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## Is the Wedding of Trade and Human Rights a Marriage of Convenience or a Lasting Union?

### Abstract

A review of:

Forced to Be Good: Why Trade Agreements Boost Human Rights. By Emilie Hafner-Burton. Ithaca, NY: Cornell University Press, 2009. 220pp.

### Keywords

Trade agreements, Trade policy, Free trade, FTAs

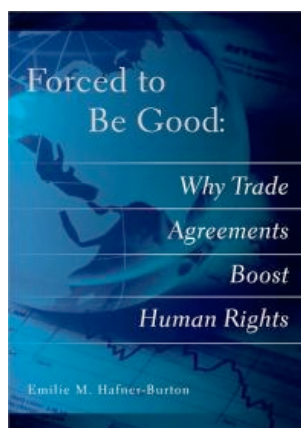
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## Is the Wedding of Trade and Human Rights a Marriage of Convenience or a Lasting Union?

By Susan Ariel Aaronson

**Forced to Be Good: Why Trade Agreements Boost Human Rights. By Emilie Hafner-Burton. Ithaca, NY: Cornell University Press, 2009. 220pp.**

Where many see trade policies and agreements as undermining human rights, Emilie Hafner-Burton takes a contrarian and more optimistic view. Her provocative and well-written book, Forced to Be Good: Why Trade Agreements Boost Human Rights, is based on years of qualitative and empirical analysis of the marriage of trade agreements and human rights. She shows that, rather than undermining human rights, Americans and Europeans have developed “mutually binding trade agreements that safeguard people’s rights and even impose penalties for violations” (2). Moreover, Hafner-Burton provides an illuminating analysis as to why developing countries might accept increased human rights conditionality. She concludes that acceptance of human rights conditionality illustrates an “extraordinary political conversion in the way governments manage trade” (4).

With this book, Hafner-Burton forces scholars to reconsider why policymakers develop and developing countries accept trade agreements with human rights provisions. I agree with Hafner-Burton’s conclusion, which has been little noted by human rights activists and scholars, economists, or policymakers. Moreover, in this essay, I argue that scholars have missed the magnitude and implications of the marriage of trade and human rights.

I begin by assessing the history of the union of trade and human rights, a union that is neither new nor rare. I then assess Hafner-Burton’s sizable contribution to this literature and compare her views to those of other analysts. Next, I discuss concerns about the EU and US approaches, noting that their divergent strategies may send confusing signals to trade partners about the indivisibility of human rights. I then show that developing countries, including some repressive states, not only accept such human rights provisions, but sometimes countries such as Egypt insist on certain provisions. Thus, industrialized countries are not the only demandeurs of such provisions. I then make some conclusions about the link between trade and human rights. Finally, I stress the limits of this relationship. While a growing number of countries are making this link, only a few countries have made these provisions actionable (e.g. failure to act on these provisions can trigger a trade dispute or a countervailing action such as demanding compensation for lost market access).

### **The Historic Connection between Trade and Human Rights**

The marriage of trade and human rights sounds contemporary, but it is in fact ancient. Although human rights laws and terminology are modern, as long as men and women have traded, they have wrestled with questions of human rights. In biblical times, for example, the sea could bring contact

with strangers who could enhance national prosperity, but these same strangers might threaten the security of the nation or enslave its people.

Policymakers first began to regulate state behavior regarding trade and human rights in the 19<sup>th</sup> century. Often one state would act and challenge (or inspire) others to follow. For example, after England banned the slave trade in 1807, it signed treaties with Portugal, Denmark, and Sweden to supplement its own ban. These nations also agreed to ban trade in slaves. After the United States banned goods manufactured by convict labor in the Tariff Act of 1890 (section 51), Great Britain, Australia, and Canada adopted similar bans. Ever so gradually, these national laws inspired international cooperation (Aaronson 2001).

