

The Trans-Pacific Partnership (TPP) and its Plan for the Enhancement of Trade and Labour Relations; the Right of
Workers to Freely Form and Join a Labor Union

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I. Introduction

Globalization and the spread of free trade have brought comparative labor standards into the spotlight. Recently, the negotiation of the Trans-Pacific Partnership (TPP), an enormous free-trade agreement, has brought out many who either support or are concerned with the possible agreement. As corporations move to locations with cheaper wages and lower legal protections for workers, international labor standards set by the International Labour Organisation (ILO) aim to protect workers in the global south. These standards have been adopted into free trade agreements such as NAFTA and are included in the draft language of the TPP. This paper focuses on Viet Nam as the country who, before the US can ratify the TPP, must make enormous changes to their labor law.

This paper aims to answer the following question. What are the perceptions and predictions that stakeholders-- such as foreign-owned factory managers, Vietnamese non-profit labor rights organizations, Vietnamese labor scholars, and American labor movement allies-- have about the prospect of freedom of association as it relates to TPP? Through research and summary of the background information, their viewpoints are all expressed as nuanced support for the trade agreement.

Following this introduction, this paper has five main sections. The first is a brief history of free trade and its manifestations in the TPP, the development and inclusion of labor standards as a part of free trade agreements, and Viet Nam as the context for this agreement as well as its labor history. This background is essential for understanding my experience as well as the following viewpoints that make up the next three segments: Corporations perspectives on TPP and the possibility of changes in the labor law, the views of labor allies in the US, and finally the views of Vietnamese scholars, including NGOs, academics and advocates of labor. It is important to recognize that these views are still changing and developing as the realities of adopting modern labor standards are realized. As this paper is both one of research as well as my findings from on the ground experiences during my time in Viet Nam, I aim to explain and juxtapose these two sources while maintaining their distinction.

II. TPP Background Information

During my experience in Viet Nam when researching the various stakeholder perspectives, nothing was more evident than the need for understanding the complex history behind why Viet Nam is looking to change their labor law and labor representation structure. The following section aims to explain the background to TPP and it's origins in the context of continuing liberalization of trade. It will also explain the history and purpose behind adopting new labor

standards as part of the TPP free trade agreement (FTA). Finally, a look at the unique circumstances of Viet Nam will explain the current labor regime and how possible future changes may alter that current structure. Ultimately, understanding the theme of trade liberalization and context to TPP is critical for fully grasping the views of stakeholders discussed below.

While the TPP has yet to be ratified and remains much debated in the current political sphere, Viet Nam's reaction to modernizing their labor standards is critical beyond this agreement. As is discussed below, trade liberalization and bilateral agreements continue to grow at the pace of our rapidly globalizing economy. Whether these labor standards are adopted through TPP or not, it is extremely likely that they will pass in the near future. Additionally, during a seminar I attended in Viet Nam, a Vietnamese ILO representative confirmed that the Party was intending to adopt these standards regardless of whether or not TPP is passed.¹ Adopting more a liberal labor relations system has the potential to indicate a modernized economy.

1. TPP: the Countries, the Trade, the Tariff Reduction

The TPP is a possible free trade agreement between 13 countries along the Pacific Ocean that would reduce trade tariffs and increase trade between these countries. The TPP originated with an agreement between New Zealand, Chile, Singapore and Brunei called the Pacific Four. The United States joined a later round of negotiations in 2008 that was focus on "financial services and investment." Australia, Peru and Viet Nam joined the discussion at this time, Malaysia joined in 2010, Canada and Mexico in 2012, and Japan in 2013.² Although this agreement has not yet been ratified, it would reduce trade tariffs between these countries and further integrate their economies.

The goal is to liberalization of trade. Many of the signatories have previously standing free trade agreements which highlights that the purpose of this agreement is to knit together a larger network of trading partners in Asia and the global south. (Appendix A) For the US, the goal is to lead the way for future trade.

TPP is as important strategically as it is economically. Economically, TPP would bind together a group that represents 40 percent of global GDP and about a third of world trade. Strategically, TPP is the avenue through

¹ Nguyen Thi Hai Ten, Informal Conversation with Program Officer of the Industrial Relations Department of the Viet Nam ILO Country Office, at the UCLA Delegation at TUT University. 14 Jan, 2016.

² Fergusson, I. F., Cooper, W. H., Jurenas, R., & Williams, B. R. (2013). The Trans-Pacific Partnership negotiations and issues for Congress. Washington, DC: Congressional Research Service.

which the United States, working with nearly a dozen other countries (and another half dozen waiting in the wings), is playing a leading role in writing the [trade] rules of the road for a critical region in flux.³

Another goal for the US is growing their economy while at the same time protecting themselves from the world's main economic powerhouse. "The region has served as an anchor of US strategic relationships, first in the containment of communism and more recently as a counterweight to the rise of China."⁴ Having this cohort of trading partners would aid the US in diversifying its sources.

2. Adopting New Labor Standards

i. A Brief History of International Labor Standards

Globalization and revolutions in shipping have moved the production of goods into the international marketplace and because of the lower cost of labor abroad, corporations are able to make large profits by manufacturing abroad and then shipping to the consumer country. The exploitation of these differences has led governments to include labor standards in many FTAs. The first "side" agreement on labor standards was the North American Agreement on Labor Cooperation (NAALC) which was added "to meet domestic political needs in the American context."⁵ Although "NAFTA is part of an overall project of liberalization which is hostile to worker interest". . . NAALC has been recognized for "bridging the troublesome link between trade liberalization and labour adjustment."⁶ NAFTA and the NAALC side agreement championed the inclusion of labor standards side agreements in free trade agreements like the TPP.

