



*Coordinating Performance in
Trade Policy and Human Rights*

Policy Roundtables with Canadian Stakeholders

APDR Meeting Summary

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EXECUTIVE SUMMARY

This paper summarizes processes and outcomes of a series of Policy Roundtables held in April-May 2016 under the auspices of the Asia Pacific Dispute Resolution (APDR) project at the University of British Columbia (UBC). Research for the APDR project is supported by the Social Sciences and Humanities Research Council of Canada (SSHRC) under its Major Collaborative Initiatives (MCRI) program. The APDR project supports research, analysis and policy proposals on cross-cultural dispute resolution in the areas of international trade and human rights in the Asia-Pacific region. The project involves a collaborative network of leading international researchers on issues of trade policy, human rights, and globalization from UBC and partner institutions around the world. Current research focuses on linkages between international trade and human rights performance, with particular attention to Canada, China, India, Indonesia, and Japan.

As part of its research dissemination strategy, the APDR project hosted a series of Policy Roundtables, in Vancouver April 20, 2016 in collaboration with the Asia Pacific Foundation of Canada; in Toronto May 3 with the Canada-China Business Council and the Asian Institute at the Munk Centre of the University of Toronto; and in Ottawa May 5 with the Institute for Public Policy Research. The Roundtables provided an opportunity to present and discuss five edited Thematic Volumes examining coordination of trade policy with human rights issues of (a) development; (b) public health; (c) labor relations; (d) poverty and inequality; and (e) government accountability. The Roundtables provided opportunities for feedback and discussion with stakeholders in the Asia-Pacific community (Vancouver); the business community (Toronto) and the policy community (Ottawa) on the results of a seven-year policy research program on coordination of international treaty compliance in trade and human rights. Following presentations on the five Thematic Volumes, participants discussed policy implications and proposals for developing more effective approaches to integrating trade and human rights.

Recommendations

Participants at the Policy Roundtables noted several initiatives that could strengthen coordination of trade policy with human rights, including:

- Clarify Human Rights Standards. Clarify standards and terms for human rights performance. Acknowledge that international human rights standards include economic, social and cultural rights in addition to civil and political rights, and also extend to the UN Sustainable Development Goals (SDG).
- Trade and Investment Agreements. Integrate human rights provisions in trade and investment agreements. Measures such as production and value chain monitoring and Human Rights Impact Assessments (HRIAs) should be used to strengthen human rights conditions for both investment and trade flows.
- Capacity Building. Establish a “deliverology” framework for measuring how businesses and partner countries integrate trade and human rights to improve outcomes. Provide assistance in the drafting of regulations; administrative capacity building with respect to investor-state arbitration; and assistance in strengthening bureaucratic cohesion. Strengthen the role of labor codes in promoting human rights conditions in partner countries.
- Gender Parity. Develop standards and frameworks for building greater opportunities for women in trade and human rights performance. Expand opportunities for involving women in leadership positions in business, government and civil society.
- Incentives for Performance. Provide stronger incentives for Canadian investors to promote human rights in international trade relationships. Apply human rights standards to inbound and outbound trade and investment. Recognize market and public relations inducements for human rights performance.
- CSR Monitoring. Track the effectiveness of measures for monitoring Corporate Social Responsibility. Work with Canadian businesses to improve the effectiveness of CSR measures and engage with host country governments to identify how they can contribute to that work.
- Certification Processes. Use third party certification (by trade associations, for example) as a basis for human rights engagement. As a complement to government enforcement, trade associations can provide market incentives for compliance, and support increased monitoring and media reporting. Third party certification can provide market incentives for compliance with international human rights standards that go beyond local requirements.
- Engagement. Pursue stronger engagement in Asia on trade and human rights. Clarify the meaning and operational conditions for engagement. Emphasize the role of international organizations rather than the experience of particular industrialized economies, in setting performance standards.

I. **Introduction: The Dilemma of Coordinating Trade Policy and Human Rights**

International, regional, and subnational disputes over issues of trade and human rights have become increasingly serious obstacles to international cooperation in the Asia Pacific region. Coordinating trade and human rights performance can be an important step toward preventing and resolving these disputes. Whereas treaty compliance involves technical analysis of state behaviour concerning specific legal obligations,¹ examination of trade and human rights performance illuminates general conditions of government behavior in relation to treaty standards.² Policy efforts to strengthen coordination of international trade and human rights performance can strengthen both the international trade system and international human rights.

Coordinating local performance of international trade and human rights standards has been difficult in part because of organizational and conceptual obstacles. Interpretive communities of officials and legal specialists that are at the heart of local interpretation and implementation of international trade and human rights regimes are often divided by conceptual differences and organizational locations.³ A lack of consensus over the meaning and purpose of trade and human rights policies,⁴ along with institutional arrangements that separate trade and human rights policy work, often inhibit

¹ Kai Raustilia and Anne-Marie Slaughter, "International Law, International Relations and Compliance," in Walter Carlsnaes et al., ed., The Handbook of International Relations, (London: Sage, 2002) pp. 538-558; Roda Mushkat, "Dissecting International Legal Compliance: An Unfinished Odyssey," Denver Journal of International Law and Policy vol. 38 no. 1 (Winter 2009), pp. 161-191.

