




ILO/Japan
Multi-Bilateral
Programme



► Multi-employer Bargaining Agreements

Towards a High-road Approach



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PREFACE

The right to collective bargaining has been provided in the Labour Code since 1994 with firm-level collective bargaining being the pre-dominant model practised by the trade unions and employers so far.

In the past years, there have been a number of initiatives to promote multi-employer collective bargaining as a mechanism to better workers' benefits, one among which is the pilot initiatives implemented under the agreement framework between the International Labour Organization (ILO) and Viet Nam General Confederation of Labour. The pilot programme started in 2016, with a focus on multi-employer collective bargaining agreement (MECBA).

For the trade unions, the core leverage for MEBAs is to create an united front of enterprise unions led by the immediate upper-level union. For the employers, the MEBAs are expected to create a level playing field of working conditions so as to prevent wage competition for labour 'poaching' and wildcat strikes. In 2017, the ILO's New Industrial Relations Framework Project funded by Japanese Government (NIRF/Japan project) continued with these experiments by renewing and extending the agreements, while encouraging signing new ones.

This research report was drafted in an effort to review the implementation process of the named pilot programme, while striving to document good practices on multi-employer collective bargaining agreements. On another attempt, it seeks to provide recommendations for the process of labour law reform, as well as suggestion to duplicate the pilot model nationwide. The research was conducted by Dr. Do Quynh Chi, under support from the ILO New Industrial Relations Framework on reinforcing representative functions of the trade unions and employers funded by the Government of Japan.

Abbreviations

CBA	Collective bargaining agreement
FES	Fredrich Ebert Stiftung
FOL	Federation of Labour
GTU	Grassroot trade union
ILO	International Labour Organisation
IR	Industrial Relations
IZ	Industrial zone
EZ	Economic zone
MEBA	Multi-employer Bargaining Agreement
MOLISA	Ministry of Labour, Invalids and Social Affairs
MW	Minimum Wage
NIRF	New Industrial Relations Framework (Project)
VCCI	Vietnam Chamber of Commerce and Industry
VGCL	Vietnam General Confederation of Labour
VITAS	Vietnam Textile and Apparel Association

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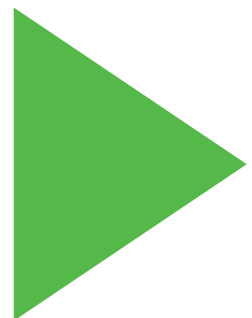
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Chapter 1: Introduction

1.1. Rationale and research objectives

The right to collective bargaining has been provided in the Labour Code since 1994 with firm-level collective bargaining being the pre-dominant model practised by the trade unions and employers so far.

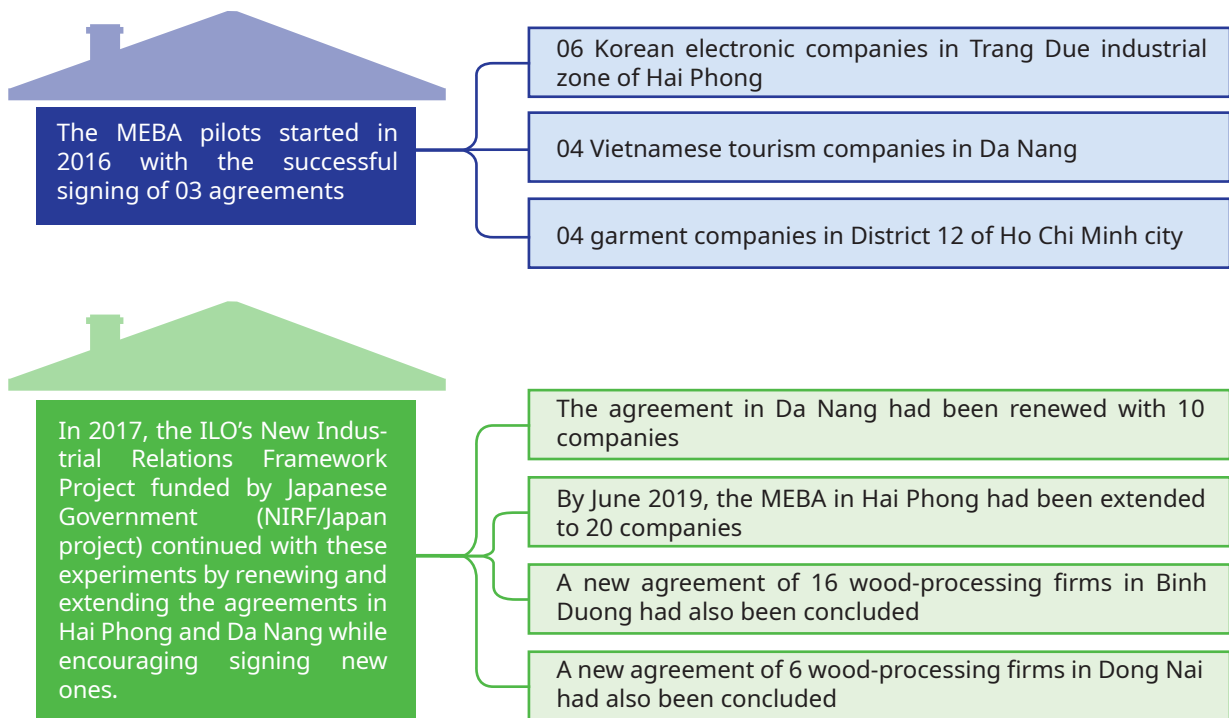
By the end of 2018, over 60% of unionised workplaces have been covered by firm-based collective bargaining agreements (CBAs) according to the Vietnam General Confederation of Labour (VGCL)¹. Despite the high rate of CBA coverage, the quality of the firm-based CBAs has raised concerns from within and outside of the VGCL system.

According to the Industrial Relations Department of VGCL, only 11.05% of the registered firm-based CBAs can be categorised as Type A – which follow the collective bargaining procedure and provides significantly higher wages and working conditions for workers. A survey by FES-VGCL in 2015 found that only 15% of the registered CBAs resulted from real labour-management negotiations² whereas the rest mainly copied from the labour legislation without engaging a real bargaining process.

The main reason for the shortage of genuine collective bargaining is the dependence of the enterprise unionists on management. There have been many initiatives to make collective bargaining a more effective mechanism to improve workers' interests, one of which has been the joint effort of the ILO Office in Hanoi and the VGCL in piloting multi-employer collective bargaining agreements (MEBAs). For the trade unions, the core leverage for MEBAs is to create an united front of enterprise unions led by the immediate upper-level trade unions that is expected to have stronger bargaining power in negotiations with the employers. For the employers, the MEBAs are expected to create a level playing field of working conditions so as to prevent wage competition for labour 'poaching' and wildcat strikes.

¹ VGCL statistics on CBA, extracted from the CBA Library

² FES and VGCL. 2015. Survey of registered CBAs. Internal report



The bargaining process of these agreements discerned strong coordination between the local FOLs and the participating enterprise unions and genuine negotiations between unions and employers, which is rare in Vietnam (Do and Nguyen 2016).

The VGCL itself has also encouraged the FOLs to initiate MEBAs. So far, two MEBAs have been signed in Khanh Hoa and Quang Ninh. The VGCL has also set the target of initiating multi-employer bargaining in 32 provinces and cities. At the same time, provisions on MEBAs have been incorporated in the draft 2019 Labour Code Revision.

As multi-employer bargaining is going to be promoted on a national scale by the VGCL, it is important to review the current MEBAs to address the following questions:



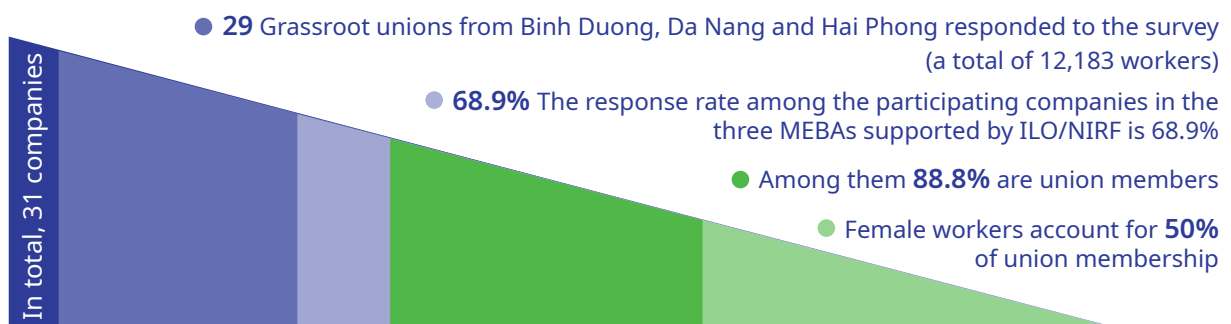
Therefore, it is the objective of this research to conduct an in-depth analysis of the joint ILO-VGCL experiments MEBAs to investigate the following aspects:

- The proceedings of negotiating each MEBA: commonalities and differences
- The roles of different stakeholders in these processes
- The factors that influenced the success of each agreement
- The impacts of the MEBAs on workers and employers
- Lessons learnt for the trade unions; and
- Implications for the Labour Code Revision (the provisions on MECBA)

1.2. Research Methodology

The research used a combination of quantitative and qualitative methods. First, the consultant thoroughly reviewed the relevant documents provided by the project teams and the local pilot teams. These documents include reports from the local pilot teams, internal reports of the project and VGCL with regards to MEBAs, statistics of companies participating in the MEBAs, and previous studies on MEBAs.

To make an assessment of the MEBAs and lay the foundation for replication of the experiments, it is crucial that the impacts of the MEBAs are quantifiable. Therefore, a survey that focused on the economic and social impacts of the agreements on workers and management of the participating companies was conducted. Two questionnaires, one for the management and the other for the union leadership, were sent by email to each of the participating companies via the VGCL's Industrial Relations Department and the provincial FOLs. The participating companies and grassroots unions filled in the questionnaires and sent directly back to either the consultant or NIRF Project.



The responding companies present a good mixture of labour force sizes: 46% of the responding companies employ less than 100 workers with the smallest company having 17 workers and the biggest company in the group has 1,450 workers. In terms of firm-level bargaining agreements, 51.6% of the responding companies have got effective CBAs at the time of signing the MEBAs while 45.1% have never signed firm-level CBAs.

Table 1

Attributes of Responding Employers and Unions

Attributes	Employers	Unions
No. of respondants	31	29
<i>Hai Phong</i>	13	9
<i>Da Nang</i>	9	9
<i>Binh Duong</i>	9	11
Total no. of Workers	12,183	
Total no. of union members		10,828

In parallel with the survey of participating companies in MEBAs, the consultant together with members of the NIRF and VGCL project teams conducted 25 in-depth interviews with the key actors in the MEBAs. It should be noted that apart from the pilot MEBAs in Hai Phong, Da Nang and Binh Duong under the framework of the NIRF project, the consultant also interviewed the key actors of other MEBAs conducted by other projects and agencies for comparison. The MEBAs outside of the NIRF project studied include.

- (i) The MEBA of garment companies in Van Lam, Hung Yen;
- (ii) The MEBA of tourism companies in Ha Long, Quang Ninh;
- (iii) The MEBA of VITAS member companies; and
- (iv) The MEBA of the Rubber Corporation.

