

THE SOCIALIST-ORIENTED MARKET ECONOMY IN VIETNAM: FROM THE CONSTITUTION TO FREE TRADE AGREEMENTS | *A ECONOMIA DE MERCADO DE ORIENTAÇÃO SOCIALISTA NO VIETNÃ: DA CONSTITUIÇÃO AOS ACORDOS DE LIVRE COMÉRCIO*

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ABSTRACT | This paper reviews the legal aspect of the formed and changing perceptions of the Communist Party of Vietnam on the socialist-oriented market economy (SME). The authors assess the reflection of that awareness in the 2013 Constitution and the practical implementation of Vietnams participation in recent free trade agreements. We find there have been important changes in perceptions related to the SME before the enactment of the 2013 Constitution. However, the reflection of awareness about that policy in the 2013 Constitution is not enough and has caused several challenges to its enforcement, especially regarding the legal system and global economic integration. The authors here also point out conflicts between the policy of building a SME in Vietnam with the requirements of free trade in terms of theory and recent practical agreements, raising questions of whether those conflicts could be acceptable and how to address them.

KEYWORDS | Socialist-oriented market economy. Constitution of Vietnam. Free trade agreements.

RESUMO | Este artigo revisa o aspecto legal das percepções formadas e cambiantes do Partido Comunista do Vietnã sobre a economia de mercado de orientação socialista (EMOS). Os autores avaliam o reflexo dessa consciência na Constituição de 2013 e a implementação prática da participação do Vietnã nos recentes acordos de livre comércio. Constatamos que houve mudanças importantes nas percepções relacionadas ao EMOS antes da promulgação da Constituição de 2013. No entanto, o reflexo da conscientização sobre essa política na Constituição de 2013 não é suficiente e tem causado diversos desafios à sua efetivação, principalmente no que diz respeito ao ordenamento jurídico e à integração econômica global. Os autores aqui também apontam conflitos entre a política de construção de uma EMOS no Vietnã com as exigências do livre comércio em termos teóricos e acordos práticos recentes, levantando questões sobre se esses conflitos poderiam ser aceitáveis e como resolvê-los.

PALAVRAS-CHAVE | Economia de mercado de orientação socialista. Constituição do Vietnã. Acordos de livre comércio.

1. INTRODUCTION

Responding to extreme socioeconomic challenges, the Sixth National Congress of the Communist Party of Vietnam (Party Congress – 1986) set out to “strengthen [the] socialist economy on all three aspects of ownership, management manner, distribution mechanism” to promote economic units and develop manufacturing and improve productivity, quality, and economic efficiency (VAN AN, 2006). Specifically, the Party Congress – 1986 sought to “harmoniz[e] the interests of society, collectives and workers; [and] [e]nsur[e] the autonomy of manufacture and business as well as financial autonomy of grassroots economic units, and the right of the labor collective. State administrative agencies at all levels must obey their function properly and do not interfere in the manufacture and business activities of grassroots units.”

While this was a good directive policy, until 2001, the concept of a “socialist-oriented market economy” appeared in the documents of the Ninth Party Congress and the amendment of the 1992 Constitution (NGUYEN, 2022). The connotation of this concept has improved, but it has not helped solve many theoretical and practical problems. Moreover, it has caused skepticism in a part of the people, State employees, and party members.

Notably, “socialist-oriented market economy” is not only a purely economic concept but also a complex one, having existed for only twenty years (PHAM, 2016). Its controversy is a natural expression in social science and the legal-political field. Therefore, this policy should not be assessed from a single perspective, nor should it be intended to discern right and wrong among the parties to the debate.

From the view that considers collective ownership as the foundation under the 1992 Constitution, collective ownership is no longer directly mentioned in the 2013 Constitution. This change may increase the risk of speculation of means of production by the forms of private ownership or take advantage of preferential mechanisms for the private economic sector to usurp

collective or public properties. Therefore, before any significant change, the position of collective ownership must be reaffirmed in the Constitution.

Regarding the right to education, the 2013 Constitution has created a new legal basis for private primary education service providers to charge tuition fees. However, the State will not charge tuition fees but will charge other fees such as educational *support* services.

