

# BRIDGING THE GAP BETWEEN THE LAW IN BOOKS AND THE LAW IN ACTION FOR BETTER UTILIZATION OF VIETNAM' NEW-GENERATION FTAS

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## Abstract

By the end of August 2023, 15 FTAs to which Vietnam is a party are still in effect, of which 4 are so-called new-generation FTAs. Having these treaty texts signed and ratified, i.e. having the law in books, is not enough; it is just the necessary condition. More importantly, the agreements need to be put in practice, i.e. having the law in action. Given the short time span post their entry into force, their implementation and enforcement may fall well behind. By adopting the socio-legal methodology, this article aims to provide suggestions for Vietnam to better exploit its new-generation FTAs by means of narrowing the gaps between the two laws at issue. In particular, it addresses the following questions of (i) what is the gap between the law in books and the law in action in the four new-generation FTAs concluded by Vietnam, (ii) what are empirical examples of such gaps, (iii) why are those gaps? and (iv) how to bridge the gap *inter se*?

## I. Introduction

Since its WTO accession in early 2007, Vietnam has actively pursued international economic integration through both multilateral and pluri-lateral approaches. By the end of May 2023, 15 FTAs to which Vietnam is a party are still in effect,<sup>1</sup> of which 4 are so-called new-generation FTAs: the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), the EU-Vietnam Free Trade Agreement (EVFTA), the UK-Vietnam Free Trade Agreement (UKVFTA) and the Regional Comprehensive Economic Partnership Agreement (RCEP). WTO-plus and WTO-extra commitments featuring these four trade deals are demanding and challenging to Vietnam. Among the four, the earliest and latest in their entry into force against Vietnam are the CPTPP (since 14/1/2019) and the RCEP (since 1/1/2022) respectively. Given such milestones, their implementation and enforcement time spans are quite short so far.

Having these treaty texts signed and ratified, i.e. having the law in books, is not enough; it is just the necessary condition. More importantly, the agreements need to be put in practice, i.e. having the law in action. Due to the short time span post their entry into force, their implementation and enforcement may fall well behind. The law in books, or black-letter law, refers to the law in law books which might be found in primary and secondary sources of law, such as legislations, delegated legislations and case-law. Regarding the FTAs or treaties in general, the law in books indicates the texts of these agreements. In other words, regarding Vietnam's new-generation FTAs in this article, their legal texts are the law in books. The term 'law in action' might refer to legal processes, such as law-implementing and law-enforcing procedures, and legal institutions, including the legislative, executive and judicial bodies. In this article, law in action denotes the implementation and enforcement of the four above-mentioned FTAs. The law in books and the law in action might not always or necessarily be identical or the similar. The law might look good or even perfect on paper but their implementation or enforcement on the contrary falls short of any success. Such differences *inter se* can be attributed to various factors. These gaps undermine the efficiency or effectiveness of these treaties, frustrate the pro-FTA stakeholders, bringing down their expectation and endorsement or even giving rise to the anti-FTA moves.

So far, there have been quite many researches on these 4 FTAs in general and their application in particular; however, few have adopted the empirical method, in particular in-depth interviews and questionnaires, to gather information from stakeholders, including the competent state bodies, state officials, trading enterprises to provide some concrete empirical illustrations of the gap in question. This empirical research was conducted as part of the WTO Chair Program at Foreign Trade University (FTU), Vietnam. The survey was carried out in June and July 2022

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<sup>1</sup> <https://trungtamwto.vn/thong-ke/12065-tong-hop-cac-fta-cua-viet-nam-tinh-den-thang-112018> (accessed on 15 May 2023).

with the involvement of both private- and public-sector participants nation-wide. As to the private sector, the survey was in view of (i) assessment of the awareness of Vietnamese enterprises about FTAs, (ii) their evaluation of FTA implementation, (iii) their exportation and importation status-quo in FTA markets, (iv) FTA impacts on them in the post-Covid 19 recovery period, (v) prospects and expectations of enterprises and (vi) factors in FTA exploitation. Regarding the public sector, the survey centered on (i) policy and law development and institutional perfection in FTA implementation, (ii) FTA promulgation and spreading-out to Vietnamese enterprises and (iii) supports to them to benefit from FTAs. Through questionnaires and in-depth interviews, the survey involves 415 Vietnamese enterprises and 30 state competent authorities. To shed light of concrete examples of the gap in question, the empirical method to gather data from the survey participants. Based on the above preliminary findings, this article analyzes some empirical instances of such gaps in the case of Vietnam, then delve into potential explanations to their existence and finally discusses ways to address them for the better exploitation of these trade deals.

The article first searches for and analyzes some cases of the gap among the two ‘laws’ in the context of Vietnam’s new-generation FTAs (Section II). It then explains the contributors to such gaps (Section III). The paper concludes with some gap-filling recommendations in view of the most benefits for Vietnam from these trade deals (Section IV).

## **II. Empirical examples of gaps between law in books and law in action regarding Vietnam’s new-generation FTAs**

### **2.1. Rules of origin**

#### *2.1.1. Legal texts of rules of origin in new-generation FTAs: Law in books*

According to the CPTPP, to have tariff preferences, textile and garment products must meet specific rules of origin for each product group, with the core principle being the "yarn forward" rule. Although the specific commitments do not directly use the term “yarn forward”, all countries appear to agree on this core element, as reflected in many Official Documents of CPTPP member countries summarizing rules of origin for CPTPP textile and garment products. The "yarn forward" rule, in simplified terms, requires that all stages of the textile and garment production chain (from yarn spinning, weaving, dyeing, printing, cutting, sewing, pressing... to the final product) must be performed in CPTPP member countries.

In addition, Self-Certification of Origin is a new form of certification of the origin of goods.<sup>2</sup> Unlike the traditional method where the certification of origin is issued by an authorized authority, self-certification of origin minimizes the involvement of the government authority, transferring the responsibility of certifying the origin of goods to the business or exporter.<sup>3</sup> This means that businesses and exporters proactively perform verification procedures and meet the requirements to declare that the goods meet the origin criteria. They are also responsible for the accuracy of the declaration, instead of waiting for approval from the government regulatory.<sup>4</sup> The CPTPP applies a self-certification of origin mechanism for exporters, which means that exporters are allowed to self-certify the origin of goods on their commercial documents.<sup>5</sup> The agreement specifies the minimum information to be shown on the self-certification of origin documents.<sup>6</sup> Regarding the EVFTA, a self-certification of origin mechanism applies to exporters

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<sup>2</sup> VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cau-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.

<sup>3</sup> *Ibid.*

<sup>4</sup> Hoang, T. (2021), *Điểm khác biệt về cơ chế tự chứng nhận xuất xứ của các FTA thế hệ mới*, available at <https://haiquanonline.com.vn/diem-khac-biet-ve-co-che-tu-chung-nhan-xuat-xu-cua-cac-ftathe-he-moi-142388.html>, accessed on 8/9/2023.

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

<sup>6</sup> VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cau-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.

that are issued REX codes and which means that enterprises with REX codes will be able to self-certify the origin of their goods on commercial documents.<sup>7</sup>

### 2.1.2. *Law in action: In reality*

As soon as the FTAs officially took effect in Vietnam, the Ministry of Industry and Trade has timely issued appropriate guidance decrees and legal documents to facilitate business activities. Regulation-wise, Circular 03/2019/TT-BCT faithfully conveys the committed text regarding rules of origin for specific textile and garment product groups. Therefore, there are no *de jure* shortcomings from a regulatory perspective.<sup>8</sup>

### 2.1.3. *Gaps*

Implementing rules of origin "from yarn forward" for textile and garment products has been a controversial topic because of the *de facto* conflict between the regulations of the FTAs and domestic law. In practical implementation, certificates-of-origin (C/O) issuing authorities interpret the rules of origin as "from fiber forward" (instead of "from yarn forward").<sup>9</sup> According to the issuing authorities, this interpretation closely aligns with the committed wording on specific rules for textile and garment products in the Agreement.<sup>10</sup> After being bilaterally discussed with some countries in the CPTPP to harmonize the understanding and implementation, the term "from fiber forwards" has been accepted by the C/O issuing authority but only in cases where "fiber is spun in Vietnam", while "fiber is spun in other CPTPP countries" is still not accepted.<sup>11</sup> This still fails to bridge the gaps between the provisions of the CPTPP and the regulations currently being implemented in Vietnam.<sup>12</sup>

Additionally, the policy of self-certification of origin in Vietnam is facing certain difficulties and challenges in terms of lacking uniformity and coherence for different FTAs as it is relatively new in Vietnam.<sup>13</sup> As a consequence, the regulations regarding self-certification are scattered across various legal documents (mostly in the form of circulars and decrees) and may come into effect at different points in time.<sup>14</sup>

## 2.2. *State-owned enterprises*

There is a gap in transparency enforcement between regulations in the CPTPP and the implementation of the state-owned enterprises (SOEs) in Vietnam.

### 2.2.1. *Legal texts of SOEs in new-generation FTAs: Law in books*

While other obligations are regulated quite generally in the CPTPP and basically there are no conflicts with current Vietnamese laws, the transparency prescribed in the Article 17.10 of the CPTPP turns out to impose specific and completely new requirements. To be more specific, this article consists of two main obligations regarding providing public information in general and

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<sup>7</sup> Dang, M. P. (2022), "Self Certification of goods origin according to ATIGA, EVFTA and CPTPP", *Journal of Legal Studies*, 9(20).

<sup>8</sup> Law Library (2019), *Xuất xứ hàng hóa trong Hiệp định đối tác toàn diện Thái Bình Dương*, available at <https://thuvienphapluat.vn/van-ban/Thuong-mai/Thong-tu-03-2019-TT-BCT-xuat-xu-hang-hoa-trong-Hiep-dinh-Doi-tac-Toan-dien-Thai-Binh-Duong-405885.aspx>, accessed on 8/9/2023.

<sup>9</sup> VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cau-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.

<sup>10</sup> Law Library (2019), *Xuất xứ hàng hóa trong Hiệp định đối tác toàn diện Thái Bình Dương*, available at <https://thuvienphapluat.vn/van-ban/Thuong-mai/Thong-tu-03-2019-TT-BCT-xuat-xu-hang-hoa-trong-Hiep-dinh-Doi-tac-Toan-dien-Thai-Binh-Duong-405885.aspx>, accessed on 8/9/2023.

<sup>11</sup> VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cau-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.

<sup>12</sup> *Ibid.*

<sup>13</sup> Hoang, T. (2021), *Điểm khác biệt về cơ chế tự chứng nhận xuất xứ của các FTA thế hệ mới*, available at <https://haiquanonline.com.vn/diem-khac-biet-ve-co-che-tu-chung-nhan-xuat-xu-cua-cac-ftathe-he-moi-142388.html>, accessed on 8/9/2023.

<sup>14</sup> *Ibid.*

providing information upon another party's request. Regarding the obligation to disclose information and provide general information, the CPTPP requires each member country to make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement, and thereafter shall update the list annually.<sup>15</sup> However, Vietnam takes a reservation that this requirement shall not apply until (i) five years from the date of entry into force of this Agreement (applied for SOEs having revenue from business activities of SDR 200 million in the three preceding years); (ii) six months from the date of entry into force of this Agreement (applied for SOEs having revenue from business activities of SDR 500 million in the three preceding years).<sup>16</sup>

### 2.2.2. *Law in action: In reality*

In Vietnam, the Government also issued Decree 47/2021/NĐ-CP providing details in some articles in the Corporate Law. In Chapter V, the information disclosure, ranging from the principle and the format to the media and the account used to disclose and so on, is clearly stated. This is really a positive internalization of regulations in CPTPP to the Vietnam legal system to eliminate the conflicts between the CPTPP and the Vietnam Corporate Law 2014.

### 2.2.3. *Gaps*

Nevertheless, the enforcement of rules for SOEs turns out to be more complicated. The CPTPP officially came into force in Vietnam on 14 January 2019. It means that the five-year period of exception for SOEs in Vietnam to implement transparency principle is coming. However, there are many problems in how Vietnamese SOEs conduct information disclosure. Firstly, there is an incompatibility in the number of the SOEs in official statistics reports. According to the Statistical Yearbook of Vietnam 2022 published by the General Statistics Office, up to 31st December 2021, there are 1,906 SOEs in Vietnam, of which 877 have 100% state-owned capital and 1,029 with 50% state-owned capital.<sup>17</sup> However, according to the Ministry of Planning and Investment, up to August 2023, there are only 571 SOEs disclosing information on Business Portal, of which 390 enterprises having 100% state-owned capital and 181 enterprises having 50% state-owned capital.<sup>18</sup> In other words, the list of enterprises requiring information disclosure by the Ministry of Planning and Investment does not cover all SOEs according to statistics from the General Statistics Office. This means that up to 1,029 SOEs do not have to disclose information. One of the reasons is that Vietnam still has a several-month time-limit of the exception for some specific types of SOEs. However, this is not the main reason whereas there are also similar regulations regarding transparency of SOEs in the Corporate Law 2020 which is compatible with that of the CPTPP. In fact, most of SOEs in Vietnam that must disclose information do not comply strictly and fully with regulations. The poor implementation is manifested in: 1) not fully publishing the whole information as prescribed, 2) lack of official websites or, 3) lack of a separate section on information disclosure on the website as required.<sup>19</sup> This may lead to the risk that Vietnam does not fully comply with the provisions of Article 17.10 of the CPTPP and constitutes an actual violation by Vietnam.<sup>20</sup>

## 2.3. *Intellectual property*

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<sup>15</sup> Article 17.10, CPTPP.

<sup>16</sup> Centre for the WTO and international trade, "Summary of the CPTPP", available at <https://wtocenter.vn/file/16828/Tom%20luoc%20CPTPP%20-%20Chuong%2017.pdf>, accessed on 7/8/2023.

<sup>17</sup> General Statistics Office (2022), *Statistical Yearbook of Vietnam 2022*, Statistical Publishing House, Hanoi, p. 482.

<sup>18</sup> Agency of Enterprise Development, Business Portal, available at <https://business.gov.vn/doanh-nghiep-nha-nuoc/danh-sach>, accessed on 7/8/2023..

<sup>19</sup> Nguyen H. (2020), "State-owned enterprises under the CPTPP and challenges for Vietnam", *Journal of Legal Studies*, Volume 1/2020, Hanoi Law University Publishing House, p. 28.

<sup>20</sup> *Ibid.*



### 2.3.1. Legal texts of intellectual property in new-generation FTAs: Law in books

Three new-generation FTAs, namely the EVFTA, the CPTPP and RCEP, have higher and more comprehensive commitments in terms of intellectual property rights.<sup>21</sup> The scope of regulatory issues covered is diverse and encompasses multiple sectors.<sup>22</sup> In addition to reaffirming the important basic principles of the TRIPS agreement, these agreements set high requirements for policy transparency and regulations related to intellectual property rights.<sup>23</sup> The Intellectual Property Chapter of the EVFTA comprises 63 articles and 2 appendices, namely the List of Geographical Indications and the Product Group Catalog.<sup>24</sup> It covers various aspects such as the protection of intellectual property rights, the scope of these rights, patents, industrial designs, trademarks, geographical indications, confidential information, plant varieties, expiration of rights, and enforcement of intellectual property rights.<sup>25</sup> The CPTPP reaffirms the important principles of the TRIPS agreement, such as the goal of promoting the creation and dissemination of technology and protecting the vital interests of people's health and nutrition.<sup>26</sup> It particularly emphasizes the Doha Declaration on the TRIPS Agreement and Public Health, balancing the interests between intellectual property owners and the public, preventing the abuse of intellectual property rights, and the right to determine parallel import policies.<sup>27</sup> The agreement requires transparency in the legal provisions, procedures, and administrative decisions applicable to the protection and enforcement of intellectual property rights on the internet.<sup>28</sup> It also calls for the disclosure of information on registered applications and protection certificates for industrial property rights and plant varieties.<sup>29</sup>

New-generation FTAs also require stricter enforcement through civil and administrative procedures and remedies, especially criminal provisions and penalties.<sup>30</sup> On the one hand, regulations in the new-generation FTAs focused on civil judicial procedures such as the CPTPP and the RCEP. As can be seen from Article 18.74 of CPTPP and from Article 11.59 of RCEP, “Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter”. On the other hand, the new-generation FTAs required member countries to provide criminal procedures and penalties as well. As can be seen from Article 18.77 of CPTPP and Article 11.74 of RCEP, “Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale”. Furthermore, the CPTPP provides for criminal enforcement even if the owner or the third party does not request. This can be regarded as a well-rounded mechanism to handle intellectual property violations.

### 2.3.2. Law in action: In reality

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<sup>21</sup> Do G. N. (2022), “Implementing Intellectual Property Provisions in New-Generation Free Trade Agreements in the EU”, *VNU Journal of Science: Legal Studies*, Vol. 38, No. 3, pp. 53-63.

<sup>22</sup> Ipvietnam (2022), *Cam kết về sở hữu trí tuệ trong các Hiệp định thương mại tự do*, available at <https://ipvietnam.gov.vn/documents/20195/1488814/CAM+KET+SHTT-trong+FTA+%28web%29.pdf/55ccd0fd-11d6-4d20-8ad9-3393140bae58>, accessed on 8/9/2023.

<sup>23</sup> Do G. N. (2022), “Implementing Intellectual Property Provisions in New-Generation Free Trade Agreements in the EU”, *VNU Journal of Science: Legal Studies*, Vol. 38, No. 3, pp. 53-63.

<sup>24</sup> VCCI (2016), *Summary of Vietnam-EU Free Trade Agreement (EVFTA)*, available at <https://wtocenter.vn/chuyen-de/12781-summary-of-vietnam-eu-free-trade-agreement-evfta>, accessed on 8/9/2023.

<sup>25</sup> Fabris, A. (2017), *Intellectual property law in Vietnam: the trademark protection, a comparison between the Vietnamese and EU systems*, available at <https://tesi.eprints.luiss.it/18696/>, accessed on 8/9/2023.