For each of the MEBAs, the consultant interviewed:

- Representatives of the trade unions (the provincial, district/industrial zone, or sectoral unions) that have been directly engaged in the CBA process
- Representatives of the business associations directly engaged in the CB process³
- Representatives of the local DOLISAs
- The managers and unionists of one or two participating companies of the local MEBAs

Unfortunately, the research team was only able to interview 04 employees from Da Nang. Yet, we tried to investigate the ways the unions have used to consult workers during the bargaining process to understand the extent to which the rank-and-file workers were engaged in these initiatives.

³ The agreements of VINATEX and the Rubber Corporation are called 'sectoral CBAs' but in fact, they only cover a fraction of the whole industries, mainly including the member companies of VINATEX and Rubber Corporation. Therefore, we also categorise them as multi-employer bargaining agreements.

1.3.A Mapping of the MEBAs

There are eleven effective MEBAs at the time of writing, covering 279 companies and over 185,000 workers (see Table 1). Most of these agreements, except for the ones by VINATEX and the Rubber Corporation⁴, emerged from groupings of companies in the same industry and geographical location. This feature reflects the structure of the unions: the sectoral unions only cover a fraction of the industry while the larger part is affiliated to the local FOLs. As a result, the local FOLs rather than the sectoral unions represent the workers in most MEBAs.

Table 2						
Mapping of the effective MEBAs						
MEBAs	Sector	Province	No. of Enterprises covered	No. of Workers covered	Term	Signatories
ILO/NIRF and VGCL						
Trang Due IZ, Hai Phong	Electronics	Hai Phong	20	7,415	2019-2022	Hai Phong IZ Union and 20 Companies
Da Nang Tourism	Tourism & hospitality	Da Nang	10	2,385	2018-2020	Da Nang FOL and Da Nang Tourism Association
Binh Duong Wood Processing	Wood Processing	Binh Duong	16	9,886	2019-2020	BIFA and Binh Duong FOL
Dong Nai Wood Processing	Wood processing	Dong Nai	6	12,303	2019-2020	Dong Nai IZ Union and 6 companies
Linh Trung IZ <i>(In progress)</i>	Garment	HCMC	5	5,921	2019-2021	HCMC IZ Union and 5 companies
Quang Nam private kindergartens	Education	Quang Nam	10	39	2019-2021	

⁴ Both VINATEX and Rubber Corporation are state-owned general corporations, each of which consists of over 100 companies located in different provinces.

MEBAs	Sector	Province	No. of Enterprises covered	No. of Workers covered	Term	Signatories
CNV International and VGCL Project						
Van Lam Garment	Garment	Hung Yen province	5	4,000	2019-2020	Van Lam FOL and 05 companies
VGCL's Initiatives						
Ha Long , Quang Ninh Tourism	Tourism & Hospitality	Quang Ninh province	28	4,600	2018-2020	28 companies and Ha Long FOL
Rubber Corporation (Phase 2)	Rubber planting and processing	National	60	6,500	2019-2021	Rubber Corporation and Rubber sectoral union
VINATEX (Phase 4)	Garment	National	80	120,000	2017-2020	VITAS & National Garment Union
Binh Duong Garment (Phase 3)	Garment	Binh Duong	13	7,000	2017-2020	Binh Duong Garment Union and Binh Duong Garment Association
Hanoi Garment	Garment	Hanoi	27	5,000*	2017-2020	Hanoi Garment Union and Hanoi Garment Association
Total coverage	279 companies					185,000 workers
* This number is estimated by the author based on the available information on the websites of Hanoi Garment Sectoral Union						

It is interesting that the pioneering companies in signing MEBAs come from both manufacturing (electronics, garment, wood processing, and rubber) and services (tourism, education and hospitality). Almost all of the participating companies are medium-sized and large ones, employing from 100 to several thousand workers. There is also a mixture of organised companies that have already got their firm-level collective bargaining agreements (CBAs) and companies that are unorganised or have not signed firm-level CBAs.

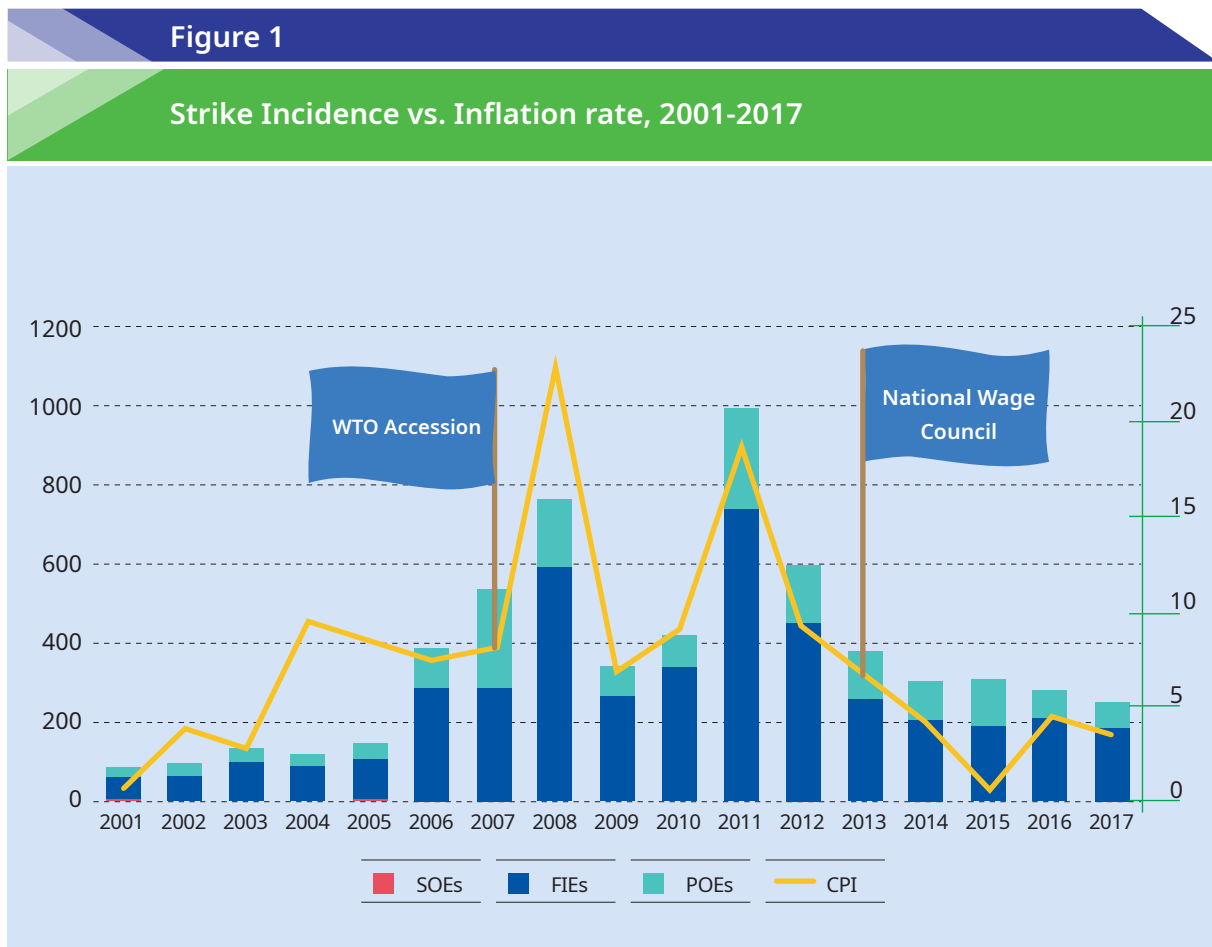
Chapter 2: Context for Collective Bargaining

2.1. The setting of wages and working conditions before and after 2013

How wages and working conditions are set in the labour market significantly influences the approaches of both employers and workers to collective bargaining. If wages and working conditions are mainly determined by negotiations between individual workers and employers, which is often the case of high-skilled employees, there is less a demand for collective bargaining. If wages and working conditions are unilaterally decided by the employers, usually close to, or lower than, the minimum standards, there is a high leverage by the workers and their representative organisations to initiate collective bargaining (ILO 2017). This section discusses the transition in the way wages and working conditions have been set from pattern-bargaining through wildcat strikes before 2013 to (informal) employer coordination after 2013.

Wildcat strikes and pattern-bargaining before 2013

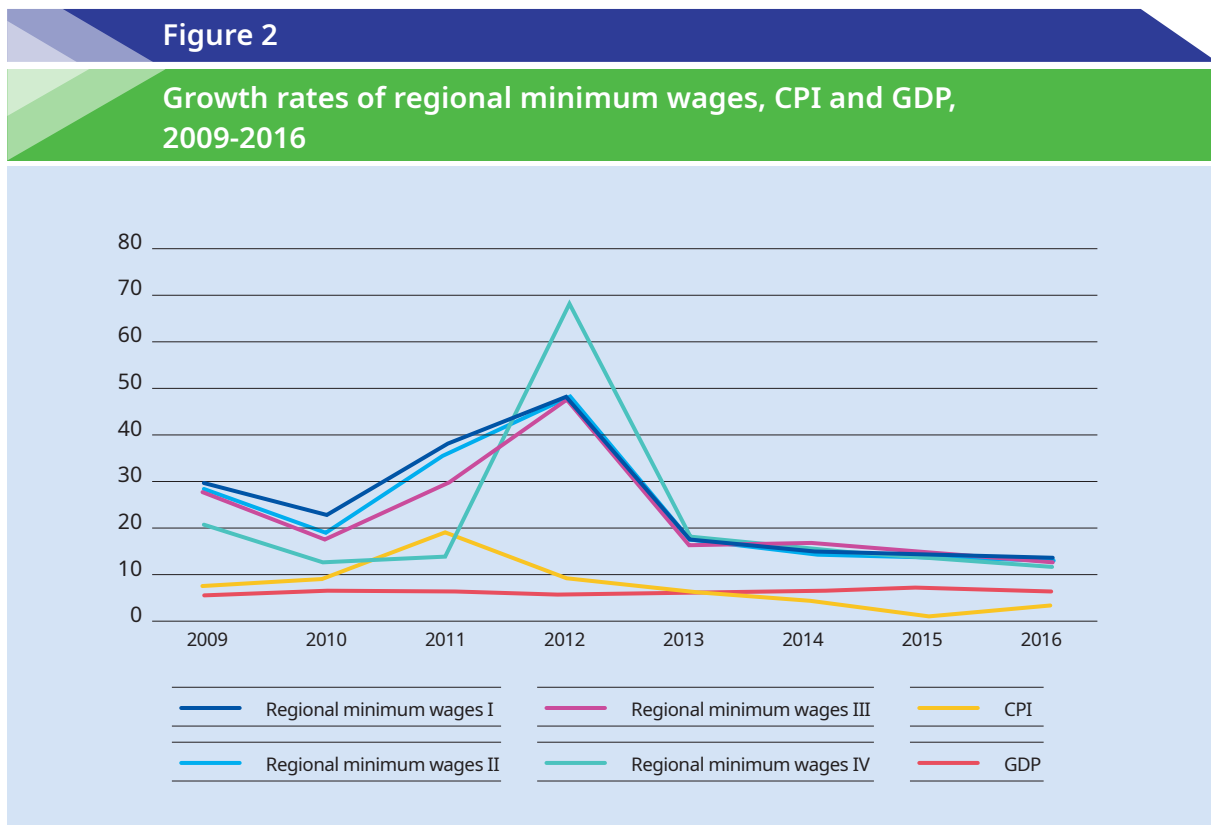
There is a strong correlation between wildcat strikes and inflation rates. The period of 2005-2012 witnessed the high rise of both inflation rates and wildcat strikes (see Figure 1). During this period, the government adjusted the minimum wages in consultation with the social partners. As a result, the first three months of the year, the timewhen employers were supposed to adjust their wage tables to the new minimum wages, had the highest strike incidence, contributing 41.2% of the total number of strikes (ILO Vietnam 2011). Workers walked out, usually to influence the base rates adjusted by the employers as a result of the new MWs. Strikes tended to cool down in April then exploded again in May, June, and July, the high season for garment and footwear production, which are also the most strike-prone industries. As the employers urgently needed to complete production orders, workers had higher bargaining power to demand for higher allowances and better bonus. These three months accounted for 28.3% of the annual strike incidence between 2010-2011 (ILO Vietnam 2011).