The labor standards used by these FTAs are the core labor standards of the International Labor Organization (ILO). The ILO, created in 1919, has established over 150 standards at work, known as Conventions. Today, eight of them have been promulgated as the core standards referenced above. These standards include the right to organize and collectively bargain, and the right to non-discrimination, as well as—the most contentious—the right to freedom of

³ USTR, "Remarks by Ambassador Michael Froman at the Council on Foreign Relations: The Strategic Logic of Trade," June 16, 2014.

⁴ Fergusson (2013). The Trans-Pacific Partnership Negotiations.

⁵ Atleson, James B. International Labor Law: Cases and Materials on Workers' Rights in the Global Economy. St. Paul, MN: Thomson/West, 2008. Print. The political background that led President Clinton to reach agreements on NAALC exemplifies the struggle of labor in the globalizing marketplace. More on this background can be found on page 227.

⁶ Atleson. International Labor Law: Cases and Materials on Workers' Rights in the Global Economy. 276

association and protection of the right to organize a workers' organization.⁷ These standards are not only the labor standards used in NAFTA, but are also used to regulate the standards of the TPP labor side agreement.

Since NAFTA, the language has changed. NAALC specifically included that countries would "strive to ensure" compliance. In 2007, US FTAs with Colombia, Korea, Panama, and Peru used the more tactile language, "adopt and maintain" which was replicated in TPP. In addition, TPP requires that standards cover economic processing zones. And finally, the agreement obligates member countries to discourage importing goods sourced from forced labor.⁸

While some doubts have risen about the enforceability of NAFTA's labor standards, many expect the TPP to be a step forward in ensuring labor standards. In a statement in May of last year, the White House echoed these statements.

Through the Trans-Pacific Partnership we are renegotiating NAFTA and instituting stronger, fully enforceable labor and environmental standards. These high standards will not only bring hundreds of millions of people under enforceable labor standards and protect endangered wildlife in one of the fastest growing regions of the world—they will also help level the playing field for workers and businesses here at home by ensuring our trade partners are playing by the rules.⁹

While many doubt these changes will have any effect¹⁰, there is no doubt that the TPP even goes beyond the core ILO labor standards to include the requirement that TPP countries establish a minimum wage as well as prohibits lowering the labor standards in export processing zones.¹¹ These are noteworthy evolutions as we explore the perspectives of the Vietnamese stakeholders.

Beyond the updated labor standards which will be discussed further on, the TPP is truly a watershed in American history as it is the first true agreement with a communist country. "The only representative that workers have had is a union controlled by the Communist Party."¹² While this agreement could surely never have been imagined a century earlier, it shows the changing nature of market liberalization. Viet Nam is clearly opening up segments of its markets to international trade and is willing to adopt labor standards in order to gain access to global capital.

⁷ ILO.org. International Labor Organization (ILO). 2016. Web. The four core standards are as follows: 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98) 3. Forced Labour Convention, 1930 (No. 29) 4. Abolition of Forced Labour Convention, 1957 (No. 105) 5. Minimum Age Convention, 1973 (No. 138) 6. Worst Forms of Child Labour Convention, 1999 (No. 182) 7. Equal Remuneration Convention, 1951 (No. 100) 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111) .

⁸ Charnovitz, Steve."An Appraisal of the Labor Chapter of the Trans-Pacific Partnership," Committee on Ways and Means Democrats, January 2016

⁹ The White House, The Trans-Pacific Partnership: What You Need to Know about President Obama's Trade Agreement.

¹⁰ Sen. Elizabeth Warren Staff,. Broken Promises: Decades Of Failure To Enforce Labor Standards In Free Trade Agreements. 2016. Web.

¹¹ Democratic Staff of the Committee on Ways and Means,. TPP Issue Analysis: Worker Rights. 2016.

¹² Democratic Staff of the Committee on Ways and Means,. TPP Issue Analysis: Worker Rights. 2016.

ii. The Prospect of Freedom of Association

This paper focuses on the ILO standard of Freedom of Association (FOA) because of its unique position of being the most difficult to ratify (and therefore least ratified) of the core standards. Convention No. 87, Freedom of Association and Protection of the Right to Organise prescribes the following:

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.¹³

This clause is critical for ensuring that workers have the right to organize in order to protect their rights. The right for freedom to associate and form workers organizations is regarded as a fundamental element of labor rights and its centrality is recognized by the ILO's advocacy for this standard.

Still, many countries allow these standards to be violated. "One recurrent type of denial of the right to organize is the prescription by governments of single organizations to which workers must belong, outlawing or suppressing others. Ethiopia, Mauritania, Republic of Moldova and United Republic of Tanzania are among the latest additions to the list of countries that have amended their legislation to allow trade union pluralism."¹⁴ In these countries, single state run unions have previously been the only options for labor associations which, in turn, was a violation of the ILO standards. But unlike these countries, Viet Nam has agreed to trade benefits contingent on abandoning their state-run union.

In the case that a country—obligated by a free trade agreement—does not make these changes, they run the risk of losing their tariff reductions. In 2014, the US acted on allegations from 2008 of Guatemala's failure to uphold labor standards created under the Dominican Republic–Central America Free Trade Agreement (DR–CAFTA). While the US claims it "will continue to press forward until Guatemala meets its obligations and demonstrates that conditions have

¹³ CO87 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87). International Labour Organization.

