

Elimination of Child Labor in Vietnam's New Generation of Free Trade Agreements

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ABSTRACT: As of March 2021, Vietnam negotiated and signed the new generation of Free Trade Agreements (FTAs), consisting of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the European-Vietnam Free Trade Agreement (EVFTA), and the Vietnam-Eurasian Economic Union Free Trade Agreement (VN-EAEU FTA). One of the critical issues of these agreements is non-commercial provisions, especially commitments to the elimination of child labor. This study aimed to examine the implementation of the commitment to eliminate child labor in the new generation of FTAs under the principle of *pacta sunt servanda* and the government's responsibility to comply with international treaties according to the 2013 Constitution. Based on the obligations arising from international treaties, Vietnam must comply with all commitments agreed upon as a state member. As a result, it is necessary to implement suitable solutions to implement these commitments properly, especially the elimination of child labor, according to the three mentioned FTAs. By using comparative and evaluated methods, this study analyzed and commented on the similarities and differences between the Vietnam labor legal system and these three agreements on eliminating child labor. This study indicated relative compatibility between regulations in three FTAs and the Vietnamese legal system. Subsequently, there is a need to improve the effective implementation of these commitments by amending the definition of children, working hours, and classifying violations against the law regarding the employment of workers under 16 years old of coercive labor into the group of crimes and criminal liabilities to commercial legal entities.

KEYWORDS: Child Labor, Free Trade Agreements, Vietnam.



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I. INTRODUCTION

Child labor has existed worldwide from early times in one form or another.¹ There is a global commitment to eliminate child labor exemplified by including child labor elimination into internal labor standards.² Adhere to this, the new generation of Free Trade Agreements (FTAs) agrees on these fundamental standards to respect, comply with, and enforce. The new generation of FTAs refers to FTAs with a comprehensive scope beyond the traditional trade liberalization framework, consisting of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the European-Vietnam Free Trade Agreement (EVFTA), and the Vietnam-Eurasian Economic Union Free Trade Agreement (VN-EAEU FTA). Its coverage includes traditional fields such as non-tariff measures, trade in services, intellectual property rights, and non-traditional areas such as labor and environment.³

In this context, the International Labor Organization (ILO) stated that an estimated 40.3 million people were victims of modern slavery in 2016.⁴ Among them were children.⁵ Children represented 18% of those subjected to forced labor exploitation and 7% of people forced to work by state authorities,⁶ which such practices currently remain a persistent problem. At the beginning of 2020, around 160 million children, including 63 million girls and 97 million boys, were child laborers.⁷ The data mentioned above

¹ These standards include freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination regarding employment and occupation. Nehaluddin Ahmad, “Child labour: ground realities of Indian labour laws” (2011) 37:1 *Commonw Law Bulletin* 61–74.

² International Labor Organization, “Conventions and Recommendations”, (2021) online: <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>>.

³ Nguyen Thi Kim Cuc, *Commitments on forced labor and the use of child labor in new-generation free trade agreements* Ho Chi Minh City University of Law, (2020).

⁴ International Labor Organization & Walk Free Foundation, *Global estimates of modern slavery: forced labour and forced marriage* (Geneva: ILO, 2017).

⁵ *Ibid.*

⁶ *Ibid* at 10.

⁷ However, not all of these children could be abused or exploited.⁷ Many were engaged in apprenticeships or other training programs to compete more effectively in the

was just an approximation because there were no reliable data on the extent of abusive child labor worldwide. It could come from the fact that the practice is most prevalent in those countries which are less likely to collect reliable statistics. These were because of limited resources or an unwillingness of various parties, including governments and employers, who did not admit that the problem existed.⁸

In international law, member states must comply with and enforce international treaties and commitments under *pacta sunt servanda*, a fundamental principle of international law. Any member is subject to international legal responsibilities when it does not comply or fails to comply with international treaties and commitments. Therefore, if the new generation of FTAs is not committed to eliminating child labor in good faith, the consequence will deal with international responsibility. On the other hand, while the Vietnamese legal system recognizes the use of child labor through the definition of juvenile workers defined through age, it is not comprehensive and completely compatible with commitments to eliminating child labor in the new generation of FTAs to which Vietnam is a member to these agreements.

There have been many works on commitments to eliminating child labor. Ranjit Sil stated that child labor remains a social issue that demands the serious attention of policymakers, academicians, and researchers in different fields, including law.⁹ It is essential to eliminate the stereotypical assumption of poverty as the only root cause of child labor, whereas changing social attitudes and strengthening politics will eliminate child labor abuse.¹⁰ Philip Alston identified child labor abuse as a widely and unanimously condemned violation of human rights. Therefore, enhancing the international community's role is essential, especially for

future labor market. International Labour Organization & UNICEF, *Child Labour Global Estimates 2020: Trends and The Road Forward* (New York: ILO and UNICEF, 2021).

⁸ *Ibid* at 362.

⁹ Ranjit Sil, "Child Labour: A Critical Legal Analysis" (2017) 8:1 Indian Journal of Law and Justice 10–28.

¹⁰ *Ibid* at 27.

intergovernmental organizations and governments.¹¹ With regard to Convention No. 138 on Minimum Age and Convention No. 182 on Worst Forms of Child Labor, Tran Thang Loi gave an overview of the Vietnamese legal system against international integration for juvenile workers.¹² However, this work has not analyzed and proposed recommendations to improve the Vietnamese legal system when participating in the new generation of FTAs to eliminate child labor.¹³ Nguyen Thi Hong Thang examined Convention No. 138 on Minimum Age and Convention No. 182 on Worst Forms of Child Labor with the provisions of Vietnamese law on child labor. However, there is no specific alternative to improve the Vietnamese legal system in international integration.¹⁴ Le Thi Thuy Huong assessed Vietnam's advantages when participating in the EVFTA.¹⁵ Vietnam has challenges in ratifying the remaining fundamental conventions of the ILO and implementing labor commitments in the EVFTA. Doan Xuan Truong assessed the impact of those commitments on Vietnam by presenting some suggestions to ensure the proper implementation of labor commitments in the FTAs.¹⁶

Many works have discussed regulations on child labor in Vietnam. However, no specific articles examined the commitment to eliminating child labor in the country by responding to the new generation of FTAs. This study conducted an in-depth analysis on implementing commitments to eliminating child labor in the new generation of FTAs because Vietnam is a member of the above agreements. The primary purpose of this study was to examine the implementation of the commitment to eliminate child

¹¹ Philip Alston, "Implementing Children's Rights: The Case of Child Labour" (1989) 58:1 *Nordic Journal of International Law* 35–53.

¹² Tran Thang Loi, *Improving the Law on Juvenile Labor in the Context of International Integration* (Ph.D. Thesis, Vietnam National University, 2012).

¹³ *Ibid.*

¹⁴ International law, foreign law and Vietnamese law on the elimination of child labor, *Nguyen Thi Hong Thang* Vietnam National University, 2012).

¹⁵ Le Thi Thuy Huong, "The possibility of implementing labor commitments in the free trade agreements and some challenges for Vietnam" (2019) 3:124 *Vietnam Journal of Legal Sciences* 41–49.

¹⁶ Doan Xuan Truong, "Labour Commitment in new-generation FTAs - Opportunities and Challenges for Vietnam" (2017) *The Journal of Democracy and Law*.

labor in the new generation of FTAs under the principle of *pacta sunt servanda* and the government's responsibility to comply with international treaties according to the 2013 Vietnam Constitution. Based on the obligations arising from international treaties, Vietnam must comply with all commitments agreed upon as a state member. Consequently, it is crucial to implement suitable alternatives to implement these commitments properly, especially the elimination of child labor, according to the three mentioned FTAs.