<sup>26</sup> Do G. N. (2022), “Implementing Intellectual Property Provisions in New-Generation Free Trade Agreements in the EU”, *VNU Journal of Science: Legal Studies*, Vol. 38, No. 3, pp. 53-63.

<sup>27</sup> Fabris, A. (2017), *Intellectual property law in Vietnam: the trademark protection, a comparison between the Vietnamese and EU systems*, available at <https://tesi.eprints.luiss.it/18696/>, accessed on 8/9/2023.

<sup>28</sup> *Ibid.*

<sup>29</sup> Phan Q. N. (2020), “Quy định về sở hữu trí tuệ trong CPTPP và những tác động đến chuyển giao công nghệ, đổi mới sáng tạo”, *Science and Technology Information Journal*, 06A.

<sup>30</sup> Ngo A., “Enforcement of Intellectual Property Rights in new generation of FTAs: Opportunities and Challenges for Vietnamese enterprises”

In Vietnam, on 16 June 2022, the Law on Amending and Supplementing the IP Law (Law on Amending and Supplementing) was approved by the National Assembly. The IP Law was considered as the most comprehensive change ever with 102 amended and supplemented articles, many of which were modified to be compatible with legal regulations in the new-generation FTAs. For example, Article 212 of the Law on Amending and Supplementing stated that “Individuals and commercial legal entities that commit acts of infringing intellectual property rights that have all the elements constituting a crime will be prosecuted for criminal liability”. Besides, Article 214 of the Law on Amending and Supplementing stated that “Organizations and individuals that commit acts of infringing intellectual property rights specified in Clause 1, Article 211 of this Law are subject to sanctions and remedial measures according to the provisions of law on handling administrative violations”. Therefore, it is obvious that the legal framework regarding intellectual property enforcement in Vietnam provides for both administrative, civil and criminal procedures which are made to comply with regional trade agreements.

### 2.3.3. Gaps

Certain challenges related to intellectual property in Vietnam have been noted. Trademark registration is a time-consuming process, and complaint procedures are slow. Intellectual property infringements, particularly in residential and commercial areas, remain prevalent.<sup>31</sup> Vietnam's enforcement system for intellectual property rights, although designed reasonably, is still complex and not adequately effective in enabling rights owners to take actions against infringements.<sup>32</sup> Concerns have been raised by investors regarding the limited knowledge and experience of officials responsible for Vietnam's local intellectual property sector, as well as the enforcement of sanctions according to local regulations.<sup>33</sup> Although Vietnam's laws fundamentally meet the obligations of policy transparency and enforcement information under the EVFTA and CPTPP, the requirement for expanded disclosure of information to include all effective administrative decisions and information related to the examination of industrial property registration applications remains a challenge.<sup>34</sup>

Furthermore, in reality, the enforcement of intellectual property in Vietnam seems to be as different as chalk and cheese.

Firstly, disputes settlement regarding intellectual property is mainly through negotiation while intellectual property infringement cases handled in Court account for a mere number.<sup>35</sup> The number of businesses choosing the form of negotiation to settle disputes accounted for 57.83%.<sup>36</sup> This form of dispute resolution is relatively convenient, flexible and inexpensive which is widely preferred by individuals and organizations in Vietnam. However, negotiation has not been regulated by any legal framework, thereby making it difficult for state agencies to receive, manage and handle intellectual property violations.<sup>37</sup> From 2016 to September 2021,

<sup>31</sup> Fabris, A. (2017), *Intellectual property law in Vietnam: the trademark protection, a comparison between the Vietnamese and EU systems*, available at <https://tesi.eprints.luiss.it/18696/>, accessed on 8/9/2023.

<sup>32</sup> Ipvietnam (2014), *Annual Report on Intellectual Property Activities of Vietnam*, available at <https://ipvietnam.gov.vn/documents/20195/1374148/BCTN+SHTT+2021+trang+%C4%91%C3%B4i.pdf/1f4a5e23-818c-474f-9175-2b1c464a22c7>, accessed on 8/9/2023.

<sup>33</sup> Ipvietnam (2022), *Cam kết về sở hữu trí tuệ trong các Hiệp định thương mại tự do*, available at <https://ipvietnam.gov.vn/documents/20195/1488814/CAM+KET+SHTT-trong+FTA+%28web%29.pdf/55ccd0fd-11d6-4d20-8ad9-3393140bae58>, accessed on 8/9/2023.

<sup>34</sup> Do G. N. (2022), “Implementing Intellectual Property Provisions in New-Generation Free Trade Agreements in the EU”, *VNU Journal of Science: Legal Studies*, Vol. 38, No. 3, pp. 53-63.

<sup>35</sup> Tu P., Le A. (2022), “Real situation of dispute settlement on Intellectual Property Rights, Technology Transfer among individuals and organizations with profit purposes”, available at <https://lsvn.vn/thuc-trang-giai-quyet-tranh-chap-ve-quyen-so-huu-tri-tue-chuyen-giao-cong-nghe-giua-ca-nhan-to-chuc-co-muc-dich-loi-nhuan1657810468.html>, accessed on 7/8/2023.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

Vietnamese Courts resolved 40 civil cases and 150 commercial business cases.<sup>38</sup> The number of intellectual property infringement cases that have been criminally handled is not much, with only 21 cases resolved between 2016 and 2021. This limited number of cases show that intellectual property right holders in Vietnam are still afraid of filing lawsuits in court. The real situation stems from (i) the inadequacies of procedural law in resolving disputes regarding intellectual property rights, and (ii) the lack of professional capacity of adjudicating officers, as a result, the court has not really become a convincing and preferred resolution channel for intellectual property right disputes.<sup>39</sup>

Secondly, although legal legislation regulated the enforcement of intellectual property can be handled by civil, criminal and administrative measures, most of the cases in this field applied administrative measures.<sup>40</sup> In 2020, the authorities sanctioned more than 1,460 cases of intellectual property infringement, of which about 1,300 cases were handled through administrative measures, with a total fine of over 25 billion VND.<sup>41</sup> In 2022, administrative sanction in handling industrial property rights infringement continued to be mostly applied by local authorities. This is reflected in a sharp increase in both the number of cases handled and the amount of fines. There were 1,430 cases of trademark infringement handled with a total fine of more than 18 billion VND, an increase of nearly 30% in the number of cases and 35% in the total amount of fines compared to 2021 (1,109 cases with a total fine of 13,294,029,000 VND).<sup>42</sup> The settlement of disputes as regards intellectual property rights infringements by civil measures in court only accounts for a very low percentage compared to the tens of thousands of violation cases handled by administrative measures which focuses mainly on copyright (83.5%), disputes in the field of industrial property account for a very low proportion (5.5%).<sup>43</sup> This situation might result from the fact that:<sup>44</sup> (i) The publicity of the court principle makes the subjects feel apprehensive because their information might not be guaranteed confidentially; (ii) The dispute settlement process takes a lot of time and expenses. According to Vietnam civil procedure law, the time limit for preparing for first instance trial for business and commercial cases is 2 months from the date the Court accepts the case. For the complexity of cases related to intellectual property, the resolution time may be even longer and (iii) Regarding the issue of determining damage caused by acts of intellectual property rights infringement, it is difficult to determine the exact level of damage including loss of honor, dignity, prestige and reputation.

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<sup>38</sup> Official page for jury trial and court decisions, available at <https://congbobanan.toaan.gov.vn/6tatcvn/Thong-ke>, accessed on 7/8/2023.

<sup>39</sup> Nguyen L. (2020), “The need of establishing an Intellectual Property Court in Vietnam”, *Journal of Legislative Studies*, available at <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210379>, accessed on 7/8/2023.

<sup>40</sup> Tran L. (2019), “Enforcement of intellectual property rights in the context of the effective EVFTA”, presented on the 27 August 2019 Conference on “Vietnam – EU Free Trade Agreement: Important commitments on intellectual property and things to notice in mind”, available at [https://trungtamwto.vn/file/18922/3\\_Thuc%20thi%20EVF](https://trungtamwto.vn/file/18922/3_Thuc%20thi%20EVF), accessed on 7/8/2023.

<sup>41</sup> Tu P., Le A. (2022), “Real situation of dispute settlement on Intellectual Property Rights, Technology Transfer among individuals and organizations with profit purposes”, available at <https://lsvn.vn/thuc-trang-giai-quyet-tranh-chap-ve-quyen-so-huu-tri-tue-chuyen-giao-cong-nghe-giua-ca-nhan-to-chuc-co-muc-dich-loi-nhuan1657810468.html>, accessed on 7/8/2023.

<sup>42</sup> Intellectual Property Office of Vietnam, “Intellectual Property Activities Annual Report 2022”, available at <https://www.ipvietnam.gov.vn/documents/20195/1481767/BCTN+SHTT+2022+IPVIETNAM.pdf/968534c0-d809-4fbc-9df3-12fd436cadda>, accessed on 7/8/2023.

<sup>43</sup> Tran L. (2019), “Enforcement of intellectual property rights in the context of the effective EVFTA”, presented on the 27 August 2019 Conference on “Vietnam – EU Free Trade Agreement: Important commitments on intellectual property and things to notice in mind”, available at [https://trungtamwto.vn/file/18922/3\\_Thuc%20thi%20EVF](https://trungtamwto.vn/file/18922/3_Thuc%20thi%20EVF), accessed on 7/8/2023.

<sup>44</sup> Tu P., Le A. (2022), “Real situation of dispute settlement on Intellectual Property Rights, Technology Transfer among individuals and organizations with profit purposes”, available at <https://lsvn.vn/thuc-trang-giai-quyet-tranh-chap-ve-quyen-so-huu-tri-tue-chuyen-giao-cong-nghe-giua-ca-nhan-to-chuc-co-muc-dich-loi-nhuan1657810468.html>, accessed on 7/8/2023.

Thirdly, as a consequence of relying heavily on administrative enforcement actions, Vietnam consistently failed to deter widespread counterfeiting and piracy.<sup>45</sup> Most cases of intellectual property rights infringement focus mainly on goods with counterfeit trademarks, geographical indications and goods infringing on industrial designs.<sup>46</sup> The main forms of sanction applied are fines and temporary suspension of production and business activities of violating goods and services; confiscate infringing material evidence and means or force the removal of infringing elements on goods and means of business or destroy infringing goods and means of business.<sup>47</sup> For cases of intellectual property rights infringement showing signs of crime, competent authorities conducting proceedings only prosecute the crime of producing and trading counterfeit goods instead of the crime of infringing on industrial property rights or copyright infringement.<sup>48</sup>

Fourthly, the effectiveness of administrative measures is also relatively limited because of the incoordination among a lot of state authorities involved such as the customs, specialized inspectors, market management authority and economic police. From 2018 to September 2021, the market management authority alone has checked over 16,000 cases of infringement of industrial property rights and handled nearly 16,000 cases with fines of over 150 billion VND.<sup>49</sup> The National Office of Intellectual Property Viet Nam participated in 09 lawsuits, responded to 24 official documents from court, attended 10 hearings or conciliation sessions with applicants, related third parties, or related parties concerning the administrative decisions issued by The National Office of Intellectual Property Viet Nam at province-level courts.<sup>50</sup> In fact, it is difficult to determine the most competent and relevant authorities and there is no close and effective coordination between these organizations and authorities. The National Office of Intellectual Property (NOIP) is the state management agency for intellectual property, not the enforcement agency for intellectual property rights.<sup>51</sup> However, from the perspective of being one of the state management agencies assigned the function of operating the intellectual property protection system in general and the industrial property system in particular, the NOIP has considerably contributed to Vietnam's intellectual property rights enforcement activities<sup>52</sup>. In addition to building mechanisms, policies and legal framework on intellectual property, the NOIP always promptly supports intellectual property enforcement agencies to explain and guide the

<sup>45</sup> Office of the United States Trade Representative, 2022 Special 301 Report, available at <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>, accessed on 7/8/2023. Special Report 301 is an annual assessment of the state of intellectual property enforcement and protection among countries that are U.S. trading partners.

<sup>46</sup> Tran L. (2019), “Enforcement of intellectual property rights in the context of the effective EVFTA”, presented on the 27 August 2019 Conference on “Vietnam – EU Free Trade Agreement: Important commitments on intellectual property and things to notice in mind”, available at [https://trungtamwto.vn/file/18922/3\\_Thuc%20thi%20EVF](https://trungtamwto.vn/file/18922/3_Thuc%20thi%20EVF), accessed on 7/8/2023.

<sup>47</sup> *Ibid*.

<sup>48</sup> Le V. (2022), “Real situation of intellectual property rights infringement and efforts to increase effectiveness in enforcement of intellectual property rights in Vietnam”, available at <https://s3.amazonaws.com/documents.lexology.com/1415e225-a716-4bd3-9ae5-3d246c2ca319.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1693674373&Signature=VqUI6pTpVoMtLovmF6%2BWYHfgGel%3D>, accessed on 7/8/2023.

<sup>49</sup> Nguyen, V. (2022), “Enforcement of intellectual property rights is not as effective as expected”, available at <https://thoibaotaichinhvietnam.vn/thuc-thi-quyen-so-huu-tri-tue-hieu-qua-chua-nhu-mong-muon-105514.html>, accessed on 7/8/2023.

<sup>50</sup> Intellectual Property Office of Vietnam, “Intellectual Property Activities Annual Report 2022”, available at <https://www.ipvietnam.gov.vn/documents/20195/1481767/BCTN+SHTT+2022+IPVIETNAM.pdf/968534c0-d809-4f8e-9df3-12fd436eadda>, accessed on 7/8/2023.

<sup>51</sup> Nguyen, V. (2022), “Enforcement of intellectual property rights is not as effective as expected”, available at <https://thoibaotaichinhvietnam.vn/thuc-thi-quyen-so-huu-tri-tue-hieu-qua-chua-nhu-mong-muon-105514.html>, accessed on 7/8/2023.

<sup>52</sup> Ha L. (2022), “Improving the effectiveness of Intellectual Property Rights enforcement in Vietnam”, available at [https://ipvietnam.gov.vn/tin-tuc-su-kien/-/asset\\_publisher/7xsjBfqhCDAV/content/nang-cao-hieu-qua-hoat-ong-thuc-thi-quyen-so-huu-tri-tue-o-viet-nam](https://ipvietnam.gov.vn/tin-tuc-su-kien/-/asset_publisher/7xsjBfqhCDAV/content/nang-cao-hieu-qua-hoat-ong-thuc-thi-quyen-so-huu-tri-tue-o-viet-nam), accessed on 7/8/2023.



application of intellectual property laws so that the application is accurate and consistent across the country.<sup>53</sup> This may generate overload status for this authority. At the moment, there are no courts in Vietnam specialized in intellectual property and the number of intellectual property rights qualified judges is limited.<sup>54</sup> If Vietnam continues to apply the procedure as prescribed by civil procedure law in resolving intellectual property rights disputes, it will not be possible to resolve the case in this field efficiently.

## **2.4.Labour**

### *2.4.1. Legal texts of labour regulations in new-generation FTAs: Law in books*

Regarding the term ‘labour provisions’ in the FTA, there are many different interpretations, including the ILO definition (2017) which denotes labour provisions in a broad sense, including (i) any labour standards or conditions and minimum employment terms, (ii) any mechanism to promote compliance with labour standards, such as a permanent or temporary consultative body to promote dialogues; and (iii) frameworks for cooperation, such as technical assistance, exchange of good practices or practices, training, etc.<sup>55</sup>

There are many ways to classify labour regulations in an FTA. One way is to divide labour regulations into four groups, including technical assistance and capacity building, sanctions, initiatives and supervision.<sup>56</sup> Specifically, the first group – technical assistance and capacity building – may include requests to amend labour laws, increase the budget for labour, train the labour inspectorate, etc. The second group – sanctions – covers measures to ensure the implementation of labour commitments if violations occur, including fines, suspension of commercial commitments... The third group – initiatives – consists of business initiatives for economic activities such as increasing import quotas... The fourth group - supervision – are characterized by mechanisms for cooperation, dialogues, exchange, and review of compliance with labour commitments in the FTA. Labour provisions in new-generation FTAs of Vietnam follow either of the two models: US model or EU model.

Labour provisions in the new-generation FTAs converge in the following main points:

- Firstly, in terms of the location, labour regulations are included in the main agreement, instead of in a side-agreement or side-agreement attached to the main FTA. In addition, labour regulations are also located in a single chapter (i.e. Labour Chapter or Trade and Sustainable Development Chapter) instead of being integrated in other chapters. It is very likely that in the future, this approach will change as labour terms are regulated in various chapters of the FTA.
- Secondly, in terms of substantive provisions, these FTAs all have commitments to core ILO labour standards, including freedom of association, effective recognition of collective bargaining, and abolition of forced and compulsory labour, elimination of discrimination in relation to labour and employment, and prevention of weakening of labour regulations. Another similarity lies in the commitment to respect internationally recognized labour rights and the reference to the ILO Declaration on Fundamental Rights and Principles at Work (1998) and the follow-up documents.
- Thirdly, in terms of procedural regulations, these FTAs have the participation of civil society in the negotiation and implementation of labour terms; cooperative activities to strengthen the employment terms; and dispute settlement proceedings, including inter-governmental dialogues, consultations (all of which begin with consultations), and panels.

In contrast, in terms of labour provisions, new-generation FTAs differ in three main aspects:

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<sup>53</sup> *Ibid.*

<sup>54</sup> Nguyen L. (2020), “The need of establishing an Intellectual Property Court in Vietnam”, *Journal of Legislative Studies*, available at <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210379>, accessed on 7/8/2023.

<sup>55</sup> ILO (2017), “Handbook on assessment of labour provisions in trade and investment arrangements”, *Studies on Growth with Equity* (Geneva, ILO), p. 11.

<sup>56</sup> *Ibid.*, p. 675.

