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Yong Liang * and Jiayi Wei

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Can China Proactively Accept Labor Provisions of the CPTPP: Some Lessons and Experience from Vietnam's Labor Law Reform †

Liang Yong * and Wei Jiayi

Fudan University, China

* Correspondence: liangyong@fudan.edu.cn

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Abstract: China has formally applied to join the CPTPP. It is a realistic issue to comprehensively assess the possible impact of CPTPP labor provisions on China and explore effective countermeasures and measures. Vietnam, as the only socialist country among CPTPP member states, has revised its domestic labor law internally to build a dual labor union system, concluded FTAs externally and fought for a transitional period in the form of signing side letters to fulfill its obligations under the CPTPP, which has certain reference value for China. In recent years, the economic and trade agreements signed by China have adopted a more open attitude towards labor rules, and the current domestic laws have basically implemented the ILO's requirements on core labor standards at the level of textual provisions, but there is still a certain gap between the concrete implementation and the substantive requirements of the CPTPP labor rules at the level of dispute settlement. In particular, influenced by the "aggressive interpretation" of labor obligations in the dispute settlement panel report of the EU-Korea labor case, the binding dispute settlement mechanism of the CPTPP may raise the requirements of labor obligations, and China should make thorough and comprehensive risk assessment and preparation for this, and actively participate in a multi-level and differentiated plan based on China's actual needs, partial freezing and continuous follow-up.

Keywords: CPTPP labor provisions; Vietnam's Labor Law; proactive acceptance; labor standards; dispute settlement

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On December 30, 2018, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) officially entered into force. [1] The CPTPP covers a wide range of areas with high-level rules, connecting 11 member states in the Asia-Pacific region, and accounts for 15% of the global economy, making it one of the most advanced free trade agreements (FTAs) currently in place. China officially applied to join the CPTPP on September 16, 2021. The CPTPP is a novel FTA that incorporates labor as a non-traditional trade issue, with Chapter 19 (Labor Chapter) mainly replicating the corresponding content of the original TPP. The CPTPP links labor issues with trade and investment matters,[2] which may strengthen labor protections, especially for low-end suppliers

[1] Most of the CPTPP rules originate from the Trans-Pacific Partnership (TPP), which was initially developed under U.S. leadership.

[2] See Fabio Giuseppe Santacroce, "The Applicability of Human Rights Law in International Investment

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and subcontractors working with multinational corporations.[3] However, these rules may also lead to the misuse or abuse of labor provisions, potentially disrupting normal trade and economic activities and being transformed into covert policy tools.[4] Notably, non-CPTPP countries may "voluntarily" align their domestic laws with CPTPP labor rules to maintain stable trade relations with CPTPP members, contributing to the diffusion and spillover of CPTPP labor standards.[5] Therefore, whether actively pursuing membership in the CPTPP or aligning with higher international trade standards, China must pay close attention to the potential impact of CPTPP labor rules and respond proactively.Some standards manifestly exceed those found in China's existing trade agreements and domestic laws, and there are even cases of incompatibility.[6]

Although Chapter 28 of the CPTPP (Dispute Settlement) does not explicitly address labor disputes, it serves as a fallback mechanism when labor consultations fail to reach a resolution. Therefore, this article will also examine the expert panel procedures outlined in Chapter 28 that may be applied to labor disputes as part of the CPTPP labor rules.

Compared to the frequent incorporation of labor issues-and even their derivative topics-into international trade agreements by countries such as the U.S. and EU,[7] China has adopted a more active attitude toward including labor issues in trade agreements in recent years. However, China's labor provisions still primarily appear in preambles, memoranda, or exchanges of letters, without making concrete obligations or binding them to enforceable dispute resolution mechanisms. As labor protection becomes an inherent requirement of sustainable development,[8] China has actively responded to the trends of "humanization"[9] and "balancing"[10] in international economic law. It's foreseeable that China's labor provisions in future trade agreements may be upgraded and expanded.

In contrast, the CPTPP labor rules impose both legislative and enforcement obligations on member states and grant significant discretion to the complainant in disputes. Its punitive remedies

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Disputes", (2019) 34(1) ICSID Review 136, p. 145; Madison Condon, "The Integration of Environmental Law and International Investment Treaties and Trade Agreements: Negotiation Process and the Legalization of Commitments", (2015) 33 Virginia Environmental Law Journal 102, p. 104.

[3] See Liang Yong, "The Impact of Supply Chain Due Diligence on Labor Provisions in International Investment Agreements: Global Practice and China's Response", in Contemporary Law Review, Issue 2, 2024, p. 137.

[4] See Wan Lu, Cheng Baodong, and Li Jun, Economic Effects of the U.S. TPP Strategy and China's FTA Strategy in the Asia-Pacific Region, People's Daily Press, 2017, p. 144; E Xiaomei, "Unilateral Trade Measures Based on Labor Standards and WTO Rules: A New Trend in Trade Barriers and Developing Countries' Countermeasures", Global Law Review, Issue 2, 2010, pp. 157-159. Also see Anne Lafarre and Bas Rombouts, "Towards Mandatory Human Rights Due Diligence: Assessing Its Impacts on Fundamental Labour Standards in Global Value Chains", (2022) 13 European Journal of Risk Regulation 567, p. 568.

[5] See Li Xixia, "On TPP Labor Standards, Their Impact, and China's Response Strategies", Law Science Magazine, Issue 1, 2017, pp. 88-89.

[6] The North American Agreement on Labor Cooperation (NAALC), annexed to the North American Free Trade Agreement (NAFTA) between the U.S., Canada, and Mexico, which came into effect in 1994, was the first to integrate labor issues into an international investment treaty. In 2004, the U.S. model Bilateral Investment Treaty (BIT) introduced labor provisions for the first time in Article 13, marking the incorporation of labor standards into international economic law. See David A. Gantz, "Labor Rights and Environmental Protection under NAFTA and Other U.S. Free Trade Agreements", (2010-2011) 42(2) The University of Miami Inter-American Law Review 297, pp. 306-308.

[7] See Sun Yufeng, Research on the Protection of Labor Rights in International Investment Agreements, Wuhan University Press, 2020, p. 18; Shan Wenhua, translated by Cai Congyan, The Legal Framework for EU Investment in China: Deconstruction and Construction, Peking University Press, 2007, p. 267.

[8] See Wang Yanzhi, "The Investment Chapter of the RCEP: Asian Characteristics and Global Implications", Contemporary Law Review, Issue 2, 2021, p. 54.

[9] See Liu Sun, "The Trend of Humanization in International Law and the Reform of International Investment Law", Chinese Journal of Law, Issue 4, 2011, pp. 196-198.

[10] See He Zhipeng and Geng Siwen, "Labor Protection Provisions under the 'Belt and Road' International Investment Agreements: Status, Drivers, and Future Path", in The Belt and Road Legal Studies, Vol. 5, China University of Political Science and Law Press, 2022, pp. 8-9.

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may result in consequences beyond what the member states initially anticipated.[11] Vietnam, as the only socialist member state of the CPTPP, provides a useful reference for China through its legislative adjustments to comply with CPTPP labor provisions. However, while Vietnam's membership was more motivated by trade-offs, China's openness to CPTPP labor provisions is driven by the recognition that labor standards have become a critical factor in economic competition. [12] Additionally, China aims to expand its influence by engaging with new issues such as labor standards.

This paper is organized as follows. The first section examines the content and characteristics of CPTPP labor rules, highlighting the emphasis on both substantive and procedural rights. It also discusses the "carrot-and-stick" dispute resolution mechanism, which includes sanctions against parties that fail to comply with the final report of expert panels, significantly enhancing enforcement. The second section analyzes Vietnam's labor law reforms, including the establishment of a dual union system to align with CPTPP provisions. While this approach has achieved "nominal compliance", the long-term effectiveness still requires further study of Vietnam's enforcement practices and labor dispute resolution outcomes. The third section focuses on a textual analysis of the labor provisions in China's signed and ongoing trade agreements, providing a comparative study to identify the labor rules China has accepted and potential areas for future breakthroughs. The fourth section explores the risks and spillover effects that may arise from the practical implementation of CPTPP labor rules, with particular reference to the "radical interpretation" of labor obligations in the EU-Korea labor dispute case. Based on this, it offers recommendations for systematic risk prevention. The fifth section proposes a multi-level, differentiated strategy involving active participation, partial freezing, and continuous follow-up, ensuring China can voluntarily adopt higher labor standards from both "external to internal" and "internal to external" dimensions while preventing systemic risks.

I. Characteristics of CPTPP Labor Provisions

The labor chapter of the CPTPP contains 15 articles, focusing on four core aspects: the scope of labor rights, non-derogation requirements, dispute resolution mechanisms, and sanctions.

1.1. Incorporation of "Three Layers" of Labor Protection

The CPTPP systematically incorporates labor provisions,[13] covering three layers: (i) the first layer: It reflects the International Labor Organization (ILO)'s 1998 Declaration on Fundamental Principles and Rights at Work and Its Follow-up (hereafter referred to as "1998 Declaration") , [14] which establishes four core labor standards: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in employment and occupation. (ii) the second layer: It includes "internationally recognized" minimum wage, working hours, and acceptable working conditions. (iii) the third layer: It encourages contracting parties to promote corporate social responsibility (CSR) requirements regarding labor issues that the parties have endorsed or approved.[15]

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[11] See Drusilla K. Brown, "International Trade and Core Labour Standards: A Survey of Recent Literatures", in OECD Labour Market and Social Policy Occasional Paper, No. 43 (2000).

[12] See Kerry Rittich, "Trade Agreements in the Twenty-First Century: Rethinking the Trade-Labor Linkage", in Alvaro Santos, Cantal Thomas, and David Trubek (eds.), World Trade and Investment Law Re-imagined: A Progressive Agenda for an Inclusive Globalization, Anthem Press, 2019, p. 214.

[13] See Desirée LeClercq, "Integrating Non-binding Labour Standards in Binding Trade Agreements", (2023) 27(2) Journal of International Economic Law 542, pp. 547-548.

[14] See Article 2 of the Declaration.

[15] See Article 19.7 of the CPTPP.

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1.2. Clear Non-Derogation Requirements for Labor Legislation and Enforcement

The CPTPP prohibits member states from weakening or derogating from their labor laws to attract domestic investment or international trade. It also forbids proposing exemptions or reductions in labor protections on the grounds that they "affect trade or investment" between contracting parties. Furthermore, the CPTPP requires that members not engage in persistent or repeated actions or omissions that result in the ineffective enforcement of labor laws. These non-derogation requirements ensure that labor standards are neither lowered nor rendered ineffective in practice.

