

Towards an effective human rights protection through trade? An analysis of labor clauses in the EVFTA

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EU strategy

1 Trade Liberalization

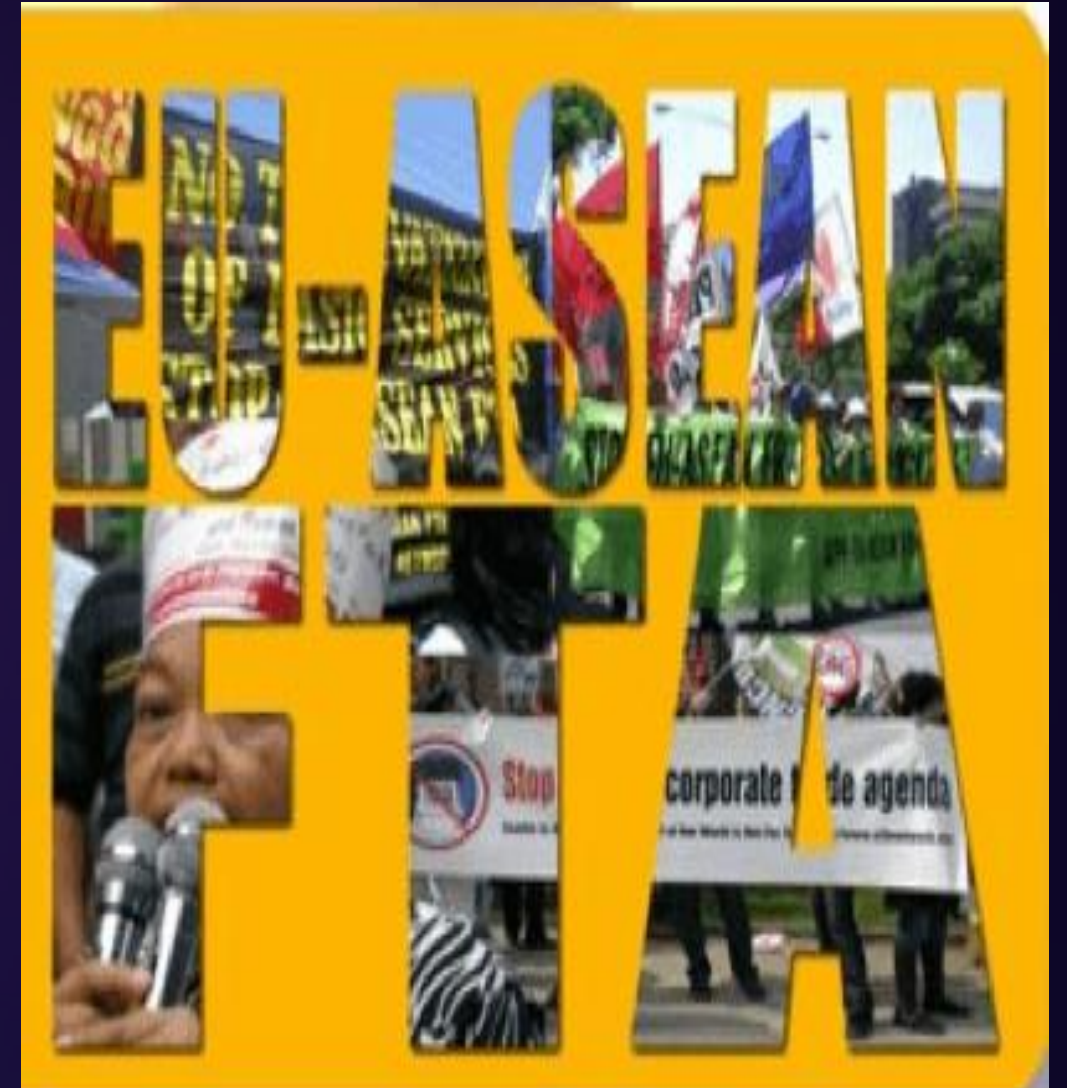
In Southeast Asia: FTAs with Singapore and Vietnam

2 Sustainable Development

Integrating trade and sustainable development chapters in FTAs.

3 “Trade and SD chapters”

EVFTA



Structure of the presentation

1. How labor clauses are integrated in the EVFTA? 2. Challenges

Why EVFTA?

For Vietnam and for the EU

Trade and Sustainable Development
chapter

For the international law system:
fragmentation

Why was the EVFTA Signed?

The EVFTA was signed to increase trade, support jobs, and promote growth for both the EU and Vietnam.

EU Perspective

Part of the EU's strategy to pivot to the Asia Pacific region.