This paper comprises five parts of the main discussion. The first part presents an overview of international trade and Vietnam's integration. The second part examines the labor commitments in the new generation of FTAs. The third part clarifies regulations on eliminating child labor in the new generation of FTAs to which Vietnam is a member of these agreements. The fourth part identifies the provisions of the Vietnam labor law on eliminating child labor. Finally, some suggestions are provided to ensure the effective implementation of commitments to eliminate child labor in the new generation of FTAs.

II. METHODS

This study used comparative and evaluated methods to analyze and examine the provisions for eliminating child labor in EVFTA, CPTPP and VN-EAEU FTA, and Vietnam's labor legal system. The authors selected applicable laws, including international treaties and documents and Vietnamese laws on labor commitments and commitment to eliminating child labor, and practices on international trade and Vietnam in the context of international integration, in three steps. First, studying the development trend of international trade in the context of integration and Vietnam's international economic and trade integration process. It became a rationale for comparing and assessing Vietnam's integration level with the world. Second, examining labor commitments in the new generation of FTAs, including freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination in respect of

employment and occupation. Third, with comparative jurisprudence, this study identified the similarities and differences between the Vietnamese legal system and EVFTA, CPTPP, and VN-EAEU FTA on regulations on eliminating child labor. It contributed to proposing recommendations to improve Vietnam's labor legal system to implement the commitment to eliminating child labor effectively.

III. AN OVERVIEW OF VIETNAM'S INTEGRATION TO INTERNATIONAL TRADE

A. Trends of International Trade in the Context of Integration

After World War II, globalization became an inevitable trend, directly affecting the world economy, especially multilateral trade negotiations.¹⁷ Since 1947, the GATT has been the focal point of industrialized governments seeking to lower trade barriers. At first, GATT focused on tariffs. Then, as the average tariff fell, GATT turned to non-tariff trade

¹⁷ In particular, with the desire to establish the International Trade Organization (ITO), countries worldwide have conducted many negotiations typically. The negotiations took place in December 1945, intending to reduce tariffs. These negotiations with the initial participation of 15 countries are the premise for introducing the General Agreement on Tariffs and Trade in 1947. While the agreement was signed, the number of participants was 23 countries. Patrick Love & Ralph Lattimore, *International Trade: Free, Fair and Open?* (Paris: OECD Publishing, 2009). The United Nations Conference on Trade and Employment took place in Havana, Cuba, from November 21, 1947, to March 24, 1948, with the participation of 56 countries that agreed to make the draft Havana Charter as the basis for establishing international trade organizations. *The final act and related documents of the United Nations Conference on Trade and Employment*, E/Conf. 2/78 (1948). The unsuccessful establishment of the ITO had come true; the introduction of the General Agreement on Tariffs and Trade (GATT) was the sole specific outcome of these negotiations. GATT was negotiated in 1947 by 23 countries, including 12 industrialized countries and 11 developing countries. 23 countries include Australia, Belgium, Brazil, Myanmar, Canada, Sri Lanka, Chile, China, Cuba, Czechoslovakia (now Czech and Slovakia), France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, South Rhodesia (now Zimbabwe), Syria, South Africa Union (now South Africa), England and the United States. See more World Trade Organization, "Press Brief Fiftieth Anniversary of the Multilateral Trading System," (2021) online: <https://www.wto.org/english/thewto_e/minist_e/min96_e/chrono.htm>.

policies and domestic policies that affect trade. The success of GATT reflects in the increase of members participating in the agreement. With 23 founding members in 1947, by the end of 1994, 128 countries were joining GATT,¹⁸ and by the end of March 2021, the WTO had 164 member countries.¹⁹ The increase in WTO members has proved that integration in international trade is an inevitable and objective trend in the contemporary world.

However, the movement of international trade tended to shift. The success of multilateral trade has gradually led to bilateral and regional trade growth since the Uruguay Round.²⁰ The global trading system's fragmentation trend emerged partly as an inevitable response to the deadlock in multilateral trade negotiations, especially at the Doha Round.²¹ Therefore, countries have tended to move to negotiating and signing FTAs. As of May 2021, 312 FTAs out of 565 regional trade agreements were signed.²² Many countries formerly tended to follow multilateral trade liberalization within the framework of the WTO. However, they latterly changed their trade liberalization policies, with Japan, the USA, and the EU as typical representatives.

¹⁸ World Trade Organization, "The 128 countries that had signed GATT by 1994", (2021) online: <https://www.wto.org/english/thewto_e/gattmem_e.htm>.

¹⁹ World Trade Organization, "Members and Observers," (2021) online: <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>/.

²⁰ Richard E Baldwin, "Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade" (2006) 29:11 *World Economy* Blackwell Publication 1451–1518.

²¹ The Doha Round, also known as the Doha Agenda on Development, started at the 4th WTO Ministerial Conference held in Doha, Qatar, in November 2001. The original goal of Ministers The set is the end of the Doha negotiation round in 2005, expecting to significantly reduce trade barriers, contribute to the development of developing countries, and solve complex problems, like Agricultural benefits, which have not been resolved in previous agreements such as GATT. The New York Times, "Global Trade After the Failure of Doha Round," (2016), online: <<https://www.nytimes.com/2016/01/01/opinion/global-trade-after-the-failure-of-the-doha-round.html>>.

²² World Trade Organization, "Public Summary Table," (2021) online <<https://www.rais.wto.org/UI/publicsummarytable.aspx>>.

Japan has been a member of GATT since 1955. It suffered from trade discrimination from other GATT member states until the 1960s.²³ Some members of the European Economic Community have used trade barriers to affect Japan's exports to the European market adversely.²⁴ As a result, Japan stopped pursuing a policy of multilateral trade liberalization in 1998 and actively promoted the negotiation of FTAs. Considering only Southeast Asia partners, as of February 2019, Japan has signed bilateral FTAs with seven countries in this region.

After participating in the North American Free Trade Agreement (NAFTA), the USA signed a bilateral FTA with Israel. After that, the USA signed a bilateral FTA with Singapore and Chile in 2003. Also, this country continued to negotiate with several other partners in Asia and Central America. Up to now, the USA has signed FTAs with 20 countries worldwide.²⁵ The USA has proven that it is a flexible country in the strategy of "pivot" in international trade to secure and expand trade relations most comprehensively and effectively.

The EU has been negotiating an FTA with the Association of Southeast Asian Nations (ASEAN) since 2007. Moreover, this organization started negotiating to sign agreements with each country in Southeast Asia, including Singapore and Vietnam, two strategic partners of the EU.²⁶ It affirms that the EU is a typical international organization establishing and implementing bilateral international trade relations. These connections were created between intergovernmental organizations worldwide, beyond the WTO framework.

²³ Vinod K Aggarwal & Charles E Morrison, "Japan's Approach to APEC and Regime Creation in the Asia Pacific" in *Asia Pacific Crossroads: Regime Creation and the Future of APEC* (New York: St Martins Press, 1998) at 209.

²⁴ Terence P Stewart, *The GATT Uruguay Round: A Negotiating History 1986-1992* (Deventer: Kluwer Law and Taxation Publishers, 1993).

²⁵ Office of the United States Trade Representative, "Free Trade Agreements," (2021) online: <<https://www.ustr.gov/trade-agreements/free-trade-agreements>>.

²⁶ Vu Van Ha, "The role of new-generation free trade agreements in international trade" (2017) *The Journal of Communist*, online: <<https://tapchicongsan.org.vn/web/guest/nguyen-cu/-/2018/46874/vai-tro-cua-cac-hiep-dinh-thuong-mai-tu-do-the-he-moi-trong-thuong-mai-quoc-te.aspx>>.

