



EuroCham Luncheon Trade Union draft law

Sofitel Phnom Penh Phokeethra– September 8th 2015



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CAMBODIAN FEDERATION OF EMPLOYERS AND BUSINESS ASSOCIATIONS

Cambodia's Trade Union Law

A NECESSITY FOR INDUSTRIAL PEACE AND HARMONY

8 SEPTEMBER 2015

SANDRA D'AMICO, VICE PRESIDENT, CAMFEBA

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Why so much attention on Cambodia as a country on labour and social affairs?

Cambodia has ratified all the fundamental labour conventions. Cambodia laws and regulations need to comply and adhere to international standards.

- One of 2 countries (Philippines) who has ratified all fundamental labour conventions in ASEAN

Cambodia has adopted a very “free and open” market approach.

- Necessary to get the economy working and attract investment and Cambodia was tremendously successful

We are least developed country and have received significant aid– Aid for Trade started booming at the time Cambodia started reconstructing and developing its economy. Cambodia was and remains an important example of “aid for trade”

- Better Factories Cambodia was a key example on Aid for Trade – we will get preferential access to US markets, in return for ensuring labour rights
- Unions flourished and continue to flourish as a result. This is the primary reason for the focus on the garment industry
- We have a largely uneducated workforce

Today, we face an increasingly competitive environment with regional countries potentially gaining preferential treatments and our cost of doing business continues to increase.

- Political landscape changing in Cambodia.
- Regional landscape changing and more regional competition today beyond ASEAN
- Significant pressure on labour and social affairs – freedoms, human rights etc.

International Labour Standards in Context

It is important to note that laws and regulations are drafted in a local context and adhere to international standards.

- *There is not one way of drafting a law to comply with international standards.*
- The Committee of experts provides an opinion on our Trade Union Law that we consider in the local context.
- The Committee of Experts opinion is not binding. *It provides a country with direction and opinion on how to further develop laws taking into consideration the local context.*
- The Committee of Experts in general, does not always understand the local context.

IMPORTANT: The aim of the International Labour Conference, when drawing up Convention No. 87, was to protect the independence of trade unions and safeguard the rights of workers to create and belong to trade unions of their own choice. The purpose was never to promote trade union proliferation and fragmentation: the ILO supervisory bodies recognize that it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations. CAS, Digest, 2006, para 320





Cambodia's Trade Union Law

The Employer's Position

CAMFEBA Vision: Successful Business. Prosperous Cambodia.

Industrial relations peace, stability and predictability, is at the heart of successful business and as a result, jobs and employment opportunities that contribute to a prosperous Cambodia, its people, economy and long term sustainability.

Employers Position on the Trade Union Movement

What industry (all employers) wants...



First: A representative and unified union movement

- ...through which not only the protection of work rights but also economic stability and creation of quality jobs, productivity and skills improvements are integrated – at a factory floor, industry and national level.

Second: A representative union movement that is genuinely working in and for the interests of Cambodian workers.

- ... in which Collective Bargaining Agreements genuinely protect worker and employer interests and industrial peace that are respected and enforced.

Third: A healthy and proactive industrial relations engagement at the factory (employer) floor, industry and national level

- ...in which social partners are being pro-active in understanding each other and collectively solving challenges for the betterment of firms and workers alike.

Employers Position on the Trade Union Movement

What industry (all employers) wants...



Fourth : A predictable economic and investment environment

- ...in which strikes are a last resort, not the only resort. A predictable social environment so that we can attract diversified investment and industries.

Fifth: A law that is clearly articulated and enforced

- ...in which all social partners are held accountable for their actions and working proactively on industrial relations harmony

Sixth: A service orientated Labour Ministry where enforcement mechanisms hold parties accountable for their actions

- ...and in so doing, promote more proactive bilateral relations between workers and employers.