- Firstly, in terms of positions, although they are all included in the main agreement, labour regulations may occupy a separate chapter entirely or only part of a chapter. For example, the CPTPP Agreement following the US model has a separate chapter on labour: Chapter 19 – Labour. The labour and environment provisions in this agreement are also located in two different chapters; does not regulate labour in the Trade and Sustainable Development chapter. In other words, the US-modelled FTAs in the formulation of labour regulations do not regulate/consider labour as part of the sustainable development goals. In contrast, in the remaining FTAs which are influenced by the EU in formulating labour regulations, labour, along with the environment, is regulated in the Trade and Sustainable Development Chapter. The divergence derives from the difference in the trade policies among the FTA partners in terms of the labour regulation model in the FTAs. This affects the interpretation of labour regulations in these FTAs. This is because the position of labour regulations constitutes the context of these regulations, which is a factor to be considered when interpreting the law. In particular, with a position in a separate chapter such as in the CPTPP, these regulations focus on reporting and monitoring labour issues in the state signatories of the agreement. Meanwhile, if it is only part of the Trade and Sustainable Development Chapter (as in the rest of the FTAs), labour regulations will focus on monitoring and reviewing impacts on sustainable development, including the impact on labour, of the entire FTA.
- Secondly, in terms of substantive provisions, while FTAs influenced by the US (such as the CPTPP Agreement) have no commitments to sign or ratify core ILO conventions, or effectively implement the above-mentioned conventions when these conventions have come into force, the FTAs adopting the EU's approach have these provisions. Similar to the above, the reason can be explained as follows: with FTAs influenced by the US FTA's labour patterns, the US ratifies only two out of the eight core ILO conventions and also prioritizes efforts to improve domestic/national legal processes for labour rights enforcement.
- Thirdly, in terms of procedural provisions, new-generation FTAs are different in terms of whether or not it is possible to apply the dispute settlement mechanism (DSM) in other commercial issues to labour disputes? Contrary to the US-influenced FTAs, which provide the same labour DSM as that in other chapters of this Agreement, FTAs influenced by the EU model apply a DSM different from that for trade disputes. In other words, if a labour dispute arising, for example, from the CPTPP Agreement is not resolved by consultation, it will be settled according to the same process and procedure as other traditional trade issues. In addition, if the award is not enforced, the follow-up procedures and penalties are essentially the same as in other traditional commercial matters. In contrast, FTAs following the EU's model all provide that the DSM of traditional trade issues will not apply to labour disputes; the alternative is a “soft” DSM based on consultations between the state disputants.

#### 2.4.2. *Law in action: In reality*

Vietnam's labour commitments in its new-generation FTAs have basically been transformed into its domestic labour law. The Labour Code 2019 – the new legislation enacted in 2019 – contains provisions that better protect fundamental labour rights and principles, including non-discrimination and gender equality, the abolition of forced and child labour, collective agreements and freedom of association. The revised regulations relate to three basic groups of labour standards, including freedom of association and collective bargaining; equality and non-discrimination in labour; protection of juvenile workers and elimination of child labour.

As to the ***freedom of association***, this right has been enshrined in Constitutions of Vietnam since the country's independence date. For example, in Article 25 of the Constitution of Vietnam 2013, freedom of association is also recognized as a basic right of citizens. Besides, it has been legalized in a series of relevant legislations and delegated legislations. The Labour Code 2019 has fundamentally improved a number of issues related to employees and employers, in which, prohibits the interference of the employer in the operation of the labour representative organization. Besides, for the first time, it legalizes the role in representing and protecting legitimate rights and interests and participating in building progressive, harmonious and stable labour relations of the Vietnam Chamber of Commerce and Industry (VCCI), the Vietnam Union

of Cooperatives and other representative organizations of employers, expands the employer's right to unilaterally terminate the labour contract and to enter into multiple definite-term labour contracts for elderly employees and foreign workers. The Labour Code stipulates many new points on dialogue at the workplace, collective bargaining, and collective labour agreements related to employees, employers, representative organizations of employers and representative organizations of employees. Vietnam is committed to vest employees the right to establish representative organizations at enterprises. After being self-established, this organization has two options: one is to voluntarily join the Vietnam General Confederation of Labour; the other is to register with the Ministry of Labour - Invalids and Social Affairs to be allowed to operate independently. One of the most important supplements of the Labour Code is the provision on the establishment of workers' organizations at enterprises not belonging to the Vietnam General Confederation of Labour in order to promote and improve the effectiveness of representation and protection of workers' rights and interests in labour relations. This is also a step forward in fulfilling its obligations under the ILO Convention (Convention 98), the Convention on Economic, Social and Cultural Rights (ICESCR, 1966) and commitments on labour and trade unions in the EVFTA.

In fact, Vietnamese enterprises are implementing commitments on labour and trade unions in the EVFTA, allowing workers to freely establish and join organizations representing workers and exercise the right to collective bargaining.

Regarding *wages*, the State does not directly intervene in the salary policy of enterprises; wages are determined on the basis of negotiation and agreement between the parties and enterprises are proactive in building salary scales, payrolls and labour norms...

Regarding *labour discrimination eradication*, the new Labour Code has expanded the scope of work for which workers can go on strike, added provisions against forced labour, and added provisions on anti-discrimination in the workplace. This is a fundamental and comprehensive amendment and supplement bringing Vietnam's labour law more in line with international labour standards, serving Vietnam's international integration process. Implementing the commitments in the new-generation FTAs and complying with the provisions of the law, Vietnam is actively executing international labour standards. Vietnamese businesses are gradually reducing discrimination in recruitment, employment and income.<sup>57</sup>

Regarding *strikes*, the state management has had innovations, especially the close attention and direction of the Government to employees and trade unions. In addition, many businesses are aware of their social responsibility in taking care of employees' lives. Enterprises have better implemented the rights for employees according to the law. The trade union organization is doing better at protecting the legitimate rights of workers at the grassroots. When employees face problems, the trade union has researched, recorded and proposed recommendations to enterprises to solve together. At the same time, trade unions at all levels, especially the Vietnam General Confederation of Labour, held orientation conferences and training on ways to reduce work stoppages and strikes. When there are pressing cases and concerns, the trade union has coordinated with the employer to solve together and create a harmonious labour relationship. To do this, trade unions at all levels have actively increased awareness among workers, thereby helping them better understand their rights and duties in labour relations. Therefore, employees can limit unnecessary conflicts, especially in the working environment. As a result, work stoppages and strikes throughout the country tended to decrease. According to statistics of the Vietnam General Confederation of Labour, the number of strikes in Vietnam has decreased continuously in recent years, from 329 in 2017 to 214 and to 120 in 2018 and 2019 respectively. In the first 2 months of 2022, there were 30 strikes, *i.e.* less than the same period in 2021 (35).<sup>58</sup>

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<sup>57</sup> Tran, Thi Bao Khanh (2022), "Implementing commitments on labour and trade unions in CPTPP and EVFTA: Current situation and solutions", *Review of Industry and Commerce*, No. 5, 3/2022.

<sup>58</sup> <https://vnexpress.net/phia-sau-nhung-cuoc-dinh-cong-o-mien-trung-4428821.html>, accessed on 4<sup>th</sup> September 2023.

During the first quarter of 2023, there were 23 collective work stoppage (decreased by 64 from the number at the same period last year) with the involvement of some 7,800 employees.<sup>59</sup>

Regarding *child labour*, in general, Vietnam has developed regulations to protect and care for children relatively fully and in accordance with international law. Vietnam is the first country in Asia and the second in the world to ratify the United Nations Convention on the Rights of the Child. Viet Nam has also ratified ILO Convention No. 182 on the Prohibition and Immediate Action to Eliminate the Worst Forms of Child Labour and ILO Convention No. 138 on Minimum Working Age. The solutions of the Vietnamese Government include popularization of general education, illiteracy eradication, support for ethnic minority children, children with disabilities, children in poor households and special circumstances, strengthening of policies on social security and poverty reduction and mitigation of the negative impact of the COVID-19 pandemic... The rate of child labour in Vietnam is not high and decreases over the years from 15.5% in 2012 to 9.1% in 2018.<sup>60</sup>

#### 2.4.3. Gaps

At the **macro-level**, regarding the definition of *collective labour disputes*, the limitation of collective labour disputes to those with representative organizations of employees as a disputant produces problems. The Code denotes it as labour disputes between one or several representative organizations of employees and the employer or one or several representative organizations of employers. Although the recognition of the role of the employees' representative organizations as a disputant in collective labour disputes is consistent with other amendments in the Code, such as the rights to establish and participate in labour representative organizations, collective labour arrangements and collective bargaining, the Code fails to cover the same role of the labour collective in collective labour disputes given the fact that the two terms of "representative organizations of employees" and "labour collective" do not coincide. Literally, "labour collective" denotes a group of employees with a labour relationship *inter se* within a certain scope of employment use.<sup>61</sup> Labour collective may share in common rights and interests regarding working hours, rest hours, minimum wages, fringe benefits... stipulated in labour arrangements; therefore, labour collective does not necessarily involve representative organizations of employees and, in practice, there are labour collectives without representative organizations of employees. The problems arising therefrom include:<sup>62</sup>

- If the dispute is between a group of labourers without their representative organizations, it is not classified as collective labour disputes and therefore must be settled through the procedures for individual labour disputes. In case where the number of involved labourers is huge, the application of the individual labour dispute procedure will be problematic. The number of such cases might be huge as in many enterprises there is no grass-root representative organizations of employees.
- If the dispute involves a group of labourers with their representative organizations, however, for some reasons, the organizations do not act on behalf of the labour collective or of the conflicting position compared to those of the labour collective then the dispute must follow the individual labour dispute settlement procedure too.
- If the dispute is over a labour issue involving multiple labour collectives in multiple production units such as over working conditions and quarantines in industrial zones or export processing zones however the representative organizations of employees fail to act on

<sup>59</sup> <http://www.congdoan.vn/tin-tuc/cong-nhan-360-500/ca-nuoc-xay-ra-23-cuoc-ngung-viec-tap-the-xuat-phat-tu-quan-he-lao-dong-808995.tld>, accessed on 4<sup>th</sup> September 2023.

<sup>60</sup> <https://tuoitre.vn/ti-le-lao-dong-tre-em-o-viet-nam-giam-theo-tung-nam-20220527142020847.htm>, accessed on 21<sup>st</sup> July 2023.

<sup>61</sup> <https://thuvienphapluat.vn/tmpl/1451/Tap-the-lao-dong?tab=0> accessed on 22<sup>nd</sup> July 2023.

<sup>62</sup> Dang, Thi Phuong Hoa (2022), "Implementation of Vietnam's labour commitments in EVFTA", *Conference on "2-year implementation of EVFTA: Socio-economic impacts and issues for Vietnam"*, Hanoi, available at <https://trungtamwto.vn/file/21965/9.-thu-thi-cam-ket-ve-ld-cua-vn.pdf> accessed on 22<sup>nd</sup> July 2023.



their behalf then it is not classified as collective labour disputes and its settlement as individual labour disputes is not appropriate either.

In practice, there are multiple disputes as above mentioned.

Regarding **child labour**, as to the *minimum age threshold* to join labour forces, the Labour Code fixes at 15 years of age which is in line with the relevant ILO Convention; however, there is no specification of minimum age thresholds for specific occupations in which child labour is either allowed or prohibited.

As to *working hours for child labour*, according to the ILO Minimum Age Recommendation (146), overtime working hours for child labour is prohibited to give them sufficient time for education, leisure and other activities; however, the Labour Code 2019 of Vietnam still allows maximum 4 hours per day and 20 hours per week for child labour under 15 years old (and 8 hours per day and 40 hours per week for children from full 15 years old and under 18 years old).<sup>63</sup> It is arguable that such domestic regulation is not in consistency with the international regulation.

As to *resting hours for child labour*, the general rule on resting hours is valid against labourers as a whole, *i.e.* no special one is applicable to child labour.

As to *occupations prohibited from using child labour*, there is no prohibition against some fishery and agricultural occupations hazardous to child labour, such as ploughing or raking, in consideration of their specialized working conditions and working standards. In addition, it is unclear whether the fish catching and processing fall into the sea-faring occupation to be prohibited from using child labour given their workload burdens and hazards. Although 69 occupations and 06 workplaces detrimental to the physical, mental and personality development of child labour – a huge expansion compared to the preceding one<sup>64</sup> - has been listed out,<sup>65</sup> they are neither all-inclusive nor comprehensive.

As to *inspection* of violations of child labour rules, at present, there is no specialized force of child labour inspectors, *i.e.* the general labour inspectors take charge of both general and child labour surveillance and inspection. Meanwhile, two thirds of children are now working in 21 occupations in various sectors, including agriculture, fishery, industry and services run by tremendous micro-, small- and medium-sized businesses.<sup>66</sup> However, the force of labour inspectors are insufficient in quantity and therefore hard to evaluate these cases.

As to *settlement* of violations of child labour rules, pursuant to the existing rules, labour violations are theoretically subject to civil, administrative and criminal remedies; however, practically, few criminal claims are submitted given the stringent and problematic burden of proof. For example, it is complicated to prove constituent elements of crimes like child maltreatment, begging or vending... Another example involves the conflict among legislations: while the Criminal Code makes it an offence for an employer to use less-than-16-year-old child labourers for burdensome, dangerous or hazardous occupations,<sup>67</sup> the Labour Codes defines child labourers as those under 18 years of age.<sup>68</sup> Therefore, it is a lacuna when it comes to the use of

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<sup>63</sup> Article 146, Labour Code of Vietnam 2019.

<sup>64</sup> Circular No. 10/2013/TT-BLĐTBXH dated 10 June 2013 by Minister of Labour, Invalids and Social Affairs on issuance of the list of occupations and workplaces prohibited from using minor labourers.

<sup>65</sup> Appendices III and IV, Circular No. 09/2020/TT-BLĐTBXH dated 12 November 2020 by Minister of Labour, Invalids and Social Affairs on detailed regulations and guidance on the implementation of the Labour Code on minor labourers.

<sup>66</sup> Dang, Thi Phuong Hoa (2022), “Implementation of Vietnam’s labour commitments in EVFTA”, *Conference on “2-year implementation of EVFTA: Socio-economic impacts and issues for Vietnam”*, Hanoi, available at <https://trungtamwto.vn/file/21965/9.-thu-thi-cam-ket-ve-ld-cua-vn.pdf> accessed on 22<sup>nd</sup> July 2023.

<sup>67</sup> Article 296, Criminal Code of Vietnam 2015.

<sup>68</sup> Article 143, Labour Code of Vietnam 2019.

child labour from full-16-year-old to under-18-year-old in burdensome, dangerous or hazardous occupations. Furthermore, monetary penalties are of low level to deter violations in employment.<sup>69</sup>

In some cases, the regulation on *labour protection favours the employer*. The opportunities for the unemployed to get hired and paid are limited. The access to the labour market after occupation shifting is even more narrowed. The right to bargaining for salary increases and social security guarantee is not exercised properly in practice. The only way out is being on a strike or job quitting which in turn brings about detriments to employees' rights and social equality. Furthermore, the roles of employers' representative organizations, such as the Vietnam Chamber of Commerce and Industry (VCCI), Vietnam Cooperative Alliance (VCA), are also confused. These organizations also are more experienced in policy lobbying and trade-union maintenance than in labour dispute settlement, let alone the fact that they are even directed and supported by the states. Therefore, at points, these organizations do not act on behalf of any labour disputant, neither the employer nor the employee.

As to the *region-based minimum wage*, though increasing, it fails to cover the bare life necessities and needs of the employees. Although theoretically the objective of the region-based minimum wage is to ensure the "minimum living standard", to cover the bare needs of the employees, including essentials, nutrition, housing, health care, transportation, education... and to set a bottom threshold for the salary negotiation between the employer and the employee, in practice, it falls short. Given the fact that Vietnam's trade competitiveness remains cheap labour, not human-resource quality or technologies, region-based minimum wage rises threaten this trade advantage and therefore its social function is not prioritized over its trade-related economic function.

As to the *unemployment insurance*, its coverage in Vietnam is negligible: only 20% of the workforce has participated in unemployment insurance.<sup>70</sup>

As to *labour unions*, the number of trade unions outside the Vietnam General Confederation of Labour is 0 by July 2023. In other words, the right to freedom of association has been *de jure* recognized and legalized; however, its implementation *de facto* falls well behind. Although the Labour Code 2019 has stipulated the freedom of association as fundamental rights of labourers in Vietnam, by August 2023, neither delegated legislations nor case law in Vietnam explain or implement in detail the principle.

As to *labour union effectiveness*, all trade unions are now members of the Vietnam General Confederation of Labour; but they serve different mandates, functions and concerns and therefore can be in conflict. In enterprises, certain trade unions on the one hand work closely with the entrepreneur management and on the other hand represent the employees and fights for their interests. However, the latter at some point is not given more weight than other functions and duties of the trade union which is detrimental to its efficiency.

As to *strikes and work stoppage*, all of the strikes or work stoppages are spontaneous, *i.e.* not organized by trade unions, and fail to comply with the stipulated procedure. The number of collective work stoppage and spontaneous strikes was 591 nationwide from 2018.<sup>71</sup> In Quarter

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<sup>69</sup> Khuc, Thi Trang Nhung and Pham, Thi Huong Giang (2022), *Improvement of law on labour child employment in Vietnam*, available at <https://vksndtc.gov.vn/tin-tuc/cong-tac-kiem-sat/hoan-thien-phap-luat-ve-su-dung-lao-dong-tre-em-o--d10-t10259.html> assessed on 25th July 2023.

<sup>70</sup> Dang, Thi Phuong Hoa (2022), "Implementation of Vietnam's labour commitments in EVFTA", *Conference on "2-year implementation of EVFTA: Socio-economic impacts and issues for Vietnam"*, Hanoi, p. 122, available at <https://trungtamwto.vn/file/21965/9.-thu-thi-cam-ket-ve-ld-cua-vn.pdf> accessed on 22<sup>nd</sup> July 2023.

