealing or modifying the measure in order to fulfil their previously committed obligations. Rooting in the *pacta sunt servanda* principle, this remedy takes priority over any others. However, in the context of irresolvable normative conflicts, the performance of this remedy can be impracticable as it goes against the calculation made by the state in the previous step of the sequence.

Firstly, if a conflict arises between a right under PTA<sub>1</sub> and an obligation under PTA<sub>2</sub> and the respondent has taken the certain measure to exercise the right (PTA<sub>1</sub>) thereby violating the obligation (PTA<sub>2</sub>). If the remedy in place under PTA<sub>2</sub> is the compliance with the obligation (PTA<sub>2</sub>), i.e. the removal or modification of the measure at issue, then the right (PTA<sub>1</sub>) is not deployed. In other words, the ultimate outcome of this compliance remedy is the fulfilment of the obligation (PTA<sub>2</sub>) and the waiver of the right (PTA<sub>1</sub>). Hence, after quite long circuitous reasoning, this cost paid to exercise the right and ignore the obligation leads to the same aftermath as the strict approach to the conflict concept that abandons the conflicting right and takes into consideration of the obligation only. This outcome is also unfavourable to the state itself based on its cost-and-benefit calculation prior to taking the first move to benefit from its right. Therefore, the compliance remedy can be predictably not complied. In a different reaction to the same conflict between the right (PTA<sub>1</sub>) and the obligation (PTA<sub>2</sub>), the PTA party may opt to skip its right (PTA<sub>1</sub>) and comply with the obligation (PTA<sub>2</sub>). This very decision made by the PTA party itself is equivalent to the consequential remedy if its action is reversed. To put it differently, in circumstances of conflicts between a right and an obligation, whatsoever the reaction of the Party in the face thereof, the final result is that such Party has to respect its obligation at the expense of abandonment of its right providing that the

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<sup>448</sup> For the full list, see Annex I, Table 22. The number of PTAs involving the EFTA, Ukraine and India is 3 for each.

<sup>449</sup> For the full list, see Annex I, Table 23. Among the 152 PTAs adopting this remedy, quite many are concluded by the EU (19 PTAs), the EFTA (16 PTAs), China (16 PTAs), Singapore (15 PTAs), Japan (15 PTAs) and Chile (15 PTAs).

compliance remedy (if any) is imposed and that the final result is parallel to that of the adoption of the strict “conflict” notion. Nevertheless, if that Party insists on exploiting its right, thereby being unable to comply with the obligation, it must take into account other remedies available under the relevant PTA.

Secondly, in terms of conflicts between parallel obligations, if the state facing conflicting norms has, in the first step, decided to comply with the laxer obligatory norm, it will incur the responsibility for violation of the more stringent obligatory norm in this subsequent step. The fulfilment of the compliance remedy will constitute the enforcement of the more stringent obligation which is in turn opposite to the very choice made by the state in the first place. To wrap up, the enforcement of the compliance remedy is unlikely to occur.

Lastly, the same logic can be repeated for conflicts between mutually exclusive obligations to prove the failure of the compliance remedy.

Given that the compliance remedy is adverse to the willingness of the state party encountering the conflict to pay the cost for its obligation infringement, compensation, among others, may be a replacement. *Compensation* is what the respondent party gives to make up for its PTA non-compliance. The complained party, when failing to implement the compliance remedy, ought to pay compensation for its infringement. Nonetheless, not all PTAs introduce such measure. Compared to compliance, fewer PTAs provide for compensation as a remedial measure.<sup>450</sup> Generally speaking, this remedy is resorted to after the failure of compliance by the respondent. For PTAs endorsing compensation, they diverge in different aspects such as time limits for negotiations on the compensation implementation, the time-based measurement of compensation, the allocation of the burden of compensation offers and requests among the complained party and the complaining party, the role of the PTA adjudicator in case of disagreement between parties over compensation measurement, time frames and procedures for compensation initiation.<sup>451</sup> For example, compensation initiation can start at (1) the expiration of the recommendation implementation period<sup>452</sup> or at (2) the

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<sup>450</sup> Some 130 PTAs stipulate compensation in case of their violation. For the detailed list, see Annex I, Table 24. On the list are, among other, PTAs concluded by the EU (18 PTAs), Japan (15 PTAs), the EFTA (15 PTAs), Singapore (14 PTAs), Chile (14 PTAs), Korea (13 PTAs) and China (13 PTAs).

<sup>451</sup> Simon Lester, Bryan Mercurio and Lorand Bartels, *Bilateral and Regional Trade Agreements: Commentary and Analysis*, Cambridge University Press, 2015, p. 424.

<sup>452</sup> *Ibid.*, ft. 207.

failure of the respondent in notification of the implementation intention or at (3) the determination of non-compliance.

In addition, *suspension of concessions* allows the complaining Party to suspend its concessions and/or benefits and/or obligations granted or offered to the other complained party. Parallel to compensation, this redress is permitted in most PTAs;<sup>453</sup> however, there are still some PTAs that do not provide therefor. PTAs provide for the suspension of concessions once compensatory measures are not in place by virtue of disagreement among parties or some violation of the agreed arrangement on compensation.<sup>454</sup> Added to that, similar to compensation, this remedy in PTAs varies in such numerous aspects as the starting point of time limits to initiate request for the remedy (ranging from the conclusion of the time limit to the achievement of agreements on compensation or compliance, or the failure in notification of the compliance intent), time limits and procedures for initiation and maintenance of the measure, the competence of PTA adjudicators (if any) in deciding the magnitude and nature of concessions to be suspended (albeit stated in different wording, all PTAs confirm the tenet of the equivalence between the degree of suspended concessions and that of the nullification or impairment ensuing from PTA-violating measures).<sup>455</sup> Moreover, objects of this suspension measure can vary from PTA to PTA, ranging from concessions and/or benefits and/or obligations.<sup>456</sup> Added to that is the measure of withdrawal of concessions. Such enforcement is referred to by different terms in PTAs, including “suspension”, “withdrawal” and “recede”.<sup>457</sup> Another divergence resides in the pre-conditions to the suspension. Normally it comes after the failure to resort to the compliance redress and when there is no reach of mutual agreement on compensation. In addition, the level of concessions and/or benefits and/or obligations to be suspended or withdrawn must proportionate or equivalent to the level of effects or the nullification and impairment ensuing from the PTA violating measure at issue.

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<sup>453</sup> For the full list of PTAs adopting this remedy, see Annex I, Table 25. Some 144 PTAs (73%) count suspension as part of their remedial systems. Prevalent in the list are trade deals by China (16 PTAs), Japan (15 PTAs), the EFTA (15 PTAs), Singapore (15 PTAs), Chile (15 PTAs) and Korea (14 PTAs).

<sup>454</sup> Simon Lester, Bryan Mercurio and Lorand Bartels, *Bilateral and Regional Trade Agreements: Commentary and Analysis*, Cambridge University Press, 2015, p. 424.

<sup>455</sup> *Ibid.*, pp. 426-427.

<sup>456</sup> The suspension of benefits is adopted by a large portion of PTAs of this group (some 83 PTAs including PTAs by the EFTA (14), Singapore (12), Panama (12), the United States (10)), while few (2 PTAs) allow for the withdrawal and suspension of concessions only. 9 PTAs mentions the term “suspension of obligations”, including 6 by the EU. For other forms of terms, see Annex I, Table 25.

<sup>457</sup> See GUAM.

Although not present in the WTO law, the *monetary remedy* is recognized in some PTAs, especially those to which the United States is a party.<sup>458</sup> It entails the violating respondent to give a money sum to the complainant in exchange of the former's non-performance of other redresses stipulated in PTAs, including the compliance and suspension of concessions, etc. In particular, for PTAs providing for this redress, the complained party is due to pay an annual monetary assessment. This redress releases a PTA-violating party from the remedy of compliance or specific performance (i.e. performance of the infringed obligation), i.e. using money to get rid of its undertaken obligation. Such regulation favours developed countries with economic power while disfavours developing countries suffering from financial constraints. This measure may be sector-/issue-specific, i.e. being designed to correct violations in such sectors as labour and environment. Prerequisites of this redress depend on regulations of the PTAs in question. For instance, it may be at the disposal of the complained party, i.e. such party just needs to inform the other party. The respondent takes this measure as a substitute for suspension, i.e., in lieu of being subject to the suspension by the other complaining party, the complained party can opt to pay money. The amount of money which is calculated based on agreements among the PTA disputants or, otherwise, on the measure of the nullification and impairment or on the level of concessions to be suspended can be equivalent to 100% or just a portion thereof.

The similarity among compensation, suspension and monetary retaliation is their provisionality, i.e. they are put in place for a while and must be removed when the compliance is satisfied.

Relatively minimal PTAs allow the PTA plaintiff to take *appropriate measures* against PTA breaches committed by other parties.<sup>459</sup> None PTAs adopting the term “appropriate measures” give any clarification to it; therefore, the measures can be interpreted widely, including those of various natures, including diplomacy, politics, economy or law. Such term may definitely be indicative of any remedies above like compliance, compensation, suspension and monetary

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<sup>458</sup> So far, only 12 PTAs provide for a monetary remedy. For the complete list, refer to Annex I, Table 26. All of these PTAs have the participation of the United States with the exception of the CPTPP. Initially drafted by, *inter alia*, the United States, the TPP adopted monetary remedies. As the succession of the TPP and with the expectation of the United States' re-joining, the CPTPP understandably preserves this form of remedy.

<sup>459</sup> Only 25 PTAs belong to this category. For the complete list, see Annex I, Table 27. Many have the participation of the EU (15 PTAs), Turkey (8 PTAs) and the EFTA (3 PTAs).

assessment individually or collectively. The ultimate aim of those measures is obviously to secure the PTA compliance.

Some 5 PTAs make use of other terms in the discussion of redresses of PTA violations. Unfortunately, none refer specifically to any of the above remedies or clearly identify what it means by using other terms regarding remedies.<sup>460</sup> This indeterminacy gives PTA adjudicators and parties more discretion in resorting to suitable remedies. They may include any or all of the above reflected redresses. Furthermore, they harness different terms to point to the possible reaction from the complaining party. *Firstly*, both the Turkey-Jordan FTA and the Turkey-Morocco FTA, in the first place, allow the PTA adjudicator to “take necessary steps” to implement its decisions which may be the paraphrasing of the compliance remedy.<sup>461</sup> In the second place, when the compliance is not put in place by the respondent, the plaintiff can “take measures in line with the decision” of the FTA adjudicator.<sup>462</sup> *Secondly*, in the same vein, the Turkey-Montenegro FTA, although phrasing it differently, prioritizes compliance over other necessary measures.<sup>463</sup> *Thirdly*, the GUAM, on the one hand, gives the first priority to mutually acceptable settlement through consultations; on the other hand, it offers the second option of either recession from the fulfilment of obligations (i.e. the withdrawal or suspension of obligations) by the complaining party or other necessary measures taken by the complaining party to not “allow damage to the national economy”.<sup>464</sup> Although being named differently, these measures share some common features with the above remedies. The first is that the priority is required to be given to measures that negatively affect the other multiple PTA to the least extent. The second is the temporariness of the measures, namely they cease to exist when the claimed violation of the other party is removed. *Fourthly*, in the New Zealand-Singapore Closer Economic Partnership Agreement, compliance likewise takes the first priority. When the complained party fails to fulfil compliance, the parties can carry out negotiations to get a mutually satisfactory resolution. In spite of no interpretation, a mutually satisfactory resolution can take any form of the above-mentioned remedies. When the second effort fails, the suspension of benefits is available.

### **4.3. ... or waiver of rights under the other permissive norm**

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<sup>460</sup> For the full list, see Annex I, Table 28.

<sup>461</sup> Article 48.7, Turkey-Jordan FTA. Article 33.7, Turkey-Morocco FTA.

<sup>462</sup> Article 48.8, Turkey-Jordan FTA. Article 33.8 and 33.9, Turkey-Morocco FTA.

<sup>463</sup> Article 21.3, Turkey-Montenegro FTA.

<sup>464</sup> Article 21.4, GUAM.

Of course, from a legal perspective, the abandonment of a right under a permissive norm at the discretion of a state holding the right is not concerned by any other states as the latter are not adversely affected or even ultimately benefit from such situation. However, as argued before, this scenario harms the right-holding state as it significantly changes cost-and-benefit calculation envisioned by the beneficiary state given the impracticability of its legal rights.

## CONCLUSION OF PART 1

Paving the way for the quest for illustrative conflicting norms among PTAs in Part 2, Chapter 1 sets up a theoretical background for the discussion of interactions between PTAs as a whole, and among their provisions. This Chapter sheds light on the issue of why the academia seemingly rarely mentions the term “conflict” of multiple PTAs *inter se*. Literally, this term has been *prima facie* almost absent from every PTA conflict clause to date. Instead, other alternative terms of, *inter alia*, “inconsistency”/ “inconsistent”, “incompatibility”/ “incompatible”, “have/has the effect of altering”/ “alter” are prevalent. Alongside, PTA conflict clauses adopt a broad conception of normative conflicts in making reference to such nexus of multiple PTAs in their totality as well as to all of their provisions as a whole. Taking into account these two observations and the research objective featuring the PTA implementation stage, neither the narrow nor the broad approach to the “conflict” notion is judged as adequate; rather, the endorsed definition is as follows: “Inconsistency or incompatibility among norms from multiple PTAs in which (the application or implementation of) one norm in one PTA has the effect of altering or alter or circumvent (that of) another in other multiple PTAs.”

As above analyzed, this Part gives the answer to the question of “Can multiple-PTAs, in principle, conflict at their normative level?” in the affirmative. Given that the preconditions to normative conflicts are met by provisions under multiple PTAs, the clashes *inter se* can be theoretically as serious as being counted as conflictual. Subsequent to the discussion of interpretative tools to avoid apparent conflicts in Chapter 2, Chapter 3 points to certain cases of unsuitability or defectiveness of existing devices in settling real conflicts of norms. There are anyway a wide range of scenarios of collisions among PTA norms with which the present tool box has proven unable to deal. Whatever reactions taken by the state in face of irresolvable normative conflicts impair its interests either in the form of responsibilities for PTA obligation encroachments or the non-performance/inoperativeness of its legitimate rights as reflected in Chapter 4.



## **PART 2: A CASE-STUDY OF INTER-PTA INTERACTIONS: THE RELATIONSHIP BETWEEN THE CPTPP AND THE EVFTA**

As explained in Part 1, conflict of norms among PTAs can exist in theory. So why do legal scholars seem reluctant to refer to the term “conflict” in the discussion of inter-PTA relations? Is it because inter-PTA conflict does not exist at all or only exist in theory, not in reality? Or because conflict does exist in reality, but the topic is under-discussed and under-theorized? Different chapters in this Part try to test the hypothesis on the existence of inter-PTA normative conflicts in Chapter 1. Against the background formulated in Chapter 1, this Part will seek to answer the question of “Can normative conflicts occur between the CPTPP and EVFTA?” or “Do normative conflicts really exist between the CPTPP and the EVFTA?” or “Is there any chance that Vietnam finds itself stuck in a situation where its measure which is alleged to be inconsistent with the CPTPP is justified under the EVFTA or vice versa? The outcomes of this Part make a contribution to cracking a more general question of whether a conflict of norms can exist between two single PTAs.

This Part takes a closer look at empirical scenarios of normative conflicts between two PTAs to which Vietnam is a party which are the CPTPP and the EVFTA. More specifically, normative clashes in subsidies, trade in services and IP are in-depth elaborated in this Part. A comprehensive analysis of all aspects of the CPTPP and the EVFTA relating to the above trade issues is provided. As pointed out in Chapter 1, norm conflicts can arise providing that both necessary and sufficient conditions to their occurrence are, in principle, met. Against such analytical backdrop, Part 2 draws several noteworthy conclusions on nature of conflicts (real or false, inherent or in application of law, bilateral or unilateral, in broad or narrow sense/concept), their extent, frequency and severity. It presents a full picture of concrete scenarios of normative conflicts as a consequence of the simultaneous performance of the CPTPP and the EVFTA by means of the compilation of the fullest list of pairs of sector-specific conflicting norms from the two PTAs which belong to the new generation of PTAs in several trade areas.

Why is the case of Vietnam, other than other states, chosen or more relevant for the conflict discussion? It is predicted that PTAs involving Vietnam are more likely to be in conflict than those involving other states. The reasoning will be based on the pre-conditions to conflicts analyzed in Chapter 1. Firstly, as Vietnam is an active player in trade regionalism, multiple

PTAs are prevalent among those to which Vietnam is a party. As stated in Chapter 1, necessary conditions to conflicting provisions are the three overlaps that can be satisfied by the existence of multiple PTAs. Of course, the phenomenon of multiple PTAs is neither typical nor unique to Vietnam but also commonplace to other states, especially in the context that the number of PTAs to which a certain WTO Member is a party can range from 1 to 20.<sup>465</sup> So far, Vietnam has finished negotiating 16 PTAs.<sup>466</sup> Among 163 bilateral trade relations which can be theoretically covered by PTAs between Vietnam and other WTO State Members, Vietnam has put 56 under the regulation of PTAs.<sup>467</sup> If counting 28 Member States of the European Union (EU) as one, then 29 out of 136 bilateral trade relations, equivalent to around 21%, have been governed by PTAs involving Vietnam. This rate is more than double the average among WTO Members,<sup>468</sup> showing its active participation of the PTA wave. Examples of single PTAs are the CPTPP and the EVFTA; Japan-Vietnam FTA, Chile-Vietnam FTA, Korea-Vietnam FTA, Vietnam-European Asian Economic Union FTA, the EVFTA, Vietnam-European Free Trade Association FTA, Vietnam-Israel FTA. Examples of double PTAs include the CPTPP, Japan-Vietnam FTA, ASEAN-Japan FTA and the RCEP Agreement; the CPTPP and Chile-Vietnam FTA; the CPTPP, ASEAN-Australia-New Zealand FTA and the RCEP Agreement; ASEAN-Korea FTA, Korea-Vietnam FTA and the RCEP Agreement; ASEAN-China FTA and the RCEP Agreement; ASEAN-India FTA and the RCEP Agreement; the CPTPP and the ASEAN Agreement. Secondly, regarding the sufficient condition to conflicts, it is more likely to witness the inconsistency or incompatibility in the subject-matter or substantive contents of norms in the two PTAs under consideration. Vietnam plays a passive, rather than active, role in PTA-law-making. In contrast, trade partners of Vietnam, including the United States, the EU, Japan, Canada,

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<sup>465</sup> Patricia M. Goff (2017), *Limits to Deep Integration: Canada between the EU and the US*, Cambridge Review of International Affairs, 30:5-6, 549-566, DOI: 10.1080/09557571.2018.1461806, p. 1.

<sup>466</sup> Including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), ASEAN Economic Community, ASEAN-India FTA, ASEAN-Australia/New Zealand FTA, ASEAN-Korea FTA, ASEAN-Japan FTA, ASEAN-China FTA, Japan-Vietnam FTA, Chile-Vietnam FTA, Korea-Vietnam FTA, Vietnam-European Asian Economic Union FTA, ASEAN-Hong Kong FTA, Regional Comprehensive Economic Partnership Agreement, EU-Vietnam FTA, Vietnam-European Free Trade Association FTA, Vietnam-Israel FTA.

<sup>467</sup> Including Canada, Mexico, Chile, Peru, 28 Members of the EU, 4 EFTA States, Australia, New Zealand, Japan, Korea, China, India, Hong Kong, Israel, 9 ASEAN Members, Russia, Kazakhstan and Armenia.

<sup>468</sup> Joost Pauwelyn and Wolfgang Alschener, 'Forget about the WTO: The Network of Relations between PTAs and Double PTAs', in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements*, Cambridge University Press, 2015, p. 504.

China, play the role of big players or even rule makers. For the United States and the EU, they act as rule-setters. PTAs are clearly a channel for them to export their external trade rules.<sup>469</sup> For instance, it has been proven that developed countries, including the United States, are rule-makers in investment.<sup>470</sup> The United States dominated the formation of the investment chapter in the TPP. Resultantly, rule-makers can ensure the consistency in their PTAs, including investment provisions. For instance, the consistency in UK treaties is double that of Egypt and Pakistan.<sup>471</sup> Or the CPTPP and the US-Columbia FTA investment chapters are 81% similar textually.<sup>472</sup> Additionally, Vietnam has no clear-cut PTA objectives, strategies, templates or tactics, especially with regards to multiple PTAs. Neither does it have well-established experience, expertise or high-skilled human resources in negotiating and drafting PTAs. To the contrary, the United States and the EU, as pioneers in the PTA wave, are well-equipped with the foregoing and have actively taken into account their pre-existing PTAs, leading to well-drafted new-PTA texts to avoid potentials for inconsistency or incompatibility among PTA provisions. For other states having finished or undergoing negotiations with the United States and EU, such as Canada, Korea or Singapore, they have better bargaining power and well-developed trade negotiation strategies. Another reason for the consideration of the case of Vietnam is the absence, to the knowledge of the author, of literature on conflicts among provisions involving its PTAs and this work purports to fill in the research gap.

Why are the CPTPP and the EVFTA more relevant than the other 14 PTAs to which Vietnam is a signatory when it comes to the puzzle of conflicts of norms? The consideration of the CPTPP and the EVFTA in this Chapter roots in two main reasons from legal and economic perspectives. In the *first* place, these two treaties involve the most important rule-makers or big powers in international trade law with the most diverging viewpoints, strategies and templates in trade negotiations bilaterally, plurilaterally and multilaterally. Beside the United States and the EU - the two most important rule-makers of international trade law are Canada and Japan. In spite of the United State withdrawal from the TPP, its external trade ideology,

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<sup>469</sup> For the EU's use of PTAs to export its external trade policies, see, for example, Leonardo Borlini and Claudio Dordi, *Deepening International Systems of Subsidy Control: The (Different) Legal Regimes of Subsidies in the EU Bilateral Preferential Trade Agreements*, 2017, 23 Colum. J. Eur. L. 551, p. 2. Jean-Christophe Maur, *Exporting Europe's Trade Policy*, 28(11), World Economy 1565(2005).

<sup>470</sup> Wolfgang Alschner and Dmitriy Skougarevskiy, *Mapping the Universe of International Investment Agreements*, Journal of International Economic Law 19(2), 2016, 561–588.

<sup>471</sup> *Ibid.*, p. 562.

<sup>472</sup> *Ibid.*

viewpoint and template are still deeply embedded in the existing CPTPP text given few variations of the CPTPP compared to the TPP. In terms of the substantive subject-matters, the CPTPP incorporates the text of the TPP while supplementing regulations on validity, the withdrawal procedure, the accession to and the review of the CPTPP in the future. The stiff combat between the United States and the EU in international trade law evolution is reflected in the stalemate of the WTO DDR and the TTIP negotiations. On the other side, although Vietnam is an active player in trade regionalism as stated above, it is not a rule-maker, but a rule-taker in preferential trade negotiations, which exacerbates the challenges imposed by multiple PTAs, especially by their conflicting norms. Among PTAs to which Vietnam is a party, the CPTPP – the replacement of the TPP and the EVFTA are the most recent, deepest and highest-standard agreements with the largest and most demanding liberalization commitments. The inclusion of the most WTO-deviating provisions in these two PTAs promises the higher probability of conflicts among their norms. In the *second* place, the CPTPP and the EVFTA involve the most important trade partners to Vietnam, including the EU, Japan, Canada, Australia and New Zealand. The CPTPP is a replacement of the TPP post-US withdrawal. Being announced as being more progressive and advanced than other previously concluded trade agreements, however, the CPTPP, compared with the TPP, is still considered as the TPP *mutatis mutandis* or “TPP-” in many aspects, including membership, global GDP and trade coverage, expected benefits to state parties and level of commitments/trade liberalization. The CPTPP has only 11 members (compared to 12 of the TPP thanks to the US involvement). In addition, the 11 state parties to the CPTPP, with the population of 502.2 million people, equivalent to 6.7% of the global population, account for some 14% of the global GDP and one sixth of the global trade while the ratios of the TPP are 40% and 26% respectively.<sup>473</sup> For Vietnam, the CPTPP will bring about a 1.3% increase in its GDP, much lower than the 6.7% ratio as a consequence of the TPP.<sup>474</sup> Furthermore, the CPTPP is expected to bring about increases of 4.04% and 3.8% in export and import volumes

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<sup>473</sup> <https://dantri.com.vn/kinh-doanh/phe-chuan-cptpp-ban-khoan-chenh-lech-trinh-do-phat-trien-kinh-te-cua-viet-nam-20181102105049453.htm> visited on 05/11/2018.

<sup>474</sup> Speech of Mr. Tran Toan Thang, the National Center for Scio-economic Information and Forecast, Ministry of Planning and Investment, available at [https://kinhdoanh.vnexpress.net/tin-tuc/quoc-te/cptpp-va-tpp-khac-nhau-the-nao-3669956.html?utm\\_source=search\\_vne](https://kinhdoanh.vnexpress.net/tin-tuc/quoc-te/cptpp-va-tpp-khac-nhau-the-nao-3669956.html?utm_source=search_vne) on November 16<sup>th</sup>, 2017.

respectively and of 20,000-26,000 in jobs in Vietnam by 2035.<sup>475</sup> However, with the expectation of the US rejoining in the TPP in the future, thereby materializing the TPP's initial ambitions, the CPTPP plays a role of a stepping stone towards the TPP and accordingly deserves the close attention right now. As to the EVFTA, the EU is the second largest trade partner of Vietnam, and its second biggest export market with the volume of 33.1 billion euros of goods exports to the EU and 9.3 billion euros of goods imports from the EU.<sup>476</sup> Regarding investment, the EU is the fifth biggest foreign investor in Vietnam with 1.3 billion USD out of the total 21.7 billion USD FDI in Vietnam in 2015.<sup>477</sup> The EVFTA is among “the most ambitious and comprehensive Free Trade Agreement that the EU has ever concluded with a developing country.”<sup>478</sup> With their WTO-deviating provisions, these two PTAs are more likely to be in clash with each other. As a result, the conflict, if any, among these two agreements and their consequences will affect Vietnam the most economically. Added to that, given the possibility that the CPTPP can open accession to new parties in the future, this economic impact of the potential conflict can be even multiplied. To sum up, among multiple PTAs of Vietnam, these two trade deals are picked due to their economic and legal magnitude.

The CPTPP and the EVFTA share some features in common while differing from each other in certain aspects. Both trade deals are classified as the deepest new-generation PTAs notwithstanding the measures utilized to evaluate the degree of the depth of PTAs.<sup>479</sup> Firstly, parties to these two treaties are compelled to take huge deviations from what they would have done in the absence of such deals. Secondly, different from shallow PTAs which deal solely with tariffs and other border measures, these two deep PTAs have a wide scope of application, covering behind-the-border trade rules, such as domestic law, regulations, administrative mechanisms and other extensive issues, including trade and trade-related issues falling out of the scope of the WTO, such as investment, competition, labour and environment to address

<sup>475</sup> <https://dantri.com.vn/kinh-doanh/phe-chuan-cptpp-ban-khoan-chenh-lech-trinh-do-phat-trien-kinh-te-cua-viet-nam-20181102105049453.htm> visited on 05/11/2018.

<sup>476</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/> visited on 3<sup>rd</sup> December 2017.

<sup>477</sup> Ibid.

<sup>478</sup> Delegation of the European Union to Vietnam, *Guide to the EU-Vietnam Free Trade Agreement*, p. 5, available at [http://eeas.europa.eu/archives/delegations/vietnam/documents/eu\\_vietnam/evfta\\_guide.pdf](http://eeas.europa.eu/archives/delegations/vietnam/documents/eu_vietnam/evfta_guide.pdf) visited on 3<sup>rd</sup> December, 2017.

<sup>479</sup> For the list of measures to assess the depth of PTAs, see Patricia M. Goff (2017), *Limits to Deep Integration: Canada between the EU and the US*, Cambridge Review of International Affairs, 30:5-6, 549-566, DOI: 10.1080/09557571.2018.1461806, p. 551.

diverging national practices.<sup>480</sup> On the flip side, the two treaties are dissimilar in some aspects. While the EVFTA is a bilateral treaty, the CPTPP is a plurilateral agreement among eleven state parties. With its ratification of the CPTPP Agreement on 12/11/2018, following its conclusion on 9/3/2018, Vietnam has become the seventh ratifying party<sup>481</sup> and been subject to its validity since 14/01/2019. Conversely, the EVFTA has been neither signed nor ratified yet in spite of its final text release in July 2018. Added to that, all undertakings by CPTPP parties are enclosed in one single pack; on the contrary, concessions made by the EU and Vietnam are divided into two agreements – the EU-Vietnam trade agreement and the EU-Vietnam Investment Protection Agreement – because the competence of the EU and its Member States are allocated differently between trade and investment issues in PTA negotiations and ratification. Being composed of 30 chapters, apart from the Preamble, side instruments and annexes, the CPTPP disciplines certain common issues with the EVFTA, including national treatment (NT) and market access (MA) for goods, customs administration and trade facilitation, trade remedies, sanitary and phytosanitary measures, technical barriers to trade, investment, trade in services, government procurement, competition policy, state-owned enterprises and designated monopolies, intellectual property, cooperation and capacity building, transparency, administrative and institutional provisions, dispute settlement, general and final provisions.<sup>482</sup> Conversely, besides certain overlapping topics, there are issues that are dealt with solely in either the CPTPP or the EVFTA such as rules of origin and origin procedures, textile and apparel goods, labour, competitiveness and business facilitation, small and medium-sized enterprises, regulatory coherence and anti-corruption for the former, and non-tariff barriers to trade and investment in renewable energy generation for the latter.<sup>483</sup> In addition to these *prima facie* differences in the scope of application, the two trade deals are divergent in their substantive contents of which in-depth comparative analyses are provided in this Part with respect to three trade and trade-related issues: subsidies (Chapter 5), services trade (Chapter 6) and intellectual property rights (Chapter 7).

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<sup>480</sup> Ibid.

<sup>481</sup> Other CPTPP parties having ratified the CPTPP prior to Vietnam include Japan, Singapore, Mexico, Canada, Australia and New Zealand.

<sup>482</sup> See the CPTPP and the EVFTA texts.

<sup>483</sup> Ibid.

## CHAPTER 5: CONFLICTS AMONG NORMS ON SUBSIDIES

This Chapter concerns both potentials for and solutions to conflicts between disciplines in subsidies in the CPTPP and EVFTA. This Chapter is structured in five sections. As subsidies regulations under the CPTPP make an explicit reference to the already existing and well-discussed WTO subsidies rules in the WTO Agreement on Subsidies and Countervailing Measures (ASCM), Section 5.1 briefly examines the concept of “subsidies”, the requirement of “specificity” and the types of subsidies under the CPTPP. Likewise, the three issues of the “subsidy” notion, the “specificity” element and the subsidy classification within the context of the EVFTA are discussed in Section 5.2 of this Chapter. However, such discussion will be quite lengthy due to their deviation from the WTO ASCM. Section 5.3 then provides a comparison between subsidies norms under the CPTPP and the EVFTA in the aspects of (1) the definition of the “subsidy” concept, (2) the “specificity” criterion and (3) categories of subsidies, including prohibited, permitted and actionable subsidies. A special emphasis is placed on the comparison of the scopes of prohibited, actionable and permitted subsidies under the two trade deals. In other words, it gives an answer to the question of whether the dividing lines between prohibited, permitted and actionable subsidies in the CPTPP are drawn divergently or convergently compared to those in the EVFTA. The ultimate objective of this Section is the exploration of any conflict between subsidies provisions in the two treaties resulting, in particular, from their differences in their scope of application and categorization of subsidies. Following is Section 5.4 exploring reasons for the differences or even potential conflicts between the CPTPP and the EVFTA as far as subsidies provisions are concerned. Paradoxically, while the EVFTA does not have regards to the public policy objectives in its Preamble, its substantive rules leave both Vietnam and the EU more policy space to subsidize in pursuit of such goals. The CPTPP, to the contrary, provides for the above-said objectives in an unequivocal manner, but follows the WTO ASCM by constraining more state autonomy of CPTPP parties. Finally, Section 5.5 strives to address the foregoing potential conflicts between two sets of norms presented in the previous sections. An elaboration on conflict clauses applicable to subsidies rules in the CPTPP and the EVFTA is given.

Before diving into the substantive matters, it is necessary to provide a summary account of the legal framework on subsidies in Vietnam. Rather than being grouped in one single legal document with consistent principles, regulations on subsidies in Vietnam spread in various

legal legislations with diverse validity, including Laws, Decrees and Circulars. Based on recipients of subsidies, some subsidies can be sector-specific or non-sector-specific. Sector-specific subsidies include, for example, agricultural subsidies and aquacultural subsidies. Subsidies to fishery under the Decree No. 67/2014/ND-CP dated 07/07/2014 by the Vietnamese government on several policies on fishery development can be named as sector-specific subsidies. The Decree prescribes certain policies, including financial support in the form of infrastructure investment, preferential credit conditions, insurance and taxation privileges and other relevant measures, such as supports for personnel education, freight transport costs, ship design, ship maintenance and reparation costs. Financial supports given to ship-owners are funded by the state budget. Non-sector-specific subsidies cover financial support for small- and medium-sized enterprises (SMEs). More specifically, Law No. 04/2017/QH14 dated 12 June 2017 issued by the National Assembly of Vietnam on supports for (SMEs) prescribes, among others, basic principles, subject-matters and resources for eligible enterprises. More specifically, SMEs are spelled out as enterprises with no more than 200 employees and satisfaction of one of the two criteria with respect to (1) the total capital (of not exceeding 100 billion VND, equivalent to some 3.7 million EUR) or (2) the total revenue in the immediately preceding year (not beyond 300 billion VND, equivalent to some 11.1 million EUR). The two forms of supports for SMEs can be of financial or non-financial nature. Financial supports come from different sources, such as (1) state contribution, including (i) state-supported credits or state-guaranteed credits, (ii) support from the state budget and (iii) support based on tax holidays, reduction in or elimination of fees, fares, land use rents and other contributions to the state budgets; and (2) private contributions by domestic and foreign individuals and organizations. Non-financial support for SMEs range from simplified tax administrative and accounting regimes for SMEs, arrangement of land sources for the development of industrial zones, centralized zones for agricultural, forestry and seafood processing for SMEs and technology supports to market expansion support, information provision, consultation and legal supports and human resource development supports. Financial supports for SMEs from state resources may be qualified as subsidies.

### **5.1. Interpretation of subsidies regulations under the CPTPP**

The discipline on subsidies is stipulated in Chapter 6 of the CPTPP, Section B on Antidumping and Countervailing Duties, Article 6.8. The fact that the provisions, rather than



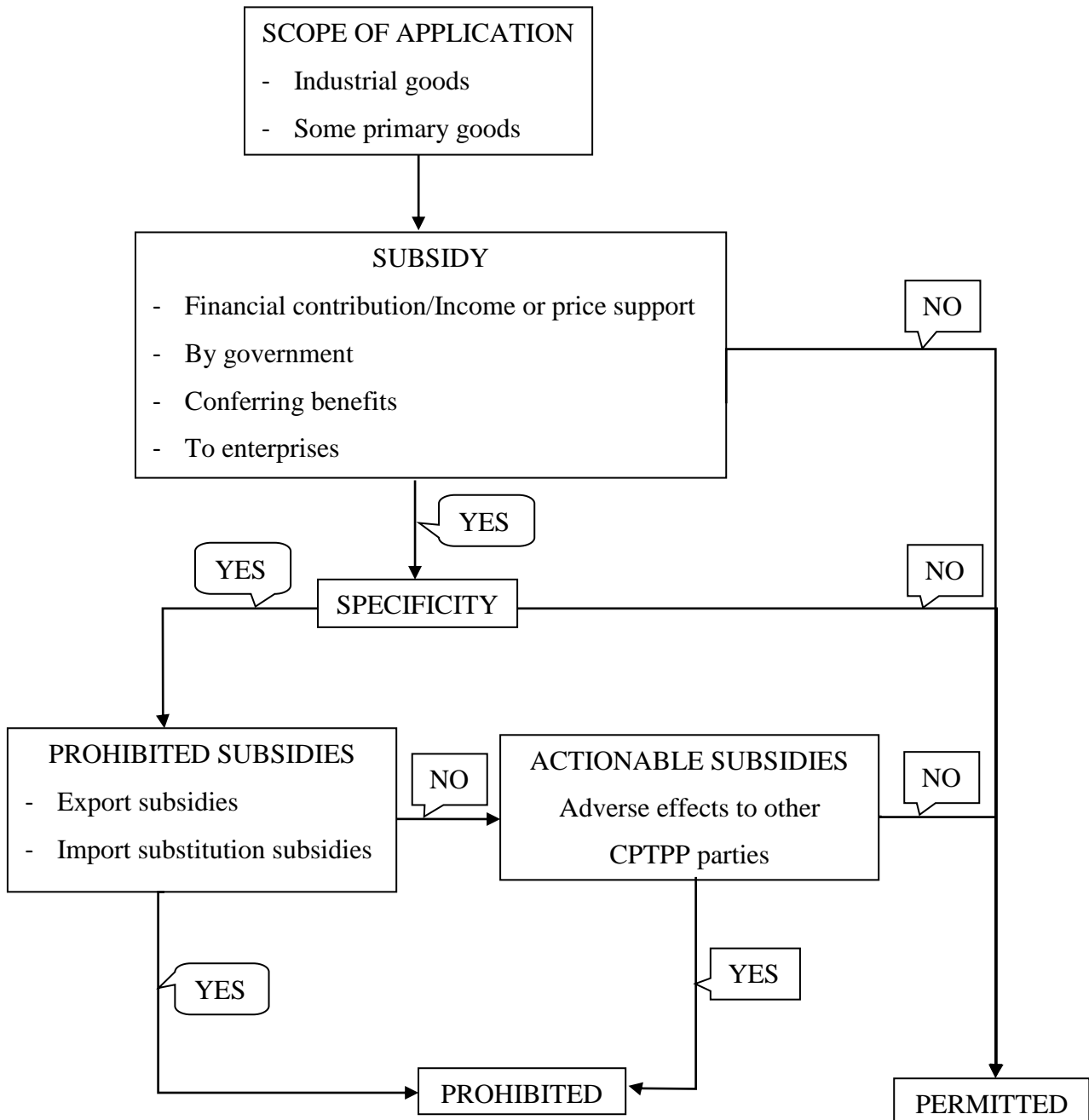
being included in Chapter 16 on Competition Policy of the CPTPP, locate in the Trade Remedies Chapter is indicative of the consequence, from a legal interpretation perspective, that subsidies regulations under the CPTPP are part of trade policies, not competition policies. This approach is consistent with the WTO ASCM which disciplines subsidies as part of the trade remedy policy but different from the EVFTA approach as analyzed below in Section 5.2.

The bare number of just only one article with three clauses dealing with subsidies in the CPTPP does not mean that they are a trivial issue. As the CPTPP refers directly to the WTO ASCM, thereby indirectly incorporating respective provisions on subsidies therefrom, there is no need to echo in detail every single relevant provision in the CPTPP. As for the substantive contents, Article 6.8.1 of the CPTPP constitutes a confirmation of the rights and obligations of CPTPP parties with regards to subsidies under the WTO ASCM while Article 6.8.2 confirms no change in rights and obligations of CPTPP parties with regards to subsidies under the ASCM. Hence, rights and obligations of CPTPP parties, as far as subsidies are concerned, are exactly the same as those under the WTO, or more specifically, Article VI of the GATT and the ASCM. To put it differently, the CPTPP respective norms on subsidies constitute WTO-equivalent provisions.

Consequentially, in terms of the scope of application, like Article VI of the GATT and the ASCM, Article 6.8 of the CPTPP only applies to industrial and certain primary (agricultural) goods, neither to primary goods governed in the Agreement on Agriculture (AoA) of the WTO Agreement nor to trade in services. In other words, the obligations of Vietnam or other CPTPP parties as to services subsidies are non-existent thanks to such exclusion. This exclusion constitutes a permission according to which Vietnam, as well as other CPTPP parties, is entitled to grant subsidies to their domestic services and service suppliers without any constraint.

Adopting the same definition of subsidies as the WTO ASCM, the CPTPP defines a subsidy as a measure featured by the four elements: (1) financial contribution or income/price support, (2) by government, (3) (conferring) benefits and (4) the beneficiaries of enterprises. The flowchart on the next page facilitates visually the analysis of the CPTPP subsidies rules.

### FLOWCHART: SUBSIDIES RULES UNDER THE CPTPP



*Source:* Based on Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 433, *mutatis mutandis*\*

\* The box of permitted subsidies has been removed from the flowchart as it has not been effective from the year 2000 on.

As there are many researches on the four elements of the “subsidy” concept in the WTO ASCM and the CPTPP implicitly incorporates that concept of the WTO, this section briefly discusses the issue. The financial contribution element is interpreted broadly, covering both (i) “a charge on public account”, including “transfers of public resources, foregoing of government revenues or the provision of goods and services by the government”<sup>484</sup> and (ii) no charge on public account, such as indirect subsidies or income or price support.<sup>485</sup> The subsidy-granting government can be public or private bodies provided that the latter are under the control or influence of the former. Furthermore, the government conferring subsidies can be at any levels, including central, regional and local governments. Since the level of the subsidizing government is irrelevant, the ignorance of the level of governance is justified. Where the third element of “benefit” is concerned, its determination is based on the comparison between the benefit or advantage in the presence of the government subsidies and that in the absence of such measure, i.e. in the normal market status. In other words, the comparison is made on the benefits conferred to the recipients in cases with and without the measure which is allegedly to be subsidies. More specifically, subsidies exist when the measure under consideration brings about a greater benefit compared to that in the absence of such measure. The subsidy recipients, generally referred to as enterprises, can be “an enterprise or industry or a group of enterprises or industries”.<sup>486</sup> While the legal form of an entity is not taken into consideration to determine whether it is an enterprise or not, economic activities are a compulsory factor. To put it differently, an entity involved in non-economic activities are excluded. Besides, the eligibility to subsidies is limited to some enterprises or industries and the selection is based on subjective criteria.

As to the condition of “specificity”, the CPTPP also recognizes the incorporation of the WTO counterpart – Article 2 of the ASCM, constituting the WTO-equivalence element. Only when the requirement of specificity is satisfied, a subsidy is subject to rules on subsidies of the CPTPP.

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<sup>484</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 444.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid, p. 450.

Subsidies in the CPTPP, following the WTO ASCM, comprise of prohibited subsidies and actionable subsidies.<sup>487</sup> Prohibited subsidies, including export subsidies and import substitution subsidies, are strictly proscribed while actionable subsidies cover those with adverse effects on the interests of another CPTPP party. As export subsidies and import substitution subsidies are the most detrimental to trade, they are outlawed beforehand and completely. Their negative impact on trade is presumed, therefore, there is no need to prove their negative effects on trade.<sup>488</sup> The prohibition is absolute and based on the usage of subsidies either for export promotion or import substitution purposes and these prohibited subsidies cannot be justified in any case. Except for subsidies contingent on exports and import substitution, all of the other subsidies now are classified as actionable under the ASCM, and likewise, under the CPTPP. The actionable subsidies that can be challenged are regulated under the CPTPP like under the WTO ASCM. Subsidies are actionable when they affect trade of the other parties. The actionability of a certain subsidy is contingent on its trade impact, not on its competition impact. With the expiry of permitted subsidies under the WTO ASCM, it is inferred that the previously-permitted subsidies now fall under the umbrella of actionable subsidies. Subsidies previously belonging to the permitted category, including subsidies for research and development, regional development subsidies, environment protection subsidies, are no longer permitted.<sup>489</sup> Consequently, no subsidies are presumed *a priori* as having no affection of trade and competition, and therefore being permitted in advance anymore. However, in theory, a subsidy can be still permitted under CPTPP so long as it does not bring about any adverse effects on the interest of other CPTPP parties; such measures are today not listed *a priori* though.

**Table 1: Types of Subsidies under the CPTPP**

<b>Prohibited subsidies</b>	<b>Actionable subsidies</b>	<b>Permitted Subsidies</b>
<ul style="list-style-type: none"> <li>- Export subsidies</li> <li>- Import substitution subsidies</li> </ul> (Article 3, ASCM)	<ul style="list-style-type: none"> <li>- Adverse effects on the interests of another CPTPP party (Article 5 of the ASCM)</li> <li>- Expired permitted subsidies (Article 8 of the ASCM)</li> </ul>	<ul style="list-style-type: none"> <li>- Without adverse effects on trade</li> </ul>

<sup>487</sup> Ibid, p. 457.

<sup>488</sup> Ibid.

<sup>489</sup> Ibid.

Source: Based on Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 433, *mutatis mutandis*\*.

To conclude, with regards to subsidies rules, given the reference of the CPTPP to the WTO ASCM rights and obligations without any supplementations or mutations and a host of literature on the latter, the in-depth discussion on the former seems to be redundant. But the above brief is still necessary for the comparative analysis in Section 5.3 of this Chapter.

## **5.2. Interpretation of subsidies regulations under the EVFTA**

Overall, EVFTA subsidies rules are characterized by two main features: (1) WTO-equivalence, i.e. being similar to the WTO ASCM by reference to the WTO in some aspects, including the definition of subsidies and the “specificity” condition and (2) WTO-deviating elements, that is the EVFTA differs from the WTO ASCM in other aspects, in particular, WTO-plus provisions on subsidies to services and WTO-minus provisions on types of subsidies to non-agricultural goods, including permitted and prohibited subsidies. The flowchart on the next page illustrates the analytical sequence of the EVFTA provisions on subsidies.

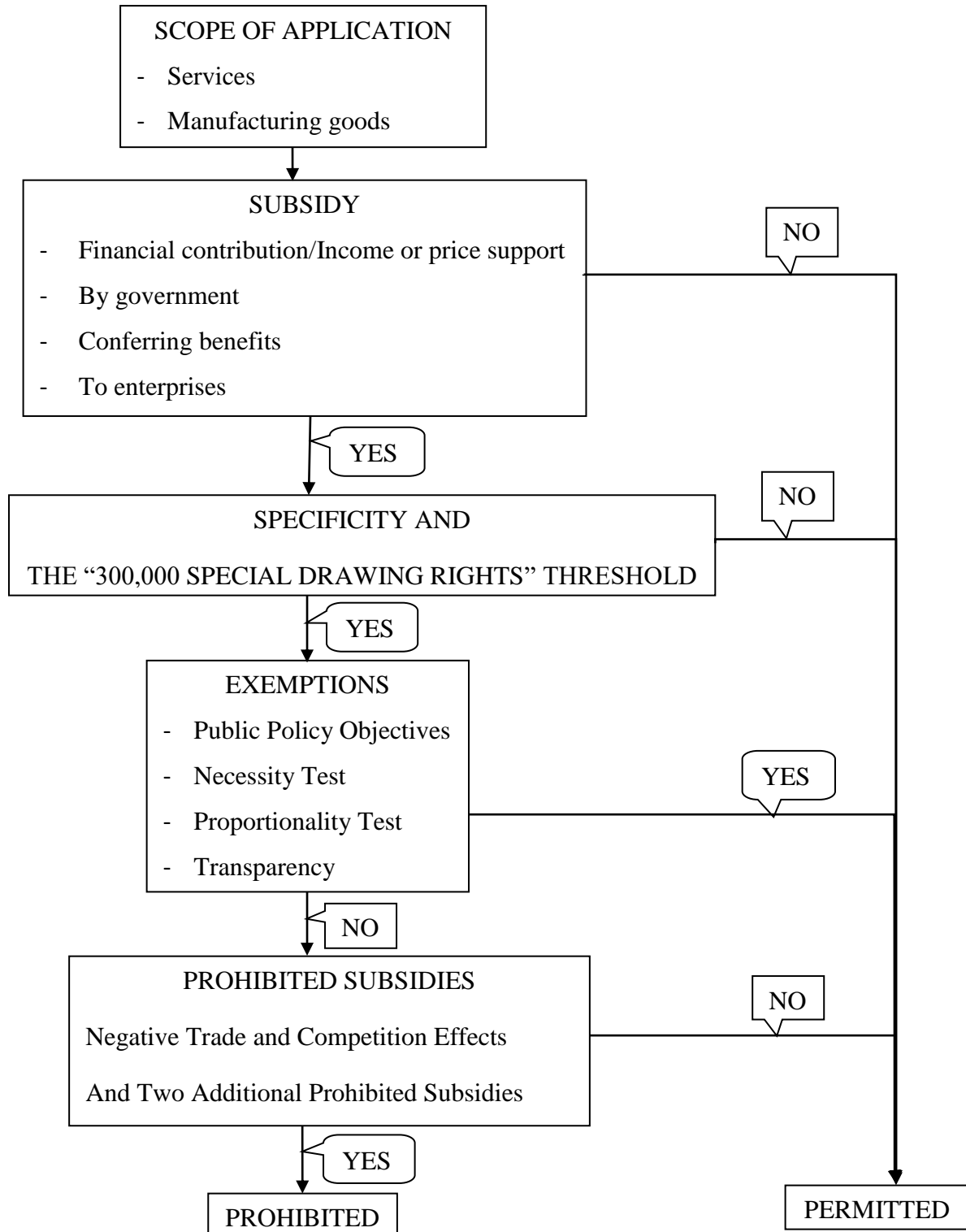
Different from the CPTPP, the EVFTA sets out norms on subsidies in the Competition Policy Chapter, which consists of two sections and Section II deals with subsidies. In economic terms, subsidies are considered, in some cases, as bad subsidies, that is, government measures that can harm not only trade but also competition conditions in the market.<sup>490</sup> Therefore, from a legal point of view, firstly, subsidies rules, due to adverse impacts of subsidies on competition, constitute a component of competition rules and the national competition authority can be in charge of negotiating the rules in international trade agreements.<sup>491</sup> Secondly, negotiators of trade agreements can choose to stipulate provisions on the discouragement of subsidies with negative undermining in either the trade remedy chapter (as in the WTO) or in the Chapter on Competition (as in the EVFTA, EU-Korea FTA, EU-Singapore FTA) to correct their negative effects. Thirdly, from an interpretative point of view,

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<sup>490</sup> Ibid.

<sup>491</sup> For example, in the EVFTA, negotiators of subsidies rules are from the Competition Authority on the Vietnamese side. See Leonardo Borlini and Claudio Dordi, *Deepening International Systems of Subsidy Control: The (Different) Legal Regimes of Subsidies in the EU Bilateral Preferential Trade Agreements*, 2017, 23 Colum. J. Eur. L. 551, p. 583.

### FLOWCHART: SUBSIDIES RULES UNDER THE EVFTA



Source: Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 433, *mutatis mutandis*.

the location of the EVFTA subsidies rules constitutes the context affecting the interpretation thereof. Pursuant to the rule of treaty interpretation, the context sheds some light on the reading of the provision at issue. Therefore, the positioning of subsidy provisions in the Competition Policy Chapter should be taken into account and their interpretation should be done accordingly. As subsidies rules belong to competition rules, their interpretation should be in line therewith. In other words, subsidies rules in the EVFTA should be read in the competition-oriented direction. Legally speaking, the prohibition of subsidies depends on the determination of their detrimental influences on trade and competition. Any inconsistency with subsidies rules can be proved through the harm to competition. With eight articles on subsidies, Section II in the Competition Policy Chapter of the EVFTA outweighs not only Section I on anti-competitive conducts but also its counterpart in the CPTPP because of its deviations from the WTO ASCM rules in services subsidies and types of non-agricultural subsidies as stated above.

### ***5.2.1. Scope of application***

Regarding the subject-matter scope of application, pursuant to Article x.2(1), the EVFTA subsidies rules apply to subsidies granted to both (1) goods and goods producers and (2) services and service suppliers. Only non-agricultural subsidies are covered; agricultural subsidies or fisheries subsidies are excluded.<sup>492</sup>

Regarding subsidies to services trade, Article x.2(9) of the EVFTA clarifies that norms on subsidies in the EVFTA shall only apply to services (sub-)sectors inscribed in both the Chapter on CBTS and the Chapter on Investment. As the audio-visual services sector, for example, is excluded from the EVFTA Chapter on CBTS and the Chapter on Investment, subsidies granted to audio-visual services and/or services suppliers fall beyond the scope of application of the EVFTA subsidies rules. Such exclusion results from the EU request since audio-visual services and service suppliers are among the main beneficiaries of state aid in the EU, alongside with aircraft producers, energy producers and agricultural producers. Subsidies to environmental services and financial services and/or their suppliers, for instance, fall under the scope of the EVFTA subsidies rules since the service sectors are inscribed in both above-mentioned Chapters.

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<sup>492</sup> Article x.2(6) of the EVFTA.

Non-economic activities are also excluded from the scope of the EVFTA.<sup>493</sup> Moreover, the EVFTA only applies to specific subsidies of which the sum per recipient for a three-year period exceeds 300,000 Special Drawing Rights (SDR).<sup>494</sup> As a consequence, for specific subsidies per beneficiary totaling below or equal to 300,000 SDR every three years, they are excluded from the EVFTA, i.e. Vietnam is free to grant such subsidies.

### ***5.2.2. Definition of subsidies***

Thanks to its explicit reference to the concept “subsidy” in the ASCM, the term “subsidies” is defined by the EVFTA in accordance with the WTO ASCM with necessary mutations with respect to the extension of the scope of the concept to services subsidies. As a result, the four above-discussed elements of the “subsidy” notion in the WTO ASCM or the CPTPP are also workable in the EVFTA context.

### ***5.2.3. The condition of specificity***

When it comes to the condition of specificity of subsidies, the EVFTA likewise makes an explicit reference to Article 2.2 of the ASCM. Therefore, the determination of the “specificity” of subsidies in the EVFTA is the same as that under the WTO or the CPTPP, constituting a WTO-equivalent or CPTPP-equivalent element. Both the two types of *de jure* specificity and *de facto* specificity are governed by the EVFTA.

Additionally, as to subsidy recipients, Article x.2(2) of the EVFTA clarifies that in cases where the subsidy recipients are in individual consumers, the subsidy in question is not considered as specific, i.e. non-specific subsidies. The rationale behinds this regulation is the requirement that the recipients of subsidies must be enterprises or industries. It should be further noted that, pursuant to Article x.2(2) of the EVFTA, subsidies for social policy objectives are non-specific. However, no definition of social policy objectives is given.

The element of specificity is to determine whether a subsidy falls within the scope of the EVFTA; in particular, in parallel to the WTO ASCM and the CPTPP, the EVFTA subsidies rules are only applicable to specific subsidies, not to non-specific subsidies.

### ***5.2.4. Principles on and categories of subsidies***

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<sup>493</sup> Article x.2(5) of the EVFTA.

<sup>494</sup> Article x.2(7) of the EVFTA.



*a. Principles on subsidies*

There are two principles on subsidies in the EVFTA. The first principle allows exemptions of market-correcting subsidies whereas the second principle discourages trade- and competition-distorting subsidies.

Locating prior to the second principle, the first principle on the exemptions or permission of subsidies which are for public policy objectives and pass the necessity, proportionality and transparency tests bases its legal foundation on Article x.1(1), the first sentence and x.1(2), Article x.1(3) and Article x.2(4). The majority of items in Article x.1 on Principles are to refer to “good subsidies”. Among the three items of Article x.1, Items x.1(2) and x.1(3) purport exclusively to subsidies with positive externalities. The other item – Item x.1(1) refers to subsidies with positivities right in the first sentence; just the other two subsequent sentences touch upon subsidies with negativities. The two foregoing facts on the location and volume appropriated to the first principle showcase that EVFTA parties, particularly the EU, have weighed much on the defence of resort to good subsidies, contrary to the CPTPP acquiescence on the WTO aversion to subsidies. Additionally, the title of Article x.2(4) is “[...] Scope” is indicative of the delimitation of the coverage scope of the EVFTA subsidies rules. In particular, EVFTA subsidies rules will not apply to subsidies in pursuit of public interest. Article x.2(4) envisages the provision as “Exemptions”, not “Exceptions”, for certain subsidies with positives or exemptions of certain subsidies with market-correcting effects or so-called “good subsidies”. In other words, the EVFTA subsidies rules, including its principle of prohibition on subsidies, will not apply to those designed to attain public policy objectives. Good subsidies or subsidies with positive effects, when meeting certain tests, will be exempted from the EVFTA scope, instead of being exceptional to or justified from the subsidy-prohibition principle. Therefore, these subsidies should be classified as permitted, rather than prohibited but justified, subsidies. The EVFTA is the only FTA so far concluded by the EU in which (1) the parties make an express recognition of positive functions of subsidies in their attainment of public policy objectives, (2) such positive functions precede

their negative functions,<sup>495</sup> and (3) the positive functions are embedded in a principle of subsidies rules.

The first principle entitles the first type of subsidies: permitted subsidies. It further sets out the necessity test and clarifies the “public policy objectives” notion. To determine permitted subsidies, the first principle must be read with Article x.2(4) which calls for the tests of proportionality and transparency. Article x.1(2) lists public policy objectives or certain market failures to exempt subsidies as governmental inventions. In other words, the EU and Vietnam governments can intrude in their economies through subsidies to correct certain market failures listed in Article x.1(2).

The inclusion of the first principle on public-policy-objective subsidies can be ascribed to two main factors: one of economic nature and the other of political nature. As above mentioned, the economic reason resides in the positive effects of subsidies, consisting of market-failure-correction or redressing functions and performance of equity objectives.<sup>496</sup> For example, to internalize the positive externalities of an economic activity on the environment, i.e. environment purification or upgradation, environment subsidies to the production of green or renewable energy can be accorded. The performance of equity objectives includes, for example, regional development subsidies. While the positive functioning of subsidies has been well established, the fact that no PTAs, except for the EVFTA, states in an unambiguous fashion those functions, let alone the recognition of such functions as a principle and the placement of the principle in the first and foremost position, indicates that the above inclusion is driven also by the negotiation context or more specifically, the domestic political concerns and interests of the EU in which the EU and its Member States are among the most frequent and heaviest user of subsidies domestically. As a result of the two above factors, is the above permissive principle introduced.

Article x.1(1), in particular its second and third sentences, disciplines the second principle of the prohibition of trade- and competition-distorting subsidies or so-called “bad subsidies”. Being couched in soft terms, i.e. bad subsidies “should not”, rather than in strict terms of

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<sup>495</sup> Leonardo Borlini, ‘Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the ‘New Generation’ EU Trade Agreements’, in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 10.

<sup>496</sup> Pierre Sauvé and Marta Soprana, *Disciplining Service Sector Subsidies: Where Do We Stand and Where Can We (Realistically) Go?*, *Journal of International Economic Law* 21(3), 2018, 599–619, ft. 13.

“shall not”, be granted, the principle implies a discouragement, rather than an absolute prohibition, of bad subsidies in accordance with the first principle above. A measure constituting a specific subsidy under the EVFTA will not be automatically or necessarily prohibited. In contrast, only when its negative consequences on trade and competition are either established or projected, it falls under the prohibition in the third sentence of Article x.1(1) of the EVFTA. Since not all subsidies lead to adverse effects on trade and competition, an absolute prohibition of all subsidies is too burdensome. In other words, no prohibition should be imposed on subsidies associated with no adverse effect on trade and competition. Added to that, by using the conjunction of “and”, rather than “or”, the principle requires cumulatively both conditions for a subsidy to be prohibited: trade-distortive effects and competition-distortive effects. Besides, the two effects can take either of the following forms: actual affection or potential affection. As a result, the principle gives birth to the second type of subsidies: prohibited subsidies.

The co-existence of the two principles embodies a reflection of the explicit recognition of two-sided purposes of subsidies: positive and negative purposes. On the positive side, with their positive purposes, subsidies are instrumental for parties to attain their public policy objectives. On the negative side, with their negative purposes, subsidies can harm competition and trade, being detrimental to competition by distorting the proper functioning of the market and to trade by undermining the benefit of trade liberalization.

As the two principles above conflict with each other, they need to be balanced given that a certain subsidy can produce both negative and positive effects cumulatively. Then, a subsidy is justified when its benefits, i.e. the fulfilment of public policy objectives, compensates its cost, i.e. the negative impact on trade and competition. The requirements of necessity and proportionality set out in Principle 1 serve this purpose as they limit to the fullest extent the negative effects by subsidies on trade and competition. In other words, only subsidies with the least trade- and competition-distortive effects are permitted. More specifically, the permitted subsidies must be necessary, proportionate and transparent to the (public policy) objectives pursued. For subsidies which are, on the one hand, harmful to trade and competition, and, on the other hand, unnecessary and/or disproportionate and/or non-transparent to pursue a public policy objective, they are not justified.

*b. Categories of subsidies*

From the foregoing, there are two types of subsidies under the EVFTA: (1) permitted subsidies, including (i) subsidies without adverse externalities on trade and/or competition and (ii) subsidies meeting the four conditions of pursuit of public policy objectives, necessity, proportionality and transparency simultaneously; (2) prohibited subsidies, including (i) subsidies with adversity to trade and competition and with failure to meet at least one of the four conditions upon which the determination of permitted subsidies is contingent and (ii) two additional prohibited subsidies.<sup>497</sup> In other words, subsidies covered under the EVFTA are either permitted or prohibited. If not permitted, then a given subsidy is prohibited and vice versa.

b1. Permitted subsidies

To be exempted, a subsidy must meet four cumulative conditions: (1) pursuit of a public policy objective,<sup>498</sup> (2) necessity to achieve the objective in question,<sup>499</sup> (3) proportionality to achieve the objective in question<sup>500</sup> and (4) transparency.<sup>501</sup> If so, the measure constitutes room for public policy or public policy space of the EU and Vietnam. As a result, Vietnam is entitled to grant subsidies if such measures are necessary, proportionate and transparent to reach its public policy objective.

*Firstly*, regarding the first requirement, public policy objectives are defined as the general goal to deliver an outcome to the overall public benefit.<sup>502</sup> The goals pursued can be economic and non-economic, however the beneficiaries of the measure must be the general public. Illustrations of public policy objectives are also provided. For example, regional development subsidies to eliminate disparities between regions<sup>503</sup> are in line with the previously permitted subsidies under the WTO ASCM. Additionally, subsidies to overcome a serious disturbance in the economy of one of the Parties are also allowed. A disturbance is considered as serious

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<sup>497</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 457.

<sup>498</sup> Article x.1(1) 1<sup>st</sup> sentence, x.1(2) of the EVFTA.

<sup>499</sup> Article x.1(1) 1<sup>st</sup> sentence of the EVFTA.

<sup>500</sup> Article x.2(4), 2<sup>nd</sup> sentence of the EVFTA.

<sup>501</sup> *Ibid.*

<sup>502</sup> Article xx.1(2) of the EVFTA.

<sup>503</sup> Article x.1(2)(b) of the EVFTA. See Leonardo Borlini, 'Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the 'New Generation' EU Trade Agreements', in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 8.

when it is featured by four features cumulatively: exceptionality, temporariness, significance and the economy-wide scope of affection.<sup>504</sup> A financial crisis, for example, is a serious disturbance in the economy and bail-outs of financial institutions during the financial crises, such as those provided by the US and the EU during the 2008 financial crisis, to restore the integrity and stability of their financial system are examples of subsidies to overcome a serious disturbance in the economy of the interested parties. The conclusion that the EU is for sure in favour of this subsidy exemption can be drawn from two perspectives. From a legal perspective, the EU, domestically, recognizes that it is “unwise to introduce a total prohibition on state aid in financial sector.”<sup>505</sup> Therefore, the EU state aid law likewise permits the use of state aid to remedy a serious disturbance in the economies of EU Member States.<sup>506</sup> Furthermore, the EU law justifies the above state aid on condition of proportionality and temporariness. From a practical perspective, the EU did take advantage of this exemption by granting state aid during the global financial crisis 2008 to restore its financial stability. Added to that, parallel to the WTO ASCM’s previously permitted subsidies, research and development subsidies and subsidies for the protection and preservation of the environment are exempted too. In additions, training subsidies and subsidies for small and medium-sized enterprises (SMEs) are also listed accordingly. For the latter, the eligibility to subsidies depends on the size of the potential recipients, i.e. SMEs. The identity of the recipients varies from the EU to Vietnam depending on the law of each party on types of entities to be considered as SMEs. The EU benefits most from this exemption in light of the fact that SMEs account for 99% of EU businesses and 90% are micro-firms.<sup>507</sup> The culture exemption listed therein is also on request by the EU as such justification is common to the EU domestic law.<sup>508</sup> None of the listed objectives are industry- or sector-specific, for example, manufacturing-, agriculture- or services- specific but of horizontal kind.<sup>509</sup> Since the list provided in Article x.1(2) is non-exhaustive, other non-listed public policy objectives may fall into this type, such as “public health, safety, the conservation of living or non-living

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<sup>504</sup> Article x.6(3) of the EVFTA.

<sup>505</sup> Pierre Sauvé and Marta Soprana, *Disciplining Service Sector Subsidies: Where Do We Stand and Where Can We (Realistically) Go?*, Journal of International Economic Law 21(3), 2018, 599–619, ft. 13, p. 604.

<sup>506</sup> Article 107 of the Treaty on the Functioning of the European Union (TFEU).

<sup>507</sup> <https://www.viasarfatti25.unibocconi.eu/notizia.php?idArt=20060> visited on 23/10/2018.

<sup>508</sup> Article 87.3(d) of the EC Treaty on the cultural exception to the EU State Aid law.

<sup>509</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 472.

exhaustible natural resources, integrity and stability of the financial system, public morals”,<sup>510</sup> protection and enforcement of labour rights and the promotion of transparency.<sup>511</sup> With the non-exhaustive nature of the exemption list, the EU endeavours not only to reactivate the WTO ASCM’s permitted subsidies but also to enlarge the latter.

Secondly, the requirement of “necessity” or the “necessity” test stipulated in the first sentence Article x.1(1) of the EVFTA requires that the subsidy be necessary for Vietnam or the EU to achieve a certain public policy objective. Although the EVFTA does not clarify the necessity requirement, it is arguable that this requirement purports to ensure that the effect on trade and competition of the other party is limited.<sup>512</sup> The issue turns out to be whether the public policy objective can be pursued without the subsidy in question or whether there is any other alternative to the subsidy in question which is less trade- and competition-distortive. If the answer is yes, then the measure is not necessary to the public policy objective attainment. Otherwise, its necessity is proven.

Thirdly, even though subsidies granted in view of attainment of public interest are not subject to any *a priori* fixed limitation on their amounts, the subsidizing party is still constrained in deciding the volume of subsidies in accordance with the proportionality test set out in the second sentence of Article x.2(4). Like the necessity requirement, neither is the element of proportionality defined in the EVFTA. However, the determination of the proportionality satisfaction is linked to the public policy objective, i.e. (1) “the amount of the subsidies involved is limited to the minimum needed to achieve”<sup>513</sup> public policy objectives and (2) “the effect on trade of the other party is limited.”<sup>514</sup> In other word, proportionality implies the question of whether the public policy objective in question can be retained with less subsidy. If a positive answer is given, then the subsidy is disproportionate and vice versa. The EU is also supportive of the introduction of this proportionality test in the EVFTA as the test is well-known and widely used in the EU law.

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<sup>510</sup> Julien Chaisse, Henry Gao and Chang fa Lo, *Paradigm Shift in International Economic Law Rule-Making: TPP as a New Model for Trade Agreements?*, Springer Nature, 2017.

<sup>511</sup> See the Preamble of the CPTPP.

<sup>512</sup> Leonardo Borlini, ‘Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the ‘New Generation’ EU Trade Agreements’, in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 9.

<sup>513</sup> Ibid.

<sup>514</sup> Ibid.

Lastly, the requirement of transparency<sup>515</sup> is clarified in Article x.4 of the EVFTA, constituting a WTO-plus obligatory norm in that the notification obligation imposed on the EU and Vietnam must be complied with once every four years by providing information about (i) the legal basis, (ii) form, (iii) amount and (iv) recipients (if possible) of subsidies and through the means of publicly accessible websites or directly by parties.

In a nutshell, the wording and the negotiation context imply that the EU is the demandeur or the rule-maker of subsidies provisions in general and of the first principle in particular. The principle is the reiteration of the EU endorsement of the re-introduction of “green light” subsidies in preferential and multilateral trade agreements as proven in the EU’s Doha Development Round (DDR) proposal.<sup>516</sup> The principle deeply roots in the ideology of the EU regarding social values, including economic and non-economic values and the balance of different values in view of achieving economic and non-economic goals or values in a simultaneous and harmonious manner. The ideology is also embodied in the intra-EU relation.<sup>517</sup> As a result, such exemptions allow room for public policies by giving right to the EU and Vietnam to granting subsidies on certain conditions.

## b2. Prohibited subsidies

The second and third sentences of Article x.1(1) stipulate prohibited subsidies. Contrary to the CPTPP which outlaws outright two types of subsidies, i.e. export subsidies and import substitution subsidies according to their usage, the EVFTA approaches the issue from the perspective of effects of the subsidies on trade and competition. More specifically, subsidies which adversely affect trade and distort competition are outlawed. The prohibition of trade-distorting and competition-distorting subsidies (or distortive subsidies) is not strict or absolute due to its wording of “should not”, instead of “shall not”. The relative prohibition depends on consequences injurious to trade and competition.

As discussed above, the discouragement of subsidies comes from their two negative externalities to trade, i.e. market access reduction, and to competition, i.e. competition distortion, for the purpose of the “avoidance of subsidy wars, free flows of goods and services

<sup>515</sup> Article x.2(4) of the EVFTA.

<sup>516</sup> Leonardo Borlini, ‘Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the ‘New Generation’ EU Trade Agreements’, in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 8.

<sup>517</sup> Article 107 of the TFEU.

across boundaries protection of global efficiency and competing procedures.”<sup>518</sup> To be prohibited, a subsidizing measure by Vietnam or the EU must fulfil four conditions cumulatively: (1) the definition of subsidy, (2) the specificity requirement, (3) failure to be classified as permitted subsidies, i.e. failure to meet at least one of the above four conditions and (4) the satisfaction of two elements: trade distortion and competition distortion. In other words, (the potential of) the existence of negative trade and competition impacts is the pre-conditions to judge the (in)consistency of a subsidy with the EVFTA. The requirement that negative affection on trade and competition must be proven in the establishment of subsidy rule violation by a measure indicates that there is no presumption on the existence of such negative effects on trade and competition as far as a subsidy is concerned, i.e. a subsidy is not assumed to (be likely to) negatively impact trade and competition. As the negative affection of trade and competition is not presumed or taken for granted, the plaintiff bears the burden of proof. Being phrased as “negative affect, or are likely to affect”, the negative externalities can occur in two scenarios: (i) actual/already-happened effects and (ii) potential/perspective effects, that is, the granting of financial contribution by a party, either by the EU or by Vietnam, does or is about to cause competitive advantage to the recipients compared with those not granted the same contribution.

The requirements of “negative effect on trade” and “negative effect on competition” must be met simultaneously as the conjunction “and” is used. As the term “negative affection” of trade and competition is not defined in the EVFTA, the issue of interpretation of such conditions is raised. Although it is argued by some authors that the two elements of trade distortion and competition distortion by subsidies are intrinsically linked, i.e. negative effects on trade are linked to those on competition and are in fact one requirement,<sup>519</sup> the conclusion does not always hold true. If trade impact and competition impact were one, there would be no need to explicitly refer to competition impacts as the negative consequence of subsidies, i.e. the express reference to negative competition impact is redundant. The explicit mention of competition affection, in addition to trade affection, must mean something. As analyzed in detail later in Section 5.3, certain subsidizing measures can harm trade but leave competition

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<sup>518</sup> Leonardo Borlini and Claudio Dordi, *Deepening International Systems of Subsidy Control: The (Different) Legal Regimes of Subsidies in the EU Bilateral Preferential Trade Agreements*, 2017, 23 Colum. J. Eur. L. 551, p. 585.

<sup>519</sup> Ibid.



conditions intact when competitors in the relevant market can still compete and consumers are even better off thanks to the subsidies. The standard of the adverse effect on trade should be interpreted from a competition-oriented perspective though.<sup>520</sup> There are some arguments for such conclusion.<sup>521</sup> Firstly, subsidies can cause competition distortion or a threat thereof. Secondly, subsidies rules are posited in the Competition Policy Chapter. Thirdly, competition promotion is one objective of the EVFTA along with the goals of trade and investment promotion as stated in its Preamble.

Furthermore, no clarification as in footnote 83 of Article 11.11 of the EU-Korea FTA is included to define the term “trade”. From an economic point of view, the negative effect on trade and competition can be (i) in the domestic market (i.e. distorting competition between the EU’s and Vietnam’s goods and services in the market of either party) and/or (ii) in the international market (i.e. harming competition between the EU’s and Vietnam’s relevant goods and/or services in the third market). However, the footnote, which is added to shed light on the term “trade” in the EU-Korea FTA, does not appear in the EVFTA. In spite of its absence, such clarification assists in the reading of the term “trade” in the latter though. By analogy, the term “trade” in this provision of the EVFTA consists of both domestic and international markets. Therefore, the determination of adverse affection of trade should take into account both bilateral trade between the EU and Vietnam and trade of the EU in the third-party market in case of judgement of subsidizing measures by Vietnam. If the subsidies are granted by the EU, the affection taken into consideration relates to both bilateral trade between Vietnam and the EU and trade by Vietnam in the third-party market where Vietnam’s and the EU’s goods and services compete. In sum, to be prohibited, a subsidy must prove to (be likely to) distort competition and affect trade either in the market of parties (i.e. in the market of the EU or Vietnam) or/and in the third-party market.<sup>522</sup> The standard of negative effects on trade and competition is neither defined nor clarified within the context of the EVFTA; consequentially, such ambiguity leads to the hardship in judging the consistency of a subsidy with EVFTA subsidies regulations.

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<sup>520</sup> Ibid, p. 596.

<sup>521</sup> Ibid.

<sup>522</sup> Ibid.

Article x.6(1) sets out two additional prohibited subsidies, depending on the nature and states of subsidy recipients.<sup>523</sup> The first additional prohibited subsidy is legal arrangements by a government or public body with an unlimited coverage of debts and liabilities in terms of either (i) the amount of those debts and liabilities or (ii) the duration of such responsibility.<sup>524</sup> So, firstly, the trade- and competition-distortive effects, which are the pre-condition of the above outlawed subsidies, are not required for this type as the measure itself constitutes a “highly distortive permanent operating aid.”<sup>525</sup> Secondly, different from the discouragement of above prohibited subsidies which does not depend on the amount of conferred subsidies, this prohibition is contingent upon the unlimited volume of guarantee of debt and liabilities. However, the unlimitedness of the guarantee is inherently reflective of the disproportionality of the subsidizing measure to its objective. In other words, the ban on this type of subsidies, although being treated in a separate provision, is in line with the principle of subsidy prohibition. The second additional prohibited subsidies are supports to insolvent or ailing enterprises backed up with no credible restructuring plan.<sup>526</sup> Different from both of the above types of prohibited subsidies, this proscription of this group of subsidies is conditional on neither their negative affection on trade and competition nor their sum but on the failure of the recipients to present credible restructuring plans. The requirement of such plan submission is to secure long-term viability and push the interested entities to commit themselves to the restructuring cost<sup>527</sup> i.e. the insolvent/ailing enterprises will in no way sustain purely up to the subsidizing measure. The lack of a trust-worthy restructuring plan may trigger the unnecessary and/or the disproportionality of the supportive measure conducted, making it dissatisfactory to the permitted-subsidy pre-conditions and therefore fall into the prohibited group. This addition originates from the EU exporting the “compatibility analysis under the rescue and restructuring guidelines”<sup>528</sup> from its domestic law to the EVFTA and mimics its approach to prohibited subsidies in the DDR. The EU demand for the addition of these two subsidies to

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<sup>523</sup> Leonardo Borlini, ‘Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the ‘New Generation’ EU Trade Agreements’, in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 6.

<sup>524</sup> Article x.6(1)(a) of the EVFTA.

<sup>525</sup> Leonardo Borlini, ‘Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the ‘New Generation’ EU Trade Agreements’, in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 6.

<sup>526</sup> *Ibid.*, p.19.

<sup>527</sup> *Ibid.*, p. 6.

<sup>528</sup> *Ibid.*

the list of prohibited subsidies is partly to discourage EU Member States from rechanneling state aids prohibited within the EU into the market of Vietnam to support investment of national companies.<sup>529</sup>

Regarding the temporal scope of application, the regulations on the two above additional prohibited subsidies under Article x.6 are suspended during the five-year period right after the entry into force of the EVFTA.<sup>530</sup> To put it in another way, the two otherwise prohibited subsidies under Article x.6 are permitted within the five-year period. Similarly, grants given by the EU and Vietnam prior to the EVFTA's entry into force which fall into these two types of subsidies are also permitted. In other words, Article x.6 and Article x.2(10) in combination constitute WTO-equivalent provision during the five-year period. Hence, during the five years after the EVFTA takes effect, Vietnam will be still entitled to grant the two types of subsidies: (i) guarantees with unlimited coverage of debts and liabilities and (ii) support to insolvent enterprises without restructuring plans. The temporary suspension is the transitional period for Vietnam to adjust to and get ready for the removal and strict non-application of the two types of subsidies when the five years lapse.

### **5.3. Comparison and conflicts between the CPTPP and the EVFTA on subsidy norms**

This Section gives an insight on commonalities and uncommonalities between the CPTPP and the EVFTA in disciplining subsidies. Due to the CPTPP's strict adherence to the WTO ASCM, both agreements define the term "subsidy" and the element of "specificity" along the same line (as the WTO ASCM). Nevertheless, they diverge in other crucial dimensions, including their scope of application and classification of subsidies. Accordingly, the CPTPP and the EVFTA are, on the one hand, in accumulation regarding their provisions on defining subsidies and the specificity requirement, and, on the other hand, in conflict while disciplining services subsidies and the prohibition and permission of non-agricultural subsidies.

#### ***5.3.1. The scope of application***

The scope of application of the CPTPP subsidies disciplines is more limited than that of the EVFTA, as the former, in contrast to the latter, excludes from its control subsidies to services. The CPTPP does not cover subsidies to services, thereby not imposing any binding

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<sup>529</sup> Ibid.

<sup>530</sup> Article x.2(10) of the EVFTA.

obligations on CPTPP parties, including Vietnam, with regards to services subsidies. To put it in another way, Vietnam retains the full discretion to subsidize services and services suppliers pursuant to the CPTPP. Such exclusion from the scope of application of service subsidies implies WTO-equivalent contour and a permissive norm. In contrast, the EVFTA covers services subsidies and imposes certain limitations, constituting obligatory norms. Such discipline constitutes WTO-plus norms in that it favours more trade liberalization than the WTO ASCM by prohibiting subsidies in certain service sectors that may (1) fall short of meeting the requirements of public policy objectives and/or necessity test and/or proportionality test and/or transparency and (2) carry negative influence on trade and competition between the EU and Vietnam in each party's market or in the third-party market. Like subsidies in general, subsidies to services and/or service suppliers also consist of two types according to their purposes: (1) subsidies to services and/or service suppliers to remedy market failures and (2) subsidies to services and/or service suppliers to distort services trade and competition.<sup>531</sup> Examples for the former include subsidies to services and/or service suppliers to improve employment, support research and development, protection of the environment or to overcome a serious economic disturbance, let us say, subsidies to financial institutions during financial crises or for prudential purposes. Examples for the latter involve (i) services export subsidies to heighten service exports that may affect Mode 3 of trade in services (ii) service import substitution subsidies in the two forms of service supply subsidies/service production subsidies and service consumption subsidies which are contingent on the consumption of domestic services to increase domestic supply of services and to reduce the importation of services which in turn affect Mode 1 of trade in services; and (iii) service investment subsidies to attract investment inflow into the subsidy-granting party, thereby affecting adversely Mode 3 of trade in services by driving investment from the other party that otherwise attracts such inflow capital to establish commercial presence to supply services. In other words, service investment subsidies produce impairment in Mode 3 of services trade, i.e. having investment- or trade- distorting effects.<sup>532</sup>

Let's assume that Vietnam subsidizes certain services and/or suppliers of services (i) inscribed in its Schedule of Specific Commitments in the EVFTA in a way which (ii) meets

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<sup>531</sup> Pierre Sauvé and Marta Soprana, *Disciplining Service Sector Subsidies: Where Do We Stand and Where Can We (Realistically) Go?*, *Journal of International Economic Law* 21(3), 2018, 599–619, p. 601.

<sup>532</sup> *Ibid.*

the specificity requirement, (iii) is above the threshold set out in Article x.2(5), (iv) is not purported to achieve any public policy objective and/or unnecessary to pursue the objective and/or disproportionate to the objective and/or not transparent and (v) negatively affects trade and competition. Such measure is, on the one hand, prohibited under the EVFTA, but, on the other hand, is lawful under the CPTPP. Taking such measure gives rise to a unilateral conflict in the applicable law between the state autonomy under the CPTPP and the prohibition under the EVFTA. In particular, Vietnam legally exercises its right under the CPTPP at the cost of ignoring or infringing upon its obligation under the EVFTA, resulting in the above conflict in the broad sense. Nevertheless, if refraining from adopting such measure, Vietnam does not act against the EVFTA's prohibitive norms but has to waive its discretion, facing a conflict in the adopted sense. Resultantly, the non-exploitation of CPTPP policy space for services subsidies leaves the CPTPP permission inoperative.

### ***5.3.2. Definition of subsidies***

Due to the explicit references to the “subsidy” notion in the WTO ASCM rather than providing their own definition by both the CPTPP and the EVFTA, norms on the “subsidy” notion in both agreements accumulate rather than clash. In other words, a measure considered as a subsidy in the CPTPP is also a subsidy in the EVFTA and vice versa. Due to their equivalence to the WTO ASCM, there will be no room for inconsistency.

### ***5.3.3. The “specificity” requirement***

Similarly, both the CPTPP and the EVFTA unequivocally refer to the “specificity” requirement under the WTO ASCM; therefore, the two norms disciplining the criterion of specificity under the CPTPP and the EVFTA are in accumulation, instead of being in conflict.

### ***5.3.4. Categories of subsidies***

#### ***a. Prohibited subsidies under the CPTPP and the EVFTA***

It is needed to determine whether prohibited subsidies to non-agricultural and non-fishery goods under the CPTPP (parallel to those under the WTO ASCM) are also illegal under the EVFTA and vice versa.

#### **a1. Export subsidies**

This part is devoted to comparing disciplines on goods-export subsidies in the CPTPP and the EVFTA. Under the CPTPP, “a subsidy is export contingent when its granting depends on export performance, i.e. if the products are not exported, the subsidy is not received (or the amount of received increases in proportion to the amount exported).”<sup>533</sup> Therefore, export subsidies accorded by Vietnam are strictly prohibited under the CPTPP. Under the EVFTA, a subsidy by Vietnam that negatively injures trade and distorts competition is prohibited no matter whether the measure is contingent on export performance or not. At first sight, prohibited subsidies under the EVFTA are apparently broader than those under the CPTPP. However, such first impression seems to be imprecise when further analysis is conducted. More specifically, export subsidies prohibited under the CPTPP can, in some cases, either be permitted or exempted under the EVFTA.

