

# PERSPECTIVE

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## **Labour Provisions of the Trans-Pacific Partnership (TPP) and how they may Affect Southeast Asian Countries**

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### **EXECUTIVE SUMMARY**

- The labour provisions in the TPP are unprecedented in nature and have the potential to be a trendsetter for future FTAs covering the trade-labour nexus.
- The TPP requires its members to abide by the fundamental labour rights detailed by the International Labour Organization (ILO). Additionally, the agreement has commitments regarding minimum wages, hours of work, and occupational safety and health.
- To implement these labour measures, the US has negotiated ‘consistency plans’ with three Southeast Asian countries – Vietnam, Malaysia and Brunei. Failure to implement these may disqualify a member from using the agreement’s tariff privileges or lead to trade sanctions against the offending country.
- The TPP’s labour provisions are likely to pose challenges especially for participating Southeast Asian countries in which national labour laws are not properly implemented or are not aligned to international standards. At the same time, the provisions allow for flexible interpretations, presumably to avoid creating major problems for countries party to the agreement.

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## INTRODUCTION

In February 2016, twelve countries from both sides of the Pacific signed the much-awaited and much-proclaimed ‘gold-standard’ 21<sup>st</sup> century trade agreement, namely the Trans-Pacific Partnership (TPP).<sup>2</sup> The agreement encompasses the liberalisation of trade and services, facilitation measures and covers several provisions and rules and regulations that go beyond-the-borders.<sup>3</sup> One such provision is about labour and the countries’ commitments to labour rights, enforcement of labour laws, prohibition of forced labour, enhancement of transparency, capacity-building exercises and other cooperation mechanisms.

This paper provides an overview of the TPP labour chapter; looks at ways that the US and the Southeast Asian signatory countries (mainly Brunei, Malaysia, Singapore and Vietnam) have treated labour issues in their bilateral or regional trade agreements; and discusses the state of labour rights and commitments of the Southeast Asian countries that are part of the agreement. The paper finds that the TPP’s labour provisions are unprecedented, especially for most Southeast Asian countries. Although countries such as Vietnam, Malaysia and Brunei have to undertake significant reforms to comply with TPP labour commitments, there are flexibilities too. For example, the TPP provides Vietnam with a five-year grace period to implement its labour provisions, followed by an assessment period of two years. In case of any labour dispute, the TPP offers a dialogue mechanism before the dispute is referred to the agreement’s dispute settlement provision. That way, Vietnam has about 10 years from the time the TPP comes into play and a labour dispute escalates all the way up to the dispute settlement panel. Nevertheless, the TPP’s labour chapter has the potential to be a pathfinder for future multilateral trade agreements covering the labour-trade nexus.

With increased globalisation, it has been contended that competition over foreign direct investment (FDI) has forced governments and firms to lower their compliance with labour standards. Some argue that weak labour standards and lack of implementation of international labour standards lead to low wages, thereby raising the comparative advantage enjoyed by countries producing labour-intensive goods. Others argue that requests to comply with labour standards, mainly by developed countries, are a way of imposing barriers to exports from developing countries.<sup>4</sup>

## TPP AND ITS LABOUR PROVISION

According to the US Trade Representative (USTR) website, ‘TPP has the strongest protections for workers of any trade agreement in history’.<sup>5</sup> It requires all TPP members to

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<sup>2</sup> The 12 member countries of the TPP are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States (US) and Vietnam.

<sup>3</sup> The Trans-Pacific Partnership (TPP) agreement holds strategic underpinnings, Sanchita Basu Das, ISEAS Perspective No 22, 10 May 2016 ([https://www.iseas.edu.sg/images/pdf/ISEAS\\_Perspective\\_2016\\_22.pdf](https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_22.pdf))

<sup>4</sup> Martin, W. and Maskus, K. E. (2001). Core Labor Standards and Competitiveness: Implications for Global Trade Policy. *Review of International Economics*, 9 (2), 317-328.

<sup>5</sup> Office of United States Trade Representative, TPP, Labour (<https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Labour-1.pdf>)

abide by the fundamental labour rights as recognized by the International Labour Organization (ILO). These include: the right to free association and collective bargaining; elimination of forced or compulsory labour; abolition of child labour; and elimination of employment discrimination. All these are said to be fully enforceable and are backed by trade sanctions.

