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WILL EVFTA HELP TO INCREASE REAL WAGES FOR VIETNAMESE WORKERS?

The European Union-Vietnam Free Trade Agreement (EVFTA), effective on 1 August 2020, is one of the first two “new-generation” free trade agreements (FTAs) that Vietnam has joined. EVFTA promises to bring many benefits to Vietnam across areas ranging from trade, services, and investment, to intellectual property, public procurement, labour, and the environment, among others. According to the Ministry of Planning and Investment, wages of Vietnamese workers will be approximately one percent higher in foreign direct investment (FDI) enterprises than in domestic firms.¹ According to the European Trade Policy and Investment Support Project (EU-MUTRAP), real wages of unskilled workers are estimated to rise by three percent by 2025. Although these are positive forecasts for the social benefits of EVFTA, if achieved, they are still modest compared to the greater economic benefits that EVFTA brings to Vietnam. Vietnam’s exports to the EU are estimated to increase by around 42.7 percent by 2025 when compared to the period before EVFTA. There will be increased export potential for agricultural and aquatic products, particularly rice with an estimated increase of 65 percent by 2025, sugar (eight percent increase), and pork (four percent increase), among others.² Exports to the EU from the textile and garment industry are expected to see a rapid increase of 67 percent by 2025. The export of leather and footwear products will also increase by about 34 percent. This is also not taking into account the benefits from other FTAs that Vietnam has joined, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), effective since January 2019.

Even if the forecast of social benefits is a modest one, can a three percent wage increase by 2025 be achieved as expected? This is a question that should be studied thoroughly in order for policy-making to achieve the predicted benefits from EVFTA in practice.

EVFTA REGULATIONS RELATED TO WAGES AND THE POSSIBILITY OF WAGE INCREASES FOR WORKERS

EVFTA states in article 13.4 as follows:

2. Each Party reaffirms its commitments, in accordance with its obligations under the ILO and the ILO Declaration

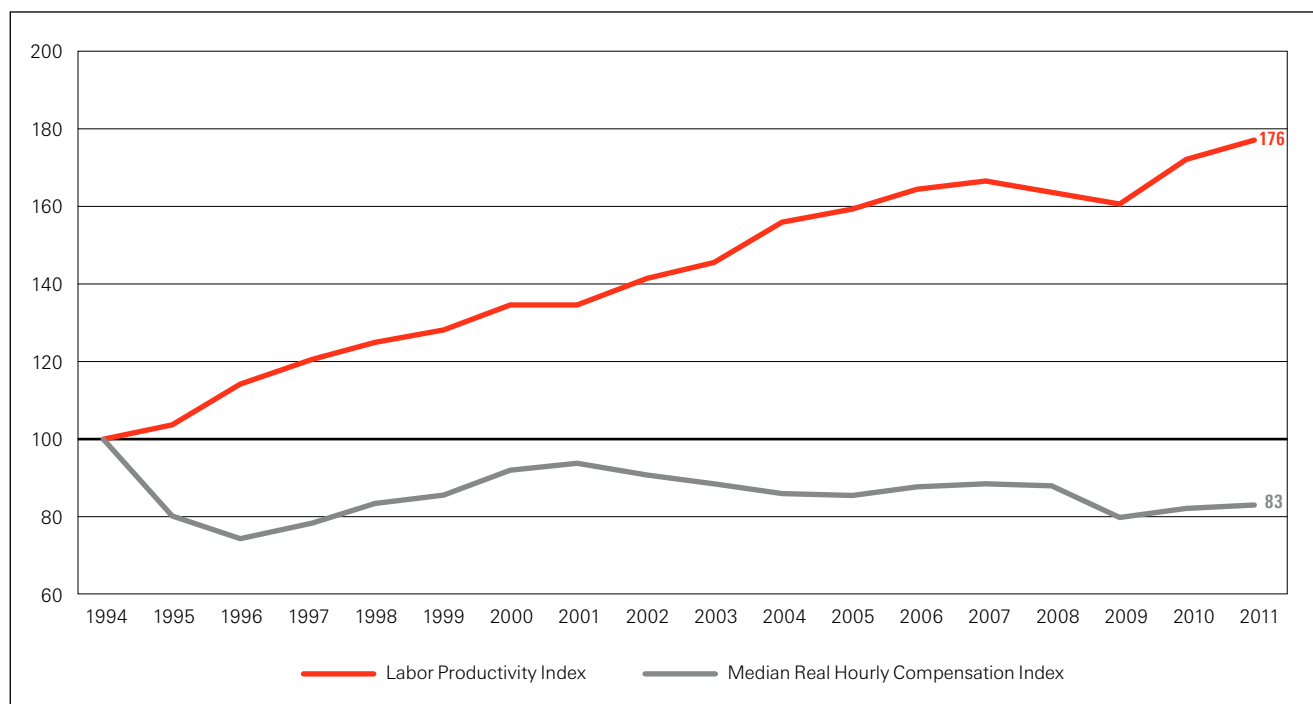
on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, to respect, promote and effectively implement the principles concerning the fundamental rights at work, namely: (a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

