

ETUC position on the EU-Vietnam Free Trade and Investment Protection Agreements

Adopted at the Executive Committee Meeting of 17-18 December 2019

Background

In December 2015 the European Union and Vietnam concluded a Free Trade Agreement (FTA) and Investment Protection Agreement (IPA). After a legal review, the final texts were agreed by both parties in June 2018 and signed in June 2019. The European Parliament has started its consent procedure and the vote in the Committee on International Trade is expected at the end of January 2020 and the vote in the Plenary at the end of February.

ETUC position in a nutshell

As the ETUC, we reaffirm our call for a progressive trade policy putting free trade agreements at the service of priority goals such as decent employment, social cohesion, equality and sustainable development. EU trade policy must therefore ensure full respect of human rights, including trade union and workers' rights, and the environment, and must also take account of the development needs of less developed countries. Trade can be a great opportunity only if it creates quality jobs and boosts sustainable development.

ETUC therefore calls on the European Parliament to oppose the ratification of the EU-Vietnam FTA and IPA until Vietnam has ratified, or defined a binding roadmap to ratify, the fundamental International Labour Organization (ILO) Convention 87 on freedom of association and protection of the right to organise and Convention 105 on the abolition of forced labour, and until the two parties involved in the negotiation have addressed the other concerns outlined below.

Human rights and enforcement concerns

Vietnam is one of the worst countries in the world to be a worker as there is no guarantee of rights.¹ In June 2019, Vietnam ratified the ILO fundamental convention 98 on the right to organise and collective bargaining, it has still to ratify two out of the eight ILO fundamental conventions, i.e. Convention 87 on freedom of association and protection of the right to organise, and Convention 105 on abolition of forced labour.

Independent trade unions in Vietnam remain effectively outlawed and the national trade union centre, the Vietnam General Confederation of Labour, is not independent of the government and the ruling party. It is not possible to realise the right of meaningful collective bargaining without independent trade unions, freely chosen by the workers through the practical realisation of the right to freedom of association.

The ETUC Congress has stated that ratification and implementation of the eight ILO Core Labour Standards as well as compliance with updated ILO Conventions and instruments such as the Forced Labour Protocol and ILO Conventions on health and safety at work must be a pre-condition for entering into EU trade negotiations. However, if a partner country has not ratified or properly implemented these Conventions, it must demonstrate through a binding roadmap how this will be achieved in a timely manner. ILO up-to-date instruments must be included in all EU trade agreements in a manner that makes them effectively enforceable.² Respecting the ILO fundamental conventions

¹ <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf>

² <https://www.etuc.org/en/publication/etuc-action-programme-2019-2023>

is a requirement of the EU's General System of Preferences system, the EU must not demand less from any trading partners.

The Vietnamese government has announced the ratification of Convention 105 in 2020 and of Convention 87 in 2023. ETUC however calls for a binding roadmap for these ratifications. ETUC also calls for a roadmap on progress towards ratification and full implementation of all up-to-date ILO conventions, particularly those referred to health and safety at work.

Hundreds of independent trade unionists have been arrested in Vietnam and subjected to violence for peaceful protests. Migrant domestic workers in Vietnam are particularly vulnerable, some being forced to work 18-hour days and subject to routine abuse. Human Rights Watch has reported that the government has imprisoned dissidents and reports on the government widely undermining freedom of expression.³ Amnesty International reports that Vietnam has at least 128 prisoners of conscience, with prisoners kept in inhuman conditions.⁴ Moreover, the Vietnamese Penal Code effectively prohibits freedom of association. In order to make the penal code coherent with the respect of human rights, it needs to be modified.

Furthermore, even if the ILO fundamental conventions are ratified in a few years, the ETUC is concerned that the Trade and Sustainable Development (TSD) chapter of the EU-Vietnam FTA does not contain a mechanism to effectively enforce an obligation to respect these conventions in law and in practice. The ETUC has made clear that effective enforcement of TSD chapters must involve an independent body involving trade unions that can trigger investigations into any violations of fundamental ILO standards. Should breaches of standards be found, there must be material penalties as a final consequence.⁵ There is also no instrument to hold companies accountable that breach these rights.

