

Human Rights Concerns in Trade Policy

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Introduction

- Importance of integrating human rights and trade policy. 2013 APFC National Task Force Report. 2012-2018 SSHRC/MCRI project.
- Examine specific issues of gender, indigenous rights, labour, environment, in context of BRI, AIIB, and Cdn-China trade and investment.
- Suggest case for integration of trade policy and human rights.



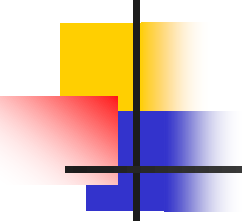
I. Tensions Over **Integrating Human Rights** **and Trade**

- Regional investment and trade: Belt and Road Initiative.
- Regional financing: AIIB.
- Bilateral relations: Cdn-China.



A. Belt and Road Initiative (BRI).

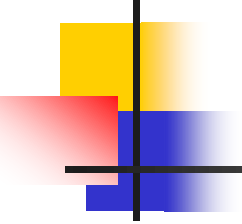
- Deference to local conditions (e.g., “Principles” in BRI Vision and Actions founding document: sovereignty, non-interference, tolerance among civilizations, different paths and modes of development, “unimpeded trade”).
- World Bank 2019: Potential for poverty alleviation and income growth, but significant risks of environmental and social harm .

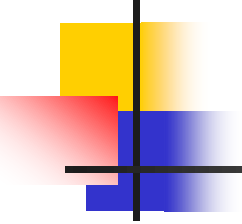
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- Questions about *Gender* (local traditions practice), *Indigenous* rights (WDP, Rohingya, India, etc.), *Labour* (pre-BRI issues in Africa, BRI issues on Pakistan M4 Highway, Greek port of Piraeus), *Environment* (Tsinghua re BRI and Paris goals; existing harms in SCS, SE Asia).



B. Asia Infrastructure Investment Bank (AIIB).

- Heavily influenced by World Bank and ADB models (e.g., “The Bank, its President, officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned”).
Changing contexts?

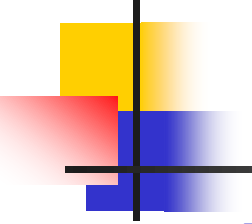
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- Environmental and Social Framework includes gender equality and treatment of labour, but does not depict these as human rights. On *gender* the Bank “supports” and “encourages” gender measures. No mandated protection and no treatment of these issues as rights-based.

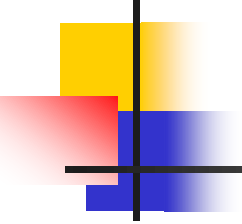
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- On *labour*, AIIB supports measures for labour protection (e.g., wages, conditions, etc.) “consistent with national law.” Again, labour not a right but one of many contending claims.
 - No Dworkinian “rights as trump claims” for gender and labour. ESF focus on “social development and inclusion” – “these human rights.”



C. Canada - China Trade and Investment.

- FIPPA: Article 33 (General Exceptions, consistent with GATT XX) Paragraph 2:
 - Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures (a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; (b) necessary to protect human, animal or plant life or health, [c) exhaustible natural resources].

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- Implications for (a) *Gender* rights (e.g., Canadian Human Rights Act), (b) *Indigenous* rights (UNDRIP, Truth and Reconciliation), (c) *Labour* rights (Canadian Labour Code and Labour Standards Regulations), (d) *Environmental* rights (e.g., Canada Environmental Protection Act; BC Environmental Management Act and Water Sustainability and Protection Acts).

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- Discussion on possible FTA. Context of Colombia, USMCA inclusion of human rights provisions (limited, much critiqued).
 - Context of Cdn “Progressive Trade Policy” re labour, environment, gender, indigenous rights (also dispute resolution).
 - Difficulties re progressive elements (esp. labour and gender). Other difficulties.



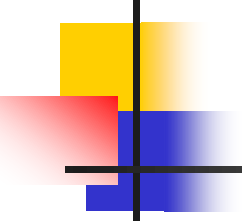
D. Observations.

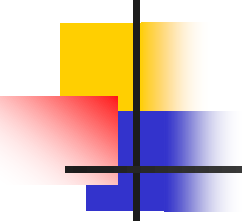
- Improvements in discussing human rights in context of trade policy.
- Silo's and barriers being challenged.
- But, BRI deference to local conditions, AIIB limited views on gender and environment rights plus deference to local law, discomfort with "progressive trade agenda" in Cdn-China relations reveal continued challenges.

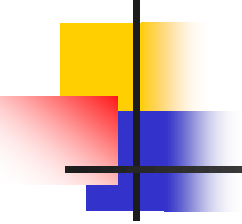


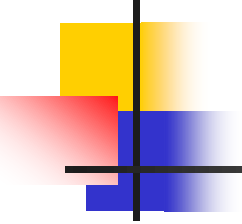
III. Complementarity of Human Rights and Trade

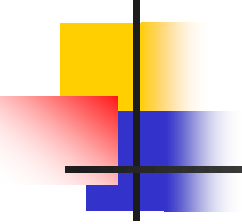
- APFC National Task Force Report on Integrating Human Rights and Trade.
- Recent series with UBC Press series on “Asia Pacific Legal Culture and Globalization” includes volumes on integrating trade policy with human rights in labour, health, development, poverty alleviation. Also, policy volume on Gender Rights and Trade (2012).

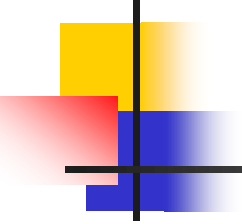
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- *Gender* rights: Defer to other speakers. Moral Imperative *plus*. Women are the greatest untapped human resource on the planet. Business case for respecting, engaging, promoting, encouraging leadership by women.
 - *Indigenous* rights. BC's enactment of the UNDRIP, Truth and Reconciliation action items testify to importance of recognizing and protecting indigenous rights. Moral Imperative *plus*.

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- Indigenous relations are a challenge for Canada and other countries (e.g., US – Standing Rock, China - Xinjiang, India – Assam, Punjab, Kashmir; Burma - Rohingya), which undermine business confidence and long-term investment. Business case for FPIC – otherwise we get blockades, resistance, conflict. FPIC provides process for balancing rights and understanding and building consent.

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- *Labour* rights. Moral Imperative *plus*. Safe and healthy workers are productive workers. Business case for independent labour unions, collective bargaining. Improves conditions for workers, brings workers into decision-making, improves sustainability and productivity.

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- *Environmental* rights. Moral Imperative *plus*. Just ask a Vancouverite how much business got done this past Friday, or on September 27th. Business investment affected by climate change scenarios. Business investment also affected by human resource implications of environmental harm (esp. health).

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- Challenge to find regulatory models. Incentives permitted under GATT/WTO Subsidies Agreement, while restrictions subject to general “behind the border” regulatory rules under GATT Art. X on transparency and rule of law – administration in a “uniform, impartial and reasonable manner.” Question for campaign style enforcement, discretionary, discriminatory enforcement.

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- Complementarity of gender, indigenous rights, labour, and environment with trade policy is clear. Challenge lies in implementation in context of sovereignty, non-interference.

IV. Summary



- Experience with BRI, AIIB, and Cdn-China suggests opportunities and challenges of integrating trade policy and human rights.
- Complementarity of trade and gender/indigenous/labour/environment rights. Business case for protecting human rights.
- Challenge of global, national and local regulatory frameworks.