Symbolic Regulation

Human Rights Provisions in Preferential Trade Agreements

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Abstract

While the multilateral trading system views human and labour rights issues as outside of its remit, states increasingly incorporate regulation in these areas into their bilateral reciprocal preferential trade agreements, "HR-PTAs. This dissertation investigates the emergence of HR-PTAs, testing alternative explanations derived from conventional "public interest" and "private interest" theories of regulation against a new theory of "symbolic regulation." According to the public interest theory of regulation, regulation is motivated by benevolent legislators' commitment to correcting market or social problems. The private interest theory of regulation instead views regulation as the result of private interest groups capturing the regulatory apparatus in order to regulate in their own self-interest. Unlike its counterparts, the symbolic theory of regulation suggests that regulation may also be created for the primary purpose of reassuring regulatory advocates that their demands have been heard, rather than to regulate a given issue area.

This dissertation argues that for the states behind them, HR-PTAs are primarily a symbolic form of regulation. Legislators create HR-PTAs to appease domestic human and labour rights organizations, while defending their trade interests through the non-enforcement of their provisions. Using longitudinal network analysis to analyse original data from 415 preferential trade agreements in force from 1989 to 2009, paired with case study evidence from the EU, US, and Canada, this dissertation finds support for the symbolic regulation explanation of HR-PTAs. It shows that a state's commitment to HR-PTAs depends less on the public interest or the desires of private interest groups than on its need to accommodate human and labour rights advocates. Symbolic regulation however should not be dismissed. It sets precedents, creates policy space, facilitates softer forms of cooperation, and can fuel political accountability politics. When this occurs, states may use HR-PTAs or other forms of symbolic regulation to achieve their seeming purpose.

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Glossary

AFL-CIO American Federation of Labor and Congress of Industrial Organizations.

CAFTA-DR Dominican Republic-Central America-United States Free Trade Agreement.

CCALC Canada-Chile Agreement on Labour Cooperation.

CCOFTA Canada-Colombia Free Trade Agreement.

CETA Canada-European Union Comprehensive Economic and Trade Agreement.

CFTA Canadian Free Trade Agreement.

CPTPP Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

CUSFTA Canada–United States Free Trade Agreement.

DOL United States Department of Labor.

EFTA European Free Trade Association.

GATT General Agreement on Tariffs and Trade.

GSP Generalized System of Preferences unilateral tariff system.

HR-PTA (Reciprocal) preferential trade agreement that contains human and/or labour rights provisions.

HRO Human Rights Organization.

ILO International Labour Organization.

NAALC North American Agreement on Labor Cooperation.

NAFTA North American Free Trade Agreement.

NAO National Administrative Office established in each NAALC member state to implement the agreement.

OCTA Omnibus Trade and Competitiveness Act of 1988.

PTA (Reciprocal) preferential trade agreement.

SAOM Stochastic Actor-Oriented Model.

TPA Trade Promotion Authority.

UDHR Universal Declaration of Human Rights.

USTR Office of the United States Trade Representative.

WTO World Trade Organization.

1 Introduction

On the 15th of November 1935, the United States (US) and the Dominion of Canada[1] concluded a bilateral preferential trade agreement (PTA).[2] According to its preamble, the purpose of the Canada–US Trade Agreement was simple: “granting mutual and reciprocal concessions and advantages for the promotion of trade.” The seven page agreement therefore largely restricted its attention to reciprocal tariff levels, foreign exchange, and related obligations.[3] Over fifty-five years later, when the US, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA) in 1993, the four hundred page trade agreement was accompanied by a fifty-five article agreement on labour standards—the North American Agreement on Labor Cooperation.

The expanding scope of PTAs to incorporate non-trade issues, such as labour and human rights provisions, is one of the most profound developments in global economic regulation in recent decades. The rise of this form of linkage politics in trade has made social issues a relevant topic in international economic policy discussions and opened the door for future linkage policies in additional issue areas

[1] As represented by the United Kingdom.

[2] The term “preferential trade agreement” is employed rather than “regional trade agreement” as it better reflects the dispersion of trade ties beyond regions. This dissertation limits the use of the term “PTA” to reciprocal trade agreements. Unilateral trade agreements, such as Generalized System of Preferences (GSP) programs, are outside the scope of this project.

[3] Article 12 of the Canada–US Trade Agreement however outlined an exceptions clause relating to restrictions imposed with on the basis of “moral or humanitarian grounds,” or that applied to sanitary or phytosanitary measures, prison made goods, police or revenue laws, or fraudulent practices.

and at other institutions. This research project is concerned with uncovering the determinants behind this extraordinary change that has put human and labour rights issues at the centre of trade policy.

The modern human and labour rights–international trade linkage was first explored in the post-war period during negotiations for the International Trade Organisation (ITO). The draft charter for the organization, proposed in the late 1940s but never implemented, supported the elimination of "unfair labour conditions" in trade.[4] The US Congress refused to approve the charter, effectively ending the ITO project. Labour rights provisions were not carried over to its successor, the General Agreement on Tariffs and Trade (GATT) or to the World Trade Organization (WTO). Human rights concerns are only tangentially covered in the GATT and WTO's formative agreements.[5] Neither institution has governed or governs the human rights practices of its member states.

During the GATT years, which spanned 1947 to 1994, there was little debate on the inclusion of human or labour rights provisions in the multilateral trading system—with a few exceptions. In 1953, shortly after the ITO failure, the US unsuccessfully proposed the inclusion of a labour rights clause in the GATT (Office of the Special Trade Representatives for Trade Negotiations 1964). The US Trade Act of 1974 again encouraged the President to promote such a clause in the GATT (US House of Representatives 1975) and in 1986, the US suggested draft language on the matter (GATT Preparatory Committee 1986). These later linkage attempts were also unsuccessful.

[4]United Nations Conference on Trade and Employment, "Final Act," Article 7, notes that the members of the ITO, "recognize that unfair labour conditions, particularly in production for export create difficulties in international trade and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory."

[5]For example, Article XX, "General Exceptions" of the GATT 1947 states: "[N]othing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human ... life or health." (GATT 1947, Art. XX.). While Article XX is not a direct reference to human rights, it does enforce minimal standards of human protection.

The WTO has faced intermittent demands throughout its existence to discuss the place of human rights more broadly, and labour rights provisions specifically, in the multilateral trade regime. At the 1996 WTO Singapore Ministerial for example, WTO members discussed creating a general social clause that would oversee labour standards. Of the major trading states, the EU and US strongly supported the initiative. The US even threatened to not sign the final declaration if it did not refer to labour standards (Leary 1997, 120). Yet, as the WTO operates on a *de facto* one member, one vote system, all member states would have to agree to the creation of a social clause. The required consensus was not reached on the topic. Strong opposition from developing countries meant that the Ministerial Declaration resolved that the International Labour Organization (ILO), not the WTO was the "competent body to set and deal with these standards," effectively ending the discussion (WTO 1996).[6] The result is that today human and labour rights provisions remain largely outside of the WTO's regulatory jurisdiction.

In the bilateral context, states such as the EU,[7] US, and Canada, have increasingly incorporated human and labour rights provisions into their PTAs.[8] From 1989 to 2009, states included regulation in these areas in 171 of their PTAs, which I together term "HR-PTAs." Clauses related to human and labour rights commonly appear in the preamble or main text of PTAs and generally outline member states' commitment to upholding domestic or international commitments in these areas.

[6]Since the Singapore Ministerial, the US has also broached the subject of labour rights in the WTO Trade Policy Review (TPR) context. In its 2004 TPR, the US insisted that the subject of labour rights was relevant to the TPR mechanism (WTO 2003, 24). In response, representatives from India and Venezuela declared that non-trade issues were not appropriate topics in the TPR setting (Aaronson 2007, 24–25).

[7]While the EU is not a state in the conventional sense, but an institution that has state-like jurisdiction over trade, for the purpose of simplicity, the EU is referred to as a state when compared to other countries.

[8]PTAs are allowed under Article XXIV of the GATT 1994 as an exception to the Most Favoured Nation rule. While the WTO itself maintains a clear distinction between trade and the promotion of human and labour rights, including human and labour rights clauses in PTAs is not clearly prohibited.

These clauses are often paired with detailed enforcement provisions that provide member states with the unilateral right to impose fines, sanctions or other hard measures on partner states that violate their human or labour rights-related obligations.

The emergence of the bilateral human and labour rights–trade linkage is puzzling for several reasons. First, HR-PTAs regulate issues that are not universally accepted by states as appropriate or relevant to the trade context, as demonstrated by the multilateral trade regime's experiences in this area.[9] Second, human and labour rights are also already governed by enforceable domestic rules in most states, and by well-established international legal regimes.[10] HR-PTAs therefore overlap with existing forms of regulation. Third, HR-PTAs may incur additional negotiation and drafting costs over traditional PTAs, which already experience a lengthy and expensive inception. Fourth, in contrast to the high general level of enforcement found in PTAs, states have never deployed the hard enforcement measures contained within their HR-PTAs, suggesting that they are reluctant to use their HR-PTAs. Yet, states choose to sign HR-PTAs in increasing numbers.

1.1 Research Questions

The evolution of the bilateral trade agenda to incorporate human and labour rights regulation raises an important empirical question: *Why do states commit to HR-PTAs?* In other words, why are states motivated to link trade preferences to human and labour rights obligations? The general reasons behind the proliferation of PTAs

[9] This is exemplified by the WTO's Singapore Ministerial Declaration, which dedicates the ILO as the appropriate venue for labour rights concerns (WTO 1996).

[10] International human and labour rights law has grown exponentially since Second World War and now incorporates dozens of legal instruments that have attracted extensive participation. These include but are not limited to: the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Forced Labour Convention, and the Minimum Age Convention.

over the past two and a half decades are well known.[11] Yet, few studies have systematically investigated why states choose to regulate specific non-trade issues, such as human and labour rights, through their trade agreements.[12]

Previous studies in this area have examined the strength and effectiveness of the human and labour rights components of the broadening trade agenda and the diffusion of human and labour rights practices through trade. In more detail, prominent early work on the topic finds that HR-PTAs with hard standards coerce repressors into improving their human rights behaviour (Hafner-Burton 2005, 2013). Controlling for the presence of hard standards within HR-PTAs, labour rights standards have also been shown to spread from importing to exporting countries through a "California effect" (Greenhill, Mosley, and Prakash 2009). Kim (2012) shows that the US' trade partners improve their labour rights performance *prior* to signing HR-PTAs in order to increase their attractiveness Kim (2012). A more recent contribution contends that domestic protectionist sentiments relate to the strength and design of economic and social rights and environmental protection clauses in PTAs (Lechner 2016). While these analyses greatly improve our knowledge of the design of HR-PTAs and the outcomes associated with the human and labour rights–trade linkage, they do not primarily focus on the reasons behind this linkage. Taking up this task, this research focuses on the motivations of the states *behind* HR-PTAs—i.e. the instigators of this practice.

In addressing the motivations behind HR-PTAs, this research project engages however with the more fundamental theoretical question: *What motivates states to regulate?* This question has been at the core of regulatory research for many decades, generating the well-known public interest and private interest or "capture"

[11] For example, see: Baldwin (1997), Fernandez and Portes (1998), Whalley (1998), Mansfield and Reinhardt (2003), and Mansfield and Milner (2012).
[12] Exceptions include: Meunier and Nicolaidis (2006) and Milewicz et al. (2018).

theories of regulation and a rich body of accompanying literature.[13] While the public interest theory of regulation suggests that states are altruistically motivated to regulate, desiring to correct market or social failures, the private interest theory counters that self-interested groups dominate the regulatory process and are able to capture the regulatory apparatus in order to produce regulation that enshrines their preferences.[14] This dichotomy is unsatisfactory as it fails to adequately account for the creation of regulation that is not motivated by altruism or out of a desire to channel benefits towards narrow interest groups but instead by the need to appear receptive to regulatory advocates' concerns. My central theoretical argument is that the creation of regulation can also serve as a visible reassurance mechanism designed to appease regulatory advocates rather than to regulate. I term this form of regulation, symbolic regulation.

Building on the symbolic politics literature (Edelman 1964; Gusfield 1963, 1967), the first original contribution of this dissertation is therefore its specification of a third theory of regulation: *the symbolic theory of regulation*. According to the symbolic theory of regulation developed here, regulation can be used to create the appearance of responsiveness by a state to the demands of regulatory advocates that have traditionally been unable or unwilling to engage in capture politics. These groups include but are not limited to non-governmental organizations (NGOs) and other civil society groups that are traditionally under-resourced or campaign for broad public interest-oriented policies rather than policies that preferentially favour their own supporters. Symbolic regulation achieves this task by explicitly and visibly affirming or acknowledging adherence to the values that

[13] For example see: Stigler (1971), R. A. Posner (1974), Wilson (1980), Peltzman (1976), Ogus (2004), Hantke-Domas (2003), Mattli and Woods (2009), Levi-Faur (2011), and Baldwin, Cave, and Lodge (2012).

[14] The private interest theory of regulation also suggests that private interest groups may advocate for the absence of regulation altogether when that is in their best interest. However, as this research project focuses on why states choose to regulate, I do not further elaborate on this scenario.

the advocates support through the creation of formal legal rules. In more detail, symbolic regulation is most likely in cases where the legislators involved in creating regulation, "regulatory legislators," are under strong pressure from regulatory advocates to provide new regulation, feel responsible towards these advocates; yet, are unable or unwilling to provide the regulation that the advocates desire. Regulatory advocates accept symbolic regulation when they face barriers to gaining information on the monitoring and enforcement of their desired regulation or when they acknowledge it as a better than nothing outcome. Importantly, the symbolic theory of regulation does not intend to explain all regulatory activities—only a specific form of regulation that is produced in response to certain conditions. In this way, the symbolic theory of regulation complements rather than competes with its counterparts.

The second original contribution of this research project is empirical. I apply each theory of regulation to the context of HR-PTAs. In line with the symbolic theory of regulation explanation, my results indicate that HR-PTAs are primarily signed as conciliatory gestures. Regulatory legislators commit to HR-PTAs when they face strong demands that they are unable to ignore from human and labour rights advocates to pay attention to human and labour rights practices and outcomes through their trade agreements. My findings therefore show that HR-PTAs are generally not signed for the reasons often assumed—i.e. to intervene in the human or labour rights practices of partner states as the public interest theory of regulation expects, or as protectionist measures designed to benefit domestic business and industry as the private interest theory of regulation explains and developing countries have argued. This finding has important implications for our understanding of the origins and desirability of linkage politics in trade. More broadly, it also affirms the importance of under-resourced groups, and especially public interest-oriented groups, in promoting regulatory innovation, though cautions that the regulation these groups receive may be primarily symbolic rather than instrumental in nature.

The remaining sections of this introduction are dedicated to the following tasks. First, I introduce my argument in more detail. Second, I provide an overview of HR-PTAs and the HR-PTA network, giving context for the discussion to come. Third, I discuss the analytical strategy pursued. Finally, the chapter concludes with an outline of the rest of this dissertation.

1.2 The Argument

The large number of HR-PTAs signed over the past two and a half decades makes an all-encompassing explanation that fits all cases unrealistic. The aim of this dissertation is therefore narrower: to explain the *main* determinant(s) behind state commitment to HR-PTAs. The empirical argument I provide is based on a key observation: international trade has an image problem.

In an interconnected global economy, devastating incidents, like the 2013 Rana Plaza factory disaster in Bangladesh, which killed over 1,100 garment workers, have brought the human costs of trade to the forefront of policy debates and advocacy efforts. Domestic public interest-oriented advocacy groups, while generally unable to capture the regulatory apparatus, are often able to harness media attention on this topic, and generate strong pressure on regulatory legislators to react. The human and labour rights implications of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)[15] for example, became a central point of contention in the negotiations leading up to the agreement's eventual signature in 2018. Through prominent editorials in newspapers and briefings from labour rights advocates, leaders were repeatedly and publicly called on to include robust labour rights provisions in the agreement's final text or even to abandon the CPTPP altogether.[16]

[15]This agreement was formerly referred to as the Trans Pacific Partnership Agreement (TPP).
[16]Examples include: Aguilar (2015), NYT Editorial Board (2015), Sifton (2015), and AFL-CIO

My main empirical argument is that for regulatory legislators, linking human and labour rights to trade is a logical reassurance-related response to the demands from regulatory advocates and the broader public that accompany this image problem. The controversy that surrounds trade agreement negotiations[17] coupled with their high-profile position in public discourse, and their origins as *trade* rather than human or labour rights tools, makes HR-PTAs a prime vehicle for symbolic forms of regulation. Due to information asymmetry between regulatory legislators and regulatory advocates and to the limited attention span of the public, it is the highly visible creation rather than the design or enforcement of HR-PTAs that fulfils their reassurance-related role. The result is that in most cases, HR-PTAs primarily exist on paper—except when political necessity forces states to use them to achieve their ostensible purpose.

Domestic audiences accept HR-PTAs for two reasons. First, as trade agreements are negotiated behind closed doors, and compliance with the human and labour rights clauses they contain is often not systematically monitored, domestic advocates of HR-PTAs do not have an easy task in ascertaining if HR-PTAs are working to meet their alleged goals. Moreover, as public attention is a scarce resource, once HR-PTAs are signed and the fanfare surrounding them diminishes, these advocates may lack the resources in terms of finances or public support, to investigate the effectiveness of the HR-PTAs they demanded. For these reasons, they

(2016).

[17] This is reflected in public opinion polls. At the height of CPTPP (then TPP) negotiations, according to an April 2016 survey of 10,000 American registered voters, only 26 percent of Americans supported the agreement (Morning Consult 2016). Canadians, New Zealanders, and Australians also exhibited scepticism towards this mega PTA. A survey conducted in February 2016 suggested that just 32 percent of the 1,500 Canadian participants supported their country joining the CPTPP (Grenier 2016). In New Zealand, support for the CPTPP was a further 12 percentage points lower than in Canada, according to an August 2015 poll (New Zealand Herald 2015). Another 2015 poll found that 30 percent of Australians outright opposed the CPTPP (Wike, Stokes, and Poushter 2015). Looking to other treaties, a YouGov poll conducted in April 2016, found that as low as 18 percent of Americans and 17 percent of Germans supported the proposed Transatlantic Trade and Investment Partnership (TTIP) agreement between the US and the EU (Barkin 2016).

may not be aware that their demands have not been truly met. Second, advocates that are not appeased by existing HR-PTAs may feel that the agreements, while not perfect, are better than nothing. These advocates may accept these symbolic HR-PTAs for the present, hoping to later use them to fuel accountability politics.

Finally, while this research project argues that HR-PTAs primarily fulfil a reassurance-related rather than a regulatory role,[18] it is important to note that "[s]ymbols need to be accepted" (Hinckley 1990, 8). When they are not, there is room for calls from domestic and international audiences for political accountability. When gaps between the advertisement of regulation and regulatory realities are revealed, symbolic regulation may be activated to achieve its seeming purpose. This means that if advocates of HR-PTAs continue to pressure states to actively fulfil their regulatory promises, HR-PTAs may soon have bite.

1.3 The Anatomy of HR-PTAs

PTAs were not initially devised to solve human or labour rights issues. The GATT viewed the purpose of PTAs as to "facilitate trade between the constituent territories" (Article 24, GATT 1947), a perspective which has been embraced by its successor, the WTO.[19] Yet, especially since the 1990s, as Figure 1.1 demonstrates, PTAs have increasingly formally regulated both human and labour rights.

The grouping of labour rights and human rights under the term "HR-PTAs" is logical for several reasons. First, several labour rights are clearly accepted rights in major human rights agreements. For example, Article 4 of the UDHR prohibits slavery, Article 22 protects the right to social security, and Article 23 gives everyone

[18] In fact, an EU Parliamentary report has noted that the EUs human rights clause has "in practice, been treated not as a human rights clause but rather as a political clause," (Bartels 2014) implying that they serve an inward-looking political function.

[19] See preamble to the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, which notes that "the purpose of such agreements [PTAs] should be to facilitate trade between the constituent territories" (WTO 1994).

the right to work, to choose their employment, and to have "just and favourable conditions of work." Second, the ILO itself treats the four core labour rights[20] as fundamental human rights (Mantouvalou 2012, 154). In addition, the EU—the actor that has signed the most HR-PTAs—has acknowledged that its standard human rights clauses cover "core labour standards as set out in the eight core ILO Conventions" (European Commission 2016a, 12).