¹⁴ International Labour Office., Freedom Of Association In Practice: Lessons Learned - Global Report Under The Follow-Up to the ILO Declaration On Fundamental Principles And Rights At Work. Geneva: N.p., 2016. Web. International Labour Conference 97Th Session 2008.

improved on the ground for workers” it has not removed the preferential reduction in tariffs.¹⁵ It is possible that Viet Nam may open itself up to face similar claims under the conditions of the FTA.¹⁶ Still, many critics say that these ‘sanctions’ are not enough to encourage good standards as they could take several years.¹⁷

3. The Socialist Republic of Viet Nam

i. Benefits of Increased Trade

Viet Nam’s main incentive for committing to the future ratification of TPP and the subsequent labor law reform is to increase domestic profits and grow trade. Viet Nam is expected to grow its economy tremendously with the passing of TPP (as well as any other future FTAs) as it will include of many international partners and reduce tariffs on traded goods. “The Vietnam Institute of Economic and Policy research estimates that these and other advantages will raise foreign direct investment (FDI) by \$13 billion.”¹⁸ A report by the World Bank claims, “implementing the TPP could add a cumulative 8 percent to Vietnam’s GDP by 2035.”¹⁹ Others have placed the numbers even higher.²⁰ My experience in Viet Nam implied nothing different, as all discussions around the future of labor reform were promptly proceeded by acknowledging the financial benefits possible through TPP.

What was less present in my time in Viet Nam, was the goal of Viet Nam to reduce their dependency on China. In a publication by Le Hong Hiep, a Faculty Member of the International Relations Department at Vietnam’s National University, Ho Chi Minh City, he points to Viet Nam’s other China-related goals. “Vietnam’s policy makers also view the TPP as a measure to balance against China’s unwarranted economic influence. In 2014, for example, China accounted for 29.6% of Vietnam’s total imports, and Vietnam ran a deficit of US\$28.96 billion in its trade with the northern neighbor.”²¹ Similar concerns have been verified in the Bloomberg article, “The Biggest Winner from TPP Trade Deal May be

¹⁵ Office of the US Trade Representative., Standing Up For Workers: Ensuring That The Benefits Of Trade Are Broadly-Shared. 2014. Web.

¹⁶ The USTR website introduces FAQ about TPP. “If Vietnam doesn’t improve their labor standards, they won’t see the economic benefits of the agreement. It’s as simple of that, thanks to the binding and enforceable rules in TPP. By linking Vietnam’s access to our market to their upgrading their labor standards, the United States has new leverage to ensure that Vietnam improves their labor protections. And if they don’t, we won’t hesitate to take action against them through trade sanctions.” United States Trade Representative., United States-Viet Nam Plan For The Enhancement Of Trade And Labour Relations. 2015.

¹⁷ Democratic Staff of the Committee on Ways and Means., TPP Issue Analysis: Worker Rights. 2016.

¹⁸ Hughes, Kent, and Anh Nguyen. “Vietnam Takes on the Trans-Pacific Partnership.” *Wilson Center Wilson Briefs* (2015).

¹⁹ Viet Sinh, Cao; Demombynes, Gabriel; Kwakwa, Victoria; Mahajan, Sandeep; Shetty, Sudhir; Đam, Vũ Đức; Vinh, Bùi Quang; Van Trotsenburg, Axel. 2016. Vietnam 2035 : toward prosperity, creativity, equity, and democracy - overview. Washington, D.C. : World Bank Group.

²⁰ Petri, Peter A., and Michael G. Plummer. 2014. “ASEAN Centrality and the ASEAN-US Economic Relationship.” *Policy Studies*, No. 69. Honolulu, HI: East-West Center

²¹ Hiep, Le Hong. "The TPP's Impact on Vietnam: A Preliminary Assessment." *Perspective*, 63rd ser., no. 2015 (November 4, 2015). February 8, 2016. Yusof Ishak Institute.

Vietnam.’²² While we did interact with anti-Chinese sentiments during our time in Vietnam, it was unclear until subsequent research that this was an important drive for the upcoming trade agreement.

ii. Changing Labor Standards

The current labor relations system in Viet Nam is a state-run single union known as the Viet Nam General Confederation of Labour (VGCL). Although the current structure of the VGCL is in violation of the TPP and ILO labor standards and will likely change, it is important to understand the current regime in order to make informed judgements about the future. The VGCL was established July 28, 1929 as the national trade union under the oversight of the Communist Party. The organization was created “to represent and protect the lawful and legitimate rights and interests of workers, office employees and other working people,” “to participate in State affairs’ governance, socio-economic management, and monitoring and oversight of the operations of State agencies and economic organizations,” and “to educate and motivate workers to bring into play their right as masters of the country, fulfill their citizens’ obligations, and build and defend the country of Viet Nam.”²³ The VGCL structure well links national sectors to local city or province units.²⁴ (Appendix B) During my time in Viet Nam, it was clear that the VGCL operates primarily as an intermediary between the government and organized workers (primarily when they are striking). We learned that recently, the VGCL has responded to recent strike waves by encouraging forms of labor relations such as increased ‘social dialogue.’

In order to comply with TPP and ILO standards of Freedom of Association (FOA), workers must be able to organize through unions other than the VGCL. This opens the possibility for independent unions. As the agreement states, “Viet Nam shall ensure that the procedures and mechanisms for registering grassroots labour unions are consistent with the labour rights as stated in the ILO Declaration, including with respect to transparency, the time periods for processing and membership requirements, and without prior authorization or discretion.”²⁵ What this future shift will bring for the VGCL is unknown, but their outlook is favorable to the transition.

Although views are positive, some say there is not enough positive change being made. Lien Hoang quotes Vice President of the VGCL, Mai Duc Chinh, at the Viet Nam Leadership Summit in Ho Chi Minh City, saying, “In case they

²² Bloomberg. (2015, 9 Oct). The Biggest Winner From TPP Trade Deal May Be Vietnam Retrieved 20 Oct, 2015.