In addition, there is other evidence in the 2013 Constitution that shows a change in “paving the way” to implement free trade agreements (FTAs) (NGUYEN, 2018). Under Article 33, “everyone has the freedom to conduct business in fields that are *not prohibited by law*.” Does this wording mean that everyone will have the *freedom of business* in *conditional business* lines, such as gold or currency? We argue that Article 33 cannot be expressed as current text but must specify the “limitations” of the right directly in the Constitution or entrust it to the law.

Within the scope of this article, the authors attempt to adopt a legal perspective to make some observations on the current practice of building a socialist-oriented market economy in Vietnam, especially following the enactment of the 2013 Constitution. We assume that some regulations in the 2013 Constitution relate to the ownership of people. The right to education and the right to business freedom did not match the spirit of the socialist-oriented market economy, as evidenced by the impact of participation in the free trade mechanism at that time.

2. OVERVIEW OF THE CONCEPT OF A “SOCIALIST-ORIENTED MARKET ECONOMY”

The concept of a “socialist-oriented market economy” was first used in Vietnam in 2001. However, it appears to relate to a policy issued nearly ten years earlier at the Fourteenth Chinese Communist Party Congress in 1992, after which China amended Article 15 of its 1982 Constitution in 1993 (BUI, 2020). At that time, China first formalized the concept of the “socialist market economy.” These concepts in Vietnam and China seem similar regarding the two constituent elements: “market

economy” and “socialist.” We do not aim to discuss the content of these two elements but rather how to connect them in Vietnam and China.

The idea of building a “socialist market economy” in China surfaced in the early 1990s, perhaps with the same essence as the declared strategy of building “socialism with Chinese characteristics.” China sought ways to build a “market economy” that differed from the Western conception (“capitalist market economy”). China wanted to build a market economy in a “socialist style.” In other words, China would use the theoretical foundations of socialism to establish a new, unique type of market economy that carries the “Chinese characteristic.”

For Vietnam, the concept still consists of two constituent elements, but we must pay special attention to an important supplement: the “orientation.” This supplement seems to clarify the relationship between “socialist” and “market economy” more than the concept in the neighboring country (LAVIGNE, 1999; EGLINGER, JEAN-PHILIPPE, 2021). The Chinese concept seeks to establish a “market economy” based on “socialism.” In contrast, the Vietnamese concept clearly shows a priority for creating a “market economy” (according to the Western conception) and steering it towards “socialism” rather than founding it on “socialism.”

This difference should be understood to avoid the “stereotypes” status that copies the comments (including criticism) of the Chinese “socialist market economy” to the case of Vietnam, as a former Vietnam minister told the media. In 2014, when asked “What is a socialist-oriented market economy institution?” Bui Quang Vinh, minister of the Planning and Investment Ministry, answered, “We just study that model, but never find. Don’t have that kind of model to look for.” The authors believe the media made a mistake in reporting his message, but this statement has not been correct by the former minister. That statement seems not to distinguish the existing (almost global) “market economy” from what does not appear in Vietnam’s “socialism” (BUI, 2020). We argue that such stages need to be separated in accordance with the Marxist interpretation of the process of social development that must undergo capital accumulation, the core of which is the market economy.

3. DEVELOPMENT OF AWARENESS OF THE COMMUNIST PARTY OF VIETNAM AND THE VIETNAMESE STATE ON THE SOCIALIST-ORIENTED MARKET ECONOMY

To clarify the policy of the Communist Party of Vietnam (CPV) and the State of Vietnam on this issue, it is necessary to return to the 1992 Constitution (NGUYEN, 2014). Article 15 provides that “the State promotes a multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and *following a socialist orientation*.”¹ Looking at this provision, it is clear that Vietnam wanted to build a type of economy to leverage socialism but did not want to build a market economy based on socialism (because socialism had not appeared).

This possibility of building a “multi-component commodity economy *following a socialist orientation*” in 1992, under the strong impact of international integration requirements and domestic factors, was reframed to building a “market economy” in 2001. However, the content remains unchanged from the 1992 Constitution, as evidenced in the political report of the Eighth Central Committee of the Party at the Ninth Congress of the Party (2001), which affirmed, “Our Party and State advocate the consistent and long-term implementation of policies to develop a multi-component commodity economy, mobilizing according to market mechanisms, under the management of the State in line with socialist orientation; *it is a socialist-oriented market economy*.” Thus, the CPV considered it the economic model of Vietnam during *the transition (Thời kì quá độ)* to achieve socialism.