3. Each Party shall: (a) make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions; (b) consider the ratification of other conventions that are classified as up to date by the ILO, taking into account its domestic circumstances; and (c) exchange information with the other Party with regard to the ratifications mentioned in subparagraphs (a) and (b).
4. Each Party reaffirms its commitment to effectively implement in its domestic laws and regulations and practice the ILO conventions ratified by Viet Nam and the Member States of the Union, respectively.³

The EVFTA document does not contain a single word which refers to the wage issue, while, for reference, the CPTPP states in article 19.3 that “each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health”.⁴ As such, the CPTPP stipulates that the minimum wage should be at an “acceptable” level, but it only refers to the minimum wage, which applies to disadvantaged and low-income groups who have little or no bargaining power. The minimum wage does not make much sense for workers already at a wage level higher than the minimum wage, especially those with high-paying jobs. Also, reaching consensus on what constitutes “acceptable” is not easy in the implementation process.

If EVFTA does not have any specific regulations about wages, then what is the basis for the forecast of increased wages for Vietnamese workers under EVFTA? The EU-MUTRAP estimates that the real wages for unskilled workers would increase by three percent by 2025, but it does not

Figure 1. Index of real wages and labour productivity in Mexico, 1994–2011



Source: "Mexico: The minimum wage rises to 88.36 pesos", Auxadi, 24 January 2018, available at <https://www.auxadi.com/en/news/the-minimum-wage-in-mexico-rises-to-88-36-pesos/>. Last accessed on 22 February 2021.

specify the basis for this forecast. If it is assumed that economic benefits will increase, and as a result workers will reap a wage increase, then this is only an assumption. In reality, many enterprises make profits, but then invest in production expansion — recruiting more workers in the process — and thus the wage of each worker remains unchanged. So, what is the basis for the forecast of an increase in workers' wages?

EVFTA (Article 13.4) provides for workers' rights to freedom of association and effective collective bargaining. This is likely the agreement's basis for enabling an increase in wages.

The rights to freedom of association and collective bargaining ensure that workers, who are in a weaker position than their employers, can associate with each other to form their own organizations. This then enables them to utilize collective bargaining power when conducting negotiations with the employer for wage increases and the improvement of other working conditions. Freedom of association can only be exercised if the right to strike is guaranteed, as the purpose of the strike is to force the employer to sit at the negotiating table. In addition to freedom of association, for the implementation of genuine collective bargaining, workers need to be protected against employers' acts of discrimination, interference against their organizations, and unfair practices in collective bargaining. Discriminatory acts from employers are common in Vietnam, including layoffs, transferring workers to undesirable positions, and creating difficulties for workers at work, among other tactics. These acts of interference are common, including but not limited to: manipulating a workers' organization leadership election to favour the employer's chosen candidate; surveilling the activities of the workers' organization; or covertly controlling the workers' organization so that it operates at the discretion of the employer. Acts which demonstrate lack of goodwill on the part of the employer are also common, such as refusing to acknowledge the workers' organization, refusing dia-

