

POLICY ESSAY

WHEN IT COMES TO FREE TRADE POLICY, HUMAN RIGHTS SHOULD BE A GAME CHANGER

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Since the end of World War II, the United States has entered into many free trade agreements. These agreements have not only been offered as a reward to U.S. allies, but have also been entered into with countries that routinely violate basic human rights standards that the United States holds dear. Policymakers have often claimed, as was the case with the U.S.–Vietnam free trade agreement negotiated in the 1990s, that these agreements would encourage improvements in human rights conditions. However, in Vietnam and elsewhere, such agreements have almost universally failed to yield any improvements. Now, as the United States considers approving the Trans-Pacific Partnership Agreement (“TPP”), members of both political parties must reevaluate this failed approach and take a meaningful stand for human rights. This Essay argues that specific, measurable human rights commitments should be a necessary prerequisite before any trade deal is consummated. Unless the United States requires enforceable commitments from counterparties that they will respect human rights, it should not reward countries with the economic and political benefits that accompany free trade. In other words, the United States must chart a new course in trade negotiations, by linking free trade benefits to human rights progress.

I. INTRODUCTION

The United States is a beacon for freedom, democracy, and liberty, and the ultimate advocate and defender of these values throughout the world. According to the U.S. Department of State: “The protection of fundamental human rights was a foundation stone in the establishment of the United States over 200 years ago. Since then, a central goal of U.S. foreign policy has been the promotion of respect for human rights, as embodied in the Universal Declaration of Human Rights.”¹ Although the State Department and others within the foreign policy establishment never hesitate to criticize other countries for neglecting their commitment to the Universal Declaration of Human Rights (“UDHR”), U.S. foreign policy has often failed to give appropriate priority to human rights concerns.

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¹ *Human Rights*, U.S. DEP’T OF STATE, <http://www.state.gov/j/drl/hr/> (last visited Mar. 26, 2015), archived at <http://perma.cc/H3PV-NQWU>.

Policymakers claim time and time again that a commitment to human rights on the part of American allies and trade partners is non-negotiable,² only to bargain away human rights commitments, in exchange for assurances of economic benefits, regional influence, or political power.³ Especially in Congress, invocation of human rights is often used as a rhetorical device to justify support for or opposition to certain policies, while rarely carrying the weight of a true “game changer.”

One of the areas in which this contradiction is most evident is U.S. trade policy. As Congress debates and ultimately votes on the Trans-Pacific Partnership (“TPP”),⁴ the United States has a singular opportunity to reaffirm its commitment to human rights and to disavow misguided policies that mortgage that commitment in exchange for empty promises of political and economic influence.

This Essay begins by discussing the United States’s past practices regarding human rights, and, more specifically, regarding trade agreements. It then puts forth the United States–Vietnam free trade agreement as one example of a free trade agreement that promised too much improvement in human rights and delivered too little. Finally, this Essay concludes with a call to action: congressional approval of the TPP must be conditioned on concrete human rights commitments from our negotiating partners. The United States’s fundamental national values demand that it makes human rights central to trade policy. If prospective economic partners do not show a strong commitment to human rights, the United States must not reward them with the economic and political benefits that accompany free trade. The citizens of these countries and the American people deserve better.

II. AN OLD PROBLEM: PAST TRADE AGREEMENTS AND HUMAN RIGHTS

The subordination of human rights to short-term economic interests is contrary to both American national interests and the values embodied in the Universal Declaration of Human Rights (“UDHR”). As chairwoman of the UDHR drafting committee, Eleanor Roosevelt was not only the original drafter of the document, but was also the driving force behind its adoption.⁵

² See, e.g., 144 CONG. REC. 14,013 (1998) (statement of Rep. Joe Scarborough) (“[W]hether we are fighting for civil rights in Birmingham or Beijing it is non-negotiable. Regrettably we have negotiated away too many of those freedoms and too many of those rights for a higher Dow Industrial and a lower price on consumer goods.”).