<sup>71</sup> <https://thanhnien.vn/dinh-cong-tu-phat-tang-dot-bien-1851452600.htm#> (accessed on 01/8/2023).

1/2022 only, spontaneous strikes rocketed by 40% from the same period of the previous year.<sup>72</sup> Although generally speaking the number of collective work stoppage and strikes tends to reduce recently, for instance, from 214 in 2018 to 107 in 2021, it was 64 in Quarter 1/2022 only, increasing by 40% (compared to 44) from the same time in 2021.<sup>73</sup> The majority happened in export-oriented sectors such as textile and garment (40%), shoe leather (15%), electronics (10%), wood processing (7%) and others (28%).<sup>74</sup> Noticeably, most of them take place in FDI enterprises, such as Korea-, China-, Taiwan- and Japan-owned enterprises. Strikes and stoppages are mainly due to salary and welfare issues for employees ranging from disagreements with the salary payment mechanism of the enterprise, especially on holidays and New Year, late payment of wages or bonuses, payment of unreasonable salaries and bonuses, unfair Tet holiday bonuses, avoidance of social insurance and health insurance payment for employees, organization of overtime working hours in violation of the provisions of the law, harsh management and rough treatment of employees and poor-quality food at workplace...

At the **micro-level**, both employers and employees occasionally fail to comply with labour law, rules and regulations. Both parties to labour contracts at times do not obey law on labour safety. In 2022, the number of labour accidents in Vietnam was 7,718 cases, increasing by more than 18.66% compared to year 2021 with 7,923 serious casualties.<sup>75</sup>

As to **labour contracts**, in practice, lot of employers avoid concluding labour contracts with employees to save costs of social insurance premiums, unemployment insurance premiums... The practice is against the legitimate rights of labourers and public interests given its harm to the social security system and state budgets.

As to **forced labour**, at the labourers at enterprises, according to the ILO regulations, the retainment of personal identity documents is illegal; however, in Vietnam, statistics show that 24.28% of employees have to submit their personal identity documents.<sup>76</sup> Furthermore, 22.72% of the newly-hired employees have to commit to working continuously for a certain time period without quitting; and 4.54% of female employees have to commit to not giving birth to babies within a certain time limit.<sup>77</sup> Another example of forced labour is that the employer request the employee to work for a probationary period longer than prescribed and to get paid just equal to the minimum wage stipulated in law.

As to **non-discrimination**, at the micro level, there is still discrimination against female employees. Female labourers in Vietnam are sometimes vulnerable and mal-treated.<sup>78</sup>

## 2.5.Environment

### 2.5.1. Legal texts of environment provisions in new-generation FTAs: Law in books

Environmental regulations in the FTA are regulations that deal with environmental issues. “Environmental regulation basically corresponds to the following objectives: (i) management of natural resources, (ii) conservation of ecosystems and biodiversity; and (iii) pollution prevention

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<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> <http://laodongxahoi.net/nam-2022-ca-nuoc-xay-ra-hon-7700-vu-tai-nan-lao-dong-1326853.html> (accessed on 10th August 2023).

<sup>76</sup> Ministry of Labour, Invalids and Social Affairs (2017), *Report No. 146/BC - BLĐTBXH dated 31/12/2017*.

<sup>77</sup> Mai, Dang Luu (2021), “Vietnamese law on forced labour eradication”, *Review of Industry and Commerce*, available at <https://tapchicongthuong.vn/bai-viet/phap-luat-viet-nam-ve-xoa-bo-lao-dong-cuong-buc-78817.htm> visited on 28/7/2023.

<sup>78</sup> Tran, Thi Mong (2019), “Thực trạng pháp luật Việt Nam hiện hành về các biện pháp bảo vệ quyền của lao động nữ” [translated: The status-quo of Vietnamese law on female employee protection measures], *Review of Industry and Commerce*, No. 2, 2023, <https://tapchicongthuong.vn/bai-viet/thuc-trang-phap-luat-viet-nam-hien-hanh-ve-cac-bien-phap-bao-ve-quyen-cua-lao-dong-nu-62270.htm> accessed on 10 August 2023.

and control.”<sup>79</sup> For a variety of reasons, environmental regulation in FTAs plays an increasingly important role. Over time, these regulations also evolved in scope and content. In terms of location, environmental regulations in the FTA may appear in the preamble and in the content of the FTA; some FTAs have a separate chapter on the environment, of which an increasing number of FTAs have a separate chapter on labour. There are different types of environmental regulations in FTAs, with nine main groups of provisions including:<sup>80</sup>

- (1) General provisions: The four new-generation FTAs of Vietnam mention environmental issues or sustainable development in their preamble as a basis for the FTA signatories to set broad goals for the entire FTAs. These regulations play an important role in the interpretation of FTA provisions related to the environment.
- (2) General exception provisions applicable to the entire FTA but also relevant to environment issues: These provisions are based on or a verbatim copy of the general exceptions of Articles XX(b) and XX(g) of the General Agreement on Tariffs and Trade (GATT) or Article XIV(b) of the General Agreement on Trade in Services (GATS), thereby defining the scope of environmental agreements. These provisions appear in about 80% of FTAs.<sup>81</sup>
- (3) Provisions on municipal environmental rules of the countries participating in the FTA: The objective of these provisions is to maintain or improve environmental standards and to create a level playing field for trade among FTA signatories and to ensure that they cannot create a trade advantage by lowering environmental protection standards. To achieve these goals, FTAs often contain provisions on:
  - Assurance that domestic environmental laws and policies entail high or higher levels of environmental protection;
  - Commitment not to violate environmental laws in order to gain trade advantages;
  - Efforts to improve environmental protection levels;
  - Effective enforcement of environmental laws;
  - Ability to effectively invoke sanctions when there are violations of environmental laws.
- (4) Environmental provisions on specific trade/environmental issues such as trade in environmental goods and services, circular economy, renewable energy, environmental conservation, energy conservation, climate change, biodiversity (conservation), control of invasive species, air quality, water quality, soil quality, marine pollution/environment, water resources, fisheries resources, forest resources, illegal timber, desertification, ozone layer protection...<sup>82</sup>
- (5) Provisions on multilateral environmental agreements (MEAs). A group of FTA environmental provisions provide for the priority application of MEAs. MEAs are used as international environmental standards in FTAs. In general, these provisions provide that, in the event of a conflict between FTA provisions and the specific trade obligations in the multilateral and bilateral environmental agreements, the latter shall prevail. The FTAs list MEAs, such as the Paris Agreement, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Basel Convention on the control of cross-border transport of hazardous wastes and their disposal, as their priorities.<sup>83, 84</sup>
- (6) Provisions on public participation: In the FTAs, the objectives of Principle 10 of the Rio Declaration are incorporated into the FTA itself by specifying how the requirements of the

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<https://www.ris.org.in/sites/default/files/Publication/ITEC%20Trade%20and%20Sustainability%20Report%202019-min.pdf#page=61> (accessed on 13/7/2023).

<sup>80</sup> Besides, environmental provisions can be grouped in 10, see OECD (2023), *OECD Work on Regional Trade Agreements and the Environment*, p. 7, available at <https://www.oecd.org/env/Policy-Perspectives-OECD-work-on-regional-trade-agreements-and-the-environment.pdf> (accessed on 13/7/2023).

<sup>81</sup> *Ibid*, p. 8.

<sup>82</sup> *Ibid*.

<sup>83</sup> *Ibid*.

<sup>84</sup> Noémie Laurens and Jean-Frédéric Morin (2019), “Negotiating environmental protection in trade agreements: A regime shift or a tactical linkage?”, *International Environment Agreements* 19, pp. 533–556.



Rio Declaration should be applied. In particular, provisions of public participation, community submissions and public sessions can make a valuable contribution to meeting the requirements of Principle 10 on access to environmental information, participation in decision making and effective access to legal proceedings.

- (7) Institutional regulations: The goal of enhancing cooperation on environmental issues is one of the main reasons for including environmental regulations in FTAs. However, FTAs differ in the level of details of these provisions: some FTAs provide general provisions on partnership and cooperation mechanisms; other FTAs have detailed regulations, mechanisms and specific activities for implementation. Cooperation activities can be described in detail in the content of the FTA itself, or in the cooperation agreement accompanying the FTA, or be determined by an environmental enforcement agency in the FTA.
- (8) Environmental regulation enforcement tools/mechanisms: While some new-generation FTAs have specific enforcement mechanisms, most of them only provide a rough outline of the responsibilities of the implementing agency.<sup>85</sup> The establishment of a separate body to oversee the enforcement of environmental regulations in the FTA is an important factor in ensuring that the environmental commitments in the FTA are implemented in practice.
  - Enforcement mechanisms for environmental regulations: Depending on specific groups of environmental regulations in the FTA, prescribed enforcement mechanisms vary. As for general rules, there is usually no specific enforcement mechanism. Provisions on general exceptions, domestic environmental regulations, institutional regulations, environmental regulations in specific trade/environment issues, or regulations of MEAs may be enforceable by any of the above means. Regulations on community participation or dispute settlement or provisions on tools/mechanisms for enforcement of environmental regulations are guaranteed to be enforced by the remaining 3 methods. The FTA enforcement tools/mechanisms take the following forms:
    - Dialogue mechanisms for implementation among the parties and reports on the meetings between the parties are made public;
    - Inter-party consultation mechanisms in the early stages of the dispute settlement procedure;
    - Negotiation and arbitration mechanisms for dispute settlement when dialogue/consultation do not help to resolve implementation shortcomings. Some FTAs provide for the participation of independent panels; other FTAs do not explicitly state whether panelists are environmental experts while some FTAs do;
    - Public accountability mechanisms such as public submissions and public meetings, access to environmental information, participation in decision-making and effective access to procedures; and
    - Periodic monitoring and review by the Parties (periodic reports and review meetings).
- (9) Regulations on environmental dispute settlement: the FTAs provide a specific mechanism for environmental dispute settlement to ensure the implementation of these commitments.
  - Inter-party dialogue/consultation mechanisms in the early stages of the dispute settlement procedure;
  - Negotiating and arbitration mechanisms for dispute settlement when dialogue/consultation do not help to resolve implementation shortcomings. Some FTAs provide for the participation of independent panels; other FTAs do not explicitly state whether panelists are environmental experts while some FTAs do;

In addition, environmental regulations in the FTA also vary depending on FTA signatories. This is because countries have different views on the objectives of environmental regulations in those trade deals. For example, the US has a "hard" approach and the EU takes a "soft" approach to environmental issues in the FTA. In particular, influenced by the US approach, the CPTPP stipulates the obligations in the Environment Chapter within the scope of the CPTPP's DSM.

#### 2.5.2. *Law in action: In reality*

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<sup>85</sup> *Ibid.*

To transform new-generation-FTA environment commitments into domestic law, the Law on Environment Protection 2020 with 16 chapters and 171 articles was enacted with lots of amendments and updates to repeal the Law on Environment Protection 2014. For the very first time ever in Laws on Environment Protection, an environment protection principle states that environment protection is a “condition, foundation, pre-requisitory and central element” for sustainable socio-economic development, goes hand in hand with the latter and is taken into consideration throughout development activity.<sup>86</sup> The principle is in line with the FTAs as to the mutual supportiveness *inter se* and further detailed in other following provisions, including Art. 5.9-11, to stringent rules on investment and trade.

Regarding forest resource management, Decree No. 102/2020/ND-CP was issued by the Government in 2020 to set out the legal wood system in Vietnam, criteria to determine and authority to notify risky wood imported to Vietnam.

To incorporate Vietnam’s commitments on climate change in the new-generation FTAs, in particular in the EVFTA, a separate chapter – Chapter 7 in the Law on Environment Protection 2020 – is introduced. In particular, to transform Article 13.6.2 of the EVFTA, Articles 91 and 92 of the Law stipulate the obligations to reduce greenhouse gases as well as to control the manufacturing, consumption and trading of ozone-depleting substances. In addition, Article 139 of the Law sets out rules on formation and development of the carbon market with efficient pricing mechanisms pursuant to the above-mentioned EVFTA provision, not to mention administrative measures to control emitted carbon masses and to determine emission quotas in the national strategy... Furthermore, the Law has incorporated the FTA obligations to prevent pollution from ships by inserting the relevant regulations.<sup>87</sup> Therefore, it is evident that Vietnam has made substantial domestic law changes to transform FTA commitments into its national law.

### 2.5.3. Gaps

The Law on Environment Protection lacks further detailed rules to set out a legal framework for international cooperation in coping with pollution from ship accidents. The implementation of international commitments and domestic law on the transition to a low greenhouse gas emission economy is extremely challenging given the fact that law-making, -implementing and -enforcing processes in Vietnam is not fully developed.

## 2.6. Settlement of labour and environment disputes

### 2.6.1. Law in books

New-generation FTAs have different provisions on processes, procedures and institutions in the settlement of environmental and labour disputes, but in general, they aim to settle disputes among parties.

Regarding the applicable mechanism to settle environmental and labour disputes in FTAs, new-generation FTAs differ on whether or not the DSM in other trade matters is applicable to both environmental or labour disputes? Contrary to US-modelled FTAs which provide for the same environmental and labour DSM as that for other chapters of this Agreement, this is not the case for the EU or Canadian FTAs. In other words, if environmental and labour disputes related to, for example, the CPTPP Agreement are not resolved by consultation, they will be resolved according to the same procedures as traditional trade issues. In addition, if the award is not enforced, the follow-up procedures and penalties are essentially the same as in other traditional trade issues. In contrast, EU-modelled FTAs provide that the DSM for traditional trade issues will not apply to environmental and labour disputes; the alternative is a “soft” or specific dispute resolution mechanism based on consultations among disputants.

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<sup>86</sup> Art. 4.2, Law on Environment Protection 2020.

<sup>87</sup> See Art. 70.2, Law on Environment Protection 2020.

In general, the labour and environment DSM in Vietnam's new-generation FTAs can be divided into four groups: (1) FTA's general DSM (which also applies to environment and labour disputes) without any conditions, (2) FTA's general DSM (applies to both environmental and labour disputes) with conditions, (3) a special settlement mechanism for FTA environment and labour disputes (defined in the chapters relating to environment or labour in the FTA) and (4) non-application of any DSM in the FTA. In addition, FTAs may exclude one or more groups of environmental and labour regulations from the scope of the applicable DSM.

*a. FTA general dispute settlement mechanism*

For FTAs that provide for the application of the FTA's general DSM to environmental and labour disputes, it is necessary to study this common DSM. The main contents of the FTA DSM include:

- Initiation of dispute resolution procedures
  - o First, the right to initiate a dispute settlement procedure. Most of the new-generation FTAs only provide for state-to-state dispute settlement, therefore, only recognize the right to use the DSM in the FTA of states. Some FTAs allow non-state actors to use the DSM in the FTA.
  - o Second, the scope of application of the FTA DSM. Not every new-generation FTA provides for the application of a DSM to all disputes arising from the FTA; some can stipulate otherwise. As noted above, in addition to environmental and labour disputes, several FTAs also exclude other, such as competition disputes, from the scope of the FTA's DSM. Or the FTA may provide for the application of a DSM only to disputes over the interpretation of the FTA. Parties may also make exceptions or reservations to the application of the dispute resolution mechanism for certain policies or sensitive areas.
  - o Third, selection of a DSM. New-generation FTAs have three different ways to regulate the choice between the FTA DSM and the World Trade Organization (WTO) DSM: (i) providing separate jurisdiction of either of the two mechanisms; (ii) allowing the choice of either mechanism and the selected one will have the exclusive jurisdiction and (iii) permitting the use of both DSMs.
- Dispute settlement methods: Almost all new generation FTAs provide for the mode of negotiation and consultation. In addition, dispute resolution through a third party, including mediation, conciliation and arbitration, may also be provided.
- Proceedings: New-generation FTAs all have provisions on procedures if the adjudication is chosen to resolve the dispute.
  - o Establishment of a panel: All FTAs provide for the automatic establishment of a panel to avoid unilaterally hindering the establishment of a panel by a state disputant.
  - o Selection of panelists: To prevent a disputant from prolonging the dispute settlement process by making it difficult to select panelists, FTAs include provisions on how to select them.
  - o Proceedings: FTAs increasingly detail the mandatory proceedings because, if the proceedings are determined only when a party has initiated a lawsuit, it will not ensure clarity and certainty of this process, thereby affecting the appellate process.
  - o Time limits: most new-generation FTAs provide specific deadlines for each step in the dispute settlement process.
  - o Interim review: This mechanism allows the disputants to review panel reports before they are publicly available.
  - o Appellate procedures: Although it ensures consistency among rulings, the appellate procedure often takes more time and costs to resolve disputes, so there are few FTAs with this provision.
  - o Approval and entry into force of reports/awards: most new-generation FTAs stipulate that panel reports/awards will be adopted automatically and take effect immediately.
- Execution and enforcement of judgments:
  - o Sanctions: including retaliation, compensation for damage or fines. New-generation FTAs also have provisions on how to select and apply sanctions.

- Monitoring: some FTAs include additional monitoring and oversight mechanisms to ensure compliance with panel rulings.
- Dispute settlement body, including a political body, a permanent dispute settlement body, secretariat:
  - A political body: The new-generation FTA may provide for the establishment of a political body under the name of a joint committee or a dispute settlement body to participate in dispute settlement at the consultation stage or formally in the panel establishment and the approval of the reports/awards.
  - A permanent dispute settlement body: There are very few new-generation FTAs that establish permanent bodies for dispute settlement due to the high costs of maintaining these bodies, even though they guarantee the consistent and predictable dispute settlement outcomes.
  - A secretariat: Also due to maintenance costs, new-generation FTAs do not establish a permanent secretariat to assist the dispute settlement body.
- Other regulations:
  - Third-party involvement: Some FTAs allow third parties to participate in the dispute resolution proceedings, especially to provide views on legal issues, to join and submit comments and to resolve disputes.
  - Transparency: more and more new-generation FTAs allow partial or complete disclosure of the dispute settlement process; some FTAs allow public litigations.
  - Dispute settlement costs: new-generation FTAs may have specific provisions on determining the obligation to pay dispute settlement costs.