Countries choose to negotiate bilateral or regional FTAs to promote trade between the parties. It also proved the desire to speed up the process of global trade liberalization amid complex multilateral trade negotiations. Negotiating and agreeing to sign bilateral or regional FTAs is competitive liberalization to reduce trade barriers. For example, as soon as NAFTA came into effect, the EU negotiated and signed an FTA with Mexico to ensure that EU-originating goods would not face a competitive disadvantage in the Mexican market due to NAFTA's influence.²⁷ Thus, the provisions of the FTA are the basis and motivation for countries to constantly come up with policies and measures to attract investment, develop the economy, and improve their competitive position. It thereby contributed to promoting regional and global trade liberalization.

In the development of international trade, the term "FTA" is understood differently depending on each country's perspectives and diverse developments in many fields. According to Malaysia's National Trade Promotion Agency, an FTA is an international agreement between two or more countries to reduce or remove trade barriers and bring closer economic integration.²⁸ New Zealand Foreign Affairs and Trade stated that an FTA between two countries or a group of countries could set the rules for how countries treat each other when doing business together. They usually remove tariffs on goods, simplify customs procedures, and remove unjustified restrictions on what can or cannot be traded.²⁹ According to the Ministry of Trade and Industry Singapore, FTAs are treaties that make trade and investment between two or more economies easier. With FTAs, Singapore-based exporters and investors enjoy many benefits like tariff concessions, preferential access to certain sectors, faster

²⁷ Douglas A Irwin, "International Trade Agreements," *The Library of Economics and Liberty*, (2020) online: <<https://www.econlib.org/library/Enc/InternationalTradeAgreements.html>>.

²⁸ The Official Portal of Malaysia External Trade Development Corporation, "Free Trade Agreements," (2020) online: <<https://www.matrade.gov.my/en/malaysian-exporters/going-global/understanding-free-trade-agreements>>.

²⁹ New Zealand Foreign Affairs & Trade, "About Free Trade Agreements," (2021) online: <<https://www.mfat.govt.nz/en/trade/free-trade-agreements/about-free-trade-agreements/>>.

entry into markets, and intellectual property protection.³⁰ From the three examples above, we have found that although the term FTA is expressed in many ways, the primary content of the FTA focuses on economic benefits and promotes the development of free trade. Thus, in the most general understanding, FTA is an agreement between two or more countries and territories to liberalize trade and services in one or several groups of goods and services by reducing tariffs, and setting forth favorable regulations for the exchange of goods, services, and investments among members. In particular, FTA is no longer understood within the narrow scope of regional or bilateral integration agreements with a simple level of economic linkage as before. It refers to deep economic integration agreements between two or more countries.³¹ Therefore, today's FTAs are also called the new generation of FTAs. This term refers to FTAs with a comprehensive scope beyond the traditional trade liberalization framework. The scope of commitments of these agreements is not only in traditional fields such as non-tariff measures, trade in services, and intellectual property rights. They are also related to non-traditional issues such as labor rights, civil organizations, trade unions, labor, and the environment.

B. Vietnam's Integration Process of International Economy and Trade

Following the Doi Moi leadership in 1986, Vietnam has profoundly and comprehensively followed international economic integration and international trade. It took place on all three levels: bilateral, regional, and multilateral. Vietnam has participated in regional and international economic and trade organizations such as ASEAN (1995) and Asia-Pacific Economic Cooperation (APEC 1998). Especially, in 2007, after 11 years of negotiations, Vietnam officially became a member of the WTO. In addition, Vietnam has actively negotiated and signed FTAs. As of March

³⁰ Ministry of Trade and Industry Singapore, "Free Trade Agreements," *Ministry of Trade and Industry Singapore*, (2021) online: <<https://www.mti.gov.sg/Improving-Trade/Free-Trade-Agreements>>.

³¹ Bui Truong Giang, *Towards Vietnam's FTA strategy: East Asia theoretical and practical basis* (Hanoi, Vietnam: Social Science Publishing House, 2010).

2021, Vietnam is a member of 15 FTAs,³² typically the new generation of FTAs, including VN-EAEU FTA, EVFTA, and CPTPP.

VN-EAEU FTA was the first new generation of FTA in which Vietnam became a member,³³ with the two sides having negotiated this FTA since March 2013. After more than two years with eight rounds of official negotiations and many informal rounds, the two sides officially signed this FTA on May 29, 2015, in Kazakhstan that took effect on October 5, 2016. VN-EAEU FTA is the first FTA signed by the Eurasian Economic Union with partner countries. Therefore, it is likely that Vietnam will enjoy many benefits when joining this FTA. VN-EAEU FTA consists of 15 chapters related to trade aspects such as trade in goods, rules of origin, trade remedies, trade in services, investment, property ownership, intellectual property, technical barriers, and customs facilitation. Not only mention the trade sector, but VN-EAEU FTA also stipulates non-commercial issues, specifically the sustainable development in Chapter 12. Accordingly, the member states acknowledge that the development must be accompanied by social development and environmental protection. Therefore, the parties will promote trade relations and strengthen cooperation toward sustainable development on environmental and labor issues.

CPTPP is the second new generation of FTA in which Vietnam has become a member. It is an FTA with the participation of 11 countries, comprising Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. CPTPP was officially signed in Santiago, Chile, on March 8, 2018, with the Trans-Pacific Partnership Agreement (TPP) as its predecessor.³⁴ TPP is considered the agreement

³² WTO Center VCCI, "Free Trade Agreements," (2021) online: <<https://www.trungtamwto.vn/fta>>.

³³ This FTA takes effect from October 5, 2016. The Eurasian Economic Union is an international economic alliance of countries in the north of the Asia-Europe area with 05 members, including Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. The main goal of this economic alliance is to improve competitiveness. See more The Investopedia Team, "Eurasian Economic Union," (2021), online: <<https://www.investopedia.com/terms/e/eurasian-economic-union-eeu.asp>>.

³⁴ TPP was started to negotiate in March 2010, officially signed on February 4, 2016, and is expected to take effect in 2018. However, by January 2017, the US declared withdrawal from this FTA. After the US withdrew from TPP, the remaining 11

with the most robust protections for workers of any trade agreement in history,³⁵ requiring member states to be obliged to comply with commitments strictly. However, it also has certain flexibility in the implementation process for member states,³⁶ while CPTPP took effect for Vietnam on January 14, 2019. CPTPP consists of 30 chapters with many contents ranging from trade issues such as trade in goods, rules of origin, customs, trade remedies, trade in services, investment, intellectual property, and non-commercial issues such as labor and environment. Among these chapters, Chapter 19 is quite special. The literature has described it as the culmination of a progressive trajectory of linkage between trade and labor in a trade agreement.³⁷ Chapter 19 of the Agreement aims to protect and enforce labor rights, improve working conditions and living standards, and enhance the cooperation and capacity of the parties on labor issues. As a result, the parties affirmed their obligations related to labor issues, including recognizing labor rights provisions in the domestic legal system, not encouraging trade or investment by lower basic labor standards, and effective enforcement of labor laws. In addition, the mechanism for settling labor-related disputes is also mentioned in this Chapter.

EVFTA is the third new generation of FTA with the participation of Vietnam. EVFTA was signed between Vietnam and 28 member states of the EU.³⁸ From the EU's perspective, EVFTA is the most ambitious FTA

member states had actively negotiated and unified the content of CPTPP based on keeping the range of the basic commitments of TPP, except for 20 obligations to be postponed to ensure the balance of the rights and obligations of the remaining members.