1.3. Inclusion of a "Carrot-and-Stick" Labor Dispute Resolution Mechanism

The CPTPP incorporates both "soft" and "hard" mechanisms for labor dispute resolution. The "soft mechanisms" include labor dialogue (Article 19.11) and labor consultations (Article 19.15). If the disputed parties involved are unable to resolve the dispute within 60 days, the complaining party may invoke the "hard mechanism" under Chapter 28 (Dispute Settlement). Once an expert panel reviews the labor dispute and issues a report, the disputing parties are required to comply with the report's findings. The integration of "soft" mechanisms, such as labor dialogue and consultations, with the "hard" mechanisms in the dispute resolution chapter ensures that labor disputes are handled with sensitivity while maintaining the efficiency of dispute resolution to prevent unnecessary delays.

The CPTPP labor provisions go beyond the four core labor standards by incorporating comprehensive procedural rules to ensure the enforcement of substantive labor rights. At the domestic level, the rules require that parties guarantee procedural rights such as the right to file lawsuits, defend against claims, present evidence, and appeal decisions. Furthermore, the rules mandate that court judgments must be effectively and promptly enforced. At the international level, the CPTPP establishes a "carrot-and-stick" dispute resolution framework consisting of labor dialogue, labor consultations, and dispute settlement mechanisms.

1.4. Establishment of a "Progressive" Sanction Mechanism for Non-Compliance

Article 28.20 of the CPTPP provides a progressive sanction mechanism involving compensation, suspension of benefits, and monetary penalties: The losing party must negotiate compensation with the winning party within the time frame specified after receiving the latter's request. If the parties fail to reach a compensation agreement or the losing party fails to fulfill its obligations under the agreement, the winning party may issue a written notice to suspend benefits, specifying the level of benefits to be suspended. After issuing the notice of suspended benefits, the losing party may, within the stipulated time frame, propose a monetary compensation plan to the winning party, requesting that the suspension of benefits be halted.

The CPTPP labor provisions significantly strengthen the mechanisms for enforcement, as reflected in the following aspects: (i) The CPTPP goes beyond the ILO's Declaration, which requires member states to merely "respect, promote, and realize" the four core labor standards, by hardening the obligations for labor protection at both the legislative and enforcement levels.[16] The inclusion of an expert panel procedure offers a fallback solution for unresolved labor disputes. If labor dialogue and consultations fail to resolve a dispute, the expert panel can issue a final report binding on all parties, thus addressing the shortcomings of the ILO's soft enforcement mechanisms.[17] The CPTPP strengthens enforcement through economic sanctions. It imposes obligations on the losing party to provide compensation, suspend benefits, or pay monetary penalties. This suggests that the CPTPP's enforcement design carries an element of economic coercion to ensure compliance.[18]

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[16] See Li Xixia, "On the Enforceable Labor Standards of the CPTPP and China's Response Measures", Journal of China University of Labor Relations, Issue 4, 2021, p. 43.

[17] See Ruben Zandvliet: Trade, Investment and Labour: Interactions in International Law, Brill Nijhoff, 2022, p. 60.

[18] See Axel Marx, Franz Christian Ebert, and Nicolas Hachez, "Dispute Settlement for Labour Provisions in EU Free Trade Agreements: Rethinking Current Approaches," (2017) 5(4) Politics and Governance 49, p. 50.

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II. Vietnam's Path, Characteristics, and Implementation of Labor Law Reforms

During the TPP's negotiations, Vietnam's labor laws required all unions to be affiliated with the Vietnam General Confederation of Labour (VGCL) and restricted the right to strike. The Vietnamese government even criticized that the TPP had transcended the boundaries of a FTA, becoming a political tool, and stated that "such an agreement contradicts Vietnam's ideology".[19] However, the United States-Vietnam Plan for the Enhancement of Trade and Labour Relations (hereinafter referred to as "Labor Plan") not only imposed specific requirements for Vietnam's labor law reforms but also mandated that the implementation of the plan be reviewed and evaluated in the third, fifth, and tenth years after the TPP took effect. Failure to comply could result in the suspension or termination of tariff reductions.[20] During the 4th Nuclear Security Summit in 2016, the U.S. and Vietnam reached an agreement under which the U.S. would continue to provide technical assistance to Vietnam for implementing the TPP agreement.[21] Although the TPP text did not explicitly require Vietnam to reform its domestic labor laws, the U.S. used tariff reductions as an "incentive" to encourage these reforms.[22]

After the U.S. withdrawal from the TPP in January 2017, Vietnam's progress in labor law reforms noticeably slowed or even suspended. It was not until the CPTPP came into effect in 2018 that Vietnam resumed its reform efforts.

2.1. Vietnam's Path to Labor Law Reform

2.1.1. From a "Unitary System" to a "Dual System" in Domestic Law

The National Assembly of Vietnam revised the *2012 Labor Code* and passed a new Labor Code on November 20, 2019, which came into effect on January 1, 2021. To further implement the *2019 Labor Code*, the Vietnamese government issued detailed implementation guidelines.[23] Compared to the *2012 Labor Code*, the *2019 Labor Code* introduced revisions and adjustments related to labor contracts, independent unions, collective bargaining, and working hours (as shown in Table 1). One of the most significant reforms is the strengthening of workers' freedom of association and collective bargaining rights, which is considered a major departure from Vietnam's previous labor law framework.

Table 1. Comparison of Freedom of Association Provisions in Vietnam's 2012 and *2019 Labor Code*s.

Provisions in 2012 Labor Code	**Provisions in *2019 Labor Code***	**Changes**
The role of trade unions in labor relations (Art. 188)	/	The duties of superior trade unions towards grassroots unions and between unions of the same level are eliminated

[19] See Peng Shunyu, "On the Connection between Free Trade and Labor Standards and Its Impact on China: The Case of TPP Labor Provisions", Journal of Qiqihar University, Issue 8, 2018, pp. 95-96.

[20] See Chapter 8 (Review of Implementation) of United States-Vietnam Plan for the Enhancement of Trade and Labour Relations, China Academy of International Trade and Economic Cooperation, https://www.caitec.org.cn/upfiles/file/2017/4/fea7034c-4675-4ad9-8497-49a6d1b2b9b3.pdf.

[21] See "The U.S. Pledges to Assist Vietnam in Implementing the TPP Agreement," Government News Portal of the Socialist Republic of Vietnam, https://cn.baochinhphu.vn/%E7%BE%8E%E5%9B%BD%E6%89%BF%E8%AF%BA%E5%8D%8F%E5%8A%A9%E8%B6%8A%E5%8D%97%E5%AE%9E%E6%96%BDTPP%E5%8D%8F%E5%AE%9A-11622871.htm.

[22] See Lizhen Zheng, "Evolution of Chinese Labor Problem in Trade and Investment Agreements: Notional Gap and Normative Necessity for Accession to CPTPP," (2023) 46(1) Fordham International Law Journal 473, p. 524.

[23] See Decree No. 145/2020/ND-CP.

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Interpretation of the term "grassroots employees' representative organization"(Art.3.4); Establishment, membership, and operation of unions in enterprises, agencies, and organizations (Art.189)	Definition of grassroots employees' representative organizations (Art.3.3); Rights to establish, join, and participate in activities of grassroots employees' representative organizations (Art.170); Grassroots unions in Vietnam's union system (Art.171)	Introduction of **enterprise employee organizations**, which now join with grassroots unions to form employees' representative organizations
/	Establishment and membership of enterprise employee organizations (Art.172); Leadership and members of enterprise employee organizations (Art.173); Charter of enterprise employee organizations (Art.174)	New provisions outlining the **establishment, leadership, and structure** of enterprise employee organizations and their charters
Prohibition on employer interference in the establishment, membership, and operation of unions (Art.190); Employer responsibilities towards unions (Art.192)	Prohibition on employer interference in the establishment, membership, and operation of employees' representative organizations at the grassroots level (Art.175); Employer obligations towards grassroots employees' representative organizations (Art.177)	Further **refines prohibited behaviors** that interfere with the operations of employees' representative organizations and expands the **scope of employer obligations**
Rights of grassroots union representatives in labor relations (Art.191); Conditions for union activities within enterprises, agencies, and organizations (Art.193)	Rights of leaders of grassroots employees' representative organizations (Art.176); Rights and obligations of grassroots employees' representative organizations in labor relations (Art.178)	**Refines the rights and obligations** of grassroots employees' representative organizations and **removes** the authority of the chairman of the People's Committee to resolve collective labor disputes

(This table was compiled by the author based on official Vietnamese legal texts[24]).

[24] Source: Ministry of Commerce of the People's Republic of China, http://hochiminh.mofcom.gov.cn/article/ddfg/laogong/202208/20220803337824.shtml.

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This comparison demonstrates significant changes introduced in the *2019 Labor Code*, most notably the introduction of **enterprise employee organizations** and enhanced definitions and procedures for representative organizations. The reforms strengthen the autonomy of labor organizations and limit employers' ability to interfere with their establishment and operations, aligning Vietnam's labor regulations more closely with international standards. Compared to the *2012 Trade Union Law*, which established a union system under the VGCL with a vertically managed hierarchy (hereafter referred to as "government unions"), the *2019 Labor Code* introduces significant breakthroughs in freedom of association. These reforms include: (i) Introduction of enterprise employee organizations: In addition to government unions, the new law allows enterprise employee organizations to be established, which are not subordinate to any government union. Workers have the right to join both government unions and enterprise employee organizations and participate in their activities. (ii) Establishment procedures, membership, and charters: The *2019 Labor Code* clearly defines the procedures for establishing enterprise employee organizations, their membership structures, and the content of their charters, providing a clear framework for operation. (iii) Collective bargaining, dialogue, and the right to strike: The new code grants grassroots employee representative organizations, including enterprise employee organizations, the rights and obligations to engage in collective bargaining, dialogue, and lead strikes. Mechanisms are also in place to ensure the enforcement of these rights.[25] Following the implementation of the *2019 Labor Code*, government unions now coexist with enterprise employee organizations, breaking the unitary system previously dominated by government unions. This reform allows enterprise employee organizations to exercise freedom of association without interference from government unions.[26] Some scholars consider the recognition of independent "new unions", i.e., enterprise employee organizations not affiliated with the VGCL, a milestone in the realization of freedom of association in Vietnam.[27] In terms of collective bargaining rights, the *2019 Labor Code* introduced reforms in five key areas: (i) Significantly expanded the scope of issues eligible for collective bargaining. (ii) Confirmed the collective bargaining rights of enterprise employee organizations. (iii) Refined the collective bargaining process with stricter procedural requirements.[28] (iv) Clarified three procedures to follow if collective bargaining fails. (v) Outlined the responsibilities of the Provincial People's Committees: According to Article 74(3), the committees are responsible for "assisting in promoting collective bargaining and actively facilitating agreements between both parties during the bargaining process". These improvements enhance collective bargaining as a key mechanism for dialogue between workers and employers.