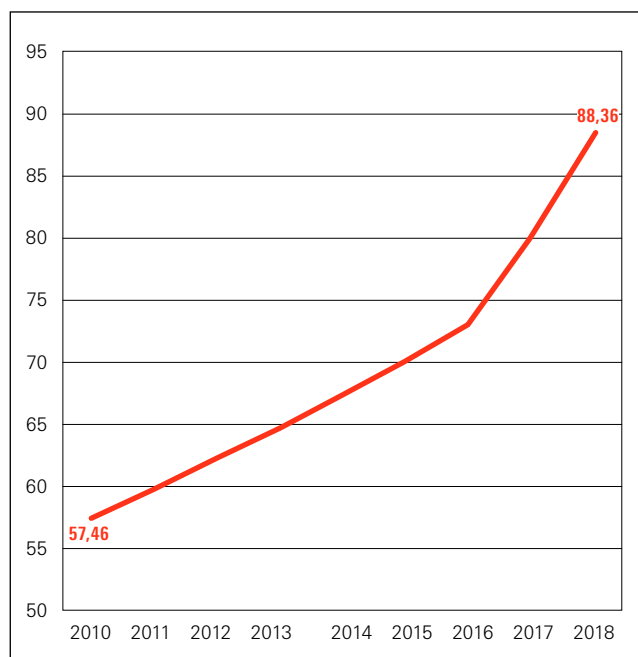
logue and negotiations with the workers' organization, not implementing the collective agreement after signing it, and so on. Only when these rights are guaranteed can collective bargaining be implemented effectively and the possibility of wage increases for workers be realized.

WOULD THE FORECAST OF A THREE PERCENT WAGE INCREASE FROM EVFTA BE ACHIEVED AS EXPECTED?

The story of the North American Free Trade Agreement (NAFTA) with regard to Mexico elicits many thoughts. NAFTA was signed in 1994 between Mexico, the US, and Canada⁵ With labour regulations included in an FTA for the first time, the expectation was that NAFTA would improve conditions for Mexican workers, including wages and other working conditions, so that they were on a par with its developed neighbours. Although more could be said about the effects on other working conditions, this article will place its focus on the aspect of wages.

Like EVFTA and other FTAs, NAFTA did not have specific regulations on wages. At the time of NAFTA's negotiations, many studies forecast that NAFTA would help increase trade, develop the economy, and increase wages for Mexican workers, even creating a significant expectation that Mexican workers' wages would be on a par with the USA's and Canada's, thus creating a level playing field and improving worker conditions in the region. NAFTA was negotiated during a period of rising unemployment in the US and a decline in the real income of US workers.⁶ US trade unions described the US social security floor at that time as the worst among developed nations.⁷ Even so, the wage gap between Mexico and the US is still quite large. In 1992, the average hourly wage of manufacturing workers in Mexico was USD 2.35/hour, while in the US it was USD 16.17/hour.⁸ This shows that NAFTA's forecast expected huge wage increases for Mexican workers. So what actually happened after ten, 20,

Figure 2. The Mexican minimum wage, 2010–18



Source: Ibid.

and 25 years of NAFTA? Many studies have revealed that, far from bridging the wage gap between the two nations, this gap has actually widened.

To a certain extent, NAFTA has contributed to wage increases for workers, but the rate of wage growth is not commensurate with the growth in labour productivity. The empirical study after a decade of NAFTA by Sandra Polaski, former Deputy Director General of the International Labour Organization, confirmed that Mexican workers' salaries and incomes were still too low compared to neighbouring countries.⁹ Research by K. A. Nolan Garcia¹⁰ confirmed that even after more than 15 years, Mexican workers still could not earn enough to buy imported products from the neighbouring USA. After nearly 20 years of NAFTA, a publication by the Center for Latin American Studies at UC Berkeley¹¹ revealed that labour productivity in Mexico had almost doubled while the average real wage had not increased, not even by a small margin (see figure 1). Nominal wages increased and manufacturing wages may have increased more than in other industries, but the average real wage of workers in the country (adjusted after inflation) remained largely unchanged from 1994–2011, or even saw a slight decline.