The export processing zones of all TPP members have additional commitments regarding minimum wage rates, hours of work, and occupational safety and health. The TPP discourages its parties to import goods that are produced or contain parts manufactured by forced labour regardless of whether the source country is a member of TPP or not. The labour chapter talks extensively about transparency in the implementation of labour commitments in national economies, including public participation and accommodating requests for information.

Acknowledging the importance and complexity of the labour provisions, the TPP document proposes mechanisms for cooperation and coordination on labour issues (such as job creation, promotion of entrepreneurship, raising productivity, small and medium-scale enterprises (SMEs), discrimination against women and migrant workers) that will be jointly determined by TPP member countries. Moreover, to resolve any labour issue among TPP countries, the labour chapter offers a dialogue mechanism. This is in addition to dispute settlement provisions provided in the agreement.

Finally, in order to implement the labour measures and align domestic labour rights to international standards, the USTR has negotiated consistency plans with three Southeast Asian countries – Vietnam, Malaysia and Brunei. A consistency plan outlines the changes a country needs to make before the trade agreement becomes effective. This includes reforms in laws, regulations, institutions and practice. The implementation plan also ensures regular engagement, monitoring and reporting of progress with TPP compliance.

## **LABOUR PROVISIONS AND THE BILATERAL AND REGIONAL AGREEMENTS OF THE US AND SOUTHEAST ASIAN COUNTRIES**

It is essential to understand the rationale for including labour provisions in international trade agreements which are mostly initiated by developed countries in the West. This section provides an overview of how the labour issue has been treated in various bilateral or regional agreements entered into by the US and by Southeast Asian countries.

### The US

The US has followed two frameworks for incorporating labour provisions in its trade agreements – unilateral, and bilateral or regional agreements. The unilateral route is the Generalised System of Preference (GSP) and its labour provisions, set up by the US in 1984. The GSP provides preferential duty-free entry for up to 5000 products from 122 designated countries.<sup>6</sup> While the GSP itself is to give developing countries access to US market, the

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<sup>6</sup> Office of the US Trade Representative (<https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp>)

labour provision is to ensure fair labour standards for workers in those countries.<sup>7</sup> This is to avoid trade based on unfair competition derived from coerced labour i.e. through the denial to workers of their rights, making small children work, discriminating against women, suppressing wages and ignoring workplace safety.

The US has promoted inclusion of labour provisions in its regional trade agreements such as the North American Free Trade Agreement (NAFTA), as well as bilateral ones with Jordan, Bahrain, Chile, Singapore and Peru. Although US trade agreements have gradually evolved towards a more comprehensive reference to ILO standards, the country has also used its own definition of 'internationally recognized workers rights', by excluding certain Fundamental Conventions and adding minimum working conditions.

NAFTA mentions labour under a separate agreement called the North American Agreement on Labour Cooperation (NAALC). NAALC lays down several goals and principles.<sup>8</sup> The agreement, in general, expresses the shared interests of the parties to cooperate so that the economic benefits emerging from NAFTA can be distributed equally among all groups of people. The nature of the agreement is tri-national rather than supranational, thereby respecting national sovereignty. Trade sanctions are applicable for issues related to child labour, health and safety at work and minimum wages, whereas the matter of collective rights is subject to ministerial consultation. It has been noted that although there have been several cases of cooperative consultation under NAALC, none of them have gone to the dispute process.<sup>9</sup>

However, NAALC has received lot of criticism from the domestic US audience as they felt that many of the provisions mentioned in the agreement are not enforceable. Subsequently, in 2007, the Bush Administration and Democrats came up with a bipartisan deal, called the

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<sup>7</sup> Compa, L.A. and Vogt, J.S. (2001), 'Labour Rights in the Generalised System of Preferences: A Twenty Year Review', Digital Commons@ILR, Cornell University ILR School, Winter

<sup>8</sup> NAALC goals are to a) improve working conditions and living standards, b) promote labour principles to the greatest extent, c) encourage co-operation to promote innovation, d) promote the publication and exchange of information, data development and coordination, as well as joint studies for promoting mutually-beneficial understanding of the laws and institutions covering labour in the territory of each of the signatories, e) pursue cooperative labour-related activities on the basis of mutual benefit, f) promote compliance with labour law by each party and g) foster transparency in the administration of labour law.