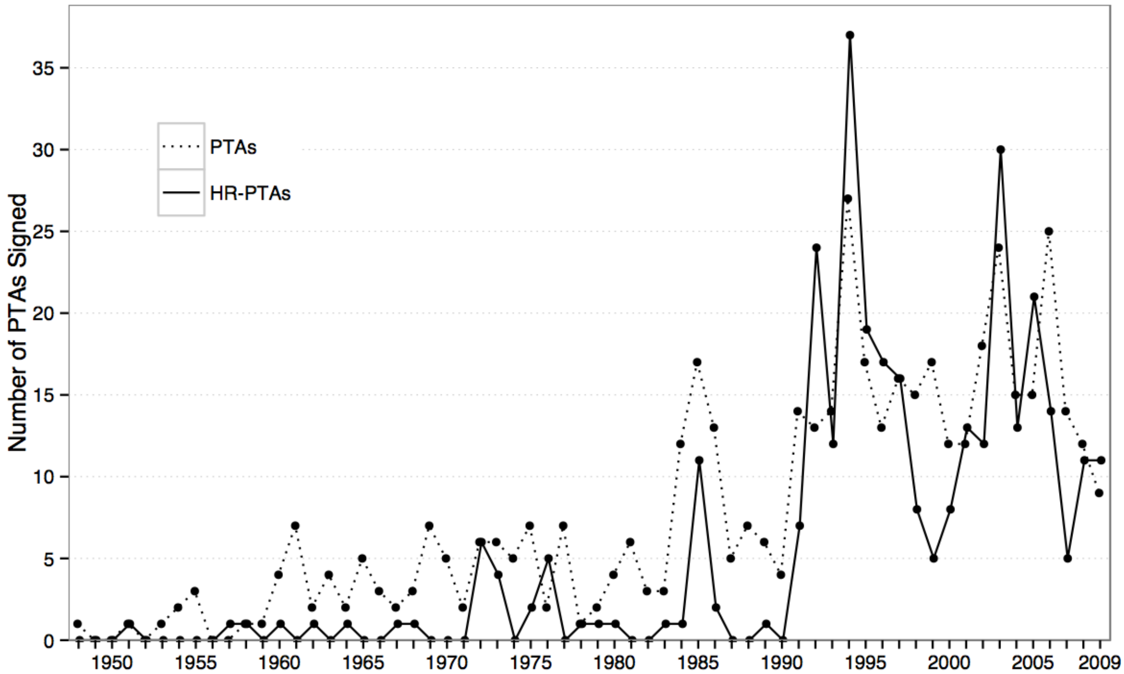

Figure 1.1: State Commitment to PTAs and HR-PTAs, 1948-2009

Figure 1.1 shows that basic labour rights provisions crept into a handful of agreements covering trade relations as early as the 1950s.[21] the 1958 Benelux Eco-

[20]The four core labour rights are: the freedom of association, the elimination of forced labour, the abolition of child labour, and the elimination of discrimination in respect of employment.

[21]The 1958 Benelux Economic Union between Belgium, the Netherlands, and Luxembourg for example contained labour-related social provisions. Article 70 of the Treaty Establishing the Benelux Economic Union reads:

> In the field of social policy the High Contracting Parties shall pursue a co-ordinated policy in consultation with corporate organisations of trade and industry which aims at the advancement of social progress and at the introduction of social

nomic Union) but became common in the 1990s. Human rights regulation only began to appear in PTAs in the early 1990s. While less than 30 HR-PTAs were signed between the 1950s and 1980s, in the 1990s alone, over 100 HR-PTAs were signed. The rise of HR-PTAs means that states are increasingly choosing to formally pair their trading practices with human and labour rights commitments.

States with all levels of human rights scores have committed to HR-PTAs but in general, the stronger a state's human rights practices, the larger the proportion of its trade agreements cover human or labour rights issues. Figure 1.2 breaks down state commitment to HR-PTAs by states' human rights scores, as measured by their level of physical integrity rights protection (Cingranelli, Richards, and Clay 2014). A score of 8 signifies strong human rights practices; whereas, a score of 0 implies strongly repressive behaviour (Cingranelli, Richards, and Clay 2014).

welfare measures providing a maximum of protection and of social security to their people. (English translation from original in French, available from WIPO (1958).)

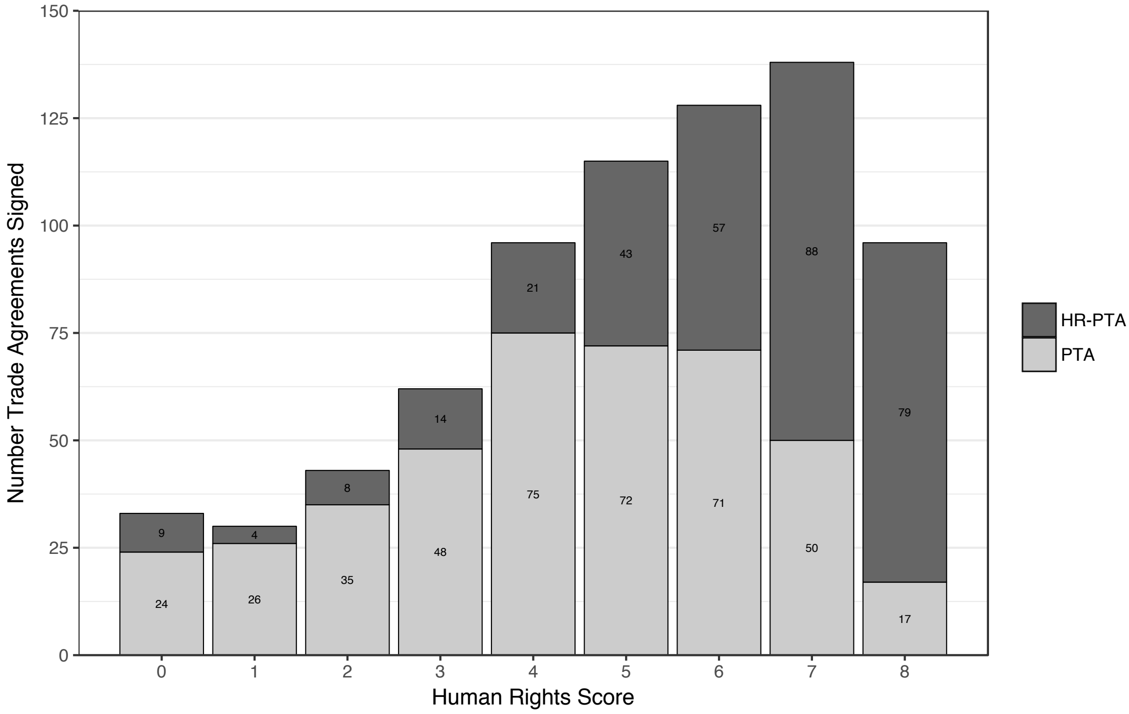

Figure 1.2: Type of Trade Agreement by States' Human Rights Scores, 1989-2009

Figure 1.2 also illustrates that states with strong human rights practices are generally more likely to sign any form of trade agreement than states with repressive human rights practices.

The HR-PTAs this array of states sign are not all alike; their content differs from agreement to agreement. The human and labour rights clauses in HR-PTAs can take on many forms, often appearing in the preamble to the treaties, and sometimes in an article in the main text. Newer HR-PTAs often contain the provisions in a separate chapter in the main text or in a side agreement to the treaty. Modern EU PTAs and other agreements covering trade include a clause declaring the parties' "respect of democratic principles and fundamental human rights as set out in the Universal Declaration on Human Rights."[22] In contrast, the US' HR-PTAs routinely

[22] This clause is sometimes instead included in a political side agreement. For example the 2016 FTA between Canada and the EU (CETA) is accompanied by the Canada-European Union Strategic Partnership Agreement (SPA), which contains the parties' human rights commitments.

include only labour rights provisions. In the early to mid 1990s, US labour clauses primarily focused on the enforcement of domestic labour laws, though more recently have broadened to include references to international labour standards. The location of the labour clauses in the US' HR-PTAs differs from agreement to agreement, with side agreements in line with the NAFTA template common in the post NAFTA years, and more recent agreements including dedicated labour rights chapters within the main text. For example, the US-Jordan Free Trade Agreement (signed 2000) notes in the main text:

> The Parties reaffirm their obligations as members of the International Labor Organization and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. (Art.6).

Canada has incorporated aspects of the US and EU models. The text of the Canada-Colombia FTA (signed 2008) affirms members' commitments to "protect, enhance and enforce basic workers' rights" and to:

> [R]espect the values and principles of democracy and promotion and protection of human rights and fundamental freedoms as proclaimed in the Universal Declaration of Human Rights. (Preamble).[23]

The possible enforcement measures that can be taken under HR-PTAs vary from softer mechanisms, such as consultations and human rights dialogues, to harder mechanisms adopted from the international trade regime.[24] These include: fines,

[23] A side agreement oversees the human rights commitments of the parties in more detail. See: Government of Canada (2010a).

[24] Of the international legal regimes, international trade law perhaps comes closest to the ideal of "hard law" (Shaffer and Pollack 2010, 715). Hard law is legally binding, precise, and delegates authority for the implementation and enforcement of the obligations it contains (Abbott and Snidal 2000). PTAs generally meet all three criteria. The 2018 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) for instance, is a legally binding agreement. Like many trade agreements, it is also precise—at over 5,000 pages long, the CPTPP text provides ample space for clarificatory statements and detailed articles. The CPTPP also contains similar enforcement mechanisms to the much praised WTO panels, sometimes referred to as the "jewel" in the WTO's crown (WTO 2016). PTA dispute settlement panels may authorize retaliatory measures, such as fines or sanctions, against non-compliant parties.

sanctions, and provisions allowing for the termination of the agreement. The inclusion of strong enforcement measures makes HR-PTAs unique. Outside of HR-PTAs, international human and labour rights commitments generally lack teeth. International human rights law lacks the centralized coercive enforcement institutions present in domestic settings. This has been the case since the 1948 signing of the Universal Declaration of Human Rights (UDHR)—a milestone in the foundation of modern human rights law. Yet, at that time, "[n]ot even the liberal democracies were ready to commit themselves to binding legal obligations" (E. Posner 2014, 17), a legacy that has had long reaching effects. Today, human rights treaties, while increasing in number, remain "unequipped with legal authority" (104) and rely primarily on voluntary compliance. The related international labour rights regime—organized around the ILO—while possessing a potentially coercive enforcement mechanism,[25] has also largely relied on the "voluntary approach to compliance" (Charnovitz 2001) common in international law.[26]

While HR-PTAs make human and labour rights obligations subject to this range of enforcement measures, like much in international law, HR-PTAs are not designed to be self-enforcing and rely on member states to oversee their functioning.[27] When human and labour rights enforcement-related cases do get opened under HR-PTAs, as the ILO notes, it is often not member states but "advocacy measures by civil society, in particular workers' organizations, [which] have proved instrumental" (ILO 2015, 4). All cases that have been brought forward under US HR-PTA mechanisms have been proposed using a civil society mechanism under which orga-

[25] When a state does not comply with the recommendations of the ILO's Commission of Inquiry, Article 33 of the ILO Constitution gives the ILO Governing Body the ability to recommend to the International Labour Conference "such action as it may deem wise and expedient to secure compliance therewith."

[26] As Kimberly Ann Elliott memorably puts it, the "enforcement of law, standards, and norms relies on three basic tools—sunshine, carrots, and sticks. The ILO has traditionally relied primarily on sunshine" (Elliott 2000, 2).

[27] An exception to this rule is the Canada-Colombia FTA (signed 2008), which includes a side agreement requiring the partners to monitor the human rights effects of the FTA annually.

nizations can send in submissions about trade partners that have allegedly violated their HR-PTA governed obligations. Under current EU HR-PTAs, civil society is not granted the opportunity to propose its own cases. Member states of most HR-PTAs could propose submissions of their own but have rarely done so (GAO 2014, 34; ILO 2015; Saltnes 2013; The Staff of Senator Elizabeth Warren 2015).[28] To date, the hard enforcement measures associated with HR-PTAs have not been used.

The PTA and HR-PTA networks

Trade agreements form a large network that connects states across the world. Like all basic networks,[29] the trade agreement network is comprised of two main features: *nodes*[30] and *ties*.[31] Here, countries are the nodes in question and trade agreements, whether traditional PTAs or HR-PTAs, are the ties. The overarching pattern made by these ties form the structure of the network. Some networks for example feature a star pattern, with one central node or "hub" that has ties to a set of other nodes or "spokes" that themselves are unconnected. The PTA and HR-PTA networks features clear hubs and spokes, although the spokes often have some ties between them, as illustrated in Figure 1.3.[32] The PTA and HR-PTA networks however have mostly different (but in a few cases overlapping) hubs and spokes. While many actors such as: Jordan, Turkey, and to a lesser extent, the EU and Israel, are "hubs" in the PTA network as evidenced by the "star pattern" of their ties, only the EU and US are clear hubs in the HR-PTA network.

[28] These provisions have however been enforced on a number of occasions under *unilateral* preference schemes (i.e. Generalised System of Preferences (GSP) programs). For example, on the basis of its human rights practices, Myanmar was exempt from EU GSP preferences from 1997 to 2013 (EU Council 2014, 23). Also, see discussion on the use of trade-related labour conditions in the Dominican Republic in Schrank (2013).

[29] A network can also be called a "graph."

[30] Nodes are also known as "vertices" or "actors."

[31] Ties may also be referred to as "edges," "relations," or "connections."

[32] States with no PTAs or HR-PTAs (i.e. isolates) have been removed to make the graphs more readily interpretable.

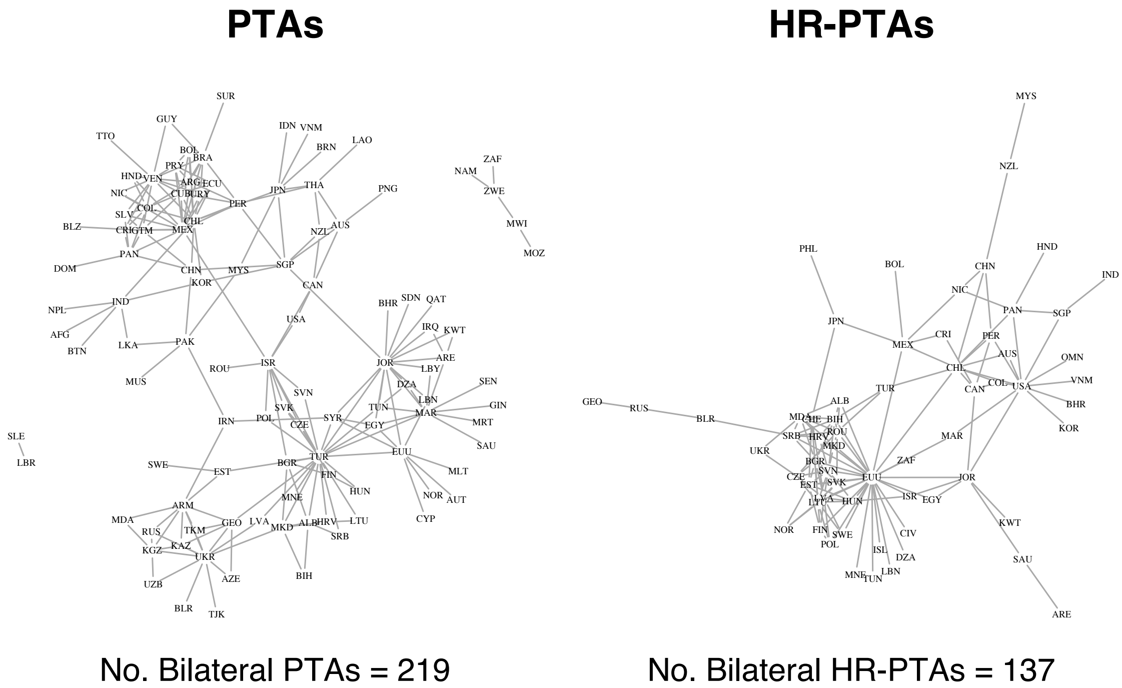

Figure 1.3: The Bilateral PTA and HR-PTA Networks, 1989-2009

The ties in any given network may be directed[33] or undirected. A directed tie is a tie with an orientation that is usually depicted with arrows. Thus, a directed tie from node A→B would not imply that there is another directed tie from B→A. In an undirected network, a tie is *between* nodes A and B not *from* node A *to* node B. In this case, the tie does not have a direction and is usually depicted with a straight line, as the PTA and HR-PTA ties are in Figure 1.3. The PTA and HR-PTA ties are best understood as undirected in nature as the trade agreements in focus are reciprocal in nature and involve commitments going both ways. The *formation* of a trade agreement could however be viewed as a directed tie if one state initially proposes the agreement to the other. Yet, the demandeurs behind specific trade agreements are generally not possible to isolate as trade negotiations occur behind closed doors. Therefore, in this research project, I treat the PTAs and HR-PTAs as

[33]Directed ties are also referred to as "arcs."

undirected ties.

Networks can be assessed and described at the level of individual nodes or as a whole (i.e. at the network level). At the node level, one of the most important concepts for my purposes is "centrality." Centrality—an actor level characteristic—is not to be confused with Freeman "centralization," which is a network-level measure. Centralization captures the distribution of a given measure of centrality in a given network.[34] An actor's centrality in a network is commonly understood as a key indicator of its importance or prominence in the network (Wasserman and Faust 1994, 169). Central actors are the best connected to others and given their structural prominence, may have the most influence in a network. A variety of measures have been developed to assess the centrality of a given actor (i.e. state) in network analysis. One of the most widely used measures of centrality is degree centrality.[35] Degree centrality is a simple measure that calculates the number of ties connected to a given node. Here, this corresponds to the number of PTAs or HR-PTAs signed by a given country. A node with no ties is called an "isolate."

As Table 1.1 illustrates, the two central actors (in terms of the number of HR-PTAs they sign) in the HR-PTA network are the EU and US, though the EU has signed more than twice as many HR-PTAs as the US. The HR-PTAs of these actors are analysed in Chapters 4 and 5, respectively. A grouping of eastern European states that joined the EU during the 1989-2009 period, are the next highest HR-PTA signers,[36] followed by Chile. As why the new eastern European democracies make human rights commitments has been well-studied and is likely related to their accession to the EU (Moravcsik et al. 2000; Elsig, Milewicz, and

[34] Centralization scores range from 0 (all actors have identical centralities) to 1 (a perfect star network).
[35] Degree is often referred to as "connectivity."
[36] Once a state joins the EU, as it no longer has autonomy in trade policy, its node is removed from the dataset for the following years. The degree scores for states that join the EU are therefore indicative only of pre-EU accession trade agreements.

Table 1.1: Top HR-PTA Signing States (1989-2009)

Rank	**Country**	**Degree HR-PTA**	**Degree PTA**
1	EUU	29	9
2	USA	12	2
3	LTU	11	2
	LVA	11	2
	SVN	11	2
4	CHL	10	13
	BGR	10	5
	EST	10	3
5	BIH	9	2
	ROU	9	1
6	MDA	8	2
7	JOR	7	16
	SVK	7	3
	SRB	7	2
	SVK	7	3
8	MEX	6	15
	CZE	6	4
	HUN	6	2
9	PAN	5	7
	CAN	5	4
	HRV	5	4
	FIN	5	3

Stürchler 2011), these states are outside the scope of the case study analyses. The next highest non-European signers are Jordan, Mexico, and Panama, with 7, 6, and 5 HR-PTAs respectively. These countries have generally not been demandeurs of HR-PTAs but rather recipients of the agreements. The recipients of HR-PTA are briefly discussed in final chapter. Canada, which as of 2009 had signed 5 HR-PTAs, and which has had a unique experience with these agreements going from a recipient to a demandeur of a new form of linkage, will be analysed in Chapter 6.

