

DuaneMorris

**EU- VIETNAM FREE TRADE AGREEMENT'S  
(EVFTA'S) AND COMPREHENSIVE AND  
PROGRESSIVE TRANS-PACIFIC  
PARTNERSHIP'S (CPTPP'S) INFLUENCE ON  
VIETNAMESE TEXTILE & APPAREL INDUSTRY**

**DR. OLIVER MASSMANN - Partner, General Director**

**DUANE MORRIS VIETNAM LLC**

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## AGENDA

1. Current development status of Vietnamese textile & apparel industry: Where does it stand in the global supply chain?
2. EU – Vietnam FTA's and CPTPP's Rules of Origin for textile & apparel products
3. What are the opportunities and challenges of these new rules?
4. What should enterprises prepare for?

A perspective view of a long, brightly lit industrial textile factory aisle. On both sides, there are rows of spinning machines. The machines are dark grey or black, with numerous spindles and bobbins. The bobbins are light-colored, possibly white or cream, and are arranged in neat rows. The floor is polished and reflects the overhead lights. The ceiling is high, with rows of industrial lights. The overall atmosphere is one of a busy, modern manufacturing environment.

# Textile sector

## Overview on Vietnam's textile sector

5,214 enterprises  
(~15% being  
foreign-invested  
enterprises)