Labour principles in NAALC include: liberty of association and protection of the right to organise; the right to collective bargaining; the right to strike; the prohibition of forced labour; restrictions on child labour; minimum standards for working conditions; elimination of discrimination in employment; equal remuneration for men and women; prevention of accidents at work and occupational illnesses; compensation in the event of accidents at work and occupational illnesses; and protection of migrant workers. [North American Agreement of Labour Cooperation, Labour Program, Government of Canada

(<http://www.labour.gc.ca/eng/relations/international/agreements/naalc.shtml>)

<sup>9</sup> Grandi, P.L. (2009) 'Trade Agreements and their Relation to Labour Standards: The Current Situation', *ICTSD Programme on EPAs and Regionalism*, International Centre for Trade and Sustainable Development, Issue Paper No. 3, November

May 10th agreement or the New Trade Policy Template.<sup>10</sup> The new deal aims at ensuring that participating members of a trade agreement are working towards improving labour conditions. It requires the member countries to adopt and enforce the basic labor standards set in the 1998 Declaration of the ILO.<sup>11</sup> It also makes sure that the labour provisions are subject to the dispute settlement procedures, implying that countries that violate labour rules could be subject to sanctions.<sup>12</sup> So any trade agreements signed around and after 2007 are subject to the US' New Trade Policy Template. These included US' bilateral trade agreements with Peru, Panama, Columbia and South Korea.

### Southeast Asian Countries Bilateral FTAs and ASEAN Community

Where Southeast Asian countries are concerned, labour provisions are in general included for FTAs that have been bilaterally or multilaterally signed with the US and the EU. Apart from the TPP, the US has only one bilateral agreement in the region, i.e. with Singapore. The US-Singapore Free Trade Agreement, signed in 2003, has a chapter on labour in the main text (Chapter 17). It refers to the 1998 ILO Declaration and covers issues like enforcement of national labour laws, public awareness, institutional arrangements and labour cooperation and consultation.<sup>13</sup>

To date, the EU has concluded two trade agreements in the Southeast Asian region – with Singapore in 2013 and Vietnam in 2015. It has also been pursuing negotiations with Malaysia since 2010 and Thailand since March 2013, though these have failed to make significant progress. The Singapore-EU FTA includes labour provisions in Chapter 13 of trade and sustainable development<sup>14</sup> and is binding in nature under the agreement's dispute settlement mechanism. In addition to the reference to the 1998 ILO labour principles, the agreement includes reaffirmation of commitments under the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work.<sup>15</sup>

For the EU-Vietnam FTA, labour is included under the Trade and Sustainable Development chapter (Chapter 15) and is binding in nature. The two broad objectives of the chapter are to promote mutual supportiveness between trade, investment and labour policies and to ensure that increased trade and investment do not come at the expense of workers' protection. Under the FTA, both the EU and Vietnam recognise the multilateral

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<sup>10</sup> The New Trade Policy Template reflects Democrats' long-standing position on trade, such as strengthening labour and environmental standards. It consists of trade-related issues in labour, environment, investment, government procurement, intellectual property, and port security.

<sup>11</sup> International Labour Organisation, ILO Declaration of Fundamental Principles and Rights at Work (<http://www.ilo.org/declaration/lang--en/index.htm>)

<sup>12</sup> Cho, S. (2007), 'The Bush Administration and Democrats Reach a Bipartisan Deal on Trade Policy', Insights, American Society of International Law, Volume 11, Issue 15 (<https://www.asil.org/insights/volume/11/issue/15/bush-administration-and-democrats-reach-bipartisan-deal-trade-policy>)

<sup>13</sup> Singapore Free Trade Agreements, IE Singapore (<http://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/US%20Singapore%20FTA/Legal%20Text/United20StatesSingapore20FTA20Legal20Text.pdf>)

<sup>14</sup> In the context of FTA, the EU deals with labour and environment matters in integrated manner and puts it under the trade and sustainable development chapter.