This policy aimed to develop manufacturing forces and economic development to create infrastructure and technical facilities to build socialism and gradually improve people’s lives (KHUYEN, VAN, 2022). There is an argument that such awareness was stable and consistent from 2001 to 2013, but there has been no new progress to concretize that policy. (NAM, 2013).

However, we argue that the change started at the Tenth Party Congress (2006), where the CPV made clear the characteristics of the socialist-

1 This policy was also stated in the Political Platform adopted at the Seventh Party Congress (1991).

oriented market economy. At this Congress, the Party introduced its view of “eliminating all discriminations among *types of ownership*.”² This important development shows the shift away from building a socialist-oriented market economy “based on the regime of People ownership, collective ownership, private ownership in which *the People ownership and collective ownership are the core foundations*.” As affirmed in the 2001 documents, the Party soon realized that the discrimination among ownership regimes was a significant obstacle to creating a market economy. Many researchers have confused this key point, instead criticizing inequalities between *economic sectors* (the State sector, the collective sector, the private individual sector, and the private capitalist sector in various forms) without acknowledging that the inequality of ownership regimes is the cause of inequality of economic sectors. The expression of “inequality” in incentives between domestic private enterprises and foreign direct investment enterprises is clear and similar to “inequality” between domestic private and State-owned enterprises (SOEs).

In other words, the inequality of economic sectors is a consequence of the inequality of ownership regimes rather than the natures of the economic sectors (VAN TRONG, 2022). To fully solve the inadequacies, it is necessary to eliminate the discrimination among ownership regimes rather than economic sectors. As a result, the Tenth Party Congress affirmed that eliminating discrimination against types of ownership was an important highlight in the change of awareness. However, eliminating the discrimination among ownership regimes has been ineffective, leading to an outward expression of inequality among economic sectors.

That important policy toward equality among ownership regimes in the Tenth Party Congress was neither mentioned nor clarified in the Eleventh Party Congress (2011), which only emphasized the role of economic sectors as a stepping-stone for changes in the 2013 Constitution. Two arguments can explain this situation.

First, the Eleventh Party Congress was fully aware of the importance of equality of ownership regimes, so the CPV did not reiterate the spirit of the

2 Political report of the Ninth Central Committee of the Party at the Tenth Party Congress.

Tenth Party Congress but focused on the expression of ownership regimes (through economic sectors). However, the failure to recall the spirit of the Tenth Congress on equality among ownership regimes may inadvertently lead to misunderstanding, equating equality among ownership regimes and economic sector equality. Second, the CPV (in the Eleventh Party Congress) was unaware of the differences between the equality of ownership regimes and economic sector equality, focusing too much on equality among economic sectors.

Both explanations are equally convincing when we review the perception of leading politicians, such as Bui Quang Vinh, the former minister of the Planning and Investment Ministry, whose answer was mentioned. However, we are still inclined to the first reason because of a relating provision in the 2013 Constitution. Based on the awareness of nondiscrimination among ownership regimes, the 2013 Constitution still affirms that the State economy is considered a sector that “plays a leading role” while “the actors in all economic sectors are equal.”³ After the Constitution was enacted, the private economic sector was considered an important driving force of the socialist-oriented market economy (Resolution No. 10-NQ/TW on June 3, 2017). It is unfortunate that the collective ownership regime and its expression (i.e., the collective economic sector in various forms) seem not to be given attention in policy forums and even in the 2013 Constitution, despite the Platform of the Party on national construction amended in 2011 affirming that “the collective economy is constantly being strengthened and developed. The State economy and the collective economy are becoming solid foundations of the national economy.”⁴

This shortcoming seems to have been realized in the Twelfth Party Congress (2016). There, the CPV acknowledged the cause of the current inadequacies because of insufficient awareness, especially as the economic sectors (State economy, SOEs, collective economy in the structure of market economy) had not yet fully promoted the right of people in business freedom according to the provisions of the Constitution and laws⁵. Simultaneously, the

3 Vietnamese Constitution 2013, art. 51(2).

4 CPV (2011), Political Platform for developing the country during the transition to socialism (supplement, development in 2011).