²³ Thi Van Lam, Dang. "Vietnamese Trade Unions In Brief". 2012. Presentation.

²⁴ Thi Van Lam, Dang. "Vietnamese Trade Unions In Brief". 2012. Presentation.

²⁵ United States Trade Representative, United States-Viet Nam Plan For The Enhancement Of Trade And Labour Relations. 2015.

are better than our traditional trade union, then we are happy if workers join the other [organizations].”²⁶ While the VGCL may be looking forward to these changes, there is little evidence that substantial movement is being made. The US House of Representative’s Committee on TPP and Workers rights explains the grim situation that must change before Viet Nam meets the standards of freedom of association and the US can accept the agreement.

Labor activists remain imprisoned, serving out harsh sentences, even though their continued detention has been found by the U.N. Working Group on Arbitrary Detentions to be a deprivation of liberty for the exercise of the right of freedom of association, in breach of Vietnam’s existing international legal obligations, apart from TPP. And recent reports allege that peaceful labor organizers continue to be subject to harassment and abuse by the state.²⁷ Currently, the domestic situation confirms that standards are not being met, but the motivation to meet these standards may come from already evident changing labor relations.

Recent labor unrest since 2005 has led to an increase in strikes as a result of poor wages and working conditions. The vast majority of these strikes are occurring in foreign owned investment firms (FDIs) as a result of clashing labor relations culture.²⁸ One example of this clash is the failure of foreign firms to provide a Tet Holiday bonus, a practice that is widely expected.²⁹ These uprisings external to the VGCL add an element of pressure. “If the situation remains unchanged and the VGCL does not deal with the challenges of changing labour relations, workers will nevertheless fight for better working conditions and render the official trade unions obsolete.”³⁰ Thus, it is possible that these new labor standards evolve from necessity rather than the adoption of an FTA.

4. Conclusion

Trade liberalization has brought increased foreign domestic investment to many regions of the global south where the cost of labor is low. Through FTAs and subsequent labor standards agreements, governments are being required to meet labor standards such as FOA which obligates them to protect worker’s rights to join and form unions of their choice. “The reason businesses tend to relish free-trade agreements, and unions loathe them, is precisely that trade liberalization

²⁶ Hoang, Lien. "Vietnam Labor Union 'Happy' To End Monopoly For TPP". BNA Snapshot (2016).

²⁷ Democratic Staff of the Committee on Ways and Means,. TPP Issue Analysis: Worker Rights. 2016.

²⁸ “Unions in Transition: Changing Industrial Relations in Vietnam.” AmCham Vietnam. 2016. Page 4. Citing: Opinions Adopted by the Working Group on Arbitrary Detentions at its sixty-fifth session, 14-23 November 2012, No. 42/2012 (Vietnam) (A/HRC/WGAD/2012/42) (February 20, 2013), “Vietnam Beating Case Highlights TPP Labor Rights Issue,” Trung Nguyen, Voice of America (November 23, 2015), and “Vietnamese Authorities Detain and Beat Two Human Rights Activists,” Radio Free Asia. (November 9, 2015).

²⁹ Dean Hua, Lecture at Ton Duc Thang University. Jan 5, 2016 .

³⁰ “Unions in Transition: Changing Industrial Relations in Vietnam.” AmCham Vietnam. 2016. Jan 25, 2016. Page 4.

allows multinational brands to exploit the absence of those labor protections in poorer countries.”³¹ Although international corporations do not want to pay the costs associated with increased labor rights, they continue to drive free trade agreements like the TPP which would reduce tariffs between many countries including the US and Vietnam thus building profits. Last year, such businesses paid \$450 million in tariffs to TPP countries.³²

The TPP is unique in that it includes trade with Viet Nam, a communist country with a state run union known as the VGCL. Viet Nam benefits from being included in this agreement because of potential for increased profits. “Not only does the TPP offer investors a rare opportunity in Vietnam, but may allow Vietnam to gradually add higher value-added manufacturing capacity and cut down on its supply chains’ dependence on China.”³³ Although the agreement would align with Viet Nam’s goals of increased trade and independence, there are labor standards they must meet before the US can ratify the trade agreement.

They will have to change the structure of the VGCL to be compliant with the international labor standard that protects workers rights to join and form their own labor organization. While the passing of the TPP has not yet occurred and its certainty unknown, changes to the current labor relations system are likely to occur regardless. One example of the modernizing labor standards is the recent minimum wage raise of 15% for 2015.³⁴

III. Vietnamese Corporate Viewpoint

For manufacturers located in Viet Nam, both domestic and foreign-owned, the primary response to the possibilities TPP, with decreased tariffs, increased trade, and high potential for profits. The following segment explores the primary reactions of corporate manufacturing in Viet Nam. The views can be divided into four segments: the first details which sectors can expect profits and to what extent the profits will be linked with TPP, the second addresses the primary question of freedom of association, the third segment looks deeper into the potential costs that these corporations may incur. Finally the last section focuses on Vietnam’s largest employer: Nike, and my visit to a foreign-owned manufacturer of Nike products (FEA-VN). These key concerns for many employers will provide the background and reasons for support of the TPP from a main stakeholder group.

³¹ Chen, Michelle. "TPP Could Actually Make Working Conditions Worse In Vietnam". The Nation. N.p., 2015. Web. 1 July 2016.

³² Cheney, Cathy. "Nike, Other Footwear Makers Say TPP Deal Will Boost Domestic Supply Chain - Portland Business Journal". Portland Business Journal. Web. 6 Oct. 2015.