The establishment of enterprise employee organizations and the detailed provisions on collective bargaining rights in the *2019 Labor Code* mark a crucial step toward aligning Vietnam's domestic labor regulations with the labor provisions of the CPTPP. Additionally, Article 7 of the *2019 Labor Code* defines the Vietnam Chamber of Commerce and Industry (VCCI) and the Vietnam Cooperative Alliance (VCA) as employer representatives, specifying their roles in building labor relations and participating in legislative processes. However, the capacity of these employer representative organizations to engage in dialogue, negotiate and sign collective agreements, mediate labor disputes, and organize strikes requires further refinement.

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[25] See Dao Mong Diep, "The Assessment of the Labor Code Impact on Labor Relations," (2021) 58 Hong Kong Journal of Social Sciences 12, p. 13.

[26] See Ban Xiaohui and Chang Yajie, "The Impact of FTAs on Labor Standards in Countries along the Belt and Road and China's Response Strategies: A Perspective on Vietnam's 2021 Labor Code", Journal of International Economic Law, Issue 1, 2021, pp. 112-113.

[27] See Tran Thi Kieu Trang and Richard Bales, "On the Precipice: Prospects for Free Labor Unions in Vietnam," (2017) 19 San Diego International Law Journal 71, pp. 87-89.

[28] Article 68 of the *2019 Labor Code* stipulates that a prerequisite for initiating collective bargaining is that the membership of the grassroots employee representative organization must meet a minimum percentage of the total workforce. Article 69 allows both parties to determine the composition of participants in the bargaining process independently. Article 70(2) sets a 90-day time limit for collective bargaining, unless otherwise agreed by both parties. These detailed provisions facilitate smoother collective bargaining and better protect workers' rights.

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2.1.2. Active Ratification and Implementation of ILO Labor Conventions

Since joining the International Labor Organization (ILO) in 1992, Vietnam has ratified 25 ILO conventions covering collective bargaining, forced labor, the abolition of child labor, and anti-discrimination. Notably, between 2019 and 2020, Vietnam ratified two fundamental conventions: the *1949 Right to Organize and Collective Bargaining Convention* (ILO Convention No. 98) [29] and the *1957 Abolition of Forced Labor Convention* (ILO Convention No. 105) .[30] In addition to these two fundamental conventions, Vietnam has also ratified two technical conventions. With these efforts, Vietnam has ratified all but one of the ILO's nine fundamental conventions, with the only exception being the *1948 Freedom of Association and Protection of the Right to Organize Convention* (ILO Convention No. 87) .[31] On May 20, 2021, the Ministry of Labor, Invalids and Social Affairs (MOLISA) of Vietnam signed a Memorandum of Understanding (MoU) with the ILO's Vietnam office to promote the research and application of international labor standards in Vietnam between 2021 and 2030. [32] According to a MOLISA spokesperson, the MoU aims to enhance the application and enforcement of international labor standards in Vietnam and facilitate the study and potential ratification of ILO Convention No. 87 along with 14 other ILO conventions.[33] On October 16, 2023, MOLISA held consultations with an ILO working group to assess the progress of Vietnam's ratification of additional conventions, with a focus on examining the proposal for Vietnam's accession to ILO Convention No. 87.[34]

2.1.3. Promoting Labor Standards Through FTAs

In addition to the CPTPP, Vietnam signed the European Union-Vietnam Free Trade Agreement (EVFTA) in June 2019, which incorporates high labor standards. Although the EVFTA does not contain a dedicated labor chapter, Chapter 13 (Trade and Sustainable Development) includes labor-related provisions. However, the interpretation and application of these provisions within the context of sustainable development create greater uncertainty. This issue will be further examined in Section 4, using the labor dispute case between the EU and South Korea as an example.

2.2. Characteristics of Vietnam's Labor Law Reforms

2.2.1. Rapid Adoption of CPTPP Labor Standards and Procedural Requirements

During the TPP negotiations and the signing of the Labor Plan, Vietnam's labor protection level was significantly below the standards required by the CPTPP labor provisions. However, following the entry into force of the CPTPP, Vietnam swiftly amended its Labor Code and ratified relevant ILO conventions, actively recognizing and committing to high labor standards in its domestic legislation. The most notable breakthroughs were made in freedom of association and collective bargaining

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[29] See Quốc hội thông qua Nghị quyết phê chuẩn việc gia nhập Công ước số 98, CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI, http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=29644.

[30] See 94,82% ĐBQH tán thành Việt Nam gia nhập Công ước số 105 của ILO về xóa bỏ lao động cưỡng bức, CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI, http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=222708.

[31] ILO website, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103004.

[32] See *Ký kết hợp tác thúc đẩy các tiêu chuẩn lao động quốc tế tại Việt Nam giai đoạn 2021-2030 - Trao tặng Kỷ niệm chương Vì sự nghiệp Lao động – Thương binh và Xã hội cho Giám đốc Văn phòng ILO tại Việt Nam*, CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI, http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=226056.

[33] See *Gia nhập thêm các công ước ILO: Đảm bảo tốt hơn quyền của người lao động*, CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI, http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=226115.

[34] See Thứ trưởng Lê Văn Thanh làm việc với Đoàn công tác của ILO, CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI, https://www.molisa.gov.vn/baiviet/238052.

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rights, with the adoption of a dual union mechanism that allows government unions and enterprise employee organizations to coexist. This reform aligned Vietnam's labor regulations with the CPTPP standards in a short period without undermining the traditional dominance and role of government unions.

2.2.2. External Commitments Driving Domestic Labor Law Reforms

Vietnam's acceptance of the CPTPP, ratification of ILO conventions, and willingness to receive technical assistance from foreign governments and international organizations demonstrate a clear strategy of using international commitments to accelerate domestic reforms. By raising its international legal obligations, Vietnam improved domestic labor standards and enhanced its ability to enforce these laws, showcasing a reform approach driven by external openness to facilitate internal progress.

2.2.3. Negotiation of Side Letters with High-Standard Member States to Secure Transition Periods

Before the implementation of the 2019 Labor Code, there were significant gaps between Vietnam's domestic labor regulations and international labor standards. To allow time for legislative and enforcement reforms and to mitigate the risk of labor disputes during the period of regulatory adjustment, Vietnam signed side letters on labor issues with Australia, Canada, New Zealand, Japan, and Malaysia. These side letters included the following provisions: (i) For the first three years following the CPTPP's entry into force for Vietnam, the signatory countries could not suspend benefits as a remedy for any measures taken by Vietnam that failed to comply with its labor obligations under the CPTPP. (ii) For the first five years, the signatory countries could not suspend benefits for any measures taken by Vietnam that violated Article 19.3(1)(a) (Labor Rights). These transition periods effectively provided temporary exemptions from the suspension of benefits, giving Vietnam time to align its labor laws with CPTPP standards.

2.3. Assessment of the Implementation of Vietnam's Labor Reforms

Although the 2019 Labor Code swiftly brought Vietnam's domestic legislation into formal compliance with its international obligations, further refinement of supporting laws and regulations is still required to achieve the broader goal of progressive, harmonious, and stable labor relations. For example, Vietnam has yet to issue formal documents detailing the order of establishment between government unions and enterprise employee organizations, as well as the procedures for establishing enterprise employee organizations, leaving the status of these organizations in a state of ambiguity.

During the most recent Vietnam-U.S. Labor Dialogue, Vietnam's Deputy Minister of Labor acknowledged that while the planned guidance documents for the 2019 Labor Code have largely been issued, one key decree on employee representative organizations and collective bargaining still requires extensive consultation with workers and businesses due to its direct and significant impact.[35] On December 15, 2023, Vietnam's Ministry of Labor, Invalids and Social Affairs (MOLISA) and the U.S. Department of Labor held an online meeting to discuss the status of labor reforms, focusing on the implementation of the *2019 Labor Code*, particularly on labor relations, employee representative organizations, and plans to amend the Trade Union Law.

In terms of ILO convention implementation, the ILO has created a regular reporting schedule for Vietnam. By 2029, Vietnam will be required to submit detailed reports on its compliance with the ILO conventions it has ratified, including Convention No. 98 and Convention No. 105, and respond to the Committee of Experts' observations.[36] Vietnam submitted its first report on the implementation of Convention No. 98 in 2021, evaluating the effects of labor reforms. The report positively noted that labor relations had become more stable, with increased worker participation in unions, greater dialogue at the corporate, group, and national levels, more collective labor

[35] See Đối thoại lao động Việt Nam – Hoa Kỳ ngày càng đi vào chiều sâu và thực chất, CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI, https://www.molisa.gov.vn/baiviet/239440.
[36] Source: ILO, https://normlex.ilo.org/dyn/normlex/en/f?p=1000:14000:0::NO:14000:P14000_COUNTRY_ID:103004.

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agreements signed each year, and a significant decline in strikes. However, the report also highlighted persistent challenges, such as superficial social dialogue and a rise in labor disputes, attributed to the lack of meaningful collective bargaining. A pilot program for sectoral collective bargaining, focusing on state-owned enterprises, joint-stock companies, and other state sectors, was found to be less effective because it did not align well with industry structures or the current union organization framework.[37] Additionally, the dual union system introduced under the *2019 Labor Code* creates uncertainty in how government unions and enterprise employee organizations should share representational authority within companies. This overlap has led to competing obligations and union rivalry, potentially undermining collective bargaining efforts. While workers are free to join one or both unions, they face difficulty determining which union can better represent their interests. Traditional government unions still maintain greater influence due to their historic status and strong ties with the government, leaving enterprise employee organizations at a disadvantage. If government unions are to avoid becoming a "second choice", they must innovate and reform to maintain their relevance.[38]

On November 10, 2023, the Department of Labor Relations and Wages under the Ministry of Labor, Invalids and Social Affairs (MOLISA) held a dedicated meeting to gather feedback on the 2023 Labor Relations Report. While the draft report acknowledged that the *2019 Labor Code* represented significant innovation and brought Vietnam closer to international labor standards and market economy principles, it emphasized the need to further reflect the realities of labor relations since the *2019 Labor Code*'s implementation. Specifically, the report highlights challenges such as establishing grassroots employee organizations, workplace dialogue, sectoral and multi-enterprise collective bargaining, and the formation of worker representative dialogue groups and collective bargaining committees.[39]

MOLISA also noted that, although labor relations in 2023 remained largely stable, with only about 20 strikes nationwide (a 75% decrease compared to the same period in 2022), the sustainability of labor relations within enterprises remains a concern. In particular, the substantive effectiveness of workplace dialogue and negotiation activities is still limited. Unlawful collective labor disputes and strikes continue to occur, disrupting business operations.[40] One key issue following the *2019 Labor Code* amendments is that the changes have disrupted the balance between the Labor Code and other regulations, such as the Trade Union Law and the Social Insurance Law, resulting in inconsistencies across the labor law system. Further efforts are needed to enhance the coherence, uniformity, and synchronization of the *2013 Constitution* (Article 10), the *2012 Trade Union Law*, and Chapter 13 of the *2019 Labor Code*. Additionally, the requirement for enterprises to contribute 2% of payroll to union funds has raised concerns and prompted questions about its fairness and implementation.

