# Elimination of child labour in new- generation free trade agreements and international integration of Vietnam

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***Abstract:***

In the current globalization context, countries around the world are constantly promoting international economic integration through the establishment and implementation of comprehensive and diversified cooperation relations at various levels. Among them, negotiating, signing, and joining to become a party to may international treaties in the field of international trade, especially free trade agreements (FTA) are highly significant increasing. Following this trend, in recent times, many countries and international organizations in the world such as Japan, United States of America (USA), Mexico, Australia, New Zealand, Canada, Singapore, European Union (EU)… has negotiated and singed new-generation FTAs. These new generation FTAs have broadened the scope of regulation which cover non-commercial issues such as labour rights, civil society organizations, trade unions, environment.

In line with the general trend of the world, as of March 2021, Vietnam has negotiated and signed 15 FTA with other countries and intergovernmental international organizations. There of them, namely 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) are related to labour commitments, especially the commitment to the elimination of child labour. This is one of the non-commercial commitments in the new generation FTAs that has received considerable attention from the international community and Vietnam due to as considered one of the worst forms of exploitation remaining in society today. According to statistics of the International Labour Organization in 2017, around 73 million children worldwide are currently engaged in dangerous jobs that affect their health, safety,

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and moral development.[3] From that fact, this article will focus on studying and clarifying legal issues related to commitment to the elimination of child labour under the three typical agreements mentioned above. Particularly, the paper also focuses on analysing, evaluating as well as commenting on the similarities and differences between the Vietnam labour legal system and EVFTA, CPTPP and VN-EAEU FTA on the elimination of child labour, and thus supposes some suggestions for the effective implementation of this commitment.

**Keyword:** child labour, new-generation FTAs, EVFTA, CPTPP, VN-EAEU FTA, Vietnam legal system

## 1. Overview of international trade and Vietnam in the context of integration

### *1.1. Development trends of international trade in the context of integration*

After World War II, globalization arises as an inevitable trend, directly affecting the world economy, especially the emergence of multilateral trade negotiations. In particular, with the desire to establish the International Trade Organization (ITO), countries around the world have conducted many negotiations, typically the negotiations took place in December 1945[4] with goal of reducing tariffs. Among them, there was the United Nations Conference on Trade and Employment in 1947[5]. 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.[6] Since 1947, GATT has been the focal point of industrialized governments seeking to lower trade barriers. At first, GATT focused on tariffs, then, as average tariff fell, GATT turned to non-tariff trade policies and domestic policies that affect trade. As we can see, the success of GATT is reflected in the increase in the number of members participating in the agreement.

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[3] ILO (2017), Global estimates of Child labour: Results and Trends, 2012-2016, p.11.

[4] These negotiations with the initial participation of 15 countries, are the premise for the introduction of the General Agreement on Tariffs and Trade in 1947. When the Agreement was signed, the number of participants was 23 countries.
Patrick Love, Ralph Lattimore (2009), International Trade: Free, Fair and Open?, OCED Insights, p.81.

[5] 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 agreed to make the draft Havana Charter, the basis for establishing international trade organizations. https://docs.wto.org/gattdocs/q/GG/SEC/53-36.PDF, 14/02/2021

[6] 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.

With 23 founding members in 1947, by the end of 1994, there were 128 countries joining GATT[7] and by the end of March 2021, the WTO had 164 member countries.[8]

The success in multilateral trade has gradually given way to the growth of bilateral and regional trade since the end of the Uruguay Round.[9] The trend of fragmentation of the global trading system emerged partly as an inevitable response to the deadlock in multilateral trade negotiations, especially at the Doha Round.[10] Therefore, countries have tended to move to negotiating and signing FTAs. According to WTO statistics, as of May 2021, there have been 312 FTAs out of a total of 565 regional trade agreements that have been signed.[11] Through our research, we have found that many countries formerly tended to follow multilateral trade liberalization within the framework of the WTO, but latterly changed their trade liberalization policies, in which Japan, USA and EU are typical.

Japan was a member of GATT since 1955. It has suffered from trade discrimination from other GATT member states until the 1960s.[12] Some members of the European Economic Community have used trade barriers to adversely affect Japan's exports to the European market.[13] 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) and signing a bilateral FTA with Israel, USA signed a bilateral FTA with Singapore and Chile

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[7] https://www.wto.org/english/thewto_e/gattmem_e.htm, 17/02/2021.
[8] https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm, 01/04/2021.
[9] Baldwin. R. E. (2006), Multilateralising regionalism: spaghetti bowls as building blocs on the path to global free trade, The World Economy, N.29(11), p.1451-1518.
[10] 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 in 2005, hoping to significantly reduce trade barriers, contributing to the development of poor countries and solving difficult problems still exist, like Agricultural benefits, have not been resolved in previous agreements such as GATT. "Global Trade After The Failure of the Doha Round", Opinion | Global Trade After the Failure of the Doha Round - The New York Times (nytimes.com), 17/03/2021.
[11] http://rtais.wto.org/UI/publicsummarytable.aspx, 17/04/2021.
[12] Yamamoto, Yoshinobu and Kikuchi, Tsutomo (1998), Japan's Approach to APEC and Regime Creation in the Asia Pacific, in Vinod K. Aggarwal and Charles E. Morrison, (eds.) Asia Pacific Crossroads: Regime Creation and the Future of APEC, New York: St Martins Press, p. 209.
[13] Stewart. T. P. (1993) (ed.), The GATT Uruguay Round: A Negotiating History 1986-1992, Deventer, Kluwer Law and Taxation Publishers, p. 1840.