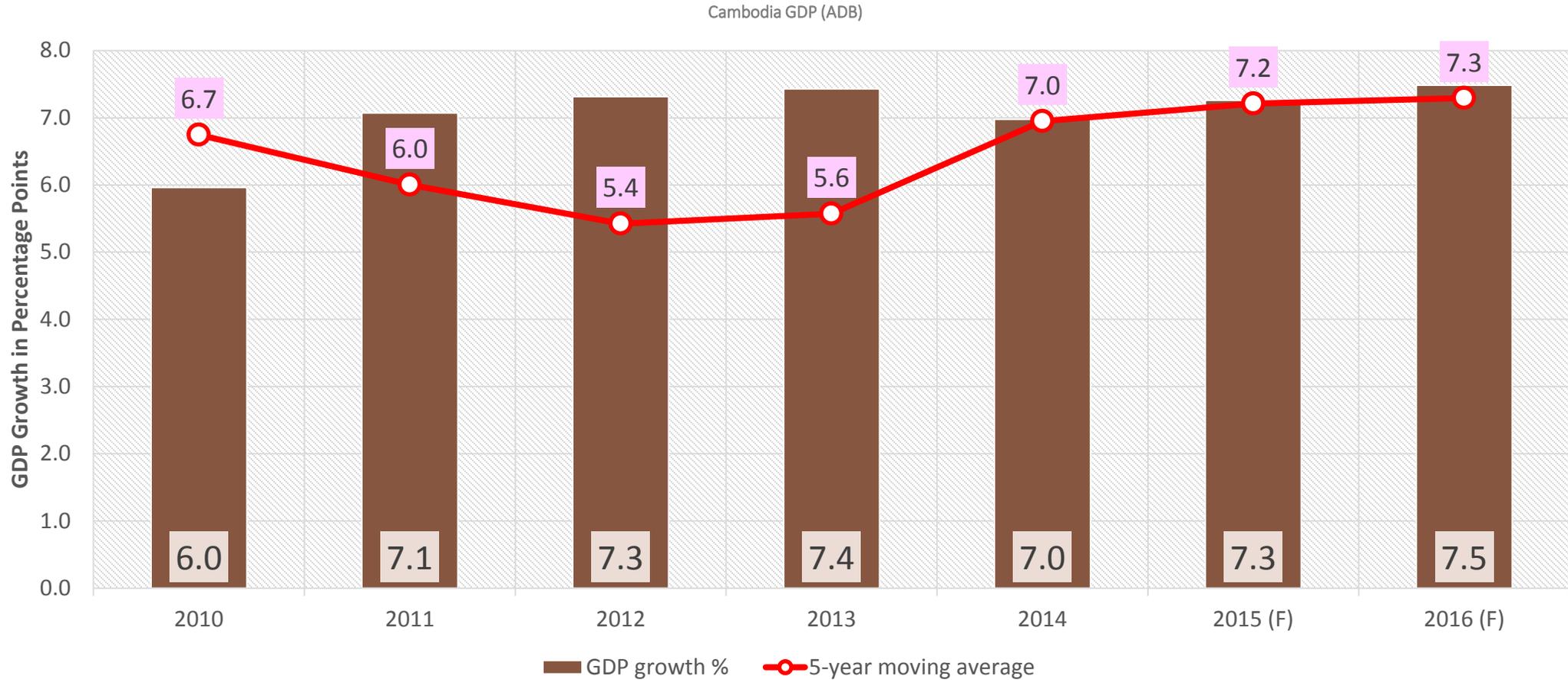


The economic environment and industrial relations in data

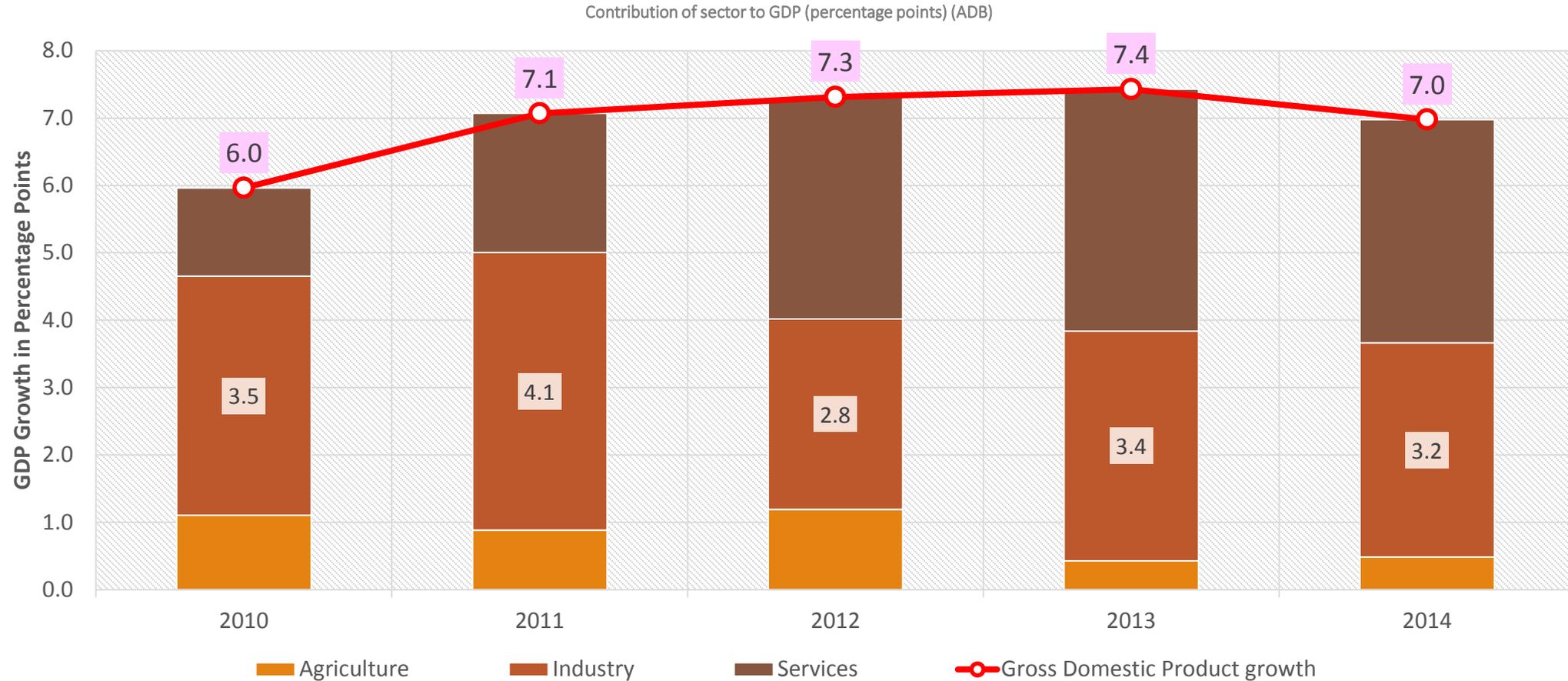
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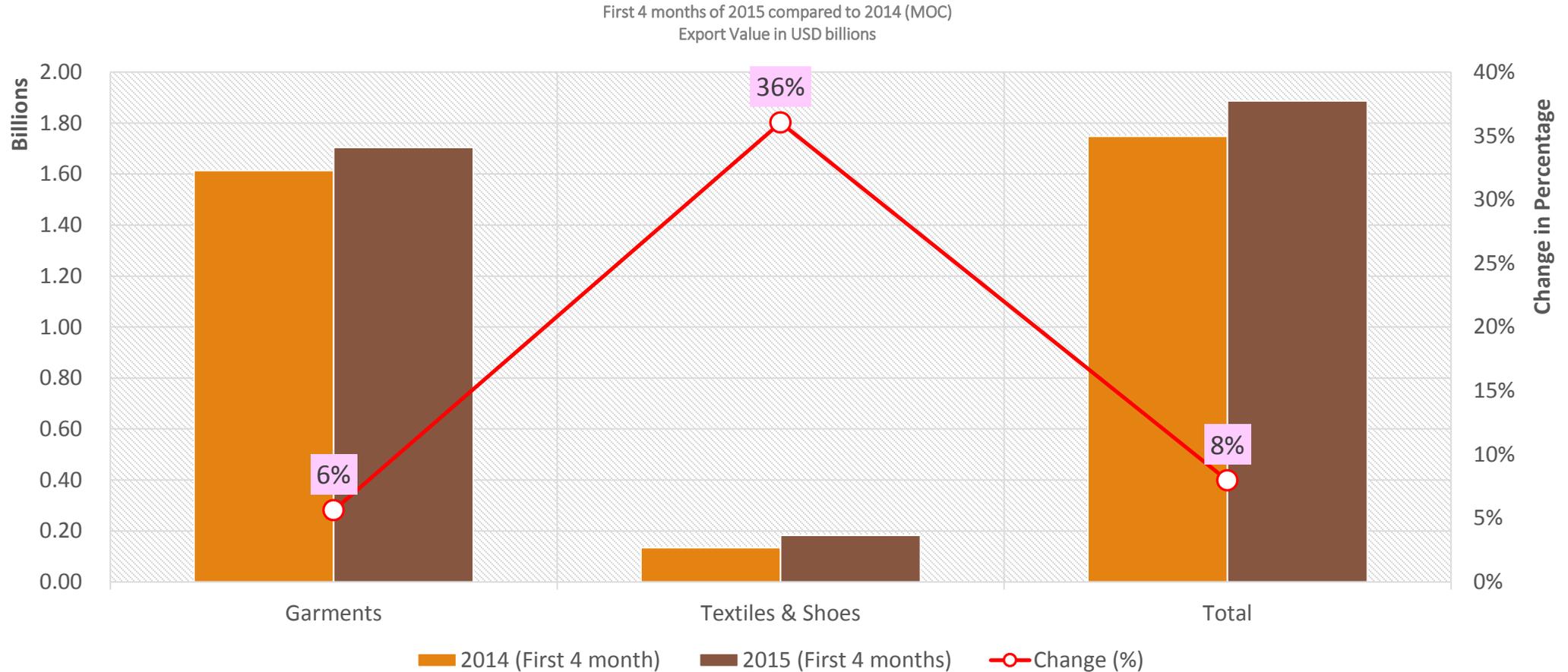
Cambodia continues to enjoy robust growth, although at a **slower** **pace.**