In the post-World War II era, some policymakers decided to embed human rights rules in trade agreements. The draft treaty for the International Trade Organization was the first trade agreement to include explicit labor rights objectives. However, it was abandoned by its signatories after the US Congress refused to vote on implementing legislation (Wilcox 1949; Diebold 1952). In the years that followed, trade was governed by the General Agreement on Tariffs and Trade (GATT), which governed only border measures such as tariffs and quotas. The GATT had no explicit mention of human rights.

In 1993, after eight years of arduous negotiations, the international community created the World Trade Organization (WTO) to govern trade relations among member states. Member states use the WTO to negotiate multilateral trade barrier reduction and to settle disputes regarding policies that one or more nations may perceive as distorting trade. WTO rules make no explicit mention of human rights (although the objective of the WTO is to enhance human welfare). The WTO is a system of negative regulation; WTO rules provide little guidance on what government officials *can* do to promote human rights as they work to expand trade. The WTO delineates what members cannot do when they link trade policies and human rights policies. States cannot distort trade in the interest of promoting human rights at home or abroad (Bartels 2009; Aaronson 2007).

However, around the time that the WTO was created, member states became increasingly frustrated with the slow process of multinational trade negotiations. They subsequently began to negotiate bilateral or regional trade agreements (including free trade agreements or FTAs) and, from day one, many of these agreements included human rights provisions.

The North American Free Trade Agreement (NAFTA), a 1993 trade agreement among the United States, Canada, and Mexico, was the first modern trade agreement to include several explicit human rights provisions. It included labor rights provisions in a side agreement, but it also included specific transparency and public participation obligations beyond those delineated in the GATT. Policymakers around the world responded to NAFTA with a flurry of new FTAs (Please note in other countries these agreements are called RTAs or PTAs). As of December 2008, there were over 230 such agreements in force, and many others are being negotiated (Fiorentino et al. 2006; Lamy 2006). But free trade agreements are not the only trade strategy used by policymakers to link market access and human rights performance. The United States and the European Union (as well as other trading entities) also include human rights provisions in their preference programs. These programs are designed to give greater market access to developing countries. Hafner-Burton's study covers free trade agreements as well as trade preferences. The rest of this essay refers only to free trade agreements.

### Assessing the Link: Hafner-Burton's Contribution

Hafner-Burton seeks to answer four questions about the union of trade and human rights in US and EU trade agreements.

- Why are governments making such links and who motivates policymakers to act?
- Why are the two approaches so different?
- Why would repressive states accept these provisions?
- Are these provisions improving human rights outcomes?

She begins by dispelling the idealistic notion that policymakers in the United States or European Union are missionaries for the gospel of human rights. She believes both the demanders and recipients of these agreements are rational economic and political actors who make and accept these agreements for a wide range of reasons. Sometimes these officials simply want to improve governance among their trade partners; other times they are responding to pressure from union or civil society constituents. These trade policymakers believe that, by including these provisions, targeted countries will have an incentive to improve their respect for specific human rights. Meanwhile, although “no government wants its market access regulated through human rights standards of conduct” (119), developing countries will accept the costs of protecting human rights for the benefit of consistent and greater access to these huge industrialized country markets.

Although her analysis focuses on the supposedly surprising finding that developing countries accept this link, Hafner-Burton admits that the results of these FTAs are mixed. She finds that the European Union successfully used its trade agreements to challenge the behavior of autocrats in Mauritania and Guinea Bissau. Under the pressure of losing trade benefits, these countries enacted specific human rights reforms, set a timeline for implementation, and created a monitoring process to ensure that reforms were implemented. However, Hafner-Burton finds less striking changes after coups in Togo and Cote D'Ivoire. She notes that actionable human rights provisions in US FTAs are relatively new and thus it is too early to assess these links. Taken in sum, she finds that implementation of human rights regulations “has been selective and political...when influence does occur, it is modest” (154-160).