³ See Paul Park & Katherine H.S. Moon, *Human Rights and Diplomacy: The Koreas, U.S., and China*, BROOKINGS INST. (Nov. 14, 2014), <http://www.brookings.edu/blogs/up-front/posts/2014/11/14-human-rights-diplomacy-park-moon>, archived at <http://perma.cc/RL3Y-5GFK>.

⁴ See “Fast Track,” *TPP Debate Set to Ramp Up as New Congress Takes Office*, INT’L CTR. FOR TRADE & DEV. (Jan. 15, 2015), available at <http://www.ictsd.org/bridges-news/bridges/news/fast-track-tpp-debate-set-to-ramp-up-as-new-us-congress-takes-office>, archived at <http://perma.cc/833G-PAT2>.

⁵ See *The Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Mar. 26, 2015), archived at <http://perma.cc/VGF3-HAGV>.

For decades, the U.S. government has made clear that “a central goal of U.S. foreign policy has been the promotion of respect for human rights, as embodied in the” UDHR.⁶ Even today, the U.S. State Department acknowledges this priority in no uncertain terms:

Because the promotion of human rights is an important national interest, the United States seeks to hold governments accountable to their obligations under universal human rights norms and international human rights instruments; promote greater respect for human rights, including freedom from torture, freedom of expression, press freedom, women’s rights, children’s rights, and the protection of minorities; promote the rule of law, seek accountability, and change cultures of impunity.⁷

That respect for human rights is very much part of the United States’s foundation is routinely affirmed in such official declarations. It is also a fundamental legal obligation of the United States and a universally accepted aspiration of the international community.

From all the treaties, laws, and speeches extolling the importance of human rights, one might expect that such considerations would be primary factors in deciding U.S. policy. In reality, human rights too often take a backseat to other priorities. As new trade agreements come up for debate, Congress must again ask an old question: is it appropriate for the United States to develop close economic ties with countries that have deplorable human rights records? Despite ongoing and well-publicized human rights violations, the United States has signed trade agreements with human rights violators, including Colombia and Vietnam.⁸ Politicians from both political parties claimed these deals were necessary to ensure economic and regional influence.⁹ While some such agreements have, indeed, enhanced American influence abroad, all too often they have rewarded countries that obstinately violate fundamental human rights without imposing any costs.¹⁰

⁶ See U.S. DEP’T OF STATE, *supra* note 1.

⁷ *Id.*

⁸ See *U.S.-Colombia Trade Agreement: Overview of the U.S.-Colombia Trade Agreement*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/uscolombiatpa/facts> (last visited Mar. 26, 2015), archived at <https://perma.cc/9DH2-G3ME>; *The U.S.-Vietnam Bilateral Trade Agreement (BTA) - Resources for Understanding*, Embassy of the U.S. – Hanoi, Vietnam, <http://vietnam.usembassy.gov/econ12.html> (last visited Mar. 26, 2015), archived at <http://perma.cc/XQW2-H4HX>.

⁹ See Thomas F. McLarty, *Voting Yes on Trade is Hard for Democrats But Necessary*, WALL ST. J., Jan. 6, 2015, available at <http://www.wsj.com/articles/mack-mclarty-voting-yes-on-trade-is-hard-for-democrats-but-necessary-1420590566>, archived at <http://perma.cc/MN3W-G2NM>.

¹⁰ See Cu Huy Ha Vu, *Standing up for Human Rights in Vietnam*, WASH. POST, May 16, 2014, available at http://www.washingtonpost.com/opinions/standing-up-for-human-rights-in-vietnam/2014/05/16/cd040826-d7b6-11e3-8a78-8fe50322a72c_story.html, archived at <http://perma.cc/BEL6-HNBR>.

The United States entered into these trade agreements hoping that stronger economic ties would push its counterparties toward more open and responsible societies.¹¹ In most cases, however, this expectation has not been met; rather, the human rights situations in these countries have remained stagnant or have deteriorated. For example, the trade agreement negotiated with Vietnam in the 1990s was, like the TPP is today, justified in part by claims that it would improve the abysmal human rights record of the counterparty.¹² Before such assertions in support of the TPP are blindly accepted, Congress should consider the extent to which past agreements with Vietnam have compromised, rather than furthered, the American human rights agenda.