Density is the most common network-level measure that calculates how connected a given network is. It is calculated by taking the total number of ties in a given network and dividing it by the total number of possible ties. Density therefore ranges from 0 (no ties have been made of all possible ties) to 1 (all possible ties are connected). For example, a network with 50 connected ties out of 300 possible ties would have a density of approximately 0.17. As shown in Figure 1.2, the HR-PTA network is less dense than the PTA network, which itself is relatively sparse. In the HR-PTA network, 1.2 percent of the possible ties are connected, and in the PTA network, 1.7 percent.

Table 1.2: Network-Level Descriptive Statistics (1989-2009)

	HR-PTA	**PTA**
Density	0.012	0.017
Degree Centralization	0.172	0.120
Mean Degree	1.99	2.84

In terms of centralization, the HR-PTA network has more variability in the dispersion of its ties than the PTA network, indicated by its higher degree centralization score. Compared to the hierarchical ideal type of the "star network", in which all actors are only connected to the hub node in the centre and not to each other, the inequality of the HR-PTA network is approximately 17 percent of the maximum possible and the PTA network is 12 percent of the maximum possible.

In other words, the HR-PTA network is slightly more hierarchical than the PTA network, making it simpler to isolate dominant actors such as the EU. The lower centralization score of the PTA network suggests that the PTA network has a more even distribution of ties across actors than the HR-PTA network. Lastly, the mean degree score is simply the average number of ties each actor has in each network. The mean degree in the HR-PTA network is 1.99 and in the PTA network, 2.84, meaning that on average each country in the sample has 1.99 HR-PTA ties and 2.84 PTA ties.

1.4 Strategy

Determining why states commit to HR-PTAs is a difficult task. Trade negotiations routinely occur behind closed doors and there are no publicly-available official negotiating histories to draw on. Comparing individual treaty texts is inadequate as the documents can do little to reveal the motivations behind specific clauses. I therefore rely on two strategies. First I conduct statistical network analyses using a new HR-PTA dataset (Milewicz 2014; Milewicz et al. 2018) to assess how different relevant factors affect the likelihood of states committing to HR-PTAs. Second, I prepare detailed country-level case studies that rely on interviews with trade negotiators, with human and labour rights organizations, and with other relevant stakeholders, as well as information from media reports, official documents, and secondary sources. Using this combination of evidence, I aim to provide a detailed picture of the origins of HR-PTAs. Each of these elements is described in more detail below.

The use of network analysis enables me to statistically test a series of hypotheses derived from each of the three theories of regulation and assess their relevance to explaining why states commit to HR-PTAs. Most previous quantitative analyses of PTAs have relied on traditional statistical methods for dyadic data—i.e. logistic regression with cubic splines.[37] However, as Manger, Pickup, and Snijders (2012, 863-864) stress, it is reasonable to assume that bilateral PTA data exhibits dyadic dependence.[38] The common independence of observations assumption is thus violated using this technique, leading to specification error and biased results. While, other alternatives exist,[39] an advantage of network analysis is that rather than treating interdependence as a nuisance, it models it. Using network analysis techniques allows me to directly evaluate and account for the indirect effect that a given PTA or HR-PTA may have on the formation of other agreements. In this way I am able to control for features such as path dependence, which may partially explain states' subsequent HR-PTA commitments beyond their initial HR-PTAs.

More specifically, I use stochastic-actor-oriented-models (SAOM).[40] SAOMs are a type of longitudinal network model that evaluates the probability of "ties" (here PTAs and HR-PTAs) being created or dissolved as the result of the structure of the current network and the characteristics of the actors or, in network terminology, the "nodes" involved. SAOMs, unlike their counterpart Temporal Exponential Random Graph Models (TERGMs), are actor-oriented, which makes them an appropriate choice when the main concern is evaluating why actors choose to create particular ties. An additional benefit of SAOMs is that beyond testing the importance of monadic, dyadic, and structural[41] explanations, they enable insights on how the evolving and co-evolving structures of the HR-PTA network and the PTA network affect state commitment to trade agreements

My statistical analysis is based on an extensive new dataset that codes human

[37] A few recent studies are exceptions. See: Hollway and Koskinen (2016), Milewicz et al. (2018), and Warren (2010).

[38] A particular state may be a member of multiple PTA dyads, meaning individual observations are unlikely to be independent even after controlling for dyadic and monadic predictors.

[39] Spatial analysis for example, is also adapted to deal with interdependence.

[40] For a basic introduction, see: Snijders, Van de Bunt, and Steglich (2010).

[41] Structural effects relate to the structure of the network and their presence indicates that the presence of one tie depends on the presence of other ties. These can also be referred to as "network" effects.

and labour rights clauses in PTAs (Milewicz 2014; Milewicz et al. 2018), which I have contributed to, and original country-level data on 442 human and labour rights organisations (HROs). The sample of trade agreements is comprised of 171 HR-PTAs and 244 PTAs for a total of 415 trade agreements overall. The PTAs we have coded are primarily drawn from the WTO PTA database and a list held by the World Trade Institute (i.e. the "Hufbauer List"). This effort, which currently looks at PTAs signed from 1948 until 2009, is the most comprehensive attempt yet to code non-trade issues in PTAs. I have hand-coded the HRO data using the Yearbook of International Organizations' online database (Union of International Associations 2016).[42]

The EU, US, and Canada are the focus of my case studies. Each actor has been a proponent of HR-PTAs for over 25 years. The EU and US are the top two signatories of HR-PTAs, and therefore leaders in this area. This makes them crucial cases to explain. Understanding why the main instigators behind HR-PTAs have chosen to commit to these agreements offers an important step towards generating a broader understanding of why states sign HR-PTAs. Canada was chosen for unique reasons. First, Canada was a recipient rather than a demandeur of its first HR-PTA. Understanding this transition provides useful information on the determinants of HR-PTAs. Second, I was able to gain broader access to Canadian officials as a Canadian citizen and also able to submit access to information requests.

I conducted the interviews for my case studies in person in Brussels, Washington D.C., and Ottawa between 2016 and 2017.[43] The information collected from my interviews produced data that could not have been identified using other techniques. It is important to acknowledge however that interview data is subject to limitations. For example, it can be biased by many factors such as the amount of

[42]See Appendix B for more details.
[43]Skype was used in cases where in-person interviews were not possible.

time that has passed since the event in question, and in the case of interviews with officials, is often given on the condition of anonymity.[44] Despite these drawbacks, by carefully comparing and triangulating the information given by different interviewees, with media reports and other sources, this research project aims to produce a reliable narrative. Further information on the interviews conducted is presented in Appendix D.

1.5 Outline of the Study

In Chapter 2, the main theoretical chapter, I present a framework for studying the creation of regulation. Using the framework, I first outline the traditional public interest and private interest theories of regulation in more detail. I then proceed to develop and present the symbolic theory of regulation.

Chapters 3 through 6 are the core empirical chapters of this dissertation. In Chapter 3, I first apply the three regulatory theories to the case of HR-PTAs and derive a series of testable hypotheses about why states commit to the agreements. I then use SAOMs to test my hypotheses using new data. The statistical results indicate that states do not sign HR-PTAs for the reasons commonly suggested by the capture or public interest theories of regulation. States are most likely to sign HR-PTAs for reasons that align with the symbolic theory of regulation. Finally, I provide a first look at the HR-PTA enforcement-related activities that states have undertaken. I show that as the symbolic theory explanation expects, to date, states have not deployed the hard enforcement measures contained within their HR-PTAs.

Chapters 4, 5, and 6, respectively look at the experiences of the EU, US, and Canada with HR-PTAs, focusing on what has motivated each state to commit to

[44] The majority of the interviews undertaken for this research project were done on an anonymous basis. A few interviews were given fully off the record and the information they provided was therefore not incorporated into this research project unless substantiated by another interviewee.

these agreements and how they have used their HR-PTAs in practice. The discussion and analyses in these three chapters are also framed using the three theories of regulation. The results of my case study analyses largely align with the symbolic theory explanation of HR-PTAs.

Finally, in Chapter 7, I conclude by putting the main findings of this research project in context, highlighting key limitations of the project, identifying new avenues for future research, and reflecting on the merits of symbolic regulation and the future of HR-PTAs.

2 Three Theories of Regulation

What motivates states to regulate?[1] Social scientists have applied insights from variants of the familiar "public interest" and "private interest" or capture theories of regulation to address incarnations of this question for over six decades.[2] Each theory offers a distinct explanation of the conditions under which states regulate. The public interest theory of regulation assumes that regulation is created by benevolent regulatory legislators—i.e. the officials involved in negotiating and drafting regulation—to achieve outcomes that maximize public gains and welfare (Hantke-Domas 2003). The private interest theory of regulation instead claims that regulation is created to benefit narrow interest groups (Stigler 1971; R. A. Posner 1974). While the two traditional theories of regulation have largely been applied to domestic regulatory cases, it is also possible to adapt them to explain international regulatory outcomes (Mattli and Woods 2009), such as HR-PTAs—the focus of this study.

Yet, not all regulation is created for reasons that align with the public or private interest theories of regulation. The majority of this chapter is dedicated to developing a third theory of regulation—*the symbolic theory of regulation.* The symbolic theory of regulation answers the question: "What motivates states to reg-

[1] As no single definition of regulation exists across social science disciplines or within the common regulatory theories (Koop and Lodge 2017), regulation here is broadly understood to refer to a set of official rules designed to oversee market or social behaviour. See Baldwin, Cave, and Lodge (2012, 2-3) for a more detailed discussion on the multiple definitions of regulation.

[2] See for example: Huntington (1952), Weingast and Moran (1983), Graddy (1991), Meade (2012), and Pigou (2013).

ulate?" with the response, reassuring regulatory advocates that their concerns have been heard. According to the symbolic theory of regulation, it is the very act of creating formal legal rules rather than their provision that achieves their purpose. In more detail, the symbolic theory of regulation views regulation as a tool that relies on the language and understandings associated with legal rules to appease regulatory advocates and to accrue increased support. Regulatory legislators are therefore the primary benefactors of symbolic regulation, rather than the broader public or narrow interest groups. Like the two traditional regulatory theories, the symbolic theory of regulation is applicable to cases of domestic and international regulation.

Although the theory of symbolic regulation is most akin to the private interest theory of regulation—in that it argues that regulation is the result of interest group demands—the two theories are distinct. The private interest theory assumes that interest groups are able to capture the regulatory apparatus. In contrast, the symbolic theory argues that regulation can also be the product of demands from interest groups that are *not* able or willing to do so due to financial or strategic resource constraints or incompatibility with their guiding principles. These groups are frequently public interest–oriented in their focus.

The three regulatory theories are not mutually exclusive but rather complementary. The best way to understand the theories is to look at: (1) the different assumptions on which they are based, and (2) the outcomes that they predict. I explain the assumptions behind each theory and their understanding of why states regulate as the product of regulatory demands and institutional support. Demands from regulatory advocates, including demands that originate within institutions themselves, either seek to direct benefits towards narrow interest groups, or are broad in nature, desiring regulation that will benefit the wider public. Institutional support for the regulation proposed by advocates can be strong or weak. Regulatory outcomes refer to how the regulation will be implemented, monitored and enforced in practice. While the question "what motivates states to regulate?" could be answered looking solely at assumptions, uncovering the intentions of regulatory legislators often poses a challenge for researchers. A dual focus on the more visible predicted outcomes associated with each theory therefore offers an additional tool to help answer this fundamental question. Using this simple framework, this chapter proceeds to outline each theory of regulation. However, before proceeding with the discussion, it is necessary to clarify actors involved in the regulatory process.

2.1 The Actors

The key actors in focus in the three theories of regulation are: the public, interest groups, and legislators. The group termed the "public" is broad but straightforward—it refers to the general populace of an area or sometimes to a subset of that population.

Interest groups are national or international organizations[3] devoted to influencing public policy in areas in which members hold common beliefs. I distinguish between two types of interest groups: private and public. The extant regulation literature primarily focuses on private interest groups, treating them as homogeneous organizations, each united by a desire to further its own and its members' *self*-interest.[4] This is the type of interest group central to the private interest theory of regulation. Yet, groups campaigning to forward the broader *public* interest also play an important role in domestic and international politics.[5] Public inter-

[3]While interest groups are often studied at the domestic level, international non-governmental organizations (NGOs) are increasingly recognized as an important form of interest group (Bloodgood 2011).

[4]See for example: Stigler (1971); R. A. Posner (1974); Peltzman (1976); Becker (1983, 375); and Mattli and Woods (2009, 10).

[5]As Beermann (1991, 189) notes: "casual observation indicates that there is relatively widespread participation in interest groups representing the interests of great numbers of people." The importance of these groups to domestic and international political outcomes is documented in a growing literature. See for example: Weiss and Gordenker (1996), Risse-Kappen, Ropp, and Sikkink (1999), Finger and Princen (2013), and Keck and Sikkink (2014).

est groups include defenders of global issues including human rights, environmental protection, and democracy. Examples of public interest groups include well-known national and international organizations such as Amnesty International, the World Wildlife Fund, and the American Civil Liberties Union.

To better distinguish between public and private interest groups, I rely on Jeffrey Berry's classic characterisation of a public interest group being a group that "seeks the collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization" (Berry 2015, 7). This definition has two parts. First, public interest groups are characterized by the type of goods that they seek. Collective goods are goods that benefit the broader public. Second, the benefits associated with the provision of the demanded collective good will not privilege the organization's own members or supporters at the expense of the broader public. For the remainder of this study, the term public interest group is used to refer to this type of collective good-seeking group. The term "private interest group" is reserved for interest groups that campaign to maximize gains to their own membership.

Public and private interest groups are not only distinct in their aims, but also in their means. The private interest groups central to the private interest theory are known to provide regulatory legislators and regulators with financial or political benefits in return for legislating and regulating in their favour. To achieve this goal, private interest groups often rely on direct monetary contributions from members and patrons, or on having sway over strategic groupings of voters. In contrast, public interest groups generally lack the financial capacity or the influence over targeted groups of voters to provide such enticements.[6] Yet, public interest groups

[6] While a few public interest groups are well-financed, many rely on intermittent donations of varying sizes. Furthermore, when public interest groups have members, they are rarely concentrated in particular electoral constituencies. Instead, public interest groups generally draw their membership from across electoral constituencies.

are not devoid of power.[7] They possess a "diffuse moral power"[8] underpinned by their collective-good seeking nature and the perceived legitimacy that stems from it, as well as from the general dispersion of their supporters across and throughout states. In more detail, in their advocacy and focus areas, public interest groups often are seen by the public as a moral authority, a view that is buttressed when they have a broad base of supporters as this signals to the public that the views that they espouse are held by many. For these reasons, public interest groups are well placed to affect public opinion, generate bad publicity, and play a prominent role in public discourse, all factors that are relevant to the deliberations of policymakers.

Public interest groups, such as NGOs, use a variety of strategies to reach regulatory legislators, including: compiling original research and policy briefs, providing testimony before legislative audiences, drafting press releases, organizing public marches and protests, filing lawsuits, and personally approaching receptive regulatory legislators.[9] These activities are examples of both inside and outside lobbying efforts in the sense that they engage policy makers directly, i.e. inside, through face-to-face contact, and indirectly, i.e. outside, through the media and general attempts to mobilize public support. Most NGOs can be expected combine both inside and outside lobbying strategies (Dellmuth and Tallberg 2017, 706), which may be mutually reinforcing. By demonstrating public-buy in, or outside support, for their positions, regulatory legislators may be more receptive to public interest groups' inside lobbying. These efforts are often at least partially successful. As Jessica Mathews notes: "Increasingly, NGOs are able to push around even the largest governments" (Mathews 1997).

[7]Berry (2015, 289) echoes this sentiment, noting that public interest groups possess "significant resources and support," which they deploy to affect policy deliberations.

[8]On the concept of "moral power," see: Mehta and Winship (2010).

[9]For the labour, human rights, and religious activists involved in lobbying for the US GSP labor rights amendment of 1984 for example, the need to have one or several legislative champions became apparent, which informed future efforts (Compa and Vogt 2000, 202-203).

It is important to acknowledge that many organizations have features that align with both private and public interest groups. Labour unions provide a clear example. From the start, the first major US labour union, the National Labor Union (1866-1872) focussed both on collective action bargaining in the private interest of its members, i.e. the "pure and simple unionism" approach, and on broader political issues that would serve the collective interest of all US workers whether or not affiliated (Loomis, Francia, and Strolovitch 2011, 175). Modern labour unions, such as the AFL-CIO (1866-present),[10] the largest federation of labour unions in the US, also divide their attention between public and private interest roles.[11] Today, according to Cathy Feingold, director of the AFL-CIO's International Department, the AFL-CIO sees itself both as a "worker and as a human rights organization."[12] This is reflected in the roles it takes on. Advocating in the interests of its own members remains one of the AFL-CIO's core areas of advocacy; however, the organization is also home to the largest international workers' rights organization in the US, the Solidarity Centre, which has a broader public interest mandate. Even outside the Solidarity Centre, the AFL-CIO takes on public interest advocacy roles. In 2015 for example, the organization urged the world soccer body FIFA's corporate sponsors to "ensure that major sporting events uphold the highest possible human rights standards" (Reuters Staff 2015)—a policy position that does not directly affect its own members' interests.

The AFL-CIO is not alone in its dual nature. Other members of organized labour often work together with public interest groups and/or on public interest issues. In 2007 for example, the United Food and Commercial Workers International

[10] The American Federation of Labor (AFL) merged with the the Congress of Industrial Organizations (CIO) in 1955 to form the AFL-CIO.

[11] From its founding, the AFL-CIO focused primarily on the provision of particularistic benefits to members and "pure and simple unionism." However, by the early 1900s the AFL-CIO became an active advocate of general legislative reform in the area of labour, ranging from laws restricting convict and child labour to securing an eight-hour workday.

[12] Interview with Cathy Feingold, March 2017.

Union, assisted Human Rights Watch with its report "Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association" (HRW 2007). Amidst workers' rights scandals surrounding the construction of new stadiums for World Cup soccer events, in 2015, Transparency International, the International Trade Union Confederation, and Avaaz together joined a campaign for FIFA reform (Reuters Staff 2015). More recently in March 2018, A coalition of global unions, HROs, and workers' rights organizations called for the end to the prosecution of Cambodian human and labour rights defender, Moeun Tola (HRW 2018). Finally, labour unions often officially present themselves as organizations that work on human rights issues.[13] The Canadian Labour Congress, which represents 3.3 million workers, emphasizes for example that:

> Canadian labour's strong belief that all workers have the collective right to bargain wages and working conditions is matched by our support for human rights and equality rights at home and around the world. The Canadian Labour Congress and its affiliated unions are active in the workplace, in our organizations and with partner groups in this country and globally to demand human rights and equality rights for all. (CLC 2015).

Labour unions' human rights focus, like the Canadian Labour Congress' human rights statement above, their framing of labour rights as human rights, and their human rights-related activities, which accompany their more directly member-oriented activities make the classification of labour unions difficult.[14] However, it is clear from this discussion that groups such as labour unions can and do operate both as private interest groups and as public interest groups, often depending on the issue area at hand. This duality is further discussed and accounted for in the following chapters.

[13] For a detailed account of US organized labour's shift to a human rights framing from the 1990s onwards, see: Compa (2008).

[14] For example, while labour unions are sometimes viewed as private interest groups, e.g. Culpepper and Regan (2014), Evans (2015) argues that trade unions are human rights organizations, suggesting that they are public interest groups.

The last main actors of interest are the legislators involved in creating regulation. "Legislators" are government officials who as a group make laws and who may be elected members of a legislative body. My focus here is primarily on a subset of legislators who are directly involved in the process of negotiating and drafting regulation. Therefore, to demarcate these officials from other legislators, I use the term "regulatory legislators." The composition of groups of regulatory legislators varies from country to country and amongst issue areas but often include members of the executive, members of relevant government departments, and sometimes members of legislatures. For example, in the area of trade, the negotiating and drafting of new international agreements is largely delegated to actors from the executive and bureaucracy in the US and EU. However, elected members of the EU Parliament and US Congress, who are "legislators" in the broader sense of the term, retain rights over accepting the final agreement. As these elected officials are not involved in trade negotiations or the drafting of PTAs however, they are not regulatory legislators in this area. Finally, regulators are the officials and regulatory agencies that engage in the monitoring and enforcement of *existing* regulation, and are less central to uncovering what motivates states to regulate in the first place. Regulators however play an important role in overseeing and facilitating *ex post* use of regulation.