While the adoption of a dual union system allowed Vietnam to formally comply with CPTPP labor provisions at the legislative level, it remains unclear whether this compliance will comply with the CPTPP's standards in practice. The 2019 labor reforms display a reactive nature, suggesting that they were implemented primarily to meet the immediate requirements of international agreements. However, the Vietnamese government has yet to publish a formal report on the implementation of the *2019 Labor Code*, nor have any labor disputes under the CPTPP framework involving Vietnam or other member states been reported.

Without these insights, it is difficult to conduct a targeted analysis of potential challenges Vietnam faces in implementing the CPTPP's labor provisions. However, Vietnam's 2021 national report to the ILO on the implementation of Convention No. 98 provides some indications of these

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[37] See Báo cáo Quan hệ lao động 2019 – Hướng tới thương lượng tập thể thực chất, https://webapps.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_831337.pdf.

[38] See Huu Nguyen-Duc, "Competing Workers' Rights to Represent Workers as Vietnam Joins Free Trade Agreements (CPTPP, EVFTA) – A Challenge from Vietnam's Trade Unions," (2021) 33(2) Revista de Investigaciones Universidad del Quindío 153, p. 162.

[39] https://quanhelaodong.gov.vn/tin-tuc-su-kien/tin-tuc/lay-y-kien-hoan-thien-bao-cao-quan-he-lao-dong-nam-2023/.

[40] See Lao động THỦ ĐÔ: Quan hệ lao động năm 2023 cơ bản duy trì ổn định, at https://laodongthudo.vn/quan-he-lao-dong-nam-2023-co-ban-duy-tri-on-dinh-165346.html.

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challenges. The report found that the pilot sectoral collective bargaining programs fell short of expectations, revealing a significant gap between practice and aspirations.

III. Provisions and Characteristics of Labor Provisions in China's Existing Economic and Trade Agreements

Traditionally, China has adopted a cautious or even evasive approach toward including labor provisions in international treaties. However, in recent years, as China has become more integrated into the global economy, its stance has evolved. China has not only strengthened cooperation with the ILO but has also largely accepted the conclusion that labor issues encompass both economic and social dimensions. China has also recognized that approximately 65% of newly signed international trade agreements now include labor provisions.[41] In recent years, criticisms and accusations against China's labor practices have shifted from human rights issues to concerns relating to "social dumping and unfair trade".[42] In response, China has become increasingly sensitive to the potential use of labor issues as technical tools to challenge China's non-market economy status and fair competition practices. One area of focus lies in the differences between China's laws and practices and those of other countries regarding freedom of association, collective bargaining rights, and the right to strike. These differences raise important questions: Are labor issues sensitive political matters or social issues linked to trade? Should labor issues be domestic affairs or part of international labor cooperation? Should labor issues be primarily regulated by domestic law or in accordance with internationally recognized minimum standards?

China's perspective on labor issues has shifted: labor matters have evolved from being viewed solely as political concerns to being seen as social and economic issues, and now, as matters directly linked to economic globalization. This shift in understanding provides a new opportunity for China to incorporate labor provisions into international trade agreements [43]

3.1. Labor Provisions in China's Existing Trade Agreements

Although some of China's international trade and investment agreements contain labor-related provisions, these provisions are inconsistent and have not yet developed into a stable paradigm.

3.1.1. Labor Provisions in China's Bilateral Investment Treaties (BITs)

China has included labor-related provisions in only a few BITs, mainly in the following ways: (i) preliminary references to health and sustainable development: Several BITs mention labor-related themes in their preambles, such as health or sustainable development. Examples include BITs signed between China and Trinidad and Tobago, Guyana, Uzbekistan, as well as the China-Japan-Korea trilateral investment agreement. Additionally, BITs signed between China and Brunei and Jordan (though not yet in force) contain references to the importance of human resource development and the effective use of economic resources to improve living standards. These references, when broadly interpreted, could be understood as related to labor concerns. (ii) labor-related issues as exceptions or restrictions on investment: Some BITs or protocols attached to BITs between China and countries such as Thailand, Singapore, Sri Lanka, New Zealand, Mauritius, and Madagascar contain exceptions or restrictions related to labor issues. Similar clauses can be found in protocols to China's BITs with Austria, Germany, and Portugal. Certain BITs also contain consultation clauses that specify that it is inappropriate to encourage investment by relaxing, exempting, or otherwise violating domestic health, safety, or environmental measures. For example, Article 18 of the *2012 China-Canada BIT*

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[41] ILO, 'Proposals for Including Safe and Healthy Working Conditions in the ILO's Framework of Fundamental Principles and Rights at Work', GB.343/INS/6, para 24 (noting that 65 per cent of trade agreements incorporate the Declaration), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_823038.pdf.

[42] See Lizhen Zheng, "Evolution of Chinese Labor Problem in Trade and Investment Agreements: Notional Gap and Normative Necessity for Accession to CPTPP", (2023) 46(1) Fordham International Law Journal 473, pp. 490-495.

[43] See Lizhen Zheng, "Evolution of Chinese Labor Problem in Trade and Investment Agreements: Notional Gap and Normative Necessity for Accession to CPTPP", (2023) 46(1) Fordham International Law Journal 473, pp. 500-503.

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includes such a provision. In general, China has adopted a cautious approach toward directly including labor issues in its BITs. Rather than regulating labor matters explicitly, China has preferred to frame them indirectly through exceptions or preambles.

3.1.2. Labor Provisions in China's Free Trade Agreements (FTAs)

By the end of August 2024, China has signed 22 FTAs, with labor-related provisions included in agreements with Chile (2006), New Zealand (2008), Peru (2009), Iceland (2013), and Switzerland (2013). There is a noticeable trend of development in these provisions. Compared to the *2006 China-Chile FTA*, which included a Memorandum of Understanding on Labor Cooperation that did not contain binding language, the *2008 China-New Zealand FTA* and the *2013 China-Switzerland FTA* both included Memoranda of Understanding on Labor Cooperation. Although these documents reaffirm that labor legislation and enforcement are matters of domestic law, they establish requirements for effective enforcement and non-derogation of labor standards. Furthermore, they include mechanisms for consultative meetings to address potential disputes. However, these agreements do not provide specific arrangements for situations where consultations do not lead to a resolution, nor do they impose any labor obligations on the contracting parties' enterprises. This indicates a gradual shift in China's approach to labor issues in its FTAs, moving towards more explicit commitments, although significant gaps and limitations still exist.

3.1.3. New Developments in Labor Provisions in the Comprehensive Agreement on Investment (CAI) Between China and the EU

The CAI text between China and the EU, tentatively concluded at the end of 2020, represents the highest level of labor rules that China might accept in an international economic and trade agreement. Notably, labor provisions are "embedded" within Section 4 (Investment and Sustainable Development) of the CAI. The first subsection (Background and Objectives) lists a series of legal documents related to international labor protection in a "note-taking" manner.[44] The third subsection specifically addresses investment and labor, where the first two of the five provisions are prohibitive requirements, mandating that parties shall not derogate from or fail to effectively enforce their labor laws, nor use labor standards for protectionist purposes, while also excluding "good faith" measures as exceptions; the latter three are enhancing requirements, emphasizing the parties' obligations to fulfill their commitments within the ILO and subsequent actions, requiring China to make continuous efforts to ratify the two ILO fundamental conventions on the prohibition of forced labor[45] and to commit to enhancing the contribution of investment to sustainable development goals.

Later, the fourth subsection on the mechanism to address differences incorporates a "consultation + expert panel resolution + collaborative enforcement" mechanism,[46] detailing the form, content, timing, preparations by the parties, and confidentiality of consultations, significantly enhancing the relative certainty and enforceability of labor dispute resolutions. Overall, China has adopted a more open attitude in incorporating labor issues into the international economic and trade

[44] Article 4.1.1 of the CAI reviews international documents on sustainable development, notably the *1992 Agenda 21*, the *2002 Johannesburg Plan of Implementation on Sustainable Development*, the *2006 Ministerial Declaration of the Economic and Social Council on Full Employment and Decent Work*, *the ILO's 2008 Declaration on Social Justice for a Fair Globalization*, the outcome document of the 2012 United Nations Conference on Sustainable Development titled "The Future We Want", the *United Nations 2030 Agenda for Sustainable Development and its Sustainable Development Goals*, and the *ILO's Centenary Declaration on the Future of Work of 2019*, reaffirming a commitment to promoting investment development to benefit future generations and ensure that this objective is integrated into and reflected in the investment relations between the parties.

[45] ILO Convention No. 29 (the Forced Labour Convention of 1930), prohibits all forms of forced labor and requires contracting states to criminalize practices of forced labor. ILO Convention No. 105 (the Abolition of Forced Labour Convention of 1957), supplements Convention No. 29.

[46] If disputes cannot be resolved through consultation within 120 days, a panel of three experts is formed from a list nominated by the contracting parties. The expert panel, based on the CAI's sustainability chapter, customary rules of international public law compiled under the 1969 Vienna Convention on the Law of Treaties, and domestic laws of the contracting parties, must issue a provisional report within 150 days of its establishment, and after discussion between the parties, a final report within 180 days. The parties must consult within 30 days after the expert panel issues its final report and discuss measures to resolve the differences based on the report.

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agreements it has signed or negotiated, including in FTAs with New Zealand and Switzerland, which include requirements for non-diminution of labor protections and effective enforcement. The CAI text, in principle, "embeds" labor issues within its chapter on sustainable development and allows for the application of a state-state dispute resolution mechanism to labor disagreements. Although the CAI text does not define labor standards or labor laws and does not incorporate the trade sanction model found in CPTPP labor rules, leaving substantial "maneuvering space" for contracting parties, with the development of the concept of sustainable development, there is still room for development in CAI labor provisions, especially since the CAI itself does not exclude agreed compensation as a legal remedy, which could also be seen as a "quasi-sanction". Furthermore, the CAI advocates for China to promptly sign the two ILO fundamental conventions against forced labor. Although the review process for the CAI text was suspended after its principle conclusion, China's ratification of the aforementioned ILO conventions against forced labor in 2022 sends a positive signal of China's willingness to accept higher labor standards and its desire to restart the CAI review process.

3.2. Assessment of Legislation and Enforcement Related to the Four Core Labor Standards in China's Domestic Law

The CPTPP requires its signatories to adhere to and effectively enforce four core labor standards as well as acceptable working conditions. This includes two aspects: one is the incorporation of required labor rights into the domestic labor system, and the other is effective enforcement. Regarding these four categories of core labor standards, the ILO Governing Body has identified eight fundamental conventions,[47] China has ratified all but the conventions related to freedom of association and has also joined the *1981 Occupational Safety and Health Convention* (ILO Convention No.155), as per the ILO website.[48] The following discussion will focus on legislation and enforcement regarding the aforementioned four core labor standards.