³⁵ Office of United States Trade Representative, *TPP Chapter Summary Labor*, (2015) online: <<https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Labour-1.pdf>> at 1.

³⁶ Sanchita Basu Das, “Labour Provisions of the Trans-Pacific Partnership (TPP) and how they may Affect Southeast Asian Countries” (2016) 37 ISEAS Yusof Ishak Institute at 2.

³⁷ Maria Anna Corvaglia, “Labour Rights Protection and Its Enforcement under the USMCA: Insights from a Comparative Legal Analysis” (2021) 20:5 World Trade Rev 648–667.

³⁸ Over five years of negotiations, this agreement was started to negotiate on June 26, 2010, in Brussels, Belgium, on the sidelines of the 8th Asia-Europe Summit. The two sides officially ended the negotiation process by signing the EVFTA negotiation statement on December 2, 2015. In August 2018, the EU announced the official

that the EU has ever signed with a developing country. The two sides pledged to eliminate 99% of tariff lines.³⁹ EVFTA plays a vital role in Vietnam's international economic integration and trade liberalization strategy. Due to a wide range of commitments that stand high commitment standards, EVFTA is expected to bring the Vietnamese economy as large and quality as the EU market. It will help Vietnam improve its competitiveness and create the Vietnam market's position and attractiveness to the international community. In terms of content, EVFTA consists of 17 chapters, two protocols, and several memorandums of understanding, covering many issues, including sustainable development. In Chapter 13 of this Agreement, the parties recognized the importance of promoting sustainable development.

Moreover, they affirmed that they would comply with commitments to promoting the development of international trade to contribute to sustainable development goals for the benefit of the present and future generations. Thus, the two main objectives of this Chapter are to promote mutual assistance in trade, investment, and labor policy and to ensure that the growth in trade and investment does not impair worker protections.⁴⁰ Therefore, EVFTA is a typical new generation of FTA due to its scope, including trade and non-trade issues, which other countries and international organizations can learn to make in the future.

contents of this FTA document. On June 30, 2019, the EU and Vietnam officially signed EVFTA. It is a new generation FTA expected and has special meaning for both sides. With high and comprehensive standards, the EU and Vietnam have actively negotiated to unify the agreement's contents. Linh Pham, "Vietnam takes benefits from the EVFTA and EVIPA," *Viettonkin Consulting* (2020), online: <<https://www.viettonkinconsulting.com/news/vietnam-takes-benefits-from-the-evfta-and-evipa/>>.

³⁹ Ha Chinh, "Today, Vietnam-EU officially signed FTA and IPA," *VGP News* (2021) online: <<https://www.baochinhphu.vn/Kinh-te/Hom-nay-Viet-Nam-EU-chinh-thuc-ky-ket-FTA-va-IPA/369594.vgp>>.

⁴⁰ European Commission Staff, *Human Rights, and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement* (European Commission, 2016).

IV. CONTENTS OF LABOR COMMITMENTS IN THE NEW GENERATION OF FTAS

In facing the trend of referring to labor commitments in FTAs, Lars Engen mentions two attitudes of the signatories, the leaders, and the followers.⁴¹ The leaders are involved in the new generation of FTAs covering labor commitments with most partner countries. It asserts that they support and promote the regulation of labor commitments in the FTA. Meanwhile, the followers often only sign FTAs containing labor commitments with countries that pursue this trend. USA and EU are two typical representatives of the leaders, participating in creating a template for the content of the new generation of FTAs. As of 2017, the USA has referred labor commitments in 13 out of 14 FTAs that the USA has signed.

Similarly, the EU has agreed with its partners on labor commitments, with 15 out of 38 FTAs that the EU has signed.⁴² As a follower, Vietnam has accepted labor commitments in the new generation of FTAs because of the importance of these agreements to Vietnam. These FTAs are lifesaving options in the deadlocked Doha Round, and Vietnam is stepping up international economic integration and promoting trade liberalization through the expansion of comprehensive cooperation. Based on studying 13 FTAs with the US as a member and 15 FTAs with the EU as a member that mentioned labor commitments, three basic contents of those commitments are shown. They include an international legal framework regulating international labor standards, obligations of member states regarding the implementation of labor commitments, and disputes over their implementation.

A. Legal Framework of Regulating International Labor Standards

In labor commitments, the country members of the new generation of FTAs often agree to unify their obligations based on an international legal

⁴¹ Lars Engen, "Labour Provisions in Asia-Pacific Free Trade Agreements, Ninth Tranche of the Development Account Project" (2017) United Nations Economic and Social Commission for Asia and the Pacific at 53.

⁴² *Ibid* at 13.

framework related to international labor standards. Common references in the above international legal framework include the 1998 ILO Declaration on Fundamental Principles and Right at Work and its Follow-up (1998 Declaration). They are also fundamental conventions such as Convention No. 182 on Worst Forms of Child Labor, ILO Fundamental Conventions, and other ILO Conventions. The ILO's Decent Work Agenda, the ILO Declaration on Social Justice for a Fair Globalization, and the 2006 Ministerial Declaration of ECOSOC on Full and Productive Employment and Decent Work were also mentioned in the new generation of FTAs. According to ILO statistics in 2016, 64.9% of the total FTAs signed in the world refer to the 1998 Declaration, 13% refer to the ILO's Decent Work Agenda, and 9.1% refer to them the ILO Fundamental Conventions.⁴³ Therefore, the ILO plays a vital role in developing international labor and modern international trade.

In VN-EAEU FTA, CPTPP, and EVFTA, Vietnam follows the general trend of referring to the 1998 Declaration.⁴⁴ To effectively face the challenges posed by globalization, as disparities in the distribution of global benefits become increasingly evident, the 1998 Declaration is the most referenced document in the FTAs signed in the world. The 1998 Declaration binds all ILO member states to respect, observe, and implement fundamental labor standards, regardless of the extent of their participation in the eight fundamental conventions corresponding to four international labor standards. It will help to ensure that these labor standards in particular and labor commitments, in general, are effectively enforced. In addition to the 1998 Declaration, a few other basic reference documents are also mentioned, such as the ILO Fundamental Conventions and the 2006 Ministerial Declaration of ECOSOC on Full and Productive Employment and Decent Work.

⁴³ *Ibid* at 14.

⁴⁴ The 1998 Declaration is mentioned in Article 12.7.1 VN-EAEU FTA, Article 19.2 CPTPP, and Article 13.4.2 EVFTA.

B. Obligations of Member States in Implementing Labor Commitments

Under *pacta sunt servanda*, the new generation of FTAs can bind the parties unless otherwise provided for in these agreements. Accordingly, regardless of the level of development, all parties must comply with the provisions recognized in the agreement. In this context, labor provisions in the new generation of FTAs often address the basic obligations of member states at various levels, from encouraging obligatory. Regardless of the level, two basic obligations related to the implementation of labor commitments are mentioned in the current new generation of FTAs. They are the obligation to respect, comply with, and implement fundamental labor standards and the obligation to implement domestic labor laws.

1. The obligation to respect, comply with, and implement fundamental labor standards

Fundamental labor standards are a set of four internationally recognized labor principles. They include freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination regarding employment and occupation. Among them, the abolition of child labor is the one that has received much international attention because it is one of the worst forms of exploitation that still exist in today's society. These labor principles have been recognized in several documents and statements, such as the 1948 Universal Declaration of Human Rights,⁴⁵ the 1989 Convention on the Rights of the Child,⁴⁶ or the 1995 Copenhagen Declaration on Social Development.⁴⁷ After that, they were officially mentioned as fundamental labor standards in the 1998 Declaration. The 1998 Declaration binds all ILO member states to respect, observe, and implement fundamental labor standards, regardless of the

⁴⁵ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948), Articles 20-23.