³³ "Company Stampede to Southeast Asia Seen on Trans-Pacific Partnership Trade Pact." WSJ. February 9, 2016.

³⁴ "Vietnam Approves Minimum-Wage Hike Of 15 Percent In 2015". Thanh Nien Daily. Web. 11 Nov. 2014.

1. Profits

While it is not possible to predict the exact profit increase for corporations operating in Viet Nam, it is clear that substantial profits are expected and enough to bring foreign-owned corporations on board with TPP. In the tradeoff of decreased control over labor for increased trade and profits, corporations are clearly willing to further liberalize trade for the financial benefits—which are expected to be large. The Peterson Institute for International Economics predicts that, “by 2025, membership of the TPP could boost exports from Vietnam by an additional 29%.”³⁵ My experience of being in a Vietnamese corporation imitated the sense that these numbers imply: increased trade is a benefit for FDI profits.

In addition to foreign-owned manufacturing, domestic-owned firms (SOEs) are also critical to the manufacturing landscape. Their understanding of domestic labor changes may be more adept and aid them in better understanding the changes of market liberalization. State Owned Enterprises make up 32.3% of Vietnam’s GDP and 40.4% of the country’s total annual investment³⁶, so their success is critical for reinvesting gained capital locally. A report comparing FDIs and domestic firms found that “domestically-owned Vietnamese firms tend to lose market share to their foreign-owned competitors when they compete head to head; but they also tend to benefit from higher levels of foreign capital invested in their industry.”³⁷ While increasing trade will benefit these SOEs, a larger share of profits will go to benefit to FDIs.

Another way we can compare various distinguishing opinions of corporations is by sector. Various sectors will benefit to varying degrees. “The schedule for tariff reduction and elimination for many products in the textiles, apparel, and footwear sectors – sectors in which Vietnam is the most competitive and has the greatest economic interest – are back-loaded and tariffs will not be significantly reduced or eliminated for those products until years six, seven, 11 and 13 of the Agreement.”³⁸ These sectors may be less inclined to support the agreement, but still the overwhelming response has been in favor of the FTA.

³⁵ "Company Stampede to Southeast Asia Seen on Trans-Pacific Partnership Trade Pact." WSJ. February 9, 2016.

³⁶ Hiep, Le Hong. "The TPP's Impact on Vietnam: A Preliminary Assessment."

³⁷ Hanh Pham, 2016. "Foreign Direct Investment, Productivity And Crowding-Out: Dynamic Panel Evidence On Vietnamese Firms," Proceedings of Economics and Finance Conferences 3205904, International Institute of Social and Economic Sciences.

³⁸ Democratic Staff of the Committee on Ways and Means, . TPP Issue Analysis: Worker Rights. 2016.

2. Freedom of Association

The possibility of changes in freedom of association have not been acknowledged as major areas of concern for manufacturers. While many of these corporations, especially FDIs, operate in countries with equivalent labor laws, their concerns are not focused on these changes.³⁹ There is the possibility that these changes in labor law may reduce the labor unrest.

What is more likely, is that the freely associating unions are able to be controlled by the very companies they are associated with, known as ‘company-unions.’ “The denial of associational rights to Vietnamese workers is rendered worse by the fact that not only is the organizing of independent unions legally prohibited, but the official union structure is also de facto dominated at the factory level by employers themselves. This is because enterprise-level union officials are typically chosen by factory managers, not workers, and are, most commonly, actually the company’s human resource managers.”⁴⁰ The current position of the VGCL as intermediary between labor and the government is a strong indicator of the possibility for ‘company unions.’ These company unions would be partially, if not fully, run by the corporations, much to the corporation’s benefit.

3. Costs of Change

Beside the ability of employees to freely associate and form unions of their choosing, there are many other labor costs associated with higher standards. However, it seems corporations have found simple solution.

Factory inspections by the ILO’s Better Work Vietnam program found that 19% of factories failed to pay the legal minimum wage for workers’ regular hours, and that 30% did not provide workers with the minimum legal compensation for overtime hours. Similarly, the Fair Wage Network’s 2010-2011 study found that a majority (53%) of the factories it surveyed in Vietnam failed to pay workers in accordance with legal requirements and that 25% of surveyed factories paid workers less than the legal minimum wage.⁴¹

³⁹ Chu, Kathy. “Why the TPP Trade Deal Isn’t All Good for Vietnam’s Factories.” WSJ. February 8, 2016.

⁴⁰ Worker Rights Consortium, “Made in Vietnam: Labor Rights Violations in Vietnam’s Export Manufacturing Sector,” May 2013.

⁴¹ Worker Rights Consortium, “Made in Vietnam: Labor Rights Violations in Vietnam’s Export Manufacturing Sector,”

Companies often lament that the changes will hurt their bottom line,⁴² specifically costs associated with the minimum wage. In 2015, minimum wages rose 15%,⁴³ but these changes are likely only the beginning if Viet Nam continues to see advances in their trade economy.

While concerns mainly focus on the rising cost of minimum wages, there is some concern that TPP a increase in popularity for manufacturing in Viet Nam will cause costs to rise even further. “Stanley Szeto, the chief executive of Lever Style, a Hong Kong-based firm that manufactures shirts and pants for brands from Hugo Boss to J. Crew, says he's ‘not very excited’ about the trade pact because any surge of investment could make it more expensive to manufacture in Vietnam.”⁴⁴ Manufactures are wary of major changes in trade because of the potential costs occurring from such popularity.