5 Political report of the Eleventh Central Committee of the Party at the Twelfth Party Congress.

CPV reaffirmed its “continuing to renovate the content and manner in [the] operation of the collective economy and cooperative economy.”⁶

Thus, it can be seen that the CPV has gradually achieved comprehensive views on the relationship of ownership regimes to ensure equality among these regimes. Meanwhile, many economic experts focus on the external appearance of ownership regimes through all economic sectors. This contrast may be a barrier to the unity between the state and society in building the socialist-oriented market economy in Vietnam. Because the Party’s awareness is less widely disseminated, while the opinion of “economic experts” is widespread in society and impacting back to the perception of senior leaders in Government. This situation may be the consequence of the inefficient information exchange between the internal Party and outside.

4. LINKS BETWEEN POLICIES OF JOINING FREE TRADE AGREEMENTS AND BUILDING A SOCIALIST-ORIENTED MARKET ECONOMY IN THE VIETNAMESE CONSTITUTION

In the early 21st century, when the CPV and the State of Vietnam advocated building a socialist-oriented market economy, there was a view that “encouraging the development of private property in an immature market economy in a country transitioning to socialism indirectly, means ignoring the stage of capitalist development such our country, may lead to unintended consequences and endangering the socialist development orientation that we have chosen”. (PHUONG, 2008). This is not undue anxiety (SICURELLI, 2015). At the time of the Tenth Party Congress in 2006, the CPV still admitted that “the Party’s idea in some areas is slow to innovate. Some issues in viewpoints and major undertakings have not been clarified, so they have not reached a high consensus on awareness and a lack of decisiveness in policy-making and governance such as ownership and economic sectors; equitization of state enterprises.”⁷

6 Political report of the Eleventh Central Committee of the Party at the Twelfth Party Congress.

7 Political report of the Ninth Central Committee of the Party at the Tenth Congress of the Party.

At this time, Vietnam promotes international economic integration based on a “fuzzy” awareness of the “socialist-oriented market economy” and has only “briefly indicated [the] basic content of socialist orientation in the market economy” in Vietnam with four characteristics.⁸ Accordingly, Vietnam advocates building a market economy based on four goals:

- the objective “people become[] rich; the country becomes powerful; society becomes fair, democratic and civilized”; strong liberation and continuous development of production capacity, improving people's lives; promoting hunger eradication and poverty alleviation, encouraging individuals to become legitimately rich and help others escape from poverty and gradually improve their wealth.

- developing the economy with multiple ownership regimes and different economic sectors, in which the State economy plays a leading role; the State economy and the collective economy gradually become solid foundations of the national economy.

- improvement and social equity in each development level and all development policy; economic growth is associated with cultural, health care and education development,..., well solving social issues aims to human development. Implementing the distribution regime mainly based on labor results, economic efficiency, the contribution of capital and other resources, and social welfare.

- promoting the social mastership of people, ensuring the role of the socialist rule-of-law State’s management and government to the economy under the leadership of the CPV.

One of the tasks promoted to achieve these four goals is involving Vietnam in international trade linkages directly or indirectly (e.g., through ASEAN). Following that direction, Vietnam has signed a series of FTAs with partners such as Japan, Korea, and the European Union (DUONG, 2016; PHAN, JEONG, 2016). This situation raises the question that in the process of

⁸ Presentation of the Presidium on discussion ideas of delegates to the Tenth Congress Party documents.

building the market economy in Vietnam, will the requirements of FTAs support or conflict with the “socialist orientation”?

To answer this question, first, we must clarify the difference in the goals of the market economy in different political regimes. The fundamental difference lies in the objectives of capitalist political regimes that focus on “freedom nature” and call attention to the “social nature” of trade activities. In contrast, the socialist political regime desires to ensure the “social nature” of commercial activities before truly acquiring the “freedom nature.” More specifically, the “freedom” of commercial activities requires the widening of the power of actors to conduct trade and minimize State intervention. Even States can be sued and must pay compensation if their interference in the commercial activities of private entities is considered “arbitrary.”