*b. Special dispute settlement mechanisms in FTAs for environment and labour disputes*

New-generation FTAs, especially EU-modelled FTAs like the EVFTA, often provide for a special procedure for environmental and labour provisions, including:

- Step 1: Claims/Requests/Reports on FTA violations of environmental or labour regulations. This is usually the first step in the entire dispute resolution process.
- Step 2: Consultation. FTA can stipulate a government-level formal or informal consultation step among disputants.
- Step 3: Consideration of the case by an *ad hoc* dispute settlement body (so-called a “group of experts”, “panel of experts” or “panel of arbitrators”) to arrive at findings and recommendations on the case at issue. In case the disputants fail to get arrangements during consultations, the panel of experts or panel of arbitrators shall be established to put forth binding recommendations or decisions (depending of FTA rules).
- Step 4: Circulation of reports by the dispute settlement body to disputants. The violating party is requested to identify measures to be taken to implement the findings and recommendations by the dispute settlement body, or imposed penalties set out in FTA environment or labour provisions.
- Step 5: Scrutiny of the implementation of the relevant measures by a competent committee or body established upon agreement among disputants.

Some FTAs provide for a number of measures that can be taken before parties use the environmental or labour DSM in the FTA. These steps may be mandatory or optional, depending on the FTA, including submitting the request to the national point of contact<sup>88</sup> – the competent authority to review the request. The body reserves the right to accept or reject a review request. If the review request is accepted, it will proceed with a series of follow-up procedures, including reviewing and issuing a final report that may suggest a number of ways to address the issues identified in the review, such as dialogues through relevant institutions under the FTA, action plans or environmental or labour consultations. These consultations are conciliatory and optional (different from the formal and mandatory consultation step in the formal dispute resolution

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<sup>88</sup> This body is named differently across countries, such as National Administrative Office, Office of Trade and Labour Affairs...



process). The consultation is mainly adopted in US- or Canada-modelled FTAs<sup>89</sup> but this is often not the case in EU-modelled FTAs.

Regarding alternative dispute resolution (ADR) methods, all FTAs maintain consultation as a method by which the disputing parties resolve their disputes on their own without the involvement of a third party. FTAs have specific provisions for consultation, including procedures, deadlines, information to be made publicly available (in particular, consultation documents) and the participation of the parties in the consultation process: who is involved (ranging from the International Labour Organization (ILO) to governmental agencies in charge of environment/labour and trade issues to stakeholders such as civil societies, independent experts, research institutions, the general public...)?, when to participate? and how to join? to promote dialogue, exchange of information and reach a solution. In addition, most FTAs provide for consultation, mediation and conciliation as alternative methods for environmental/labour dispute resolution, although most of these provisions are few in quantity and general in substance. In general, FTAs stipulate that consultation at this step is a written, mandatory and pre-requisite procedure before moving on to the establishment of a panel.

Regarding arbitration methods, many FTAs have provisions for environmental/labour dispute settlement by a panel if consultations are unsuccessful. These regulations differ in the panel name (such as Panel, Panel of Experts, Arbitration Panel or Arbitral Panel, Review Panel, or others), panelists (experts or arbitrators), panelist criteria and selection formality, the number of panelists (normally ranging from 3 to 5), holders of the right to access to the Panel mechanism (e.g. public members), participation of relevant parties (ILO, independent organizations, experts, consultancy group, committees...), information publication throughout dispute settlement procedures, time-limits for dispute settlement by the Panel, jurisdiction of the Panel (to make recommendations (if panelists are experts) or to make final and binding findings/awards (if panelists are arbitrators)). In addition, some FTAs have additional provisions on the conditions for the establishment of panels, namely the dispute must be (i) related to trade and (ii) not subject to legal enforcement of national labour/environmental law as a result of prolonged or repeated conduct or non-conduct.

Regarding sanctions, FTAs are divided into two groups: a group of FTAs, including EU-modelled FTAs which do not provide for sanctions against violations of environmental/labour regulations, and a group of FTAs, including US- and Canada-modelled FTAs which provide otherwise.<sup>90</sup> FTAs of the second group often provide for sanctions as a last resort, i.e. after other dispute settlement measures have been applied. FTAs may provide for the application of the following five sanctions separately or jointly when there is a violation of labour regulations: (1) compensation for damage, (2) suspension of benefits under the provisions of the FTA, (3) fines, (4) compliance/action plans and similar measures and (5) border access restrictions.

### 2.6.2. *Law in action and gaps*

The practice of applying the labour and environmental DSM does not converge across FTAs. In practice, most FTA labour/environmental DSMs are rarely applied in practice. Specifically, during the 25-year period (1991-2016), there was only one time when a panel was established in a labour dispute between Guatemala and the United States in 2008 under the FTA *inter se*.<sup>91</sup> Regarding environmental disputes, there is no inter-state dispute that has resorted to arbitration, but mainly been through the mechanism of claim/complaint submission in the then North

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<sup>89</sup> The consultation might be referred to as “general consultations” or “cooperative labour consultations”.

<sup>90</sup> ILO (2022), *Labour Provisions in Trade Agreements Hub*, available at <https://www.ilo.org/LPhub/>, accessed on 25/4/2023.

<sup>91</sup> ILO (2016), “Assessment of labour provisions in trade and investment arrangements”, *Studies on Growth with Equity* (Geneva, ILO) and ILO (2017), “Handbook on assessment of labour provisions in trade and investment arrangements”, *Studies on Growth with Equity* (Geneva, ILO).

Atlantic Free Trade Agreement (NAFTA) and later in the present USMCA.<sup>92</sup> In contrast, labour disputes arise mainly between countries, with the United States being the most frequent user of the dispute resolution mechanism. Up to 2019, 52 labour disputes have activated the FTA DSM, in which the number of labour disputes in the FTA initiated by the United States, Canada and the EU is 50, 1 and 1 respectively.<sup>93</sup> In addition, there are 42 labour disputes arising from NAFTA. The first FTA labour dispute that was resolved through arbitration was between the United States and Guatemala in 2008 with an award in favor of the latter. The only labour dispute initiated by the EU so far is the one with South Korea within the framework of the EU-Korea Free Trade Agreement. In this dispute, the Panel of Experts established in 2019 reached findings in early 2021 against South Korea. Unlike other FTA provisions, FTA rules on dispute settlement virtually entail no incorporation or transformation into the domestic law of Vietnam. However, by the end of August 2023, Vietnam follows suits when having never used the DSM in new generation FTAs.

### III. What are the drivers of the gaps?

There are many views on factors that influence the implementation and enforcement of new-generation FTA rules in Vietnam. Take FTA dispute resolution as an example, elements such as inadequate financing and support from senior authorities, insufficient clarity and specificity of regulations, supervision and regular review activities... are blamed.<sup>94</sup> These factors fall into three groups:

#### 3.1. FTA law themselves

One advantage of the process of incorporating provisions from FTAs into Vietnam's legal system is that many of these provisions are built upon Vietnam's regulations and commitments within the WTO. Therefore, they do not need to be transformed again, as Vietnam has already modified, supplemented, and newly enacted various legislative documents to ensure the compatibility of Vietnamese law with those regulations and commitments when joining the WTO.<sup>95</sup>

However, because new-generation FTAs contain WTO-plus and WTO-extra commitments by Vietnam in various areas, the incorporation is challenging in that some legal regulations, after being domesticated, may still be incompatible or not fully transformed in line with Vietnam's commitments in the FTA.<sup>96</sup> The complexity of rules of origin, coupled with the intricacies of obtaining Certificates of Origin, for instance, deters businesses from fully utilizing FTA benefits.<sup>97</sup> Additionally, the introduction of self-certification of origin, although a positive move, faces challenges due to varying regulations across different FTAs.<sup>98</sup> Furthermore, labor rights

<sup>92</sup> Velut J.B., Baeza-Breinbauer D., De Bruijne M., Garnizova E., Jones M., Kolben K., Oules L., Rouas V., Tigere Pittet F. and Zamparutti T. (2022), *Comparative analysis of trade and sustainable development provisions in free trade agreements*, London School of Economics, p. 22.

<sup>93</sup> ILO (2019), *Labour Provisions in G7 Trade Agreements: a Comparative Perspective*, Geneva, ILO. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_719226.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_719226.pdf), p. 55.

<sup>94</sup> George Clive & Shunta Yamaguchi (2018), "Assessing Implementation of Environmental Provisions in Regional Trade Agreements", *OECD Trade and Environment Working Papers 2018/01*, available from: <https://doi.org/10.1787/18166881>, accessed on 25/4/2023.

<sup>95</sup> VCCI (2023), *Thách thức từ thực tiễn nội luật hóa các quy định trong FTA thế hệ mới*, available at <https://trungtamwto.vn/hiep-dinh-khac/13302-thach-thuc-tuthuc-tien-noi-luat-hoa-cac-quy-dinh-trong-fta-the-he-moi>, accessed on 8/9/2023.

<sup>96</sup> VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cau-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.

<sup>97</sup> Chen M. (2022), "Rules of Origin and Certificate of Origin Challenges in Vietnam's FTAs", *Trade and Investment Review*, Vol. 28(3), pp. 189-205.

<sup>98</sup> Wu H. (2021), *Self-Certification Challenges in Vietnam's FTAs*. *Journal of International Trade Policy*, Vol. 17(4), pp. 423-437.

violations persist,<sup>99</sup> and intellectual property commitments require more effective enforcement mechanisms.<sup>100</sup> Certain difficulties in Vietnam's observance of FTA environment law can be attributed to objective factors, such as stringency of new-generation-FTA environment protection rules. The EU is among the most demanding trade partners as far as environment protection in trade negotiations is concerned. As to dispute resolution, quite many new-generation FTAs have entered into force for a short time period which in turn is followed by their incomprehensive implementation. When it comes to dispute settlement for instance, the fuller the implementation, the more likely the dispute arises. These challenges underscore the need for ongoing efforts to streamline regulations, strengthen enforcement, and ensure alignment with global trade standards as Vietnam continues its journey toward greater economic integration.<sup>101</sup>

Furthermore, new-generation FTAs are general, ambiguous, unclear and full of obscure and multi-meaning terminologies. Let us say ambiguous rules on the aim and functions/duties of civil society organizations. Another instance is the soft law on dispute settlement in EU-modelled FTAs, such as those in the EVFTA or UKVFTA, which fails to prevent violations of obligations or commitments due to the lack of threats of consequential penalties or liability FTA. Additionally, the prescription against a breach of the obligation to effectively enforce national labour/environmental laws "through a sustained or recurring course of action or inaction in a manner affecting trade or investment"<sup>102</sup> or "through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour laws, as an encouragement for trade and investment"<sup>103</sup> is abstract and can be read in many ways. Multiple potential interpretations of new-generation FTAs hinder both their execution and enforcement. Difficulties lie in proving not only the sustained or recurring course of action or inaction but also its effects on trade and investment and the causal link between the former and the latter. Otherwise, their implementation will be facilitated and disputes are less likely to arise.

There is almost no jurisprudence on the interpretation of new-generation-FTA regulations. Given that fact, the dispute settlement body, for example, has more discretion to interpret the law, or impose very high standards of proof on plaintiffs who claim violations of these provisions in the FTA, leading to difficult to prove violations. In line with this approach, regulations in FTAs are not really effective in protecting the interests of the parties. The indirect impact of this legal interpretation is also reflected in the consequential lack of confidence in these FTA provisions. The absence of rulings in the FTA on prior and similar disputes affects the predictability of the DSM.

Some DSMs even encourage dispute resolution through negotiation/negotiation or diplomacy, rather than through mediation, conciliation, arbitration or court. Many FTA DSMs even exempt the parties from these mechanisms, *i.e.* making them no longer mandatory. In addition, many countries have also reached agreement on the reservations of labour/environmental regulations for instance in FTAs, so that they do not have to comply with these substantive and procedural provisions in FTAs. In other words, the DSM viability and effectiveness are diminished by these reservations/limitations.

In addition, the form of sanctions applied when there is a violation of FTA regulations, especially labour/environmental ones, also affects the effectiveness of dispute resolution. The

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<sup>99</sup> Li W. (2020), "Persistent Labor Rights Violations in Vietnam's Enterprises", *Labor and Human Rights Review*, Vol. 14(2), pp. 87-102.

<sup>100</sup> Kumar R. (2021), "Intellectual Property Enforcement in Vietnam's FTAs", *Journal of Intellectual Property Law*, Vol. 30(1), pp. 45-60.

<sup>101</sup> Jones S. (2023) *Streamlining Regulations and Strengthening Enforcement: A Path to Economic Integration in Vietnam*. Trade Policy and Economics Journal, Vol. 40(5), pp. 512-528.

<sup>102</sup> Art. 19.5.1 of the CPTPP.

<sup>103</sup> Art.13.3.3, EVFTA.

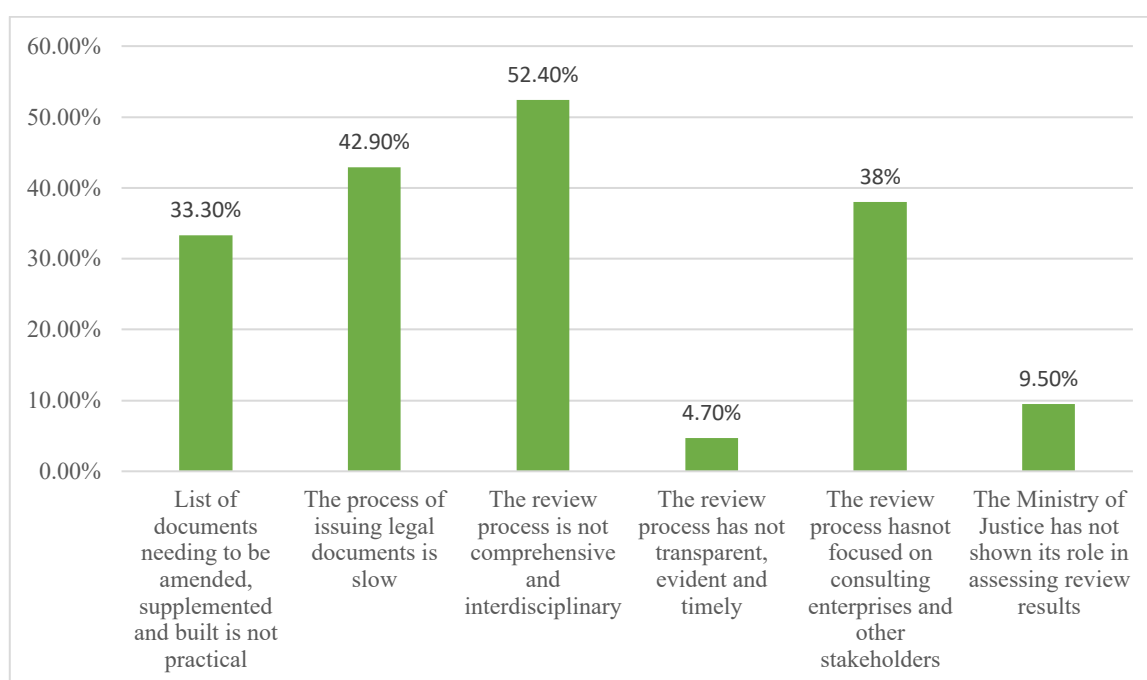
low enforceability of these provisions due to the absence or lack of highly coercive sanctions or dependence on the goodwill of the parties may cause the parties to hesitate to bring the dispute to settlement.

### 3.2. Law implementers and enforcers

Although the FTA-law-implementing authorities in Vietnam have taken efforts to ensure the compatibility of domestic laws, there are still some cons:

- *The review of compatibility with FTA commitments is not comprehensive, interdisciplinary and transparent enough.* According to the above mentioned Report of Vietnam Chamber of Commerce and Industry (VCCI) in November 2021, all drafted legal documents for internalization are made publicly for comments and consultation, but most of them are not accompanied by any explanation of policy options in the draft provisions (e.g. Report, Impact Assessment Report...), causing certain difficulties for the understanding and comments of the stakeholders.<sup>104</sup> Moreover, according to the Survey under the FTU-WCP Phase III, 52% of surveyed state authorities believed that the review process is not comprehensive and interdisciplinary.