4. Nike and Far Eastern Apparel

With 330,000 workers, Nike is the prime employer in the ‘linchpin’ of the TPP that is Viet Nam.⁴⁵ An example of responding to decades of changing labor standards, Nike first manufactured in Japan before moving to other lower-cost areas like Viet Nam.⁴⁶ They understand the changes well and are even expected to benefit through increased trading. UBS AG research estimates a 50 base point increase from the TPP alone.⁴⁷ Although Nike uses local manufacturing suppliers, the majority of the benefits from tariff reduction would be reserved for global brands (not manufacturers).⁴⁸ In a formal statement however, Nike claimed they “support TPP because it will allow us to innovate, expand our business and drive economic growth. Open trade enables U.S. companies to compete and consumers to win.”⁴⁹ As such a large employer, it is critical that Nike sees a benefit to remaining in the country. Otherwise, Viet Nam risks losing hundreds of thousands of jobs.

Our visit to the Taiwanese-owned manufacturer for Nike, Far Eastern Apparel-Viet Nam (FEAVN), aligns with the perspectives and incentives of Nike as well as the reality of incoming changes in labor law. During our tour of FEAVN, there was little concern of losing Nike’s business. The manufacturing plant managers were proud of their

⁴² "Vietnam Approves Minimum-Wage Hike Of 15 Percent In 2015". Thanh Nien Daily. Web. 11 Nov. 2014.

⁴³ "Vietnam Approves Minimum-Wage Hike Of 15 Percent In 2015". Thanh Nien Daily. Web. 11 Nov. 2014.

⁴⁴ Chu, Kathy. "Why the TPP Trade Deal Isn't All Good for Vietnam's Factories." WSJ. February 8, 2016.

⁴⁵ Keady, Jim. "US & Vietnam Labor Advocates Say Senate Must Vote NO On Fast Track". Daily Kos. Web. 23 June 2015.

⁴⁶ Harry C Katz, Thomas A Kochan and Alexander Colvin. "Labor Relations in a Globalizing World" (2015).

⁴⁷ Pham, Peter. "The TPP-Induced Love Triangle Between Nike, The U.S. And Vietnam". Forbes. Web.

⁴⁸ Chu, Kathy. "Why the TPP Trade Deal Isn't All Good for Vietnam's Factories." WSJ. February 8, 2016.

⁴⁹ Brettman, Allan. "Nike, Columbia Sportswear Tout Benefits Of Trans-Pacific Partnership Pact". Oregon Live. Web. 6 Oct. 2015.

organization and had invested in securing and improving the facility as it had suffered damages during the recent strike waves.⁵⁰ From our time there, it was clear they intended to continue manufacturing Nike products and were not concerned about losing business in the wake of upcoming TPP changes.

Another fascinating part about being in the factory and listening to presentations on labor relations, was the excitement revolving around a new undertaking of the firm called ‘Social Dialogue’ which aims at increasing communication between workers and the employers.

In an apparent attempt to address the domination of VGCL enterprise-level unions by factory managers, the ILO Better Work Vietnam program, in cooperation with the VGCL, since 2011 has promoted the establishment of “Performance Improvement Consultative Committees (“PICCs”) at the factory level, which are comprised of an equal number of factory workers and managers and whose purpose is “to improve workplace cooperation and working conditions.” Beginning in 2012, Better Work began to require that the worker members of these committees be nominated and elected by workers themselves.⁵¹

Aligned with efforts by BetterWork and RespectVN, FEAVN has increased employee feedback through anonymous evaluation methods and complaint forums. While this new method of labor relations is the cause for much excitement at FEAVN, I believe that the motivation to draw ties between the employer and employees is an effort to preemptively gain control of the future employee organizations. Through these methods, the corporation can be responsible for improvements in working conditions and thus further mitigate the possibility of an independent union forming.

IV. U.S. Labor Allies

Originally, this paper had intended to summarize the Vietnamese labor perspective on the possible labor law changes from TPP, but seeing as any consolidated labor perspectives are represented by the government-run VGCL, this segment has been substituted in its place. Sympathizers or workers in Viet Nam take many forms, but my interaction with American labor scholars verified that their concern for worker’s rights. American Labor scholars are some of the most prominent allies for workers in all countries. During my time in Viet Nam, I was able to interact and learn from many American labor activists who were researching the potential impacts of TPP on labor in Viet Nam. Their views are

⁵⁰ "Visit to Far Eastern Apparel Group Viet Nam (FEAVN)." Ha Dang (RespectVN). Jan 16, 2016.

⁵¹ Worker Rights Consortium, “Made in Vietnam: Labor Rights Violations in Vietnam’s Export Manufacturing Sector,”

explored in this next section, as well as acknowledgement that their views do not come as equivalent to the views of workers.

1. US Labor and the TPP

While the US Government touts that the TPP is a revolutionary move for international labor standards, the role of the American labor movement in the formation of the labor standards has been very limited.⁵² In a publication by the AFL-CIO, they aggressively deny supporting the process of negotiating the TPP. “The current administration is more responsive to meeting requests from labor representatives than the prior administration. However, having an open door is not the same as having an open mind.”⁵³ What American labor movement allies would have advocated for, whether on behalf of Vietnamese workers or for their own protection is unknown.

2. Labor Concerns

The two categories of concern from the American labor allies can be described as concern for their own jobs and concern for working Vietnamese as fellow laborers in the global economy. Domestically, the main concern for American labor is that TPP will further the offshoring of jobs in a similar fashion as NAFTA.⁵⁴ Large FTAs often bridge the gap for capital to be more mobile, which, in turn, causes workers’ jobs to go overseas where labor is cheaper. For labor abroad, especially in the case of Viet Nam, Americans favor improved labor standards while acknowledging that the increased standards must not drive out job opportunities.⁵⁵ In understanding the American allied perspective, it must be taken into account their desire to protect their own jobs when considering their desire to support labor organizing abroad.