in 2003 and continue to negotiate with several other partners in Asia and Central America. Up to now, USA has signed FTAs with 20 countries around the world.[14]

The EU has been negotiating an FTA with Association of Southeast Asian Nations (ASEAN) since 2007, and started negotiating to sign agreements with each country in Southeast Asia, including Singapore and Vietnam which are two strategic partners of the EU.[15]

In can be seen that countries choose to negotiate bilateral or regional FTAs to promote trade between the parties as well as the desire to speed up the process of global trade liberalization amid difficult multilateral trade negotiations. The process of negotiating and agreeing to sign bilateral or regional FTAs is called 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.[16] 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 economy, improve their competitive position, thereby contributing to promoting regional and global trade liberalization.

In the development process of international trade, the term "FTA" is understood in different ways depending on each country's perspectives and diverse developments in many fields. According to The National Trade Promotion Agency of Malaysia, an FTA is an international agreement between two or more countries to reduce or remove trade barriers and bring closer economic integration.[17] As stated by New Zealand Foreign Affairs and Trade, FTA between two countries or a group of countries can be used to set the rules for how countries treat each other when it comes to doing business together. They usually remove tariffs on goods, simplify customs procedures, remove unjustified restrictions on what can or cannot be traded.[18] In the opinion of Ministry of Trade and Industry Singapore,

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[14] https://ustr.gov/trade-agreements/free-trade-agreements, 17/04/2021.
[15] Vu Van Ha (2017), "The role of new generation free trade agreements in international trade", Electronic Communist Magazine
[16] Douglas A. Irwin, "international Trade Agreements", https://www.econlib.org/library/Enc/InternationalTradeAgreements.html, 15/04/2021.
[17] http://www.matrade.gov.my/en/malaysian-exporters/going-global/understanding-free-trade-agreements, 17/04/2021.
[18] https://www.mfat.govt.nz/en/trade/free-trade-agreements/about-free-trade-agreements/, 17/04/2021.

FTAs are treaties which make trade and investment between two or more economies easier. With FTAs, Singapore-based exporters and investors stand to enjoy a myriad of benefits like tariff concessions, preferential access to certain sectors, faster entry into markets and intellectual property protection.[19] From the three examples above, we have found that although the term FTA is expressed in many ways, the basic content of the FTA focuses on economic benefits and promotes the development of free trade. Thus, basically, in the most general understanding, FTA is an agreement between two or more countries and territories for the purpose of liberalizing trade and services in one or several groups of goods and services by reducing tariffs, setting forth favourable regulations for exchange of goods, services, and investments among members. In particular, FTA currently are no longer understood within the narrow scope of regional or bilateral integration agreements with a simple level of economic linkage as before. It is used to refer to deep economic integration agreements between two or more countries.[20] Therefore, today's FTAs are also called new-generation FTAs. This term is used to refer to FTAs with a comprehensive scope, beyond the traditional framework of trade liberalization. The scope of commitments of these agreements, is not only traditional fields such as non-tariff measures, trade in services, intellectual property rights, but also those related to non- traditional issues such as labour rights, civil organizations, trade unions, labour, and environment.

### *1.2. Vietnam process of international economic integration and international trade*

Since the Doi Moi in 1986, Vietnam has followed international economic integration and international trade more deeply and comprehensively on all three levels: bilateral, regional and multilateral. Vietnam has participated in regional and international economic and trade organizations such as ASEAN (1995), 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 2021, Vietnam is a member of 15 FTAs[21], typically three new generation FTAs including: VN-EAEU FTA, EVFTA, CPTPP.

[19] https://www.mti.gov.sg/Improving-Trade/Free-Trade-Agreements, 17/04/2021.
[20] Bui Truong Giang (2010), Towards Vietnam's FTA strategy: East Asia theoretical and practical basis, Social Science Publishing House, Hanoi, p.40.
[21] https://trungtamwto.vn/fta, 25/03/2021.

VN-EAEU FTA[22] is the first new generation FTA to take effect which Vietnam is a member. This FTA has been negotiated by the two sides 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 29th, 2015 in Kazakhstan. It takes effect from October 5th, 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. In terms of its content, VN-EAEU FTA consists of 15 chapters with contents related to trade aspects such as trade in goods, rules of origin, trade remedies, trade in services, investment, property ownership, intellectual property, technical barriers, customs facilitation. Not only mentioning the trade sector, VN-EAEU FTA also stipulates on non-commercial issues, specifically the sustainable development in Chapter 12. Accordingly, the member states acknowledge that the development must be accompanied by the process of social development and environment protection. Therefore, the parties will make efforts to promote trade relations, strengthen cooperation on environmental and labour issues, towards sustainable development.