Cambodia is on track to become a lower middle income country. Economic and industry diversification essential for continued sustained growth. Industrial relations stability at the heart of growth in labour intensive industries.



Overall exports have grown slightly in the first four months of 2015 compared to 2014. Textiles decreased by 33% while shoes grew by 44%. Overall GTS sector grew by 8 percent compared to the first 4 months in 2014. This is the first time that growth in the sector has slowed to less than double digit growth since financial crises. World Bank notes a slowing down of growth in the sector.



Source: Ministry of Commerce Data. CAMFEBA Analysis



GTS with construction and services (finance, real estate) continue to propel growth. GTS however, faced with several challenges.



Continued appreciation of US dollar and emergence of other low wage manufacturing countries

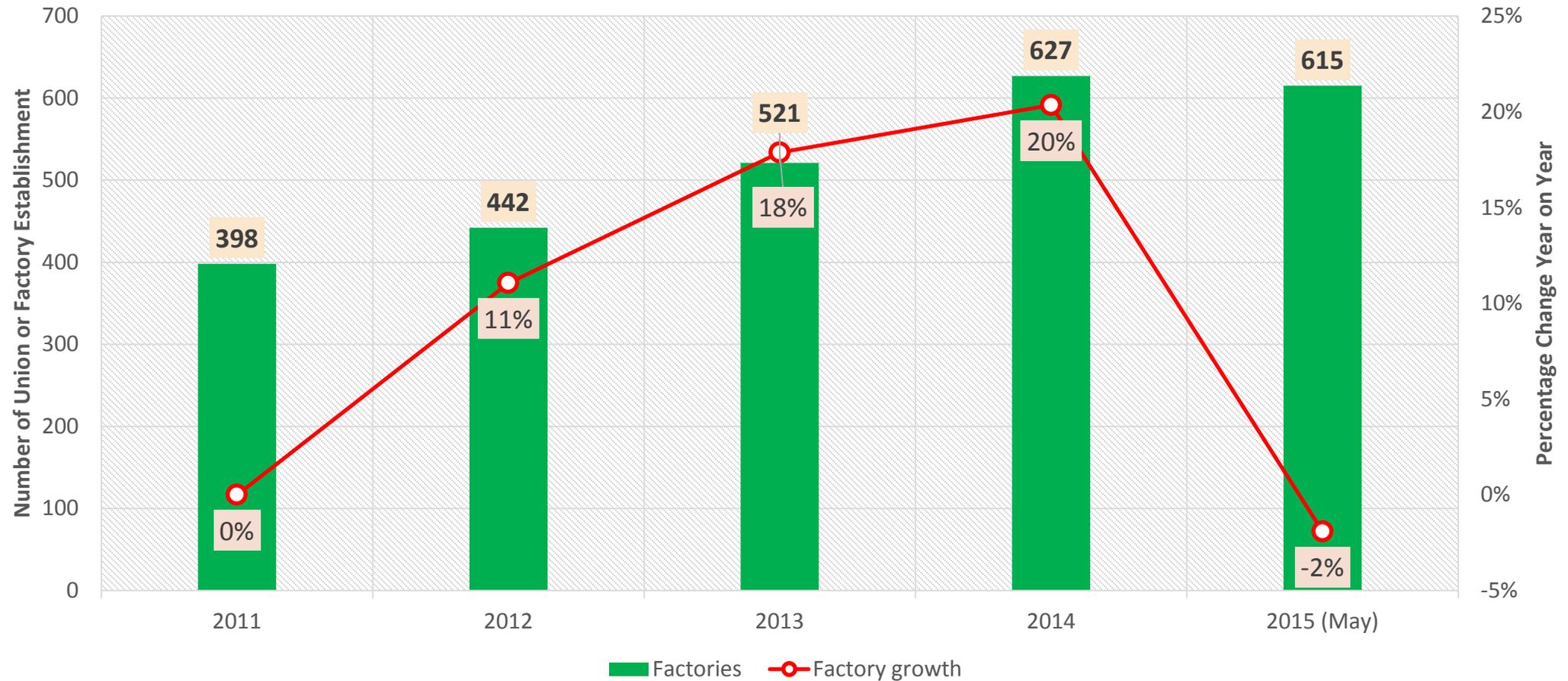
Increased regional competitors on wage and productivity. Myanmar accelerating at a rapid rate, but other countries too – Bangladesh, Indonesia, Vietnam

- Larger workforces – lower wages
- Larger consumer markets
- Better infrastructure
- TPP and its potential impacts – medium to long term?
-

Continued concerns about stability of industrial relations.