3.2.1. Effective Abolition of Child Labor

Article 15 of the *Labor Law of the People's Republic of China* (hereinafter referred to as the "*Labor Law*") clearly stipulates that, except under strictly limited special circumstances,[49] the employment of minors under the age of 16 is prohibited. The *2002 Regulations on the Prohibition of Using Child Labor* issued by the State Council prescribe economic and administrative penalties for violations of the regulations on the use of child labor, and in severe cases, criminal responsibility may be pursued under the *Criminal Law* for crimes such as child trafficking, forced labor, or other offenses.[50] Notably, the minimum employment age for minors in China's domestic law is set at the age of 16, which is higher than the ILO Convention's minimum age standard of 15.

3.2.2. Elimination of Discrimination in Employment and Occupation

Article 1 of ILO Convention No. 111 explicitly defines "discrimination in employment and occupation" as discrimination arising from distinctions, exclusions, or preferences based on race, color, gender, religion, political opinion, national extraction, or social origin. Article 12 of the *Labor*

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[47] 1. On freedom of association: ILO Convention No. 87 and ILO Convention No. 98; 2. On the elimination of all forms of forced or compulsory labor: ILO Convention No. 29 and ILO Convention No. 105; 3. On the effective abolition of child labor: ILO Convention No. 138 and ILO Convention No. 182; 4. On the elimination of discrimination in employment and occupation: ILO Convention No. 111 and ILO Convention No. 100.

[48] Source: ILO website,

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404.

[49] Artistic, sports, and specialized craft units employing minors under the age of 16 must comply with national regulations, undergo approval procedures, and ensure their right to compulsory education.

[50] Article 11 of the *Regulations on the Prohibition of Using Child Lab*or describes situations including "deceiving and coercing child labor, employing child labor for work at heights, underground, radioactive, highly toxic, highly flammable or explosive environments, or in labor of the fourth level of physical intensity as defined by the state, employing children under 14 years of age, or causing death or serious injury to child labor".

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Law comprehensively states that "there shall be no discrimination based on nationality, race, gender, or religious beliefs", and Article 13 specifically emphasizes the equal employment rights of women to those of men. Additionally, specific legislations provide certain protections for special employment groups such as persons with disabilities, ethnic minorities, veterans, infectious disease patients, and rural household workers. Furthermore, in *2018 Supreme People's Court in the Notice on Increasing the Types of Civil Cases* (Law [2018] No. 344) added "disputes over the right to equal employment" under the category of "general personality rights disputes", characterizing disputes involving employment discrimination as torts, allowing workers who have experienced discrimination to bring lawsuits directly to the courts without going through labor arbitration. While legislation explicitly addresses the elimination of discrimination, practical challenges remain due to the profit-driven nature of businesses and insufficient accountability mechanisms, particularly in eradicating gender and household registration discrimination.

3.2.3. Elimination of Forced or Compulsory Labor

The *P.R.C. Constitution* explicitly defines labor as both a right and an obligation of Chinese citizens[51] rather than merely a right of workers. Thus, the elimination of forced or compulsory labor is covered under "the state's respect and protection of human rights", protected by laws, administrative regulations, and judicial interpretations. The 2011 amendment to the *Criminal Law* (Amendment VIII) changed Article 244 from "crime of forcing workers to work" to "crime of forced labor", expanding the scope of the crime from "workers" to "others", thus extending the protection to natural persons; it broadened the subjects of the crime from entities to both entities and natural persons; added "violence, threats" as means of forcing labor; removed the requirement of "serious circumstances", lowering the threshold for criminal charges; and increased the penalties, raising the maximum sentence from 3 years to 10 years. Simultaneously, both the *Labor Contract Law* and the *Labor Law* stipulate that workers have the right to unilaterally terminate their employment relationships when subjected to forced labor by employers. At present, China's legislation prohibiting forced labor is dispersed across various laws and has not been systematically legislated, but it has essentially met the requirements for eliminating forced labor. Additionally, China annually submits reports to the ILO based on the follow-up measures of the Declaration.[52] However, a minority of countries, ignoring differences in penal and correctional philosophies between the East and the West, have misinterpreted or even deliberately distorted forced labor, judging Chinese labor reforms and the now-abolished re-education through labor as "forced labor", leading to unwarranted accusations against China. In response, the Chinese government has demonstrated ample institutional confidence, firmly rebutting excessive and unwarranted accusations while actively ratifying and joining the two ILO fundamental conventions on prohibiting forced labor, showing a sustained effort in promoting the prohibition of forced labor.

3.2.4. Freedom of Association and Recognition of the Right to Collective Bargaining

Article 35 of the Constitution affirms citizens' right to associate, which is implemented in the *Trade Union Law*, *Labor Law*, and *Labor Contract Law*. The *Trade Union Law* confirms the right of workers to form unions (Article 3) and the right of unions to engage in collective bargaining (Article 21). However, it also specifies that unions operate on the principle of democratic centralism, requiring that the establishment of unions at all levels must be approved by the higher-level union (Article 12.1) and that lower-level unions are led by higher-level unions (Article 10.5). This structure presents a

[51] Article 42 of the Constitution of the People's Republic of China states: "Citizens of the People's Republic of China have the right and duty to work. The state creates conditions for employment, strengthens labor protection, improves working conditions, and on the basis of developing production, improves remuneration and welfare for workers. Labor is a glorious duty of all citizens capable of working."

[52] Reports under the follow-up measures to the "Declaration" differ from the ILO's regular reporting procedures, emphasizing that even countries that have not ratified the eight fundamental conventions should respond to related domestic legal and practical issues. See Janice R. Bellace, "Human Rights at Work: The Need for Definitional Coherence in the Global Governance System", (2014) 30(1) The International Journal of Comparative Labor Law and Industrial Relations 175, p. 180.

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deviation from ILO Convention No. 87, Article 2, which states that workers and employers have the right to establish and join organizations of their choosing without prior approval, indicating a significant difference from the independent union system stipulated by the ILO. Meanwhile, the Labor Law and Labor Contract Law, in detailing the mutual negotiations and establishment of collective agreements between workers and employers, use terms like "may" instead of "have the right" or "shall" suggesting an encouragement rather than a mandate for collective negotiations and agreements. However, combining Article 8 of the *Labor Law*, which states that "workers may negotiate equally with employers through the workers' congress, workers' representatives congress, or other forms", and Article 6 of the *Labor Contract Law*, which states that "unions should assist and guide workers in legally establishing and fulfilling labor contracts with employers and establishing a collective bargaining mechanism to protect the lawful rights and interests of workers", Chinese labor law also focuses on implementing the right to collective bargaining, but emphasizes implementation through workers' congresses and representative congresses.

3.3. The Gap Between Labor Standards Accepted by China and CPTPP Labor Provisions

Labor issues have always been a sensitive matter in international economic and trade relations, and their complexity has increased in recent years with the "linkage" between labor and trade, and between labor and investment. China has consistently respected the ILO's primary responsibility in promoting international labor protection. In recent years, not only has the Chinese government actively participated in negotiations on business and human rights driven by the UN Human Rights Council, it has also adopted a more open attitude towards incorporating labor issues in international economic and trade agreements. However, as China has formally applied to join the CPTPP, it is necessary to prepare specifically for the gaps between the labor standards China has accepted and the CPTPP labor rules, including: firstly, Chinese domestic law on prohibiting child labor, eliminating employment discrimination, and prohibiting forced labor is already quite comprehensive and largely meets or even exceeds ILO standards. Thus, future efforts should primarily focus on strengthening enforcement. However, there are significant differences in the areas of freedom of association and collective bargaining rights. Accepting CPTPP labor provisions may not only pose systemic challenges to current Chinese labor and trade union laws, but the interpretation and application of these rights may also differ significantly from other countries due to the socialist production relations, values, and ideologies involved; secondly, in dispute resolution, China has only accepted labor consultations and dialogue mechanisms in international economic and trade agreements signed so far. Although there has been a breakthrough in the principles agreed upon in the CAI text, which allows for referral to an expert panel, this should not be seen as China having accepted an expert panel as the "safety net mechanism" for resolving labor disputes. The focus remains on refining consultation rules, and for the foreseeable future, labor consultations and dialogues will continue to be the main method of resolving labor disputes.

IV. Can China Fully Adopts the CPTPP Labor Provisions?

China's openness to adopting the CPTPP rules represents an effort to further deepen its reform and opening-up, despite the significant challenges it may bring. China views this as a crucial initiative to advance domestic reforms and seek high-quality development. Unlike the founding members of the CPTPP, who engaged in intense "bargaining", i.e. to reach a consensus before the agreement was finalized, China faces the established CPTPP labor provisions. The negotiation issues China confronts are not only whether to agree to adopt the CPTPP labor provisions and commit to fulfilling future labor rule obligations but also how to reach a consensus with all CPTPP member states on initiating China's accession process, which will necessarily include labor provisions.

4.1. Challenges of Fully Adopting Labor Rules Before Initiating the CPTPP Accession Process

China's open and proactive stance towards adopting the CPTPP labor rules is not overly aggressive or rash. Compared to the labor provisions of the United States-Mexico-Canada Agreement

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(USMCA), the CPTPP labor provisions still allow member states maintain certain discretionary powers in implementation. In this context, it is first necessary to explore the feasibility and difficulty of China adhering to these rules. The CPTPP requires each member state to adopt and maintain its laws and regulations according to the *1998 Declaration* and related acceptable conditions of work regarding minimum wages, working practices, and occupational safety and health, and to enforce the ILO core labor standards. Although China has not clearly defined core labor standards and labor laws in its previous five FTAs and the CAI text in principle, and its domestic labor laws do not fully align with the five core labor standards listed in the 2022 amendment of the 1998 Declaration among the ten ILO fundamental conventions, compliance is not difficult for China. This is because Article 19.3 of the CPTPP does not define labor standards, and the five aspects of labor standards under CPTPP Article 19.3 are essentially covered by the Chinese labor law system. However, it is foreseeable that China and the developed CPTPP countries (such as Canada, Australia, Japan) might have significant differences in the interpretation of the right to freedom of association and the effective recognition of the right to collective bargaining. These differences could lead to divergent or even conflicting conclusions based on different legal interpretations, stages of industrial development, and social traditions, which could bring great uncertainty to the initiation of China's CPTPP accession process. Especially, compared to the developed CPTPP members who signed side letters with Vietnam to temporarily "freeze" the suspension of benefits sanctions against Vietnam, the tolerance towards China, a "new member intending to join", will evidently be much lower. Therefore, before initiating the CPTPP accession process, China first needs to negotiate with the 11 CPTPP member states to make them recognize the credibility of China's commitment to accepting the CPTPP labor provisions.