2.2 Public Interest Regulation

The public interest theory of regulation is both a positive theory about what motivates states to regulate and a normative theory about what *should* motivate states to regulate. As this study chiefly focuses on explaining why states commit to HR-PTAs, rather than why states should do so, attention in this section is limited to the positive aspects of the public interest theory. There is no definitive or predominant version of the positive form of the public interest theory.[15] The discussion in this chapter therefore aims to provide a general account of the theory, covering its main unifying elements, rather than to provide a complete overview of all variants of the theory.[16]

According to the public interest theory of regulation, the motivating purpose behind the creation of regulation is to secure public interest-oriented outcomes in response to market inefficiencies or social problems (Hantke-Domas 2003, 165; Mattli and Woods 2009, 9).[17] Market inefficiencies may arise for various reasons, including the presence of externalities, imperfect information, or a lack of competition. Inequitable social practices are also the result of many factors, which may include: resource scarcity, an information deficit, or a cultural tradition. The public interest theory suggests that regulation is primarily the result of benevolent regulatory legislators' desire to correct these inefficient market or inequitable social practices through the introduction of rules (Baldwin, Cave, and Lodge 2012, 15–24; Ogus 2004, 29–54).

Assumptions

The key assumption underlying the public interest theory of regulation is that regulatory legislators are strongly motivated to secure public interest-oriented regulation. Regulatory legislators' desire to correct inefficiencies stems from two main sources. First, these legislators may have internalised a commitment to a particular

[15] See: Hantke-Domas (2003).

[16] See: Mattli and Woods (2009, Chapter 1) for a detailed discussion on variants of the public interest theory of regulation.

[17] The term "public interest" itself is contested. According to Downs (1962, 1), "any detailed inquiry about its exact meaning plunges the inquirer into a welter of platitudes, generalities, and philosophic arguments." Therefore, following the advice of Downs (1962, 2), for the purposes of this study, the term public interest is defined by its function. That is, the "public interest" refers to any actions that aim to broadly benefit society. These actions may be related to interests that are common to all members of society, to a majority of its members, to future generations, or to societal ideals (Feintuck 2004, 12–13).

norm they view as upholding public interest–oriented ideals, such as human rights. Second, they may possess a general preference to regulate in the public interest.

Public-interest regulation can be a result of broad demands from domestic audiences to correct market or social failures (Downs 1962, 11) that educate regulatory legislators on a topic. However, this is not a necessary condition. All that is required to produce public interest regulation is a socially-minded regulatory legislator with the ability and resources necessary to create their desired form of regulation. Stated differently, public interest regulation requires internal public interest-oriented demands, and strong institutional support.

Expected Outcomes

The public interest theory of regulation can be extended to formulate expected outcomes. Logically, when regulatory legislators create regulation out of public interest-oriented intentions, we can expect that these legislators desire to use that regulation—e.g. in terms of monitoring it and enforcing it—in a manner that achieves its purpose of maximising public gains. It can therefore be predicted that when possible, states will *attempt* to use any regulation signed for public interest-oriented reasons to secure those outcomes. This attempt does not guarantee a public interest outcome—such outcomes may prove elusive for various reasons. For example, the regulation may not function as intended because it is poorly designed, improperly implemented, or the issue to be dealt with has changed or developed over time, making it no longer appropriate. However, in general, when regulation is created as a public-interest endeavour, we should expect the regulation to be monitored and enforced in a manner that secures the desired public interest-oriented outcomes.

*

Common examples of public interest regulation are domestic antitrust laws, which prohibit the operation of cartels and monopolies, and multilateral environmental treaties, which aim to reduce environmental degradation and improve human quality of life on the planet.

2.3 Private Interest Regulation

Private interest theorists, sometimes referred to as capture or Chicago School theorists, view the public interest theory of regulation as naive. They suggest that the primary motivation that drives states to regulate originates from private interest groups, not benevolent regulatory legislators. These private interest groups are the main drivers behind—and winners of—regulation (Stigler 1971; R. A. Posner 1974; Peltzman 1976). The fundamental claim of the private interest theory of regulation is that private interest group pressure is able to "capture" the regulatory apparatus of states, leading to regulation that overrides societal interests in favour of interest group desires. For instance, Stigler (1971, 3) argues that "regulation is acquired by the industry and is designed and operated primarily for its benefit." Private interest regulation is therefore the result of *government* failure, rather than a response to market or social failures.

The traditional version of the private interest theory of regulation is that private interest groups overtake the regulatory apparatus to ensure that *existing* regulation is implemented, monitored, and enforced in a way that achieves their goals at the expense of the public interest. Regulation can however also be captured at the drafting stage—the focus here. This occurs when interest groups succeed in securing new regulation to meet their own needs, at the expense of societal needs.

Assumptions

The main assumption underlying the private interest theory is that private interest groups with narrow demands are able to gain regulatory legislators' support to create the regulation that these groups desire. Private interest groups typically try to gain the support of these legislators using lobbying (Hall and Wayman 1990; Hall and Deardorff 2006), bribery (Snyder 1991; Laffont and Tirole 1991; Grossman and Helpman 1994), threats (Dal Bó and Di Tella 2003; Gordon and Hafer 2005), cultural and social influence, (Solomon 2010; Kwak 2013) or other forms of persuasion.[18] These strategies are often not deployed publicly as the preferential policies pursued by private interest groups are unlikely to achieve support from a broader public that may be marginalized by their introduction.[19] Only when private interest groups succeed in attaining regulatory legislators' support are the grounds for regulatory capture met.

Expected Outcomes

The private interest theory of regulation can also logically be extended to predict regulatory outcomes. A regulatory legislator that creates regulation to benefit a private interest group can be expected to use that regulation to achieve its ostensible goal. This may mean monitoring and enforcing the regulation to ensure the benefits are secured for the private interest group that demanded the regulation, or in certain cases mean the non-implementation or non-enforcement of regulation in a manner that best benefits that group. These outcomes however only represent general expectations, as there are many factors, as described above, that may affect how regulation is used in practice.

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The private interest theory of regulation suggests that examples of regulatory capture abound. The US Federal Aviation Administration's selective enforcement of

[18]See: Laffont and Tirole (1991, 1090-1091).

[19]In some cases, private interest groups may outwardly campaign for their preferred regulatory policies, often using a more palatable public interest framing.

safety standards with airline carriers, with which it has been accused of having an "overly collaborative relationship" (S. Freeman 2008), is one example of the capture of existing domestic regulation. Some argue that the 2007 global financial crisis was the result of *ex ante* regulatory capture, with the permissive regulation in the US and UK prior to the crisis benefiting the financial industry at the expense of the broader public (Baker 2010; Johnson and Kwak 2011).

Limitations of Existing Approaches

The traditional theories of regulation provide important insights into the determinants of regulation. However, they are unable to explain regulation that upon closer examination is not motivated by maximizing benefits to the broader public or to private interest groups. For example, election campaign promises and the regulation they (sometimes) lead to are often motivated by *electoral candidates'* desire to become elected and to gain broad popularity amongst voters. These promises are frequently the response to public interest-oriented demands from voters; yet, the regulation they lead to is not primarily intended to fix market or social problems or to provide benefits to powerful private interest groups but rather to reassure voters that the campaign promises upon which they were elected have been met. We are unequipped to satisfactorily explain this type of regulatory response using the public interest–private interest dichotomy. A third theory of regulation is necessary.

2.4 Symbolic Regulation

The symbolic theory of regulation suggests that regulation is created to re-assure domestic regulatory advocates that their concerns have been heard. Symbolic regulation is therefore not created for altruistic reasons or dictated by private interest groups for their benefit. It is a unique form of regulation.

The theory of symbolic regulation developed here primarily draws on insights from fruitful debates in the later half of the twentieth century in two research disciplines: symbolic anthropology, which studies symbols and how meaning is assigned to them (Geertz 1973; Turner 1967; Schneider 1980), and symbolic politics, which evaluates how symbols operate in the political realm (Edelman 1964; Gusfield 1963; Gusfield 1967).

An understanding of the basic operations of symbols is necessary before preceding.

What are Symbols?

We are constantly surrounded by symbols. These include the emojis increasingly used in text messages to common gestures such as waving to neighbours or shaking hands in greeting. According to symbolic anthropologist Clifford Geertz (1973, 91), these symbols, like all symbols, are concrete embodiments of ideas or beliefs. David Schneider defines a symbol more precisely as: "something which stands for something else, ... where there is no necessary or intrinsic relationship between the symbol and that which it symbolizes" (Schneider 1980, 1). Thus, a symbol can be anything from an object, to a sound, to a gesture, and its referant may bear little physical or logical resemblance to the symbol itself.

When deciphering symbols, some meanings are more likely to be accepted than others. Interpretations that conform to the existing knowledge of the person or people who are deciphering the symbol generally fall under this category. As symbolic anthropologist Mary Douglas notes: "The more the symbol is drawn from the common fund of human experience, the more wide and certain its reception" (Douglas 1966, 114). For many, the planting of a flag often symbolizes ownership of a given piece of territory; the "law" symbolizes justice or order. These common symbols are repeatedly interpreted in a uniform manner, making them widely accepted even though both could represent a number of ideas.

Symbolic anthropologists emphasize that symbols can also perform multiple functions. For instance, they can be expressive and serve to highlight a particular world-view (Ortner 1984, 129). Symbols can be used to "make the rules more palatable," or in other cases, to instruct or to coerce their interpreters (Womack 2005, 75). In these ways and others, symbols can be and are used in regulatory politics.

Symbolic Politics

Symbolic politics occurs when a political act is used or treated as a symbol—in other words, when a given political act stands for something other than what it appears to stand for. In *The Symbolic Uses of Politics* (1963), Murray Edelman suggests that politics is often an expressive vehicle "rather than an instrument for changing the world" (Edelman 1964, 11). In this way, Edelman suggests that when symbols invade the political realm, we can expect large divergences between public claims about legislation, which are expressive in nature, and actual policy outcomes. In fact, according to Edelman, "The most intensive dissemination of symbols commonly attends the enactment of legislation which is most meaningless in its effects upon resource allocation" (26).

In line with Edelman's usage of the term, "symbolic politics" has most often been used to characterize situations in which a stark disconnect between public claims about the purpose of a given policy or action and its operation in practice occur. Joseph Gusfield's early study on the American Temperance Movement for example describes historical temperance legislation in the US as having no tangible effect on drinking behaviour—its seeming purpose—instead performing a symbolic function for the temperance movement (Gusfield 1963). John Dwyer describes section 112 of the US Clean Air Act as more symbolic than functional (Dwyer 1990). In the area of American crime legislation, Nancy Marion suggests that as crime control is primarily a state responsibility, federal legislation in the area is largely symbolic in nature, designed and advertised to make voters "feel good" rather than to effectively legislate against crime (Marion 1997, 67). In a recent study, Sandra Suarez shows that legislation on executive compensation during the Great Depression and the Great Recession fall short of what was promised, causing her to relegate it to the realm of symbolic politics (Suárez 2014).

Although symbolic political acts often fall short of the promises associated with them, they are generally accepted by the public. According to Edelman (1964, 26), the general public often display apathy towards the success or failure of political acts to allocate resources in the manner assured. In other cases, acts are presented in technical legalese, not understood by general audiences. Finally, the very setting of "formal political acts help 'prove' the integrity and legitimacy of the acts they frame, creating a semblance of reality from which counterevidence is excluded" (190).

The symbolic politics literature introduces the notion of leaders strategically using symbolism in the political realm. The theory of symbolic regulation outlined below further specifies the purpose and value of symbolism in regulation, situating the symbolic use of regulatory devices amidst the theories of public and private interest regulation.

The Symbolic Theory of Regulation

The theory of symbolic regulation distinguishes a particular type of symbolic politics which occurs in the regulatory realm. According to the theory, the primary purpose of regulation is not always to regulate—its traditional role—but instead to reassure domestic audiences, including interest groups and the broader public, that their concerns are being heard. In this case, the creation of regulation symbolizes that regulatory legislators are responsive to their audiences and uphold similar values to those held by the regulatory advocates. It is the very creation of symbolic regulation—which is often accompanied by declaratory speeches and announcements that use language matching the goals and prospective outcomes of a particular piece of regulation to advocates' demands—rather than its design or associated outcomes that fulfil its appeasing role. When symbolic regulation appeases regulatory advocates, it may provides benefits for popularity-seeking policymakers who desire to maintain political support.

Assumptions

The symbolic theory of regulation assumes that regulatory legislators are self-interested and desire political popularity and support. These legislators are motivated to provide symbolic regulation when they: (1) face strong pressure to act from regulatory advocates, i.e. strong demands, (2) feel responsible towards these advocates, and (3) are unable or unwilling to provide the regulation that the advocates desire, i.e. weak institutional support.

Regulatory legislators face strong pressure to act when issues attract the attention of and support from a broad or vocal coalition of actors, often centred around the efforts of public interest groups, such as NGOs and their supporters, or private interest groups, such as industry associations. These groups spread information and their preferred positions by publicising government policies, areas of concern, and potential remedies throughout their networks and in the media, i.e. outside lobbying, and using their leverage to lobby policymakers directly, i.e. inside lobbying.[20] Regulatory advocates often, though not always, channel their demands directly or indirectly through domestic representative institutions, such as the US Congress or the EU Parliament.[21] Advocates are generally aware that while members of these elected institutions may not negotiate or draft regulation themselves, they often provide input formally or informally on general regulatory objectives and

[20]See for example: Keck and Sikkink (2014).
[21]Both public and private interest-oriented regulatory advocates are known to use this strategy.

may vote on the ratification of the regulation produced. Despite these elected officials' usual degree of separation from the drafting and negotiation of regulation, due to their general mandate to represent the interests of the public and their insider familiarity with channels of influence within government, elected representatives are well-positioned to be responsive towards advocates,' and especially public interest-oriented advocates,' demands and to pressure and persuade members of negotiation teams and other officials involved in the negotiation and drafting process.

While regulatory advocates may succeed in securing attention from regulatory legislators either directly or indirectly, e.g. via members of elected institutions, many interest groups however, and particularly the public interest groups outlined earlier in this chapter, do not have the resources or influence to capture the regulatory apparatus as the private interest theory of regulation predicts. These groups can often command attention from regulatory legislators but are unable to compel these legislators to provide the regulation they desire. These are the interest groups central to the symbolic theory of regulation.

Regulatory legislators may feel responsible towards these regulatory advocates for several reasons. Especially when regulatory advocates are backed by strong public support for their positions, ignoring their message may incur popularity-related consequences for officials as these advocates demonstrate that their position is relevant to a large share of the population. Elected regulatory legislators, for example, face incentives to increase general public support for their office and therein improve their overall job-security by catering to advocates with popular backing. Even when elected officials are not regulatory legislators themselves, their mandate to the public and the propensity of the public to hold them accountable for regulatory decisions, may encourage them to relay demands from regulatory advocates to those directly involved in the negotiation and drafting of agreements. In other cases, regulatory legislators may later need the support of the regulatory advocates or the elected officials that champion their causes on another issue. Other regulatory legislators may generally feel it is morally unacceptable to completely ignore the advocates, especially in situations where they appeal to widespread global norms, such as human rights. In each of these situations, regulatory legislators are incentivised to produce some form of regulation to placate the advocates.

While the previous discussion emphasized that public interest and private interest regulation require strong support from regulatory legislators, regulatory legislators produce symbolic regulation when they only weakly support the regulation demanded by regulatory advocates, but are unable to ignore their demands. If regulatory legislators strongly supported the regulation demanded by advocates, they would create the public interest or private interest regulation they asked for. However, regulatory legislators are not always supportive of regulatory initiatives. Regulatory legislators may be unable or unwilling to provide regulation in the form that advocates desire as they generally lack the will, expertise, resources, or authority to do so. When this occurs, regulatory legislators provide symbolic forms of regulation.

Expected Outcomes

The symbolic theory of regulation predicts different outcomes to the public and private interest theories. The theory expects regulation to only be used—i.e. in terms of implementation, monitoring and enforcement—when necessary to meet its political goals. While this makes symbolic regulation generally characterized by a large gap between regulatory promises and regulatory outcomes, symbolic regulation is not the same as non-enforced or non-binding regulation. Symbolic regulation is a specific type of regulation that regulatory legislators *create* to appease regulatory advocates, not to regulate. States could create and then *later* decide to not implement, monitor, or enforce a given piece of regulation for many other reasons. For example, the regulation could have become outdated, the state's domestic and international priorities could have changed, or the state could suffer from a severe lack of resources. These situations of non-enforcement lay outside the scope of this research project.

How Does Symbolic Regulation Work?

Symbolic regulation is not created to address actual regulatory problems. However, it serves two important political purposes for regulatory legislators: *fooling* regulatory advocates and *postponing* other forms of regulation.

Fooling: When public information on regulatory outcomes is scarce, regulatory legislators can use the creation of symbolic regulation to convince advocates that their demands have been met—regardless of actual regulatory realities, in terms of the drafting, implementation, and enforcement of the regulation. This is the fooling strategy. Here, these legislators' goal is to provide regulation that is "sufficient to satisfy calls for change without threatening the status quo" (Milakovich and Gordon 2013, 378). States may even perform acts of "mock compliance" to persuade advocates that their goals are being met (Walter 2008).

The fooling strategy succeeds when there is an asymmetry of information between regulatory legislators and their audiences or when advocates lose interest in a given topic over time. This most often occurs when there are cultural, financial, or political barriers to information diffusion. International regulation in particular is especially difficult for even specialist NGOs to collect information on, as they must have in addition to technical skills, the financial ability and cultural or language expertise to evaluate regulatory practices in multiple countries. Cathy Feingold of the AFL-CIO emphasizes that it requires enormous resources for organizations to prepare the necessary affidavits, interview workers, compile testimonies, and craft a legal argument.[22] In addition, interest groups often tackle many topics and may be unable to allocate the resources required to remain engaged in advocacy efforts

[22] Interview with Cathy Feingold, February 2017.

related to a specific policy over time.

Postponement: Regulatory legislators may also create symbolic regulation to postpone a specific action while still showing a tangible commitment to a particular value or issue. Regulatory legislators that are unable to meet the demands of advocates in the present may use symbolic regulation to postpone the creation of costly public interest or private interest regulation. In other words, regulatory legislators can use weaker symbolic regulation to assuage advocates for the present, hoping that the advocates will later weaken their demands or that the legislators will face fewer obstacles to providing the regulation in the future. These legislators are aware that audience attention amongst the general public and interest groups may be redirected towards emerging issues once the symbolic regulation is created. While the opinions of regulatory advocates may not change, an issue may lose priority even on advocates' agendas. Public attention is after all a scarce resource (Downs 1972).

Symbolic regulation only fulfils its purpose of appeasement when advocates accept it. Advocates that are not fooled generally do not have an interest in accepting symbolic regulation, but there are several exceptions. First, even when they are not fooled, advocates may treat symbolic regulation as a useful starting point that creates a precedent to be built upon in the future and that may over time produce the outcome that they desire. Second, advocates are often aware that if they continue to pressure states to operationalize symbolic regulation, states may eventually be forced to use symbolic regulation for its ostensible purpose. When this type of accountability politics occurs, symbolic regulation can eventually have a strong impact on the area it governs.

2.5 Conclusions

This chapter developed the theory of symbolic regulation central to this research project and presented it alongside the traditional public interest and private interest theories of regulation using a simple framework. The framework used focused on the unique assumptions and expected outcomes associated with each theory of regulation. Figures 2.1 and 2.2 summarize the main points of the discussion, though present general patterns rather than rules.

As outlined in Figure 2.1 and discussed above, the assumptions underlying the theories come in two basic forms: (1) demand for a given piece of regulation and (2) institutional support for that regulation. It is the combination of these two features that leads to the three variants of regulation presented above. The most common configurations that lead to each type of regulation are presented in Figure 2.1.