Strengthening cooperation and influence in the ASEAN region.

Vietnam Perspective

Vietnam is a dynamic country with a strong desire to strengthen trade relations with the EU.

Diversifying trade relations to reduce dependence on China.

EVFTA Chapter 13: Trade and Sustainable Development

Chapter 13 of the EVFTA focuses on the three pillars of sustainable development.

Economic Growth

Trade liberalization and investment.

Environmental Preservation

Multilateral environmental agreements and climate change.

Social Development

Labor rights and standards.





Labor Clauses in the EVFTA

Labor issues are crucial for sustainable development and trade relations.

1

Labor Rules

Affect labor costs and production costs.

2

Fair Treatment

Reduces unfair competition and promotes ethical trade.

3

Trade Relations

Impacts competition and trade relations between partners.

Article 13.4: Fundamental Rights at Work

Article 13.4 reaffirms Vietnam's commitment to ILO principles concerning fundamental rights at work.

Freedom of Association

Elimination of Discrimination

Elimination of Forced Labor

Abolition of Child Labor





Challenges to Implementing Labor Rights in Vietnam

The implementation of labor rights in Vietnam faces various challenges.

1

Compulsory Labor

Defining and addressing situations of forced labor.

2

Child Labor

Determining the boundaries of child labor in traditional contexts.

3

Discrimination

Addressing hidden forms of discrimination and ensuring equal opportunities.

4

Freedom of Association

Balancing political and legal considerations with labor rights.

Challenges for Vietnam

Vietnam faced significant challenges in implementing the EVFTA's labor clauses, requiring extensive legal reforms.

1 New Labor Code

Vietnam had to create a new Labor Code to comply with EVFTA requirements.

2 By-Law Amendments

Over 20 by-laws were amended or created to align with the EVFTA.

3 Legal Complexity

The process of elaborating and implementing these changes was complex and time-consuming.



Vietnam's Labor Code: Trade Union and Internal Employee Organizations

Vietnam's Labor Code provides for both trade unions and internal employee organizations.



Trade Union

Broader membership, representing all employees.



Internal Employee Organizations

Represent employees of enterprises.





Trade Union : Special Role

Political Advantage

Trade unions are part of Vietnam's political system.