² See generally, John Gillespie and Pip Nicholson, ed., Law and Development and the Global Discourses of Legal Transfers (Cambridge: Cambridge University Press, 2012).

³ Ernst-Ulrich Petersmann, "Multilevel Judicial Governance of International Trade Requires a Common Conception of Rule of Law and Justice," Journal of International Economic Law vol. 10 no. 3 (2007), pp. 529-551.

⁴ Henry J. Steiner and Philip Alston, International Human Rights Law in Context: Law, Politics, Morals (Oxford: Oxford University Press, 2000), Section E.16.

coordination. International trade standards tend to privilege consumption;⁵ local business models⁶ and reliance on financial and regulatory incentives for private behavior,⁷ but all too often are unconnected with local human rights conditions and policies. International discourses on private property and trade liberalization often work to limit the range of approaches available locally to promote human rights.⁸ Similarly, human rights discourses often tend to confront the norms and institutions of international trade as obstacles rather than potential contributors to human rights conditions.⁹ Yet coordination of trade and human rights performance remains a compelling goal.

While there is an emerging recognition of the need to coordinate local performance of international trade and human rights standards,¹⁰ empirical research and policy analysis have been lacking.¹¹ Despite robust efforts to establish international standards for

⁵ Jeffrey Barber, "Production, Consumption, and the World Summit on Sustainable Development," Environment, Development and Sustainability no. 5 (2003), pp. 63-93.

⁶ Ian Barney, "Business, community development and sustainable livelihoods approaches," Community Development Journal vol. 38, no. 3 (2003), pp. 255-265.

⁷ Bob Frame and Rhys Taylor, "Partnerships for Sustainability: Effective Practice?" Local Environment vol. 10 no. 3 (2005) pp. 275-29; Douglas A. Kysar, "Sustainable Development and Private Global Governance," Texas Law Review vol. 83 (2005), pp. 2109-2166.

⁸ Ernst-Ulrich Petersmann, "Human Rights and International Trade Law: Defining and Connecting the Two Fields," in Thomas Cottier, Joost Pauwelyn and Elisabeth Burgi, ed., Human Rights and International Trade (Oxford: Oxford University Press, 2005), pp. 29-94.

⁹ Steiner and Alston *supra*, Chapter 16.

¹⁰ Frederick M. Abbot, Christian Breining-Kaufmann, Thomas Cottier, ed., International Trade and Human Rights: Foundations and Conceptual Issues (Ann Arbor: University of Michigan Press, 2006); Cottier, Thomas, Joost Pauwelyn and Elisabeth Burgi, ed., Human Rights and International Trade (Oxford: Oxford University Press, 2005).

¹¹ John H. Jackson, "Reflections on the Possible Research Agenda for Exploring the Relationship between Human Rights Norms and International Trade Rules," in Abbott et al., pp. 19-28.

business and human rights,¹² efforts to integrate human rights standards into trade arrangements often have resulted in mainly hortatory efforts that have modest operational effects.¹³ Coordinating trade and human rights performance offers the possibility for “bundling” normative and institutional dimensions of trade and human rights performance so as to strengthen human rights even while promoting trade performance.

II. The APDR Project: Linking Academic Research and Policy Discussion

Since 2002, the Asia Pacific Dispute Resolution (APDR) project at the University of British Columbia has worked to develop knowledge and policy responses to questions of local performance of international standards on trade and human rights (<http://apdr.iar.ubc.ca>). Local performance of international trade and human rights standards involves questions about values and organization, and may be examined by reference to the normative and operational paradigms of “Selective Adaptation” and “Institutional Capacity.”¹⁴

Normative aspects of trade and human rights performance involve relationships between local values and international standards. Selective Adaptation focuses on normative conditions for local implementation of international trade and human rights standards by reference to conscious and unconscious processes of perception about standards and norms, complementarity between local and non-local standards and norms, and legitimacy. Organizational dimensions of local trade and human rights performance involve questions of Institutional Capacity of implementing agencies to perform their assigned tasks in the context of local socio-economic and political conditions. Building

¹² UN High Commission for Human Rights, “Guiding Principles on Business and Human Rights,” (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [accessed Nov. 30, 2015].

¹³ Radu Mares, ed. Business and Human Rights: A Compilation of Documents (The Hague: Martinus Nijhoff, 2004), Introduction.

¹⁴ Pitman B. Potter, Assessing Treaty Performance in China: Trade and Human Rights (Vancouver: UBC Press, 2014); Chapter One.

on existing approaches focused on internal structures, resources and processes,¹⁵ the APDR project focuses on relational questions of institutional purpose, bureaucratic and geographic location, regulatory orientation toward formality and/or discretion, and staff cohesion and discipline. Taken together, the paradigms of Selective Adaptation and Institutional Capacity offer important tools for understanding normative and operational conditions affecting local performance of international trade and human rights standards.