⁴⁶ *Convention on the Rights of the Child*, November 20, 1989, 1577 UNTS 3, Articles 15-32 (entered into force September 2, 1990).

⁴⁷ *Report of The World Summit for Social Development*, UNGAOR, UN Doc A/CONF.166/9 (1995) at Point i, Commitment 3.

extent of their participation in the eight fundamental conventions corresponding to four international labor standards. It is also the mandatory obligation of member states. It will help to ensure that these labor standards in particular and labor commitments, in general, are effectively enforced.

2. The obligation to implement domestic labor laws

In FTAs, member countries often commit that domestic labor laws will be effectively enforced. Accordingly, based on recognition of fundamental labor standards, countries can establish domestic labor standards consistent with international labor standards and are not allowed to lower these standards. Among the two basic obligations mentioned above, the first obligation is mentioned in the new generation of FTAs Vietnam is a member of. According to these agreements, a difference in the level of recognition of obligations shows the member's attitude and willingness towards this commitment. Specifically, this obligation is mentioned indirectly through the provisions on obligations arising from membership of the ILO and the 1998 Declaration at VN-EAEU FTA. Meanwhile, this obligation is recognized in CPTPP and EVFTA. Not only does the full name of the obligation, including all three levels that member countries need to comply with, the provisions of CPTPP and EVFTA also list all the fundamental labor standards. It reaffirms the importance of the above labor standards, avoiding that each party has a different approach to these standards.

Regarding the second obligation, only CPTPP and EVFTA recognize it. Specifically, EVFTA members commit to effectively implementing domestic laws and regulations, not denying the enforcement of labor laws to encourage trade and investment.⁴⁸ Similarly, the CPTPP also requires the parties not to encourage trade and investment by lowering labor conditions and standards by abandoning or ignoring provisions in the labor laws. In addition, to ensure that this obligation is effectively enforced, the

⁴⁸ *The Free Trade Agreement between Vietnam and the Eurasian Economic Union*, May 29, 2015, in Article 12.7.1 (entered into force October 5, 2016)

members of the CPTPP have agreed to recognize that those with legitimate interests will have access to different types of courts depending on the laws of each member state.⁴⁹ We have noticed that complying with the CPTPP will be higher than EVFTA because of the courts' fair and transparent access to those whose interests are recognized by the laws. It will ensure that domestic legal regulations are effectively enforced. It is also considered a purpose of regulations on ensuring the right to access the court system of relevant subjects. In particular, to effectively enforce member countries' labor laws, the CPTPP also requires members to ensure reasonable working conditions and regimes.⁵⁰ These regulations put an obligation on member states, including Vietnam, to perfect the legal system in general and the legal system on labor in particular about harmonizing the provisions in labor laws of member states with the labor commitments under the new generation of FTAs.

C. Dispute Settlement of Implementing Labor Commitments

To ensure the implementation of labor commitments, the current new generation of FTAs stipulates a dispute settlement mechanism in case there is a breach of the obligations of member states to implement commitments. Before choosing an appropriate solution, the parties will give priority to dialogue. If the dialogue fails, the member states will use the dispute settlement mechanism that the parties have agreed upon and recognized to settle. These mechanisms and measures may be applied exclusively to labor commitment disputes or all disputes arising within the scope of the agreement. There are currently two trends in approaching different dispute settlement mechanisms. Specifically, the first is to settle disputes based on an arbitral tribunal. It assesses the extent of the breach of obligations, thereby taking appropriate handling measures such as economic sanctions

⁴⁹ *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, March 8, 2018, at Article 19.1-3 (entered into force December 30, 2018); *European Union–Vietnam Free Trade Agreement*, June 30, 2019, Article 13.4.2 (entered into force August 1, 2020).

⁵⁰ *European Union–Vietnam Free Trade Agreement*, June 30, 2019, in Article 13.3-4 (entered into force August 1, 2020).

or fixed amount payment, represented by the USA. The second one is to settle disputes based on consultation and negotiation, represented by the EU.

If disputes arise over the implementation of labor commitments, the new generation of FTAs to which Vietnam is a member will have corresponding solutions with separate mechanisms. After applying the consultation mechanism, but the issue has not been resolved, the members of all three FTAs continue to choose an independent third-party evaluation mechanism. The third party can be a Joint Committee consisting of representatives of the parties to the VN-EAEU FTA. In EVFTA, it can be the Trade and Sustainable Development Committee under the Trade Commission, including representatives of the parties to this agreement. In CPTPP, the Labor Council consists of representatives of the parties to the CPTPP. All of them will be responsible for discussing and attempting to resolve the dispute through various methods, including consulting with independent experts or using other popular means such as conciliation or mediation if necessary.

VN-EAEU FTA has not paid much attention to labor commitments and has not considered the solution to thoroughly solve it once disputes over the implementation of labor commitments occur. If the Joint Commission fails to provide an adequate resolution to the satisfaction of the disputing parties and the provisions of the chapter on dispute settlement do not apply, the dispute over the implementation of labor commitments will remain. Unlike the VN-EAEU FTA, the CPTPP selects an arbitration panel, and the EVFTA selects an expert panel in case the evaluation mechanism by an independent third party fails. As a result, the expert panel will release a report which provides recommendations for the parties to discuss, agree on and take appropriate measures for implementation. Meanwhile, the arbitration panel within its jurisdiction will issue an award requiring the disputing parties to comply. Thus, between an agreement that upholds the parties' will, allowing the parties to free agree on the choice of a final remedy (EVFTA), and an agreement that introduces a compulsory measure (CPTPP). The possibility of disputes over the implementation of labor commitments to be resolved more effectively will belong to the

CPTPP. In particular, to thoroughly settle these disputes, the CPTPP also allows the parties to refer to the provisions on dispute settlement in Chapter 28 on Dispute Settlement.⁵¹ It is the difference between the CPTPP and the remaining two FTAs. The mandatory provisions will raise awareness of compliance of CPTPP members with labor commitments to avoid disputes arising, affecting economic, trade, and investment activities between parties.

The arbitration panel mechanism will be more effective than the consultation mechanism in the aforementioned two trends. In the consultation mechanism, the fact that labor commitments are observed, promoted, and effectively implemented depends a lot on the will and attitude of countries to remedy violations. Based on the recommendations given by the panel, the countries will plan their implementation. In the mechanism of establishing an arbitration panel, despite the division of jurisdiction, the decisions of the arbitration panel are mandatory, and the obligations arising from this decision are obligatory by the countries. This forces countries to strictly implement the signed labor commitments, avoiding unnecessary violations.

V. VIETNAM IN ELIMINATING CHILD LABOR IN THE NEW GENERATION OF FTAS

The elimination of child labor is the fundamental labor standard specified in the labor commitments in the new generation of FTAs. The abolition of child labor has not been recognized in detail. To clarify some main issues on the abolition of child labor, member states of these agreements can refer to the 1998 Declaration and two relevant international conventions, including Convention No. 138 on Minimum Age and Convention No. 182 on Worst Forms of Child Labor. Accordingly, the provisions for abolishing child labor include the following three basic aspects.

⁵¹ *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, March 8, 2018, Article 19.15.12-13 (entered into force December 30, 2018).