- Garment exports grew by 9.2 percent in 2014 in terms of value and 11.2 percent in terms of volume compared with 17.6 percent and 13.4 percent respectively in 2013. (World bank data)

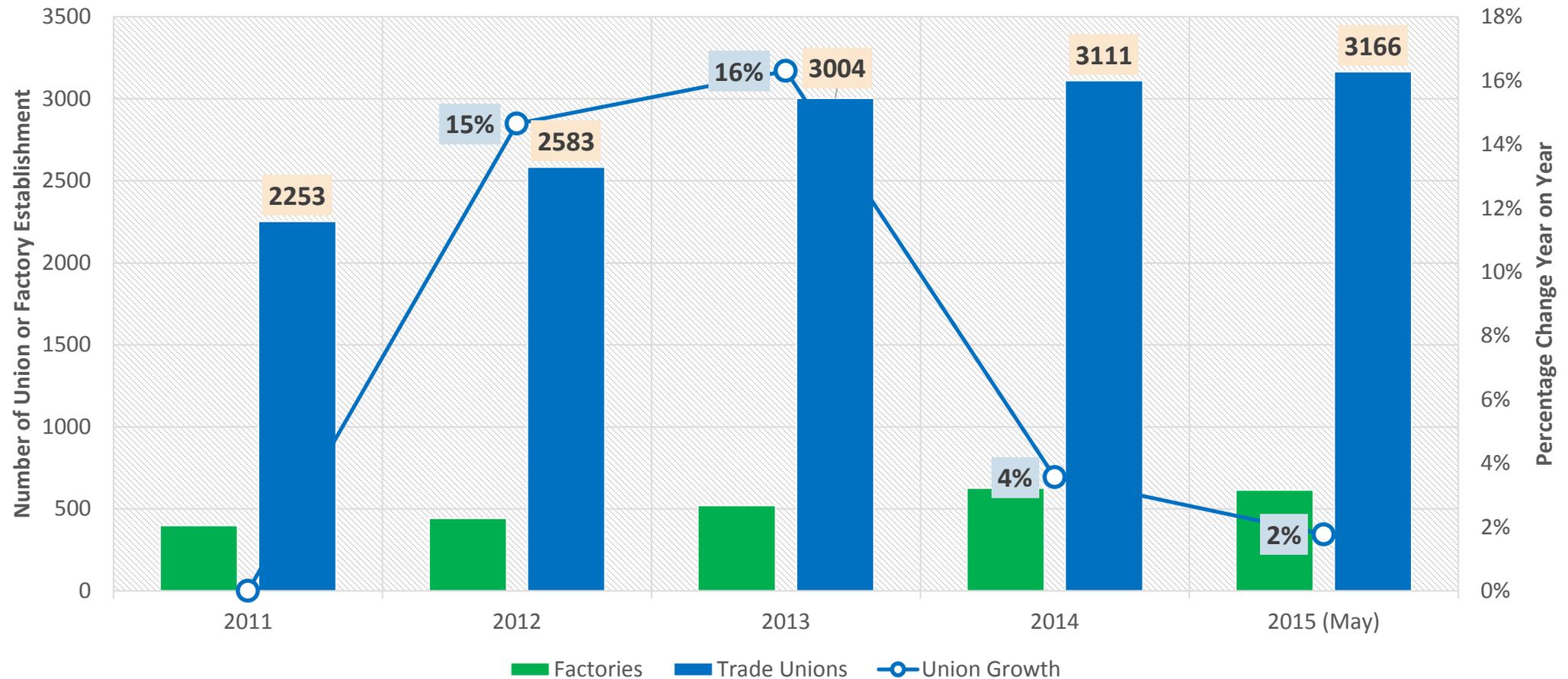
The GTS sector has seen a steady growth of factories since 2011, however is starting to face a decline in number of establishments according to GMAC. Government data suggests a slight increase.



Notes: GMAC, May 2015



The GTS sector is the most highly unionized sector in Cambodia with more than 90 percent of unions active in this sector. Minority unions are a significant challenge.



Notes: GMAC, May 2015, MOLVT data on unions, May 2015

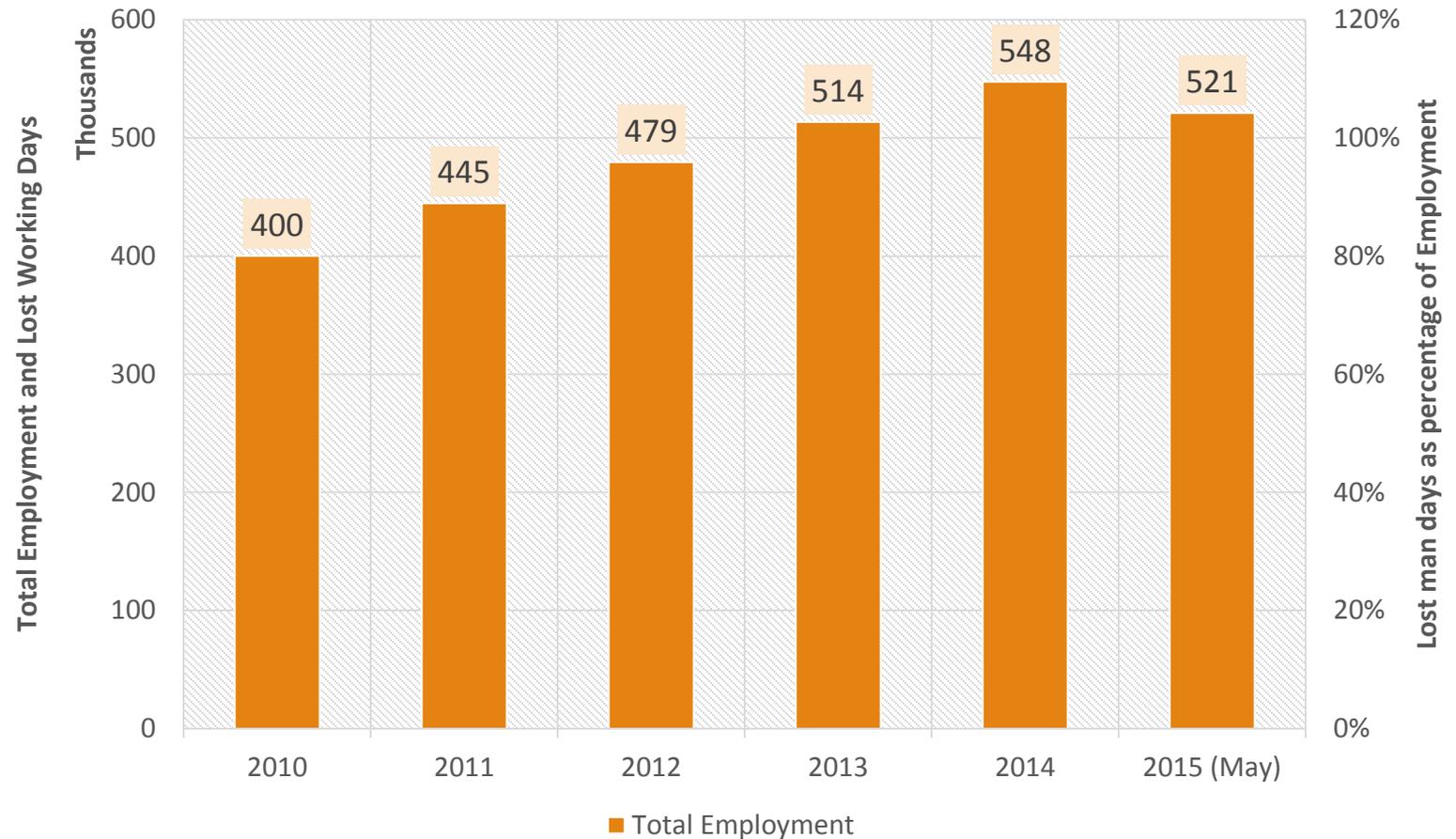


Total employment in the GTS sector is slightly decreasing according to GMAC. Lack of data on subcontracting factories is a challenge and discussions in the sector suggest a much bigger drop in employment as many subcontracting factories have closed. Government data suggests a slight increase.