Building on these efforts, the APDR project has focused since 2009 on the challenge of coordinating trade policy with human rights performance in five Asia-Pacific economies, namely Canada, China, India, Indonesia, and Japan. The project has supported interview and archival research on coordinated compliance, while developing local Case Studies relevant to Canadian policy concerns. The project has adopted a cross-cultural and interdisciplinary approach that recognizes varying approaches to the respective roles of the market and the state in trade policy, while also noting the importance of economic, social and cultural rights in addition to political and civil rights as foundations for international human rights standards. The project has generated policy proposals for building treaty compliance programs, processes and institutions that are responsive to cross-cultural differences. The research has enabled policymakers in Canada and internationally to understand more fully the requirements for coordinated compliance with international trade and human rights standards. The Asia Pacific Foundation of

¹⁵ H.V. Savitch, "Global Challenge and Institutional Capacity: Or How We Can Refit Local Administration for the Next Century," Administration and Society vol. 30 no. 3 (1998), pp. 248-73; William Blomquist and Elinor Ostrom, "Institutional Capacity and the Resolution of the Commons Dilemma," in Michael D. McGinnis, ed., Polycentric Governance and Development: Readings from the Workshop in Political Theory and Policy Analysis (Ann Arbor: University of Michigan Press, 1999), pp. 60-73; Patsy Healey, "Building Institutional Capacity through Collaborative Approaches to Urban Planning," Environment and Planning A vol. 30 no. 9 (1998), pp. 1531- 46; Stéphane Willems and Kevin Baumert. Institutional Capacity and Climate Actions (Paris: OECD Environmental Directorate; International Energy Agency, 2003).

Canada's taskforce report on integrating business and human rights was an important contribution to this discussion and serves as valuable context for the present Summary.¹⁶

As part of its research dissemination strategy, the APDR project has generated a book series on Asia Pacific Legal Culture and Globalization, to be published by UBC Press. The series looks beyond traditional legal institutions and actors to examine normative and operational frameworks for local legal behavior. Books in the series reflect international scholarship from a wide variety of disciplines, including law, political science, economics, sociology, and history. Publications include:

Pitman B. Potter and Ljiljana Biukovic, eds., Globalization and Local Adaptation in International Trade Law (2011).

Pitman B. Potter, Assessing Treaty Performance in China: Trade and Human Rights (2014).

Sarah Biddulph, The Stability Imperative: Human Rights and Law in China (2015).

In addition, the series will present five Thematic Volumes edited by leading international scholars and based on APDR research completed over the past seven years. The five Thematic Volumes examine coordination of trade policy with human rights issues of (a) development; (b) public health; (c) labor relations; (d) poverty and inequality; and (e) government accountability. Each of the volumes examines the challenge of coordinating trade policy and human rights in the context of tensions between globalization and local legal culture, while also addressing policy implications and solutions.

III. Policy Roundtables

In an effort to disseminate and seek feedback on the five Thematic Volumes, the APDR project hosted a series of Policy Roundtables in April and May 2016 in Vancouver, Toronto and Ottawa. The Roundtables provided opportunities for feedback

¹⁶ See e.g., Asia Pacific Foundation, "Advancing Canada's Engagement with Asia on Human Rights: Integrating Business and Human Rights," (Sept. 25, 2013), http://www.asiapacific.ca/sites/default/files/filefield/human_rights_taskforce_v3.pdf [accessed December 12, 2013].

and discussion with major stakeholders in the Asia-Pacific community (Vancouver); the business community (Toronto); and the policy community (Ottawa). Following summary presentations on the five Thematic Volumes, participants discussed policy implications and proposals for developing more effective approaches to coordinating trade policy and human rights.

A. The Vancouver Roundtable: The Asia-Pacific Community.

The Policy Roundtable held in Vancouver April 20, 2016 in collaboration with the Asia Pacific Foundation of Canada, focused on hearing comments and discussion from stakeholders in what is widely considered to be Canada's gateway to the Asia Pacific region. After initial presentation of the five Thematic Volumes, participants broke into discussion groups focused on issues of (a) development; (b) poverty and inequality; and (c) government accountability. Following these small group discussions, the Roundtable concluded with a wrap-up session and key-note remarks from Professor Daniel Drache, Professor of Political Science at York University and Associate Director of the Robarts Centre for Canadian Studies.

1. Development Discussion Group

The development discussion group noted a range of issues to be considered in coordinating trade policy and human rights, including definitions and enforcement of legal rights; issues of policy enforcement; questions about corruption; the role of culture; and the functions of governments and NGOs. In response to questions about the elements of development that are most amenable to trade policy solutions, participants focused on the relationship between fostering economic growth (including jobs and employment) and the pursuit of happiness and wellbeing. Participants noted the role of human rights law and policy in balancing these goals. Several economies in Asia, such as Indonesia and China, were cited as examples where economic growth policy needs to be coordinated better with attention to happiness and wellbeing. Participants also noted the important beneficial effects of expanding the role of women in society and the economy. Issues of mechanization were also discussed as exemplifying tensions between building productivity and protecting human wellbeing. Participants noted the importance of

universal education as a critical element for coordinating economic development with human wellbeing through fostering innovation and information technologies. Public health policy was also noted as a key element in fostering human wellbeing while also supporting productivity. Finally, participants noted the importance of gender equality as essential to empowering women as participants in economic development and human rights protection.