A. Definition of Children and Worst Forms of Child Labor

Children are all persons under the age of 18. However, they are employed in formal and informal sectors, including construction and domestic activities and small-scale industries.⁵² The ILO describes the worst forms of child labor in Convention No. 182 on the Worst forms of child labor. They comprise all forms of slavery or practices like slavery; the use, procuring, or offering of a child for prostitution, the production of pornography or pornographic performances or illicit activities; and work which is likely to harm the health, safety, or morals of children.⁵³ Furthermore, UNICEF's definition of child labor describes child labor as work that exceeds a minimum number of hours, depending on the child's age and the type of work.⁵⁴ Meanwhile, ILO describes child labor as work that deprives children of their childhood, potential, and dignity and harms physical and mental development.⁵⁵ In conclusion, child labor is a barrier to the development of individual children. However, the definition of child labor and its worst forms are still not regulated in the Vietnamese legal system.

B. Obligations of Member States in Eliminating Child Labor

Member states must pursue a national policy designed to ensure the effective abolition of child labor. For this reason, they must raise the minimum age for admission to employment or work to a level consistent with the entire physical and mental development of the young generation

⁵² Navpreet Kaur & Roger W Byard, "Prevalence and potential consequences of child labour in India and the possible impact of COVID-19 - a contemporary overview" (2021) 61:3 *Medicine, Science, and the Law* 208–214.

⁵³ Convention No. 182 on Worst forms of child labor, June 17, 1999, ILO C 182 at Article 2-3 (entered into force November 19, 2000).

⁵⁴ Minli Liao & Jun Sung Hong, "Child labor in the People's Republic of China: An ecological systems analysis" (2011) 54:4 *International Social Work* 565–579. at 565.

⁵⁵ Abdalla Ibrahim et al., "Child labor and health: a systematic literature review of the impacts of child labor on child's health in low- and middle-income countries" (2019) 41:1 *Journal of Public Health* 18–26.

progressively.⁵⁶ Moreover, they must specify a minimum age for admission to employment or work within its territory and on means of transport registered in its territory.⁵⁷ Stipulating the minimum age for each type of work will reduce employers' actual exploitation of children.

C. Minimum Ages

Accordingly, member states need to pay attention to three different age milestones, including 15, 18, and 13 to 15 years old. 15 years old is the minimum working age in general. In some cases, this age can be reduced to 14 years old.⁵⁸ This reduction is often found in countries that are always in need of human resources, such as India. Article 24 of the Indian Constitution prohibits the employment of children below the age of 14 years in dangerous factories.⁵⁹ The minimum working age shall not be less than the age of completion of compulsory schooling. It is because the lack of access to education contributes to child labor.⁶⁰ 18 years old is the minimum age allowed to perform dangerous work.

In some cases, this age can be reduced to 16 years old because the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. The health, safety, and morals of the young persons concerned are fully protected.⁶¹ 13-15 years old is the age to participate in light work, which does not affect health, comprehensive development, and learning. This age can be reduced to 12-14 years old in some cases.⁶² These regulations demonstrate the flexibility for countries with poor socio-economic conditions and the developing countries to use

⁵⁶ Convention No. 138 on Minimum Ages, 1973, ILO C 138, Article 1 (entered into force November 19, 2000).

⁵⁷ *Ibid* at Article 2.

⁵⁸ *Ibid*.

⁵⁹ Surya Deva, "Child labor: Should companies 'stand at bay' or 'enter the water?'" (2014) 56:2 *Journal of Indian Law Institute* 143-174.

⁶⁰ Amir Radfar et al., "Challenges and perspectives of child labor" (2018) 27:1 *Industrial Psychiatry Journal* 17-20.

⁶¹ Convention No. 138 on Minimum Ages, *supra* note 56 at Article 3.

⁶² *Ibid* at Article 7.

child labor in some special cases. However, it should be clear and transparent under the control of the state and society.

In addition to the above three similar aspects, the CPTPP has recognized and confirmed that forced child labor is one of the worst forms of child labor in Article 19.6 of the Agreement. To improve the effectiveness of enforcement to eliminate child labor, the CPTPP has required countries not to encourage the importation of all kinds of goods with origins produced in whole or in part by forced child labor. This requirement was also applied to the abolition of forced labor.

The elimination of child labor is approached in different forms in VN-EAEU FTA, CPTPP, and EVFTA. In the VN-EAEU FTA, the abolition of child labor is indirectly regulated through another regulation: the obligations of member states arising from membership of the ILO and the 1998 Declaration. Meanwhile, this standard is directly recognized in the CPTPP and EVFTA. From different approaches, the commitments to eliminating child labor in the three FTAs mentioned above differ in their ability to enforce them effectively. In the VN-EAEU FTA, with the indirect approach, the ability of this standard to be effectively implemented is not high.

In contrast, the EVFTA and CPTPP directly recognize the elimination of child labor in the agreement, which will improve the effectiveness of this standard. However, the difference in the enforcement mechanism leads to the difference in the ability to enforce this standard in the EVFTA and CPTPP effectively. Specifically, the specific and applicable provisions in the CPTPP would help enforce the abolition of child labor better than the theoretical and encouraging regulations in the EVFTA. These provisions include "internalizing" this standard into the domestic labor laws and discouraging countries from importing goods with origins or ingredients produced by forced labor, including forced child labor. To explain the difference in content related to the abolition of child labor between the new generation of FTAs to which Vietnam is a member, we believe that it comes from the experience of negotiating and signing the new generation of FTAs. Vietnam and the member countries of the Eurasian Economic

Union are both new actors participating in the world's new generation of FTAs. Meanwhile, the EVFTA and CPTPP are two products with extensive experience in negotiating and signing the new generation of FTAs, such as the EU and USA. As a result, the content of labor commitments in general and the abolition of child labor, in particular, are different.

VII. VIETNAM LABOR LAW ON THE ELIMINATION OF CHILD LABOR

Vietnam became a member of the ILO during two stages, namely 1950-1976 and 1980-1985. After that, Vietnam ratified two ILO Conventions relating to child labor, including Convention No. 182 on Worst Forms of Child Labor⁶³ and Convention No. 138 on Minimum Age.⁶⁴ In the current Vietnamese legal documents on the labor system, the abolition of child labor is mainly regulated in the Labor Code 2019 and the Penal Code 2015 (amended and supplemented in 2017). It is also mentioned in the number of other relevant legal documents, such as the Law on Children 2016 and Decree No. 28/2020/ND-CP dated March 1, 2020, of the Government on providing penalties for administrative violations in the fields of labor, social insurance, and overseas workforce supply under contract (Decree No. 28/2020/ND-CP). There are some circulars issued by specialized ministries that also regulate the elimination of child labor. They are Circular No. 10/2013/TT-BLDTBXH dated June 10, 2013, of the Ministry of Labor, War Invalids and Social Affairs on promulgating the lists of jobs and workplaces in which the employment of minor persons is prohibited (Circular No. 10/2013/TT-BLDTBXH) and Circular No. 11/2013/TT-BLDTBXH dated June 11, 2013, of the Ministry of Labor, War Invalids and Social Affairs on promulgating the list of light tasks permitted for persons under 15 years old (Circular No. 11/2013/TT-BLDTBXH). These regulations mainly cover some basic aspects of the abolition of child labor, including the definition of child labor, minimum ages relevant to the

⁶³ Vietnam ratified Convention No. 182 on the Worst Forms of Child Labor in 2000.

⁶⁴ Vietnam ratified Convention No. 138 on Minimum Age in 2003.

use of child labor, principles of using child labor, and sanctions in case of violations of commitments on the abolition of child labor.