Although the manufacturing industry after nearly 20 years of NAFTA—and now under the replacement USMCA—is believed to create the most jobs and have the highest level of improved working conditions in Mexico, the non-governmental organization Sierra Club confirms that the average manufacturing worker earns only 28.6 percent of what a family of four needs to cover basic necessities.¹² A study by Owen E. Herrnstadt published in 2018 by the Economic Policy Institute (a non-profit think tank in the United States), said that after more than 25 years, the average wage of Mexican manufacturing workers was less than three US dollars an hour, less than a fifth of that of a US manufacturing worker.¹³ In 1994, the wages of auto workers in the United States were five times higher than those in similar factories in Mexico, but by 2016, the pay gap had increased nine-fold.¹⁴ Another study published by the US think tank Conference Board¹⁵

confirms that the wage gap between the US and Mexico remained the same or even grew for the period 1997–2016. A study by David Bacon gives further evidence for NAFTA's failure to address the wage imbalance between Mexico and the US: "[b]y 2010, 53 million Mexicans were living in poverty; in the 20 years after NAFTA went into effect, the buying power of Mexican wages dropped—the minimum wage's buying power plummeted by a staggering 24 percent."¹⁶ Mexico has even been lagging behind China for the past 20 years, with the average wage in the manufacturing industry in China tripling between 2005–16, reaching USD 3.60/hour, while in Mexico during the same period the average wage decreased from USD 2.20/hour to USD 2.10/hour.¹⁷ In 2018, Mexico had the lowest wages of all the OECD member states, with an average hourly wage of USD 4.60, compared with the bloc's average of USD 16.60.¹⁸ In 2019, Mexico raised its minimum wage by 16.2 percent, which was still not enough to help Mexico rectify the situation that "Mexicans work longer hours than anyone in the OECD, but wages are among the lowest".¹⁹ The minimum wage in Mexico in 2020 was 123.22 pesos (USD 6.53)²⁰ per day—a rise from 88.36 pesos per day in 2018—which is still lower than the long-stagnant US federal minimum wage of USD 7.25/hour, itself considered not "acceptable", and despite the two countries being close together and sharing a border.

Why did Mexican workers' wages not rise as expected? The answer lies in the failure to fully exercise workers' rights.

Thus far, the rights of Mexican workers to form and operate unions have not been guaranteed as they should have been according to NAFTA's labour provisions. By 2012, the proportion of workers joining trade unions was only 8.8 percent of the total employed workforce and 13.9 percent of the total salaried workers. Employer-sponsored unions are quite common, contributing to weakening the representative role of genuine unions and making little sense as a means to implementing collective bargaining, especially collective bargaining related to wages. 90 percent of collective bargaining agreements are the result of sham negotiations between "fake" unions and employers.²¹

In establishing organizations and conducting collective bargaining, workers and trade union representatives always face attacks from employers. A number of incidents have occurred over the course of many years, of which many are still unresolved. A recent example which typifies this is the labour dispute and strike of an education union in the city of Oaxaca, still ongoing since 2015, which led to some deaths and injured union members and representatives.²² Acts of violence against unions are common. On 18 November 2017, two mining workers were killed for participating in strikes in the state of Guerrero, and in another incident, 130 university workers who were union members were attacked for union activities in the town of San Cristóbal de las Casas on 9 February 2017. In January 2018, a union representative was murdered, and this came after their having voiced concerns about receiving threats soon after being elected.²³ These cases show that trade union rights are being seriously violated in Mexico. These violations serve not only to prevent workers from forming their organizations and to attack collective bargaining, but also descend into violence, assault, and murder against union representatives and union members, which has the chilling effect of making workers reluctant to speak collectively about workplace problems or open dialogues for the protection and improvement of their working conditions,

including wages. Therefore, the situation in Mexico is still plagued by issues such as low wages, poor occupational health and safety, limits on occupational medicine, child labour, forced labour, and labour exploitation. The story of Mexico shows that after 25 years, NAFTA failed to fulfil the “promise” of increasing real wages for workers.