Participants in the development discussion group also acknowledged obstacles to coordinating trade policy with human rights. Local conditions especially in rural areas were repeatedly cited as obstacles to both economic development and human rights. Despite calls for change (including numerous World Bank studies), marginalization and oppression of women continues to be an obstacle to economic development and human rights protection. At the local level, political priorities and relationships often result in primacy being given to economic growth over environmental protection. Local priorities are also evident in economies of Japan and India, for example, where discourses on food security are deployed to block efforts at liberalization of agricultural trade. Intellectual property was also cited as an obstacle to coordinating trade policy and human rights, as rigid IP protection regimes were seen to increase costs of pharmaceuticals and medical equipment with resulting decreases in access to medical treatment for the poor.

Looking forward, participants in the development discussion group questioned whether economic development should be the primary goal of trade policy. Participants noted that WTO accession in some economies such as China was used as a springboard for broader domestic political and economic reform. Participants noted that in India, by contrast, there appears to be resistance to linking trade liberalization and local development. Participants noted the importance of understanding variations in local socio-economic and political conditions and the policy discourses that result.

2. Poverty/Inequality Discussion Group

The poverty/inequality discussion group focused on coordinating trade policy and poverty reduction. Some participants noted that greater trade liberalisation does not

necessarily lead to improved human rights outcomes. Discussion was held on the role of global legal regimes and their impact and effect at the local level. Participants noted the importance of Human Rights Impact Assessments (HRIA), while noting the importance of transparency and credibility in HRIA activities. Participants noted the importance of increasing investment to build income and raise skill levels. Participants noted the linkage between growth and jobs on the one hand, and the potential for building happiness and wellbeing. Participants discussed what should be the proper role of government, while raising questions about whether there is a political appetite in Canadian society to promote human rights at the [perceived] expense of global competitiveness. Participants noted that government should take the lead in coordinating trade and human rights.

Participants in the poverty/inequality discussion group raised multiple questions about foreign investment, including the challenges and possibilities of linking trade and investment with Official Development Assistance (ODA). Linking trade with ODA can facilitate trade and investment cooperation while also raising awareness of human rights standards. Participants noted that investments could be more aligned with human security conditions in potential recipient countries. Participants noted the potential to increase the capacity of outside agencies to promote local performance of human rights standards. As a first step, one approach to investment could be to adopt a 'do no harm' principle, aimed at alleviating and mitigating negative impacts from investments and trade. A second step would be to consider how trade and investment relations can generate positive human rights impacts. Participants noted the importance of policy mechanisms to influence the behaviour of Canadian companies, by setting out rules and guidelines for what is expected and offering capacity building assistance to help companies adhere to those rules and guidelines. Participants noted the importance of including human rights values in trade agreements such as the Trans Pacific Partnership.

Participants also discussed the role of values in coordinating trade and human rights. Some noted that perhaps the role of Canada at the international level should be to articulate human rights values even while promoting trade and investment relations. A Canadian agenda that promotes human rights values respectfully, not from a moral high

ground but as a key foreign policy principle, could be presented effectively to the global community. Participants noted that resource companies can play a key role in developing local infrastructure for poverty alleviation. Canada can play a role in linking investment with human security. Participants noted the importance of institutional frameworks to promote values on coordination of trade policy and human rights. This would include education, environmental impact assessments, and the involvement of NGOs and business groups in human rights certification processes. Trade and investment agreements could be designed to reflect five core values of labour rights, protection of indigenous peoples, environmental sustainability, resource revenue sharing and resource rent distribution.

3. Government Accountability Discussion Group

Participants in the government accountability discussion group noted many issues linking trade policy and human rights, including distinguishing between accountability and transparency as standards for trade and human rights performance, and liability for harmful socio-economic consequences. As well, participants noted the importance for trade and human rights performance of newly emerging issues such as robotics, e-commerce, genetics and DNA modification. Participants noted the importance of sanctions in response to human rights violations – this would require monitoring and clear standards for linking trade and human rights. Participants discussed human rights certification processes akin to the due diligence processes used by investors. However, it is important to make sure that this type of ‘certificate’ system does not become a trade barrier. Participants noted the relationship between the rule of law and human rights, but cautioned that less than 20% of world population has no access to any type of rule of law.

Participants noted the tensions that often arise between human rights goals and business priorities. All too often, human rights are seen as an add-on and not as a fundamental issue by trade actors. Some business actors are more focused on their businesses without attending to human rights consequences. Participants noted the question whether an “aspirational rule” that may not be complied with is preferable to no rule at all. Participants noted the example of NAFTA, which created separate processes for labour

relations and environmental protection, and by doing so brought attention to these topics. Questions were raised as to whether including human rights mechanisms in trade agreements would improperly delay negotiations even while bringing attention to human rights. Linking human rights compliance with supply chain management could potentially make it easier to monitor human rights performance. Yet concerns were raised about the difficulty in monitoring the increasing granularity of the global supply chain and business compliance through auditing, certification schemes, self-reporting, guidelines and regulation.