Recent developments regarding labour rights in Vietnam

On the 20th November 2019, the Vietnamese National Assembly adopted a revised Labour Code. According to the ILO, the new labour law improves the legal framework for employment relations, working conditions, and the representation of employers and workers. "The most important change in the revised Labour Code is the ability of workers in enterprises to exercise their right to form or join a representative organization of their own choosing, which does not have to be affiliated to the Viet Nam General Confederation of Labour."⁶

The ETUC welcomes this important progress and the efforts made by the Vietnamese authorities. The adoption of the amendments to the Labour Code constitutes significant progress for Vietnamese workers and paves the way for the implementation of the remaining ILO fundamental conventions.

More needs to be done. Ahead of the vote on consent by the European Parliament, the government should present a clear and credible roadmap for the ratification of the outstanding ILO fundamental conventions. On the Vietnamese Labour Code, it is important that the Government's decrees for implementing the new provisions do not back-track on progress made or introduce unjustified restrictions such as limiting freedom of association by setting high thresholds or registration formalities for forming a company level union.

³ <https://www.hrw.org/world-report/2019/country-chapters/vietnam>

⁴ <https://www.amnesty.org/en/latest/news/2019/05/viet-nam-surge-number-prisoners-conscience-new-research-shows/>

⁵ <https://www.etuc.org/en/document/etuc-submission-non-paper-commission-services-trade-and-sustainable-development-tsd>

⁶ https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_729339/lang--en/index.htm

Moreover, continued progress towards full possibility of free and independent trade unions needs to be ensured. To achieve this goal, it is crucial to ensure the involvement of independent social partners and civil society in monitoring the process preparing the ratification and eventual implementation of the FTA. In this respect, the composition of the Domestic Advisory Group (DAG) needs to be balanced and include independent and free labour representatives. Furthermore, the role of the DAGs (both in EU and in Vietnam) need to be clearly defined.

An additional tool to promote a satisfactory implementation of the possible FTA would be the setting up of an interparliamentary committee. Finally, the Penal Code should be reformed and brought in conformity with Vietnam's obligations under the International Covenant on Civil and Political Rights (ICCPR) and with the amended Labour Code.⁷

EU-Vietnam Investment Protection Agreement

ETUC is concerned that the EU-Vietnam IPA includes the Investment Court System (ICS). The ICS poses a threat to regulatory protections and workers' rights. ETUC has made clear that unions oppose such special courts for foreign investors and the extensive rights granted to them (e.g. protection from indirect expropriation, fair and equitable treatment) that allow them to challenge laws that threaten their profits. In the past such courts have been used to challenge laws that protect workers such as those on minimum wages and health safety.

The presence of such a court system can also act to dissuade governments from enacting laws that might trigger a challenge via the Investment Court System, even if they are in the public interest, such as regulating to ensure universal access to healthcare or the precautionary principle.

Furthermore, the rule of law will not be strengthened in either the EU or Vietnam by establishing a parallel justice system with still insufficient guarantee of independence of the arbitrators from private investors. The ETUC believes that strengthening the rule of law requires the EU to provide support for domestic legal systems.

Employment impact

ETUC deplores the lack of an in-depth quantified assessment of the impact the trade deal would have on sectorial employment in the EU. A detailed analysis, providing reliable data to identify the most impacted sectors and regions, is needed to evaluate the benefits of a trade deal for the EU. For instance, the textile industry still represents 2 million jobs in the EU. Moreover, such an analysis is necessary to allow workers to anticipate change and to make effective use of their information and consultation rights. This information is also important at regional level to set up and implement regional industrial strategy as well as to contemplate the use of EU instruments such as the European Globalisation Adjustment Fund, to cope with possible redundancies.

⁷ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>