III. FREE TRADE'S EMPTY PROMISE: THE VIETNAM CASE STUDY

U.S. economic relations with Vietnam are relatively new. Following the Vietnam War, the United States placed an embargo on bilateral trade with Vietnam,¹³ and it was not until the 1990s—nearly thirty years after the withdrawal of U.S. forces—that the United States restarted meaningful dialogue with the government of Vietnam.¹⁴ In 1991, five years after the Vietnamese Communist Party “adopted market-oriented economic reforms, [and] loosened many domestic political controls,” the United States opened an office in Hanoi to coordinate POW/MIA matters.¹⁵ Soon after his election, President Bill Clinton made clear his intent to normalize relations with Vietnam.¹⁶ Despite U.S. congressional efforts to require some accountability regarding Vietnam’s human rights record,¹⁷ President Clinton ended the trade embargo in February 1994.¹⁸ This significant step towards normalization of relations was soon followed by the appointment of the first post-war ambassador to

¹¹ See Juan Carlos Hidalgo & Daniel Griswold, *Free Trade Agreement Would Promote U.S. Exports and Colombian Civil Society*, FREE TRADE BULL. 1 (Feb. 15, 2011), available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/FTB-044.pdf>, archived at <http://perma.cc/E5YR-RHMY>.

¹² See *U.S. Relations With Vietnam*, U.S. DEP’T. OF STATE (Feb. 11, 2015), <http://www.state.gov/t/pa/ei/bgn/4130.htm>, archived at <http://perma.cc/2ZBH-5Q24> (“The United States wants a strong, independent, and prosperous Vietnam that respects human rights and the rule of law. U.S. relations with Vietnam have become increasingly cooperative and broad-based in the years since political normalization.”).

¹³ MARK E. MANYIN, CONG. RESEARCH SERV., R40208, U.S.-VIET. RELATIONS IN 2014: CURRENT ISSUES AND IMPLICATIONS FOR U.S. POLICY 7 (2014), available at <https://www.fas.org/sgp/ctr/row/R40208.pdf>, archived at <https://perma.cc/TF36-TR2P>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The author of this Essay accompanied President Clinton on his historic visit to Vietnam in 2000. See *Sanchez Skips Diplomacy for Vietnam Trip*, L.A. TIMES, Nov. 16, 2000, available at <http://articles.latimes.com/2000/nov/16/local/me-52674>, archived at <http://perma.cc/C5BZ-63BJ>.

¹⁷ MANYIN, *supra* note 13, at 7.

¹⁸ Patrick Cockburn, *US Finally Ends Vietnam Embargo*, INDEPENDENT, Feb 4, 1994, available at <http://www.independent.co.uk/news/world/us-finally-ends-vietnam-embargo-1391770.html>, archived at <http://perma.cc/4G4A-JWUQ> (quoting President Clinton’s claim that

Vietnam, and, in 2000, the signing of the U.S.–Vietnam Bilateral Trade Agreement (“BTA”).¹⁹

BTAs are significant because they dramatically expand and advantage counterparties’ trade relations with the United States. The U.S.–Vietnam BTA, for example, announced “a commitment by both sides to create necessary conditions for the products, businesses, and nationals of the other side to have fair access to compete in the other’s markets.”²⁰ In exchange for promises that it would provide a level playing field for U.S. companies and goods, Vietnam received access to U.S. markets at much lower tariff rates.²¹ The BTA represented the culmination of the normalization of relations with Vietnam, and “clear[ed] the way for Vietnam to receive NTR [“normal trade relations”] treatment on an annual basis.”²² In 2006, the United States granted Vietnam permanent NTR (“PNTR”) status, as part of a deal allowing Vietnam to join the World Trade Organization (“WTO”).²³