Participants acknowledged the need to reconcile conflicting norms and values from different countries. For example practices of dumping mining waste into rivers is not allowed in Canada but in some countries such as Papua Guinea there is no law that addresses the issue. This raises the tension between legality and ethics. In the Papua New Guinea case, for example, it would not be illegal to contaminate water but might be unethical to do so. Other questions were raised on the role of Canadian values in cross-border transactions - how to transmit Canadian human rights values through trade policy?

B. The Toronto Roundtable: Considering Business Dimensions.

The Policy Roundtable held in Toronto May 3, 2016 was presented in collaboration with the Canada China Business Council and the Asian Institute at the Munk Centre of the University of Toronto. The meeting focused on business dimensions of integrating trade policy and human rights. After presentation of the Thematic Volumes, participants broke into discussion groups on issues of (a) development; poverty and inequality, (b) public health and (c) government accountability. Following the small group discussions, the Roundtable concluded with a wrap-up session and keynote remarks from Professor Michael Goldberg, Dean Emeritus at UBC's Sauder School of Business and Senior Fellow of the Asia Pacific Foundation of Canada.

1. Development, Poverty and Inequality Discussion Group

The development, poverty and inequality discussion group noted a range of issues to be considered in coordinating trade policy and human rights, including urbanization,

trade in palm oil, and liberalization of investment regimes. In response to questions about the elements of development, poverty and inequality that are most amenable to trade policy solutions, participants focused on Indonesia in particular and the unintended consequences of poverty alleviation. Palm oil production, for example, has the potential to decrease poverty even while leading to serious environmental harm. Participants noted that trade in palm oil could be subject to international standards with a high degree of acceptance in domestic systems. In addition, participants noted the importance of monitoring the supply chain through third party certification to ensure that palm oil is not produced at the expense of foodstuff production. Participants also suggested that further liberalization of foreign direct investment and increasing transparency might reduce opportunities for corruption. Issues of urbanization and the differences between rural and urban areas in measuring poverty were also discussed.

Participants acknowledged obstacles to coordinating trade policy with human rights. Participants noted that in Indonesia, tensions exist between development goals and labour standards, such that unskilled workers tend not to benefit from increases in wages due to market liberalization (e.g. in the rice and oil industries). Participants noted the challenges posed by corporatized enterprises and agricultural governance. Likewise, participants noted the tension between consumption and inequality, whereby prices play a key role in determining the influence of trade on poverty. For example, liberalization of rice production in Indonesia has had a negative effect on poverty due to high levels of protection in upstream and labour intensive industries.

Looking forward, participants in the development, poverty and inequality discussion group questioned whether property rights and the right to food could be guaranteed through third party certification. Participants also suggested the imposition of certain control export mechanisms, such as export tax on palm oil, to mitigate the negative effects of trade on human rights. Finally, participants acknowledged the effectiveness of international economic law tools to promote beneficial domestic legislative change in Asia. They also noted that the World Trade Organization (WTO) and the Transpacific Partnership (TPP) provide federal governments, in particular Canada, with an opportunity

to decrease their market supply control on agriculture and increase green energy outputs. However, participants also noted that an increase in digitalization and migration resulted in a directly proportional increase in inequality. Such effects could be mitigated by strengthening the level of institutional capacity in Asia, where Canadian enterprises could potentially play a fundamental role.

2. Public Health Discussion Group

Participants in the public health discussion group noted many questions related to linkages between trade policy and human rights. Participants discussed patent protection regimes and their effects on access to medicines in Asia and in Canada. Participants discussed pharmaceutical and health care pricing mechanisms as non-tariff barriers to trade and market access. In addition, participants discussed the issue of affordability of medicines and the role of provincial and state legislation in establishing pricing, in contrast to unfettered market pricing that privileges affluent consumers. Participants also noted the importance of pharmaceutical companies and the role played by institutional conditions on healthcare funding and advertising in Asian countries. Questions were raised as to the harmonization of the World Health Organization (WHO) “Model List of Essential Medicines” and the variations in administrative legal procedures to approve those medicines. Participants indicated that a mutual recognition or equivalence system would be beneficial to coordinate trade and public health. Participants also noted the importance of assessing the institutional, political and legal impact of infectious disease control after the SARS and H1N1 crises in Asia. Finally, participants acknowledged the need for environmental protection and food safety rules as materializations of current public health concerns.

In response to the question of what kind of trade policy initiatives are needed to promote public health in Asia, participants suggested the carve-out of public health measures from investor-state dispute settlement in international trade and investment agreements. Participants also identified the equivalence of certification schemes along the global supply chain as essential to enhance food safety standards and international trade. Finally, participants acknowledged the need for a balanced approach to regulatory

autonomy in adopting public health measures without unnecessarily encumbering international trade. To this end, participants suggested including human rights principles in the design of public health measures that have the potential of directly or indirectly impacting international trade.