*Firstly*, in certain instances, export subsidies granted by Vietnam falling under the prohibition of the CPTPP can be authorized under the EVFTA. Export subsidies under the CPTPP are not subject to any threshold to be justified from the prohibition, i.e. export subsidies are strictly banned *a priori* pursuant to the CPTPP irrespective of their amount. However, subsidies contingent upon exportation can fall beyond the scope of application of the EVFTA if their sum per beneficiary does not surpass 300,000 SDR in a certain three-year span according to Article x.2(7) of the EVFTA. This proviso equates a WTO-minus provision, i.e. allowing for less trade liberalization than the WTO ASCM. Put differently, export subsidies complying with the above limitation, while being consistent with the EVFTA, is incompatible with the CPTPP’s export subsidies rules, or more specifically Article 3.1(a) of the ASCM.

From the foregoing, it is arguable that a unilateral conflict in the applicable law between the right under the EVFTA and the prohibition under the CPTPP, or, in particular, between the permissive norm in the EVFTA and the prohibitive norm in the CPTPP. Provided that Vietnam gives export subsidies to its domestic goods or goods producers of which the amount per recipient totals below or equal to 300,000 SDR, it acts consistently with the EVFTA on the one hand and contrary to the CPTPP on the other hand. Different scenarios of the measure can be adopted by Vietnam. In the first scenario, if exploiting the EVFTA right by subsidizing as above stated, Vietnam violates the CPTPP norm on export subsidies and encounters the

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<sup>533</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 458.

conflict in the broad sense. Otherwise, the second scenario is featured by Vietnam's respect for its CPTPP obligation by staying away from the above subsidy; Vietnam is not in violation of the CPTPP but has to abandon its right under the EVFTA, giving birth to a conflict in the adopted sense.

**Secondly**, export subsidies granted by the Vietnamese government exceeding the threshold above can be exempted from the EVFTA if they meet the four requirements of (1) pursuit of public policy objectives, (2) the necessity test, (3) the proportionality test and (4) transparency. More specifically, pursuant to the EVFTA, subsidies for exportation can be given in view of attaining any of the objectives listed in Article x.1(2). The first examples of subsidies belonging to this group are those granted by Vietnam under Article x.1(2)(d) of the EVFTA to SMEs which engage in goods exportation.<sup>534</sup> Another example involves subsidies given to Vietnam's domestic goods or goods producers to export their cultural goods, such as books or printing products, for the purpose of promoting culture.<sup>535</sup> Given that, there can be a unilateral conflict in the applicable law between the right under the exempting norm in the EVFTA and the prohibition under the prohibitive norm in the CPTPP. If the Vietnamese government, in the first scenario, exploits its right under the EVFTA by giving 300,000 SDR-plus export subsidies per recipient during a certain three-year period to its domestic producers which are necessary, proportionate and transparent to achieve any of the public policy objectives listed in Article x.1(2), such as for the SMEs or cultural promotion exceptions, it disregards the CPTPP rules on export subsidies (more specifically, provisions equivalent to Article 3.1 of the WTO ASCM). A conflict in the broad sense will follow. In sharp contrast, if the Vietnamese government, in the second scenario, refrains from adopting or maintaining the measure in Scenario 1 above, a violation of the CPTPP's relevant norm cannot be found, nor is the conflict in the broad sense. But Vietnam has to waive its right under the EVFTA, constituting a conflict in the adopted sense.

To conclude, the EVFTA rules on export subsidies are less stringent than those under the CPTPP. Export subsidies completely outlawed in the CPTPP do not necessarily fall under

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<sup>534</sup> The subsidies can be in the form of consultancy and market research financial contribution. See Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 460.

<sup>535</sup> For the EU's measures subsidizing EU producers for their export of cultural goods for cultural-promoting objectives, see Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 459.

absolute prohibition in the EVFTA. While CPTPP norms on export subsidies are equivalent to the WTO ASCM norms, the EVFTA contains WTO-minus provisions as leaving more room for subsidies with negative effects on trade liberalization than the WTO ASCM.

#### a2. Import substitution subsidies

Some CPTPP-outlawed import substitution subsidies accorded by Vietnam can be exempted by the EVFTA. In the first place, certain import substitution subsidies while being banned completely under the CPTPP are still permitted under the EVFTA, Article x.2(7) when they stay within the limit of 300,000 SDR stipulated therein. As a consequence, found is a unilateral conflict between the right under the EVFTA and the prohibition under the CPTPP in the applicable law. In the first scenario, if subsidizing to substitute imports in general and imports from the EU and the CPTPP parties in particular, the Vietnamese government violates the CPTPP prohibition, giving rise to a conflict between the two norms at issue. In the second scenario, if not subsidizing in that way, Vietnam does not encounter conflicts in the broad sense; however, a conflict in the adopted sense can be established due to Vietnam's waiving of its EVFTA right.

In the second place, reasoning along the same line as for export subsidies above leads to the consequence that certain subsidies conferred by the government in Vietnam to replace imports from the EU and the CPTPP parties which are (1) necessary to, (2) proportionate to, (3) transparent for the accomplishment of a certain (4) public policy objective are simultaneously banned under the CPTPP and excluded from the EVFTA. Emerging is a unilateral conflict in the applicable law between the exempting norm under the EVFTA and the prohibitive norm under the CPTPP. Particularly, in one scenario, Vietnam, if subsidizing to substitute imports from the EU and the CPTPP parties, acts contrary to its obligation under the CPTPP, triggering a conflict in the broad sense. In another scenario of no initiation of the foregoing subsidy, no conflict in the broad sense is found at the cost of Vietnam's abandonment of its EVFTA right, i.e. a conflict in the adopted sense can be present. In sum, for Vietnam, the EVFTA disciplines in a laxer or WTO-minus manner import substitution subsidies compared to the CPTPP.

On the flip side, the next logical question is whether prohibited subsidies under the EVFTA are also outlawed *per se* under the CPTPP. The conditions of negative effects on trade and



competition between the EU and Vietnam in each party's market or in the third-party market are irrelevant in the determination of prohibited subsidies under the CPTPP as the latter are presumed *a priori* to severely injure trade of the parties. Moreover, the further prohibition of two subsidies with respect to unlimited debt or liability guarantees and insolvent- or ailing-enterprise supports unassociated with reliable restructuring plans pursuant to the EVFTA is not taken for granted in the CPTPP as these measures are not necessarily designed at all time for the purposes of export promotion or import substitution.

In a nutshell, the scopes of prohibited subsidies are different between the CPTPP and the EVFTA. Certain subsidies outlawed under the EVFTA are not prohibited under the CPTPP, and vice versa.

*b. Permitted subsidies under the CPTPP and the EVFTA*

Following the WTO ASCM, the CPTPP provides for no permitted subsidies due to the expiry thereof. As a result, in the CPTPP, no subsidies are classified *ex ante* as permitted or non-actionable. In other words, the CPTPP, identical to the WTO ASCM, divides subsidies into two groups of prohibited and actionable subsidies only and does not entitle Vietnam to grant any subsidies which are *prima facie* excluded or immune from litigation under the CPTPP. However, theoretically, it is inferred from the definition of actionable subsidies that subsidies, to be permitted under the CPTPP, must not be accompanied with any adverse effect on trade of the CPTPP parties.

In contrast, Vietnam is, under the EVFTA, entitled to subsidizing when its measure (1) aims at general interest and is (2) necessary, (3) proportionate and (4) transparent to the achievement thereof. Furthermore, it is inferred from the EVFTA second principle on subsidies that subsidies in the EVFTA are classified as permitted when they are not associated with any negative trade and/or competition impacts. In other words, in theory, subsidies without any negative trade and/or competition externalities are permitted. However, in legal terms, the EVFTA does not discipline a prior approval or determination of subsidies without adverse affection or a list thereof. Hence, in the EVFTA, Vietnam does not have the right to grant any subsidies which are *ex ante* immune from litigation.

The EVFTA allows for more permitted subsidies than the CPTPP. To put it differently, certain measures categorized as permitted subsidies under the EVFTA can be actionable under the

CPTPP. This reasoning holds true for subsidies impairing trade but not hurting competition since these measures are actionable under the CPTPP due to its trade impairment but still permitted under the EVFTA because of its competition non-distortion. As Vietnam has the right to grant subsidies which are not accompanied with any negative competition effects, the EVFTA imposes WTO-minus or CPTPP-minus provision for relaxing conditions of a permitted subsidy, accepting the presence of negative impacts on trade on condition of the absence of negative impacts on competition. If granting the above-mentioned subsidies, Vietnam performs its EVFTA right but at the same time fails to adhere to its CPTPP obligation, which in turns prompts the EVFTA right to clash unilaterally with the CPTPP obligation in the broad sense. Vice versa, if no such measure is taken, no conflict *lato sensu* is found, but a conflict in the adopted sense can be established thanks to Vietnam getting rid of its entitlement.

*c. Actionable subsidies under the CPTPP and the EVFTA*

The objective of this section is to determine whether the scopes of actionable subsidies under the CPTPP and the EVFTA are alike. Under the CPTPP, actionable subsidies are those that affect trade of other CPTPP parties, i.e. being assessed against the so-called adverse effect standard<sup>536</sup> according to Article 5 of the ASCM. A subsidy is subject to litigation if causing “adverse effects to the interests”<sup>537</sup> of other CPTPP parties. The “adverse effect to the interests” of other CPTPP parties takes three different forms: (1) “injury to the domestic industry”<sup>538</sup> of another CPTPP party or (2) “nullification or impairment of benefits accruing directly or indirectly”<sup>539</sup> to other CPTPP parties or (3) “serious prejudice to the interest of”<sup>540</sup> CPTPP parties according to Article 6 of the ASCM. The condition of “injury to the domestic industry” is satisfied when a certain subsidy undercuts artificially the price of the like products.<sup>541</sup> The second scenario is satisfied when “the subsidy in question affects the tariff reductions reached in the framework of negotiations for a specific product (Article I of the

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<sup>536</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 470.

<sup>537</sup> Ibid.

<sup>538</sup> Ibid.

<sup>539</sup> Ibid.

<sup>540</sup> Ibid.

<sup>541</sup> Ibid.

GATT), or any other commitment assumed in the framework of the GATT.”<sup>542</sup> The serious prejudice (caused) to (the interest) of CPTPP parties, as a standard to determine or clarify a subsidy as being actionable, involves, for example, restructuring subsidies. Furthermore, under the CPTPP, like Article 5 of the ASCM, there is only one form of “adverse effects on trade” that is actual affection, i.e. the effect that has happened. In other words, a subsidy is actionable when it has (actually) caused detrimental or harmful effect to trade of the other CPTPP parties. There is no case for the potential effect. Neither is the room for the effect on competition, i.e. the competition distortion is not considered.

Some subsidies actionable under the CPTPP can be permitted or justified under the EVFTA. In other words, the CPTPP actionable subsidies cover some that are otherwise not categorized as such in the EVFTA. *Firstly*, while the CPTPP focuses on adverse effects on trade of CPTPP parties, not on other WTO non-CPTPP parties, the EVFTA puts a focal point on effects on the EU as long as the subsidy is granted by Vietnam. To put it in another way, adverse impacts on trade of CPTPP parties will be irrelevant in the determination of actionable subsidies under the EVFTA, i.e. a subsidy actionable under the CPTPP may not be challenged under the EVFTA and vice versa.

*Secondly*, a measure by Vietnam can be challenged under the CPTPP due to its adverse effect on trade but, at the same time, permitted under the EVFTA due to its failure to impact competition. The CPTPP puts an emphasis on adverse effects on trade in the form artificial price undercutting of like products in the markets of CPTPP parties or in the third-party export markets, causing inefficient allocation of resources and harming comparative advantage of other CPTPP parties.<sup>543</sup> Accordingly, the absence of competition distortion has no bearing on the actionability of certain subsidies under the CPTPP. The EVFTA, on the contrary, while still concerning trade effects of subsidies, focuses more on effects on competition. Particularly, negative impacts on trade does not necessarily or automatically accompany with competition impairment provided that “competitors offering like products can continue to compete (e.g. because of differences in quality or distribution channels). In addition, the decrease in prices benefits consumers, so long as the market situation does not

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<sup>542</sup> Ibid, p. 471.

<sup>543</sup> Ibid, p. 473.

result in the exclusion of all competitors from the market, thereby allowing the producer benefiting from the subsidy to further increase its prices.”<sup>544</sup>

*Thirdly*, providing that certain subsidies by Vietnam, on the one hand, reside within the threshold of 300,000 SDR under Article x.2(7) of the EVFTA but, on the other hand, surpass the 5% *ad valorem de minimis* under the CPTPP, in particular Article 6.1 of the ASCM, they can be challenged pursuant to the CPTPP while being out of the scope of the EVFTA.

*Lastly*, subsidies granted by Vietnam for the restructuring of certain enterprises justified under Article x.6. of the EVFTA can be challenged under the CPTPP (more specifically Article 6.1. of the WTO ASCM) as covering operating costs and therefore causing serious prejudice to the interest of other CPTPP parties.

In sum, the scope of actionable subsidies under the CPTPP is not identical to that under the EVFTA. In particular, certain subsidies falling under the former are not classified as such under the latter. The first group involves subsidies with adverse effects on trade of the CPTPP parties, not on the EU trade, and vice versa. The second case relates to subsidies with devastating trade effects but without competition impairments. Thirdly, within-EVFTA-threshold subsidies can be challenged under the CPTPP as surpassing the *de minimis* threshold set out therein. Lastly, restructuring subsidies justified under Article x.6 of the EVFTA can cause serious prejudice to CPTPP-party interests.

From the foregoing, it can be concluded that the specific subsidies belonging to each type are different between the CPTPP and the EVFTA. In particular, the prohibited subsidies in the CPTPP overlap with those in the EVFTA. Certain subsidies strictly outlawed under the former can be authorized under the latter, including export or import substitution subsidies complying with the ceiling under Article x.2(7) of the EVFTA and subsidies for their public policy objectives and satisfying the requirements of necessity, proportionality and transparency. On the flip side, certain EVFTA-permitted subsidies fall under the prohibition of the CPTPP. The actionable subsidies under the CPTPP may be permitted under the EVFTA, in particular, subsidies affecting trade only and falling short of affecting negatively competition. Added to that are subsidies exceeding the 5% threshold under the CPTPP but still complying with the threshold of 300,000 SDR under Article x.2(7) of the EVFTA.

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<sup>544</sup> Ibid.

Furthermore, subsidies causing serious prejudice to interest of CPTPP parties can be justified under Article x.6(1) of the EVFTA, including operating-, debt-forgiving or restructuring subsidies.

To wrap up, given the similarities between the CPTPP and the EVFTA in their approaches to the concepts of “subsidy” and “specificity”, provisions on these two elements in the two trade deals accumulate. It can be further observed that the limited scope of application of the CPTPP with regards to subsidies in services may put in question the consistency with the EVFTA of certain measures by Vietnam designed to subsidize its domestic services and/or service suppliers. Accordingly, certain subsidies to services and/or service suppliers accorded by Vietnam that fall outside of the control of the CPTPP can be in violation of the relevant rules in the EVFTA. Moreover, it can be concluded that, provisions on types of subsidies under the EVFTA, in some scenarios, can lead to violation of obligations under the CPTPP. Not only can a conflict arise where certain subsidies are either permitted or exempted under the EVFTA and, at the same time, prohibited under the CPTPP, but also subsidies without adverse effect on competition of the EU can also run contrary to the CPTPP rules on actionable subsidies if they cause adverse effects on trade to CPTPP parties.

#### **5.4. Reasons for the accumulations and conflicts between the CPTPP and the EVFTA**

This section tries to explain the rationale behind CPTPP-EVFTA clashes in disciplining subsidies. The answer does not reside in the stated objectives of the two treaties, rather in the political or negotiation context of the two norm sets.

From the legal-interpretation perspective, different objectives of the CPTPP and the EVFTA can be, in theory, blamed for the conflicts. More specifically, with the permission to utilize subsidies to materialize the necessary public interest and the prohibition of subsidies distorting trade and competition, it is expected that general policy goals and the protection of trade and competition and their constituting components such as the right to regulate for the former and consumer interest for the latter will be listed unequivocally as the objectives of the EVFTA. However, it is not the case. On the one hand, both agreements confirm the objectives of promotion of regional economic integration, development of trade and investment between parties and promotion of trade and investment liberalization, creation of a stable and predictable environment for investment, provision of a predictable legal framework for trade

and investment relations, creation of new employment opportunities, increase in living standards, improvement in the general welfare, sustainable development, promotion of the competitiveness of companies, environment protection, labour protection, transparency in international trade, “harmonious development and expansion of international trade by removing obstacles to trade and by avoiding creating new barriers to trade or investment between parties.”<sup>545</sup> On the other hand, completely dissimilar from the CPTPP, the EVFTA does not mention, in an unequivocal manner, in its Preamble the objectives of the recognition of the right to regulate of parties, safeguards of public welfare and protection of legitimate public policy objectives as well as their illustrative cases, such as property reduction, growth and development of SMEs, the preservation and enhancement of cultural identity and diversity and, last but not least, the interest of consumers with regards to competition policy. Irrespective of their absence, all of the above factors are, ironically, the grounds for Article x.1 of the EVFTA to either exempt or outlaw certain subsidies. More specifically, as the protection of the benefits of consumers is in the heart of the competition policy, the EVFTA, in principle, prohibits subsidies running contrary to competition law, including those detrimental to consumer benefits. In the meantime, although failing to make a reference, in its Preamble, to the right of the EU and Vietnam to regulate in determining what constitutes their public policy objectives as well as their means, including subsidies, Article x.1 of the EVFTA fully exploits this discretion through, first, the recognition of such goals, and, second, the provision of concrete situations of, *inter alia*, the support for SMEs, environment protection, cultural and heritage protection and preservation, as exemptions.

According to the similarities and dissimilarities in the objectives of the EVFTA and the CPTPP, it is hard to explain why the CPTPP adheres to the strict or subsidy-aversion approach of the WTO ASCM which is characterized by the pre-determined list of prohibited subsidies, actionable subsidies and the expiration of permitted subsidies without any exemption or justification for or consideration of the overall or net positive externalities of general-objective-oriented subsidies. In the opposite direction, the EVFTA adopts a WTO-minus approach in its discrimination of good subsidies from bad subsidies by permitting more state policy space and state intervention through the subsidy channel to fulfil each party’s own public policy goals. Indeed, the relevant substantive norms of the two deals should have been

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<sup>545</sup> The Preambles of the CPTPP and the EVFTA.

enunciated the other way round in light of the objectives upon which each set of norms is built. It is quite paradoxical from the treaty-interpretation point of view, especially in light of the fact that the objects and purposes shed light on the reading of the term in question. The explicit reference of certain objectives<sup>546</sup> in the CPTPP Preamble fails to be supported by valid provisions on subsidies in the CPTPP; whereas, considering the silence of the EVFTA Preamble on the issues of consumer benefits, SMEs, the right to regulate, public policy objectives, cultural and heritage protection and preservation, it is hard to explain its departure from the WTO ASCM and its forceful endorsement of two foregoing principles on subsidies as well its resultant classification of subsidies.

Another determinant of the differences in the dividing lines among various types of subsidies in the CPTPP and the EVFTA is the interests protected by each agreement. At the objective level, while the Preamble of the CPTPP has regards to the benefits of consumers, the corresponding statement is missing from the EVFTA Preamble. Nevertheless, at the normative level, by following the WTO ASCM approach, the CPTPP subsidies provisions aim at protecting the interests of businesses and producers of the goods like the subsidized competing goods,<sup>547</sup> while the EVFTA counterparts, under the influence of the EU, puts a focus more on the protection of the market competition conditions and interests of consumers.<sup>548</sup> Therefore, a certain measure actionable under the CPTPP due to its adverse effect on certain producers of goods (through the artificial reduction in the prices of the relevant goods and the reduction in the benefits accrued to the interested producers) may still be permitted by the EVFTA (due to its benefits to consumers through price reduction and the possibly intactness of the market competition conditions as competitors in the relevant market can still survive and keep competing).<sup>549</sup> Based on the above mismatches, the designs of substantive norms on subsidies in the two treaties should be switched to each other.

From a political point of view, the above noted accumulations and conflicts between the CPTPP and the EVFTA have their roots in the negotiation context of the two agreements.

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<sup>546</sup> Including, as above-mentioned, preservation of right to regulate of parties, safeguards of public welfare and protection of legitimate public policy objectives, support for SMEs, protection and preservation of the environment and culture, the interest of consumers.

<sup>547</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 489.

<sup>548</sup> *Ibid.*, p. 490.

<sup>549</sup> *Ibid.*, pp. 489-490.

Within the CPTPP, as a plurilateral treaty, beside Vietnam, there are ten other parties with hugely diverging economic development and social traditions, preferences and interests as well as bargaining chips. The GDP per capital of Singapore – the CPTPP party with the highest GDP per capita, for example, is 24 times higher than that of Vietnam – the party with the lowest GDP per capita.<sup>550</sup> As far as subsidies negotiations are concerned, it is harder for CPTPP parties to achieve WTO-plus liberalization, therefore ending up with the duplication of the WTO ASCM subsidies rules. Among the contentious issues is the extension of the coverage of CPTPP subsidies rules to such sensitive area as services trade. In sharp contrast, the EVFTA is a bilateral agreement to which the EU is the strong demandeur in subsidies negotiations with its advocacy of WTO-equivalent provisions in some aspects, including the definitions of subsidies and specificity, WTO-plus provisions on the scope of coverage of services subsidies, and WTO-minus provisions on categories of subsidies. Subsidies norms in the EVFTA mainly reflect the policies the EU aims at in its relation with Vietnam, economic development of Vietnam as well as the intensity of subsidies used by Vietnam.<sup>551</sup> Not only at the intra-EU level but also at the multilateral level via its DDR proposals and currently at the bilateral level through trade agreements with Korea, Singapore and Vietnam is the EU's strong endorsement of such WTO-deviation subsidies rules unequivocally demonstrated. At the domestic level, the intra-EU integration is also proceeded at the higher and deeper level than that under the WTO, shaping in some degree the outcomes of its exportation of its external trade policies to its trade partners. As the EU is the demandeur in the negotiations, the EVFTA provisions on subsidies can be principally ascribed to the ideology and goals of the EU external trade policy in the subsidy area. Since the EU keeps trying to export its external trade policies to its relation with Vietnam by means of a trade deal, the outcome of subsidies rules in the EVFTA to the great extent portrays the most prominent attributes of the EU domestic politics and law. Domestically, the EU state aid law is characterized by, firstly, its extensive coverage of state aid to services. Secondly, the EU state aid law, in principle,

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<sup>550</sup> GDP per capital in 2018 of the 11 CPTPP parties are as follows: Singapore (61,230 USD), Australia (56,700 USD), Canada (46,730 USD), New Zealand (41,620 USD), Japan (40,110 USD), Brunei (33,820 USD), Chile (16,140 USD), Malaysia (10,700 USD), Mexico (9,610 USD), Peru (7,120 USD) and Vietnam (2,550 USD). <https://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEOWORLD> visited on 05/11/2018.

<sup>551</sup> Leonardo Borlini, 'Subsidies Regulation Beyond the WTO Substance, Procedure and Policy Space in the 'New Generation' EU Trade Agreements', in Giuliana Ziccardi Capaldo, *The Global Community Yearbook of International Law and Jurisprudence*, Oxford University Press, 2016, p. 2.



prohibits state aids due to their detriment to the EU common market.<sup>552</sup> Thirdly, the EU state aid law also recognizes the positive functions of state aid to promote EU public policy objectives, such as social cohesion through the development of poorer regions.<sup>553</sup> Therefore, the EU allows for the intervention through state aid by the EU Member States “in their economies, either as an actor in industrial or political policies or as a supporter of its industries in difficulty”.<sup>554</sup> However, while the EVFTA sets out subsidies with market-correcting effects as its exemptions and therefore falling out of its application scope, the EU state aid law outlaws all state aids but at the same time justifies certain exceptions with positive functions. In other words, good state aids are classified as prohibited but justified state aids in the EU law whereas, in the EVFTA, good subsidies are permitted subsidies. Such dissimilarity comes from the EU’s endeavour to reactivate permitted subsidies under the WTO ASCM by setting a principle on the permission of this type of subsidies by excluding them from the scope of the EVFTA.

Regarding the definition of subsidies, the puzzle is why the EVFTA adopts the same conceptualization of the subsidies as the WTO ASCM, but not the “state aid” notion as the EU State Aid law given the demandeur role of the EU in the EVFTA negotiation in subsidies rules. The WTO teleology of adopting the existing subsidy definition, which is broader than the EU “State Aid” notion, is that “WTO Members cannot adopt measures in the form of subsidies that distort trade, preventing the maximum efficiency in the allocation of resources from being reached, and possibly injuring the trade interests of other Members whose comparative advantage may be altered by the subsidy.”<sup>555</sup> Furthermore, with 163 Members, the WTO adopts the broad notion of subsidies in order “to include all cases where the government intervention grants a benefit in a manner that harms trade”,<sup>556</sup> “to allow WTO Members to challenge any type of subsidies through the dispute settlement mechanism or to adopt countervailing duties against subsidized imports”,<sup>557</sup> “to quickly and unilaterally defend themselves against negative effects that subsidized imports have in their markets by adopting countervailing duties. A broad definition of “subsidy” facilitates these types of protectionist

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<sup>552</sup> Gustavo E. Luengo Hernández de Madrid, *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Kluwer Law International, 2007, p. 485.

<sup>553</sup> Ibid.

<sup>554</sup> Ibid.

<sup>555</sup> Ibid.

<sup>556</sup> Ibid.

<sup>557</sup> Ibid.

measures”,<sup>558</sup> to challenge the conformity of a subsidizing measure before the WTO Dispute Settlement Body and “to adopt countervailing duties unilaterally as a defense against subsidized imports from other Members to cause injury to their industry.”<sup>559</sup> Given that the EU objective is to export its external trade policy not only to bilateral-trade relations but also to multilateral-trade relations, the EU state aid notion is not introduced to the EVFTA as, otherwise, it would be difficult for WTO Members to determine in advance the (in)compatibility of a subsidy measure with WTO rules provided that the rule on the state aid notion were multilateralized.

This EU domestic state-aid legal context gives an explanation to the parallel between the EVFTA subsidies rules and the EU state aid law in various dimensions, ranging from the more extensive and ambitious regulations on services subsidies in EU PTAs in general and EVFTA in particular compared to the WTO General Agreement on Trade in Services (GATS) and the CPTPP to the less liberalized and more autonomous regulations in pursuit of public policy objectives compared to the WTO ASCM and the CPTPP.

As can be observed, the principles of subsidies rules in the EVFTA, as the EU plays the role of the demandeur, mimic the EU’s state aid law which stipulates the two principles of, firstly, prohibition of state aid and, secondly, exceptions for state aid in certain circumstances.

For subsidies to services, the EVFTA imposes a stricter obligation than the CPTPP. Although escaping from the control of the CPTPP, subsidies to services granted by Vietnam can be ruled out under the EVFTA under certain circumstances when they meet simultaneously the conditions of (1) specificity, (2) excess of threshold stipulated in Article x.2(7) of the EVFTA and (3) unnecessary or disproportionality or non-transparency, thereby resulting to a strife between the two norms in question in the CPTPP and the EVFTA.

The fact that EVFTA-allowed or EVFTA-exempted subsidies are broader in certain cases than their counterparts under the CPTPP can be attributable to the EU in taking into account more positive functions or effects of subsidies, i.e. their achievement of public policy objectives, when governing subsidies than WTO Members, and therefore, providing for cases where positive effects of subsidies outweigh their negative impacts. Hence, both the EU and

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<sup>558</sup> Ibid.

<sup>559</sup> Ibid.

Vietnam are allowed to intervene into their economies through subsidizing measures to a larger extent on certain grounds under the EVFTA than under the CPTPP.

In conclusion, while certain issues, including the definition of subsidies and their specificity requirement, are disciplined in the CPTPP and the EVFTA in the same manner parallel to the WTO ASCM counterparts, regulations in other aspects, particularly the application scope and subsidy classification, are enunciated divergently. Correspondingly, unilateral conflicts in the applicable law can emerge therefrom. Certain services subsidies that fall under the EVFTA subsidies provisions are not covered by the CPTPP. Besides, the EVFTA allows Vietnam to interfere more in its economy by subsidies measures in pursuit of public policy objectives than the CPTPP. On the flip side, certain subsidies accorded by Vietnam which are permitted or justified under the EVFTA subsidies rules, Articles x.1(1) or x.2(4) or x.2(7), are strictly prohibited or actionable under the CPTPP (pursuant to the WTO ASCM Articles 1, 3 and 5 respectively). As a party to both trade pacts, Vietnam is bound by both sets of clashing norms and needs to either avoid or solve the foregoing conflicts when subsidizing. All of the above conflicts are of unilateral nature in the applicable law between an EVFTA exempting norm and a CPTPP prohibitive norm. No inherent bilateral conflict between mutually exclusive obligations can be found.

### **5.5. Conflicts-solving: Conflict clauses regarding subsidies in the CPTPP and the EVFTA**

This section aims at addressing the above-mentioned CPTPP-EVFTA conflicts in subsidies. There are no conflict clauses on the interaction *inter se*; only conflict clauses on the relation between the EVFTA and WTO exist. Conflict clauses stated in Article 1.2 of the CPTPP govern double PTAs only and are therefore not applicable to the CPTPP-EVFTA interaction. Neither are conflict clauses stated in Article x.21 of Chapter XX on Institutional, General and Final Provisions of the EVFTA for the same reason. Article x.3 of the EVFTA constitutes a conflict clause governing the interaction between the EVFTA and the WTO as to subsidies to trade in goods, but neither to subsidies to trade in services nor to the relation between the EVFTA and the CPTPP. However, since CPTPP rules on subsidies to trade in goods are incorporated from or equivalent to their WTO counterparts, any conflicts between the EVFTA and the CPTPP also leads to the inconsistency between the former and the WTO ASCM.

Hence, where rules on subsidies to trade in goods are concerned, the conflict clause applicable to the EVFTA-WTO relation leads to the same legal consequence for the EVFTA-CPTPP interaction. The EVFTA conflict clause adopts a broad definition of conflicts by referring to both rights and obligations under the WTO law on subsidies. Using the term “without prejudice to [...]”, the EVFTA gives the prevalence to the WTO law on subsidies, more specifically, Article VI of the GATT 1994, the ASCM and the AoA. In other words, in case of any inconsistency between the EVFTA subsidies rules and the above WTO law on subsidies to trade in goods, the latter prevails. Based on the foregoing, when the EVFTA clashes with the CPTPP subsidies rules, it goes against the WTO ASCM simultaneously. The precedence of the WTO rules on subsidies to goods, as the result of the application of the conflict clause above, automatically makes the CPTPP’s WTO-equivalent rules on subsidies prevail over the EVFTA too. In other words, the above-analyzed conflicts between the CPTPP and the EVFTA concerning subsidies to goods, which coincidentally represent inconsistencies between the EVFTA and the WTO ASCM, will be solved through the precedence of the WTO ASCM or the CPTPP subsidies rules. In particular, because the EVFTA’s WTO-minus rules on the classification of subsidies to goods must give way to the CPTPP corresponding rules, Vietnam has to comply with the stricter CPTPP rules on the prohibition of subsidies to goods. However, it should be noted that the above upshot is by inference because the CPTPP and the WTO ASCM are independent.

Nevertheless, as stated above, Article x.3 of the EVFTA does not extend its application to any inconsistency between the EVFTA and the WTO in services subsidies, leaving any clash *inter se* out of its scope. Furthermore, Article x.21 of Chapter XX on Institutional, General and Final Provisions of the EVFTA governing the relation between the WTO Agreement and the EVFTA leaves them to co-exist and the CPTPP conflict clauses do not touch upon single-PTA relations. Consequentially, the conflict between the CPTPP and the EVFTA in disciplining services subsidies is addressed by neither their conflict clauses nor customary rules as Vietnam is the sole common party to the two agreements.

The upshot is that the CPTPP-EVFTA conflicts in subsidies to trade in goods, when it comes to rules on the permission and prohibition of goods subsidies, are solved with the prevalence of the CPTPP rules, i.e. the WTO ASCM. In contrast, the conflict regarding services subsidies is irresolvable by neither treaty nor customary law.

## Conclusion

Against the background of the interpretation of relevant provisions on subsidies, the two trade pacts are contended first to converge in their WTO-equivalent approaches to the notions of subsidies and specificity, facilitating their accumulation. Second, their divergences lie in their application coverage and division of various types of subsidies.

With respect to services subsidies, the EVFTA has a broader scope of application than the CPTPP. More specifically, subsidies to services and/or to services suppliers are not governed by the CPTPP but the reverse is true for the EVFTA. Consequentially, if Vietnam grants subsidies to certain services and/or service suppliers in the sectors or sub-sectors listed in its Schedule of specific commitments under the EVFTA, the measure is subject to rules on subsidies in the EVFTA and can be prohibited in certain circumstances according to the EVFTA. On the contrary, such measure falls out of the scope of the CPTPP. A conflict between the right under the CPTPP and the prohibition under the EVFTA may arise because a certain service subsidy that Vietnam is free to grant under the CPTPP can be prohibited or challenged under the EVFTA.

While the CPTPP follows strictly the WTO ASCM in dividing different types of the non-agricultural subsidies, the EVFTA relaxes the corresponding disciplines for Vietnam by means of its two subsidy principles and the consequential categorization. As explained above, the categorization of subsidies into prohibited, permitted/exempted and actionable subsidies under the CPTPP and the EVFTA are not alike. In the *first* place, the EVFTA allows certain export subsidies and import substitution subsidies which are otherwise completely prohibited under the CPTPP, including those abiding by the threshold under Article x.2(7) of the EVFTA and those affecting trade of CPTPP parties or other WTO Members, not EU trade or competition. Furthermore, certain export and import substitution subsidies *per se* outlawed in the CPTPP are still potentially excluded in consideration of their objective, necessity, proportionality and transparency. Conversely, the two newly-added prohibited subsidies pursuant to the EVFTA may be free from the blanket proscription in the CPTPP in light of the potential disconnection of their usage from export enhancement or import replacement purposes. In the *second* place, actionable subsidies under the CPTPP are also broader than those under the EVFTA. While the CPTPP allows CPTPP parties to impugn a subsidy

measure by another party which has the negative or adverse trade effects, the EVFTA tightens the standard by requiring not only negative trade affection but also negative competition affection. In the *third* place, *ex ante* permitted subsidies are not existent under the CPTPP due to the expiration of the permitted subsidies in the WTO ASCM. In contradistinction, the EVFTA relaxes considerably the rules and permits more room for the pursuit of a non-exhaustive list of general policy goals contingent on the necessity, proportionality and transparency of the subsidy exemptions. Regarding the classification of conflicts, all of the above conflicts are of unilateral nature in the applicable law between an EVFTA exempting norm and a CPTPP prohibitive norm. No inherent bilateral conflict between mutually exclusive obligations can be found.

As far as the rationales behind the conflicts are concerned, the objectives mentioned in the Preambles of the two treaties, from the interpretative angle, fail to give an explanation to their conflictual substantive norms on subsidies while the negotiation history and context provide some useful assistance in the task. The EVFTA mentions in its Preamble neither the objective of protection of consumer benefits nor the pursuit of protection of public policy objectives or their illustrations as confirmed by the first principle in its subsidies rules. The EVFTA neither refers to nor recognizes explicitly in its Preamble the right to regulate of the two parties. Although being listed as a public policy objective to justify subsidy in Article x.1(2)(e), the promotion of culture and heritage preservation, for example, are not counted in an express manner in the Preamble of the EVFTA as its objective.

Last but not least, the CPTPP-EVFTA conflicts in subsidies to trade in goods, where rules on the permission and prohibition of goods subsidies are concerned, are solvable with the assistance of the conflict clause under the EVFTA by giving the prevalence to the CPTPP corresponding rules; conversely, it is not the case for the conflict regarding services subsidies which is resolvable by neither treaty law nor customary law.

## CHAPTER 6: CONFLICTS AMONG TRADE-IN-SERVICES NORMS

This chapter analyses potential conflicts among trade-in-services rules in the two PTAs. Section 6.1 of Chapter 6 figures out potential conflicts arising from the CPTPP's trade-in-service norms which constitute EVFTA-plus disciplines. Following is Section 6.2 which identifies conflicting as well as accumulating scenarios due to EVFTA-minus provisions in the CPTPP. The method utilized is comparative analysis of horizontal and sector-specific disciplines in two PTAs regarding several trade issues.

The CPTPP stipulates services trade in a fragmented way by scattering the relevant rules in different chapters. In particular, regulations on services can be found in ten chapters of the CPTPP. Modes 1, 2 and 4 (according to the classification of the GATS) are governed under Chapter 10 of the CPTPP – Cross-border Trade in Services. Mode 3 is under the scope of Chapter 9 – Investment. Besides, sector-specific commitments are applicable to individual services sectors. Financial services are regulated in Chapter 11 while telecommunication is stipulated in Chapter 12. Other rules can be found: E-commerce – Chapter 14; Government Procurement in Services – Chapter 15; Competition – Chapter 16; SOEs – Chapter 17; Transparency and anti-corruption – Chapter 26.

Rather than having a scattered or fragmented model of the chapter of services trade like in the Comprehensive Economic and Trade Agreement (CETA), the EVFTA has grouped relevant rules in just one chapter – Chapter 8 which is titled “Liberalization of Investment, Trade in Services and E-commerce” with three accompanied annexes of which the first conveys commitments of the EU and the last two pertain to those of Vietnam. Besides rules on the four modes of supply of services, Chapter 8 also covers a sub-chapter on regulatory framework ranging from domestic regulations which apply to all modes of services supply, provisions applying to all services sectors (such as mutual recognition of professional qualifications), to sector-specific provisions. In addition, Chapter 8 consists of a sub-sector on e-commerce and concludes with a sub-chapter on general exceptions.

The EVFTA rules in services are GATS-based, i.e. mirroring GATS commitments in some aspects, containing GATS-plus commitments in others by furthering the liberalization compared to the GATS, and GATS-minus concessions in the other aspects, i.e. lowering the liberalization compared to the GATS.

According to the above-mentioned adopted concept of conflict of norms, norms classified in search for conflicting relations include obligatory norms, prohibitive norms, permissive norms and exempting norms. So, the very first step in the search for conflicting norms is the classification of norms into the four types above listed. Indeed, in the agreements in question, there are many norms which do not fall into any of the four above kinds. They are comprised of definitive or conceptual norms – norms which stipulate meaning of legal terminologies used in the treaties. According to the definition of conflict of norms, these definitive norms cannot exist in conflict, thereby being irrelevant for the perusal. However, they can be indirectly relevant for the normative conflict since, from the interpretative point of view, they play the role of the context for reading other potentially conflicting substantive norms.

The two agreements contain certain definitive norms. Norms governing the scope of application of Cross-border Trade in Services (CBTS) can be found in Article 10.2 of the CPTPP, according to which the chapter on cross-border trade in services applies to “measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party”. As to modes of supply, different from the GATS, the CPTPP follows the NAFTA-style in grouping the three of Modes 1, 2 and 4 in the GATS legal terms into a collective mode called “Cross-border trade in services” and Chapter 10 of the CPTPP deals with the CBTS. Like the GATS, the chapter regulates both governmental bodies, including central, regional and local bodies, and non-governmental bodies delegated by the former. Beneficiaries of such regulations include both natural persons and judicial persons, calling collectively “services suppliers of another Party”, i.e. “a person of a party that seeks to supply or supplies a service”.<sup>560</sup> Different from the GATS, Chapter 10 does not include an exclusive definition of persons. Rather, the clause on “Denial of benefits” limits the scope of application according to beneficiaries. However, like the GATS, the CPTPP brings benefits to both existing and potential service suppliers. Under the CPTPP, certain categories of services are excluded from the scope of the Chapter, including financial services<sup>561</sup> which are covered in another chapter and air services with six exceptions.<sup>562</sup> Excluded government activities cover government procurement<sup>563</sup> and subsidies provided by a Party.<sup>564</sup>

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<sup>560</sup> Article 10.1, CPTPP.

<sup>561</sup> Article 10.2.3 (a) of the CPTPP.

<sup>562</sup> Article 10.2.5 of the CPTPP.

<sup>563</sup> Article 10.2.3 (b) of the CPTPP.



As to the EVFTA Chapter 8's scope of application, the EVFTA seems to resemble the EU-Singapore FTA in the structure of the services trade chapter in that it differentiates between cross-border trade in services (i.e. Modes 1 and 2 under the ramification of the GATS), establishment (i.e. Mode 3 of the GATS) and temporary entry for business persons (i.e. Mode 4 of the GATS). In other words, the EVFTA merges the first two modes of supply of services under the classification of the GATS into one mode of supply and names them as "cross-border supply."<sup>565</sup> Mode 3 is governed under Chapter II of Chapter 8 – Establishment which comprises of investment in other trade areas besides services.<sup>566</sup> The corresponding regulations apply to "measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of an investment by an investor of the other Party in the territory of the former Party,"<sup>567</sup> i.e. covering not only pre-establishment but also post-establishment measures. Mode 4 – Temporary presence of natural persons for business purposes is governed in Chapter IV of Chapter 8. So, it is clear from the template of Chapter 8 of the agreement that the EVFTA in services trade does not follow either the GATS or the CETA in the typology of classification of service supply modes. However, akin to the GATS, the agreement does not define the term "trade in services" in Chapter 8 although the name of the Chapter is "Trade in Services, Investment and E-commerce." Only definitions of services,<sup>568</sup> cross-border supply of services (including Modes 1 and 2 of the GATS),<sup>569</sup> investment (i.e. Mode 3 pursuant to the GATS) and temporary presence of natural persons for business purposes (i.e. Mode 4 pursuant to the GATS) are provided.

In terms of the territorial scope of application, the EVFTA applies in the entirety of territories of Parties, including all levels of government. Echoing the GATS, the agreement stipulates "measures adopted or maintained by a Party" as "measures taken by central, regional or local governments and authorities; and by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities."<sup>570</sup> Being beneficiaries of the agreement rules, services suppliers are denoted by the agreement as natural persons or

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<sup>564</sup> Article 10.2.3 (d) of the CPTPP.

<sup>565</sup> Chapter 8.I.4.1 of the EVFTA.

<sup>566</sup> Chapter 8.I.4.p of the EVFTA.

<sup>567</sup> Chapter 8.II, Section 1, Article 1(1) of the EVFTA.

<sup>568</sup> Chapter 8.I.1.4.(j) of the EVFTA.

<sup>569</sup> Chapter 8.I.1.4.(l) of the EVFTA.

<sup>570</sup> Chapter 8.I.1.4.(o).

judicial persons of the other Party that supply a service.<sup>571</sup> Compared to the beneficiaries of the GATS, those of this agreement are narrower in scope as the former gives benefits to both existing and potential service supplier while the later only covers existing service suppliers. On the other hand, mirroring the GATS, the agreement covers both types of services suppliers including natural and judicial person. Relevant regulations on natural persons focus on nationality requirement.<sup>572</sup> In addition, conditions to the recognition of judicial persons under the agreement center on both (i) constitution/organization requirements (i.e. establishment requirement) and (ii) substantive business operation<sup>573</sup> to avoid mail-box companies.

Chapter III of Chapter 8, EVFTA covers cross-border services regulating measures of Parties affecting Modes 1 and 2 but the EU and Vietnam decided to exclude from the scope of application of Chapter III audio-visual services, national maritime cabotage and air transport services.<sup>574</sup> Like in the GATS, the EU and Vietnam also put services supplied in the exercise of governmental authority out of the scope of the rules on services trade in the FTA.<sup>575</sup> In regards to subsidies, they are covered by another sub-chapter which is titled “Competition and State Aid”.<sup>576</sup> Likewise, with only one exception, government procurement is addressed in another chapter on public procurement.

Main obligations imposed on the parties by the CPTPP and the EVFTA include MA, NT and most-favoured-nation (MFN) treatment. One main substantive obligation imposed on Vietnam is the market access obligation set out in Article 10.5 of the CPTPP. It prohibits four forms pertaining to quantitative limitations and one limitation on legal entity forms. The NT obligation requires Vietnam to accord “services and services suppliers of the other CPTPP parties treatment no less favourable than the treatment it offers to its own services and service suppliers in like circumstances.”<sup>577</sup> Two main elements of this obligation are the comparator of “like circumstances” and the criterion of “no less favourable treatment”. Regarding the former, the reference of the “like circumstances” comparator in the NT obligatory norm by the CPTPP follows the NAFTA template, but differs from the GATS in basing “on the totality

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<sup>571</sup> Chapter 8.I.1.4(m).

<sup>572</sup> Chapter 8.I.1.4(a).

<sup>573</sup> Chapter 8.I.1.4(b) and (c).

<sup>574</sup> Chapter 8.III.1 of the EVFTA.

<sup>575</sup> Chapter 8.I of the EVFTA, Article on Objectives, coverage and definition, 4.(j).

<sup>576</sup> Chapter 8.I.4.t of the EVFTA.

<sup>577</sup> CPTPP, Article 10.3

of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.”<sup>578</sup> The difference can be attributed to the interpretative problem associated with the benchmarks of “like services” and “like service suppliers” arising in WTO jurisprudence. However, like the GATS and different from the NAFTA, beneficiaries of the obligations include both services and services suppliers of the other parties. Regarding the latter, i.e. the criterion of “no less favourable treatment”, as it is a “WTO-equivalent element” incorporated from the GATS, its interpretation can be cited from the relevant one in the WTO DSB decisions. Under Article 10.3.2, in case of measures or treatments accorded by a regional, rather than central, government, the relevant treatment is that accorded by such government to the service supplier of its own party.

Just like the NT obligation, the MFN obligation refers to two criteria which are “like circumstances” and “no less favourable treatment”. Regarding the “likeness” criterion, the MFN obligation refers to the “like circumstances” comparator rather than “like services” and/or “like service suppliers.”

Analogous to the GATS, the interlink among the NT, MA and MFN treatment clauses is not clearly determined by the CPTPP. The MA provision does not apply to any measure that can accidentally, not purposefully, influence the market access of imported services, but only to measures taking the forms of quantitative or numerical limitations, etc.

Regarding scheduling, the CPTPP adopts the negative list, thereby following the NAFTA style. The negative list requires the liberalization of the NT and MA for all services sectors and sub-sectors except for the certain listed carve-outs. The adoption of the negative list approach is confirmed in Articles 10.3 and 10.7 of the CPTPP. More specifically, the NT obligation applies to measures in any (sub-)sectors of services except for those explicitly inscribed or listed in the Schedule of specific commitments. In the CPTPP, the excluded measures take the form of non-conforming measures (Article 10.7). There are two types of non-conforming measures: first, existing measures (Article 10.7.1(a)) and its continuation/renewal/amendment (Article 10.7.1(b) and (c)); and, second, future measures

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<sup>578</sup> CPTPP, Article 10.3, footnote 2.

(Article 10.7.2). The NT obligation does not hold true for non-conforming measures applied by regional governments (Article 10.7.3).

Although it is commonly believed that negative scheduling supports further trade liberalization than the positive scheduling, this is not always the case. The specific level of liberalization can be mutated by horizontal or sector-specific commitments. By the same token, specific commitments in each (sub-)sector must be read in combination with scheduling techniques. To sum up, the difference in scheduling methods between the CPTPP and the EVFTA is purely of technical nature, not of substantive nature or necessarily constitute normative conflicts. So, in order to fully evaluate obligations of services trade liberalization of each party, including Vietnam, it necessitates a grasp of the sector-specific schedule.

For the CPTPP, regarding trade in services, it is comprised of two annexes. These two annexes apply to CBTS, investment, financial services and maritime transport services. The two annexes allow Vietnam or other state signatories to list reservations not complying with, with respect to CBTS, the four obligations of MA, NT, MFN and local presence, and with respect to investment, the obligations of MA, NT, MFN, performance requirements, senior management and board of directors. Annex I inscribes existing non-conforming measures while Annex II inscribes future non-conforming measures.<sup>579</sup> As both annexes adopt the negative listing template, Vietnam and other contracting parties have to list all measures inconsistent with any of the disciplines mentioned. If any incompatible measure fails to be listed by Vietnam or any contracting parties can be challenged by the other contracting parties.

Within the framework of Annex I are the “standstill effect” and the “ratchet clauses”. The “ratchet effect” is the consequential effect of the negative-list approach. It yields the so-called “status-quo obligation”. At the time Annex I takes effect, only CPTPP-non-conforming measures listed therein can be maintained by Vietnam or other contracting parties who have inscribed the measures. The standstill effect imposes the above obligation on Vietnam and abates the autonomous national policy space accrued to Vietnam. The ratchet clauses (Articles 10.7.1(c) and 9.11.1(c) of the CPTPP) obligate Vietnam or any contracting parties not to

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<sup>579</sup> Annexes I and II of the CPTPP.

amend existing non-conforming measures if such amendment lowers the level of conformity of these measures prior to such change. Accordingly, the level of non-conformity of non-conforming measures must not be elevated compared to that at the time of entry-into-force of Annex I. The objective of the norm is to maintain the level of commitments that exists at the time Annex I takes effect. This obligatory norm gives rise to a legal issue which is the measurement of the degree of conformity of non-compliance measures to which trade-restrictiveness indices can be relevant. This norm limits the space of national policy in the future. Regarding future measures, the autonomy of Vietnam or any other contracting parties to introduce new non-conforming measures is constrained by those inscribed by Annex II. In other words, like Annex I, Annex II also limits the autonomous national policy freedom of Vietnam.

Under the EVFTA, main obligations in trade in services also cover MA, NT and MFN treatment. The “positive list” scheduling technique is adopted to delimit the scope of application of NT and MA obligations to services sectors or sub-sectors which are inscribed in the Schedule of Specific commitments of Parties and subject to the conditions and limitations listed therein. The MA obligation<sup>580</sup> in investment in services trade constitutes an obligatory or prohibitive norm. For sector(s) or sub-sector(s) where Vietnam undertakes MA commitments, Vietnam is prevented from putting in place any of the five quantitative restrictions and one qualitative reservation on legal entity. As for the NT obligation in investment in services, it is incumbent on Vietnam and the EU to grant investors and investment of the other party no less favourable treatment compared to that offered to its own investors and their investment in like situations.<sup>581</sup> The three involved criteria are (i) investors and their investment, (ii) “like situations” and (iii) “treatment no less favourable”. Similarly, according to the MFN obligation in the EVFTA, Chapter 8, Chapter II – Investment, Article 4.1 and 4.2, Vietnam bears the obligation to give investors and investments of the EU treatment no less favourable than the treatment, accorded in like situations, to investors and investment of the non-party.

In its EVFTA Schedule of specific commitments in Modes 1, 2 and 3 of services supply, Vietnam has made commitments in 11 sectors and 121 sub-sectors. Taking the GATS

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<sup>580</sup> CPTPP, Chapter 8, Chapter II – Investment, Articles 2.1 and 2.2.

<sup>581</sup> EVFTA, Chapter 8, Chapter II – Investment, Articles 3.1 and 3.2.

commitments as a parameter, Vietnam's commitments in PTAs in general and the EVFTA in particular can be categorized into three groups: GATS, GATS-minus and GATS-plus. More specifically, there are two types of GATS-plus commitments. The first type exposes a (sub-)sector already inscribed in the Vietnam's GATS Schedule with no or partial openness to a higher level of liberalization. The second type exposes a (sub-)sector which has not been inscribed in the Vietnam's GATS Schedule to liberalization undertakings for the first time.

Among the 121 sub-sectors inscribed in the sector-specific commitments, 79 sub-sectors carry GATS-plus commitments, equivalent to 64.5%.<sup>582</sup> In the business services sector, 11 out of 29 sub-sectors of this Sector contain GATS-plus undertakings. Sectors with the highest percentage of sub-sectors exposed to GATS-plus liberalization are Sectors 2 and 8 (100%). On the other end of extremity, Sectors 3, 9, 10 contain no GATS-plus undertakings; in other words, they just echo 100% exactly the GATS commitments. In the mid-point are Sectors 4 and 5 (75%), Sector 11 (60%), Sector 1 (around 52.4%), Sectors 5, 6 and 7 (around 50%).

**Table 2: Number of Service Subsectors Containing GATS-plus Commitments in the EVFTA**

<b>Sector</b>	<b>Ratio of subsectors containing GATS-plus commitments to total subsectors in the corresponding sector</b>
1 – Business Services Sector	11/29
- Sub-sector: Professional Services	3
- Sub-sector: Computer and Related Services	1
- Sub-sector: Research and Development Services	2
- Sub-sector: Rental/Leasing Services without Operators	5
2 – Communication Services Sector	18/18
- Sub-sector: Postal Services (CPC 7512)	1
- Sub-sector: Postal Services (CPC 7511)	9
- Sub-sector: Telecommunication Services	8
3 – Construction and Related Engineering Services Sector	0/5
4 – Distribution Services Sector	3/4
5 – Educational Services Sector	3/4
6 – Environmental Services Sector	3/6
7 – Financial Services Sector	21/44

<sup>582</sup> Calculation by the author based on Vietnam's Schedule of Commitments in Modes 1, 2 and 3 annexed to the EVFTA.

- Sub-sector: Insurance and Insurance-Related Services	4
- Sub-sector: Banking and Other Financial Services	11
- Sub-sector: Securities	6
8 – Health Related and Social Services Sector	4/4
9 – Tourism and Travel Related Service Sector	0/3
10 – Recreational, Cultural and Sporting Services Sector	0/2
11 – Transport Services Sector	15/25
- Sub-sector: Maritime Transport Services	4
- Sub-sector: Internal Waterways Transport	3
- Sub-sector: Air Transport Services	3
- Sub-sector: Rail Transport Services	5

*Source:* Calculation by the author.

In view of modes of supply, 41 out of 79 sub-sectors have GATS-plus commitments in Mode 1 – cross-border supply of services.<sup>583</sup> 18 other sub-sectors have GATS-plus commitments pertaining to Mode 2 and 69 out of 79 GATS-plus sub-sectors relate to Mode 3.<sup>584</sup> Therefore, among the three modes, Mode 2 has the fewest GATS-plus commitments while Mode 3 contains the most GATS-plus commitments. That Mode 2 enjoys the lowest number of GATS-plus commitments in the EVFTA results from the fact that Mode 2 is the mode of service supply which has been subject to the highest measure of liberalization among the four modes Vietnam made commitments within the GATS. To put it differently, right at its accession to the WTO, Vietnam had made undertakings on services trade liberalization supplied in Mode 2 at a level higher than other modes. Mode 2 within the GATS commitments of Vietnam is mostly accompanied with “None”, i.e. full liberalization or no limitation. Consequentially, afterwards, in the EVFTA, there is less room for progressive liberalization in Mode 2 than other modes of service supply. Most GATS-plus commitments in Mode 2 in the EVFTA fall in sub-sectors uninscribed in the GATS and then newly inscribed in this agreement.

Among the four modes, Mode 3 – Commercial presence is the mode in which developing countries in general and Vietnam in particular are resistant in making undertaking as this Mode liberalization allows foreign service suppliers to provide services in the market of the host countries in one or more forms of representative offices, branches, subsidiaries, joint ventures (JVs), 100%-foreign-owned enterprises, putting competition pressure directly on

<sup>583</sup> Calculation by the author.

<sup>584</sup> Ibid.

domestic service suppliers. As a result, within the GATS, Vietnam has made reservations to impose limitation on MA and NT for foreign investors in general and EU investors in particular. Therefore, the EVFTA is an opportunity for EU negotiators to request for further liberalization in Mode 3 compared to the GATS from Vietnam.

### **6.1. Potential conflicts ensuing from EVFTA-plus provisions in the CPTPP**

CPTPP commitments by Vietnam are more liberalized than the EVFTA in many aspects. For the full list of such EVFTA-plus elements in the CPTPP's trade-in-services commitments by Vietnam, see Annex 2.2. To determine whether such divergences constitute conflicts, analysis must be made on a case-by-case basis.

#### **6.1.1. Business services**

##### *a. Legal services*

According to CPTPP commitments, Vietnam has the obligation to permit foreign *lawyers* from CPTPP parties to supply any legal services, excluding two legal service activities of (1) "participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam" and (2) "legal documentation and certification services of the laws of Viet Nam", in the form of (i) wholly-foreign-owned limited liability law firms and (ii) JV limited liability law firms.<sup>585</sup> In addition, foreign *lawyers* from a CPTPP state can advise on Vietnamese law if they meet the two professional conditions of "(i) graduation in a Vietnamese law college and (ii) satisfaction of requirement applicable to like Vietnamese lawyers."<sup>586</sup> Under the EVFTA, Vietnam retains the right to impose any measures regarding legal services provided by EU *lawyers* in Mode 3 of establishing commercial presence.<sup>587</sup>

There are three different scenarios of measures by Vietnam:

- Scenario 1: Vietnam exercises its right under the EVFTA by not allowing any foreign lawyers to provide legal services in the form of (i) wholly-foreign-owned limited liability law firms or (ii) JV limited liability law firms. Then Vietnam violates its obligation under the CPTPP. Conflict between right and obligation arises afterwards.
- Scenario 2: Performing its obligation under the CPTPP, Vietnam permits foreign

<sup>585</sup> CPTPP, Annex I – Vietnam – 2.

<sup>586</sup> Ibid.

<sup>587</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, pp. 13-14.



lawyers to provide legal services in the form of (i) wholly-foreign-owned limited liability law firms and (ii) JV limited liability law firms. In such instance, Vietnam violates neither the CPTPP nor the EVFTA. Since the CPTPP takes effects prior to the EVFTA, the treatment given to CPTPP investors in legal services in this Scenario is not governed by the MFN obligation under the EVFTA.<sup>588</sup> Therefore, in this Scenario, Vietnam grants extra privilege to EU lawyers for free. Conflict arises therefrom according to the adopted definition of conflicts.

- Scenario 3: Vietnam does not allow foreign lawyers, with the exception of foreign lawyers from CPTPP states, to provide legal services in the form of (i) wholly-foreign-owned limited liability law firms or (ii) JV limited liability law firms. This measure then discriminates for lawyers from CPTPP parties and against those from non-CPTPP parties, including EU lawyers. As mentioned, the CPTPP takes effects prior to the EVFTA, therefore the treatment given to CPTPP investors in legal services in this Scenario is neither governed by the MFN obligation under the EVFTA nor against the EVFTA MFN obligation. Resultantly, no conflict is established in any sense.

In sum, with the entry into force of the CPTPP prior to the EVFTA, there is a scenario of the measure taken by Vietnam to avoid conflict of norms with regards to the sub-sector at issue. In other words, the two norms can accumulate.

*b. Urban planning and urban landscape architectural services*

Under the CPTPP, in NT for Mode 3, Vietnam has made “None”, i.e. full liberalization, commitments with the exception of national security and social stability purposes. Vietnam has committed to granting investors from CPTPP parties in urban planning and urban landscape architectural services treatment no less favourable than that granted to its like domestic services and service suppliers. Under the EVFTA, in NT for Mode 3, Vietnam has committed to partial liberalization by requesting responsible foreign architects working in EU-invested enterprises to have the professional practicing certificate granted or recognized by the Vietnamese government.<sup>589</sup>

- Scenario 1: Exercising the right by requesting responsible foreign architects working in foreign-invested enterprises in urban planning and urban landscape architectural services to

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<sup>588</sup> EVFTA, Chapter 8, Chapter II, Article 4.4.

<sup>589</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 16.

have the professional practicing certificate granted or recognized by the Vietnamese government, Vietnam makes an infringement of its obligation in NT for Mode 3 in urban planning and urban landscape architectural services under the CPTPP. Therefore, a conflict in the narrow sense emerges.

- Scenario 2: If removing the requirement of recognized certificate for foreign architects, Vietnam does not go against its CPTPP obligation but has to give extra preferences to EU investors in urban planning and urban landscape architectural services.

- Scenario 3: If combining Scenario 1 for non-CPTPP investors and Scenario 2 for CPTPP investors, Vietnam discriminates against EU investors and in favour of CPTPP investors. Only a violation of the MFN obligation under the EVFTA can be claimed, but not a conflict between the two norms under discussion.

Arguing in the same line as the legal services above, there is no conflict and the two norms accumulate.

*c. Computer and related services*

Regarding NT obligation for Mode 3, Vietnam has committed to “None” or full liberalization for computer and related services provided by investors from CPTPP parties. Hence, Vietnam has to treat investors and investments from CPTPP parties in computer and related services no less favourably than it does to its own like domestic investors and investments in computer and related services. Under the EVFTA, Vietnam is obligated to allow EU investors/enterprises to set up branches in Vietnam to supply computer and related services on the condition that the chief of the branch is a resident in Vietnam.<sup>590</sup>

- Scenario 1: If Vietnam requires foreign investors/enterprises in computer and related services to hire a resident in Vietnam to act as the chief of their branches (i.e. Vietnam exercises its right under the EVFTA and ignores its obligation under the CPTPP), such treatment violates the NT obligation under the CPTPP. Conflict according to the broad definition will arise.

- Scenario 2: If Vietnam releases foreign investors/enterprises in computer and related services from the residency requirement for the chief of their branches (i.e. Vietnam forgoes

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<sup>590</sup> Ibid, p. 17.

its right under the EVFTA and complies with its obligation under the CPTPP), such measure does not violate the CPTPP or the EVFTA. No conflict in the broad sense emerges. However, Vietnam gives treatment to EU investors/enterprises in computer and related services better than its concession under the EVFTA, representing a conflict in the adopted sense.

- Scenario 3: Vietnam requires foreign investors/enterprises in computer and related services, except for those from CPTPP parties, to hire residents in Vietnam as the chief of their branches. Then, by favouring CPTPP investors and enterprises in computer and related services and disfavouring non-CPTPP like investors, including EU investors, Vietnam just runs contrary to the MFN obligation under the EVFTA but faces no conflict between the two norms at issue.

*d. Research and development services on social science and humanity*

Regarding MA obligation in Modes 1-3 supply of the service at issue, Vietnam is bound to “None” commitment under the CPTPP, i.e. Vietnam has to permit suppliers from CPTPP parties to provide research and development services on social science and humanity through Modes 1-3, except for branches.<sup>591</sup> This service sub-sector is subject to the most liberalized undertakings in Vietnam’s CPTPP Schedule of specific commitments. In sharp contrast, Vietnam has not inscribed the service at issue in its EVFTA Schedule of specific commitments. As a result, Vietnam is free from both horizontal and sector-specific commitments in this service sub-sector and retains the right to adopt or maintain any measures, including limitations and conditions, in terms of research and development services on social science and humanity supplied by EU service suppliers.

Scenarios of measures by Vietnam:

- Scenario 1: By imposing any measure, limitations or restrictions, on MA for any of Modes 1-3 supply of research and development services on social science and humanity, Vietnam enjoys its rights under the EVFTA and ignores its obligation under the CPTPP. Vietnam then breaks its obligation under the CPTPP and conflict *lato sensu* between the EVFTA right and the CPTPP obligation follows.

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<sup>591</sup> CPTPP, Annex II – Vietnam – 39.

- Scenario 2: Vietnam does not make use of any limitation or restriction on MA for Modes 1-3 supply of research and development services on social science and humanity, thereby not making any violation of the EVFTA or the CPTPP. There is no conflict in the broad sense. However, EU suppliers of research and development services on social science and humanity benefit from treatment more favourable than that committed by Vietnam at no extra cost resulting in conflicts in the adopted sense.

- Scenario 3: Vietnam imposes a certain limitation or restriction on MA for any of Modes 1-3 supply of research and development services on social science and humanity, except for those provided by suppliers from CPTPP parties. Such measure constitutes a discrimination for service suppliers from CPTPP states and against non-CPTPP-party service suppliers, including EU service suppliers. Since the sub-sector is unincorporated in Vietnam's EVFTA Schedule of specific commitments, such discrimination does not violate the MFN obligation under the EVFTA as to research and development services on social science and humanity. Put differently, the two norms accumulate, instead of conflicting.

*e. Interdisciplinary research and development services*

As far as the MA obligation for Mode 3 or investment in interdisciplinary research and development services is concerned, pursuant to the CPTPP, Vietnam is bound to the "None" commitments,<sup>592</sup> i.e. Vietnam has to allow investors from CPTPP parties to set up subsidiaries, JVs without any cap on foreign equity and 100%-foreign-owned enterprises to provide the service at issue in Vietnam. In the same context, under the EVFTA, Vietnam is bound to granting partial liberalization in MA to EU's investors by permitting them to establish JVs with EU's capital contribution of no more than 70% to supply interdisciplinary research and development services in Vietnam.<sup>593</sup> Pursuant to this obligation, Vietnam is compelled to give approval to neither JVs with more-than-70% EU-ownership nor 100%-EU-owned enterprises in this service.<sup>594</sup>

Vietnam can adopt different measures.

- Scenario 1: Vietnam only allows foreign investors to form JVs with no more than 70% foreign ownership and outlaws subsidiaries of foreign investors and 100%-foreign-

<sup>592</sup> CPTPP, Annex II – Vietnam – 39.

<sup>593</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 18.

<sup>594</sup> Ibid.

owned enterprises to provide interdisciplinary research and development services in Vietnam. By exploiting its right under the EVFTA, Vietnam violates its obligation under the CPTPP. Conflict in this case is between parallel obligations, in which the CPTPP duty is stricter.

- Scenario 2: Apart from branches, Vietnam endorses all forms of investment in the service at issue, including subsidiaries, JVs without any cap on foreign equity and 100%-foreign-owned enterprises. By adhering to the more stringent obligation under the CPTPP, Vietnam, at the same time, automatically spreads a better treatment to non-CPTPP investors in the services, including, among others, EU investors, triggering a conflict in the adopted sense.

- Scenario 3: Except for CPTPP investors, foreign investors are allowed to form only JVs with no more than 70% foreign ownership and banned from forming subsidiaries and 100%-foreign-owned enterprises to provide interdisciplinary research and development services in Vietnam. The measure equates to a discrimination against non-CPTPP investors, particularly EU investors, and in favour of CPTPP like investors. Arguing in the same line as the legal services above, there is no conflict and the two norms accumulate given that the CPTPP takes effect before the EVFTA.

*f. Real estate services*

Not inscribing the real estate services sub-sector in the Schedule of Specific Commitments under the EVFTA, Vietnam retains the right to impose any limitations and/or conditions of horizontal or specific application on Modes 1, 2 and 3 of CPC 821 services provided by EU service suppliers. For instance, regarding limitation on investment, Vietnam has the right not to permit EU investors to set up subsidies, JVs or 100% foreign-owned enterprises to provide CPC 821 services. On the other hand, under the CPTPP, Vietnam is obligated to fully liberalize market access to trade in services in CPC 821 in Modes 1, 2 and 3, i.e. Vietnam is bound to removing any limitations or conditions in the three modes of supply of the services.<sup>595</sup> In other words, Vietnam has to, *inter alia*, permit subsidies, JVs or 100% foreign-owned enterprises established by CPTPP investors to provide real estate services.

Vietnam can design its measure in three scenarios:

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<sup>595</sup> CPTPP, Annex II – Vietnam – 38.

- Scenario 1: Shall Vietnam does not allow subsidiaries, JVs or 100%-foreign-owned enterprises, the CPTPP obligation of Vietnam will be intruded, thereby resulting in a conflict between CPTPP obligatory norm and EVFTA permissive norm.
  - Scenario 2: Provided that Vietnam does allow subsidiaries, JVs or 100%-foreign-owned enterprises, there is no infringement of the CPTPP or the EVFTA. Consequentially, there is no conflict of norms according to the broad sense. However, the extra cost in the form of treatment to EU services and service suppliers, investments and investors more favourable than committed makes Vietnam encounter a conflict in the adopted sense.
  - Scenario 3: Vietnam does allow subsidiaries, JVs or 100%-foreign-owned enterprises for CPTPP services and service suppliers, investments and investors while not granting such privileges to other non-CPTPP (e.g. EU) counterparts. There is no violation of the CPTPP or the EVFTA; hence, no conflict of norms exists according to the broad sense. This measure brings about treatment of non-CPTPP, including EU, investors less favourable than that granted to like investors from the CPTPP state parties. Arguing in the same line as the legal services above, there is no conflict and the two norms accumulate in the context that the CPTPP takes effect before the EVFTA.
- g. Rental/leasing service without operators relating to other machinery and equipment (CPC 83109) with regards to mining and oil field equipment; commercial radio, television and communication equipment*

Regarding MA for Modes 1 and 2, under the CPTPP, Vietnam has made the “None” or full commitment,<sup>596</sup> i.e. being bound to completely opening the service at issue. Under the EVFTA, Vietnam has not inscribed this service sub-sector, thereby retaining the right to impose any restrictions, including limitations and/or conditions with regards to Modes 1 and 2 supply of the services.

Different scenarios of measures by Vietnam:

- Scenario 1: If not liberalizing MA for Modes 1 and 2 for the services at issue, Vietnam exercises the right under the EVFTA and ignores the obligation under the CPTPP, causing a right-vis-à-vis-obligation collision.

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<sup>596</sup> CPTPP, Annex II – Vietnam, pp. 36 and 38.

- Scenario 2: Shall no measures of limitations and/or restrictions on the service at issue in MA, Modes 1 and 2 are put in place, then no infringement of either of two PTA provisions at issue is committed. No conflict in the broad sense is found at the cost of waiving the right of Vietnam under the EVFTA. In other words, a conflict in the adopted sense exists.

- Scenario 3: Vietnam does not liberalize MA for Mode 1 and 2 supplies of the services at issue, except for CPTPP like services (suppliers). On the one hand, neither PTAs is violated; on the other hand, such measure with its carve-outs constitutes treatment less favourable to EU service suppliers compared to their competitors from the CPTPP parties.

Regarding the NT for Modes 1 – 4, under the CPTPP, Vietnam likewise is committed to the “None” obligation, i.e. giving CPTPP services and service suppliers treatment no less favourable than the treatment Vietnam gives to its like domestic services and service suppliers at issue.<sup>597</sup> Under the EVFTA, through the uninscription of the service sub-sector at issue, Vietnam reserves the right to give EU services and service suppliers treatment less favourable than that appropriated to its like domestic services and service suppliers. Therefore, a conflict, if any, will be between an EVFTA right and a CPTPP obligation.

Scenarios of measures by Vietnam: Let’s assume that Vietnam does not impose on its domestic services and service suppliers any limitations on capital transfer in JVs with foreign investors.

- Scenario 1: If excluding foreign investors in the services in question from the same capital transfer freedom, Vietnam violates its CPTPP obligation, facing conflict *lato sensu*.

- Scenario 2: When granting foreign investors the same freedom, Vietnam does not violate its CPTPP obligation. No conflict *lato sensu* follows. However, Vietnam has to give EU investors treatment more favourable than its EVFTA undertakings, giving rise to a conflict in the adopted sense.

- Scenario 3: If allowing CPTPP investors while excluding non-CPTPP, such as EU, competitors to enjoy the above-mentioned freedom, Vietnam does not violate its CPTPP obligation. However, such measure discriminates EU investors in favour of their CPTPP competitors. Along the same line as the legal services above, there is no conflict and the two

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<sup>597</sup> CPTPP, Annex II – Vietnam – 38.

norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

*h. Other business services*

h1. Investigation and security, security system services (part of CPC 873) (CPC 87305/87309)

Under the EVFTA, Vietnam retains the right to impose any limitations and/or conditions on investment in security system services provided by EVFTA service providers. Under the CPTPP, Vietnam has an obligation to allow JVs in security system services in which capital ownership by CPTPP investors does not surpass 49%.<sup>598</sup>

The three scenarios of measures adopted by Vietnam:

- Scenario 1: In so far as Vietnam does not allow liberalization of investment in security system services, more specifically prohibiting JVs or permitting JVs with less-than-49% foreign ownership, such measure violates the obligation under the CPTPP. Consequentially, conflict *lato sensu* arises.

- Scenario 2: If Vietnam acts consistently with the partial liberalization undertaking by allowing JVs with 49% foreign ownership, neither the CPTPP nor the EVFTA is intruded. By compliance with the obligation rather than the right, Vietnam gives the MFN treatment pursuant to the (stricter) obligation, i.e. giving extra privilege/preferences to EU investors, producing conflict in the adopted sense.

- Scenario 3: Vietnam does not liberalize investment in the security system services with the exception of partial liberalization for CPTPP investors, which accounts for a differentiation for the CPTPP and against the EVFTA investors. By the same token, there is no conflict between the two norms at issue.

h2. Services related to management consulting CPC 866, except CPC 86602, arbitration and conciliation services for commercial disputes between businesses (CPC 86602\*\*)

In terms of NT obligation for Mode 3, under the EVFTA, Vietnam has to allow EU investors to set up branches in Vietnam to provide the services in question however on the condition

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<sup>598</sup> CPTPP, Annex I – Vietnam – 40.



that the chief of the branch resides in Vietnam.<sup>599</sup> Vietnam is allowed to reject the establishment of EU investors' branches in Vietnam if the heads of such branches are not residents in Vietnam. Under the CPTPP, Vietnam must allow CPTPP investors to establish branches to provide the above services in Vietnam and the chief of the branch does not need to be a resident in Vietnam.<sup>600</sup> This obligation is stricter than that under the EVFTA. Potential conflict in this case (if any) will be between parallel obligations in which the stricter obligation is under the CPTPP and the less stringent one is under the EVFTA.

Different scenarios of measures are available to Vietnam:

- Scenario 1: If not allowing the establishment of a branch falling short of the fulfilment of the residency requirement, Vietnam then violates the CPTPP and suffers from a conflict *lato sensu*.
- Scenario 2: If otherwise ignoring the residency condition in its approval of foreign-branch formation, Vietnam does not violate any of its commitments. In return, it gives EU investors treatment more privileged than its EVFTA commitments and may be in confrontation with a conflict in the adopted sense.
- Scenario 3: Providing that Vietnam imposes the measure in accordance with Scenario 1 on foreign branches, barring those established by investors from CPTPP parties, such measure constitutes a discrimination for CPTPP investors and investments and against EU counterparts. Likewise, there is no conflict of the two norms at issue giving the validity time of the CPTPP compared to the EVFTA.

### h3. Services incidental to agriculture, hunting and forestry (CPC 881)

Examples of these services include research and development services for technology for agriculture, husbandry, poultry and fishery; technology transfer in agriculture and husbandry; technological advisory services for agriculture, husbandry and poultry.

Firstly, under the EVFTA, “services relating to investigation, evaluation and exploitation for natural forest including exploitation of woods and wild, rare and precious animals hunting and trapping, aerial photographing, aerial seed planting and aerial chemicals spraying and dusting,

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<sup>599</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 21.

<sup>600</sup> CPTPP, Annex I – Vietnam – 26.

micro-bial plant, animal genetic resource in agriculture”<sup>601</sup> are excluded. “For the avoidance of ambiguity, animal husbandry and the improvement of breeding stock are included in this commitment.”<sup>602</sup> According to Vietnam’s EVFTA Schedule of Specific Commitments, the above-mentioned services activities are, as being excluded, not subject to any horizontal or specific commitments. Thanks to the full freedom or entitlement resulting therefrom, Vietnam can impose any horizontal or sector-specific limitations and/or conditions. Such footnote is absent in the corresponding service sub-sector in the CPTPP Schedule of Specific Commitments of Vietnam,<sup>603</sup> i.e. the above EVFTA-excluded services activities are included in the CPTPP commitments of Vietnam and subject to sector-specific commitments stated in the services incidental to agriculture, hunting and forestry. The absence of such footnote itself constitutes a divergence between a right under the EVFTA and an obligation under the CPTPP.

Secondly, regarding the MA for Mode 3 supply of services incidental to agriculture, hunting and forestry, excluding footnote 1, Vietnam’s commitment in the CPTPP allows purchases of shares by the CPTPP’s foreign investors in Vietnamese enterprises in the service at issue with 51% cap on CPTPP ownership, constituting an obligation of Vietnam.<sup>604</sup> In contrast, under the EVFTA, Vietnam has not listed purchase of shares as a form of commercial presence for EU investors in their supply of the service in question.<sup>605</sup> Put differently, compared to the EVFTA undertakings by Vietnam in the sub-sector, Vietnam’s CPTPP commitment adds not only one form of investment of purchase of shares in a Vietnamese enterprise but also the cap of foreign equity in share purchase of 51%.

The conflict, if any, arises therefrom will be right-and-obligation collision. The right under the EVFTA allows Vietnam to prohibit EU investments and/or investors in services incidental to agriculture, hunting and forestry, excluding footnote 16 from buying shares in a Vietnamese enterprise or, otherwise, allow the cap of EU equity as a result of the purchase of shares in a Vietnamese enterprise less than 51%.<sup>606</sup> Nevertheless, the obligation under the

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<sup>601</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 23, ft. 1.

<sup>602</sup> Ibid.

<sup>603</sup> CPTPP, Annex I – Vietnam – 8.

<sup>604</sup> Ibid.

<sup>605</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 23.

<sup>606</sup> Ibid.

CPTPP mandates Vietnam to permit CPTPP investors to purchase of shares in a Vietnamese enterprise in the services with the cap on foreign capital of 51%.<sup>607</sup>

Scenarios of measures by Vietnam can be:

- Scenario 1: When exercising the right under the EVFTA, Vietnam violates the CPTPP, thereby suffering from a conflict *lato sensu*.
- Scenario 2: By complying with the obligation under the CPTPP, Vietnam violates neither the EVFTA nor the CPTPP but gives extra privileges to EU investors and/or investments without getting any further concessions from the EU. Such treatment can be considered as granting MFN treatment to the EU investors and/or investments.
- Scenario 3 combines Scenario 1 with an exception for CPTPP investors and/or investment, discriminating against EU investors and/or investments.

Along the same line as the legal services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

h4. Services incidental to fishing: Specialised consultancy services related to marine or freshwater fisheries, fish hatchery services (part of CPC 882)

Where the MA obligation for Modes 1 – 3 is concerned, under the CPTPP, Vietnam has made a “None” commitment in the services in this item.<sup>608</sup> Conversely, Vietnam has not inscribed the same service in the EVFTA’s Schedule of Specific Commitments. In other words, this service sub-sector has been newly inscribed in the CPTPP which is absent from the EVFTA. Pursuant to the “uninscription” approach in the EVFTA, Vietnam reserves the right to maintain or adopt any measures relating to MA for Modes 1 – 3 of supply of the services provided by EU services and/or service suppliers and/or investors and/or investment. Under the CPTPP commitments, Vietnam bears the obligation to remove any limitations or conditions on MA for Modes 1 – 3 on services at issue for CPTPP services and/or service suppliers and/or investors and/or investment.

Three scenarios of measures by Vietnam:

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<sup>607</sup> CPTPP, Annex I – Vietnam – 8.

<sup>608</sup> CPTPP, Annex II – Vietnam – 38.

- Scenario 1: If introducing or maintaining any measures relating to MA for Mode 1 – 3 supply of the services under discussion (i.e. exploiting its right under the EVFTA), Vietnam can violate its CPTPP obligation. This case will lead to a conflict in the broad sense.

- Scenario 2: If Vietnam observes its CPTPP obligation by refraining itself from introducing or maintaining any measures relating to MA for Mode 1 – 3 supply of the services under discussion, no conflict *lato sensu* emerges at the cost of extra privileges for EU services and/or service suppliers and/or investors and/or investment which otherwise represents a conflict in the adopted sense.

- Scenario 3 involves Scenario 1 with the exception for CPTPP services and/or service suppliers and/or investors and/or investments. The measure in this situation discriminates against, *inter alia*, EU services and/or service suppliers and/or investors and/or investment.

Along the same line as the legal services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

##### h5. Services incidental to mining (CPC 883)

As to MA commitments in Mode 1 supply of services incidental to mining (CPC 883), under the CPTPP, Vietnam has undertaken “None”, i.e. full liberalization, commitments. However, under the EVFTA, Vietnam is bound to only partial liberalization of the service at issue. Hence, the conflict, if any, will be between parallel obligations, in which the less stringent obligation is under the EVFTA according to which Vietnam has a partial obligation, i.e. Vietnam has to remove all/not maintain any limitations and/or conditions on Mode 1 supply of services incidental to mining with the exception of the measure of registration with the competent authority of Vietnam under the terms outlined in Vietnam’s applicable law applicable to EU companies without a commercial presence in Vietnam.<sup>609</sup> The more stringent obligation under the CPTPP forces Vietnam to remove all limitations and/or conditions on Mode 1 supply of the services.

Three scenarios of measures by Vietnam:

- Scenario 1: The requirement that companies without commercial presence in Vietnam be registered with the competent authority of the Government of Viet Nam under the terms

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<sup>609</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 24.

outlined in Vietnam's applicable laws to provide through Mode 1 services incidental to mining, although according with its EVFTA obligation,<sup>610</sup> violates the CPTPP obligation. Hence, a conflict between parallel obligations will be resulted in.

- Scenario 2: By refraining from adopting such requirement as the above, Vietnam will not commit any violation of any PTA obligation at issue, hence facing no conflict in the broad sense. Such measure gives the most favourable treatment to all states' services incidental to mining and suppliers of services at issue, including non-CPTPP (e.g. EU) services and services suppliers.

- Scenario 3 diverges from Scenario 1 by exempting CPTPP services and/or service suppliers from the registration requirement. No conflict in the broad sense can be brought about although the consequential discrimination against EU services and/or service suppliers and for CPTPP services and/or service suppliers can break the MFN obligation under the EVFTA.

Along the same line as the legal services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

#### h6. Services incidental to manufacturing (CPC 884 and 885 except for Printing (CPC 88442))

In regards to the MA obligation in Mode 3 of services incidental to manufacturing (CPC 884 and 885 except for Printing (CPC 88442)), under the CPTPP, Vietnam is bound to allowing investors from CPTPP states to establish both JVs *and* 100% foreign-owned enterprises to provide the services.<sup>611</sup> However, slightly differently, under the EVFTA, Vietnam has agreed on the liberalization in the form *either* JVs *or* 100% foreign-owned enterprises for EU investors.<sup>612</sup> In that context, conflict may arise between parallel obligations. The less stringent obligation under the EVFTA requests either JVs with 50% foreign equity cap or 100%-foreign-owned enterprises to be allowed for EU investment in and investors of the services at issue while the stricter obligation under the CPTPP obligates Vietnam to allow both JVs with

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<sup>610</sup> Ibid.

<sup>611</sup> CPTPP, Annex II – Vietnam – 36.

<sup>612</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 24.

maximum 50% foreign equity and 100%-foreign-owned enterprises set up by CPTPP investors to provide the services.<sup>613</sup>

Three scenarios of measures by Vietnam:

- Scenario 1: If exercising the right under the EVFTA by allowing just JVs *or* 100%-foreign-owned enterprises to provide the service, Vietnam violates the CPTPP, thereby encountering a conflict *lato sensu*.
- Scenario 2: When perform the obligation under the CPTPP, Vietnam allows investors and investments in the services under discussion in the form of both JVs with a maximum of 50% foreign ownership *and* 100%-foreign-owned enterprises. Such concession gives MFN treatment for EU investors and investments.
- Scenario 3: If Vietnam adopts the measure in Scenario 1 with the exception as in Scenario 2 for CPTPP investors and investments in services incidental to manufacturing (CPC 884 and 885 except for Printing (CPC 88442), such measure disfavors EU investors and investment compared to their CPTPP competitors.