Hafner-Burton deserves our praise and admiration; she has written several of the best researched and most widely quoted articles exploring the union of trade and human rights. But in this book, her statistical analysis of the “effects” is, as she admits, “crude” (162). Using the Polity IV data set, she finds that, in countries with a free trade agreement with Europe, some 82 percent improve their human rights protection versus 75 percent without such a trade agreement. This dataset covers physical integrity rights—freedom from arbitrary arrest, imprisonment, abuse, rape, or torture. While improvements in these rights may be a positive side effect from trade or new trade agreements, these rights are not explicitly discussed in the trade agreements under review. Thus, it is surprising that she did not discuss other rights more directly mentioned in both US and EU agreements. Hafner-Burton is up-front about the limitations of this analysis. She notes that similar statistical tests are not yet possible for Canada or the United States because there were only three countries where data were available through 2003 (the last year of her analysis) (160-164). However, it is surprising that she did not focus her quantitative review on labor rights, where there are several excellent datasets available, such as the CIRI Human rights dataset at <http://ciri.binghamton.edu>.

Taken in sum, Hafner-Burton's book is well-written and well-argued. Her expertise and long publication record on human rights make her an authoritative source on these issues to policymakers, economists, and the human rights community. Moreover, her book is an important bridge between two academic cultures (economics and human rights) that speak different languages and value different norms. It deserves wide attention.

### **A Different Assessment of the Marriage of Trade and Human Rights**

Hafner-Burton offers a strong comparison of the US versus the EU approach to linking trade and human rights. But she does not go far enough in her assessment. First, we need a greater understanding of what is happening at the WTO, the international organization governing trade. Second, we need to examine if other nations beyond the United States and European Union are making such links. And finally, we need clearer evidence of the effectiveness of these links, i.e. what they mean for governance coherence, respect for human rights, and for the concept that human rights are universal and indivisible.

It seems likely that, as more nations accept trade agreements with human rights provisions, respect for human rights should increase. Over 70 percent of nations (or more than 130 of them) participate in trade agreements with such provisions if we include only EU and US preferential trade agreements and FTAs. But these FTAs are not the only trade agreements with specific human rights provisions or human rights effects. The GATT/WTO, the international agreements governing trade, have some human rights provisions, although they are implicit, obscure, and little discussed.

Few scholars have examined how WTO membership may affect the *behavior* of governments regarding democratic rights. Mary Comerford Cooper tried to test the relationship between WTO membership and democratization (as opposed to protecting a particular human right) for the period 1947-1999. She could not determine whether democratic states were more likely to join the WTO or whether WTO membership makes countries more likely to become or remain democratic (Cooper 2003: 15). In a forthcoming study, Professors Rod Abouharb and Susan Aaronson examine the effect of membership in the GATT/WTO over time (now 153 nations) and find that duration of WTO membership leads to stronger performance on our metrics for political participation, free and fair elections, and measures of access to information (Aaronson and Abouharb 2011). This process is indirect, because the GATT/WTO does not *directly regulate* the behavior of people or firms involved in trade, but requires that member states provide these rights to economic actors (Ostry 2004).

Under WTO rules, member states give economic actors “an entitlement to substantive rights in domestic law including the right to seek relief; the right to submit comments to a national agency or the right to appeal adjudicatory rulings” (Charnovitz 2001: 1-7). Member states must also ensure that “members and other persons affected, or likely to be affected, by governmental measures imposing restraints, requirements and other burdens, should have a reasonable opportunity to acquire authentic information about such measures and accordingly to protect and adjust their activities or alternatively to seek modification of such measures” (GATT Analytical Index, Paragraph 2, (a)). These rights can be described as political participation, administrative due process, and informational rights (democratic rights).

Although more states and the GATT/WTO link trade and some human rights, the many nations that now link trade and human rights take different approaches to the same human rights in

their trade agreements. The plethora of strategies could send confusing signals to developing countries about the universality and indivisibility of human rights.

At first glance, the European Union's approach appears supportive of the notion that human rights are indivisible and universal. The European Union puts human rights clauses in the body of the agreement and relies on dialogues to change the behavior of its trade partners that do not consistently respect human rights. If one of the European Union's FTA partners undermines human rights, the European Union will demand a formal dialogue, but only rarely will it cut off trade or put in place trade sanctions. EU officials admit that these dialogues are inconsistent, too general, and too informal. But they cling to dialogue even when it may not be useful. Despite this belief in indivisibility, the European Union focuses on particular human rights when policymakers see major human rights violations such as coups. They often ignore violations of cultural or social rights. But even in the most egregious human rights situations, EU officials are reluctant to close off trade. Thus, despite EU belief in the universality and indivisibility of international human rights, policymakers are sending a message that some rights are more important than others; and *only some* countries can be prodded with trade policy tools to change their behavior (European Commission 2001: 3).