3. Government Accountability Discussion Group

Participants in the government accountability discussion group raised several questions about foreign direct investment and trade policy, including the challenges and possibilities of linking trade and investment with human rights protection. In particular, participants noted the beneficial effects of trade and investment agreements in promoting market liberalization.

Transparency and accountability were seen to pose serious challenges in many economies, with China being a key example. Some challenges encountered by foreign owned businesses include, inter alia, changes in government pricing policies. In addition, the time needed to adapt to legislative changes might be too long for Canadian listed companies to ensure compliance with their own internal guidelines – such as those about reporting to their shareholders. Participants identified the need of an open market to foster business relations. Participants noted that while the Canadian business community aspires to having a free trade agreement with China, such an agreement should focus not only on tariffs, but also on important aspects of human rights. In this regard, participants acknowledged the leading role played by Canada in the world political economy and its potential impact on international agreements affecting world trade and investment.

Participants also acknowledged the success of implementing wood construction standards by Canadian companies doing business in China. Based on this example, Canada could focus on strategic sectors that would benefit the coordination of international trade and human rights. In addition, participants noted the many expectations of Canadian citizens that the Canadian government work to ensure human rights protection abroad, as evidenced by the involvement of Amnesty International in Canadian trade deals. Finally, participants acknowledged the need to translate international trade and investment

agreements into better business practices that facilitate the coordination of international trade with human rights protection.

C. The Ottawa Roundtable: The Policy Community.

The Policy Roundtable held in Ottawa May 5, 2016 in collaboration with the Institute for Research on Public Policy, focused on hearing comments and discussion from stakeholders on current and emerging trade and human rights policy issues facing Canadians and their governments. After initial presentation of the Thematic Volumes, participants broke into discussion groups focused on issues of (a) development; (b) labor relations; (c) poverty and inequality; and (d) government accountability. Following the small group discussions, the Roundtable concluded with a wrap-up session and keynote remarks from Professor Michael Goldberg, Dean Emeritus at UBC's Sauder School of Business and Senior Fellow of the Asia Pacific Foundation of Canada.

1. Development Discussion Group

The development discussion group noted a range of issues to be considered in coordinating trade policy and human rights, including political support for trade agreements; issues of policy implementation; the balance between customary and formal regulation; and the functions of overseas governments. In response to the question of potential opportunities for integrating trade and human rights, participants focused on differences in the ways that trade and human rights have been approached and articulated across different policy spaces. Participants noted there has been significant progress in the integration of trade and human rights as policy priorities. Participants noted that there is potential for a clearer common language that speaks of shared prosperity, and that recognizes the opportunities for Canadian business while also taking a long-term perspective on emerging trade partners and their human rights standards. Participants also acknowledged that this would require a shift in thinking between and among stakeholders in setting a broader policy frame.

Participants in the development discussion group also acknowledged obstacles to coordinating trade policy with human rights. Policy implementation at the local level was

identified as a major obstacle. Participants noted that there is not always flow through from standards to implementation. The lack of cohesion between local institutions was also identified as a problem. In the case of land, for example, there often appears a lack of coordination between investment regulation, agricultural management and land use rights. Participants noted that the problem of implementation has three layers: (i) capacity to set standards; (ii) capacity to enforce those standards; and (iii) sensitivity to local community interests and conditions in the course of enforcement. The Canadian political economy was also cited as a potential obstacle to coordinating trade policy and human rights, as participants questioned whether Canadians would be willing to forgo cheaper goods for the better protection of human rights abroad.

Participants recognized the importance of educating Canadians on the importance of trade and developing a social license for trade policy. Coordination of trade policy and human rights can serve an important role in this regard. Participants suggested that including Canadian society in the negotiation process through increased transparency could be a useful way to open a dialogue on the benefits from trade agreements as well as the potential trade-offs, ultimately leading to a more informed discussion.

2. Labor Relations Discussion Group

Participants in the labor relations discussion group discussed multiple questions about linking trade policy and human rights, including the effectiveness of international law to improve labor standards; labor mobility; and the politics involved in implementing international law to improve labor standards abroad. In response to questions about the elements of labor relations that are most amenable to trade policy solutions, participants noted that TPP presents an important opportunity for Canada to include labor standards in trade negotiations. As well, participants suggested that TPP labor standards should extend beyond issues of minimum wages, to include working conditions.

Participants acknowledged the limits to the role of international law as a vehicle to improve labor standards in the domestic context. That the WTO has not explicitly identified various labor rights was cited as an example. Participants noted that

enforceability of international labor standards is one of the main barriers to improving local labor standards. Participants noted that often civil society is relied upon to enforce international standards, but that funding deficiencies and the lack of financial resources remain important obstacles. Participants also noted that regional differences could hinder negotiation efforts, acknowledging the need for consistency in proposed plans and standards balanced against regional relativism. Participants discussed differences between China and India with respect to their willingness to connect labor standards to trade treaties – India has shown a willingness to link trade treaty standards to local labor regulation, while China has shown less willingness. As well, the group noted that, in the Canadian context, provincial jurisdiction has the potential to complicate government efforts to negotiate trade agreements.