<sup>15</sup> European Commission, EU-Singapore FTA ([http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151766.pdf](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151766.pdf))

international standards and agreements on labour, including ILO labour standards.<sup>16</sup> In general, the EU FTAs in Southeast Asia do not introduce any new measures under labour provisions but only reaffirms prior international commitments.

Under the ASEAN Community, labour is not dealt in a separate chapter. The ASEAN Economic Community (AEC) talks about skilled labour/professionals under the subject of facilitating the movement of skilled labour and business visitors. However, this is more about recognition of education and skills among member economies to facilitate foreign investment in the region. Migrant labour, women and children are discussed broadly in the context of building resilience in the region under the ASEAN Socio-Cultural Community (ASCC).

## LABOUR RIGHTS IN VIETNAM, MALAYSIA AND BRUNEI

### Vietnam

Currently, Vietnam has limited labour rights. It is one of the countries listed in the US' Department of Labour (DOL), where export-manufacturing goods, particularly garments, are produced at low costs using suppressed wages, poor working condition and other subpar labour standards.<sup>17</sup> The government prohibits independent trade unions outside the ones affiliated with the Communist Party's Vietnam General Confederation of Labour (VGCL) that controls the union registration process.<sup>18</sup> The VGCL is a poor representation of the protection or legitimisation of workers' interests, as the union barely discusses or organises demonstrations on issues of workers' welfare, insurance or depressed wages.<sup>19</sup> This is because, at the factory level, it is the managers who serve in the position of union leaders and workers are not permitted to meet in the absence of the management.<sup>20</sup> Furthermore, while strikes are not permitted in Vietnam, 'wildcat strikes' – organised by workers outside the union structure – occur regularly, leading to the leaders of such strikes being fired, blacklisted or even imprisoned.<sup>21</sup>

Vietnam also suffers from issues of forced and child labour. It has been reported that drug offenders are detained in rehabilitation centres that function as sources of cheap labour for several industries, including garments. Under the disguise of 'labour therapy', these centres punish the detainees when they refuse to work or are not able to meet their daily production

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<sup>16</sup> European Commission, EU-Singapore FTA

([http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc\\_154229.pdf](http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154229.pdf))

<sup>17</sup>U.S. Department of Labour, List of goods produced by forced labour or child labour, (<https://www.dol.gov/ilab/reports/child-labor/list-of-goods/countries/?q=Vietnam>)

<sup>18</sup> U.S. Department of State, Vietnam 2014 Human Rights Report (<http://www.state.gov/documents/organization/236702.pdf>)

<sup>19</sup> Oliver Massmann, 'The TPP: A win for Vietnam's Workers', The Diplomat, April 20, 2016 (<http://thediplomat.com/2016/04/the-tpp-a-win-for-vietnams-workers/>)

<sup>20</sup> Worker Rights Consortium, Labour Rights violation in Vietnam's export manufacturing sector, May 2013 ([http://www.usfashionindustry.com/pdf\\_files/WRC-Report-Vietnam.pdf](http://www.usfashionindustry.com/pdf_files/WRC-Report-Vietnam.pdf))

<sup>21</sup> AFL-CIO (America's Union), 'The Gold Standard for Workers? The State of Labour Rights in Trans-Pacific Partnership Countries,'

([http://www.aflcio.org/content/download/174525/4153892/1628\\_TPPLaborRightsReport.pdf](http://www.aflcio.org/content/download/174525/4153892/1628_TPPLaborRightsReport.pdf))

quota. From 2000 to 2011, the number of drug detention centres increased from 56 to 123. Around 309,000 people are estimated to have been detained in these centres in the same period.<sup>22</sup> The US DOL finds child labour prevalent in the manufacturing of bricks and garments.<sup>23</sup> Human trafficking as a source of forced labour is a frequent occurrence in the garments industry and other informal sectors such as construction, fishing, agriculture mining, logging, and manufacturing activities.<sup>24</sup>

In addition, women workers in Vietnam face pregnancy-based discrimination. Factory workers are often at risk from blocked fire exits and the failure by management to provide safeguard instruments. Garment factory workers are reported to work long hours for inadequate wages. Workers on short-term contract or third-party labour contractors are also rampant in the manufacturing sectors.<sup>25</sup>

It should be noted that Vietnam is the second largest source of apparel and textile imports to the US, totalling around US\$10 billion in value and generating more than 2 million jobs.<sup>26</sup> Many of the apparel and textile products manufactured in Vietnam are sub-contracted to small workshops, who frequently use forced labour and misuse their rights. Thus, the TPP is expected to bring in positive changes to the labour environment in Vietnam.