4.2. The Textual Binding Effects of Fully Adopting CPTPP Labor Provisions

High-standard labor clauses might establish trade barriers based on labor standards. The original intent of setting international labor standards was to improve workers' labor and living conditions. However, as labor issues become linked with trade, some countries attempt to establish new trade barriers under the guise of protecting labor rights, using these as legal tools to squeeze the competitive advantages of developing countries. The CPTPP labor provisions not only require signatories to eliminate all forms of forced or compulsory labor but also mandate that they "prevent importation of goods produced wholly or in part by forced or compulsory labor, including forced or compulsory child labor".[53] This implies that goods identified as containing elements of "forced or compulsory labor", even if they originate from or involve intermediate products from non-CPTPP member states, are to be excluded. Furthermore, since the CPTPP labor rules do not accept the definition of "forced or compulsory labor" as outlined by ILO Convention No. 29,[54] the determination of "forced or compulsory labor" becomes a discretionary issue for the importing state. This not only could encourage member states to strengthen labor legislation and enforcement but also lead to the indirect application of CPTPP labor standards.

Discretionary abuse could lead to widespread and distorted economic and trade conflicts. The CPTPP labor provisions are enforced by binding dispute resolution mechanisms and remedial measures, particularly the suspension of benefits system, which includes parallel and cross-retaliation components. According to Article 28.20(4) of the CPTPP, the parallel retaliation mechanism should be applied first unless "suspending benefits in the same sector is not practicable or effective, and the circumstances are serious enough", and the winning party, under certain conditions, can also seek cross-retaliation. While the existence of a retaliation mechanism might encourage the losing party to accept the expert panel's advice due to potential trade interest losses, it is more detrimental than beneficial to member countries in the long run and could become a "pretext" for triggering a trade war or a new type of legal tool. Especially since the CPTPP allows the winning

[53] Article 19.6 of the CPTPP.

[54] Footnote to Article 19.3 of the CPTPP states: The obligations listed in Article 19.3, when related to the ILO, refer only to the ILO Declaration. Therefore, the CPTPP does not require signatories to comply with international labor conventions related to the labor rights obligations listed.

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party to initiate the suspension of benefits system and gives the winning party the right to discretionarily determine the level of suspended benefits, this could lead to misuse or abuse of the suspension of benefits system. Although Chapter 28 of the CPTPP mentions that if the level of suspended benefits by the winning party is clearly excessive, the losing party may reconvene the expert panel for review, the CPTPP does not specify whether the retaliatory measures are to be suspended during the period from the filing of the suspension of benefits suit to the completion of the expert panel's review, nor does it clearly define the criteria for considering whether the level of interests is balanced, thus failing to effectively restrain the potential abuse of discretionary power in trade retaliation and suspension of benefits levels.

4.3. The "Spillover Effect" of Aggressive Interpretations of Labor Clauses in the EU-Korea Labor Case

Before the EU-Korea labor case,[55] disputes involving FTA labor clauses rarely progressed to an expert panel process. In the first labor dispute brought under an FTA, the Guatemala labor case involving the 2005 Dominican Republic-Central America-United States FTA, [56] Article 16.1.1 incorporated the core labor standards declared in the *1998 Declaration*, but the panel considered that it only regulated the enforcement of labor laws, limiting labor standards to the issues "related to trade".[57] The panel emphasized the soft promotional effect of FTA labor clauses on the contracting parties' labor standards, rather than directly interpreting host country domestic labor standards. However, the 2021 opinion of the expert panel in the EU-Korea labor case substantially broke this "usage", presenting three major changes:

4.3.1. The Scope of Labor Protection Obligations Extended Beyond the "Trade-Related" limitations

In response to Korea's assertion that labor protection obligations should be limited to the "trade-related" scope, the EU argued that four measures in the *South Korean Trade Union and Labour Relations Adjustment Act* (TULRAA) violated the obligations to "respect, promote, and realize" related fundamental rights and principles stated in the first sentence of Article 13.4.3 of the *EU-Korea FTA* signed on June 10, 2010, effective from January 7, 2011—the first EU FTA to embed labor clauses into the sustainable development chapter.[58] Moreover, the *EU-Korea FTA* did not require a "trade effect" test.[59] After a comprehensive review considering the context, Chapter 13 (Sustainable Development Chapter), and the overall objectives of the EU-Korea FTA, the panel concluded that the provisions of Articles 13.1.1 and 13.1.2, which articulate the goals of promoting sustainable development and considering social development as an integral part of sustainable development, clearly positioned decent work as central to trade and sustainable development.[60] The case extended the scope of regulations within the FTA to include domestic legislation and enforcement issues concerning core

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[55] On December 17, 2018, the EU initiated consultations with South Korea, accusing it of violating core principles of freedom of association and collective bargaining rights as established by the ILO, based on South Korean domestic legislation and practices, under the EU-Korea FTA. When consultations failed, the EU requested the formation of an expert panel to review the case. Report of the Panel of Experts, Panel of Experts Proceeding Constituted Under Article 13.15 of the EU-Korea Free Trade Agreement, January 20, 2021 (hereafter referred to as "Report").

[56] The Office of the United States Trade Representative website states that this FTA is strengthening the rights and conditions of workers in the region by implementing labor protections that workers are entitled to under the laws of their countries. This includes the first labor dispute brought under the FTA, ensuring that Guatemalan workers can exercise their rights under Guatemalan law. We remain committed to helping Guatemala achieve this outcome and reap the benefits of enforcing internationally recognized labor rights.

[57] In the matter of Guatemala-Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR (2017), para.190.

[58] Report, para.55. EU-Korea FTA Article 13.4.3, first sentence, stipulates that the parties commit to respecting, promoting, and realizing, in their laws and practices, the basic rights and principles as members of the ILO and per the 1998 Declaration.

[59] Report, paras.56, 60.

[60] Report, paras.63, 69-70, 79.

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labor standards through an expanded interpretation of sustainable development goals and multilateral international agreements and principles "nested" within the FTA.

4.3.2. Non-Mandatory ILO Obligations Embedded in FTA Create Binding Constraints

South Korea invoked Article 13.1.3 of the *EU-Korea FTA*, arguing that there was no intention to "harmonize labor standards" between the parties,[61] and that the *1998 Declaration* does not impose binding obligations on South Korea;[62] however, the EU contended that South Korea had not made "continued and sustained" efforts after ratifying the ILO fundamental conventions, violating the obligation under Article 13.4.3 of the FTA that parties will make "continued and sustained" efforts.[63] The panel noted that once ILO documents are embedded into an FTA, they generate binding force, and the EU based its demands on Article 13.4.3 of the FTA that South Korea undertake corresponding obligations.[64] Additionally, the panel considered that South Korea's "commitment to respect, promote, and realize" obligations, although weaker than "shall respect, promote, and realize" requirements, still carried legal binding effect.[65]

4.3.3. Best Efforts Clauses Become "Quasi" Obligations

South Korea argued that the word "will" in the last sentence of Article 13.4.3 of the EU-Korea FTA, unlike "shall" or "must", is closer to an expression of intent rather than a definitive obligation;[66] however, the EU believed that "will" does not naturally weaken the binding nature of a commitment, and whether it can be interchangeable with "shall" "depends on the context and content of the clause".[67] Furthermore, the panel pointed out that "continued and sustained efforts" are not required to be "persistent", but standing still or similar actions do not meet the requirements.[68]

The EU-Korea labor case marked the first instance where the EU initiated an state-state dispute resolution procedure against a contracting party for violating labor clauses, prompting the other party to fulfill its obligations. A significant breakthrough of the expert panel was recognizing that although the *1998 Declaration* is a soft law instrument, embedding it into an FTA results in binding obligations for the contracting parties. Some view the EU-Korea labor case as a "litmus test" for combining trade and social issues, reflecting the EU's promotion of its value standards through international economic and trade agreements and reducing the obstacles for South Korea to advance labor rule reforms.[69] Shortly after the release of the expert panel report, South Korea ratified three fundamental ILO conventions (Nos. 29, 87, and 98) on April 20, 2021, ending over a decade of inactivity since ratifying ILO Convention No. 187 on February 20, 2008,[70] which the EU had criticized for not taking "prompt" and "urgent" efforts.[71] On July 6, 2021, South Korea amended Article 2.4(Ra) of the TULRAA,[72] removing a previous clause and not only allowing laid-off workers and others to

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[61] Report, paras.80, 86.

[62] Korea's Written Submission, 14 February 2020, para.55.

[63] Report, para.55. EU-Korea FTA Article 13.4.3 states that the parties reaffirm their commitment to effectively implementing the ILO conventions they have ratified. The parties will continue to make efforts to ratify fundamental ILO conventions and other conventions listed as "up-to-date" by the ILO.

[64] Report, paras.120-122.

[65] Report, paras.125-126, 127, 129.

[66] Report, para.262.

[67] Consolidated Hearing Report, prepared by the Parties, 6 November 2020, para.62.

[68] Report, paras.270-273.

[69] See Ji Sun Han: "The EU-Korea Labour Dispute: A Critical Analysis of the EU's Approach", (2021) 26(4) European Foreign Affairs Review 531, pp. 532-533.

[70] Source: ILO website, https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103123.

[71] See Ji Sun Han, "The EU-Korea Labour Dispute: A Critical Analysis of the EU's Approach", (2021) 26(4) European Foreign Affairs Review 531, p.532.

[72] https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=60885.

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join sectoral, occupational, and regional unions but also enterprise unions,[73] This amendment ensured the implementation of the newly ratified ILO conventions within South Korean domestic law.

The *EU-Korea FTA* was the first FTA in which the EU incorporated a dedicated sustainable development chapter, a practice it has continued in subsequent international economic and trade agreements such as the EVFTA and the tentatively concluded CAI. This repeated contractual practice has significantly reinforced the backdrop of sustainable development in the resolution of future labor disputes. Despite the EU's preference in FTA texts to use exhortatory rather than punitive language to advance labor protections,[74] the expert panel in the EU-Korea labor case moved beyond a passive adjudicator role and assumed a more proactive supervisory role, enhancing enforcement to increase the effectiveness of labor clauses. Influenced by this case, future dispute resolution practices may break from the traditional restraint of not interpreting labor standards and host country laws, adopting a more assertive stance instead. Especially, the CPTPP labor provisions attempt to coerce member countries to adopt higher labor standards through economic sanctions, increasing uncertainty for more aggressive interpretations in future CPTPP labor dispute resolutions. In the context where Europe and the U.S. are trying to use FTAs to link trade with labor, environmental, and other non-economic goals to export their values and globally shape standards,[75] China must also prepare for potential labor disputes in its research and preparations for the CPTPP labor rules, particularly those that might touch on national core interests, and build preventive mechanisms to isolate necessary risks.