Meanwhile, the United States promotes particular human rights and makes the protection of only some of these human rights subject to potential trade disputes under the agreement's dispute settlement body. So, like the European Union, the United States sends a message that some human rights are more important than other human rights. But the US approach also signals that these rights are so important as to be worth a trade dispute to ensure enforcement. The United States makes violation of labor rights<sup>1</sup> and property rights actionable (they can be disputed under the agreement). But the United States has yet to make such a challenge in its trade agreements despite apparent violations of labor rights commitments in countries such as Jordan.

The Office of the US Trade Representative (USTR), the cabinet agency that negotiates trade policies, proudly asserts that Bahrain, Oman, Chile, Morocco, Colombia, Panama, and Peru have changed their labor laws to meet international norms (Aaronson and Zimmerman 2007: 164-169). But these same governments do not always enforce the laws and regulations on their books. Thus, these agreements have not thus far always led to definitive improvements in labor rights enforcement and conditions in these countries. Many of America's FTA partners have a hard time enforcing their labor laws because of a lack of resources, political will, or both. The European Union and Canada back up their trade agreements with considerable sums of capacity building assistance to help policymakers gain expertise and will to protect human rights. But the United States provides

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<sup>1</sup> The US approach to labor rights has evolved and did not even include all core labor rights until 2007. Moreover, although labor rights can be actionable, challenges are rare. Each US free trade accord since NAFTA (except the US-Jordan agreement) provides that sixty days after a complaining party requests cooperative labor consultations, that party *may* initiate the formal dispute settlement process if disagreements over enforceable labor provisions have not been resolved. See, e.g., DR-CAFTA, art. 16.6(6); US-Peru TPA, Art. 17.7(6). Similarly, the US-Jordan Free Trade Agreement establishes that sixty days after cooperative consultations are requested on any matter under the accord, if no resolution is reached, either party *may* refer the case to a joint committee, composed of parties' representatives and headed by their respective trade agencies; if the matter is still not resolved after ninety days under the joint committee, either party *may* initiate the formal dispute settlement process. US-Jordan FTA, art. 17(b), (c). (Human Rights Watch 2008).

relatively little capacity building assistance. Each US trade accord containing workers' rights protections, with the exception of the US-Jordan agreement, requires labor-related capacity building; yet there are few funds budgeted for such projects and the amounts vary each year.<sup>2</sup> US FTA partners are unlikely to successfully improve labor rights enforcement without greater incentives. The Government Accountability Office (GAO), a Congressional agency, notes that the United States was aware of implementation problems in countries such as Morocco and Jordan, but "US agencies did not translate them into remedial plans." GAO found that, despite changes in labor laws, labor rights problems continue in Jordan, Morocco and, to a lesser extent, Chile. Therefore, it concluded that the United States needs to match its objectives with capacity building in the targeted country (GAO 2009: 5).<sup>3</sup>

The United States focuses on labor rights rather than human rights in general. This focus stems from trade union pressure in the US and a fear among members of Congress of both parties that other nations such as China ignore their own labor laws in the interest of gaining market advantage. But this focus on labor rights, I believe, prevents policymakers from effectively addressing the broader governance problems that bedevil countries such as Colombia. It is true that union leaders are murdered with impunity in Colombia. They are being murdered because they are political activists as well as union leaders, and because the government is unable to protect them and effectively investigate and prevent such crimes. Colombia's problems are rule of law problems and cannot be addressed simply by focusing on labor rights per se.