To return to the case of Vietnam: labour commitments in EVFTA create a legal framework for Vietnam to ensure the rights of workers, including the rights to form organizations and collective bargaining with the goal of wage increases. However, there has not yet been a guarantee that these rights will be effectively realized in the next four to five years—that is, by 2025, the year for which workers’ wage growth is projected to reach three percent thanks to EVFTA.

As of today, the only workers’ representative organization operating in Vietnam is the Vietnam General Confederation of Labour. Collective bargaining by Vietnamese Trade Unions at the enterprise level has little to do with wage bargaining. If anything, it is more about negotiating wage adjustment when the statutory minimum wage increases. Such minimum wage adjustment negotiations are not real wage increase negotiations. In some enterprises, wage negotiations take place but are not representative of real collective bargaining, rather it is the trade union that proposes a wage increase for workers upon finding out that the enterprise has made profits. Trade unions try to persuade employers but the result is at the sole discretion of the employer. It is not genuine collective bargaining, one of the reasons being that enterprise trade unions are not independent from employers. It is common in Vietnam that the enterprise trade union chairperson at the same time holds the position of head or deputy head of human resources, or even deputy director of the enterprise. These management positions are under the leadership and administration of the director general, which make the enterprise trade union chairperson dependent upon the employer and not in an equal position to negotiate with the management. To rectify this in order to facilitate genuine collective bargaining, the Better Work programme of the International Labour Organization, which has been in Vietnam for more than ten years with the support of brands in the garment supply chains, require garment enterprises to have an independent trade union chairperson not affiliated with the management, meaning that a blue-collar worker would hold the enterprise’s trade union chairmanship. Regardless, under the present circumstances, the enterprise trade union chairperson still does not have collective strength from workers to back the collective bargaining and hence cannot organize a strike. That leaves genuine collective bargaining still unimplemented in practice, and any wage increase is totally dependent on the willingness of the employer. This reliance on the employer is not the solution as 70–80 percent of more than 7,000 spontaneous strikes in Vietnam since 1995 have been related to wages. Supporting genuine union independence from the employer, relying on the collective strength of workers, and using the right to strike as leverage for collective bargaining on wages is not a prospect that can be quickly achieved. Within the next five years, this will remain a topic of struggle for the union, as the process of trade union reform includes changing individual thinking to collective thinking, as well as change-fuelled action. All these changes cannot be attained overnight as the current trade unions have been operating in such a model for more than 90 years. This implies that the goal—of a three

percent wage increase over the next five years for workers through trade union collective bargaining—is not an easy one to achieve unless the union can undergo a breakthrough in terms of structure in the near future.

We can assume that the 2019 Labour Code of Vietnam gives workers the right to set up other representative organizations outside of the Vietnam General Confederation of Labour, and it is hoped that these organizations will be independent from the employers and based on the collective power of the workers so as to promote genuine collective bargaining. Then, the actual wages of the workers through collective bargaining would hopefully increase by three percent. That is the theory, but this does not always work out in practice, at least not always as swiftly as the theory would assume.