### Malaysia

Malaysia has problems with respect to forced labour and human trafficking. The US DOL lists forced labour as one of the pervasive factors in the electronics and garment industries, while the palm oil sector also uses child labour.<sup>27</sup> Many estimates indicate that there are 3-4 million migrant workers in Malaysia, which constitutes 20-30 per cent of country's workforce.<sup>28</sup>

In the last few years, there have been multiple reports documenting the mistreatment of migrant labour and human trafficking. A study by Verite in 2014 found that nearly 30 per cent in a sample of 500 migrant workers in the electronics industry was forced labour. Another 70 per cent of the workers can be categorised under forced labour if one considers debt from recruitment fees, restricted movement, isolation and document retention as a form

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<sup>22</sup> Adeline Zensius, 'Forced Labour in Vietnam: A Violation of ILO Convention 29', International Labour Right Forum, September 7, 2011, ([http://laborrightsblog.typepad.com/international\\_labor\\_right/2011/09/forced-labor-in-vietnam-a-violation-of-ilo-convention-29-.html](http://laborrightsblog.typepad.com/international_labor_right/2011/09/forced-labor-in-vietnam-a-violation-of-ilo-convention-29-.html))

<sup>23</sup> U.S. Department of Labour, List of goods produced by forced labour or child labour, (<https://www.dol.gov/ilab/reports/child-labor/list-of-goods/countries/?q=Vietnam>)

<sup>24</sup> Office to monitor and combat trafficking in persons, 2015 Trafficking in Persons Report (<http://www.state.gov/documents/organization/243562.pdf>)

<sup>25</sup> Worker Rights Consortium, Labour Rights violation in Vietnam's export manufacturing sector, May 2013 ([http://www.usfashionindustry.com/pdf\\_files/WRC-Report-Vietnam.pdf](http://www.usfashionindustry.com/pdf_files/WRC-Report-Vietnam.pdf))

<sup>26</sup> ITA, Office of Textiles and Apparels, April 29, 2016 (<http://otexa.trade.gov/msrcty/v5520.htm>).

<sup>27</sup> U.S. Department of Labour, List of goods produced by forced labour or child labour (<https://www.dol.gov/ilab/reports/child-labor/list-of-goods/countries/?q=Malaysia>)

<sup>28</sup> International Labour Organisation, Review of Labour Migration Policy in Malaysia, 2016 ([http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_447687.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_447687.pdf))

of coerced labour.<sup>29</sup> Another study by Finnwatch in 2014 reported violations of labour rights among many of the interviewed migrant workers. These included wages below statutory minimum, lack of overtime pay, restriction of freedom of association, gender discrimination, document detention and imposition of debts.<sup>30</sup> The US Department of State in its 2015 Trafficking in Persons Report mentioned that migrant workers in agriculture, palm oil plantations, construction sites and the electronic industry were subject to labour practices (such as seizing of passports, restricting movement, withholding wages, violating contracts, debt bondage with employers or recruitment agencies) that could be denoted as forced labour.<sup>31</sup>

Freedom of association is limited in Malaysia and is controlled by the Director General of Trade Unions (Ministry of Human Resource). There are legal restrictions on industrial action and police permission is needed for public gatherings of more than five persons. Collective bargaining is also restricted in certain industries, such as electronics and the public sector. Moreover, there is exclusion of certain matters from collective bargaining such as wages or hours of working. There are reports employers often terminate or penalise workers for expressing their dissatisfaction with employers or for arrange demonstrations.<sup>32</sup> ILO, in one of its reports, states that most of these policies were introduced to create a stable environment in Malaysia, keeping in mind the interest of economic development and foreign capital.<sup>33</sup>