CPTPP is the second new generation FTA that Vietnam is a member of. It is FTA with the participation of 11 countries including: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. CPTPP was officially signed in Santiago, Chile on March 8th, 2018. The predecessor of the CPTPP was the Trans-Pacific Partnership Agreement (TPP).[23] CPTPP took effect for Vietnam from January 14th, 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 to non-commercial issues such as labour and environment. In Chapter 19 of the Agreement, with the aim of protecting and enforcing labour rights, improving working conditions and living standards, enhancing cooperation and capacity of the parties on labour issues, the parties affirmed their obligations related to labour issues, including the recognition of labour rights provisions in the domestic legal system, not encouraging

[22] This FTA takes effect from October 5, 2016. The Economic Alliance Asia-Europe is an international economic alliance of countries located 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.

[23] 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 withdrawing from this FTA. After the US withdrew from TPP, the remaining 11 member states had actively negotiated and unified the content of CPTPP on the basis of keeping the content 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.

trade or investment by lower basic labour standards, effective enforcement labour laws. In addition, the mechanism for settling labour-related disputes is also mentioned in this Chapter.

EVFTA is the third new generation FTA with the participation of Vietnam. EVFTA was signed between Vietnam and 28 member states of the EU.[24] From the EU's perspective, EVFTA is the most ambitious FTA that the EU has ever signed with a developing country. The two sides pledged to eliminate 99% of tariff lines.[25] EVFTA plays an important role in Vietnam's strategy of international economic integration and trade liberalization. Due to a wide range of commitments, stand high standards of commitment, EVFTA is expected to bring the Vietnamese economy a large and quality as EU market. It will help Vietnam improve the competitiveness of the economy, create the position and attractiveness of the Vietnam market to the international community. In terms of content, EVFTA consists of 17 chapters and 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, affirmed that they will comply with commitments on promoting the development of international trade in a way that contributes to the goals of sustainable development, for the benefit of present and future generations.

## 2. Contents of labour commitments in new generation FTAs

When it comes to the trend of referring to labour commitments in FTAs, Lars Engen mentions two attitudes of the signatories, the "leader" and the "follower".[26] The leaders involved in many new generation FTAs covering labour commitments with most partner countries. It means that they support and promote the regulation of labour commitments in the FTA. Meanwhile, the followers often only sign FTAs containing labour commitments

[24] This agreement was started to negotiate on June 26, 2010 in Brussels, Belgium on the sidelines of the 8th Asia-Europe Summit over 5 years of negotiations, the two sides officially ended the negotiation process. By signing the statement about officially ending EVFTA negotiation on December 2, 2015. In August 2018, the EU announced the official contents of this FTA document. June 30, 2019, EU and Vietnam officially signed EVFTA. This is a new generation FTA expected and has certain special meaning for both sides. With high and comprehensive standards, EU and Vietnam have actively negotiated to unify the contents of the Agreement.

[25] Ha Chinh, "Today, Vietnam - EU officially signed FTA and IPA", VGP News :. | Hôm nay, Việt Nam – EU chính thức ký kết FTA và IPA | BÁO ĐIỆN TỬ CHÍNH PHỦ NƯỚC CHXHCN VIỆT NAM (baochinhphu.vn), 20/03/2021.

[26] Lars Engen (2017), Labour Provisions in Asia-Pacific Free Trade Agreements, Ninth Tranche of the Development Account Project, United Nations Economic and Social Commission for Asia and the Pacific, Background Paper No.1.2017, p.53.

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 new generation FTAs. As of 2017, USA has referred labour commitments in 13 out of 14 FTAs that USA has signed. Similarly, the EU has agreed with its partners on labour commitments in 15 out of 38 FTAs that the EU has signed.[27] As a follower, Vietnam has accepted labour commitments in new generation FTAs because of the importance of these agreements to Vietnam. These FTAs are lifesaving options in the context of 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 to which USA is a member and 15 FTAs to which EU is a member that mentioned labour commitments, three basic contents in those commitments are shown, including: an international legal framework regulating international labour standards; obligations of member states regarding the implementation of labour commitments and the settlement of disputes over the implementation of labour commitments.

***(i) An international legal framework regulating international labour standards***

In labour commitments, the member states of new generation FTAs often agree to unify their obligations in the basis of an international legal framework related to international labour 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 (referred to as the 1998 Declaration), Convention No.182 on Worst Forms of Child Labour, ILO Fundamental Conventions and other ILO Conventions, the ILO's Decent Work Agenda, the ILO Declaration on Social Justice for a Fair Globalization or the 2006 Ministerial Declaration of ECOSOC on Full and Productive Employment and Decent Work. According to ILO statistics in 2016, 64.9% of the total FTAs signed in the world refer to the 1998 Declaration, 13% of them refer to the ILO's Decent Work Agenda and 9.1% of them refer to the ILO Fundamental Conventions.[28]

[27] ILO (2017), Studies on Growth with Equity: Handbook on assessment of labour provisions in trade and investment arrangements, Printing and Distribution Branch (PRODOC) of the ILO, p.13.
[28] ILO (n.27), p.14

In VN-EAEU FTA, CPTPP and EVFTA, Vietnam follows the general trend of the world when referring to the 1998 Declaration.[29] 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 labour standards, regardless of the extent of their participation in the eight fundamental conventions corresponding to four international labour standards. This will help to ensure that these labour standards in particular and labour commitments in general are effectively enforced. In addition to the 1998 Declaration, a few other basic reference documents are also mentioned such as ILO Fundamental Conventions, the 2006 Ministerial Declaration of ECOSOC on Full and Productive Employment and Decent Work.