Only 30  
enterprises with  
5,000  
employees each

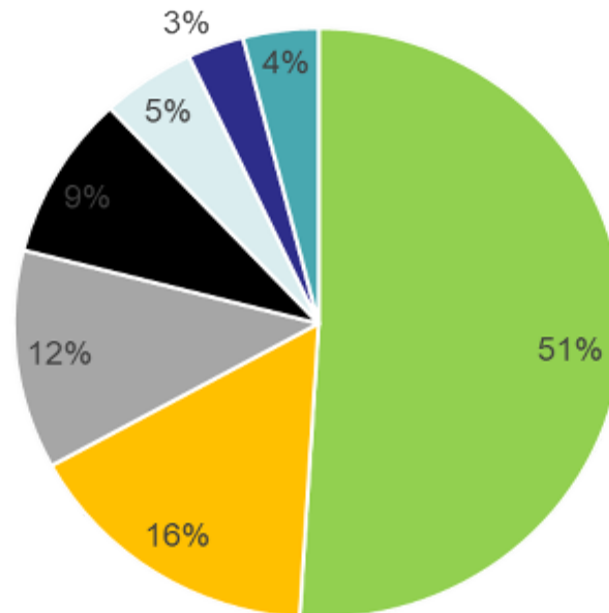


2.5 million  
employees in  
the sector

Average salary:  
USD220 – 290/  
month

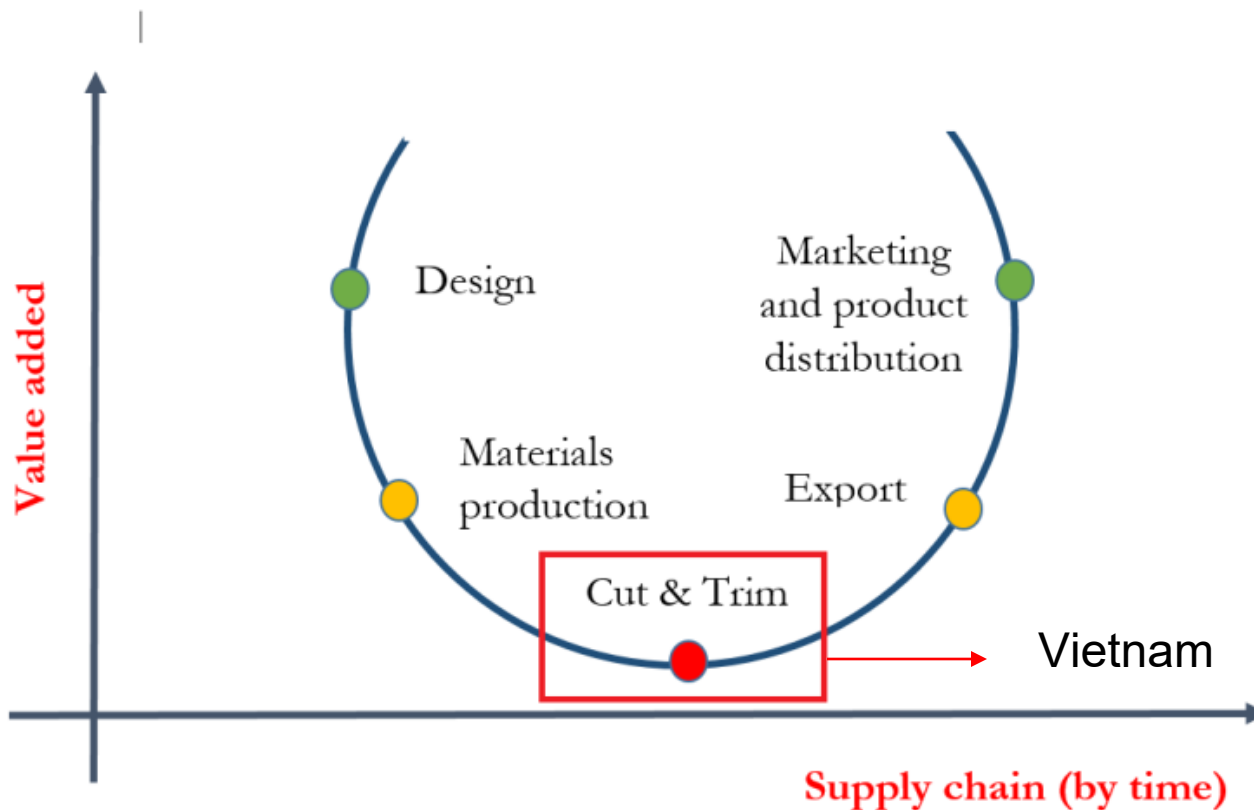
## Main export markets

2015



■ The US 
 ■ EU 
 ■ Japan 
 ■ Korea 
 ■ China 
 ■ Canada 
 ■ Others

# Vietnam's textile sector in the supply chain



# EU – Vietnam FTA's and CPTPP's Rules of Origin for textile & apparel products





# Comprehensive and Progressive Trans-Pacific Partnership (“CPTPP”)

- The TPP was already concluded on 06 October 2015. However, in January 2017, right after President Trump took his office, the United States formally expressed its withdrawal from the agreement.
- In November 2017, during APEC meeting in Da Nang, Vietnam, ministers from 11 countries decided to push ahead with the TPP with its new name – CPTPP
- On 8 March 2018, the CPTPP was finally signed in Chile.
- The CPTPP accounts for 495 million people, representing 13.5% of the world total economic output - worth a total of \$10 trillion.
- The CPTPP is expected to take effect in 2018.



## CPTPP's General Rules of Origin

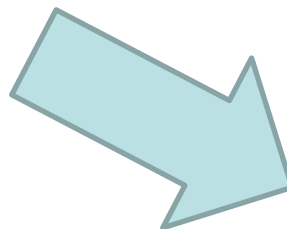


- Originating goods:
  - Wholly obtained or produced goods;
  - Produced in and from materials originating from CPTPP countries; or
  - Produced in and using material not originating from CPTPP countries but satisfying CPTPP rules of origin.
- Separate rules of origin for each specific type of goods
- Separate chapter on rules of origin for textile products
- Rules of origin in CPTPP are predominantly based on a specified shift in tariff classification, regional value content and production stages
- No requirement for certificates of origin under CPTPP, or third-party certification of origin but self-certification is sufficient

## CPTPP - Textiles and Apparel

- Vietnam's garment and textile exports to the CPTPP countries now account for 13% of the total value.
- Fabrics imported from CPTPP countries is currently 1.5% of fabrics import value of Vietnam.
- Most tariffs on textiles and apparel will be eliminated immediately, although tariffs on some sensitive products will be phased out as agreed by the CPTPP Parties.
- Yarn-forward RoR: all products in a garment from the yarn stage forward, including yarn spinning, knitting and dyeing, must be made in one of the countries that is party to the agreement in order to qualify for preferential treatment under CPTPP.