V. China's Autonomous Acceptance of the CPTPP Labor Rules

Compared to labor rules in international economic and trade agreements, China has previously signed, accepting the CPTPP labor provisions presents a greater challenge. This is not only due to the stricter labor obligations included in the CPTPP but also because new entrants must first gain the consensus of the 11 founding member states. China, following the United Kingdom, is the second state to apply for membership in the CPTPP and is currently waiting for the CPTPP Commission to decide whether to initiate negotiations.

The CPTPP labor provisions and the dispute resolution chapter's "safety net" mechanisms effectively link through binding enforcement mechanisms, particularly those based on sanctions, to promote common labor clauses for "fair trade", thereby narrowing the "gap" between economic growth and social justice. Despite the logical paradox this entails—not addressing the disparities in benefits distribution due to different positions in the global value chain or considering the overall development levels of countries, and instead hoping to establish a "market civilization" with universal competition that coexists in a "Utopia" through "strong labor rules",[76] it is clear that this approach puts the cart before the horse. In recent years, China has paid more attention to coordinating economic and social development and has adopted an inclusive and open attitude towards incorporating labor issues in international economic and trade agreements. Previous research has emphasized adopting differentiated contracting approaches for different countries,[77]

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[73] Despite allowing a broader range of people to join unions, the leadership and representatives of enterprise unions must still be elected from among employee union members; non-employee union members may participate in union activities but must not affect the effective operation of the enterprise. https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=22531#:~=In%20this%20amendment%2C%20the%20proviso%20to%20sub-paragraph%204,and%20regional%20unions%2C%20but%20also%20enterprise%20%28company-based%29%20unions.

[74] See Li Xueping: "New Practices Connecting Free Trade and International Core Labor Standards—Labor Clauses in the TPP Agreement and Its Challenges to China's Foreign Trade", in Seeking, Issue 9, 2016, p. 25.

[75] See Jiang Xiaohong, "Sustainable Development Clauses in the EU's New Generation of Trade and Investment Agreements—Trends Toward Hard Implementation of Soft Clauses", in European Studies, Issue 4, 2021, p. 115.

[76] See Adalberto Peruli, "Fundamental Social Rights, Market Regulation and EU External Action", (2014) 30(1) The International Journal of Comparative Labor Law and Industrial Relations 25, p. 29.

[77] See He Zhipeng and Geng Siwen, "Labor Protection Clauses under the 'Belt and Road' International Investment Agreements: Current Situation, Motivation, and Future", China University of Political Science and Law Press, Vol. 5, 2022, pp. 16-17.

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expressing concerns for labor protection with flexible wording,[78] and urging overseas enterprises to establish a good investor image[79]--approaches that favor cooperation, gradual progress, and soft consultations over confrontation, aggressiveness, and hard constraints. Although these values remain crucial, it should be recognized that in the context of China's active engagement with the CPTPP as a means to deepen reform and opening-up, continuing to include only declarative rather than binding labor clauses in international economic and trade agreements and placing labor disputes entirely under non-binding dispute resolution mechanisms of labor consultations and dialogues seems no longer sufficient to meet practical needs. A more pragmatic approach of "empowering construction" is necessary, starting from a perspective of proactive acceptance to explore a China-specific solution. This article argues that proactive acceptance involves two aspects: formally, within the CPTPP negotiation framework, and substantially, within domestic laws outside of the CPTPP negotiations, advancing synergistically from both an "external to internal" and "internal to external" perspective.

5.1". External to Internal" proactive Acceptance: Newcomer's "Premium" vs. Founding Members' "Counteroffer"

Objectively, under the promotion and even "coercion" of a few developed countries, some developing countries accept higher labor standards in FTAs to exchange for trade and investment benefits within the FTA framework.[80] Vietnam's swift adoption of CPTPP labor provisions and rapid amendment of its domestic laws likely reflects an exchange of benefits as a primary factor for accepting CPTPP labor provisions, which fundamentally differs from China's approach of proactively aligning with higher international economic and trade standards. Particularly, given the fundamental differences in economic scale and potential influence between Vietnam and China, CPTPP member states' expectations for domestic reforms and their tolerance for temporary "non-compliance" vary significantly between Vietnam and China. Moreover, Vietnam's dual trade union system, although quickly achieving "nominal compliance". faces potential conflicts between its dual union systems, clashes between labor laws and related legislation, and less-than-expected outcomes from collective bargaining pilots, which could have unforeseeable negative impacts. Therefore, China should systematically consider these factors before entering CPTPP negotiations.

5.1.1. Overall Attitude: Open Acceptance, Gradual Adoption

(i) Implementing the Principle of Autonomous Openness

Frankly speaking, the CPTPP labor provisions, as a "mini-multilateral agreement" advancing international labor protection, would generally promote the development of member states' domestic labor laws and help shape a favorable and stable labor environment. This concept was already reflected in the *2008 China-New Zealand FTA Labor Cooperation Memorandum of Understanding*, which emphasized that both parties should adhere to internationally recognized core labor standards and fulfill their obligations as ILO members, showcasing China's responsibility and mission as a major country aiming to pursue happiness for its people and keeping pace with the times. China's application to join the CPTPP reflects its willingness to embrace potential new developments in labor rules with an open attitude stance and to advance a new round of high-level opening-up with a firmer conviction.

(ii) Enhancing Domestic Labor Legislation

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[78] See Liu Jingdong, "Reconsideration on the Rule of Law System Construction under the 'Belt and Road'", in Global Law Review, Issue 3, 2021, pp. 180-182; Zhang Guang, "Study on Public Interest Protection in International Investment Law", Law Press, 2016, p. 270.

[79] See Zhou Yushun and Xu Shu, "Linking Mechanisms between International Investment Agreements and International Labor Standards", Social Science Research, Issue 6, 2021, p. 108.

[80] See Xiao Jun, "On the Enforceability of Labor Clauses in the Comprehensive Agreement on Investment between China and the EU", in Law Science, Issue 9, 2022, p. 180.

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Although China has consistently opposed using labor protection as a pretext to shape new economic and trade barriers such as "value-based trade" and "value-based investment", and even more so, opposed unfounded criticism and interference in its domestic affairs under the guise of labor issues, it has continually advanced the development of its labor legislation. The amendments made in 2015 to the *Employment Promotion Law* in 2018 to the *Labor Law* in 2021 to the *Work Safety Law* and the *Trade Union Law*, the enactment of the *2019 Regulations on Ensuring the Payment of Migrant Workers' Wages*, and the amendment in 2017 to the *Regulations on the Organization of Labor Dispute Arbitration* have all improved labor standards and enriched China's labor law system. However, these amendments exhibit characteristics of being reactive and fragmented, and there is room for further enhancement in terms of systemic cohesion and synergy. China's application to join the CPTPP requires a systematic refinement of its domestic labor laws in a relatively short period to align with CPTPP labor provisions, and it must consider improving the overall alignment of domestic laws with CPTPP labor provisions, especially in terms of their potential expanded interpretations in practice.

(iii) Optimizing Labor Law Enforcement

China should not only focus on incorporating internationally accepted labor standards into domestic legislation but also emphasize advancing the coordination between domestic, foreign-related, and international rule of law in enforcement. Law enforcement should adopt a dynamic perspective to review existing labor disputes, enhance communication and coordination among various departments, and optimize mechanisms for handling labor disputes. It is essential to continuously improve labor inspection outcomes and to enhance the actual effectiveness of China's labor law enforcement by perfecting mechanisms that protect workers' rights in three stages: prevention, control during incidents and post-incident remedies.

5.1.2. Dispute Resolution: Focus on Consultation and Dialogue, with Restricted Use of Third-Party Dispute Resolution

Incorporating robust dispute resolution mechanisms in international economic and trade agreements might appear to facilitate the harmonization of international labor standards. However, in reality, it can potentially create new trade barriers both between member and non-member states and among member states themselves, undermining a fair and mutually beneficial international trade environment. Labor issues have a distinct social dimension and are closely linked to a country's overall development level and societal traditions. Using rigid dispute resolution mechanisms or even sanction-based systems to ensure implementation could instead exacerbate both labor and trade issues. Therefore, it's advisable to make preemptive arrangements for potential labor disputes, which might include:

(i) Establishing a Preprocessing Mechanism for Labor Disputes

The labor dispute resolution mechanism outlined in the CAI text tentatively agreed upon in 2020 somewhat resembles the WTO's "non-retroactive" dispute resolution system. It is evident from the EU-Korea labor case that there is considerable expansiveness in the expert panel's interpretation and application of labor clauses. In other words, if the CPTPP labor dispute resolution expert panel adopts a similarly aggressive stance in interpretation and application, it could not only erode the public management rights of contracting states but also pose significant risks to China.[81] Particularly in recent years, a few countries have baselessly accused China of "forced labor" which could potentially be amplified through supply chain scenarios.[82] Therefore, submitting labor disputes to an expert panel for resolution entails great risks.

China should insist during negotiations that labor dispute resolutions continue to maximize the use of labor dialogues and consultations. It is also advisable to set up a preprocessing mechanism for potential labor disputes, with specific operational mechanisms that could include: regularizing and normalizing the mechanism for cooperative exchange on labor issues; establishing a dialogue

[81] See Zhao Chunlei, "Interpretation of Labor Clauses in International Economic and Trade Agreements—A Case Study of the EU-Korea Labor Dispute", in Forum of Political Science and Law, Issue 6, 2022, p.155.

[82] See Liang Yong, "Labor Clauses in International Investment Treaties Under the Influence of Supply Chain Due Diligence: International Practices and China's Countermeasures", in Contemporary Law Science, Issue 2, 2024, p. 138.

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platform among domestic unions, chambers of commerce, and other relevant organizations for timely information exchange and opinion sharing; creating a complaint center for the preliminary review and handling of practices not in compliance with CPTPP labor rules.

A preprocessing mechanism for labor issues would not only provide a convenient and stable channel for organizations such as unions to discuss the implementation and practical challenges of labor laws but also offer more accurate information for the government to understand the status of labor legislation and enforcement. Compared to addressing disputes post-occurrence through dialogue and consultation, a preprocessing mechanism allows for early identification, management, and even resolution of labor disagreements before they escalate into disputes between contracting parties.

(ii) Preserving Necessary Flexibility for Rights of Association and Collective Bargaining

China has not yet joined the two fundamental ILO conventions concerning the rights of association and collective bargaining. Furthermore, the provisions within Chinese law on the right to associate, such as the revised *2021 Trade Union Law*, exhibit notable differences from the CPTPP labor provisions. Article 2 of the *Trade Union Law* positions trade unions as "mass organizations of the working class voluntarily formed under the leadership of the Communist Party of China" and that "the All-China Federation of Trade Unions and its member organizations represent the interests of employees and safeguard the legal rights and interests of employees under the law". Articles 10 and 12, which assert principles of "democratic centralism", "leadership of higher-level trade union organizations over lower-level ones", and "the establishment of trade union organizations must be approved by a higher-level trade union", all indicate a vertical management relationship within the trade union system. This structure, where the basic function of the unions is to coordinate between employers and all workers, starkly contrasts with the provisions of the ILO fundamental conventions, particularly those concerning independence and self-administration without prior approval as stipulated in Article 2 of ILO Convention No. 87.