Looking forward, participants discussed the importance of a multi-stakeholder approach in the dynamics of trade agreements. Participants acknowledged the political and economic risks involved with China’s new initiative to start its own trade agenda (for example, the “One Belt, One Road” initiative and the Asian Infrastructure Investment Bank¹⁷), and noted that understanding these dynamics not only with respect to Canadian interests but also the interests of trading partners, could mitigate the risk of diminishing the influence of international norms.

3. Poverty/Inequality Discussion Group

Participants in the poverty and inequality discussion group focused on the role of international economic law and the sustainability of current poverty and inequality alleviation strategies in Indonesia. The group noted that despite Indonesia adopting the

¹⁷ On “One Belt One Road” (OBOR), see “Chinese president proposes Asia-Pacific dream,” APEC China 2014 (November 9, 2014), <http://www.apec-china.org.cn/41/2014/11/09/3@2418.htm> and “Chinese president advocates new type of int’l relations,” China.org.cn (September 29, 2015), http://www.china.org.cn/xivisitius2015/2015-09/29/content_36708416.htm [accessed May 25, 2016]. On Asian Infrastructure Investment Bank (AIIB), see Jane Perlez, “China Creates of World Bank of Its Own, and the U.S. Balks,” New York Times Dec. 4, 2015), http://www.nytimes.com/2015/12/05/business/international/china-creates-an-asian-bank-as-the-us-stands-alooft.html?_r=0 [accessed Dec. 8, 2015].

UN Sustainable Development Goals (SDGs) it has been very difficult for Indonesia to operationalize them. Participants also acknowledged the tension between the goals of economic development and sustainability. The burning of vast forest areas in Indonesia for the export of palm oil was cited as an example. Participants also discussed the opportunity for international economic law to have local normative influence. Participants suggested that ‘grey zones’ in international initiatives could change behavior at the local level, including policy instruments that would support the expansion on trade, access to finance, transportation and infrastructure.

Also discussed was how human rights could be integrated into trade policy and who should be taking the lead in assessing human rights compliance. Participants noted that governments and NGOs could act as complements to government certification efforts. The discussion group raised multiple questions about gender and trade policy, particularly in the context of the international framework and suggested that gender-specific measures have a crucial role to play in the assessment of economic development and poverty reduction. Participants also noted the value of trade policies in empowering women as participants in economic development. Participants noted that lessons could be learned from coffee cooperatives in Columbia, for example.

4. Government Accountability Discussion Group

Participants in the government accountability discussion group noted a wide range of issues in linking trade policy and human rights, including the way in which accountability is conceived; (it being sufficiently broad to be meaningful) the way in which good governance is defined; (taking into account its nature as politically charged) the requirements of transparency to achieve accountability; as well as the functions of various actors such as businesses and banks. The group noted several opportunities for trade agreements to affect local accountability standards. The case of China and the gaining momentum of the anti-corruption movement were discussed in particular, with China having made progress on transparency because of its commitments made to the WTO. Participants also noted, however, that more needs to be learned on the extent to which local authorities are reviewing and making decisions independent of Communist

Party officials. Participants also cited other stories of success, such as the US-Cambodia FTA, which helped to change Cambodia's labor code. The group questioned the extent to which these changes could be done outside of a trade agreement, however, and discussed the importance of capacity building as an alternate vehicle for improvement.

Participants in the government accountability discussion group raised multiple questions about foreign investment, including the challenges of addressing rights-based transparency in trade and investment agreements. Participants acknowledged that in some economies such as China, discussion of trade and human rights linkages is particularly difficult - the China Gold case¹⁸ was cited as an example. Participants discussed the role of funding institutions and noted that it is unusual for financial support to be withdrawn over human rights concerns. That the World Bank and similar funding institutions continue to fund businesses where human rights problems have been reported was also noted as a challenge to the coordination of trade policy with government accountability. The group also discussed the challenges involved in third-party suppliers and the difficulties in monitoring accountability in a multi-level supply chain. Participants also questioned the point in the supply chain at which Canadian companies are responsible. Are Canadian companies responsible for monitoring Bangladesh labour laws for example?

Looking forward, participants discussed how the implementation of laws that require Canadian companies to comply overseas could improve domestic compliance. Participants also noted that this would require incentives for them to do so. The group also discussed the potential for involving other countries in technical assistance programs and training in specific institutions as a means of better coordinating compliance.

¹⁸ The China Gold matter involved alleged human rights violations at a mining operation in China by a PRC subsidiary based in Canada. See e.g., "Final Statement on the Request for Review regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region," <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng> [accessed Nov. 30, 2015].