15-20% import  
tariff rate



0%

## Exceptions to the yarn-forward rule



- A carefully tailored short supply list (when certain yarns and fabrics not widely available in the region can be permanently sourced from outside the region for qualifying products or only within 5 years from the CPTPP’s entry into force).
- Cut and sew rule: bras, synthetic baby garments and textile bags. For those things, you can use yarn or fabric from anywhere and cut and sew within the CPTPP.
- *de minimis*: total weight of a textile or apparel’s non-CPTPP yarn does not exceed 10 percent of the main fabric.

## Investor-state dispute settlement (ISDS)

- Through binding arbitration
- Arbitral awards are final, binding and fully enforceable in CPTPP countries
- ISDS provisions include protections commonly found in investment agreements such as non-discrimination; fair and equitable treatment; full protection and security; the prohibition of expropriation that is not for public purpose, without due process, or without compensation; the free transfer of funds related to investments; and the freedom to appoint senior management positions regardless of nationality.
- New protections in the CPTPP:
  - Transparency in arbitral proceedings, disclosure of filings and arbitral awards, and participation of interested non-disputing parties to make *amicus curiae* submissions to a tribunal
  - Safeguards to ensure government's ability to regulate in the public interest (public health, safety and the environment)

## EU – Vietnam Free Trade Agreement (“EVFTA”)



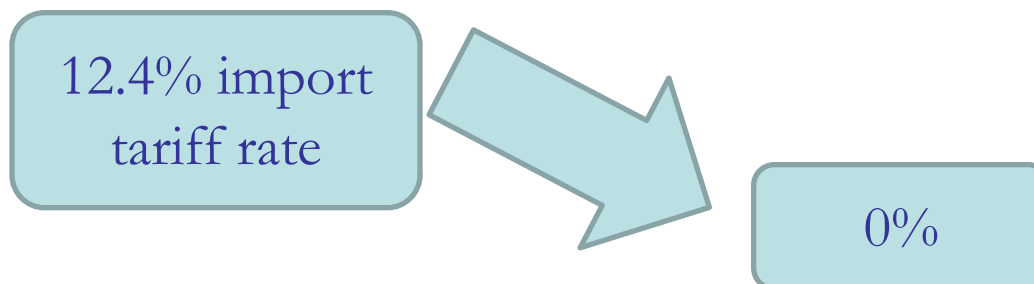
## EVFTA's General Rules of Origin

- Products are considered originating under the agreement if they meet one of the following requirements:
  - wholly obtained in the EU Member States or in Vietnam
  - products produced in the EU or in Vietnam incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing within the EU or Vietnam.
- There are prescribed set procedures for certain goods that must be completed within the EU or Vietnamese borders to be qualified as originating goods.
- Procedures such as breaking-up and assembly of packages; simple painting and polishing operations or sharpening, etc. are exempted areas of working to obtain originating status.



## EVFTA's General Rules on Textile & Apparel products

- The EU has for a long time been the second largest importer of Vietnamese textiles and garments (representing 13.5% of Vietnam's global export in 2016).
- EU duties on textile & apparel have dismantling periods stretching from 5 to 7 years for the more sensitive items and 3 years from entry into force for less sensitive goods.
- Tariff elimination within seven years for Vietnam's textiles and apparel products, from the existing duty rate of 12.4%.





## EVFTA – Fabric-forward rule

- Requirement of the use of fabrics produced in Vietnam, with the only exception being of fabrics produced in South Korea, another FTA partner of the EU (Bilateral cumulation).