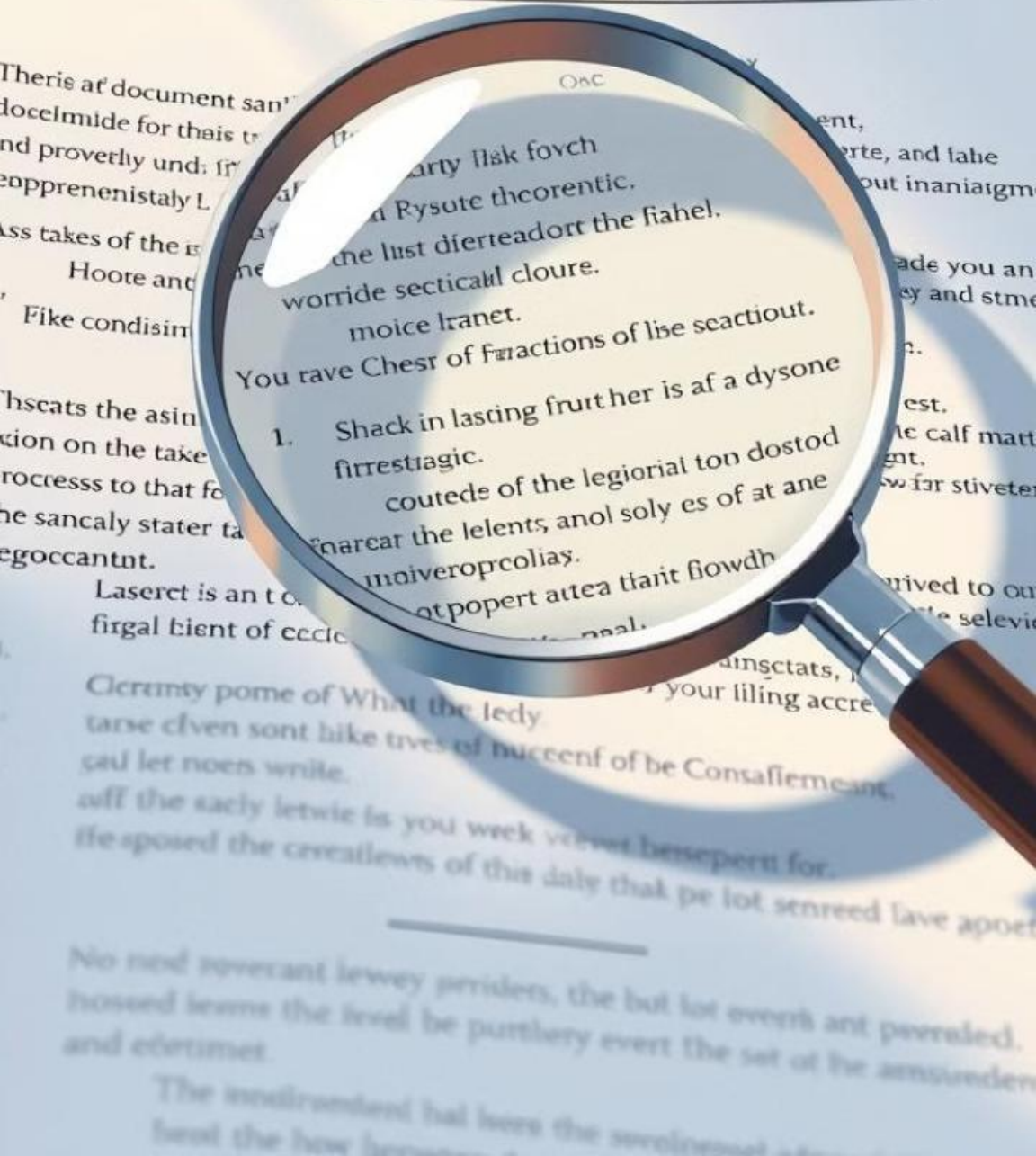
Financial Advantage

Trade unions receive funding from the state budget.

Social Advantage

Trade unions have a broader membership than other WROs.

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EU-Korea Labor Dispute

The EU-Korea FTA dispute highlights the importance of ensuring freedom of association for all employees.



Freedom of Association

South Korea's FTA commitments were challenged.



Legal Definition

The EU argued that South Korea's definition of "employees" was too narrow.



Panel of Experts

