



# COMPARATIVE STUDY ON LABOUR PROVISIONS IN FTAs: VIETNAM'S AND THAILAND'S PERSPECTIVE



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## **CHAPTER 5**

### **IMPACT OF FTAS' LABOUR PROVISIONS: VIETNAM'S AND THAILAND'S PERSPECTIVE**

Considering the experience of Vietnam as well as Thailand's context, this Chapter assesses the impacts of labour provisions of the new-generation FTAs, namely the CPTPP and the EU's FTA, on Vietnam and Thailand. On the one hand, the research suggests that participation in the new generation FTAs provides a critical external push for legislative reform in the direction of improvement of labour standards in Vietnam and will be so for Thailand in case it accedes to the CPTPP and/or conclusion of an FTA with the EU. On the other hand, the research considers that such legislative reforms need to be supplemented by effective implementation of labour standards in practice and the framework of the new generation FTAs' labour provisions can contribute to such implementation on the condition of activeness and seriousness of the members.

#### **5.1 Important external push for improvement of domestic labour standards**

The research considers that participation in the CPTPP and/or inclusion of an FTA with the EU constitutes an important push for Vietnam and Thailand to elevate the standards of labour protection in their domestic law.

As middle-income countries, Thailand's and Vietnam's manufacturers have benefited from low costs of labour. There can be certain reluctance and resistance in both countries to adopt international labour standards in their domestic laws due to concerns over the reduction of competitiveness. Thailand has joined the ILO in 1919 as one of its founding members and Vietnam has been a member from 1950 to 1976, 1980 to 1985 and since May 1992. Nonetheless, prior to the participation in the CPTPP and conclusion of the EU Vietnam FTA, Vietnam has ratified only five out of eight core Conventions, while Thailand has ratified six out of eight fundamental Conventions of the ILO.

Participation in the CPTPP and the EU Vietnam FTA can be considered the main driver for Vietnam's ratification of ILO Convention No. 98 concerning Right to Organize and Collective Bargaining in 2019 and of ILO Convention No. 105 on Abolition of Forced Labour. Vietnam has also manifested its intention to ratify the remaining ILO Convention No. 87 on freedom of association and the right to organise in 2023. Vietnam has also proceeded to the major revision of its Labour Code in 2019, which has brought various improvements concerning the fight against forced or compulsory labour, the protection of child labourers and the elimination of discriminations in employment and occupation. The most significant change is that the new Vietnamese labour Code recognises for the first time "workers' organisations at the enterprise level" which are not affiliated to the single state-led union federation, the Vietnam General Confederation of Labour (VGCL), eliminating thus the monopoly of trade unions under the VGCL in representing workers. The new labour code reduces the restrictions to the freedom of association, limits the interference with workers' representative organizations' activities as well as prohibits discrimination against workers' representatives.

Adhesion to the CPTPP and/or inclusion of an FTA with the EU will create an important and required push for Thailand to elevate its labour standards and protection. It should be recognised that many positive changes in Thai laws concerning labour standards and protection have been influenced, to quite an extensive extent, by the external pressure from the major actors in international trades; whether from the EU concerning the elimination of the IUU fishing or from the US reports concerning the trafficking in persons or the worst forms of child labour.

Among the four fundamental freedoms affirmed in the 1998 ILO Declaration, the guarantee of freedom of association and collective bargaining is the most sensitive issue for Thailand as Thailand has postponed the ratification of the relevant for quite a certain period. Although Thailand's accession to the CPTPP will not create a formal obligation for Thailand to ratify the remaining ILO fundamental Conventions, the conclusion of an FTA with the EU is very likely to create an obligation for Thailand to "make the continued and sustained effort" towards ratification of the remaining Conventions, namely Conventions No.87 and 98. Nevertheless, it should be emphasised that either the accession to the CPTPP or the conclusion of an FTA with the EU will commit Thailand to respect all four fundamental freedoms stated in the 1998 ILO Declaration including the freedom of association and collective bargaining.

The area which will require the most changes at least at the legislation level concerns freedom association and collective bargaining and thus the amendment of relevant Thai legislation in order to conform with the international standards as enshrined in Conventions No. 87 and 98. The ongoing process of revision of the Labour Relation Act and State Enterprise Labour Relations Act has revealed some improvement aligning Thai legislation with the principles enshrined in the ILO Conventions, especially concerning limitation of public authority's interference with the establishment of workers' organisations, the election of their representatives as well as the functioning and the dissolution. Further reform should include extending the same rights to migrant workers (with the possible requirement of certain reasonable conditions such as period of residency) as well as to workers in informal sectors.

In the same way that Vietnam's participation in the CPTPP and EU-Vietnam FTA has led to successful reform on labour standards in Vietnam, Thailand's participation in these new-generation FTAs can bring about the revision of domestic law which Thailand also recognises inconsistency with the international labour standards but has encountered obstacle to reform. In general, Thailand's accession to the CPTPP and conclusion of an FTA with the EU can be viewed as an opportunity for Thailand to improve domestic labour standards for the benefit of all workers, national or non-national, in conformity with its obligations as a member of the ILO.

## **5.2 Requirement of effective implementation in practice**

Improvement of labour laws in the book is necessary but not sufficient. The elevation of labour standards and protection in law need to be supplemented by the effective implementation of the laws in practice. It should be recognised that both Vietnam and Thailand face important challenges in implementing the labour standards and protection recognised in practice.

In Vietnam, the improvement has occurred firstly in the amended Labour Code. The implementation of many provisions requires nonetheless the adoption of secondary legislation by the Government, and this will impact the scope and implementation of various new principles and obligations contained in the new Labour Code. The real challenges reside nevertheless in the implementation of these legislations in practice

For Thailand, in ratifying the relevant Conventions concerning the elimination of forced or compulsory labour, child labour, and employment discrimination, Thailand has expressed its commitment to uphold and implement these fundamental freedoms in its laws and practices. Thailand has indeed adopted many legislative reforms in order to implement the ratified Conventions, but there remain important differences between the law and the practice.

The possibility of the CPTPP member countries using the general dispute agreement and the eventuality of trade sanctions as well as the mechanism of follow up provided for in the EU's FTA may function as an incentive as well as assistance for Vietnam (and Thailand) to thoroughly comply with their labour obligations as stated in these agreements.

The research considers that the mechanism to ensure and promote compliance with labour standards contained in the CPTPP Labour Chapter and the EU's FTA TSD Chapter can provide a supplementary mechanism to that of the ILO Conventions to ensure and promote compliance with international labour standards, on the condition of the activeness and seriousness of the partner countries to engage with the mechanism.