**Figure 1: Problems in reviewing compatibility among Vietnamese legal regulations and the new-generation FTAs**

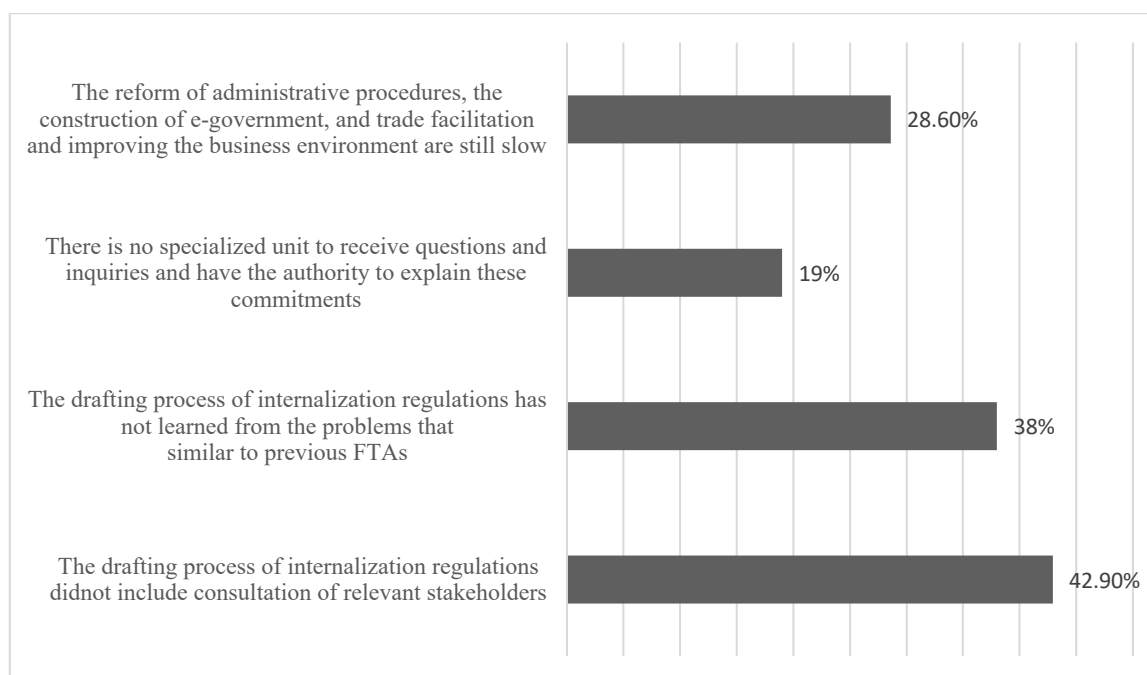


Source: Survey results under the FTU-WCP Phase III

- *The review of compatibility with FTA commitments did not involve the participation of and consultation with enterprises and stakeholders.* As regards enterprise consultation, according to the FTU-WCP Phase III survey findings, 38% of participant state authorities contended that the review process has not focused on consulting enterprises and other stakeholders who are affected by the draft review results. When being asked about the remaining problems in internalization of the new FTAs commitments and the implementation of the new FTAs, the Survey under the FTU-WCP Phase III show results as follows:

**Figure 2: Remaining problems in internalization of the new FTAs commitments and the implementation of the new FTAs**

<sup>104</sup> Centre for the WTO and International Trade (2021), “Legal development activities to implement the CPTPP – Review of results and policy implications for the coming period”, available at <https://chongbanphagia.vn/download/f5024/thong-cao-bao-chi-ht-cptpp-vie.pdf>, accessed on 7/8/2023.



*Source: Survey results under the FTU-WCP Phase III*

Again, 42.9% of surveyed state authorities held that the drafting process of international regulations did not consult stakeholders affected by the new-generation FTAs. This survey result also corresponds exactly to the survey result that the research team of the FTU-WCP project carried on enterprises. To be more specific, when being asked about participation in the drafting of legal regulations on internalization and propagandizing of the new FTAs, only 16.1% of surveyed enterprises confirmed that they are invited to join a consultation process with the government regarding the new-generation FTAs. Moreover, only 9.5% of surveyed enterprises confirmed that they are invited to join a consultation process with the government on drafting regulations to internalize commitments and implement FTAs.

- *The process of issuing legal regulations to internalize Vietnam's commitments in the new-generation FTAs is slow.* The internalization of the new-generation FTAs, first of all CPTPP and EVFTA, involves many international regulations, such as the ICSID convention on settling investment disputes between countries and citizens from other nations or multilateral agreements and cooperation mechanisms on environmental protection. They are conventions that Vietnam has not joined, but they are often referred to when implementing CPTPP, EVFTA and other new-generation FTAs. This is a challenge and therefore, the internalization of these international treaties has so far been behind the commitments.<sup>105</sup> Compared with the milestone of January 14, 2019 as required by the CPTPP, on average, each of the legal documents built and issued for internalization purpose is 246 days late.<sup>106</sup> The results from the survey under the FTU-WCP Phase III also illustrates this problem obviously when 42.9% of surveyed state authorities believed that the review process of issuing legal documents is slow. Although the date of entry into force required by the CPTPP is still guaranteed, the slow issuance of the guiding documents has affected the ability of Vietnamese enterprises to take advantage of the benefits from the FTAs in the early future. This may be one of the reasons why the effective utilization in the first two years following

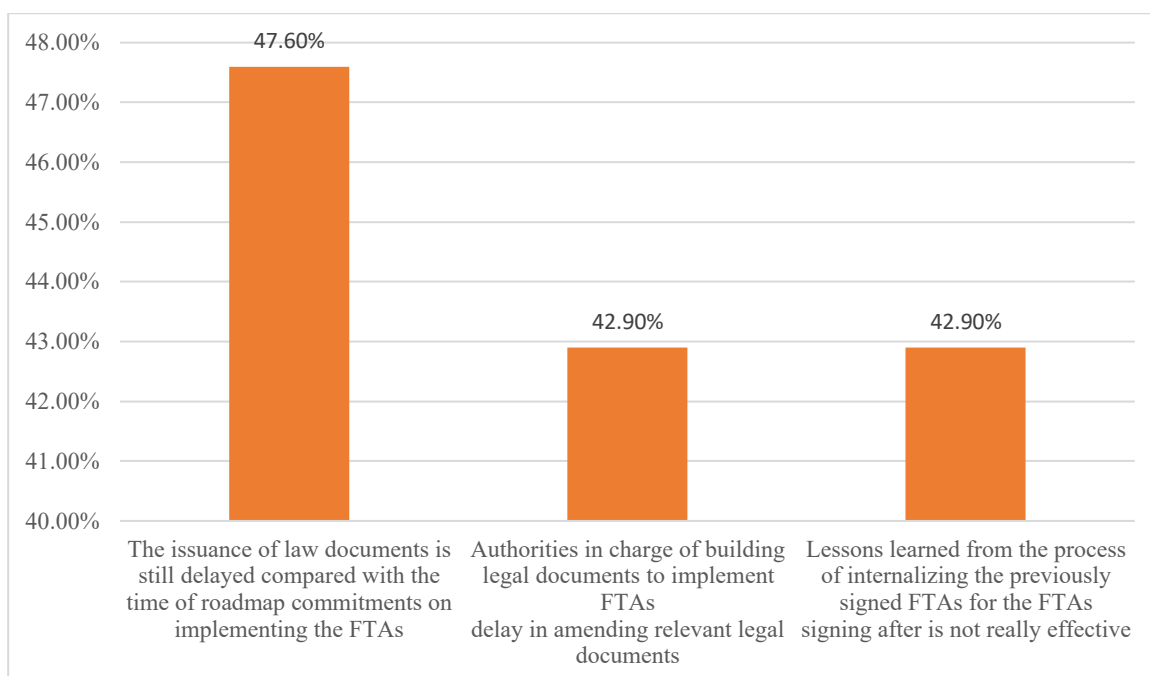
<sup>105</sup> Nguyen T. (2023), "Orientations and solutions to promote the implementation of the new generation of FTAs", available at <http://lyluanchinhtri.vn/home/index.php/thuc-tien/item/5012-phuong-huong-giai-phap-thuc-day-thuc-hien-cac-hiep-dinh-thuong-mai-tu-do-the-he-moi.html>, accessed on 7/8/2023.

<sup>106</sup> Centre for the WTO and International Trade (2021), Summary Report of "Legal development activities to implement the CPTPP – Review of results and policy implications for the coming period", available at [https://aecvcci.vn/Modules/News/Uploaded/Document/2021111110021439\\_pdf.pdf](https://aecvcci.vn/Modules/News/Uploaded/Document/2021111110021439_pdf.pdf), accessed on 7/8/2023.



the entry into force of the CPTPP has not met expectations.<sup>107</sup> When being asked about the progress of building and issuing legal regulations to internalize Vietnam's commitments in the new generation FTAs, 47.6% of surveyed state authorities believed that the issuance of the implementation law documents is still delayed compared with the time of roadmap commitments on implementing FTAs.

**Figure 3: Problems in the progress of building and issuing legal regulations to internalize Vietnam's commitments**



*Source: Survey results under the FTU-WCP project Phase III*

- *Monitoring, propagandizing and disseminating legal regulations system to internalize Vietnam's commitments in the new-generation FTAs are not quite efficient.* According to the above-mentioned Report of Vietnam Chamber of Commerce and Industry (VCCI) in November 2021, all 15 legal documents being issued to implement CPTPP commitments are publicly available on the website of the drafting agency for consultation.<sup>108</sup> However, this action is simply being public on websites, but approaching businesses and enterprises is another story. If there are no documents to explain and clarify, it will be difficult for the stakeholders to give comments and share their ideas. From the survey results under the FTU-WCP project, 76.2% of surveyed enterprises confirmed that they are informed and propagandized about content of FTAs by the Government. However, information provided to enterprises should include not only official documents but also explanatory documents.<sup>109</sup> The process of implementing commitments should include the establishment of a specific advisory and guidance unit, immediately to deal with inadequacies as well as amending and adjusting regulations, if necessary.

The above status-quo derives from factors:

- Firstly, in terms of legal knowledge and competence, authorities in Vietnam which is the FTA rule-taker may not meet the requirements. Take environment as an example, difficulties in the implementation of new-generation FTAs stem first from the incomplete and

<sup>107</sup> *Ibid.*

<sup>108</sup> Phuong H. (2021), "Evaluation of the effectiveness of developing legal system to implement the CPTPP", Economy and Forecast Review, available at <https://kinhtevadubao.vn/danh-gia-hieu-qua-xay-dung-phap-luat-thuc-thi-hiep-dinh-cptpp-20103.html>, accessed on 7/8/2023.

<sup>109</sup> Centre for the WTO and International Trade (2021), "Legal development activities to implement the CPTPP – Review of results and policy implications for the coming period", available at <https://chongbanphagia.vn/download/f5024/thong-cao-bao-chi-ht-cptpp-vie.pdf>, accessed on 7/8/2023.

occasionally inconsistent policy and legal systems. Over the past several years, statutory law has been made in great amount though detailed guidelines or secondary legislations are not in place on time, which consequentially produces obstacles to Vietnam's observance with international undertakings on environments. Moreover, there are some mis-matches between central and local trade- and investment-related environment policy and rules. For instance, along with tariff preferences and the gradual elimination of trade barriers, importation of goods, materials and technologies into Vietnam fails to meet international environment standards in general, especially those in developed countries, leading to the risk of Vietnam becoming a destination of outdated, low-quality and environment-unfriendly equipment, machinery and goods. This status-quo follows the practice that local governments are still introducing and applying various preferential measures to attract foreign direct investment while not really paying attention to environmental protection and sustainable development concerns – which are inconsistent with the fundamental principle of trade-and-environment mutual supportiveness link set out in the Law on Environment Protection 2020. The implementation and enforcement of domestic environment law is not quite efficient. Regardless of environment regulations in the law books and increase in the inspection, checking and remedial measures, environmental law violations are widespread. The capacity of the staff to handle international environment-related trade issues has not met the requirements. Financial resources for environmental protection activities are limited which yields to, *inter alia*, inadequate investment in modern technologies for environmental protection management. This will lead to difficulties in meeting and complying with the obligations and high standards committed in Vietnam's joined new-generation FTAs.

- Secondly, in terms of dedication, the authorities in the Vietnam, while enforcing environmental/labour regulations in particular, are likely to underestimate these regulations as well as the relevant cooperation and dialogue mechanisms, neither taking them as a matter of priority nor paying due attention to these regulations and their impacts in practice. After the FTA conclusion, most rule-taking parties, including Vietnam, often neither give priority to environmental or labour issues over trade ones nor put pressure on their partner countries or appreciate the goodwill between the parties to maintain the relationship in trade and politics. In addition, countries are also reluctant to use inter-state DSMs due to fear of the possibility of counter-claims or -measures. The status-quo in labour law in action, for instance, is attributable to inefficiency and shortcomings in the designs and functions of trade unions and labour DSMs; lengthy, painstaking and problematic organization proceedings; the unreasonably low minimum wage thresholds. The operation of trade unions occasionally is cursory and superficial, inefficient and not for the interest of the employee, therefore the employee will turn their back against the existing trade unions of the Vietnam General Confederation of Labour. Instead they will act spontaneously or gather or join force in their own set-up new trade unions for their own sake.

### **3.3. The law-making, -implementing and -enforcing context**

The context covers a variety of aspects, such as the economy, politics, society, culture, etc. As to the political context, internationally, trading partners will most likely be unwilling to resort to formal DSMs, to use “market power” to promote regulations, *inter alia* environmental/labour rules, or the impact of these regulations on rule-taking trade partners countries, to convince these rule-takers to sign or ratify the core rules/principles of MEAs or of the ILO.<sup>110</sup> In addition, the lack of willingness or political motivation of trading partner countries to pursue environmental/labour lawsuits must also be taken into account.<sup>111</sup> Domestically, the zero number of trade unions outside the Vietnam General Confederation of Labour might be attributable in part to this factor which centers on maintaining the stability of the political institutions and on

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<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

ensuring the leadership role of the Communist Party of Vietnam in the whole society.<sup>112</sup> The introduction of trade unions outside the Vietnam General Confederation of Labour is a very new and sensitive issue in Vietnam, especially when some opposition and hostile forces are trying to entice workers to serve bad purposes. In Vietnam, at present, the theoretical foundation of trade unions independent of the Vietnam General Confederation of Labour is not clear. Not only the connotation of the "independence" of these organizations is unclearly defined, but also there is a lack of experience in reality. In that condition, it is worth to be prudential first of all to avoid the tendency to misunderstand or incompletely understand the Civil Code. It is feared that the Vietnam General Confederation of Labour-independent trade unions may be exploited by hostile forces to fight back the nation if effective management measures are not in place. Furthermore, they may cause conflicts in labour relations at enterprises, adversely affect the investment environment and social order and safety if there are no clear and strictly enforced legal provisions. Unfair competition may appear among trade unions in the same enterprise, reducing the collective strength of employees in the same enterprise.

As to the economic context, regarding the exploitation of rules of origin for example, the key cons lie in the economy development level of Vietnam, in particular its industrial production structure. Due to the limited scale of domestic industries and a lack of robust supporting industries, Vietnam heavily relies on imported intermediate inputs.<sup>113</sup> This poses difficulties for Vietnam in meeting the domestic content requirements under the CPTPP.<sup>114</sup> Among the 458 surveyed businesses, 22% of them reported that one of the obstacles preventing them from benefiting from the Free Trade Agreements (FTA) is their inability to meet the technical and quality requirements for exporting to FTA participating countries, mostly because the source of raw materials and the production process do not meet the FTA Rules of Origin. Additionally, 28% of the businesses highlighted facing difficulties when applying for FTA Certificate of Origin for their export goods in terms of missing documentation, procedural obstacles, and missed deadlines. RoOs therefore on the one hand are considered a key factor in unlocking opportunities for Vietnamese goods to penetrate deeply into the EU, CPTPP, and RCEP markets, but on the other hand constitute one of the biggest barriers against businesses to fully utilize the benefits of the EVFTA, RCEP, CPTPP and other trade agreements.<sup>115</sup>

The social context involves the capacity of private actors. Many enterprises either lack or have neither accurate nor timely information about export markets' technical standards, environment requirements and conditions, which in turn hinders their production and business. Although awareness of many businesses about environmental protection have recently changed, it still remains limited due to development or economic difficulties. In the current post-Covid-19 situation, especially along with the pandemic impacts, it is difficult for businesses, especially for those with obsolete production and business technologies, to immediately meet the strict requirements. Regarding labour, for instance, statistics show that both employers and employees contribute some 40% for the labour accidents individually.<sup>116</sup> In other words, both the employers and employees are either not fully aware of the labour law regulations or acting purposefully when disregarding labour law to save production costs or at their convenience. Moreover, the

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<sup>112</sup> <https://www.tapchiconsan.org.vn/web/guest/nghien-cu/-/2018/824270/ban-ve-to-chuc-cua-cong-nhan-tai-doanh-nghiep-va-nhung-thach-thuc-dat-ra-doi-voi-to-chuc-cong-doan-viet-nam-hien-nay.aspx> (accessed on 27 August 2023).

<sup>113</sup> VIR (2019), *SOE divestment a priority in CPTPP era*, available at <https://www.vir.com.vn/soe-divestment-a-priority-in-cptpp-era-65586.html>, accessed on 8/9/2023.

<sup>114</sup> *Ibid.*

<sup>115</sup> Vietnam trade and industry review (VTIR) (2023), *Đánh giá chính sách tự chứng nhận xuất xứ hàng hóa tại Việt Nam theo các Hiệp định thương mại tự do thế hệ mới*, available at <https://tapchicongthuong.vn/bai-viet/danh-gia-chinh-sach-tu-chung-nhan-xuat-xu-hang-hoa-tai-viet-nam-theo-cac-hiep-dinh-thuong-mai-tu-do-the-he-moi-105526.htm>, accessed on 8/9/2023.

<sup>116</sup> *Ibid.*

ineffective functioning of meetings with civil society organizations is due to their lack of resources, insufficient time of meetings and unclear objectives and functions. In addition, the application of an effective DSM depends on the resources available in each country to continuously monitor implementation and enforcement of commitments in FTA partner states. If the country itself, like Vietnam, does not have resources, it must rely on the resources of private actors partly through the activation of DSMs. If these resources are not available, violations cannot be either detected or reported, resulting in no claims to be made.