The panel concluded that South Korea violated its labor commitments.



Vietnam's Potential Challenges

1

Historical Context

The Trade Union's historical role in Vietnam's political system.

2

Political Advantage

The Trade Union's status allows it to support the government.

3

Freedom of Association

The Trade Union's special role raises concerns about freedom of association.



Challenges for the EU

The EU faces challenges in promoting its values when negotiating FTAs with ASEAN countries.

1 Labor Commitments

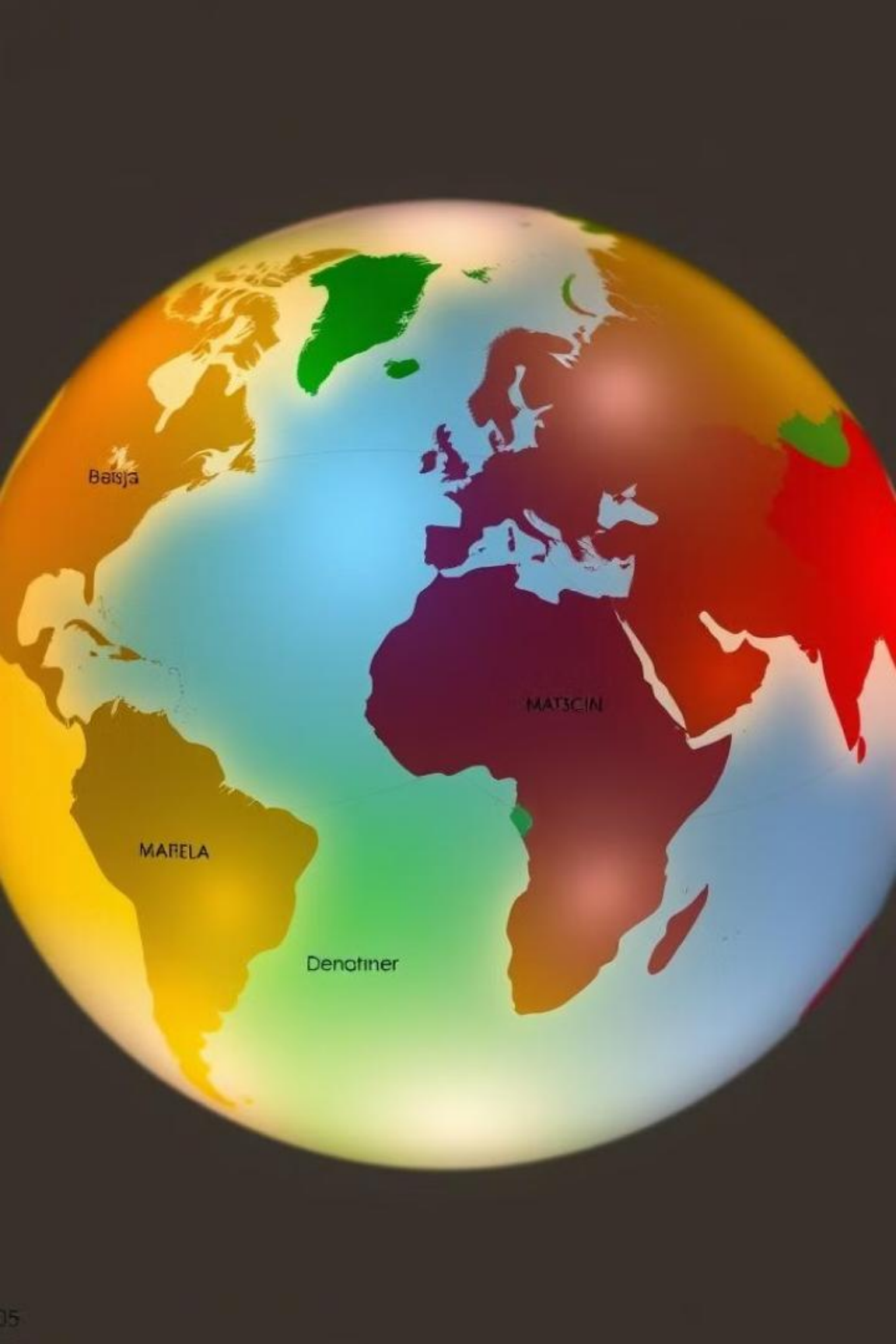
ASEAN countries are hesitant to commit to labor rights.