Moreover, despite collective contracts being covered in laws such as the *Labor Law*, *Labor Contract Law* and *Trade Union Law,* the implementation of these provisions remains under the strict guidance of higher-level trade unions, which aligns poorly with ILO Convention No. 98's stipulations on collective bargaining. The structured vertical management and the close relationship between trade union organization at all levels and governmental structures limit the independence necessary for effective collective bargaining at the enterprise level, which is crucial for fulfilling the rights under ILO Convention No. 98.

To address these fundamental differences, particularly in terms of the freedom of association and the right to collective bargaining, China needs to engage in careful bilateral negotiations with CPTPP member states before formally launching talks. It would be essential to isolate these issues or preserve flexibility by reaching agreements that acknowledge these disparities.

(iii) Seek Bilateral Arrangements to Freeze or Postpone Suspension of Benefits

The CPTPP mandates that member countries translate their labor rules into domestic law and enforce them through a progressive sanction mechanism, which, unlike the WTO's authorized trade retaliation mechanisms, allows victorious parties to take immediate retaliatory trade actions that are not limited to compensating losses. These sanction-tinged retaliatory mechanisms, although potentially strengthening enforcement, could lead to an over-reliance on punitive measures.

Given the backdrop of "single judgment finality" in the CPTPP dispute resolution mechanism and the aggressive interpretation of labor obligations seen in cases like the EU-Korea labor dispute, China must be cautious of potential rule exploitation and prepare risk management strategies. Vietnam's approach to postponing the suspension of benefits provides a model. If China could negotiate with some CPTPP member countries to freeze or postpone the implementation of suspension of benefits mechanisms or establish a bilateral labor committee, it would require consultation before initiating suspension of benefits remedies, aiming for a resolution through mutual agreement to avoid launching punitive measures. However, this approach, while potentially beneficial, must be leveraged carefully as the existing CPTPP members' tolerance for non-compliance from China may be significantly lower than for Vietnam, possibly approaching "zero tolerance".

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5.1.3. Continuous Attention to the Development of Soft Law Obligations

Labor issues are increasingly incorporated into international economic and trade agreements with converging and standardized language.[83] Although ILO legal advisors have clarified to member states that the *1998 Declaration* is "a non-binding political statement... without new commitments or any new legal obligations", [84] the *1998 Declaration* was unanimously agreed upon by all 187 member states. Subsequently, about 65% of FTAs explicitly reference the Declaration, 9% mention ILO fundamental conventions, while others refer to other ILO conventions, the *Decent Work Agenda,* the *Declaration on Social Justice*, or specific human rights documents.[85]

The EU-Korea labor case took an aggressive interpretation of terms like "encourage" and "make continuous and relentless efforts", effectively giving binding force to these advisory and soft-law obligations. This interpretation may have strayed from the real intentions of the contracting parties and could transform such clauses into new policy tools if similar conclusions are followed in future dispute resolutions. Objectively, even for international treaties ensured by coercive enforcement mechanisms, a few countries still exploit their discourse power to package their value-based perspectives and selective domestic laws or policies as superior "paradigms" to promote externally, thereby negating the progressiveness or legitimacy of other countries' systems.[86]

For those representing mainstream international community opinions and future trends, guidelines and self-regulatory standards that may arise from public opinion, reputation, and policy guidance are considered "soft law obligations".[87] If key terms are interpreted with excessive obligations by discourse leaders, constraints may arise that far exceed contractual expectations. Moreover, soft law obligations are rapidly evolving. For instance, in June 2022, the ILO decided to incorporate "safe and healthy working environments" into the framework of fundamental principles and rights at work. On April 28, 2023, the ILO convened tripartite members and experts to discuss the impact of this decision and how to advance these rights, although these are still soft law obligations. Their interpretation and application rely heavily on the "mainstream opinions" of the international community, particularly a few dominant countries. These soft law obligations might also elevate the standards of "acceptable working conditions" already included in the CPTPP.

Therefore, the Chinese government needs to pay special attention to the development of "soft law obligations" especially when such terms are excessively obligated. In negotiating international economic and trade agreements and formulating domestic laws, China should avoid directly transplanting soft law language or incorporating it into labor clauses through simple arrangements. Instead, it should combine these terms with potential application scenarios to create well-defined provisions.

5.2". Internal to External" proactive Acceptance: Proactive Institutional Openness vs. Passive Benefit Exchange

China's application to join the CPTPP not only demonstrates its proactive alignment with higher international economic and trade standards but also shows its full preparation and systemic confidence to enhance domestic labor standards. Even if China does not obtain consent from all CPTPP member states to formally start the negotiations, it will continue to deepen reform and

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[83] See Wang Pei and She Yunxia, "On International Trade and International Labor Standards from the Perspective of the China-New Zealand Memorandum of Understanding on Labor Cooperation", Journal of the China Institute of Labor Relations, Issue 1, 2009, p. 80.

[84] ILC: The 86th Session (1998), Provisional Record 20, para.325.

[85] ILO Governing Body, "Recommendations on Incorporating Safe and Healthy Working Conditions into the Framework of Fundamental Principles and Rights at Work", October 14, 2021, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_824754.pdf.

[86] See Wang Rui, "Civilization Hierarchy in Modern China—A Perspective from the History of Thought", Human Magazine, Issue 1, 2021, pp. 91-92.

[87] See Liang Yong, "On Soft Law Solutions in China's Overseas Investment Governance", Law Science, Issue 11, 2022, p. 178.

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opening up by autonomously adopting higher labor standards and establishing more stable and harmonious labor relations. This has already been proven in practice.

In recent years, China has not only actively revised laws such as the *Trade Union Law* and *Employment Promotion Law* but has also taken the lead in testing higher labor standards in Free Trade Zones (FTZs) and Free Trade Ports.[88] Particularly, the Comprehensive Plan for Fully Conforming to International High-Standard Economic and Trade Rules to Advance High-Level Institutional Opening in China (Shanghai) Free Trade Pilot Zone (State Document [2023] No. 23, referred to as "the Comprehensive Plan") Articles 66-69, issued by the State Council on November 26, 2023, specifies protections for workers' rights. While it rejects sanction mechanisms for non-compliance with expert panel reports, the substantive requirements include Article 66, which emphasizes creating harmonious labor relations and comprehensively implementing labor contracts and systems, ensuring workers' rights to rest, safety, and social insurance; and Article 68, which explicitly states that it is impermissible to reduce the level of protection of workers' rights to promote trade or investment. Procedural requirements, outlined in Article 67, include appointing labor inspectors to intensify labor protection law enforcement and Article 69 aims to improve the tripartite coordination mechanism covering workers, unions, and enterprises, conducting public opinion reviews, selectively publicizing review outcomes, and encouraging social forces to participate in labor dispute mediation and consultations.

It is noteworthy that some of the provisions in the aforementioned articles substantively aim to build mechanisms under the ILO fundamental conventions, especially under CPTPP labor rules. However, the Comprehensive Plan cautiously avoids using expressions identical or similar to those in the ILO fundamental conventions and CPTPP labor rules, eschewing terms like "ILO core labor standards" or "public participation", while including phrases like "in accordance with laws and regulations" (Article 66) and "based on relevant legal and regulatory provisions" (Article 67), emphasizing adherence to Chinese domestic law as the reference standard.

Thus, China may use the FTZs as a breakthrough point for spreading reforms, while continuing to adhere to domestic law standards and using the concept of autonomy to drive reforms. This reaffirms that China's acceptance of higher labor standards is fundamentally about advancing reforms, not merely about exchanging benefits. China's approach to adopting the CPTPP labor rules is based on a comprehensive assessment of the potential positive and negative impacts these rules may have on China, incorporating Chinese concepts to avoid misinterpretation or deliberate distortion of certain terms, especially soft law obligations, which could put China in a passive or even controlled position.

VI. Conclusion

Since the CPTPP came into effect, considerations for expanding its membership have begun, and China has shown determination to join the pact. However, given the unpredictable international situation and the current state of domestic labor legislation and enforcement in China, there are still many difficulties and challenges ahead. In the context of the ongoing global economic slowdown and the stagnation of traditional multilateralism represented by the WTO, joining the CPTPP, a "mini-multilateral" model, could significantly consolidate China's leading position in the Asia-Pacific region. It also demonstrates China's resolve to further deepen reforms in labor legislation and enforcement, and to better respond to the need for more harmonious labor relations. However, it should be recognized that there are substantial differences between Chinese law on freedom of association and collective bargaining and the CPTPP labor rules, particularly as the CPTPP includes a binding dispute resolution mechanism that differs from past international economic and trade agreements, which did not address labor standards or only included declarative provisions or

[88] On June 1, 2023, the State Council issued "Notice on Pilot Measures for Institutional Opening to International High Standards in Qualified Free Trade Zones and Free Trade Ports", initially in Shanghai, Guangdong, Tianjin, Fujian, Beijing FTZs, and Hainan Free Trade Port.

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abstract consultation clauses. China needs to adopt an "proactive acceptance" mode to effectively balance the positive and negative impacts of these provisions.

Moreover, it is fully recognized that the goals of the CPTPP labor rules—to protect workers' rights and improve working conditions—align intrinsically with China's actively promoted "Human Rights Action Plan" and the deepening of labor rights protection reforms. In recent years, China has taken a more open attitude towards labor issues, as evidenced by the explicit inclusion of investment and labor issues in the CAI's chapter on investment and sustainable development, which demonstrates China's systemic confidence in integrating labor issues into economic and trade agreements.

China should seize the opportunity to promote a high level of openness in foreign affairs, accelerating the scientific improvement and effective implementation of domestic and international labor laws. This approach would allow China to take a proactive yet strategically advantageous position in regional trade. Simultaneously, China must be particularly vigilant and guard against the impact of trade retaliation measures under the CPTPP dispute resolution mechanism, especially given that such a system could lead to an escalation in the scale of international economic and trade conflicts. Therefore, this paper emphasizes that China should autonomously accept the CPTPP labor provisions, employing a dual approach of "external to internal" and "internal to external" to implement multilevel and differentiated arrangements along with accompanying dispute resolution mechanisms. This strategy is aimed at managing potential systemic risks effectively. By adopting this approach, China can ensure that it aligns its international commitments with its internal reforms in labor laws, striking a balance between advancing its labor standards and maintaining its economic competitiveness and trade relationships. This will not only facilitate China's deeper integration into the global economy under equitable and just terms but will also enhance its capacity to manage and negotiate international labor standards effectively.