In addition, placing FTA DSMs in the broader context of the existence of their alternatives such as the WTO counterpart, may indicate some other factors affecting FTA implementation and dispute settlement:

- Firstly, some difficulties in terms of procedures/process of dispute settlement in FTAs compared to those of the WTO. For the most part, new-generation FTAs do not allow third parties to participate. In terms of panelists, the FTA usually provides for a panelist list with representatives of the disputants. The lack of complete information on the exact number of disputes that have been resolved by the FTA DSM is also a problem. There is no body in charge of the registration of disputes resolved under the FTA. Neither the majority of FTAs also have established long-term institutions to widely publish dispute settlement outcomes. Furthermore, FTAs differ in transparency requirements. The results of alternative dispute resolution, such as mediation, are also confidential. Even when dispute settlement results are made public, it is only in the local language to which the access is limited.
- Second, the FTA does not have collective/multilateral pressure or motivation like the WTO DSM. For example, although sanctions/retaliatory measures are theoretically and *de jure* provided as permitted under the FTA and are assumed to have been used in some disputes, FTAs *de facto* impose very strict regulations and tend to adopt restrictive instead of permissive approach. Under WTO rules, retaliatory measures are used as a last resort because the main purpose of using the WTO DSM is not to impose retaliatory measures. In contrast, proceedings at the WTO is to replace retaliatory measures: the parties sue to the WTO not to retaliate but to avoid having to resort to retaliatory measures to the detriment of all parties. When filing a lawsuit to the WTO, the parties want to use collective/multilateral pressure, damage to national reputation and collective pressure to force the violating country to comply with WTO regulations. This is evidenced by the fact that the majority of disputes at the WTO are resolved before the parties go to the step of resorting to retaliatory measures; and even when the WTO dispute settlement body permits the use of retaliatory measures, the parties still give priority to the use of procedural measures. However, most of the new-generation FTAs are signed bilaterally or plurilaterally, so this multilateral pressure is no longer available when using the DSM of these agreements.
- Third, although the WTO DSM has many advantages compared to its FTA counterpart, recently, when the WTO Appellate Body was paralyzed, it affected the dispute settlement effectiveness in general. In that context, FTA parties are expected to turn to DSMs therein.

The culture context can be blamed as far as certain FTA-law compliance is concerned. The discrimination against females at work, let's say, originates deeply from the social culture. Due to cultural factors, Vietnam is an Oriental country, influenced by Confucianism and feudal etiquette, so the role of women is underestimated, which is reflected in their occasional maltreatment in the workplace, ranging from labour division and allocation, salaries, promotion opportunities, dismissal... Although this situation is increasingly better off, it still exists in enterprises.

#### **IV. How to fill in the gap?**

Against the above discussion, it is essential to address the driving forces for the gap-filling purpose. More specifically, they are detailed as follows:

##### ***4.1.Improvement in the transformation of FTA law to domestic law***

Since many FTA provisions are based on Vietnam's existing commitments within the World Trade Organization (WTO), continuous alignment with these commitments is essential. Regular assessments and updates should be conducted to ensure that Vietnam's domestic laws remain compatible with both WTO and FTA regulations. This approach can minimize the need for extensive transformation efforts.<sup>117</sup> Given the extensive commitments in new-generation FTAs that go beyond WTO frameworks, a systematic approach to transforming these provisions into domestic law is crucial. Vietnam should establish clear guidelines and mechanisms for the effective and consistent transformation of FTA commitments to ensure their practical application.<sup>118</sup> Harmonizing self-certification procedures for different FTAs is crucial for simplifying compliance for businesses. Vietnam should work on unifying and standardizing self-certification requirements to reduce complexity and ensure uniformity.<sup>119</sup>

Added to that, to bridge the gap between regulations and practical implementation, comprehensive explanations and guidance for FTA provisions should be provided. This can help businesses better understand and comply with the regulations, reducing practical difficulties resulting from inadequate application.<sup>120</sup> In particular, efforts should be made to harmonize interpretations between Vietnamese authorities and FTA member countries. Bilateral discussions and agreements should aim to align interpretations of key terms and principles, such as the "yarn forward" rule, to ensure consistency.<sup>121</sup> Harmonizing self-certification procedures for different FTAs is crucial for simplifying compliance for businesses. Vietnam should work on unifying and standardizing self-certification requirements to reduce complexity and ensure uniformity.<sup>122</sup> As to labour law, for example, to fully integrate FTA labour provisions into the domestic legal system, it entails further legislative actions. Amendment of Vietnamese labour law is vital. Let us say, to address the root of procedurally inconsistent strikes and work stoppage, it is urgent and essential to change relevant domestic labour law provisions, in particular those on minimum wages, on simplification of procedures of organizing strikes and work stoppage and clarification of trade union roles therein. Delegated legislations should be enacted to explain in detail the implementation of rules on freedom of association, must-do and must-not-do lists for trade unions outside of the Vietnam General Confederation of Labour and the establishment of support organizations for workers and trade unions besides efficiency increases in the executive management of trade unions and labour relations to ensure the compliance with labour law. Regarding environment regulations, it is crucial to review, amend and improve the domestic legal system on environment protection to meet FTAs' relevant requirements, especially when it comes to the covered MEAs, including setting the favourable conditions for the development of carbon market and the transition to a low greenhouse gas emission economy.

Strengthening enforcement mechanisms for labor standards and intellectual property rights is vital. Stricter penalties for violations and improving the effectiveness of enforcement agencies can help ensure that rights granted by FTAs are upheld.<sup>123,124</sup>

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<sup>117</sup> VCCI (2023), *Thách thức từ thực tiễn nội luật hóa các quy định trong FTA thế hệ mới*, available at <https://trungtamwto.vn/hiep-dinh-khac/13302-thach-thuc-tuthuc-tien-noi-luat-hoa-cac-quy-dinh-trong-fta-the-he-moi>, accessed on 8/9/2023.

<sup>118</sup> VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cao-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.

<sup>119</sup> Hoang, T. (2021), *Điểm khác biệt về cơ chế tự chứng nhận xuất xứ của các FTA thế hệ mới*, available at <https://haiquanonline.com.vn/diem-khac-biet-ve-co-che-tu-chung-nhan-xuat-xu-cua-cac-fta-the-he-moi-142388.html>, accessed on 8/9/2023.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> ILO (2022), *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, available at [https://www.ilo.org/wcmsp5/groups/public/ed\\_norm/declaration/documents/normativeinstrument/wcms\\_716594.pdf](https://www.ilo.org/wcmsp5/groups/public/ed_norm/declaration/documents/normativeinstrument/wcms_716594.pdf), accessed on 8/9/2023.



#### ***4.2.Enhancement of capacity of various legal institutions***

When it comes to labour, the first is reforming the ***Communist Party***'s leadership and direction towards trade unions. To realize this objective, it entails renewing awareness about the role of trade unions to suit the market economy and deeper international integration, strengthening propaganda and education of workers to unify the awareness of the nature and role of the Vietnam General Confederation of Labour and trade unions in the current workers' and trade unions' movements, renewing the Party's leadership method for trade unions in private and FDI enterprises and introducing a new model for trade unions of Vietnam General Confederation of Labour therein. As to labour institutions, it is essential to upgrade the structure and operation of the Vietnam General Confederation of Labour to attract the membership of other trade unions nation-wide. A fundamental and comprehensive renovation of the organization and operation of the Vietnam General Confederation of Labour entails amendments of its Charter to reform the mode of organization and operation of the Vietnamese trade unions in non-state-owned and FDI enterprises, and renewal of its cadre work, establishment of support departments for workers and trade unions in the enterprise and renewal of the direction method of the immediate superior trade union towards the grassroots trade union, renovation of processes and methods of propagating, mobilizing and developing trade union members, establishing grassroots trade unions in non-state-owned and FDI enterprises. Besides, the Vietnam General Confederation of Labour and its trade union units should take radical reforms in structure and organization to improve their efficiency to stop the outflow of employees to other newly-established labour unions. Furthermore, the Vietnam General Confederation of Labour should build up and tighten its relationship with main trade union organizations world-wide, especially those in the trade partners of Vietnam such as in the EU, US, Australia... to exchange and share viewpoints and experience in the first place and to prevent potential legal challenges in the second place.

In addition, it is imperative to strengthen inspection and examination of the observance of regulations on occupational safety and health by enterprises, especially in areas with high risks of occupational accidents and serious incidents, to pay attention to the construction of safe working procedures and measures at the enterprises and the implementation of occupational accident prevention activities with support from the Social Insurance Fund for occupational accidents and diseases... Local competent authorities direct enterprises to actively inspect occupational safety and health conditions, coordinate with the Ministry of Labour, Invalids and Social Affairs in inspecting and examining enterprises operating in the business sectors and industries with high risks of occupational accidents and serious incidents such as construction, material production, textiles, footwear, mining, minerals, especially key construction works adjacent to residential areas crowded with people, lifting equipment, elevators...

As to the environment topic, to fully put in force environmental law, collaboration among these competent environmental authorities is required in order to determine the appropriate roadmap and content, ensure the proper schedule, the right authority to build and execute the relevant law and policy. This solution comes from the fact that environment law and policy need a multi-sector and inter-sector approach. Therefore, in order to ensure the serious and effective implementation of these commitments and obligations, it is necessary to establish inter-sectoral coordination and cooperation mechanisms at the central and local levels and between the central and local governments. In addition to coordination and cooperation in the implementation of commitments and obligations, these coordination mechanisms are especially necessary and important when dealing with arising issues. Regarding the strengthening of environmental management capacity, it is urgent to increase the inspection, examination and supervision of the observance of legal regulations on environmental protection, to ensure strict control over sectors and fields that are likely to cause environmental pollution, to strengthen the responsibility of organizations and individuals involved and to increase sanctions to handle violations of the law

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<sup>124</sup> Ipvietnam (2014), *Annual Report on Intellectual Property Activities of Vietnam*, available at <https://ipvietnam.gov.vn/documents/20195/1374148/BCTN+SHTT+2021+trang+%C4%91%C3%B4i.pdf/1f4a5e23-818c-474f-9175-2b1c464a22c7>, accessed on 8/9/2023.

on environment. Resources devoted to environment protection should be improved in both quantity and quality. In particular, civil servants and officials, including managers, officials/legal experts of relevant ministries and branches in the field, need further training and knowledge on trade-related environment international and domestic law and further capacity building to strengthen the competence to settle trade-related labour and environment disputes. Investment in environmental protection activities and mechanisms to encourage the private sector to participate in environment-related commercial goods and services provisions should be in place.

#### ***4.3. Change in responses of the law observers (enterprises, the public...)***

It is essential to conduct promulgation of new-generation FTAs and domestic law and enhancement of public awareness. This is facilitated through the promulgation of Vietnam's commitments under these FTAs, especially WTO-plus and WTO-extra commitments, and consequences of the FTA commitments' violations among enterprises and the public, thereby enhancing their public awareness and encouraging their participation in the relevant implementation. For example, strengthening and prioritizing the organization of propaganda and dissemination of knowledge and legislations on occupational safety and health suitable to each economic sector and industry, especially for employees without labour contracts, constitute a capacity-building measure. Enterprises strengthen the implementation of occupational safety and health by focusing on self-inspection activities, proactively controlling and preventing dangerous and harmful factors at workplace, preventing occupational accidents caused by a high fall, electric shock, falling or collapsing objects and by organizing occupational safety and health training for the staff. As to FTA environmental law, these measures motivate export-oriented enterprises to research about their export markets and the environment rules imposed on imports and afterwards to come up with technological, investment, managerial... solutions...

To overcome challenges related to rules of origin and industrial production structure, Vietnam should focus on developing robust domestic industries and supporting industries. By reducing reliance on imported intermediate inputs, businesses can more easily meet the domestic content requirements of FTAs.<sup>125</sup> To cope with the new-generation-FTA law, Vietnamese domestic firms need to carefully study and fully implement them to overcome technical barriers to widen their segments in large-sized export markets with plenty of growth prospects.

As to the cultural environment of the law-implementation, it is a long journey towards changes in certain customs and practices on FTA-related international and domestic laws, such as the Oriental male chauvinism in workplace, "custom rules the law" principle, "bad luck associates with litigations" mindset ... in the law-making, -implementing and -enforcing processes.

## **V. Conclusion**

This article centers on analyzing the discrepancies between the legal texts of new-generation FTAs to which Vietnam is a party and their actual implementation and enforcement. The fact that these trade deals have entered into force *de jure* against Vietnam does not at all times indicate their *de facto* application and enforcement. Based on the 2022 empirical survey findings conducted by the FTU WCP, it is highlighted that there are still gaps *inter se*. The status-quo is driven by the FTA laws themselves, their implementers and enforcers. This paper also proposes certain measures to be taken to narrow them down. Further researches in the future might give a more comprehensive picture.

## **References**

- Agency of Enterprise Development, Business Portal, available at <https://business.gov.vn/doanh-nghiep-nha-nuoc/danh-sach>, accessed on 7/8/2023..
- Aissi Jonas, Marva Corley-Coulibaly, Elizabeth Echeverria Manrique, Marialaura Fino, Laetitia Fourcade, Takaaki Kizu, Rafael Peels, Daniel Samaan, Pelin Sekerler Richiardi, and

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<sup>125</sup> VIR (2019), *SOE divestment a priority in CPTPP era*, available at <https://www.vir.com.vn/soe-divestment-a-priority-in-cptpp-era-65586.html>, accessed on 8/9/2023.

Christian Viegelaahn (2016), "Assessment of labour provisions in trade and investment arrangements", *Studies on Growth with Equity*, pp. 72-88.

- Aissi Jonas, Rafael Peels, and Daniel Samaan (2018), "Evaluating the effectiveness of labour provisions in trade agreements: An analytical and methodological framework", *International Labour Review* 157, no. 4, 671-698.
- Bipartisan Trade Promotion Authority Act of 2002. Bipartisan Trade Promotion Authority Act of 2007. TPA-2015, Public Law 114-126, June 29, 2015, Sec. 102(b)(10), available at <https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf> (accessed on 31 July 2023).
- Bodansky D. and Lawrence J. C. (2009), "Trade and Environment" in Bethlehem D. *et al.* (2009), *The Oxford Handbook of International Trade Law*, pp. 508-512.
- Bui Thanh Son (2020), *Triển khai các hiệp định thương mại tự do thế hệ mới trong giai đoạn hội nhập kinh tế quốc tế sâu rộng và toàn diện [translated: Implementing new-generation free trade agreements in the period of deep and comprehensive international economic integration]*, available at <https://www.tapchiconsan.org.vn/web/guest/kinh-te/-/2018/815809/trien-khai-cachiep-dinh-thuong-mai-tu-do-the-he-moi-trong-giai-doan-hoi-nhap-kinh-te-quoc-te-saurong-va-toan-dien.aspx> (accessed on 19/8/2023).
- Centre for the WTO and International Trade (2021), "Legal development activities to implement the CPTPP – Review of results and policy implications for the coming period", available at <https://chongbanphagia.vn/download/f5024/thong-cao-bao-chi-ht-cptpp-vie.pdf>, accessed on 7/8/2023.
- Centre for the WTO and International Trade (2021), Summary Report of "Legal development activities to implement the CPTPP – Review of results and policy implications for the coming period", available at [https://aecvcci.vn/Modules/News/Uploaded/Document/2021111110021439\\_pdf.pdf](https://aecvcci.vn/Modules/News/Uploaded/Document/2021111110021439_pdf.pdf), accessed on 7/8/2023.
- Centre for the WTO and international trade, "Summary of the CPTPP", available at <https://wtocenter.vn/file/16828/Tom%20luoc%20CPTPP%20-%20Chuong%2017.pdf>, accessed on 7/8/2023.
- Charnovitz S. (2013), "Trade and the Environment" in Lukauskas A., Stern R. M. and Zanini G. (2013), *Handbook of Trade Policy for Development*, Oxford University Press, pp. 899-900.
- Chen M. (2022), "Rules of Origin and Certificate of Origin Challenges in Vietnam's FTAs", *Trade and Investment Review*, Vol. 28(3), pp. 189-205.
- Commission of the European Communities (2006), *Global Europe: Competing in the World*, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF> (accessed on 30 March 2023).
- Dang, M. P. (2022), "Self Certification of goods origin according to ATIGA, EVFTA and CPTPP", *Journal of Legal Studies*, 9(20).
- Dang, Thi Phuong Hoa (2022), "Implementation of Vietnam's labour commitments in EVFTA", *Conference on "2-year implementation of EVFTA: Socio-economic impacts and issues for Vietnam"*, Hanoi, available at <https://trungtamwto.vn/file/21965/9.-thu-thi-cam-ket-ve-ld-cua-vn.pdf> accessed on 22<sup>nd</sup> July 2023.
- Do G. N. (2022), "Implementing Intellectual Property Provisions in New-Generation Free Trade Agreements in the EU", *VNU Journal of Science: Legal Studies*, Vol. 38, No. 3, pp. 53-63.