The peak of wildcat strikes, from 2008 to 2011, was also the period of economic slow-down. Workers, therefore, chose to stay and 'voice' up by going on strikes rather than choosing 'exit' (quit jobs) as the labour market demand dropped. During this period, workers across enterprises used wildcat strikes to initiate 'pattern-bargaining' (Do 2016). In particular, the leading strikes often occurred in companies with strong informal worker organisation. Victory for the leading strikes tended to change the wage levels of the whole region or industrial zone and encouraged spontaneous copy-cat strikes in other companies. The spread of the influence of leading strikes to other companies was assisted by three factors: industrial clustering, employer coordination and worker networks. In particular, companies in an industrial cluster in a region or an industrial zone tend to coordinate, formally and informally, in pay rates to prevent competition. Therefore, when a strike in one company resulted in a new wage rate, other companies tend to adjust their wage scale accordingly both to retain workers and to prevent similar strikes. The informal networks of workers within the same cluster or industrial zone were another push factor for this cross-company coordination (Do 2016). If a company was hesitant to keep up with the increase, workers would walk out to start the de facto negotiations with the employers.

Labour market conditions and minimum wage bargaining after 2013

In 2013, the inflation rate was brought down to under 10% per year and the National Wage Council was established. The incidence of strikes reduced quickly from 1,000 strikes in 2011 to over 200 in 2017 and the heat of 'collective bargaining by riots' (Hobsbawm 1960) was transferred to the minimum wage bargaining at the National Wage Council. Since 2013, the regional (nominal) minimum wages have been adjusted in tandem with the inflation rates (see Figure 2).



Source: VEPR (2017)

Employers and workers have become used to the annual adjustment of minimum wages. Normally employers try to keep a small difference between the minimum wages and the base rates paid to low-skilled workers. When the minimum wages are increased, the employers raise the whole wage scale accordingly. The coordination, both formal and informal, among employers in adjusting wages has grown stronger than it was before 2013. The FDI companies tend to coordinate within the framework of their business associations. For instance, the Japanese, Korean and Taiwanese investors in each industrial zone tend to meet frequently to agree upon the same wage increase after the new minimum wages are announced. For local companies or those outside of industrial zones, employers discreetly investigate the wage adjustments of neighboring companies and make their own decisions accordingly.

As the economy recovers, labour shortages have become fiercer. On the one hand, the employers have invested into automation to reduce the need for labour⁵; on the other

The owner of a wood-processing company in Binh Duong explained: *'when the new minimum wages are announced, I will ask my HR staff to find out immediately how other companies adjust their wages. Sometimes, I had to purchase the wage tables of neighboring companies to compare with ours. It's important that we don't pay lower than other companies; otherwise, we will lose our workers'* (Interview conducted in September 2019).

hand, the informal wage coordination based on minimum wages has become the de facto labour market mechanism to set wages. However, instead of raising wages for workers, the employers have informally coordinated to keep the basic wages at the minimum level, mainly to minimise the contribution to social insurance schemes, while putting the large proportion of workers' income into piece-rate payment, bonus, and overtime premium. According to the 2018 survey by the Institute of Workers and Unions over nearly 1,000 workers in manufacturing and service industries, the basic

salary of 50% of surveyed workers was paid at the minimum level while around 10% was paid under the minimum wages (IWTU 2018). In other words, without the pressure from wildcat strikes, market forces and employers' coordination have increasingly tied wages and working conditions to the minimum standards. In this context, it is important that the trade unions initiate real collective bargaining to improve wages and working conditions for the unskilled workers.

2.2. Social Partners' Approaches to Collective Bargaining

The trends of collective bargaining in an industry or a country depend, to a large extent, on the structure of trade unions and employers' organisations as well as the strength of the unions in negotiating collective bargaining agreements (ILO 2017). In Nordic countries, for instance, as the employers and workers in each industry often have national representative organisations, it is possible to negotiate national sectoral agreements. In the United States and United Kingdom, the trend of sectoral bargaining has reversed to firm-level bargaining after the 1970s as unions' strength declined and employers' pursuit of flexibility in decision making. In Vietnam, the VGCL enjoys a high unionisation rate of over 40% in the formal sector (VGCL 2017); however, collective bargaining remains at an infant stage. Over 60% of unionised enterprises have been covered by firm-level CBAs but only 15% of these agreements resulted from genuine negotiations while the rest are just copies of the labour law (FES-VGCL 2015). This research analysed the approaches of the labour administration and the social partners to collective bargaining and found the major differences that may have obstructed real collective bargaining.

⁵ It is estimated that automation has resulted in the reduction of labour force by a third for the past 5 years in the labour-intensive manufacturing industries in the South of Vietnam (interviews with employers and business associations, May-September 2019)

Trade Unions

Although the VGCL has a large membership of over 10 million⁶, its strength in collective bargaining is affected by three important constraints:

First, the current structure of the VGCL originates from the centrally-planned economy in which industries were dominated by state-owned enterprises. The sectoral unions used to cover all, if not most, of the workers employed in the affiliating SOEs. Along with the economic reform, non-state enterprises emerged and they are registered under the local governments instead of the linear ministries like the SOEs. As such, the unions of non-state companies have been affiliated to the regional unions instead of the sectoral ones. Over three decades after Doi Moi, the membership of provincial unions has grown much bigger than that of the sectoral unions. For instance, the national garment sectoral union has around 100 affiliated enterprise unions and 150,000 members. The membership of the national garment sectoral union is minor compared to the whole garment industry which consists of over 8,000 companies and 2.5 million workers (FPTS 2017). This dual structure of VGCL has fragmented the power of the trade unions on industry level and shifted the focus of the organisation to the geographical branches.

Second, the union's strength in collective bargaining is further curtailed by the fact that VGCL-affiliated unions are not able to organise strikes although the law has granted them the right to lead strikes. Pham (2017) argued that as the VGCL is a socio-political organisation that acts more as the bridge between employers and workers, organising strikes is out of the question for the unions. Since 1995, there have been over 6,000 strikes but none was organised or led by the VGCL-affiliated unions. Without the weapon of strikes, the unions have little left to bargain with the employers.

Finally, the approach of the trade unions toward collective bargaining remains in transition from the legalistic perspective of the command economy, in which the unions demand no more than what the law provides, to the interest-based perspective in which the unions negotiate for higher interests for their members. The unionists interviewed in this research, for instance, often raised their concerns that 'if this issue is not provided in the law, we have no ground to persuade the employer to accept it' or 'the employer has already complied with the law, we can not ask to them to do more'. Therefore, the fact that the unions were engaged in multi-employer bargaining initiatives which raised workers' interests above the minimum standards has an important impact on the traditional union system.

⁶ VGCL. 2018. Report for the implementation of 22-CT/TW. Internal Report

Employers

The representation of employers is patchy and fragmented. Business associations cover a small number of local businesses that are of bigger sizes while the SMEs stay out of these organisations. For instance, Binh Duong Furniture Association (BIFA) consists of over 200 local wood-processing companies, which accounts for only a third of the total number of wood-processing companies in Binh Duong. The FDI companies affiliate to their nationality-based business associations such as the Japanese Business Association (JBA), Korean Chamber of Commerce (KoCham), European Chamber of Commerce (EuroCham), among others. In the mean time, the national business association, VCCI, has limited presence at provincial and sectoral levels. The structure of employers' organisation, therefore, is not favourable for regional or sectoral collective bargaining initiatives.

The employers have faced with little pressure to engage into serious collective bargaining. At the enterprise level, the enterprise unions rarely challenge the management to start real bargaining process. Prior to 2013, the real collective bargaining might happen under the pressure of strikes but as the threat of strikes has diminished, the employers tend to make decisions based on the market situation. At the regional and sectoral level, the employers have, so far, been hesitant to engage into collective bargaining. One of the reasons is the fluctuations of markets that the employers have to face with, which makes it difficult for them to commit to a long-term collective bargaining agreement. Second, the absence of a strong association and the competition among the companies have made employers less willing to engage in multi-employer bargaining agreements. Thirdly and probably most importantly, the benefits of multi-employer bargaining remain intangible for the employers.

Our interviews with business associations and employers showed that multi-employer bargaining may offer potential benefits to the employers. First, the labour-intensive industries such as garment, wood-processing and tourism have been facing with growing labour shortages in all skill segments. Wage competition and labour poaching have

become increasingly pervasive and fierce. In this context, a bargaining agreement that covers a region or at least the industrial groupings of companies in one region will help stabilise the labour force. Such a prospect, consequently, may gradually draw the employers, especially the SMEs, towards joining MEBA. Therefore, the potential benefits of collective bargaining pilots must be showcased to the employers so as to extend the coverage of MEBA.

The leader of a business association told us: *'The labour shortages have become more severe than ever. I just got this message from a member company, saying that this morning, his whole moulding team has quitted for another company that pays higher. This has happened a lot recently'.* The manager of a hotel complained: *'Tourism has grown so fast that now we face with extremely high [labour] turnover. Labour poaching is pervasive. The staff may change within weeks, not months'.*



Chapter 3: Multi-Employer Bargaining Agreements in Hai Phong, Binh Duong and Da Nang

3.1. Selection of Company Groupings – the role of business associations

In the first phase of MEBA pilots (2015-2016), the trade unions' approach was to survey a group of companies then starting a buy-in process. During this process, the trade unions negotiated with each of the selected companies. Among the employers, there was no business association or any mechanism for coordination. At the end of the process, some companies would drop out and the agreement was signed with the remaining companies. For instance, the FOL of District 12, HCMC surveyed ten garment companies and ended up signing the MEBA with four. This 'downsizing' approach was adopted again in the second phase (2018-2019) in the case of Da Nang tourism industry. Da Nang FOL made a list of over 20 tourism companies before the buy-in process and ended up with 10 companies (including 4 companies originally covered by the first MEBA). Ha Long FOL started with 42 companies and finally concluded the agreement with 20. The FOL of Van Lam, Hung Yen worked with 07 garment enterprises and signed the agreement with 5.