“The garment sector remains a critical source of jobs for Cambodian people and the economy. We cannot underestimate the importance of keeping and maintaining this industry, which is 90 percent foreign investment and ownership and 10 percent of factories have Cambodian and foreign interests.”

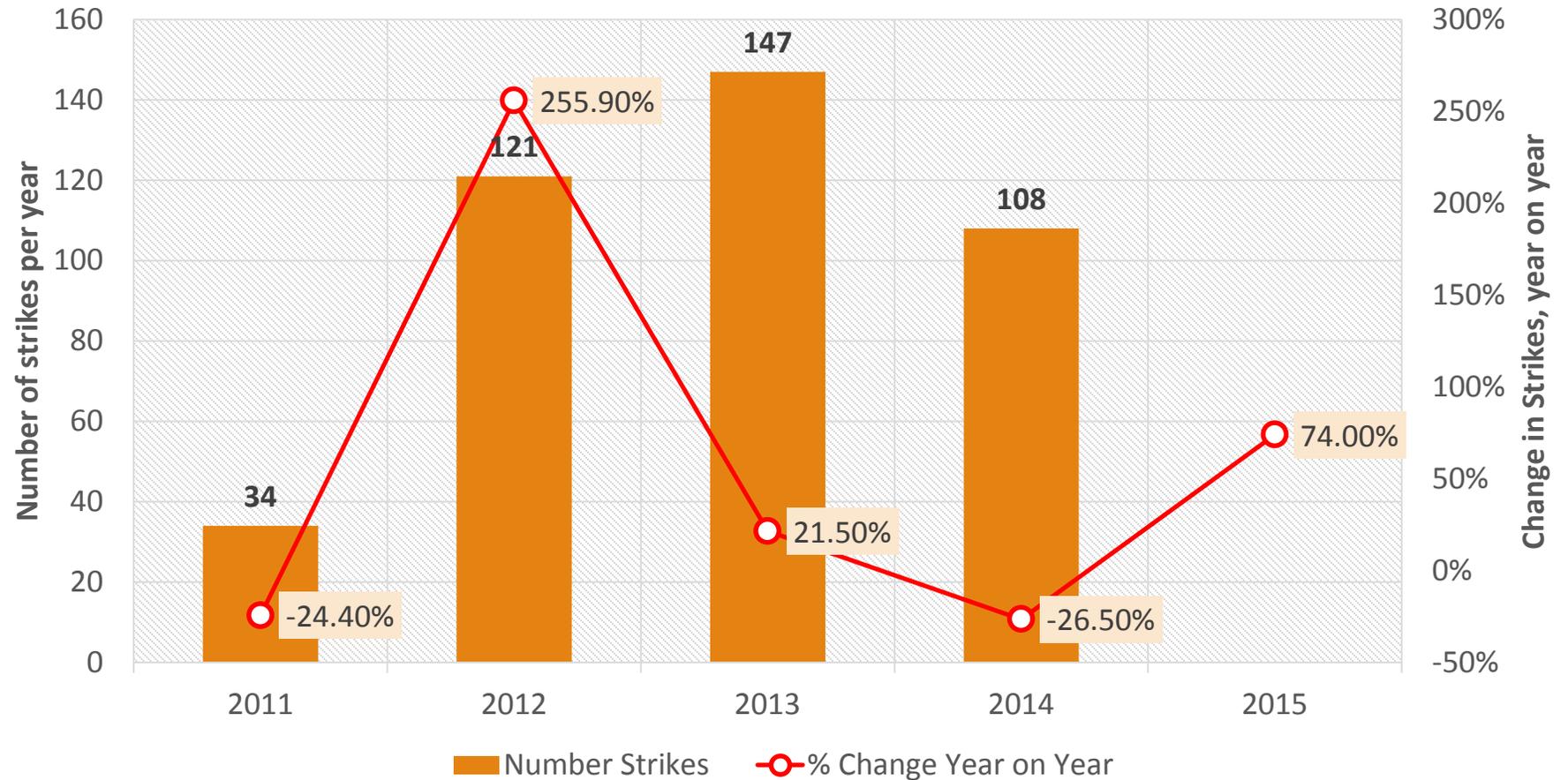
Industrial peace is essential to diversify and upgrade the garment sector as well as attract new higher value added sectors and jobs to Cambodia”

Van Sou Ieng, President of GMAC and CAMFEBA



Strikes in the GTS sector have resulted in an unpredictable industrial relations environment. This was a primary reason for the request for the trade union law. Increasingly having impact on investment.

“...strikes in the Kingdom’s garment industry picked back up, largely because of poor communication between employers and workers.”
 Kong Athit, Vice President of the Coalition of Cambodian Apparel Workers Democratic Union.
 Phnom Penh Post, May 26, 2015, page 4.



Notes: Strikes in 2014 declined due to restriction on public demonstrations
 2015 data reflects increase in strikes in first quarter 2015, compared to same period in 2014.





Why a request for a Trade Union law?

CAMFEBA Vision: Successful Business. Prosperous Cambodia.

Industrial relations peace, stability and predictability, is at the heart of successful business and as a result, jobs and employment opportunities that contribute to a prosperous Cambodia, its people, economy and long term sustainability.

A wide variety of challenges with the union movement and industrial relations in general led to the request for developing a trade union law in 2007 (1 of 2)



“Social peace and stability are Cambodia’s most important challenge to address in the coming years.”

H.E. Sok Chenda, SG of CDC

A fragmented union movement.

- Too many unions, no coordination

Multiplicity of unions & not representative.