A. Definition of Child Labor in Vietnam Law

Vietnam's current labor law does not define child labor and the age to determine child labor. It has only the definition of juvenile workers defined through age. According to Article 143 of the Labor Code 2019, a minor employee is under 18 years old. Meanwhile, Article 1 of the Law on Children 2016 stipulates that children as under 16 years old. It is similar to Indonesia, which defines children under 16 years old.⁶⁵ According to Vietnamese law, child workers are under 16 years old participating in the labor field and are a part of the juvenile workforce. However, this provision has led to an inconsistent interpretation of child in the term child labor of Convention No. 182 on Worst Forms of Child Labor. Article 2 of the Convention provides the term child to all persons under 18 years. With this understanding, child labor is for those engaged in labor under 18 years. This concept is compatible with the current Vietnamese law on "minor employees." Thus, the Vietnamese law has not defined "child labor" but has mentioned minor employees. These two concepts have similar connotations, referring to employees under 18 years old.

B. Minimum Ages

Regarding the minimum ages related to child labor (minor employee), Article 143 of the Labor Code 2019 already regulates it. Accordingly, the age milestones for each type of minor employee are from full 15 years old to under 18 years old, from 13 years old to under 15 years old, and under 13 years old. In terms of the provisions on the minimum ages in Convention No. 138 on Minimum Ages, the ages in Vietnamese law are

⁶⁵ Edo Fernando, "Criminal Law Policy on the Protection of the Marriage of the Underage Children" (2020) 1:1 Indonesia Journal of Law and Society 75–100 at 82.

compatible with the convention, specifically in Articles 3, 7, and 8.⁶⁶ The provision on the minimum ages in Article 143 of the Labor Code 2019 has improved compared to the Labor Code 2012, that only mentioned a single milestone to define minor employees. The introduction of different minimum ages in the first article of the Section on Minor Employees reflects and conveys the true spirit of Convention No. 138 on Minimum Ages, making it easy for relevant subjects to refer to and apply when needed.

C. Principles of Using Child Labor

Principles of using child labor are mainly mentioned in Article 144, 146 of the Labor Code 2019. Accordingly, employers need to pay attention to regulations on the nature of work, normal working time, overtime, and several other regulations related to the full development of minor employees, both physically and mentally. They are enumerated in the subsequent paragraphs. First, the minor employees will not have to do heavy, dangerous, and unhealthy jobs to ensure their physical and mental development and personality. Child labor is described as an insidious evil because it frequently (though not always) limits a child's future

⁶⁶ Clause 2, Article 143 of the Labor Code 2019 provides: "People from sufficient 15 years old to 18 years old are not allowed to do the job or work in the workplace specified in Article 147 of this Code". These work and workplaces are kinds of work and site places harmful to employees' health, safety, and virtues. This provision is compatible with Article 3 of Convention No.138 on Minimum Ages. Clause 3, Article 143 of the Labour Code 2019 provides: "People from the age of 13 who are less than 15 years old are only made of light work according to the list issued by the Minister of Labour, War Invalids and Social Affairs". This provision is compatible with Article 7 of Convention No.138 on Minimum Ages when allowing national laws to regulate the types of suitable jobs for ages 13 to 15 years old. Clause 4, Article 143 of the Labour Code 2019 provides: "Persons who are not only 13-year-olds can only do jobs prescribed in Clause 3, Article 145 of this Code". Jobs for those not 13 years old are artwork, fitness, and sports. However, as long as they do not harm the development of physical strengths, true and personalities of people who are not 13 years old. This provision is compatible with Article 8 of Convention No.138 on Minimum Ages when permitting an exception to the ban on use or prohibitions that are not satisfied with the minimum age.

opportunities.⁶⁷ Accordingly, these heavy, dangerous, and unhealthy jobs affect their learning and deprive children of the opportunity to attend school. They also cause them to leave school early, make them try their best to go to school, and do complex and time-consuming work simultaneously.⁶⁸ They are those who have not yet fully developed physically and mentally. Therefore, when employing them, the employers have the responsibility to take care of the conditions of the nature of work to ensure that the labor process does not affect or disrupt their full development.

Second, the working time of minor employees is divided into two levels corresponding to different ages. For a person from full 15 years old to under 18 years old, the working time must not exceed 8 hours in a day and 40 hours in a week; meanwhile, working hours for a person under 15 years old must not exceed 04 hours in a day and 20 hours in a week.⁶⁹ Comparing the normal working time for employees, namely no more than 08 hours in a day and no more than 48 hours in a week⁷⁰, we found that the difference between the working time for employees from full 15 years old to under 18 years old and from full 18 years old are insignificant. The period from full 15 years old to under 18 years old is a transitional stage in complete physical and mental development. During this period, minor employees need to be cared for and educated in many fields of social life to be ready to overcome challenges and difficulties. Therefore, the working time of this subject should be adjusted and reduced accordingly to ensure their comprehensive development process.

Third, it is regulated for each age over time, like normal working time. Persons under the age of 15 will not be allowed to work overtime or work at night. Meanwhile, persons from full 15 years old to under 18 years old will be allowed to do it in several specific occupations prescribed by law. The regulation on overtime, mentioned in the Labor Code 2012, continues

⁶⁷ Sarah A Janzen, “Child labor measurement: Whom should we ask?” (2018) 157:3 *International Labour Review* 169–191.

⁶⁸ Vu Cong Giao & Nguyen Hoang Ha, “Prevention and elimination of child labor in international and Vietnamese law” (2017) 11:210 *Journal of Jurisprudence* 33–45.

⁶⁹ *Labour Code 2019*, SV 2019, Article 146.

⁷⁰ *Ibid* at Article 105.

to be repeated in the Labor Code 2019. There has been no document detailing the list of jobs for minor employees from full 15 to under 18 years old. Instead, only a list of types of jobs and workplaces is prohibited from using them promulgated by the Ministry of Labor, War Invalids, and Social Affairs. This list is released together with Circular No. 10/2013/TT-BLDTBXH.

Fourth, when using the minor employees, the employers are responsible for taking care of their employees in terms of working, health, and study. They must create favorable occupational education and training conditions to improve their occupational skills. The period from full 15 years old to under 18 years old is a crucial stage in fully completing human health and psychophysiology. Therefore, it is indispensable to improve health and foster and educate the subjects in knowledge and life skills to equip them with enough knowledge and skills to stand firm against future difficulties. It is the responsibility of the family, the school, and the employer to use minor employees.

D. Sanctions in Violations of Commitments on the Abolition of Child Labor

Regarding sanctions in case of violations of the use of child labor, Vietnamese law stipulates that these acts depending on the seriousness of the violations, will be subject to administrative or criminal sanctions. Accordingly, administrative sanctions are mainly regulated in Decree No. 28/2020/ND-CP. Meanwhile, criminal sanctions are mentioned in Penal Code 2015 (amended and supplemented in 2017).

Firstly, regarding administrative sanctions, Vietnamese law has specific provisions on handling methods for violations against regulations on minor employees, specifically in Article 28 of Decree No. 28/2020/ND-CP. Accordingly, for acts of violating regulations on minor employees, the employer may be fined from 43 USD to 3,225 USD depending on the specific type of behavior. In addition, there are a few acts related to the use of child labor that is noted by Vietnam's labor law. They are the case of recruiting people under the age of 14 to apprenticeship or job training,

except for occupations and jobs permitted by law (Article 13⁷¹), and the case of concluding employment contracts with persons aged from 15 to under 18 without written consent from their legal representatives (Article 8).⁷² The regulations on violations against minor employees are still not concentrated. In particular, although Decree No. 28/2020/ND-CP has reserved a clause (Article 28) to stipulate administrative penalties for violations of minor employees, there are still a few other provisions referring to violations related to minor employees, such as Articles 8⁷³ and 13.⁷⁴ Such non-centralized regulation will cause difficulties in law enforcement activities of competent state agencies.