Having a good understanding of the history of these labor chapters, labor activist Lance Compa points out his concern for seeing any improvement in standards. “Governments have shown little appetite for confronting one another under social chapters in trade agreements. They prefer seemingly endless rounds of dialogue, consultation, conferences, outreach, benchmarking, and other forms of talk therapy.”⁵⁶ This same opinion was present in the Seminar on the Impact of TPP that I attended at Ton Duc Thang University. American labor leaders repeatedly warned Vietnamese labor scholars

⁵² "Labor's So-Called Seat at the Table at TPP Negotiations." AFL-CIO. February 8, 2016.

⁵³ "Labor's So-Called Seat at the Table at TPP Negotiations." AFL-CIO. February 8, 2016.

⁵⁴ Democratic Staff of the Committee on Ways and Means. TPP Issue Analysis: Worker Rights. 2016.

⁵⁵ Worthen, Helena. Thoughts Upon Reading the TPP Labor Side Agreement. Blog. Dec 2015.

⁵⁶ Compa, Lance. “How to Make the Trans-Pacific Partnership Work for Workers and Communities.” The Nation. Jan 2016.

about the likely lack of followthrough for many of these goals of improving standards.⁵⁷ Especially for allies from the global north, it is difficult to relate to the choice that Viet Nam faces.

Between the delegation and the publications of Helena Worthen, it is evident that the Labor Side Agreement is viewed as a strong standard (possibly even higher than those of the United States, but still must be one that is accepted with extreme caution.⁵⁸ During the UCLA delegation, it was clear that the American Allies were making an impossible ask; to risk jeopardizing substantial increases in trade growth for stronger labor protections is not a decision they were ready to make.

V. VN Academic + NGO

Two final perspectives that have similar views on the future of changing labor reform and TPP are Vietnamese labor academics and labor-focused NGOs. During my time in Viet Nam, many lectures with the labor faculty at Ton Duc Thang University clarified their optimism and acceptance to the likely coming changes. The NGOs we were able to interact with had a similar respect for the FTA and saw their job of protecting workers as very much the same. The following section expands on these perspectives.

1. Academic Perspective

At Ton Duc Thang University, the labor faculty also work with the VGCL to educate various union affiliates. This is cause for a unique perspective and one that essentially aligns with the VGCL's support for TPP while at the same time lack of motion toward substantial change. In a lecture at TDT on the meaning of change related to the VGCL, Mrs. La explained the VGCL's efforts that were already underway to train their members to be ready for these changes.⁵⁹ While she could not say what the future of organized labor would look like, it was interesting that the VGCL had already begun training. This also relates back to the already-made choice to accept these possible changes for the reward of increased trade benefits and expansion.

⁵⁷ "Seminar on Impact of TPP on Labor Unions (UCLA Delegation)." Jan 14, 2016.

⁵⁸ Worthen, Helena. Thoughts Upon Reading the TPP Labor Side Agreement. Blog. Dec 2015.

⁵⁹ Mrs. La, Lecture at Ton Duc Thang University. Jan 6, 2016.

2. NGO Perspective

The labor-focused NGOs that we came to understand during our time in Viet Nam were limited to Better Work and Respect VN, both of which do amazing work advocating for labor standards. “The objective of Better Work is to enhance compliance with internationally recognized labor standards. Better Work officials assess factory compliance, develop labor-management relations, and engage stakeholders (including governments, producers, unions, employees, and buyers) in improving working conditions.”⁶⁰ RespectVN has championed labor relations improvements for factories such as FEA-VN. Both of these groups continue to fill the gaps around the single party union, but share the view that changes are coming and their work must continue.

Currently, the Vietnamese regime largely limits the ability of NGOs to exist. “Government policies in Vietnam restricting the establishment of independent grassroots nongovernmental organizations, including those that could investigate labor rights abuses and assist workers, and preventing the establishment of independent trade unions hamper fully independent monitoring of working conditions in Vietnam’s export garment factories.”⁶¹ But these NGOs play an important role in the organization of labor rights and will likely become more central as market liberalization further effects Viet Nam.

These NGOs are aware that corporations are doing what they can to limit strikes and that “such strikes are likely to persist until the government permits a measure of meaningful associational activity by employees and other workable avenues for constructive industrial relations.”⁶² These NGOs exist to advocate for worker standards and improve the lives of working people. Better Work use factory monitoring and corporate social responsibility measures⁶³ to influence the standards for workers, and has been critiqued for its inability to get “below the iceberg” to the core of the problems.⁶⁴ Still it is important to recognize that global NGOs represent a different opinion of the TPP labor standards that may juxtapose that of acceptance and preparedness.

Respect VN describes the problem well, acknowledging their work in improving lives every day, while at the same time raising concerns for the larger trends. “The controversy with regard to labor obligations in free trade agreements has been whether the tax exemption would go to pockets of high-income workers, further digging the income

⁶⁰ Harry C Katz, Thomas A Kochan and Alexander Colvin. "Labor Relations in a Globalizing World" (2015).

⁶¹ Keady, Jim. "US & Vietnam Labor Advocates Say Senate Must Vote NO On Fast Track". Daily Kos. Web. 23 June 2015.

⁶² Worker Rights Consortium, “Made in Vietnam: Labor Rights Violations in Vietnam’s Export Manufacturing Sector,” May 2013.