Lately, Malaysia has been making an effort to change its labour rights conditions. In 2014, the government consulted with civil society stakeholders to draft and propose amendments strengthening the existing anti-trafficking laws. The TPP labour chapter and the Malaysia Consistency Plan have some helpful directions. For example, the Consistency Plan calls on Malaysia to amend its laws to limit the ability of labour officials to: deny trade union registration and affiliation; make it illegal to retain a worker's passport; expand the right to strike; and allow migrant workers improved trade union rights. Accordingly Malaysia needs to amend eight of its labour laws on forced labour and freedom of association.<sup>34</sup>

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<sup>29</sup> Verite (2014), 'Executive Summary', *Forced Labour in the Production of Electronics Goods in Malaysia: A Comprehensive Study of Scope and Characteristics*, ([https://www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysianElectronics2014\\_ExecutiveSummary.pdf](https://www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysianElectronics2014_ExecutiveSummary.pdf))

<sup>30</sup> Finnwatch, The law of the Jungle: Corporate responsibility of Finnish Palm Oil purchases, 5/2014 (<http://www.finnwatch.org/images/palmoil.pdf>)

<sup>31</sup> US DOS, Trafficking in Persons Report 2015 (<http://www.state.gov/documents/organization/243560.pdf>)

<sup>32</sup> ITUC, Survey of violations of trade union rights (<http://survey.ituc-csi.org/Malaysia.html?lang=en#tabs-2>)

<sup>33</sup> Mohamad, Jutia, Labour policy revamp under TPP, the New Straits Times, 23 February 2016 ([http://www.isis.org.my/attachments/commentaries/2016/JM\\_NST\\_23Feb2016.pdf](http://www.isis.org.my/attachments/commentaries/2016/JM_NST_23Feb2016.pdf))

<sup>34</sup> The eight laws will be – the Employment Act of 1955, The Trade Union Act 1959, Child and Young Persons Employment Act 1966, Passport Act 1966 (implementing regulations), Industrial Relation Act 1967, Sabah Labour Ordinance 1967, Sarawak Labour Ordinance, Private Employment Agencies Act 1981 and Workers' Minimum Standards of Housing and Amenities Act 1990. Mohamad, Jutia, Labour policy revamp under TPP, the New Straits Times, 23 February 2016 ([http://www.isis.org.my/attachments/commentaries/2016/JM\\_NST\\_23Feb2016.pdf](http://www.isis.org.my/attachments/commentaries/2016/JM_NST_23Feb2016.pdf))

## Brunei

In order to comply with the labour standards stated in the ILO declaration, the labour rights situation in Brunei needs to be improved. The country has been implementing the Sharia Penal Code (SPC) since May 1 2014 in parallel with the existing common law-based criminal law system. Although SPC implementation in Brunei starts with offences punishable by fines and imprisonment, it subsequently extends to extreme punishment of dismemberment and death by stoning for crimes like adultery and alcohol consumption.<sup>35</sup>

Freedom of speech is limited in Brunei, thereby making it difficult for freedom of association to develop.<sup>36</sup> Activists considered anti-government in nature can be detained without trial indefinitely, a punishment renewable every second year.<sup>37</sup> The formation of trade unions is subject to government approval.<sup>38</sup> The majority of labour laws apply to the Bruneian citizens, failing to cover skilled and unskilled migrant workers.<sup>39</sup> Although Brunei prohibits all forms of forced labour, female migrant workers, who form most of the household domestic workers, are liable to be forced labour. Withholding salaries of migrant domestic help and retention of travel documents of migrant workers by employers or agents are generally accepted in the country.<sup>40</sup>

The US-Brunei labour Consistency Plan in the TPP addresses some of these issues such as ending document detention or employment discrimination. Brunei is in the process of allowing the 'right to collective bargaining' and the 'right to strike'.<sup>41</sup>

## **IMPLEMENTATION OF THE TPP LABOUR PROVISIONS**

To implement the labour provisions in the TPP agreement, the US has agreed for Consistency Plans with three countries, Vietnam, Malaysia and Brunei, and has negotiated to work on improving the labour rights in the three economies, according to their individual needs. The consistency plans are side agreements to the TPP labour chapter (chapter 19), similar to NAFTA and its labour deal, NAALC.

The Brunei consistency plan addresses issues related to: trade union registration; child-labour protection; transparency in documentation; and job discrimination. The plan requires

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<sup>35</sup> US Department of State, 'Brunei 2014 Human Rights Report', 2014 (<http://www.state.gov/documents/organization/236638.pdf>).