		Institutional Support	
		Strong	*Weak*
Demand	*Broad interest*	**Public Interest Regulation** (1)	**Symbolic Regulation** (3)
	Narrow interest	**Private Interest Regulation** (2)	**No Regulation** (4)

Figure 2.1: Assumptions by Theory of Regulation

Box 1 in Figure 2.1 depicts that it is generally the combination of broad public-interest demands and strong institutional support that leads to public interest regulation. Demands in this case need not come from outside sources, such as public interest groups or the general public, but can originate with public-minded regulatory legislators themselves that desire to correct social or market inefficiencies.

The private interest theory of regulation explains regulation as the result of narrow demands from private interest groups that seek to maximize their own gains, and strong institutional support for such regulation (Box 2 of Figure 2.1). Institutional support is given when the interests of regulatory legislators align with the interests of the private interest group. This is often the result of interest group persuasion in the form of favours.

Symbolic regulation theory predicts that in the absence of strong institutional support, broad demands from the public or from public interest groups do not lead to public interest regulation. Instead, they lead to symbolic regulation, designed to appease regulatory advocates and to secure political gains (Box 3 of Figure 2.1). As discussed above, when these demands are met with strong institutional support, they instead generate public interest regulation.

Finally, though not central to the discussion above, narrow interest demands met with weak institutional support are not conducive to the production of any form of regulation (Box 4 of Figure 2.1). While broad demands made by public interest groups are often able to affect public opinion and generate bad publicity, that makes it difficult for regulatory legislators to ignore (Berry 2015, 289), demands for regulation to benefit a narrow interest group, are less likely to awaken public attention and legislative responses. Regulatory legislators are unlikely to gain popularity for advertising regulation that will benefit only narrow groups. Therefore, while it is possible, it is unlikely that narrow interest demands paired with weak institutional support will lead to symbolic regulation. Instead, no regulation is the most likely result.

As the chapter outlined, each of the three regulatory theories also predicts particular ideal–case outcomes, summarized in Figure 2.2.

	Public Interest (1)	Private Interest (2)	Symbolic (3)
Motivation	Benevolence	Secure benefits for private interests	Appeasement of regulatory advocates
Desired Output	Regulation is robustly implemented, monitored, and enforced to serve the common good.	Regulation is implemented, monitored, and enforced in way that best benefits private interests.	Regulation is implemented, monitored, and enforced as necessary to serve its political purpose.

Figure 2.2: Expected Outcomes by Theory of Regulation

As Figure 2.2 summarizes, the public interest theory of regulation expects that benevolent regulators will monitor and enforce regulation in a way that meets its public interest-oriented goals. The private interest theory instead predicts that regulation will be monitored and enforced in a way that maximizes returns to the private interest groups that captured the regulatory apparatus. Lastly, the symbolic theory of regulation argues that regulation will be monitored and enforced only when not doing so impedes its political purpose. However, as the discussion emphasized, in practice, regulatory outcomes may depend on a myriad of factors. These factors include: resource constraints, changing public sentiments, and competing political or regulatory priorities. Thus, the outputs of the three theories of regulation can only be predicted with a measure of caution, as they depend on case-specific circumstances.

To conclude, the three theories of regulation provide distinct explanations of what motivates states to regulate. Yet, it is important to note that in practice regulation may not always align neatly with one theory or another. The bootleggers and Baptists anecdote, for example, suggests that the regulatory outcomes we witness are not the result of public interest-serving regulators or capture-desiring private interest groups. They are instead sometimes the result of marriages of convenience between interest groups that desire a given piece of regulation for the concerns it outwardly addresses and other groups that profit from undermining such regulation (Yandle 1983).

The bootleggers and Baptists account explains that Baptists and bootleggers both favour a ban of licensed alcohol sales on Sundays—the bootleggers because their profits would increase, and the Baptists as they desire decreased levels of drinking on their Sabbath. Together, the coalition of the two interest groups may be able to secure the regulation that they desire with institutional support as it is both public-spirited and private-interest oriented.

In the analyses that follow, the three theories of regulation are applied to the case of HR-PTAs, mindful that in certain cases, combinations of the theories may provide the best insights.

3 | The Global HR-PTA Network

Why do states commit to HR-PTAs? In this chapter, I apply the three theories of regulation outlined in Chapter 2, to the HR-PTA context. Each theory offers a distinct explanation to this empirical question and forms the basis of a series of testable hypotheses.[1] I test the first set of assumption-based hypotheses using a novel technique—statistical network analysis. The second set of hypotheses relate to how HR-PTAs are enforced. While the case studies analyze these outcome-oriented hypotheses in more detail, in this chapter, I provide an initial examination using descriptive data. The analyses performed in this chapter are primarily focused on uncovering the broad patterns associated with HR-PTA creation across the network of HR-PTAs. In contrast, the case study chapters provide the opportunity for in-depth analyses of the HR-PTAs of three actors: the EU, US, and Canada.

In the first part of this chapter, I outline the public interest, private interest, and symbolic theory explanations of HR-PTA formation. In brief, the public interest theory suggests that HR-PTAs are created for altruistic reasons. According to the theory, states commit to HR-PTAs out of a desire to improve their trade partners' human or labour rights practices. In contrast, the private interest theory argues that HR-PTAs are dictated by domestic producers and industry associations and are created to protect domestic industry. This explanation aligns with the common protectionist interpretation of HR-PTAs. The symbolic theory instead views HR-

[1] The hypotheses developed here are re-visited in the case study chapters where they are examined using qualitative methods.

PTAs as tools of appeasement, motivated by demands from public interest groups, such as human rights organisations and (sometimes) labour unions. The goal of symbolic HR-PTAs is to attract support for trade agreements rather than to regulate rights outcomes. From these explanations, I develop theory-specific hypotheses.

The second part of this chapter is dedicated to the first set of analyses. To test the hypotheses associated with each theory, I employ an extensive new and unpublished dataset that codes human and labour rights clauses in trade agreements (Milewicz 2014) and original data covering the presence of human rights organizations across states. The sample of data is global in reach and covers 171 HR-PTAs and 244 PTAs for a total of 415 trade agreements overall, spanning 1989 to 2009.

To model the HR-PTA and PTA networks, I use stochastic-actor-oriented-models (SAOMs).[2] SAOMs are a type of longitudinal network model that evaluate the probability of "ties" (here traditional PTAs and HR-PTAs) being created, maintained, or dissolved as the result of the structure of the current network and the characteristics of the actors or, in network terminology, the "nodes" involved.[3] As it is reasonable to assume that bilateral PTA data exhibits dyadic dependence,[4] SAOM's offer benefits over the traditional statistical techniques used to study PTA commitment.[5] Rather than treating interdependence as a problem, network analysis models it. Thus, while the hypotheses presented in this chapter focus on actor characteristics, as guided by the regulatory theories, importantly I am also able to control for how interdependence affects state commitment to HR-PTAs. For exam-

[2] For an introduction to SAOMs, see: Snijders, Van de Bunt, and Steglich (2010).

[3] SAOMs, unlike their counterpart Temporal Exponential Random Graph Models (TERGMs), are actor-oriented, which makes them an appropriate choice when the main concern is evaluating why actors choose to create particular ties.

[4] The common independence of observations assumption is thus violated using this technique, leading to specification error and biased results.

[5] The most common technique used is logistic regression with cubic splines (and various adaptations for dyadic data). A few recent studies are exceptions and use longitudinal network analysis. See: Warren (2010), Manger, Pickup, and Snijders (2012), Milewicz et al. (2018), and Hollway and Koskinen (2016).

ple, it is possible that states may exhibit path dependence in their choice to sign HR-PTAs. This may be the result of lower costs associated with signing additional HR-PTAs beyond the first (Milewicz et al. 2018) or due to an ingrained habit. By controlling for these features, I can better assess if the three regulatory explanations are relevant to explaining states' initial *and* subsequent HR-PTA commitments.

My analyses provide the strongest support for a single rather than a mixed theory-driven explanation. While the analyses do not show support at this aggregate level for the public interest or private interest explanations of HR-PTAs, they align with the symbolic theory explanation. As the symbolic theory explanation expects, I find that state commitment to HR-PTAs is related to the presence of human and labour rights advocacy organizations within a state. My findings also substantiate the presence of interdependence in the PTA and HR-PTA networks, affirming my decision to use SAOMs. I find that once a state signs an HR-PTA, it is more likely to sign further HR-PTAs and less likely to sign traditional PTAs in the future, which are forms of path dependence. These results suggest that while habit or cost may play a role in states' subsequent decisions to commit to HR-PTAs, the presence of domestic advocacy remains an important predictor.

The final section of this chapter provides a broad overview of the HR-PTA outcomes in terms of the enforcement-related activities that states have undertaken. While relevant HR-PTAs outcomes also include implementation and monitoring activities, as most HR-PTAs do not have specific implementation or monitoring requirements, in this section, I focus on enforcement activities. However, as only a handful of states have participated in these activities, the analysis is descriptive in nature. The data presented shows that while HR-PTAs have led to the creation of non-binding ministerial agreements and reports, in no cases have the hard enforcement measures contained in HR-PTAs been invoked. This outcome is in line with the symbolic theory explanation of HR-PTAs, which suggests that it is primarily the creation rather than the enforcement of these agreements that fulfils their political role.

3.1 Hypotheses and Observable Implications

The three theories of regulation each provide a distinct explanation of what motivates states to regulate. Applied to the case of HR-PTAs, a number of unique hypotheses and observable implications can be derived. These hypotheses come in two forms: the first hypothesis associated with each theory of regulation is focused on the theory's underlying assumptions, the second hypothesis turns its attention to the theory's expected outcomes.

The Public Interest Theory of Regulation and HR-PTAs

The public interest theory of regulation is straightforward to apply to the case of HR-PTAs. It assumes that states are motivated to sign HR-PTAs in order to achieve the agreements' ostensible purpose—the improvement of human or labour rights practices. In more detail, the public interest theory suggests that for the states behind HR-PTAs, commitment to the trade–human rights linkage is the result of regulatory legislators' altruistic desire to improve their trade partners' behaviour in these areas. Regulatory legislators may deem HR-PTAs to be in the public interest out of a normative commitment to international human or labour rights standards specifically or as they believe the treaties will generally benefit the broader public.

The public interest explanation of HR-PTAs is plausible. States often use public interest-oriented reasoning when advertising their HR-PTAs. Canada, for example, has described the purpose of its trade agreement with the EU in this manner, claiming: "CETA cements the paramount right of democratic governments to regulate *in the interests of citizens*"(House of Commons Canada 2017, 8640, emphasis added). The EU in turn suggests that its trade policy "goes beyond economics" and is about EU "principles and values" (Malmström 2016, 4–5), alluding to a public interest motivated intent.

Going beyond public rhetoric, how can we uncover if regulatory legislators commit to HR-PTAs for public interest-oriented reasons? An observable implication of the public interest theory explanation is that if HR-PTAs are policies created to address repressive human or labour rights practices, then the agreements should be signed when a partner state displays poor human or labour rights practices.

This leads to the following testable assumption-based hypothesis:

P1 *The weaker the human rights practices of its partner state, the more likely a state is to commit to an HR-PTA.*

According to Hypothesis P1, if a state commits to HR-PTAs for public interest-oriented reasons, then we should expect it to sign its HR-PTAs when its partner states exhibit repressive practices.

The public interest theory of regulation also provides a simple outcome-oriented hypothesis:

P2 *States will use their HR-PTAs to combat repression.*

Hypothesis P2 suggests that states that commit to HR-PTAs for public interest-oriented reasons should also be expected to effectively implement, monitor, and enforce this regulation where possible. If they do not, it is unclear that they will achieve their desired outcome of improved human rights practices for the general public in partner states. The enforcement track record of HR-PTAs, while not incorporated into the statistical analysis due to the limited variation present in this data, is introduced in the final section in this chapter and analysed in more detail in the case study chapters.

The Private Interest Theory of Regulation and HR-PTAs

Applied to the case of HR-PTAs, the private interest theory of regulation suggests that the states behind HR-PTAs commit to these seemingly "public-spirited" treaties in order to protect the interests of private interest groups, and in particular, powerful producers that have captured the regulatory apparatus. Against fears of cheaper labour abroad, the goal of HR-PTAs is to "level-the-playing-field" between foreign and domestic producers by requiring equally strong human and labour rights protection from all member states. HR-PTAs are therefore protectionist policies.

This view is not without support. One TPP commentator puts it nicely: "Governments have a crafty way of cooking up local environment, labour, packaging and marketing rules that might be outwardly pitched as health and safety measures but are really just non-tariff based ways to protect local industries" (Hasselback 2015). Many developing countries have also endorsed this explanation, deeming the linkage between trade and specifically labour rights to be a "guise for protectionism in developed-country markets"(WTO 1999). In addition, free traders generally view those in favour of the human and labour rights-trade linkage as "protectionists masquerading as moralists" (Howse and Trebilcock 1996, 61).

It is important to highlight that while the labour-trade linkage is most often criticized as a protectionist ploy, both the labour *and* human rights standards found in trade agreements are plausible protectionist tools. Some human and labour rights standards however, are more amendable to being exploited for protectionist purposes than others. Of the core labour rights, which are often recognized as human rights, these are: freedom from forced labour, freedom from child labour, and freedom to form and join a union and to bargain collectively. A lax regulatory environment around these rights may allow producers to cut costs and undermine their counterparts in states that exhibit strong protection in these areas. However, other human and labour rights may also be susceptible to protectionist manipulation. States that do not enforce regulation around freedom from discrimination at work allow employers to remunerate workers at differing rates based on their gender, age, or other characteristic. This type of discriminatory behaviour may also reduce costs for producers. Constraints on working time and occupational safety and health standards, and social security laws are also factors that affect the bottom line. For these reasons, the private interest protectionist-based hypotheses apply to all forms of HR-PTAs.

In more concrete terms, like the public interest explanation, the first private interest hypothesis (Hypothesis C1)[6] is assumption-oriented. As the private interest explanation focuses on demands from narrow groups as the impetus behind regulation, we can derive the following hypothesis:

> **C1** *The stronger the demands for HR-PTAs it faces from private interest groups, the more likely a state is to commit to an HR-PTA.*

Hypothesis C2 turns to the output-oriented expectations of the private interest theory of regulation:

> **C2** *States will use their HR-PTAs to accomplish a levelled playing field.*

States that commit to HR-PTAs in order to protect domestic industry can be expected, where possible, to use their HR-PTAs for that purpose. If states do not implement, monitor, and enforce their HR-PTAs with trade partners that have worse human or labour rights practices than their own, domestic industries will not clearly protected by the regulation. After all, the claim that HR-PTAs are protectionism in disguise is only applicable to HR-PTAs that are used in protectionist ways. Hypothesis C2, like P2, will be examined in final section of this chapter and the case study chapters.

The Symbolic Theory of Regulation and HR-PTAs

Applied to the case of HR-PTAs, the symbolic theory of regulation suggests that the states behind HR-PTAs primarily commit to the treaties to appease domestic

[6] The "C" in C1 refers to "capture"

interest groups unable or unwilling to capture the regulatory process, usually public interest groups, rather than to directly confront human or labour rights problems. HR-PTAs thus serve a reassuring rather than a regulatory role.

In practice, HR-PTAs have been the clear focus of an array of domestic and international advocacy efforts, spearheaded by public interest-oriented human rights organizations (HROs) and trade unions engaged in labour rights advocacy. This lends credence to the symbolic theory explanation. These groups include well-known names such as: the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Human Rights Watch, the International Federation for Human Rights, and Amnesty International.[7]

The first symbolic regulation hypothesis (S1) is input-oriented and focuses on public interest-oriented demands for HR-PTAs from regulatory advocates:

> **S1** *The stronger the demands for HR-PTAs it faces from public interest groups, the more likely a state is to commit to an HR-PTA.*

As the previous chapter outlined, these demands from HROs and labour rights groups are often, though not always, channelled through elected representative institutions. Elected representatives are primary targets for these generally public interest-oriented groups as their mandate is to represent the broader public and its concerns, and their job security is at least partially tied to their ability to do so. This makes elected representatives unlikely to be able to fully ignore the demands that originate from these groups. In the case of trade, members of these elected institutions may not negotiate or draft PTA's directly, but they often provide formal or informal input on PTA negotiating objectives and may have the opportunity

[7] It is important to acknowledge that as Chapter 2 suggests, labour unions take on both public and private interest advocacy roles. For this reason, while their actions surrounding HR-PTAs have generally been framed as a public interest appeal, organized labour could conceivably advocate for HR-PTAs as a protectionist measure designed to safeguard the jobs and wages of its members. As a robustness check, in Appendix C, the dual nature of labour unions is therefore accounted for in the analyses that follow through the exclusion of labour unions from other human rights organizations included in the main HROs indicator.

to vote on their ratification. In addition their position provides them with insider access to trade negotiators and channels of influence within the state. These factors make elected representatives well-placed to champion the issues of these (generally) public interest groups, though their involvement is not a necessary condition for producing symbolic regulation.

The symbolic theory of regulation also can be extended to generate an output-oriented hypothesis. Hypothesis S2 predicts that:

> **S2** *HR-PTAs are only enforced when not doing so impedes their appeasing purpose.*

If HR-PTAs are motivated by popularity-seeking regulatory legislators desiring to appease (generally) public interest groups, then we can expect the regulation they contain to largely remain unimplemented, unmonitored, and unenforced. It is after all the creation rather than the use of symbolic regulation that these legislators hope will appease regulatory advocates. Only when regulatory advocates are able to mount sufficient pressure on the state and regulators post-signing, should we expect symbolic regulation to be used. Due to the nature of Hypothesis S2 and the limited variation present in the HR-PTA outcome data, this final hypothesis will be excluded from the statistical analyses. Instead, it is discussed in the final section of this chapter and in the case study chapters.

*

It is also important to acknowledge the possibility of multiple complementary theories being best adapted to explaining the formation of HR-PTAs. For example, in order for the "bootleggers and Baptists" version of regulation to occur, a coalition of seemingly opposite but united interest groups must form. In the case of HR-PTAs, the human rights organizations and labour unions that desire to use the agreements to achieve improvements in their advocacy areas are akin to the Baptists. The bootleggers are business or industry interest groups that desire HR-PTAs as a means of safeguarding their profits from being undercut by cheap labour abroad. The results presented in the coming chapters will evaluate if both private interest and public interest dynamics are at play in the creation of HR-PTAs.

3.2 Key Explanatory Variables

Each hypothesis is tested using relevant explanatory variables. For practical reasons, the statistical analyses presented in this chapter focus on assumption-oriented hypotheses associated with each theory of regulation. Therefore, the discussion in this section is limited to those hypotheses, leaving the outcome-oriented hypotheses outlined above to be discussed and tested in the final section of this chapter and in the case study chapters. I begin with an overview of the dependent variables used in my statistical analyses.

Dependent Variables

The PTA and HR-PTA networks are the main dependent variables in this analysis.[8] In order to facilitate comparison, both the HR-PTA and PTA networks are modelled, rather than only the HR-PTA network.[9] The central dependent variable in the bilateral HR-PTA network, HR-PTA, is a dichotomous indicator that captures the presence of a bilateral HR-PTA between two actors. The actors in question can be two states, a regional organization such as MERCOSUR and a state, or two regional organizations.[10] As my main focus is on state commitment to HR-PTAs

[8]This means that the network of trade agreement *ties* are the dependent variables.

[9]While the coefficients of the PTA and HR-PTA networks themselves should not be directly compared, it is useful to contrast the broad patterns present in each network.

[10]Plurilateral trade agreements formed by multiple states are not included in the sample as these agreements are not structurally similar to bilateral agreements and the plurilateral data is too sparse to analyse as a separate network.

rather than on the design of HR-PTAs, an HR-PTA is defined here as any PTA that references human or labour rights in its preamble or main text.[11]

In the PTA network, a corresponding indicator, PTA, is used to capture traditional PTA ties. The data for the dependent variables comes from a comprehensive new dataset on human and labour rights clauses in PTAs (Milewicz 2014), which is discussed in more detail in Appendix A.

Independent Variables

Six main independent variables are incorporated into the analyses: HUMAN RIGHTS (PARTNER), HUMAN RIGHTS (ASYMMETRY), EXPORT SIMILARITY, LAB. INTENSIVE EXPORTS (PROP), and HROs (LOG). These indicators correspond to each theory of regulation's hypotheses and are summarized in Table 3.1 at the end of this section.