Along the same line as the legal services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

#### h7. Photographic services, Portrait Photography services (CPC 87504)

Regarding the MA obligation, under the CPTPP, Vietnam has made “None”, i.e. full liberalization, commitments for Modes 1 and 2 of supply of the services, and partial liberalization in Mode 3. By contrast, under the EVFTA, Vietnam has not inscribed the service in its Schedule of Specific Commitments. The conflict, if any, can be between a right and an obligation. Under the EVFTA, Vietnam is entitled to adopt or maintain any measures, including limitations and restrictions, regarding Mode 1 – 3 of supplies of photographic services, portrait photography services (CPC 87504) provided by EU services and service suppliers, apart from their business cooperation contracts (BCCs) and JVs.<sup>614</sup> Nevertheless, under the CPTPP, Vietnam is obligated to remove existing measures and to not impose new

<sup>613</sup> CPTPP, Annex II – Vietnam – 36.

<sup>614</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 26.

measures, including limitations and restrictions, regarding Mode 1 – 3 of supply of the services, less BCCs and JVs, for services and service suppliers from CPTPP state parties.<sup>615</sup>

Designed measures by Vietnam can be:

- Scenario 1: If Vietnam adopts or maintains any measures, including limitations and restrictions regarding Modes 1 – 3 of supply of photographic services, portrait photography services (CPC 87504) other than BCCs and JVs, a violation of the CPTPP obligation is committed by Vietnam and thereafter is the conflict among the two norms.
- Scenario 2: If strictly observing its CPTPP obligation by not utilizing any measures, including limitations and restrictions regarding Modes 1-3 of supply of the services, with exception of BCCs and JVs, Vietnam does not infringe upon the CPTPP or the EVFTA. Hence, there is no conflict in the broad sense. However, there is a grant of extra preferences to non-CPTPP service and service suppliers, including those of the EU.
- Scenario 3: If Vietnam follows Scenario 1 for non-CPTPP service (suppliers) and Scenario 2 for CPTPP service (suppliers), such measure is equivalent to a discrimination against EU services (suppliers) and for CPTPP services (suppliers).

Analyzing in the same manner as the legal services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

#### h8. Packaging services

Under the EVFTA, Vietnam has committed to allowing only JVs. To put it differently, Vietnam has the right to prohibit the EU investors from establishing BCCs, purchase of shares, subsidiaries, representative offices and 100%-foreign-owned enterprises in the supply of packaging services.<sup>616</sup> Under the CPTPP, Vietnam has made “None” undertakings, i.e. full liberalization, with one exception of JVs.<sup>617</sup> As a result, Vietnam has the obligation to allow CPTPP investors to set up BCCs, purchase of shares, subsidiaries, representative offices and 100%-foreign-owned enterprises in the supply of packaging services. Conflict (if any) arising therefrom will be classified as a right-obligation collision.

<sup>615</sup> CPTPP, Annex II – Vietnam – 39.

<sup>616</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 27.

<sup>617</sup> CPTPP, Annex II – Vietnam – 39.

Three scenarios of measures by Vietnam:

- Scenario 1: If exercising the right under the EVFTA, i.e. not allowing forms of investment of BCCs, purchase of shares, subsidiaries, representative offices and 100%-foreign-owned enterprises in the supply of packaging service, Vietnam violates the CPTPP, giving rise to a conflict.
- Scenario 2: Provided that Vietnam observes the obligation under the CPTPP, i.e. permitting foreign investors to make investment in the form of BCCs, purchase of shares, subsidiaries, representative offices and 100%-foreign-owned enterprises in the supply of packaging services, there is no violation of the CPTPP or the EVFTA. But Vietnam has to confer extra privileges to EU investors and/or investments by giving the MFN treatment according to the stricter obligation under the CPTPP to EU investors and investment.
- Scenario 3: Vietnam adopts the measure in Scenario 1 for non-CPTPP investors and investments and Scenario 2 for CPTPP counterparts in providing packaging services, thereby discriminating among foreign investors and investments in the services, more specifically, against non-CPTPP, including EU, investors and investments, and for CPTPP competitors.

Analogous to the legal services above, there is no conflict and the two norms accumulate given the points of entry into force of the CPTPP and the EVFTA.

#### h9. Asset appraisal

While not inscribing this sub-sector under the EVFTA, Vietnam has, on the contrary, listed it with the “Unbound” promise regarding MA for Modes 1, 2 and 4 in the CPTPP. Similarly, concerning NT for Modes 1 – 4, Vietnam has committed to the “Unbound” undertaking under the CPTPP. In MA for Mode 3 of the asset appraisal service, Vietnam is subject to limited liberalization under the CPTPP.<sup>618</sup> In the face of the EVFTA right and the CPTPP obligation, Vietnam can choose among three scenarios and, in short, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA and based on the reasoning for the legal services above.

### **6.1.2. Communication services**

#### *a. Telecommunication services*

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<sup>618</sup> CPTPP, Annex I – Vietnam – 37.



a1. Mode 1 of telecommunication services

Regarding Mode 1 of telecommunication services, under the CPTPP, Vietnam has agreed to relax conditions for an entity to be considered a multinational company for this entry. More specifically, four conditions must be met cumulatively and the condition of public listing on the stock exchange of a CPTPP party is removed.<sup>619</sup> Consequentially, under the CPTPP, Vietnam has to permit CPTPP-party suppliers of satellite-based telecommunication services, including both basic and value-added services, through Mode 1 to provide the service to an entity which meets only four out of five conditions.<sup>620</sup> Slightly different, under the EVFTA, all five conditions, including “public listing on the stock exchange of a party”, must be fulfilled. In other words, Vietnam has to permit EU suppliers to provide the satellite-based telecommunication services, including both basic and value-added services, through Mode 1 to an entity which meets simultaneously the five conditions.<sup>621</sup>

For example, if an entity meets the four conditions, less the public listing condition under the EVFTA, Vietnam has to allow suppliers from the CPTPP states to provide the service at issue to such entity, however, does not have to do so for EU like suppliers.

Scenarios of measures by Vietnam include:

- Scenario 1: If not allowing foreign suppliers to provide the service in question to such entity through Mode 1, then Vietnam violates the CPTPP. Conflict arising afterwards will be of parallel-obligation nature.
- Scenario 2: If allowing suppliers to provide the service in question to such entity through Mode 1, then Vietnam does not intrude either the CPTPP or the EVFTA and gives extra preferences to EU investors and suppliers of the services at issue pursuant to the EVFTA’s MFN obligation. Then there is a conflict in the adopted sense.
- Scenario 3: If not allowing foreign suppliers, with the exception of CPTPP service suppliers, to provide the service at issue through Mode 1 to the above-mentioned entity, Vietnam favours CPTPP suppliers and against EU competitors and violates the MFN obligation in the satellite-based telecommunication services in Mode 1 under the EVFTA.

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<sup>619</sup> CPTPP, Annex I – Vietnam, pp. 9-10.

<sup>620</sup> Ibid.

<sup>621</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, pp. 29, 33, 36, 39.

However, this measure does not give birth to any conflict in any sense between the two norms in question at the cost of the MFN infringement under the EVFTA.

a2. Market access, Mode 3 of the telecommunication services

Regarding the purchase of shares, in telecommunication service, including both basic and value-added services and for both non-facilities-based and facilities-based services, under the CPTPP, Vietnam must allow CPTPP investments in the form of the purchase of shares in telecommunication services. This is an obligatory norm. More specifically, Vietnam must allow certain caps on foreign purchase of shares, ranging from 65%, 100% and 70% for non-facilities-based services to 49%, 51% and 65% for facilities-based services.<sup>622</sup> However, under the EVFTA, Vietnam has not committed to permitting EU investors to purchase shares in Vietnamese enterprises to supply the services.

Regarding the cap on foreign capital in JVs, generally speaking, Vietnam's CPTPP commitments on foreign capital caps in JVs are higher than those under the EVFTA. In particular, regarding facilities-based services of value-added services, Vietnam is obligated to allow JVs with 51% and 50% of capital owned by CPTPP investors and EU investors respectively under the two agreements.<sup>623</sup>

Likewise, Vietnam can choose among three scenarios and, generally speaking, no conflict arises given the CPTPP's entry into force compared to the EVFTA.

*b. Audiovisual services*

Regarding dissimilarities between the CPTPP and the EVFTA in their scope of application to audio-visual services, for some EU Member States, audio-visual services are of sensitive nature; therefore, the services is excluded from the scope of obligation of EVFTA. Consequentially, Vietnam and the EU are free to pursue their domestic policy/aim in this sub-sector. This audio-visual service exclusion under the EVFTA constitutes a permissive norm.

The same does not hold true for CPTPP contracting parties. Put differently, the reversal is true: audio-visual services still fall under the scope of the services trade regulation. Regarding this sub-sector, there is an obligatory norm that Vietnam has to obey in services trade. Given the sensitivity of audio-visual services, the CPTPP parties do not adopt the full liberalization

<sup>622</sup> CPTPP, Annex I – Vietnam – 10.

<sup>623</sup> Ibid. EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 38.

of the sub-sector but agree on a partial progress. Some sub-sectors are still protected; others are open and liberalized. However, overall, the CPTPP is more liberalized than the GATS. In sharp contrast to the EVFTA, the CPTPP adopts a “WTO-plus” approach to liberalizing audio-visual services.

Contracting parties to the CPTPP are more for liberalization in audio-visual services trade than the EU. Talks on audio-visual services in the TPP were driven in good part by the United States, Japan, not by Canada, Australia or New Zealand. Previously, in the TPP-12 – the predecessor of the CPTPP, the United States was the most offensive in freeing the services. Their stance was shared somehow by Japan and New Zealand – two other remaining developed parties. The advocacy of these three parties was evident within the framework of the WTO establishment. While only three developed members took on commitments in this sub-sector in the Uruguay Round, all of them, namely the United States, Japan and New Zealand, were at the TPP negotiation table. Their pro-trade-liberalization stance can be attributable to their role as main players and exporters of the service in the global market. Once again, in the Doha Development Round, the United States and Japan insist on their GATS-plus proposals in audiovisual services. Back to the WTO framework, the EU did not engage any commitments.

On Vietnam’s side, its willingness to open the sub-sector was showcased since its accession to the WTO where it took on substantial liberalization undertakings. However, unlike the above developed partners, Vietnam holds a negligible role in the relevant markets and its viewpoint is driven mainly by powerful trade counterparts. In the CPTPP, Vietnam has commitments in all three sub-sectors of audio-visual services (television-related and radio-related services, movies-related and video-tape-related services and sound-recording services). For the first sub-sector, only television and radio broadcasting services are inscribed; those relating to production are not. Compared to the GATS, such inscription constitutes a “GATS-plus” provision as such inclusion is absent from the GATS schedule. Similar to other Members in the Doha Development Round, Vietnam offered fewer GATS-plus commitments in television-related and radio-related services than in the other two components of the audiovisual services.

In the CPTPP, motion-picture production (CPC 96112) is, on the Vietnamese side, subject to the full liberalization or no-restriction-or-condition undertakings in Mode 2, surpassing the “Unbound” counterpart in the GATS. The overwhelming number of undertakings in the motion picture-related and video-tape-related-services over those in television and radio follows suit what happened within the multilateral talks in the Uruguay Round when parties made more commitments in the former than in the latter.

Audio-visual commitments of Vietnam, although being not absolutely free of limitations or conditions, contain considerable liberalization advances. In audiovisual services, few restrictions are attached. Among the few limitations, most of them are inscribed in Mode 3. In terms of modes of supply, audiovisual services are, for the main part, supplied in Modes 1, 3 and 4. Modes 1 and 4 are subject to full liberalization under the CPTPP. Likewise, as the services are less provided in Mode 2, Vietnam has scheduled full liberalization in this Mode in all sub-sectors of the services. Mode 3 is the most restricted among all four modes of supply in this sub-sector. Limitations take the form of caps on foreign capital contribution, BCCs, types of legal entities (JVs and share purchase); there is no commitment for mass communication and performance requirements.

Among the four modes, Modes 1, 2 and 4 are the ones where Vietnam has undertaken the most “GATS-plus” commitments by withdrawing “Unbound” commitments (if any) and replacing them with “None” or full commitments. Vietnam engages more commitments in sub-sectors where fewer limitations or conditions are in place in the GATS framework, i.e. in the movie-based services.

There are different types of restrictions Vietnam has retained the right to impose. *Firstly*, regarding performance requirements, this measure (or so-called content quotas) is applicable to motion-picture services only and only through the traditional channel of delivery (i.e. in cinemas), neither to other services (such as television, radio or music) nor through state-of-the-art modes of distribution (e.g. through the Internet). The scope of these requirements is limited. By considering some determinants in fixing screening quotas, including domestic cinematographic making capacity, screening infrastructure and customer tastes, Vietnam retains the discretion to guarantee that Vietnamese movies are projected, at the largest, 20%

of the whole quantity of cinema movies screened every year.<sup>624</sup> In addition, during peak time (6pm-10pm), Vietnam requires only one Vietnamese film to be projected in cinemas.<sup>625</sup> *Secondly*, as for caps on foreign ownership, in motion picture services, including movie and video production, distribution and projection, Vietnam keeps the same 51% cap on foreign ownership participation as in the GATS.<sup>626</sup> In sum, only Mode 3 is subject to limitations and conditions and the other modes are not.

In sharp contrast, this sub-sector is out of the scope of application of the services chapter under the EVFTA; therefore, Vietnam preserves the full flexibility/full discretion to impose any limitation/restrictions and conditions therein. This rule is equivalent to an indirect confirmation of a permissive norm. This regulation constitutes “GATS-minus” commitments in liberalizing less than the WTO/GATS counterparts.

As shown above, the CPTPP constitutes GATS-plus in audiovisual trade; otherwise, the EVFTA is GATS-minus. As a result, the CPTPP commitments by Vietnam are more liberalized than the counterpart in the EVFTA. Whether such disparity can yield conflicts depends on applied trade policies by Vietnam. For instance, if Vietnam requires 30% of all cinematographic shows per year to have Vietnamese origin, such EVFTA-permitted measure infringes upon the CPTPP’s undertaking by Vietnam. In other words, a conflict in broad terms arises. If the mandatory ratio drops to 20%, no conflict occurs. As conflict occurrence depends heavily on the applied policy of Vietnam, it is not absolute, but just potential or in the applicable law. However, in the above-said second scenario, in return of conflict non-emergence, Vietnam has to forgo the right allowed under the EVFTA, making the pact in-operative in part.

Scenarios of measures:

- Scenario 1: If not allowing foreign suppliers to invest in audiovisual services in the form of, for example, JVs or BCCs, Vietnam will violate the CPTPP. Such measure will cause a conflict between the EVFTA right and the CPTPP obligation.
- Scenario 2: If permitting JVs with 51% foreign capital contribution, for example, Vietnam will not violate the CPTPP or the EVFTA. However, in that manner, Vietnam gives

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<sup>624</sup> CPTPP, Annex I – Vietnam – 12.

<sup>625</sup> Ibid.

<sup>626</sup> CPTPP, Annex I – Vietnam – 11.

extra preference to EU investors for free, thereby being exposed to a conflict in the adopted sense.

- Scenario 3: If adopting measures in Scenario 1 with the exception of Scenario 2 for CPTPP investors and/or investment, Vietnam does break neither the CPTPP nor the EVFTA. Therefore, no conflict *lato sensu* will be made. In addition, such discrimination among foreign investors and investments in audiovisual services in general and for CPTPP investors and/or investments and against EVFTA investors and/or investments is not subject to the MFN obligation under the EVFTA as the service sub-sector is excluded from the scope of application of the Trade in Service Chapter of the EVFTA. Therefore, no conflict in the adopted sense is found. In other words, CPTPP norms and EVFTA norms governing audiovisual services are in accumulation, instead of being in conflict.

### **6.1.3. Construction services**

Regarding NT for Mode 3 of construction services, Vietnam is subject to partial liberalization commitments under the EVFTA and full liberalization commitments under the CPTPP. In particular, under the EVFTA, Vietnam has to allow EU service suppliers to set up branches to provide construction services on the condition that the chief thereof is a resident in Vietnam.<sup>627</sup> The CPTPP obligation of Vietnam is stricter than the EU corresponding duty.<sup>628</sup>

Scenarios of measures by Vietnam:

- Scenario 1: If banning foreign investors from branch establishment to provide construction services in Vietnam when the chief of the branch is not a resident in Vietnam, Vietnam goes against its obligation under the CPTPP. Afterwards, a conflict in the applicable law arises among parallel obligations.

- Scenario 2: If permitting the formation of branches by foreign investors in construction services regardless of their fulfilment of the Vietnamese-residency requirement as to the branch chief, Vietnam does not violate the CPTPP or the EVFTA and gives extra preferences to EU investors.

- Scenario 3: If combining Scenario 1 for non-CPTPP investors and investments and Scenario 2 for CPTPP investors and investments, Vietnam discriminates against EU investors.

<sup>627</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 42.

<sup>628</sup> CPTPP, Annex I – Vietnam – 26.

Parallel to the computer and related services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

#### **6.1.4. Distribution services**

*a. For commission agents' services, wholesale trade services and retailing services of video records on whatever medium, rice, cane and beet sugar*

Under the EVFTA, Vietnam has not inscribed in, i.e. excluding the distribution of those products from, the Schedule of sector-specific commitments. Under the CPTPP, Vietnam has inscribed the sub-sector and been subject to partial commitments.<sup>629</sup> Potential conflict is between the right under the EVFTA and the obligation under the CPTPP. More specifically, pursuant to the EVFTA, Vietnam reserves the right to adopt or maintain any measure with regards to all modes of distribution services supplied by EU retailers, wholesalers and commissioners of the products mentioned in the title of the entry.<sup>630</sup>

Mode 1 of the three sub-sectors of distribution services of products above includes online/internet-based distribution services and e-commerce. Under the CPTPP, Mode 1, with regards to video records on whatever medium, rice, cane and beet sugar, Vietnam has committed to the “None” undertaking for two types of usage of products, that is (i) for personal use and (ii) for personal and commercial use with regards to legitimate computer software. In other words, Vietnam has to permit online distribution/sales and e-commerce sales (retailing and wholesaling) of afore-said products, including video records, rice, cane and beet sugar for two purposes indicated above when such sale is provided by CPTPP service suppliers.

For Mode 2, i.e. consumption abroad, of the three sub-sectors of distribution services of products above, same as Mode 1, Vietnam is tied to the “None” undertakings for two purposes of utilities of the products at issue.

In Mode 3 of the three sub-sectors of distribution services for the products at issue, foreign investors can establish subsidiaries, JVs, 100%-foreign-owned-enterprises to provide retailing, wholesaling and commission agency services in Vietnam. Under the CPTPP, Vietnam gives a “None” promise with one limitation which will switch to a “None”

<sup>629</sup> CPTPP, Annex II – Vietnam, pp. 11, 12.

<sup>630</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 43.

undertaking five years after the entry into force of the CPTPP. Firstly, during the period of five years from the entry into of the CPTPP, Vietnam is obligated to allow foreign investors from the CPTPP parties to establish subsidiaries, JVs, 100%-foreign-owned-enterprises to provide retailing, wholesaling and commission agency services in Vietnam. One limitation Vietnam retains within this five-year period relates to outlet establishment. More specifically, foreign investors from other CPTPP signatories are allowed to establish the first outlet for retail services. However, to establish the second outlet for retailing services, CPTPP investors must get from the Vietnamese competent authorities the approval which is based on the consideration of elements of “the number of existing service suppliers in a particular geographic area, the stability of market and geographic scale.”<sup>631</sup> However, this limit is eroded in scope by the fact that Vietnam must allow foreign investors from CPTPP parties to set up outlets for retailing services with the “area of less than 500 square meters in areas that are planned for commercial activities by the People’s Committee of cities and provinces, and on which the construction of infrastructure has been finished.”<sup>632</sup> When the five-year period subsequent to the entry into force of the CPTPP lapses, Vietnam is obligated to allow foreign investors from CPTPP parties to establish commercial presence less branches, without any limitations or conditions.<sup>633</sup>

In Mode 4 of the three sub-sectors of distribution services for the products at issue, Vietnam has to permit natural persons from CPTPP parties to enter into Vietnam to provide commission agency, retailing and wholesaling services of the products above-mentioned.

Scenarios of measures by Vietnam:

- Scenario 1: If exercising the right under the EVFTA, Vietnam violates the CPTPP and incurs a conflict between the EVFTA right and the CPTPP obligation.
- Scenario 2: If observing its obligation under the CPTPP, Vietnam does infringe upon neither the CPTPP nor the EVFTA, but at the same time gives extra benefits to EU service suppliers for free.

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<sup>631</sup> CPTPP, Annex II – Vietnam – 6.

<sup>632</sup> Ibid.

<sup>633</sup> Ibid.



- Scenario 3: If following Scenario 1 for non-CPTPP service suppliers and Scenario 2 for CPTPP service suppliers, Vietnam discriminates against EU services suppliers and in favour of CPTPP competitors.

In the same vein as in the legal services above, there is no conflict and the two norms accumulate taking into account the points of entry into force of the CPTPP and the EVFTA.

*b. For franchising services for products, except for cigarettes and cigars, publications<sup>634</sup> video records on whatever medium, precious metals and stones, pharmaceutical products and drugs<sup>635</sup>, explosives, processed oil and crude oil, rice, cane and beet sugar*

With respect to NT for Mode 3, Vietnam commits partial liberalization under the EVFTA while being subject to the “None”, i.e. full liberalization, undertaking under the CPTPP. Exposed to the stricter obligation under the CPTPP, Vietnam has to allow foreign investors from CPTPP parties to establish branches in Vietnam even when the chief of the branch is not a resident in Vietnam.<sup>636</sup> Otherwise, under the less stringent obligation of the EVFTA, Vietnam has to permit EU investors to establish branches in Vietnam to provide franchising services on the condition that the chief of the branch is a resident of Vietnam.<sup>637</sup> As in the computer and related services above, there is no conflict and the two norms accumulate taking into account the point of entry into force of the CPTPP and the EVFTA.

### **6.1.5. Educational services**

*a. Primary education services*

Firstly, regarding MA for Mode 1, 2 and 4 supply of primary education services, under the EVFTA, Vietnam has not inscribed the sub-sector in its Schedule of Specific commitments. In contrast, Vietnam, in addition to being subject to horizontal commitments, undertakes “Unbound” commitments in its Schedule under the CPTPP.<sup>638</sup>

Secondly, regarding MA for Mode 3 supply of primary education services, under the EVFTA, Vietnam retains the right to adopt or maintain any measure regarding the service at issue

<sup>634</sup> For greater clarity, publications mean books, newspapers and magazines.

<sup>635</sup> For the purposes of this Schedule "pharmaceuticals and drugs" do not include non-pharmaceutical nutritional supplements in tablet, capsule or powdered form.

<sup>636</sup> CPTPP, Annex I – Vietnam – 26.

<sup>637</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 45.

<sup>638</sup> CPTPP, Annex II – Vietnam – 16.

provided by EU service suppliers.<sup>639</sup> Under the CPTPP, Vietnam has given “Unbound” commitments with three exceptions. Particularly, Vietnam is bound to allow foreign investors from CPTPP parties to establish “(a) preschool education institutions using foreign educational programmes for foreign children; and (b) compulsory education institutions using foreign educational programmes, issuing foreign qualifications, for foreign students and some Vietnamese students. The compulsory education institutions may enroll Vietnamese students, but the number of Vietnamese students in primary schools and middle schools shall not exceed 10 per cent of the total number of students, and that in high schools shall not exceed 20 per cent of the total number of students.”<sup>640</sup> Then the EVFTA right and the CPTPP obligation might be in conflict.

Thirdly, as to NT for Modes 1, 2 and 4, under the EVFTA, Vietnam has not inscribed the sub-sector as stated above. In sharp contrast, under the CPTPP, Vietnam is bound to the “None” or full commitments. In this situation, the EVFTA right can conflict with the CPTPP obligation. Pursuant to the EVFTA commitment, Vietnam retains the right to treat primary education services provided in Modes 1, 2 and 4 by EU service suppliers less favourably than Vietnam’s like domestic services and service suppliers.<sup>641</sup> Under the CPTPP, Vietnam is bound to treat Modes 1, 2 and 4 of primary education services supplied by CPTPP service providers no less favourably than its like domestic services and service suppliers.<sup>642</sup>

Certain measures by Vietnam:

- Measure 1: If exercising the right under the EVFTA, Vietnam can treat foreign (suppliers of) primary education services less favourably than Vietnam’s like domestic service (suppliers), thereby trespassing against the CPTPP and facing the conflict *lato sensu* between the two norms at issue.
- Measure 2: If treating foreign service (suppliers) no less favourably than its domestic like service (suppliers), Vietnam can perform the obligation, thereby not violating either the CPTPP or the EVFTA or confronting with the conflict *lato sensu*.

<sup>639</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, pp. 45-46.

<sup>640</sup> CPTPP, Annex I – Vietnam – 42.

<sup>641</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 46.

<sup>642</sup> CPTPP, Annex I – Vietnam – 42.

- Measure 3: If treating CPTPP (suppliers of) primary education services in Modes 1, 2 and 4 no less favourably than its like domestic service (suppliers) and EU (suppliers of) primary education services in Modes 1, 2 and 4 less favourably than its like domestic service (suppliers), Vietnam does not violate the EVFTA or the CPTPP but discriminates among foreign service (suppliers).

Fourthly, as to NT for Mode 3, under the EVFTA, Vietnam has not inscribed it in its commitments. But it has inscribed and committed to partial liberalization undertakings under the CPTPP. Similarly, Vietnam can opt for one out of three potential scenarios.

Likewise, taking into consideration of different points of entry into force of the CPTPP and the EVFTA, no conflict can emerge.

*b. Secondary education services*

Firstly, in this sub-sector, regarding MA for Mode 3, conflict can be between the EVFTA right and the CPTPP obligation. Under the EVFTA, Vietnam retains the right to adopt or maintain any measure with regards to EU investment in secondary education services.<sup>643</sup> Under the CPTPP, Vietnam is bound to allow investors from CPTPP states to establish subsidiaries, JVs and 100%-foreign-owned enterprises to provide “(a) preschool education institutions using foreign educational programmes for foreign children; and (b) compulsory education institutions using foreign educational programmes, issuing foreign qualifications, for foreign students and some Vietnamese students.”<sup>644</sup> Similarly, Vietnam can exploit its EVFTA right, thereby intruding its CPTPP obligation by not allowing foreign investors to establish commercial presence to supply activities (a) and (b) above. If permitting foreign investors to establish commercial presence to supply activities (a) and (b) above, Vietnam does not infringe upon its obligation but tolerates a concession more demanding than its EVFTA obligation mentioned above. If the permission above is limited to CPTPP investors, the measure is less favourable to EU investors in the service.

Secondly, regarding NT for Mode 1, the EVFTA commitment by Vietnam is “Unbound” while its CPTPP obligation is “None”, i.e. full liberalization. The conflict can arise depending on the measure taken by Vietnam. Its EVFTA right allows Vietnam to grant EU suppliers of

<sup>643</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 46.

<sup>644</sup> CPTPP, Annex I, p. 42.

cross-border secondary education services treatment less privileged than that conferred to Vietnam's like domestic services and service suppliers.<sup>645</sup> However, under the CPTPP, Vietnam is bound to granting suppliers from CPTPP parties in cross-border secondary education services treatment no less favourable than that provided to Vietnam's like domestic service suppliers.<sup>646</sup> Then, the relation under consideration is between the EVFTA right and the CPTPP obligation. Measures by Vietnam can be divided into three scenarios as stated in above sub-sectors.

In the same vein, there is no conflict among the norms. The related norms accumulate.

*c. For higher education services, adult education and other education services*

For NT for Mode 3, regarding teaching experience and qualification, Vietnam is tied to the full commitment under the CPTPP and "None"-plus-condition commitments under the EVFTA. Under the EVFTA, Vietnam retains the right to prevent EU investors from hiring foreign teachers to work in EU-invested schools in higher education services, adult education or other education services, including foreign languages if these foreign teachers have either less than 5 years of teaching experience or their qualification not recognized by the competent authorities.<sup>647</sup> Under the CPTPP, Vietnam must allow investors from CPTPP parties to hire foreign teachers to work in foreign-invested schools in higher education services, adult education or other education services even if foreign teachers have neither 5-year teaching experience nor recognized qualification.<sup>648</sup> With three potential scenarios of measures like those applied in above sub-sectors, no conflict can arise therefrom.

#### **6.1.6. Environmental Services**

There are no EVFTA-plus commitments in this service sector.

#### **6.1.7. Health related and social services**

With regards to the sub-sector of residential health facilities services other than hospital services (CPC 93193) and other human health services (CPC 93199),<sup>649</sup> under the EVFTA,

<sup>645</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 46.

<sup>646</sup> CPTPP, Annex I – Vietnam – 42. CPTPP, Annex II – Vietnam – 15.

<sup>647</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 46.

<sup>648</sup> CPTPP, Annex I – Vietnam – 13.

<sup>649</sup> Only with respect to the obligations of Chapter 10 (Cross-Border Trade in Services).

Vietnam has not inscribed the sub-sector in its Schedule;<sup>650</sup> whereas, under the CPTPP, Vietnam has inscribed it and given “Unbound” commitments.<sup>651</sup> Therefore, under the EVFTA, Vietnam is subject to no commitments, including horizontal and sector-specific ones and reserves the right to adopt or maintain any measures with regards to the service at issue. However, under the CPTPP, Vietnam is still tied to the horizontal commitments.

Scenarios of measures by Vietnam:

- Scenario 1: Vietnam introduces a measure violating a horizontal commitment against foreign suppliers of residential health facilities. Such measure is consistent with the EVFTA but contravenes the CPTPP commitment of Vietnam in regards to the services at issue. Then, there will be a unilateral conflict between the right under the EVFTA and the obligation under the CPTPP in the applicable law.
- Scenario 2: If Vietnam does not adopt any measure incompatible with the horizontal commitment under the CPTPP, there is a violation of neither the CPTPP nor the EVFTA, i.e. no conflict *lato sensu*. However, Vietnam has to give extra preferences to EU investors.
- Scenario 3: If Vietnam follows Scenario 1 with the exception for like service suppliers from CPTPP states, such measure discriminates against non-CPTPP service suppliers, including EU service suppliers, and for those from CPTPP parties.

With three potential scenarios of measures like those applied in above sub-sectors, no conflict can arise therefrom.

### **6.1.8. Tourism and travel related services**

As to the sub-sector of tourist guides services, under the EVFTA, Vietnam has not inscribed this sub-sector in its Schedule of specific commitments;<sup>652</sup> while its undertakings under the CPTPP is “Unbound”.<sup>653</sup> Parallel to the sub-sector of residential health facilities services other than hospital services (CPC 93193) and other human health services of health related and social services, Vietnam can choose among three scenarios of measures. Generally speaking, no conflict exists in the relation between the norms in question.

<sup>650</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 58.

<sup>651</sup> CPTPP, Annex II – Vietnam, pp. 25 and 36.

<sup>652</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 59.

<sup>653</sup> CPTPP, Annex II – Vietnam – 24.

### **6.1.9. Recreational, cultural and sporting services**

#### *a. Video tape production services*

Under the EVFTA, Vietnam has uninscribed the sub-sector. Under the CPTPP, regarding MA for Modes 1 – 4, Vietnam has been subject to “Unbound”.<sup>654</sup> Regarding NT for Modes 1, 2 and 4, Vietnam is subject to “None”, i.e. full liberalization. Hence, under the EVFTA, Vietnam has the right to impose any measure, including limitations and conditions which treat EU services (suppliers) of Modes 1, 2 and 4 of video tape production services less favourably than Vietnam’s like domestic services (suppliers). Pursuant to the CPTPP, Vietnam is bound not to adopt or maintain measures, such as limitations and/or conditions, which treat CPTPP parties’ services and services suppliers of video tape production services no less favourably than Vietnam’s like domestic services (suppliers).

Measures by Vietnam:

- Scenario 1: If Vietnam treats EU services (suppliers) equally to CPTPP services (suppliers) but less favourably than Vietnam’s like domestic services (suppliers), a conflict between the EVFTA right and the CPTPP obligation can arise.
- Scenario 2: If treating EU services (suppliers) equally to CPTPP services (suppliers) and no less favourably than Vietnam’s like domestic services (suppliers), Vietnam does not violate the CPTPP but has to give treatment to the EU services (suppliers) more favourable than compromised under the EVFTA as this sub-sector is not covered by the EVFTA’s MFN obligation.
- Scenario 3: If treating EU services (suppliers) less equally than its domestic services (suppliers) and CPTPP competitors no less favourably than Vietnam’s like domestic services (suppliers), Vietnam does not violate its CPTPP obligation but discriminates against EU service suppliers. As stated above, Vietnam is not in breach of the EVFTA’s MFN obligation due to the exclusion of the sub-sector from the scope of the MFN obligation in the EVFTA. In other words, the two norms are in accumulation.

#### *b. Entertainment services*

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<sup>654</sup> CPTPP, Annex II – Vietnam – 36.

Firstly, regarding MA for Mode 3 supply of the entertainment services, Vietnam is committed to partial liberalization under both the EVFTA and the CPTPP. Particularly, under the EVFTA, Vietnam has the right to prohibit EU investors from purchasing shares in Vietnamese enterprises who invest in entertainment services.<sup>655</sup> Nevertheless, under the CPTPP, Vietnam is bound to permit CPTPP investors to procure no more than 49% shares in Vietnamese enterprises.<sup>656</sup> After three years from the entry into force of the CPTPP, such obligation becomes stricter as being increased to 51%.<sup>657</sup> The three scenarios of measures by Vietnam:

- Scenario 1: If prohibiting foreign investors from purchasing shares in Vietnamese enterprises who invest in entertainment services, Vietnam violates its CPTPP obligation, bringing about conflict in the broad sense.
- Scenario 2: If allowing foreign investors to purchase shares in Vietnamese enterprises who invest in entertainment services, Vietnam does not infringe upon its CPTPP obligation, bringing about no conflict *lato sensu*. However, that Vietnam has to give more concessions to EU investors is not required under the EVFTA's MFN obligation since this service sub-sector is excluded therefrom.
- Scenario 3 results from the combination of Scenario 1 for non-CPTPP investors and Scenario 2 for CPTPP investors. Although discriminating against EU investors, this measure is not inconsistent with the EVFTA MFN obligation for the same reason above. Therefore, the two norms accumulate.

Secondly, the same line of argument can be made with regards to JVs in the services and the same conclusion of no conflict is drawn.

Thirdly, regarding NT for Mode 1 of entertainment services, Vietnam is subject to "Unbound" and "None" commitments under the EVFTA and the CPTPP respectively. In other words, under the EVFTA, Vietnam is entitled to discriminate against EU suppliers in their cross-border supply of entertainment services compared to its like domestic services and service suppliers.<sup>658</sup> To the contrary, under the CPTPP, Vietnam is supposed to treat CPTPP's

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<sup>655</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 60.

<sup>656</sup> CPTPP, Annex I – Vietnam – 15.

<sup>657</sup> Ibid.

<sup>658</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 60.

entertainment services (suppliers) no less favorably than its like domestic services (suppliers).<sup>659</sup> All in all, there is no conflict between the two norms in spite of the three potential scenarios for the same reason stated in the above sub-sectors.

*c. Performing arts and fine arts*

This sub-sector is uninscribed in the EVFTA but, to the contrary, subject to “Unbound” commitments under the CPTPP. As a result, Vietnam has the right to impose on EU suppliers of this service any limitations and/or conditions of horizontal and sector-specific application. On the other hand, Vietnam must obey horizontal commitments under the CPTPP for performing arts and fine arts. For the same reason, no conflict can be found in this sub-sector regardless of the difference in the relevant commitments.

*d. Services related to the hosting of a sporting event (including promotion, organisation and facilities management)*

By not inscribing this service sub-sector in its Schedule of specific commitments under the EVFTA, Vietnam is free to adopt and maintain any measures of horizontal or sector-specific application regarding the supply of the service at issue in all modes by EU suppliers. Conversely, besides its inscription in the CPTPP’s Schedule of specific commitments, this sub-sector is subject to “None” undertakings in MA for Modes 2 and 3, i.e. Vietnam has to allow the supply of this service by CPTPP suppliers through Modes 2 and 3 without any limitations or conditions. As the sub-sector is not subject to the EVFTA’s MFN obligation, the allowance of Modes 2 and 3 of supply for CPTPP suppliers combined with the prohibition of or limitations on Modes 2 and 3 provided by EVFTA suppliers is not inconsistent with the afore-said MFN obligation and brings about no conflict.

The same argument is applicable to the NT obligation for Modes 1 – 4 and no conflict can be present in this case.

*e. Sporting and other recreational services: Martial art clubs and extreme sports*

As the sub-sector is uninscribed under the EVFTA, the same argument for services related to the hosting of a sporting event (including promotion, organisation and facilities management) is applicable here too.

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<sup>659</sup> CPTPP, Annex I – Vietnam – 15.



*f. Electronic games business*

Although being subject to partial liberalization for MA for Mode 3 under both the EVFTA and the CPTPP, Vietnam bears a stricter obligation under the latter. Firstly, with regards to the purchase of shares in Vietnamese enterprises in electronic games business, under the EVFTA, Vietnam has not listed this form of investment in its Schedule in the EVFTA, and hence can refuse EU investments in this form. However, Vietnam has promised to allow this form of investments by CPTPP investors. Particularly, 49% of foreign equity for the period of two years from the entry into force of the CPTPP is allowed.<sup>660</sup> The ratio increases to 51% and 100% after the two-year and five-year periods respectively.<sup>661</sup> Secondly, with regards to JVs, under the EVFTA, Vietnam has to allow EU investors to hold at the largest of 49% ownership in JVs in the service.<sup>662</sup> However, under the CPTPP, the ratio is more demanding with 51% and unlimited thresholds after two years and five years respectively.<sup>663</sup> There is no conflict between parallel obligations given the fact that the discrimination against EU investors as stated above is excluded from the scope of the MFN obligation in the EVFTA.

*g. Amusement parks*

While uninscribing the sub-sector in the EVFTA, Vietnam incurs the “Unbound” undertaking for MA for Modes 1, 2 and 4 and partial liberalization for MA for Mode 3 under the CPTPP. Consequentially, under the EVFTA, Vietnam has the right to adopt and maintain any measures of horizontal and sector-specific commitments with regards to amusement parks services. In contrast, under the CPTPP, Vietnam is bound to horizontal commitments in the service. In addition, Vietnam has to allow CPTPP investors with less than one-billion-USD investment to build and manage theme parks or amusement parks when the Vietnamese competent authorities advise the applicant that the investment is likely to be of net benefit to Vietnam.<sup>664</sup> Besides, Vietnam is required to approve CPTPP investments of more than one billion USD unconditionally.<sup>665</sup> Regardless of the differences in commitments, there is no conflict as this sub-sector falls outside of the MFN obligation in the EVFTA.

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<sup>660</sup> CPTPP, Annex I – Vietnam – 16.

<sup>661</sup> Ibid.

<sup>662</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 59.

<sup>663</sup> CPTPP, Annex I – Vietnam – 16.

<sup>664</sup> CPTPP, Annex I – Vietnam – 29.

<sup>665</sup> Ibid.

### 6.1.10. Transport services

#### a. Maritime Transport Services

a1. Passenger transportation less cabotage (CPC 7211) and Freight transportation less cabotage (CPC 7212)

Regarding MA for commercial presence in the form of share purchases to supply the service at issue, under the EVFTA, Vietnam has not inscribed this form of investment in its Schedule, therefore being free to ban EU investors from buying shares in Vietnamese enterprises to provide the service. Conversely, under the CPTPP, Vietnam is due to allow CPTPP investors to buy at most 49% shares in Vietnamese enterprises to provide the same service.<sup>666</sup> In the face of the divergence between the EVFTA right and the CPTPP obligation, Vietnam can choose among the three measures:

- Scenario 1: Should Vietnam either outlaw foreign investors from share purchase to provide maritime passenger transportation less cabotage and maritime freight transportation less cabotage or limit the share purchase to less than 49%, it breaks the CPTPP obligation and faces a conflict *lato sensu*.
- Scenario 2: Provided that Vietnam allows foreign investors to buy up to 49% shares in its domestic enterprises to supply the service, it does not run contrary to any obligation, thereby suffering from no conflict in broad terms. However, by treating the EU investors more favourably than the relevant undertaking, the measure deprives Vietnam of its right under the EVFTA, triggering a conflict in the adopted sense.
- Scenario 3: By treating CPTPP investors in accordance with Scenario 2 and non-CPTPP, including EU, investors in accordance with Scenario 1, Vietnam does not infringe upon its CPTPP obligation and at the same time exercises its EVFTA right at issue. Although this measure discriminates against EU investors and investments and hence violates the MFN obligation under the EVFTA, it does not yield any conflict among the two norms under discussion. All in all, in any case, it is possible for Vietnam to escape from the conflict.

a2. Maritime cabotage services and Pushing and towing services

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<sup>666</sup> CPTPP, Annex I – Vietnam – 29.

Under the EVFTA, Vietnam has not inscribed the sub-sector in its Schedule; whereas, under the CPTPP, Vietnam has inscribed and given “Unbound” commitments.<sup>667</sup> Therefore, under the EVFTA, Vietnam is subject to no commitments, including horizontal and sector-specific ones and reserves the right to adopt or maintain any measures with regards to the service at issue. However, under the CPTPP, Vietnam is still tied to the horizontal commitments.

Scenarios of measures by Vietnam:

- Scenario 1: Vietnam introduces a measure violating a horizontal commitment against foreign suppliers of maritime cabotage services or of pushing and towing services. Such measure is consistent with the EVFTA but contravenes the CPTPP commitment by Vietnam in regards to the services at issue. Then, there will be a unilateral conflict between the right under the EVFTA and the obligation under the CPTPP in the applicable law.
- Scenario 2: If Vietnam does not adopt any measure incompatible with the horizontal commitment under the CPTPP, there is a violation of neither the CPTPP nor the EVFTA. There will be no conflict *lato sensu*. However, Vietnam has to give extra preferences to EU investors.
- Scenario 3: If Vietnam follows Scenario 1 with the exception for like service suppliers from CPTPP states, such measure discriminates against non-CPTPP service suppliers, including EU service suppliers, and for those from CPTPP parties.

With three potential scenarios of measures like those applied in above sub-sectors, no conflict can arise therefrom.

### a3. Container handling services (CPC 7411)

In terms of NT in Mode 1 of supplying container handling services in maritime transport, undertakings by Vietnam are “Unbound” and “None” under the EVFTA and the CPTPP respectively.<sup>668</sup> Accordingly, under the EVFTA, Vietnam retains the right to discriminate against EU suppliers in favour of its domestic providers, with respect to, for instance,

<sup>667</sup> CPTPP, Annex II – Vietnam, pp. 25 and 36.

<sup>668</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 64.

registration requirement in Mode 1. Conversely, under the CPTPP, Vietnam is bound not to discriminate against CPTPP competitors in favour of its domestic suppliers.<sup>669</sup>

Scenarios of measures by Vietnam:

- Scenario 1: If treating EU services (suppliers) equally to CPTPP counterparts but less favourably than domestic competitors, Vietnam sets itself against the CPTPP obligation, causing conflict in the broad sense.
- Scenario 2: By treating EU services (suppliers) in the same way as CPTPP like services (suppliers) and no less favourably than its domestic like services (suppliers), Vietnam, in exchange of non-violation of the CPTPP or the EVFTA, grants EU services (suppliers) privileges more preferentially than undertaken, resulting in conflict in the adopted sense.
- Scenario 3: Should Vietnam treat CPTPP services (suppliers) more favourably than the EU competitors but no less favourably than its like domestic services (suppliers), the measure does not go against the two norms at issue, however, at the expense of discrimination among foreign services (suppliers), or more specifically, against EU counterparts.

In a nutshell, there is no conflict between the two provisions under discussion.

#### a4. Shipping Agency Services

Under the EVFTA, due to the uninscription of the shipping agency services sub-sector, Vietnam is not subject to horizontal or specific-specific commitments and has the discretion to adopt or maintain measures, including limitations or conditions, with regards to the services provided by the EU suppliers. On the other hand, under the CPTPP, by inscribing the sub-sector in the Schedule, Vietnam has undertaken diverse commitments ranging from “Unbound” and partial liberalization to full liberalization. Consequentially, Vietnam has to, for instance, permit CPTPP investors to provide shipping agency services in Vietnam through the establishment of JVs or the purchase of no more than 49% of shares in Vietnamese enterprises.<sup>670</sup> Reasoning along the same line as the sub-sector above, the upshot is that there is no conflict to be found.

#### b. *Internal Waterways Transport*

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<sup>669</sup> CPTPP, Annex I – Vietnam – 18.

<sup>670</sup> CPTPP, Annex I – Vietnam – 19.

b1. Passenger transport less cabotage (CPC 7221) and Freight transport less cabotage (CPC 7222)

Where MA for Mode 3 is concerned, Vietnam can, under the EVFTA, block EU investors from purchasing shares in Vietnamese enterprises to supply the service at issue. On the contrary, under the CPTPP, Vietnam is compelled to allow CPTPP investors to purchase shares at the maximum level of 49% in a Vietnamese enterprise to provide the same service.<sup>671</sup> Similarly, three scenarios of measures can be adopted by Vietnam.

- Scenario 1: By clogging foreign investors from buying shares in Vietnam or, otherwise, permitting such practice but confining the ratio of less than 49%, Vietnam breaks its obligation under the CPTPP and brings about a conflict in the broad sense.

- Scenario 2: Should Vietnam approves foreign investors to provide the service at issue through the purchase at the largest of 49% of shares in its domestic enterprises, its measure is not incompatible with any provision under consideration, yielding no conflict *lato sensu*. However, the measure costs extra privilege to EU like investors for free, amounting to a conflict in the adopted sense.

- Scenario 3: By initiating the measure in Scenario 1 for non-CPTPP investors and that in Scenario 2 for CPTPP investors, the measure, on the one hand, does not create any conflict between the two relevant norms, but, on the other hand, constitutes a differentiation against non-CPTPP, including EU, investors and violates the MFN obligation under the EVFTA.

In sum, no conflict can be found.

b2. Rental of vessels with crew (CPC 7223) and Pushing and towing services

Under the EVFTA, Vietnam has not inscribed the sub-sector in its Schedule; whereas, under the CPTPP, Vietnam has inscribed and given “Unbound” commitments.<sup>672</sup> Therefore, under the EVFTA, Vietnam is subject to no commitments, including horizontal and sector-specific ones and reserves the right to adopt or maintain any measures with regards to the service at issue. However, under the CPTPP, Vietnam is still tied to the horizontal commitments. Reasoning along the same line as with the maritime cabotage services and pushing and towing services in maritime transport services, no conflict can be established.

<sup>671</sup> CPTPP, Annex I – Vietnam – 20.

<sup>672</sup> CPTPP, Annex II - Vietnam, pp. 25 and 36.

*c. Air transport services*

This service consists of different components: (1) air transportation services, including (i) domestic and international air transportation services and (ii) passenger and cargo/commodity/freight transportation and (2) air-transport related services, including (i) maintenance, repair and overhaul services (line maintenance, heavy maintenance, engine maintenance, component overhaul); (ii) selling and marketing of air transport services; (iii) computerized reservation system services; (iv) ground handling services; (iv) airport operation/management services and (v) specialty air services.

This subsector has been addressed/referred marginally in PTAs in general and in these two PTAs in particular. In principle, the service sub-sector is excluded from the scope of application of the two PTAs, except for some of its components. As far as CBTS is concerned, there is a similarity between the CPTPP and EVFTA (or between the two PTAs and GATS). Both PTAs follow the template of the GATS because the air services are also carved-out from the GATS. Both multilateral and bilateral trade pacts follow the same suit by excluding virtually the whole sub-sector. The rationale behind resides in/dates back from bilateral treaties that shaped air services disciplines.

With regards to CBTS, the CPTPP excludes both (1) air services, including domestic and international, both scheduled and non-scheduled *air transportation services* and (2) related services in support of air services. However, the exclusion is eroded by 6 exceptions. Put differently, only 6 sub-sectors of air services are covered in CBTS. In regards to investment, all sub-sectors of these services are included in the CPTPP.

Under the EVFTA, the whole services sector, with five exceptions, is carved-out from the scope of CBTS and investment. Only 5 sub-sectors of air transport services are included in both CBTS<sup>673</sup> and investment.<sup>674</sup>

Both PTAs have differently broader scopes of application than that of the GATS (GATS-plus for the EVFTA, GATS++ for the CPTPP). The exclusion of air services under the GATS is eroded by only three exceptions. In other words, only 3 sub-sectors of air services are covered by the GATS, compared to 6 sub-sectors and investment under the CPTPP or 5 sub-sectors

<sup>673</sup> EVFTA, Chapter 8, Chapter III, Article on Scope and Definition.

<sup>674</sup> EVFTA, Chapter 8, Chapter II, Section 1 – Investment, Article 1.2(e).

under the EVFTA. The three exceptions under the GATS are "(i) aircraft repair and maintenance service, (ii) selling and marketing of air transport services and (iii) computer reservation system (CRS) services."<sup>675</sup>

Five sub-sector exceptions are in common among the CPTPP and the EVFTA. The fact that the United States, EU and some other WTO Members expand their PTAs to some specific sub-sectors of air services in PTAs can be attributable to several factors. *Firstly*, it stems from the ambiguity under the GATS: whether these two added services sub-sectors are included or excluded from the GATS? The GATS excludes from its scope of application “services directly related to traffic rights.” It is inferred that “services not directly related to traffic rights” are not excluded from, i.e. being included in, the GATS. But the term is not defined in the GATS’s Annex and different WTO Members attribute different interpretation. For example, the EU and some read the term “service not directly related to traffic rights” to include ground handling services and airport operation services, so they include these two sub-sectors in both their DDR proposals and their PTA negotiations. *Secondly*, the coverage of these service sub-sectors in the specific commitments roots in the size/magnitude of (domestic and international) markets for these sub-sectors. *Thirdly*, some sub-sectors have experienced dramatic changes over the time after the birth of the WTO, make it more likely to subject to international competition and require trade facilitation through trade liberalization. Competition arises (1) among traditional players of the market, (2) between traditional and new players in air services, (3) between air services and other competitive transport services (e.g. between air and sea transport). The increasingly stiff competition necessitates the need to reduce costs, leads to the introduction of new technology to decline costs.

With regards to investment in air transport services, although a majority of the services have been carved out from relevant rules on CBTS, it is not the case for rules in investment under the CPTPP. Relevant disciplines on investment under the CPTPP do not carve out air transportation services and air-transport-related services. This scope of application constitutes a considerable improvement compared to the GATS (i.e. GATS-plus) and the EVFTA. The expansion of investment rules to air services is a big jump in liberalization compared to those of the EVFTA. This difference can lead to a right-and-obligation collision.

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<sup>675</sup> Annex on Air Transport Services, Item 3.

Regarding the included sub-sectors of air transport services, the three important terms of air services, air transportation services and air-transport related services are not defined in the CPTPP. The term “aircraft repair and maintenance services” is defined in the CPTPP<sup>676</sup> and the EVFTA in the same way as the GATS.<sup>677</sup> The term is denoted in a way that makes it, to use the industry’s terminology, constitute “maintenance, repair and overhaul.” Likewise, the term “computerized reservation system (CRS) services” is denoted in the CPTPP<sup>678</sup> and in the EVFTA<sup>679</sup> exactly the same as the GATS.<sup>680</sup> However, in the past, the term only refers to huge CRS established and possessed by airlines to enable ticket reservation via channels of travel agencies. Now, CRS includes modern business-to-customer online reservation system run by virtual entities, websites of conventional agencies, reversal action portals, portals owned collectively by airlines, alliance websites, websites of airlines themselves. Along the same line, the two agreements<sup>681</sup> at issue interpret the term “selling and marketing of air transport services” like the GATS.<sup>682</sup> In sum, both CPTPP and EVFTA are modelled on the GATS in that the three sub-sectors of services are defined along similar lines to those under the Annex of the GATS. Although denoted in the same way, these three terms are explicitly defined in the two PTAs rather than by being cross-referred to or incorporated from the GATS. On surface, these three terms are not improved by the two agreements compared to those under the GATS. Nevertheless, now the same terms among the two agreements are interpreted to cover broader substantive contents due to changes in technology. Put differently, thanks to dynamic interpretation, narrowly interpreted terms in the past in the GATS have been understood in a broad sense at present in GATS and other PTAs.

The three other sub-sectors are not defined in the GATS, Annex on Air Transport as they are excluded from the GATS and constitute WTO-plus/GATS-plus inclusion in PTAs. *Firstly*, the CPTPP<sup>683</sup> narrows the term “ground handling service” compared to that under the EVFTA<sup>684</sup>

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<sup>676</sup> CPTPP, Chapter 8, Chapter II, Article 2(e)(i) and Chapter 8, Chapter III, Article on Scope and Definition, (c),(i).

<sup>677</sup> GATS, Article 6(a) of the Annex on Air Transport.

<sup>678</sup> CPTPP, Chapter 10, Article 10.1.

<sup>679</sup> EVFTA Chapter 8, Chapter II, Article 2(e)(iii) and Chapter 8, Chapter II, Article on Scope and Definition, (c)(iii).

<sup>680</sup> GATS, Article 6(c) of the Annex on Air Transport.

<sup>681</sup> CPTPP, Chapter 10, Article 10.1 and EVFTA, Chapter 8, Chapter II, Article 2(e)(ii) and Chapter 8, Chapter III, Article on Scope and Definition, (c)(ii).

<sup>682</sup> GATS, Article 6(b) of the Annex on Air Transport.

<sup>683</sup> CPTPP, Article 10.1.



by adding some clarifications, including “[...] on a fee or contract basis [...]”, “[...] except the preparation of food [...]” for catering and by excluding from the sub-sector “self-handling” and “line maintenance” activities. The two clarifications reduce the scope of sub-sector included in the CPTPP. *Secondly*, the two agreements conceptualize the term “airport operation services” identically.<sup>685</sup> *Lastly*, specialty air services in the CPTPP, Article 10.1 are not covered in the EVFTA; hence, the CPTPP has a broader scope of application than the EVFTA. The inclusion of such sub-sector in the CPTPP, at first glance, apparently improves Vietnam’s commitments as it lacks the counterpart in the EVFTA. However, the “Unbound” commitment attached to the sub-sector turns the first impression to be wrong. In combination with “Unbound” undertakings by Vietnam in the former, the level of commitment of Vietnam on this sub-sector are equal in the two PTAs.

Regarding the substantive obligation, different limitations and conditions are applicable to air transport services, including economic needs test, cap on foreign ownership, local presence requirement, discrimination against foreign service suppliers in providing repair services to airship flying under the national flag and residency requirement. Under the CPTPP, Vietnam retains a reservation to put a cap on foreign capital contribution at the ratio of 30% to preserve discretion over ownership of and control over Vietnamese domestic airlines. As the services are excluded from the EVFTA, Vietnam makes no commitments regarding this sub-sector, i.e. Vietnam is entitled to lodge any limitations or conditions on air transport services provided in Mode 3. Under the EVFTA, the restrictions or conditions imposed by Vietnam can be quantitative ones on MA or discriminatory ones on NT. Conflicts can arise from such inconsistency.

#### c1. Air transportation services

As far as the commercial presence to supply air transportation services (including domestic and international air transportation services, barring six sub-sectors)<sup>686</sup> is concerned, Vietnam has not inscribed the sub-sector in the EVFTA but is at the same time subject to an

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<sup>684</sup> EVFTA, Chapter II, Section 1, Article 1.2(e)(iv) and Chapter III, Article on Scope and Definition, (c)(iv).

<sup>685</sup> CPTPP, Article 10.1. EVFTA, Chapter II, Section 1, Article 1.2(e)(v) and Chapter III, Article on Scope and Definition, (c)(v)

<sup>686</sup> Six excluded sub-sectors include (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called maintenance, (ii) selling and marketing of air transport services, (iii) computer reservation system services, (iv) specialty air services, (v) airport operation services and (vi) ground handling services.

undertaking of partial liberalization under the CPTPP. Hence, under the EVFTA, Vietnam is free to adopt or maintain any measures, including limitations and/or conditions, regarding the service provided by EU investors. In contrast, under the CPTPP, Vietnam is under the obligation to allow CPTPP investors to hold aggregately no more than 30% of the charter capital or shares in a Vietnamese airline.<sup>687</sup> Likewise, three scenarios can be present:

- Scenario 1: Providing that Vietnam does not allow foreign investors to hold shares or, otherwise, allow them to hold less than 30% of the charter capital or shares in a Vietnamese airline to provide the service at issue, it contravenes its obligation under the CPTPP, producing a conflict in the broad sense.
- Scenario 2: Shall Vietnam allows foreign investors to hold no more than 30% of the charter capital or shares in a Vietnamese airline to provide the service at issue, it is not in violation of its obligation under the CPTPP, producing no conflict in the broad sense. However, it has to treat non-CPTPP, including EU, investors more favourably than committed, thereby bringing about conflict in the adopted sense.
- Scenario 3: The combination between Scenario 1 for non-CPTPP investors and Scenario 2 for CPTPP rivals, although contravening the MFN obligation under the EVFTA, does not trigger any conflict between the two provisions at issue.

The upshot is that there is no conflict between the norms under discussion.

## c2. Air-transport related services

With respect to NT for Modes 1-4 of supply of the two sub-sectors of air-transport-related services, including specialty air services (except for commercial flight training) and airport operation services, Vietnam has not inscribed these services in its EVFTA Schedule of specific commitments on the one hand while being subject to the “Unbound” commitment under the CPTPP on the other hand.<sup>688</sup> The three scenarios ready to be adopted comprise of:

- Scenario 1: If treating foreign services (suppliers) at issue as a whole less favourably than its like domestic services (suppliers), Vietnam violates the prescription under the CPTPP, rendering a conflict in the broad sense.

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<sup>687</sup> CPTPP, Annex I – Vietnam – 41.

<sup>688</sup> CPTPP, Annex II – Vietnam – 6.

- Scenario 2: Conversely, if foreign services (suppliers) as a whole are treated no less favourably than Vietnamese like domestic services (suppliers), no inconsistency between the two above provisions can be established. However, the measure costs Vietnam treatment more privileged than its EVFTA commitments, inducing a conflict in the tailored sense.
- Scenario 3: If conferring to EU services (suppliers) treatment less favourable than its domestic services (suppliers), but at the same time, treating CPTPP counterparts no less favourably than the latter, Vietnam does not act against any provision at issue although its measure amounts to an infringement of the MFN obligation under the EVFTA.

In the end, no conflict is found in this discussion.

*d. Space transport (CPC 733)*

With respect to NT for Modes 1-4 of supply of space transport services, Vietnam has not inscribed this sub-sector in its EVFTA Schedule of specific commitments on the one hand while being subject to the “Unbound” commitment under the CPTPP on the other hand.<sup>689</sup> Reasoning along the same line as in air-transport related services leads to the same conclusion of no conflict.

*e. Rail Transport Services*

e1. Passenger transportation less cabotage (CPC 7111) and Freight transportation less cabotage (CPC 7112)

Regarding the MA for commercial presence in the supply of these two service sub-sectors, under the EVFTA, Vietnam retains the right to either prohibit EU investors from buying shares in a Vietnamese enterprise or to allow foreign equity of less than 49%.<sup>690</sup> On the other hand, under the CPTPP, Vietnam bears the obligation to permit CPTPP investors to hold equity of no more than 49% in Vietnam enterprises.<sup>691</sup> The following scenarios can occur in reality:

- Scenario 1: If banning foreign investors seeking to supply the service at issue from holding equity in Vietnamese enterprises or, otherwise, limiting the ratio of foreign equity in

<sup>689</sup> CPTPP, Annex II – Vietnam – 27.

<sup>690</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 71.

<sup>691</sup> CPTPP, Annex I – Vietnam – 21.

Vietnamese enterprises to less than 49%, Vietnam breaks its obligation under the CPTPP, evoking a conflict in the broad sense.

- Scenario 2: Conversely, if foreign investors as a whole are conferred the right to purchase 49% of shares in Vietnamese enterprises to supply the service, Vietnam does not encounter any conflict *lato sensu* but has to grant EU investors more favourable treatment than committed, which constitutes a conflict in the tailored sense.

- Scenario 3: If treating EU investors as in Scenario 1 and CPTPP investors as in Scenario 2, Vietnam does not trigger any conflict in any sense in spite of the fact that its measure can be counted as a discrimination against EU investors and in favour of CPTPP rivals, i.e. a violation of the MFN obligation under the EVFTA.

In sum, irrespective of the divergence between the relevant commitments in the two treaties, no conflict can be proven.

Regarding the NT obligation for Mode 1 of supply of the two service sub-sectors, Vietnam has undertaken “Unbound” and “None” commitments under the EVFTA and the CPTPP respectively. Consequentially, under the EVFTA, Vietnam is entitled to discriminate against EU (suppliers of) passenger transportation less cabotage and freight transportation less cabotage services in Mode 1 in comparison with treatment to its like domestic services (suppliers).<sup>692</sup> On the contrary, under the CPTPP, Vietnam has to treat CPTPP suppliers of the two services in Mode 1 treatment no less preferentially than its treatment to its domestic competitors.<sup>693</sup> Likewise, three scenarios to be considered include:

- Scenario 1: When Vietnam behaves towards EU service (suppliers) equally to CPTPP competitors but less favourably than its like domestic counterparts, a violation of the CPTPP obligation is committed, rendering a conflict in the broad sense.

- Scenario 2: Vietnam may decide to grant EU services (suppliers) treatment equal to that conferred to CPTPP rivals and simultaneously in a no-less-privileged way than that to its like domestic counterparts. Then, no conflict *lato sensu* arises since no obligation infringement is initiated. However, as extra non-committed preferences are granted to EU services (suppliers), it might be argued that a conflict in the adopted sense is existent.

<sup>692</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 71.

<sup>693</sup> CPTPP, Annex I – Vietnam – 6. CPTPP, Annex II – Vietnam – 27.

- Scenario 3: Another option for Vietnam is to treat CPTPP services (suppliers) no less favourably than its domestic counterparts but concurrently more favourably than their EU competitors. Since no violation of any norm at issue can be proven, no conflict is confirmed either although the consistency of the measure with the EVFTA MFN obligation can be challenged.

To conclude, no conflict can be determined.

#### e2. Infrastructure business services and Pushing and towing services

Where the NT for Modes 1-4 of supply of infrastructure business services and MA and NT obligations for Modes 1-4 of pushing and towing services are concerned, Vietnam has not inscribed these services in its EVFTA Schedule of specific commitments on the one hand while being subject to the “Unbound” commitment under the CPTPP on the other hand.<sup>694</sup> Reasoning along the same line as in air-transport related services leads to the same conclusion of no conflict.

#### f. Road transport services

Regarding MA for Mode 3 of supply of passenger transportation less cabotage (CPC 7121+7122) and freight transportation less cabotage (CPC 7123), under the EVFTA, Vietnam has not committed to liberalize the purchase of shares in Vietnamese enterprises for EU service suppliers.<sup>695</sup> In contrast, under the CPTPP, Vietnam agrees to allow CPTPP investors to buy up to 49% or 51% of shares in Vietnamese enterprises depending on the market need to supply the services at issue.<sup>696</sup> Again, three scenarios are ready to be implemented and conflict, by analogy, is not established.

Similarly, as for NT for Mode 1 of supply of the service at issue, undertakings by Vietnam under the EVFTA and the CPTPP are “Unbound” and “None” respectively.<sup>697</sup> Resultantly, under the EVFTA, Vietnam is free to discriminate against EU service suppliers in Mode 1 in favour of its domestic service suppliers; conversely, under the CPTPP, Vietnam is refrained from discriminatory treatment against CPTPP service suppliers in Mode 1 in favour of its

<sup>694</sup> CPTPP, Annex II – Vietnam – 27.

<sup>695</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 71.

<sup>696</sup> CPTPP, Annex I – Vietnam – 22.

<sup>697</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 71. CPTPP, Annex I – Vietnam – 22.

domestic counterparts. By analogy, the reasoning in passenger transportation less cabotage and freight transportation less cabotage for rail transport services holds true here to disprove the existence of a conflict.

*g. Pipeline transport*

While not inscribing the service sub-sector of pipeline transport in its EVFTA Schedule of specific commitments, Vietnam is subject to “Unbound” undertakings for NT obligation in the CPTPP.<sup>698</sup> To put it in another way, under the CPTPP, Vietnam is still tied to the horizontal commitments. Reasoning along the same line as with the maritime cabotage services and pushing and towing services in maritime transport services, no conflict can be established.

*h. Services auxiliary to all modes of transport*

h1. Container handling services, except services provided at airports (part of CPC 7411)

Under the EVFTA, Vietnam can bar EU investors from supplying container handling services, except services provided at airports, through the purchase of shares in a Vietnamese enterprise or, otherwise, permit such investment form with the limitation of less than 50% on foreign equity.<sup>699</sup> In contrast, Vietnam cannot treat CPTPP investors in the service sub-sector in such way as it promises to allow CPTPP investors to buy up to 50% shares in Vietnamese enterprises.<sup>700</sup> The following scenarios can occur in reality:

- Scenario 1: If banning foreign investors seeking to supply the service at issue from buying shares in Vietnamese enterprises or, otherwise, limiting the ratio of foreign equity in Vietnamese enterprises to less than 50%, Vietnam breaks its obligation under the CPTPP, evoking a conflict in the broad sense.
- Scenario 2: Conversely, if foreign investors as a whole are conferred the right to purchase 50% of shares in Vietnamese enterprises to supply the service, Vietnam does not encounter any conflict *lato sensu*, but has to grant EU investors more favourable treatment than committed, which constitutes a conflict in the tailored sense.

<sup>698</sup> CPTPP, Annex II – Vietnam – 27.

<sup>699</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 73.

<sup>700</sup> CPTPP, Annex I – Vietnam – 18.

- Scenario 3: If treating EU investors as in Scenario 1 and CPTPP investors as in Scenario 2, Vietnam does not trigger any conflict in any sense in spite of the fact that its measure can be counted as a discrimination against EU investors and in favour of CPTPP rivals and as a violation of the MFN obligation under the EVFTA.

In sum, irrespective of the divergence between the relevant commitments in the two treaties, no conflict can be proven.

## h2. Freight transport agency services (CPC 748)

Considering the NT for Mode 1 supply of freight transport agency services, Vietnam has undertaken “Unbound” and “None” commitments under the EVFTA and CPTPP respectively.<sup>701</sup> Applying the judgement with respect to the passenger transportation less cabotage (CPC 7111) and freight transportation less cabotage of the rail transport services leads to the same upshot of no conflict.

## 6.2. Potential conflicts ensuing from EVFTA-minus provisions in the CPTPP

Conflicts can also arise from CPTPP commitments which are EVFTA-minus. For the full list of EVFTA-minus commitments under the CPTPP, see Annex 2.3.

### 6.2.1. Business services

#### a. Rental/leasing services without operators

##### a1. Relating to ship (CPC 83103)

Regarding MA and NT obligations in Mode 3 of rental/leasing services without operators relating to ship, Vietnam has not inscribed the sub-sector under the CPTPP while being subject to partial liberalization under the EVFTA.<sup>702</sup>

Regarding Modes 1 and 2 of the service at issue, Vietnam has not inscribed under the CPTPP and committed to full liberalization under the EVFTA.<sup>703</sup>

Conflict if any will arise between a right and an obligation. Vietnam retains the right to impose on CPTPP services and/or services suppliers and/or services investments and/or investors any limitations or conditions (of horizontal or sector-specific application) regarding

<sup>701</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 73.

<sup>702</sup> Ibid, p. 18.

<sup>703</sup> Ibid.

Modes 1, 2 and 3 of supply of the services in question. In contrast, under the EVFTA, Vietnam gives “None” commitments in Modes 1 and 2 and “None with an exception” commitments in Mode 3 of the services, i.e. Vietnam is obligated to remove any limitations or conditions in Modes 1, 2 and 3 of supply of the services, except for the 70% limitation on foreign-capital caps in JVs, for EU services and/or services suppliers and/or services investments and/or investors.<sup>704</sup>

The three scenarios of applied measures by Vietnam:

- Scenario 1: Vietnam imposes limitations and/or conditions (of horizontal or sector-specific application) on Modes 1, 2, 3 of supply of the services at issue, except for the 70% limitation on foreign-capital caps in JVs. For instance, Vietnam either prohibits JV or only allows JVs with less-than 70% ownership of foreign investors. Then a violation of the EVFTA by Vietnam gives birth to a unilateral conflict between the CPTPP right and the EVFTA obligation.

- Scenario 2: If removing limitations or conditions in Modes 1, 2 and 3 of supply of the services, except for the 70% limitation on foreign-capital caps in JVs, Vietnam infringes upon neither the EVFTA nor the CPTPP. Then, there is no conflict in broad sense. Additionally, the treatment more favourable than the sector-specific commitment given by Vietnam to CPTPP services suppliers and/or services investments and/or investors has its roots in the CPTPP MFN obligation for the service at issue which requires treatment to CPTPP beneficiaries to be no less favourable than other foreign, including EU, beneficiaries.

- Scenario 3 involves Scenario 1 for non-EU services (suppliers) and Scenario 2 for EU services (suppliers). In that case, Vietnam treats EU services (suppliers) more favourably than the CPTPP counterparts and can contravene the MFN obligation under the CPTPP. In other words, this measure does not lead to any conflict of the two norms in question (i.e. they accumulate), but just to the violation of the CPTPP MFN obligation.

a2. Rental/leasing services without operators relating to other machinery and equipment (CPC 83109 excluding mining and oil field equipment; commercial radio, television and communication equipment)

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<sup>704</sup> Ibid.



As to the MA obligation for Mode 3 supply of the service in question, Vietnam has made “Unbound” commitments pursuant to the CPTPP and partial liberalization undertakings under the EVFTA. The CPTPP right and EVFTA obligation in this service sub-sector can be in conflict. Under the CPTPP, Vietnam can adopt or maintain any measure such as limitations and/or conditions with regards to MA for investment by CPTPP investors in the service at issue. For example, Vietnam can prohibit CPTPP investors from establishing JVs in Vietnam to provide rental/leasing services without operators relating to other machinery and equipment (CPC 83109 excluding mining and oil field equipment; commercial radio, television and communication equipment) or allow CPTPP investors to hold equity of less than 51% equity in JVs with Vietnamese partners to provide the service at issue.<sup>705</sup> Under the EVFTA, Vietnam is obligated to allow EU investors to set up JVs with Vietnamese partners and to contribute 51% of the JV capital.<sup>706</sup>

The conflict (if any) is in the applicable law, depending on measures adopted by Vietnam.

- Scenario 1: If Vietnam exercises its entitlement under the CPTPP, for example by banning foreign investors from establishing JVs in Vietnam to provide rental/leasing services without operators relating to other machinery and equipment (CPC 83109 excluding mining and oil field equipment; commercial radio, television and communication equipment) or by allowing foreign investors to hold equity of less than 51% equity in JVs with Vietnamese partners to provide the service at issue, it will intrude its EVFTA obligation. A conflict *lato sensu* can follow.

- Scenario 2: If obeying its obligation under the EVFTA by approving foreign investors to set up JVs with Vietnamese partners and to contribute 51% of the JV capital, Vietnam does not commit a violation of the EVFTA or the CPTPP norms at issue but gives CPTPP investors extra preferences higher than promised which is, on the one hand, consistent with the CPTPP MFN obligation for the service at issue and, on the other hand, indicative of the conflict in the adopted sense.

- Scenario 3 combines Scenario 1 for CPTPP investors and Scenario 2 for non-CPTPP, including EU, investors. Vietnam then discriminates against CPTPP investors and for EU like

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<sup>705</sup> CPTPP, Annex II – Vietnam – 38.

<sup>706</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 19.

investors in the service under discussion, violating the CPTPP's MFN obligation in the service at issue. However, the relation between the two norms in question is not conflictual but accumulating. Providing that the remedy of compliance applies to the MFN obligation, Scenario 2 will take place eventually.

*b. Other business services*

b1. Technical testing and analysis services (CPC 8676, excluding conformity testing of means of transport and certification of transport vehicles)

As for MA for Mode 1 supply of the service in this item, while offering an "Unbound" commitment<sup>707</sup> under the CPTPP, Vietnam is bound to partial liberalization under the EVFTA.<sup>708</sup> Conflict, if any, can be between the CPTPP right and the EVFTA obligation. Under the CPTPP, Vietnam is entitled to maintain or adopt any measures regarding Mode 1 of supply of technical testing and analysis services on CPTPP services and/or services suppliers. To the contrary, under the EVFTA, Vietnam is bound to removing any limitations and/or conditions regarding Mode 1 of supply of the services in question for EU services and/or services suppliers.

The three scenarios of measures by Vietnam are as follows:

- Scenario 1: Vietnam maintains or adopts any limitations and/or conditions (e.g. prohibition) regarding Mode 1 of supply of the services on services and/or services suppliers and thereby being against the EVFTA, bringing about a conflict *lato sensu*.
- Scenario 2: Vietnam does not adopt or maintain any limitations or conditions regarding Mode 1 of supply of the technical testing and analysis services, with the exception of mining, oil, and gas related field, i.e. waiving its right under the CPTPP and performing its obligation under the EVFTA. No conflict in the broad sense is present but extra preferences are given to the CPTPP services and services suppliers in Mode 1 of the services due to the CPTPP MFN obligation.
- Scenario 3, entailing Scenario 1 with the exception for EU services and services suppliers, marks a discrimination against CPTPP services and services suppliers and for EU counterparts. Such scenario constitutes a violation of the MFN obligation under the CPTPP

<sup>707</sup> CPTPP, Annex I – Vietnam – 7; Annex II – Vietnam – 23.

<sup>708</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 22.

but does not trigger any conflict between the two norms in question. As the two norms are not violated, they accumulate, not conflict. Of no difference, the remedy of MFN compliance will lead to Scenario 2 above.

#### b2. Services incidental to manufacturing, Printing (CPC 88442)

Firstly, as far as Modes 1 and 2 of provision of the printing services are concerned, Vietnam has committed to “Unbound” undertakings under the CPTPP<sup>709</sup> and full liberalization undertakings under the EVFTA.<sup>710</sup> Then, the relation between the CPTPP right and the EVFTA obligation may be of conflictual nature. More specifically, under the CPTPP, Vietnam retains the right to adopt or maintain any measure with regards to Modes 1 and 2 of supply of the printing services incidental to manufacturing provided by CPTPP providers, such as prohibitions or restrictions of the two modes at issue. Otherwise, under the EVFTA, Vietnam is bound to open altogether Modes 1 and 2 of the printing services provided by EU suppliers.

Scenarios of measures by Vietnam:

- Scenario 1: In so far as adopting or maintaining any measure with regards to Modes 1 and 2 of supply of the printing services incidental to manufacturing, Vietnam breaks its EVFTA obligation and a conflict *lato sensu* arises.
- Scenario 2: If allowing foreign suppliers to provide the service at issue through Modes 1 and 2 freely without any limitations or conditions, Vietnam does not commit an infringement of the EVFTA or the CPTPP. No conflict *lato sensu* can be observed; however, Vietnam pays an extra cost of giving CPTPP services (suppliers) better treatment than compromised under the CPTPP. Conflict in the adopted sense is found.
- Scenario 3: If Vietnam modifies the measure under Scenario 1 by exempting EU services suppliers from the scope of application of the measure, a violation of the EVFTA or the CPTPP cannot be established either. Nevertheless, it distinguishes against CPTPP services (suppliers) and for EU competitors. As all modes of supply of the printing services at issue are excluded from the MFN obligation under the CPTPP,<sup>711</sup> such measure is exempted from

<sup>709</sup> CPTPP, Annex II – Vietnam – 23.

<sup>710</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 24.

<sup>711</sup> CPTPP, Annex II – Vietnam – 23.

the MFN obligation under the CPTPP. In this way, the two obligatory norms at issue from the CPTPP and the EVFTA accumulate.

*Secondly*, dealing with MA for Mode 3 of/investment in the printing services, the CPTPP compromise by Vietnam is “Unbound”,<sup>712</sup> while the equivalence in the EVFTA is partial liberalization.<sup>713</sup> Particularly, pursuant to the CPTPP, Vietnam is entitled to adopt and/or maintain any measures, such as limitations and conditions, with regards to investment in the printing services by CPTPP investors. Let’s say JVs or 100% foreign-invested enterprises established by investors from CPTPP states can be strictly outlawed. Conversely, Vietnam is tied to approving EU investors on capital contribution of 50% in JVs or 100% foreign-owned enterprises to provide the printing services in Vietnam.<sup>714</sup>

Measures by Vietnam can be:

- Scenario 1: Providing that neither JVs nor 100% foreign-invested enterprises established by foreign investors to provide the printing services, Vietnam, in exercising its CPTPP right, violates the EVFTA obligation and causes a conflict *lato sensu*.
- Scenario 2: If Vietnam endorses either capital contribution of 50% in JVs or 100% foreign-owned enterprises by foreign investors to provide the printing services in Vietnam, the obligation under the EVFTA is respected and found is no EVFTA obligation infringement. Neither a conflict *lato sensu* is observed. However, that Vietnam has treated CPTPP services (suppliers) more favourably than promised under the CPTPP represents a conflict in the adopted sense.
- Scenario 3 is a slight variation of Scenario 1 by carving out EU printing services (suppliers). Such measure, albeit differentiating against CPTPP services (suppliers) and for EU competitors, is justified for its exclusion from the MFN obligation under the CPTPP regarding printing services for the same reason stated above,<sup>715</sup> making the two norms at issue accumulate.

*Thirdly*, in terms of MA for Mode 3 of the printing services, Vietnam has committed to the “Unbound” undertaking under the CPTPP and to partial liberalization under the EVFTA.

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<sup>712</sup> CPTPP, Annex II, p. 36.

<sup>713</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 24.

<sup>714</sup> Ibid.

<sup>715</sup> CPTPP, Annex II, p. 23.

Vietnam is entitled, under the CPTPP, to adopt or maintain any limitations and conditions with regards to investment in the printing services provided by CPTPP investors.<sup>716</sup> For instance, JVs and 100% foreign-owned enterprises formed by CPTPP investors can be strictly banned. Nevertheless, Vietnam is tied, under the EVFTA, to approving EU investors to set up JVs with 50% foreign capital contribution or 100% foreign-invested enterprises to provide the printing services in Vietnam.

Scenarios of measure by Vietnam:

- Scenario 1: If banning JVs and 100% foreign-owned enterprises from providing the printing services, Vietnam violates its obligation under the EVFTA, producing a conflict in broad terms among the two norms at issue.
- Scenario 2: If authorizing JVs and 100% foreign-owned enterprises to provide the printing services, Vietnam does not violate its obligation under the EVFTA. Neither is a conflict *lato sensu* observed. However, Vietnam has treated CPTPP services (suppliers) more favourable than promised under the CPTPP which can be credited as a conflict in the adopted sense.
- Scenario 3: If Vietnam modifies the measure under Scenario 1 by exempting EU service suppliers from the scope of application of the measure, a violation of the EVFTA or the CPTPP cannot be established either. Nevertheless, it distinguishes against CPTPP services (suppliers) and for EU competitors. As the printing services incidental to manufacturing is out of the scope of the MFN obligation under the CPTPP, such measure is not a violation of the latter, leaving the two norms at issue to accumulate.

b3. Building-cleaning services (CPC 874), including disinfecting and exterminating services (CPC 87401) and window cleaning services (CPC 87402) only in industrial zones and export processing zones

Regarding Modes 1, 2 and 3 of supply of the service at issue, Vietnam has not inscribed the service in the CPTPP while being subject to the “None”, or full liberalization, commitment under the EVFTA.<sup>717</sup> Under the CPTPP, Vietnam is free to adopt or maintain any measure with regards to the provision through Modes 1, 2 and 3 of the building-cleaning services by

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<sup>716</sup> Ibid.

<sup>717</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 26.

CPTPP service suppliers. Under the EVFTA, Vietnam is obligated to allow the supply through Modes 1, 2 and 3 of the service at issue by EU service suppliers.

Measures by Vietnam can be:

- Scenario 1: If exercising the right by adopting or maintaining any measure with regards to Modes 1, 2 and 3 of supply of the building-cleaning services, Vietnam violates the EVFTA. Conflict arises afterwards.
- Scenario 2: If respecting the obligation through the allowance of Modes 1, 2 and 3 of supply of the services at issue, Vietnam does not violate the CPTPP or the EVFTA. A conflict in the broad sense does not emerge but Vietnam has to extend extra preferences to non-EU services and service suppliers, including CPTPP's services and service suppliers without getting any extra preference, which constitutes a conflict in the adopted sense.
- Scenario 3 involves Scenario 1 for CPTPP services and services suppliers and Scenario 2 for the EU services and service suppliers. Regardless of the fact that this measure equates to a discrimination against CPTPP services and service suppliers and for EU counterparts and a violation of the MFN obligation under the CPTPP, no conflict in any sense is confirmed.

#### b4. Packaging services

Regarding MA for Mode 3 of packaging services, Vietnam is committed to partial liberalization under the CPTPP and the EVFTA. Conflict, if any, will be between parallel obligations. Under the CPTPP, Vietnam has to allow CPTPP investors to set up JVs with 49%-CPTPP-capital contribution in the supply of packaging services.<sup>718</sup> On the other hand, under the EVFTA, Vietnam has to allow EU investors to set up JVs with 70%-EU-capital contribution in the supply of same services.<sup>719</sup> The less stringent obligation is under the CPTPP while the more stringent obligation is under the EVFTA.

Scenarios of measures by Vietnam:

- Scenario 1: If Vietnam only allows foreign investors to contribute no more than 49% of capital in JVs to provide packaging services, it violates the EVFTA. A unilateral conflict

<sup>718</sup> CPTPP, Annex II – Vietnam – 39.

<sup>719</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 27.

will arise.

- Scenario 2: If allowing foreign investors to contribute no more than 70% of capital in JVs to provide packaging services, Vietnam does not act inconsistently with the EVFTA. A unilateral conflict *lato sensu* is absent, but Vietnam has to give an extra 21% in foreign equity contribution in JVs to CPTPP investors higher than committed, amounting to a conflict in the adopted sense.

- Scenario 3: Vietnam only allows foreign investors to contribute no more than 49% of capital in JVs to provide packaging services, except for the case of EU investors in which the cap will be increased to 70%. Such measure, although discriminating against CPTPP investors and for EU investors in packaging services in Vietnam and thereby violating the MFN obligation under the CPTPP, does not produce any conflict in any sense among the two norms under discussion.

#### b5. Trade fairs and exhibitions services (CPC 87909\*\*)

Regarding Mode 1, Vietnam has not inscribed the sub-sector under the CPTPP, therefore enjoying the right to adopt any measure inconsistent with horizontal commitments and being free from any sector-specific commitments; whereas, in the EVFTA, Vietnam has inscribed the subsector and been exposed to horizontal commitments.<sup>720</sup> Regarding Mode 2, under the EVFTA, Vietnam incurs the “None”, i.e. full liberalization, commitment.<sup>721</sup> Therefore, a conflict may arise between the CPTPP right and the EVFTA obligation. More specifically, Vietnam can adopt or maintain any measures in both MA and NT for Mode 2 of the trade fairs and exhibitions services by CPTPP suppliers. Conversely, Vietnam must grant, without any obstacle, MA and NT to the service at issue provided through Mode 2 by EU suppliers.