Unfortunately, in spite of deepening economic relations with the United States, Vietnam did little to mitigate its severe human rights violations. In the years immediately following the BTA, a number of dissidents, academics, and religious leaders were harassed, detained, and put under house arrest for exercising their rights to freedom of speech, freedom of religion, and freedom to assemble.²⁴ Political dissidents were prohibited from expressing their beliefs, and the Vietnamese Communist Party significantly limited the mobility of religious leaders, including those of the Unified Buddhist Church of Vietnam (“UBCV”) and of Protestant evangelical churches.²⁵ In 2000, “domestic media remained under strict state control and published scarcely any criticism of the government.”²⁶ According to Human Rights Watch, “[i]nternet access remained tightly controlled for Vietnam’s approximately 85,000 subscribers (0.1 percent of the country’s population).”²⁷ Even the State Department, presumably amenable to the BTA, acknowledged that, as of the year 2001:

The Government[] [of Vietnam’s] human rights record worsened in some respects and it continued to commit numerous, serious abuses. The Government continued to repress basic political and

lifting the embargo “offer[ed] us the best way to resolve the fate of those who remain missing and about whom we are not sure”).

¹⁹ MANYIN, *supra* note 13, at 7, 8. The BTA went into effect in December 2001.

²⁰ *U.S.-Vietnam Bilateral Trade Agreement (BTA)*, *supra* note 8.

²¹ *Id.*; MANYIN, *supra* note 13, at 8.

²² *Vietnam Bilateral Trade Agreement: Historic Strengthening of the U.S.-Vietnam Relationship*, Nat’l Econ. Council (July 13, 2000), <http://clinton4.nara.gov/WH/EOP/nec/html/RosenUS-VietBilat000713.html>, archived at <http://perma.cc/Q76Y-MGKU>.

²³ MANYIN, *supra* note 13, at 8.

²⁴ See HUMAN RIGHTS WATCH, *World Rep. Viet.: Hum. Rts. Devs.* (2001), available at <http://www.hrw.org/legacy/wr2k1/asia/vietnam.html>, archived at <http://perma.cc/K8MX-RLZN>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

some religious freedoms and abuses by the Government increased Prison conditions remain harsh, particularly in some isolated provinces. Police beat suspects during arrests, and sometimes beat suspects during detention and interrogation. Incidents of arbitrary detention of citizens, including detention for peaceful expression of political and religious views, increased.²⁸

Thus, it is clear that the BTA was not tied to any demands for immediate improvement in Vietnam's human rights policies.

As the Vietnamese government continued to repress its citizens, it reaped significant economic benefits. Between 2000 and 2001—when NTR was granted—U.S. imports from Vietnam increased from \$822 million to \$1.05 billion; between 2006 and 2007—when PNTR status was granted—imports from Vietnam grew from \$8.5 billion to \$10.6 billion.²⁹ Yet, in 2001, the U.S. Commission on International Religious Freedom (“USCIRF”) recommended designating Vietnam as a Country of Particular Concern (“CPC”) due to its ongoing restrictions of religious freedom.³⁰

Although some have argued that Vietnam has grown more tolerant of religious plurality,³¹ USCIRF's 2014 Annual Report recommended re-classifying Vietnam as a CPC.³² Indeed, the human rights situation in Vietnam remains as urgent as it was in 2005 when the Commissioner of USCIRF, Nina Shea, testified before the House International Relations Committee's Subcommittee on Africa, Global Human Rights and International Operations. During this hearing, Commissioner Shea argued:

Our deepening economic and commercial relationship with Vietnam may encourage economic reform and transparency and it may draw Vietnam further into a rules-based international trading system, but the evidence suggests that it has not encouraged greater political freedom for Vietnamese citizens. The human rights situation in Vietnam has not improved since passage of the Bilateral Trade Act of 2001 The lessons of recent history are quite

²⁸ U.S. Dep't of State: Bureau of Democracy, Human Rights, and Labor, Country Reps. on Hum. Rts. Pracs.: Viet. 1 (Mar. 4, 2002), available at <http://www.state.gov/j/drl/rls/hrrpt/2001/eap/8384.htm>, archived at <http://perma.cc/S4M9-WHMN>.

²⁹ MANYIN, *supra* note 13, at 13 (citing data from the United States International Trade Commission).