## EVFTA's Conflict Resolution

- EVFTA secures a modern reformed investment dispute resolution standard
- Independent International Tribunal will be competent to all conflicts about investment protection provisions (5 year transitional period for Vietnam)
- A court of Appeal will be established
- UNCITRAL rules on transparency in treaty-based investor-state arbitration are implemented which guarantees a high standard of juridical transparency
- The decisions of the tribunal are enforceable and cannot be questioned by local jurisdiction

# Opportunities and challenges from the EVFTA's and CPTPP's ROOs



# Opportunities

- China is not a member to the CPTPP and has not signed an FTA with the EU. The preferential tariff will create a competitive advantage for Vietnam's garment enterprises against Chinese businesses- the biggest competitor of Vietnam on EU market.
- The textile and apparel industry will have more access to new markets, especially those that Vietnam do not have FTAs. Statistics show that Vietnam could boost the exports to the CPTPP countries by over 10% in 2018 if it can absorb all the potentials.
- Garment and textile material projects will tend to move to Vietnam to take advantage of the agreements → chances for supporting industry development.
- Around 6,000 textile companies in Vietnam - **~600,000 machines have to be replaced**

## Opportunities (cont.)

- The RoOs will encourage investment in untapped part of the value chain in Vietnam
- The RoOs will also improve the technical and technology system
  - complete the manufacturing value chain in Vietnam
  - Encourage the use of materials in Vietnam, stimulate import-export and investment in Vietnam

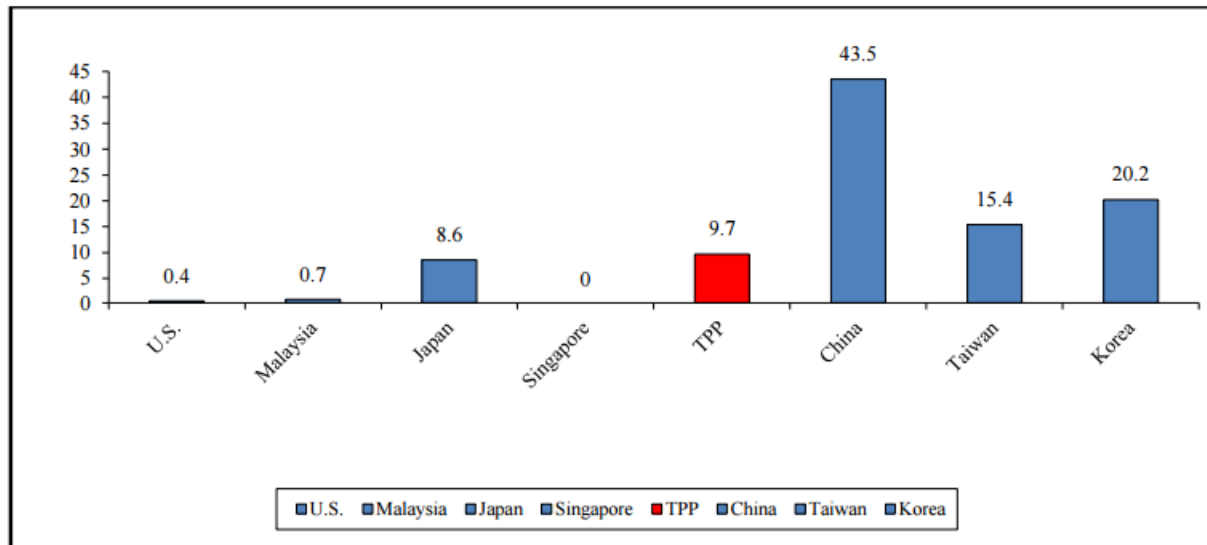


# Challenges



- Possible non-tariff barriers (packaging, preservation, labelling, etc.) in top potential markets.
- Vietnam heavily depends on imported materials. Textile dyeing is the break point of the whole value chain of Vietnam textile and garment industry. This is an obstacle for Vietnam in meeting the “yarn-forward” and “fabric-forward” rule in the CPTPP and the EVFTA.
- With foreign fashion trends changed by the introduction of culture from Korea, Japan ... together with more diverse design and forms, the domestic market may be controlled by foreign-invested companies and foreign imports.
- Yarn production must go together with weaving and dyeing but environment protection is currently an issue.