Because of the focus on “freedom nature,” until the 1990s and early 2000s, international actors/organizations such as the United Nations began paying attention to the “social nature/sociality” of international trade through calls for the “social responsibility” of enterprises, especially multinational companies. In contrast, socialist political regimes, since becoming counterweights to capitalism, consistently requested securing the “social nature” of private activities in parallel with maximizing the “freedom nature” of these activities. That means all actors are allowed to do business but must prioritize the “sociality” before expanding trade “freedom.” It is clear to realize the prerequisites of the “social nature” of economic activities when looking back at the goals set at the Tenth Party Congress in building a socialist-oriented market economy in Vietnam (NGUYEN, NGUYEN, 2022).

Thus, participation in international trade through FTAs did not conflict with the orientation of building socialism through a market economy. However, it must also be noted that contradictions do not arise or develop if only the implementation process is in the right direction, requiring the “social nature” of trade activities. In other words, taking advantage of the FTAs to focus on the “freedom nature” of commercial activities is a sign of deviation and potentially damaging to the orientation of building socialism, as mentioned above (DIEP, 2018).

We agree with the concern about a deviation from building socialism through a market economy in light of the incomplete awareness of the socialist-oriented market economy as acknowledged at the Tenth Congress, the changes in encouraging the private economic sector, ignoring collective economic type, and confusing the transformation of State economic operation. There are a number of good examples expressed in the changes to the 2013 Constitution that show the remarkable impact of “freedom nature” covered by reason of guaranteeing commitments in FTAs that Vietnam had signed or promoted at the time of drafting and approving the 2013 Constitution (FFORDE, 2019). Those are the changes in the State’s perceptions of human rights, in which some changes not only help people get more benefits but also make people lose their legitimate rights and guarantees. The three best examples are the right to ownership, the right to education, and the right to business, as discussed below.

- In terms of the right to ownership, along with the process of international economic integration, the value of collective ownership (community ownership, public ownership) has been replaced by overkilling forms of private ownership. From the view that considers collective ownership as a constitutional regime under the 1992 Constitution, it is no longer directly mentioned in the 2013 Constitution. This fundamental change may increase the risk of speculation of means of production by the forms of private ownership or take advantage of preferential mechanisms for the private economic sector to usurp collective or public properties. Currently, the Vietnamese government has refocused on the value of collective ownership and indicated that “Perceptions of many committees, party organizations, authorities, party members, and people about the nature, position, and role of the collective economic sector and cooperatives in the socialist-oriented market economy in our country are not very complete, inconsistent, and even influenced by prejudices about the old-style cooperative model.” Before any significant change, however, the position of collective ownership needs to be reaffirmed in the Constitution.

- Regarding the right to education, while the Constitution from 1992 and previous Constitutions all affirmed that “primary education is compulsory and

free of charge,”⁹ until 2013, the Constitution only provided that “primary education is compulsory, the State does not charge tuition fee[s].” The 2013 Constitution has created a new legal basis for private primary education service providers to charge tuition fees. On the other hand, the State will not charge tuition fees but will charge other fees, such as the fees for educational *support* services.¹⁰ This change stems from Article 23.3 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), whereby generating and sustaining broad-based economic growth requires “sustained high-level commitment by their governments to effectively and efficiently administer public institutions, invest in public infrastructure, welfare, health and education systems, and *foster entrepreneurship and access to economic opportunity.*”

There is other evidence in the 2013 Constitution that shows a change in “paving the way” for implementing FTAs. Article 33 provides that “everyone has the freedom to conduct business in fields that are *not prohibited by law.*” Currently, there is no clear explanation of the scope of fields/sectors that are “not prohibited by law,” so there are two ways of understanding. First, “not prohibited by law” are the fields/behaviors not listed on the prohibited catalogs under legal documents. Second, “not prohibited by law” includes fields/behaviors that are “conditional business” but are not prohibited.