³⁰ U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANN. REP. 103 (2014), available at <http://www.uscirf.gov/sites/default/files/USCIRF%202014%20Annual%20Report%20PDF.pdf>, archived at <http://perma.cc/L8BV-EK5W>. Other countries designated as CPCs include North Korea, Burma, Sudan and Iran. The CPC list is put together by USCIRF, an independent commission that advises Congress, the State Department and the President on domestic and foreign religious freedom violations. USCIRF provides annual reports that categorize countries into tiers depending on the severity of their religious freedom violations. Tier 1 includes “countries whose governments engage in or tolerate ‘particularly severe’ violations of religious freedom” that are “systematic, ongoing and egregious.” *Id.* at 12, 32.

³¹ See MANYIN, *supra* note 13, at 18–19 (arguing that the Vietnamese Communist Party “informally permit[s]” religious views that do not pose a threat to the regime).

³² U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *supra* note 30, at 5.

clear—economic freedom and political freedom cannot be separated.³³

Furthermore, the Vietnamese government has increased its “suppression of dissent.”³⁴ The Vietnamese government continues, to this day, to “target[] specific individuals and organizations that have called for the institution of democratic reforms and/or publicly criticized government policy on sensitive issues The government increasingly has targeted bloggers and lawyers who represent human rights and religious freedom activists.”³⁵

Currently, the Vietnamese government incarcerates hundreds of political and religious prisoners whose only “crimes” are peacefully advocating for social justice and religious freedom in Vietnam. Pastors, priests, and members of Vietnam’s diverse religious community continue to face increased scrutiny and imprisonment for following their religious beliefs. It is now abundantly clear, fifteen years after signing the BTA, that free trade has not produced any meaningful human rights gains in Vietnam.

During this time, however, Congress did not sit idly by. Rather, members of Congress actively lobbied the Clinton Administration, arguing against rewarding Vietnam with economic opportunities such as accession to the WTO as well as PNTR status, unless the Vietnamese government took steps to respect the rights of its own citizens.³⁶ One of the key leaders of this effort has been the Congressional Caucus on Vietnam.³⁷ This Caucus aims to bring attention to the Vietnamese government’s repeated violations of fundamental human rights and urges Congress and the President to avoid undermining American human rights interests. To this end, in May 2006, members

³³ *Human Rights in Vietnam: Testimony by Nina Shea, Vice-Chair Before the House Int’l Relations Comm. Subcomm. on Africa, Global Human Rights and Int’l Operations*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM (June 20, 2005), <http://www.uscirf.gov/advising-government/congressional-testimony/human-rights-in-vietnam>, archived at <http://perma.cc/A485-J7L9>.

³⁴ MANYIN, *supra* note 13, at 15.

³⁵ *Id.* Some have guessed that this increased crackdown, despite the general weakness of pro-democracy forces, is a result of the Vietnamese Communist Party’s concerns about “growing discontent over alleged government corruption, land seizures by government institutions and officials, worsened economic conditions, and a sense among some Vietnamese that Hanoi has been unable to prevent China from asserting its maritime claims at Vietnam’s expense” as well as “power struggles among Vietnam’s top leaders.” *Id.* at 15–16.

³⁶ See 152 CONG. REC. 21,843 (2006) (statement of Rep. Loretta Sanchez) (arguing against “establishing Permanent Normal Trade Relations (PNTR) with Vietnam without mandating essential human rights protections”); 152 CONG. REC. 21,844 (2006) (statement of Rep. Dana Rohrabacher); 152 CONG. REC. 21,844 (2006) (statement of Rep. Wolf).

³⁷ The Caucus was founded and co-chaired by the author in 1997. See 144 CONG. REC. H698 (daily ed. Mar. 3, 1998) (statement of Rep. Loretta Sanchez), (announcing the founding of the Congressional Dialogue on Vietnam); *Loretta Sanchez*, WALL ST. J. (2012), <http://projects.wsj.com/campaign2012/candidates/view/loretta-sanchez—CA-H>, archived at <http://perma.cc/5GPD-JKFT>. Although initially known as the Congressional Dialogue on Vietnam, the group was later renamed the “Congressional Caucus on Vietnam.” See *Congresswoman Loretta Sanchez Accomplishments*, POLITICO (2010), http://www.politico.com/pdf/PPM169_congresswoman_loretta_sanchez_accomplishments_fact_sheet.pdf, archived at <http://perma.cc/6MKA-ZMCJ>.