The second phase of MEBA pilots of the NIRF Project, however, witnessed the emergence of the "extension" approach in selecting company groupings. In this new approach, the trade unions started negotiations with the core group of employers, then gradually extending to a larger number of companies of the same industry and location. Hai Phong IZ union, for instance, started the negotiation with 05 core companies that originally joined the first MEBA in 2016. Then the negotiation was extended to 13 companies and finally 19 companies agreed to sign the second MEBA in Trang Due industrial zone. Similarly, the MEBA in Binh Duong started with 05 wood-processing companies and ended

with 16 member companies of BIFA (Binh Duong Furniture Association). The extension of participating companies in these two MEBA was made possible by the support of the local business associations. In Hai Phong, the Korean Business Association in Trang Due Industrial Zone got engaged at the very end of the negotiation process with Hai Phong IZ Union and consequently influenced other member companies to join the agreement. In a similar scenario, BIFA joined the negotiation process with Binh Duong FOL at the final two months, thanks to which, a larger number of wood-processing companies were then persuaded to sign the agreement. **These two examples have proven that the participation of business associations in the bargaining process is crucial to ensure the large-scale coverage of the MEBA.**

3.2. Bargaining Process and the Unions' Strategy

All of the MEBA pilots followed the same basic 5-step process, although each union may have their own tactics in conducting each of the steps.

Step 1: Preparation

In the first step, trade unions conducted surveys of the target companies and collected workers' demands. Based on the preparative work, the trade unions developed a draft agreement which they used to initiate the bargaining process with the selected companies.

The trade unions conducted the surveys in two different ways:

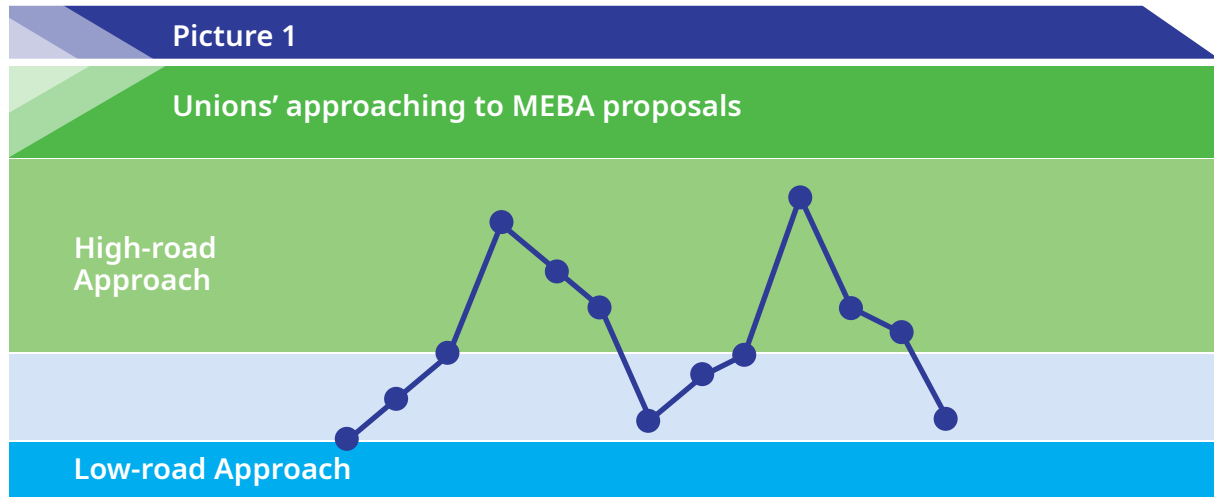
(i) (i) the upper-level trade unionists visited each company to conduct, in collaboration with the enterprise unions, a survey of wages and working conditions, which was also combined with consultations of workers on the issues they wished to incorporate in the bargaining process; or

(ii) (ii) the upper-level trade unions required the enterprise unions to submit reports of wages and working conditions. In this case, the enterprise unions could conduct their own surveys or use the existing statistics to submit to the upper-level unions. During this process, the enterprise unions might also identify the issues that workers were most concerned about to include into the agreements.

A survey by the upper-level unions offer more quality information and a better chance to consult with the workers than the submission of reports from the grassroots unions. The more workers are engaged into the negotiation process, the more they will support the union negotiators.

Step 2: Making Proposals for Negotiation

After the surveys and collection of workers' demands, the trade unions went through a process of selecting the key provisions to be included in the proposed agreement. This has proven to be a strategic decision by the unions which would later determine the whole bargaining process. The researcher found that among the pilot MEBA, there are two main approaches to deciding upon the proposed provisions in the draft MEBA:



(i) Low-road approach⁷:

In the first approach, tentatively referred to here as the 'low-road' approach, the upper-level unions defined the proposed provisions close to the lowest rates currently applied by

⁷ The terms 'low-road' and 'high-road' approaches have been frequently used in human development studies, especially in human resource management and employment relations. The 'high-road' approach often refers to strategies that treat sustainability, shared prosperity and efficiency as necessary complements; whereas the 'low-road' approach denotes the strategies that require trade-offs between short-term benefits of one party and the sufferings or damages for the others. See detailed explanations here (https://www.cows.org/_data/documents/1776.pdf). Here, the term 'low-road' approach is used to emphasize the fact that the benefits of the workers have not been improved as the trade-off for the quick and extensive conclusion of the MEBA.

(ii) High-road Approach

In the 'high-road' approach, the trade unions' proposals targeted the middle range of the selected companies. In the case of Trang Due, for instance, the benefit of having two Saturdays off had been applied by the bigger electronic companies before the Trang Due MEBA was initiated. The Hai Phong IZ union decided to incorporate this provision in the proposed agreement. After the tense negotiations with the Korean employers, the union agreed not to make this provision obligatory for all participating companies but successfully persuaded the employers to pay at least 150% of basic salary for 02 Saturdays (if the workers work all Saturdays in a month). The shift meal was another 'tension point' in the bargaining

most, if not all, of the targeted companies. For instance: if the basic salaries paid by all of the targeted companies were at least 3% higher than the applicable minimum wages, the trade unions would propose a floor rate of $\{MW+3\%$ in the agreement.

According to the interviewed unionists, such 'low-road' approach was chosen for two reasons: *First*, the unions in the pilots had a very short time for negotiation as they were constrained by the project targets and timeline. Therefore, if the proposed rates were set too high, the bargaining process might last much longer than planned; *Second*, the unions wanted to engage as many employers as possible including both the high-paying companies and the less-affluent ones (the SMEs). As the MEBAs that were built upon the 'low-road' approach incurred minimum additional financial expenses for the employers, the employers were more willing to join the agreements. However, the benefits gained for the workers covered by the agreements were not substantially improved. For instance, in our interview with Binh Duong FOL, the unionists expressed their dissatisfaction with the low benefits gained through the agreement of 16 wood-processing companies. The employees of the hotels participating in Da Nang tourism agreement also admitted that the agreement does not offer any better provisions compared to their existing benefits. The minor impacts of MEBAs with low-road approach are also reflected in the

process, especially in labour-intensive industries. In Trang Due, the common shift-meal rate was VND19,000/person/day; yet, the trade union proposed the higher rate of VND21,000/person/day, which the employers finally agreed to adopt.

The high-road approach has the potential to improve the benefits of workers, especially those in the SMEs; yet it also tends to pose more challenges and risks for the trade unions in securing the successful conclusion of the MEBAs. In the 2015-2016 period, the Dong Nai IZ union adopted the high-road approach and failed to reach an agreement with the Japanese employers after a long and difficult negotiation process.

For these reasons, choosing a low-road or high-road approach in MEBAs remains controversial among the unionists at all levels. However, it should be argued that the ultimate goal of collective bargaining, no matter at what level, is to improve the rights and interests of union members. Therefore, a collective bargaining agreement that brings minimal, if not none, benefits for the covered workers fails to live up to its meaning and in the long run, may affect the legitimacy of the (upper-level) trade unions. It should be noted that the choice of low-road vs. high-road approach has been made primarily by the upper-level union negotiators without consulting the union members. Yet, in order to adopt the

modest changes of the companies' budget. According to our quantitative survey, 38.7% of the participating employers experienced no budget increase due to the MEBAs and 58% had minor increase within their previously planned budget.

high-road approach, it is crucial that the unions strengthen their bargaining power. In the later section, this research will suggest 06 measures to improve the union bargaining power.

Step 3: Single-employer bargaining and the buy-in process

Table 3

Union Strategies to Single-Employer Bargaining



Unlike the bargaining of the MEBAs of the VINATEX, Rubber Corporation, and the garment sector in Binh Duong and Hanoi in which the participating companies are represented by the state-owned corporations in negotiations, in other pilots the trade unions had to approach employers separately. In so doing, the upper-level unions tried to persuade each company to join the agreement and discuss the draft agreement at the same time. This step, therefore, is the most important and also the most challenging job for the union

negotiators. The upper-level unions used the following strategies to buy-in and negotiate with the employers:

Explain the labour challenges faced by the local companies (such as high labour turnover, labour shortages, labour poaching, etc.) and offer the MEBA as a solution. For Hai Phong, Binh Duong and Da Nang, the employers all have been facing with serious labour shortages and labour poaching. Therefore, creating a level playing field to improve labour stability was offered by the trade unions as a long-term benefit of the MEBA;

Provide incentives to companies that can join the agreements (for instance: companies can receive higher scores to get the local awards for best enterprises)

Accommodate the specific needs of each employer (eg.: some employers want to be excepted from the implementation of certain provisions, the union negotiators can offer exemptions in the agreements)

Use the personal influence of unionists to persuade employers: the experienced upper-level union officials have developed strong ties with the companies over the years (like in the case of Da Nang, Binh Duong, Hai Phong and Quang Ninh). The collaborative relationship between the upper-level unionists and the companies have been an important factor to buy-in the latter.

Resort to political pressures: in a few cases, the trade unions have engaged the local governments to increase the pressure over the employers to join the agreement. In our quantitative survey of the participating companies, the political pressure was the reason for 19.4% of companies to join the MEBA.

Use the threat of strikes: the Vietnamese unions have never used strikes or the threat of strikes against the employers. Despite this collaborative tradition, the evidence from the MEBA pilots proves that the use of, at least, the threat of strikes can be utilised in collective bargaining. In particular, one upper-level union used, informally, the threat of strikes if the (foreign) employers withdrew from the bargaining process. Such strategy successfully made the employers to return to the bargaining table.