<sup>36</sup> US Department of State, 'Brunei 2014 Human Rights Report', 2014 (<http://www.state.gov/documents/organization/236638.pdf>).

<sup>37</sup> Amnesty International, The State of World's Human Rights, Amnesty Internal Report 2014/2015 ([https://www.amnestyusa.org/pdfs/AIR15\\_English.PDF](https://www.amnestyusa.org/pdfs/AIR15_English.PDF))

<sup>38</sup> United Nations General Assembly, 'Report of the Working Group on the Universal Period Review', Brunei Darussalam, 7 July 2014 (<file:///C:/Users/sanchitabasudas/Documents/sanchita/2016/perspective/un-human-rights-report.pdf>)

<sup>39</sup> ITUC (<http://survey.ituc-csi.org/Brunei-Darussalam.html?lang=en#tabs-2>)

<sup>40</sup> US Department of State, 'Brunei 2014 Human Rights Report', 2014 (<http://www.state.gov/documents/organization/236638.pdf>).

<sup>41</sup> ITUC (<http://survey.ituc-csi.org/Brunei-Darussalam.html?lang=en#tabs-2>)

Brunei to implement a minimum wage for the first time.<sup>42</sup> The country has been often criticized in the West for its Shariah-based laws and potential impact on religious minorities.<sup>43</sup>

According to the Consistency Plan for Malaysia, the country needs to lift restrictions on workers forming unions and improve the labour rights of migrant workers, including requiring employers to give workers contracts and the removal of the practice of employers keeping the passport of migrant workers.<sup>44</sup> Malaysia also needs to follow through on its anti-trafficking laws. The Consistency Plan states that the US and Malaysian governments will meet annually for seven years after the entry into force of the Agreement to observe the progress in the implementation of the labour reform in the country.<sup>45</sup> Of late, both Malaysia and Brunei have been planning to undertake labour reforms and trying to make amendments to issues that the TPP requires the countries to enforce.<sup>46</sup>

The Vietnam Consistency Plan, known as US-Vietnam Plan for the Enhancement of Trade and Labour relations, needs the country to enact a range of legal reforms with workers organizing themselves in independent unions outside the Communist Party's control, workers having the right to elect their own union leaders as well as increasing protection against work-place discrimination and penalty charges for forced labour. One key commitment for Vietnam is cross-affiliation, which implies that the country has to allow local unions in one specific factory to affiliate with the workers of factories in the same sector and to form a broader national federation with unions from other sectors. Vietnam will not be able to join the TPP until and unless it satisfies the US with its progress in meeting the labour rights' requirements outlined in the consistency plan. However, Vietnam has a five year grace period to permit workers to unionize. It has another two years after that to allow for the US to assess whether or not the country has complied with the cross-affiliation obligation.<sup>47</sup>

The lack of implementation of TPP labour provisions may prohibit a member from using the agreement's tariff privileges or see the offending country facing trade sanctions. The US

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<sup>42</sup> Brunei-United States Labour Consistency Plan (<https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-BN-Labor-Consistency-Plan.pdf>)

<sup>43</sup> William Mauldin, 'TPP gives US increased power to push nations to improve labour practices', October 5, 2015, The Wall Street Journal (<http://www.wsj.com/articles/pacific-trade-deal-gives-u-s-increased-power-to-push-nations-to-improve-labor-practices-1444058329>)

<sup>44</sup> Vivian Dong, 'Enforcing Labour Standards Under the Trans-pacific Partnership', 29 February 2016, onLabour (<https://onlabor.org/2016/02/29/enforcing-labor-standards-under-the-trans-pacific-partnership/>)

<sup>45</sup> Malaysia-United States Labour Consistency Plan (<https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-MY-Labor-Consistency-Plan.pdf>)

<sup>46</sup> Firdaos Rosli, 'How differently would you reform Malaysia?', 15 March 2016, The New Straits Times (<http://www.nst.com.my/news/2016/03/132766/how-differently-would-you-reform-malaysia>); Leo Kasim, 'Labour reforms needed under TPP', The Brunei Times, 10 February 2016 (<http://www.bt.com.bn/business-national/2016/02/10/labour-reforms-needed-under-tpp>).

