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Trade and Human Rights: What Is Canada’s Role?

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Context: 21st Century Challenges to Human Rights

- **Economic problems** (recession/unemployment/slow growth/stagnation/corruption in many developing countries).
- **Technical and scientific progress** (cell phones, bio tech, big data etc....) can be human rights enhancing and/or undermining.
- **Governments struggle** to respect, protect, and remedy human rights in ever changing human rights environment. Limits of will and capacity. Citizenship is a good example of unwillingness.
- **Policy conflicts** (e.g. open borders and right to life for migrants vs. political stability in Europe; inadequate shared tax strategies).
- **Unanticipated spillovers** For example, cases on breaching online privacy could both directly and indirectly affect human rights—including their physical and financial security.
- Citizens/Investors/Consumers have *rising expectations of business*, government and other actors on human rights.
Kudos to Canada

- With Progressive Trade Policy, Canada is leading efforts to use trade agreements to prod other governments to respect specific human rights: gender, labor rights, Indigenous rights.
- But is this sufficient?
- And is it effective?
Under the Universal Declaration, to protect human rights, sometimes governments must intervene in markets to ensure adequate, affordable provision of public goods like education or sanitation.

In other instances, governments must avoid acting (to protect the right to privacy or freedom of speech).

Thus, protecting human rights requires policy expertise! When using trade policy to promote human rights, policymakers should seek to build that expertise (the supply side of governance), as well as work to build a demand for human rights.

Thoughts?
Industrialized country policymakers have expertise helping developing country counterparts build capacity to protect and advance human rights (*the supply side*).

Policymakers are not good at bolstering the *demand side of human rights*.

When we use sanctions, we focus on supply of human rights and presume that policymakers in repressive countries are sensitive to changes in supply of traded goods.

We should also think about how the incentive of increasing trade with trade agreements can bolster the local inherent demand for human rights.
Expectations of trade agreements vs reality

- Expectation: Policymakers and the public make broad assertions about the effects of trade agreements upon human rights. Truth is effects of expanded trade (which trade agreements supposedly bring) are uneven and ever changing.

Example: labor rights in Mexico—over the 24 years of NAFTA, some improvement in labor rights in Mexico, but enforcement uneven due to “protection contracts, which undermine unions. AFL-CIO and Mexico’s National Workers Union are collaborating to challenge protection contracts under the NAALC-labor side agreement of NAFTA.
Short Term vs. Long Term Direct vs. Indirect Effects

• A trade agreement can simultaneously have direct positive effects on some human rights over time as well as negative effects on other human rights. Moreover, those effects can change over time as GNP, governance capacity, will, and funding to improve the governance for human rights changes over time.

• So NAFTA may not have dramatically improved labor rights, but attention to labor right in Mexico increased in all 3 countries and unions are collaborating to protect and empower workers.
So let’s take those questions and apply them to AI

- AI can be defined as a computer system that performs tasks usually associated with people.
- Canada has comparative advantage in AI, but to succeed in AI, need lots of personal data.
- Canada only has 38 million people, needs access to greater population to achieve economies of scale and scope re. data.
But Canada says little about the how and how the how affects human rights

- Priority: Canada needs bigger markets if it wants to encourage growth thru digital sectors.
- Priority: Internet must be free and open. Personal data must be protected. Individuals need ability to see algorithms at times to prevent misuse. Government needs ability to prevent, regulate use.
Yet Canada has not figured out or put forward an AI trade policy that

- Allows its firms access to data while simultaneously protecting personal information and allowing individuals rights to challenge use of algorithms/Al because without direct intent they could undermine some human rights.
Another example

- 30% of workers in Canada are contingent workers including those in the gig economy.
- But trade agreements don’t cover them.
What does this mean for NAFTA? (I)

- **Human rights**
  - CETA has some human rights language but it is limited (mostly third-country related)
    - Preamble: Members **reaffirm** “their strong attachment to democracy and to fundamental rights as laid down in the Universal Declaration of Human Rights.”
    - Preamble: Members **recognize** “the importance of international security, democracy, human rights and the rule of law for the development of international trade and economic cooperation.”
    - Annex 8–E: “With respect to Articles 8.16, 9.8 (Denial of benefits) and 28.6 (National security), the Parties **confirm** their understanding that measures that are ‘related to the maintenance of international peace and security’ **include the protection of human rights**.”
  - Make it a chapter?
    - Adopt binding language and make it enforceable under chapter 20 (state-to-state)?
    - Denial of benefits to firms of a Party that have poor human rights records, at home and or abroad?
What does this mean for NAFTA? (II)

Gender chapter
- CETA has one reference to gender
  - Article 8.10: “Each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security”
    - Para. 2(d): “targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief” is one of the grounds for breaching “fair and equitable treatment.”
- Canada–Chile FTA as an example? Is it enough?
  - Integrate the Canada–United States Council for Advancement of Women Entrepreneurs and Business Leaders into NAFTA, adding Mexico?
- Going further?
  - Adopt binding language and make it enforceable under chapter 20 (state–to–state)?
  - Denial of benefits to firms that do not protect gender equality at home or abroad?
  - Allow for discrimination in favour of women–owned businesses (from all 3 countries) in public procurement process?
What does this mean for NAFTA? (III)

- Digital trade and data flows
  - CPTPP is supposedly the model
    - Protects cross-border data flows
    - Prohibits the imposition of tariffs on electronic transmissions
    - Prohibits the obligation for a business to locate specific computing facilities in exchange for market access
    - Ensures that countries have laws and regulations that protect consumers (privacy and security, fraudulent & deceptive activities)
    - Mechanism for member states to cooperate on a range of digital related issues
  - But “legitimate public policy objectives” can allow for derogation as long as it is not disguised protectionism.
    - Can this apply to regulations supporting AI?
What does this mean for free trade with China?

- Labour rights
  - A hard sell but not impossible
- Gender and human rights
  - A much harder sell
- Digital trade and data flows
  - Opening up China’s digital market is the challenge
    - How to break through the Great Firewall?
  - China will claim that security concerns trump free cross-border digital trade and data flows

- Canada is unlikely to make much headway on these issues in its FTA negotiations (should they ever go ahead).
Conclusion

- Canada has the credibility to push for a more progressive (or inclusive) trade internationally.
- But its leadership capacity is limited.
- So it needs EU and US to also take up the agenda (but US is currently not in a position to help).
- Getting China and other emerging economies on board will take a long time.
- What kind of incentives (carrot and sticks) can Canada and like-minded countries offer?
Thank you | Merci