- Need representative voice of workers to work in a proactive manner

Outside interference, disruption of the workplace, intimidation, exploitation and threatening behaviours and approaches.

- Need a constructive industrial relations environment to address worker concerns

Illegal and wildcat strikes, are increasing at an alarming rate.

- Strikes should be a last resort, not a tool for blackmailing, instigation, or personal interest
- Both employers and worker representatives need to be more proactive and dialogue

A largely uneducated workforce which will take years to “correct” in education development

Note: H.E. Sok Chenda. Secretary General of Council for Development of Cambodia (CDC) at the pre-conference meeting with CAMFEB Vice President at the CDRI Annual Outlook Conference, January 2015. Cambodia Research Development Institute

A wide variety of challenges with the union movement and industrial relations in general led to the request for developing a trade union law in 2007 (2 of 2)



“Social peace and stability are Cambodia’s most important challenge to address in the coming years.”

H.E. Sok Chenda, SG of CDC

Union infighting disrupting the workplace.

- Union activities need to be in the interest of workers

Not respecting the rights of others who want to work

- Those who do not want to participate in union activities, need to be respected

Intimidating, threatening and blackmailing employers and workers.

- Unions need to work in the interest and benefit of workers

Minority unions exploit the law for personal gain

- Interference and unpredictable union behavior is crippling confidence of those invested in Cambodia

Inability to use CBA effectively and realise its benefits – for workers, employers and industry

- Tools that should contribute to industrial peace, are not being leveraged effectively

Note: H.E. Sok Chenda. Secretary General of Council for Development of Cambodia (CDC) at the pre-conference meeting with CAMFEBA Vice President at the CDRI Annual Outlook Conference, January 2015. Cambodia Research Development Institute

Our GTS sector is our biggest formal employment sector. At present there are limited other job opportunities for a workforce that is mostly uneducated....



“Social peace and stability are Cambodia’s most important challenge to address in the coming years.”

H.E. Sok Chenda, SG of CDC

Employment levels are not growing in the sector. **Industry growth** is slowing compared to previous year.

- Essential to **maintain** the sector, **diversify the sector** and economy

Industrial relations environment a slippery slope and dissuading investment

- Despite significant investment in union capacity building and mandatory monitoring of the exporting sector by ILO Better Factories Cambodia Programme (BFC)
- Industrial relations is problematic and having adverse effects on attracting diversified labour intensive industries and formal employment growth.

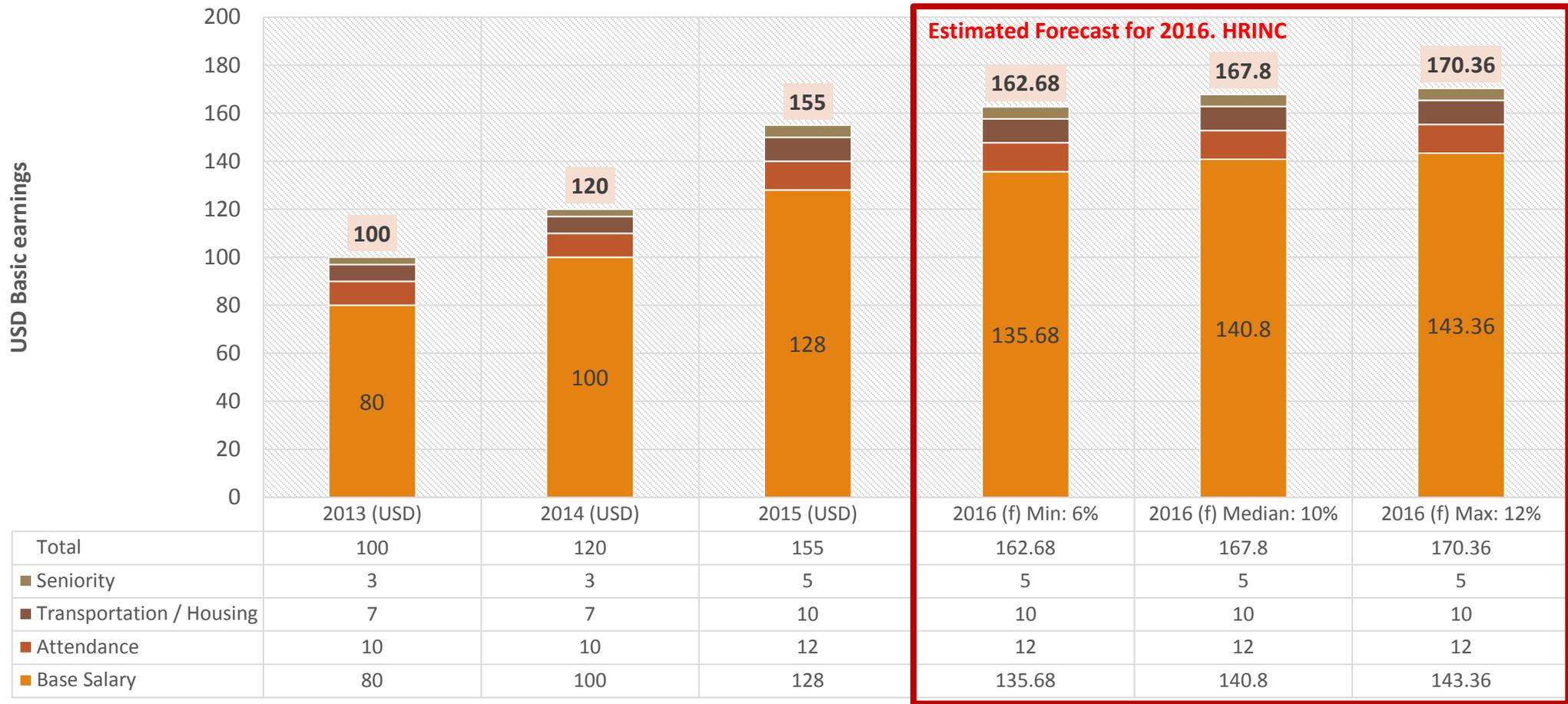
Employers need to step up their engagement in a more positive manner.

ASEAN integration is looming and our competitiveness and productivity is lagging compared to others (higher productivity in VN , higher electricity costs, petrol transportation costs etc.)

Lack of focus on skills and productivity development as tripartite partners are continuously dealing with industrial disputes.

Note: H.E. Sok Chenda. Secretary General of Council for Development of Cambodia (CDC) at the pre-conference meeting with CAMFEBA Vice President at the CDRI Annual Outlook Conference, January 2015. Cambodia Research Development Institute

Pressure on wages coupled with a less desirable industrial relations environment requires careful management to continue to attract investment, create jobs, diversify the economy.