of the Congressional Caucus on Vietnam sent a letter to the U.S. Trade Representative—Designate Susan Schwab, calling her attention to concerns regarding Vietnam’s accession to the WTO.³⁸ This letter indicated congressional opposition to allowing Vietnamese accession to the WTO until the country of Vietnam showed good-faith efforts to improve its record on the treatment of its citizens.³⁹ It also argued that giving Vietnam the benefits of more open trade status would turn a blind eye toward some of the worst human rights violations of our time. In effect, it would reward a country with expanded trade status while that country denied its own people the right to speak freely.⁴⁰

From the start, Congress has been playing catch-up. Members of both chambers of Congress have introduced various versions of a Vietnam Human Rights Act (some of which the author co-sponsored) but have thus far been unsuccessful getting a version passed in the Senate.⁴¹ Members of the House and Senate have very different agendas and interests in relation to Vietnam; some view Vietnam as integral to the United States’s China policy and some see it as critical to U.S. economic interests in the region. Yet those who favor increased trade liberalization, regardless of the human rights cost, maintain the upper hand because the BTA is already in place. All congressional attempts to condition these benefits on human rights progress have failed. A new approach is needed to give human rights a central role in American trade policy. Rather than trying to clean up the human rights problems after passing a free trade agreement, the United States must build commitments to respect human rights into those agreements in the first instance.

IV. REPEATING PAST MISTAKES: THE TRANS-PACIFIC PARTNERSHIP

When the United States continues to offer economic opportunities without requiring any tangible changes, what incentive is there for governments to stop repressing their own people? Despite Vietnam’s unacceptable human rights record, the United States is currently considering authorizing “fast-track authority” for the TPP free trade agreement that would include Vietnam and other countries with similarly poor records.⁴² The TPP negotiations

³⁸ Letter from Rep. Loretta Sanchez to Susan Schwab, U.S. Trade Representative-Designate (May 2006) (on file with author).

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 2.

⁴¹ See, e.g., *All Bill Information (Except Text) for H.R. 1897 – Vietnam Human Rights Act of 2013*, CONGRESS.GOV (2013), <https://www.congress.gov/bill/113th-congress/house-bill/1897/all-info#major-actions>, archived at <https://perma.cc/JG63-GHS3>; MANYIN, *supra* note 13, at 21 n.52 (describing the Senate’s continued failure to pass legislation requiring Vietnam’s government to respect human rights).

⁴² See *Obama’s Top Asia Adviser: Goal Is for Complete Trade Pact in 2015*, N.Y. TIMES, Jan. 22, 2009, available at <http://www.nytimes.com/reuters/2015/01/22/us/politics/22reuters-usa-trade-asia.html>, archived at <http://perma.cc/F5DP-2GYF>.

currently include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States.⁴³ The objective of this massive agreement is to eliminate tariffs and non-tariff barriers to trade in goods and services.⁴⁴ The agreement also includes text regarding intellectual property rights, foreign direct investment, and other issues.⁴⁵ President Obama has made the TPP a cornerstone of his second-term economic plan, despite significant opposition from members of Congress.

A trade agreement that might govern 40 percent of U.S. imports and exports should not include countries that perpetrate egregious human rights violations, absent specific human rights conditions.⁴⁶ Countries that commit such violations include Vietnam, Peru, and Brunei.⁴⁷ Members of Congress who oppose the agreement most often argue that it would hurt American workers.⁴⁸ Others oppose the TPP because the agreement does not enforce strong enough intellectual property, labor, and environmental rights.⁴⁹ Furthermore, many of those who oppose the TPP claim it is irresponsible to approve this agreement, given that it would cement partnerships with countries that violate basic human rights. In December 2014, the Department of Labor released an important report, enumerating a “List of Goods Produced by Child Labor or Forced Labor” and the countries in which those goods are

⁴³ *TPP Issue-by-Issue Information Center*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-issue-issue-negotiating-objectives> (last visited Mar. 8, 2015), archived at <https://perma.cc/4SG5-Y5W5>.