- Elsig M., Pauwelyn J. and Bernauer T. (2012), “Dispute Settlement Mechanism—Analysis And Problems” in Narlikar A., Daunton M. and Stern R.M. (2012), *The Oxford Handbook on the World Trade Organization*, Oxford University Press.
- European Commission (2010), *Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth*, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF> (accessed on 30 March 2023).
- European Union (2016), *European Union Global Strategy: Shared Vision, Common Action: A Stronger Europe*, available at [https://eeas.europa.eu/sites/eeas/files/eugs\\_review\\_web\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eugs_review_web_0.pdf) (accessed on 30 March 2023).
- Fabris, A. (2017), *Intellectual property law in Vietnam: the trademark protection, a comparison between the Vietnamese and EU systems*, available at <https://tesi.eprints.luiss.it/18696/>, accessed on 8/9/2023.
- Fickling M. and Hufbauer G. (2012), “Trade and the Environment” in Daunton M. *et al.* (2012), *The Oxford Handbook on the World Trade Organization*, Oxford University Press.
- Gaia Graselli et al. (2021), “Social clauses in Trade agreements: Implications and Action Points for the Private Sector in Developing Countries”, *Trade Lab Law*, available at: <https://georgetown.app.box.com/s/on7fahebpi7kkq5m90g483hhjs21zfjk> (accessed on 25 April 2023).
- General Statistics Office (2022), *Statistical Yearbook of Vietnam 2022*, Statistical Publishing House, Hanoi, p. 482.
- George Clive & Shunta Yamaguchi (2018), “Assessing Implementation of Environmental Provisions in Regional Trade Agreements”, *OECD Trade and Environment Working Papers 2018/01*, available at <https://doi.org/10.1787/18166881> (accessed on 25 April 2023).
- Ha L., (2022), “Improving the effectiveness of Intellectual Property Rights enforcement in Vietnam”, available at [https://ipvietnam.gov.vn/tin-tuc-su-kien/-/asset\\_publisher/7xsjBfqhCDAV/content/nang-cao-hieu-qua-hoat-ong-thuc-thi-quyen-so-huu-tri-tue-o-viet-nam](https://ipvietnam.gov.vn/tin-tuc-su-kien/-/asset_publisher/7xsjBfqhCDAV/content/nang-cao-hieu-qua-hoat-ong-thuc-thi-quyen-so-huu-tri-tue-o-viet-nam), accessed on 7/8/2023.
- Halliday Simon (2004), *Judicial review and compliance with administrative law*, Hart Publishing.
- Harrison James (2019), “The labour rights agenda in free trade agreements”, *The Journal of World Investment & Trade* 20, no. 5 (2019): 705-725, pp. 710-711.
- Hoang Xuan Huy (2019), “Cam kết, nghĩa vụ về môi trường của Việt Nam trong Hiệp định Thương mại tự do (EVFTA)” [*translated: Vietnam's environmental commitments and obligations in the Free Trade Agreement (EVFTA)*], *Environment Magazine*, No. 7/2019.
- Hoang, T. (2021), *Điểm khác biệt về cơ chế tự chứng nhận xuất xứ của các FTA thế hệ mới*, available at <https://haiquanonline.com.vn/diem-khac-biet-ve-co-che-tu-chung-nhan-xuat-xu-cua-cac-ftathe-he-moi-142388.html>, accessed on 8/9/2023.
- ILO (2016), “Assessment of labour provisions in trade and investment arrangements”, *Studies on Growth with Equity* (Geneva, ILO).
- ILO (2017), “Handbook on assessment of labour provisions in trade and investment arrangements”, *Studies on Growth with Equity* (Geneva, ILO).
- ILO (2019), *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*, available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg\\_p/documents/publication/wcms\\_719226.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg_p/documents/publication/wcms_719226.pdf) (accessed on 25 April 2023).
- ILO (2022), *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, available at

[https://www.ilo.org/wcmsp5/groups/public/ed\\_norm/declaration/documents/normativeinstrument/wcms\\_716594.pdf](https://www.ilo.org/wcmsp5/groups/public/ed_norm/declaration/documents/normativeinstrument/wcms_716594.pdf), accessed on 8/9/2023.

- ILO (2022), *Labour Provisions in Trade Agreements Hub*, available at <https://www.ilo.org/LPhub/> (accessed on 25 April 2023).
- Intellectual Property Office of Vietnam, “Intellectual Property Activities Annual Report 2022”, available at <https://www.ipvietnam.gov.vn/documents/20195/1481767/BCTN+SHTT+2022+IPVIETNAM.pdf/968534c0-d809-4f8e-9df3-12fd436eadda>, accessed on 7/8/2023.
- Ipvietnam (2014), *Annual Report on Intellectual Property Activities of Vietnam*, available at <https://ipvietnam.gov.vn/documents/20195/1374148/BCTN+SHTT+2021+trang+%C4%91%C3%B4i.pdf/1f4a5e23-818c-474f-9175-2b1c464a22c7>, accessed on 8/9/2023.
- Ipvietnam (2022), *Cam kết về sở hữu trí tuệ trong các Hiệp định thương mại tự do*, available at <https://ipvietnam.gov.vn/documents/20195/1488814/CAM+KET+SHTT-trong+FTA+%28web%29.pdf/55ccd0fd-11d6-4d20-8ad9-3393140bae58>, accessed on 8/9/2023.
- Jones S. (2023) *Streamlining Regulations and Strengthening Enforcement: A Path to Economic Integration in Vietnam*. Trade Policy and Economics Journal, Vol. 40(5), pp. 512-528.
- Khuc, Thi Trang Nhung and Pham, Thi Huong Giang (2022), *Improvement of law on labour child employment in Vietnam*, available at <https://vksndtc.gov.vn/tin-tuc/cong-tac-kiem-sat/hoan-thien-phap-luat-ve-su-dung-lao-dong-tre-em-o--d10-t10259.html> assessed on 25th July 2023.
- Kumar R. (2021), “Intellectual Property Enforcement in Vietnam's FTAs”, *Journal of Intellectual Property Law*, Vol. 30(1), pp. 45-60.
- Law Library (2019), *Xuất xứ hàng hóa trong Hiệp định đối tác toàn diện Thái Bình Dương*, available at <https://thuvienphapluat.vn/van-ban/Thuong-mai/Thong-tu-03-2019-TT-BCT-xuat-xu-hang-hoa-trong-Hiep-dinh-Doi-tac-Toan-dien-Thai-Binh-Duong-405885.aspx>, accessed on 8/9/2023.
- Le V. (2022), “Real situation of intellectual property rights infringement and efforts to increase effectiveness in enforcement of intellectual property rights in Vietnam”, available at <https://s3.amazonaws.com/documents.lexology.com/1415e225-a716-4bd3-9ae5-3d246c2ca319.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1693674373&Signature=VqUI6pTpVoMtLovmF6%2BWYHfgGel%3D>, accessed on 7/8/2023.
- Li W. (2020), “Persistent Labor Rights Violations in Vietnam's Enterprises”, *Labor and Human Rights Review*, Vol. 14(2), pp. 87-102.
- Mai, Dang Luu (2021), “Vietnamese law on forced labour eradication”, *Review of Industry and Commerce*, available at <https://tapchicongthuong.vn/bai-viet/phap-luat-viet-nam-ve-xoa-bo-lao-dong-cuong-buc-78817.htm> visited on 28/7/2023.
- Mani M and Jha S. (2006), *Trade Liberalization and the Environment in Vietnam*, World Bank Policy Research Working Paper No. 3879, April.
- Martínez-Zarzoso I. (2018), “Assessing the Effectiveness of Environmental Provisions in Regional Trade Agreements: An Empirical Analysis”, *OECD Trade and Environment Working Papers*, No. 2018/02, OECD Publishing, Paris, <https://doi.org/10.1787/5ffc615c-en>.
- Michael J. Trebilcock (2015), *Advanced Introduction to International Trade Law*, Edward Elgar Publishing.
- Ministry of Labour, Invalids and Social Affairs (2017), *Report No. 146/BC - BLĐTBXH dated 31/12/2017*.



- Myant M. (2022), “Labour rights in trade agreements: five new stories”, *ETUI Research Paper-Working Papers*.
- Ngo A., “Enforcement of Intellectual Property Rights in new generation of FTAs: Opportunities and Challenges for Vietnamese enterprises”
- Nguyen Dinh Dap (2022), “*Các quy định về môi trường trong Hiệp định EVFTA*” [translated: *Environmental regulations in the EVFTA Agreement*], *Hội thảo khoa học: “Hai năm thực hiện Hiệp định EVFTA: Tác động kinh tế-xã hội và những vấn đề đặt ra đối với Việt Nam”* [Scientific conference: “Two years of implementing the EVFTA Agreement: Socio-economic impacts and issues facing Vietnam”], available at <https://trungtamwto.vn/chuyen-de/21834-cac-quy-dinh-ve-moi-truong-trong-hiep-dinh-evfta>, (accessed on 19/8/2023).
- Nguyen H. (2020), “State-owned enterprises under the CPTPP and challenges for Vietnam”, *Journal of Legal Studies*, Volume 1/2020, Hanoi Law University Publishing House, p. 28.
- Nguyen L. (2020), “The need of establishing an Intellectual Property Court in Vietnam”, *Journal of Legislative Studies*, available at <http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210379>, accessed on 7/8/2023.
- Nguyen Lam Tram Anh (2021), “Nội luật hóa các cam kết về môi trường, ứng phó biến đổi khí hậu trong CPTPP và EVFTA” [translated: Internalize environmental commitments and climate change response in CPTPP and EVFTA], *Review of Industry and Commerce*, No. 4/2021.
- Nguyen T. (2023), “Orientations and solutions to promote the implementation of the new generation of FTAs”, available at <http://lyluanchinhtri.vn/home/index.php/thuc-tien/item/5012-phuong-huong-giai-phap-thuc-day-thuc-hien-cac-hiep-dinh-thuong-mai-tu-do-the-he-moi.html>, accessed on 7/8/2023.
- Nguyen, V. (2022), “Enforcement of intellectual property rights is not as effective as expected”, available at <https://thoibaotaichinhvietnam.vn/thuc-thi-quyen-so-huu-tri-tue-hieu-qua-chua-nhu-mong-muon-105514.html>, accessed on 7/8/2023.
- Noémie Laurens and Jean-Frédéric Morin (2019), “Negotiating environmental protection in trade agreements: A regime shift or a tactical linkage?”, *International Environment Agreements* 19, pp. 533–556.
- OECD (2001), *The Development Dimensions of Trade*.
- OECD (2023), *OECD Work on Regional Trade Agreements and the Environment*, available at <https://www.oecd.org/env/Policy-Perspectives-OECD-work-on-regional-trade-agreements-and-the-environment.pdf> (accessed on 28 April 2023).
- Office of the United States Trade Representative, 2022 Special 301 Report, available at <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>, accessed on 7/8/2023.
- Phan Q. N. (2020), “Quy định về sở hữu trí tuệ trong CPTPP và những tác động đến chuyển giao công nghệ, đổi mới sáng tạo”, *Science and Technology Information Journal*, 06A.
- Phuong H. (2021), “Evaluation of the effectiveness of developing legal system to implement the CPTPP”, *Economy and Forecast Review*, available at <https://kinhtevadubao.vn/danh-gia-hieu-qua-xay-dung-phap-luat-thuc-thi-hiep-dinh-cptpp-20103.html>, accessed on 7/8/2023.
- Routledge Myant M. (2017), “The impact of trade and investment agreements on decent work and sustainable development”, Brussels, ETUI, available at <https://www.etui.org/publications/guides/the-impact-of-trade-and-investment-agreements-on-decent-work-and-sustainable-development> (accessed on 25 April 2023).
- Smith A., Harrison J., Campling L., Richardson B. and Barbu M. (2020), *Free trade agreements and global labour governance: the European Union’s trade-labour linkage in a value chain world*, London.

- Torres A.R.B., Ibrahim A.N., Jajere B.M., Saidahmadovich D.K., Shivan M.Y., Al Ameer M.I.D. and Ngundu P. (2019), *Environmental Provisions in Regional Trade Agreements*, Emerging Issues on Trade and Sustainability.
- Tran L. (2019), “Enforcement of intellectual property rights in the context of the effective EVFTA”, presented on the 27 August 2019 Conference on “Vietnam – EU Free Trade Agreement: Important commitments on intellectual property and things to notice in mind”, available at [https://trungtamwto.vn/file/18922/3\\_Thuc%20thi%20EVFTA](https://trungtamwto.vn/file/18922/3_Thuc%20thi%20EVFTA), accessed on 7/8/2023.
- Tran Viet Dung (2020), *Các quy định về môi trường trong EVFTA và CPTPP - Một số kiến nghị hoàn thiện pháp luật môi trường* [translated: *Environmental regulations in EVFTA and CPTPP - Some recommendations to improve environmental laws*], Hong Duc Publisher.
- Tran, Thi Bao Khanh (2022), “Implementing commitments on labour and trade unions in CPTPP and EVFTA: Current situation and solutions”, *Review of Industry and Commerce*, No. 5, 3/2022.
- Tran, Thi Mong (2019), “Thực trạng pháp luật Việt Nam hiện hành về các biện pháp bảo vệ quyền của lao động nữ” [translated: *The status-quo of Vietnamese law on female employee protection measures*], *Review of Industry and Commerce*, No. 2, 2023 , <https://tapchicongthuong.vn/bai-viet/thuc-trang-phap-luat-viet-nam-hien-hanh-ve-cac-bien-phap-bao-ve-quyen-cua-lao-dong-nu-62270.htm> accessed on 10 August 2023.
- Tu P., Le A. (2022), “Real situation of dispute settlement on Intellectual Property Rights, Technology Transfer among individuals and organizations with profit purposes”, available at <https://lsvn.vn/thuc-trang-giai-quyet-tranh-chap-ve-quyen-so-huu-tri-tue-chuyen-giao-cong-nghe-giua-ca-nhan-to-chuc-co-muc-dich-loi-nhuan1657810468.html>, accessed on 7/8/2023.
- VCCI (2016), *Summary of Vietnam-EU Free Trade Agreement (EVFTA)*, available at <https://wtocenter.vn/chuyen-de/12781-summary-of-vietnam-eu-free-trade-agreement-evfta>, accessed on 8/9/2023.
- VCCI (2021), *Hoạt động xây dựng pháp luật thực thi CPTPP – Đánh giá hiệu quả thực hiện và Hàm ý chính sách*, available at <https://trungtamwto.vn/file/21230/bao-cao-nghien-cuu-xdpl-thuc-thi-cptpp.pdf>, accessed on 8/9/2023.
- VCCI (2023), *Thách thức từ thực tiễn nội luật hóa các quy định trong FTA thế hệ mới*, available at <https://trungtamwto.vn/hiiep-dinh-khac/13302-thach-thuc-tuthuc-tien-noi-luat-hoa-cac-quy-dinh-trong-fta-the-he-moi>, accessed on 8/9/2023.
- Velut J.B., Baeza-Breinbauer D., De Bruijne M., Garnizova E., Jones M., Kolben K., Oules L., Rouas V., Tigere Pittet F. and Zamparutti T. (2022), *Comparative analysis of trade and sustainable development provisions in free trade agreements*, London School of Economics.
- Vidigal G. (2017), “Why is there so little litigation under free trade agreements? Retaliation and adjudication in international dispute settlement”, *Journal of International Economic Law*, 20(4), pp. 927-950.
- Vietnam trade and industry review (VTIR) (2023), *Đánh giá chính sách tự chứng nhận xuất xứ hàng hóa tại Việt Nam theo các Hiệp định thương mại tự do thế hệ mới*, available at <https://tapchicongthuong.vn/bai-viet/danh-gia-chinh-sach-tu-chung-nhan-xuat-xu-hang-hoa-tai-viet-nam-theo-cac-hiep-dinh-thuong-mai-tu-do-the-he-moi-105526.htm>, accessed on 8/9/2023.
- Vilas-Ghisso S. J. and Liverman D. M. (2006), *Scale, Technique and Composition Effects in the Mexican Agricultural Sector: The Influence of NAFTA and the Institutional Environment*, Montreal: North American Commission on Environment Cooperation.
- VIR (2019), *SOE divestment a priority in CPTPP era*, available at <https://www.vir.com.vn/soe-divestment-a-priority-in-cptpp-era-65586.html>, accessed on 8/9/2023.
- WTO (2010), “DDG Yerxa Cites Benefits of More Open Trade on the Environment”, 26/3/2010, available at

[https://www.wto.org/english/news\\_e/news10\\_e/envir\\_26mar10\\_e.htm](https://www.wto.org/english/news_e/news10_e/envir_26mar10_e.htm) (accessed on 30 July 2023).

- Wu H. (2021), *Self-Certification Challenges in Vietnam's FTAs*. Journal of International Trade Policy, Vol. 17(4), pp. 423-437.

#### **Websites:**

- <http://baobaohiemxahoi.vn/vi/tin-chi-tiet-se-sua-bo-luat-lao-dong-phu-hop-voi-cam-ket-ve-lao-dong-trong-cptpp-21863941.aspx> (accessed on 6 June 2023).
- <http://baochinhphu.vn/Kinh-te/Bo-Cong-Thuong-Dinh-huong-xay-dung-phap-luat-dap-ung-hoi-nhap-kinh-te/415003.vgp> (accessed on 6 June 2023).
- <http://laodongxahoi.net/nam-2022-ca-nuoc-xay-ra-hon-7700-vu-tai-nan-lao-dong-1326853.html> (accessed on 10th August 2023).
- <http://moit.gov.vn/web/guest/tin-chi-tiet/-/chi-tiet/cong-tac-sua-%C4%91oi-xay-dung-phap-luat-%C4%91e-thuc-thi-hiep-%C4%91inh-evfta-19466-22.html> (accessed on 6 June 2023).
- <http://www.congdoan.vn/tin-tuc/cong-nhan-360-500/ca-nuoc-xay-ra-23-cuoc-ngung-viec-tap-the-xuat-phat-tu-quan-he-lao-dong-808995.tld>, accessed on 4<sup>th</sup> September 2023.
- <https://congbobanan.toaan.gov.vn/6tatcvn/Thong-ke>, accessed on 7/8/2023.
- <https://rtais.wto.org/UI/PublicAllRTAList.aspx> (accessed on 31 March 2023).
- <https://thanhvien.vn/dinh-cong-tu-phat-tang-dot-bien-1851452600.htm#> (accessed on 01/8/2023).
- <https://thuvienphapluat.vn/tnpl/1451/Tap-the-lao-dong?tab=0> accessed on 22<sup>nd</sup> July 2023.
- <https://trungtamwto.vn/thong-ke/12065-tong-hop-cac-fta-cua-viet-nam-tinh-den-thang-112018> (accessed on 15 May 2023).
- <https://tuoitre.vn/ti-le-lao-dong-tre-em-o-viet-nam-giam-theo-tung-nam-20220527142020847.htm>, accessed on 21<sup>st</sup> July 2023.
- <https://vnexpress.net/phia-sau-nhung-cuoc-dinh-cong-o-mien-trung-4428821.html>, accessed on 4<sup>th</sup> September 2023.
- <https://www.ris.org.in/sites/default/files/Publication/ITEC%20Trade%20and%20Sustainability%20Report%202019-min.pdf#page=61> (accessed on 31 March 2023).
- <https://www.tapchiconsan.org.vn/web/guest/nghien-cu/-/2018/824270/ban-ve-to-chuc-cua-cong-nhan-tai-doanh-nghiep-va-nhung-thach-thuc-dat-ra-doi-voi-to-chuc-cong-doan-viet-nam-hien-nay.aspx> (accessed on 27 August 2023).