The bargaining strategies of the union negotiators tend to focus more on persuasion and accommodation rather than adversarial measures. In our in-depth interviews, the union negotiators were largely hesitant to use more assertive tactics in bargaining for several reasons. First, the assertive tactics might push the employers away from the multi-employer bargaining process. Second, the union negotiators did not want to damage their relationships with the employers. A union negotiator stressed that the motto of the Viet-

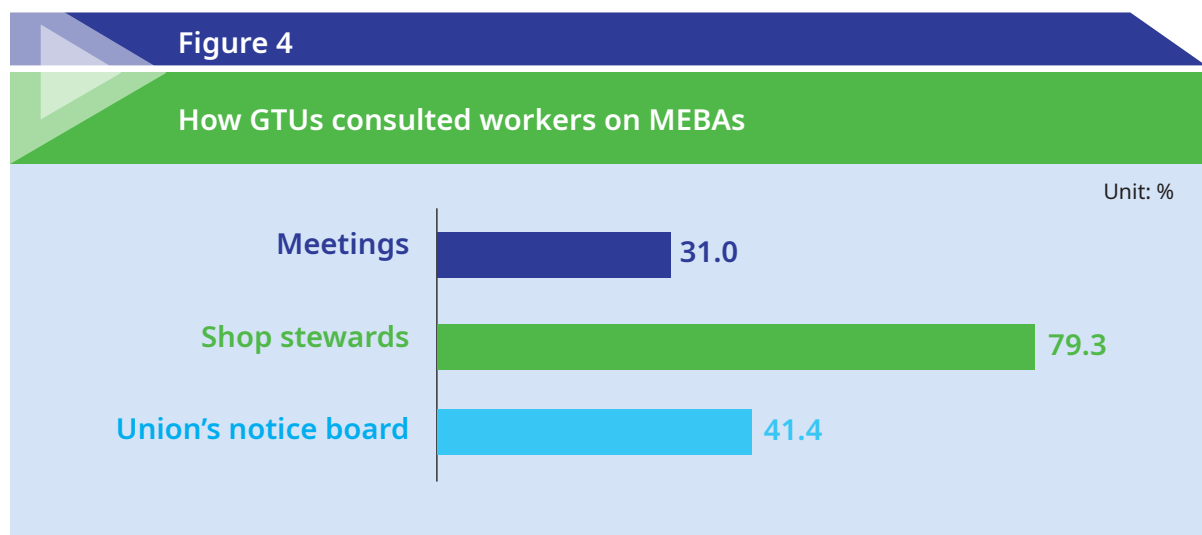
namese unions is ‘the unions are on the same boat with the employers’. Last but not least, apart from persuasion and accommodation, most of the upper-level unionists had limited foundation of grassroots support, especially that from the enterprise unionists and union members. As the workers were not intimately engaged in the bargaining process, the union negotiators lacked a strong source of bargaining power to utilise any assertive actions.

Step 4: Multi-employer bargaining

In most pilots, the large part of negotiations took place during the bargaining process with individual employers while the multi-employer bargaining sessions, if any, were mainly regarded as the formal approval of the agreements. There were also exceptions. For instance: in the case of Binh Duong, the real bargaining process only started when BIFA represented their members in negotiating with Binh Duong FOL, which occurred roughly two months before the final agreement was concluded. Da Nang FOL discussed with the local tourism association in parallel with single-employer bargaining. And the IZ union of Hai Phong started the negotiation with the head of Korean Business Association in Trang Due Industrial Park less than a week before the signing of the agreement. Yet, the negotiation with the head of the business association played the key role in defining the key provisions and the coverage of the whole agreement.

Step 5: Conclusion of the agreements and extension

When the upper-level unions finalised the negotiations with the employers/business associations, the agreements were shared with enterprise unions and workers for approval. According to our survey of the enterprise unions, the most common way to consult workers was through the shop stewards (‘To trong cong doan’) (Figure 4). The shop stewards gave workers copies of the MEBAs to read and comment and then sign upon approval. However, there were a number of cases in which the workers were not consulted prior to the official signing of the agreements, especially when the time between the final negotiation finished and the signing was too short.



The signing of the MEBAs has attracted the attention from other enterprises in the industry that also want to join. For instance: Da Nang is planning to extend the tourism agreement to incorporate more than 20 companies. In Quang Ninh, eight more companies have joined the tourism agreement, making the total number of participating employers to twenty-eight. Hai Phong IZ union has also received expressed interests from more companies in Trang Due IZ in joining the agreement.



3.3. Bargaining Issues

We categorised the bargaining issues in the MEBAs into 04 groups: (i) salary and allowances; (ii) bonus and cash-based benefits; (iii) non-cash benefits; and (iv) employers' issues.

Salary and Allowances

This is the most important group of bargaining issues for any collective bargaining agreement. This category includes the basic salary and allowances (such as: attendance allowance or seniority allowance) that must be incorporated in the calculation of social insurance contribution. Negotiations over this category have been most difficult both for the employers and the unions. For the employers, due to the high rate of social insurance contribution, they were reluctant to negotiate nor commit to an increase of basic salary and allowances. An employer told us: 'I'm willing to raise wages for the workers but the problem is the high social insurance contribution rate. I'd rather invest into welfare benefits for workers than paying more social insurance' (Interview in August 2019).

To negotiate with employers on wages, the unions need strong and persuasive reasoning. However, the trade unions lack reliable guidelines on wages and local living costs to lay the foundation for pay bargaining. Consequently, some trade unions decided to leave this group out of the agreement or keep the commitment close to the minimum wages. In general, among the MEBAs, the employers are committed to paying 2-5% higher

The chairperson of a district FOL explained: *'we wanted to negotiate on salaries but we did not have any reliable reference on the average wage level or the living cost in our district to stage our argument with the employers. Without good evidence, we knew that we would not be able to persuade them [employers] to accept our proposal'.*

than the applicable minimum wages, which most of them had adopted prior to the MEBAs.

Bonus and cash-based benefits

This category includes shift meals, Tet bonus, productivity bonus, welfare benefits, transport allowance, among others that are based on workers' performance and specific needs and are not counted in the social insurance contribution. The employers have been more willing to make commitments in this category, especially when the benefits are tied to workers' performance. Some of the prominent benefits in this category include: the menstruation benefit of 50 thousand dong/month (Van Lam), travel allowances (Trang Due and Ha Long), shift meals ranging from 17-21 thousand dong/person/day, benefits for difficult workers and gifts for special occasions (all agreements).

Non-cash benefits

The non-cash benefits include provisions on working hours and rest time as well as the conditions for the enterprise unions' work. For instance, the Trang Due agreement encourages participating companies to have at least one 40-hour week every month and commits to 1-3 days of paid leave for summer vacation. Binh Duong wood-processing agreement provides for at least one hour per quarter for the enterprise unions to hold workshops with workers. Both Trang Due and Ha Long agreements set the specific timeline for management to respond to unions' requests and grievances.

Employers' Issues

Bargaining is a give-and-take process in which the employers commit to providing favourable conditions to workers and unions while expecting to earn certain benefits for their own. Without gaining concrete benefits, the employers will be reluctant to join the agreements or provide more favourable benefits for the workers. However, it remains rare for the MEBA to include employers' issues. Our interviews with the employers reveal the following issues that employers wish to be included in the agreements:

- Participating companies should commit to avoid using unhealthy measures to poach labour from one another;
- If participating companies have not got their firm-level CBA, they can use the MEBA as an alternative;
- The unions shall not organise strikes during the term of the MEBA if the employers comply fully with the agreement

According to the unions, the shortage of clear definitions and provisions in the regulatory framework has made it difficult for them to incorporate the above-mentioned issues into the agreement. An unionist told us: *'In the long run, we need to create some legal provisions to ensure the benefits of employers in these multi-employer bargaining agreements. A company in our group has not got their own CBA and they want to use the MEBA as their CBA but the labour administration refused to accept it and asked them to negotiate their firm-level agreement. The director of the company was disappointed as they thought joining the MEBA would save the time for a firm-level agreement'*.

In a similar tone, the representative of a business association said: *'What worries us most is labour poaching. We originally wanted to add a provision in the MEBA to prevent labour poaching but there has not been any definition of labour poaching in the law. Also, the MEBA has no enforcement clause. What can we do if a company violates such provision?'*

3.4. Roles of the key actors

Trade Unions

The trade unions have played the most important role in the bargaining process. There were four levels of the union system engaged in the bargaining:

- **VGCL:** the national union organisation coordinates all the unions in the MEBA pilots which may fall into projects with international organisations (ILO/NIRF, CNV International) or VGCL's own initiatives. VGCL provides the subordinate unions with trainings on bargaining skills and technical back-up during the bargaining process. However, the VGCL has given the subordinate unions with a lot of freedom in deciding their own strategies, bargaining issues and company groupings.
- **Provincial FOLs:** the roles of provincial FOLs varied widely from '*mere observation*' to '*leading the bargaining process*'. The division of work between the provincial FOLs and the district/IZ unions in leading the bargaining depended on the individual capacity of the lead negotiator. This means that if the most experienced unionist who has strong connections with local enterprises and has devotion to the pilots is working at the provincial FOL, then that person would lead the bargaining. This was the case of Da Nang, Binh Duong and Ha Long. Otherwise, the provincial FOLs would only acquire a supporting role while the district/IZ unions led the bargaining process.
- **District/IZ unions:** the immediate upper unions played the leading roles in the cases of Hai Phong and Hung Yen. The leaders of Hai Phong IZ Union and Van Lam FOL initiated the bargaining process with the employers, conducted negotiations with each employer and the whole group. They also coordinated the participating enterprise unions in the whole process. In other cases, the immediate upper unions acted as the key members of the negotiating teams of the unions. For instance, the Tan Uyen FOL worked closely with Binh Duong FOL during the bargaining process. The unionists of Tan Uyen conducted surveys at the target companies and maintained the network of participating enterprise unions, which laid the foundation for the successful negotiation. It is possible to assert that whether or not the district/IZ unions led the bargaining or not, they played an irreplaceable role in these MEBA pilots.
- **Enterprise unions:** according to our quantitative survey, 86.2% of the enterprise unions defined their roles as 'developing the MEBA proposal and participating in the negotiation with the upper-level unions'. However, the interviews showed that the enterprise unionists rarely played any proactive role in the bargaining process. During the preparation, the enterprise unionists supported the upper-level unions in surveys and collection of workers' demands. During the buy-in and negotiation process, the enterprise unionists acted more as the intermediary between the upper-level union and the management rather than siding with the former. However, the enterprise unions provide the important information to the upper-level unions to support the negotia-

A provincial union official explained the role of the enterprise unions: *'the enterprise unionists may get into trouble with the management if they engage into real negotiations. Therefore, most of the time the enterprise union officials kept a neutral position while we [the upper-level unionists] did the real negotiation job'.*

tion process. In the case of Trang Due, for instance, the enterprise unionists informed the upper-level union officials about the reactions of the employers to the proposed agreement, which helped the upper-level union to swiftly work out a counter-strategy.

Employers and Business Associations

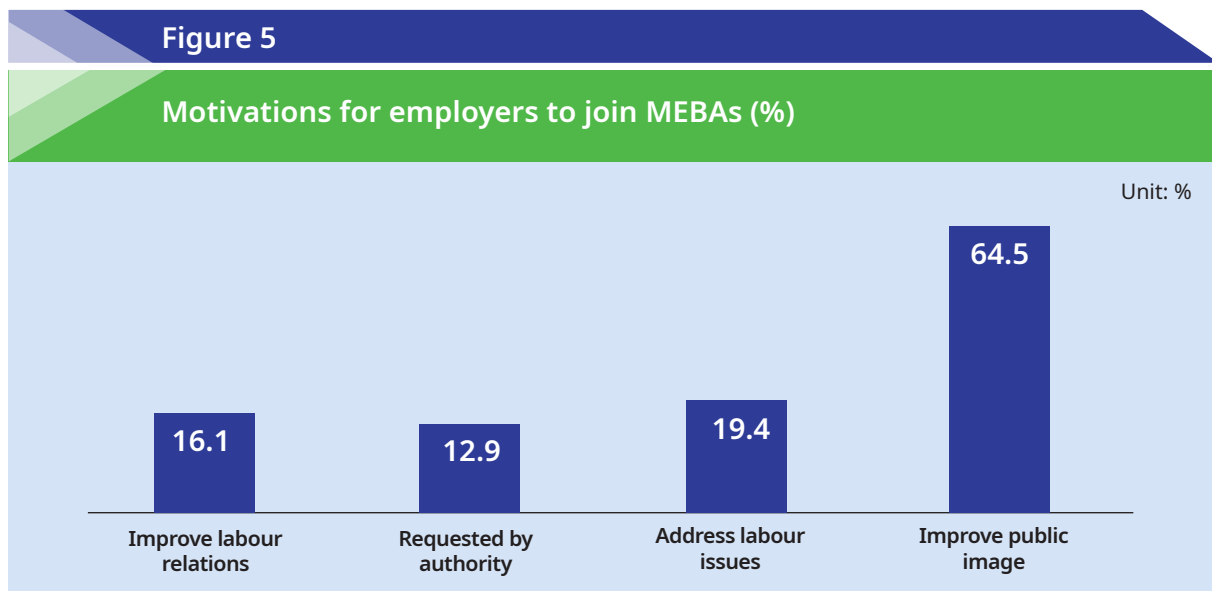
As discussed earlier, the business associations played the crucial role in extending the coverage of the MEBA in Hai Phong, Binh Duong and Da Nang. However, as admitted by the local unionists, there had not been a regular dialogue mechanism between the upper-level unions and the business association prior to the signing of the MEBA. In the case of Trang Due, the IZ union only got to know about the Korean business association at the very last days of the bargaining process. In Binh Duong, BIFA only got engaged into the negotiations in the last 2 months while in Da Nang, the Tourism Association embarked into the bargaining in 2015 on the basis of personal connections with one of the local union officials.