D. Recommendations.

Taken together, participants at the three Policy Roundtables expressed a broad consensus on the importance for Canada of building capacity for the implementation of existing human rights standards in the context of trade policy. Participants noted several initiatives that could strengthen coordination of trade policy with human rights, including:

- Clarify Human Rights Standards. Clarify standards and terms for human rights performance. Acknowledge that international human rights standards include economic, social and cultural rights in addition to civil and political rights, and also extend to the UN Sustainable Development Goals (SDG).
- Trade and Investment Agreements. Integrate human rights provisions in trade and investment agreements. Measures such as production and value chain monitoring and Human Rights Impact Assessments (HRIAs) should be used to strengthen human rights conditions for both investment and trade flows.
- Capacity Building. Establish a “deliverology” framework for measuring how businesses and partner countries integrate trade and human rights to improve outcomes. Provide assistance in the drafting of regulations; administrative capacity building with respect to investor-state arbitration; and assistance in strengthening bureaucratic cohesion. Strengthen the role of labor codes in promoting human rights conditions in partner countries.
- Gender Parity. Develop standards and frameworks for building greater opportunities for women in trade and human rights performance. Expand opportunities for involving women in leadership positions in business, government and civil society.
- Incentives for Performance. Provide stronger incentives for Canadian investors to promote human rights in international trade relationships. Apply human rights standards to inbound and outbound trade and investment. Recognize market and public relations inducements for human rights performance.
- CSR Monitoring. Track the effectiveness of measures for monitoring Corporate Social Responsibility. Work with Canadian businesses to improve the effectiveness of CSR measures and engage with host country governments to identify how they can contribute to that work.
- Certification Processes. Use third party certification (by trade associations, for example) as a basis for human rights engagement. As a complement to government enforcement, trade associations can provide market incentives for compliance, and support increased monitoring and media reporting. Third

party certification can provide market incentives for compliance with international human rights standards that go beyond local requirements.

- Engagement. Pursue stronger engagement in Asia on trade and human rights. Clarify the meaning and operational conditions for engagement. Emphasize the role of international organizations rather than the experience of particular industrialized economies, in setting performance standards.

IV. Next Steps

The Policy Roundtables provided invaluable feedback and policy discussion on the wide range of issues addressed in the five Thematic Volumes being prepared under the APDR project. Moving forward, the editors of the Thematic Volumes will be reexamining their work and including reflections and insights gained from the Policy Roundtables. In particular the policy recommendations to be offered in the Thematic Volumes will draw upon the recommendations and feedback gained from stakeholders at the Policy Roundtables. We hope as well that this Report will be of some assistance to policy processes in Canada and elsewhere that are confronting the challenge of integrating human rights and trade policy.

V. Acknowledgements

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Asia Pacific Foundation of Canada. The Foundation and particularly President and CEO Stewart Beck and Vice President for Research and Programs Dr. Eva Busza provided invaluable suggestions and perspectives on the design of the Vancouver Policy Roundtable. In addition, the Foundation provided meeting facilities, suggested potential invitees, oversaw invitations and communications, and provided other logistical support. Mr. Beck provided opening comments for the Vancouver Roundtable that set a very useful tone for the event.

Asian Institute at the Munk Centre of the University of Toronto. The Institute and particularly outgoing Director Professor Joseph Wong provided very useful perspectives on the design of the Toronto Policy Roundtable. In addition, the Institute provided meeting facilities, suggested potential invitees, oversaw invitations and communications, and provided other logistical support. Professor Wong gave opening comments for the Toronto Roundtable that provided very valuable conceptual and policy perspectives on the session.

Canada China Business Council. The Council and particularly Executive Director Sarah Kutulakos provided important insight on the design and implementation of the Toronto Roundtable. The Council identified potential invitees, assisted with invitations and notices, promoted the event on its website, and provided other support. Drawing on her extensive business experience, Ms. Kutulakos offered very insightful comments at the opening of the Toronto Roundtable.

Institute for Research on Public Policy. The Institute and particularly Director Graham Fox provided extremely valuable advice and suggestions on the design and operation of the Ottawa Roundtable. IRPP identified potential invitees, assisted with invitations and notices, promoted the event on its website, and provided other valuable support. Mr. Fox offered important comments at the opening of the Ottawa Roundtable that set a terrific tone for the event.

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Ambassador Joseph Caron (formerly Canadian Ambassador to India, Ambassador to China, and Ambassador to Japan),

Professor Thomas Cottier (Director, World Trade Institute, Berne Switzerland),

The Honourable Irwin Cotler (MP, former Minister of Justice for Canada),

Ambassador Jonathan Fried (Ambassador and Permanent Representative of Canada to the World Trade Organization),

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I have been privileged to serve as Principal Investigator for the APDR project. My thanks go to all participants, organizers, colleagues and staff who have done so much to contribute to this work.

Pitman B. Potter
Vancouver Canada
May 30, 2016

Appendices

A. Partner Institutions

- A.1. Asia Pacific Foundation of Canada
- A.2. Canada China Business Council
- A.3. Asian Institute at Munk Centre of the University of Toronto
- A.4. Institute for Research on Public Policy

B. Invitations and Agendas

- B.1. Vancouver
- B.2. Toronto
- B.3. Ottawa

C. Book Summaries and Discussion Questions

D. Speaker Biographies

- E. Asia Pacific Foundation Taskforce Report “Advancing Canada’s Engagement With Asia on Human Rights: Integrating Business and Human Rights” (2013), https://www.asiapacific.ca/sites/default/files/filefield/human_rights_taskforce_v3.pdf.