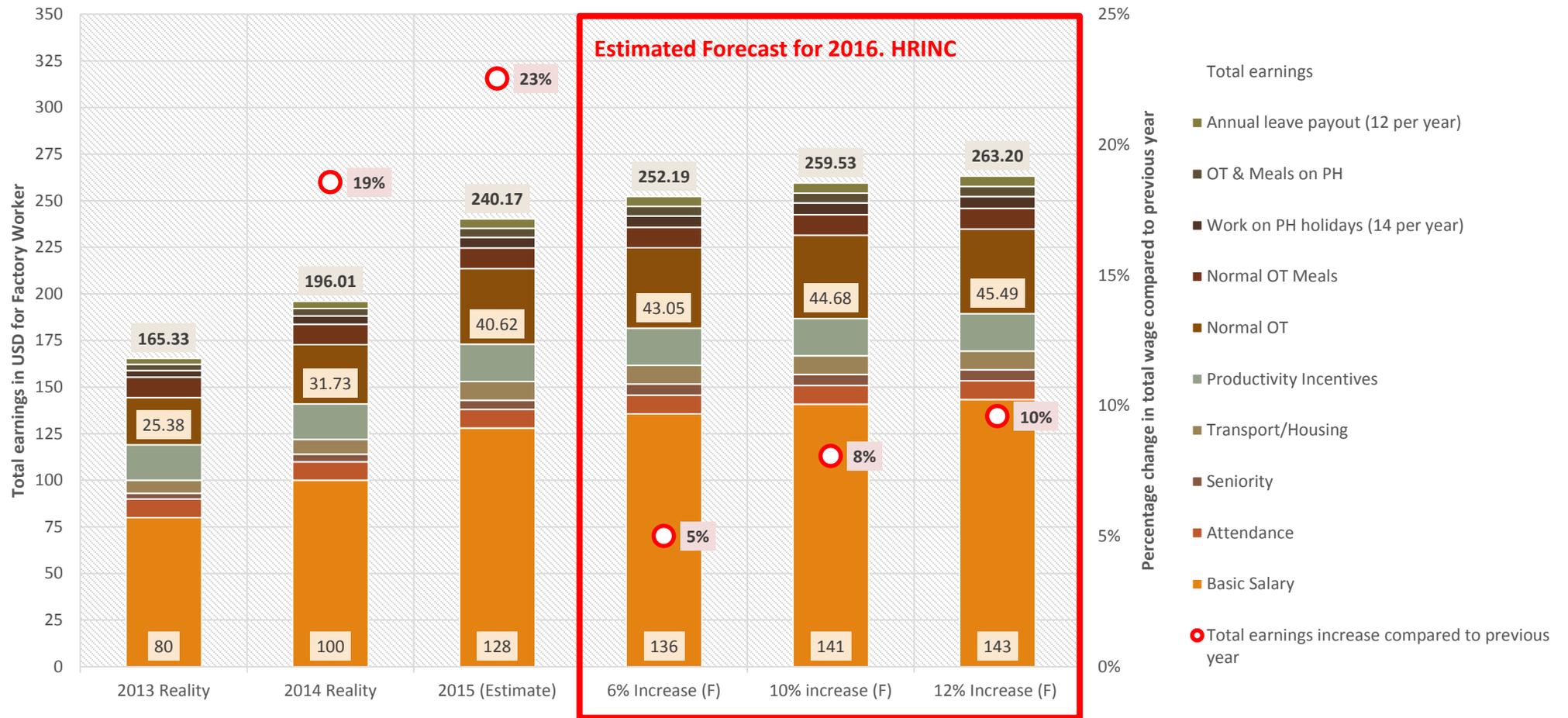


Date provide by HRINC Cambodia. consulting@hrinc.com.kh for more detailed information.
 HIRNC Consulting: Insights that drive employee engagement and bottom-line performance

Note: 2015 data based on HRINC experience of developments in the sector. Generally all allowances are being re-negotiated and lowest amounts considered in the calculation. Other allowances have also been negotiated in factories, including food allowances. Forecasted data by HRINC



Cambodia GTS sector needs to move up the value chain and maintain order levels. Higher value added work for higher wages and moving away from reliance on overtime is essential.



The knock on effect of industrial relations challenges in GTS sector cannot be underestimated. It impacts all of our industries...



“It is very difficult to work with the Cambodian Union Movement as there are too many unions, little cohesion and a lot of personal agenda’s that are difficult to balance”

International Trade Union delegate (ITUC) response in meeting with CAMFEBA in early 2015 discussing the new law and the Cambodia’s challenges in industrial relations.

77.4 million of production and damages across 95 factories in early 2014.

Destroyed hospitals and other private sector industries

SME servicing the sector closed down:

- Food and other vendors
- Smaller suppliers
- Transportation providers
- Etc. etc.

Loss of income to rural households

Loss of life can never be quantified

Industrial relations in the garment, textile and footwear sector is impacting all our industries.

Cambodia's competitiveness is declining and we need to ensure we maintain sectors that are critical to the growth and prosperity of Cambodia...

News from a leading factory in Cambodia which has in the past, been a model of compliance, working conditions, worker care....

“Nearly 800 workers to be laid off in the coming week – possibly more.

The costs involved in manufacturing are not competitive. Nothing is ever enough. We don't know what is coming as there is always something else.

Industrial relations is the biggest challenge – we have lost alone 2 million in strikes. It's an unpredictable environment and increasingly high risk.

Cambodia is too risky for labour intensive industry

Further decisions will be made in the coming 12 months as to whether or not we will stay.”





The Process of Negotiating and Consultation of the Trade Union Law

CAMFEBA Vision: Successful Business. Prosperous Cambodia.

Industrial relations peace, stability and predictability, is at the heart of successful business and as a result, jobs and employment opportunities that contribute to a prosperous Cambodia, its people, economy and long term sustainability.

There has been significant consultation and tripartite meetings

Around five consultations that included unions, employers and government

- Each were 2 – 3 days long schedule over a series of months, to allow for regrouping and reflecting on negotiations
- Consultations were exhaustive and constructive and translation to English was provided
- Went through the articles step by step
- ILO union representatives (ACTRAV), ILO Employer representative (ACTEMP) and ILO Standards specialists were involved in every negotiation
- Government also provided the constituents with experts from Deputy Prime Ministers to Council of Ministers and Council of Jurists to explain legal aspects to the group
 - How laws are structured
 - How labour laws were developed – history etc.