Hypothesis P1, which is related to the public interest theory of regulation, is straightforward to operationalize. As it refers to the level of human and labour rights protection practised by partner states, we can rely on established indicators that measure performance in these areas. To evaluate hypothesis P1, the monadic indicator HUMAN RIGHTS (PARTNER), measuring a given state's trade partner's respect for human rights, is used. To capture respect for human rights, the indicator relies on data from the CIRI Human Rights Dataset (Cingranelli, Richards, and Clay 2014). Following Hafner-Burton (2005), the CIRI physical integrity rights index is the main human rights indicator used. It ranges from 0 (no government respect for this right) to 8 (full government respect for this right). For EU (HR-)PTAs and the (HR-)PTAs of regional organizations, the mean physical integrity rights score is calculated for current member states each year. The CIRI empowerment rights index (Cingranelli, Richards, and Clay 2014), which incorporates a measure

[11]This assumption is relaxed in Models 5 and 6.

of workers' rights is also used as a robustness check.

Hypothesis C1 is more complex to operationalize. It is difficult to directly measure protectionist private interest–oriented demands for HR-PTAs on a large scale. I therefore focus my attention on observable permissive background conditions associated with this hypothesis. First, I use a proxy that looks at the human rights practices of partner states. In particular, asymmetrical human rights practices are often related to asymmetrical production costs, as the unit cost of labour is generally higher in rights-respecting states. This divergence in costs may foster protectionist private interest demands for HR-PTAs. According to the private interest theory, we can therefore expect that the larger the *difference* between a state and its trade partner's human rights practices, the more likely the state is to commit to an HR-PTA. The first variable associated with Hypothesis C1 is thus the dyadic HUMAN RIGHTS (ASYMMETRY) indicator, which measures the absolute value of the difference in human rights practices in the dyad. It, like the HUMAN RIGHTS (PARTNER), indicator is based on the CIRI physical integrity rights data (Cingranelli, Richards, and Clay 2014).

Second, I turn to proxies that measure relevant characteristics of a given state's trade portfolio. One of the most suitable proxies for private interest demands in this area would be a measure of import sensitivity, or "revealed comparative advantage," such as that used in Hafner-Burton, Mosley, and Galantucci (2018). A measure of import sensitivity can be viewed as a measure of a state's robustness to import competition. As such, this measure first isolates areas in which a given state, A, is sensitive to imports and then captures the number of imports *into* state A *from* partner state B in those areas. The idea behind this proxy is that domestic protectionist demands are largely incited by foreign competition that threatens relatively disadvantaged domestic industries. However, the spatial and temporal coverage of existing import sensitivity data is severely limited.[12] Therefore, instead, I use two alternate proxies: EXPORT SIMILARITY and LABOUR INTENSIVE EXPORTS (PROP).

As with the measure of import sensitivity, the logic behind measuring export similarity is that competition is a clear driver of protectionist demands. However, in the case of export similarity, the idea is that demands from protectionist groups are likely to occur when the member states of HR-PTAs generally have competitive rather than complementary export profiles. While competition in import-sensitive sectors is one circumstance that may foster protectionist sentiments, when states have similar export profiles, this can also induce competition and protectionist demands from private interest groups. Export similarity is therefore a measure of export competition. In more detail, states that sell similar types of goods on the world market are one form of competitor. The logic is simple. In the automotive industry for example, Asian companies, such as Japan's Mitsubishi, and North American companies, such as the US' General Motors, compete to win market shares. This competition may incite these companies and their supporters to demand HR-PTAs from their governments with the intention of keeping a level playing field. Thus, according this logic, we can expect that the more similar a state and its trade partner's export profiles, the more likely the state is to commit to an HR-PTA. I therefore also test Hypothesis C1 using an original dyadic indicator, EXPORT SIMILARITY.

I calculate EXPORT SIMILARITY from state–level world export flows listed in the UN Comtrade Database (United Nations 2017). To maximize data availability, I disaggregate the export data using the United Nations' Standard International Trade Classification Revision 2 at the two-digit level.[13] For regional organizations, I use the sum of member states' export portfolios to facilitate the inclusion of these

[12] For example, the data used in Hafner-Burton, Mosley, and Galantucci (2018) is from Richardson and Zhang (2001), who calculate the US' revealed comparative advantage between 1980 and 1995.

[13] More recent revisions of the Standard International Trade Classification System had data availability constraints.

actors in the sample. Following Chatagnier and Kavaklı (2017), I first calculate the proportion of exports found in each of the 69 categories for each country–year. Next, I estimate the Pearson's correlation between the vectors for each country pair to produce an EXPORT SIMILARITY score bounded between minus one and one. An EXPORT SIMILARITY score of one indicates that two states have an identical export portfolio in a given year.

While the EXPORT SIMILARITY measure is general in nature, it is also possible that it is the export of specifically labour-intensive products that largely fuels protectionist demands for HR-PTAs as these exports are susceptible to undercutting from other states with poorer human and labour rights protections. Therefore to test C1, I also create an alternate indicator to EXPORT SIMILARITY, called LABOUR INTENSIVE EXPORTS (PROP), which measures the proportion of a given state's export portfolio that is classified as "labour-intensive." Labour-intensive categories correspond to Standard International Trade Classification System codes 61, 65, 69, 83, 84, 85, and 89, as defined in Mayer, Butkevicius, and Kadri (2002, 28).[14]

Next, Hypothesis S1 focuses on the advocacy of public interest groups. The presence of human and labour rights organizations in a given state is the best available proxy for measuring demands from public interest groups for HR-PTAs.[15] The primary indicator used to test the first symbolic regulation hypothesis (S1) is HROs (LOG), a monadic count variable that measures the number of HROs based in a given state.[16] I created the HROs measure by hand–coding data from the Yearbook of International Organizations (YIO) (Union of International Associations 2016), which contains a record of 442 HROs. HROs is similar to the HROs indicator pre-

[14]The product areas covered by these codes are: leather, textiles, apparel, footwear, fabricated metal products, and other manufactures.

[15]Other useful indicators would capture media coverage supporting the use of human rights provisions in trade and domestic groups' specific positions. Due to lack of data availability however, these cannot be incorporated here.

[16]See Appendix B for more detailed coding information.

sented by Murdie and Bhasin (2011), which also relies on YIO data, but only spans 1990 to 2004. For EU (HR-)PTAs and the (HR-)PTAs of regional organizations, I calculate the values for each year by taking the sum of HROs present in member states during that year.[17]

Table 3.1: Key Indicators by Theory of Regulation

Theory	**Hypothesis**	**Operationalization**	**Indicator**
Public Interest	P1	Human and labour rights performance of partner state (monadic).	HUMAN RIGHTS (PARTNER)
Private Interest (capture)	C1	Human and labour rights asymmetry (dyadic).	HUMAN RIGHTS (ASYMMETRY)
		Similarity of export profiles (dyadic).	EXPORT SIMILARITY
		Labour-intensive exports (proportion)	LAB. INTENSIVE EXPORTS (PROP)
Symbolic	S1	Presence of human rights organizations (monadic).	HROs (LOG)

Control Variables

A large number of monadic state-level, dyadic, and structural controls are also included in the analyses. To control for how active a country is in global trade, which may affect its willingness to sign an HR-PTA,[18] I include the monadic indicator IMPORTS + EXPORTS (LOG). IMPORTS + EXPORTS (LOG) is based on trade data from the Correlates of War Trade Dataset (Barbieri, Keshkt, and Pollins 2009; Barbieri and Keshkt 2012). More specifically, the indicator is the (logged) sum of a state's imports and exports. For the EU and regional organizations, the value is the sum of the (logged) sum of imports and exports of all the current member states.

[17] As a robustness check, I also remove labour unions from the HROs indicator and present the results in Appendix C.

[18] The more a state is engaged in trade, the larger the amount of trade that is on the line should an HR-PTA be used to rescind trade preferences.

To control for states' receptiveness to domestic advocates' demands, the monadic indicator REGIME is used, which captures regime type. The data for REGIME is from the widely used combined Polity score, which varies from -10 (strongly autocratic) to 10 (strongly democratic) (Marshall, Jaggers, and Gurr 2011). As Mansfield and Milner (2012) and Allee and Elsig (2017) suggest, the number of veto players in a given state may also affect states' commitment to trade agreements. I therefore include the monadic indicator VETO PLAYERS, which is taken from Henisz's POLCON variable (Henisz 2000). VETO PLAYERS ranges from 0 to 1 and captures the number and alignment of domestic actors with veto powers.

The dyadic indicator TRADE ASYMMETRY controls for the effects of power. It is possible that states are more likely to secure their desired form of trade agreement when they have the power to coerce any disagreeing trade partner into accepting it. Indicators based on trade flows are useful measures of power in trade negotiations. A Canadian trade negotiator, puts it succinctly: in trade, "Market power remains the basic prerequisite to gaining concessions" (Hart 1990, 41). TRADE ASYMMETRY is from the Correlates of War Trade Dataset (Barbieri, Keshkt, and Pollins 2009; Barbieri and Keshkt 2012). It is measured as the (logged) absolute difference in the imports of Country A from Country B and those of Country B from Country A in a given year.

The final controls I include are: DISTANCE, ALLIANCE, and GDP PER CAPITA (LOG)—all commonly included statistical analyses of PTA commitment.[19] The dyadic indicator DISTANCE relies on the CEPII measure of the distance in kilometres between the capital cities of each country (Mayer and Zignago 2011). For regional organizations, I substitute the city in which the organization has its main headquarters. I divide the DISTANCE score by 100 for algorithmic reasons. The ALLIANCE indicator is based on the dyadic Correlates of War alliance data, which I have re-

[19]See for example: Mansfield and Reinhardt (2003) and Mansfield and Milner (2012).

coded as "1" when two states have a defence, neutrality, entente, or non-aggression pact and "0" otherwise (Gibler 2008). In the case of regional organizations, if any member state has an alliance with the trade partner, ALLIANCE is coded as 1. The monadic indicator GDP PER CAPITA (LOG) comes from the Penn World Table and is a logged version of its real GDP per capita (expenditure-side) indicator (Feenstra, Inklaar, and Timmer 2015). GDP PER CAPITA (LOG) measures the relative standard of living enjoyed in a given state. Again, for regional organizations, the aggregated value of all current member states' scores was compiled.

Milewicz et al. (2018) shows that network structural effects are important predictors of non-trade issue inclusion in PTAs. Therefore, four additional structural indicators are included. Using the names employed in Milewicz et al. (2018) for clarity, SHARED COSTS captures the likelihood of a state committing to an HR-PTA with partners that already have done so (using the RSiena "transitive triads" effect). A positive coefficient of SHARED COSTS here would suggest that if State A had already signed an HR-PTA with states B and C, then States B and C are more likely to sign an HR-PTA between them and "close the triad." The second structural effect controlled for, SUBSEQUENT COSTS, measures degree popularity (using the RSiena "in-degree related popularity (sqrt)" effect), which for my purposes captures the cost of committing to a subsequent trade agreement after signing a first trade agreement. SUBSEQUENT COSTS is measured as the square root of the number of agreements a state has previously signed. A positive coefficient indicates that a state is more likely to sign an additional trade agreement, the more agreements it already has signed. It therefore also controls for one form of path-dependency or habit.

START-UP COSTS are also controlled for using an isolate effect (using the RSiena "network-isolate" term). An "isolate" is a network term for an actor that has signed no PTAs or HR-PTAs (i.e. it has no ties). START-UP COSTS is measured as "1" if a state has no previous trade agreement ties and "0" if it has previous ties. The indicator captures the general propensity of a state to create its first trade agreement in each network and can be interpreted as a measure of the cost of first entering the network. A positive coefficient indicates that states are generally reluctant to sign their first trade agreement.

Lastly, a "cross-network" effect called CROSS NETWORK ACTIVITY is included. CROSS NETWORK ACTIVITY captures whether what states do in one network affects their actions in another (using the RSiena "inPopIntn" effect).[20] Applied to the trade agreement networks, CROSS NETWORK ACTIVITY can be interpreted as another measure of path dependency or habit. A negative CROSS NETWORK ACTIVITY coefficient in the PTA network model indicates that once a state signs an HR-PTA it is less likely to sign a traditional PTA in the future.

3.3 Estimation Technique and Model Specification

Stochastic Actor-Oriented Models (SAOMs) are used to test the hypotheses presented above. SAOMs are a type of longitudinal network model that calculate the relative importance of different factors in explaining the probability of "tie change" (here the formation, maintenance or dissolution of a PTA or HR-PTA) in a specific network by a given utility-maximizing actor (here a state) (Ripley et al. 2018). The probability of tie change is based on endogenous structural, exogenous monadic, and dyadic indicators, as well as random disturbances.

The underlying assumption behind SAOMs is that actors aim to maximize their utility, given the current state of the network. They accomplish this by creating, maintaining, or discarding ties, as modelled by their evaluation function. Each actor can only make one tie change at a time, in what is called a "mini-step." Each mini-step defines the current state of the network on which future utility-maximizing

[20] As cross-network effects do not correspond to the main hypotheses, following Milewicz et al. (2018), the analysis is limited to cross-network activity rather than closure effects.

decisions are made. The model is a continuous time Markov chain.

Two main networks are modelled: the HR-PTA and the PTA networks.[21] The evaluation function for country i models that country's theoretically determined preferences and its likelihood of forming an HR-PTA or PTA tie. The evaluation function is defined in a linear manner—i.e. as in generalized linear model—as:

$$f_i(\beta_k, x) = \sum_{k=1}^{n} \beta_k s_{ik}(x) \tag{3.1}$$

where β_k are the parameters and $s_{ik}(x)$ are the values of the covariates or the score on the structural effect.

As it is not possible to observe who initiates each trade agreement, the models presented employ a network solution for non-directed data. Following Manger et al. (2012) and (Milewicz et al. 2018), a modification of the basic SAOM model to account for non-directed networks called "unilateral initiative and reciprocal confirmation" (i.e. RSiena Model Type 3) is used. This modification is appropriate as it assumes that one state proposes the PTA but it realistically assumes that both states must agree in order for the PTA to be signed.

For modelling purposes, the data is separated into 11 waves (1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009), each corresponding to a two year time period (i.e. 1989-1990; 1991-1992, 1993-1994, ... etc.).[22] The sample is comprised of 415 trade agreements overall. The waves begin in 1989 and cover two-year periods finishing in 2009, the last year of available data. The time period chosen is necessary as there were very few HR-PTAs signed before 1989, which means that

[21] Following (Milewicz et al. 2018), these two networks are modelled separately rather than as nested/ordered networks. Modelling the networks in an ordered manner would have made choices in the HR-PTA network, the primary focus of this research, strongly determined by PTA choices and limit statistical power to include all the explanatory effects this dissertation tests.

[22] Using 11 waves ensures suitable Jaccard distance scores between successive networks as suggested in Ripley et al. (2018).

due to limited data, earlier periods cannot be adequately modelled. The unit of analysis is a change in PTA or HR-PTA tie between successive waves.

As with all SAOMs, estimation is conditional on the first observed network, which is not modeled. Any agreement signed before 1989 but still in force however, is included in this first observed network. The estimates—which are determined by a stochastic approximation through repeated simulations[23]—can be interpreted in a similar manner to the results of a multinomial logistic regression analysis (Ripley et al. 2018).

3.4 Results

Summary statistics of the indicators are presented in Table 3.2. The network structural indicators are excluded.

[23]This means that exact estimates may vary slightly from run to run. However, they are expected to remain largely consistent.

Table 3.2: Summary Statistics

Indicator	Minimum Value	Maximum Value	Mean Value
HUMAN RIGHTS (PARTNER)	0.0	8.0	4.6
HUMAN RIGHTS (ASYMMETRY)	0.0	8.0	2.5
EXPORT SIMILARITY	-0.2	1.0	0.1
LAB. INTENSIVE EXPORTS (PROP)	0	1.0	0.1
HROs (LOG)	-9.2	4.6	-6.0
IMPORTS + EXPORTS (LOG)	4.2	16.0	9.0
REGIME	-10.0	10.0	1.9
TRADE ASYMMETRY	0.0	26.2	11.3
DISTANCE	0.10	198.1	78.3
ALLIANCE	0.0	1.0	0.1
GDP PER CAPITA (LOG)	5.0	11.7	8.5
VETO PLAYERS	0.0	0.7	0.2

Table 3.3 presents three models. Each model separately tests the propositions associated with each regulatory theory. Model 1 corresponds to Hypothesis P1, which relates to the public interest explanation of HR-PTA creation. In Model 2, the private interest explanation of HR-PTAs is tested, corresponding to Hypothesis C1. Finally Model 3 tests the symbolic regulation explanation of HR-PTAs and corresponds to Hypothesis S1.

An alternate specification of Model 2 is presented in Table 3.4, which uses the LAB. INTENSIVE EXPORTS (PROP) indicator instead of EXPORT SIMILARITY.

Table 3.3: SAOM Parameter Estimates: By Theory of Regulation

	Model 1 Public Interest		**Model 2 Private Interest**		**Model 3 Symbolic**	
	PTA	HR-PTA	PTA	HR-PTA	PTA	HR-PTA
Main Indicators:						
HUMAN RIGHTS (PARTNER)	0.01 (0.03)	−0.07 (0.03)*				
HUMAN RIGHTS (ASYMMETRY)			0.03 (0.03)	0.05 (0.03)$^{\cdot}$		
EXPORT SIMILARITY			0.28 (0.17)$^{\cdot}$	0.16 (0.16)		
HROs (LOG)					0.05 (0.02)**	0.10 (0.02)***
Controls:						
IMPORTS + EXPORTS (LOG)	−0.05 (0.05)	−0.12 (0.05)*	−0.07 (0.06)	−0.15 (0.05)**	−0.07 (0.06)	−0.21 (0.06)***
REGIME	−0.02 (0.02)	0.02 (0.01)	−0.02 (0.02)	0.02 (0.01)	−0.03 (0.02)	0.00 (0.01)
VETO PLAYERS	0.20 (0.49)	0.33 (0.43)	0.22 (0.50)	0.20 (0.46)	0.12 (0.51)	−0.16 (0.50)
TRADE ASYMMETRY	0.12 (0.02)***	0.06 (0.02)**	0.12 (0.02)***	0.05 (0.02)**	0.11 (0.02)***	0.04 (0.02)*
DISTANCE	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***
ALLIANCE	0.12 (0.12)	0.51 (0.11)***	0.13 (0.12)	0.55 (0.11)***	0.14 (0.12)	0.58 (0.12)***
GDP PER CAPITA (LOG)	0.03 (0.04)	0.39 (0.10)***	0.03 (0.04)	0.39 (0.10)***	0.02 (0.04)	0.43 (0.11)***
SHARED COSTS	0.09 (0.06)	−0.04 (0.05)	0.08 (0.06)	−0.05 (0.06)	0.10 (0.06)	−0.02 (0.06)
SUBSEQUENT COSTS	0.84 (0.14)***	0.72 (0.10)***	0.85 (0.14)***	0.75 (0.12)***	0.82 (0.13)***	0.65 (0.11)***
START-UP COSTS	1.55 (0.63)*	3.53 (0.41)***	1.53 (0.61)*	3.48 (0.41)***	1.66 (0.64)**	3.65 (0.42)***
CROSS-NETWORK ACTIVITY	−0.49 (0.10)***	−0.02 (0.07)	−0.48 (0.10)***	0.01 (0.07)	−0.49 (0.09)***	0.06 (0.07)
INTERCEPT (DENSITY)	−3.73 (0.98)***	−7.47 (1.44)***	−3.53 (0.99)***	−7.61 (1.42)***	−2.36 (1.09)*	−5.31 (1.49)***
Estimation Iterations	9,715		9,860		9,672	
Goodness of Fit	0.093	0.101	0.302	0.273	0.102	0.101

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

Table 3.4: SAOM Parameter Estimates: Private Interest Alternate Specification Based on Labour-Intensive Exports

	Model 2b	
	Private Interest (Alternate)	
	PTA	HR-PTA
Main Indicators:		
HUMAN RIGHTS (PARTNER)		
HUMAN RIGHTS (ASYMMETRY)	0.03 (0.03)	0.05 (0.03)$^{\cdot}$
LAB. INTENSIVE EXPORTS (PROP)	2.04 (0.73)**	0.98 (0.56)$^{\cdot}$
HROs (LOG)		
Controls:		
IMPORTS + EXPORTS (LOG)	−0.04 (0.05)	−0.15 (0.06)*
REGIME	−0.02 (0.02)	0.02 (0.01)
VETO PLAYERS	0.06 (0.53)	0.13 (0.45)
TRADE ASYMMETRY	0.12 (0.02)***	0.05 (0.02)**
DISTANCE	−0.01 (0.00)***	−0.01 (0.00)***
ALLIANCE	0.23 (0.13)$^{\cdot}$	0.60 (0.12)***
GDP PER CAPITA (LOG)	0.02 (0.04)	0.42 (0.11)***
SHARED COSTS	0.10 (0.06)	−0.05 (0.06)
SUBSEQUENT COSTS	0.81 (0.14)***	0.74 (0.14)***
START-UP COSTS	1.71 (0.62)**	3.45 (0.43)***
CROSS-NETWORK ACTIVITY	−0.52 (0.10)***	0.01 (0.07)
INTERCEPT (DENSITY)	−4.07 (1.01)***	−8.40 (1.50)***
Estimation Iterations	9,852	
Goodness of Fit	0.057	0.342

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

The reported parameters are estimated using the method of moments procedure. All models successfully converged on stable point estimates. The goodness-of-fit estimates reported at the bottom of Tables 3.3, 3.4, 3.5, and 3.6 are p-values for each network's degree distribution. "Degree" simply refers to the number of PTAs each state in the network has and "degree distribution" is the distribution of these degree values across nodes. P-values greater than 0.05 signify a satisfactory degree of overlap between the simulated degree distribution and the observed degree distribution of the original data. The p-values reported suggest that all three models have an excellent model fit. Exponentiating the coefficients presented in Tables 3.3, 3.4, 3.5, and 3.6 provides the relative change in the probability that two states form an HR-PTA, given a one-unit increase in the independent variable of interest.[24]

Beginning with the key indicators, the main indicator of interest in Model 1 is HUMAN RIGHTS (PARTNER), corresponding to Hypothesis P1. As the public interest theory expects, the estimated coefficient in the HR-PTA network is negative and statistically significant. Exponentiating the coefficient of -0.07, this indicates that for every unit increase in HUMAN RIGHTS (PARTNER), a state becomes approximately 6.8 percent less likely to sign an HR-PTA. HR-PTAs are therefore more likely to be signed the lower the human rights score is of partner states.