The US also uses its trade agreements to promote democratic decision-making, access to information, and transparency. The United States requires partner countries to ensure that their citizens can influence trade policymaking and have access to information about the negotiations from day one. This strategy is based on the American view that human rights can only flourish if citizens know and can demand their rights. Canada includes similar provisions to empower citizens to demand their rights. These provisions have changed how these countries make trade policy. For example, in the past ten years, Jordan, Morocco, Chile, and Mexico established channels for organized civil society to comment on trade policies and influence trade policymaking. All of these nations are US free trade agreement signatories. While this change may appear to be structural, it also makes it possible for new players to make trade policy and bring new issues to the fore (Cherfane 2006; Halle and Wolfe 2007).

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<sup>2</sup> See, e.g., NAALC, Art. 11; DR-CAFTA, annex 16.5; US-Peru TPA, annex 17.6.

<sup>3</sup> The Bush Administration committed \$75 million from FY 2005-2008 for labor and environmental initiatives in CAFTA-DR countries. It also carried out labor programs in Morocco, Oman, Bahrain, and Jordan to train workers on worker rights issues, to enhance labor ministries' capacity, and to help eradicate the worst forms of child labor. See also (USTR 2009: 190).



**Human Rights in Trade Agreements: Text Box I**

<b>Country/Right</b>	<b>European Union</b>	<b>United States</b>	<b>Canada</b>
<b>Strategy</b>	Universal human rights and specific rights	Specific human rights	Specific human rights
<b>Which Rights?</b>	Labor rights, transparency, due process, political participation, and privacy rights	Transparency, due process, political participation, access to affordable medicines, and labor rights.	Transparency, due process, political participation, labor rights, cultural and indigenous rights
<b>How Enforced?</b>	Human rights violations lead to dialogue and possible suspension depending on nature of violation.	In newest agreements, labor rights can be disputed under dispute settlement body affiliated with the agreement. Process begins with bilateral dialogue to resolve issues.	Only labor rights (monetary penalties). Use dialogue first.

The European Union, the United States, and Canada are the major demanders of human rights links in trade agreements. Interestingly, in October 2009, the European Union changed its approach to linking trade and human rights in its free trade agreements; and it is now more of an amalgam of the EU/US and Canadian approaches. The EU model retains the earlier focus on universal human rights and supplements it with chapters on social and environmental issues as well as specific rights (EU-Korea Free Trade Agreement 2009). This new approach is evident in a new EU-South Korea trade agreement. In its preamble, it notes that the signatories desire to “strengthen the development and enforcement of labor and environmental laws and policies, promote basic workers’ rights and sustainable development and implement this agreement in a manner consistent with these objectives” (EU-Korea Free Trade Agreement 2009: Preamble). The FTA also has language protecting the right to privacy. In the services chapter, Article 7.43 says that each party should reaffirm its commitment to protect fundamental rights and freedom of individuals, and shall adopt adequate safeguards to the protection of privacy.

The FTA with South Korea also includes a separate chapter on trade and sustainable development. Article 13.4 commits the two parties to respecting, promoting, and realizing, in their laws and practices, core labor rights. The parties also reaffirm their commitment to effectively implement the International Labor Organization (ILO) Conventions that both states have ratified. Finally, Article 13.9 commits the parties to “introduce and implement any measures aimed at protecting the environment and labor...in a transparent manner with due notice and public consultation.” To achieve that goal, the agreement requires signatories to set up an advisory group on sustainable development as well as a civil society forum on these issues (EU-Korea Free Trade Agreement 2009: Annex 13). Thus, the agreement sets up a citizen monitoring process. The new

paradigm also includes a strategy for government consultations on social issues as well as a panel of experts to examine matters that cannot be settled through governmental consultations. However, the European Union has no formal mechanism for trade disputes related to these issues (Articles 13.14 and 13.15). Thus, while the European Union now highlights labor rights, the latter are not disputable under the agreement. Thus, while the United States and Canada signal that the protection of labor rights is important enough to lead to a potential trade dispute, the European Union signals it is only worthy of consultations.

Taken in sum, these agreements send a message that some human rights are more important than others and that only some human rights are worth disputing under the agreement. They also signal that human rights are not indivisible and universal. Therefore, when these governments use trade agreements to promote human rights, they may undermine the very coherence that policymakers aim to establish among trade, development, and human rights policies.