We argue that the textual meaning of Article 33 should only be understood according to the first explanation: that the prohibited fields/sectors will not include conditional business activities. Under Article 33 of the 2013 Constitution, will everyone have the *freedom of business* in the fields of *conditional business*, such as gold or currency? We argue that Article 33 cannot be expressed as current text but must specify the “limitations” of the right directly in the Constitution or entrust it to the law. Because the Constitution did not limit the right as current text, could a law restrict business freedom without being considered a constitutional violation? Although according to the principle of limitation of rights expressed in Article 4 of the International Covenant on Economic, Social and Cultural Rights, rights limitation may be defined by “laws,”

9 The article 59 of the 1992 Constitution.

10 Vietnamese Law on Education 2019, art. 95(3).

but “laws” in such cases still must comply with the scope of limitation established by higher legal documents such as the Constitution.

We can point out that provisions of the 2013 Constitution may be due to the requirements of liberalizing international trade under the FTAs that Vietnam signed or wished to participate in when it expressed favoritism for the “freedom nature” over the “social nature” of business activities. In other words, the basic elements of a “market economy”—such as ownership, educational rights, and business rights—deviate from the “socialist orientation” in Vietnam.

5. SOME PRACTICAL ISSUES IN BUILDING A SOCIALIST-ORIENTED MARKET ECONOMY IN VIETNAM BEFORE AND AFTER THE 2013 CONSTITUTION

It is an undeniable fact that Vietnam has achieved great socio-economic achievements, including the gradual perfection of building a socialist-oriented market economy (TRAN, TUAN, 2020). However, in addition to the theoretical questions as analyzed, there are many problems in the implementation of relevant policies and laws.

The first and most important issue challenging the State is that it has not determined the scope of State intervention in the market and does not know how to effectively use management tools, especially laws. The lack of legal tools leads to the inability of State management agencies and public officials to determine the scope of their authorities and responsibilities. Therefore, implementing a task or procedure often requires the participation of many different parties to ensure no one is solely responsible for an incident. This context is similar to taking advantage of the principle of democratic centralization to push individual responsibility to collective responsibility. There are many arguments that there are too many laws and regulations in Vietnam, but we argue that the legal system in Vietnam, even in terms of quantity, cannot compare with many other countries, especially in developed countries. It is important to be aware that the more detailed the law is, the less arbitrary the

treatment of entities will be—which helps achieve better discipline and thereby improve performance. Even a “freedom” nation like the United States still codifies details for each public service activity. Even the “Oath” for taking the office of a district-level civil servant is legislated. The more detailed normative documents are issued, the more gaps in the legal system will be avoided. What we need to limit is not the promulgation of normative documents but the administrative documents and orders (due to the lack of detailed norms) and that is the “fertile ground” for arbitrary and harassing behaviors from all parties in all economic sectors.

The 2013 Constitution has made several important changes in the organizational structure of the State apparatus and a more rational assignment of authority. It clearly shows the personal responsibilities of heads of State agencies. This is a good sign for the upcoming changes if the State is truly willing to improve its role in relation to the country’s economic and social system. However, in reality, the *equitization* (*cổ phần hóa*) of SOEs can be clear evidence for implementing macroeconomic policies to build a socialist-oriented market economy in Vietnam. The vague provisions in the Party Congress documents and Constitution have led to confusion about the task of equitizing SOEs and the *socialization* (*xã hội hóa*) of public services.

Accordingly, instead of continuing to have SOEs and changing its operating mechanism to achieve better efficiency (e.g., Viettel’s model), the State mobilized the participation of the private sector to ensure equality among economic sectors under the public-private partnership mechanism. This mechanism, along with vague regulations, has led to difficulties in determining the responsibilities of the actors when having an incident occurs, such as the Da River water treatment plant incident in October 2019, the dialysis accident in Hoa Binh General Hospital causing eight deaths, and other cases of corruption related to the wrong cooperation between public units and private enterprises in big public hospitals and Centers for Disease Control and Prevention before and during the Covid-19 pandemic. These incidents all stemmed from failing to identify the scope of authority and responsibility to provide public services of the State and the scope of private sector participation.