Scenarios of measures by Vietnam:

- Scenario 1: As long as adopting or maintaining any measures with regards to MA or NT for Mode 2 of the trade fairs and exhibitions services, Vietnam violates its obligation under the EVFTA as above. A conflict *lato sensu* arises.

- Scenario 2: So long as fully liberalizing the MA and NT for Mode 2 of the services at issue, Vietnam does not violate the EVFTA. No conflict *lato sensu* emerges but Vietnam has

<sup>720</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 27.

<sup>721</sup> Ibid.

to give treatment to CPTPP suppliers of trade fairs and exhibitions services better than promised under the CPTPP, which is equivalent to a conflict in the adopted sense.

- Scenario 3: If adopting Scenario 1 for non-EU service suppliers and Scenario 2 for EU counterparts, Vietnam does not infringe on the EVFTA norm at issue. Albeit such measure constitutes a discrimination against non-EU, including CPTPP, service suppliers and for EU like competitors, it does not cause any conflict in any terms between the two relevant norms.

### **6.2.2. Communication services**

#### *a. Postal services (CPC 7511)*

In Modes 1, 2 and 3 of the postal services, Vietnam has unscribed the sub-sector in the CPTPP, but is otherwise committed to full liberalization in the EVFTA.<sup>722</sup> As a result, under the CPTPP, Vietnam retains the right to adopt or maintain any measure of horizontal or sector-specific application to prevent or restrict the postal services provided by CPTPP suppliers. Nevertheless, under the EVFTA, Vietnam is subject to horizontal commitments and obligated to allow MA and NT for Modes 1, 2 and 3 of the postal services by EU suppliers.<sup>723</sup> Likewise, among three scenarios, the granting of MA and NT to Modes 1, 2 and 3 of the postal services provided by EU suppliers, but not to CPTPP counterparts, will save Vietnam from a conflict in any sense among the two norms at issue, irrespective of the potential violation of the CPTPP MFN obligation.

### **6.2.3. Construction and related engineering services**

This sector has no EVFTA-minus commitments. In other words, CPTPP contains only EVFTA-equivalent and EVFTA-plus commitments by Vietnam in construction and related engineering services.

### **6.2.4. Distribution services**

In the first place, regarding MA for Mode 2 of the commission agents' services, wholesale trade services and retailing services of products,<sup>724</sup> an “Unbound” commitment is made by

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<sup>722</sup> Ibid, p. 28

<sup>723</sup> Ibid.

<sup>724</sup> Other than “(i) cigarettes and cigars, books, newspapers and magazines, video records on whatever medium, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar; (ii) products for personal use and (iii) legitimate computer softwares for personal and commercial use”. See CPTPP, Annex II – Vietnam – 11.



Vietnam under the CPTPP,<sup>725</sup> while the corresponding commitment under the EVFTA is “None”.<sup>726</sup> As a consequence, under the CPTPP, Vietnam has the right to adopt and maintain any measures on the prohibition and limitation of the MA in the consumption abroad of the service sub-sector for the products at issue provided by service suppliers from CPTPP states. On the other hand, under the EVFTA, Vietnam is obligated to remove any measure with regards to limitations and restrictions of the service at issue for certain products provided by EU service suppliers. Any conflict is then between the CPTPP right and the EVFTA obligation.

Applicable measures by Vietnam can be:

- Scenario 1: If taking measures banning or restricting the MA to the consumption-abroad supply of the services for the products at issue, Vietnam can exercise its CPTPP right at the expense of violating its EVFTA obligation. A conflict *lato sensu* arises.
- Scenario 2: If refraining from putting in place any measure with regards to limitations and restrictions of the service at issue for certain products, Vietnam can save itself from infringing upon the EVFTA obligation at issue. However, by giving CPTPP service suppliers treatment more privileged than its undertakings in CPTPP, Vietnam counters a conflict in the adopted sense.
- Scenario 3 combines Scenario 1 for non-EU suppliers and Scenario 2 for EU suppliers of the service at issue. In this manner, Vietnam treats CPTPP services (suppliers) less favourably than EU like services (suppliers), resulting in the infringement of the MFN obligation under the CPTPP. However, no conflict in any sense can be claimed among the two norms at issue.

In the second place, regarding NT for Mode 2 of the commission agents' services, wholesale trade services and retailing services of products,<sup>727</sup> Vietnam is tied to partial and full liberalization under the CPTPP and EVFTA respectively. Pursuant to the CPTPP, Vietnam can treat CPTPP services (suppliers) less favourably than Vietnam's like domestic services

<sup>725</sup> CPTPP, Annex II – Vietnam – 11.

<sup>726</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 44.

<sup>727</sup> Other than (i) cigarettes and cigars, books, newspapers and magazines, video records on whatever medium, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar; (ii) products for personal use and (iii) legitimate computer softwares for personal and commercial use.

(suppliers) in Mode 2 of supply of the service at issue.<sup>728</sup> In contrast, under the EVFTA, Vietnam has to treat EU services (suppliers) no less favourably than Vietnam's like domestic counterparts in the Mode and the service under discussion.<sup>729</sup> Conflict between the CPTPP right and the EVFTA obligation depends on the applied measure by Vietnam.

Scenarios of measures by Vietnam:

- Scenario 1: If treating CPTPP services (suppliers) in the same way as the EU competing services (suppliers) but less favourably than Vietnam's domestic services (suppliers) then Vietnam violates the EVFTA obligation and gives rise to a conflict *lato sensu*.
- Scenario 2: If Vietnam gives treatment to CPTPP services (suppliers) in the same way as the EU competing services (suppliers) but no less favourable than Vietnam's domestic services (suppliers) then no breaking of the EVFTA obligation can be established. But Vietnam has to grant CPTPP services (suppliers) preferences more favourable than its undertakings under the CPTPP. In other words, a conflict in the adopted sense can be present.
- Scenario 3: If Vietnam treats CPTPP services (suppliers) less favourably than its domestic counterparts while granting EU services (suppliers) no less favourable treatment than its domestic competitors, such measure favours EVFTA services (suppliers) more than CPTPP counterparts. Even though a violation of the CPTPP's MFN obligation in the sub-sector at issue follows, this is not the case for the conflict between the two norms under discussion.

### **6.2.5. Educational services**

In the light of MA for Mode 1 of the three educational services sub-sectors of "(i) higher education services, (ii) adult education and (iii) other education services (CPC 929 including foreign language training) in technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields"<sup>730</sup>, Vietnam is subject to "Unbound" and "None" commitments under the

<sup>728</sup> CPTPP, Annex II – Vietnam – 11.

<sup>729</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 43.

<sup>730</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 46.

CPTPP and EVFTA respectively,<sup>731</sup> giving rise to a right-and-obligation collision. Under the CPTPP, Vietnam can adopt or maintain any measure, such as a prohibition and/or limitation on the MA for Mode 1 of the three sub-sectors at issue provided by CPTPP suppliers. Under the EVFTA, Vietnam is compelled to remove any measure banning or constraining the MA for Mode 1 of the three sub-sectors at issue provided by EU suppliers.

Measures by Vietnam can be designed as follows:

- Scenario 1: If prohibiting and/or limiting the MA for Mode 1 of the three educational service sub-sectors at issue, Vietnam can violate its EVFTA obligation and then face a conflict in the broad sense.
- Scenario 2: If no limitation or condition is imposed by Vietnam on Mode 1 of the three educational service sub-sectors, CPTPP services (suppliers) enjoy treatment better than promise by Vietnam under the CPTPP, constituting a conflict in the adopted sense.
- Scenario 3 involves Scenario 1 for non-EU services (suppliers) and Scenario 2 for EU equivalence, resulting in no EVFTA obligation violation. Although such approach discriminates against non-EU, including CPTPP, service suppliers and goes against MFN obligation for the service at issue under the CPTPP, no conflict in any sense can be observed among the two norms under discussion.

### **6.2.6. Environmental services**

This sector carries no EVFTA-minus commitments, i.e. having only EVFTA-equivalent or EVFTA-plus undertakings.

### **6.2.7. Health related and social services**

#### *a. Hospital services (CPC 9311) and Medical and dental services (CPC 9312)*

For MA for investment, Vietnam's undertaking under the CPTPP is partial liberalization and under the EVFTA is full liberalization. Conflict may be between parallel obligations, in which the less stringent obligation under the CPTPP forces Vietnam to allow JVs and 100% foreign-owned enterprises established by CPTPP investors to provide hospital services and medical and dental services in Vietnam on the condition that CPTPP investors meet the threshold on

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<sup>731</sup> CPTPP, Annex I – Vietnam – 13. EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 46.

the minimum capital contribution, more specifically, US\$20 million, US\$2 million and US\$200,000 for a hospital, a polyclinic unit and a specialty unit respectively.<sup>732</sup> The more stringent obligation under the EVFTA requires Vietnam to approve JVs and 100% foreign-owned enterprises established by EU investors to provide the service at issue regardless of capital contribution by EU investors.<sup>733</sup>

- Scenario 1: If prohibiting JVs or 100%-foreign-owned enterprises set up by a foreign investor with less than the capital contribution required above, Vietnam violates the EVFTA and is in face of a conflict *lato sensu*.

- Scenario 2: If allowing JVs and 100%-foreign-owned enterprises to provide the service at issue regardless of capital contribution by the relevant foreign investors, Vietnam does not go against its EVFTA obligation or confront a conflict *lato sensu*. However, in such situation, Vietnam gives extra privilege for CPTPP investors in the service reasonably in light of the CPTPP MFN obligation for the service sub-sector at issue.

- Scenario 3 is the mixture of Scenario 1 for non-EU investors and Scenario 2 for EU investors. In such case, regardless of a discrimination against non-EU, including CPTPP, investors and for EU investors in hospital services and medical and dental services, no conflict exists as no violation of the CPTPP or the EVFTA obligation is committed.

*b. Health related and social services: Social services (CPC 933), including Social services with accommodation (CPC 9331) and Social services without accommodation (CPC 9332)*

Regarding Modes 1 and 2 of the service at issue, Vietnam is tied to an “Unbound” commitment under the CPTPP<sup>734</sup> and to a “None”, i.e. full commitment, under the EVFTA.<sup>735</sup> Secondly, in terms of Mode 3, undertakings by Vietnam are “Unbound” and partial liberalization under the CPTPP and the EVFTA respectively. Under the CPTPP, Vietnam retains the entitlement to adopt any measures with regards to MA and NT for Modes 1, 2 and 3 of the supply of the service at issue by CPTPP service suppliers. Within the ambit of the EVFTA, it is compulsory for Vietnam to remove or not introduce any measure with regards to

<sup>732</sup> CPTPP, Annex II – Vietnam – 36.

<sup>733</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 58.

<sup>734</sup> CPTPP, Annex II – Vietnam – 36.

<sup>735</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 58.

MA and NT, Modes 1 and 2 of the service in question provided by EU service suppliers. Additionally, Vietnam has to allow EU investors to contribute no more than the threshold of 70% equity to set up JVs.<sup>736</sup> Similarly, Vietnam can adopt one of the three scenarios:

- Scenario 1: If adopting or maintaining any measures with regards to MA and NT for Modes 1, 2 and 3 of the supply of the service at issue, including the limitation of less than 70%-foreign-equity contribution in JVs as stated above, Vietnam breaks its EVFTA obligation and faces conflicts in the broad sense.
- Scenario 2: If opening completely Modes 1 and 2 as well as allowing 70%-foreign-owned JVs to supply the service, Vietnam does not infringe upon its EVFTA obligation but has to give treatment to CPTPP service suppliers more privileged than its CPTPP commitment, which is equivalent to a conflict in the adopted sense.
- Scenario 3: If Vietnam applies Scenario 1 for non-EU service suppliers and Scenario 2 for EU competitors, neither the EVFTA obligation nor conflict of norms in the broad sense can be observed. Although discriminating against CPTPP service suppliers, such measure is justified as being out of the scope of the MFN obligation under the CPTPP.<sup>737</sup> In that context, the two norms are in accumulation.

#### **6.2.8. Tourism and travel related services**

There is no EVFTA-minus commitment.

#### **6.2.9. Recreational, cultural and sporting services**

There is no EVFTA-minus commitment.

#### **6.2.10. Transport services**

##### *a. Maritime Transport Services*

a1. Passenger transportation less cabotage (CPC 7211) and Freight transportation less cabotage (CPC 7212)

Regarding MA for Mode 1 of supply of the service in this Item, Vietnam is committed to

<sup>736</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 58.

<sup>737</sup> CPTPP, Annex II – Vietnam – 25.

partial liberalization under the CPTPP<sup>738</sup> and to full liberalization under the EVFTA.<sup>739</sup> More specifically, with regards to passenger transportation services less cabotage and domestic freight transport services less cabotage, Vietnam, under the CPTPP, retains the right to prohibit or limit MA for Mode 1 of the service at issue provided by CPTPP suppliers while being obligated under the EVFTA to liberalize fully MA for Mode 1 of the service provided by EU suppliers.

Scenarios of measures by Vietnam:

- Scenario 1: If prohibiting or limiting MA for Mode 1 of the service at issue, Vietnam violates the EVFTA and faces the conflict *lato sensu*.
- Scenario 2: If allowing MA for Mode 1 of the service at issue, Vietnam does not infringe on the EVFTA obligation or face the conflict in the broad sense. However, treatment better than committed conferred on CPTPP service suppliers gives rise to a conflict in the adopted sense.
- Scenario 3: If combining Scenario 1 for non-EU services (suppliers) and Scenario 2 for EU services (suppliers), Vietnam does not violate the EVFTA but rather discriminates against the latter. The measure, while being in violation of the MFN obligation under the CPTPP, leads to no conflict in any sense.

#### a2. Maintenance and repair of vessels (CPC 8868\*)

Vietnam has uninscribed the sub-sector under the CPTPP. However, for Modes 1 and 2, and for NT of Mode 3, Vietnam has undertaken full liberalization while promising partial liberalization for MA for Mode 3 under the EVFTA.<sup>740</sup> Conflict in this case can be between the CPTPP right and the EVFTA obligation. More specifically, under the CPTPP, Vietnam is free to impose any measure of horizontal or sector-specific application with regards to maintenance and repair of vessels services provided by CPTPP service suppliers. Under the EVFTA, Vietnam has to refrain from adopting or maintaining any measure with regards to Modes 1 and 2 of the service in question provided by EU service suppliers. In addition, Vietnam has to allow JVs in which EU investors contribute no more than 70% in the

<sup>738</sup> CPTPP, Annex II – Vietnam – 36.

<sup>739</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 61.

<sup>740</sup> *Ibid*, p. 64.

provision of maintenance and repair of vessels services.<sup>741</sup>

Scenarios of measures at issue:

- Scenario 1: If adopting or maintaining any measure with regards to Modes 1, 2 and 3 of provision of maintenance and repair of vessels services, Vietnam violates the EVFTA, producing a conflict in the broad sense.
- Scenario 2: If the reversal of Scenario 1 is introduced, Vietnam does not violate the EVFTA and no conflict *lato sensu* arises. In return, Vietnam has to give CPTPP service suppliers and investors in the service more preferences than required by its CPTPP sector-specific commitments, constituting a conflict in the adopted sense.
- Scenario 3: If introducing Scenario 1 for non-EU and Scenario 2 for EU service suppliers, Vietnam discriminates against CPTPP service suppliers and can break the MFN obligation under the CPTPP in the service at issue. In contrast, no conflict is found as none of the two norms in question is contravened.

### a3. Container handling services

With regards to MA in Mode 3 of container handling services, Vietnam is committed to partial liberalization under the CPTPP and the EVFTA. Under the CPTPP, Vietnam is entitled to prohibit CPTPP investors from establishing representative offices, subsidies and 100%-foreign-owned enterprises to provide container handling services in Vietnam.<sup>742</sup> Under the EVFTA, Vietnam has to allow EU investors to form the above-mentioned commercial presence.<sup>743</sup>

- Scenario 1: If banning representative offices, subsidies and 100%-foreign-owned enterprises established by foreign investors to provide container handling services in Vietnam, Vietnam violates the EVFTA, leading to a conflict *lato sensu*.
- Scenario 2: If approving representative offices, subsidies and 100%-foreign-owned enterprises established by foreign investors to provide container handling services in Vietnam, Vietnam does not trespass upon the EVFTA and faces no conflict in the broad sense. However, given the extra preferences conferred on CPTPP investors in the service in

<sup>741</sup> Ibid.

<sup>742</sup> CPTPP, Annex I – Vietnam – 18.

<sup>743</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 64.

question, conflict in the adopted sense can be found.

- Scenario 3: If applying Scenario 1 for non-EU investors and Scenario 2 for EU investors, Vietnam discriminates against CPTPP investors and infringes upon the MFN obligation under CPTPP in the sub-sector. Nevertheless, no conflict in any sense between the two norms at issue can be claimed.

#### a4. Maritime agency services

The sub-sector has not been inscribed by Vietnam in the CPTPP while being subject to full liberalization for Modes 1 and 2, partial liberalization in MA for Mode 3 and “Unbound” commitment in NT for Mode 3. Hence, under the CPTPP, Vietnam reserves the right to adopt and maintain any measure of horizontal and sector-specific application with regards to maritime agency services provided by CPTPP service suppliers. Under the EVFTA, Vietnam has to comply with horizontal commitments and to allow Modes 1 and 2 altogether and MA for Mode 3 in which EU investors can set up JVs by contributing 49% capital to provide maritime agency services.<sup>744</sup>

Scenarios of measures by Vietnam:

- Scenario 1: If adopting any measures prohibiting or limiting Modes 1 and 2 of the service at issue or banning 49%-foreign-owned JVs in supplying the service at issue, Vietnam acts inconsistently with its EVFTA obligation, thereby confronting a conflict in the broad sense.

- Scenario 2: If complying with horizontal commitments and allowing Modes 1 and 2 altogether and MA for Mode 3 in which foreign investors can set up JVs by contributing 49% capital to provide maritime agency services, Vietnam does not commit any EVFTA violation and then avoids conflict *lato sensu*. However, Vietnam has to give CPTPP suppliers of the service at issue more privileges, which amounts to a conflict in the adopted sense.

- Scenario 3: If adopting Scenario 1 for non-EU and Scenario 2 for EU service suppliers, Vietnam can discriminate against CPTPP suppliers of maritime agency services, i.e. violating the MFN obligation under the CPTPP for the sub-sector at issue, but, encounter no conflict in any sense among the two discussed norms.

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<sup>744</sup> Ibid, p. 65.



#### a5. Container station and depot services

For Mode 1, Vietnam is bound to “Unbound” and “None” undertakings under the CPTPP<sup>745</sup> and the EVFTA respectively.<sup>746</sup> Under the CPTPP, Vietnam is entitled to prohibit or restrict Mode 1 of the supply of container station and depot services by CPTPP suppliers. In contrast, Vietnam is on a duty to allow EU suppliers to provide the service in question through Mode 1.

Scenarios of measures by Vietnam:

- Scenario 1: If prohibiting foreign suppliers to provide container station and depot services through Mode 1, Vietnam infringes upon the EVFTA obligation, causing a conflict *lato sensu*.
- Scenario 2: If allowing foreign suppliers to provide container station and depot services through Mode 1, Vietnam does not act inconsistently with its EVFTA obligation; however, in return, it has to give extra preference to CPTPP suppliers, leading to a conflict in the adopted sense.
- Scenario 3: By applying Scenario 1 to non-EU and Scenario 2 to EU service suppliers, Vietnam discriminates against CPTPP suppliers of container station and depot services, hence intruding the MFN obligation for the service under the CPTPP. On the contrary, no conflict between the two norms in question is established.

#### b. *Internal waterways transport*

##### b1. Passenger transport (CPC 7221) and Freight transport (CPC 7222)

Regarding MA for Mode 1, Vietnam has undertaken “Unbound” and “None” commitments under the CPTPP and the EVFTA respectively. Similarly, Vietnam is in the face of both CPTPP right and EVFTA obligation and can choose among three scenarios.

Slightly differently, as for MA for Mode 3, Vietnam confronts with parallel obligations. According to the CPTPP less stringent obligation, Vietnam has to allow JVs established by CPTPP investors with 49% capital contribution while permitting JVs formed by EU investors with 51% foreign equity under the EVFTA.

Scenarios of measures by Vietnam:

<sup>745</sup> CPTPP, Annex II – Vietnam – 36.

<sup>746</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 66.

- If just allowing 49% equity in JVs to be held by foreign investors to provide the service at issue, Vietnam breaks its obligation under the EVFTA, thereby incurring a conflict in the broad sense.
- If allowing JVs with 51% foreign equity to provide the service at issue, Vietnam otherwise does not break its obligation under the EVFTA or face conflict *lato sensu*. But Vietnam has to give a preference to CPTPP investors higher than its CPTPP sector-specific undertakings, which constitutes a conflict in the adopted sense.
- If allowing the foreign-capital-contribution caps of 49% and 51% for non-EU and EU investors respectively, Vietnam discriminates against CPTPP investors, i.e. infringing upon the MFN obligation under the CPTPP for the sub-sector. In return, it does not encounter any conflict in any terms between the two norms under discussion.

#### b2. Internal waterways transport, Cabotage services

Regarding NT, under the CPTPP, Vietnam is bound to the “Unbound” commitment only, i.e. Vietnam can discriminate against CPTPP’s internal waterways transport, cabotage services and service suppliers and for Vietnam’s like domestic services and service suppliers. However, under the EVFTA, Vietnam has to treat EU’s services and service suppliers no less favourably than its like domestic service and service suppliers.

Scenarios of measures by Vietnam:

- If treating CPTPP service and service suppliers and their EU competitors equally but less favourably than its domestic counterparts, Vietnam breaks its commitments under the EVFTA, confronting with a conflict in the broad sense.
- If treating CPTPP service and service suppliers and their EU competitors equally but no less favourably its domestic counterparts, Vietnam does not break its commitments under the EVFTA but has to give extra preferences to CPTPP service and service suppliers. Hence, a conflict in the adopted sense can be found.
- If Vietnam behaves towards CPTPP service and service suppliers less favourably than its domestic competitors and towards EU service (suppliers) no less favourably than the latter, such treatment constitutes a discrimination against CPTPP services and service suppliers but does not violate the MFN obligation under the CPTPP since the subsector does not fall within

the scope of such obligation.<sup>747</sup> In other words, the two norms is in accumulation.

### b3. Maintenance and repair of vessels (CPC 8868)

Having not inscribed the sub-sector under the CPTPP, Vietnam, in the meantime, is subject to full liberalization for Modes 1 and 2 and to partial liberalization for Mode 3 under the EVFTA.<sup>748</sup> Conflict, if any, can be of right-vis-à-vis-obligation collision nature. The right under the CPTPP allows Vietnam to adopt and/or maintain any measure of horizontal or sector-specific application with regards to maintenance and repair of vessels services provided by CPTPP suppliers. Under the EVFTA, Vietnam is bound not to adopt or maintain any measure with regards to Modes 1 and 2 of supply of the service at issue provided by EU suppliers.<sup>749</sup> As for EU investment in maintenance and repair of vessels services, Vietnam has to allow EU investors to form JVs with Vietnamese partners by contributing at the largest of 70% of the capital.<sup>750</sup>

Scenarios of measures:

- Scenario 1: By adopting or maintaining any measure prohibiting or limiting Modes 1 or 2 of the service at issue or prohibiting either JVs as a whole or 70%-foreign-owned-capital JVs, Vietnam will break its EVFTA obligation and give rise to a conflict *lato sensu*.
- Scenario 2: If liberalizing both Modes 1 and Mode 2 and permitting JVs with 70%-foreign-owned capital, Vietnam does not infringe upon its EVFTA obligation or bring about a conflict in broad terms. However, Vietnam has to liberalize more in the form of extra preferences to CPTPP services (suppliers) and faces a conflict in the adopted sense.
- Scenario 3: If combining Scenario 1 for non-EU and Scenario 2 for EU suppliers, Vietnam will give rise to no conflict in any sense between the two norms in question, although it discriminates against CPTPP services (suppliers) and for EU services (suppliers) and violates MFN obligation for the service at issue.

### c. Air transport services

#### c1. Ground-handling services, excluding aircraft servicing and cleaning, surface transport,

<sup>747</sup> CPTPP, Annex II – Vietnam – 27.

<sup>748</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 64.

<sup>749</sup> Ibid.

<sup>750</sup> Ibid.

airport management and air service navigation

Under the CPTPP, Vietnam retains the right to adopt and maintain measures with regards to ground-handling services provided by CPTPP service suppliers. Under the EVFTA, it is compulsory for Vietnam to fully liberalize Modes 1 and 2 of ground-handling services.<sup>751</sup> Regarding investment, Vietnam has to allow EU investors to set up JVs in Vietnam when certain conditions prescribed in MA for Mode 3 are met.

Regarding NT, Vietnam has to treat EU investors and investments no less favourable than its like domestic investors and investments with the carve-outs stated in NT for Mode 3.<sup>752</sup>

Scenarios of measure by Vietnam:

- Scenario 1: If exercising its CPTPP right by adopting or maintaining any measure (apart from exceptions listed in the EVFTA, Annex on Vietnam's Schedule of Specific commitments, Ground handling services, Mode 3) with regards to Modes 1-3 of supply of the services, e.g. prohibition or limitation of Modes 1 or 2 of the service, Vietnam will violate its EVFTA obligation, resulting in a conflict *lato sensu*.
- Scenario 2: If Vietnam does not introduce or maintain any measure with regards to Modes 1-3 of the services at issue, except for the EVFTA carve-outs mentioned above, it acts consistently with its EVFTA obligation and faces no conflict regarding the two norms at issue. However, Vietnam has to give CPTPP service suppliers treatment more favourable than compromised under CPTPP for free, i.e. being not required by CPTPP MFN obligation. Conflict in the adopted sense can arise.
- Scenario 3: Treating in the same way as Scenario 1 for non-EU and as Scenario 2 for EU service suppliers, Vietnam acts in accordance with its EVFTA obligation and brings about no conflict in the broad sense. Vietnam, by that way, discriminates against CPTPP service (suppliers) and in favour of EU counterparts, but does not violate the MFN obligation under CPTPP since the service sub-sector at issue is carved-out from the obligation.<sup>753</sup>

## c2. In-flight meal serving services

Under the CPTPP, Vietnam has failed to inscribe the sub-sector but being subject to full

<sup>751</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 68.

<sup>752</sup> Ibid.

<sup>753</sup> CPTPP, Annex II – Vietnam – 6.

liberalization for Modes 1 and 2 and to partial liberalization for Mode 3 under the EVFTA.<sup>754</sup> Conflict, if any, in this context can be between the CPTPP right and the EVFTA obligation. Under the CPTPP, Vietnam retains the right to adopt and maintain any measure with regards to in-flight meal serving services provided by CPTPP suppliers. The obligation under the EVFTA forces Vietnam to fully liberalize Modes 1 and 2 of supply of the service at issue provided by EU suppliers. Regarding Mode 3, Vietnam has to allow EU investors to contribute no more than 49% of capital in JVs with Vietnamese partners to provide in-flight meal serving services.<sup>755</sup>

Scenarios of measures:

- Scenario 1: If prohibiting and/or limiting Modes 1 and 2 of the service under discussion or not allowing 49%-foreign-owned JVs in the service, Vietnam acts inconsistently with its EVFTA obligation, facing a conflict *lato sensu*.
- Scenario 2: If allowing Modes 1 and 2 of the service under discussion and 49%-foreign-owned JVs in the service, Vietnam vice versa acts in coherence with its EVFTA obligation, facing no conflict *lato sensu*. However, due to the privileges conferred on CPTPP services (suppliers) higher than the corresponding commitments by Vietnam under the CPTPP, the measure may trigger a conflict in the adopted sense.
- Scenario 3: When adopting Scenario 1 for non-EU and Scenario 2 for EU service suppliers, Vietnam discriminates against CPTPP service suppliers and in favour of EU competitors and can give rise to MFN obligation infringement under CPTPP. However, as the measure does not affect the implementation of the two norms at issue, no conflict in any terms can be claimed.

*d. Rail transport services, cabotage services*

Regarding Mode 2, Vietnam is stick to the “Unbound” and “None” commitments under the CPTPP and the EVFTA respectively. Regarding MA for Mode 3, Vietnam is subject to the “Unbound” commitment under the CPTPP while facing a partial commitment under the EVFTA. Then, conflict, if any, can be the interaction between the CPTPP right and the EVFTA obligation. More specifically, under the CPTPP, Vietnam has the right to bar

<sup>754</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 70.

<sup>755</sup> Ibid.

cabotage services for rail transport services provided by CPTPP service suppliers in Modes 2 and 3. Under the EVFTA, Vietnam must altogether authorize or liberalize Mode 2 of cabotage services for rail transport services supplied by EU providers.<sup>756</sup> Additionally, Vietnam has to allow EU investors to contribute no more than 49% in JVs with Vietnamese partners to supply the services.<sup>757</sup>

Scenarios of measures by Vietnam:

- Scenario 1: If exercising its CPTPP right by blocking or constraining cabotage services for rail transport services provided in Modes 2 and 3, Vietnam violates its EVFTA obligation and faces a conflict in the broad sense.
- Scenario 2: If allowing foreign service suppliers to provide through Mode 2 cabotage services for rail transport services and 49%-foreign-owned JVs with Vietnamese partners, Vietnam does not act against its EVFTA obligation, but has to give CPTPP competitors treatment better than its CPTPP undertakings, encountering conflicts in the adopted sense.
- Scenario 3: If limiting addressees of Scenario 1 to non-EU service suppliers and those of Scenario 2 to EU service suppliers, Vietnam does not infringe upon either its EVFTA obligation or the MFN obligation for the services at issue under the CPTPP as its discrimination against CPTPP services (suppliers) and for EU counterparts is not covered by such obligation.<sup>758</sup> To put it in another way, no conflict in any sense is present.

*e. Road transport services, road cabotage services*

Regarding NT for Modes 2 and 3, under the CPTPP, Vietnam has committed to the “Unbound” undertakings, in sharp contrast to the “None”, i.e. full liberalization, promises under the EVFTA. In particular, pursuant to the CPTPP, Vietnam retains the right to adopt and maintain measures with regards to NT for Modes 2 and 3 of the services provided by CPTPP suppliers to discriminate against CPTPP services (suppliers) and for its like domestic road cabotage services (suppliers). Nevertheless, under the EVFTA, Vietnam has to grant EU road cabotage services (suppliers) treatment no less favourable than its treatment to its like

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<sup>756</sup> Ibid, p. 71.

<sup>757</sup> Ibid.

<sup>758</sup> CPTPP, Annex II – Vietnam – 27.

domestic services (suppliers).<sup>759</sup>

Scenarios of measures by Vietnam:

- If treating CPTPP services (suppliers) and their EU competitors equally but less favourably its domestic counterparts, Vietnam breaks its commitments under the EVFTA, confronting with a conflict in the broad sense.
- If treating CPTPP services (suppliers) and their EU competitors equally but no less favourably its domestic counterparts, Vietnam does not break its commitments under the EVFTA. Nevertheless, Vietnam gives extra preferences to CPTPP services (suppliers) and, therefore, a conflict in the adopted sense can be found.
- If Vietnam treats CPTPP services (suppliers) less favourably than its like domestic counterparts and towards EU services (suppliers) no less favourably than its like domestic counterparts, such measure constitutes a discrimination against CPTPP services (suppliers) but does not violate the MFN obligation under the CPTPP as the subsector at issue is not covered by the obligation.<sup>760</sup> In other words, the two norms accumulate.

*f. Services auxiliary to all modes of transport*

f1. Maritime cargo handling services (CPC 741)

Vietnam has not inscribed the sub-sector under the CPTPP, but undertaken full liberalization for Modes 1 and 2, partial liberalization for MA for Mode 3 and “Unbound” commitments for NT for Mode 3. Resultantly, a conflict, if any, may be between the CPTPP right and the EVFTA obligation. Under the CPTPP, Vietnam has the right to adopt and maintain any measure of horizontal and sector-specific commitments in light of maritime cargo handling services provided by CPTPP suppliers. In contrast, under the EVFTA, Vietnam is subject to horizontal commitments and has to open completely Modes 1 and 2 of the service provided by the EU.<sup>761</sup> Furthermore, Vietnam has to allow EU investors to establish 49%-EU-owned JVs with Vietnamese partners to provide maritime cargo handling services.<sup>762</sup>

Scenarios of measures by Vietnam:

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<sup>759</sup> Ibid.

<sup>760</sup> CPTPP, Annex II – Vietnam – 27.

<sup>761</sup> EVFTA, Annex 8-B-1 on Vietnam’s Schedule of Specific Commitments, p. 72.

<sup>762</sup> Ibid.

- Scenario 1: If adopting or maintaining any measure of horizontal and sector-specific commitments in light of maritime cargo handling services, Vietnam may violate its EVFTA obligation and confront with a right-obligation-collision conflict.
- Scenario 2: If imposing no limitations or conditions on Modes 1 and 2 of the services provided by foreign suppliers or allowing foreign investors to establish 49%-foreign-owned JVs to provide the service at issue, Vietnam does not break its EVFTA obligation or bring about conflicts. Instead, Vietnam has to give CPTPP services (suppliers) preferences more than its CPTPP specific commitments, yielding to conflicts in the adopted sense.
- Scenario 3: If combining Scenario 1 for non-EU and Scenario 2 for EU services (suppliers), Vietnam does not break its EVFTA obligation either, i.e. no presence of conflict in the broad sense. However, Vietnam then discriminates against CPTPP services (suppliers) and for EU counterparts, i.e. infringing upon the CPTPP's MFN obligation for the service in question. In return, no conflict in any terms among the norms at issue exists.

#### f2. Container handling services, except services provided at airports (part of CPC 7411)

As far as MA for Mode 1 is concerned, “Unbound” and “None” are undertakings by Vietnam under the CPTPP and the EVFTA respectively. Consequentially, under the CPTPP, Vietnam retains the right to prohibit or limit Mode 1 of supply of the container handling services, except services provided at airports, provided by CPTPP suppliers. On the other hand, Vietnam is obligated to fully liberalize Mode 1 of supply of the services provided by EU suppliers.<sup>763</sup>

Scenarios of measures by Vietnam:

- Scenario 1: If prohibiting or limiting foreign suppliers from supplying through Mode 1 the container handling services, except services provided at airports, Vietnam acts against its EVFTA obligation, leading to a conflict between the CPTPP right and the EVFTA obligation in the broad sense.
- Scenario 2: If fully liberalizing Mode 1 of supply of the services, Vietnam does not violate its EVFTA obligation or face the conflict. In exchange, Vietnam has to give CPTPP services (suppliers) treatment more favourable than its sector-specific undertaking under the

<sup>763</sup> EVFTA, Annex 8-B-1 on Vietnam's Schedule of Specific Commitments, p. 73.



CPTPP. Although being consistent with the CPTPP MFN obligation with regards to the service sub-sector at issue, the measure leads to a conflict in the adopted sense between the two norms under consideration.

- Scenario 3: If treating non-EU services (suppliers) in accordance with Scenario 1 and EU competitors in line with Scenario 2, Vietnam is not in breach of its EVFTA obligation either. Such measure equates to a discrimination against CPTPP and for EU services (suppliers). Such violation of the MFN obligation with respect to the services under the CPTPP, to the contrary, does not trigger any conflict in any sense between the two norms at issue.

### **Conclusion**

For the purpose of finding potentially conflicting norms in the CPTPP and the EVFTA on services trade, this Chapter puts a focus on the comparative analysis of two sets of rules in the two treaties. Regulations on trade in services in the two agreements cover twelve services sectors and the elaboration resolves around three main sector-specific obligations, that is, MA, NT and MFN treatments. As commitments by Vietnam in these pacts are made according to different techniques of inscription, more specifically, through the negative list in the CPTPP and through the positive list in the EVFTA, the very first step to make the cross-treaty comparison possible is the conversion of the CPTPP commitments from the negative approach to the positive approach. As a result, two Annexes on CPTPP rules which amount to EVFTA-plus and EVFTA-minus disciplines are constructed.

Surprisingly, no conflict among the two sets of rules has been found so far. In other words, they are in accumulation. Among a considerable number of recognized differences in the levels of commitments by Vietnam towards the CPTPP's and the EU's services and service suppliers, none can be counted as conflicts. With respect to (sub-)sectors where the NT or MA obligations are not subject to the MFN obligation either under the CPTPP or the EVFTA, Vietnam can treat CPTPP and EU services and service suppliers differently to comply simultaneously with its diverse commitments in the two trade pacts. In other words, the application of the two different norms at the same time triggers no contradiction in any situation or the implementation of either does not affect that of the other. As to (sub-)sectors where the MFN obligation applies, Vietnam can still adopt or maintain measures to

discriminate among the two groups of services and service suppliers in accordance with its respective undertakings in each treaty. Then, the violated obligation is the MFN obligation, but not any of the two norms relevant to the conflict discussion. Their accumulation can be classified as complementation where a certain norm in the CPTPP adds or compliments another norm in the EVFTA, without contradicting the latter, or vice versa.

## CHAPTER 7: CONFLICTS AMONG NORMS ON INTELLECTUAL PROPERTY RIGHTS

Albeit the Chapters on intellectual property rights (IPRs) in the two treaties cover other different areas such as copyright, industrial designs, patents, it is proven that TRIPS-deviating norms in PTAs show up chiefly in regulations on geographical indications (GIs).<sup>764</sup> While the US's and the EU's external trade policies converge in other areas of IPRs, this is not the case for their GI policies. GIs are the area where the US and the EU clash the most in intellectual properties (IPs). Among different areas of IPs, the CPTPP and EVFTA are in the sharpest contrast in GIs, which is reflected in provisions of PTAs concluded between each of these two countries and other states. The US and other developed signatories of the CPTPP, including Canada and Australia, object to the enhancement of GI protection at all trade negotiation levels, including multi-, pluri- and bi-lateral levels. On the EU side, the two topics with respect to IPRs that the EU concerns most are GIs and IPR enforcement.<sup>765</sup> Due to historical and cultural reasons, GIs hold a unique and strategic position in the EU IP law, alongside with its external trade policy, and constitute a non-negotiable item in the EU PTA strategy and negotiation agenda. Such determined stance of the EU has persisted throughout the history of making international law on IPs. In the multilateral trade law-making context, the EU is the endorser of the introduction of GIs in the TRIPS during the WTO formation and later during the DDR through its acquiescence of progresses in GI protection. In the regional or plurilateral or bilateral context, PTAs are tools for the EU to export its TRIPS-plus GI protection standards oversea. The adherence of the EU to strong GI protection in PTAs and the WTO is ascribed more to economic, cultural and traditional reasons than to legal reasons. In economic terms, GIs are for the differentiation of EU agricultural products, foods, wines and spirits from other competing foreign products, thereby enhancing competitiveness as well as guaranteeing market access to third-party export markets for EU GI-protected products or goods. However, in legal terms, there is a lack of valid evidence on the superiority of the EU approach over other approaches in GI protection. In other words, GIs are more for the economic self-interest of the EU than for some sound economic or legal rationales or backups such as the transcendence of the EU GI-based model over other alternatives. In sum, the US approach to IPRs conflicts with the EU approach most conspicuously in the GI area. The

<sup>764</sup> Thomas Cottier, Dannie Jost and Michelle Schupp, 'The Prospects of TRIPS-Plus Protection in Future Mega-Regionals', in Thilo Rensmann, *Mega-Regional Trade Agreements*, Springer, 2017, pp. 191-215.

<sup>765</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 138.

conflict among disciplines on trademarks (TMs) and GIs in PTAs concluded by the US and the EU is reflective of their conflict over or competition for market (access) against their rival products.

On the side of Vietnam, its domestic legal system in IPRs is evaluated as quite well-developed and consistent with international treaties on IPs. Vietnam has participated in virtually all of the most important multilateral international treaties on IPRs with respect to patents, TMs, new plant varieties, copyright, etc., including the Paris Convention on the Protection of Industrial Property, the Patent Cooperation Treaty, the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers and Phonograms and Broadcasting Organizations, the International Convention for the Protection of New Varieties of Plants. To implement international treaties on IPs, Vietnam has enacted many legal documents of different rankings, including Laws by the National Assembly, Decrees by the Government and Circulars by Ministries. Some can be named, such as the Law No. 50/2005/QH11 dated 29/11/2005 on Intellectual Property (Law on IP 2005), the Law No. 36/2009/QH12 dated 19/06/2009 on the amendment and supplementation of certain provisions in the Law on IP 2005 (Law on IP 2009), Decree No. 22/2008/ND-CP detailing some provisions and implementation measures in the Law on IP 2005 and the Law on IP 2009 with respect to copyright and related rights, Decree No. 21/2015/ND-CP dated 14/02/2015 on royalties and rewards for cinematographic, art, theatrical works and other forms of art performance. In spite of the relatively comprehensive legal rules on IP, their effective implementation is still a huge challenge to Vietnam.

Regarding domestic regulations on GIs, the law of Vietnam defines GIs along the same line as the TRIPS.<sup>766</sup> Furthermore, indications ineligible to GI protection under the law in Vietnam include, among others, names or indications which have become common or general names for goods in Vietnam and GIs identical or similar to a pre-existing protected TM as far as the use of such GIs will cause confusion about the origin of the products. Vietnam adopts the *sui generis* system to deal exclusively with GI protection domestically. As to the TM-GI relation, Vietnamese law prioritizes the former. As GIs can be protected through TMs, especially amounting to either of the two variations of TMs which are certification marks and collective marks, causing potential conflicts between TMs and GIs, the relation between prior TMs and

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<sup>766</sup> See Article 4.22 of the Law on IP 2005 of Vietnam.

subsequent GIs is addressed in Article 80.3 of the Law on IP 2005 which states that the registration for a GI will be rejected if the GI is identical or similar to a pre-existing protected TM and the use of such GI causes the confusion about the product origin. This prescription reiterates the superiority of prior TMs over subsequent GIs as well as the “first in time, first in right” principle.<sup>767</sup> In other words, at present, Vietnam’s domestic law on GIs is consistent with the CPTPP and inconsistent with the EVFTA as analyzed in detail below. Up to 30/10/2018, 69 GIs have been protected in Vietnam, of which Vietnamese GIs total 63; the other remaining 6 are non-Vietnamese GIs.<sup>768</sup> 39 out of the 63 Vietnamese GIs are listed in Part B of Annex 12-A of the EVFTA while the other 24 GIs of Vietnam are unlisted in the Annex.

This Chapter, first, explores the potentially conflicting regulations on IP in the two agreements and then tries to explain the rationales behind such inconsistency. Furthermore, solutions to the conflict are also discussed. In order to achieve these goals, this Chapter is divided into five sections. CPTPP rules on IP, in particular, on TMs and GIs are analyzed in Section 7.1, followed by Section 7.2 which is devoted to the interpretation of EVFTA provisions on IP with the special emphasis on TMs and GIs. Against the background provided in the two preceding sections, Section 7.3 makes a comparison between the two sets of rules in view of finding their potential inconsistency. Reasons for the established conflict are elaborated in Section 7.4. Section 7.5 concludes with a discussion about conflict clauses to solve the established inconsistency.

## **7.1. Interpretation of rules on GIs and TMs in the CPTPP**

In the CPTPP, IP rules are included in Chapter 18; TMs and GIs are governed in Articles 18.18-18.28 and Articles 18.30-18.36 respectively.

### **7.1.1. TMs under the CPTPP**

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<sup>767</sup> The principle is defined as the “principle of priority where the exclusive right to a TM is attributed to the first who registered or used it”. “In case of conflicting trademark claims, usually the prior right in time prevails, based on first use, first registration or common knowledge of the mark compared to those of competing marks”. See Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 422.

<sup>768</sup> The 6 GIs include those with their origin in the EU (2 GIs of Cognac and Scotch whiskey), Cambodia (2 GIs of Kampong Speu and Kampot), Peru (1 GI of Pisco) and Thailand (1 GI of Isan Thai Lan). See [http://noip.gov.vn/web/noip/home/vn?proxyUrl=/noip/cms\\_vn.nsf/\(agntDisplayContent\)?OpenAgent&UNID=A\\_E65FF4A12A2D2104725831A0033C23A](http://noip.gov.vn/web/noip/home/vn?proxyUrl=/noip/cms_vn.nsf/(agntDisplayContent)?OpenAgent&UNID=A_E65FF4A12A2D2104725831A0033C23A) visited on 30/10/2018.

The blanket remark on CPTPP rules on TMs is that they pursue TRIPS-plus protection of TMs.

*a. TM registrability - Articles 18.18 and 18.19*

As an obligatory norm, Article 18.18 amounts to a TRIPS-plus discipline by enlarging the scope of eligibility to TM registration to cover more objects. Vietnam and other CPTPP parties are enjoined to protect signs which may be not visually perceptible or may contain a sound.<sup>769</sup> While, under Article 15.1 of the TRIPS, WTO Members, including Vietnam, retain the right to impose the visual perceptibility as a pre-condition to TM registration, the CPTPP pushes for the repeal of this barrier to TM registration. The agreement, by removing the requirement regarding the visual perceptibility of a sign, relaxes the condition for TM registration and, consequentially, TM protection and simultaneously expands the scope of application of the CPTPP TM rules to cover not only visually perceptible but also visually imperceptible signs. As a TRIPS-plus regulation, this provision extends the TM protection to new IP objects which can be otherwise unprotected as TMs under the TRIPS, including visually imperceptible signs, sound-containing signs, scent marks, collective marks and certification marks. The removal of the “visual perceptibility” requirement is partly due to technological development which allows businesses to create signs to differentiate themselves, their goods and/or services by using different components of, barring visually perceptible signs, such visually imperceptible signs as scent- or sound-based signs. For the most part, the US is behind this rule as this clause appears not only in the CPTPP but also in other PTAs concluded by the US.<sup>770</sup> Such significant enlargement of the TM-based system is in line with the ideology of the US which prefers the TM-based system to the GI-based system. Resultantly, the CPTPP, under the pressure from the US, extends the scope of objects with proper eligibility to TM protection. However, it should be noted that, by using the phrase of “shall make best efforts”, the CPTPP does not set a binding obligation, but just encourages CPTPP parties, including Vietnam, to extend their TM registration to cover scent-mark-based signs.<sup>771</sup>

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<sup>769</sup> Article 18.18, the first sentence of the CPTPP.

<sup>770</sup> Thilo Rensmann, *Mega-Regional Trade Agreements*, Springer International Publishing AG, 2017, p. 201.

<sup>771</sup> Article 18.18, the second sentence of the CPTPP.

Article 18.19, in combination with Article 18.30, confirms that GIs can be protected by using different means, including the TM-based system or the *sui generis* system or other alternatives, and is parallel to the TRIPS as the latter leaves its Member States with the discretion to choose legal means to protect GIs.<sup>772</sup> The TM-based system is “a broader form of legal recognition that may or may not have sections that deal specifically with communally held rights or products from specific geographic areas”,<sup>773</sup> meanwhile, the *sui generis* system<sup>774</sup> is “specific legislation that deals with the granting of monopoly rights to GIs”.<sup>775</sup> Accordingly, Vietnam is compelled to protect collective marks as well as certification marks as TMs and to offer GI holders the protection of their GIs in the form of TMs. Article 18.19 is the result of the US’s norm-exporting strategy. Domestically, “the US does not consider that GIs require a separate *sui generis* system for protection. It considers that GIs are a sub-set of TMs. As a consequence, the protection of GIs in the US is based on the same criteria and rules applicable to TMs.”<sup>776</sup> However, the precondition for an object or sign to be protected as a TM, under US law, is its distinctiveness and “proper GIs are facing considerable difficulties in meeting such distinctiveness test”.<sup>777</sup> Therefore, in the US, GIs are usually ineligible to TM protection. A solution for the US to protect GIs through TMs is the creation of collective marks and certification marks so that GIs in the US can be protected thereby.<sup>778</sup>

*b. Level of TM protection - Articles 18.20 and 18.21*

Being designed to deal with the TM-GI interaction, Article 18.20 of the CPTPP is among the most important provisions in this discussion. As a clause on the relationship between TMs and GIs, this proviso prescribes the superiority of prior TMs over later GIs. Vietnam, as well as other CPTPP parties, bears the obligation to protect the exclusivity of the right of TM owners from CPTPP parties. At first glance, by replicating closely Articles 16.1 of the TRIPS, this discipline apparently constitutes TRIPS-equivalent regulation in setting out the

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<sup>772</sup> Article 22.2 of the TRIPS.

<sup>773</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 417.

<sup>774</sup> *Sui generis* is a “Latin expression, literally meaning ‘of its own kind’, or ‘unique in its characteristics’”. See *Ibid.*

<sup>775</sup> *Ibid.*

<sup>776</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, pp. 480-481.

<sup>777</sup> *Ibid.*, p. 482.

<sup>778</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 418.

exclusiveness of rights of TM owners. However, this provision of the CPTPP diverges from the TRIPS by one small, but crucial, addition which significantly shapes its substantive content. Particularly, different from Articles 16.1 and 17 of the TRIPS, the CPTPP manifestly establishes that owners of pre-existing TMs take priority over holders of later GIs through the insertion of the phrase “[...] including subsequent GIs [...]”. Neither Article 16.1 nor Article 17 of the TRIPS on the exclusiveness of TM rights and exceptions thereto respectively refers, in an express manner, to subsequent GIs although their interpretation in the *EC – Trademarks and Geographical Indications* (hereinafter referred to as the *EC-TMs and GIs*) case filed by the US against the EU domestic regulation which set the co-existence between prior TMs and later GIs<sup>779</sup> supports later GIs as limited exceptions to the TM right exclusiveness.

This regulation of the CPTPP equates to not only a confirmation of the “first in time, first in right” principle but also an expansion of such principle beyond the inter-TM relation to the TM-GI relation. The explicit reference to subsequent GIs to make them subject, in a clear-cut manner, to the principle of the exclusiveness of right of TM owners, i.e. setting out the prevalence of pre-existing TMs over later GIs. The CPTPP prevents the chance in which subsequent GIs escape from the exclusiveness of TM owners’ right and put a limitation on the scope of exceptions to the exclusiveness of TM holders’ rights under Article 17 of the TRIPS to not cover cases of subsequent GIs. Hence, CPTPP parties, including Vietnam, are not allowed to invoke Article 17 of the TRIPS to justify their regulation on the co-existence between prior TMs and later GIs. The insertion of the above qualifying phrase to delimit the scope of carve-outs under Article 17 of the TRIPS roots deeply in the afore-mentioned case law. As mentioned, in the past, in 2005, the US lost a case against the EU domestic measure which stipulated the co-existence between earlier TMs and later GIs.<sup>780</sup> The EU succeeded in justifying its measure as a carve-out of the exclusiveness of the TM owners’ right under Article 17 of the TRIPS thanks to its consideration of legitimate interests of TM owners and of third parties. In the context that PTAs are exploited by the EU, following its winning in the WTO dispute above, as a means to either impose or export its ideology of codification of the priority of GIs by leaving them to coexist with prior TMs, the US tries to counteract this trend by introducing a clause on the prior TM-subsequent GI interaction into PTAs concluded by

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<sup>779</sup> European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, DS174 (hereinafter referred as *EC-TMs and GIs*).

<sup>780</sup> *Ibid.*



the US with other parties which manifestly remedies the opaqueness of Articles 16.1 and 17 of the TRIPS through the clarification of the exposition of later GIs to the superiority of earlier TMs. In other words, the US and the EU are competing in the expansion of the geographical influence of their models through the imposition on as many partners as possible. In line with the TM-based model in the US, this rule is considered as TRIPS-plus mainly from the perspective of TM owners in securing more absoluteness of or less exceptions to TM rights by putting subsequent GIs under the coverage of the exclusivity of TM rights, but not from the perspective of GI holders due to fewer chances for subsequent GIs to exist side-by-side with earlier TMs.

However, the CPTPP allows for certain carve-outs of the principle on TM superiority when there is a conflict between prior TMs and later GIs. Particularly, three exceptions to the principle of TM priority can be found where later GIs can co-exist with prior TMs. Firstly, according to Article 18.20, later GIs can exist side-by-side with earlier TMs with consent of owners of the latter. In this case, the co-existence between registered TMs and subsequent identical or similar GIs is contingent upon TM owners' assent. Even for this exception to the TM right, the CPTPP still gives precedence to TMs by making the carve-out dependent on the will of TM owners which may not be the case in reality. The other two exceptions with respect to GI names for wines and spirits and to GIs agreed upon in earlier international agreements pursuant to Article 18.36.4 and 18.36.6 respectively will be discussed in detail later in this Chapter.

Article 18.21 on exceptions to TM rights is an exempting norm as it stipulates carve-outs of TM protection pursuant to which Vietnam retains the right to adopt or maintain certain measures which may conflict with prior TMs when it can justify such measures as limited exceptions to TM rights on condition of the consideration of legitimate interest of TM owners and of third parties. Compared to the TRIPS, Article 18.21 of the CPTPP replicates textually Article 17 of the TRIPS. However, from the interpretative point of view, Article 18.21, in combination with Article 18.20, is narrower in scope than Article 17 of the TRIPS due to its exclusion of subsequent similar or identical GIs from potential carve-outs of TM exclusive rights as analyzed above. Indeed, this provision should be considered as TRIPS-plus from the perspective of TM owners due to its coverage of fewer exceptions to TM owners' rights.

In sum, Vietnam must reject the registration or application of subsequent GIs, in the course of trade, which are identical or similar to prior registered TMs without consent of the TM owners. The clause imposes a stricter obligation of Vietnam in the protection of a more exclusive right of CPTPP TM holders. TM owners enjoy their exclusivity not only against identical and similar signs in general but also against identical and similar subsequent GIs in the course of trade. The subordination of later GIs to prior TMs is relaxed on three cases on the condition of the consent of prior TM owners, or with regards to GI names for wines or spirits or to GI names agreed upon in earlier international agreements.

*c. Term of TM protection - Article 18.26*

Vietnam is bound to grant TM owners the protection for at least ten years for TM initial registration and each subsequent renewal. This rule constitutes a TRIPS-plus provision by providing TM owners the protection for a longer period of three more years.<sup>781</sup> This increase in the TM protection term is under the pressure from the US as the same term can be found in other PTAs concluded by the US.<sup>782</sup>

The upshot is that, compared to the TRIPS, the CPTPP rules on TMs amount to TRIPS-plus since they not only (i) ease substantially the registrability, allowing more objects to enjoy the eligibility to TM protection by covering newly added signs, including visually imperceptible signs, sound-containing signs, scent marks, collective marks and certification marks but also secure (ii) a higher level of TM protection in relation with later GIs and (iii) a longer duration of protection for TM objects. Furthermore, the CPTPP rules on TMs are driven mainly by the US as they are, for the most part, parallel to the counterparts in previous PTAs involving the US.

**7.1.2. GIs under the CPTPP**

Although accounting for just 8.3% of the length<sup>783</sup> of the CPTPP Chapter on IP, compared to 4.5% of TMs,<sup>784</sup> GIs are among the most important topics, second only to the rules on

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<sup>781</sup> Under Article 18 of the TRIPS, the duration of TM protection is at least 7 years for initial registration and each renewal.

<sup>782</sup> For example, the Central America Free Trade Agreement (CAFTA), Article 15.2.9.

<sup>783</sup> 2,118 words out of 25,499 words.

<sup>784</sup> 1,386 out of 25,499 words.

enforcement in terms of the length. Barring the horizontal enforcement rules, GIs are the most crucial IPR in terms of the length of rules.

*a. Definition of GIs*

Article 18.1 of the CPTPP defining GIs is just a definitive norm, not a permissive or exempting, obligatory or prohibitive norm, but crucial to the delimitation of the scope of application of other substantive norms. The agreement spells out the term as indications identifying the geographical origin of a goods in a certain locality which essentially attributes a certain quality, reputation or characteristics to the goods.<sup>785</sup> Due to its parallel to the TRIPS approach, the two norms accumulate.<sup>786</sup> As the CPTPP defines GIs with respect to goods as a whole without differentiating any of its specific types, CPTPP rules on GIs apply to goods at large. In other words, they share the same scope of application as the TRIPS GI rules and broader than the corresponding EVFTA rules which will be analyzed in Section 7.2 below.

*b. Substantive norms on GIs*

b1. GI protection models

In terms of the model of GI protection, Article 18.30, in line with Article 18.19 above, is the recognition that Vietnam, as well as other CPTPP parties, has the discretion in GI protection to set up legal means, including TMs and the *sui generis* system. In simple words, Vietnam has the right to choose a legal means to protect GIs. The more freedom for CPTPP parties may go hand in hand with the less likelihood of GI protection under the GI-based or *sui generis* system. This rule is equivalent to Article 22.2 of the TRIPS and constitutes the recognition of or adaptation to divergences in the state-of-the-art domestic law on GI protection in CPTPP parties. Different CPTPP parties adopt diverse GI protection models; more specifically, the TM-based model is adopted in the US, Canada and Australia.

b2. Level of GI protection

At first glance, Article 18.32 apparently concerns GI opposition and cancellation by setting out bases for GI name registration and/or protection to be opposed or cancelled; its substantive content turns itself to be clauses on, *among others*, the TM-GI interaction. It is a re-affirmation of Article 18.20 above on the relationship between TMs and GIs and a

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<sup>785</sup> Article 18.1 of the CPTPP.

<sup>786</sup> Article 22.1 of the TRIPS.

confirmation of the inferiority of later GIs to prior TMs in accordance with the US model. The CPTPP puts the spotlight on procedural issues of GI opposition and/or cancellation by allocating not only separate but also lengthy provisions on this issue, in sharp contrast to the EVFTA which contains no single separate clause on and says few words about the two situations of GI opposition and cancellation. Indeed, it is unclear whether the EVFTA provides for cases of objection or cancellation of established EU GIs.

Accordingly, Vietnam has to refuse or not to afford GI protection or recognition in certain circumstances where either “the proposed GI is likely to cause confusion with a pre-existing pending or registered TM”<sup>787</sup> or the GI is a customary term, i.e. a common name, in Vietnam.<sup>788</sup> In other words, Vietnam is not compelled to protect terms as GIs should they are generic terms in the territory of Vietnam. These norms confirm the “first in time, first in right” principle or the superiority of prior TMs over later confusing GIs and are in line with the approach adopted by the US. Article 18.32 should be read in light of Articles 18.33 and 18.34. Article 18.33 gives guidance to determine whether a term is a customary term. Particularly, consumer understanding is taken as a benchmark against which a given term is assessed to be the term customary in the common language or not and Vietnam’s authorities retain the discretion to use consumer understanding to judge the qualification of a term as being customary in common language. In other words, the Vietnamese authority has freedom in their judgement of customary term. Further qualifications are provided to shed light on the contributing factors in the construction of consumer understanding, although the list of factors is non-exhaustive, but just illustrative. In the meantime, Article 18.34 prohibits the protection of individual components of multi-component protected GIs where the individual components are customary terms in the common language. As a result, Vietnam is banned from protecting individual components of multi-component protected GIs where the individual components are customary terms in the common language. Both provisions facilitate the fulfilment of the obligation under Article 18.32.1(c) of rejection of the registration or protection as a GI of a customary term. Articles 18.32.1(c), 18.33 and 18.34 unambiguously permit the enlargement

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<sup>787</sup> Article 18.32.1(a) and (b) of the CPTPP and Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1036.

<sup>788</sup> Article 18.32.1(c) of the CPTPP and Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1036.

of bases of GI registration/protection opposition/cancellation on a basis of common names<sup>789</sup> to guarantee that “a water tight system of opposition to a GI exists in the TPP parties’ legislations.”<sup>790</sup> Hence, Vietnam is bound to allow interested persons from CPTPP parties to object to Vietnam’s recognition or protection of GIs in cases above. Vietnam also undertakes to “allow the possibility of (GI) cancellation if the GI no longer meets the required conditions for registration”.<sup>791</sup>

If setting up a *sui generis* system for the GI protection, Vietnam is compelled to allow for the competence of its judicial authorities to deny GI protection or recognition in the same circumstances as in GI opposition prescribed in Article 18.32.1.<sup>792</sup> In combination with Article 18.36.4, Article 18.32 does not apply to GI names for wines and spirits. Hence, under the CPTPP, GI names for wines and spirits enjoy special and differential treatment compared to those for other goods and services in that they are not subject to grounds for GI opposition and cancellation stipulated in Article 18.32.

It is obligatory for Vietnam to provide for the procedures for the objection and cancellation of and the rejection of the recognition or protection of GI translation or transliteration in accordance with Article 18.32.1 and 18.32.2.<sup>793</sup> In other words, the procedures for the objection to and cancellation of and rejection of GI recognition or protection work not only for GIs but also for their translation and transliteration.

Article 18.36 is of crucial importance to the reading of Articles 18.31 and 18.32 above and, to some text, can be considered as a conflict clause governing the relation between CPTPP rules and rules in other international agreements, for instance the EVFTA rules, with respect to GIs. In principle, regarding GIs protected or recognized under international agreements, for example, under the EVFTA, Vietnam is bound to apply procedures for the GI protection or recognition as well as opposition and cancellation pursuant to the CPTPP.<sup>794</sup> However, Article 18.36.4 allows for certain carve-outs of the obligation under Articles 18.31 and 18.32 as

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<sup>789</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 488.

<sup>790</sup> *Ibid.*

<sup>791</sup> Article 18.32.3 of the CPTPP and Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1036.

<sup>792</sup> Article 18.32.4 of the CPTPP.

<sup>793</sup> Article 18.32.5 of the CPTPP.

<sup>794</sup> Article 18.36.1 of the CPTPP.

mentioned above. Wine and spirit GIs protected or recognized under international agreements are not subject to the procedures for protection, registration, opposition or cancellation under Articles 18.31 and 18.32 of the CPTPP. Therefore, Vietnam is not bound to the obligation regarding the procedures for the protection, registration, opposition or cancellation under Articles 18.31 and 18.32 towards EU GI names for wines and spirits listed in Part A of Annex 12-A of the EVFTA. The exceptions of GIs for wines and spirits to the obligation with regards to GI opposition and cancellation are mainly for the interest of the US and Canada – the two countries with separate agreements with the EU on GI names for wines and spirits. Economically, there are domestic interests of constituencies in the US to support the *sui generis* system for wine and spirit name protection.<sup>795</sup> As a result, the US domestic law sets GI names for wines and spirits as exceptions to its TM-based system. In other words, notwithstanding the US hostile stance towards GIs due to their anti-competitive nature,<sup>796</sup> there are certain domestic interests, e.g. of wine and spirit industries, in the US associated with GI protected<sup>797</sup> and the insertion of the above exemptions is for the sake of US domestic wine and spirit industries holding GIs. With the existence of the “double-standard system” in the US in which “TM law is the only means for protecting GIs other than wines and spirits”,<sup>798</sup> the US wants to export the same system through the TPP. In addition, in 2006, the US concluded an agreement with the EU with regards to wines which designs, *among others*, “specific regulations for appellation of origin for wines”.<sup>799</sup> Similarly, Canada had an agreement with the EU on wines and spirits in 2003.<sup>800</sup> In a nutshell, the exemption of GI names for wines and spirits under international agreements from the opposition and cancellation procedures set out in Article 18.32 of the CPTPP assists both the US and Canada to comply concurrently with their promises with the EU.

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<sup>795</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 486.

<sup>796</sup> *Ibid.*, pp. 475-476.

<sup>797</sup> *Ibid.*, pp. 478-479.

<sup>798</sup> *Ibid.*, p. 486.

<sup>799</sup> *Ibid.* Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 436.

<sup>800</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 436.

The obligation under Article 18.36.1 is further carved out by Article 18.36.6 according to which “agreed GI lists in earlier international agreements are not subject to”<sup>801</sup> procedures of neither GI protection or recognition nor opposition or cancellation. Such exception is ascribed to the consideration of the interest and situations of CPTPP parties who may be exposed to mutually exclusive obligations under the CPTPP and their earlier international agreements. In particular, certain CPTPP parties concluded, prior to the CPTPP, international agreements in which they must adhere to different GI protection models. For example, Canada, in the CETA, has agreed to provide the strong level of protection for some 140 EU GIs and therefore might not comply with its CPTPP obligation with respect to GIs simultaneously. Three temporal points are crucial to the determination of earlier international agreements under Article 18.36.6 of the CPTPP which are points of conclusion, ratification and entry into force. As, the CPTPP was concluded and ratified by and has taken effect against Vietnam in advance of the EVFTA,<sup>802</sup> it is unlikely for Vietnam to benefit from this carve-out as the EVFTA is not an earlier international treaty according to Article 18.36.6 of the CPTPP. To put it in another way, the EVFTA is not an earlier international treaty in relation with the CPTPP and such carve-out applies to neither the EVFTA nor GIs protected within its ambit, except for the two other carve-outs above-discussed. In addition, GI protection must not start prior to their filing date.<sup>803</sup>

In conclusion, while adopting the principle of the priority of prior TMs over subsequent GIs, the CPTPP does not rule out altogether their co-existence. The three exceptions to the principle on the TM superiority include (1) cases with prior consent of earlier TM owners under Article 18.20, (2) GIs for wines and spirits under Article 18.36.4 and (3) GIs in earlier international agreements under Article 18.36.6.

## **7.2. Interpretation of rules on GIs and TMs in the EVFTA**

Chapter 12 of the EVFTA contains IP rules; TMs and GIs are governed in Articles 12.17-12.22 and Articles 12.23-12.33 respectively.

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<sup>801</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1036.

<sup>802</sup> While the CPTPP was concluded, ratified by and entered into force against Vietnam on 9/3/2018, 12/11/2018 and 14/01/2019 respectively, the EVFTA has not been signed or concluded yet although its final text was agreed upon in July 2018. See [http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#\\_pending](http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_pending) visited on 06/11/2018.

<sup>803</sup> Article 18.35 of the CPTPP.

### **7.2.1. TMs under the EVFTA**

EVFTA rules on TMs can be grouped in three with respect of (i) the definition of TMs,<sup>804</sup> (ii) registration of TMs and related issues (e.g. revocation of TM registration),<sup>805</sup> and the level of protection of TMs.<sup>806</sup>

With regards to the TM definition, the EVFTA is in accumulation with the TRIPS, Article 12.2.2(b). In terms of the level of TM protection, according to Article 12.18(b), Vietnam is bound to protect the exclusive right of TM owners to prevent all third parties from using, in the course of trade, identical or similar signs in relation to goods or services that are identical or similar to those goods or services for which the proprietor's TM is registered provided that a likelihood of confusion is triggered.<sup>807</sup> The rule is similar to the first sentence of Article 16.1 of the TRIPS. However, no presumption on a likelihood of confusion is taken for granted as in the second sentence of Article 16.1 of the TRIPS. Different from the CPTPP, the EVFTA does not mention subsequent GIs as potential cases of identical or similar signs; therefore, subsequent GIs identical with or similar to prior registered TMs are not subject to the exclusive right of TM owners as in the analysis of Article 12.30 below. In other words, subsequent identical or similar GIs are out of the scope of the exclusiveness of TM rights. As the EU prefers GIs to TMs, the agreement does not extend the exclusiveness of TM rights to subsequent GIs as in the CPTPP, thereby not granting the priority of prior TMs over later GIs in all cases.

Furthermore, under Article 12.18(a), Vietnam is required to protect the right of registered-TM owners to prevent third parties from using, in the course of trade, TM-identical signs for goods or services which are identical to those goods or services for which the TM is registered.<sup>808</sup> Different from Article 12.18(b), this paragraph is narrower in the scope of application and effective against signs identical with (not similar to) registered TMs. TM owners enjoy a higher right in their prevention of usage of TM-identical signs without the need of proof of confusion likelihood. Article 12.18 on the level of TM protection must be read in combination with Article 12.21 which sets out certain exceptions thereto.

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<sup>804</sup> Article 12.2.2(b) of the EVFTA.

<sup>805</sup> Articles 12.17.3, 12.19, 12.20, 12.22 of the EVFTA.

<sup>806</sup> Articles 12.17.1, 12.18, 12.21 of the EVFTA.

<sup>807</sup> Article 12.18(b) of the EVFTA.

<sup>808</sup> Article 12.18(a) of the EVFTA.



Article 12.21 of the EVFTA is content with Article 17 of the TRIPS and the interpretation of the latter in the *EC — TMs and GIs* case. More specifically, footnote 3 to Article 12.21 clarifies that the use of GIs is justified as a limited exception to TM rights. Such GI carve-outs are contingent on conditions of (1) fair use and (2) "(accordance with) honest practices in industrial or commercial matters."<sup>809</sup> This rule, in combination with Article 12.30 (see below), confirms the preference, in the EVFTA, for GIs over TMs.

Regarding the term of TM protection, the EVFTA has no article on this issue; therefore, TMs held by owners from EVFTA parties are protected for the period of at least seven years for initial registration and each subsequent renewal as stipulated in Article 18 of the TRIPS. Consequentially, Vietnam is required to protect TMs held by EU owners for at least seven years for each time of initial registration or renewal.

### **7.2.2. GIs under the EVFTA**

The sub-section on GIs accounts for some 20% of the length of the IPR Chapter, secondly only to the Section on IPR enforcement (34.6%), compared to the ratio of 8.95% of the TM sub-sector. The length of the subsection on GIs is reflective of its second most significant topic in the EVFTA Chapter on IP. Except for the enforcement issue that is horizontally applicable to all IPRs, GIs are the most significant among IPRs.

Two main features of EVFTA rules on GIs should be noted. First, overall, the EVFTA rules on GIs amount to TRIPS-plus commitments in compelling parties, in particular Vietnam, to grant a higher degree of GI protection than stipulated in the TRIPS. Second, the EU is the rule exporter in GI rules in the EVFTA as most of the relevant provisions therein replicate the corresponding provisions in other EU PTAs, especially the CETA.

#### *a. Definition of GIs*

The EVFTA puts the spotlight on GIs; however, it fails to have a separate article on defining this key term. Notwithstanding that fact,<sup>810</sup> its conceptualization of GIs can be inferred from, *inter alia*, Article 12.24.1(b) on a system for GI registration and protection. Consequentially, parallel to Article 23.1 of the TRIPS, GIs are understood in the EVFTA as indications that

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<sup>809</sup> Article 12.21 of the EVFTA.

<sup>810</sup> The EVFTA is different from the EU-Singapore FTA in this aspect as the latter states its definition of GIs in footnote 14 to the title "Sub-section C: Geographical Indications" therein.

“identify a good as originating in a territory, region or locality of a party, where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin.”<sup>811</sup> Furthermore, Article 12.2.2 of the EVFTA refers to the TRIPS concept of GIs, thereby indirectly importing the equivalence from the TRIPS. Besides, pursuant to Article 12.25, both Vietnam and the EU agree indirectly to incorporate the definition of GIs stipulated in Article 22.1 of the TRIPS. The upshot is that GIs are defined in the EVFTA along the same line as in the TRIPS.

*b. Scope of application*

The application scope of the EVFTA’s relevant rules on GIs is limited to four groups of goods, including wines, spirits, agricultural products and foodstuffs, rather than to goods as a whole as in the TRIPS.<sup>812</sup> To put it differently, in terms of the scope of application, the EVFTA rules on GIs are narrower than those of the TRIPS, amounting to TRIPS-minus provisions. Resultantly, where the four afore-mentioned groups of goods are concerned, their GIs are treated by the EVFTA; GIs for the other remaining goods are still addressed by the TRIPS. The following analysis works for GIs of the EU and Vietnam for the four goods clusters as mentioned.

*c. Substantive regulations: Level of GI protection*

Overall, with 11 articles and two annexes on lists of the EU’s and Vietnam’s protected GIs and product classes, EVFTA rules on GIs mark a conspicuous TRIPS-plus evolution. Substantive provisions of the EVFTA help the EU to materialize its three objectives as to GIs in PTAs in general and in the EVFTA in particular, including (1) “the *sui generis* register-based system”<sup>813</sup>, (2) “strong-form protection for GIs [...] with a particular emphasis on specific registered names (listed GIs)”,<sup>814</sup> and (3) administrative enforcement,<sup>815</sup> of which the strong-form GI protection is the most important.<sup>816</sup> Firstly, regarding the *sui generis* register-based system, PTA co-signatories, including Vietnam, undertake to maintain a GI registration and protection system that consists of certain minimum components. The required system of

<sup>811</sup> Article 12.24.1(b) of the EVFTA.

<sup>812</sup> Article 12.23 of the EVFTA.

<sup>813</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1030.

<sup>814</sup> *Ibid.*

<sup>815</sup> *Ibid.*

<sup>816</sup> *Ibid.*, p. 1031.

registration seems to resemble the *sui generis* register-based systems pursued by the EU domestically. Secondly, as to the strong level of GI protection, neither all EU-wide protected GIs nor all EU GIs on the lists annexed to EU PTAs are granted strong-form protection but only a limited group of EU GIs enjoys such right. The inclusion of a limited number of GIs is partly because only a small group of EU GIs is of significance to the EU in export markets. From an economic perspective, most of 1200-plus EU GIs are well-known in the EU only. A majority of EU GI products are consumed domestically within the EU; only a trivial segment of EU GI products is exported. Lastly, administrative enforcement is designed for the transfer of enforcement costs from individual EU right-holders to foreign taxpayers in PTA co-signatories in general and taxpayers in Vietnam in particular.<sup>817</sup> In other words, EU GI owners do not bear cost to enforce their GI rights. “EU GI owners may use administrative processes to resolve disputes rather than requiring judicial authorities to enforce GI names”,<sup>818</sup> thereby not incurring “the expense or effort of enforcing their registered names”.<sup>819</sup> Accordingly, the EU’s PTA co-signatories, like Vietnam, undertake to initiate appropriate administrative actions to enforce the protection of EU GIs, especially for those listed in the relevant annexes to EU PTAs.<sup>820</sup> Not only in the EVFTA, the EU pursued the same targets also in other preceding PTAs concluded by the EU in the twenty-first century under its new Global EU Trade Policy, including in the EU-Korea FTA and the CETA.

Articles 12.25, 12.27, 12.28 and 12.30 of the EVFTA are of key importance to the discussion about the level of GI protection in the EVFTA. Vietnam undertakes to protect EU GIs in accordance with the level of protection agreed upon.<sup>821</sup> As the level of GI protection stipulated in Article 12.25 of the EVFTA is clarified in Articles 12.27 and 12.28, the reading of Article 12.25 must be in combination with that of Articles 12.27 and 12.28. According to these two legal bases, there are two levels of GI protection in the EVFTA: the strong level of GI protection and the other, so-called the low or reduced or limited or standard level of GI protection. The strong level of GI protection prohibits the use of qualifying expressions

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<sup>817</sup> Ibid.

<sup>818</sup> Ibid.

<sup>819</sup> Ibid.

<sup>820</sup> Article 12.31.2 of the EVFTA.

<sup>821</sup> Article 12.25 of the EVFTA.

attached to registered GIs.<sup>822</sup> Particularly, Vietnam is bound to protect the 164 EU GIs listed in Part A of Annex 12-A of the EVFTA according to the strong level of GI protection set out in Article 12.27.1 and 12.27.2 by banning the use of these GI names even with qualifiers. On the other hand, the low level of GI protection set out in Article 12.28 is applicable to just 5 EU GIs. To put it differently, Vietnam undertakes to protect the 5 EU GIs in accordance with the low level of GI protection set out in Article 12.28.1-12.28.3.

The strong level of GI protection is comprised of three cumulative components. Firstly, the use of GI names even when the true destination of origin of products is clarified is prohibited. Hence, the registration of TM name of “burgurdy wine, product of Australia”, for example, must be rejected. Secondly, the use of the translation of GI names is not allowed. The registration of TM name of, for instance, “Parma Ham” which is the translation of the EU GI name of “Prosciutto di Parma” must be turned down. Lastly, the proscription against the use of GIs with qualifying expressions, including “-kind”, “-type”, “-style”, “-imitation”,<sup>823</sup> is also confirmed. In other words, no use of such qualifiers<sup>824</sup> is allowed in connection with GIs under the strong protection level in the EVFTA. “[...] qualifiers (like, type, style) are not allowed on labels. Thus, even if not misled, [...] a product may not be described as ‘burgurdy-style wine, product of Australia’”.<sup>825</sup> “[...] competitors from outside of the designated region may not use the name, even with clear qualifiers”.<sup>826</sup> As a result, GI protection is strengthened to prevent cases of GI uses where “the true origin of the product is indicated or the GI is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like”.<sup>827</sup> These obligatory norms set out an obligation of Vietnam to provide strong protection to certain EU GIs. Accordingly, Vietnam undertakes to provide strong protection, including preventing the use of certain EU GIs even with qualifying expressions by non-GI owners, to established EU GIs at the time the EVFTA takes effects. This regulation gives rise to a more stringent obligation of Vietnam towards EU GIs compared with the TRIPS in

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<sup>822</sup> Article 12.27 of the EVFTA and Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1037.

<sup>823</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1035.

<sup>824</sup> Ibid.

<sup>825</sup> Ibid, p. 1023.

<sup>826</sup> Ibid, p. 1026.

<sup>827</sup> EVFTA, Article 12.27.2.

extending the enhanced level of protection beyond wines and spirits products as in Article 23 of the TRIPS to other products, including foodstuffs and agricultural products.

Vietnam is compelled to provide the strong level of GI protection to 164 EU GIs. Although 169 EU GIs are listed in Part A of Annex 12-A, 5 of them are subject to the low level of protection pursuant to Article 12.28. Therefore, the strong level of protection is conferred to the remaining 164 GIs. The first observation is that, although there are some 6000 GIs protected EU-wide<sup>828</sup> and 1200 GIs have the EU origin, the number of EU GIs falling into the scope of protection in EU PTAs ranges from 100 to 200. In the case of the EVFTA, the 169 EU GIs enumerated in Part A of Annex 12-A to enjoy various levels of protection fall into four groups: wines (87 GI names, equivalent to 51.5%), spirits (23 GI names, equal to 13.6%), foodstuffs (45 GI names or 26.6%) and agricultural products (14 GI names or 8.3%).<sup>829</sup> Such small proportion of EU GIs can be analyzed from different perspectives. From an international perspective, the negotiation outcomes are, of course, the equilibrium between conflicting models on GI protection, including the TM-based model applied in, for example, the US and Canada and the GI-based or *sui generis* model in the EU. From the EU domestic perspective, the state of the art of GIs in the EU contributes to this fact. Most of EU GI-bearing products are “consumed domestically and most of the rest is exported only within the Europe”.<sup>830</sup> For example, the ratio of EU GI-bearing products exported to the outside of the EU is just 2% with respect to foodstuffs.<sup>831</sup>

Another observation concerns the major portion of GI names for wines and spirits. That GI names for wines and spirits dominate established EU GIs in the EVFTA, accounting from 51.4% and 13.6% individually or 65% collectively, is reflective of the status-quo of GI protection in the EU and of the fact that, for the EU, GIs for wines and spirits are of more significant importance, especially in consideration of the EU internal context and domestic lobby efforts and outcomes in the EU. Domestically, in the EU, among the 6000-plus EU-wide protected GIs, those for wines and spirits also surpass those for foodstuffs and

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<sup>828</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 485. Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 416.

<sup>829</sup> Calculated by the author based on Annex 12-A of the EVFTA.

<sup>830</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1034.

<sup>831</sup> *Ibid.*

agricultural products in terms of the number of GIs, more specifically 5,200 GIs, equivalent to some 86.7%, for the former and 821 GIs for the latter.<sup>832</sup> Economically, wines and spirits bearing GI names account for the majority of EU products exported, in terms of the value, to the world in general.<sup>833</sup> Affluent holders of GI names for wines can afford costly lobbying expenditures to protect their interest in third-party markets, including market access and competition whereas smaller holders of other GI names for other products lag behind in the run.

Regarding the scope of application, at present, the strong level of protection is granted to 164 EU GIs.<sup>834</sup> However, it can be extended to other 1030-plus unlisted EU GIs provided that they are added to Annex 12-A in the future pursuant to the conditions and procedures set in Article 12.26 of the EVFTA. As above mentioned, so far, there are some 1200 EU GIs for wines, spirits, foodstuffs and agricultural products are protected EU-wide.<sup>835</sup> But just 169 of them are included in the Annex; therefore, the other 1031 remaining GIs are out of the scope of the EVFTA at present, thereby not enjoying GI protection by Vietnam. Hence, the obligation of Vietnam to protect EU GIs in either the strong or the standard level does not involve the unlisted EU GIs. When the list of EU GIs granted a certain level of protection is enlarged according to Article 12.26, the obligation of Vietnam will be extended correspondingly.

The enumeration of certain EU GIs in the relevant list allows them to be protected directly through EU PTAs in general and through the EVFTA in particular and saves EU GI owners from undergoing long, costly, complicated and sometime fruitless procedures in accordance with domestic law of other PTA co-signatories to get protected in their territories. The inclusion of EU GIs in Annexes constitutes a more convenient and less costly or so-called “fast-track procedure”, permitting EU GI holders to enjoy the protection immediately when the treaties take effect without being subject to domestic procedures which otherwise apply to names registered as GIs. For the 169 EU GIs enumerated in Annex 12-A of the EVFTA, they are protected immediately in the territory of Vietnam as GIs when the EVFTA enters into

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<sup>832</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 416.

<sup>833</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 486.

<sup>834</sup> Article 12.27.1 of the EVFTA.

<sup>835</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1028.

force without the need to go through procedures which are otherwise applicable domestically in Vietnam to names to be registered as GIs, saving EU GI owners from spending time and money to deal with domestic procedures in Vietnam. Vietnam has to unquestioningly give protection to these listed GI names without any chance for objection, revocation or cancellation.

In opposite to Article 12.27 on the strong level of GI protection, Article 12.28 is a provision on the reduced level of GI protection. In other words, it is an exceptional norm in relation with Article 12.27 by putting exceptions to the general principle of the strong GI protection, and thereby relieving Vietnam, to some extent, from the highly demanding obligation under Article 12.27. Compared with the obligation to confer the strong level of protection, a less stringent obligation is stipulated in Article 12.28 since there are certain carve-outs of Vietnam's obligation to protect, at the strong level, EU GIs listed in Part A of Annex 12-A. Two types of carve-outs are allowed. The first is GI-name-specific carve-outs set out in Article 12.28.1-12.28.3 entailing the reduced level of GI protection applicable to some EU GIs, in opposite to Article 12.27 on the strong level of GI protection. The second is non-GI-name-specific carve-outs in Article 12.28.5. Regarding the first type of carve-outs, five EU GIs are excluded from the strong protection under Article 12.27 and subject to the standard protection.<sup>836</sup> Among them, four GI names are for cheese products, that is "Asiago", "Feta", "Fontina" and "Gorgonzola", and one GI name for wine products, that is "Champagne". As these five EU GIs enjoy the limited protection, only 164 out of 169 established EU GIs (out of 1200 EU GIs) enjoy the strong protection in Vietnam at the time the EVFTA takes effect. However, ten years after the entry into force of the EVFTA, 165 EU GIs, including the GI name of "Champagne", are strongly protected in Vietnam. The low level of protection is construed as limitations on the right of EU GI holders which can be imposed in different ways: (1) existing users of indications are exempted from the strict prohibition and/or (2) new users can use indications with qualifying expressions or qualifiers.<sup>837</sup> However, in the EVFTA, the low GI protection takes the form of the former, not the latter. In other words, only existing users of indications, for example, existing TM holders, can benefit from the reduced protection level granted to the five EU GIs above. New users cannot use the above

<sup>836</sup> Article 12.28.1-12.28.3 of the EVFTA.