To form an organization, workers need to be aware of and exercise their rights properly. This demands time for worker training. In the case that workers overstep or abuse their authority, it also takes time to settle any dispute. Also, worker training is not only an information session about the right to organize, but is also a workshop about related rights such as the right to strike, the right to collective bargaining, and the teaching of skills to exercise these rights. The path from training to effective practice is certainly not short. For the first time in Vietnam, the worker’s right to organize has been legalized, so the implementation will inevitably encounter hurdles, for example: discrimination, manipulation, interference, and unfair labour practices. These tactics from employers, which traditionally have affected workers, can apply equally to new worker organizations. All these matters take time to resolve. Many problems may not be resolved internally between the worker and the employer, but must rely on the intervention of a third party, as for example in conciliation, arbitration, and court. So far, the operation of these agencies in Vietnam for the promotion of collective bargaining has been ineffective. Again, these agencies need time to improve their capacity. Therefore, the next five years for the establishment of worker organizations in order to promote collective bargaining on wages is just the preliminary stage. This will be where institutions are set up to enable the exercising of the right, rather than the stage where the right itself is exercised. Many issues may arise involving enforcement of the law, such as: the mismatched interpretations of legal documents or the misunderstanding of the rights of parties leading to disputes; a weak capacity to resolve issues, making it difficult to achieve quick resolutions; incomplete institutions for problem-solving, which demand actions of institutional reform; and the implications of emerging issues that are not yet regulated in law, and that therefore require legislative intervention. Problems which arise may however also spur on the various processes of institutional completion concerning the registration of workers’ organizations, collective bargaining, the exercise of rights while resolving disputes, conciliation, and arbitration. Such a background shows that, in the next five years, it will not be easy to achieve a real wage increase of three percent through collective bargaining by workers’ representative organizations other than through the Vietnam General Confederation of Labour.

Vietnam may not face incidents of discrimination as serious as in Mexico (i.e. union representatives being attacked and killed), or at least this is not currently expected, but there is no guarantee that trade union officials, as well as leaders of other workers’ representative organizations, will not face

Some typical acts of anti-union discrimination and interference by employers at workplaces:

- Taking revenge (in various forms) on workers who join the union;
- Regularly transferring workers to other undesirable work positions within 60 days of a worker’s resignation;
- Controlling and supervising workers 24 hours a day;
- Finding ways to dismiss workers who are active in unions or involved in organizing strikes, with reasons purportedly unrelated to their union activities.
- Transferring the union chairperson to another, less pleasant job when seeing that the union chairperson speaks out strongly for workers.
- Promoting the union chairperson to a more senior position or using material benefits to “buy off” union officials.
- Not transferring trade union fees to the union as well as not transferring the membership dues deducted from members to the union.
- Managing trade union bank accounts, controlling the union’s expenditure, and not allowing the union to expend its budget upon activities which the enterprise does not approve of.
- Dominating the election process of the executive committee of trade unions, deciding the list of candidates for election, introducing or appointing personnel for unions, manipulating and monitoring the vote-checking process, and utilizing various means to embed employer personnel in the leadership of enterprise trade unions, thereby ensuring that unions will operate as the enterprise desires them to.
- Explicitly protecting the position of the management in the trade union executive committee, and making workers think that only the management in the trade union committee can help negotiate for and protect the rights and interests of workers.

Source: Survey carried out by the Institute for Workers and Trade Unions, 2018

other types of discrimination which could prevent them from setting up organizations to conduct collective bargaining. A survey on unfair labour practices faced by trade unionists, which was conducted by the Institute of Workers and Trade Unions in 2018, shows that in places where trade union officials speak out strongly to protect workers, a lot of discrimination and interference against union officials subsequently occurs.

We may expect that a three percent wage increase will at least be achieved for the low-income group through the statutory minimum wage increase. In other words, the group of low-income workers will receive a three percent wage increase if the statutory minimum wage increases by three percent by 2025. Even so, let us look more closely at this. In 2019, the National Wage Council of Vietnam announced that the minimum wage had ensured the minimum standard of living, which means the minimum wage had fulfilled its mission according to the law. This implies that any increase in the years after would be mainly to compensate for inflation. Therefore, for a real minimum wage increase, the notion of “minimum wage” needs to be changed to “living wage”.

However, in Vietnam, this new notion has not been adopted by the National Wage Council nor by the government. It is difficult to bring this new notion into discussions in the National Wage Council because economic growth goals are still considered as higher priorities.