Second, the lack of clarity on the mechanisms of participation and accountability will cause more serious consequences when considering the need to comply with the requirements set out in the FTAs Vietnam has signed in recent years. Special attention should be paid to the risk of applying the Investor-State Dispute Settlement (between foreign investors and the host State). For example, according to the CPTPP, not only foreign investors who have invested in Vietnam but also investors who are *preparing to invest*¹¹ in Vietnam have the right to sue the State if they find an administrative decision that damages their investment efforts. They also have the right to initiate lawsuits for reasons of not achieving the expected benefits when making investment preparation efforts.

Third, the potential strengths of the country have not been determined to formulate appropriate policies in economic development in general and trade promotion in particular. With its foundation as an agricultural country, Vietnam has more potential in this area than industrial production and services, which are unfamiliar and outdone by other countries. While food safety is spreading as a global threat, the Vietnamese government does not seem to pay enough attention to agricultural production resources and still considers it an old and outdated field. In recent years, the State has launched the construction of *New Rural (Nong thon moi)*. Prime Minister Nguyen Xuan Phuc has also promoted the development of hi-tech agriculture several times in public and media but has not had adequate investments in legal institutions compared to other start-up fields. This challenge will lead to clearer consequences for Vietnam vis-à-vis its recent FTAs. Accordingly, the labor force directly producing agricultural products for the trade supply chain only benefit indirectly. However, if any crisis arises, the farmers will be the ones who bear the biggest damage in the calculated proportion of the profit gained.

South Korea's decline in agricultural production after the FTA with the United States is a good example. According to the Korea Rural Economic Institute (KREI), in 2007, South Korea will suffer the "damage cost of 446.5 billion Won after 5 years, 895.9 billion Won after 10 years, and 1,036.1 billion

11 CPTPP, art. 9(1).

Won after 15 years due to the Korea-U.S.FTA”. (HAN, 2011). The agricultural products that suffer the most are crop and livestock productions. Another study by Korea University also showed that the damage level was nearly two times higher than KREI's prediction.

However, if appropriate measures are taken, the results could be better. For instance, the Philippines experienced an increase in agricultural production (from 0.02% to 0.13%) and food production (from 0.06% to 0.17%) before and after the removal of tariff barriers under the FTA with the United States. (CABANILLA, 2006). Therefore, Vietnam needs to carefully study and consider the measures to protect agricultural production, which (until now) accounts for the high proportion of the economy's structure.

Fourth, there is a lack of effort to build and strengthen legal institutions for implementing economic activities in cyberspace, where there are emerging challenges and risks to the national economy in the digital era. In particular, there is the risk of external manipulation of databases and other operative means of the digital economy, making the new foundation of the cyber economic regime unguaranteed.

Finally, there is the implementation of relevant policies and laws that show the results have not been commensurate with the potential. There has been no incentive to release production power—an important basis of a market economy—due to the fragmentation of resource allocation. Article 52 of the 2013 Constitution established an important legal basis for the ability to consolidate economic resources so the State can promote regional economic links. This view continues to be expressed in the Resolution of the Twelfth Party Congress with the policy of “building a number of special economic zones to create poles of growth and testing innovative regional development institutions.¹² However, the draft of the Law on Special Administrative—Economic Units of Van Don, Bac Van Phong, and Phu Quoc did not follow this policy but continued to promote the fragment of key economic areas of the country. For a small country like Vietnam, the division of administrative boundaries into 63 provinces and central cities causes great difficulty in

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mobilizing resources and achieving the unity of the national economy, as the Constitution declared.

4. CONCLUSION

In general, Vietnam has taken an appropriate theoretical approach to its policy of building a socialist-oriented market economy. This economic model can be considered a new theory, so it must encounter obstacles in the process of realization. To achieve its development goals, the CPV and the Vietnamese State should focus on sustainable legal instruments instead of administrative orders that come very fast, go very quickly, and leave significant consequences. The political perception needs to be carefully integrated into the legal system on the basis of international norms of human rights. The conflict between free trade and a socialist-oriented market economy may be reduced if the CPV and the State pay more attention to the essential rights of people, especially vulnerable groups such as workers, farmers, and children, to protect them from the harmful effects of free trade.

REFERENCES

BUI, T. H. Governance, the socialist market economy, and the Party-State in Vietnam and China. In **The Socialist Market Economy in Asia**. Palgrave Macmillan, Singapore, p. 117-140, 2020.