<sup>837</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1035.

five indications even with qualifiers, i.e. new registration of TMs consisting of these GIs with qualifiers must be rejected. The latter is used in other PTAs concluded by the EU.<sup>838</sup> Accordingly, regarding the four GI names of “Asiago”, “Feta”, “Fontina” and “Gorgonzola”, existing users/producers/businesses using these four GI names retain the perpetual right to use these names.<sup>839</sup> However, new users/producers/businesses cannot make use of these GI names, even with qualifying expressions/qualifiers. In other words, prohibited are names such as “Feta-style cheese”, “Feta-kind cheese”, “Feta-type cheese”, “Feta-imitation cheese” and the like for GIs of “Asiago”, “Gorgonzola” and “Fontina” utilized by new users.

<b>Examples of Prohibited Use of EU GIs Subject to the Reduced Level of Protection</b>			
Asiago-style cheese	Feta-style cheese	Gorgonzola-style cheese	Fontina-style cheese
Asiago-kind cheese	Feta-kind cheese	Gorgonzola-kind cheese	Fontina-kind cheese
Asiago-type cheese	Feta-type cheese	Gorgonzola-type cheese	Fontina-type cheese
Asiago-imitation cheese	Feta-imitation cheese	Gorgonzola-imitation cheese	Fontina-imitation cheese

Vietnam is allowed to permit any person in Vietnam to use certain EU GIs when the three cumulative conditions are met, including (1) certain GI-name-specific applicability, (2) actual commercial use of GIs, i.e. only existing users of the relevant GIs are excluded and (3) good faith in the application, registration for or acquisition of GI names. *Firstly*, as explained above, this type of exceptions is applicable to only 5 EU GIs, not to any or every established EU GIs enumerated in Part A of Annex 12-A of the EVFTA. Therefore, for the other 164 EU established GIs, Vietnam is still bound to the level of protection committed in Article 12.27. Among the five EU GIs, four relate to the “cheese” class, that is “Asiago”, “Fontina”, “Gorgonzola”, “Feta” and the remaining one EU GI relates to the “wine” class. *Secondly*, as to the determination of existing users to be eligible to the exception, regarding the four GI names for cheese, the existing use of GIs must commence before the cut-off date of 01/01/2017. In terms of the GI name of “Champagne”, no specific date is stated as the cut-off date to determine existing users. It is inferred from the lack of a clear time point that existing users of the “Champagne” GI name are determined at the moment of entry into force of the

<sup>838</sup> For example, Article 20.21.1 of the CETA. Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1033.

<sup>839</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1038.



EVFTA. In other words, those utilizing this GI name before the EVFTA takes effects are considered as “existing users”. It should be noted that no minimum period of GI usage, for example 5 or 10 years,<sup>840</sup> prior to the cut-off date is required for the establishment of existing users as well as for the eligibility to such exception under the EVFTA. *Lastly*, the requirement of good faith is not clarified in the agreement. When all of the three conditions are met, the existing users in Vietnam of the four EU GIs relating to cheeses are exempted for an indefinite period of time. On the contrary, the existing users of the GI name of “Champagne” can take advantage of the exception for ten years after the EVFTA takes effect. Ten years after the EVFTA enters into force, such exception under Article 12.28.3 regarding the GI name of “Champagne” lapses. In simple words, when the ten-year transitional period after the EVFTA enters into force expires, Vietnam is bound to protect the EU GI name of “Champagne” at the strong protection level in accordance with Article 12.27 of the EVFTA, not with the exception under Article 12.28.3. Therefore, among the GI-name-specific exceptions, there are two sub-sets. The first sub-set allows for the permanent use of the GI names while the other permits just temporary use of the GI name by existing users. The first sub-set, according to Article 12.28.1-12.28.2, applies to four specific EU GIs and allows (commercial) use of GI indications which occurs prior to 01/01/2017. Hence, these four EU established GIs can be used by any person in Vietnam who made actual commercial use in good faith of such GIs before 01/01/2017.<sup>841</sup> The exception applies to indications themselves, i.e. not extending its scope of application to the translation, transliteration or transcription of GIs (as in Article 12.28.3). The indefinite period for using those four GIs in the future amounts to a permanent limitation on the right of holders of the four GI names. The four cheese names of “Asiago”, “Fontina”, “Gorgonzola” and “Feta” might “continue to be used indefinitely by those using these names”<sup>842</sup> prior to 01/01/2017 and Vietnam keeps the perpetual right to use these four GI names for cheese producers who are justified as existing users. Conversely, the other sub-set under Article 12.28.3 involving just one EU GI of “Champagne” governs the use of not only the GI indication itself, but also its translation,

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<sup>840</sup> Different from the CETA which requires a minimum 5-10 year span of EU GI use for the eligibility to exception. See Thilo Rensmann, *Mega-Regional Trade Agreements*, Springer International Publishing AG, 2017, p. 204. See CETA, Article 20.21.3 and 20.21.4.

<sup>841</sup> Article 12.28.1-12.28.2 of the EVFTA.

<sup>842</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, *Journal of World Trade* 51.6 (2017): 1021-1042, p. 1032.

transliteration or transcription. The temporariness of the limitation on the right of holders of the GI name “Champagne” means that, after 10 year, such exception will lapse; the protection conferred to the GI will turn from the low level to the strong level. Vietnam can confer to wine producers in its territory who are in use of the GI name of “Champagne” the conditional and temporary right to use the name as well as its translation, transliteration or transcription for a 10-year transitional period. The two sub-sets share in common the transferability of the right to use the GI names to new owners.<sup>843</sup>

The second type of non-GI-name-specific carve-outs set out in Article 12.28.5 is another exception to the strong level of GI protection under Article 12.27 according to which “personal names can continue to be used”.<sup>844</sup>

Article 12.30 governs the TM-GI interaction or, more specifically, constitutes a clause on TM-GI co-existence. In terms of its scope of application, the provision does not explicitly govern the relation between prior GIs and later TMs, but it is inferred that “new TM applications will not be approved if they use the same name as a registered GI”.<sup>845</sup> In other words, later TMs identical or similar to prior GIs will be rejected according to the principle of the strong level of GI protection favouring GIs in their interaction with TMs as analyzed in Articles 12.25 and 12.27 above. Just governing the relation between earlier TMs and subsequent GIs, Article 12.30 allows for the co-existence between the former and the latter, i.e. owners of prior TMs cannot prevent the use of later GI names which may cause the likelihood of confusion. This rule is in line with footnote 3 to Article 12.21 on carve-outs to rights conferred to TM owners. From the perspective of TM protection, this rule sets out an obligation of Vietnam to “protect existing TMs, including TMs that have been applied for before any newly agreed GI regulation come into force”.<sup>846</sup> However, from the perspective of GI protection, this rule provides for another exception to the level of protection conferred to established EU GIs in Article 12.27 by putting further limitations on rights of holders of established EU GIs according to which EU GI holders have to accept other prior identical or similar TMs to co-exist with their GIs.

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<sup>843</sup> Ibid, p. 1033.

<sup>844</sup> Ibid, p. 1034.

<sup>845</sup> Ibid, p. 1033.

<sup>846</sup> Ibid.

In terms of the scope of application, the co-existence relation is applicable not only to the established GIs listed in Annex 12-A but also to additional GIs that can be supplemented in the future according to Article 12.26, i.e. even additional new GIs can co-exist with existing TMs.<sup>847</sup> In other words, the co-existence relation is not constrained to the fixed list of established GIs inscribed in Part A of Annex 12-A but also expands to other later newly-added GIs. However, the co-existence with earlier TMs of later GIs is contingent on one requirement to be met by the former rather than by the latter, that is the good faith in the application or registration or acquisition of the prior TMs. This regulation is driven by the EU as the same provision can be found in other EU PTAs,<sup>848</sup> marking the triumph of the EU to ensure that its later established EU GIs can co-exist with other prior identical or similar TMs owned by producers from other states. Being obligated to protect, at the strong level, a number (164) of EU GIs listed in the Part A of Annex 12-A, Vietnam has to prohibit like products imported from third parties which are (i) like EU products and (ii) bear the same EU protected GIs, pursuant to EVFTA. Furthermore, Vietnam has undertaken to recognize that GIs of the EU registered after TMs of other countries can co-exist with the latter. Without such protection, EU products could be refrained from access to the market of Vietnam due to the protection given to already/prior-registered TMs of other countries.

In conclusion, EVFTA rules on GIs constitute TRIPS-plus in many aspects. In the first place, the agreement sets up a *sui generis* register-based system for GIs of both parties which is absent from the TRIPS. In the second place, the EVFTA expands the enhanced protection under Article 23 of the TRIPS beyond wines and spirits to foodstuffs and agricultural products. Particularly, the higher levels of protection are conferred to the 169 established EU GIs enumerated in the relevant Annex. Additionally, later EU GIs can co-exist with prior TMs. Lastly, the treaty establishes the administrative enforcement to better protect rights of GI holders.

### **7.3. Comparison and potential conflicts between IP rules in the CPTPP and the EVTA**

In terms of the significance of GIs in the Chapters on IP, both the CPTPP and the EVFTA converge in their strong emphasis on GIs which can be observed in the volume of words in the text of the two agreements allocated to this IPR, turning them to be the most important

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<sup>847</sup> Ibid.

<sup>848</sup> For example, the CETA or Article 10.21.3 of the EU-Singapore FTA.

among various IPRs in terms of the length of words. In both agreements, GIs account for a space which prolongs second only to the section of IP enforcement and ranks first among various IPRs in terms of length. Besides, the two treaties accumulate in their definitions of TMs and GIs and both the US and the EU use their bargaining power to export their domestic law on GIs abroad to their PTA co-signatories.

Notwithstanding the above similarities, several differences can be observed. With 11 articles,<sup>849</sup> CPTPP rules on TMs surpass their counterparts on GIs with 7 articles<sup>850</sup> in terms of the number of provisions. Besides, there is no Annex on GIs in the CPTPP. In sharp contrast to the CPTPP, the EVFTA, apart from two annexes on GIs, contains 11 articles on GIs<sup>851</sup> outweighing its 6 articles on the TMs<sup>852</sup> in terms of the number of provisions. GIs are at the heart of the EVFTA Chapter on IP with two annexes on (i) the EU's protected GIs and Vietnam's protected GIs and (ii) product classes. Additionally, the two trade pacts diverge not only in their adopted models of GI protection but also in the levels of protection granted to TMs and GIs as well as in their regulatory principles on the relationship between prior TMs and later similar or identical GIs. These two aspects of GI protection are intertwined as the former is a means affecting the effective achievement of the latter while the latter is a decisive factor in the selection of the former.

### ***7.3.1. Definition of GIs***

As explained above, given their either inherent or explicit borrowing of the GI notion from the TRIPS, the two agreements are in accumulation due to their adoption of the same definition of GIs.

### ***7.3.2. Scope of application***

While the CPTPP rules on GIs, like the TRIPS, apply to goods in general, the EVFTA does not cover all goods at large, but just four groups of goods, including wines, spirits, foodstuffs and agricultural products. Therefore, all GIs of CPTPP parties will be protected under the CPTPP; conversely, only the four types of GI names for wines, spirits, foodstuffs and agricultural products of the EU and Vietnam are protected under the EVFTA. The other types

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<sup>849</sup> Articles 18.18 – 18.28 of the CPTPP.

<sup>850</sup> Articles 18.30-18.36 of the CPTPP.

<sup>851</sup> Articles 12.23 – 12.33 of the EVFTA.

<sup>852</sup> Articles 12.17 – 12.22 of the EVFTA.

of GIs of the EU and Vietnam, barring the four above-mentioned GIs, are protected under the TRIPS. The elaboration in the next sub-section therefore concerns with any inconsistency with respect to the four above groups of products.

### **7.3.3. GI protection**

#### *a. Models of GI protection*

Under the CPTPP, Vietnam, to protect GIs, is free to choose among different legal means, including the TM-based system, the *sui generis* system or other means. There is no required, or one-size-fit-all, model for GI protection across CPTPP parties given their diverse approaches adopted domestically. This rule accumulates with the TRIPS. However, that the TM-based model is referred to prior to the *sui generis* system implies the preference of the former over the latter. Conversely, under the EVFTA, to protect EU GIs, Vietnam has no option but the *sui generis* system.

The divergence among the rules in the two agreements on the required models of GI protection does not directly give rise to any normative conflict as they apply to different GIs with different origins. However, since the systems/models used to protect GIs will affect the level of protection conferred to thereto, differences between the two treaties in the GI-protection models cause the consequential dissimilarities in the degrees at which GIs are protected and the latter itself can trigger conflict.

#### *b. Level of GI protection*

In terms of GI protection, from Vietnam's perspective, the CPTPP equates to the EVFTA-minus with regards to the obligations of Vietnam towards GIs of other PTA co-signatories. More specifically, Vietnam is required to protect GIs with their origin in other PTA co-signatories under the CPTPP at a lower protection level than under the EVFTA. Whereas the CPTPP applies the "first in time, first in right" principle to the TM-GI relationship, i.e. prior TMs take priority over subsequent GIs, the EVFTA, on the contrary, acquiesces the co-existence of the latter with the former. These two divergent regulations impose mutually exclusive obligations upon Vietnam, giving birth to a real and inherent conflict.

Regarding the principle of protection, the CPTPP adopts the “first in time, first in right” principle<sup>853</sup> or the superiority of pre-existing TMs to later GIs. The CPTPP, in principle, gives a priority to TMs in their relation with later identical or similar GIs by stating that “[...] the owner of a registered TM has the exclusive right to prevent third parties [...] from using [...] identical or similar signs, including subsequent GIs [...]”.<sup>854</sup> In other words, under the CPTPP, post similar or identical GIs, in principle, cannot co-exist with prior TMs. GI regulations in the CPTPP are featured by the TM-based approach which guarantees that “TMs will always trump GIs”.<sup>855</sup> Therefrom, under the CPTPP, Vietnam, on the one hand, undertakes to adhere to the TM-based approach which prioritizes TMs over GIs. The EVFTA, in contrast to the CPTPP, does not acquiesce the same provision on the priority of prior TMs over post GIs but instead adopts the principle on the strong level of protection for established EU GIs.<sup>856</sup> The EVFTA even sets up procedure<sup>857</sup> to add new GIs to the list of the strong level of protection;<sup>858</sup> therefore, the 1000-plus EU GIs currently not in the Annex may be inserted later and be entitled to such protection in the future. The strong protection given to the established EU GIs is further strengthened by the advocacy of the co-existence between prior TMs and subsequent GIs on certain conditions relating to the former. Hence, Vietnam, on the other hand, under the EVFTA, is bound to leave later EU GIs to co-exist with prior TMs held by CPTPP producers in certain circumstances. In a nutshell, a GI is protected at a less stringent level under the CPTPP than under the EVFTA.

To deepen such difference, the CPTPP even prescribes grounds for the objection to and cancellation of and rejection of registration or protection as GIs, especially with regards to GIs likely to cause confusion with prior pending or registered TMs and customary-term GIs.<sup>859</sup> In opposition, the EVFTA does not have any equivalent to such clauses in the CPTPP and even imposes the obligation to protect 169 EU GIs regardless of whether any of them is identical or similar to prior registered TMs or a customary term in Vietnam.<sup>860</sup> In other words,

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<sup>853</sup> Article 18.20 of the CPTPP.

<sup>854</sup> Article 18.20 of the CPTPP.

<sup>855</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 472.

<sup>856</sup> Articles 12.25 and 12.27 of the EVFTA.

<sup>857</sup> Article 12.26 of the EVFTA.

<sup>858</sup> Article 12.25 of the EVFTA.

<sup>859</sup> Article 18.32.1, 2 and 5 of the CPTPP.

<sup>860</sup> Articles 12.27 and 12.30 of the EVFTA.

Vietnam has to immediately and unconditionally protect the 164 established EU GIs and the other 5 GIs at the strong and reduced levels respectively without any chance for objection, revocation or cancellation. Therefore, under the EVFTA, the established EU GIs take priority over even prior identical or similar TMs.

Regarding carve-outs to the principles of TM and GI protection under the CPTPP and the EVFTA respectively, the two agreements diverge sharply. Firstly, under the CPTPP, the co-existence of later GIs with prior TMs is considered as an exception to the principle of the superiority of TMs.<sup>861</sup> Accordingly, not any subsequent GI can enjoy the co-existence with prior registered TMs. Only when later GIs fall into certain circumstances, they are excluded from the scope of superiority of earlier TMs and co-exist therewith. In other words, the co-existence is conditional. Particularly, the exceptions to the principle on the superiority of TMs to GIs under the CPTPP include (1) the co-existence between TMs and GIs which is contingent upon TM proprietors' approval thereon,<sup>862</sup> (2) GI names for wines and spirits<sup>863</sup> and (3) GIs agreed upon in earlier international agreements.<sup>864</sup>

On the other side, the EVFTA also provides for certain exceptions to the principle of GI strong protection especially under Articles 12.21 and 12.30 which directly relate to the TM-GI relationship. Although these two provisions confirm the EVFTA's preference of GIs over TMs, their approaches to the TM-GI interaction seems to be slightly different. On the one hand, under Article 12.21, the co-existence of later GIs with prior TMs is interpreted as an exception to the exclusiveness of TM rights. On the other hand, under Article 12.30, the same issue is read as an exception to the principle of GI strong protection. Article 12.21 of the EVFTA is content with Article 17 of the TRIPS and the interpretation of the latter after the *EC — TMs and GIs* case. More specifically, footnote 3 to Article 12.21 clarifies that the use of GIs is justified as a limited exception to TM rights. Such GI carve-outs are contingent on conditions of (1) fair use and (2) "(accordance with) honest practices in industrial or commercial matters."<sup>865</sup> Conversely, in Article 12.30, with the statement that "[...] measures [...] shall not prejudice eligibility for or the validity of the trademark or the right to use the

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<sup>861</sup> Articles 18.21, 18.32 and 18.36.4 and 18.36.6 of the CPTPP.

<sup>862</sup> Article 18.20 of the CPTPP.

<sup>863</sup> Article 18.36.4 of the CPTPP.

<sup>864</sup> Article 18.36.6 of the CPTPP.

<sup>865</sup> Article 12.21 of the EVFTA.

trademark”, the coexistence of prior TMs with later GIs (not the other way round, i.e. the co-existence of later GIs with prior TMs) is considered as an exception to the strong level of protection of the established EU GIs. The wording of Article 12.30.1 as stated above indicates that EVFTA parties intend to turn the TM-GI coexistence as a carve-out of the superiority of later GIs, not the other way round as in the CPTPP. This is the sharp opposition in approaches of the two agreements which will profoundly influence the obligations of Vietnam as the common party of the two deals. Different from the CPTPP, the EVFTA does not entail consent from owners of prior TMs for the co-existence between TMs and GIs.

Parallel to the CPTPP, the EVFTA stipulates that the co-existence between prior TMs and later identical or similar GIs is not automatic. However, contrary to the CPTPP, such interaction is conditional upon the good faith in the application or the registration for or the acquisition of the former. In other words, not any prior registered TMs can co-exist with later established EU GIs; in order to do that, prior registered TMs must meet certain requirements. This requirement further shows the preference of GIs over TMs in the EU view in that it is imposed on prior TMs, not later GIs. By inference, if the requirement is not satisfied, then the prior TMs cannot co-exist with, but are subordinate to later GIs and must be revoked.

From the interpretative point of view, Article 18.21 of the CPTPP constitutes an EVFTA-plus provision, particularly, compared with Article 12.21 of the EVFTA where the level of protection of rights of TM owners is concerned. As analyzed above, the EVFTA, more specifically Articles 12.21 and 12.30, allows for more cases of carve-outs of the exclusiveness of TM rights, to include subsequent GIs; as a consequent, subsequent GIs can co-exist with prior TMs. On the flip side, the CPTPP, more specifically Articles 18.20 and 18.21, does not allow subsequent GIs to fall within the scope of limited exceptions to TM rights, i.e. subsequent GIs are subordinate to prior TMs. In other words, contrary to the EVFTA, the lapse in time between prior TMs and subsequent GIs, under the CPTPP, is not supportive of the co-existence between the former and the latter, but, conversely, constitutes a solid ground for the superiority of the former to the latter.

The CPTPP does not automatically give the co-existence with prior TMs to later GIs; however, it does provide for certain cases of such interaction, including GI-name-specific exceptions and international-agreement-specific exceptions to the superiority of prior TMs.



EU GI names for wines and spirits enlisted in Part A of Annex 12-A of the EVFTA are not subject to the principle of TM superiority under Article 12.20 of the CPTPP, i.e. EU GI names for wines and spirits enlisted in Part A of Annex 12-A of the EVFTA which are subsequent and identical or similar to prior TMs of CPTPP owners can co-exist with the latter.<sup>866</sup> Regarding international-agreement-specific carve-outs, under Article 18.36.6 of the CPTPP, given the time points of conclusion, ratification and entry into force of the CPTPP and the EVFTA, the US will succeed in the imposition of their ideology on their trade partners, including on Vietnam. Put differently, “the first in time in concluding an agreement with trade partners has the first in right to prevent the other from promoting their views”.<sup>867</sup> Although it would be better for Vietnam if the EVFTA were an earlier international treaty in relation with the CPTPP in any sense according to Article 18.36.6 of the CPTPP, it is not the case.

#### **Timelines for the CPTPP and the EVFTA**

	<b>CPTPP</b>	<b>EVFTA</b>
<b>Conclusion</b>	09/3/2018	7/2018
<b>Ratification</b>	12/11/2018	Not yet
<b>Entry into force</b>	14/01/2019	Not yet

Therefore, for the established EU GI names for wines and spirits which account for the majority (65%) of the 169 established EU GIs listed in the relevant Annex to the EVFTA, they can co-exist with other prior similar or identical TMs owned by CPTPP proprietors. The norms in the CPTPP (more specifically, Article 18.36.4) and in the EVFTA (Article 12.30) accumulate where the established EU GIs for wines and spirits are concerned.

For the other established EU GIs for foodstuffs and agricultural products accounting for the remaining 35% of the established EU GIs, conflict, rather than accumulation, is more likely to be proven since the EVFTA is not an earlier international agreement pursuant to Article 18.36.6 of the CPTPP. The conflict involves two mutually exclusive obligations: on the one hand, the obligation of Vietnam under the CPTPP to prevent later GIs which are similar or identical to prior TMs where the former can trigger a confusion likelihood, and, on the other

<sup>866</sup> Article 18.36.4 of the CPTPP.

<sup>867</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the 'Living Cultural and Gastronomic Heritage'?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 488.

hand, its obligation under the EVFTA to leave later EU GIs to co-exist with earlier identical or similar TMs.

Given that the CPTPP enters into force prior to the EVFTA and providing that certain producers from CPTPP parties, e.g. from Canada, Australia or New Zealand, apply or register or acquire successfully and in good faith for a given TM which is identical or similar to any of the established EU GIs for foodstuffs and agricultural products or which contain certain qualifiers listed in Article 12.27.2 of the EVFTA, such TM constitutes a prior TM in relation with the subsequent EU GI. If acting in compliance with the obligation under Article 18.32 of the CPTPP by rejecting the recognition or protection of the EU's subsequent strongly-protected GIs, Vietnam infringes upon its obligation of the strong EU GI protection, when the EVFTA enters into force, according to Article 12.27 of the EVFTA. Vice versa, if protecting the related EU GIs at the strong level and leaving them to co-exist with TMs held by CPTPP producers pursuant to Article 12.20 of the EVFTA, it contravenes the obligation to reject the protection of GIs in Article 18.32.1, 2 and 5 of the CPTPP. In simple words, it is impossible for Vietnam to comply with both obligations at the same time. The observance of the CPTPP obligation produces the EVFTA infringement and vice versa.

The following analysis is based on the fact that the CPTPP has been conducted and ratified by and taken effect against Vietnam prior to the EVFTA, i.e. the EVFTA is a later international agreement in relation with the CPTPP according to Article 18.36.6 of the latter. Besides, this elaboration concerns the established EU GIs, barring the GI names for wines and spirits. In that context, Vietnam is then exposed simultaneously to two fighting obligations. In the *first* place, with regards to the established EU GIs and TMs owned by CPTPP producers, after the EVFTA enters into force, CPTPP producers can still use in Vietnam their prior-registered TMs for the identification, sales or marketing of their products which are identical or similar to EU GIs but, simultaneously, EU holders can use their GIs for their products in Vietnam's market. This co-existence measure runs contrary to the exclusive right of CPTPP TM owners. On the contrary, should Vietnam guarantee the exclusive rights of the CPTPP registered-TM holders, it breaks its obligation to maintain TM-GI co-existence relations under the EVFTA. Due to the essence of the conflict between mutually exclusive obligations, the respect of one undertaking will trigger the violation of the other and vice versa. No matter which obligation with which Vietnam decides to comply, it might face cross-sector suspensions of concessions

by the party to the other agreement. For example, with regards to the four GI names for cheese products which are conferred the reduced level of protection, under the CETA, Canadian (new) producers are still allowed to use these names with qualifying expressions of -style, -type, -kind and -imitation. Therefore, let's assume that, after 1/1/2017 and prior to the entry into force of the EVFTA, cheese producers from CPTPP parties, such as from Canada, register as TMs in Vietnam the relevant GI names with or without the clarification of the country of origin.

<b>Examples of Canadian TMs Registered in Vietnam prior to the EVFTA taking effects</b>			
Asiago-style cheese (Product of Canada)	Feta-style cheese (Product of Canada)	Gorgonzola-style cheese (Product of Canada)	Fontina-style cheese (Product of Canada)
Asiago-kind cheese (Product of Canada)	Feta-kind cheese (Product of Canada)	Gorgonzola-kind cheese (Product of Canada)	Fontina-kind cheese (Product of Canada)
Asiago-type cheese (Product of Canada)	Feta-type cheese (Product of Canada)	Gorgonzola-type cheese (Product of Canada)	Fontina-type cheese (Product of Canada)
Asiago-imitation cheese (Product of Canada)	Feta-imitation cheese (Product of Canada)	Gorgonzola- imitation cheese (Product of Canada)	Fontina-imitation cheese (Product of Canada)

Vietnam must prohibit the use of the above GI names even with qualifiers since no use of the terms with qualifying expressions by future users, i.e. users of the names after 1/1/2017, is allowed pursuant to Article 12.28.1 and 12.28.2 of the EVFTA. However, such prohibition is incompatible with the obligation of Vietnam towards the pre-registered TMs held by CPTPP owners.

In the *second* place, with regards to the established EU GIs and TMs consisting of generic terms owned by CPTPP producers, Vietnam undertakes to protect the EU GIs, such as “Prosciutto di Parma”, which contain certain generic terms in CPTPP parties. Let's say, producers from CPTPP parties have registered their TMs containing the term “parma” for their ham products, for instance “Parma Ham”, before the entry into force of the EVFTA. When the EVFTA takes effect, Vietnam has to give such EU GIs, more specifically in this case “Prosciutto di Parma”, the strong level of protection by preventing other, including

CPTPP producers, from using their registered TMs of “Parma Ham” for their products as they do not originate in the country of origin stated in the GI according to Article 12.27.1(a)(i). However, in Vietnam, the term at issue is a prior TM in relation with the later EU GI, so Article 12.30 of the EVFTA is applicable to let the CPTPP prior TM to co-exist with the EU later GI, that is, CPTPP producers can still have access to Vietnam’s market for their ham products by making use of their registered TMs for the identification, sales or marketing thereof. This co-existence solution violates the obligation of Vietnam to protect the exclusive right of CPTPP TM owners. To conclude, no matter which measure Vietnam adopts, Vietnam may face a lawsuit and has to pay for its violation of IP obligation under the other agreement.

The same argument works for other EU GI names for foodstuffs and agricultural products unlisted in but later potentially inserted into Part A of Annex 12-A. As the CPTPP takes effect prior to the addition of these GIs to the Annex 12-A list, by analogy, conflict between mutually exclusive obligations can emerge. The different approaches adopted by the two agreements to tackle the relationship between prior registered TMs of CPTPP owners and subsequent identical or similar established or unestablished but latter added EU GIs produce conflictual obligations to Vietnam towards these two IPRs.

#### **7.4. Reasons for CPTPP-EVFTA conflicting norms on GIs and TMs**

Conflicts in IP between the CPTPP and the EVFTA can be ascribed to heterogeneities in regulatory ideologies, standards and models in disciplining IP in general and GIs and TMs in particular in the US and EU legal systems or their so-called “conflicting regulating models for the protection of GIs”.<sup>868</sup> The US and the EU use PTAs to impose their stance on GIs upon other PTA co-signatories<sup>869</sup> to fight for access to export markets for their products which are protected by either TMs or GIs domestically. IP, like other trade issues in PTAs, is subject to the strategy of external trade policy exportation of the EU.<sup>870</sup> More specifically, with respect to GIs, the EU tries to export its *sui generis* system. Conversely, the US tries to export its TM-based system for GI protection. In other words, the division among developed countries

<sup>868</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 150.

<sup>869</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, *Journal of World Trade* 51.3 (2017): 471-493, p. 472.

<sup>870</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 176. Crina Vijju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, *Journal of International Economic Law* 16(2), 2013, 409-437, p. 429.

with regards to their GI-protection history and models causes the potential conflicts between rules on GI and TM protection in different PTAs concluded by third parties with these two groups for and against TRIPS-plus protections for GIs.

Since the US is the demandeur and rule-setter in the IP issue,<sup>871</sup> its ideology in IP, in spite of its withdrawal from the TPP, is still embedded in the CPTPP demonstrated through some slight departures of the CPTPP text from the TPP text. With a highly skeptical approach to GIs, other developed parties to the CPTPP besides the US, including Canada, Australia and New Zealand, disfavor the strengthening of IP rules on GIs.<sup>872</sup> Instead, they acquiesce the means of combination of consumer law and TM law in protecting origin indications.<sup>873</sup> Their aversion comes from the condemnation of the GI-based system/model for “its disguised protectionist purpose by granting exclusive market access to certain products bearing the GIs to the detriment of others without GIs while the former can be produced in other places not the geographical area associated with GIs,”<sup>874</sup> not to mention the fact that, in some of these countries, certain protected GIs are generic terms. In particular, the strong level of GI protection is criticised most for its anti-competitive nature which is detrimental to a competitive market and causes commercial disadvantage to producers from CPTPP parties, especially from Canada, Australia and New Zealand. In the US, the opposition to the GI-based model is strongly favourable to the protection of interests of their domestic constituencies, especially giant businesses. “US companies have heavily invested to build markets for their mass-produced products and consider GIs as an obstacle that is preventing or inhibiting the use of what they perceive as ‘Common Food names’”.<sup>875</sup> In other words, US producers have problems with terms which are generic names in the US but meanwhile protected as GIs in the *sui generis* system in the EU. The terms of “feta” or “parma”, for instance, are generic terms in the US while on the contrary being protected as GIs in the EU and therefore being in use for identification, sales and marketing of a great deal of US

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<sup>871</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1036.

<sup>872</sup> Ibid, p. 1037. Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 138.

<sup>873</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 146.

<sup>874</sup> Ibid.

<sup>875</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, Journal of World Trade 51.3 (2017): 471-493, p. 477.

products.<sup>876</sup> Another argument from the US is the potential violation by the GI-based approach of international human right law, more specifically the principles of freedom of expression and the freedom of commercial expression in the US.<sup>877</sup> Consequentially, the US has developed its own domestic law featuring the superiority of TMs to GIs, the extension of the “first in time, first in right” principle from inter-TM relations to TM-GI interactions<sup>878</sup> and the non-existence of the *sui generis* system.

Likewise, with its higher bargaining power in PTA negotiations and its norm-exporting strategy in IP, the EU has succeeded in making GI rules in its PTAs mirror, for the most part, its own domestic regulatory ideology and legislations. This fact necessitates some discussion about EU domestic legal regimes on GIs in view of discovering rationales behind conflicts in IP. Domestically, the EU policy on GIs constitutes a core component of the EU policy on agriculture proclaimed in the EU Common Agricultural Policy (CAP).<sup>879</sup> The EU domestic policy on GIs pursues two main objectives (1) “to guarantee quality to consumers (reducing consumer confusion)”<sup>880</sup> and (2) “to obtain fair price for farmers”.<sup>881</sup> Internationally, as part of its “Global EU Policy”, the EU policy on IP in PTAs is characterized by two main attributes: (1) the requirement of ratification by other EU FTA signatories of international treaties on IP and (2) huge advance in GI protection.

The EU position is persistent across its various PTAs, including not only those with Canada, Korea, Singapore and Vietnam, but also its PTA with the US as observed in its proposal with respect to GIs during the TTIP negotiations.<sup>882</sup> Particularly, the EU GI policy can be perceived as “just a mercantilist intent of selling its GIs into developing countries’ market”.<sup>883</sup>

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<sup>876</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, Journal of International Economic Law 16(2), 2013, 409-437, p. 410.

<sup>877</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1037.

<sup>878</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, Journal of World Trade 51.3 (2017): 471-493, p. 483.

<sup>879</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, Journal of International Economic Law 16(2), 2013, 409-437, p. 410. Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1027.

<sup>880</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1027.

<sup>881</sup> Ibid.

<sup>882</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, Journal of World Trade 51.3 (2017): 471-493, pp. 484-485, ft. 26.

<sup>883</sup> Ibid, p. 475.

Accordingly, PTAs concluded by the EU share many features in common, ranging from the relative length of the Section on GIs compared to the whole IPR Chapters to the insertion of substantive provisions for the pursue of objectives of the EU in its PTAs. As above-mentioned, the three objectives pursued by the EU concerning GIs include (1) the establishment of the “*sui generis* register-based system”,<sup>884</sup> (2) the strong level of protection applicable to a specific group of EU established GIs<sup>885</sup> and (3) administrative enforcement.<sup>886</sup> Where the strong level of protection is concerned, the EU targets to ensure that some 100-200 GIs which are really important to the EU in international trade are protected accordingly. The number of EU GIs protected in the strong form is some 140, 160, 164 and 201 in the CETA, the EU-Singapore FTA, the EVFTA and the TTIP (pending) respectively.<sup>887</sup> The EU insists on the strong level of GI protection as, in its view, GIs, in order to serve their function as product differentiators, do need a certain level of protection which allows for the exclusive use of the indications to ensure the monopolistic power in the market for GI holders as well as to prevent misuse.<sup>888</sup> With regards to the TM-GI co-existence, Article 12.30.1 of the EVFTA is the result of the exportation of the EU domestic law, more specifically the EU Regulation on GI protection acquiescing the TM-GI co-existence which was challenged by the US to the WTO DSB in 1999.<sup>889</sup> As the WTO Panel in the *EC – TMs and GIs* case confirmed that the TM-GI co-existence fell into the limited exception to exclusive rights conferred to TM owners when the precondition to the exception set out in Article 17 of the TRIPS, which involved the consideration of legitimate interests of TM owners as well as of third parties, was met. Following the ruling by the WTO Panel in favour of the EU domestic law on the co-existence between earlier/prior TMs and later/subsequent GIs, the EU tries to extend this principle overseas through its treaty codification efforts. To put it differently, against this background of the confirmation of the consistency with the TRIPS of the TM-GI co-existence rule in its domestic law, the EU wants to either export to or impose upon its PTA co-signatories the same standard. Article 12.30 of the EVFTA on the co-existence between

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<sup>884</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1030.

<sup>885</sup> Ibid.

<sup>886</sup> Ibid.

<sup>887</sup> See Annex 10-A of the EU-Singapore FTA and Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, Journal of World Trade 51.3 (2017): 471-493, p. 485.

<sup>888</sup> Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, Journal of International Economic Law 16(2), 2013, 409-437, pp. 416-417.

<sup>889</sup> The *EC – TMs and GIs* case.

prior TMs and later GIs come from the EU rules on the same issue and both have their legal foundation in Article 17 of the TRIPS. More specifically, Article 17 of the TRIPS permits WTO Member States to limit the rights of TM owners which is then contingent on the consideration of the interest of TM owners and of third parties. In accordance with Article 17 of the TRIPS, Article 12.30 also puts some constraints on the superiority of rights of owners of earlier TMs in relation with later GIs and makes the co-existence contingent upon a series of conditions in line with the requirement of Article 17 of the TRIPS. These conditions relate to the earlier TMs, more specifically, the good faith in their application, registration and acquisition. The EU approach to the GI protection bases its foundation on certain historical, traditional and cultural reasons while lacking sound economic grounds although some consenting opinions point out the role of GIs in overcoming information asymmetries in differentiating authentic GI products from counterfeit goods, in protecting both consumers and producers and in improving the wealth of farmers and/or rural areas.<sup>890</sup>

In fact, the tension between the US- and EU-led systems is not embryonal but instead long-lasting since the WTO establishment until now as observed at all trade-negotiation levels, including multilateral, bilateral, plurilateral and regional levels. In the past, at the WTO multilateral level, TRIPS regulations on GIs were balanced points at that time between two schools on origin indication protection. On the one hand, for the US and its allies,<sup>891</sup> the TM-based protection system for origin indications won to some extent as the TRIPS does not stipulate any particular required system for the GI protection,<sup>892</sup> i.e. WTO Members have a flexibility to choose means to protect GIs, either through GIs or TMs. On the other hand, the EU and its GI-based system<sup>893</sup> for origin indication protection did win WTO TRIPS negotiation in some measure when GIs were acknowledged in TRIPS as one type of IPRs and protected in accordance with an agreed-upon basic degree. As a consequence of such equilibrium, the implementation of TRIPS rules on GIs has witnessed fragmented regulations

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<sup>890</sup> Hazel VJ. Moir, *Understanding EU Trade Policy on Geographical Indications*, Journal of World Trade 51.6 (2017): 1021-1042, p. 1024.

<sup>891</sup> The TM-based system for GI protection exists in some 50-plus countries. See Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, Journal of International Economic Law 16(2), 2013, 409-437, pp. 417, 437.

<sup>892</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 146.

<sup>893</sup> The *sui generis* system is adopted for GI protection in some 100-plus countries. See Crina Viju, May T. Yeung, and William A. Kerr, *Geographical Indications, Conflicted Preferential Agreements, and Market Access*, Journal of International Economic Law 16(2), 2013, 409-437, pp. 417, 437. Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 146.



on GIs among WTO Members, i.e. GIs are protected in a fragmented manner across WTO Members. Many, such as the US, Canada, Australia and New Zealand, protect GIs through the legal means of TMs whereas the EU protects GIs through the *sui generis* system. As explained above, the collision between the conflicting approaches adopted by the US and the EU in GI protection gave rise to the *EC – TMs and GIs* case in which the US made a claim on the inconsistency with the TRIPS, Article 16.1 on the exclusiveness of rights of TM owners of the EU measure which, *inter alia*, set the co-existence between pre-existing TMs and subsequent GIs. The EU measure was then favoured by the Panel as a carve-out of the exclusiveness of TM owners' rights under Article 17 of the TRIPS thanks to its fulfilment of the precondition to exceptions.

At present, with its failure to attain the TRIPS-plus regulations on GIs at the WTO DDR, the EU drives its efforts through other channels, including PTA negotiations. Two objectives targeted by the EU with respect to GIs in the WTO DDR consist of (1) the setting up of automatic GI protection mechanism<sup>894</sup> and (2) an enhanced level of GI protection that mimic in the largest measure the EU's domestic GI system.<sup>895</sup> These blanket goals are materialized by several means. The first entails the establishment of a multilateral register for automatic GI protection<sup>896</sup> which is a mechanism to allow nationally-protected GIs to be automatically protected multilaterally to save EU GI holders from suffering from lengthy, costly, burdensome and sometimes fruitless (i.e. EU GIs are not protected in third parties) GI registration procedures in their export markets.<sup>897</sup> The second involves the improvement of Article 23 of the TRIPS in the forms of both (i) the expansion of the scope of application of Article 23 of the TRIPS and (ii) the upgrading of the level of protection under Article 23 of the TRIPS. The scope of application of Article 23 of the TRIPS is proposed by the EU to be scaled up to cover not only wines and spirits but also all agricultural products and foodstuffs.<sup>898</sup> Added to that is scaling down the scope of exemptions to protections under Article 23 of the TRIPS.<sup>899</sup> All are supportive of the ultimate outcome of the exclusivity of rights of EU GI holders not only within the territory of the EU but also abroad, more

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<sup>894</sup> Billy A. Melo Araujo, *The EU Deep Trade Agenda: Law and Policy*, Oxford University Press, 2016, p. 146.

<sup>895</sup> *Ibid.*

<sup>896</sup> *Ibid.*, p. 151.

<sup>897</sup> *Ibid.*

<sup>898</sup> *Ibid.*, p. 154.

<sup>899</sup> *Ibid.*, p. 155.

specifically, in the EU's export markets for EU GI-bearing products. As a result, the tension between the US and the EU in the past still persists now and may extend to involve third parties, for instance, Canada, Korea, Singapore and especially Vietnam, in the future given their PTAs with both the US and the EU. While other developed parties can take advantage of the exceptions under Article 18.36.6 of the CPTPP to justify their commitments to the various levels of GI protection in PTAs with the EU and to avoid potential conflicts with their commitments towards the US, Vietnam is not in the same situation.

### **7.5. Conflict-solving: Conflict clauses**

In terms of the TM-GI relationship, as above analyzed, a conflict arises between two mutually exclusive obligations which involve, on the one hand, the prescription under the CPTPP that Vietnam has to grant the superiority of prior CPTPP TMs to later GIs, including later EU GIs, and, on the other hand, the regulation under the EVFTA that Vietnam has to leave later EU GIs to co-exist with other prior TMs. In the context that the CPTPP was concluded and ratified by and took effect against Vietnam in advance of the EVFTA, EU GIs are not exceptional to the principle of TM priority pursuant to Article 18.36.6 of the CPTPP. Therefore, once arising in reality, the conflict seems to be irresolvable as either of the two obligations is not justified as the exception to the other.

### **Conclusion**

To achieve the ultimate purpose of the discovery of conflicting norms in IP in the CPTPP and the EVFTA, this Chapter first provides the interpretation of the relevant rules on TMs and GIs in the two agreements which then turns into the background for the comparative analysis of the two sets of provisions. GIs and TMs and their interaction, instead of other IPRs, are at the heart of the discussion in this Chapter thanks to the largest extent of the divide between the US and the EU over the way in which they regulate domestically GIs and TMs and the relations *inter se* and, resultantly, their approaches to the same issue in the PTA context. The rationale behind the found conflict is also explored. Some remarks on the conflict solvability conclude this Chapter.

Several observations are drawn. *Firstly*, the dissimilarity in the GI-protection models adopted in the CPTPP and the EVFTA brings about diverse levels of protection for GIs. GIs, while being protected through either the TM-based system or *sui generis* system in the CPTPP, are

subject exclusively to the *sui generis* system in the EVFTA. Therefore, while the EVFTA improves GI protection compared to the TRIPS through (1) the establishment of a *sui generis* registration system, (2) the strong level of protection for certain established GIs and (3) administrative enforcement, it is not the case for the CPTPP. The CPTPP, on the contrary, provides for less protection for GIs than the EVFTA, puts more emphasis on the grounds for opposition and cancellation of GIs, and especially extends the “first in time, first in right” principle to the TM-GI interaction. *Secondly*, the different levels of GI protection, particularly where the TM-GI interaction is concerned, trigger a conflict of real and inherent nature between two mutually exclusive obligations from the perspective of Vietnam as the common party. Vietnam bears, on the one hand, the obligation under the CPTPP to reject the recognition or protection of subsequent GIs for foodstuffs and agricultural products that are identical or similar to pre-existing TMs owned by CPTPP proprietors, and undertakes, on the other hand, to leave later EU GIs to co-exist with other prior TMs pursuant to the EVFTA. The compliance with both obligations at the same time is impossible for Vietnam. The observance with one will lead to the infringement of the other and vice versa. This inconsistency is irresolvable due to the fact that the EVFTA is a subsequent international agreement in relation with the CPTPP which in turn eradicates the potential for the established EU GIs listed in the relevant Annex of the EVFTA to be carved-out from the conflicting obligation of Vietnam pursuant to Article 18.36.6 of the CPTPP.

The answer to the question regarding the root of conflicting norms in the CPTPP and the EVFTA is offered in their negotiation context. The divide among developed countries over their GI-protection histories and models for and against TRIPS-plus GI protection produces the potential conflict between GI and TM protection in different PTAs concluded by third parties with these two groups, and particularly in the CPTPP and the EVFTA. Both the EU and the US are claimed to use PTAs to export their domestic trade policies in general and their internal legislations on IP in particular.<sup>900</sup> Because of the dominant roles supported by fierce bargaining chips of the US in the TPP (now the CPTPP) and of the EU in the EVFTA, the resultant disciplines on IP in general and on GIs and TMs in particular are inspired, to a large extent, by the US and EU domestic law respectively. Added to that are the huge differences in traditions in the US and the EU in protecting IPRs, especially TMs and GIs.

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<sup>900</sup> Ibid, p. 137.

Notwithstanding the US withdrawal from the TPP, its ideology is deeply transposed to the CPTPP which acquiesces the TM-based approach. In contrast, the EU insists on a TRIPS-plus level of protection for GIs both domestically and internationally so that, geographically, EU GIs are protected in more and more third countries abroad, especially in export markets for its GI-bearing products and that, substantively, the exclusivity of GIs, including their priority over TMs, is enhanced in third-party territories. Failing to achieve its objective for TRIPS reforms in the multilateral forum, particularly the development of TRIPS-plus rules on GIs, the EU tries to take advantage of the PTA negotiation venue. The EU's GI-based approach clashes with the US's TM-based approach, making their trade partners who are exposed concurrently to these two approaches in their PTAs confront with regulatory tensions, which in turns bars them from adhering to both systems simultaneously.

## CONCLUSION OF PART 2

One objective of this Part is to test the hypothesis on the existence of inter-PTA normative conflicts in Part 1. If the answer to the question of whether inter-PTA conflicts do exist in reality is affirmative, then an insight into the nature and frequency of such conflicts is provided. In other words, efforts are made to determine whether existent conflicts relate to a right-obligation collisions, parallel obligations or mutually exclusive obligations and whether they are common or rare. This Part also aims at analyzing concrete pairs of norms in conflicts as well as rationales behind their clashing interactions. Finally, for real conflicts, their solvability and potential solutions are also addressed. The methods of legal interpretation, comparative analysis and judicial reviews are utilized throughout this Part. Added to that is the method of critical analysis.

The CPTPP and the EVFTA - the two PTAs to which Vietnam is a signatory, are used as a case study to investigate potentials for conflicting norms. Given the similarities between Vietnam and other WTO Members such as Canada, Korea, Japan and Singapore, with regards to multiple-PTA involvement, including the participation in new-generation PTAs and the vulnerability to the strategies of norm exportation adopted the EU and the United States, that Vietnam and its PTAs are selected to be at the heart of this research can be ascribed to its excessively disadvantageous negotiation position and the absence of writings duly addressing the issue. Besides, in consideration of the crucial roles of subsidies, services and IP in such a transitional economy as Vietnam in both economic and legal terms as well as for the interest of time and space, efforts are directed exclusively towards addressing the issue of inter-PTA conflicts among rules in these three areas.

Regarding the nature and frequency of conflicts, the findings are quite mixed. Particularly, at one extreme, no conflictual relation is confirmed among trade-in-services norms in the two agreements (Chapter 6). In the midpoint, as to subsidies regulations, conflicts between rights and obligations are found (Chapter 5). At the other extreme, emerging is a conflict between two mutually exclusive obligations stipulated by norms on the TM-GI relationship in the two treaties (Chapter 7). *Firstly*, with respect to rules on trade in services, no conflict can be found, notwithstanding a wide range of divergences in the commitments taken by Vietnam in the two agreements, because Vietnam can comply with them by discriminating for or against

either CPTPP or EU services and service suppliers. In such way, Vietnam does not encounter any conflict in any sense but just contravenes the MFN obligation (if applicable) under either of the two treaties. *Secondly*, regarding rules on subsidies, Vietnam confronts with situations where a certain subsidy which is permitted under the CPTPP is prohibited under the EVFTA or vice versa. An example of the former comprises of subsidies to services which are above 300,000 SDR and not for and/or disproportionate to achieve any public policy objectives. Transparent and proportionate subsidies to non-agricultural goods to achieve public policy objectives which simultaneously constitute export subsidies or import substitution subsidies are illustrative of the latter. *Lastly*, regarding the established EU GI names for foodstuffs and agricultural products listed in the relevant Annex to the EVFTA, it is potentially impossible for Vietnam to adhere to the relevant rules on the TM-GI interaction in the two treaties at the same time. In particular, leaving later identical or similar established EU GIs to co-exist with pre-existing TMs of CPTPP proprietors is in violation of the obligation of Vietnam to protect the exclusiveness of TM rights under the CPTPP. On the flip side, preventing EU holders to use their later identical or similar established GIs to protect the exclusiveness of the pre-existing TMs owned by CPTPP producers is inconsistent with the commitment undertaken by Vietnam to the security of TM-GI co-existence under the EVFTA.

For the other non-conflicting norms, different types of accumulation have been found ranging from complementary accumulation and accumulation by confirmation of existing rights or obligations to accumulation in the form of exceptions.

Part 2 provides, in addition to its search for normative conflicts between the two agreements, explanations to the established inconsistencies in economic, legal, political and cultural terms. More specifically, where the inconsistency among provisions on GIs in the two treaties is concerned, it is claimed that the “deep ‘cultural’ and legal divide between the EU and the United States on the issue of GIs”<sup>901</sup> should be blamed for such emergence.

As the CPTPP and the EVFTA are single PTAs from the perspective of Vietnam, conflict clauses in these two agreements are not applicable to the clashing relations *inter se* where subsidies rules are concerned. As to IP norms, given that the scenario to avoid the potential

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<sup>901</sup> Inama Stefano, *GIs Beyond TTIP: Death or Victory for the ‘Living Cultural and Gastronomic Heritage’?*, Journal of World Trade 51.3 (2017): 471-493, p. 471.

conflict is impractical due to the subsequent-agreement status of the EVFTA in relation with the CPTPP, the conflict is of inherent and irresolvable nature.

## CONCLUSION

With the objectives of providing an insight into potential problems triggered by the implementation of multiple PTAs by a common state party in consideration of inter-PTA norm interactions and solutions thereto, contributions of the research to the existing literature can be summarized as follows:

A “conflict” concept tailored to the research objective has been developed in Chapter 1 of Part 1. The answer to the question of how to determine the existence of a conflict necessitates, firstly, the construction of the “conflict” concept adequate to the research objective, secondly, interpretation tools to avoid apparent conflicts, and lastly, the satisfaction of preconditions to conflict emergence. From the jurisprudential perspective, two dominating narrow and broad approaches to the conflict concept have been established with their own pros and cons put forth by scholarly supporters and opponents. A conflict, in narrow terms, is based on the impossibility-of-joint-compliance test, involves two mutually exclusive obligations with which the simultaneous compliance is impossible, and therefore, covers neither right-obligation collisions nor parallel obligations. Conversely, in broad terms, the term, based on the violation test, is spelled out as a situation in which the observance with one norm produces the violation of the other norm, comprising of both right-obligation collisions and parallel obligations in addition to extreme cases of mutually exclusive obligations.

The adoption or rejection of the two approaches must be put in the context of the research discussion which centers on inter-PTA interactions and will be facilitated by an insight into conflict clauses in PTAs. Given the missing of a consensus on defining the “conflict” concept, the dissertation has made the first contribution by compiling conflict clauses in some 200 PTAs notified to the WTO by its Members as being concluded from 2000 to 2018 and remaining in force in order to construct an approach to this thorny topic in view of attaining the research objective. Some key and interesting findings have been drawn from such compilation. Surprisingly, that the very term “conflict” is absent from the conflict clauses inserted in these 200 surveyed PTAs is supportive of the upshot that the reference to the term “conflict” is more relevant to academic discourse. The non-existence of the term “conflict” in PTA conflict clauses can explain, in some measure, why scholars seem reluctant to use such concept in their discussion about PTAs. Textually speaking, other interchangeable terms are



of more use in PTAs to indicate conflicts, such as, to name some, “inconsistency”, “incompatibility”, “have the effect of altering”. Additionally, one of the key conclusions as well as contributions to unsettled debates over the contentious “conflict” notion is that the above-mentioned broad approach finds more solid legal supportive evidence in PTA conflict clauses. However, given the objective of the research which highlights the aspect of implementation of multiple PTAs by a common state party, the broad sense is proven to be not broad or adequate enough. In a nutshell, a new tailor-made conceptualization of the term is developed in the end. Particularly, conflict, from the angle of multiple-PTA implementation, can be construed as inconsistency or incompatibility among norms from multiple PTAs in which (the application or implementation of) one norm in one PTA has the effect of altering or alters or circumvents (that of) another in other multiple PTAs.

Furthermore, generally speaking, norms across PTAs can be either in accumulation or in conflict. If they do not accumulate then they clash with each other and vice versa. Inferred from the adopted definition of conflict, accumulation is a situation where the application or implementation of two PTA norms at a time produces no effect of alteration or circumvention in any case or the implementation of one PTA norm cannot lead to the alteration or circumvention of the implementation of the other. The five potential scenarios of accumulation relate to the absence of either the necessary or sufficient conditions to conflict in which one PTA norm (1) adds or complements, without contradicting or (2) reiterates or confirms or (3) terminates or (4) sets exemptions or exceptions to or (5) explicitly refers to or incorporates another PTA norm.<sup>902</sup>

The determination of an adequate “conflict” understanding in Chapter 1 is followed by the analysis of interpretative rules to avoid apparent conflicts in Chapter 2. Conflicts can be classified in different ways. While apparent conflicts are those avoidable by being interpreted away, real conflict, on the contrary, cannot be avoided by means of interpretation. Among the interpretative tools of extensive use throughout the whole study are customary rules of interpretation, the consideration of relevant interpretation in the WTO DSB decisions and no change in the rights and obligations of the parties.

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<sup>902</sup> Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, Cambridge University Press, 2003.

Real conflict can be, in theory, solved by means of either conflict clauses in PTAs or other rules in PIL. The solutions which are the focal point of Chapter 3 range from the termination or non-application or prevalence of either conflicting PTAs or the norms thereof to their co-existence and consultations. In the meantime, other exploitable means in PIL include *lex superior*, *lex specialis* and *lex posterior* principles. Notwithstanding a variety of resolutions above, an insight into the existing toolbox reveals that, in many instances, they are either unavailable or inapplicable, leaving real conflicts to be irresolvable. The unavailability covers situations where conflict clauses are either non-existent in PTAs or, otherwise, existent but designed to address any, except for inter-PTA, relations, such as those between international trade and other branches of PIL or between PTAs and WTO law. On the other hand, in cases where conflict clauses target inter-PTA linkages, their applicability is under attack as they are either ineffective against inconsistencies among single PTAs to which only one state is a common party, or, in certain cases, running contrary to each other, not to mention the potentially *de facto* unworkability of the co-existence or consultation alternatives.

The inability of the present solutions to inter-PTA conflicts leaves states to face legal consequences of either state responsibility for the infringement upon international obligations or waiver of legitimate rights. Chapter 4 concludes Part 1 with its discussions of these two scenarios of potential aftermaths.

Part 2 puts the spotlight on the quest of conflicting norms in the CPTPP and EVFTA in three areas of subsidies, services and IP. Given the fact that the number of PTAs concluded by one single WTO Member ranges from 1 to 20,<sup>903</sup> while Vietnam gets involved in 15 PTAs, other WTO Members can be signatories to as few as 1 and as many as 20 PTAs at the same time. That the existence of multiple PTAs is not unique to Vietnam gives rise to the question of why multiple PTAs concluded by Vietnam should be studied empirically in quest for exemplary normative conflicts. While necessary conditions to inter-PTA conflicts are also met by multiple PTAs concluded by other WTO Members, the selection of the case of Vietnam and its two specific PTAs is justified by a higher likelihood of its multiple PTAs in the satisfaction of the sufficient pre-condition to conflicts which is the inconsistency or incompatibility in the substantive regulation of norms under consideration. Although the

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<sup>903</sup> Patricia M. Goff (2017), *Limits to Deep Integration: Canada between the EU and the US*, Cambridge Review of International Affairs, 30:5-6, 549-566, DOI: 10.1080/09557571.2018.1461806, p. 1.

United States and the EU play the role of rule setters or norm exporters in PTA negotiations, they are at odds with each other in many thorny trade and trade-related issues, leaving their PTA co-signatories in a dilemma of reconciling their clashing commitments with these two parties. Powerful bargaining positions, clear-cut and well-established ideologies, trade negotiation strategies and tactics, as well as experience in PTA negotiations and text drafting enable the United States and the EU to easily ensure the consistency among their PTAs in the prevention of potential normative incompatibility on the one hand, and to impose their rules for the sake of their domestic constituencies on the other hand. Conversely, as a small developing country, Vietnam faces bargaining power imbalances and is bound to follow the rules set by others. Though not only Vietnam but also other WTO Members, such as Canada, Korea, Japan, Mexico or Singapore, are between the United States and EU, the most salient difference between Vietnam and these countries in bargaining power in trade deals makes the former more vulnerable to inconsistent inter-PTA undertakings. Even though not playing the role of norm exporters, these states have stronger bargaining power than Vietnam, let alone their well-developed ideologies, trade negotiation strategies and tactics and skillfulness in international trade law formation. Another rationale behind the picking of Vietnam is the need to fill in the research gap left by existing literature. To the best of the author's knowledge, no studies up to date have been devoted exclusively to the topic discussed here. Besides, among Vietnam's multiple PTAs, the CPTPP and the EVFTA and their interaction are highlighted due to their conspicuous magnitude to Vietnam in both economic and legal terms.

The remarks drawn on the nature and frequency of normative conflicts are quite nuanced. In the *first* place, no conflict among the two sets of rules on services trade has been found so far. In other words, they are in accumulation. None of a considerable number of recognized differences regarding the level of commitments by Vietnam towards the CPTPP's and the EU's services and service suppliers can be counted as conflicts. With respect to (sub-)sectors where the national treatment and market access obligations are not subject to the MFN obligation either under the CPTPP or the EVFTA, Vietnam can treat CPTPP and EU services and service suppliers differently to comply simultaneously with its diverse commitments in the two trade pacts. In other words, the application of the two different norms at the same time provokes no contradiction in any situation or the implementation of or reliance on either does not lead to the alteration or contravention in the implementation of the other. As to (sub-

)sectors where the MFN obligation applies, Vietnam can still adopt or maintain measures to discriminate among the two groups of services and service suppliers in accordance with its respective undertakings in each treaty. Then, the violated obligation is the MFN obligation, but not any of the two norms relevant to the conflict discussion. Their accumulation can be classified as complementary where a certain norm in the CPTPP adds or complements another norm in the EVFTA, without contradicting the latter, or vice versa.

In the *second* place, subsidies rules in the two treaties accumulate in some aspects and diverge or even conflict in others. The scopes of prohibited subsidies, for example, overlap. More specifically, some subsidies either excluded or permitted under the EVFTA constitute prohibited subsidies under the CPTPP; vice versa, certain subsidies banned under the EVFTA escape from the proscription under the CPTPP. Resultantly, conflicts arise among permissive or exempting and obligatory or prohibitive norms.

*Lastly*, regarding rules on IP, a conflict between mutually exclusive obligations emerges in certain circumstances. Provided that (1) the involved established EU GIs are names for foodstuffs or agricultural products (so that they are not excluded from the scope of Article 18.32 of the CPTPP in accordance with Article 18.36.4 of the CPTPP), that (2) an identical or similar TM held by a CPTPP proprietor is applied or registered for or acquired in Vietnam in good faith prior to the entry into force of the EVFTA (to meet the requirement of the TM-GI co-existence under Article 12.30 of the EVFTA) and that (3) TM owners from CPTPP parties do not approve the using of GIs, then Vietnam has the obligation under the CPTPP to protect the exclusive right of TM holders to prevent EU goods producers or services suppliers from using the subsequent similar or identical established GIs. Under the EVFTA, on the contrary, Vietnam bears the obligation to ensure EU GI holders to use the GIs and to ensure the EU GIs to exist side-by-side with prior registered CPTPP TMs. The observance of the CPTPP obligation with regards to the exclusivity of TM owners' rights is inconsistent with the obligation to ensure the co-existence between prior CPTPP TMs with later identical or similar EU GIs pursuant to the EVFTA. On the flip side, if leaving a CPTPP party's prior registered TMs to co-exist with later similar or identical established EU GIs under the EVFTA, Vietnam runs contrary to its obligation to grant the exclusive right to TM owners under the CPTPP. In other words, Vietnam cannot comply simultaneously with the two obligations in question. It

is impossible for Vietnam to act consistently with both obligations at the same time. The conformity to either obligation leads to the infringement upon the other.

Regarding the reasons for conflicts, the upshot relates to Vietnam's situation in the midst of the tension between the EU and the United States over how to govern or regulate trade and trade-related issues. Because of the deadlock of the WTO DDR and for the retainment of its competitive advantage, PTA conclusion by Vietnam with these two trade partners is inevitable. In spite of its withdrawal from the TPP, the United States still succeeded either in the exportation of its external trade policy to the remaining CPTPP parties or in the injection of its external trade policies into the CPTPP given the few minor departures of the CPTPP text from the TPP text. Likewise, the EU adopts the same strategy in its PTA negotiation and conclusion, including its practice in the EVFTA. In terms of IP regulations, for example, the found conflict of real and inherent nature between two obligatory norms is the aftermath of the collision between the EU-led and US-led models in GI protection. Although the US is not a CPTPP party anymore, its ideology on the exportation of its domestic law on GIs through PTAs is strongly prevalent in the CPTPP text which acquiesces, as to the TM-GI relationship, the "first in time, first in right" principle, or the superiority of prior TMs over later GIs, barring GI names for wines and spirits.<sup>904</sup> Conversely, the EU is the endorser of the introduction of GIs in the TRIPS during the WTO formation and GI protection progress in the DDR and PTA negotiations.

Since this dissertation, for the interest of time and space, confines itself to the study of single PTAs, future literature can fill in the gap by shedding light on double-PTA interactions, such as those among the CPTPP, the Japan-Vietnam FTA and the ASEAN-Japan FTA. Moreover, more efforts should be devoted to investigating other behind-the-border issues unaddressed in this research regarding the CPTPP-EVFTA interaction, including substantive rules on investment, labour, environment and competition or procedural rules on dispute settlement for the purpose of providing a full and comprehensive picture, rather than just a non-exhaustive or illustrative list, of conflicting norms. Furthermore, conclusions drawn in this dissertation can be relevant to subsequent studies on multiple PTAs concluded by other developing and least-developed states. The outcomes of this research, by analogy, also potentially hold good for multiple PTAs concluded by such states as Malaysia, Peru, Chile, who are (likely to be)

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<sup>904</sup> Article 18.36.4 of the CPTPP.

trapped in the dilemmatic two-fold PTA relations with the EU and the US, in consideration of their similarities with Vietnam in their bargaining trade power. The fact that certain WTO Members (1) are accustomed with the practice of multiple PTAs, (2) have either negotiated or concluded PTAs with different groups with tensions over their trade objectives, models of or approaches to the same trade(-related) issues and (3) do not act as rule-takers, thereby being tied to conflicting regulations, makes the findings in this work relevant to other case studies of other states to testify them against various circumstances. Added to that, the unaddressed question of how Vietnam, as well as other PTA parties, confronting with the same situation should react to inter-PTA conflicts and aftermaths of their irresolvability deserves thorough consideration, in particular strategies for states to prevent them in advance, such as contextualization of norms in one single PTA in relation with, rather than in isolation from, all other multiple PTAs concluded by the same state party to prevent cross-PTA conflicts; careful revisiting of pending commitments under multiple PTAs, especially those with separate groups of trade partners in clash with each other over their trade ideologies, objectives, models, etc.; renegotiation of PTAs in view of the modification of existing or insertion of new substantive norms or effective conflict clauses, or the pursuit of multilateral regulations through the WTO's multilateral forum instead of through regional or plurilateral alternatives...

## LEGAL DOCUMENTS

See Annex I for the full list of PTAs under consideration.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

The EU-Vietnam Free Trade Agreement.

The Agreement on Tariffs and Trade of the WTO.

The Agreement on Trade-Related Aspects of Intellectual Property Rights.

The EU-Canada Comprehensive Economic and Trade Agreement.

The EU-Singapore Free Trade Agreement.

The Central America Free Trade Agreement (CAFTA).

The International Court of Justice 1996 Advisory Opinion on Legality of the Threat/Use of Nuclear Weapons case and 2004 Advisory Opinion on Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory.

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## ANNEX 1: COMPILATION OF PROVISIONS RELEVANT TO CONFLICTS OF NORMS IN PTAs

PTAs included in the Annex have the following attributes: (1) Not Customs Union agreements, (2) Being notified to the WTO, (3) Being still in force and (4) Entering into force from 2000 on.

There are 302 RTAs notified to the WTO up to 2018<sup>905</sup>, but only 198 PTAs meet the conditions.

Columns are denoted as follows:

- (1.1): Use of terms of “inconsistency”/ “inconsistent”/ “consistent”
- (1.2): Use of terms of “incompatibility”/ “incompatible”/ “compatible”
- (1.3): Use of the phrase of “Has the effect of altering”/ “alter”
- (1.4): Term “affect”/“affected”
- (1.5): None of the relevant terms is used
- (2.1): No interpretative rules mentioned
- (2.2): Accordance with customary rules of interpretation of PIL
- (2.3): Consideration of WTO DSB Interpretation
- (2.4): No addition or diminishing rights and obligations
- (2.5): Other ways of interpretation
- (3.1): No conflict clauses on relations with other PTAs
- (3.2): Double PTAs only
- (3.3): Single PTAs only
- (3.4): Both double and single PTAs
- (3.5): Non-application of PTA at issue

<sup>905</sup> <https://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=1029> visited on 27<sup>th</sup> January 2018.

Tesi di dottorato "Interactions between Preferential Trade Agreements (PTAs): A Case Study of Vietnam's Multiple PTAs"  
di HOANG THI MINH HANG  
discussa presso Università Commerciale Luigi Bocconi-Milano nell'anno 2019  
La tesi è tutelata dalla normativa sul diritto d'autore (Legge 22 aprile 1941, n.633 e successive integrazioni e modifiche).  
Sono comunque fatti salvi i diritti dell'università Commerciale Luigi Bocconi di riproduzione per scopi di ricerca e didattici, con citazione della fonte.

- (3.6): Termination of the other conflicting PTA
- (3.7): Prevalence of PTA in question
- (3.8): Prevalence of the other conflicting PTA
- (3.9): Co-existence /Confirmation of rights and obligations under other existing PTAs
- (3.10): Consultation to get a mutually satisfactory solution
- (4.1): No Remedy
- (4.2): Compliance/ Specific performance
- (4.3): Compensation
- (4.4): Suspension of Concessions/Obligations/Benefits
- (4.5): Monetary Remedy
- (4.6): Appropriate Measure
- (4.7): Other remedies

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)										Remedies (4)						
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 10	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
1	Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	2018	V <sub>906</sub>					V <sub>907</sub>	V <sub>908</sub>	V <sub>909</sub>										V <sub>911</sub>	V <sub>912</sub>		V <sub>913</sub>	V <sub>914</sub>	V <sub>915</sub>	V <sub>916</sub>			
2	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017				V <sub>917</sub>	V							V <sub>918</sub>					V <sub>919</sub>		V								
3	Singapore-Australia FTA (SAFTA)	2017	V <sub>920</sub> 921					V <sub>922</sub>						V <sub>923</sub>						V <sub>924</sub>		V <sub>925</sub>	V <sub>926</sub>	V <sub>927</sub>					

<sup>906</sup> Article 1.2.1, CPTPP. Article 1.2.2, CPTPP.

<sup>907</sup> Article 28.12.3, CPTPP.

<sup>908</sup> Ibid.

<sup>909</sup> Ibid.

<sup>910</sup> Article 1.2.1, CPTPP. Article 1.2.2, CPTPP.

<sup>911</sup> Article 1.2.1, CPTPP.

<sup>912</sup> Article 1.2.2, CPTPP.

<sup>913</sup> Article 28.19, CPTPP.

<sup>914</sup> Article 28.20.1, CPTPP.

<sup>915</sup> Article 28.20.2, CPTPP.

<sup>916</sup> Article 28.20.7, CPTPP.

<sup>917</sup> Article 31.1, Hong Kong, China-Macao, China Closer Economic Partnership Agreement.

<sup>918</sup> Ibid.

<sup>919</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)												
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4				
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7					
4	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016					V <sup>928</sup>	V <sup>929</sup>	V <sup>930</sup>	V <sup>931</sup>											V <sup>933</sup>								V <sup>934</sup>	V <sup>935</sup>	V <sup>936</sup>			
5	Canada-Ukraine FTA	2016	V <sup>937</sup>					V <sup>938</sup>					V <sup>939</sup>							V <sup>940</sup>	V <sup>941</sup>								V <sup>942</sup>	V <sup>943</sup>	V <sup>944</sup>			

<sup>920</sup> SAFTA, Chapter 17 – Final Provision, Article 9.

<sup>921</sup> Footnote 7 of SAFTA, Chapter 17 – Final Provision, Article 9.

<sup>922</sup> Article 1.5, Chapter 16 – Dispute Settlement, SAFTA.

<sup>923</sup> SAFTA, Chapter 17 – Final Provision, Article 9.

<sup>924</sup> Ibid.

<sup>925</sup> Article 9.2, Chapter 16 – Dispute Settlement, SAFTA.

<sup>926</sup> Article 10, Chapter 16 – Dispute Settlement, SAFTA.

<sup>927</sup> Ibid.

<sup>928</sup> Article 1.5, Section B, Chapter 1, General Definitions and Initial Provisions, EU-Canada CETA.

<sup>929</sup> Article 29.17, Section D, Chapter Twenty-nine – Dispute Settlement, EU-Canada CETA.

<sup>930</sup> Ibid.

<sup>931</sup> Article 29.18, Section D, Chapter Twenty-nine – Dispute Settlement, EU-Canada CETA.

<sup>932</sup> Article 1.5, Section B, Chapter 1, General Definitions and Initial Provisions, EU-Canada CETA.

<sup>933</sup> Ibid.

<sup>934</sup> Article 29.12, Sub-section B, Section C, Chapter Twenty-nine – Dispute Settlement, CETA.

<sup>935</sup> Article 29.14, Sub-section B, Section C, Chapter Twenty-nine – Dispute Settlement, CETA.

<sup>936</sup> Ibid.

<sup>937</sup> Preamble to Canada-Ukraine FTA. Articles 1.2.1, Canada-Ukraine FTA. Article 1.2.2, Canada-Ukraine FTA.

<sup>938</sup> Article 17.11.2, Canada-Ukraine FTA.

<sup>939</sup> Article 1.2, Canada-Ukraine FTA.

<sup>940</sup> Article 1.2.2, Canada-Ukraine FTA.

<sup>941</sup> Preamble to Canada-Ukraine FTA. Article 1.2.1, Canada-Ukraine FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 10	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
6	EFTA-Georgia FTA	2016			V <sup>945</sup>					V <sup>946</sup>						V <sup>947</sup>				V <sup>948</sup>	V <sup>949</sup>		V <sup>950</sup>	V <sup>951</sup>	V <sup>952</sup>					
7	Argentina-Brazil FTA	2016				V	V					V										V								
8	Southern Common Market (MERCOSUR)- Mexico Economic Complementation Agreement	2016				V	V					V										V								
9	Southern Common Market (MERCOSUR) – Chile Economic Complementation Agreement	2016				V	V					V										V								

<sup>942</sup> Article 17.12.2, Canada-Ukraine FTA

<sup>943</sup> Articles 17.12 and 17.13, Canada-Ukraine FTA

<sup>944</sup> Articles 17.13 and 17.14, Canada-Ukraine FTA.

<sup>945</sup> Preamble to EFTA-Georgia FTA. Article 1.4.1, Chapter 1, EFTA-Georgia FTA. Article 1.4.2, EFTA-Georgia FTA.

<sup>946</sup> Article 12.5.2, EFTA-Georgia FTA.

<sup>947</sup> Article 1.4, EFTA-Georgia FTA.

<sup>948</sup> Preamble to EFTA-Georgia FTA. Article 1.4.1, Chapter 1, EFTA-Georgia FTA.

<sup>949</sup> Article 1.4.2, EFTA-Georgia FTA.

<sup>950</sup> Article 12.8, EFTA-Georgia FTA.

<sup>951</sup> Article 12.9.1, EFTA-Georgia FTA.

<sup>952</sup> Article 12.9.2, EFTA-Georgia FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)						
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 10	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6
10	EU-SADC Economic Partnership Agreement	2016					V		V	V	V													V	V			V
11	EU-Ghana FTA	2016	V					V	V	V													V	V			V	
12	EU-Colombia and Peru - Accession of Ecuador FTA	2016	V				V	V	V	V													V	V	V			

<sup>953</sup> Article 92, EU-SADC Economic Partnership Agreement.

<sup>954</sup> Ibid.

<sup>955</sup> Article 83, EU-SADC Economic Partnership Agreement.

<sup>956</sup> Article 86.1, EU-SADC Economic Partnership Agreement.

<sup>957</sup> Article 86.2, EU-SADC Economic Partnership Agreement.

<sup>958</sup> Article 70, EU-Ghana FTA.

<sup>959</sup> Article 62, EU-Ghana FTA.

<sup>960</sup> Ibid.

<sup>961</sup> Article 70.3, EU-Ghana FTA on taxation matters. Article 80.1, EU-Ghana FTA on relation with other agreements, not including PTAs.

<sup>962</sup> Article 53, EU-Ghana FTA.

<sup>963</sup> Article 56.1, EU-Ghana FTA.

<sup>964</sup> Article 56.2, EU-Ghana FTA.

<sup>965</sup> Article 296.2, EU-Colombia and Peru - Accession of Ecuador FTA related to tax agreements.

<sup>966</sup> Article 5, EU-Colombia and Peru - Accession of Ecuador FTA. Article 319, EU-Colombia and Peru - Accession of Ecuador FTA.

<sup>967</sup> Article 317, EU-Colombia and Peru - Accession of Ecuador FTA.

<sup>968</sup> Ibid.

<sup>969</sup> Article 308, EU-Colombia and Peru - Accession of Ecuador FTA.

<sup>970</sup> Article 310.1(a), EU-Colombia and Peru - Accession of Ecuador FTA.

<sup>971</sup> Article 310.1(b) and 310.3, EU-Colombia and Peru - Accession of Ecuador FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
13	Eurasian Economic Union (EAEU)-Vietnam FTA	2015					V <sup>972</sup>	V						V <sup>973</sup>						V <sup>974</sup>				V <sup>976</sup>	V <sup>977</sup>	V <sup>978</sup>			
14	Japan-Mongolia Economic Partnership Agreement	2015	V <sup>979</sup>					V <sup>980</sup>					V <sup>981</sup>							V <sup>982</sup>	V <sup>983</sup>		V <sup>984</sup>	V <sup>985</sup>	V <sup>986</sup>				
15	Korea-Vietnam FTA	2015	V <sup>987</sup>					V <sup>988</sup>					V <sup>989</sup>							V <sup>990</sup>	V <sup>991</sup>	V <sup>992</sup>	V <sup>993</sup>	V <sup>994</sup>	V <sup>995</sup>				

<sup>972</sup> Article 1.12.1, Chapter 1, Eurasian Economic Union (EAEU)-Vietnam FTA.

<sup>973</sup> Ibid.

<sup>974</sup> Ibid.

<sup>975</sup> Article 8.4, Chapter 8, Eurasian Economic Union (EAEU)-Vietnam FTA

<sup>976</sup> Article 14.14, Chapter 14, Eurasian Economic Union (EAEU)-Vietnam FTA.

<sup>977</sup> Article 14.15.1, Chapter 14, Eurasian Economic Union (EAEU)-Vietnam FTA.

<sup>978</sup> Ibid.

<sup>979</sup> Article 1.11.1, Japan-Mongolia Economic Partnership Agreement. Article 1.11.3, Japan-Mongolia Economic Partnership Agreement.

<sup>980</sup> Article 16.8.1(c), Japan-Mongolia Economic Partnership Agreement.

<sup>981</sup> Article 1.11, Japan-Mongolia Economic Partnership Agreement.

<sup>982</sup> Article 1.11.1, Japan-Mongolia Economic Partnership Agreement.

<sup>983</sup> Article 1.11.3, Japan-Mongolia Economic Partnership Agreement.

<sup>984</sup> Article 16.11.1, Japan-Mongolia Economic Partnership Agreement.

<sup>985</sup> Article 16.11.3, Japan-Mongolia Economic Partnership Agreement.

<sup>986</sup> Article 16.11.3(b) and 16.11.4, Japan-Mongolia Economic Partnership Agreement.

<sup>987</sup> Preamble to Korea-Vietnam FTA. Article 1.3.1, Korea-Vietnam FTA. Article 1.3.3, Korea-Vietnam FTA.

<sup>988</sup> Article 15.9.5, Korea-Vietnam FTA.

<sup>989</sup> Preamble to Korea-Vietnam FTA. Article 1.3, Korea-Vietnam FTA.

<sup>990</sup> Article 1.3.2, Korea-Vietnam FTA.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	
16	China-Korea FTA	2015					V <sup>996</sup>		V <sup>997</sup>					V <sup>998</sup>						V <sup>999</sup>			V <sup>1000</sup>	V <sup>1001</sup>	V <sup>1002</sup>					
17	Australia-China FTA	2015	V <sup>1003</sup>						V <sup>1004</sup>	V <sup>1005</sup>	V <sup>1006</sup>			V <sup>1007</sup>						V <sup>1008</sup>	V <sup>1009</sup>	V <sup>1010</sup>		V <sup>1011</sup>	V <sup>1012</sup>	V <sup>1013</sup>				
18	Southern African	2015	V					V								V			V	V			V		V					

<sup>991</sup> Preamble to Korea-Vietnam FTA. Article 1.3.1, Korea-Vietnam FTA.

<sup>992</sup> Article 1.3.3, Korea-Vietnam FTA.

<sup>993</sup> Article 15.13.2, Korea-Vietnam FTA.

<sup>994</sup> Article 15.14.1, Korea-Vietnam FTA.

<sup>995</sup> Article 15.14.2, Korea-Vietnam FTA.

<sup>996</sup> Article 1.3, China-Korea FTA.

<sup>997</sup> Article 20.11.3, China-Korea FTA.

<sup>998</sup> Article 1.3, China-Korea FTA.

<sup>999</sup> Ibid.

<sup>1000</sup> Article 20.12, China-Korea FTA.

<sup>1001</sup> Article 20.15.1, China-Korea FTA.

<sup>1002</sup> Ibid.

<sup>1003</sup> Preamble to Australia-China FTA. Article 1.2.1, Australia-China FTA. Article 1.2.2, Australia-China FTA. Article 1.2.3, Australia-China FTA.

<sup>1004</sup> Article 15.9.1, Australia-China FTA.

<sup>1005</sup> Article 15.9.2, Australia-China FTA.

<sup>1006</sup> Article 15.9.3, Australia-China FTA.

<sup>1007</sup> Article 1.2, Australia-China FTA.

<sup>1008</sup> Article 1.2.2, Australia-China FTA.

<sup>1009</sup> Preamble to Australia-China FTA. Article 1.2.1, Australia-China FTA.

<sup>1010</sup> Article 1.2.3, Australia-China FTA.

<sup>1011</sup> Article 15.13.1, Australia-China FTA.

<sup>1012</sup> Article 15.16.1, Australia-China FTA.

<sup>1013</sup> Article 15.16.2, Australia-China FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)									
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7		
	Development Community (SADC)- Accession of Seychelles		1014													1015			1016		1017					1018		1019			
19	New Zealand-Korea FTA	2015	V 1020				V 1021	V 1022			V 1023								V 1024	V 1025		V 1026	V 1027	V 1028							
20	Korea-Australia FTA	2014	V 1029				V 1030	V 1031	V 1032		V 1033								V 1034	V 1035	V 1036		V 1037	V 1038	V 1039						

<sup>1014</sup> Article 27.2, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>1015</sup> Article 27, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>1016</sup> Article 27.2, Southern African Development Community (SADC) - Accession of Seychelles. Article 27.3, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>1017</sup> Article 27.1, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>1018</sup> Article 32.2, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>1019</sup> Article 32.3, Southern African Development Community (SADC) - Accession of Seychelles.

<sup>1020</sup> Preamble to New Zealand-Korea FTA. Article 1.2.1, New Zealand-Korea FTA. Article 1.2.2, New Zealand-Korea FTA. Footnote 1 to Article 1.2.2, New Zealand-Korea FTA.

<sup>1021</sup> Article 19.5.1, New Zealand-Korea FTA.

<sup>1022</sup> Article 19.5.2, New Zealand-Korea FTA.

<sup>1023</sup> Preamble to New Zealand-Korea FTA. Article 1.2, New Zealand-Korea FTA.

<sup>1024</sup> Preamble to New Zealand-Korea FTA. Article 1.2.1, New Zealand-Korea FTA.

<sup>1025</sup> Article 1.2.2, New Zealand-Korea FTA.

<sup>1026</sup> Article 19.13, New Zealand-Korea FTA.

<sup>1027</sup> Article 19.15.1, New Zealand-Korea FTA.

<sup>1028</sup> Article 19.15.2, New Zealand-Korea FTA. Article 19.15.6.

<sup>1029</sup> Preamble to Korea-Australia FTA. Article 1.2.3, Korea-Australia FTA. Article 1.2.1, Korea-Australia FTA.

<sup>1030</sup> Article 20.5, Korea-Australia FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 10	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
21	Turkey-Malaysia FTA	2014	V <sub>1040</sub>		V <sub>1041</sub>				V <sub>1042</sub>							V <sub>1043</sub>			V <sub>1044</sub>	V <sub>1045</sub>	V <sub>1046</sub>	V <sub>1047</sub>			V <sub>1048</sub>	V <sub>1049</sub>	V <sub>1050</sub>			
22	Turkey-Moldova FTA	2014				V <sub>1051</sub>		V											V <sub>1052</sub>			V <sub>1053</sub>								V <sub>1054</sub>

<sup>1031</sup> Ibid.

<sup>1032</sup> Ibid.

<sup>1033</sup> Preamble to Korea-Australia FTA. Article 1.2, Korea-Australia FTA.

<sup>1034</sup> Article 1.2.2, Korea-Australia FTA.

<sup>1035</sup> Preamble to Korea-Australia FTA. Article 1.2.1, Korea-Australia FTA.

<sup>1036</sup> Article 1.2.3, Korea-Australia FTA.

<sup>1037</sup> Article 20.13, Korea-Australia FTA.

<sup>1038</sup> Article 20.14.1, Korea-Australia FTA.

<sup>1039</sup> Article 20.14.2, Korea-Australia FTA.

<sup>1040</sup> Preamble to Turkey-Malaysia FTA. Article 1.3, Turkey-Malaysia FTA.

<sup>1041</sup> Article 1.4, Turkey-Malaysia FTA.

<sup>1042</sup> Article 12.9.2, Turkey-Malaysia FTA.

<sup>1043</sup> Article 1.3, Turkey-Malaysia FTA.

<sup>1044</sup> Article 1.4, Turkey-Malaysia FTA.

<sup>1045</sup> Article 1.3, Turkey-Malaysia FTA.