⁴⁴ *See Outlines of TPP*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (Nov. 12, 2011), available at <https://ustr.gov/tpp/outlines-of-TPP#>, archived at <https://perma.cc/2DKZ-MCMF>.

⁴⁵ *See id.*

⁴⁶ *See* Drew DeSilver, *The facts and figures behind proposed trans-Pacific trade deal*, PEW RESEARCH CTR. (Apr. 25, 2014), <http://www.pewresearch.org/fact-tank/2014/04/25/the-facts-and-figures-behind-proposed-trans-pacific-trade-deal/>, archived at <http://perma.cc/S53F-LV7D>.

⁴⁷ *See Human Rights in Vietnam*, HUMAN RIGHTS WATCH, <http://www.hrw.org/asia/vietnam> (last visited Mar. 8, 2015), archived at <http://perma.cc/Q2RR-E2LU>; *Human Rights in Peru*, HUMAN RIGHTS WATCH, <http://www.hrw.org/americas/peru> (last visited Mar. 8, 2015), archived at <http://perma.cc/24GA-THKC>; U.S. DEP'T OF STATE, BRUNEI 2013 HUMAN RIGHTS REP., available at <http://www.state.gov/documents/organization/220391.pdf> (last visited Mar. 8, 2015), archived at <http://perma.cc/FTH6-9QFY>.

⁴⁸ *See, e.g.,* Zach Carter & Michael McAuliff, *House Democrats Balk At Efforts By Obama, Boehner On Controversial Pacific Trade Deal*, HUFFINGTON POST (Jan. 9, 2014), http://www.huffingtonpost.com/2014/01/09/trans-pacific-partnership-obama-boehner_n_4570837.html, archived at <http://perma.cc/T8GH-F8JU>; *The Trans-Pacific Trade (TPP) Agreement Must Be Defeated*, OFFICE OF SEN. BERNIE SANDERS, <http://www.sanders.senate.gov/download/the-trans-pacific-trade-tpp-agreement-must-be-defeated?inline=file> (last visited Mar. 8, 2015), archived at <http://perma.cc/74W3-HLY3>.

⁴⁹ *See* Ibrahim Balkhy, *Obama's Trans-Pacific Partnership May Undermine Public Health, Environment, Internet All At Once*, HUFFINGTON POST (Dec. 9, 2013), http://www.huffingtonpost.com/2013/12/09/obama-trans-pacific-partnership_n_4414891.html, archived at <http://perma.cc/35PD-4WQF>.

produced.⁵⁰ According to the report, Vietnam, Mexico, Peru, and Malaysia all produce at least some goods using child labor.⁵¹

In a letter to U.S. Trade Representative Michael Froman, 153 House members stressed how important it is for the TPP to protect workers' rights in the United States, as well as those of workers in other, signatory countries. The letter focused on four countries of particular concern: Vietnam, Malaysia, Mexico and Brunei. These four countries' inability to conform to international labor standards illustrates the urgent need for compliance mechanisms to promote accountability. The TPP offers an historic opportunity to chart a new course toward accountability by setting benchmarks for human rights progress as a condition for trade benefits.⁵²

While TPP negotiators have claimed significant distinctions between those countries with whom the United States has been negotiating and those left out of the TPP, these distinctions do not withstand scrutiny. A recent *Washington Post* editorial noted that the United States has justified negotiating with Vietnam, but not with China, on the grounds that China "does not meet the pact's rule-of-law aspirations."⁵³ Yet Vietnam, which follows China's policy of seeking foreign investment while repressing its own citizens' rights—no independent trade unions allowed—would be a charter member⁵⁴ of the TPP.⁵⁴ The TPP in its current form is not only a mistake as a matter of policy, but also a betrayal of American values. Agreeing to do business with those who believe the rights and freedoms of individuals are not worth respecting compromises the values Americans hold dear.