In Model 2, presented in Table 3.3, the indicators corresponding to the private interest explanation and testing Hypothesis C1—HUMAN RIGHTS (ASYMMETRY), and EXPORT SIMILARITY—are not statistically significant at the 0.05 level or below. In Model 2b, presented in 3.4, the results are similar: HUMAN RIGHTS (ASYMMETRY), and LAB. INTENSIVE EXPORTS (PROP)—are not statistically significant at the 0.05 level or below in the HR-PTA network, however LAB. INTENSIVE EXPORTS (PROP) is positive and statistically significant in the PTA network. There is

[24] Note however that interpretation in the form of predicted probabilities is not possible with SAOM estimates.

not clear statistical support in Models 2 or 2b for the private interest explanation of regulation.

Turning to hypothesis S1, the parameter estimates for Model 3, found in Table 3.3, are generally in line with the expectations of symbolic regulation explanation of HR-PTA development. HROs (LOG) is positive and statistically significant, however in both the PTA and HR-PTA networks. This suggests that states with more HROs are more likely to engage in trade agreements in general but also in HR-PTAs specifically. In the PTA network, a unit increase in HROs (LOG) is related to around a 5.1 percent increase in the likelihood of a state forming a PTA. Exponentiating the coefficient of 0.10 in the HR-PTA network tells us that for each unit increase in HROs, there is a 10.1 percent increase in the odds of a state forming an HR-PTA.

Of the controls, IMPORTS + EXPORTS (LOG) is statistically significant across all three models presented in 3.5 in the HR-PTA network. In the HR-PTA network of Model 3 for example, the IMPORTS + EXPORTS (LOG) coefficient of -0.21 suggests that for each unit increase in IMPORTS + EXPORTS (LOG) (or each 2.7 fold increase in imports and exports on a non-logged scale), the likelihood of a state forming an HR-PTA decreases by close to 19 percent. Thus, when larger trade flows are on the line, states are less likely to sign HR-PTAs. REGIME and VETO PLAYERS are not statistically significant in any of the Models. TRADE ASYMMETRY, which is a measure of power, is statistically significant across Models 1 through 3 in the PTA and HR-PTA networks. This suggests that state commitment to all forms of PTA is affected by asymmetric power relations.

ALLIANCE and GDP PER CAPITA (LOG) in contrast are positive and statistically significant only in the HR-PTA network in Models 1 through 3. This suggests that relatively wealthier states and states that are in alliances are more likely to commit to HR-PTAs, though not necessarily PTAs. Of the structural indicators, SUBSEQUENT COSTS and START-UP COSTS are significant across all the networks. This suggests that states display a reluctance to sign their first (HR)-PTAs but once they have signed their first agreement, they are more likely to continue signing them with every agreement they sign. CROSS-NETWORK ACTIVITY is only significant in the PTA network, suggesting that states transition from PTAs to HR-PTAs but not the other way around. This represents a form path dependency; once an item is on the agenda, it less likely to be removed.

Table 3.5: SAOM Parameter Estimates: Combined

	Model 4 Combined		Model 4b Combined (Alternate)	
	PTA	HR-PTA	PTA	HR-PTA
Main Indicators:				
HUMAN RIGHTS (PARTNER)	0.03 (0.03)	−0.04 (0.04)	0.05 (0.03)	−0.04 (0.04)
HUMAN RIGHTS (ASYMMETRY)	0.02 (0.03)	0.03 (0.03)	0.02 (0.03)	0.02 (0.03)
EXPORT SIMILARITY	0.28 (0.18)	0.17 (0.17)		
LAB. INTENSIVE EXPORTS (PROP)			2.25 (0.82)**	1.02 (0.60)·
HROs (LOG)	0.06 (0.02)**	0.10 (0.02)***	0.06 (0.02)**	0.10 (0.02)***
Controls:				
IMPORTS + EXPORTS (LOG)	−0.09 (0.06)	−0.19 (0.07)**	−0.06 (0.05)	−0.19 (0.06)**
REGIME	−0.03 (0.02)	0.00 (0.02)	−0.03 (0.02)·	0.00 (0.02)
VETO PLAYERS	0.07 (0.51)	0.04 (0.49)	−0.12 (0.56)	−0.04 (0.47)
TRADE ASYMMETRY	0.12 (0.02)***	0.04 (0.02)*	0.11 (0.02)***	0.04 (0.02)*
DISTANCE	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***
ALLIANCE	0.14 (0.12)	0.59 (0.12)***	0.25 (0.13)·	0.64 (0.12)***
GDP PER CAPITA (LOG)	0.02 (0.04)	0.44 (0.12)***	0.00 (0.04)	0.48 (0.11)***
SHARED COSTS	0.09 (0.06)	−0.02 (0.06)	0.11 (0.06)·	−0.02 (0.06)
SUBSEQUENT COSTS	0.86 (0.13)***	0.66 (0.11)***	0.86 (0.14)***	0.65 (0.12)***
START-UP COSTS	1.61 (0.63)*	3.66 (0.41)***	1.71 (0.60)**	3.60 (0.50)***
CROSS-NETWORK ACTIVITY	−0.51 (0.10)***	0.02 (0.08)	−0.57 (0.11)***	0.02 (0.08)
INTERCEPT (DENSITY)	−2.41 (1.15)*	−5.61 (1.60)***	−3.21 (1.14)**	−6.54 (1.65)***
Estimation Iterations	10,403		10,363	
Goodness of Fit	0.091	0.087	0.091	0.107

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

Models 4 and 4b, presented in Table 3.5, includes the relevant indicators for all three regulatory theories together in one model. This is one way of testing if the theories provide complementary explanations of HR-PTA formation. The results of Models 4 and 4b generally correspond to those of Models 1 to 3 with an important difference—HUMAN RIGHTS (PARTNER) is no longer statistically significant in the HR-PTA network once HROs is controlled for in the same model. As in Model 2, HUMAN RIGHTS (ASYMMETRY) and EXPORT SIMILARITY are not statistically significant in the PTA or HR-PTA networks. In Model 4b, LAB. INTENSIVE EXPORTS (PROP) remains statistically insignificant in the HR-PTA network. This means that the main models presented do not provide clear statistical evidence in support of Hypothesis C1 and the protectionist private interest explanation of HR-PTA formation. Model 4 provides strong support however for the symbolic theory hypothesis (Hypothesis S1). HROs (LOG) retains the coefficient of 0.10 in the HR-PTA network and remains positive and statistically significant in both the PTA and HR-PTA networks, though again with a smaller coefficient in the PTA network. The control variables retain similar estimates and statistical significance in Model 4.

Table 3.6: SAOM Parameter Estimates: Preamble versus Main Text

	Model 5		**Model 6**	
	Preamble Only		**Main Text Only**	
	PTA	HR-PTA	PTA	HR-PTA
Main Indicators:				
HUMAN RIGHTS (PARTNER)	0.02 (0.03)	−0.04 (0.04)	0.03 (0.03)	−0.04 (0.04)
HUMAN RIGHTS (ASYMMETRY)	0.05 (0.03)	−0.02 (0.03)	0.03 (0.03)	0.01 (0.03)
EXPORT SIMILARITY	0.36 (0.18)$^{\cdot}$	0.15 (0.21)	0.30 (0.17)$^{\cdot}$	0.04 (0.20)
HROs (LOG)	0.07 (0.02)***	0.09 (0.02)***	0.07 (0.02)***	0.09 (0.02)***
Controls:				
IMPORTS + EXPORTS (LOG)	−0.15 (0.07)*	−0.14 (0.07)*	−0.08 (0.05)	−0.16 (0.06)**
REGIME	0.00 (0.02)	0.02 (0.02)	−0.04 (0.02)*	0.01 (0.02)
VETO PLAYERS	−0.20 (0.49)	0.13 (0.50)	0.21 (0.49)	−0.33 (0.48)
TRADE ASYMMETRY	0.12 (0.02)***	0.03 (0.02)	0.11 (0.02)***	0.04 (0.02)$^{\cdot}$
DISTANCE	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)**	−0.00 (0.00)**
ALLIANCE	0.12 (0.12)	0.40 (0.13)**	0.20 (0.12)$^{\cdot}$	0.42 (0.14)**
GDP PER CAPITA (LOG)	0.02 (0.04)	0.39 (0.14)**	0.01 (0.04)	0.40 (0.11)***
SHARED COSTS	0.18 (0.06)**	−0.10 (0.07)	0.09 (0.05)$^{\cdot}$	−0.10 (0.08)
SUBSEQUENT COSTS	0.81 (0.12)***	0.69 (0.12)***	0.71 (0.11)***	0.63 (0.12)***
START-UP COSTS	1.99 (0.61)**	3.26 (0.49)***	1.96 (0.61)**	4.29 (0.51)***
CROSS-NETWORK ACTIVITY	−0.74 (0.11)***	0.12 (0.08)	−0.39 (0.09)***	−0.02 (0.08)
INTERCEPT (DENSITY)	−1.11 (1.12)	−5.68 (1.81)**	−1.99 (1.05)$^{\cdot}$	−5.18 (1.55)***
Estimation Iterations	10,239		10,376	
Goodness of Fit	0.108	0.085	0.325	0.221

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

Models 5 and 6, reported in Table 3.6 disaggregate the sample based on the location of the human and labour rights references in the treaty. Model 5 limits the sample to preambular human and labour rights references, whereas Model 6 focuses solely on main text references. The results of Models 5 and 6 largely match those presented in Model 4 with a few differences. In Model 5, which only includes preambular human and labour rights provisions, EXPORT SIMILARITY is almost statistically significant in the PTA network. HROs (LOG) remains positive and statistically significant in the HR-PTA network in these models. As preambular clauses are conventionally understood to serve interpretive and declarative roles,[25] not regulatory roles, HR-PTAs with main text human or labour rights clauses, as analysed in Model 6, are perhaps the most likely type of HR-PTA to be created as public interest or private interest regulation rather than symbolic regulation. That the public interest and capture indicators are not statistically significant predictors of main text HR-PTAs suggests that these explanations may not fit the case of HR-PTAs well.

The parameter estimates of the remaining network effects in Models 5 and 6 are generally in the directions expected. The SUBSEQUENT COSTS variable is positive and statistically significant in both Models, suggesting that the more (HR-)PTAs a given state signs, the more likely the state is to continue signing (HR-)PTAs. SHARED COSTS is only statistically significant in the PTA network of Model 5, suggesting that unlike in the more general NTI networks analyzed in Milewicz et al. (2018), in the HR-PTA networks, having shared partners does not clearly promote treaty formation. The positive START-UP COSTS indicator, which is positive and statistically significant in both models across all networks, indicates that states are generally reluctant to sign their first PTAs and HR-PTAs. As in Models 1 through

[25] Article 31(2) of The Vienna Convention on the Law of Treaties states: "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its *preamble* and annexes." (Emphasis added).

4, the CROSS NETWORK ACTIVITY indicator is positive and significant in the PTA networks in Models 5 and 6, suggesting that states decisions to create bilateral PTAs and HR-PTAs are partially interdependent. While there is no evidence that creating PTAs make states more likely to sign HR-PTAs, according to Models 5 and 6, creating HR-PTAs make states less likely to establish PTAs that do not regulate human and labour rights issues.

Of the controls, IMPORTS + EXPORTS remains statistically significant in the HR-PTA networks. TRADE ASYMMETRY is positive and significant in only the PTA network in Models 5 and 6, suggesting that power asymmetry amongst trade partners in terms of their market activity is an important feature that facilitates the negotiation of PTAs but not necessarily HR-PTAs. DISTANCE is negative and statistically significant in the PTA and HR-PTA networks in Models 5 and 6, indicating that the closer together states are, the more likely they are to sign a PTA. ALLIANCE is only statistically significant in the HR-PTA networks in Table 3.6. Its positive coefficient of 0.40 in Model 5 means that states that are in an alliance are around 49 percent more likely to sign an HR-PTA than other states. GDP PER CAPITA (LOG) is positive and statistically significant only in the HR-PTA network. The GDP PER CAPITA (LOG) coefficient of 0.40 in Model 6 suggests that states are 49 percent more likely to sign an HR-PTA for each unit increase in GDP PER CAPITA (LOG).

Overall, the results are consistent with the symbolic theory of regulation, which proposes that states do not primarily sign HR-PTAs to address human rights problems, but rather to address the demands of domestic audiences, while keeping their trade preferences intact.

Robustness Checks

Further model specifications are presented in Appendix C. These models disaggregate HR-PTAs with human and labour rights provisions, change the two HUMAN

RIGHTS indicators from the CIRI physical integrity rights index to the CIRI empowerment rights index (Cingranelli, Richards, and Clay 2014) as the empowerment rights index more closely reflects the workers' rights commitments found in labour rights HR-PTAs, remove labour unions from the HROs indicator,[26] and replace the GDP PER CAPITA (LOG) indicator with GDP (LOG), based on the real GDP output indicator from the Penn World Table (Feenstra, Inklaar, and Timmer 2015). GDP (LOG) is a measure of productive capacity—appropriate in the context of trade—rather than of standard of living (Feenstra, Inklaar, and Timmer 2015). The results of these additional models are largely consistent with those presented above.

3.5 Mapping HR-PTA Outcomes

The statistical analyses presented above have assessed the different factors that affect the likelihood of states signing HR-PTAs. The analyses therefore focused on testing the first hypothesis associated with each theoretical explanation (i.e. Hypotheses P1, C1, and S1). Yet, as previously argued, regulation can also be evaluated by looking at its outcomes. As HR-PTAs generally contain few binding implementation[27] or monitoring requirements,[28] this section focuses on one specific outcome: formal enforcement activities. This section therefore aims to provide an overview of HR-PTA enforcement activities. It provides a first look at how the outcome-oriented hypotheses developed in this chapter relate to how HR-PTAs

[26] As it is plausible that some labour unions may desire HR-PTAs to protect the jobs of their members, excluding labour unions form the sample of HROs ensures that these groups are not driving the results that we witness.

[27] An exception to this assessment is the requirement under some HR-PTAs for member states to create an institutional body that oversees the human or labour rights elements of the treaty. Under the CAFTA-DR (signed 2004) for example, the parties are required to create a Labor Affairs Council comprising of cabinet level officials (Article 16.4). The established council is required to meet in the year following the agreement's entry into force and then only at the mutual decision of member states in later years.

[28] The Canada-Colombia FTA (signed 2008) is an exception. It is linked to a side agreement that contains annual human rights reporting requirements.

have been used in practice (i.e. Hypotheses P2, C2, and S2). As the US and Canada are two of the three countries that have engaged in formal enforcement activities under their HR-PTAs, the outcome-oriented hypotheses for these two countries are analysed in greater detail in their case study chapters. The EU in contrast has yet to engage in formal enforcement activities under its reciprocal HR-PTAs.[29]

Due to the limited number of enforcement activities that have been taken under existing HR-PTAs, this section relies on descriptive data rather than on statistical analysis to assess HR-PTA outcomes. This descriptive exercise uses and builds on detailed HR-PTA enforcement data collected by Nolan Garcia (2011a, 2011b). Nolan Garcia's dataset covers public submissions under the North American Agreement on Labor Cooperation (NAALC) from 1994 to 2006.[30] Public submissions are detailed complaints filed by civil society members alleging that a member state of an HR-PTA has violated one of their human or labour rights obligations under that treaty. All HR-PTAs built on the NAFTA model have public submission mechanisms. EU HR-PTAs however do not incorporate this feature.[31]

While state parties are able to unilaterally pursue enforcement activities under most HR-PTAs, in practice, this route has not been used. I have extended Nolan Garcia's dataset, using the same coding scheme, to incorporate more recent NAALC submissions, as well as submissions that have occurred under other reciprocal trade

[29] The EU's HR-PTAs have however formed the basis for softer forms of cooperation such as human rights dialogues and technical assistance. For example, see: Isabelle Ioannides (2017).

[30] The first submission under the NAALC was filed in 1994.

[31] Under EU HR-PTAs, civil society however may be formally represented through a Joint Consultative Committee. For example, the EU-Chile Association Agreement (signed 2002) establishes a Joint Consultative Committee (JCC) "with the task of assisting the Association Council to promote dialogue and cooperation between the various economic and social organisations of civil society in the European Union and those in Chile" (Article 10). The EU Chile JCC however was only launched in April 2015, fourteen years after the HR-PTA came into force (Isabelle Ioannides 2017, 165). In other EU HR-PTAs, such as the EU-Mexico Global Agreement (signed 2000), the EU has instead formed civil society working groups (100).

agreements.[32] The data covers two areas: information on the state "claimants"[33] and "defendants"[34] involved with each submission and the outcomes associated with each (accepted) submission.

The data shows that of the accepted claims, enforcement-related activities have included: the creation of action plans, formal ministerial consultations or agreements, reports, or in one case, arbitration. In no case under any HR-PTA have sanctions been deployed or a trade agreement rescinded. This means that in no case has a state invoked the hard enforcement measures associated with its HR-PTAs. This finding aligns with the symbolic theory explanation of HR-PTAs, which argues that states only will use their HR-PTAs in the minimal way necessary to achieve their political purpose.

Enforcement Activities

HR-PTAs are not self-enforcing. Enforcement activities must be undertaken by member states and as the ILO has noted, largely depend "on the political will of the countries concerned" (ILO 2015, 4). However, civil society organizations are able to file public submissions under HR-PTAs that are based on the NAFTA model. This is the primary way enforcement activities are prompted under these HR-PTAs.