### **Other Scholars on the Union of Trade and Human Rights**

Some analysts believe that the United States' and European Union's use of human rights provisions is "legal inflation;" they argue that governments are using trade agreements to globalize their social policies or regulatory approach. They also argue that these provisions go way beyond those embedded in the global system governing trade under the WTO. Others argue that trade agreements are not the right place to address human rights issues. Some scholars stress that, by enhancing economic growth, trade agreements already promote human rights (such as the right to work, the right to self-determination, or property rights).<sup>4</sup> All this may be true. But policymakers recognize that market access is an important lure for other policymakers to change behavior. Moreover, although the inclusion of human rights provisions could distort trade, it may also stimulate trade.

Other scholars have examined the union of preferential trade agreements and human rights and have come to different conclusions about whether or not the marriage has been—shall we say—consummated. In a fascinating but preliminary study, International Trade Commission economist Michael Ferrantino examines negotiations of the United States' free trade agreements. He argues that these agreements can serve as an anchor or "lock-in mechanism" for domestic reforms. But he warns that it is difficult to ascertain causality—whether a particular reform is caused by FTA negotiations or by the domestic reform process—and he calls for further research (Ferrantino 2006). Lorand Bartels, a Cambridge Law professor, also sees the wedding as blessed. Bartels concludes that trade-human rights provisions are useful because they set up mechanisms for dialogue, allow civil society in multiple countries to monitor compliance with international norms, and make human rights part of the trade relationship. Aaronson and Zimmerman examined how the United States, European Union, Brazil, and South Africa try to link trade and human rights. They found that no government actually examines whether such links are effective or how best to make this link (Aaronson and Zimmerman 2007).

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<sup>4</sup> For a good summary of both sides of these arguments, see (van Hees 2004). Human rights encompass the principles of liberty, fairness, equality of opportunity, non-discrimination, and the rule of law.

Economists Horn, Mavroidis, and Sapir compare US/EU approaches to FTAs. They argue that these provisions are a “means for the two hubs to export their own regulatory approaches to their FTA partners” (Horn et al. 2007: 2). This analysis does not fit human rights, in my opinion. Governments may seek to make their governance approach the way of the world when crafting intellectual property or food safety regulations, but this assertion does not match governmental strategies regarding human rights. When governments link human rights and trade agreements, these governments are trying to be supportive of *international* human rights standards rather than domestic regulations or domestic human rights priorities. Nonetheless, as the three economists note, these agreements are not solely about trade or human rights; rather, they are about governance, as Hafner-Burton has asserted.

### **Other Countries that Wed Trade and Particular Human Rights**

The United States and European Union are not the only nations or common markets attempting to wed trade and human rights in their preferential trade agreements.<sup>5</sup> Developing and middle income countries are also associating human rights and trade and placing these provisions in the preamble and even the body of trade agreements. For example, the Common Market of Eastern and Southern Africa (COMESA) Member States committed to promote democracy and human rights in their Treaty Article 6.<sup>6</sup> Mercosur, a trade agreement and common market among Brazil, Argentina, Paraguay, and Uruguay, includes several human rights provisions. If any party to Mercosur fails to protect ILO core labor standards, a supranational Commission on Social and Labor Matters can review allegations at the behest of another member state. Mercosur also includes the Ushuaia Protocol on democratic commitment, which prohibits the entry of undemocratic states into the common market. This provision was invoked against Paraguay in 1996.

Chile has incorporated labor rights language in several of its more recent bilateral FTAs. For example, the Chile-China regional trade agreement has two labor and environmental side agreements. Article 108 commits both parties “to carry out cooperation activities in the fields of employment and labor policies and social dialogue.” This is relatively soft language, but it does underscore the importance of labor rights (Memorandum of Understanding 2005). These South-South trade/human rights provisions reflect a changing attitude about what trade agreements should include.