### *(ii) Obligations of member states regarding the implementation of labour commitments*

Under pacta sunt servanda principle, new generation FTAs are capable of binding the parties, unless otherwise provided for in these agreements. Accordingly, all parties, regardless of the level of development, must comply with the provisions recognized in the agreement. It has been observed that labour provisions in these new generation FTAs often address the basic obligations of member states at various levels, from encouraging to obligatory. Regardless of the level, two basic obligations related to the implementation of labour commitments mentioned in the current new generation FTAs include: the obligation to respect, comply with and implement fundamental labour standards and the obligation to implement domestic labour laws.

*Firstly, the obligation to respect, comply with and implement fundamental labour standards*

Fundamental llabour standards are a set of four internationally recognized labour principles, including: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. Among them, the abolition of child labour is the one that has received much international

[29] The 1998 Declaration is mentioned at: Art.12.7.1 VN-EAEU FTA, Art.19.2 CPTPP and Art.13.4.2 EVFTA

attention because it is one of the worst forms of exploitation that still exist in today's society. These labour principles, before being officially mentioned as fundamental labour standards in the 1998 Declaration, have been recognized in several documents and statements such as the 1948 Universal Declaration of Human Rights[30], the 1989 Convention on the Rights of the Child[31], or the 1995 Copenhagen Declaration on Social Development[32]. As mentioned eearlier, the 1998 Declaration binds all ILO member states to respect, observe, and implement fundamental labour standards, regardless of the extent of their participation in the eight fundamental conventions corresponding to four international labour standards. It is also mandatory obligation of member states. This will help to ensure that these labour standards in particular and labour commitments in general are effectively enforced.

*Secondly, the obligation to implement domestic labour laws*

In FTAs, member countries often commit that domestic labour laws will be effectively enforced. Accordingly, based on recognition of fundamental labour standards, countries have the right to establish domestic labour standards that are consistent with international labour standards and are not allowed to lower these standards.

Of the two basic obligations mentioned above, the first obligation is the only one mentioned in all three new generation FTAs to which Vietnam is a member. According to the content of these agreements, it could be seen that there was a difference in the level of recognition of obligations, thereby showing the attitude and will of the members towards this obligation. 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 clearly 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 labour standards. This reaffirms the importance of the above labour standards, avoiding the case that each party has different approach to these standards.

Regarding the second obligation, only CPTPP and EVFTA recognize it. Specifically, EVFTA members commit to effectively implement domestic laws and

[30] Art.20, Art.23 The Universal Declaration of Human Rights in 1948
[31] Art.15, Art.32 Convention on the Rights of the Child in 1989
[32] Point I, Commitment to 3 statements of the Copenhagen summit on social development in 1995.

regulations, not deny the enforcement of labour laws to encourage trade and investment.[33] Similarly, the CPTPP also require the parties not to encourage trade and investment by lowering labour conditions and standards through the acts of abandoning or ignoring provisions in the labour laws. In addition, to ensure that this obligation is effectively enforced, the 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.[34] We have noticed that the ability to comply in the CPTPP will be higher than EVFTA because of the fair and transparent access to the courts of those whose interests are recognized by the laws. This will ensure that domestic legal regulations are effectively enforced. It is also considered as a purpose of regulations on ensuring the right to access to the court system of relevant subjects. In particular, to effectively enforce member countries' labour laws, the CPTPP also require members to ensure reasonable working conditions and regimes.[35]

***(iii) The settlement of disputes over the implementation of labour commitments***

To ensure the implementation of labour commitments, the current new generation FTAs all stipulate 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 and recognized in the content of the agreement to settle. These mechanisms and measures may be applied exclusively to labour commitment disputes or to all disputes arising within the scope of the agreement. It was discovered that there are currently two trends in approaching different dispute settlement mechanisms. Specifically, the first one is to settle disputes based on an arbitral tribunal established to assess the extent of the breach of obligations, thereby take appropriate handling measures such as economic sanctions or fixed amount payment, represented by USA. The second one is to settle disputes based on consultation and negotiation, represented by the EU.

If disputes arise over the implementation of labour commitments, all three new generation FTAs to which Vietnam is a member will have corresponding solutions with

[33] Art.12.7.1 VN-EAEU FTA.
[34] Refer to Art.19.1, 19.2 and Art. 19.3 CPTPP; Art.13.4.2 EVFTA.
[35] Refer to Art.13.3, 13.4 EVFTA.