<sup>1046</sup> Preamble to Turkey-Malaysia FTA.

<sup>1047</sup> Article 1.3, Turkey-Malaysia FTA.

<sup>1048</sup> Article 12.13, Turkey-Malaysia FTA.

<sup>1049</sup> Article 12.14.1, Turkey-Malaysia FTA.

<sup>1050</sup> Article 12.14.2, Turkey-Malaysia FTA.

<sup>1051</sup> Article 4.2, Turkey-Moldova FTA.

<sup>1052</sup> Article 4.1, Turkey-Moldova FTA.

<sup>1053</sup> Ibid.

<sup>1054</sup> Article 31, Turkey-Moldova FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	1	1	1	1	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
23	Pacific Alliance Additional Protocol to the Framework Agreement	2014		V <sub>1055</sub>					V <sub>1056</sub>	V <sub>1057</sub>				V <sub>1058</sub>						V <sub>1059</sub>	V <sub>1060</sub>		V <sub>1061</sub>	V <sub>1062</sub>	V <sub>1063</sub>				
24	Mexico-Panama FTA	2014		V <sub>1064</sub>				V						V <sub>1065</sub>				V <sub>1066</sub>	V <sub>1067</sub>			V <sub>1068</sub>	V <sub>1069</sub>	V <sub>1070</sub>					
25	Canada-Korea FTA	2014	V <sub>1071</sub>					V <sub>1072</sub>						V <sub>1073</sub>						V <sub>1074</sub>			V <sub>1075</sub>	V <sub>1076</sub>	V <sub>1077</sub>				

<sup>1055</sup> Preamble to Pacific Alliance Additional Protocol to the Framework Agreement. Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement. Footnote 1 to Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1056</sup> Article 1.3, Pacific Alliance Additional Protocol to the Framework Agreement. Article 17.15.4, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1057</sup> Article 17.15.6, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1058</sup> Preamble to Pacific Alliance Additional Protocol to the Framework Agreement. Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1059</sup> Preamble to Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1060</sup> Article 1.2.2, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1061</sup> Article 17.15.5(d), Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1062</sup> Article 17.20.1, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1063</sup> Article 17.20.2, Pacific Alliance Additional Protocol to the Framework Agreement.

<sup>1064</sup> Preamble to Mexico-Panama FTA. Article 1.3.1, Mexico-Panama FTA. Article 1.3.2, Mexico-Panama FTA.

<sup>1065</sup> Preamble to Mexico-Panama FTA. Article 1.3, Mexico-Panama FTA.

<sup>1066</sup> Article 1.3.2, Mexico-Panama FTA.

<sup>1067</sup> Preamble to Mexico-Panama FTA. Article 1.3.1, Mexico-Panama FTA.

<sup>1068</sup> Article 18.16.3, Mexico-Panama FTA.

<sup>1069</sup> Ibid.

<sup>1070</sup> Article 18.17, Mexico-Panama FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)									
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4		
			·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·		
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7		
26	Japan-Australia Economic Partnership Agreement	2014	V <sup>1078</sup>				V <sup>1079</sup>		V <sup>1080</sup>		V <sup>1081</sup>				V <sup>1082</sup>					V <sup>1083</sup>	V <sup>1084</sup>	V <sup>1085</sup>	V <sup>1086</sup>			V <sup>1087</sup>	V <sup>1088</sup>	V <sup>1089</sup>			
27	EU-Georgia Association	2014					V		V <sup>1090</sup>	V <sup>1091</sup>	V <sup>1092</sup>		V <sup>1093</sup>													V <sup>1094</sup>	V <sup>1095</sup>	V <sup>1096</sup>		V <sup>1097</sup>	

<sup>1071</sup> Preamble to Canada-Korea FTA. Article 1.2, Canada-Korea FTA. Article 1.3, Canada-Korea FTA.

<sup>1072</sup> Article 21.9.2, Canada-Korea FTA.

<sup>1073</sup> Preamble to Canada-Korea FTA. Article 1.2, Canada-Korea FTA.

<sup>1074</sup> Ibid.

<sup>1075</sup> Article 21.10.1, Canada-Korea FTA.

<sup>1076</sup> Article 21.10.2, Canada-Korea FTA.

<sup>1077</sup> Article 21.11, Canada-Korea FTA.

<sup>1078</sup> Preamble to Japan-Australia Economic Partnership Agreement. Article 1.11.1, Japan-Australia Economic Partnership Agreement. Article 1.11.2, Japan-Australia Economic Partnership Agreement. Article 1.11.5, Japan-Australia Economic Partnership Agreement.

<sup>1079</sup> Article 1.11.4, Japan-Australia Economic Partnership Agreement.

<sup>1080</sup> Article 19.12.1, Japan-Australia Economic Partnership Agreement.

<sup>1081</sup> Article 19.12.4, Japan-Australia Economic Partnership Agreement.

<sup>1082</sup> Preamble to Japan-Australia Economic Partnership Agreement. Article 1.11, Japan-Australia Economic Partnership Agreement.

<sup>1083</sup> Article 1.11.5, Japan-Australia Economic Partnership Agreement.

<sup>1084</sup> Article 1.11.4, Japan-Australia Economic Partnership Agreement.

<sup>1085</sup> Preamble to Japan-Australia Economic Partnership Agreement. Article 1.11.1, Japan-Australia Economic Partnership Agreement.

<sup>1086</sup> Article 1.11.2, Japan-Australia Economic Partnership Agreement.

<sup>1087</sup> Article 19.13, Japan-Australia Economic Partnership Agreement.

<sup>1088</sup> Article 19.15.1, Japan-Australia Economic Partnership Agreement.

<sup>1089</sup> Article 19.15.2, Japan-Australia Economic Partnership Agreement.

<sup>1090</sup> Article 265, EU-Georgia Association Agreement.

<sup>1091</sup> Ibid.

<sup>1092</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Agreement																												
28	EU-Ukraine Association Agreement	2014					V	V <sup>1098</sup>	V <sup>1099</sup>	V <sup>1100</sup>		V <sup>1101</sup>																	
29	EU-Moldova Association Agreement	2014					V	V <sup>1106</sup>	V <sup>1107</sup>	V <sup>1108</sup>		V <sup>1109</sup>																	

<sup>1093</sup> Article 423, EU-Georgia Association Agreement is irrelevant to inter-PTA relations.

<sup>1094</sup> Article 254, Association Agreement between EU and Georgia.

<sup>1095</sup> Article 257.1, EU-Georgia Association Agreement.

<sup>1096</sup> Article 257.2, EU-Georgia Association Agreement.

<sup>1097</sup> Article 422, EU-Georgia Association Agreement.

<sup>1098</sup> Article 320, EU-Ukraine Association Agreement.

<sup>1099</sup> Ibid.

<sup>1100</sup> Article 320, EU-Ukraine Association Agreement.

<sup>1101</sup> Article 479, EU-Ukraine Association Agreement.

<sup>1102</sup> Article 311, EU-Ukraine Association Agreement.

<sup>1103</sup> Article 315.1, EU-Ukraine Association Agreement.

<sup>1104</sup> Article 315.2, EU-Ukraine Association Agreement.

<sup>1105</sup> Article 478, Association Agreement between EU and Ukraine.

<sup>1106</sup> Article 401, Association Agreement between EU and Moldova.

<sup>1107</sup> Ibid.

<sup>1108</sup> Article 401, Association Agreement between EU and Moldova.

<sup>1109</sup> Articles 405 and 456, Association Agreement between EU and Moldova is irrelevant to inter-PTA relations.

<sup>1110</sup> Article 390, Association Agreement between EU and Moldova.

<sup>1111</sup> Article 393.1, Association Agreement between EU and Moldova.

<sup>1112</sup> Article 393.2, Association Agreement between EU and Moldova.

<sup>1113</sup> Article 455, Association Agreement between EU and Moldova.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4			
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7			
30	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013		V <sup>1114</sup>					V						V <sup>1115</sup>					V <sup>1116</sup>	V <sup>1117</sup>			V <sup>1118</sup>	V <sup>1119</sup>	V <sup>1120</sup>						
31	Korea-Colombia FTA	2013	V <sup>1121</sup>						V <sup>1122</sup>						V <sup>1123</sup>					V <sup>1124</sup>	V <sup>1125</sup>			V <sup>1126</sup>	V <sup>1127</sup>	V <sup>1128</sup>						
32	Canada-Honduras FTA	2013	V <sup>1129</sup>						V <sup>1130</sup>							V <sup>1131</sup>				V <sup>1132</sup>	V <sup>1133</sup>			V <sup>1134</sup>	V <sup>1135</sup>	V <sup>1136</sup>						

<sup>1114</sup> Preamble to Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Article 1.2.1, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Article 1.2.2, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>1115</sup> Ibid.

<sup>1116</sup> Article 1.2.2, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>1117</sup> Preamble to Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement. Article 1.2.1, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>1118</sup> Article 18.13.2, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>1119</sup> Article 18.13.3, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>1120</sup> Article 18.14, Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement.

<sup>1121</sup> Preamble to Korea-Colombia FTA. Article 1.2.1, Korea-Colombia FTA. Article 1.2.2, Korea-Colombia FTA.

<sup>1122</sup> Article 20.9.2, Korea-Colombia FTA.

<sup>1123</sup> Preamble to Korea-Colombia FTA. Article 1.2, Korea-Colombia FTA.

<sup>1124</sup> Article 1.2.2, Korea-Colombia FTA.

<sup>1125</sup> Preamble to Korea-Colombia FTA. Article 1.2.1, Korea-Colombia FTA.

<sup>1126</sup> Article 20.10, Korea-Colombia FTA.

<sup>1127</sup> Article 20.11.1, Korea-Colombia FTA.

<sup>1128</sup> Article 20.11.2, Korea-Colombia FTA.

<sup>1129</sup> Preamble to Canada-Honduras FTA. Article 1.3.1, Canada-Honduras FTA. Article 1.3.2, Canada-Honduras FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
33	EFTA-Bosnia and Herzegovina FTA	2013			V				V										V	V	V		V	V	V				
					1137				1138										1139				1140	1141	1142		1143	1144	1145
34	EFTA-Central America (Costa Rica	2013			V				V										V	V			V	V	V				
					1146				1147										1148				1149	1150			1151	1152	1153

<sup>1130</sup> Article 1.2.2, Canada-Honduras FTA.

<sup>1131</sup> Preamble to Canada-Honduras FTA. Article 1.3, Canada-Honduras FTA.

<sup>1132</sup> Article 1.3.2, Canada-Honduras FTA.

<sup>1133</sup> Preamble to Canada-Honduras FTA. Article 1.3.1, Canada-Honduras FTA.

<sup>1134</sup> Article 21.17, Canada-Honduras FTA.

<sup>1135</sup> Article 21.18, Canada-Honduras FTA.

<sup>1136</sup> Ibid.

<sup>1137</sup> Preamble to EFTA-Bosnia and Herzegovina FTA. Article 3.1, EFTA-Bosnia and Herzegovina FTA. Article 3.2, EFTA-Bosnia and Herzegovina FTA. Article 3.3, EFTA-Bosnia and Herzegovina FTA.

<sup>1138</sup> Article 45.5, EFTA-Bosnia and Herzegovina FTA.

<sup>1139</sup> Preamble to EFTA-Bosnia and Herzegovina FTA. Article 3.1 and 3.2, EFTA-Bosnia and Herzegovina FTA. Article 3.3, EFTA-Bosnia and Herzegovina FTA.

<sup>1140</sup> Article 3.2, EFTA-Bosnia and Herzegovina FTA.

<sup>1141</sup> Preamble to EFTA-Bosnia and Herzegovina FTA. Article 3.1, EFTA-Bosnia and Herzegovina FTA.

<sup>1142</sup> Article 3.3, EFTA-Bosnia and Herzegovina FTA.

<sup>1143</sup> Article 46.1, EFTA-Bosnia and Herzegovina FTA.

<sup>1144</sup> Article 46.3, EFTA-Bosnia and Herzegovina FTA.

<sup>1145</sup> Ibid.

<sup>1146</sup> Preamble to EFTA-Central America (Costa Rica and Panama) FTA. Article 1.5.1, EFTA-Central America (Costa Rica and Panama) FTA. Article 1.5.2, EFTA-Central America (Costa Rica and Panama) FTA.

<sup>1147</sup> Article 12.5.2, EFTA-Central America (Costa Rica and Panama) FTA.

<sup>1148</sup> Preamble to EFTA-Central America (Costa Rica and Panama) FTA. Article 1.5, EFTA-Central America (Costa Rica and Panama) FTA.

<sup>1149</sup> Preamble to EFTA-Central America (Costa Rica and Panama) FTA. Article 1.5.1, EFTA-Central America (Costa Rica and Panama) FTA.

<sup>1150</sup> Article 1.5.2, EFTA-Central America (Costa Rica and Panama) FTA.

<sup>1151</sup> Article 12.8.1, EFTA-Central America (Costa Rica and Panama) FTA.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	and Panama) FTA																												
<b>35</b>	Iceland-China FTA	2013	V <sub>1154</sub>					V <sub>1155</sub>	V <sub>1156</sub>	V <sub>1157</sub>			V <sub>1158</sub>								V <sub>1159</sub>	V <sub>1160</sub>	V <sub>1161</sub>	V <sub>1162</sub>	V <sub>1163</sub>				
<b>36</b>	Switzerland-China FTA	2013	V <sub>1164</sub>		V <sub>1165</sub>			V <sub>1166</sub>	V <sub>1167</sub>							V <sub>1168</sub>					V <sub>1169</sub>	V <sub>1170</sub>	V <sub>1171</sub>	V <sub>1172</sub>	V <sub>1173</sub>				

<sup>1152</sup> Article 12.9.1, EFTA-Central America (Costa Rica and Panama) FTA.

<sup>1153</sup> Ibid.

<sup>1154</sup> Preamble to Iceland-China FTA. Article 4.1, Iceland-China FTA. Article 4.2, Iceland-China FTA.

<sup>1155</sup> Article 2.2, Iceland-China FTA.

<sup>1156</sup> Article 111.4, Iceland-China FTA.

<sup>1157</sup> Article 111.3, Iceland-China FTA.

<sup>1158</sup> Preamble to Iceland-China FTA. Article 4, Iceland-China FTA.

<sup>1159</sup> Preamble to Iceland-China FTA. Article 4.1, Iceland-China FTA.

<sup>1160</sup> Article 4.2, Iceland-China FTA.

<sup>1161</sup> Article 117.1, Iceland-China FTA.

<sup>1162</sup> Article 117.2, Iceland-China FTA.

<sup>1163</sup> Article 120, Iceland-China FTA.

<sup>1164</sup> Preamble to Switzerland-China FTA. Article 1.3.1, Switzerland-China FTA. Article 1.3.2, Switzerland-China FTA.

<sup>1165</sup> Article 1.3.2, Switzerland-China FTA.

<sup>1166</sup> Article 15.5.1, Switzerland-China FTA.

<sup>1167</sup> Article 15.5.2, Switzerland-China FTA.

<sup>1168</sup> Preamble to Switzerland-China FTA. Article 1.3.2, Switzerland-China FTA.

<sup>1169</sup> Preamble to Switzerland-China FTA.

Article 1.3.1, Switzerland-China FTA.

<sup>1170</sup> Article 1.3.2, Switzerland-China FTA.

<sup>1171</sup> Article 15.9.1, Switzerland-China FTA.

<sup>1172</sup> Article 15.10.1, Switzerland-China FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
37	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013	V <sup>1174</sup>					V <sup>1175</sup>	V <sup>1176</sup>				V <sup>1177</sup>							V <sup>1178</sup>	V <sup>1179</sup>		V <sup>1180</sup>	V <sup>1181</sup>	V <sup>1182</sup>				
38	New Zealand-Chinese Taipei Economic	2013	V <sup>1183</sup>					V <sup>1184</sup>	V <sup>1185</sup>				V <sup>1186</sup>					V <sup>1187</sup>	V <sup>1188</sup>		V <sup>1189</sup>	V <sup>1190</sup>	V <sup>1191</sup>						

<sup>1173</sup> Article 15.10, Switzerland-China FTA.

<sup>1174</sup> Article 1.4, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1175</sup> Article 15.2.5, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1176</sup> Article 15.2.3, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1177</sup> Article 1.4, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1178</sup> Article 1.4.1, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1179</sup> Article 1.4.2, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1180</sup> Article 15.14.3, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1181</sup> Article 15.15.1, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1182</sup> Article 15.15.2, Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership.

<sup>1183</sup> Article 3.2, Chapter 23 on General Provisions, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1184</sup> Article 4.1, Chapter 1 on Initial Provisions, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1185</sup> Article 9.4, Chapter 21 on Dispute Settlement, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1186</sup> Article 3, Chapter 23 on General Provisions, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1187</sup> Article 3.1, Chapter 23 on General Provisions, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1188</sup> Article 3.2, Chapter 23 on General Provisions, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1189</sup> Article 14, Chapter 21 on Dispute Settlement, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1190</sup> Article 15.1, Chapter 21 on Dispute Settlement, New Zealand-Chinese Taipei Economic Cooperation Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Cooperation Agreement																												
<b>39</b>	Singapore-Costa Rica FTA	2013	V <sub>1192</sub>						V <sub>1193</sub>	V <sub>1194</sub>				V <sub>1195</sub>					V <sub>1196</sub>	V <sub>1197</sub>			V <sub>1198</sub>	V <sub>1199</sub>	V <sub>1200</sub>				
<b>40</b>	Chile-Thailand FTA	2013	V <sub>1201</sub>					V					V <sub>1202</sub>							V <sub>1203</sub>			V <sub>1204</sub>	V <sub>1205</sub>	V <sub>1206</sub>				
<b>41</b>	Mauritius-Turkey FTA	2013				V <sub>1207</sub>												V <sub>1208</sub>				V <sub>1209</sub>	V						

<sup>1191</sup> Article 15.2, Chapter 21 on Dispute Settlement, New Zealand-Chinese Taipei Economic Cooperation Agreement.

<sup>1192</sup> Article 1.3.1, Singapore-Costa Rica FTA. Article 1.3.2, Singapore-Costa Rica FTA.

<sup>1193</sup> Article 1.2.2, Singapore-Costa Rica FTA.

<sup>1194</sup> Article 17.12.5, Singapore-Costa Rica FTA.

<sup>1195</sup> Article 1.3, Singapore-Costa Rica FTA.

<sup>1196</sup> Article 1.3.2, Singapore-Costa Rica FTA.

<sup>1197</sup> Article 1.3.1, Singapore-Costa Rica FTA.

<sup>1198</sup> Article 17.15.1, Singapore-Costa Rica FTA.

<sup>1199</sup> Article 17.17.1, Singapore-Costa Rica FTA.

<sup>1200</sup> Article 17.17.2, Singapore-Costa Rica FTA.

<sup>1201</sup> Article 6.9, Chapter 6 – SPS Measures, Chile-Thailand FTA, governing only SPS issues.

<sup>1202</sup> Article 1.2, Chapter 1, Chile-Thailand FTA.

<sup>1203</sup> Ibid.

<sup>1204</sup> Article 14.13.1, Chapter 14, Chile-Thailand FTA.

<sup>1205</sup> Article 14.14.1, Chapter 14, Chile-Thailand FTA.

<sup>1206</sup> Article 14.14.2, Chapter 14, Chile-Thailand FTA.

<sup>1207</sup> Article 3, Mauritius-Turkey FTA.

<sup>1208</sup> Ibid.

<sup>1209</sup> Article 3.2, Mauritius-Turkey FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
42	Hong Kong, China-Chile FTA	2012	V <sub>1210</sub>					V <sub>1211</sub>	V <sub>1212</sub>					V <sub>1213</sub>				V <sub>1214</sub>	V <sub>1215</sub>	V <sub>1216</sub>		V <sub>1217</sub>	V <sub>1218</sub>	V <sub>1219</sub>						
43	Malaysia-Australia FTA	2012	V <sub>1220</sub>					V <sub>1221</sub>	V <sub>1222</sub>			V <sub>1223</sub>						V <sub>1224</sub>	V <sub>1225</sub>	V <sub>1226</sub>		V <sub>1227</sub>	V <sub>1228</sub>	V <sub>1229</sub>						
44	Agreement on Trade in Goods between	2012			V <sub>1230</sub>		V <sub>1231</sub>							V <sub>1232</sub>			V <sub>1233</sub>	V <sub>1234</sub>	V <sub>1235</sub>											

<sup>1210</sup> Preamble to Hong Kong, China-Chile FTA. Article 1.2.1, Hong Kong, China-Chile FTA. Article 1.2.2, Hong Kong, China-Chile FTA.

<sup>1211</sup> Article 17.1.2, Hong Kong, China-Chile FTA.

<sup>1212</sup> Article 17.10.3, Hong Kong, China-Chile FTA.

<sup>1213</sup> Preamble to Hong Kong, China-Chile FTA. Article 1.2, Hong Kong, China-Chile FTA.

<sup>1214</sup> Article 1.2.1, Hong Kong, China-Chile FTA.

<sup>1215</sup> Preamble to Hong Kong, China-Chile FTA.

<sup>1216</sup> Article 1.2.2, Hong Kong, China-Chile FTA.

<sup>1217</sup> Article 17.11.1, Hong Kong, China-Chile FTA.

<sup>1218</sup> Ibid.

<sup>1219</sup> Article 17.12.2, Hong Kong, China-Chile FTA.

<sup>1220</sup> Article 21.2.1, Malaysia-Australia FTA. Article 21.2.3, Malaysia-Australia FTA.

<sup>1221</sup> Article 20.4.1, Malaysia-Australia FTA.

<sup>1222</sup> Article 20.11.6, Malaysia-Australia FTA.

<sup>1223</sup> Article 21.2, Malaysia-Australia FTA.

<sup>1224</sup> Article 21.2.2, Malaysia-Australia FTA.

<sup>1225</sup> Article 21.2.1, Malaysia-Australia FTA.

<sup>1226</sup> Article 21.2.3, Malaysia-Australia FTA.

<sup>1227</sup> Article 20.14.1, Malaysia-Australia FTA.

<sup>1228</sup> Article 20.16, Malaysia-Australia FTA.

<sup>1229</sup> Ibid.

<sup>1230</sup> Articles 6.5 and 6.6, Agreement on Trade in Goods between Turkey and Korea.

<sup>1231</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Turkey and Korea																												
45	EU-Central America Association Agreement <sup>1235</sup>	2012					V	V	V	V		V													V	V	V		
46	EU-Columbia and Peru Trade Agreement	2012					V	V		V		V													V	V	V		
47	Association Agreement between	2012					V	V		V		V													V	V	V		

<sup>1232</sup> Article 6.6.1, Agreement on Trade in Goods between Turkey and Korea.

<sup>1233</sup> Article 6.5, Agreement on Trade in Goods between Turkey and Korea.

<sup>1234</sup> Article 6.6.2, Agreement on Trade in Goods between Turkey and Korea.

<sup>1235</sup> Part IV-Trade, EU-Central America Association Agreement.

<sup>1236</sup> Article 322.1, EU-Central America Association Agreement.

<sup>1237</sup> Ibid.

<sup>1238</sup> Article 322.3, EU-Central America Association Agreement.

<sup>1239</sup> Article 314.1, EU-Central America Association Agreement.

<sup>1240</sup> Articles 314.3 and 317.1 EU-Central America Association Agreement.

<sup>1241</sup> Articles 314.3 and 317.2, EU-Central America Association Agreement.

<sup>1242</sup> Article 317, EU-Columbia and Peru Trade Agreement.

<sup>1243</sup> Ibid.

<sup>1244</sup> Article 308.1, EU-Columbia and Peru Trade Agreement.

<sup>1245</sup> Article 310.1(a), EU-Columbia and Peru Trade Agreement.

<sup>1246</sup> Article 310(b), EU-Columbia and Peru Trade Agreement.

<sup>1247</sup> Article 317, Association Agreement between the EU and Colombia and Peru and Ecuador.

<sup>1248</sup> Ibid.

<sup>1249</sup> Article 308.1, Association Agreement between the EU and Colombia and Peru and Ecuador.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	the EU and Colombia and Peru and Ecuador																												
<b>48</b>	Chile-Vietnam FTA	2011					V <sup>1252</sup>					V <sup>1253</sup>									V <sup>1255</sup>			V <sup>1256</sup>	V <sup>1257</sup>	V <sup>1258</sup>			
<b>49</b>	Mexico-Central America FTA	2011		V <sup>1259</sup>					V <sup>1260</sup>											V <sup>1262</sup>	V <sup>1263</sup>			V <sup>1264</sup>	V <sup>1265</sup>	V <sup>1266</sup>			
<b>50</b>	El Salvador-Cuba FTA	2011		V <sup>1267</sup>																	V <sup>1268</sup>			V <sup>1269</sup>		V <sup>1270</sup>			

<sup>1250</sup> Article 310.1, Association Agreement between the EU and Colombia and Peru and Ecuador.

<sup>1251</sup> Article 310.2, Association Agreement between the EU and Colombia and Peru and Ecuador.

<sup>1252</sup> Article 1.2, Chile-Vietnam FTA.

<sup>1253</sup> Article 12.10.3, Chile-Vietnam FTA.

<sup>1254</sup> Article 1.2, Chile-Vietnam FTA.

<sup>1255</sup> Ibid.

<sup>1256</sup> Article 12.12.1, Chile-Vietnam FTA.

<sup>1257</sup> Article 12.13.1, Chile-Vietnam FTA.

<sup>1258</sup> Article 12.13.2, Chile-Vietnam FTA.

<sup>1259</sup> Article 1.3.2, Mexico-Central America FTA.

<sup>1260</sup> Article 1.2, Mexico-Central America FTA.

<sup>1261</sup> Article 1.3, Mexico-Central America FTA.

<sup>1262</sup> Article 1.3.2, Mexico-Central America FTA.

<sup>1263</sup> Preamble to Mexico-Central America FTA. Article 1.3.1, Mexico-Central America FTA.

<sup>1264</sup> Article 17.17, Mexico-Central America FTA.

<sup>1265</sup> Article 17.18.1, Mexico-Central America FTA.

<sup>1266</sup> Article 17.18.2, Mexico-Central America FTA.

<sup>1267</sup> Article 33, El Salvador-Cuba FTA.

<sup>1268</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
51	Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS)	2011					V <sup>1271</sup>		V <sup>1272</sup>					V <sup>1273</sup>				V <sup>1274</sup>						V <sup>1275</sup>	V <sup>1276</sup>	V <sup>1277</sup>			
52	Costa Rica-Peru FTA	2011		V <sup>1278</sup>					V					V <sup>1279</sup>					V <sup>1280</sup>	V <sup>1281</sup>				V <sup>1282</sup>	V <sup>1283</sup>	V <sup>1284</sup>			

<sup>1269</sup> Annex VI, El Salvador-Cuba FTA.

<sup>1270</sup> Article 29, Annex VI, El Salvador-Cuba FTA.

<sup>1271</sup> Article 23.1, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS). Article 23.2, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1272</sup> Article 31, Additions to Annex 4 on Dispute Settlement Provisions to the Treaty on a Free-Trade Area, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1273</sup> Article 23, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1274</sup> Article 23.1, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS). Article 23.2, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1275</sup> Article 21, Annex No. 4 to the Treaty on a Free-Trade Area - Dispute Settlement Procedures, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1276</sup> Article 22, Annex No. 4 to the Treaty on a Free-Trade Area - Dispute Settlement Procedures, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1277</sup> Article 23, Annex No. 4 to the Treaty on a Free-Trade Area - Dispute Settlement Procedures, Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS).

<sup>1278</sup> Article 1.3.2, Costa Rica-Peru FTA. Article 1.3.1, Costa Rica-Peru FTA.

<sup>1279</sup> Article 1.3, Costa Rica-Peru FTA.

<sup>1280</sup> Article 1.3.2, Costa Rica-Peru FTA.

<sup>1281</sup> Article 1.3.1, Costa Rica-Peru FTA.

<sup>1282</sup> Article 15.10.2, Costa Rica-Peru FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 10	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
53	Ukraine-Montenegro FTA	2011		V <small>1285</small>	V <small>1286</small>					V <small>1287</small>						V <small>1288</small>			V <small>1289</small>	V <small>1290</small>	V <small>1291</small>		V <small>1292</small>	V <small>1293</small>	V <small>1294</small>				
54	Panama-Peru FTA	2011		V <small>1295</small>				V <small>1296</small>					V <small>1297</small>			V <small>1298</small>		V <small>1299</small>	V <small>1300</small>	V <small>1301</small>									
55	Japan-Peru Economic Partnership	2011	V <small>1302</small>					V <small>1303</small>	V <small>1304</small>		V <small>1305</small>							V <small>1306</small>	V <small>1307</small>	V <small>1308</small>	V <small>1309</small>	V <small>1310</small>							

<sup>1283</sup> Article 15.10.3, Costa Rica-Peru FTA.

<sup>1284</sup> Article 15.11, Costa Rica-Peru FTA.

<sup>1285</sup> Article 5.2, Ukraine-Montenegro FTA.

<sup>1286</sup> Article 4.1, Ukraine-Montenegro FTA.

<sup>1287</sup> Article 49.2, Ukraine-Montenegro FTA.

<sup>1288</sup> Articles 4 and 5, Ukraine-Montenegro FTA

<sup>1289</sup> Article 4.1, Ukraine-Montenegro FTA. Article 5.2, Ukraine-Montenegro FTA.

<sup>1290</sup> Article 5.1, Ukraine-Montenegro FTA.

<sup>1291</sup> Article 2.2, Ukraine-Montenegro FTA.

<sup>1292</sup> Article 52, Ukraine-Montenegro FTA.

<sup>1293</sup> Article 53.1, Ukraine-Montenegro FTA.

<sup>1294</sup> Article 53.2, Ukraine-Montenegro FTA.

<sup>1295</sup> Article 1.3, Panama-Peru FTA.

<sup>1296</sup> Ibid.

<sup>1297</sup> Article 1.3.2, Panama-Peru FTA.

<sup>1298</sup> Article 1.3.1, Panama-Peru FTA.

<sup>1299</sup> Article 18.10.2, Panama-Peru FTA.

<sup>1300</sup> Article 18.11.1, Panama-Peru FTA.

<sup>1301</sup> Article 18.11.2, Panama-Peru FTA.

<sup>1302</sup> Article 2.1, Japan-Peru Economic Partnership Agreement. Article 2.2, Japan-Peru Economic Partnership Agreement.

<sup>1303</sup> Article 216.4, Japan-Peru Economic Partnership Agreement.

<sup>1304</sup> Article 216.5, Japan-Peru Economic Partnership Agreement.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7			
	Agreement																															
<b>56</b>	Japan-India Comprehensive Economic Partnership Agreement	2011	V <small>1311</small>							V <small>1312</small>												V <small>1314</small>	V <small>1315</small>		V <small>1316</small>	V <small>1317</small>	V <small>1318</small>					
<b>57</b>	India-Malaysia Comprehensive	2011	V <small>1319</small>							V <small>1320</small>												V <small>1322</small>	V <small>1323</small>		V <small>1324</small>	V <small>1325</small>	V <small>1326</small>					

<sup>1305</sup> Article 2, Japan-Peru Economic Partnership Agreement.

<sup>1306</sup> Article 2.1, Japan-Peru Economic Partnership Agreement.

<sup>1307</sup> Article 2.2, Japan-Peru Economic Partnership Agreement.

<sup>1308</sup> Article 218.1, Japan-Peru Economic Partnership Agreement.

<sup>1309</sup> Article 218.5, Japan-Peru Economic Partnership Agreement.

<sup>1310</sup> Article 219, Japan-Peru Economic Partnership Agreement.

<sup>1311</sup> Article 12, Japan-India Comprehensive Economic Partnership Agreement. Article 12.2, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1312</sup> Article 96.14, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1313</sup> Article 12, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1314</sup> Article 12.1, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1315</sup> Article 12.2, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1316</sup> Article 140.1, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1317</sup> Article 140.3, Japan-India Comprehensive Economic Partnership Agreement.

<sup>1318</sup> Ibid.

<sup>1319</sup> Article 16.2, India-Malaysia Comprehensive Economic Cooperation Agreement. Article 16.2.2, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1320</sup> Article 14.1.3, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1321</sup> Article 16.2, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1322</sup> Article 16.2.1, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1323</sup> Article 16.2.2, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1324</sup> Article 14.16, India-Malaysia Comprehensive Economic Cooperation Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Economic Cooperation Agreement																												
<b>58</b>	Peru-Mexico Commercial Integration Agreement	2011		V <sup>1327</sup>					V <sup>1328</sup>					V <sup>1329</sup>					V <sup>1330</sup>	V <sup>1331</sup>				V <sup>1332</sup>	V <sup>1333</sup>	V <sup>1334</sup>			
<b>59</b>	Peru-Korea FTA	2011	V <sup>1335</sup>						V					V <sup>1336</sup>							V <sup>1337</sup>			V <sup>1338</sup>	V <sup>1339</sup>	V <sup>1340</sup>			
<b>60</b>	EFTA-Montenegro FTA	2011			V <sup>1341</sup>				V <sup>1342</sup>							V <sup>1343</sup>				V <sup>1344</sup>	V <sup>1345</sup>	V <sup>1346</sup>		V <sup>1347</sup>	V <sup>1348</sup>	V <sup>1349</sup>			

<sup>1325</sup> Article 14.17.1, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1326</sup> Article 14.17.2, India-Malaysia Comprehensive Economic Cooperation Agreement.

<sup>1327</sup> Article 1.3, Peru-Mexico Commercial Integration Agreement.

<sup>1328</sup> Article 1.2.2, Peru-Mexico Commercial Integration Agreement.

<sup>1329</sup> Article 1.3, Peru-Mexico Commercial Integration Agreement.

<sup>1330</sup> Article 1.3.2, Peru-Mexico Commercial Integration Agreement.

<sup>1331</sup> Article 1.3, Peru-Mexico Commercial Integration Agreement.

<sup>1332</sup> Article 15.14, Peru-Mexico Commercial Integration Agreement.

<sup>1333</sup> Article 15.15.1, Peru-Mexico Commercial Integration Agreement.

<sup>1334</sup> Article 15.15.2, Peru-Mexico Commercial Integration Agreement.

<sup>1335</sup> Article 1.2.2, Peru-Korea FTA.

<sup>1336</sup> Ibid.

<sup>1337</sup> Ibid.

<sup>1338</sup> Article 23.16.2, Peru-Korea FTA.

<sup>1339</sup> Article 23.17.1, Peru-Korea FTA.

<sup>1340</sup> Article 23.19, Peru-Korea FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
61	EFTA-Hong Kong, China FTA	2011	V <sup>1350</sup>	V <sup>1351</sup>			V <sup>1352</sup>						V <sup>1353</sup>					V <sup>1354</sup>	V <sup>1355</sup>			V <sup>1356</sup>	V <sup>1357</sup>	V <sup>1358</sup>					
62	EFTA-Peru FTA	2010				V <sup>1359</sup>	V <sup>1360</sup>					V <sup>1361</sup>						V <sup>1362</sup>				V <sup>1363</sup>	V <sup>1364</sup>	V <sup>1365</sup>					

<sup>1341</sup> Article 3.1, EFTA-Montenegro FTA. Article 3.2, EFTA-Montenegro FTA. Article 3.3, EFTA-Montenegro FTA.

<sup>1342</sup> Article 43.5, EFTA-Montenegro FTA.

<sup>1343</sup> Article 3, EFTA-Montenegro FTA.

<sup>1344</sup> Article 3.2, EFTA-Montenegro FTA.

<sup>1345</sup> Article 3.1, EFTA-Montenegro FTA.

<sup>1346</sup> Article 3.3, EFTA-Montenegro FTA.

<sup>1347</sup> Article 44.1, EFTA-Montenegro FTA.

<sup>1348</sup> Article 44.3, EFTA-Montenegro FTA.

<sup>1349</sup> Ibid.

<sup>1350</sup> Article 1.4.1, EFTA-Hong Kong, China FTA. Article 1.4.2, EFTA-Hong Kong, China FTA.

<sup>1351</sup> Article 1.4.2, EFTA-Hong Kong, China FTA.

<sup>1352</sup> Article 10.6.2, EFTA-Hong Kong, China FTA.

<sup>1353</sup> Article 1.4, EFTA-Hong Kong, China FTA.

<sup>1354</sup> Article 1.4.1, EFTA-Hong Kong, China FTA.

<sup>1355</sup> Ibid.

<sup>1356</sup> Article 10.9.1, EFTA-Hong Kong, China FTA.

<sup>1357</sup> Article 10.10.1, EFTA-Hong Kong, China FTA.

<sup>1358</sup> Ibid.

<sup>1359</sup> Article 1.4, EFTA-Peru FTA.

<sup>1360</sup> Article 12.10.1, EFTA-Peru FTA.

<sup>1361</sup> Article 1.4, EFTA-Peru FTA.

<sup>1362</sup> Ibid.

<sup>1363</sup> Article 12.16.2, EFTA-Peru FTA.

<sup>1364</sup> Article 12.16.3, EFTA-Peru FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
63	Canada-Panama FTA	2010	V <small>1366</small>					V <small>1367</small>					V <small>1368</small>					V <small>1369</small>	V <small>1370</small>			V <small>1371</small>	V <small>1372</small>	V <small>1373</small>					
64	Malaysia-Chile FTA	2010	V <small>1374</small>						V <small>1375</small>				V <small>1376</small>						V <small>1377</small>	V <small>1378</small>		V <small>1379</small>	V <small>1380</small>	V <small>1381</small>					
65	EFTA-Ukraine FTA	2010			V <small>1382</small>			V <small>1383</small>						V <small>1384</small>			V <small>1385</small>	V <small>1386</small>	V <small>1387</small>		V <small>1388</small>	V <small>1389</small>	V <small>1390</small>						

<sup>1365</sup> Article 12.17, EFTA-Peru FTA.

<sup>1366</sup> Article 1.04.1, Canada-Panama FTA. Article 1.04.2, Canada-Panama FTA.

<sup>1367</sup> Article 22.11.2, Canada-Panama FTA.

<sup>1368</sup> Article 1.04, Canada-Panama FTA.

<sup>1369</sup> Article 1.04.2, Canada-Panama FTA.

<sup>1370</sup> Article 1.04.1, Canada-Panama FTA.

<sup>1371</sup> Article 22.12.2, Canada-Panama FTA.

<sup>1372</sup> Article 22.13.1, Canada-Panama FTA.

<sup>1373</sup> Ibid.

<sup>1374</sup> Article 1.2, Malaysia-Chile FTA. Article 1.2.2, Malaysia-Chile FTA.

<sup>1375</sup> Article 12.11.4, Malaysia-Chile FTA.

<sup>1376</sup> Article 1.2, Malaysia-Chile FTA.

<sup>1377</sup> Article 1.2.1, Malaysia-Chile FTA.

<sup>1378</sup> Article 1.2.2, Malaysia-Chile FTA.

<sup>1379</sup> Article 12.12, Malaysia-Chile FTA.

<sup>1380</sup> Article 12.14.1, Malaysia-Chile FTA.

<sup>1381</sup> Article 12.14.2, Malaysia-Chile FTA.

<sup>1382</sup> Article 1.3.1, EFTA-Ukraine FTA. Article 1.3.2, EFTA-Ukraine FTA.

<sup>1383</sup> Article 9.5.2, EFTA-Ukraine FTA.

<sup>1384</sup> Article 1.3, EFTA-Ukraine FTA.

<sup>1385</sup> Article 1.3.2, EFTA-Ukraine FTA.

<sup>1386</sup> Article 1.3.1, EFTA-Ukraine FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
66	Costa Rica-China FTA	2010	V <small>1391</small>					V <small>1392</small>	V <small>1393</small>					V <small>1394</small>				V <small>1395</small>	V <small>1396</small>		V <small>1397</small>	V <small>1398</small>	V <small>1399</small>						
67	EU-Korea FTA	2010				V <small>1400</small>	V <small>1401</small>	V <small>1402</small>	V <small>1403</small>			V <small>1404</small>							V <small>1405</small>			V <small>1406</small>	V <small>1407</small>	V <small>1408</small>					
68	Hong Kong, China-New Zealand Closer	2010	V <small>1409</small>					V <small>1410</small>	V <small>1411</small>									V <small>1412</small>	V <small>1413</small>	V <small>1414</small>		V <small>1415</small>	V <small>1416</small>	V <small>1417</small>					

<sup>1387</sup> Article 1.3.3, EFTA-Ukraine FTA.

<sup>1388</sup> Article 9.8, EFTA-Ukraine FTA.

<sup>1389</sup> Article 9.9.1, EFTA-Ukraine FTA.

<sup>1390</sup> Article 9.9, EFTA-Ukraine FTA.

<sup>1391</sup> Article 3, Costa Rica-China FTA. Article 3.2, Costa Rica-China FTA.

<sup>1392</sup> Article 2.2, Costa Rica-China FTA.

<sup>1393</sup> Article 147.3, Costa Rica-China FTA.

<sup>1394</sup> Article 3, Costa Rica-China FTA.

<sup>1395</sup> Article 3.1, Costa Rica-China FTA.

<sup>1396</sup> Article 3.2, Costa Rica-China FTA.

<sup>1397</sup> Article 153.1, Costa Rica-China FTA.

<sup>1398</sup> Article 155.1, Costa Rica-China FTA.

<sup>1399</sup> Article 155.2, Costa Rica-China FTA.

<sup>1400</sup> Article 15.14, EU-Korea FTA.

<sup>1401</sup> Article 14.16, EU-Korea FTA.

<sup>1402</sup> Ibid.

<sup>1403</sup> Ibid.

<sup>1404</sup> Article 15.14, EU-Korea FTA.

<sup>1405</sup> Article 15.14.1, EU-Korea FTA.

<sup>1406</sup> Article 14.8, EU-Korea FTA.

<sup>1407</sup> Article 14.11.1, EU-Korea FTA.

<sup>1408</sup> Article 14.11.2, EU-Korea FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
	Economic Partnership Agreement																													
<b>69</b>	Canada-Jordan FTA	2009	V <sup>1418</sup>							V <sup>1419</sup>									V <sup>1421</sup>	V <sup>1422</sup>				V <sup>1423</sup>	V <sup>1424</sup>	V <sup>1425</sup>				
<b>70</b>	Turkey-Jordan FTA	2009					V <sup>1426</sup>	V											V <sup>1427</sup>				V <sup>1428</sup>			V <sup>1429</sup>				V <sup>1430</sup>

<sup>1409</sup> Article 3, Chapter 18, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1410</sup> Article 2.2, Chapter 16, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1411</sup> Article 8.4, Chapter 16, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1412</sup> Article 3, Chapter 18, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1413</sup> Preamble of Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1414</sup> Article 3, Chapter 18, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1415</sup> Article 12.2, Chapter 16, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1416</sup> Article 14.1, Chapter 16, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1417</sup> Article 14.2, Chapter 16, Hong Kong, China-New Zealand Closer Economic Partnership Agreement.

<sup>1418</sup> Article 1-2.1, Canada-Jordan FTA. Article 1-2.2, Canada-Jordan FTA.

<sup>1419</sup> Article 14-10.2, Canada-Jordan FTA.

<sup>1420</sup> Article 1-2, Canada-Jordan FTA.

<sup>1421</sup> Article 1-2.2, Canada-Jordan FTA.

<sup>1422</sup> Article 1-2.1, Canada-Jordan FTA.

<sup>1423</sup> Article 14-12.2, Canada-Jordan FTA.

<sup>1424</sup> Article 14-13.1(a), Canada-Jordan FTA.

<sup>1425</sup> Article 14-13.1, Canada-Jordan FTA.

<sup>1426</sup> Article 16, Turkey-Jordan FTA.

<sup>1427</sup> Article 16, Turkey-Jordan FTA.

<sup>1428</sup> Article 16, Turkey-Jordan FTA.

<sup>1429</sup> Article 48.7, Turkey-Jordan FTA.

<sup>1430</sup> Article 48.8, Turkey-Jordan FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
71	Turkey-Chile FTA	2009			V				V							V			V	V	V		V	V	V				
72	Panama-Guatemala FTA	2009	V					V					V						V	V			V		V				
73	Panama-Nicaragua FTA	2009	V					V					V						V	V			V		V				
74	EU-Eastern and	2009					V	V					V										V						

<sup>1431</sup> Article 3, Turkey-Chile FTA. Article 4.1, Turkey-Chile FTA.

<sup>1432</sup> Article 46.3, Turkey-Chile FTA.

<sup>1433</sup> Articles 3 and 4, Turkey-Chile FTA.

<sup>1434</sup> Article 4.1, Turkey-Chile FTA.

<sup>1435</sup> Article 3, Turkey-Chile FTA.

<sup>1436</sup> Article 4.2, Turkey-Chile FTA.

<sup>1437</sup> Article 47, Turkey-Chile FTA.

<sup>1438</sup> Article 48.1, Turkey-Chile FTA.

<sup>1439</sup> Article 48.2, Turkey-Chile FTA.

<sup>1440</sup> Article 1.04.1, Panama-Guatemala FTA. Article 1.04.2, Panama-Guatemala FTA.

<sup>1441</sup> Article 1.04.1 and 1.04.2, Panama-Guatemala FTA.

<sup>1442</sup> Article 1.04.2, Panama-Guatemala FTA.

<sup>1443</sup> Article 1.04.1, Panama-Guatemala FTA.

<sup>1444</sup> Article 20.17, Panama-Guatemala FTA.

<sup>1445</sup> Article 20.18, Panama-Guatemala FTA.

<sup>1446</sup> Article 1.04.1, Panama-Nicaragua FTA. Article 1.04.2, Panama-Nicaragua FTA.

<sup>1447</sup> Article 1.04, Panama-Nicaragua FTA.

<sup>1448</sup> Article 1.04.2, Panama-Nicaragua FTA.

<sup>1449</sup> Article 1.04.1, Panama-Nicaragua FTA.

<sup>1450</sup> Article 20.17.2, Panama-Nicaragua FTA.

<sup>1451</sup> Article 20.18, Panama-Nicaragua FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)									
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	
			·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·		
	Southern Africa States Interim EPA						1452																								
<b>75</b>	Interim Partnership Agreement between EU and Pacific States	2009					V	V										V													
							1453										1454				V					V	V			V	
							1455																			1456	1457			1458	
<b>76</b>	Interim Agreement with a view to EU - Central Africa Economic Partnership Agreement	2009					V	V	V																	V	V			V	
							1459		V				V												V	V			V		
							1460																			1463	1464			1465	
							1461		V																						
<b>77</b>	New Zealand-Malaysia FTA	2009	V						V									V			V	V				V	V	V			
			1466						1467												V					V	V	V			

<sup>1452</sup> Article 65, EU-Eastern and Southern Africa States Interim EPA.

<sup>1453</sup> Article 75, Interim Partnership Agreement between EU and Pacific States.

<sup>1454</sup> Ibid.

<sup>1455</sup> Ibid.

<sup>1456</sup> Article 55, Interim Partnership Agreement between EU and Pacific States.

<sup>1457</sup> Article 58.1, Interim Partnership Agreement between EU and Pacific States includes financial compensation.

<sup>1458</sup> Article 58.2.

<sup>1459</sup> Article 106, Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement.

<sup>1460</sup> Article 83, Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement.

<sup>1461</sup> Ibid.

<sup>1462</sup> Article 106, Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement applies to other non-PTA agreements.

<sup>1463</sup> Article 74, Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement.

<sup>1464</sup> Article 77.1, Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement.

<sup>1465</sup> Article 77.2, Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement.

<sup>1466</sup> Article 18.2, New Zealand-Malaysia FTA.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
78	EFTA-Albania FTA	2009			V 1474					V 1475								V 1476		V 1477	V 1478		V 1479		V 1480	V 1481	V 1482			
79	EFTA-Serbia FTA	2009			V 1483					V 1484								V 1485		V 1486		V 1487	V 1488		V 1489	V 1490	V 1491			

<sup>1467</sup> Article 16.3.3, New Zealand-Malaysia FTA.

<sup>1468</sup> Article 18.2, New Zealand-Malaysia FTA.

<sup>1469</sup> Ibid.

<sup>1470</sup> Ibid.

<sup>1471</sup> Article 16.14, New Zealand-Malaysia FTA.

<sup>1472</sup> Article 16.15.1, New Zealand-Malaysia FTA.

<sup>1473</sup> Article 16.15.2, New Zealand-Malaysia FTA.

<sup>1474</sup> Article 39, EFTA-Albania FTA.

<sup>1475</sup> Article 33.7, EFTA-Albania FTA.

<sup>1476</sup> Article 39, EFTA-Albania FTA.

<sup>1477</sup> Article 39.2, EFTA-Albania FTA.

<sup>1478</sup> Article 39.1, EFTA-Albania FTA.

<sup>1479</sup> Article 39.3, EFTA-Albania FTA.

<sup>1480</sup> Article 34.2, EFTA-Albania FTA.

<sup>1481</sup> Article 34.3, EFTA-Albania FTA.

<sup>1482</sup> Ibid.

<sup>1483</sup> Article 41, EFTA-Serbia FTA.

<sup>1484</sup> Article 34.5, EFTA-Serbia FTA.

<sup>1485</sup> Article 41, EFTA-Serbia FTA.

<sup>1486</sup> Article 41.2, EFTA-Serbia FTA.

<sup>1487</sup> Preamble to EFTA-Serbia FTA.

<sup>1488</sup> Article 41.3, EFTA-Serbia FTA.

<sup>1489</sup> Article 35.1, EFTA-Serbia FTA.

<sup>1490</sup> Article 35.3, EFTA-Serbia FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
80	Turkey-Serbia FTA	2009			V 1492		V							V 1493			V 1494			V 1495	V									
81	ASEAN-Australia-New Zealand FTA	2009	V 1496				V 1497	V 1498						V 1499	V 1500			V 1501	V 1502	V 1503		V 1504	V 1505	V 1506						
82	ASEAN-India Agreement on Trade	2009	V 1507				V 1508	V 1509			V 1510			V 1511				V 1512	V 1513	V 1514		V 1515	V 1516	V 1517						

<sup>1491</sup> Ibid.

<sup>1492</sup> Article 16.1, Turkey-Serbia FTA.

<sup>1493</sup> Article 16, Turkey-Serbia FTA.

<sup>1494</sup> Ibid.

<sup>1495</sup> Article 16.2, Turkey-Serbia FTA.

<sup>1496</sup> Article 2.1, Chapter 18, ASEAN-Australia-New Zealand FTA. Article 2.2, Chapter 18, ASEAN-Australia-New Zealand FTA. Article 2.3, Chapter 18, ASEAN-Australia-New Zealand FTA.

<sup>1497</sup> Article 4.1, Chapter 17 – Consultations and Dispute Settlement, ASEAN-Australia-New Zealand FTA.

<sup>1498</sup> Article 12.7, Chapter 17 – Consultations and Dispute Settlement, ASEAN-Australia-New Zealand FTA.

<sup>1499</sup> Article 2, Chapter 18, ASEAN-Australia-New Zealand FTA.

<sup>1500</sup> Article 2.5, Chapter 18, ASEAN-Australia-New Zealand FTA.

<sup>1501</sup> Article 2.2, Chapter 18, ASEAN-Australia-New Zealand FTA.

<sup>1502</sup> Preamble to ASEAN-Australia-New Zealand FTA. Article 2.1, Chapter 18, ASEAN-Australia-New Zealand FTA.

<sup>1503</sup> Article 2.3 Chapter 18, ASEAN-Australia-New Zealand FTA.

<sup>1504</sup> Article 15, Chapter 17 – Consultations and Dispute Settlement, ASEAN-Australia-New Zealand FTA.

<sup>1505</sup> Article 17, Chapter 17 – Consultations and Dispute Settlement, ASEAN-Australia-New Zealand FTA.

<sup>1506</sup> Ibid.

<sup>1507</sup> Preamble to ASEAN-India Framework Agreement on Comprehensive Economic Cooperation. Article 16, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation. Article 16.3, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1508</sup> Article 10, ASEAN-India Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1509</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	in Goods under the Framework Agreement on Comprehensive Economic Cooperation																												
83	Korea-India Comprehensive Economic Partnership	2009	V <sup>1518</sup>					V <sup>1519</sup>	V <sup>1520</sup>				V <sup>1521</sup>							V <sup>1522</sup>	V <sup>1523</sup>	V <sup>1524</sup>	V <sup>1525</sup>	V <sup>1526</sup>					

<sup>1510</sup> Article 16, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1511</sup> Article 16.4, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1512</sup> Article 16.2, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1513</sup> Preamble to ASEAN-India Framework Agreement on Comprehensive Economic Cooperation. Article 16.1, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1514</sup> Article 16.3, ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1515</sup> Article 15.1, ASEAN-India Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1516</sup> Article 15.4, ASEAN-India Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1517</sup> Article 15.5, ASEAN-India Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation.

<sup>1518</sup> Article 1.2.1, Korea-India Comprehensive Economic Partnership Agreement. Article 1.2.2, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1519</sup> Article 14.2.5, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1520</sup> Article 14.2.3, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1521</sup> Article 1.2, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1522</sup> Preamble to Korea-India Comprehensive Economic Partnership Agreement.

<sup>1523</sup> Article 1.2.2, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1524</sup> Article 14.13.3, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1525</sup> Article 14.14.1, Korea-India Comprehensive Economic Partnership Agreement.

<sup>1526</sup> Article 14.14.2, Korea-India Comprehensive Economic Partnership Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Agreement																												
84	India-Nepal Treaty of Trade	2009					V	V					V										V						
85	Peru-China FTA	2009	V <sub>1527</sub>							V <sub>1528</sub>			V <sub>1529</sub>									V <sub>1530</sub>	V <sub>1531</sub>	V <sub>1532</sub>	V <sub>1533</sub>	V <sub>1534</sub>			
86	Japan-Switzerland Agreement on Free	2009	V <sub>1535</sub>			V <sub>1536</sub>		V <sub>1537</sub>							V <sub>1538</sub>				V <sub>1539</sub>		V <sub>1540</sub>	V <sub>1541</sub>	V <sub>1542</sub>	V <sub>1543</sub>	V <sub>1544</sub>				

<sup>1527</sup> Article 3.1, Peru-China FTA. Article 3.2, Peru-China FTA.

<sup>1528</sup> Article 180.5, Peru-China FTA.

<sup>1529</sup> Article 3, Peru-China FTA.

<sup>1530</sup> Article 3.1, Peru-China FTA.

<sup>1531</sup> Article 3.2, Peru-China FTA.

<sup>1532</sup> Article 186, Peru-China FTA.

<sup>1533</sup> Article 188, Peru-China FTA.

<sup>1534</sup> Article 189, Peru-China FTA.

<sup>1535</sup> Article 7.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership. Article 7.2, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1536</sup> Article 8.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1537</sup> Article 142.1(b), Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1538</sup> Articles 7 and 8, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1539</sup> Article 8.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1540</sup> Article 7.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1541</sup> Article 7.2, Japan-Switzerland Agreement on Free Trade and Economic Partnership. Article 8.2, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1542</sup> Article 145.1, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1543</sup> Article 145.3, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

<sup>1544</sup> Article 145.4, Japan-Switzerland Agreement on Free Trade and Economic Partnership.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Trade and Economic Partnership																												
<b>87</b>	Canada-Peru FTA	2008	V <sub>1545</sub>					V <sub>1546</sub>					V <sub>1547</sub>						V <sub>1548</sub>	V <sub>1549</sub>			V <sub>1550</sub>	V <sub>1551</sub>	V <sub>1552</sub>				
<b>88</b>	Canada-Columbia FTA	2008	V <sub>1553</sub>					V <sub>1554</sub>					V <sub>1555</sub>						V <sub>1556</sub>	V <sub>1557</sub>			V <sub>1558</sub>	V <sub>1559</sub>	V <sub>1560</sub>				
<b>89</b>	EFTA-Columbia FTA	2008					V <sub>1561</sub>	V <sub>1562</sub>					V <sub>1563</sub>								V <sub>1564</sub>		V <sub>1565</sub>	V <sub>1566</sub>	V <sub>1567</sub>				

<sup>1545</sup> Article 102.1, Canada-Peru FTA. Article 102.2, Canada-Peru FTA.

<sup>1546</sup> Article 2110.2 Canada-Peru FTA.

<sup>1547</sup> Article 102, Canada-Peru FTA.

<sup>1548</sup> Article 102.2, Canada-Peru FTA.

<sup>1549</sup> Preamble to Canada-Peru FTA. Article 102.1, Canada-Peru FTA.

<sup>1550</sup> Article 2113, Canada-Peru FTA.

<sup>1551</sup> Article 2114.1, Canada-Peru FTA.

<sup>1552</sup> Ibid.

<sup>1553</sup> Article 102.1, Canada-Columbia FTA. Article 102.2, Canada-Columbia FTA.

<sup>1554</sup> Article 2110.2, Canada-Columbia FTA.

<sup>1555</sup> Article 102, Canada-Columbia FTA.

<sup>1556</sup> Article 102.2, Canada-Columbia FTA.

<sup>1557</sup> Article 102.1, Canada-Columbia FTA.

<sup>1558</sup> Article 2113.2, Canada-Columbia FTA.

<sup>1559</sup> Article 2114.1, Canada-Columbia FTA.

<sup>1560</sup> Article 2114, Canada-Columbia FTA.

<sup>1561</sup> Article 1.4, EFTA-Columbia FTA.

<sup>1562</sup> Article 12.10.1, EFTA-Columbia FTA.

<sup>1563</sup> Article 1.4, EFTA-Columbia FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
90	EFTA-Canada FTA	2008				V 1568		V 1569												V 1570			V 1571	V 1572	V 1573				
91	Gulf Cooperation Council (GCC)-Singapore FTA	2008				V 1574		V 1575		V 1576		V 1577		V 1578						V 1579			V 1580	V 1581	V 1582				
92	Peru-Singapore FTA	2008	V 1583			V 1584			V 1585		V 1586								V 1587	V 1588	V 1589	V 1590	V 1591	V 1592					

<sup>1564</sup> Ibid.

<sup>1565</sup> Article 12.16.2, EFTA-Columbia FTA.

<sup>1566</sup> Article 12.16.3, EFTA-Columbia FTA.

<sup>1567</sup> Article 12.17, EFTA-Columbia FTA.

<sup>1568</sup> Preamble to EFTA-Canada FTA.

<sup>1569</sup> Article 29.5, EFTA-Canada FTA.

<sup>1570</sup> Preamble to EFTA-Canada FTA.

<sup>1571</sup> Article 30, EFTA-Canada FTA.

<sup>1572</sup> Article 31.3(a), EFTA-Canada FTA.

<sup>1573</sup> Article 31.3(b), EFTA-Canada FTA.

<sup>1574</sup> Article 1.5, Gulf Cooperation Council (GCC)-Singapore FTA. Article 1.5.1, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1575</sup> Article 9.8.2, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1576</sup> Ibid.

<sup>1577</sup> Article 1.5.1, Gulf Cooperation Council (GCC)-Singapore FTA. Article 1.5.2, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1578</sup> Article 1.5.2, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1579</sup> Article 1.5.1, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1580</sup> Article 9.8.1 and 5, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1581</sup> Ibid.

<sup>1582</sup> Article 9.9.2, Gulf Cooperation Council (GCC)-Singapore FTA.

<sup>1583</sup> Article 1.2.1, Peru-Singapore FTA. Article 19.4, Peru-Singapore FTA.

<sup>1584</sup> Article 1.2.2, Peru-Singapore FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4			
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7			
93	Southern Common Market (MERCOSUR) - Southern African Customs Union (SACU) Preferential Trade Agreement	2008					V	V					V													V	V					
94	South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	2008					V	V								V	V									V	V					
95	EU-Serbia	2008					V	V				V	V													V	V	V				

<sup>1585</sup> Article 17.13.3, Peru-Singapore FTA.

<sup>1586</sup> Article 1.2.1, Peru-Singapore FTA. Article 1.2.2, Peru-Singapore FTA. Article 19.4, Peru-Singapore FTA.

<sup>1587</sup> Article 1.2.2, Peru-Singapore FTA.

<sup>1588</sup> Article 1.2.1, Peru-Singapore FTA.

<sup>1589</sup> Article 19.4, Peru-Singapore FTA.

<sup>1590</sup> Article 17.16, Peru-Singapore FTA.

<sup>1591</sup> Article 17.17.1, Peru-Singapore FTA.

<sup>1592</sup> Article 17.17.2, Peru-Singapore FTA.

<sup>1593</sup> Article 16, Annex V, Dispute Settlement Procedure, Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU) PTA.

<sup>1594</sup> Article 17, Annex V, Dispute Settlement Procedure, Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU) PTA.

<sup>1595</sup> Article 13, South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan.

<sup>1596</sup> Ibid.

<sup>1597</sup> Ibid.

<sup>1598</sup> Article 20.10, South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan.

<sup>1599</sup> Article 20.11, South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Stabilization and Association Agreement							<sup>1600</sup>					<sup>1601</sup>	<sup>1602</sup>										<sup>1603</sup>	<sup>1604</sup>	<sup>1605</sup>			
<b>96</b>	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008	V <sup>1606</sup>					V <sup>1607</sup>	V <sup>1608</sup>			V <sup>1609</sup>												V <sup>1610</sup>	V <sup>1611</sup>				V <sup>1612</sup>
<b>97</b>	EU-CARIFORUM Economic Partnership	2008				V <sup>1613</sup>		V <sup>1614</sup>	V <sup>1615</sup>			V <sup>1616</sup>												V <sup>1617</sup>	V <sup>1618</sup>				V <sup>1619</sup>

<sup>1600</sup> Article 13, Protocol 7 on Dispute Settlement, EU-Serbia Stabilization and Association Agreement.

<sup>1601</sup> Ibid.

<sup>1602</sup> Article 16, Protocol 7 on Dispute Settlement, EU-Serbia Stabilization and Association Agreement is on relation with WTO obligations only.

<sup>1603</sup> Article 6, Protocol 7 on Dispute Settlement, EU-Serbia Stabilization and Association Agreement.

<sup>1604</sup> Article 9.1, Protocol 7 on Dispute Settlement, EU-Serbia Stabilization and Association Agreement.

<sup>1605</sup> Article 9.2, Protocol 7 on Dispute Settlement, EU-Serbia Stabilization and Association Agreement.

<sup>1606</sup> Article 80, EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement is irrelevant.

<sup>1607</sup> Article 62, EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement.

<sup>1608</sup> Ibid.

<sup>1609</sup> Article 80, EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement is irrelevant.

<sup>1610</sup> Article 53, EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement.

<sup>1611</sup> Article 56.1, EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement.

<sup>1612</sup> Article 56.2, EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement.

<sup>1613</sup> Article 222, EU-CARIFORUM Economic Partnership Agreement is not relevant as relating to WTO law only. Articles 242 and 243 are irrelevant.

<sup>1614</sup> Article 219, EU-CARIFORUM Economic Partnership Agreement.

<sup>1615</sup> Ibid.

<sup>1616</sup> Articles 222, 242 and 243 EU-CARIFORUM Economic Partnership Agreement are irrelevant.

<sup>1617</sup> Article 210, EU-CARIFORUM Economic Partnership Agreement.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)												
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4					
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	1	1	2	3	4	5	6	7					
	Agreement																																	
<b>98</b>	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008			V <sup>1620</sup>					V <sup>1621</sup>						V <sup>1622</sup>					V <sup>1623</sup>			V <sup>1624</sup>	V <sup>1625</sup>		V <sup>1626</sup>		V <sup>1627</sup>	V <sup>1628</sup>	V <sup>1629</sup>		V <sup>1630</sup>	
<b>99</b>	Turkey-Montenegro FTA	2008				V <sup>1631</sup>										V <sup>1632</sup>					V <sup>1633</sup>					V <sup>1634</sup>								V <sup>1635</sup>
<b>100</b>	ASEAN-Japan	2008	V				V		V							V						V	V	V		V	V	V						

<sup>1618</sup> Article 213.1, EU-CARIFORUM Economic Partnership Agreement includes financial compensation.

<sup>1619</sup> Article 213.2, EU-CARIFORUM Economic Partnership Agreement.

<sup>1620</sup> Article 37, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1621</sup> Article 13, Protocol 6 on Dispute Settlement, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1622</sup> Ibid.

<sup>1623</sup> Article 37, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1624</sup> Article 37.1, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1625</sup> Article 37.2, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1626</sup> Article 37.3, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1627</sup> Article 6, Protocol 6 on Dispute Settlement, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1628</sup> Article 9.1, Protocol 6 on Dispute Settlement, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1629</sup> Article 9.2, Protocol 6 on Dispute Settlement, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1630</sup> Article 125.4, EU-Bosnia and Herzegovina Stabilization and Association Agreement.

<sup>1631</sup> Article 15.1, Turkey-Montenegro FTA.

<sup>1632</sup> Article 15, Turkey-Montenegro FTA.

<sup>1633</sup> Article 15.1, Turkey-Montenegro FTA.

<sup>1634</sup> Article 15.2, Turkey-Montenegro FTA.

<sup>1635</sup> Article 21.3, Turkey-Montenegro FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4		
			·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·			
	Comprehensive Economic Partnership Agreement		<sup>1636</sup>				<sup>1637</sup>		<sup>1638</sup>							<sup>1639</sup>			<sup>1640</sup>	<sup>1641</sup>	<sup>1642</sup>			<sup>1643</sup>	<sup>1644</sup>	<sup>1645</sup>						
<b>101</b>	Japan-Vietnam Economic Partnership Agreement	2008	V <sup>1646</sup>				V <sup>1647</sup>		V <sup>1648</sup>							V <sup>1649</sup>			V <sup>1650</sup>	V <sup>1651</sup>	V <sup>1652</sup>			V <sup>1653</sup>	V <sup>1654</sup>	V <sup>1655</sup>						
<b>102</b>	China-New Zealand	2008	V						V		V					V			V	V	V			V	V	V						

<sup>1636</sup> Preamble to ASEAN-Japan Comprehensive Economic Partnership Agreement. Article 10, ASEAN-Japan Comprehensive Economic Partnership Agreement. Article 10.4, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1637</sup> Article 10.2, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1638</sup> Article 67.1(c), ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1639</sup> Article 10, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1640</sup> Article 10.2, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1641</sup> Preamble to ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1642</sup> Article 10.4, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1643</sup> Article 71.1, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1644</sup> Articles 71.3 and 72, ASEAN-Japan Comprehensive Economic Partnership Agreement.

<sup>1645</sup> Ibid.

<sup>1646</sup> Article 9, Japan-Vietnam Economic Partnership Agreement.

<sup>1647</sup> Article 9.5, Japan-Vietnam Economic Partnership Agreement.

<sup>1648</sup> Article 120.1(b), Japan-Vietnam Economic Partnership Agreement.

<sup>1649</sup> Article 9, Japan-Vietnam Economic Partnership Agreement.

<sup>1650</sup> Article 9.5, Japan-Vietnam Economic Partnership Agreement.

<sup>1651</sup> Article 9.1, Japan-Vietnam Economic Partnership Agreement.

<sup>1652</sup> Article 9.3, Japan-Vietnam Economic Partnership Agreement.

<sup>1653</sup> Article 123.1, Japan-Vietnam Economic Partnership Agreement.

<sup>1654</sup> Article 123.3, Japan-Vietnam Economic Partnership Agreement.

<sup>1655</sup> Article 123.3, Japan-Vietnam Economic Partnership Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
	FTA		<sup>1656</sup>					<sup>1657</sup>	<sup>1658</sup>			<sup>1659</sup>						<sup>1660</sup>	<sup>1661</sup>	<sup>1662</sup>			<sup>1663</sup>	<sup>1664</sup>	<sup>1665</sup>				
<b>103</b>	China-Singapore FTA	2008	V <sup>1666</sup>					V <sup>1667</sup>	V <sup>1668</sup>			V <sup>1669</sup>							V <sup>1670</sup>	V <sup>1671</sup>			V <sup>1672</sup>	V <sup>1673</sup>	V <sup>1674</sup>				
<b>104</b>	Australia-Chile FTA	2008				V <sup>1675</sup>			V <sup>1676</sup>			V <sup>1677</sup>							V <sup>1678</sup>				V <sup>1679</sup>	V <sup>1680</sup>	V <sup>1681</sup>				

<sup>1656</sup> Preamble to China-New Zealand FTA. Article 3.1, China-New Zealand FTA. Article 3.2, China-New Zealand FTA.

<sup>1657</sup> Article 190.3, China-New Zealand FTA.

<sup>1658</sup> Article 190.4, China-New Zealand FTA.

<sup>1659</sup> Article 3, China-New Zealand FTA.

<sup>1660</sup> Article 3.1, China-New Zealand FTA.

<sup>1661</sup> Preamble to China-New Zealand FTA.

<sup>1662</sup> Article 3.2, China-New Zealand FTA.

<sup>1663</sup> Article 195, China-New Zealand FTA.

<sup>1664</sup> Article 198.1, China-New Zealand FTA.

<sup>1665</sup> Article 198.2, China-New Zealand FTA.

<sup>1666</sup> Article 112.1, China-Singapore FTA. Article 112.2, China-Singapore FTA.

<sup>1667</sup> Article 98.3(b), China-Singapore FTA.

<sup>1668</sup> Article 98.1, China-Singapore FTA.

<sup>1669</sup> Article 112.1, China-Singapore FTA. Article 112.2, China-Singapore FTA.

<sup>1670</sup> Article 112, China-Singapore FTA.

<sup>1671</sup> Article 112.2, China-Singapore FTA.

<sup>1672</sup> Article 101, China-Singapore FTA.

<sup>1673</sup> Article 102, China-Singapore FTA.

<sup>1674</sup> Ibid.

<sup>1675</sup> Preamble to Australia-Chile FTA. Article 1.2, Australia-Chile FTA.

<sup>1676</sup> Article 21.10.3, Australia-Chile FTA.

<sup>1677</sup> Preamble to Australia-Chile FTA.

<sup>1678</sup> Preamble to Australia-Chile FTA. Article 1.2, Australia-Chile FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
105	Mauritius-Pakistan Preferential Trade Agreement	2007					V 1682		V 1683						V 1684				V 1685			V 1686		V						
106	Pakistan-Malaysia Closer Economic Partnership Agreement	2007	V 1687					V 1688	V 1689			V 1690									V 1691	V 1692		V 1693	V 1694	V 1695				
107	Korea-United States FTA	2007					V 1696		V 1697				V 1698								V 1699	V 1700		V 1701	V 1702	V 1703	V 1704			

<sup>1679</sup> Article 21.11, Australia-Chile FTA.

<sup>1680</sup> Article 21.12.1, Australia-Chile FTA.

<sup>1681</sup> Article 21.12.2, Australia-Chile FTA.

<sup>1682</sup> Preamble to Mauritius-Pakistan Preferential Trade Agreement. Article 2.2, Mauritius-Pakistan Preferential Trade Agreement. Article 7, Mauritius-Pakistan Preferential Trade Agreement.

<sup>1683</sup> Article 2.1(a), Mauritius-Pakistan Preferential Trade Agreement. Article 2.1(b), Mauritius-Pakistan Preferential Trade Agreement.

<sup>1684</sup> Preamble to Mauritius-Pakistan Preferential Trade Agreement. Article 2.2, Mauritius-Pakistan Preferential Trade Agreement.

<sup>1685</sup> Article 7, Mauritius-Pakistan Preferential Trade Agreement.

<sup>1686</sup> Preamble to Mauritius-Pakistan Preferential Trade Agreement. Article 2.2, Mauritius-Pakistan Preferential Trade Agreement.

<sup>1687</sup> Article 133.1, Pakistan-Malaysia Closer Economic Partnership Agreement. Article 133.2, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1688</sup> Article 113.4, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1689</sup> Article 113.3, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1690</sup> Article 133, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1691</sup> Article 133.1, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1692</sup> Article 133.2, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1693</sup> Article 122, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1694</sup> Article 123.1, Pakistan-Malaysia Closer Economic Partnership Agreement.

<sup>1695</sup> Article 123.2, Pakistan-Malaysia Closer Economic Partnership Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
108	United States-Panama Trade Promotion Agreement	2007				V 1705		V 1706					V 1707							V 1708				V 1709	V 1710	V 1711	V 1712			
109	Panama-Honduras FTA	2007	V 1713					V 1714					V 1715					V 1716	V 1717				V 1718		V 1719					

<sup>1696</sup> Article 1.2.1, Korea-United States FTA.

<sup>1697</sup> Article 22.11.2, Korea-United States FTA.

<sup>1698</sup> Article 1.2, Korea-United States FTA.

<sup>1699</sup> Article 1.2.2, Korea-United States FTA.

<sup>1700</sup> Article 1.2.1, Korea-United States FTA.

<sup>1701</sup> Article 22.12.2, Korea-United States FTA.

<sup>1702</sup> Article 22.13.1, Korea-United States FTA.

<sup>1703</sup> Article 22.13.2, Korea-United States FTA.

<sup>1704</sup> Article 22.13.5, 6, 7, Korea-United States FTA.

<sup>1705</sup> Article 1.3.1, United States-Panama Trade Promotion Agreement.

<sup>1706</sup> Article 1.2.2, United States-Panama Trade Promotion Agreement.

<sup>1707</sup> Article 1.3.1, United States-Panama Trade Promotion Agreement.

<sup>1708</sup> Ibid.

<sup>1709</sup> Article 20.14, United States-Panama Trade Promotion Agreement.

<sup>1710</sup> Article 20.15.1, United States-Panama Trade Promotion Agreement.

<sup>1711</sup> Article 20.15.2, United States-Panama Trade Promotion Agreement.

<sup>1712</sup> Article 20.15.6, United States-Panama Trade Promotion Agreement.

<sup>1713</sup> Article 1.04, Panama-Honduras FTA.

<sup>1714</sup> Article 1.02.2, Panama-Honduras FTA.

<sup>1715</sup> Article 1.04.1 and 2, Panama-Honduras FTA.

<sup>1716</sup> Article 1.04.2, Panama-Honduras FTA.

<sup>1717</sup> Preamble to the Panama-Honduras FTA. Article 1.04.1, Panama-Honduras FTA.

<sup>1718</sup> Article 20.17, Panama-Honduras FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
110	Panama-Costa Rica FTA	2007		V					V					V					V	V				V		V			
			<small>1720</small>						<small>1721</small>					<small>1722</small>					<small>1723</small>	<small>1724</small>				<small>1725</small>		<small>1726</small>			
111	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007					V		V					V							V			V		V			
							<small>1727</small>		<small>1728</small>					<small>1729</small>							<small>1730</small>			<small>1731</small>		<small>1732</small>			
112	El Salvador-Honduras-Chinese Taipei	2007	V						V					V					V	V				V	V	V			
			<small>1733</small>						<small>1734</small>					<small>1735</small>					<small>1736</small>	<small>1737</small>				<small>1738</small>	<small>1739</small>	<small>1740</small>			

<sup>1719</sup> Article 20.18, Panama-Honduras FTA.

<sup>1720</sup> Article 1.04, Panama-Costa Rica FTA.

<sup>1721</sup> Article 1.02.2, Panama-Costa Rica FTA

<sup>1722</sup> Article 1.04.1 and 2, Panama-Costa Rica FTA.

<sup>1723</sup> Article 1.04.2, Panama-Costa Rica FTA.

<sup>1724</sup> Preamble to the Panama-Costa Rica FTA. Article 1.04.1, Panama-Costa Rica FTA.

<sup>1725</sup> Article 20.17, Panama-Costa Rica FTA.

<sup>1726</sup> Article 20.18, Panama-Costa Rica FTA.

<sup>1727</sup> Article 1.3.1, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras).

<sup>1728</sup> Article 1.2.2, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras).

<sup>1729</sup> Article 1.3.1, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras).

<sup>1730</sup> Ibid.

<sup>1731</sup> Article 18.19, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras).

<sup>1732</sup> Article 18.20, Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras).

<sup>1733</sup> Article 1.03.1, El Salvador-Honduras-Chinese Taipei. Article 1.03.2, El Salvador-Honduras-Chinese Taipei.

<sup>1734</sup> Article 1.02.2, El Salvador-Honduras-Chinese Taipei FTA.

<sup>1735</sup> Article 1.03, El Salvador-Honduras-Chinese Taipei.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7			
113	Turkey-Georgia FTA	2007				V 1741	V														V 1742			V 1743			V 1744	V 1745				
114	Brunei Darussalam-Japan Economic Partnership Agreement	2007	V 1746					V 1747	V 1748			V 1749									V 1750	V 1751		V 1752	V 1753	V 1754						
115	Japan-Indonesia Economic Partnership	2007	V 1755					V 1756				V 1757									V 1758	V 1759		V 1760	V 1761	V 1762						

<sup>1736</sup> Article 1.03.2, El Salvador-Honduras-Chinese Taipei.

<sup>1737</sup> Preamble to El Salvador-Honduras-Chinese Taipei FTA. Article 1.03.1, El Salvador-Honduras-Chinese Taipei.

<sup>1738</sup> Article 15.15, El Salvador-Honduras-Chinese Taipei.

<sup>1739</sup> Article 15.16.7, El Salvador-Honduras-Chinese Taipei.

<sup>1740</sup> Article 15.16.2, El Salvador-Honduras-Chinese Taipei.

<sup>1741</sup> Article 12.1, Turkey-Georgia FTA.

<sup>1742</sup> Article 12, Turkey-Georgia FTA.

<sup>1743</sup> Article 12.1, Turkey-Georgia FTA.

<sup>1744</sup> Article 12.2, Turkey-Georgia FTA.

<sup>1745</sup> Article 32.3, Turkey-Georgia FTA.

<sup>1746</sup> Article 9.1, Brunei Darussalam-Japan Economic Partnership Agreement. Article 9.2, Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1747</sup> Article 111.1(b), Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1748</sup> Article 111.1(f), Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1749</sup> Article 9, Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1750</sup> Article 9.1, Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1751</sup> Article 9.2, Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1752</sup> Article 114.1, Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1753</sup> Article 114.3, Brunei Darussalam-Japan Economic Partnership Agreement.

<sup>1754</sup> Article 114.4, Brunei Darussalam-Japan Economic Partnership Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.		
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Agreement																												
116	Japan-Thailand Economic Partnership Agreement	2007	V <sub>1763</sub>					V <sub>1764</sub>					V <sub>1765</sub>							V <sub>1766</sub>				V <sub>1767</sub>	V <sub>1768</sub>	V <sub>1769</sub>			
117	Chile-Japan Strategic Economic Partnership Agreement	2007					V <sub>1770</sub>	V <sub>1771</sub>					V <sub>1771</sub>							V <sub>1772</sub>				V <sub>1773</sub>	V <sub>1774</sub>	V <sub>1775</sub>			

<sup>1755</sup> Article 12, Japan-Indonesia Economic Partnership Agreement.

<sup>1756</sup> Article 143.1(b), Japan-Indonesia Economic Partnership Agreement.

<sup>1757</sup> Article 12, Japan-Indonesia Economic Partnership Agreement.

<sup>1758</sup> Article 12.1, Japan-Indonesia Economic Partnership Agreement.

<sup>1759</sup> Article 12.3, Japan-Indonesia Economic Partnership Agreement.

<sup>1760</sup> Article 146.1, Japan-Indonesia Economic Partnership Agreement.

<sup>1761</sup> Article 146.3, Japan-Indonesia Economic Partnership Agreement.

<sup>1762</sup> Article 146.3, Japan-Indonesia Economic Partnership Agreement.

<sup>1763</sup> Preamble to Japan-Thailand Economic Partnership Agreement. Article 11.1, Japan-Thailand Economic Partnership Agreement.

<sup>1764</sup> Article 163.1(b), Japan-Thailand Economic Partnership Agreement.

<sup>1765</sup> Preamble to Japan-Thailand Economic Partnership Agreement. Article 11.1, Japan-Thailand Economic Partnership Agreement.

<sup>1766</sup> Ibid.

<sup>1767</sup> Article 166.1, Japan-Thailand Economic Partnership Agreement.

<sup>1768</sup> Article 166.3, Japan-Thailand Economic Partnership Agreement.

<sup>1769</sup> Ibid.

<sup>1770</sup> Article 3, Chile-Japan Strategic Economic Partnership Agreement.

<sup>1771</sup> Ibid.

<sup>1772</sup> Ibid.

<sup>1773</sup> Article 185, Chile-Japan Strategic Economic Partnership Agreement.

<sup>1774</sup> Article 186.1, Chile-Japan Strategic Economic Partnership Agreement.

<sup>1775</sup> Article 186.2, Chile-Japan Strategic Economic Partnership Agreement.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
118	EFTA-Egypt FTA	2007			V <sup>1776</sup>			V										V <sup>1777</sup>		V <sup>1778</sup>	V <sup>1779</sup>		V						
119	EU-Montenegro Stabilization and Association Agreement	2007			V <sup>1780</sup>				V <sup>1781</sup>			V <sup>1782</sup>						V <sup>1783</sup>		V <sup>1784</sup>		V <sup>1785</sup>	V <sup>1786</sup>	V <sup>1787</sup>	V <sup>1788</sup>				
120	EU-Albania Stabilization and Association Agreement	2006			V <sup>1789</sup>			V										V <sup>1790</sup>		V <sup>1791</sup>		V <sup>1792</sup>							V <sup>1793</sup>

<sup>1776</sup> Preamble to EFTA-Egypt FTA. Article 45, EFTA-Egypt FTA.

<sup>1777</sup> Ibid.

<sup>1778</sup> Article 45, EFTA-Egypt FTA.

<sup>1779</sup> Preamble to EFTA-Egypt FTA.

<sup>1780</sup> Article 39, EU-Montenegro Stabilization and Association Agreement.

<sup>1781</sup> Article 13, Chapter II - Dispute settlement procedures, Protocol 7 – Dispute Settlement, EU-Montenegro Stabilization and Association Agreement.

<sup>1782</sup> Ibid.

<sup>1783</sup> Article 39, EU-Montenegro Stabilization and Association Agreement.

<sup>1784</sup> Article 39.1, EU-Montenegro Stabilization and Association Agreement.

<sup>1785</sup> Article 39.3, EU-Montenegro Stabilization and Association Agreement.

<sup>1786</sup> Article 6, Chapter II - Dispute settlement procedures, Protocol 7 – Dispute Settlement, EU-Montenegro Stabilization and Association Agreement.

<sup>1787</sup> Article 7.1, Chapter II - Dispute settlement procedures, Protocol 7 – Dispute Settlement, EU-Montenegro Stabilization and Association Agreement.

<sup>1788</sup> Article 133, EU-Montenegro Stabilization and Association Agreement. Article 9.2, Chapter II - Dispute settlement procedures, Protocol 7 – Dispute Settlement, EU-Montenegro Stabilization and Association Agreement.

<sup>1789</sup> Article 36.1, EU-Albania Stabilization and Association Agreement.

<sup>1790</sup> Ibid.

<sup>1791</sup> Article 36.1, EU-Albania Stabilization and Association Agreement.

<sup>1792</sup> Article 36.3, EU-Albania Stabilization and Association Agreement.

<sup>1793</sup> Article 126.2, EU-Albania Stabilization and Association Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Association Agreement																												
121	United States-Colombia FTA	2006					V	V						V							V			V	V	V	V		
122	United States-Peru FTA	2006					V	V						V							V			V	V	V	V		
123	United States-Oman FTA	2006					V	V						V		V				V	V			V	V	V	V		

<sup>1794</sup> Article 1.2, United States-Colombia FTA.