<sup>47</sup> United States-Vietnam Plan for the Enhancement of Trade and Labour Relation (<https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labour-Relations.pdf>), World Trade Online, 'Tentative US-Vietnam Consistency Plan links tariff benefits to labour compliance', 4 October 2015, bilaterals.org (<http://www.bilaterals.org/?tentative-u-s-vietnam-consistency>)

or any other TPP member country may take any of these three countries to a special dispute-settlement panel in case any firm or labour group complains. For Vietnam, if the US feels during the two-year assessment period (post five years of the grace period) that the country has not kept its labour reform obligations, it will notify Vietnam and subsequently enter into consultation with it, and eventually suspend the tariff-phase-outs that have not materialized by then (such as for apparel and footwear, canned tuna, brooms, glass etc, which will take more than seven years).<sup>48</sup>

It should be noted that the US in the past had been mindful about signatory countries' extent of compliance with promised trade measures. The country has taken Guatemala to a dispute-resolution panel over bad labour practices.<sup>49</sup> Another case was Costa Rica, in which it was not able to meet its Intellectual Right commitments under the Central American Free Trade Agreement (CAFTA) and the US consequently blocked sugar imports until the country had made the necessary amendments.<sup>50</sup>

## CONCLUSION

The TPP is said to have 'the strongest protections for workers of any trade agreement in history'. Indeed, on paper the TPP lays down provisions that are much more demanding than the ones agreed to under existing trade agreements, especially for Southeast Asian countries.

The TPP needs all its members to adopt and prepare their labour laws in recognition of the ILO's fundamental labour rights and practices. It provides bilateral consistency plans between the US and the three Southeast Asian countries - Vietnam, Malaysia and Brunei - placing additional requirements on the three to avail of the trade privileges in the agreement. The three consistency plans are developed according to domestic culture and needs and hence differ in content, scope and enforcement mechanism.

Despite such efforts, there are criticisms, especially in the US, discussing the loopholes as well as implementation and monitoring issues. For example, the Brunei Consistency Plan talks about ending document confiscation and public outreach to inform and educate people, but does not talk about high fees levied on migrant workers by recruitment agencies. For Malaysia, the Consistency Plan does not specifically mention the right to bargain in all sectors. It also does not clearly hold employers fully accountable for forced labour. In the case of Vietnam, the plan mentions prohibition on discrimination, but does not specify religion, political opinion, or immigration status as protected categories. Despite the right to strike or to form unions that are independently managed, there is no clear mention of penalties for employers violating those rights.

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<sup>48</sup> United States-Vietnam Plan for the Enhancement of Trade and Labour Relation (<https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labour-Relations.pdf>)

<sup>49</sup> William Mauldin, 'TPP gives US increased power to push nations to improve labour practices', October 5, 2015, The Wall Street Journal (<http://www.wsj.com/articles/pacific-trade-deal-gives-u-s-increased-power-to-push-nations-to-improve-labor-practices-1444058329>)

<sup>50</sup> Alana Samuels, 'The TPP's uneven attempt at labour protection', The Atlantic, 22 January 2016 (<http://www.theatlantic.com/business/archive/2016/01/tpp-mexico-labor-rights/426501/>).

For all of these countries, the consistency plan fails to include any evaluation mechanism to monitor the implementation of the necessary legal and regulatory changes. Moreover, critics complain that these countries have little incentive to undertake domestic reforms in a timely manner as the countries can avail of market access privileges soon after the agreement is ratified.<sup>51</sup>

Nevertheless, the TPP is a good beginning. Its labour chapter has the potential to lead the outcomes of future multilateral trade agreements involving the Asia-Pacific countries. For the developing countries in Southeast Asia, it provides guidelines to undertake improvements in their labour conditions. In the end, it is the political will of member economies to enforce the labour standards that they have already committed to in the trade agreement.

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<sup>51</sup> AFL-CIO (America's Union), 'The Gold Standard for Workers? The State of Labour Rights in Trans-Pacific Partnership Countries,' ([http://www.aflcio.org/content/download/174525/4153892/1628\\_TPPLaborRightsReport.pdf](http://www.aflcio.org/content/download/174525/4153892/1628_TPPLaborRightsReport.pdf))