# Imported fabrics by source (per cent of fabrics import value)



*Source: Rules of Origin, labor standards and the TPP (David Vanzetti and Pham Lan Huong, 2014)*

## Challenges (cont.)

- Vietnam requires more foreign investment in textile industry to move up the value chain.
- Sourcing managers are looking for alternatives due to rising costs, labour shortages, strict compliance and environmental regulations and a move to production of high value products in China
- Establish domestic supply chain





# What should enterprises prepare for?

## What should enterprises prepare for?

- Looking for new sources of raw materials instead of China to take advantage of the EVFTA and the CPTPP while the domestic supply has not been able to meet the demand.
- Investing in new and modern equipment.
- Improving the workers' skills.
- Thoroughly understand rules and requirements in the agreements to make appropriate changes in business plan.
- Reducing costs and diversifying product designs to compete with new wave of foreign invested enterprises.
- Improving the connection among enterprises in the value chain by establishing textile clusters.

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WHEREVER YOU ARE - BE ALL THERE

*Jim Elliot*

# DUANE MORRIS VIETNAM LLC

**Thank you very much!**

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# References (1)



**International Consulting & Trading Services Ltd.,**

Hanoi, 15<sup>th</sup> October 2015

To Whom It May Concern

Recommendation of Excellent Services of Mr. Oliver Massmann

I am Managing Director of International Consulting and Trading Services Ltd, a company registered in British Virgin Islands with operations based from our Hanoi Representative office. Over 15 years we have assisted many international overseas suppliers, from a wide range of industries, to identify markets and thereafter representing their interests to secure ongoing business here in Vietnam. The majority of our clients are based in Asia, Eastern and Western Europe.

While we endeavour to enforce our contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented us and settled a defaulted payment, due to us for services provided to an international German company.

We would further note that Mr. Massmann's successful handling of the case exceeded our expectations since he achieved a settlement without the need for costly arbitration in the courts of Vienna.

Mr. Massmann's capability in legal analysis and his commercial aptitude combined with his exceptional negotiation skills, led to a timely and efficient resolution of the dispute at hand. Of course being German himself was also a significant contributing factor, since he was able to tease out information from the opposing German lawyer, giving him a winning hand.

Mr. Massmann has demonstrated to us his capability as a real problem solver. We regard him and his team at Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust them with further work.



Michael Anthony Langrish-Smith  
Managing Director

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## References (2)



I am Andrew Meyer, CEO of Nine Dragons Group LLC. We have been actively involved in Vietnam Real Estate since 1999. We have gone through many lawyers and law firms, and were disappointed by all of them. Lack of knowledge of the laws, the differences between buying and selling in specific cities, very slow response time and poor client service.

Finally, we met Mr. Oliver Massmann. The first project we did with him was the same as working with our attorneys in NYC. He has a very strong knowledge of the laws, procedures and intricacies of Vietnam. Speaks the language fluently (a rarity) and is a consummate professional who responds to my requests very quickly.