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, the Trade and Sustainable Development Committee under the Trade Commission including representatives of the parties to the EVFTA or the Labour 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 a variety of methods, including consulting with independent experts or using other popular means such as conciliation or mediation if necessary.

It seems to us that VN-EAEU FTA has not really paid much attention to labour commitments and has not taken into account the solution to thoroughly solve it once disputes over the implementation of labour 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,[36] so the dispute over the implementation of labour commitments will remain exist. 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 will of the parties, allowing the parties to free agree on the choice of a final remedy (EVFTA) and an agreement that introduce a compulsory measure (CPTPP), it is clearly that the possibility of disputes over the implementation of labour 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.[37] This is the difference between the CPTPP and remaining two FTAs. The mandatory provisions will raise awareness of compliance of CPTPP members with labour commitments, avoid disputes arising, affecting economic, trade and investment activities between parties.

In the two trends mentioned above, we believe that the use of the arbitration panel mechanism will be more effective than the consultation mechanism. In the consultation

[36] Refer to Art.12.9 VN-EAEU FTA.
[37] Refer to Art.19.15.12 and 19.15.13 CPTPP.

mechanism, the fact that labour 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 strictly implement the signed labour commitments, avoiding unnecessary violations.

### 3. Regulations on the abolition of child labour in new generation FTAs to which Vietnam is a member

Elimination of child labour is the fundamental labour standard specified in the labour commitments in the three new generation FTAs to which Vietnam is a member. Based on an overview of the content of these agreements, it could be seen that the abolition of child labour has not been recognized in detail. Therefore, to clarify some main issues on the abolition of child labour, 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 Labour. Accordingly, the provisions on the abolition of child labour include the following three basic aspects:

*(i) Definition of children and worst forms of child labour*

Children are all persons under the age of 18 and the worst forms of child labour comprises: all forms of slavery or practices like slavery; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances or illicit activities; and work which is likely to harm the health, safety, or morals of children.[38]

*(ii) Obligations of member states to eliminate child labour*

Member states must undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.[39] Moreover, they must specify a minimum age for

[38] Art.2, Art.3 Convention No. 182 on Worst forms of child labour.
[39] Art.1 Convention No. 138 on Minimum Ages.

admission to employment or work within its territory and on means of transport registered in its territory.[40]

*(iii) Minimum ages*

Accordingly, member states need to pay attention to three different age milestones, including: 15 years old, 18 years old, and from 13 to 15 years old. 15 years old is the minimum working age in general and in some cases this age can be considered to be reduced to 14 years old.[41] The minimum working age shall not be less than the age of completion of compulsory schooling. 18 years old is the minimum age allowed to perform dangerous work and in some cases this age can be reduced to 16 years old on condition that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity and the health, safety and morals of the young persons concerned are fully protected.[42] 13-15 years old is the age to participate in light work, which do not affect health, comprehensive development and learning process. In some cases, this age can be reduced to 12-14 years old.[43]

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, like the abolition of forced labor, the CPTPP has required countries to not encourage the importation of all kinds of goods with origins produced in whole or in part by force child labour.

As can be seen that the elimination of child labour is approached in different forms in VN-EAEU FTA, CPTPP and EVFTA. In the VN-EAEU FTA, the abolition of child labour is indirectly regulated through another regulation which is the obligations of member states arise 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 on the elimination of child labour in three FTAs mentioned above differ in their ability to effectively enforce them. In the VN-EAEU FTA, with the indirect approach, the ability of this standard to be effectively implemented is not high. In contrast,

[40] Art.2 Convention No. 138 on Minimum Ages.

[41] Art.2 Convention No. 138 on Minimum Ages.
[42] Art.3 Convention No. 138 on Minimum Ages.
[43] Art.7 Convention No. 138 on Minimum Ages.

the EVFTA and CPTPP directly recognize the elimination of child labour in the content of the agreement, which will improve the effectiveness of this standard. However, the difference in the enforcement mechanism will lead to the difference in the ability to effectively enforce this standard in the EVFTA and CPTPP. Specifically, the specific and practical provisions in the CPTPP, including "internalizing" this standard into the domestic labour laws and discouraging countries from importing goods with origins or ingredients produced by forced labour, including forced child labour, would help to better enforce the abolition of child labour than the theoretical and encouraging regulations in the EVFTA. To explain the difference in content related to the abolition of child labour between the new generation FTAs to which Vietnam is a member, we believe that it comes from the experience of negotiating and signing new generation FTAs. Vietnam and the member countries of the Eurasian Economic Union are both new actors in the process of participating in the world's new generation of FTAs, while the EVFTA and CPTPP are two products with participation of entities with extensive experience in negotiating and signing new generation FTAs such as the EU, USA, and other countries. As a result, the content of labour commitments in general and abolition of child labour in particular are different as described above.