In all 03 cases, the business associations played the following roles:

- Coordinating among the member companies in the bargaining process
- Negotiating with the unions on behalf of their members
- Buying-in more members in the association to join the agreements.

According to the representatives of business associations, they regarded the bargaining process as a good chance to initiate dialogues with the upper-level unions and to boost the public image of the association.

For the individual employers, the biggest motivation for them to join MEBAs was to improve labour-management relations in their companies (see Figure 5). This is especially important for companies that are facing with labour shortages and the challenge to retain their valuable employees. However, the request from the local authority was the second biggest reason for companies to join the agreements. Nonetheless, only a small number of employers expected the MEBAs as the solution to their labour issues.



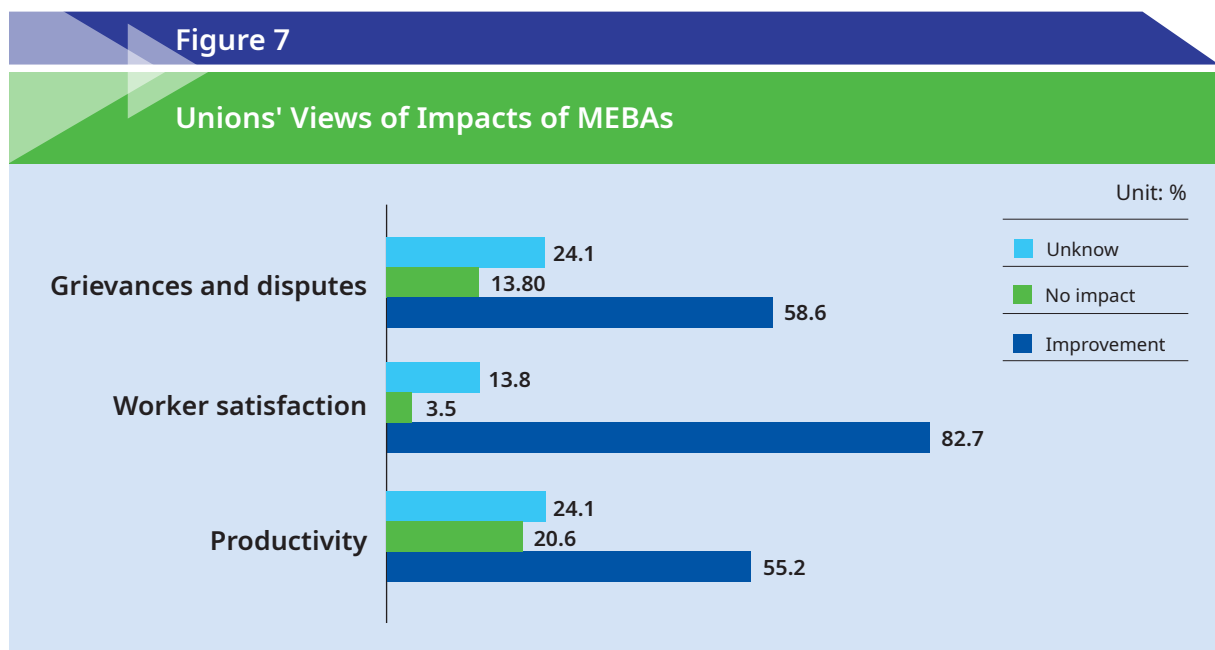
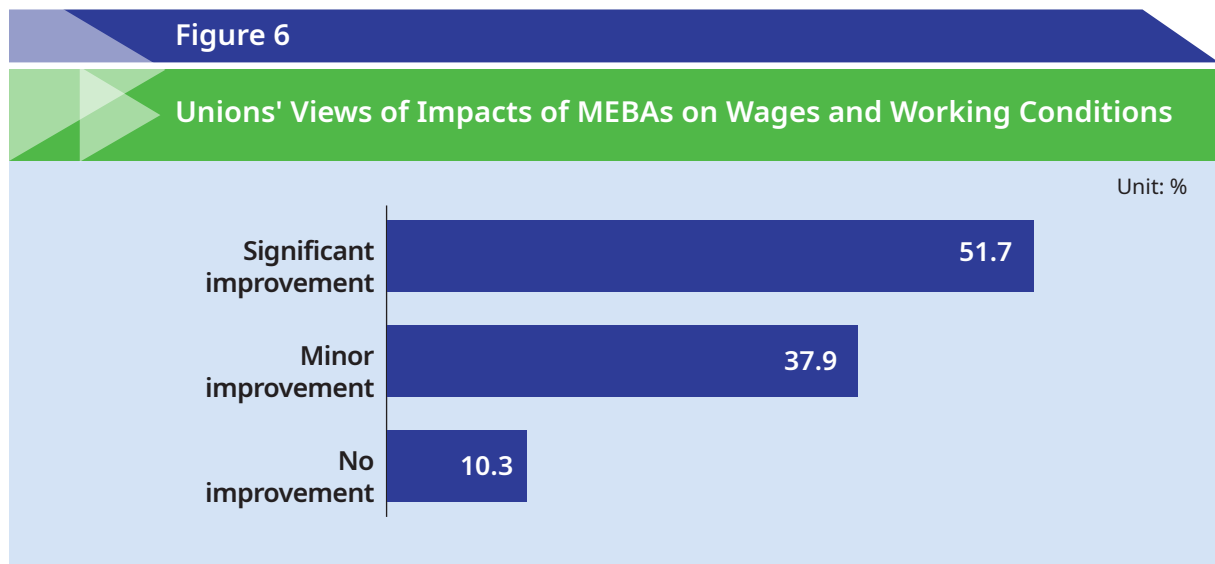
Source: Survey of 31 companies

3.5. Impacts of MEBAs

This section presents the results of the quantitative survey of the participating employers and enterprise unions in the MEBAs in Hai Phong, Da Nang and Binh Duong. The survey outcome should be reviewed with caution as it contains a few weaknesses. **First**, the assessment of the impacts of the MEBAs was made based on the subjective judgement of the managers and enterprise unionists as none of the participating companies has conducted any scientific measurement of the impacts of these agreements yet. **Second**, the leadership of enterprise unions responding to this survey is dominated by managers: 82.7% of the union chair people of the participating enterprises are department-level managers or higher (eg.: deputy director general) and 68% of the enterprise union executive board are managers and office clerks. Third, the researcher was not able to interview the rank-and-file workers covered by the MEBAs (with a few exceptions in Da Nang). **Therefore**, in this section, the results from the quantitative survey are cross-checked with our in-depth interviews with employers, unionists and representatives of business associations.

Impacts on Workers

The survey shows that overall, the GTUs have positive views of the impacts of MEBAs on working conditions and labour relations (Figure 6 and 7). More than half of the consulted unions found MEBAs bringing *significant improvement* on wages and working conditions. It should be noted that half of the unions with this positive evaluation are those participating in Trang Due IZ agreement. Nearly 40% of the unions, half of which come from Binh Duong wood-processing industry agreement, found minor improvement thanks to the MEBAs. Particularly, 10.3% of the unions found the MEBAs bringing no improvement at all. These are companies that have already paid higher than the rates negotiated under the MEBAs.



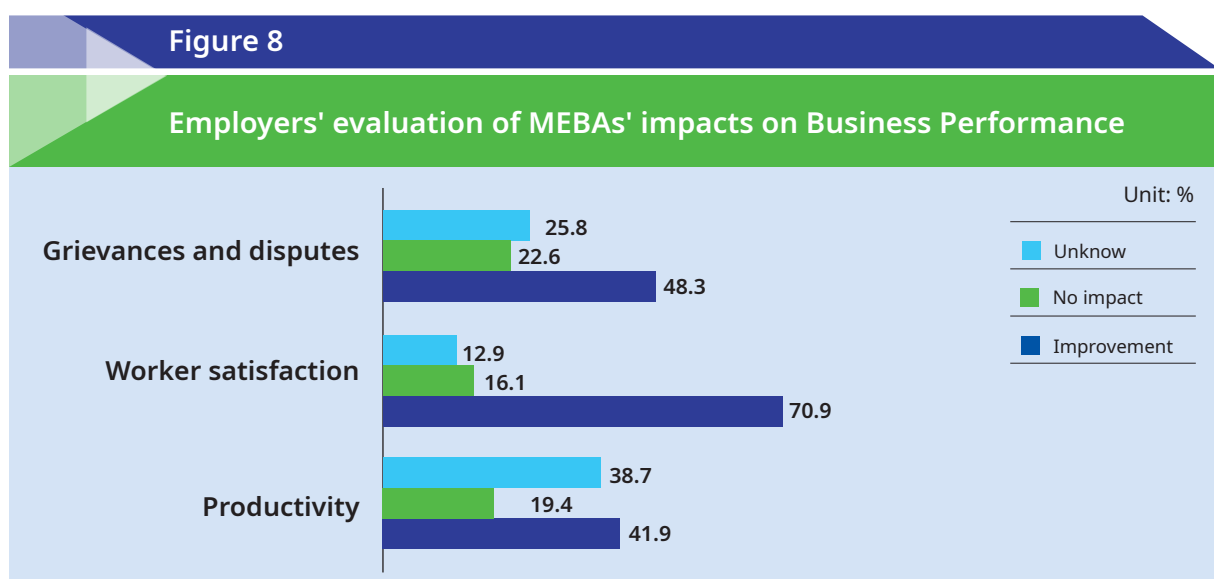
MEBAs have the most significant impact on worker satisfaction as 82.7% unions found improvement in this aspect after signing the MEBAs. The MEBAs also have positive impacts on lessening grievances and disputes in 58.6% of the surveyed companies. The lowest level of improvement is found in productivity with 55.2% having improvement and 20.6% seeing no impact. It seems the evaluation of the unions is close to what the employers view of the impacts of MEBAs with the biggest improvement found in worker satisfaction and the least in productivity.