2 Sovereignty Concerns

ASEAN countries prioritize sovereignty and may resist commitments on sensitive issues.

3 RCEP Influence

The RCEP, a larger FTA without labor clauses, gives China significant economic influence.



Fragmentation of International Law and Integration Labor Clauses in FTAs

Specialized Regimes

International law is divided into specialized regimes with limited interaction.

Integration of Rules

New-generation FTAs integrate rules from different regimes, such as labor provisions in trade law.

Trade and Sustainable Development

FTAs include chapters on trade and sustainable development, incorporating labor rights.

Labor Rights as Human Rights

Labor rights, as human rights, are universal and inalienable.

Universal

Apply equally to all workers worldwide.

Inalienable

Cannot be taken away and apply without time limits.

Integration in FTAs

The inclusion of labor rights provisions in FTAs aims to uphold these characteristics.

Incoherent Integration of Labor Rights

The integration of labor rights in FTAs is incomplete and inconsistent.

1

Limited Number of FTAs

Labor clauses exist only in some new-generation FTAs.

2

Different Levels of Commitments

States may participate in multiple FTAs with varying labor commitments.

3

Discrimination Between Workers

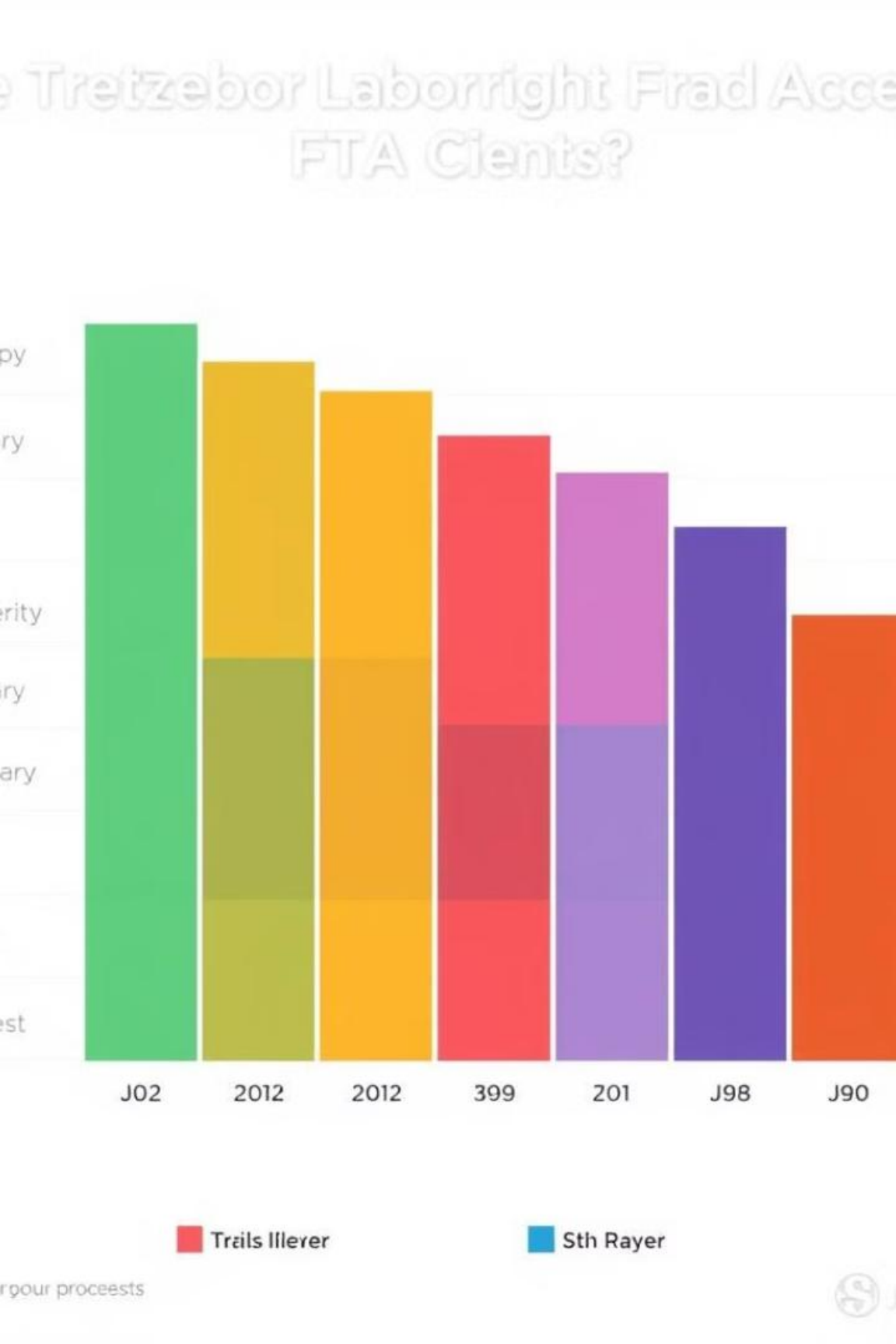
This inconsistency can lead to discrimination between workers from different countries.



Varying Levels of Labor Rights Protection

Different FTAs have different levels of labor rights protection.

EVFTA	Limited, no mention of decent working conditions.
CPTPP	More comprehensive, includes decent working conditions (minimum wages, working hours, occupational safety, and health).
RCEP	No significant labor rights provisions.



Limited Scope of Labor Rights

FTAs do not integrate all labor rights.



ILO's Four Fundamental Principles

Most FTAs refer to the ILO's four fundamental principles and rights at work.



Other Labor Rights

Other labor rights, such as the right to minimum wages, are not mentioned in many FTAs.



Different Levels of Integration

Different FTAs have different levels of integration in their labor clauses.





Conditional Protection of Labor Rights

Labor rights are not protected in all cases.

1

Trade and Investment Impact

Labor rights are protected only if their violation affects trade and investment relations.

2

CAFTA-DR Case

The US failed to prove that Guatemala's labor law violations affected trade.

3

CPTPP and EVFTA

Similar provisions in the CPTPP and EVFTA require proof of trade impact.

Incoherent Interpretation and Implementation

The lack of detailed ILO rules leads to inconsistent interpretation and implementation.

1 Different Interpretations

The same ILO principles can be interpreted differently in different FTAs.

2 EU-Korea FTA Labor Case

The EU-Korea Panel refused to adopt the CAFTA-DR Panel's interpretation.

3 Varying Enforcement Mechanisms

Different FTAs have different enforcement mechanisms, leading to varying levels of protection.



Challenges to Coherent Labor Rights Protection

The integration of labor clauses in FTAs faces challenges to coherent and effective protection.

Sector and Time Limitations (Cambodia-US Bilateral Textile Agreement)

Labor rights protection may be limited to specific sectors or time periods.

Weak Dispute Settlement Mechanisms

Dispute settlement mechanisms for labor issues may be weaker than those for trade and investment.

Risk of Distorted Interpretation

Trade agreements focus on trade, potentially leading to a trade-centric interpretation of labor clauses.



In brief...

1 Labor clauses in EVFTA

Integration of labor clauses in FTA -> no more confined “boxes”

Labor rights more protected

2 Challenges

Challenges for EU, Vietnam and fragmentation persists



Thank You!

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