## 4. The provisions of Vietnam labour law on the abolition of child labour

Vietnam became a member of the ILO during the 1950-1976, 1980-1985, after that, Vietnam ratified two ILO Conventions relating to child labour including Convention No. 182 on Worst Forms of Child Labour[44] and Convention No. 138 on Minimum Age[45]. In the current system of Vietnamese legal documents on labour, the abolition of child labour is regulated in the Labour Code 2019, the Penal Code 2015 (amended and supplemented in 2017) and number of other relevant legal documents such as the Law on Children 2016, Decree No.28/2020/ND-CP dated March 01, 2020 of the Government on providing penalties for administrative violations in the fields of labour, social insurance, and overseas manpower supply under contract (referred to as Decree No.28/2020/ND-CP); Circular No. 10/2013/TT-BLDTBXH dated June 10, 2013 of the Ministry of Labour, War Invalids and Social Affairs on promulgating the lists of jobs and workplaces in which the employment of minor persons in prohibited (referred to as Circular No.10/2013/TT-BLDTBXH);

[44] Vietnam ratified the Convention No. 182 on Worst forms of child labour in 2000
[45] Vietnam ratified the Convention No. 138 on Minimum Age in 2003

Circular No. 11/2013/TT-BLDTBXH dated June 11, 2013 of the Ministry of Labour, War Invalids and Social Affairs on promulgating the list of light tasks permitted for persons under 15 years old (referred to as Circular No.11/2013/TT-BLDTBXH). These regulations mainly cover some basic aspects of the abolition of child labour, including definition of child labour, minimum ages relevant to the use of child labour, principles of using child labour, sanctions in case of violations of commitments on the abolition of child labour.

*(i) Definition of child labour*

The Vietnam current labour law does not have a specific definition of child labour and the age to determine child labour. It has only the definition of juvenile workers defined through age. According to the provisions of Article 143 of the Labour Code 2019, a minor employee is an employee who is under 18 years of age. Meanwhile, Article 1 of the Law on Children 2016 stipulates that a child is a person under 16 years of age. From the above two provisions, we can conclude that, according to Vietnamese law, child workers are those who are under 16 years of age participating in the labour field and they are a part of the juvenile workforce. However, in our opinion, this provision has led to an inconsistent interpretation of “child” in the term “child labour” of Convention No. 182 on Worst Forms of Child Labour. Article 2 of the above Convention provides that “the term child shall be applied to all persons under the age of 18 years”. With this understanding, child labour according to international law is those who are engaged in labour under the age of 18 years. This concept is compatible with the current Vietnamese law on “minor employee”. Thus, it can be seen that the Vietnamese law has not provided a definition of "child labour" but has mentioned " minor employee " and these two concepts have similar connotations, both refer to employees under 18 years of age.

*(ii) Minimum ages*

Regarding the minimum ages related to the use of child labor (minor employee), Article 143 of the Labor Code 2019 specifies the age milestones for each type of minor employee, including: From full 15 years old to under 18 years old, from full 13 years old to under 15 years old and under 13 years old. Referring to the provisions on the minimum ages in Convention No.138 on Minimum Ages, we found that the ages in Vietnamese law are compatible with the provisions of the Convention, specifically in Articles 3,7,8.[46] The

[46] Clause 2, Art.143 of the Labour 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 Art.147 of this Code". These work and workplaces are

provision on the minimum ages in Article 143 of the Labour Code 2019 is an improvement compared to the Labour Code 2012. Previously, Article 161 of the Labour Code 2012 only mentioned a single milestone for the purpose of defining minor employee. Moreover, the introduction of different minimum ages in the very first article of the Section on Minor Employee reflects and conveys the true spirit of the Convention No.138 on Minimum Ages, making it easy for relevant subjects in referring and applying when needed.

*(iii) Principles of using the child labour*

According to Article 144, 146 of the Labour Code 2019, the 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, specifically:

Firstly, the minor employees will not have to do heavy, dangerous, and unhealthy jobs to ensure their physical and mental development and their personality. 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 labour process does not affect or disrupt their full development.

Secondly, the working time of minor employee is divided into two levels corresponding to different ages. For 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 person under 15 years old must not exceed 04 hours in a day and 20 hours in a week.[47] Comparing the normal working time for employees, namely no more than 08 hours in a day and no more than 48 hours in a week[48], we found that the difference between working time for employees from full 15 years old to under 18 years old and from full 18 years old are insignificant. In fact, the period from full 15 years old to under 18

kinds of work and site places that are harmful to health, safety and virtues of employees. This provision is compatible with Art.3 of the Convention No.138 on Minimum Ages. Clause 3, Art.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 Labor, War Invalids and Social Affairs". This provision is compatible with Art.7 of the Convention No.138 on Minimum Ages when allowing national laws to regulate the types of jobs that are suitable for age 13 to 15 years old. Clause 4, Art.143 of the Labor Code 2019 provides: "Persons who are not only 13-year-olds can only do jobs prescribed in Clause 3, Art.145 of this Code". Jobs for those who are not 13 years old are artwork, fitness and sports but do not harm the development of physical strengths, true and personality of people who are not 13 years old and must have copper Italy of labor agencies on provincial-level People's Committees. This provision is compatible with Art.8 of the 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.

[47] Art.146 of the Labour Code 2019.

[48] Art.105 of the Labour Code 2019.

years old is a transitional stage in the period of the 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.