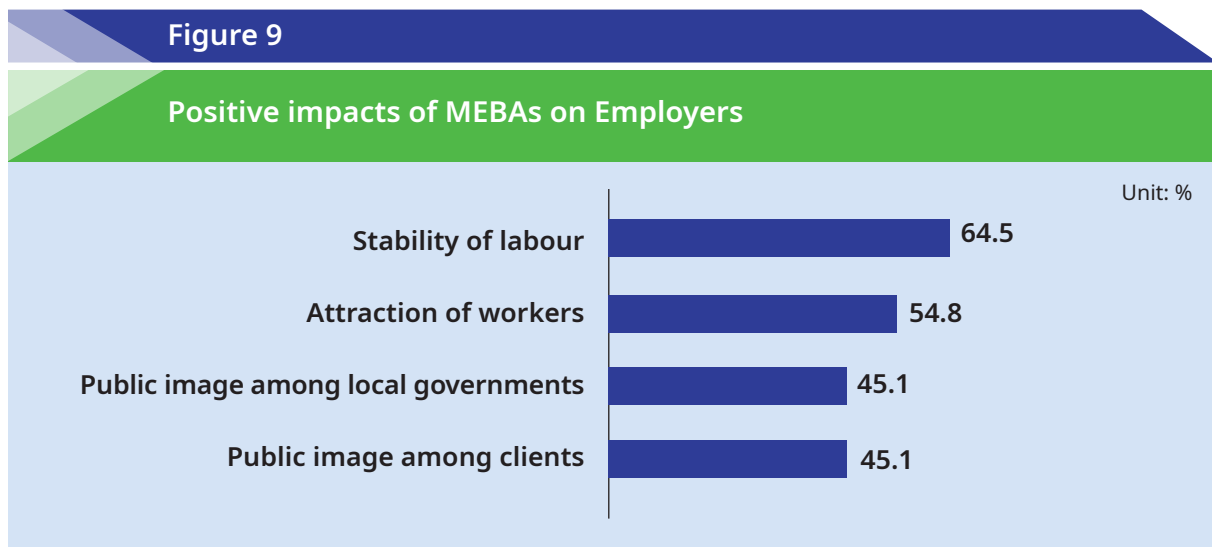
Generally, the MEBAs have the biggest impacts on workers in smaller companies that had not negotiated their firm-level CBAs or paid lower than the rates in the MEBAs. The MEBAs also provide an extra guarantee for the covered workers, which explains their increasing satisfaction.

Impacts on Employers

The fact that the trade unions tend to opt for a low-road approach to bargaining results in the minor impacts of the agreements on the employers' budget. According to our survey, 38.7% of the employers experienced no financial impact as a result of joining the MEBAs while 58% witnessed budget increase as planned.

In our survey, the employers only made subjective evaluation of the impacts of MEBAs on their businesses as none has made any scientific measurement yet. The biggest impact of the MEBAs has been improving worker satisfaction (Figure 8) which has resulted in labour force stability (Figure 9). The employers are less positive about the impacts of MEBAs on raising productivity and lessening grievances and disputes (Figure 8). According to the interviewed employers, due to labour shortages, they have been trying to address workers' grievances so as to improve their commitments. Therefore, it is difficult to split the impacts of the MEBAs on workers' grievances. However, the employers admitted that the MEBAs are effective in building the public image of the companies among workers, the local governments and clients (Figure 9).

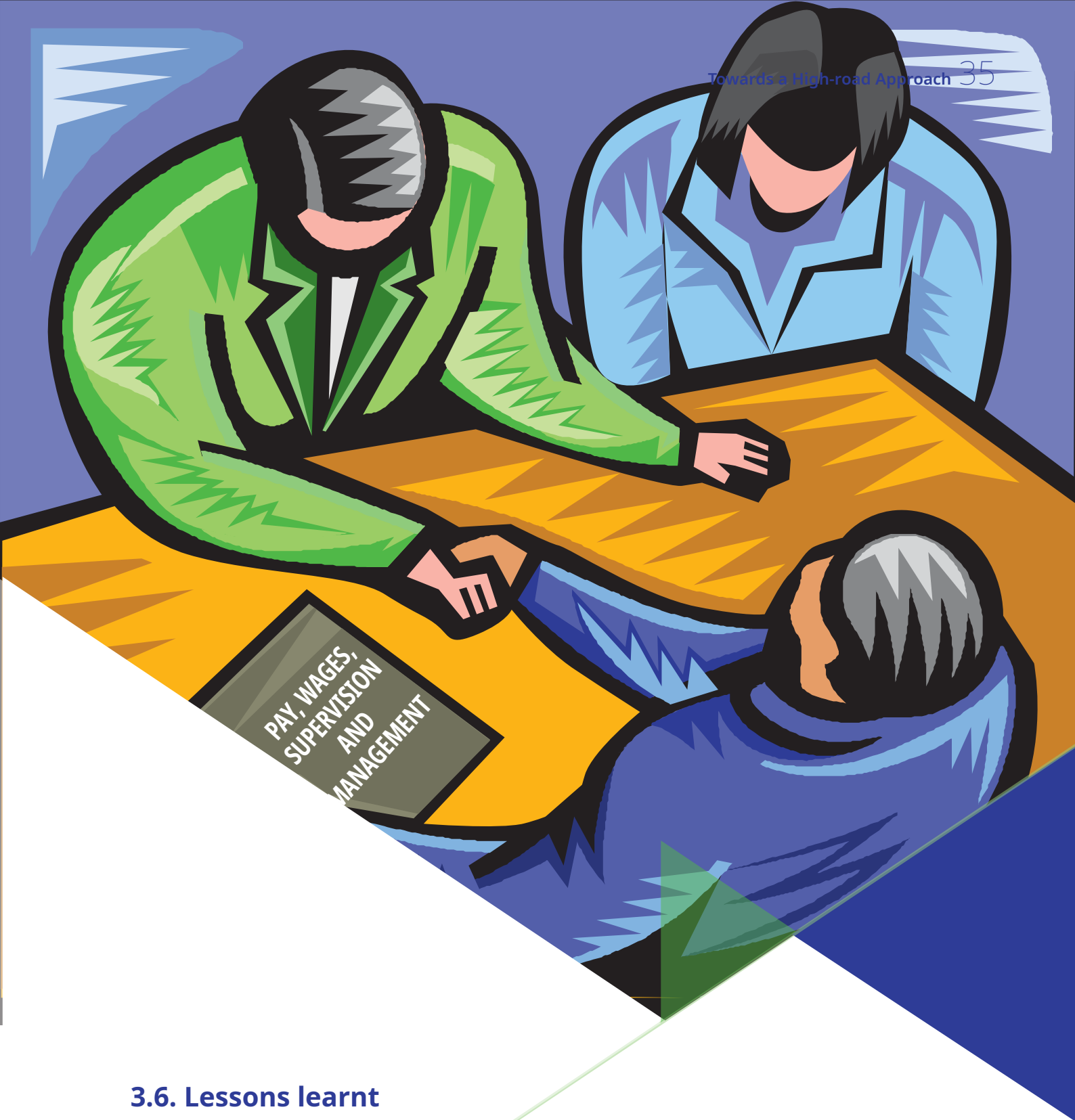




As the MEBA resulted in modest additional expenses for the employers while yielding positive impacts on their business performance and public image, the employers are generally satisfied with the MEBA. *As many as 74.2% of the surveyed companies expressed their willingness to join the next phase of the agreements.*

Impacts on the upper-level unions

The unions have gained a number of benefits from the pilots: **First**, the regional FOLs have been able to establish their first dialogues with employers and their associations, such as in the case of Hai Phong, Quang Ninh, Binh Duong, and Hung Yen. In Binh Duong, for instance, after the conclusion of the MEBA, the Binh Duong FOL and BIFA signed a cooperation program which has laid the foundation for an unprecedented long-term collaboration between the two organisations. **Second**, the practice of genuine bargaining between the upper-level union negotiators and the employers/business associations helps change the awareness of unionists at all level from a legalistic to interest-based approach. **Third**, the whole bargaining process urged the upper-level unions to reinforce their relationships with the grassroots unions, which is key to strengthening the whole union system.



3.6. Lessons learnt

As shown in this research, the approaches of the unions in defining the negotiating rates have important impacts. The GTUs and workers were apparently more satisfied with the high-road approach as their benefits have been improved. The employers are slightly more satisfied with low-road agreements⁸. However, if the negotiating rates are set too low, the agreement may lose its meaning of upholding the interests of workers and the unions' goal of conducting 'genuine bargaining' may not be achieved.

⁸ In our survey, we asked employers to rate their satisfaction with the MEBAs from 1 (least satisfied) to 5 (most satisfied). The overall average rate is 3.9. The average rate among employers participating in high-road agreement is 3.8.

The director of a company even suggested: *'Next time, the unions do not need to hold meetings or negotiations. You can survey the CBAs of the target companies. If the companies have already paid higher than the proposed rates, you invite them to join the agreement'*.

In his suggestion, negotiation is not necessary and the bargaining agreement will bring no change at all to workers' benefits.

Additionally, the low-road agreements may not be able to reduce the labour competition among companies as the difference between the companies at the top and those at the bottom remains large.

In order to pursue the high-road approach to multi-employer bargaining, the unions' bargaining power must be strengthened. The experiences of the pilot teams in this research suggest the following ways to reinforce the bargaining power of the trade unions (see Box 1).

The HR manager of a company commented: *'the agreement sets a very low rate so that smaller companies can also join. Therefore, it [the agreement] has no meaning for bigger companies like ours. We are still losing good workers due to labour poaching'*.

Box 1: Strengthening Unions' Bargaining Power – 06 lessons learnt

1. Developing a strong alliance with grassroots unions
2. Engaging workers throughout the bargaining process
3. Developing wage guidelines
4. Maintaining regular dialogues with the employers/business associations
5. Understanding the structure of the local business community
6. If persuasion does not work, challenge the employers.

Lesson 1: Building alliance between grassroots and upper-level unions

The root of power for the unions in bargaining is the solidarity of the grassroots unions and members behind the union negotiating team. *Therefore, it is crucial that the upper-level union leading this process build close ties with the participating enterprise unions. Hai Phong IZ union offers a good practice in this aspect.*

According to our surveys of the participating enterprise unions, the upper-level unions have provided them with necessary information and

The IZ union has developed a network of core workers and grassroots unionists from all member enterprise unions and industrial zones in the city via the social media (Zalo and Facebook). The IZ union officials and the grassroots unionists maintain constant contacts over all issues ranging from the changing of legislation and policies, union activities, sharing experience and information, to coordinating efforts for collective bargaining (Interview with the chairwoman of Hai Phong IZ union, August 2019).

materials relevant for the bargaining (72.4%); supported the enterprise unions in conducting surveys of working conditions (55.2%); and trained the unionists in bargaining skills (48.3%). Although the GTUs acted only as the intermediary in the bargaining between the upper-level unions and the employers, they informed the union negotiators of important insight about the companies. Without securing the support of GTUs, the grassroots unions may become the first obstacle to successful bargaining.