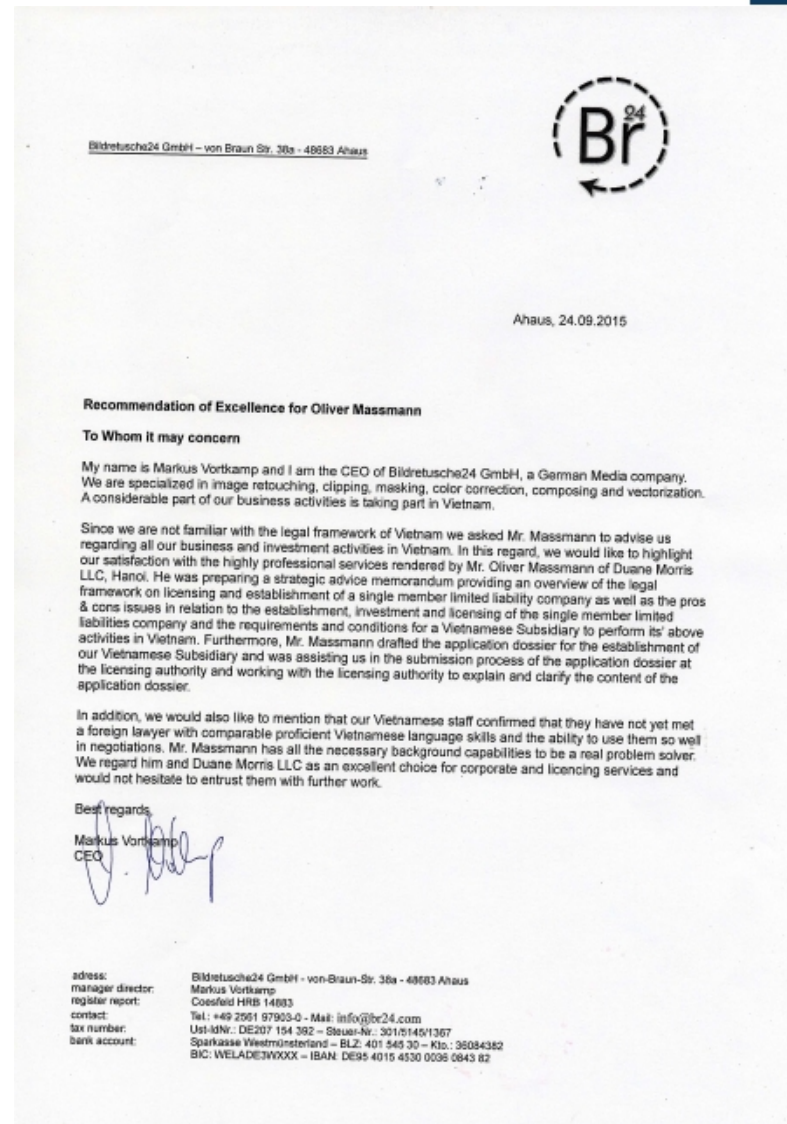
We continue to work with Mr. Oliver Massmann and are thrilled to have an attorney who brings so much to the table working on our team.

I highly recommend Mr. Oliver Massmann and his firm, Duane Morris Vietnam LLC. Should you have any questions, please feel free to contract me at any time.

Andrew Meyer

CEO

## References (3)





## References (4)



Hong Kong, 01 Jan 2015

### To Whom It May Concern

My name is Thomas Domanski and I am Managing Director of Bauer Hong Kong Ltd shareholder of Bauer Vietnam Ltd). Bauer Hong Kong Ltd is a member of the German based Bauer Group of Companies and a subsidiary of the Bauer Spezialtiefbau GmbH which belongs to the MDax listed ultimate holding company Bauer AG. The Bauer Group is specialized in foundation engineering, machinery, and Resources related services. A considerable part of Bauer Group's corporate activities takes place in Asian countries, among them Vietnam.

While we try our utmost to avoid entering into legal proceedings to enforce contractual rights, this is – unfortunately – not always possible. In this regard, we would like to highlight our satisfaction with the highly professional services rendered by Mr. Oliver Massmann of Duane Morris LLC, Hanoi, who successfully represented Bauer in Singapore (SIAC) based arbitration proceeding concerning a dispute about payment for construction works provided by Bauer in Vietnam.

We would like to note that Mr. Massmann's handling of the case significantly contributed to the successful conclusion of the case out of court/Arbitration. Mr. Massmann's services combined thorough legal analysis with a strong commercial approach, lead to a timely and efficient resolution of the dispute at hand. In addition, we would also like to mention that our Vietnamese staff confirmed that they have not yet met a foreign lawyer with comparably proficient Vietnamese language skills and the ability to use them professionally in negotiations. Mr. Massmann has proven himself to be capable to use local knowledge paired with legal competence to resolve disputes in an efficient manner. We regard him and Duane Morris LLC as an excellent choice for dispute resolution services and would not hesitate to entrust him with further work.

Best regards

Thomas Domanski  
Managing Director

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