Thirdly, overtime, like normal working time, is regulated for each respective age. Persons under the age of 15 years will not be allowed to work overtime nor 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. It could be seen that the regulation on overtime, which was mentioned in the Labour Code 2012, continues to be repeated in the Labour Code 2019. However, up to now, there is no document detailing the list of jobs that minor employees from full 15 years old to under 18 years old can do overtime, but only a list of types of jobs and workplaces that are prohibited from using them promulgated by the Ministry of Labour, War Invalids and Social Affairs. This list is released together with Circular No.10/2013/TT-BLDTBXH.

Fourthly, when using the minor employees, the employers have responsibility to take care of their employees in terms of working, health, study. They must create favourable conditions in occupational education and training in purpose of improving their occupational skills. As mentioned above, the period from full 15 years old to under 18 years old is an important stage in the process of fully completing human's health and psychophysiology. Therefore, it is very necessary to improve health, foster and educate the subjects in knowledge and life skills in this period to equip them with enough knowledge and skills to be able stand firm against future difficulties. This is not only the responsibility of the family, the school but also the employer in the case of using minor employees.

***(iv)*** *Sanctions in case of violations of commitments on the abolition of child labour*

Regarding sanctions in case of violations on the use of child labour, Vietnamese law stipulates that these acts depending on the seriousness of the violations will be subject to administrative or criminal sanctions.

Firstly, regarding administrative sanctions, Vietnamese law has specific provisions on handling methods for violations against regulations on minor employees, specifically in Article 28 of the Decree No. No. 28/2020/ND-CP. Accordingly, for acts of violating regulations on minor employees, the employer may be fined from VND 1,000,000 to VND

75,000,000 depending on the specific type of behavior. In addition, there are a few acts related to the use of child labor that are noted by Vietnam's labor law, such as the case of recruiting people under the age of 14 to apprenticeship or job training, except for occupations and jobs permitted by law (Article 13[49]) or the case of concluding employment contracts with persons aged from 15 to under 18 without written consent from their legal representatives (Article 8[50]). We find that the regulations on violations against minor employees are still not concentrated. Specifically, 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 Article 8[51] and 13[52]. Such non-centralized regulation will cause difficulties in law enforcement activities of competent state agencies.

Secondly, regarding criminal sanctions, Vietnamese law has specific provisions on the use of employees under the age of 16. Accordingly, any person who employs a person under 16 to do hard or dangerous works or works that involve contact with harmful substances on the list compiled by the State shall face a penalty of from up to 03 years' community sentence to 12 years' imprisonment.[53] 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. In addition, in the case where a person under the age of 16 is forced to participate in labor because the employer uses force, threatens to use force or other tricks to coerce them, the employee may suffer imprisonment from 2 years to 07 years.[54] In case of transferring or receiving a person under 16 years of age to perform forced labor, a prison term of between 07 and 12 years may be imposed.[55] From the above regulations, we find that, among the acts related to people under 16 years old, the act of transferring and receiving people under 16 years old for the purpose of forced labor has the

[49] Point b, Clause 2, Art.13 of Decree No.28/2020/ND-CP dated March 01, 2020 of the Government on providing penalties for administrative violations in the fields of labour, social insurance, and overseas manpower supply under contract.
[50] Point c, Clause 2, Art.8 of Decree No.28/2020/ND-CP dated March 01, 2020 of the Government on providing penalties for administrative violations in the fields of labour, social insurance, and overseas manpower supply under contract.

[51] Art.8 provides the Regulation on the processing of handling acts of violation of regulations on labor contracts.
[52] Art.13 provides the Regulation on the processing of handling acts of violating regulations on training and retraining and improving professional skills.
[53] Art.296 Criminal Code 2015 (amended and supplemented in 2017).
[54] Point b, Clause 2, Art.297 Criminal Code 2015 (amended and supplemented in 2017).
[55] Point b, c, Clause 1, Art.151 Criminal Code 2015 (amended and supplemented in 2017).

highest penalty. These are acts that 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 of age, 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, acts of transferring and receiving people under 16 years old for the purpose of forced labor will not occur. In other words, if the employer "still has a need" to use child labor, it will certainly give rise to actual acts of transferring and receiving child labor. Therefore, acts of directly using labor and forcing labor for people under 16 years of age should be subject to higher penalties.

## 5. Suggestions to ensure effective implementation of commitments to eliminate child labour in EVFTA, CPTPP and VN-EAEU FTA

To effectively implement commitments related to child labour in the context of an increasing number of new generation FTAs with the participation of Vietnam, the four recommendations will be given as follows:

***Firstly,*** amending the definition of “children” in Article 1 of the Law on Children 2016. Accordingly, “children are people under the age of 18”. This recommendation is based on the following reasons:

As a party to Convention No.182 on Worst Forms of Child Labour, 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. This is to ensure Vietnam's obligations in the implementation of international treaties to which Vietnam is a member according to the principle of pacta sunt servanda. To effectively enforce this obligation, Vietnam must internalize the provisions of international law by amending, supplementing, cancelling, or promulgating new legal documents. Therefore, amending the definition of “children” to ensure the obligations and responsibilities of the country in the implementation of international commitments.