Secondly, Vietnamese law has specific criminal sanctions on employees under 16 years old. Employing a person under 16 to do complicated or dangerous works involving contact with harmful substances on the list compiled by the state is not allowed. Any person who violates shall face a penalty of up to three years' community sentence to 12 years' imprisonment.⁷⁵ The fine levels are determined mainly based on the rate of injury or harm to the health of employees and the number of employees who are subject to the above acts. If a person under 16 years old is forced to participate in labor because the employer uses force, threatens to use force, or uses other tricks to coerce them, the employee may suffer imprisonment from two to seven years.⁷⁶ In case of transferring or receiving a person under 16 years old to perform forced labor, a prison term of between 07 and 12 years may be imposed.⁷⁷ We find from the above regulations that, among the acts related to people under 16 years old, transferring and

⁷¹ *Decree No.28/2020/ND-CP dated March 1, 2020, of the Government on providing penalties for administrative violations in labor, social insurance, and overseas workforce supply under contract*, SV 2020, Point b, Clause 2, Article 13.

⁷² *Ibid* at Point c, Clause 2, Article 8.

⁷³ Art.8 provides the regulation on handling acts of violation of regulations on labor contracts.

⁷⁴ Art.13 provides the regulation on the processing of handling acts of violating regulations on training and retraining and improving professional skills.

⁷⁵ *Penal Code 2015*, RSV 2017, *Article 296*.

⁷⁶ *Ibid* at Point b, Clause 2, Article 297.

⁷⁷ *Ibid* at Point b, c, Clause 1, Article 151.

receiving people under 16 years old for forced labor has the highest penalty. These acts indirectly lead to forced labor for people under 16 years old.

Meanwhile, acts of using force, threatening to use force, or other tricks to force people under the age of 16 to work, or in other words, acts that directly lead to forced labor for those under 16 years old, the penalty shall be lower. In our opinion, the provisions on the above penalty levels are unreasonable. If people under 16 years old are protected and not forced to participate in the labor process, transferring and receiving people under 16 years old for forced labor will not occur. In other words, if the employer "still has a need" to use child labor, it will undoubtedly give rise to actual acts of transferring and receiving child labor. Therefore, directly using labor and forcing labor on people under 16 should be subject to higher penalties.

VII. ENSURING THE EFFECTIVE IMPLEMENTATION OF COMMITMENTS TO ELIMINATE CHILD LABOR

There are three recommendations for ensuring the effective implementation of the Vietnamese government's commitment to eliminate child labor. These recommendations deal with the context of an increasing number of FTAs with the participation of Vietnam. The first recommendation is to amend the definition of "children" in Article 1 of the Law on Children 2016. Accordingly, children are people under the age of 18. As a party to Convention No. 182 on Worst Forms of Child Labor, Vietnam is obliged to fully comply with the provisions mentioned in the Convention, especially the regulation on "the term child shall apply to all persons under the age of 18" in Article 2 of the above Convention. It ensures Vietnam's obligations in implementing international treaties to which Vietnam is a member, according to *pacta sunt servanda*. To effectively enforce this obligation, Vietnam must internalize the provisions of international law by amending, supplementing, canceling, or promulgating new legal documents. Therefore, amending the definition of "children" ensures the state obligations in implementing international commitments.

Before the age of 18, a juvenile is not yet fully developed and perfected physically and mentally and has not yet fully met the conditions to perform the tasks like an adult. This subject needs to enjoy certain incentives in social life to develop comprehensively and be ready to participate in the labor market in the future. Therefore, it is necessary to amend the regulation on the definition of children.

The subsequent recommendation includes the amendment of the regulations on working time of child workers from full 15 years old to under 18 years old. Accordingly, Article 146.2 of the Labor Code 2019 outlines that a person's working hours from 15 to under 18 years old shall not exceed 06 hours per day and 30 hours per week. It is unreasonable to prescribe that those persons from 15 years old to under 18 years old shall not exceed 08 hours per day and 40 hours per week. While the age difference between the two age groups is moderate, the frequency of working between these two age groups is not significantly different, 8 hours per week.⁷⁸ Besides, there is a big difference between the age group from 15 years old to under 18 years old and the age group under 15 years old, 20 hours a week.⁷⁹ Although development and self-improvement are different at each age, such working time will lead children between the ages of 15 and under 18 to no longer have enough time to prepare mentally and physically ready to enter adulthood. Therefore, it is necessary to amend this subject's working time regulations.

In practice, the period from full 15 years old to less than 18 years old is a crucial period for children when their psycho-physiological problems change considerably. Children in this stage require attention, fostering, and education in all aspects of life to fully develop physically and mentally. Children in this stage require attention, fostering, and education in all aspects of life to fully develop physically and mentally. Therefore, with the regulation on working time not exceeding 08 hours a day and 40 hours a week, children at this stage will have limited opportunities to develop

⁷⁸ It is 48 hours a week for people who are 18 years old compared to 40 hours a week for people from age 15 to under 18 years old.

⁷⁹ It is 40 hours a week for people aged 15 to 18 years compared to 20 hours a week for people under 15 years old.

comprehensively and perfect themselves physically, psychologically, and intellectually. The maximum working time is reduced, and children can participate in courses to foster and develop themselves.

The further recommendation is to add the provisions "violations against regulations of law on the employment of worker under 16" (Article 296 of the Criminal Code 2015) and "coercive labor" (Article 297 of the Criminal Code 2015) into the group of crimes for which commercial legal entities are criminally liable. Consequently, the provision on criminal liability of commercial legal entities has become a new one. This regulation is one of the most important measures to ensure fairness and equality in handling commercial legal entities when there is a violation of the law, simultaneously avoiding the omission of criminals. Furthermore, this regulation has met the requirements of fighting against crime in the new situation caused by legal entities, mainly in non-commercial fields, in common with the world. However, among 33 crimes applicable to commercial legal entities, in the group of crimes in the non-commercial sector, only environmental crimes are mentioned (Articles 235 to 246). This shortcoming needs to be overcome because labor and the environment are two non-commercial issues that receive significant attention from countries today. The addition of this provision will further improve the provisions of Vietnamese law in handling commercial legal entities, especially for violations in the non-commercial field.

The proportion of child workers was recorded in the National Survey on Child Labor Results. In 2012, the percentage of child workers aged 15 to 17 working in factories and workshops was 9%; at restaurants, bars and hotels was 3.8%.⁸⁰ The proportion of child labor used by commercial legal entities is a relatively large, potentially high risk of commercial legal entities committing illegal acts related to employees under 16 years old. Therefore, the addition of two labor-related crimes to the scope of criminal liability of commercial legal entities contributes to deterring and preventing acts of illegal use and forced child labor of commercial legal entities.

⁸⁰ *Viet Nam National Child Labour Survey 2012 Main Findings*, by International Labor Organization, Ministry of Labour, Invalids, and Social, & General Statistics Office (Hanoi, Vietnam: ILO, MOLISA, GSO, 2014).

VIII. CONCLUSION

The elimination of child labor is an international legal obligation of Vietnam recognized in ILO international treaties, while Vietnam is also bounded due to its participation in the new generation of FTAs. An exemplary implementation of these commitments will ensure that Vietnam significantly benefits from participating in trade agreements, namely the reduction of tax on goods and services and the ease of access to markets. In contrast, while Vietnam does not comply with its labor commitments, including commitments to eliminating child labor, the international trade relations between Vietnam and partner countries will be severely affected, especially when Vietnam is subject to trade barriers. Therefore, the synchronous implementation of the above recommendations will limit and eliminate children's illegal use and forced labor in Vietnam. It contributes to the protection of children in the best way, in line with international commitments in international treaties on human rights in general and the 1989 Convention on the Rights of the Child.

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None.

COMPETING INTERESTS

The authors declared that they have no competing interests.

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