Last round of negotiations was in June 2014

- Final recommendations on the overall draft law

Inter-ministerial meetings started in 2015

- Have been extensive and exhaustive to negotiate the law

Tripartite (Employer, Union, Government) Review of inter-ministerial meetings in Late July 2015.

Hope for the law to go to parliament at the end of the year

There was significant consultation and tripartite meetings

The law was sent several times to the ILO CEACR (Committee of Experts on Application of conventions and recommendations) division to ensure that it is in line with international obligations

It is important to note that laws and regulations are drafted in a local context and adhere to international standards.

- *There is not one way of drafting a law to comply with international standards.*
- The Committee of experts provides an opinion on our Trade Union Law that we consider in the local context.
- The Committee of Experts opinion is not binding. *It provides a country with direction and opinion on how to further tailor and negotiate the law.*

Opinions of the Committee of Experts have been shared with constituents to consider in our negotiations.

- We specifically had a standards specialist Mr. Tim de Meyer to help craft the law to address our national challenges in relations to most representative status of unions, formation of unions, structure etc.



Where we are today: Number of people to form a union remains a deep concern to employers in the current environment (1.1 of 3)

What has happened

- 2014: The new law suggested 20 percent of workforce HOWEVER
- 2015: The law has been revised to 10 people on recommendation of the ILO (No consideration for local challenges, multiplicity of unions etc.)
- Employers are deeply concerned when considering the challenges related to industrial relations.
- A need to ensure quality representation of the workforce, a quality union movement, not quantity.

International Labour standards:

- **CAMFEBA Legal Advice received from ILO:** This provision (20 percent) is not *per se* incompatible with Convention 87. According to the ILO supervisory bodies, “*a minimum membership requirement is not in itself incompatible with Convention n. 87, but the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed.*”
- **IMPORTANT:** The aim of the International Labour Conference, when drawing up Convention No. 87, was to protect the independence of trade unions and safeguard the rights of workers to create and belong to trade unions of their own choice. The purpose was never to promote trade union proliferation and fragmentation: the ILO supervisory bodies recognize that it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations. CAS, Digest, 2006, para 320
- The committee of experts has been VERY restrictive in their interpretations of “what is a reasonable number”

New recommendations and suggestions on numbers of form a union (1 of 3)

New thinking and recommendations for Government:

Put the number of unions in a Prakas so we can start with a higher threshold today given the challenges on the ground and review again at 5 or 10 year intervals. That way it can be change the numbers on union formation - based on the economic and social development.

Another recommendation that considers the broader economy and SMEs using Chile law as a base line and in line with International Labour Standards

- *“In companies with 50 or fewer employees, a union may be formed with at least 10 employees, regardless of the percentage of employees represented.*
- *In companies with more than 50 employees, a union may be formed with at least 25 workers joining within one year of its creation, provided that this represents at least 15% of the employer’ workforce. When an employer maintains multiple places of business, a union may be formed with at least 25 workers at each site, provided they represent at least 30% of the employees at each location.” OR*
- *In companies with 100 or fewer employees, a union may be formed with at least 30 employees.*
- *In companies with more than 100 employees, a union may be formed with at least 30 workers joining within on a year of its creation, provided that this represents at least 15% of the employer workforce. When an employer maintains multiple places of business, a union may be formed with at least 30 workers at each site, provided they represent at least 20% of employees at each location.*



Where we are today (2 of 3)

Transparency around unions and employers activities

- Financial reporting
- Representativeness and obligations
- Education levels for unions are still low, however coincide with other laws and regulations
- Foreigners can be trade unionists as well as employer representatives

Recognition of Most Representative Status (MRS) Unions

- Clear deliberation on MRS unions and their roles and responsibilities working closely with Standards specialists during negotiation. While we had achieved with ILO experts 50% plus 1, **it has now been reduced to 30 percent**
- **Concern about implementation with new numbers to form a trade union. Not going to be easy in implementation.**

One CBA per enterprise

- One CBA per enterprise to stabilize industrial relations climate and ensure benefits of CBA are realized
- Going to require significant capacity building of Unions and Employers to ensure clear agreements and standards, respect for CBA's and more proactive industrial relations management
- **Enforcement will be difficult with the new requirement of number of people to establish a union.**

Where we are today (3 of 3)

Penalties

- Original penalties for employers and workers were detrimental to investor confidence. Unions and employers jointly requested changes.
- June 2014 changes were reasonable and ensured employers and unions are held accountable for unfair labour practices. Unions were not happy with suspension of registration.
- 2015. Penalties today are take a warning then penalty fine against an individual however no sanctions for repeated violation of the law or de-registration if unions continue to breach the law.
 - The approach is like a “performance review” in building a better IR foundation
 - The penalties are not sufficient to dissuade bad behaviors or employers AND workers

Maintaining the role of the shop stewards and defining the relationship between union and shop stewards

The role of the Ministry of Labour and Vocational training has been diminished significantly in the new law which is of great concern for employers

- Referrals to the labour court, rather than ministry take action and appeal to the labour court



What is fuss about then...

Political interests and too much outside influence which does not consider the realities of the challenges on the ground.

- International unions, even embassies, are not aware of the economic environment and general reality of challenges employers, unions and industry is facing
- Political environment and perceptions playing a large role
- A focus on human rights and freedoms only, not being responsible and accountable as a representative and holding parties accountable in their roles as representatives in the context of Cambodia

In 2014, particular unions who were present in all negotiations, suggest that there is no need for a trade union law, the labour law as it is currently structured is sufficient.

Unions are concerned about financial reporting from a personal perspective. Gaining great support from outside unions. Concerns for individuals, rather than the role of the union as a legal entity, in the context of Cambodia industrial relations.

- Unions have positioned any obligation as legal entity representing members as government interference.



Why we should adopt the trade union law?

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The law is not about the GTS sector only. It is about Cambodia's Industrial Relations framework and learning from what went wrong in the GTS sector.



A law that **governs the formation, representativeness and conduct** of union and employer bodies.

A need to ensure law enforcement and improve accountability of worker and employer organisations

Too many trade unions, too much exploitation: a need to move from quantity to quality representation – for a sustainable union movement, for workers and for social dialogue to be effective

Inability to negotiate CBAs

Strikes should be a last resort, outside interference needs to be stamped out

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Thank you! Question and Answers.

Presentation can be downloaded on www.camfeba.com or email camfeba.vicepresident@gmail.com