Text Box II below delineates which countries are including certain kinds of human rights provisions in their free trade agreements. Mercosur, Canada, and the United States make certain human rights actionable; these include democratic rights in a linked protocol to Mercosur, and labor rights in US and Canada free trade agreements. As noted above, the European Union includes universal human rights and argues that all human rights are universal and can lead the EC to put in

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<sup>5</sup> Much of the text that follows builds on (Aaronson forthcoming).

<sup>6</sup> The [Common Market of Eastern and Southern Africa](#) (COMESA) was established by a treaty signed on 5 November 1993 in Kampala, Uganda. The agreement was ratified a year later in Lilongwe, Malawi on 8 December 1994. The COMESA treaty is aimed at creating a common market in Eastern and Southern Africa. It has 19 member countries: Angola, Burundi, Comoros, DR Congo, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe with 400 million people (“Comesa Treaty” 2000).

place trade sanctions or to negate the agreement, should its trade partner act in an egregious manner to undermine human rights.

### Examples of Human Rights Embedded in FTAs: Text Box II

- **Labor:** Canada, Chile, Mercosur, EC, Japan, US, New Zealand
- **Democratic Rights:** Mercosur
- **Access to Affordable Medicine:** Costa Rica, US
- **Right to Cultural Participation:** EFTA/EEA (body), Caricom (body)
- **Right to Privacy:** EC/Caricom, Canada
- **Indigenous Minority Rights:** Canada, New Zealand, Australia
- **Political Participation and Due Process:** Canada (body and side agreements), US (body)
- **Privacy:** Canada (body)

Taken in sum, these human rights provisions embedded in trade agreements reflect a changing attitude about what trade agreements should include. According to Lorand Bartels, “the idea that these links are valid seems to be gaining its own dynamic” (2008a: 21).

When these links are simply in the preamble, they generally impose no binding obligations on the signatories (unless these obligations are binding under other agreements). However, we should not presume that just because many of these provisions are only in the preamble (and thus impose no binding obligations), they will remain rhetorical. Bartels concludes that, as agreements with preamble references to human rights grow in number and scope, “this may well lead to operative provisions at a later stage,” as happened with EU human rights provisions (2008a: 21).

### Conclusion: The Wedding of Trade and Human Rights

Collectively, the free trade agreements signed by the United States, European Union, and Canada may change policymaker opinion about linking trade (a means to enhancing human welfare) with human rights. But the marriage of trade and human rights still has many problems. First, we do not know if these agreements actually change conditions on the ground—i.e. if they empower more people to demand their rights and if governments are doing a better job of respecting these human rights. We need more empirical and qualitative studies. There are several human rights datasets that may prove useful, but scholars may find it difficult to tease out the effects of particular trade agreements, given that most FTAs are relatively recent.<sup>7</sup> We also do not know if developing countries will continue to make these links and if they will make them actionable.

The United States, European Union, and Canada have been powerful countries for many years, and government officials believe they have a special responsibility to promote human rights internationally. They are comfortable making the link. However, although policymakers from other countries may agree on the importance of protecting human rights, they may not believe it is appropriate to intervene in the affairs of other nations, even in the most extreme cases of human rights abuse. Some of these countries (Mercosur member states, for example) have made observance

<sup>7</sup> See as example, the CIRI Human rights dataset (used by the World Bank) at [ciri.binghamton.edu](http://ciri.binghamton.edu) or the Bertelsman Transformation Index (which has data from 2003-2008) at [www.bertelsmann-transformation-index.de](http://www.bertelsmann-transformation-index.de).

of human rights a condition for receiving trade benefits, but it seems unlikely that these countries will make other human rights (such as labor rights) disputable. The demandeurs who seek to include human rights provisions must negotiate with nations that may not be receptive to such a link.

Finally, we must note that human rights provisions are expensive for developing countries to implement. These nations must devote scarce resources to human rights, perhaps before they have the national income or political consensus to do so. However, one can also argue that governments must respect human rights and meet their existing international obligations.

Policymakers must carefully assess the human rights impact of their trade choices. In so doing, they may create an enduring and effective match, and not just a marriage of convenience between trade agreements and human rights.

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