Opposition to free trade agreements such as the TPP is often bipartisan, and arguments against free trade are typically based on a desire to protect American jobs.⁵⁵ While there are, indeed, legitimate concerns about shipping American jobs abroad, human rights concerns constitute an additional, independent reason to oppose participation in the TPP. Before initiating or developing significant economic ties with other countries, the United States must insist that universal standards of human rights are respected and central to

⁵⁰ BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR (2014), available at http://www.dol.gov/ilab/reports/pdf/TV-PRA_Report2014.pdf, archived at <http://perma.cc/3QV8-2HUC>.

⁵¹ *Id.* at 4–5.

⁵² Because the TPP negotiations are closed to the public, only time will tell if the agreement sets any human rights benchmarks. See Maira Sutton, *Secret TPP Negotiations—And Public Protests—To Be Held in New York City*, ELEC. FRONTIER FOUND. (Jan. 23, 2015), <https://www.eff.org/deeplinks/2015/01/secret-tpp-negotiations-and-public-protests-be-held-new-york-city>, archived at <https://perma.cc/7H3N-KWCG?type=image>.

⁵³ Editorial, *Human Rights Must be a Priority as U.S. Talks Trade with Vietnam*, WASH. POST, Dec. 13, 2013, available at http://www.washingtonpost.com/opinions/human-rights-must-be-a-priority-as-us-talks-trade-with-vietnam/2013/12/13/37d5ea14-640f-11e3-91b3-f2bb96304e34_story.html, archived at <http://perma.cc/KX8B-SN7H>.

⁵⁴ *Id.*

⁵⁵ See Alec MacGillis, *Why Obama's Big Trade Deal Isn't a Sure Thing*, SLATE (Feb. 2, 2015), http://www.slate.com/articles/news_and_politics/politics/2015/02/democrats_working_with_tea_party_against_obama_s_trade_deal_the_president.html, archived at <http://perma.cc/CYU7-BLME>.

any agreement. Just as President Obama has for many of his second-term priorities, he must insist that human rights commitments in the TPP are not a “nice-to-have—[they’re] a must-have.”⁵⁶ Trade can be used as a powerful tool to exert influence, and require that other countries take a positive position on human rights issues. This influence should be fully exerted before the agreements are signed and enter into effect lest the United States repeat the failures of the U.S.–Vietnam BTA.

Trade advocates correctly argue that established trade agreements can function as an enforcement mechanism for human rights in many of these countries. However, the United States must learn from the past and avoid the delusion that, if it enables countries like Vietnam to improve their economic statuses, they will stop abusing and ignoring the rights of their citizens. History has shown that increased exposure to international markets does not push countries to change their behavior regarding human rights. The TPP is an opportunity for the United States to return to its core values, uphold international human rights standards, and practice what it preaches. The United States can no longer afford to ignore illegal and immoral behavior on the part of its trading “partners” in the name of economic and political benefits.

V. CONCLUSION

In recent times, the United States has seen its interest in increased economic strength come into direct conflict with its interest in promoting human rights abroad. Those arguing for increased economic ties with human rights violators have almost invariably carried the day. Now, free trade agreements are once again on the table, as a priority of President Obama’s final years in office. Driven by domestic political priorities, politicians from both sides of the aisle will doubtless argue that U.S. economic interests must be paramount. These arguments must not eclipse human rights imperatives this time around. Human rights represent a core international and American value, and they deserve to be recognized as such. Moreover, it is widely acknowledged that the spread of democracy, rule of law, and respect for human rights promote political stability and economic growth abroad, which inevitably yield economic benefits to the United States. In effect, the United States will do well by doing good.

Before Congress grants President Obama fast-track authority with respect to any future trade deal, it should mandate that any such agreement contain explicit, stringent, and enforceable requirements that counterparties respect the rights of their citizens. If these requirements are put into effect, the United States can stand, once more, as a global beacon of freedom.

⁵⁶ See President Barack Obama, Remarks as Prepared for Delivery of the State of the Union Address (Jan. 20, 2015), *available at* <http://www.whitehouse.gov/the-press-office/2015/01/20/remarks-president-barack-obama-prepared-delivery-state-union-address>, *archived at* <http://perma.cc/7ST8-33UH>.