<sup>1795</sup> Ibid.

<sup>1796</sup> Ibid.

<sup>1797</sup> Article 21.15, United States-Colombia FTA.

<sup>1798</sup> Article 21.16.1, United States-Colombia FTA.

<sup>1799</sup> Article 21.16.2, United States-Colombia FTA.

<sup>1800</sup> Article 21.16.6 and 21.16.7, United States-Colombia FTA.

<sup>1801</sup> Preamble to United States-Peru FTA. Article 1.2, United States-Peru FTA.

<sup>1802</sup> Article 1.2, United States-Peru FTA.

<sup>1803</sup> Preamble to United States-Peru FTA. Article 1.2, United States-Peru FTA.

<sup>1804</sup> Article 21.15.2, United States-Peru FTA.

<sup>1805</sup> Article 21.16.1, United States-Peru FTA.

<sup>1806</sup> Article 21.16.2, United States-Peru FTA.

<sup>1807</sup> Article 21.16.6, United States-Peru FTA.

<sup>1808</sup> Preamble to United States-Oman FTA. Article 1.2, United States-Oman FTA.

<sup>1809</sup> Preamble to United States-Oman FTA.

<sup>1810</sup> Article 22.4.2, United States-Oman FTA. Article 22.4.1, United States-Oman FTA.

<sup>1811</sup> Article 1.2.2, United States-Oman FTA.

<sup>1812</sup> Preamble to United States-Oman FTA. Article 1.2.1, United States-Oman FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4		
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7			
124	ASEAN-Korea FTA	2006					V <sup>1817</sup>	V <sup>1818</sup>		V <sup>1819</sup>					V <sup>1820</sup>				V <sup>1821</sup>					V <sup>1822</sup>	V <sup>1823</sup>	V <sup>1824</sup>						
125	Chile-Peru FTA	2006						V <sup>1825</sup>																								
126	Chile-Colombia FTA	2006					V <sup>1826</sup>	V <sup>1827</sup>						V <sup>1828</sup>							V <sup>1829</sup>			V <sup>1830</sup>	V <sup>1831</sup>	V <sup>1832</sup>						

<sup>1813</sup> Article 20.10.2, United States-Oman FTA.

<sup>1814</sup> Article 20.11.1, United States-Oman FTA.

<sup>1815</sup> Article 20.11.2, United States-Oman FTA.

<sup>1816</sup> Article 20.11.5, United States-Oman FTA.

<sup>1817</sup> Article 18, ASEAN – Korea FTA.

<sup>1818</sup> Article 9, Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation among The Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea.

<sup>1819</sup> Ibid.

<sup>1820</sup> Article 18, ASEAN-Korea FTA.

<sup>1821</sup> Ibid.

<sup>1822</sup> Article 14.2, Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation among The Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea.

<sup>1823</sup> Article 15.2, Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation among The Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea.

<sup>1824</sup> Article 15.3, Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation among The Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea.

<sup>1825</sup> Article 1.2.2, Chile-Peru FTA.

<sup>1826</sup> Article 20.2, Chile-Colombia FTA.

<sup>1827</sup> Article 1.2.2, Chile-Colombia FTA.

<sup>1828</sup> Article 20.2, Chile-Colombia FTA.

<sup>1829</sup> Ibid.

<sup>1830</sup> Article 16.13, Chile-Colombia FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
127	Chile-India PTA	2006					V	V					V											V	V	V			
128	Panama-Chile Treaty of Free Trade	2006					V	V					V								V			V	V	V			
129	Panama-Singapore FTA	2006	V					V	V							V				V	V	V	V	V	V				

<sup>1831</sup> Article 16.15.1 and 2, Chile-Colombia FTA.

<sup>1832</sup> Article 16.15.4, Chile-Colombia FTA.

<sup>1833</sup> Article 15, Annex E on Dispute Settlement Procedures of Chile-India PTA.

<sup>1834</sup> Article 16.1, Annex E on Dispute Settlement Procedures of Chile-India PTA.

<sup>1835</sup> Article 16, Annex E on Dispute Settlement Procedures of Chile-India PTA: Suspension of benefits.

<sup>1836</sup> Preamble to Panama-Chile Treaty of Free Trade. Article 1.3, Panama-Chile Treaty of Free Trade.

<sup>1837</sup> Article 1.2.2, Panama-Chile Treaty of Free Trade.

<sup>1838</sup> Article 1.3, Panama-Chile Treaty of Free Trade.

<sup>1839</sup> Ibid.

<sup>1840</sup> Article 13.13.2, Panama-Chile Treaty of Free Trade.

<sup>1841</sup> Article 13.15.2, Panama-Chile Treaty of Free Trade.

<sup>1842</sup> Article 13.15.1, Panama-Chile Treaty of Free Trade.

<sup>1843</sup> Preamble to Panama-Singapore FTA. Article 1.2.2, Panama-Singapore FTA. Article 18.7, Panama-Singapore FTA.

<sup>1844</sup> Article 15.8.3, Panama-Singapore FTA.

<sup>1845</sup> Article 15.8.2, Panama-Singapore FTA.

<sup>1846</sup> Preamble to Panama-Singapore FTA. Articles 1.2.2 and 18.7, Panama-Singapore FTA.

<sup>1847</sup> Article 1.2.3, Panama-Singapore FTA.

<sup>1848</sup> Preamble to Panama-Singapore FTA. Article 1.2.2, Panama-Singapore FTA.

<sup>1849</sup> Article 18.7, Panama-Singapore FTA.

<sup>1850</sup> Article 15.15, Panama-Singapore FTA.

<sup>1851</sup> Article 15.16.1 of Panama-Singapore FTA.

<sup>1852</sup> Article 15.16.2 of Panama-Singapore FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
130	Nicaragua-China Taipei FTA	2006	V 1853					V 1854					V 1855					V 1856	V 1857			V 1858		V 1859					
131	Japan-Philippines Economic Partnership Agreement	2006	V 1860					V 1861					V 1862						V 1863	V 1864		V 1865	V 1866	V 1867					
132	EFTA-SACU FTA	2006				V 1868		V 1869						V 1870		V 1871	V 1872	V 1873	V 1874			V 1875						V 1876	

<sup>1853</sup> Preamble to Nicaragua-China Taipei FTA. Article 1.03, Nicaragua-China Taipei FTA.

<sup>1854</sup> Article 1.02.2, Nicaragua-China Taipei FTA.

<sup>1855</sup> Article 1.03, Nicaragua-China Taipei FTA.

<sup>1856</sup> Ibid.

<sup>1857</sup> Preamble to Nicaragua-China Taipei FTA. Article 1.03, Nicaragua-China Taipei FTA.

<sup>1858</sup> Article 22.15, Nicaragua-China Taipei FTA.

<sup>1859</sup> Article 22.16, Nicaragua-China Taipei FTA.

<sup>1860</sup> Preamble to Japan-Philippines Economic Partnership Agreement. Article 11.1, Japan-Philippines Economic Partnership Agreement. Article 11.4, Japan-Philippines Economic Partnership Agreement.

<sup>1861</sup> Article 154.1(b), Japan-Philippines Economic Partnership Agreement.

<sup>1862</sup> Preamble to and Article 11, Japan-Philippines Economic Partnership Agreement.

<sup>1863</sup> Ibid.

<sup>1864</sup> Article 11.4, Japan-Philippines Economic Partnership Agreement.

<sup>1865</sup> Article 157.1, Japan-Philippines Economic Partnership Agreement.

<sup>1866</sup> Article 157.2, Japan-Philippines Economic Partnership Agreement.

<sup>1867</sup> Ibid.

<sup>1868</sup> Article 4, EFTA-SACU FTA.

<sup>1869</sup> Article 37.5, EFTA-SACU FTA.

<sup>1870</sup> Articles 4 and 5, EFTA-SACU FTA.

<sup>1871</sup> Article 5, EFTA-SACU FTA.

<sup>1872</sup> Article 4.2, EFTA-SACU FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
133	India-Bhutan Agreement on Trade, Commerce and Transit	2006					V	V					V										V						
134	Turkey-Albania FTA	2006				V		V							V				V			V							V
						<small>1877</small>									<small>1878</small>				<small>1879</small>			<small>1880</small>							<small>1881</small>
135	Pakistan-China FTA	2006					V		V		V			V							V			V			V		
						<small>1882</small>			<small>1883</small>		<small>1884</small>			<small>1885</small>							<small>1886</small>			<small>1887</small>			<small>1888</small>		
136	Central European Free Trade	2006				V		V							V				V	V			V						
						<small>1889</small>									<small>1890</small>				<small>1891</small>	<small>1892</small>									

<sup>1873</sup> Article 4.1, EFTA-SACU FTA.

<sup>1874</sup> Article 5, EFTA-SACU FTA.

<sup>1875</sup> Article 36, EFTA-SACU FTA.

<sup>1876</sup> Ibid.

<sup>1877</sup> Article 15.1, Turkey-Albania FTA.

<sup>1878</sup> Article 15, Turkey-Albania FTA.

<sup>1879</sup> Article 15.1, Turkey-Albania FTA.

<sup>1880</sup> Article 15.2, Turkey-Albania FTA.

<sup>1881</sup> Article 32.2, Turkey-Albania FTA.

<sup>1882</sup> Preamble to Pakistan-China FTA. Article 3, Pakistan-China FTA.

<sup>1883</sup> Article 2.2, Pakistan-China FTA.

<sup>1884</sup> Article 64.4, Pakistan-China FTA.

<sup>1885</sup> Article 3, Pakistan-China FTA.

<sup>1886</sup> Preamble to Pakistan-China FTA. Article 3, Pakistan-China FTA.

<sup>1887</sup> Article 71, Pakistan-China FTA.

<sup>1888</sup> Article 72, Pakistan-China FTA.

<sup>1889</sup> Preamble to Central European Free Trade Agreement. Article 36.2, Central European Free Trade Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Agreement																												
137	United States-Bahrain FTA	2005					V	V						V						V	V			V	V	V	V		
							<sup>1893</sup>							<sup>1894</sup>						<sup>1895</sup>	<sup>1896</sup>			<sup>1897</sup>	<sup>1898</sup>	<sup>1899</sup>	<sup>1900</sup>		
138	Japan-Malaysia Economic Partnership Agreement	2005	V					V					V							V	V		V	V	V				
			<sup>1901</sup>						<sup>1902</sup>					<sup>1903</sup>						<sup>1904</sup>	<sup>1905</sup>		<sup>1906</sup>	<sup>1907</sup>	<sup>1908</sup>				
139	Guatemala-Chinese Taipei FTA	2005	V					V					V						V	V		V	V	V					
			<sup>1909</sup>											<sup>1910</sup>						<sup>1911</sup>	<sup>1912</sup>		<sup>1913</sup>	<sup>1914</sup>	<sup>1915</sup>				

<sup>1890</sup> Preamble to Central European Free Trade Agreement.

<sup>1891</sup> Article 36.2, Central European Free Trade Agreement.

<sup>1892</sup> Preamble to Central European Free Trade Agreement.

<sup>1893</sup> Article 1.2.1, United States-Bahrain FTA.

<sup>1894</sup> Ibid.

<sup>1895</sup> Article 1.2.2, United States-Bahrain FTA.

<sup>1896</sup> Article 1.2.1, United States-Bahrain FTA.

<sup>1897</sup> Article 19.10, United States-Bahrain FTA.

<sup>1898</sup> Article 19.11.1, United States-Bahrain FTA.

<sup>1899</sup> Article 19.11.2, United States-Bahrain FTA.

<sup>1900</sup> Article 19.11.5 United States-Bahrain FTA.

<sup>1901</sup> Article 11.1, Japan-Malaysia Economic Partnership Agreement. Article 11.3, Japan-Malaysia Economic Partnership Agreement.

<sup>1902</sup> Article 149.1(b), Japan-Malaysia Economic Partnership Agreement.

<sup>1903</sup> Article 11, Japan-Malaysia Economic Partnership Agreement.

<sup>1904</sup> Article 11.1, Japan-Malaysia Economic Partnership Agreement.

<sup>1905</sup> Article 11.3, Japan-Malaysia Economic Partnership Agreement.

<sup>1906</sup> Article 152.1, Japan-Malaysia Economic Partnership Agreement.

<sup>1907</sup> Article 152.3, Japan-Malaysia Economic Partnership Agreement.

<sup>1908</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7
140	Iceland-Faroe Islands Agreement	2005				V	V				V											V							
141	Egypt-Turkey FTA	2005				V <sup>1916</sup>	V						V <sup>1917</sup>			V <sup>1918</sup>			V <sup>1919</sup>		V <sup>1920</sup>								
142	Chile-China FTA	2005				V <sup>1921</sup>	V <sup>1922</sup>	V <sup>1923</sup>					V <sup>1924</sup>						V <sup>1925</sup>		V <sup>1926</sup>	V <sup>1927</sup>	V <sup>1928</sup>						
143	Korea-Singapore FTA	2005	V				V	V			V								V	V	V	V	V						

<sup>1909</sup> Article 1.03.2, Guatemala-Chinese Taipei FTA.

<sup>1910</sup> Ibid.

<sup>1911</sup> Ibid.

<sup>1912</sup> Ibid.

<sup>1913</sup> Article 18.15, Guatemala-Chinese Taipei FTA.

<sup>1914</sup> Article 18.15.7, Guatemala-Chinese Taipei FTA.

<sup>1915</sup> Article 18.16, Guatemala-Chinese Taipei FTA.

<sup>1916</sup> Article 13, Egypt-Turkey FTA.

<sup>1917</sup> Ibid.

<sup>1918</sup> Article 13.1, Egypt-Turkey FTA.

<sup>1919</sup> Article 13.2, Egypt-Turkey FTA.

<sup>1920</sup> Article 34.3, Egypt-Turkey FTA.

<sup>1921</sup> Preamble to Chile-China FTA. Article 3, Chile-China FTA.

<sup>1922</sup> Article 2.2, Chile-China FTA.

<sup>1923</sup> Article 86.3, Chile-China FTA.

<sup>1924</sup> Preamble to Chile-China FTA. Article 3, Chile-China FTA.

<sup>1925</sup> Ibid.

<sup>1926</sup> Article 92.2, Chile-China FTA.

<sup>1927</sup> Article 93.1, Chile-China FTA.

<sup>1928</sup> Article 93.2, Chile-China FTA.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
			1929					1930	1931			1932							1933	1934		1935	1936	1937						
144	India-Singapore Comprehensive Economic Cooperation Agreement	2005	V 1938					V 1939				V 1940							V 1941	V 1942		V 1943	V 1944	V 1945						
145	Thailand-New Zealand Closer	2005	V 1946					V 1947				V 1948							V 1949	V 1950		V 1951	V 1952	V 1953						

<sup>1929</sup> Article 1.3.1, Korea-Singapore FTA. Article 1.3.2, Korea-Singapore FTA.

<sup>1930</sup> Article 20.2.5, Korea-Singapore FTA.

<sup>1931</sup> Article 20.2.3, Korea-Singapore FTA.

<sup>1932</sup> Article 1.3.1, Korea-Singapore FTA. Article 1.3.2, Korea-Singapore FTA.

<sup>1933</sup> Article 1.3.1, Korea-Singapore FTA.

<sup>1934</sup> Article 1.3.2, Korea-Singapore FTA.

<sup>1935</sup> Article 20.13.3, Korea-Singapore FTA.

<sup>1936</sup> Article 20.14.1, Korea-Singapore FTA.

<sup>1937</sup> Article 20.14.2, Korea-Singapore FTA.

<sup>1938</sup> Preamble to India-Singapore Comprehensive Economic Cooperation Agreement. Article 16.5.1, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1939</sup> Article 15.1.4, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1940</sup> Article 16.5, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1941</sup> Preamble to India-Singapore Comprehensive Economic Cooperation Agreement. Article 16.5.1, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1942</sup> Article 16.5.2, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1943</sup> Article 15.11, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1944</sup> Article 15.12.1, India-Singapore Comprehensive Economic Cooperation Agreement.

<sup>1945</sup> Article 15.12.2, India-Singapore Comprehensive Economic Cooperation Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Economic Partnership Agreement																												
<b>146</b>	EFTA-Korea FTA	2005					V <sub>1954</sub>	V <sub>1955</sub>					V <sub>1956</sub>							V <sub>1957</sub>	V <sub>1958</sub>		V <sub>1959</sub>	V <sub>1960</sub>	V <sub>1961</sub>				
<b>147</b>	EFTA-Lebanon FTA	2004				V <sub>1962</sub>		V <sub>1963</sub>							V <sub>1964</sub>				V <sub>1965</sub>	V <sub>1966</sub>		V							
<b>148</b>	EFTA-Tunisia FTA	2004			V			V							V				V	V	V	V							

<sup>1946</sup> Preamble to Thailand-New Zealand Closer Economic Partnership Agreement. Article 18.6, Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1947</sup> Article 17.6.1(b), Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1948</sup> Preamble to Thailand-New Zealand Closer Economic Partnership Agreement. Article 18.6, Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1949</sup> Preamble to Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1950</sup> Article 18.6, Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1951</sup> Article 17.10.1, Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1952</sup> Article 17.10.3, Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1953</sup> Article 17.11, Thailand-New Zealand Closer Economic Partnership Agreement.

<sup>1954</sup> Preamble to EFTA-Korea FTA. Article 1.5, EFTA-Korea FTA.

<sup>1955</sup> Article 9.6.5, EFTA-Korea FTA.

<sup>1956</sup> Preamble to EFTA-Korea FTA.

<sup>1957</sup> Article 1.5, EFTA-Korea FTA.

<sup>1958</sup> Preamble to EFTA-Korea FTA.

<sup>1959</sup> Article 9.10.3, EFTA-Korea FTA.

<sup>1960</sup> Article 9.10.4, EFTA-Korea FTA.

<sup>1961</sup> Ibid.

<sup>1962</sup> Preamble to EFTA-Lebanon FTA. Article 38, EFTA-Lebanon FTA.

<sup>1963</sup> Article 34.4, EFTA-Lebanon FTA.

<sup>1964</sup> Preamble to EFTA-Lebanon FTA.

<sup>1965</sup> Article 38, EFTA-Lebanon FTA.

<sup>1966</sup> Preamble to EFTA-Lebanon FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
					1967										1968		1969		1970	1971										
149	Turkey-Syria FTA	2004			V 1972		V								V 1973		V 1974		V 1975										V 1976	
150	Turkey-Morocco FTA	2004			V 1977		V								V 1978		V 1979		V 1980											V 1981
151	Turkey-Tunisia FTA	2004			V 1982		V								V 1983		V 1984		V 1985										V 1986	

<sup>1967</sup> Preamble to EFTA-Tunisia FTA. Article 42.1, EFTA-Tunisia FTA. Article 42.2, EFTA-Tunisia FTA.

<sup>1968</sup> Ibid.

<sup>1969</sup> Article 42.1, EFTA-Tunisia FTA.

<sup>1970</sup> Preamble to EFTA-Tunisia FTA. Article 42.2, EFTA-Tunisia FTA.

<sup>1971</sup> Article 42.3, EFTA-Tunisia FTA.

<sup>1972</sup> Article 15.1, Turkey-Syria FTA.

<sup>1973</sup> Article 15, Turkey-Syria FTA.

<sup>1974</sup> Article 15.1, Turkey-Syria FTA.

<sup>1975</sup> Article 15.2, Turkey-Syria FTA.

<sup>1976</sup> Article 43.2, Turkey-Syria FTA.

<sup>1977</sup> Article 16.1, Turkey-Morocco FTA.

<sup>1978</sup> Article 16, Turkey-Morocco FTA.

<sup>1979</sup> Article 16.1, Turkey-Morocco FTA.

<sup>1980</sup> Article 16.2, Turkey-Morocco FTA.

<sup>1981</sup> Article 33.7, 33.8 and 33.9, Turkey-Morocco FTA.

<sup>1982</sup> Article 16.1, Turkey-Tunisia FTA.

<sup>1983</sup> Article 16, Turkey-Tunisia FTA.

<sup>1984</sup> Article 16.1, Turkey-Tunisia FTA.

<sup>1985</sup> Article 16.2, Turkey-Tunisia FTA.

<sup>1986</sup> Article 47.2, Turkey-Tunisia FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
152	Turkey-Palestinian Authority Interim FTA	2004				V <sub>1987</sub>		V										V <sub>1988</sub>		V <sub>1989</sub>		V <sub>1990</sub>						V <sub>1991</sub>	
153	ASEAN-China FTA	2004					V <sub>1992</sub>				V <sub>1993</sub>							V <sub>1994</sub>			V <sub>1995</sub>			V <sub>1996</sub>	V <sub>1997</sub>	V <sub>1998</sub>			
154	Agadir Agreement	2004					V <sub>1999</sub>	V										V <sub>2000</sub>			V <sub>2001</sub>			V					
155	Japan-Mexico Agreement for the	2004					V	V						V <sub>2002</sub>					V <sub>2003</sub>						V <sub>2004</sub>	V <sub>2005</sub>	V <sub>2006</sub>		

<sup>1987</sup> Article 15.1, Turkey-Palestinian Authority Interim FTA.

<sup>1988</sup> Article 15, Turkey-Palestinian Authority Interim FTA.

<sup>1989</sup> Article 15.1, Turkey-Palestinian Authority Interim FTA.

<sup>1990</sup> Article 15.2, Turkey-Palestinian Authority Interim FTA.

<sup>1991</sup> Article 45.2, Turkey-Palestinian Authority Interim FTA.

<sup>1992</sup> Article 23, Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN.

<sup>1993</sup> Article 8.1, Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN.

<sup>1994</sup> Article 23, Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN.

<sup>1995</sup> Article 23, Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN.

<sup>1996</sup> Article 12, Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN.

<sup>1997</sup> Ibid.

<sup>1998</sup> Article 13, Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN.

<sup>1999</sup> Article 32, Agadir Agreement.

<sup>2000</sup> Ibid.

<sup>2001</sup> Ibid.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)										
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4		
			1	1	1	1	1	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7			
	Central America-United States Free Trade Agreement (CAFTA-DR)		2020					2021										2022			2023		2024				2025	2026	2027	2028		
160	Jordan-Singapore FTA	2004					V	V					V							V	V					V	V	V				
161	MERCOSUR-India PTA	2004					V	V										V					V			V	V	V				

<sup>2020</sup> Article 1.3.2, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2021</sup> Article 1.2.2, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2022</sup> Article 1.3, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2023</sup> Article 1.3.2, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2024</sup> Preamble to Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). Article 1.3.1, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2025</sup> Article 20.15, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2026</sup> Article 20.16.1, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2027</sup> Article 20.16.2, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2028</sup> Article 20.16.6, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

<sup>2029</sup> Article 1.1.2, Jordan-Singapore FTA.

<sup>2030</sup> Article 2.3, Annex 7A Arbitral Tribunals to Jordan-Singapore FTA.

<sup>2031</sup> Article 1.1.2, Jordan-Singapore FTA. Article 1.1.3, Jordan-Singapore FTA.

<sup>2032</sup> Article 1.1.3, Jordan-Singapore FTA favours more trade liberalization.

<sup>2033</sup> Article 1.1.2, Jordan-Singapore FTA.

<sup>2034</sup> Article 4.1, Annex 7A Arbitral Tribunals to Jordan-Singapore FTA.

<sup>2035</sup> Article 4.3, Annex 7A Arbitral Tribunals to Jordan-Singapore FTA.

<sup>2036</sup> Article 4.4, Annex 7A Arbitral Tribunals to Jordan-Singapore FTA.

<sup>2037</sup> Article 8, MERCOSUR-India PTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
162	Thailand-Australia FTA	2004	V <sub>2043</sub>					V <sub>2044</sub>					V <sub>2045</sub>								V <sub>2046</sub>		V <sub>2047</sub>	V <sub>2048</sub>	V <sub>2049</sub>					
163	United States-Australia FTA	2004					V <sub>2050</sub>	V <sub>2051</sub>					V <sub>2052</sub>						V <sub>2053</sub>	V <sub>2054</sub>			V <sub>2055</sub>	V <sub>2056</sub>	V <sub>2057</sub>	V <sub>2058</sub>				
164	United States-Morocco FTA	2004					V <sub>2059</sub>	V					V <sub>2060</sub>						V <sub>2061</sub>	V <sub>2062</sub>			V <sub>2063</sub>	V <sub>2064</sub>	V <sub>2065</sub>	V <sub>2066</sub>				

<sup>2038</sup> Ibid.

<sup>2039</sup> Ibid.

<sup>2040</sup> Article 17.1, Annex 5 – Dispute Settlement Procedure to MERCOSUR-India PTA.

<sup>2041</sup> Article 17.2, Annex 5 – Dispute Settlement Procedure to MERCOSUR-India PTA.

<sup>2042</sup> Article 18, Annex 5 – Dispute Settlement Procedure to MERCOSUR-India PTA.

<sup>2043</sup> Article 1906, Thailand-Australia FTA.

<sup>2044</sup> Article 1806.1(b), Thailand-Australia FTA.

<sup>2045</sup> Article 1906, Thailand-Australia FTA.

<sup>2046</sup> Ibid.

<sup>2047</sup> Article 1810, Thailand-Australia FTA.

<sup>2048</sup> Article 1810.3, Thailand-Australia FTA.

<sup>2049</sup> Article 1811, Thailand-Australia FTA.

<sup>2050</sup> Preamble to United States-Australia FTA. Article 1.1.2, United States-Australia FTA.

<sup>2051</sup> Article 21.9.2, United States-Australia FTA.

<sup>2052</sup> Preamble to United States-Australia FTA. Article 1.1.2, United States-Australia FTA.

<sup>2053</sup> Article 1.1.3, United States-Australia FTA.

<sup>2054</sup> Preamble to United States-Australia FTA. Article 1.1.2, United States-Australia FTA.

<sup>2055</sup> Article 21.10, United States-Australia FTA.

<sup>2056</sup> Article 21.11.1, United States-Australia FTA.

<sup>2057</sup> Article 21.11.2, United States-Australia FTA.

<sup>2058</sup> Article 21.11.5, United States-Australia FTA.

<sup>2059</sup> Preamble to United States-Morocco FTA. Article 1.2.1, United States-Morocco FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
165	United States-Chile FTA	2003					V <sup>2067</sup>		V <sup>2068</sup>					V <sup>2069</sup>						V <sup>2070</sup>			V <sup>2071</sup>	V <sup>2072</sup>	V <sup>2073</sup>	V <sup>2074</sup>			
166	United States-Singapore FTA	2003					V <sup>2075</sup>	V						V <sup>2076</sup>						V <sup>2077</sup>	V <sup>2078</sup>		V <sup>2079</sup>	V <sup>2080</sup>	V <sup>2081</sup>	V <sup>2082</sup>			
167	India-Afghanistan	2003					V	V					V									V							

<sup>2060</sup> Preamble to United States-Morocco FTA. Article 1.2.1, United States-Morocco FTA.

<sup>2061</sup> Article 1.2.2, United States-Morocco FTA.

<sup>2062</sup> Preamble to United States-Morocco FTA. Article 1.2.1, United States-Morocco FTA.

<sup>2063</sup> Article 20.10, United States-Morocco FTA.

<sup>2064</sup> Article 20.11.1, United States-Morocco FTA.

<sup>2065</sup> Article 20.11.2, United States-Morocco FTA.

<sup>2066</sup> Article 20.11.5, United States-Morocco FTA.

<sup>2067</sup> Preamble to United States-Chile FTA. Article 1.3, United States-Chile FTA.

<sup>2068</sup> Article 1.2.2, United States-Chile FTA.

<sup>2069</sup> Preamble to United States-Chile FTA. Article 1.2.2, United States-Chile FTA.

<sup>2070</sup> Preamble to United States-Chile FTA. Article 1.3, United States-Chile FTA.

<sup>2071</sup> Article 22.14, United States-Chile FTA.

<sup>2072</sup> Article 22.15.1, United States-Chile FTA.

<sup>2073</sup> Article 22.15.2, United States-Chile FTA.

<sup>2074</sup> Article 22.15.5, United States-Chile FTA.

<sup>2075</sup> Preamble to United States-Singapore FTA. Article 1.1.2, United States-Singapore FTA.

<sup>2076</sup> Ibid.

<sup>2077</sup> Article 1.1.3, United States-Singapore FTA.

<sup>2078</sup> Preamble to United States-Singapore FTA. Article 1.1.2, United States-Singapore FTA.

<sup>2079</sup> Article 20.5, United States-Singapore FTA.

<sup>2080</sup> Article 20.6.1, United States-Singapore FTA.

<sup>2081</sup> Article 20.6.2, United States-Singapore FTA.

<sup>2082</sup> Article 20.6.5, United States-Singapore FTA.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Preferential Trade Agreement																												
<b>168</b>	Singapore-Australia FTA	2003	V <sub>2083</sub>					V <sub>2084</sub>	V <sub>2085</sub>				V <sub>2086</sub>								V <sub>2087</sub>	V <sub>2088</sub>	V <sub>2089</sub>	V <sub>2090</sub>	V <sub>2091</sub>				
<b>169</b>	Panama-China FTA	2003	V <sub>2092</sub>					V					V <sub>2093</sub>						V <sub>2094</sub>	V <sub>2095</sub>			V <sub>2096</sub>		V <sub>2097</sub>				
<b>170</b>	Ukraine-Moldova FTA	2003				V <sub>2098</sub>		V										V <sub>2099</sub>		V <sub>2100</sub>	V <sub>2101</sub>	V							

<sup>2083</sup> Preamble to Singapore-Australia FTA. Article 9, Chapter 17 on Dispute Settlement, Singapore-Australia FTA. Footnote 7 of Article 9, Chapter 17 on Dispute Settlement, Singapore-Australia FTA.

<sup>2084</sup> Article 1.5, Chapter 16 on Dispute Settlement, Singapore-Australia FTA.

<sup>2085</sup> Article 1.3, Chapter 16 on Dispute Settlement, Singapore-Australia FTA.

<sup>2086</sup> Preamble to Singapore-Australia FTA. Article 9, Chapter 17 on Dispute Settlement, Singapore-Australia FTA.

<sup>2087</sup> Preamble to Singapore-Australia FTA.

<sup>2088</sup> Article 9, Chapter 17 on Dispute Settlement, Singapore-Australia FTA.

<sup>2089</sup> Article 9, Chapter 16 on Dispute Settlement, Singapore-Australia FTA.

<sup>2090</sup> Article 10.1, Chapter 16 on Dispute Settlement, Singapore-Australia FTA.

<sup>2091</sup> Article 10.2, Chapter 16 on Dispute Settlement, Singapore-Australia FTA.

<sup>2092</sup> Preamble to Panama-China FTA. Article 1.03.1, Panama-China FTA. Article 1.03.2, Panama-China FTA.

<sup>2093</sup> Article 1.03.1 and 2, Panama-China FTA.

<sup>2094</sup> Article 1.03.2, Panama-China FTA.

<sup>2095</sup> Preamble to Panama-China FTA. Article 1.03.1, Panama-China FTA.

<sup>2096</sup> Article 19.17, Panama-China FTA.

<sup>2097</sup> Article 19.18, Panama-China FTA.

<sup>2098</sup> Preamble to Ukraine-Moldova FTA. Article 29.1, Ukraine-Moldova FTA.

<sup>2099</sup> Article 29.1, Ukraine-Moldova FTA.

<sup>2100</sup> Ibid.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
171	Common Economic Zone (CEZ)	2003				V <sub>2102</sub>	V <sub>2103</sub>							V <sub>2104</sub>					V <sub>2105</sub>		V									
172	China-Hong Kong, China Closer Economic Partnership Arrangement	2003				V	V				V										V									
173	China-Macao, China Closer Economic Partnership Arrangement	2003				V	V			V											V									
174	Korea-Chile FTA	2003	V <sub>2106</sub>				V <sub>2107</sub>				V <sub>2108</sub>						V <sub>2109</sub>	V <sub>2110</sub>		V <sub>2111</sub>		V <sub>2112</sub>								
175	EFTA-Chile FTA	2003				V <sub>2113</sub>	V <sub>2114</sub>				V <sub>2115</sub>							V <sub>2116</sub>		V <sub>2117</sub>	V <sub>2118</sub>	V <sub>2119</sub>								

<sup>2101</sup> Preamble to Ukraine-Moldova FTA.

<sup>2102</sup> Article 5, Common Economic Zone (CEZ).

<sup>2103</sup> Article 6, Common Economic Zone (CEZ).

<sup>2104</sup> Article 5, Common Economic Zone (CEZ).

<sup>2105</sup> Ibid.

<sup>2106</sup> Preamble to Korea-Chile FTA. Article 1.3.1, Korea-Chile FTA. Article 1.3.2, Korea-Chile FTA.

<sup>2107</sup> Article 1.2.2, Korea-Chile FTA.

<sup>2108</sup> Preamble to Korea-Chile FTA. Article 1.3.1, Korea-Chile FTA.

<sup>2109</sup> Article 1.3.2, Korea-Chile FTA.

<sup>2110</sup> Preamble to Korea-Chile FTA. Article 1.3.1, Korea-Chile FTA.

<sup>2111</sup> Article 19.14, Korea-Chile FTA.

<sup>2112</sup> Article 19.15, Korea-Chile FTA.

No	PTAs		Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
				1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
				1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
176	EU-Algeria Mediterranean Association Agreement	Euro-	2002			V <sub>2120</sub>			V										V <sub>2121</sub>			V <sub>2122</sub>			V <sub>2123</sub>					V <sub>2124</sub>
177	EU-Lebanon Mediterranean Association Agreement	Euro-	2002			V <sub>2125</sub>			V										V <sub>2126</sub>			V <sub>2127</sub>			V <sub>2128</sub>					V <sub>2129</sub>
178	EU-Chile Association Agreement		2002			V <sub>2130</sub>			V <sub>2131</sub>										V <sub>2132</sub>			V <sub>2133</sub>			V <sub>2134</sub>	V <sub>2135</sub>	V <sub>2136</sub>	V <sub>2137</sub>		

<sup>2113</sup> Preamble to EFTA-Chile FTA. Article 4, EFTA-Chile FTA.

<sup>2114</sup> Article 93.4, EFTA-Chile FTA.

<sup>2115</sup> Preamble to EFTA-Chile FTA. Article 4, EFTA-Chile FTA.

<sup>2116</sup> Ibid.

<sup>2117</sup> Article 96.1, EFTA-Chile FTA.

<sup>2118</sup> Article 96.4, EFTA-Chile FTA.

<sup>2119</sup> Article 96.6, EFTA-Chile FTA.

<sup>2120</sup> Article 21.1, EU-Algeria Euro-Mediterranean Association Agreement.

<sup>2121</sup> Article 21, EU-Algeria Euro-Mediterranean Association Agreement.

<sup>2122</sup> Article 21.1, EU-Algeria Euro-Mediterranean Association Agreement.

<sup>2123</sup> Article 21.2, EU-Algeria Euro-Mediterranean Association Agreement.

<sup>2124</sup> Article 104.2, EU-Algeria Euro-Mediterranean Association Agreement.

<sup>2125</sup> Article 22.1, EU-Lebanon Euro-Mediterranean Association Agreement.

<sup>2126</sup> Article 22, EU-Lebanon Euro-Mediterranean Association Agreement.

<sup>2127</sup> Article 22.1, EU-Lebanon Euro-Mediterranean Association Agreement.

<sup>2128</sup> Article 22.2, EU-Lebanon Euro-Mediterranean Association Agreement.

<sup>2129</sup> Article 86.2, EU-Lebanon Euro-Mediterranean Association Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
179	EFTA-Singapore FTA	2002					V <sub>2138</sub>	V <sub>2139</sub>					V <sub>2140</sub>							V <sub>2141</sub>	V <sub>2142</sub>		V <sub>2143</sub>	V <sub>2144</sub>	V <sub>2145</sub>				
180	Japan-Singapore New-Age Economic	2002	V <sub>2146</sub>					V <sub>2147</sub>					V <sub>2148</sub>							V <sub>2149</sub>	V <sub>2150</sub>		V <sub>2151</sub>	V <sub>2152</sub>	V <sub>2153</sub>				

<sup>2130</sup> Article 56.1, EU-Chile Association Agreement.

<sup>2131</sup> Article 187.3, EU-Chile Association Agreement.

<sup>2132</sup> Article 56.1, EU-Chile Association Agreement.

<sup>2133</sup> Ibid.

<sup>2134</sup> Article 56.2, EU-Chile Association Agreement.

<sup>2135</sup> Article 188.4, EU-Chile Association Agreement.

<sup>2136</sup> Article 188.6, EU-Chile Association Agreement.

<sup>2137</sup> Article 188.6, EU-Chile Association Agreement.

<sup>2138</sup> Preamble to EFTA-Singapore FTA. Article 4, EFTA-Singapore FTA.

<sup>2139</sup> Article 61.5, EFTA-Singapore FTA.

<sup>2140</sup> Preamble to EFTA-Singapore FTA.

<sup>2141</sup> Article 4, EFTA-Singapore FTA.

<sup>2142</sup> Preamble to EFTA-Singapore FTA.

<sup>2143</sup> Article 65.3, EFTA-Singapore FTA.

<sup>2144</sup> Article 65.3 and 65.6, EFTA-Singapore FTA.

<sup>2145</sup> Article 65.6, EFTA-Singapore FTA.

<sup>2146</sup> Preamble to Japan-Singapore New-Age Economic Partnership Agreement. Article 6.1, Japan-Singapore New-Age Economic Partnership Agreement.

<sup>2147</sup> Article 144.1(b), Japan-Singapore New-Age Economic Partnership Agreement.

<sup>2148</sup> Preamble to Japan-Singapore New-Age Economic Partnership Agreement. Article 6.1, Japan-Singapore New-Age Economic Partnership Agreement.

<sup>2149</sup> Preamble to Japan – Singapore New-Age Economic Partnership Agreement.

<sup>2150</sup> Article 6.1, Japan – Singapore New-Age Economic Partnership Agreement.

<sup>2151</sup> Article 147.1, Japan – Singapore New-Age Economic Partnership Agreement.

<sup>2152</sup> Article 147.1, Japan – Singapore New-Age Economic Partnership Agreement.

<sup>2153</sup> Article 147.5, 6 and 7, Japan – Singapore New-Age Economic Partnership Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Partnership Agreement																												
<b>181</b>	Turkey-Bosnia and Herzegovina FTA	2002			V			V										V		V	V		V						V
					<sup>2154</sup>													<sup>2155</sup>		<sup>2156</sup>	<sup>2157</sup>	<sup>2158</sup>							<sup>2159</sup>
<b>182</b>	GUAM FTA	2002	V					V										V		V							V		V
			<sup>2160</sup>															<sup>2161</sup>		<sup>2162</sup>	<sup>2163</sup>						<sup>2164</sup>		<sup>2165</sup>
<b>183</b>	Pakistan-Sri Lanka FTA	2002						V	V					V										V					
<b>184</b>	Panama-El Salvador (Panama-Central	2002	V					V						V						V	V			V			V		V
			<sup>2166</sup>						<sup>2167</sup>					<sup>2168</sup>					<sup>2169</sup>	<sup>2170</sup>				<sup>2171</sup>			<sup>2172</sup>		

<sup>2154</sup> Preamble to Turkey-Bosnia and Herzegovina FTA. Article 32.1, Turkey-Bosnia and Herzegovina FTA.

<sup>2155</sup> Preamble to Turkey-Bosnia and Herzegovina FTA. Article 32, Turkey-Bosnia and Herzegovina FTA.

<sup>2156</sup> Article 32.1, Turkey-Bosnia and Herzegovina FTA.

<sup>2157</sup> Preamble to Turkey-Bosnia and Herzegovina FTA.

<sup>2158</sup> Article 32.2, Turkey-Bosnia and Herzegovina FTA.

<sup>2159</sup> Article 25.2, Turkey-Bosnia and Herzegovina FTA.

<sup>2160</sup> Article 23, GUAM. Article 22.1, GUAM. Article 22.2, GUAM.

<sup>2161</sup> Articles 22 and 23, GUAM. Article 23, GUAM.

<sup>2162</sup> Article 23, GUAM.

<sup>2163</sup> Article 22.1, GUAM. Article 22.2, GUAM.

<sup>2164</sup> Article 21.4, GUAM.

<sup>2165</sup> Ibid.

<sup>2166</sup> Preamble to Panama-El Salvador (Panama-Central America) FTA. Article 1.04.1, Panama-El Salvador (Panama-Central America) FTA. Article 1.04.2, Panama-El Salvador (Panama-Central America) FTA.

<sup>2167</sup> Article 1.02.2, Panama-El Salvador (Panama-Central America) FTA.

<sup>2168</sup> Preamble to Panama-El Salvador (Panama-Central America) FTA. Article 1.04.1, Panama-El Salvador (Panama-Central America) FTA.

<sup>2169</sup> Article 1.04.2, Panama-El Salvador (Panama-Central America) FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	America) FTA																												
185	EFTA-Jordan FTA	2001			V				V						V			V		V								V	
					<sup>2173</sup>				<sup>2174</sup>						<sup>2175</sup>			<sup>2176</sup>		<sup>2177</sup>								<sup>2178</sup>	
186	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001			V			V							V			V	V		V							V	
					<sup>2179</sup>										<sup>2180</sup>			<sup>2181</sup>	<sup>2182</sup>		<sup>2183</sup>						<sup>2184</sup>		
187	EU-Egypt Euro-Mediterranean	2001			V			V							V			V		V									
					<sup>2185</sup>										<sup>2186</sup>			<sup>2187</sup>		<sup>2188</sup>									

<sup>2170</sup> Preamble to Panama-El Salvador (Panama-Central America) FTA. Article 1.04.1, Panama-El Salvador (Panama-Central America) FTA.

<sup>2171</sup> Article 20.17, Panama-El Salvador (Panama-Central America) FTA.

<sup>2172</sup> Article 20.18, Panama-El Salvador (Panama-Central America) FTA.

<sup>2173</sup> Preamble to EFTA-Jordan FTA. Article 36, EFTA-Jordan FTA.

<sup>2174</sup> Article 31.6, EFTA-Jordan FTA.

<sup>2175</sup> Preamble to and Article 36, EFTA-Jordan FTA.

<sup>2176</sup> Article 36, EFTA-Jordan FTA.

<sup>2177</sup> Preamble to EFTA-Jordan FTA.

<sup>2178</sup> Article 32.2, EFTA-Jordan FTA.

<sup>2179</sup> Article 35, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>2180</sup> Ibid.

<sup>2181</sup> Article 35.1, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>2182</sup> Article 35.2, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>2183</sup> Article 35.3, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>2184</sup> Article 118.2, EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement.

<sup>2185</sup> Article 21.1, EU-Egypt Euro-Mediterranean Association Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
			·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·	·
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Association Agreement																												
<b>188</b>	Pacific Island Countries Trade Agreement (PICTA)	2001					V	V								V			V	V	V			V					
							<sup>2189</sup>	<sup>2190</sup>								<sup>2191</sup>			<sup>2192</sup>	<sup>2193</sup>	<sup>2194</sup>			<sup>2195</sup>				<sup>2196</sup>	
<b>189</b>	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001				V		V								V			V			V	V						
						<sup>2197</sup>										<sup>2198</sup>			<sup>2199</sup>			<sup>2200</sup>							
<b>190</b>	Ukraine-Tajikistan FTA	2001	V	V				V								V			V			V							
			<sup>2201</sup>	<sup>2202</sup>												<sup>2203</sup>			<sup>2204</sup>										

<sup>2186</sup> Article 21, EU-Egypt Euro-Mediterranean Association Agreement.

<sup>2187</sup> Article 21.1, EU-Egypt Euro-Mediterranean Association Agreement.

<sup>2188</sup> Article 21.2, EU-Egypt Euro-Mediterranean Association Agreement.

<sup>2189</sup> Preamble to Pacific Island Countries Trade Agreement (PICTA). Article 24.1, Pacific Island Countries Trade Agreement (PICTA).

<sup>2190</sup> Article 4 of Annex V on Arbitration Procedure to Pacific Island Countries Trade Agreement (PICTA).

<sup>2191</sup> Preamble to and Article 24, Pacific Island Countries Trade Agreement (PICTA).

<sup>2192</sup> Article 24.2, Pacific Island Countries Trade Agreement (PICTA).

<sup>2193</sup> Article 24.1, Pacific Island Countries Trade Agreement (PICTA).

<sup>2194</sup> Preamble to Pacific Island Countries Trade Agreement (PICTA).

<sup>2195</sup> Article 22.6, Pacific Island Countries Trade Agreement (PICTA).

<sup>2196</sup> Ibid.

<sup>2197</sup> Article 16.1, Ukraine-The former Yugoslav Republic of Macedonia FTA.

<sup>2198</sup> Article 16, Ukraine-The former Yugoslav Republic of Macedonia FTA.

<sup>2199</sup> Article 16.1, Ukraine-The former Yugoslav Republic of Macedonia FTA.

<sup>2200</sup> Article 16.2, Ukraine-The former Yugoslav Republic of Macedonia FTA.

<sup>2201</sup> Article 10, Ukraine-Tajikistan FTA.

<sup>2202</sup> Article 9, Ukraine-Tajikistan FTA.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1 · 1	1 · 2	1 · 3	1 · 4	1 · 5	2 · 1	2 · 2	2 · 3	2 · 4	2 · 5	3 · 1	3 · 2	3 · 3	3 · 4	3 · 5	3 · 6	3 · 7	3 · 8	3 · 9	3 · 0	4 · 1	4 · 2	4 · 3	4 · 4	4 · 5	4 · 6	4 · 7	
191	Canada-Costa Rica FTA	2001	V <sub>2205</sub>				V							V <sub>2206</sub>		V <sub>2207</sub>	V <sub>2208</sub>					V <sub>2209</sub>	V <sub>2210</sub>	V <sub>2211</sub>						
192	Asia Pacific Trade Agreement (APTA) - Accession of China	2001				V	V				V											V								
193	United States-Jordan FTA	2000				V <sub>2212</sub>	V				V <sub>2213</sub>					V <sub>2214</sub>	V <sub>2215</sub>				V <sub>2216</sub>									
194	Russian Federation-Serbia FTA	2000				V	V				V																		V <sub>2217</sub>	
195	EFTA-The former Yugoslav Republic of	2000			V <sub>2218</sub>		V <sub>2219</sub>							V <sub>2220</sub>		V <sub>2221</sub>	V <sub>2222</sub>												V <sub>2223</sub>	

<sup>2203</sup> Article 9, Ukraine-Tajikistan FTA. Article 10, Ukraine-Tajikistan FTA.

<sup>2204</sup> Ibid.

<sup>2205</sup> Preamble to Canada-Costa Rica FTA. Article I.3, Canada-Costa Rica FTA.

<sup>2206</sup> Ibid.

<sup>2207</sup> Article I.3.2, Canada-Costa Rica FTA.

<sup>2208</sup> Preamble to Canada-Costa Rica FTA.

<sup>2209</sup> Article XIII.16, Canada-Costa Rica FTA.

<sup>2210</sup> Article XIII.18, Canada-Costa Rica FTA.

<sup>2211</sup> Ibid.

<sup>2212</sup> Article 1.2, United States-Jordan FTA. Article 1.3, United States-Jordan FTA.

<sup>2213</sup> Article 1.2 and 1.3, United States-Jordan FTA

<sup>2214</sup> Article 1.3, United States-Jordan FTA.

<sup>2215</sup> Article 1.2, United States-Jordan FTA.

<sup>2216</sup> Article 17.1(d), United States-Jordan FTA.

<sup>2217</sup> Article 17, Russian Federation-Serbia FTA.

<sup>2218</sup> Preamble to EFTA-The former Yugoslav Republic of Macedonia FTA. Article 36, EFTA-The former Yugoslav Republic of Macedonia FTA.



No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)							
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4
			1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7
	Macedonia FTA																												
<b>196</b>	Israel-Mexico FTA	2000	V <sub>2224</sub>					V <sub>2225</sub>					V <sub>2226</sub>						V <sub>2227</sub>	V <sub>2228</sub>			V <sub>2229</sub>	V <sub>2230</sub>	V <sub>2231</sub>				
<b>197</b>	EFTA-Mexico FTA	2000					V <sub>2232</sub>	V							V <sub>2233</sub>					V <sub>2234</sub>			V <sub>2235</sub>	V <sub>2236</sub>	V <sub>2237</sub>				
<b>198</b>	New Zealand-Singapore Closer	2000	V <sub>2238</sub>					V <sub>2239</sub>												V <sub>2240</sub>	V <sub>2241</sub>		V <sub>2242</sub>		V <sub>2243</sub>				V <sub>2244</sub>

<sup>2219</sup> Article 31.6, EFTA-The former Yugoslav Republic of Macedonia FTA.

<sup>2220</sup> Preamble to EFTA-The former Yugoslav Republic of Macedonia FTA. Article 36, EFTA-The former Yugoslav Republic of Macedonia FTA.

<sup>2221</sup> Article 36, EFTA-The former Yugoslav Republic of Macedonia FTA

<sup>2222</sup> Preamble to EFTA-The former Yugoslav Republic of Macedonia FTA.

<sup>2223</sup> Article 32.2, EFTA-The former Yugoslav Republic of Macedonia FTA.

<sup>2224</sup> Article 1-04, Israel-Mexico FTA.

<sup>2225</sup> Article 1-03.2, Israel-Mexico FTA.

<sup>2226</sup> Article 1-04, Israel-Mexico FTA.

<sup>2227</sup> Article 1-04.2, Israel-Mexico FTA.

<sup>2228</sup> Article 1-04.1, Israel-Mexico FTA.

<sup>2229</sup> Article 10-14, Israel-Mexico FTA.

<sup>2230</sup> Article 10-14.2, Israel-Mexico FTA.

<sup>2231</sup> Article 10-15, Israel-Mexico FTA.

<sup>2232</sup> Preamble to EFTA-Mexico FTA.

<sup>2233</sup> Ibid.

<sup>2234</sup> Ibid.

<sup>2235</sup> Article 76.3, EFTA-Mexico FTA.

<sup>2236</sup> Article 76.6, EFTA-Mexico FTA.

<sup>2237</sup> Article 76.6, EFTA-Mexico FTA: Suspension of benefits.

<sup>2238</sup> Preamble to New Zealand-Singapore Closer Economic Partnership Agreement. Article 80, New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>2239</sup> Article 58.2, New Zealand-Singapore Closer Economic Partnership Agreement.

No	PTAs	Year of signature	Conflict of norms definition (1)					Interpretative rules (2)					Conflict clauses (3)									Remedies (4)								
			1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
	Economic Partnership Agreement		1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4

*Source:* Compilation by the author.

<sup>2240</sup> Article 80, New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>2241</sup> Preamble to New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>2242</sup> Article 65.1, New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>2243</sup> Article 65.3, New Zealand-Singapore Closer Economic Partnership Agreement.

<sup>2244</sup> Article 65.2, New Zealand-Singapore Closer Economic Partnership Agreement.

**TABLE 2: PTAs USING “INCONSISTENCY”/ “INCONSISTENT” TERM IN CONFLICT CLAUSES**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
	<b>PTA AT ISSUE IN ITS ENTIRETY v. OTHER MULTIPLE PTAs</b>	
<b>1</b>	Singapore-Australia FTA (SAFTA)	2017
<b>2</b>	Canada-Ukraine FTA	2016
<b>3</b>	EU-Ghana FTA	2016
<b>4</b>	EU-Colombia and Peru – Accession of Ecuador FTA	2016
<b>5</b>	Japan-Mongolia Economic Partnership Agreement	2015
<b>6</b>	Korea-Vietnam FTA	2015
<b>7</b>	Australia-China FTA	2015
<b>8</b>	New Zealand-Korea FTA	2015
<b>9</b>	Korea-Australia FTA	2014
<b>10</b>	Turkey-Malaysia FTA	2014
<b>11</b>	Canada-Korea FTA	2014
<b>12</b>	Japan-Australia Economic Partnership Agreement	2014
<b>13</b>	Korea-Colombia FTA	2013
<b>14</b>	Canada-Honduras Free Trade Agreement	2013
<b>15</b>	Switzerland-China FTA	2013
<b>16</b>	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
<b>17</b>	Singapore-Costa Rica FTA	2013
<b>18</b>	Chile-Thailand FTA	2013
<b>19</b>	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
<b>20</b>	Hong Kong, China-Chile FTA	2012
<b>21</b>	Malaysia-Australia FTA	2012
<b>22</b>	Japan-Peru Economic Partnership Agreement	2011
<b>23</b>	Japan-India Comprehensive Economic Partnership Agreement	2011
<b>24</b>	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
<b>25</b>	Peru-Korea FTA	2011
<b>26</b>	EFTA-Hong Kong, China FTA	2011
<b>27</b>	Canada-Panama FTA	2010
<b>28</b>	Malaysia-Chile FTA	2010
<b>29</b>	Costa Rica-China FTA	2010
<b>30</b>	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
<b>31</b>	Canada-Jordan FTA	2009
<b>32</b>	New Zealand-Malaysia FTA	2009
<b>33</b>	ASEAN-Australia-New Zealand FTA	2009
<b>34</b>	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
<b>35</b>	Korea-India Comprehensive Economic Partnership Agreement	2009
<b>36</b>	Peru-China FTA	2009

No	PTAs	Year of signature
37	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
38	Canada-Peru FTA	2008
39	Canada-Columbia FTA	2008
40	Peru-Singapore FTA	2008
41	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
42	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
43	Japan-Vietnam Economic Partnership Agreement	2008
44	China-New Zealand FTA	2008
45	China-Singapore FTA	2008
46	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
47	Brunei Darussalam-Japan Economic Partnership Agreement	2007
48	Japan-Indonesia Economic Partnership Agreement	2007
49	Japan-Thailand Economic Partnership Agreement	2007
50	Panama-Singapore FTA	2006
51	Japan-Philippines Economic Partnership Agreement	2006
52	Japan-Malaysia Economic Partnership Agreement	2005
53	Korea-Singapore FTA	2005
54	India-Singapore Comprehensive Economic Cooperation Agreement	2005
55	Thailand-New Zealand Closer Economic Partnership Agreement	2005
56	Thailand-Australia FTA	2004
57	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
58	Singapore-Australia FTA	2003
59	Korea-Chile FTA	2003
60	Japan-Singapore New-Age Economic Partnership Agreement	2002
61	Canada-Costa Rica FTA	2001
62	Israel-Mexico FTA	2000
	<b>PROVISIONS OF THE PTA AT ISSUE v. PROVISIONS OF OTHER MULTIPLE PTAs</b>	
63	CPTPP	Not yet
64	El Salvador-Honduras-Chinese Taipei	2007
65	Guatemala-Chinese Taipei FTA	2005
66	Panama-China FTA	2003
	<b>PROVISIONS OF THE PTA AT ISSUE v. OTHER MULTIPLE PTAs</b>	
67	Southern African Development Community (SADC) - Accession of Seychelles	2015
68	Iceland-China FTA	2013
69	Nicaragua-China Taipei FTA	2006
	<b>PROVISIONS OF THE PTA AT ISSUE v. OBLIGATIONS UNDER OTHER MULTIPLE PTAs</b>	
70	Ukraine-Tajikistan FTA	2001

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
<b>71</b>	New Zealand-Singapore Closer Economic Partnership Agreement	2000

*Source:* Compilation by the author.

**TABLE 3: PTAs USING TERMS OF “INCOMPATIBILITY”/ “INCOMPATIBLE”/ “COMPATIBLE” IN CONFLICT CLAUSES**

No	PTAs	Year of signature
	<b>PTA AT ISSUE IN ITS ENTIRETY v. OTHER MULTIPLE PTAs</b>	
<b>1</b>	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
<b>2</b>	Costa Rica-Peru FTA	2011
<b>3</b>	Panama-Peru FTA	2011
<b>4</b>	El Salvador-Cuba FTA	2011
	<b>PROVISIONS OF THE PTA AT ISSUE v. PROVISIONS OF OTHER MULTIPLE PTAs</b>	
<b>5</b>	Pacific Alliance Additional Protocol to the Framework Agreement	2014
<b>6</b>	Mexico-Panama FTA	2014
<b>7</b>	Ukraine-Montenegro FTA	2011
<b>8</b>	Mexico-Central America FTA	2011
<b>9</b>	Panama-Guatemala FTA	2009
<b>10</b>	Panama-Nicaragua FTA	2009
<b>11</b>	Panama-Honduras FTA	2007
<b>12</b>	Panama-Costa Rica FTA	2007
<b>13</b>	Mexico-Uruguay FTA	2004
<b>14</b>	GUAM FTA	2002
<b>15</b>	Panama-El Salvador (Panama-Central America) FTA	2002
<b>16</b>	Ukraine-Tajikistan FTA	2001
	<b>THE PTA AT ISSUE v. PROVISIONS OF OTHER MULTIPLE PTAs</b>	
<b>17</b>	Peru-Mexico Commercial Integration Agreement	2011

*Source:* Compilation by the author.

**TABLE 4: PTAs USING TERMS OF “HAVE/HAS THE EFFECT OF ALTERING” OR “ALTER” IN CONFLICT CLAUSES**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
	<b>PTAs USING THE TERMS OF “HAVE THE EFFECT OF ALTERING”/ “HAS THE EFFECT OF ALTERING”</b>	
<b>1</b>	EFTA-Georgia FTA	2016
<b>2</b>	EFTA-Bosnia and Herzegovina FTA	2013
<b>3</b>	EFTA-Central America (Costa Rica and Panama) FTA	2013
<b>4</b>	EFTA-Montenegro FTA	2011
<b>5</b>	EFTA-Hong Kong, China FTA	2011
<b>6</b>	EFTA-Ukraine FTA	2010
<b>7</b>	EFTA-Albania FTA	2009
<b>8</b>	EFTA-Serbia FTA	2009
<b>9</b>	EFTA-Tunisia FTA	2004
<b>10</b>	Ukraine-Montenegro FTA	2011
<b>11</b>	EU-Algeria Euro-Mediterranean Association Agreement	2002
<b>12</b>	Switzerland-China FTA	2013
	<b>PTAs USING THE TERMS OF “ALTER”</b>	
<b>13</b>	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
<b>14</b>	EU-Montenegro Stabilization and Association Agreement	2007
<b>15</b>	EU-Albania Stabilization and Association Agreement	2006
<b>16</b>	EU-Lebanon Euro-Mediterranean Association Agreement	2002
<b>17</b>	EU-Chile Association Agreement	2002
<b>18</b>	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001
<b>19</b>	EU-Egypt Euro-Mediterranean Association Agreement	2001
<b>20</b>	Turkey-Malaysia FTA	2014
<b>21</b>	Agreement on Trade in Goods between Turkey and Korea	2012
<b>22</b>	Turkey-Chile FTA	2009
<b>23</b>	Turkey-Syria FTA	2004
<b>24</b>	EFTA-Egypt FTA	2007

*Source:* Compilation by the author.

**TABLE 5: PTAs USING THE TERMS OF “AFFECT” OR “AFFECTED” IN CONFLICT CLAUSES**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
	<b>PTAs USING THE TERMS OF “NEGATIVELY AFFECT”</b>	
<b>1</b>	Turkey-Serbia FTA	2009
<b>2</b>	Turkey-Montenegro FTA	2008
<b>3</b>	Turkey-Georgia FTA	2007
<b>4</b>	Turkey-Albania FTA	2006
<b>5</b>	Egypt-Turkey FTA	2005
<b>6</b>	Turkey-Morocco FTA	2004
<b>7</b>	Turkey-Tunisia FTA	2004
<b>8</b>	Turkey-Palestinian Authority Interim FTA	2004
<b>9</b>	Turkey-Bosnia and Herzegovina FTA	2002
<b>10</b>	EFTA-Lebanon FTA	2004
<b>11</b>	EFTA-Jordan FTA	2001
<b>12</b>	EFTA-The former Yugoslav Republic of Macedonia FTA	2000
<b>13</b>	Ukraine-Moldova FTA	2003
<b>14</b>	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001
<b>15</b>	Central European Free Trade Agreement	2006
	<b>PTAs USING THE TERMS OF “ADVERSELY AFFECT”</b>	
<b>16</b>	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
	<b>PTAs USING THE TERMS OF “BEING AFFECTED” IN CONFLICT CLAUSES</b>	
<b>17</b>	Turkey-Moldova FTA	2014
<b>18</b>	Mauritius-Turkey FTA	2013

*Source:* Compilation by the author.



**TABLE 6: PTAs WITHOUT ANY RELEVANT TERM INDICATIVE OF THE CONFLICT NOTION**

No	PTAs	Year of signature
	<b>(PROVISIONS OF) PTA AT ISSUE v. BOTH RIGHTS AND OBLIGATIONS UNDER OTHER MULTIPLE PTAs</b>	
1	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017
2	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
3	EU-Colombia and Peru - Accession of Ecuador FTA	2016
4	Eurasian Economic Union (EAEU)-Vietnam	2015
5	China-Korea FTA	2015
6	Chile-Vietnam FTA	2011
7	EFTA-Peru FTA	2010
8	Interim Partnership Agreement between EU and Pacific States	2009
9	EFTA-Columbia FTA	2008
10	EFTA-Canada FTA	2008
11	Gulf Cooperation Council (GCC)-Singapore FTA	2008
12	EU-CARIFORUM Economic Partnership Agreement	2008
13	Australia-Chile FTA	2008
14	Korea-United States FTA	2007
15	United States-Panama Trade Promotion Agreement	2007
16	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007
17	Chile-Japan Strategic Economic Partnership Agreement	2007
18	United States-Colombia FTA	2006
19	United States-Peru FTA	2006
20	United States-Oman FTA	2006
21	ASEAN-Korea FTA	2006
22	Chile-Colombia FTA	2006
23	Panama-Chile Treaty of Free Trade	2006
24	Pakistan-China FTA	2006
25	United States-Bahrain FTA	2005
26	Chile-China FTA	2005
27	EFTA-Korea FTA	2005
28	Jordan-Singapore FTA	2004
29	United States-Australia FTA	2004
30	United States-Morocco FTA	2004
31	United States-Chile FTA	2003
32	United States-Singapore FTA	2003
33	EFTA-Chile FTA	2003
34	EFTA-Singapore FTA	2002
35	Pacific Island Countries Trade Agreement (PICTA)	2001
36	EFTA-Mexico FTA	2000
	<b>PTA AT ISSUE v. OTHER PTAs</b>	

No	PTAs	Year of signature
37	Turkey-Jordan FTA	2009
38	Agadir Agreement	2004
39	MERCOSUR-India PTA	2004
40	Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS)	2011
41	EU-Korea FTA	2010
42	EU-Eastern and Southern Africa States Interim EPA	2009
43	Interim Agreement with a view to EU -Central Africa Economic Partnership Agreement	2009
44	ASEAN-China FTA	2004
45	Common Economic Zone (CEZ)	2003
	<b>PTAs AT ISSUE v. OBLIGATIONS UNDER OTHER MULTIPLE PTAs</b>	
46	Japan-Australia Economic Partnership Agreement	2014
47	Peru-Singapore FTA	2008
48	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
49	Japan-Vietnam Economic Partnership Agreement	2008
50	United States-Jordan FTA	2000
	<b>PROVISIONS OF PTA AT ISSUE v. OBLIGATIONS UNDER OTHER PTAs</b>	
51	EFTA-SACU FTA	2006
	<b>PROVISIONS OF PTA AT ISSUE v. PREFERENCES UNDER OTHER PTAs</b>	
52	South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	2008
53	Mauritius-Pakistan Preferential Trade Agreement	2007
54	South Asian Free Trade Agreement (SAFTA)	2004
55	Argentina-Brazil FTA	2016
56	Southern Common Market (MERCOSUR)-Mexico Economic Complementation Agreement	2016
57	Southern Common Market (MERCOSUR)-Chile Economic Complementation Agreement	2016
58	EU-SADC Economic Partnership Agreement	2016
59	EU-Georgia Association Agreement	2014
60	EU-Ukraine Association Agreement	2014
61	EU-Moldova Association Agreement	2014
62	EU-Columbia and Peru Trade Agreement	2012
63	Association Agreement between the EU and Colombia and Peru and Ecuador	2012
64	EU-Central America Association Agreement <sup>2245</sup>	2012
65	India-Nepal Treaty of Trade	2009

<sup>2245</sup> Part IV-Trade, EU - Central America Association Agreement.

No	PTAs	Year of signature
66	Southern Common Market (MERCOSUR) - Southern African Customs Union (SACU) Preferential Trade Agreement	2008
67	EU-Serbia Stabilization and Association Agreement	2008
68	Chile-India PTA	2006
69	India-Bhutan Agreement on Trade, Commerce and Transit	2006
70	Iceland-Faroe Islands Agreement	2005
71	Japan-Mexico Agreement for the Strengthening of Economic Partnership	2004
72	India-Thailand FTA	2004
73	India-Afghanistan Preferential Trade Agreement	2003
74	China-Hong Kong, China Closer Economic Partnership Arrangement	2003
75	China-Macao, China Closer Economic Partnership Arrangement	2003
76	Pakistan-Sri Lanka FTA	2002
77	Asia Pacific Trade Agreement (APTA) - Accession of China	2001
78	Russian Federation-Serbia FTA	2000

*Source:* Compilation by the author.

**TABLE 7: PTAs WITHOUT EXPLICIT INTERPRETATIVE RULES**

No	PTAs	Year of signature
1	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017
2	Argentina-Brazil FTA	2016
3	Southern Common Market (MERCOSUR)-Mexico Economic Complementation Agreement	2016
4	Southern Common Market (MERCOSUR)-Chile Economic Complementation Agreement	2016
5	Eurasian Economic Union (EAEU)-Vietnam	2015
6	Southern African Development Community (SADC) - Accession of Seychelles	2015
7	Turkey-Moldova FTA	2014
8	Mexico-Panama FTA	2014
9	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
10	Chile-Thailand FTA	2013
11	Agreement on Trade in Goods between Turkey and Korea	2012
12	Costa Rica-Peru FTA	2011
13	Panama-Peru FTA	2011
14	Peru-Korea FTA	2011
15	Turkey-Jordan FTA	2009
16	Panama-Guatemala FTA	2009
17	Panama-Nicaragua FTA	2009
18	EU-Eastern and Southern Africa States Interim EPA	2009
19	Interim Partnership Agreement between EU and Pacific States	2009
20	Turkey-Serbia FTA	2009
21	India-Nepal Treaty of Trade	2009
22	Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU) Preferential Trade Agreement	2008
23	South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	2008
24	Turkey-Georgia FTA	2007
25	Chile-Japan Strategic Economic Partnership Agreement	2007
26	EFTA-Egypt FTA	2007
27	EU-Albania Stabilization and Association Agreement	2006
28	United States-Colombia FTA	2006
29	United States-Peru FTA	2006
30	United States-Oman FTA	2006
31	Chile-India PTA	2006
32	India-Bhutan Agreement on Trade, Commerce and Transit	2006
33	Turkey-Albania FTA	2006
34	Central European Free Trade Agreement	2006
35	United States-Bahrain FTA	2005
36	Guatemala-Chinese Taipei FTA	2005

No	PTAs	Year of signature
37	Iceland-Faroe Islands Agreement	2005
38	Egypt-Turkey FTA	2005
39	EFTA-Tunisia FTA	2004
40	Turkey-Syria FTA	2004
41	Turkey-Morocco FTA	2004
42	Turkey-Tunisia FTA	2004
43	Turkey-Palestinian Authority Interim FTA	2004
44	Agadir Agreement	2004
45	Japan-Mexico Agreement for the Strengthening of Economic Partnership	2004
46	India-Thailand FTA	2004
47	South Asian Free Trade Agreement (SAFTA)	2004
48	MERCOSUR-India PTA	2004
49	United States-Morocco FTA	2004
50	United States-Singapore FTA	2003
51	India-Afghanistan Preferential Trade Agreement	2003
52	Panama-China FTA	2003
53	Ukraine-Moldova FTA	2003
54	China-Hong Kong, China Closer Economic Partnership Arrangement	2003
55	China-Macao, China Closer Economic Partnership Arrangement	2003
56	EU-Algeria Euro-Mediterranean Association Agreement	2002
57	EU-Lebanon Euro-Mediterranean Association Agreement	2002
58	Turkey-Bosnia and Herzegovina FTA	2002
59	GUAM FTA	2002
60	Pakistan-Sri Lanka FTA	2002
61	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001
62	EU-Egypt Euro-Mediterranean Association Agreement	2001
63	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001
64	Ukraine-Tajikistan FTA	2001
65	Canada-Costa Rica FTA	2001
66	Asia Pacific Trade Agreement (APTA) - Accession of China	2001
67	Pacific Island Countries Trade Agreement (PICTA)	2001
68	United States-Jordan FTA	2000
69	Russian Federation-Serbia FTA	2000
70	EFTA-Mexico FTA	2000

*Source:* Compilation by the author.

**TABLE 8: PTAs WITH INTERPRETATION RULES OF THE VCLT**

No	PTAs	Year of signature
	<b>RULES OF INTERPRETATION OF PIL</b>	
1	Canada-Ukraine FTA	2016
2	EFTA-Bosnia and Herzegovina FTA	2013
3	EFTA-Central America (Costa Rica and Panama) FTA	2013
4	EFTA-Montenegro FTA	2011
5	EFTA-Hong Kong, China FTA	2011
6	Ukraine-Montenegro FTA	2011
7	EFTA-Ukraine FTA	2010
8	EFTA-Peru FTA	2010
9	Canada-Panama FTA	2010
10	EFTA-Albania FTA	2009
11	EFTA-Serbia FTA	2009
12	Canada-Jordan FTA	2009
13	EFTA-Columbia FTA	2008
14	Canada-Columbia FTA	2008
15	Canada-Peru FTA	2008
16	Gulf Cooperation Council (GCC)-Singapore FTA	2008
17	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007
18	EFTA-Korea FTA	2005
19	Mexico-Uruguay FTA	2004
20	EFTA-Chile FTA	2003
21	EFTA-Singapore FTA	2002
	<b>WITH SPECIFICATION OF WHICH CUSTOMARY RULES OF INTERPRETATION TO COMPLY WITH</b>	
22	Canada-Korea FTA	2014
	<b>CUSTOMARY RULES OF INTERPRETATION OF PIL</b>	
23	Singapore-Australia FTA (SAFTA)	2017
24	EFTA-Georgia FTA	2016
25	Korea-Vietnam FTA	2015
26	Turkey-Malaysia FTA	2014
27	Switzerland-China FTA	2013
28	Iceland-China FTA	2013
29	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
30	Malaysia-Australia FTA	2012
31	Hong Kong, China-Chile FTA	2012
32	EU-Central America Association Agreement	2012
33	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
34	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
35	Costa Rica-China FTA	2010

No	PTAs	Year of signature
36	New Zealand-Malaysia FTA	2009
37	ASEAN-Australia-New Zealand FTA	2009
38	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
39	Korea-India Comprehensive Economic Partnership Agreement	2009
40	Turkey-Chile FTA	2009
41	EFTA-Canada FTA	2008
42	China-New Zealand FTA	2008
43	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
44	Pakistan-China FTA	2006
45	ASEAN-Korea FTA	2006
46	EFTA-SACU FTA	2006
47	Panama-Singapore FTA	2006
48	India-Singapore Comprehensive Economic Cooperation Agreement	2005
49	Korea-Singapore FTA	2005
50	Chile-China FTA	2005
51	EFTA-Lebanon FTA	2004
52	Jordan-Singapore FTA	2004
53	Singapore-Australia FTA	2003
54	EU-Chile Association Agreement	2002
55	EFTA-Jordan FTA	2001
56	EFTA-The former Yugoslav Republic of Macedonia FTA	2000
	<b>REFERRING TO THE VCLT 1969 AS A WHOLE WITHOUT IDENTIFYING ANY OF ITS SPECIFIC RULES OF INTERPRETATION</b>	
57	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
58	EU-SADC Economic Partnership Agreement	2016
59	EU-Ghana FTA	2016
60	EU-Colombia and Peru - Accession of Ecuador FTA	2016
61	Australia-China FTA	2015
62	China-Korea FTA	2015
63	New Zealand-Korea FTA	2015
64	EU-Georgia Association Agreement	2014
65	EU-Ukraine Association Agreement	2014
66	EU-Moldova Association Agreement	2014
67	Korea-Australia FTA	2014
68	Korea-Colombia FTA	2013
69	EU-Columbia and Peru Trade Agreement	2012
70	Association Agreement between the EU and Colombia and Peru and Ecuador	2012
71	EU-Korea FTA	2010
72	Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement	2009

No	PTAs	Year of signature
73	EU-Serbia Stabilization and Association Agreement	2008
74	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
75	EU-CARIFORUM Economic Partnership Agreement	2008
76	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
77	EU-Montenegro Stabilization and Association Agreement	2007
	<b>REFERRING TO SPECIFIC PROVISIONS ON INTERPRETATION IN THE VCLT 1969 WHICH ARE ARTICLES 31, 32 AND 33</b>	
78	Korea-United States FTA	2007
	<b>APPLICABLE RULES OF INTERNATIONAL LAW</b>	
79	Japan-Mongolia Economic Partnership Agreement	2015
80	Canada-Honduras Free Trade Agreement	2013
81	Singapore-Costa Rica FTA	2013
82	Mexico-Central America FTA	2011
83	Japan-Peru Economic Partnership Agreement	2011
84	Japan-India Comprehensive Economic Partnership Agreement	2011
85	Peru-Mexico Commercial Integration Agreement	2011
86	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
87	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
88	Japan-Vietnam Economic Partnership Agreement	2008
89	China-Singapore FTA	2008
90	United States-Panama Trade Promotion Agreement	2007
91	Brunei Darussalam-Japan Economic Partnership Agreement	2007
92	Japan-Indonesia Economic Partnership Agreement	2007
93	Japan-Thailand Economic Partnership Agreement	2007
94	El Salvador-Honduras-Chinese Taipei	2007
95	Panama-Honduras FTA	2007
96	Mauritius-Pakistan Preferential Trade Agreement	2007
97	Panama-Costa Rica FTA	2007
98	Japan-Philippines Economic Partnership Agreement	2006
99	Chile-Peru FTA	2006
100	Panama-Chile Treaty of Free Trade	2006
101	Chile-Colombia FTA	2006
102	Nicaragua-China Taipei FTA	2006
103	Thailand-New Zealand Closer Economic Partnership Agreement	2005
104	Japan-Malaysia Economic Partnership Agreement	2005
105	Thailand-Australia FTA	2004
106	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
107	United States-Chile FTA	2003
108	Korea-Chile FTA	2003
109	Japan-Singapore New-Age Economic Partnership Agreement	2002



No	PTAs	Year of signature
110	Panama-El Salvador (Panama-Central America) FTA	2002
111	Israel-Mexico FTA	2000
	<b>“(APPLICABLE) NORMS OF INTERNATIONAL (PUBLIC) LAW”</b>	
112	Pacific Alliance Additional Protocol to the Framework Agreement	2014
113	Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS)	2011
	<b>PTAS USING TERMS OF “(APPLICABLE) RULES OF INTERPRETATION UNDER INTERNATIONAL LAW” WITH SPECIFICATION OF RULES</b>	
114	CPTPP	Not yet
115	Japan-Australia Economic Partnership Agreement	2014
116	United States-Australia FTA	2004
	<b>PTAs USING TERMS OF “GENERAL PRINCIPLES OF INTERNATIONAL LAW”</b>	
117	New Zealand-Singapore Closer Economic Partnership Agreement	2000
	<b>“GENERALLY RECOGNIZED RULES AND PRINCIPLES OF INTERNATIONAL LAW”</b>	
118	Common Economic Zone (CEZ)	2003
	<b>RULES OF INTERPRETATION APPLICABLE TO THE WTO AGREEMENT</b>	
119	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013

*Source:* Compilation by the author.

**TABLE 9: PTAs REFERRING TO THE WTO DSB'S INTERPRETATION AS THEIR INTERPRETATION RULES**

No	PTAs	Year of signature
1	CPTPP	Not yet
2	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
3	Australia-China FTA	2015
4	Korea-Australia FTA	2014
5	EU-Georgia Association Agreement	2014
6	EU-Ukraine Association Agreement	2014
7	EU-Moldova Association Agreement	2014
8	EU-Central America Association Agreement	2012
9	EU-Korea FTA	2010

*Source:* Compilation by the author.

**TABLE 10: PTAs WITH INTERPRETATION RULE OF NO ADDITION OR DIMINISHING OF PTA RIGHTS AND OBLIGATIONS**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	CPTPP	2018
2	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
3	EU-SADC Economic Partnership Agreement	2016
4	EU-Ghana FTA	2016
5	EU-Colombia and Peru - Accession of Ecuador FTA	2016
6	Australia-China FTA	2015
7	New Zealand-Korea FTA	2015
8	Korea-Australia FTA	2014
9	Pacific Alliance Additional Protocol to the Framework Agreement	2014
10	Japan-Australia Economic Partnership Agreement	2014
11	EU-Georgia Association Agreement	2014
12	EU-Ukraine Association Agreement	2014
13	EU-Moldova Association Agreement	2014
14	Iceland-China FTA	2013
15	Switzerland-China FTA	2013
16	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
17	New Zealand-Chinese Taipei	2013
18	Singapore-Costa Rica FTA	2013
19	Hong Kong, China-Chile FTA	2012
20	Malaysia-Australia FTA	2012
21	EU-Central America Association Agreement	2012
22	EU-Columbia and Peru Trade Agreement	2012
23	Association Agreement between the EU and Colombia and Peru and Ecuador	2012
24	Chile-Vietnam FTA	2011
25	Japan-Peru Economic Partnership Agreement	2011
26	Malaysia-Chile FTA	2010
27	Costa Rica-China FTA	2010
28	EU-Korea FTA	2010
29	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
30	Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement	2009
31	ASEAN-Australia-New Zealand FTA	2009
32	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
33	Korea-India Comprehensive Economic Partnership Agreement	2009
34	Peru-China FTA	2009
35	Gulf Cooperation Council (GCC)-Singapore FTA	2008
36	Peru-Singapore FTA	2008

No	PTAs	Year of signature
37	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
38	EU-CARIFORUM Economic Partnership Agreement	2008
39	Turkey-Montenegro FTA	2008
40	China-New Zealand FTA	2008
41	China-Singapore FTA	2008
42	Australia-Chile FTA	2008
43	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
44	Brunei Darussalam-Japan Economic Partnership Agreement	2007
45	ASEAN-Korea FTA	2006
46	Panama-Singapore FTA	2006
47	Pakistan-China FTA	2006
48	Chile-China FTA	2005
49	Korea-Singapore FTA	2005
50	ASEAN-China FTA	2004
51	Singapore-Australia FTA	2003

*Source:* Compilation by the author.

**TABLE 11: PTAS WITH OTHER INTERPRETATION RULES**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	EU-Serbia Stabilization and Association Agreement	2008
2	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008

*Source:* Compilation by the author.

**TABLE 12: PTAs WITH CONFLICT CLAUSES ON TERMINATION OF OTHER PTAs**

No	PTAs	Year of signature
1	Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS)	2011
2	Japan-Mexico Agreement for the Strengthening of Economic Partnership	2004

*Source:* Compilation by the author.

**TABLE 13: PTAs WITH CONFLICT CLAUSES ON NON-APPLICATION OF THOSE PTAs**

No	PTAs	Year of signature
1	ASEAN-Australia-New Zealand FTA	2009
2	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
3	Gulf Cooperation Council (GCC)-Singapore FTA	2008
4	South Asian Free Trade Agreement (SAFTA)-Accession of Afghanistan	2008
5	Mauritius-Pakistan Preferential Trade Agreement	2007
6	United States-Oman FTA	2006
7	South Asian Free Trade Agreement (SAFTA)	2004

*Source:* Compilation by the author.

**TABLE 14: PTAs WITH CONFLICT CLAUSES GIVING PREVELANCE ON PTAs  
IN QUESTION**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	Canada-Ukraine FTA	2016
2	Southern African Development Community (SADC) - Accession of Seychelles	2015
3	Turkey-Malaysia	2014
4	Turkey-Moldova FTA	2014
5	Mexico-Panama FTA	2014
6	Japan-Australia Economic Partnership Agreement	2014
7	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
8	Korea-Colombia FTA	2013
9	Canada-Honduras Free Trade Agreement	2013
10	Singapore-Costa Rica FTA	2013
11	Agreement on Trade in Goods between Turkey and Korea	2012
12	Costa Rica-Peru FTA	2011
13	Ukraine-Montenegro FTA	2011
14	Panama-Peru FTA	2011
15	Peru-Mexico Commercial Integration Agreement	2011
16	Mexico-Central America FTA	2011
17	Canada-Panama FTA	2010
18	EFTA-Ukraine FTA	2010
19	Canada-Jordan FTA	2009
20	Turkey-Chile FTA	2009
21	Panama-Guatemala FTA	2009
22	Panama-Nicaragua FTA	2009
23	EFTA-Albania FTA	2009
24	EFTA-Serbia FTA	2009
25	Turkey-Serbia FTA	2009
26	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
27	Canada-Peru FTA	2008
28	Canada-Columbia FTA	2008
29	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
30	Turkey-Montenegro FTA	2008
31	Panama-Honduras FTA	2007
32	El Salvador-Honduras-Chinese Taipei	2007
33	Turkey-Georgia FTA	2007
34	EFTA-Egypt FTA	2007
35	Panama-Costa Rica FTA	2007
36	EU-Montenegro Stabilization and Association Agreement	2007
37	EU-Albania Stabilization and Association Agreement	2006



No	PTAs	Year of signature
38	Nicaragua-China Taipei FTA	2006
39	EFTA-SACU FTA	2006
40	Turkey-Albania FTA	2006
41	Central European Free Trade Agreement	2006
42	Guatemala-Chinese Taipei FTA	2005
43	Egypt-Turkey FTA	2005
44	EFTA-Lebanon FTA	2004
45	EFTA-Tunisia FTA	2004
46	Turkey-Syria FTA	2004
47	Turkey-Morocco FTA	2004
48	Turkey-Tunisia FTA	2004
49	Turkey-Palestinian Authority Interim FTA	2004
50	Mexico-Uruguay FTA <sup>2246</sup>	2004
51	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
52	Panama-China FTA	2003
53	Ukraine-Moldova FTA	2003
54	Korea-Chile FTA	2003
55	EU-Algeria Euro-Mediterranean Association Agreement	2002
56	EU-Lebanon Euro-Mediterranean Association Agreement	2002
57	EU-Chile Association Agreement	2002
58	Turkey-Bosnia and Herzegovina FTA	2002
59	GUAM FTA	2002
60	Panama-El Salvador (Panama-Central America) FTA	2002
61	EFTA-Jordan FTA	2001
62	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001
63	EU-Egypt Euro-Mediterranean Association Agreement	2001
64	Pacific Island Countries Trade Agreement (PICTA)	2001
65	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001
66	Ukraine-Tajikistan FTA	2001
67	Canada-Costa Rica FTA	2001
68	EFTA-The former Yugoslav Republic of Macedonia FTA	2000
69	Israel-Mexico FTA	2000

*Source:* Compilation by the author.

<sup>2246</sup> Treaty of Free Trade between the United States of Mexico and the Eastern Republic of Uruguay.