So is there another way to achieve the real wage increase of three percent as anticipated by the MUTRAP-EU? We might consider using EVFTA to force brands from Europe to exert pressure on manufacturers in Vietnam to raise wages. However, EVFTA has no provisions about this. Some European brands include living wage requirements in their codes of conduct for workers in their supply chains.²⁴ However, so far, brands have only been concerned with compliance with local national laws and no brand has strongly enforced this “living wage” regulation in their supply chains in developing countries, including in Vietnam. Brands can make commitments, but the effectiveness of enforcement depends on whether workers and their representative organizations, including trade unions, can negotiate enforcement. This, in turn, is difficult to achieve, as has been explained above.

Going back to the economic theory, we can still expect that when enterprises make profits and increase labour productivity and export value, employers will share a larger “piece of the pie” with their workers. Not to mention that, just for export enterprises, the benefit of reducing export tax to zero will allow employers to apportion more money to their workers. While not every employer will share voluntarily, we still expect that some proportion of ethical employers will do so. In this case, a part of the workforce will receive wage increases, hopefully up to three percent as per the forecast. But this share, if any, would not be evenly distributed among industries; probably more would be seen in export enterprises and less in import enterprises. Even worse, workers in import industries may face the situation that competition from imported products is so fierce that the employer has to reduce wages or even lay off employees when they make a loss or experience bankruptcy.

SOME POLICY RECOMMENDATIONS AND IMPLICATIONS

We can expect EVFTA to help increase real wages for Vietnamese workers but we should not be delusional. There are still many things to be done in order to achieve the desired real wage increase, which I will now explain in more detail.

First, Vietnam needs to ensure that workers’ rights as laid out in EVFTA are implemented quickly and effectively. To do so, it is necessary to establish, and make operational, institutions related to the rights to organize, strike, and collective bargaining. This will entail multiple organizations which represent workers, helping especially with the registration process for workers’ organizations and protection for their leaders and workers against discrimination and interference. At the same time, it is necessary to improve the capacity of competent authorities to quickly handle disputes that arise in the process of exercising the rights to organize and collective bargaining. Otherwise, the five-year period will only be enough for institution-building but not for bringing about a three percent real wage increase for workers as forecast.

Secondly, the EU needs to ensure that brands play a stronger role in improving working conditions for workers in producing countries, including Vietnam. Brands should demand that enterprises in the manufacturing countries pay a living wage for workers as specified in the brand’s code of

conduct. The voice of the brand can have a much greater impact than the Vietnamese labour inspectorate. If the brands were to use purchasing orders as a means of exerting pressure, this would certainly and immediately affect wages positively. For a real wage increase of three percent within five years, brands can work with enterprises to develop a roadmap and make commitments to its implementation. At the same time, trade unions should use the brand's code of conduct to push the local employer towards the payment of a living wage and contact the brand in case of pushback from the local employer.

Thirdly, Vietnam needs to adopt a new understanding of minimum wage that would in effect be a living wage. Vietnam is now a middle-income country, so it should target the minimum wage not as a tool to solve biological or income poverty, but as a means of addressing multi-dimensional poverty or poverty of opportunity. Vietnam needs to move away from the current minimum wage formula based on the consumption habits of the low-income population, and shift to calculation of a minimum living wage based on consumption patterns suitable for the current stage of development and based on market prices. Only then can wages improve and can workers benefit from economic growth.

Fourthly, for workers' representative organizations, including trade unions, to conduct substantial collective bargaining on wages, the right to strike is indispensable. Without simplifying the strike procedures, workers' representative organizations will not be able to organize strikes and workers will still resort to wildcat strikes. Strikes and collective bargaining are two related rights. When trade unions and other workers' organizations are unable to organize strikes, employers still have no motive to negotiate with unions and workers' organizations.

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IMPRINT

POLICY PAPER 2/2021

is published online by the Rosa-Luxemburg-Stiftung

Responsible: Loren Balhorn

Straße der Pariser Kommune 8A · 10243 Berlin, Germany

www.rosalux.de

ISSN 1867-3171

Editorial deadline: March 2021

Proofreading: Gegensatz Translation Collective

Setting/Production: MediaService GmbH Druck und Kommunikation