⁶³ Dang, Ha. Sustainable Labor Practice And Supply Chain Project At Cornell. 2016. E-mail.

⁶⁴ Dang, Ha. Sustainable Labor Practice And Supply Chain Project At Cornell. 2016. E-mail.

inequality hole, or whether the freedom of association would afford better opportunities for independent and responsible representatives to negotiate for better worker incomes.”⁶⁵ The views of NGOs are well exemplified in this duality.

VI. Conclusion

Various stakeholders of the potential changes in Vietnamese labor law include international and state-run corporations, Vietnamese NGOs and American Labor allies. These viewpoints, although they differ in their reasonings, can ultimately come together to support the text of the TPP side agreement on Labor. This labor agreement is unique as it is the first American FTA and Labor agreement to be made with a country that currently controls one state union. While the TPP may or may not be passed due to American politics, the likelihood that trade liberalization will reach Viet Nam and further affect their labor policies is very high. Thus, these perspectives must be considered and understood as labor continues to change in this unique environment.

⁶⁵ RespectVN. Vietnam Labor Compliance Alliance Report. Hanoi, Vietnam. Dec 2015.

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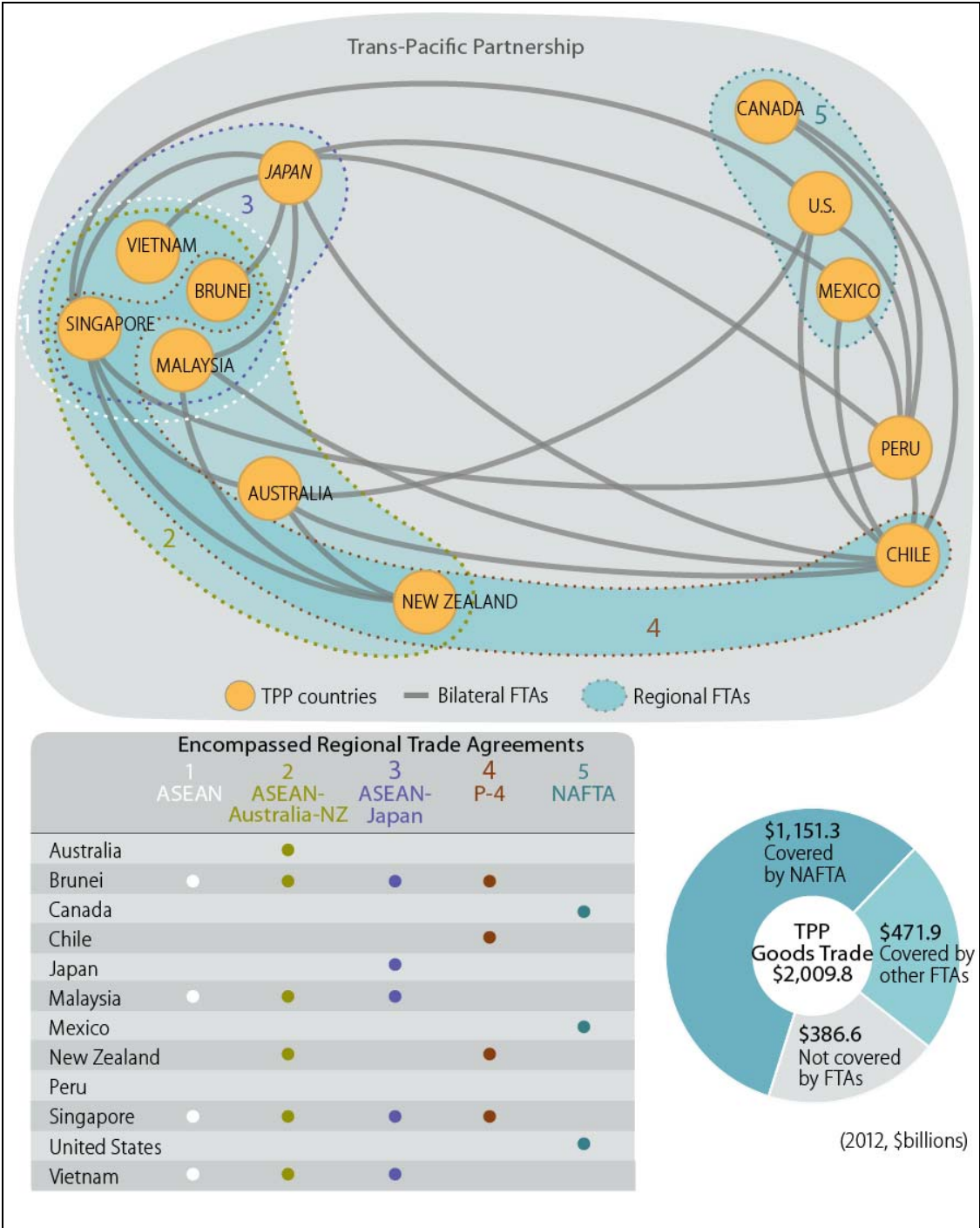
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Figure 2. Existing FTAs among TPP Countries



Source: WTO FTA database and websites of TPP countries' trade ministries. Trade data from IMF.

Notes: Aggregate TPP goods trade, both imports and exports, as reported above. ASEAN also includes countries outside the TPP: Burma (Myanmar), Cambodia, Indonesia, Laos, the Philippines, and Thailand. TPP goods trade covered by existing FTAs as depicted above, reflects all goods trade between FTA partners. This measure slightly overstates trade covered under FTAs, as most FTAs exclude market access for at least some goods.

Source: Thi Van Lam, Dang. "Vietnamese Trade Unions In Brief". 2012. Presentation.