**TABLE 15: PTAs WITH CONFLICT CLAUSES GIVING PREVELANCE ON  
OTHER MULTIPLE CONFLICTING PTAs**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017
2	Eurasian Economic Union (EAEU)-Vietnam	2015
3	Korea-Vietnam FTA	2015
4	Australia-China FTA	2015
5	Korea-Australia FTA	2014
6	Turkey-Malaysia	2014
7	Japan-Australia Economic Partnership Agreement	2014
8	EFTA-Bosnia and Herzegovina FTA	2013
9	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
10	Hong Kong, China-Chile FTA	2012
11	Malaysia-Australia FTA	2012
12	Ukraine-Montenegro FTA	2011
13	EFTA-Montenegro FTA	2011
14	EFTA-Peru FTA	2010
15	Costa Rica-China FTA	2010
16	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
17	Interim Partnership Agreement between EU and Pacific States	2009
18	New Zealand-Malaysia FTA	2009
19	EFTA-Albania FTA	2009
20	EFTA-Serbia FTA	2009
21	ASEAN-Australia-New Zealand FTA	2009
22	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
23	Peru-Singapore FTA	2008
24	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
25	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
26	Japan-Vietnam Economic Partnership Agreement	2008
27	China-New Zealand FTA	2008
28	Korea-United States FTA	2007
29	EFTA-Egypt FTA	2007
30	United States-Oman FTA	2006
31	ASEAN-Korea FTA	2006
32	Panama-Singapore FTA	2006
33	EFTA-SACU FTA	2006
34	Central European Free Trade Agreement	2006
35	United States-Bahrain FTA	2005
36	EFTA-Korea FTA	2005
37	EFTA-Lebanon FTA	2004

No	PTAs	Year of signature
38	ASEAN-China FTA	2004
39	Agadir Agreement	2004
40	Jordan-Singapore FTA	2004
41	United States-Australia FTA	2004
42	United States-Morocco FTA	2004
43	United States-Singapore FTA	2003
44	EFTA-Singapore FTA	2002
45	Turkey-Bosnia and Herzegovina FTA	2002
46	GUAM FTA	2002
47	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001
48	Pacific Island Countries Trade Agreement (PICTA)	2001
49	United States-Jordan FTA	2000
50	EFTA-The former Yugoslav Republic of Macedonia FTA	2000
51	New Zealand-Singapore Closer Economic Partnership Agreement	2000

*Source:* Compilation by the author.

**TABLE 16: PTAs WITH CONFLICT CLAUSES ON CO-EXISTENCE  
/CONFIRMATION OF RIGHTS AND OBLIGATIONS UNDER OTHER EXISTING  
PTAs**

No	PTAs	Year of signature
1	CPTPP	2018
2	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
3	Canada-Ukraine FTA	2016
4	EFTA-Georgia FTA	2016
5	Japan-Mongolia Economic Partnership Agreement	2015
6	Korea-Vietnam FTA	2015
7	China-Korea FTA	2015
8	Australia-China FTA	2015
9	Southern African Development Community (SADC) - Accession of Seychelles	2015
10	New Zealand-Korea FTA	2015
11	Korea-Australia FTA	2014
12	Turkey-Malaysia	2014
13	Pacific Alliance Additional Protocol to the Framework Agreement	2014
14	Mexico-Panama FTA	2014
15	Canada-Korea FTA	2014
16	Japan-Australia Economic Partnership Agreement	2014
17	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
18	Korea-Colombia FTA	2013
19	Canada-Honduras Free Trade Agreement	2013
20	EFTA-Bosnia and Herzegovina FTA	2013
21	EFTA-Central America (Costa Rica and Panama) FTA	2013
22	Iceland-China FTA	2013
23	Switzerland-China FTA	2013
24	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
25	Singapore-Costa Rica FTA	2013
26	Chile-Thailand FTA	2013
27	Hong Kong, China-Chile FTA	2012
28	Malaysia-Australia FTA	2012
29	Agreement on Trade in Goods between Turkey and Korea	2012
30	Chile-Vietnam FTA	2011
31	Costa Rica-Peru FTA	2011
32	Panama-Peru FTA	2011
33	Japan-Peru Economic Partnership Agreement	2011
34	Japan-India Comprehensive Economic Partnership Agreement	2011
35	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
36	Peru-Mexico Commercial Integration Agreement	2011

No	PTAs	Year of signature
37	EFTA-Montenegro FTA	2011
38	EFTA-Hong Kong, China FTA	2011
39	Mexico-Central America FTA	2011
40	El Salvador-Cuba FTA	2011
41	Canada-Panama FTA	2010
42	Malaysia-Chile FTA	2010
43	EFTA-Ukraine FTA	2010
44	EU-Korea FTA	2010
45	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
46	Canada-Jordan FTA	2009
47	Turkey-Jordan FTA	2009
48	Turkey-Chile FTA	2009
49	Panama-Guatemala FTA	2009
50	Panama-Nicaragua FTA	2009
51	ASEAN-Australia-New Zealand FTA	2009
52	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
53	Korea-India Comprehensive Economic Partnership Agreement	2009
54	Peru-China FTA	2009
55	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
56	Canada-Peru FTA	2008
57	Canada-Columbia FTA	2008
58	EFTA-Columbia FTA	2008
59	EFTA-Canada FTA	2008
60	Gulf Cooperation Council (GCC)-Singapore FTA	2008
61	Peru-Singapore FTA	2008
62	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
63	Japan-Vietnam Economic Partnership Agreement	2008
64	China-New Zealand FTA	2008
65	China-Singapore FTA	2008
66	Australia-Chile FTA	2008
67	Mauritius-Pakistan Preferential Trade Agreement	2007
68	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
69	Korea-United States FTA	2007
70	United States-Panama Trade Promotion Agreement	2007
71	Panama-Honduras FTA	2007
72	Panama-Costa Rica FTA	2007
73	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007
74	El Salvador-Honduras-Chinese Taipei	2007
75	Brunei Darussalam-Japan Economic Partnership Agreement	2007

No	PTAs	Year of signature
76	Japan-Indonesia Economic Partnership Agreement	2007
77	Japan-Thailand Economic Partnership Agreement	2007
78	Chile-Japan Strategic Economic Partnership Agreement	2007
79	United States-Colombia FTA	2006
80	United States-Peru FTA	2006
81	United States-Oman FTA	2006
82	Chile-Colombia FTA	2006
83	Panama-Chile Treaty of Free Trade	2006
84	Panama-Singapore FTA	2006
85	Nicaragua-China Taipei FTA	2006
86	Japan-Philippines Economic Partnership Agreement	2006
87	EFTA-SACU FTA	2006
88	Pakistan-China FTA	2006
89	United States-Bahrain FTA	2005
90	Japan-Malaysia Economic Partnership Agreement	2005
91	Guatemala-Chinese Taipei FTA	2005
92	Chile-China FTA	2005
93	Korea-Singapore FTA	2005
94	India-Singapore Comprehensive Economic Cooperation Agreement	2005
95	Thailand-New Zealand Closer Economic Partnership Agreement	2005
96	EFTA-Korea FTA	2005
97	EFTA-Tunisia FTA	2004
98	Mexico-Uruguay FTA	2004
99	Jordan-Singapore FTA	2004
100	United States-Australia FTA	2004
101	United States-Morocco FTA	2004
102	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
103	United States-Chile FTA	2003
104	United States-Singapore FTA	2003
105	Singapore-Australia FTA	2003
106	Panama-China FTA	2003
107	Ukraine-Moldova FTA	2003
108	Common Economic Zone (CEZ)	2003
109	Korea-Chile FTA	2003
110	EFTA-Chile FTA	2003
111	EFTA-Singapore FTA	2002
112	Japan-Singapore New-Age Economic Partnership Agreement	2002
113	Panama-El Salvador (Panama-Central America) FTA	2002
114	EFTA-Jordan FTA	2001
115	Pacific Island Countries Trade Agreement (PICTA)	2001
116	Canada-Costa Rica FTA	2001
117	United States-Jordan FTA	2000

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
118	Israel-Mexico FTA	2000
119	EFTA-Mexico FTA	2000
120	New Zealand-Singapore Closer Economic Partnership Agreement	2000

*Source:* Compilation by the author.

**TABLE 17: PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS**

No	PTAs	Year of signature
<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS ONLY</b>		
1	Ukraine-Montenegro FTA	2011
2	EFTA-Ukraine FTA	2010
3	EFTA-Albania FTA	2009
4	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
5	EFTA-Tunisia FTA	2004
<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS AND OBLIGATIONS TO AFFORD ADEQUATE OPPORTUNITY FOR CONSULTATIONS</b>		
6	EFTA-Georgia FTA	2016
7	EFTA-Bosnia and Herzegovina FTA	2013
8	EFTA-Central America (Costa Rica and Panama) FTA	2013
9	EFTA-Montenegro FTA	2011
10	EFTA-Hong Kong, China FTA	2011
11	EFTA-Serbia FTA	2009
12	MERCOSUR-India PTA	2004
<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS AND OBJECTIVES OF A MUTUALLY SATISFACTORY SOLUTION</b>		
13	CPTPP	2018
14	Pacific Alliance Additional Protocol to the Framework Agreement	2014
15	Thailand-New Zealand Closer Economic Partnership Agreement	2005
16	Thailand-Australia FTA	2004
<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS AND INSTITUTIONAL FRAMEWORK FOR CONSULTATIONS</b>		
17	Turkey-Moldova FTA	2014
18	Mauritius-Turkey FTA	2013
19	Agreement on Trade in Goods between Turkey and Korea	2012
20	Turkey-Chile FTA	2009
21	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
22	EU-Montenegro Stabilization and Association Agreement	2007
23	EU-Albania Stabilization and Association Agreement	2006
24	Egypt-Turkey FTA	2005
25	Turkey-Syria FTA	2004
26	Turkey-Tunisia FTA	2004
27	EU-Algeria Euro-Mediterranean Association Agreement	2002
28	EU-Lebanon Euro-Mediterranean Association Agreement	2002
29	EU-Chile Association Agreement	2002
30	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001



No	PTAs	Year of signature
31	EU-Egypt Euro-Mediterranean Association Agreement	2001
	<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS, TIMING AND CONSULTATION OBJECTIVES</b>	
32	Australia-China FTA	2015
33	Korea-Vietnam FTA	2015
34	Japan-Australia Economic Partnership Agreement	2014
35	Malaysia-Australia FTA	2012
36	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
37	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
38	Korea-India Comprehensive Economic Partnership Agreement	2009
39	ASEAN-Australia-New Zealand FTA	2009
40	China-Singapore FTA	2008
41	Panama-Singapore FTA	2006
42	India-Singapore Comprehensive Economic Cooperation Agreement	2005
	<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS, OBJECTIVES AND LEGAL PRINCIPLES</b>	
43	Iceland-China FTA	
44	Peru-Singapore FTA	2008
	<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS, PROVISION OF ADEQUATE OPPORTUNITY, OBJECTIVES AND LEGAL PRINCIPLES</b>	
45	Switzerland-China FTA	2013
	<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS, TIMING, OBJECTIVES AND LEGAL PRINCIPLES</b>	
46	Singapore-Australia FTA (SAFTA)	2017
47	Japan-Mongolia Economic Partnership Agreement	2015
48	New Zealand-Korea FTA	2015
49	Korea-Australia FTA	2014
50	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
51	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
52	Hong Kong, China-Chile FTA	2012
53	EFTA-Hong Kong, China FTA	2011
54	Peru-Korea FTA	2011
55	Japan-Peru Economic Partnership Agreement	2011
56	Japan-India Comprehensive Economic Partnership Agreement	2011
57	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
58	Malaysia-Chile FTA	2010
59	Costa Rica-China FTA	2010
60	New Zealand-Malaysia FTA	2009
61	Peru-China FTA	2009

No	PTAs	Year of signature
62	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
63	China-New Zealand FTA	2008
64	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
65	Japan-Vietnam Economic Partnership Agreement	2008
66	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
67	Brunei Darussalam-Japan Economic Partnership Agreement	2007
68	Japan-Indonesia Economic Partnership Agreement	2007
69	Japan-Philippines Economic Partnership Agreement	2006
70	Japan-Malaysia Economic Partnership Agreement	2005
71	Korea-Singapore FTA	2005
72	Singapore-Australia FTA	2003
73	Japan-Singapore New-Age Economic Partnership Agreement	2002
	<b>PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS, TIMING, INSTITUTIONAL FRAMEWORK, OBJECTIVES AND LEGAL PRINCIPLES</b>	
74	Turkey-Malaysia	2014
	<b>OTHER PTAs WITH CONFLICT CLAUSES ON CONSULTATIONS: (EXCHANGE OF) INFORMATION</b>	
75	Turkey-Serbia FTA	2009
76	Turkey-Montenegro FTA	2008
77	Turkey-Georgia FTA	2007
78	Turkey-Albania FTA	2006
79	Turkey-Morocco FTA	2004
80	Turkey-Palestinian Authority Interim FTA	2004
81	Turkey-Bosnia and Herzegovina FTA	2002
82	EFTA-SACU FTA	2006
83	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001

*Source:* Compilation by the author.

**TABLE 18: PTAs WITHOUT ANY CONFLICT CLAUSES RELEVANT TO INTER-PTA RELATIONS**

No	PTAs	Year of signature
	<b>PTAs WITHOUT ANY CONFLICT CLAUSES AT ALL</b>	
1	Argentina-Brazil FTA	2016
2	Southern Common Market (MERCOSUR)-Mexico Economic Complementation Agreement	2016
3	Southern Common Market (MERCOSUR)-Chile Economic Complementation Agreement	2016
4	EU-SADC Economic Partnership Agreement	2016
5	EU-Colombia and Peru - Accession of Ecuador FTA	2016
6	EU-Columbia and Peru Trade Agreement	2012
7	Association Agreement between the EU and Colombia and Peru and Ecuador	2012
8	India-Nepal Treaty of Trade	2009
9	Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU) Preferential Trade Agreement	2008
10	Chile-India PTA	2006
11	India-Bhutan Agreement on Trade, Commerce and Transit	2006
12	Iceland-Faroe Islands Agreement	2005
13	India-Thailand FTA	2004
14	India-Afghanistan Preferential Trade Agreement	2003
15	China-Hong Kong, China Closer Economic Partnership Arrangement	2003
16	China-Macao, China Closer Economic Partnership Arrangement	2003
17	Pakistan-Sri Lanka FTA	2002
18	Asia Pacific Trade Agreement (APTA) - Accession of China	2001
19	Russian Federation-Serbia FTA	2000
	<b>PTAs WITH CONFLICT CLAUSES BUT IRRELEVANT TO RELATIONS WITH OTHER PTAs</b>	
20	EU-Ghana FTA	2016
21	EU-Georgia Association Agreement	2014
22	EU-Ukraine Association Agreement	2014
23	EU-Moldova Association Agreement	2014
24	EU-Central America Association Agreement	2012
25	Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement	2009
26	EU-Serbia Stabilization and Association Agreement	2008
27	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
28	EU-CARIFORUM Economic Partnership Agreement	2008

*Source:* Compilation by the author.

**TABLE 19: PTAs WITH CONFLICT CLAUSES APPLICABLE TO DOUBLE PTAs ONLY**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	CPTPP	2018
2	Singapore-Australia FTA (SAFTA)	2017
3	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
4	Canada-Ukraine FTA	2016
5	Eurasian Economic Union (EAEU)-Vietnam	2015
6	Japan-Mongolia Economic Partnership Agreement	2015
7	Korea-Vietnam FTA	2015
8	China-Korea FTA	2015
9	Australia-China FTA	2015
10	New Zealand-Korea FTA	2015
11	Korea-Australia FTA	2014
12	Pacific Alliance Additional Protocol to the Framework Agreement	2014
13	Mexico-Panama FTA	2014
14	Canada-Korea FTA	2014
15	Japan-Australia Economic Partnership Agreement	2014
16	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
17	Korea-Colombia FTA	2013
18	Iceland-China FTA	2013
19	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
20	Singapore-Costa Rica FTA	2013
21	Chile-Thailand FTA	2013
22	Malaysia-Australia FTA	2012
23	Chile-Vietnam FTA	2011
24	Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS)	2011
25	Costa Rica-Peru FTA	2011
26	Panama-Peru FTA	2011
27	Japan-Peru Economic Partnership Agreement	2011
28	Japan-India Comprehensive Economic Partnership Agreement	2011
29	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
30	Peru-Mexico Commercial Integration Agreement	2011
31	Peru-Korea FTA	2011
32	Mexico-Central America FTA	2011
33	EFTA-Peru FTA	2010
34	Canada-Panama FTA	2010
35	Malaysia-Chile FTA	2010
36	EU-Korea FTA	2010
37	Canada-Jordan FTA	2009

No	PTAs	Year of signature
38	Panama-Guatemala FTA	2009
39	Panama-Nicaragua FTA	2009
40	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
41	Korea-India Comprehensive Economic Partnership Agreement	2009
42	Peru-China FTA	2009
43	Canada-Peru FTA	2008
44	Canada-Columbia FTA	2008
45	EFTA-Columbia FTA	2008
46	Gulf Cooperation Council (GCC)-Singapore FTA	2008
47	Peru-Singapore FTA	2008
48	China-New Zealand FTA	2008
49	China-Singapore FTA	2008
50	Australia-Chile FTA	2008
51	Panama-Costa Rica FTA	2007
52	Mauritius-Pakistan Preferential Trade Agreement	2007
53	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
54	Korea-United States FTA	2007
55	United States-Panama Trade Promotion Agreement	2007
56	Panama-Honduras FTA	2007
57	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007
58	El Salvador-Honduras-Chinese Taipei	2007
59	Brunei Darussalam-Japan Economic Partnership Agreement	2007
60	Japan-Indonesia Economic Partnership Agreement	2007
61	Japan-Thailand Economic Partnership Agreement	2007
62	Chile-Japan Strategic Economic Partnership Agreement	2007
63	United States-Colombia FTA	2006
64	United States-Peru FTA	2006
65	United States-Oman FTA	2006
66	Chile-Colombia FTA	2006
67	Panama-Chile Treaty of Free Trade	2006
68	Nicaragua-China Taipei FTA	2006
69	Japan-Philippines Economic Partnership Agreement	2006
70	Pakistan-China FTA	2006
71	United States-Bahrain FTA	2005
72	Japan-Malaysia Economic Partnership Agreement	2005
73	Guatemala-Chinese Taipei FTA	2005
74	Korea-Singapore FTA	2005
75	India-Singapore Comprehensive Economic Cooperation Agreement	2005
76	Thailand-New Zealand Closer Economic Partnership Agreement	2005
77	EFTA-Korea FTA	2005
78	Japan-Mexico Agreement for the Strengthening of Economic	2004

No	PTAs	Year of signature
	Partnership	
79	Jordan-Singapore FTA	2004
80	Thailand-Australia FTA	2004
81	United States-Australia FTA	2004
82	United States-Morocco FTA	2004
83	United States-Chile FTA	2003
84	United States-Singapore FTA	2003
85	Singapore-Australia FTA	2003
86	Panama-China FTA	2003
87	Korea-Chile FTA	2003
88	EFTA-Chile FTA	2003
89	EFTA-Singapore FTA	2002
90	Japan-Singapore New-Age Economic Partnership Agreement	2002
91	Panama-El Salvador (Panama-Central America) FTA	2002
92	United States-Jordan FTA	2000
93	Israel-Mexico FTA	2000

*Source:* Compilation by the author.

**TABLE 20: PTAs WITH CONFLICT CLAUSES APPLICABLE TO BOTH DOUBLE AND SINGLE PTAs**

No	PTAs	Year of signature
1	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017
2	EFTA-Georgia FTA	2016
3	Southern African Development Community (SADC) - Accession of Seychelles	2015
4	Turkey-Malaysia	2014
5	Switzerland-China FTA	2013
6	Mauritius-Turkey FTA	2013
7	EFTA-Central America (Costa Rica and Panama) FTA	2013
8	EFTA-Bosnia and Herzegovina FTA	2013
9	Canada-Honduras Free Trade Agreement	2013
10	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
11	Hong Kong, China-Chile FTA	2012
12	Agreement on Trade in Goods between Turkey and Korea	2012
13	Ukraine-Montenegro FTA	2011
14	EFTA-Montenegro FTA	2011
15	EFTA-Hong Kong, China FTA	2011
16	EFTA-Ukraine FTA	2010
17	Costa Rica-China FTA	2010
18	Turkey-Serbia FTA	2009
19	Turkey-Jordan FTA	2009
20	Turkey-Chile FTA	2009
21	New Zealand-Malaysia FTA	2009
22	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
23	Interim Partnership Agreement between EU and Pacific States	2009
24	EFTA-Serbia FTA	2009
25	EFTA-Albania FTA	2009
26	ASEAN-Australia-New Zealand FTA	2009
27	Turkey-Montenegro FTA	2008
28	South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	2008
29	Japan-Vietnam Economic Partnership Agreement	2008
30	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
31	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
32	Turkey-Georgia FTA	2007
33	EU-Montenegro Stabilization and Association Agreement	2007
34	EFTA-Egypt FTA	2007
35	Turkey-Albania FTA	2006

No	PTAs	Year of signature
36	Panama-Singapore FTA	2006
37	EU-Albania Stabilization and Association Agreement	2006
38	EFTA-SACU FTA	2006
39	Central European Free Trade Agreement	2006
40	ASEAN-Korea FTA	2006
41	Egypt-Turkey FTA	2005
42	Chile-China FTA	2005
43	Turkey-Tunisia FTA	2004
44	Turkey-Syria FTA	2004
45	Turkey-Palestinian Authority Interim FTA	2004
46	Turkey-Morocco FTA	2004
47	South Asian Free Trade Agreement (SAFTA)	2004
48	Mexico-Uruguay FTA	2004
49	EFTA-Tunisia FTA	2004
50	EFTA-Lebanon FTA	2004
51	ASEAN-China FTA	2004
52	Agadir Agreement	2004
53	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
54	Ukraine-Moldova FTA	2003
55	Common Economic Zone (CEZ)	2003
56	Turkey-Bosnia and Herzegovina FTA	2002
57	GUAM FTA	2002
58	EU-Lebanon Euro-Mediterranean Association Agreement	2002
59	EU-Chile Association Agreement	2002
60	EU-Algeria Euro-Mediterranean Association Agreement	2002
61	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001
62	Ukraine-Tajikistan FTA	2001
63	Pacific Island Countries Trade Agreement (PICTA)	2001
64	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001
65	EU-Egypt Euro-Mediterranean Association Agreement	2001
66	EFTA-Jordan FTA	2001
67	Canada-Costa Rica FTA	2001
68	EFTA-The former Yugoslav Republic of Macedonia FTA	2000
69	EFTA-Mexico FTA	2000

*Source:* Compilation by the author.



**TABLE 21: PTAs WITH CONFLICT CLAUSES APPLICABLE TO EXISTING PTAs ONLY**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	CPTPP	Not yet
2	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017
3	China-Korea FTA	2015
4	Canada-Korea FTA	2014
5	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
6	Chile-Thailand FTA	2013
7	Chile-Vietnam FTA	2011
8	Peru-China FTA	2009
9	Interim Partnership Agreement between EU and Pacific States	2009
10	Peru-Singapore FTA	2008
11	China-New Zealand FTA	2008
12	China-Singapore FTA	2008
13	Mauritius-Pakistan Preferential Trade Agreement	2007
14	United States-Peru FTA	2006
15	Chile-Colombia FTA	2006
16	Nicaragua-China Taipei FTA	2006
17	Pakistan-China FTA	2006
18	United States-Bahrain FTA	2005
19	Korea-Singapore FTA	2005
20	Chile-China FTA	2005
21	Jordan-Singapore FTA	2004
22	United States-Australia FTA	2004
23	United States-Morocco FTA	2004
24	United States-Singapore FTA	2003
25	Korea-Chile FTA	2003
26	Panama-El Salvador (Panama-Central America) FTA	2002
27	GUAM FTA	2002

*Source:* Compilation by the author.

**TABLE 22: PTAs WITHOUT ANY EXPLICIT CLAUSE ON REMEDIES**

No	PTAs	Year of signature
1	Hong Kong, China-Macao, China Closer Economic Partnership Agreement	2017
2	Argentina-Brazil FTA	2016
3	Southern Common Market (MERCOSUR)-Mexico Economic Complementation Agreement	2016
4	Southern Common Market (MERCOSUR)-Chile Economic Complementation Agreement	2016
5	Mauritius-Turkey FTA	2013
6	EU-Eastern and Southern Africa States Interim EPA	2009
7	Turkey-Serbia FTA	2009
8	India-Nepal Treaty of Trade	2009
9	Mauritius-Pakistan Preferential Trade Agreement	2007
10	EFTA-Egypt FTA	2007
11	India-Bhutan Agreement on Trade, Commerce and Transit	2006
12	Central European Free Trade Agreement	2006
13	Iceland-Faroe Islands Agreement	2005
14	EFTA-Lebanon FTA	2004
15	EFTA-Tunisia FTA	2004
16	Agadir Agreement	2004
17	India-Afghanistan Preferential Trade Agreement	2003
18	Ukraine-Moldova FTA	2003
19	Common Economic Zone (CEZ)	2003
20	China-Hong Kong, China Closer Economic Partnership Arrangement	2003
21	China-Macao, China Closer Economic Partnership Arrangement	2003
22	Pakistan-Sri Lanka FTA	2002
23	Ukraine-The former Yugoslav Republic of Macedonia FTA	2001
24	Ukraine-Tajikistan FTA	2001
25	Asia Pacific Trade Agreement (APTA) - Accession of China	2001

*Source:* Compilation by the author.

**TABLE 23: PTAs WITH COMPLIANCE REMEDY**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	CPTPP	Not yet
2	Singapore-Australia FTA (SAFTA)	2017
3	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
4	Canada-Ukraine FTA	2016
5	EFTA-Georgia FTA	2016
6	EU-SADC Economic Partnership Agreement	2016
7	EU-Ghana FTA	2016
8	EU-Colombia and Peru - Accession of Ecuador FTA	2016
9	Eurasian Economic Union (EAEU)-Vietnam FTA	2015
10	Japan-Mongolia Economic Partnership Agreement	2015
11	Korea-Vietnam FTA	2015
12	China-Korea FTA	2015
13	Australia-China FTA	2015
14	Southern African Development Community (SADC) - Accession of Seychelles	2015
15	New Zealand-Korea FTA	2015
16	Korea-Australia FTA	2014
17	Turkey-Malaysia FTA	2014
18	Pacific Alliance Additional Protocol to the Framework Agreement	2014
19	Mexico-Panama FTA	2014
20	Canada-Korea FTA	2014
21	Japan-Australia Economic Partnership Agreement	2014
22	EU-Georgia Association Agreement	2014
23	EU-Ukraine Association Agreement	2014
24	EU-Moldova Association Agreement	2014
25	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
26	Korea-Colombia FTA	2013
27	Canada-Honduras Free Trade Agreement	2013
28	EFTA-Bosnia and Herzegovina FTA	2013
29	EFTA-Central America (Costa Rica and Panama) FTA	2013
30	Iceland-China FTA	2013
31	Switzerland-China FTA	2013
32	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
33	Singapore-Costa Rica FTA	2013
34	Chile-Thailand FTA	2013
35	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
36	Hong Kong, China-Chile FTA	2012
37	Malaysia-Australia FTA	2012
38	EU-Central America Association Agreement	2012
39	Association Agreement between the EU and Colombia and Peru and	2012

No	PTAs	Year of signature
	Ecuador	
40	EU-Columbia and Peru Trade Agreement	2012
41	Chile-Vietnam FTA	2011
42	Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS)	2011
43	Costa Rica-Peru FTA	2011
44	Ukraine-Montenegro FTA	2011
45	Panama-Peru FTA	2011
46	Japan-Peru Economic Partnership Agreement	2011
47	Japan-India Comprehensive Economic Partnership Agreement	2011
48	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
49	Peru-Mexico Commercial Integration Agreement	2011
50	Peru-Korea FTA	2011
51	EFTA-Montenegro FTA	2011
52	EFTA-Hong Kong, China FTA	2011
53	Mexico-Central America FTA	2011
54	El Salvador-Cuba FTA	2011
55	EFTA-Peru FTA	2010
56	Canada-Panama FTA	2010
57	Malaysia-Chile FTA	2010
58	EFTA-Ukraine FTA	2010
59	Costa Rica-China FTA	2010
60	EU-Korea FTA	2010
61	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
62	Canada-Jordan FTA	2009
63	Turkey-Jordan FTA	2009
64	Turkey-Chile FTA	2009
65	Panama-Guatemala FTA	2009
66	Panama-Nicaragua FTA	2009
67	Interim Partnership Agreement between EU and Pacific States	2009
68	Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement	2009
69	New Zealand-Malaysia FTA	2009
70	EFTA-Albania FTA	2009
71	EFTA-Serbia FTA	2009
72	ASEAN-Australia-New Zealand FTA	2009
73	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
74	Korea-India Comprehensive Economic Partnership Agreement	2009
75	Peru-China FTA	2009
76	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009

No	PTAs	Year of signature
77	Canada-Peru FTA	2008
78	Canada-Columbia FTA	2008
79	EFTA-Columbia FTA	2008
80	EFTA-Canada FTA	2008
81	Gulf Cooperation Council (GCC)-Singapore FTA	2008
82	Peru-Singapore FTA	2008
83	Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU) Preferential Trade Agreement	2008
84	South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	2008
85	EU-Serbia Stabilization and Association Agreement	2008
86	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
87	EU-CARIFORUM Economic Partnership Agreement	2008
88	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
89	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
90	Japan-Vietnam Economic Partnership Agreement	2008
91	China-New Zealand FTA	2008
92	China-Singapore FTA	2008
93	Australia-Chile FTA	2008
94	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
95	Korea-United States FTA	2007
96	United States-Panama Trade Promotion Agreement	2007
97	Panama-Honduras FTA	2007
98	Panama-Costa Rica FTA	2007
99	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007
100	El Salvador-Honduras-Chinese Taipei	2007
101	Turkey-Georgia FTA	2007
102	Brunei Darussalam-Japan Economic Partnership Agreement	2007
103	Japan-Indonesia Economic Partnership Agreement	2007
104	Japan-Thailand Economic Partnership Agreement	2007
105	Chile-Japan Strategic Economic Partnership Agreement	2007
106	EU-Montenegro Stabilization and Association Agreement	2007
107	United States-Colombia FTA	2006
108	United States-Peru FTA	2006
109	United States-Oman FTA	2006
110	ASEAN-Korea FTA	2006
111	Chile-Colombia FTA	2006
112	Chile-India PTA	2006
113	Panama-Chile Treaty of Free Trade	2006
114	Panama-Singapore FTA	2006
115	Nicaragua-China Taipei FTA	2006
116	Japan-Philippines Economic Partnership Agreement	2006

No	PTAs	Year of signature
117	EFTA-SACU FTA	2006
118	Pakistan-China FTA	2006
119	United States-Bahrain FTA	2005
120	Japan-Malaysia Economic Partnership Agreement	2005
121	Guatemala-Chinese Taipei FTA	2005
122	Egypt-Turkey FTA	2005
123	Chile-China FTA	2005
124	Korea-Singapore FTA	2005
125	India-Singapore Comprehensive Economic Cooperation Agreement	2005
126	Thailand-New Zealand Closer Economic Partnership Agreement	2005
127	EFTA-Korea FTA	2005
128	ASEAN-China FTA	2004
129	Japan-Mexico Agreement for the Strengthening of Economic Partnership	2004
130	Mexico-Uruguay FTA	2004
131	South Asian Free Trade Agreement (SAFTA)	2004
132	Jordan-Singapore FTA	2004
133	MERCOSUR-India PTA	2004
134	Thailand-Australia FTA	2004
135	United States-Australia FTA	2004
136	United States-Morocco FTA	2004
137	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
138	United States-Chile FTA	2003
139	United States-Singapore FTA	2003
140	Singapore-Australia FTA	2003
141	Panama-China FTA	2003
142	Korea-Chile FTA	2003
143	EFTA-Chile FTA	2003
144	EU-Chile Association Agreement	2002
145	EFTA-Singapore FTA	2002
146	Japan-Singapore New-Age Economic Partnership Agreement	2002
147	Panama-El Salvador (Panama-Central America) FTA	2002
148	Pacific Island Countries Trade Agreement (PICTA)	2001
149	Canada-Costa Rica FTA	2001
150	Israel-Mexico FTA	2000
151	EFTA-Mexico FTA	2000
152	New Zealand-Singapore Closer Economic Partnership Agreement	2000

*Source:* Compilation by the author.

**TABLE 24: PTAs WITH CLAUSES ON COMPENSATION**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	CPTPP	2018
2	Singapore-Australia FTA (SAFTA)	2017
3	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
4	Canada-Ukraine FTA	2016
5	EFTA-Georgia FTA	2016
6	EU-SADC Economic Partnership Agreement	2016
7	EU-Ghana FTA	2016
8	EU-Colombia and Peru - Accession of Ecuador FTA	2016
9	Eurasian Economic Union (EAEU)-Vietnam FTA	2015
10	Japan-Mongolia Economic Partnership Agreement	2015
11	Korea-Vietnam FTA	2015
12	China-Korea FTA	2015
13	Australia-China FTA	2015
14	New Zealand-Korea FTA	2015
15	Korea-Australia FTA	2014
16	Turkey-Malaysia FTA	2014
17	Pacific Alliance Additional Protocol to the Framework Agreement	2014
18	Mexico-Panama FTA	2014
19	Canada-Korea FTA	2014
20	Japan-Australia Economic Partnership Agreement	2014
21	EU-Georgia Association Agreement	2014
22	EU-Ukraine Association Agreement	2014
23	EU-Moldova Association Agreement	2014
24	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
25	Korea-Colombia FTA	2013
26	Canada-Honduras FTA	2013
27	EFTA-Bosnia and Herzegovina FTA	2013
28	EFTA-Central America (Costa Rica and Panama) FTA	2013
29	Iceland-China FTA	2013
30	Switzerland-China FTA	2013
31	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
32	Singapore-Costa Rica FTA	2013
33	Chile-Thailand FTA	2013
34	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
35	Hong Kong, China-Chile FTA	2012
36	Malaysia-Australia FTA	2012
37	EU-Central America Association Agreement	2012
38	EU-Columbia and Peru Trade Agreement	2012
39	Association Agreement between the EU and Colombia and Peru and Ecuador	2012

No	PTAs	Year of signature
40	Chile-Vietnam FTA	2011
41	Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS)	2011
42	Costa Rica-Peru FTA	2011
43	Ukraine-Montenegro FTA	2011
44	Panama-Peru FTA	2011
45	Japan-Peru Economic Partnership Agreement	2011
46	Japan-India Comprehensive Economic Partnership Agreement	2011
47	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
48	Peru-Mexico Commercial Integration Agreement	2011
49	Peru-Korea FTA	2011
50	EFTA-Montenegro FTA	2011
51	EFTA-Hong Kong, China FTA	2011
52	Mexico-Central America FTA	2011
53	EFTA-Peru FTA	2010
54	Canada-Panama FTA	2010
55	Malaysia-Chile FTA	2010
56	EFTA-Ukraine FTA	2010
57	Costa Rica-China FTA	2010
58	EU-Korea FTA	2010
59	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
60	Canada-Jordan FTA	2009
61	Turkey-Chile FTA	2009
62	Interim Partnership Agreement between EU and Pacific States	2009
63	Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement	2009
64	New Zealand-Malaysia FTA	2009
65	EFTA-Albania FTA	2009
66	EFTA-Serbia FTA	2009
67	ASEAN-Australia-New Zealand FTA	2009
68	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
69	Korea-India Comprehensive Economic Partnership Agreement	2009
70	Peru-China FTA	2009
71	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
72	Canada-Peru FTA	2008
73	Canada-Columbia FTA	2008
74	EFTA-Columbia FTA	2008
75	EFTA-Canada FTA	2008
76	Gulf Cooperation Council (GCC)-Singapore FTA	2008
77	Peru-Singapore FTA	2008



No	PTAs	Year of signature
78	EU-Serbia Stabilization and Association Agreement	2008
79	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
80	EU-CARIFORUM Economic Partnership Agreement	2008
81	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
82	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
83	Japan-Vietnam Economic Partnership Agreement	2008
84	China-New Zealand FTA	2008
85	China-Singapore FTA	2008
86	Australia-Chile FTA	2008
87	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
88	Korea-United States FTA	2007
89	United States-Panama Trade Promotion Agreement	2007
90	El Salvador-Honduras-Chinese Taipei	2007
91	Brunei Darussalam-Japan Economic Partnership Agreement	2007
92	Japan-Indonesia Economic Partnership Agreement	2007
93	Japan-Thailand Economic Partnership Agreement	2007
94	Chile-Japan Strategic Economic Partnership Agreement	2007
95	EU-Montenegro Stabilization and Association Agreement	2007
96	United States-Colombia FTA	2006
97	United States-Peru FTA	2006
98	United States-Oman FTA	2006
99	ASEAN-Korea FTA	2006
100	Chile-Colombia FTA	2006
101	Chile-India PTA	2006
102	Panama-Chile Treaty of Free Trade	2006
103	Panama-Singapore FTA	2006
104	Japan-Philippines Economic Partnership Agreement	2006
105	United States-Bahrain FTA	2005
106	Japan-Malaysia Economic Partnership Agreement	2005
107	Guatemala-Chinese Taipei FTA	2005
108	Chile-China FTA	2005
109	Korea-Singapore FTA	2005
110	India-Singapore Comprehensive Economic Cooperation Agreement	2005
111	Thailand-New Zealand Closer Economic Partnership Agreement	2005
112	EFTA-Korea FTA	2005
113	ASEAN-China FTA	2004
114	Japan-Mexico Agreement for the Strengthening of Economic Partnership	2004
115	Jordan-Singapore FTA	2004
116	MERCOSUR-India PTA	2004
117	Thailand-Australia FTA	2004
118	United States-Australia FTA	2004

No	PTAs	Year of signature
119	United States-Morocco FTA	2004
120	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
121	United States-Chile FTA	2003
122	United States-Singapore FTA	2003
123	Singapore-Australia FTA	2003
124	EFTA-Chile FTA	2003
125	EU-Chile Association Agreement	2002
126	EFTA-Singapore FTA	2002
127	Japan-Singapore New-Age Economic Partnership Agreement	2002
128	Canada-Costa Rica FTA	2001
129	Israel-Mexico FTA	2000
130	EFTA-Mexico FTA	2000

*Source:* Compilation by the author.

**TABLE 25: PTAs WITH SUSPENSION REMEDIES**

No	PTAs	Year of signature
	<b>WITHDRAWAL AND SUSPENSION OF CONCESSIONS</b>	
1	Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU) Preferential Trade Agreement	2008
2	MERCOSUR-India PTA	2004
	<b>SUSPENSION OF CONCESSIONS</b>	
3	El Salvador-Cuba FTA	2011
	<b>SUSPENSION OF BENEFITS</b>	
4	CPTPP	2018
5	Singapore-Australia FTA (SAFTA)	2017
6	Canada-Ukraine FTA	2016
7	Eurasian Economic Union (EAEU)-Vietnam FTA	2015
8	Canada-Korea FTA	2014
9	Turkey-Malaysia FTA	2014
10	Mexico-Panama FTA	2014
11	Korea-Australia FTA	2014
12	Costa Rica-Colombia Free Trade Agreement & Economic Integration Agreement	2013
13	Korea-Colombia FTA	2013
14	EFTA-Bosnia and Herzegovina FTA	2013
15	EFTA-Central America (Costa Rica and Panama) FTA	2013
16	New Zealand-Chinese Taipei Economic Cooperation Agreement	2013
17	Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership	2013
18	Singapore-Costa Rica FTA	2013
19	Association Agreement between the EU and Colombia and Peru and Ecuador	2012
20	EFTA-Hong Kong, China FTA	2011
21	Mexico-Central America FTA	2011
22	Ukraine-Montenegro FTA	2011
23	Peru-Mexico Commercial Integration Agreement	2011
24	Peru-Korea FTA	2011
25	Costa Rica-Peru FTA	2011
26	Panama-Peru FTA	2011
27	EFTA-Montenegro FTA	2011
28	Canada-Panama FTA	2010
29	Hong Kong, China-New Zealand Closer Economic Partnership Agreement	2010
30	EFTA-Peru FTA	2010
31	EFTA-Ukraine FTA	2010
32	EFTA-Albania FTA	2009
33	EFTA-Serbia FTA	2009
34	Panama-Guatemala FTA	2009

No	PTAs	Year of signature
35	Canada-Jordan FTA	2009
36	Peru-China FTA	2009
37	New Zealand-Malaysia FTA	2009
38	Korea-India Comprehensive Economic Partnership Agreement	2009
39	Panama-Nicaragua FTA	2009
40	EFTA-Columbia FTA	2008
41	EFTA-Canada FTA	2008
42	Canada-Peru FTA	2008
43	Peru-Singapore FTA	2008
44	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
45	EU-Serbia Stabilization and Association Agreement	2008
46	Panama-Costa Rica FTA	2007
47	El Salvador-Honduras-Chinese Taipei	2007
48	Panama-Honduras FTA	2007
49	EU-Montenegro Stabilization and Association Agreement	2007
50	Pakistan-Malaysia Closer Economic Partnership Agreement	2007
51	United States-Panama Trade Promotion Agreement	2007
52	Korea-United States FTA	2007
53	Treaty for Free Trade between Colombia and Northern Triangle (El Salvador, Guatemala, Honduras)	2007
54	United States-Colombia FTA	2006
55	United States-Peru FTA	2006
56	United States-Oman FTA	2006
57	Panama-Singapore FTA	2006
58	Nicaragua-China Taipei FTA	2006
59	Chile-India PTA	2006
60	Pakistan-China FTA	2006
61	Chile-Colombia FTA	2006
62	EFTA-Korea FTA	2005
63	United States-Bahrain FTA	2005
64	Korea-Singapore FTA	2005
65	Guatemala-Chinese Taipei FTA	2005
66	India-Singapore Comprehensive Economic Cooperation Agreement	2005
67	Chile-China FTA	2005
68	Thailand-New Zealand Closer Economic Partnership Agreement	2005
69	United States-Morocco FTA	2004
70	United States-Australia FTA	2004
71	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
72	Jordan-Singapore FTA	2004
73	Thailand-Australia FTA	2004
74	Mexico-Uruguay FTA	2004

No	PTAs	Year of signature
75	EFTA-Chile FTA	2003
76	United States-Chile FTA	2003
77	United States-Singapore FTA	2003
78	Panama-China FTA	2003
79	Singapore-Australia FTA	2003
80	Korea-Chile FTA	2003
81	EFTA-Singapore FTA	2002
82	EU-Chile Association Agreement	2002
83	Panama-El Salvador (Panama-Central America) FTA	2002
84	New Zealand-Singapore Closer Economic Partnership Agreement	2000
85	Israel-Mexico FTA	2000
86	EFTA-Mexico FTA	2000
	<b>SUSPENSION OF OBLIGATIONS</b>	
87	EU-Canada Comprehensive Economic and Trade Agreement (CETA)	2016
88	EU-Georgia Association Agreement	2014
89	EU-Moldova Association Agreement	2014
90	EU-Ukraine Association Agreement	2014
91	EU-Central America Association Agreement	2012
92	EU-Korea FTA	2010
93	Japan-Philippines Economic Partnership Agreement	2006
94	GUAM FTA	2002
95	Japan-Singapore New-Age Economic Partnership Agreement	2002
	<b>SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS</b>	
96	EFTA-Georgia FTA	2016
97	Korea-Vietnam FTA	2015
98	China-Korea FTA	2015
99	Japan-Mongolia Economic Partnership Agreement	2015
100	Japan-Australia Economic Partnership Agreement	2014
101	Chile-Thailand FTA	2013
102	Hong Kong, China-Chile FTA	2012
103	Malaysia-Australia FTA	2012
104	Chile-Vietnam FTA	2011
105	Japan-India Comprehensive Economic Partnership Agreement	2011
106	Turkey-Chile FTA	2009
107	ASEAN-Australia-New Zealand FTA	2009
108	Japan-Switzerland Agreement on Free Trade and Economic Partnership	2009
109	ASEAN-Japan Comprehensive Economic Partnership Agreement	2008
110	Japan-Vietnam Economic Partnership Agreement	2008
111	Australia-Chile FTA	2008
112	Japan-Indonesia Economic Partnership Agreement	2007
113	Brunei Darussalam-Japan Economic Partnership Agreement	2007

No	PTAs	Year of signature
114	Japan-Thailand Economic Partnership Agreement	2007
115	Chile-Japan Strategic Economic Partnership Agreement	2007
116	Panama-Chile Treaty of Free Trade	2006
117	Japan-Malaysia Economic Partnership Agreement	2005
118	Japan-Mexico Agreement for the Strengthening of Economic Partnership	2004
119	Pacific Island Countries Trade Agreement (PICTA)	2001
120	Canada-Costa Rica FTA	2001
	<b>SUSPENSION OF CONCESSIONS AND OTHER OBLIGATIONS</b>	
121	Australia-China FTA	2015
122	Iceland-China FTA	2013
123	Japan-Peru Economic Partnership Agreement	2011
124	Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS)	2011
125	Malaysia-Chile FTA	2010
126	Costa Rica-China FTA	2010
127	China-New Zealand FTA	2008
	<b>SUSPENSION OF CONCESSIONS OR BENEFITS</b>	
128	ASEAN-India Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation	2009
129	China-Singapore FTA	2008
130	ASEAN-Korea FTA	2006
131	ASEAN-China FTA	2004
	<b>SUSPENSION OF CONCESSIONS AND SUSPENSION OF BENEFITS</b>	
132	EU-Colombia and Peru - Accession of Ecuador FTA	2016
133	New Zealand-Korea FTA	2015
134	EU-Columbia and Peru Trade Agreement	2012
	<b>SUSPENSION OF BENEFITS OR OBLIGATIONS</b>	
135	Canada-Honduras Free Trade Agreement	2013
136	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
137	Gulf Cooperation Council (GCC)-Singapore FTA	2008
138	Canada-Columbia FTA	2008
	<b>SUSPENSION OF BENEFITS AND OBLIGATIONS</b>	
139	Pacific Alliance Additional Protocol to the Framework Agreement	2014
	<b>SUSPENSION OF “CONCESSIONS AND OBLIGATIONS”, SUSPENSION OF “CONCESSIONS OR OBLIGATIONS”, SUSPENSION OF “BENEFITS”</b>	
140	Switzerland-China FTA	2013
	<b>OTHERS</b>	
	<b>SUSPENSION OF ONE OF THE ESSENTIAL ELEMENTS</b>	
141	EU-Montenegro Stabilization and Association Agreement	2007

No	PTAs	Year of signature
	<b>WITHDRAWAL OF CONCESSIONS</b>	
142	Southern African Development Community (SADC) - Accession of Seychelles	2015
143	South Asian Free Trade Agreement (SAFTA) - Accession of Afghanistan	2008
144	South Asian Free Trade Agreement (SAFTA)	2004

*Source:* Compilation by the author.

**TABLE 26: PTAs WITH MONETARY REMEDY**

No	PTAs	Year of signature
1	CPTPP	Not yet
2	Korea-United States FTA	2007
3	United States-Panama Trade Promotion Agreement	2007
4	United States-Colombia FTA	2006
5	United States-Peru FTA	2006
6	United States-Oman FTA	2006
7	United States-Bahrain FTA	2005
8	United States-Australia FTA	2004
9	United States-Morocco FTA	2004
10	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)	2004
11	United States-Chile FTA	2003
12	United States-Singapore FTA	2003

*Source:* Compilation by the author.



**TABLE 27: PTAs WITH APPROPRIATE MEASURES AS REMEDIES**

No	PTAs	Year of signature
1	EU-SADC Economic Partnership Agreement	2016
2	EU-Ghana FTA	2016
3	Turkey-Moldova FTA	2014
4	EU-Georgia Association Agreement	2014
5	EU-Ukraine Association Agreement	2014
6	EU-Moldova Association Agreement	2014
7	Interim Partnership Agreement between EU and Pacific States	2009
8	Interim Agreement with a view to EU-Central Africa Economic Partnership Agreement	2009
9	EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement	2008
10	EU-CARIFORUM Economic Partnership Agreement	2008
11	EU-Bosnia and Herzegovina Stabilization and Association Agreement	2008
12	EU-Albania Stabilization and Association Agreement	2006
13	EFTA-SACU FTA	2006
14	Turkey-Albania FTA	2006
15	Turkey-Syria FTA	2004
16	Turkey-Tunisia FTA	2004
17	Turkey-Palestinian Authority Interim FTA	2004
18	EU-Algeria Euro-Mediterranean Association Agreement	2002
19	EU-Lebanon Euro-Mediterranean Association Agreement	2002
20	Turkey-Bosnia and Herzegovina FTA	2002
21	EFTA-Jordan FTA	2001
22	EU-The former Yugoslav Republic of Macedonia Stabilisation and Association Agreement	2001
23	EU-Egypt Euro-Mediterranean Association Agreement	2001
24	Russian Federation-Serbia FTA	2000
25	EFTA-The former Yugoslav Republic of Macedonia FTA	2000

*Source:* Compilation by the author.

**TABLE 28: PTAs WITH OTHER REMEDIES**

<b>No</b>	<b>PTAs</b>	<b>Year of signature</b>
1	Turkey-Jordan FTA	2009
2	Turkey-Montenegro FTA	2008
3	Turkey-Morocco FTA	2004
4	GUAM FTA	2002
5	New Zealand-Singapore Closer Economic Partnership Agreement	2000

*Source:* Compilation by the author.

**ANNEX 2.2: CPTPP COMMITMENTS MORE LIBERALIZED THAN EVFTA COMMITMENTS<sup>2247</sup>**

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>			
<b>1. BUSINESS SERVICES</b>			
<b>A. Professional Services</b>			
(a) Legal services (CPC 861, excluding:  - participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam; - legal documentation and certification services of the laws of Viet Nam <sup>2248</sup> )	(3) Foreign lawyers may provide legal services in Viet Nam in the following forms: - Wholly foreign limited liability law firm; - Joint venture limited liability law firm  Foreign lawyers practising law in Viet Nam are not permitted to advise on Vietnamese law unless they have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese lawyers. They are not allowed to defend or represent clients before the courts of Viet Nam.		
(g) Urban planning and urban landscape architectural services (CPC 8674)		(3) None.	
<b>B. Computer and Related Services (CPC 84)</b>			
		(3) None.	

<sup>2247</sup> Compilation by the author based on the Schedule of Specific Commitments of Vietnam in the EVFTA and the conversion of the negative-list commitments of Vietnam in the CPTPP into the positive-list commitments.

<sup>2248</sup> For greater certainty, qualified Vietnamese lawyers working in foreign lawyer organizations are permitted to draft commercial contracts and business charters related to Vietnamese law.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>C. Research and Development Services</b>			
(b) R&D services on social science and humanity (CPC 852)	(1) None. (2) None. (3) None.		
(c) Interdisciplinary R&D services (CPC 853)	(3) None.		
<b>D. Real estate services</b>			
Real estate services involving own or leased property (CPC 821)	(1) None. (2) None. (3) None. (4) Unbound.		
Real estate services on a free or contract basis	(1) None. (2) None. (3) None. (4) Unbound.		
<b>E. Rental/Leasing Services without Operators</b>			
(d) Relating to other machinery and equipment (CPC 83109) Mining and oil field equipment; commercial radio, television and communication equipment	(1) None. (2) None. (3) Unbound. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) None.	
<b>F. Other Business Services</b>			
(b) Placement and supply services of personnel (CPC 872)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11)

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
			- Local Presence (Article 10.6)
(c) Investigation and security, excluding security system services (part of CPC 873)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
Investigation and security Security system services (part of CPC 873) (CPC 87305/87309)	(1) Unbound. (2) Unbound. (3) Unbound, except for a joint venture with foreign equity not exceeding 49 per cent. Foreign enterprises are enterprises with expertise in the security system service business, have capital amounts and total asset value of USD 500,000 or more, have operated for five consecutive years or more, and have not violated the laws of the home or relevant countries. Foreign individuals are not permitted to supply security system services. Foreigners may not be employed as security personnel.	(1) None. (2) None. (3) Unbound, except as indicated in the market access column. (4) None.	

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	(4) Unbound.		
Public opinion polling (CPC 864)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
(d) Services related to management consulting  - CPC 866, except CPC 86602 - Arbitration and conciliation services for commercial disputes between businesses (CPC 86602**)		(3) None.	
Arbitration and conciliation services (CPC 86602), excluding arbitration and conciliation services for commercial disputes between businesses	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Technical testing and analysis services (CPC 8676): conformity testing of means of transport and certification of transport vehicles	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
(e) Services incidental to agriculture, hunting and forestry (CPC 881)	(3) Unbound, except: Only in the form of joint-venture or business co-operation contract or the purchase of shares in a Vietnamese enterprise. In the case of a joint venture or the purchase of shares in an enterprise, foreign equity may not exceed 51%.		
(h) Services incidental to fishing (CPC 882), excluding specialised consultancy services related to marine or freshwater fisheries, fish hatchery services	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
(h) Services incidental to fishing Specialised consultancy services related to marine or freshwater fisheries, fish hatchery services	(1) None. (2) None. (3) None.		

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(part of CPC 882)			
(f) Services incidental to mining (CPC 883)			
The commitments specified hereunder are made without prejudice to the rights of the Government of Viet Nam to set out the necessary regulations and procedures to regulate the oil and gas related activities carried out within the territory or jurisdiction of Viet Nam in full conformity with the rights and obligations of Viet Nam under the GATS.			
	(1) None.		
(i) Services incidental to manufacturing (CPC 884 and 885 except for Printing (CPC 88442))	(3) None, except: Only joint ventures with foreign capital contribution not exceeding 50% shall be permitted. 100% foreign-invested enterprises shall be permitted.	(3) None	
(m) Services incidental to energy distribution (CPC 887)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	
(o) Photographic services Portrait Photography services (CPC 87504)	(1) None. (2) None. (3) None, except only in the form of business cooperation contract or joint venture with Vietnamese supplier. There shall be no limitation on foreign equity distribution in the joint venture. (4) Unbound.		



Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(p) Packaging services (CPC 876)	(3) None, except joint venture with the foreign capital contribution not exceeding 49 per cent shall be permitted.		
Asset appraisal	<p>(1) Unbound. (2) Unbound. (3) Unbound, except for Foreign organisations which are:</p> <p>(a) organisations legally established and supplying asset appraisal services in their home country; and</p> <p>(b) in partnership with a Vietnamese asset appraisal enterprise through a limited liability company with two or more members, or a joint stock company.</p> <p>Foreign individuals are not permitted to supply asset appraisal services. (4) Unbound.</p>	<p>(1) Unbound. (2) Unbound. (3) Unbound, except as indicated in the market access column. (4) Unbound.</p>	
<b>2. COMMUNICATION SERVICES</b>			
<b>C. Telecommunication Services</b>			
<p>Commitments hereunder are made in accordance with "Notes for Scheduling Basic Telecom Services Commitments" (S/GBT/W/2/REV.1) and "Market Access Limitations on Spectrum Availability" (S/GBT/W/3). For the purpose of these commitments, a "non facilities-based service supplier" means a service supplier which does not own transmission capacity but contracts for such capacity including submarine cable capacity, including on a long-term basis, from a facilities-based supplier. A non facilities-based supplier is not otherwise excluded from owning telecommunications equipment within their premises and permitted public service provision points (POP).</p> <p>Unbound for measure with respect to investment in, building of, operating and exploiting telecommunication networks and services serving ethnic minorities in rural and remote areas of Viet Nam.</p>			

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<u>Basic telecommunication services</u> (a) Voice telephone services (CPC 7521)  (b) Packet-switched data transmission services (CPC 7523**)	(1) Footnote to the “multilateral companies” term. (3) None, except: <i>Non facilities-based services:</i> Unbound, except joint venture or the purchase of shares in a Vietnamese enterprise will be allowed. Foreign equity shall not exceed 65%. No later than five years after the date of entry into force of this Agreement: None. <i>Facilities-based services:</i> Unbound, except joint venture or the purchase of shares in Vietnamese enterprise a duly licensed in Viet Nam will be allowed. Foreign equity shall not exceed 49%.		
(c) Circuit-switched data transmission services (CPC 7523**)			
(d) Telex services (CPC 7523**)			
(e) Telegraph services (CPC 7523**)			
(f) Facsimile services (CPC 7521** + 7529**)			
(g) Private leased circuit services (CPC 7522** + 7523**)			
(o*) Other services			
- Video conference services (CPC 75292) - Video Transmission services, excluding broadcasting <sup>2249</sup>			

<sup>2249</sup> Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
- Radio based services includes: + Mobile telephone (terrestrial and satellite) + Mobile data (terrestrial and satellite) + Paging + PCS + Trunking Internet Exchange Service (IXP) <sup>2250</sup>			
<u>Basic telecommunication services:</u>  (o*) Other services  - Virtual Private Network (VPN) <sup>2251</sup>	(1) Footnote to the “multilateral companies” term.  (3) None, except: Non facilities-based services: Unbound, except joint ventures or the purchase of shares in a Vietnamese enterprise shall be allowed. Foreign equity shall not exceed 70% of legal capital. No later than five years after the date of entry into force of this Agreement: None.		

<sup>2250</sup> Services providing internet access service (IAS) suppliers with connection between them and to the international Internet backbone.

<sup>2251</sup> Services, provided on commercial terms, establishing and managing a private network over public (shared) networks for the purpose of carrying out, on a non-profit basis, voice and data telecommunications between members of a closed user group defined prior to the creation of the VPN. Such group may include a corporate group or organization, or a group of legal entities with an established relationship affiliated through the pursuit of a common interest. Initial members of a closed user group using VPN service must be listed in a dialling or routing plan approved by the Competent Authority and subject to its oversight. VPN service suppliers shall notify to the Competent Authority changes of membership at least two working weeks prior to actually commencing commercial service and can commence commercial service provided that no objection from the Competent Authority is issued during these two weeks. Members are not allowed to resell VPN services to unaffiliated third parties. Virtual private networks are not allowed to carry/transfer traffic of/between unaffiliated third parties. VPN services can be offered by licensed foreign-invested service suppliers bundled with Internet access service and value-added services from (h) to (n).

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	Facilities-based services: Unbound, except joint venture or the purchase of shares in Vietnamese enterprise duly licensed in Viet Nam will be allowed. Foreign equity shall not exceed 49%.		
<u>Value-added services</u> (h) Electronic mail (CPC 7523 **)	(1) Footnote to the “multilateral companies” term.  (3) None, except: Non facilities-based services: Unbound, except the purchase of shares in or joint ventures with a Vietnamese enterprise will be allowed. Foreign equity shall not exceed 65% of legal capital. No later than five years after the date of entry into force of this Agreement: None.  Facilities-based services: Unbound, except the purchase of shares in or joint ventures (JV) with a Vietnamese enterprise duly licensed in Viet Nam will be allowed. Foreign equity shall not exceed 51 %. No later than five years after the date of entry into force of this Agreement, foreign equity up to 65 per cent is permitted.		
(i) Voice mail (CPC 7523 **)			
(j) On-line information and database retrieval (CPC 7523**)			
(k) Electronic data interchange (EDI) (CPC 7523**)			
(l) Enhance/value-added facsimile services, including store and forward, store and retrieve (CPC 7523**)			
(m) Code and protocol conversion			
(n) On-line information and data processing (incl. transaction processing) (CPC 843**)			

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<u>Value added services</u> (o) Other - Internet Access Services IAS <sup>2252</sup>	(1) Footnote to the “multilateral companies” term.  (3) Non facilities-based services: Unbound, except joint venture or the purchase of shares in a Vietnamese enterprise will be allowed. Foreign equity shall not exceed 65%. No later than five years after the date of entry into force of this Agreement: None  Facilities-based services: Unbound, except joint venture (JV) with or the purchase of shares in a Vietnamese enterprise duly licensed in Viet Nam will be allowed. Foreign equity shall not exceed 51% of legal capital No later than five years after the date of entry into force of this Agreement, foreign equity up to 65 per cent is permitted.		

<sup>2252</sup> Services providing internet access to the end users.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>D. Audiovisual Services</b>			
Performance Requirement: Cinemas must screen Vietnamese films on the occasion of major anniversaries of the country. The ratio of screening Vietnamese films to total films shall not be less than 20 per cent on an annual basis. Cinemas should show at least one Vietnamese film between the hours of 18:00 and 22:00.			
(a) Motion picture production (CPC 96112)	(1) Unbound. (2) Unbound. (3) Unbound, except only in the forms of business cooperation contracts or joint ventures with Vietnamese partners who are legally authorized to provide these services in Viet Nam or the purchase of shares in Vietnamese enterprises legally authorised to provide such services. In the case of a joint venture or the purchase of shares in an enterprise, foreign equity may not exceed 51% of the legal capital. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None except as indicated in the market access column.  (4) None.	
- Motion picture distribution (CPC 96113)	(1) Unbound. (2) None. (3) Unbound except only through business cooperation contract or joint venture with a Vietnamese partner who is legally authorized to provide these services in Viet Nam or the purchase of shares in a Vietnamese enterprise legally authorised to provide such services. In the case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 51% of the legal capital. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None.  (4) None.	

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(b) Motion picture projection service (CPC 96121)	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) Unbound except only through business cooperation contracts or joint venture with a Vietnamese partner who is legally authorized to provide these services in Viet Nam or the purchase of shares in a Vietnamese enterprise legally authorised to provide such services. In the case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 51% of legal capital. Viet Nam's houses of culture, public cinema clubs and societies, mobile projection teams, or owners or operators of temporary film-projection locations are not allowed to engage in business cooperation contract or joint-venture with foreign organisations and individuals.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>(4) None.</p>	
(e) Sound recording	<p>(1) Unbound.</p> <p>(2) None.</p> <p>(3) Unbound except that foreign ownership of up to 51 per cent in enterprises engaged in sound recording shall be permitted.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) Unbound except indicated in the market access column.</p> <p>(4) None.</p>	<p>Unbound for</p> <ul style="list-style-type: none"> <li>- Performance Requirements (Article 9.10)</li> <li>- Senior Management and Boards of Directors (Article 9.11)</li> </ul> <p>The cross-border supply of the listed sub-sectors shall comply with Viet Nam's laws and regulations, including</p>

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
			applicable registration and licensing requirements.
Mass communication Press and news-gathering agencies, publishing, radio and television broadcasting, in any form	(1) Unbound. <sup>2253</sup> (2) Unbound. <sup>2254</sup> (3) Unbound. (4) Unbound. <sup>2255</sup>	(1) None. <sup>2256</sup> (2) None. <sup>2257</sup> (3) Unbound. (4) None. <sup>2258</sup>	
<b>3. CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>			

<sup>2253</sup> For greater certainty, the absence of a reservation against the cross-border services obligations does not preclude Viet Nam from ensuring that the cross-border supply of the listed sub-sectors complies with Viet Nam's laws and regulations, including applicable registration and licensing requirements.

<sup>2254</sup> Ibid.

<sup>2255</sup> Ibid.

<sup>2256</sup> Ibid.

<sup>2257</sup> Ibid.

<sup>2258</sup> Ibid.



Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
A. General construction work for building (CPC 512) B. General construction work for civil engineering (CPC 513) C. Installation and assembly work (CPC 514, 516) D. Building completion and finishing work (CPC 517) E. Other (CPC 511, 515, 518)		(3)None.	
River Ports, Sea Ports and Airports Construction, operation and management	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for: - Local Presence (Article 10.6) - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11)
<b>4. DISTRIBUTION SERVICES</b>			
<u>Measures applicable to all sub-sectors in Distribution Services:</u>			
For video records on whatever medium, rice, cane and beet sugar			

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>A. Commission agents' services (CPC 621, 61111, 6113, 6121)</p> <p>B. Wholesale trade services (CPC 622, 61111, 6113, 6121)</p> <p>C. Retailing services (CPC 631 + 632, 61112, 6113, 6121)<sup>2259</sup></p>	<p>(1) Unbound, except none for: - Distribution of products for personal use; - Distribution of legitimate computer software for personal and commercial use.</p> <p>(2) Unbound, except none for: - Distribution of products for personal use; - Distribution of legitimate computer software for personal and commercial use.</p> <p>(3) None, except The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT)<sup>2260</sup>.</p> <p>The establishment of outlets for retail services with area of less than 500 square metres in areas that are planned for commercial activities by the People's Committee of cities and provinces, and on which the construction of infrastructure has been finished, is not subject to the ENT requirement.</p>	<p>(1) Unbound, except as indicated in Mode 1, market access column.</p> <p>(2) Unbound, except as indicated in Mode 2, market access column.</p> <p>(3) None.</p>	

<sup>2259</sup> For transparency purposes, this commitment includes multi-level sales by properly trained and certified Vietnamese individual commission agents away from a fixed location for which remuneration is received both for the sales effort and for sales support services that result in additional sales by other contracted distributors.

<sup>2260</sup> Applications to establish more than one outlet shall be subject to pre-established publicly available procedures, and approval shall be based on objective criteria. The main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of market and geographic scale.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>Five years after the date of entry into force of this Agreement for Viet Nam, the ENT shall be removed and this entry shall no longer have effect.</p> <p>(4) Unbound, except None for:</p> <ul style="list-style-type: none"> <li>- Distribution of products for personal use;</li> <li>- Distribution of legitimate computer software for personal and commercial use.</li> </ul>		
D. Franchising services (CPC 8929)	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None.</p> <p>Branching is allowed.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) None, except as indicated in the market access column.</p> <p>(4) None.</p>	
Cigarettes and cigars, publications, <sup>2261</sup> video records on whatever medium, precious metals and stones, pharmaceutical products and drugs, <sup>2262</sup> explosives, processed oil and crude oil, rice, cane and beet sugar are excluded from the commitments.			
D. Franchising services (CPC 8929)		(3) None.	
<b>5. EDUCATIONAL SERVICES</b>			
A. Primary education services	<p>(1) Unbound.</p> <p>(2) Unbound.</p> <p>(3) Unbound, except through</p> <p>(a) preschool education institutions using foreign educational programmes for foreign children;</p>	<p>(1) None.</p> <p>(2) None.</p> <p>(3) Unbound, except as indicated in the market access column.</p> <p>(4) None.</p>	<p>Unbound for</p> <ul style="list-style-type: none"> <li>- Performance Requirements (Article 9.10)</li> <li>- Senior Management and Boards of Directors</li> </ul>

<sup>2261</sup> For greater clarity, publications means books, newspapers and magazines.

<sup>2262</sup> For the purposes of this schedule "pharmaceuticals and drugs" do not include non-pharmaceutical nutritional supplements in tablet, capsule or powdered form.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>and</p> <p>(b) compulsory education institutions using foreign educational programmes, issuing foreign qualifications, for foreign students and some Vietnamese students. The compulsory education institutions may enrol Vietnamese students, but the number of Vietnamese students in primary schools and middle schools shall not exceed 10 per cent of the total number of students, and that in high schools shall not exceed 20 per cent of the total number of students.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>		<p>(Article 9.11)</p> <p>- Local Presence (Article 10.6)</p>
B. Secondary education services (CPC 922)	<p>(3) Unbound, except for</p> <p>(a) preschool education institutions using foreign educational programmes for foreign children; and</p> <p>(b) compulsory education institutions using foreign educational programmes, issuing foreign qualifications, for foreign students and some Vietnamese students.</p> <p>The compulsory education institutions may enrol Vietnamese students, but the number of Vietnamese students in primary schools and middle schools shall not exceed 10 per cent of the total</p>	<p>(1) None.</p> <p>(3) Unbound, except as indicated in the market access column.</p>	

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	number of students, and that in high schools shall not exceed 20 per cent of the total number of students.		
C. Higher education services (CPC 923) D. Adult education (CPC 924) E. Other education services (CPC 929 including foreign language training)		(3) None except indicated in the market access column.	
<b>8. HEALTH RELATED AND SOCIAL SERVICES</b>			
C. Residential health facilities services other than hospital services (CPC 93193)  Other human health services (CPC 93199) <sup>2263</sup>	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
<b>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES</b>			
A. Video tape production and distribution services - Video tape production services (CPC 96112, except for motion picture production services)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) None. (2) None. (3) Unbound. (4) None.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)

<sup>2263</sup> Only with respect to the obligations of Chapter 10 (Cross-Border Trade in Services).

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
- Video tape distribution services (CPC 96113, except for motion picture distribution services) (Also called Production and Distribution of Video Records)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
A. Entertainment services (including theatre, live bands and circus services) (CPC 9619)	(3) Unbound except joint ventures or the purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 49% are permitted. Three years after the date of entry into force of this Agreement, foreign equity not exceeding 51 per cent shall be permitted.	(1) None.	
b. Performing Arts and Fine Arts The performing arts, fine arts and other cultural activities <sup>2264</sup>	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)

<sup>2264</sup> For greater certainty, other cultural activities mean photography, art exhibitions, fashion shows, beauty and model contests, karaoke and discotheque business, and festival organisation.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
- Services related to the hosting of a sporting event (including promotion, organisation and facilities management)	(1) Unbound. (2) None. (3) None, in accordance with Viet Nam's laws and regulations and in a manner consistent with Viet Nam's commitments under this Agreement. (4) Unbound.	(1) None. (2) None. (3) None. (4) None.	
c. Sporting and other recreational services (CPC 964 except for electronic games business and amusement parks)  Martial art clubs and extreme sports	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
A. Other  - Electronic games business (CPC 964**)	(3) Unbound except only through a business cooperation contract or a joint-venture with Vietnamese partner who are authorized to provide these services or the purchase of shares in a Vietnamese enterprise authorised to supply such services.  In case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 49% of the legal capital.  No later than two years after the date of entry into force of this Agreement, 51 per cent foreign investment in electronic game services offered over the Internet	(1) None.	

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	shall be permitted. Five years after the date of entry into force of this Agreement, limitations on foreign equity: None.		
H. Other Amusement parks	(1) Unbound. (2) Unbound. (3) Unbound for foreign investment of less than USD 1 billion in building and managing theme parks or amusement parks except for the Vietnamese competent authorities advise the applicant that the investment is likely to be of net benefit to Viet Nam. <sup>2265</sup> None: foreign investments greater than USD 1 billion are not subject to this determination. (4) Unbound.		Unbound for: - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11)

<sup>2265</sup> This determination is made in accordance with the following factors: (a) the compatibility of the investment with the regional master plan for socio-economic development; (b) the ability to meet people's demand for cultural consumption; (c) the compatibility with the local and regional cultural characteristics; and (d) the effect of the investment on local state budget, employment, on the use of parts, components and services produced in Viet Nam and on competition with the services provided by the local cultural houses.



Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Gambling and Betting Services  Lottery Services	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
d. Cultural Heritage  Protection, maintenance and renovation of Viet Nam's tangible heritages as defined in the <i>Law on Cultural Heritage (2001)</i> and the revised <i>Law on Cultural Heritage (2009)</i> and intangible cultural heritages as covered by the revised <i>Law on Cultural Heritage (2009)</i> .	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
<b>11. TRANSPORT SERVICES</b>			
<b>A. Maritime Transport Services</b>  (a) Passenger transportation less cabotage (CPC 7211)  (b) Freight transportation less cabotage (CPC 7212)	(3) (a) To supply services under the national flag of Viet Nam: Unbound, except through joint-ventures or the purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 49%. Foreign seafarers may be permitted to work in ships under the national flag of Viet Nam (or registered in Viet Nam) but not exceeding 1/3 of total employees of the ships.		

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
- Maritime cabotage services	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
Pushing and towing services	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
<b>Maritime Auxiliary Services</b>		(1) None.	
- Container handling services (CPC 7411) <sup>2266</sup>			
- Shipping Agency Services	(1) Unbound. (2) Unbound. (3) Unbound, except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent.	(1) None. (2) None. (3) Unbound except as indicated in the market access column. (4) None.	

<sup>2266</sup> Public utility concession or licensing procedures may apply in case of occupation of the public domain.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	(4) Unbound.		
<b>B. Internal Waterways Transport</b>	(3) Unbound, except for the purchase of shares in a Vietnamese enterprise in which the capital contribution of foreign side not exceeding 49% of total legal capital.		
(a) Passenger transport less cabotage (CPC 7221)			
(b) Freight transport less cabotage (CPC 7222)			
(c) Rental of vessels with crew (CPC 7223)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
(d) Pushing and towing services			
<b>C. Air Transport Services</b>			
<b>C. Air Transport Services</b> Air Transportation, including domestic and international air transportation services, excluding - Aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called maintenance - Selling and marketing of air transport services - Computer reservation system services - Specialty air services - Airport operation services	(3) Unbound, except that aggregate foreign capital contribution or equity is restricted to no more than 30 per cent of chartered capital or shares of a Vietnamese airline. A Vietnamese individual or legal person who is not a foreign invested enterprise must hold the largest percentage of chartered capital or shares in the airline. Senior Management and Boards of Directors: At least two-thirds of the total members of the executive board of a foreign invested airline	(3) None, except indicated in the market access column.	Unbound for Senior Management and Boards of Directors (Article 9.11)

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
- Ground handling services	established in Viet Nam must be Vietnamese. The Director General (or Director) and the legal representative of a foreign invested airline established in Viet Nam must be Vietnamese.		
Air-transport related services - Specialty air services (except for commercial flight training) - Airport operation services		(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
<b>D. Space transport (CPC 733)</b>		(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
<b>E. Rail Transport Services</b>  (a) Passenger transportation less cabotage (CPC 7111) (b) Freight transportation less cabotage (CPC 7112)	(3) Unbound for freight rail transport services except through the establishment of joint ventures or the purchase of shares in a Vietnamese enterprise foreign equity not exceeding 49%	(1) None.	

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Infrastructure business services		(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
Pushing and towing services	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>F. Road Transport Services</b>  (a) Passenger transportation less cabotage (CPC 7121+7122) (b) Freight transportation less cabotage (CPC 7123)	(3) Unbound, except through a business cooperation contract or a joint-venture or the purchase of shares in a Vietnamese enterprise with the capital equity of foreign side not exceeding 49%. Subject to the needs of the market <sup>2267</sup> , foreign equity may be raised to but shall not exceed not exceeding 51% may be established to provide road freight transport services.	(1) None.	
<b>G. Pipeline transport</b>		(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
<b>H. Services Auxiliary to all Modes of Transport</b>			
(a) Container handling services, except services provided at airports (part of CPC 7411)	(3) Unbound, except through a joint venture with or the purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 50%.		

<sup>2267</sup> The criteria taken into account are, among others: creation of new jobs; positive foreign currency balance; introduction of advanced technology, including management skill; reduced industrial pollution; professional training for Vietnamese workers; etc.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(c) Freight transport agency services (CPC 748) <sup>2268</sup>		(1) None.	
<b>12. OTHER</b>			
<b>A. Financial services provided by non-financial institutions, excluding the provision and transfer of financial information and advisory financial services</b>		(1) None. (2) None. (3) Unbound. (4) None.	
<b>B. Judicial Administration and related services</b> (a) judicial expertise services; (b) bailiff services; (c) property auction services relating to property in accordance with the law on auction; (d) notary and certification services; and (e) proper managing and liquidating according to the regulations of the law on bankruptcy.		(1) None. (2) None. (3) Unbound. (4) None.	Unbound for: - Performance Requirements (Article 9.10) - Senior Management and - Boards of Directors (Article 9.11)
Services in the exercise of governmental authority when these services are opened to the private sector		(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for: - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article

<sup>2268</sup> Including freight forwarding services. These services mean the activities consisting of organizing and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

\* A commitment on this mode of delivery is not feasible.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
			<p>10.6)</p> <p>Any non-conforming measure adopted after the opening of such services to the private sector shall be deemed to be an existing measure subject to Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures) five years after the adoption of the measure.</p>



**ANNEX 2.3: CPTPP COMMITMENTS LESS LIBERALIZED THAN EVFTA COMMITMENTS<sup>2269</sup>**

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>			
<b>1. BUSINESS SERVICES</b>			
<b>E. Rental/Leasing Services without Operators</b>			
(a) Relating to ships (CPC 83103)	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
(d) Relating to other machinery and equipment (CPC 83109 excluding mining and oil field equipment; commercial radio, television and communication equipment)	(3) Unbound.		
<b>F. Other Business Services</b>			

<sup>2269</sup> Compilation by the author based on the Schedule of Specific Commitments of Vietnam in the EVFTA and the conversion of the negative-list commitments of Vietnam in the CPTPP into the positive-list commitments.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(e) Technical testing and analysis services (CPC 8676, excluding conformity testing of means of transport and certification of transport vehicles)	(1) Unbound. (3) None, except where Viet Nam allows private suppliers access to a sector previously closed to private sector competition on the grounds that these services had been supplied in the exercise of governmental authority, such service shall be allowed without limitation on foreign ownership five years after such access to private sector competition is allowed.		
Services incidental to manufacturing Printing (CPC 88442)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for any measure with respect to - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
(q) Building-cleaning services (CPC 874) - Disinfecting and exterminating services (CPC 87401) - Window cleaning services (CPC 87402) only in industrial zones and export processing zones	(2) None. (3) None. (4) None.	(1) None. (2) None. (3) None.	

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(r) Packaging services (CPC 876)	(3) None, except joint venture with the foreign capital contribution not exceeding 49 per cent shall be permitted.		
Trade fairs and exhibitions services (CPC 87909**)	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
<b>2. COMMUNICATION SERVICES</b>			
<b>B. Postal Services<sup>2270</sup> (CPC 7511**)</b>	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
<b>4. DISTRIBUTION SERVICES</b>			
<u>Measures applicable to all sub-sectors in Distribution Services:</u>			
Cigarettes and cigars, books, newspapers and magazines, video records on whatever medium, precious metals and stones, pharmaceutical products and drugs <sup>2271</sup> , explosives, processed oil and crude oil, rice, cane and beet sugar are excluded from the commitments.			

<sup>2270</sup> Exclude public services and reserved services.

<sup>2271</sup> For the purposes of this schedule "pharmaceuticals and drugs" do not include non-pharmaceutical nutritional supplements in tablet, capsule or powdered form.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
E. Commission agents' services (CPC 621, 61111, 6113, 6121)  F. Wholesale trade services (CPC 622, 61111, 6113, 6121)  G. Retailing services (CPC 631 + 632, 61112, 6113, 6121) <sup>2272</sup>	(2) Unbound, except none for: - Distribution of products for personal use; - Distribution of legitimate computer software for personal and commercial use.	(2) Unbound, except as indicated in Mode 2, market access column.	
<b>6. EDUCATIONAL SERVICES</b>			
Only in technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields.			
With regard to points (C), (D), and (E) below: The education content must be approved by Viet Nam's Ministry of Education and Training.			
F. Higher education services (CPC 923)  G. Adult education (CPC 924)  H. Other education services (CPC 929 including foreign language training)	(1) Unbound.		
<b>8. HEALTH RELATED AND SOCIAL SERVICES</b>			

<sup>2272</sup> For transparency purposes, this commitment includes multi-level sales by properly trained and certified Vietnamese individual commission agents away from a fixed location for which remuneration is received both for the sales effort and for sales support services that result in additional sales by other contracted distributors.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
A. Hospital services (CPC 9311) B. Medical and dental services (CPC 9312)	(3) Foreign service suppliers are permitted to provide services through the establishment of 100% foreign-invested hospital, joint venture with Vietnamese partners or through business cooperation contract. The minimum investment capital for a commercial presence in hospital services must be at least US\$20 million for a hospital, US\$2 million for a polyclinic unit and US\$200,000 for a specialty unit.		
C. Health related and social services Social services (CPC 933):  - Social services with accommodation (CPC 9331)  - Social services without accommodation (CPC 9332)	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	
<b>11. TRANSPORT SERVICES</b>			
<b>H. Maritime Transport Services</b>  (c) Passenger transportation less cabotage (CPC 7211)  (d) Freight transportation less cabotage (CPC 7212)	(1) Unbound, except international freight transportation: None.		

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(d) Maintenance and repair of vessels (CPC 8868*)	(5) Uninscribed. (6) Uninscribed. (7) Uninscribed. (8) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
<b>Maritime Auxiliary Services</b>			
- Container handling services (CPC 7411) <sup>2273</sup>	(3) Unbound, except through joint ventures or the purchase of shares in a Vietnamese enterprise with foreign capital contribution not exceeding 50% can be established.		
- Maritime Agency Services <sup>2274</sup> (CPC 748*)	(5) Uninscribed. (6) Uninscribed. (7) Uninscribed. (8) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
- Container Station and Depot Services <sup>2275</sup>	(1) Unbound.*	(1) Unbound.*	

<sup>2273</sup> Public utility concession or licensing procedures may apply in case of occupation of the public domain.

<sup>2274</sup> Maritime agency services or ship agency is a service which the ship agent is authorized to undertake, in the name of the shipowner or the ship operator, to perform services connected with the ship's operations at the port including arrangement of the ship's entry and departure; concluding contracts of carriage, marine insurance contracts, contracts for cargo handling, charter parties, and recruitment agreements; issuing and signing bills of lading or similar documents; supplying stores, bunkers and provisions to the ship; submitting ship's sea protests; communicating with the ship owner or the ship operator; arranging relevant services for ship crew; receiving and paying all amounts incident to the ship's operation; handling claims arising from contracts of carriage and or marine accidents, and supplying other services in connection with the ship as required.

<sup>2275</sup> "Container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments.

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>I. Internal Waterways Transport</b>	(1) Unbound.		
(c) Passenger transport (CPC 7221)	(3) Foreign service suppliers are permitted to provide services only through the establishment of joint ventures with Vietnamese partners in which the capital contribution of foreign side not exceeding 49% of total legal capital.		
(d) Freight transport (CPC 7222)			
Internal waterways transport:  Cabotage services		(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Performance Requirements (Article 9.10) - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)
Maintenance and repair of vessels (CPC 8868*)	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
<b>J. Air Transport Services</b>			
(a) Ground-handling services, excluding aircraft servicing and cleaning, surface transport, airport management and air service navigation	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Unbound. (2) Unbound. (3) Unbound. (4) Unbound.	Unbound for - Senior Management and Boards of Directors (Article 9.11) - Local Presence (Article 10.6)

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
In-flight meal serving services	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
<b>D. Rail Transport Services</b>	(2) Unbound. (3) Unbound.	(2) Unbound.	
Cabotage services			
<b>E. Road Transport Services</b>		(2) Unbound. (3) Unbound.	
Road cabotage services			
<b>H. Services Auxiliary to all Modes of Transport</b>			
(a) Maritime cargo handling services (CPC 741)	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	
(b) Container handling services, except services provided at airports (part of CPC 7411)	(1) Unbound.		
(c) Storage and warehouse services (CPC 742)	(1) Unbound.*		
(d) Other (part of CPC 749) <sup>2276</sup>	(1) Unbound, except freight brokerage services: None.  (3) Foreign service suppliers are only permitted to provide services through		

\* A commitment on this mode of delivery is not feasible.<sup>2276</sup> Include the following activities: bill auditing; freight brokerage services; freight inspection, weighing and sampling services; freight receiving and acceptance services; transportation document preparation services. These services are provided on behalf of cargo owners.

<sup>2276</sup> Include the following activities: bill auditing; freight brokerage services; freight inspection, weighing and sampling services; freight receiving and acceptance services; transportation document preparation services. These services are provided on behalf of cargo owners.



Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence			
Sectors and sub-sectors	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	the establishment of joint ventures with Vietnamese partners with no capital limitation.		
Dredging services (CPC...)	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	(1) Uninscribed. (2) Uninscribed. (3) Uninscribed. (4) Uninscribed.	