In practice, at the stage before the age of 18, a juvenile is not yet fully developed and perfected physically and mentally as well as has not yet fully met the conditions to be able to perform the tasks like an adult. Thus, this subject needs to enjoy certain incentives in all fields of social life to be able to develop comprehensively and be ready to participate

in the labour market in the future. Therefore, it is necessary to amend the regulation on the definition of children.

***Secondly,*** amending the regulations on working time of child workers from full 15 years old to under 18 years old. Accordingly, Article 146.2 of the Labour Code 2019 will be stated that "the working hours of person from enough 15 years of age to under 18 years of ages shall not exceed 06 hours per day and 30 hours per week". This recommendation is based on the following reasons:

From a legal point of view, it is unreasonable to prescribe that persons from enough 15 years of age to under 18 years of ages shall not exceed 08 hours per day and 40 hours per week. While the age difference between two age groups is moderate, the frequency of working between these two age groups is not significantly different, 8 hours per week.[56] 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[57]. Although at each age, development and self-improvement are different, such working time will lead children between the ages of 15 and under 18 no longer have enough time to prepare mentally and physically ready to enter adulthood. Therefore, it is necessary to amend the regulations on working time of this subject.

In practice, the period from full 15 years old to less than 18 years old is an important 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 comprehensively and perfect themselves physically, psychologically, and intellectually. The maximum working time is reduced, children can be facilitated to participate in courses to foster and develop themselves.

***Thirdly,*** supplementing the list of occupations and jobs that allow children from the age of 15 to under 18 to work overtime. This recommendation is based on the following reasons:

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[56] 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.

[57] 40 hours a week for people aged 15 to 18 years compared to 20 hours a week for people under 15 years old.

The Labour Code 2019 allows persons between the ages of 15 and under 18 years old to work overtime in several specific occupations and jobs. However, so far, the list of specific occupations and jobs has not yet been promulgated by the Ministry of Labour, Invalids and Social Affairs. The delay in promulgating regulations will affect the effectiveness of the application of legal documents.

In practice, persons between the ages of 15 and under 18 years old participate in the labour market quite a lot. In 2019, Vietnam had 1.75 million child workers, of which, the largest number fell into the group of 15 to under 18 years old, accounting for 58%[58]. Therefore, the supplementation of the list will help relevant entities such as employers, employees, agencies involved in the management of labour relations have a basis to evaluate actual labour relations, thereby take measures to protect the rights and interests of children of this age group.

***Fourthly,*** add "Violations against regulations of law on employment of worker under 16" (Article 296 of the Criminal Code 2015) and "Coercive labour" (Article 297 of the Criminal Code 2015) into the group of crimes for which commercial legal entities are criminally liable. This recommendation is based on the following reasons:

From legal perspective, the provision on criminal liability of commercial legal entities is 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, and at the same time, avoiding the omission of criminals. Furthermore, this regulation has met the requirements of fighting against crime in the new situation caused by legal entities, especially 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 (Article 235 to 246). This is a shortcoming that needs to be overcome because labour and the environment are two non-commercial issues that receive great attention from countries around the world 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.

In practice, according to the Results of National Survey on Child Labour in 2012, the percentage of child workers aged 15 to 17 working in factories and workshops is 9%;

[58] According to information at the Conference on the rights of juveniles in the revised Labour Code held on the morning of April 23, 2019 in Hanoi. "1.75 million children participating in labor in Vietnam", https://hanoimoi.com.vn/tin-tuc/Xa-hoi/933016/175-trieu-tre-em-tham-gia-lao-dong-tai-viet-nam, 17/05/2021.

at restaurants, bars and hotels is 3.8%[59]. This shows that the proportion of child labour used by commercial legal entities is quite large, potentially high risk of commercial legal entities committing illegal acts related to employees under 16 years of age. Therefore, the addition of two labour-related crimes to the scope of criminal liability of commercial legal entities will contribute to deterring and preventing acts of illegal use and forced child labour of commercial legal entities.

We believe that the synchronous implementation of the above recommendations and solutions will contribute to limiting and eliminating the illegal use and forced labour of children in Vietnam. Thereby, 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 in particular. Moreover, good implementation of these recommendations and solutions will contribute to helping Vietnam effectively and substantially implement the commitment to "eliminate child labour" in the new generation FTAs that Vietnam is a member. On the other hand, the good implementation of commitments on child labour is vivid and concrete example to affirm Vietnam's consistent foreign policy and stance in the process of international integration as stated in Article 12 of the 2013 Constitution "The Socialist Republic of Vietnam shall abide by the Charter of the United Nations and treaties to which the Socialist Republic of Vietnam is a contracting party".

## REFERENCES


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[59] ILO (2014), National investigation on children's labour 2012- Main results, p.29

6. The Universal Declaration of Human Rights in 1948
7. Convention on the Rights of the Child in 1989
8. Convention No. 182 on Worst forms of child labour
9. Convention No. 138 on Minimum Ages
10. EU- Vietnam Free Trade Agreement
11. VN- EAEU Free Trade Agreement
12. Comprehensive and Progressive Agreement for Trans- Pacific Partnership