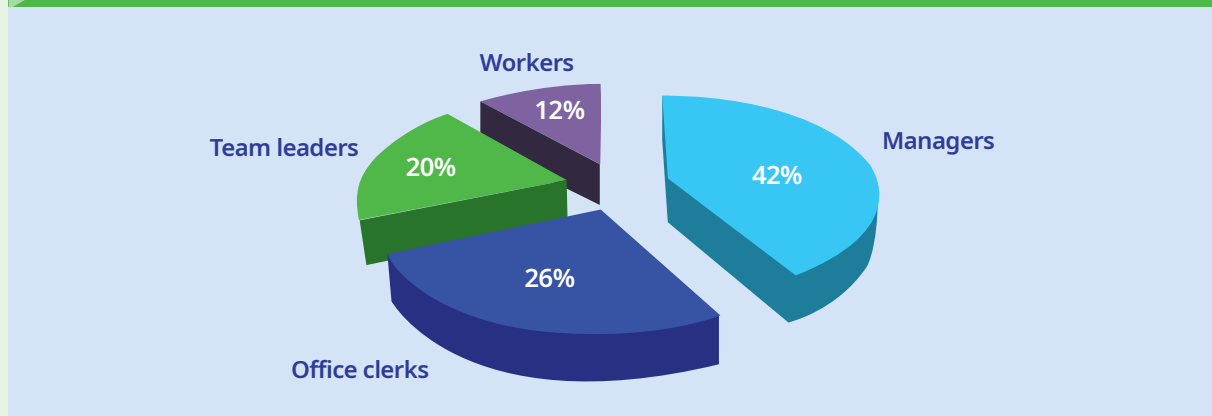
A union negotiator from Hai Phong told us: *‘Although the GTUs are not as active in the negotiations as the IZ union, they play a crucial role. If they are with us, they will inform us all the reactions of the employers so that we can prepare our strategy. If they do not trust us, they are the first to block our initiative.’*

Lesson 2: Engaging workers throughout the bargaining process

In theory, the upper-level unions maintain connections with the GTU officials and the latter is in charge of communicating with the rank-and-file workers. The support of the rank-and-file workers lays the solid base for the unions’ bargaining power. Yet, if the workers are not fully informed and kept detached from the bargaining process, the unions lose a strong source of pressure on the employers. However, the engagement of workers during the bargaining process depends largely on the capacity of the GTU officials in communicating with their members. Such communication may be affected by the fact that the GTU officials are also managers.

Figure 10

Composition of GTU Executive Boards



According to our surveys of 29 enterprise unions, the high- and middle-level managers account for 42% of the GTU executive boards while workers and team leaders making up only 32% (see Figure 10) and 86.2% of the GTU chair-people are department-level managers (including production managers, HR managers, and chief accountant). Compared with previous studies, this situation is not exceptional among GTUs in Vietnam (for instance: see Trinh 2015). When the managers account for the majority of grassroots union leadership, the workers may not be fully informed of the bargaining process, especially when such information may not be beneficial for the employers.

Therefore, if the upper-level unions opt for the high-road approach which may result in serious negotiations with the employers, it is necessary that the upper-level unions develop ways to directly engage the rank-and-file workers in the process. For example, in the case of Van Lam district, each company nominated 03 representatives from the management, the union and rank-and-file workers to form the 'core group' ('nhom nong cot'). The district FOL maintained constant contact with the core groups via Zalo to ensure that they were closely engaged in the whole bargaining process.

Lesson 3: Developing wage guidelines

As discussed earlier, to support pay bargaining, *it is crucial that unions have annual wage guidelines*. In other countries, the wage guidelines may be issued by the tripartite wage councils (Singapore) or an independent third-party organisation (United Kingdom, United States). The trade unions base on the average wage rates and living costs in the guidelines to develop their proposals for bargaining with the employers. Unfortunately in Vietnam, there has not been an independent wage guidelines that can be used for this purpose.

Lesson 4: Maintaining regular employer-union dialogues

The research found that the unions that have strong relationships with the local business associations tend to have higher bargaining power. The unions of Hai Phong, Binh Duong and Da Nang have maintained regular dialogues with the employers in their areas, either as individual companies or as groups of companies. The topics of dialogues may vary depending on the specific needs of the companies such as policy implementation, work safety, and social insurance policy. The dialogues not only enable the upper-level unions to build relationships with the employers but also demonstrate the positive impacts of healthy industrial relations. The dialogues also provide the opportunities for the unions to understand the characteristics of the local business community so as to prepare for the future bargaining. The FOL of Van Lam district, for instance, started with regular dialogues with the targeted employers before initiating the bargaining process. This is also the path currently pursued by the IZ union of Ho Chi Minh city in Linh Trung processing zone towards an MEBA.

Lesson 5: Understanding of the local business community structure

As an old Vietnamese saying goes '*knowing yourself, knowing your opponents, you will win any battle*', it is crucial that the trade unions acquire in-depth understanding of the target company groupings before starting the bargaining initiative. It should be noted that the understanding of the local business community structure is different from the knowledge acquired through surveys of working conditions in the target companies. Instead, this is the understanding of how the target employers coordinate with one another, how they make decisions with regards to labour issues, what factors influence their approach to employment relations. Such knowledge is important for the unions to develop the bargaining strategy. Based on the experience of Binh Duong, Hai Phong and Da Nang, we have identified some of the key aspects of the business community structure that the unions should investigate include:

- **Linkage among the target companies:** the companies may link to one another in various ways such as:
 - (i) Competitors (they manufacture the same products/services);
 - (ii) Sub-contractors (bigger companies sub-contract to smaller ones);
 - (iii) Subsidiaries of the same mother company;
 - (iv) Members of the same business association (and which companies/individuals are the most influential in the association)
 - (v) Supplying to the same buyer(s); and
 - (vi) Informal coordination (consulting one another on an informal basis)

- **Factors influencing the target employers' approach to employment relations:**
 - (i) Corporate/national culture (the companies may be influenced by the culture of mother companies or national values, in the case of foreign investors);
 - (ii) Internal decision-making structure (eg.: if the company is a subsidiary, the important decisions are usually made by the mother company whereas if a company is run by its owners, the decisions can be made instantly);
 - (iii) Industry situation: the growth and challenges faced by the industry in general will predict the motivation and willingness of the companies in joining bargaining agreements;
 - (iv) Labour issues: an understanding of the labour challenges (such as labour shortages, low labour commitment, labour poaching, wildcat strikes etc.) faced by the target companies will be valuable in designing the buy-in strategy for the trade unions as the MEBA's may offer a promising solution to the employers' problems.

Bài học 6: Nếu không thuyết phục được, gây áp lực với NSDLĐ

In its legal comment on the right to strike submitted to the ILO in 2014 by the ITUC, it pointed out: **without the right to strike, a right to collective bargaining amounts to no more than a right to "collective begging"**⁹. The Vietnamese workers are granted the right to strike under the leadership of the trade unions. However, the trade unions have never practised this right so far. Although there are a number of practical and administrative obstacles to organising strikes¹⁰, abandoning the whole idea of organising strikes tends to deprive the unions of their most important weapon in collective bargaining. As shown in the case of Hai Phong, the threat of strike was effective in making the employers to return to the negotiation table with concessions to the union. Therefore, even though it is still not feasible for the unions to organise strikes, using the threat of strike when other strategies in bargaining have failed can be considered by union negotiators.

⁹ https://www.ituc-csi.org/IMG/pdf/ituc_final_brief_on_the_right_to_strike.pdf

¹⁰ The unionists interviewed named a number of reasons for not organising strikes, such as: (i) Vietnamese unions are not adversarial to management; (ii) the strike procedure is too lengthy; (iii) strikes may have bad impacts on the public order and investment environment



Chapter 4: Conclusion and Recommendations

4.1. Recommendations to the Revision of the Labour Code

Point 1: Can the multi-employer bargaining agreement replace the firm-level collective bargaining agreement?

One of the reasons for SMEs to join in multi-employer bargaining agreements is to save the time and expenses spent on negotiating the firm-level CBAs. In this research, 45.1% of the surveyed companies had not signed firm-level CBAs by the time they joined the MEBAs. Then, the question asked by these companies is whether they can use the MEBAs as their firm-level CBAs? In other words, do they need to negotiate a firm-level CBA if the two parties in their companies have no such demand?

With regards to this issue, Article 81(2) of the draft Labour Code Revision provides: *“Companies covered by sectoral bargaining agreements or multi-employer bargaining agreements may develop firm-level collective bargaining agreement with benefits higher than provided in the sectoral bargaining agreements or multi-employer bargaining agreements”*. This provision reads that the negotiation of firm-level CBAs is encouraged (rather than obligatory) if the specific companies wish to negotiate for benefits higher than the MEBAs they have already joined. However, the draft Labour Code Revision does not make it clear whether a company can use the MEBA as their firm-level CBA if the management and union of the firm have no demand for further negotiations yet? This issue should be specified in either the Labour Code or decrees to increase the incentives for SMEs to join MEBAs.

Point 2: Conditions to join MEBAs

As shown in this research, all the MEBAs have brought for workers the benefits that are higher than provided in the law. The Labour Code, therefore, should create incentives

(rather than difficulties) for more companies to join these MEBA. Article 85(1) of the draft Labour Code provides that a company is allowed to join an MEBA if all employers and worker representative organisations that are signatories to the agreement. This condition is too stringent as consultation with all participating employers and WROs to get their consensus is a difficult and lengthy process. Instead, it is recommended that the condition for joining MEBA be adjusted to either: (i) the majority (50%+1) of participating employers and WROs agree; or (ii) the participating employers and WROs that represent the majority of the covered labour force agree to the extension.

Point 3: Extension of MEBA coverage

Article 84(1) of the draft Labour Code provides for the condition to extend the coverage of MEBA to the whole industry or industrial/economic zone. At the moment, the threshold is set at 75% of the employers or of the labour force in the industry/zone. There are two important issues to be considered by the policy-makers:

First, the current threshold is set too high compared to those in other countries. According to a survey by the ILO in 22 countries (Hayter and Visser 2018), the common threshold is over 50% of the employees in the area of extension. Therefore, it is recommended that the threshold for extension in the draft Labour Code be adjusted to over 50%.

Second, although MEBA are beneficial for workers, they may pose economic challenges to small-sized enterprises if they are automatically covered by the extended MEBA. According to Hayter and Visser (2018), the extension regime of MEBA has been criticised by economists as a way for the big firms to dominate over the smaller ones by increasing costs for the latter through the extended MEBA. In the cases of Ha Long-Quang Ninh and VINATEX, the smaller firms had to drop out of the agreements due to the economic impacts they may have on their business. Therefore, it is recommended that the Labour Code allows for the smaller firms (employing under 50 workers) to choose to be applied by the extended MEBA or not.

4.2. Recommendations to the Trade Unions

- Successful bargaining, whether at the grassroots or regional level, is mainly based on the bargaining power of the trade unions. It is urgent that the VGCL support and provide guidance for its branches to strengthen their bargaining power, using the 06 lessons learnt discussed earlier. Among these lessons, the most important ones include building the strong connections with the rank-and-file members and the grassroots unions
- Developing wage guidelines should be considered a priority for the national union organisation. Apart from the negotiations on minimum wage adjustment at the National Wage Council, it is important that the VGCL develop wage guidelines to lay

the foundation for collective bargaining at all levels. The wage guidelines should be built upon a transparent and scientific methodology to provide information on the average growth of wage rates in different regions and industries, the minimum living costs and productivity by industry and regions

- The VGCL should develop a database of MEBAs and lessons learnt from the MEBAs that is accessible by all union officials. There have been a growing interest from different sectoral and regional unions to initiate MEBAs; yet, they need referential materials to develop their own plans and strategies
- Instead of prioritizing the quantitative targets of the number of MEBAs to be signed, the VGCL should encourage the upper-level unions to adopt a high-road approach to make sure the real bargaining prevails and brings benefits for the workers.





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