CABANILLA, L.S. and RODRIGUEZ, U-P.E. *The Impact of a Philippine-US FTA: The Case of Philippine Agriculture*, **East Asian Bureau of Economic Research**, 2006.

DIEP, N. T. Implementing the Law on Commerce in Vietnam in Reference to the Requirements of New-Generation Free Trade Agreements. **VNU Journal of Science: Legal Studies**, v. 34, n. 2, p. 54-64, 2018.

DUONG, N. B. Vietnam-EU Free Trade agreement: impact and policy implications for Vietnam. **SECO/WTI Academic Cooperation Project Working Paper Series**, 2016.

- EGLINGER, J. P.; JEAN-PHILIPPE, E. The role of private economy in the socialist-oriented market economy in Vietnam. **The Russian Journal of Vietnamese Studies**, v. 5S, p. 44-51, 2021.
- FFORDE, A. From 'constructing socialism' to a 'socialist-oriented market economy' in contemporary Vietnam: a critique of ideologies. **Europe-Asia Studies**, v. 71, n. 4, p. 671-697, 2019.
- HAN, D.B. Evaluation of FTA Negotiation Results, Economic Effects and Compensation Policies on the Korean Agricultural Sector: Focusing on Korea's FTAs with Chile, US and EU, **Working paper at Waseda University**, 2011, www.waseda.jp/inst/oris/assets/uploads/2015/10/i4-1.pdf.
- KHUYEN, N. T.; VAN, V. H. Determining The Role and Development Policy of the Collective Economic Sector In The Socialist-Oriented Market Economy Of Vietnam. **Central European Management Journal**, v. 30, n. 3, p. 32-38, 2022.
- NAM, D.H. Developing a socialist-oriented market economy in Vietnam, **Financial Journal**, Hanoi, June 08th, 2013.
- LAVIGNE, M. **The economics of transition: from socialist economy to market economy**. Bloomsbury Publishing, 1999.
- NGUYEN, H. C. The role of socialist-oriented market economy arguments with regard to the economic & social life in Vietnam. **Science and Technology Development Journal**, v. 17, n. 1, p. 29-38, 2014.
- NGUYEN, L. T. M.; NGUYEN, T. T. P. Market Reaction to the Announcements of Free Trade Agreements: Evidence from Vietnam. In **Forum for Social Economics**, Routledge, p. 1-17, 2022.
- NGUYEN, N. A. Understanding the Socialist-Market Economy in Vietnam. **Emerging Science Journal**, v. 6, n. 5, 952-966, 2022.
- NGUYEN, N. T. T. The reform of Vietnamese Economic institutions under the impact of Free Trade Agreements A case study of the EU and Vietnam Free Trade Agreement. **Köz-gazdaság-Review of Economic Theory and Policy**, v. 13, n. 3, p. 191-203, 2018.
- PHAM, D. N. From Marx to market: the debates on the economic system in Vietnam's revised constitution. **Asian Journal of Comparative Law**, v. 11, n. 2, p. 263-285, 2016.
- PHAN, T.; JEONG, J. Y. Potential economic impacts of the Vietnam-Korea free trade agreement on Vietnam. **Journal of East Asian Economic Integration**, v. 20, n. 1, p. 67-90, 2016.
- PHUONG, V.T.K. From the Marxist conception of "abolishing capital ownership", thinking about the issue of private ownership in the socialist-

oriented market economy in Vietnam today, **Journal of Philosophy**, No 8 (207), 2008.

SICURELLI, D. The EU as a norm promoter through trade. The perceptions of Vietnamese elites. **Asia Europe Journal**, v. 13, n. 1, p. 23-39, 2015.

TRAN, T. H.; TUAN, H. A. Developing The Socialist-Oriented Market Economy In Vietnam Today. **Социосфера**, v. 2, p. 30-38, 2020.

VAN AN, D. Building up and improvement of the institution of the socialist oriented market economy in Vietnam. In **International Forum of Economic Transition**, p. 1-21, 2006.

VAN TRONG, D. The Leading Role of State Economy in a Socialist-Oriented Market Economy in Vietnam. **International Journal of Advanced Research in Economics and Finance**, v. 4, n. 1, p. 80-89, 2022.

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