The majority of HR-PTA enforcement activities to date have occurred under the NAALC—the labour side agreement to NAFTA.[35] All enforcement activities have been the result of public submissions from members of civil society. Forty-two of the forty-nine documented HR-PTA public submissions have been sent to one of the three National Administrate Organizations (NAOs) established by the

[32] To the best of my knowledge, this dataset now represents the population of formal HR-PTA enforcement activities. Enforcement activities related to unilateral preference schemes however are excluded.

[33] This refers to the state that receives a submission from civil society or itself proposes a claim.

[34] This refers to the state where the alleged violation has taken place.

[35] NAALC enforcement activities are explored in greater detail in Chapter 5.

NAALC. The remaining submissions were filed under the CAFTA-DR, the Canada-Colombia FTA, the Colombia-US FTA, the US-Bahrain FTA, and the Peru-US FTA. All submissions have therefore occurred under American or Canadian HR-PTAs. As Figure 3.1 shows, the US NAO has been the recipient of 61 percent of these submissions, Mexico 23 percent and Canada 16 percent.

Each civil society submission must be made by an organization in an HR-PTA partner country, and can be filed with any of their NAO's, except for their home state's NAO. This means that when Canada is a claimant under the NAALC, the Canadian NAO has received a submission prepared by civil society in the US or Mexico. HR-PTA submissions have alleged labour or human rights violations against nine states. Mexico has been the defendant in 59 percent of these cases, as shown in Figure 3.1, followed by the US (22 percent), Canada (4 percent), and Colombia (4 percent).

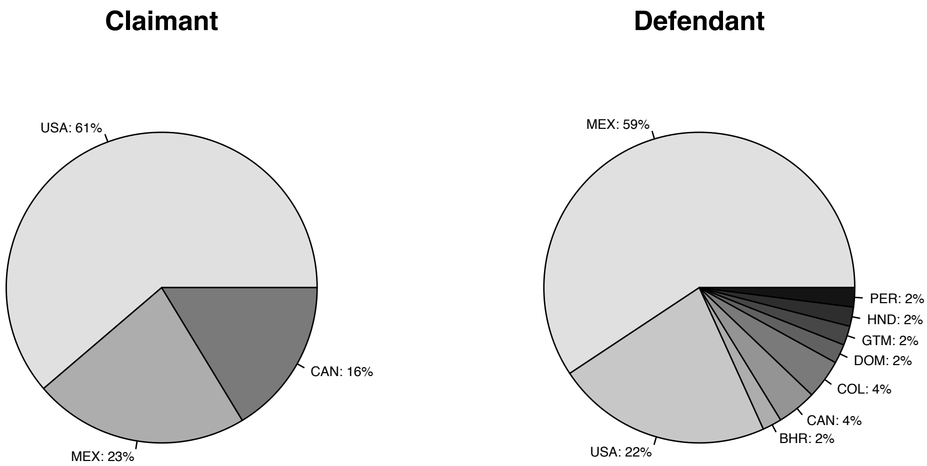

Figure 3.1: HR-PTA Submissions, 1989-2018

Figure 3.2 provides a more detailed overview of the three state claimants involved in each submission: the US, Mexico, and Canada. While most cases filed with one of the NAO's has been accepted for review, four have been withdrawn by the organizations that submitted them,[36] and ten cases have been declined for review.[37] Every case filed since 2010 has been accepted for review. Nolan Garcia (2011b) shows that from 1994 to 2006, NAALC submissions filed by transnational coalitions were most likely to be accepted for review. She posits that these submissions "signal to arbitration bodies the possibility of corroborating claims through contact with affected workers" (30), suggesting that claims submitted by transnational coalitions possess more political leverage over HR-PTA member states. This interpretation aligns with the symbolic theory explanation of HR-PTAs which expects the agreements to only be enforced when politically necessary.

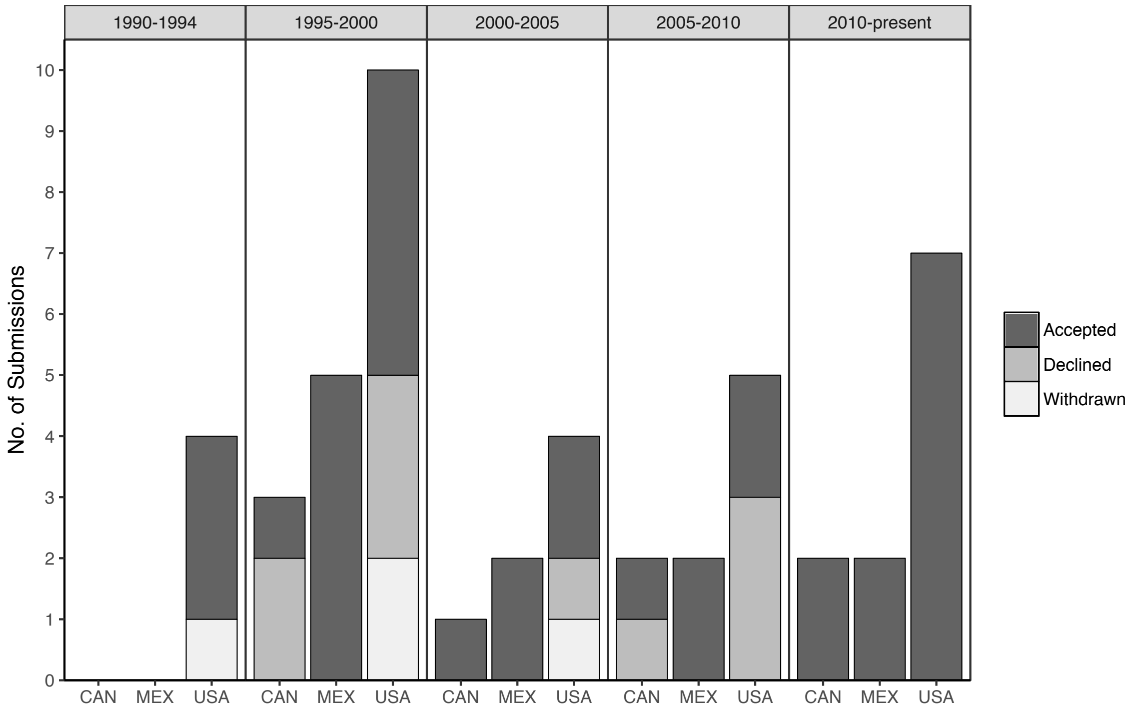

Figure 3.2: HR-PTA Submission Acceptance by Claimant, 1989-2018

Figure 3.3 illustrates the outcomes associated with the public submissions filed under HR-PTAs. Of the cases accepted for review, the most common outcome has been the creation of a non-binding report or action plan for the state with the alleged

[36]The case numbers for these submissions are: US1994-04; US1996-02, US1998-03, and US2004-01.
[37]Mexico was the defendant in nine of these cases and Canada in one.

violation to follow. In over 30 percent of cases, submissions have led to non-binding ministerial agreements or declarations. Arbitration has only been undertaken in one case filed under the CAFTA-DR against Guatemala and was unsuccessful. This case is explored in detail in Chapter 5.

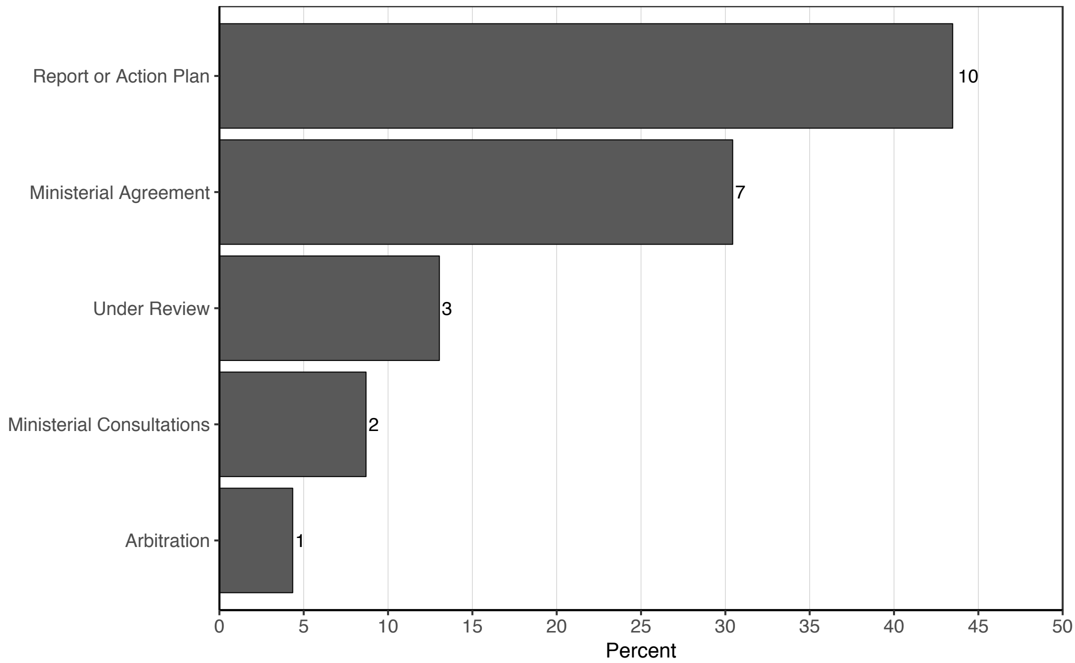

Figure 3.3: Outcomes of HR-PTA Submissions, 1989-2018

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In contrast to the expectations of Hypotheses P2 and C2, the outcomes outlined in Figure 3.3 suggest that states are unwilling or unable to use the hard enforcement measures contained in their HR-PTAs. In no cases have HR-PTA enforcement activities led to the imposition of fines or sanctions or to the termination of an HR-PTA. In addition, states have only engaged in HR-PTA enforcement when prompted by civil society demands. States' demonstrated lack of political will to initiate HR-PTA enforcement activities and to use the hard enforcement measures contained in HR-PTAs makes it less plausible that these treaties are concluded for altruistic or protectionist reasons as the public interest and private interest theories of regulation suggest. The non-enforcement of HR-PTAs makes the achievement of these goals uncertain. For example, a recent EU Parliament study of the EU-Mexico Global Agreement (signed 2000), suggests that the agreement's failure to invoke its sanctioning clause makes it "difficult to establish a clear link between the EU-Mexico FTA and the human rights situation in Mexico" (Isabelle Ioannides 2017, 114). Similarly, the 2013 annual human rights report pertaining to the Canada Colombia FTA (signed 2008)—the hard enforcement measures of which have not yet been deployed—notes: "it is not possible to establish a direct link between the CCOFTA and the human rights situation in Colombia" (Government of Canada 2013).

The outcomes illustrated in the descriptive analyses above instead most closely align with the expectations of the symbolic theory of regulation. Hypothesis S2 suggests that HR-PTAs will only be enforced when politically necessary. Thus, according to the symbolic theory explanation, HR-PTAs are only expected to be minimally enforced. This expectation has been carried out in practice. The data presented in this section shows that HR-PTA enforcement activities have fallen short of what is possible under these agreements, conveying states' reluctance to endanger trade benefits in the face of documented human or labour rights concerns. The case study chapters explore this outcome in more detail.

3.6 Conclusions

This chapter has focused on three tasks. First it applied insights from the three theories of regulation presented in Chapter 2 to the HR-PTA context. From this starting point, a series of hypotheses were derived that isolated key reasons behind state commitment to HR-PTAs aligned with the public interest, private interest, and symbolic theories of regulation. Next, it used statistical network analysis to assess the relevance of each theoretical explanation of HR-PTAs, looking at the broad factors that lead states to commit to HR-PTAs. By using statistical network analysis to test these hypotheses, this study was able to control for the effects of network structure, such as path dependency, and better isolate the effects of the theory-based explanations of interest. Finally, this chapter presented a first look at the enforcement-related outcomes associated with HR-PTAs.

The statistical network analyses presented in this chapter produced two key insights. First, they suggested that generally states do not commit to HR-PTAs for reasons associated with the public or private interest explanations. Once controlling for alternative explanations, the analysis found little support for the explanation that states are more likely to commit to HR-PTAs when their partner states exhibit repressive practices, as the public interest theory of regulation predicts. Nor did it find support for the explanation that states are more likely to commit to HR-PTAs when there is a large difference in human rights practices between partner states, when partner states have similar export profiles, or when partner states' export portfolios are heavily dominated by labour-intensive products, as the private interest theory of regulation expects. In other words, the findings presented do not suggest that states commit to HR-PTAs to improve human and labour rights outcomes or out of protectionist sentiments as is often assumed.

However, the statistical analyses presented showed that in general, the presence of HROs makes states more likely to commit to HR-PTAs, all else being equal. The removal of labour unions from the HROs indicator deployed, available in Appendix C, does not affect these findings, suggesting that the presence of these dual-nature interest groups is not driving the main results presented. My analyses therefore showed the strongest support for the symbolic regulation explanation of HR-PTAs. These findings were also robust to controlling for the presence of path dependency that may affect subsequent HR-PTA commitment. This indicates that domestic advocacy efforts may play a role not only in the creation of states' first HR-PTAs, but also in their next HR-PTAs. This outcome however may also be consistent with the the symbolic theory explanation for another reason. Audiences may be more likely to believe symbols that are consistently deployed.

The descriptive analysis of HR-PTA enforcement activities showed that few states have used their HR-PTAs for their ostensible purpose: to ensure trade partners live up to strong human and labour rights practices. The US, Canada, and Mexico have been the only states to pursue formal claims associated with alleged human or labour rights violations under their HR-PTAs, though only after being prompted by civil society submissions. No submission has led to the use of the hard enforcement measures contained within HR-PTAs. These findings align with the symbolic theory explanation of HR-PTAs.

Large-scale statistical and descriptive analyses are only one aspect of the empirical analyses undertaken in this research project. In the remaining empirical chapters, three states' experiences with HR-PTAs are explored in detail. Turning to case studies provides an opportunity to explore the micro-dynamics and causal mechanisms that have led to HR-PTAs.

4 | Lomé to Lima: The European Union's HR-PTAs

Where countries systematically flout core labour standards, we will not hesitate to take away the positive trade incentives that we have put in place" (Mandelson 2005).

Peter Mandelson, then EU[1] Trade Commissioner, made this public-spirited declaration about the EU's HR-PTA policy in a speech titled "Trade policy for a 'Social Europe" in 2005. That same year, the European Parliament's (EP) Subcommittee on Human Rights requested an independent study on the status and evolution of the EU's HR-PTAs. At the time, the EU Commission had negotiated around 25 HR-PTAs. The report concluded "Without a doubt, the single most important failure of the EU's policy on human rights and democracy clauses is the [EU's] failure to invoke them in cases in which they are obviously relevant" (Bartels 2005a, xi), a surprising finding given Commissioner Mandelson's assurance. As the EU's human rights clause also covers core labour standards (European Commission 2016a, 12), this finding is also applicable to relevant cases of labour rights violations. One year later, Mandelson reassured an audience in Switzerland that the EU's prominence in trade would give it "real leverage in securing social justice and human rights"

[1]For simplicity, the abbreviation "EU" is used in this chapter regardless of the time period discussed. When discussing relevant years, the term "the Community", referring to the European Communities, is also employed.

(Mandelson 2006). However, in the view of the EP, the EU did not make use of this leverage in the years following. In 2010, the EP passed a resolution expressing its view that "major challenges" persisted in the monitoring and implementation of the human rights clause in EU agreements covering trade (European Parliament 2010).

The EP was amongst the first actors to suggest a mismatch between the EU's seemingly public interest-oriented proclamations regarding its HR-PTAs and how the EU has used its HR-PTAs in practice. What can explain this puzzling outcome? Why does the EU commit to HR-PTAs? In more detail, are the EU's HR-PTAs the result of EU regulatory legislators' public-interest-oriented desire to address repressive practices? Has the EU been coerced by private interest groups to create HR-PTAs to "level-playing field" between domestic and foreign businesses? Or does the EU commit to HR-PTAs in order to visibly reassure regulatory advocates that it values human rights and labour rights rather than to regulate these areas? This chapter explores the EU's experience with HR-PTAs from the public interest, private interest, and symbolic regulation perspectives.

Although this chapter outlines the chronology of the human and labour rights elements of the EU's trade policy, its primary intention is not to provide a detailed history of the EU's HR-PTAs. The historical background for this chapter draws on excellent accounts of the subject[2] but the emphasis here is placed on uncovering the reasons behind the EU's commitment to HR-PTAs.

4.1 Three Approaches to the EU's HR-PTAs

Recall from Chapter 2 that the three theories of regulation—public interest, private interest, and symbolic regulation—each make different assumptions about the motivating factors behind and the expected outcomes associated with the creation of

[2] See: Bartels (2005b) and Fierro (2003).

regulation. Each theory predicts unique observable assumption and outcome-related implications that relate to the hypotheses developed in Chapter 3. Here, we adapt these hypotheses to the case study context. The key mechanisms and implications of each theory, as applied to EU HR-PTAs, are summarized in Table 4.1.

Table 4.1: Why Does the EU Commit to HR-PTAs?

Theory	**Motivation to Regulate**	**Observable Implications**
Public Interest	Benevolence towards repressive states. Political will to address it.	P1: HR-PTAs concluded when EU partner states have poor human rights records. P2: HR-PTAs (attempted to be) enforced/used to combat repression.
Private Interest (capture)	Protectionist sentiments/desire to "level-the-playing-field" inherited from private interest groups.	C1: HR-PTAs concluded when EU faces strong pressure from private interest groups with protectionist demands. C2: HR-PTAs (attempted to be) enforced/used to target competitors and to accomplish levelled playing field.
Symbolic	Appeasement of HROs and other domestic audiences.	S1: HR-PTAs concluded when EU faces strong pressure from public interest-oriented advocates. S2: HR-PTAs enforced/used when not doing so impedes their appeasing purpose.

While each observable implication may not be sufficient on its own to adequately explain the EU's HR-PTAs, taken together and compared, they provide a detailed picture. The following section outlines in more detail the observable implications of each theory as applied to the EU case.

As we know, public interest regulation is created to protect and preserve the public interest. Applied to HR-PTAs, this means that the agreements are viewed as a tool for combating repressive behaviour. While domestic advocates may pressure governments to address their poor human or labour rights practices, the public interest theory of regulation suggests that states should commit to HR-PTAs regardless of cost or pressure from these advocates. They should do so out of a desire to benefit the public interest. Therefore, applied to the EU case, we should expect the EU to conclude HR-PTAs when repressive behaviour is evident in partner states. More specifically, Hypothesis P1 suggests that the EU is more likely to sign HR-PTAs, the weaker the human rights practices of its partner states. This first hypothesis requires us to assess the EU's HR-PTA record. Does the EU commit to HR-PTAs when it signs trade agreements with the worst human and labour rights violators? Are the EU's HR-PTAs a response to repressive practices?

Yet, not only is the presence of repressive practices a tell-tale sign of public interest HR-PTAs, but also the ways in which the agreements are subsequently used. If the EU commits to its HR-PTAs for public interest-oriented reasons, we should expect it to demonstrate its political will to address repressive practices by using (or at least attempting to use) its HR-PTAs to achieve that goal (Hypothesis P2).

The private interest theory of regulation as applied to HR-PTAs suggests that HR-PTAs are the result of protectionist desires to level-the-playing field rather than public interest sentiments. The theory maintains that regulation is the direct result of private interest group pressure on regulatory legislators to secure regulation that favours the interest group itself. In the case of EU HR-PTAs, these interest groups would be businesses and industry groups that desire HR-PTAs to remain competitive. If EU regulatory legislators commit to HR-PTAs to achieve the goals of these private interest groups, this is a form of regulatory capture. Hypothesis C1 therefore suggests that if the EU's HR-PTAs are a form of regulatory capture, we should expect EU HR-PTA commitments to coincide with strong private interest-oriented demands for HR-PTAs.

As the name of the theory alludes, if the EU commits to HR-PTAs as a form of private interest regulation, we can also expect that it will use (or attempt to use) this regulation to protect private interests (Hypothesis C2). Paper promises do not protect businesses from foreign competition.

According to the symbolic theory explanation, vocal public interest advocates and their allies play an important role in the creation of symbolic regulation. Regulatory legislators provide regulation to appease these activists and demonstrate their adherence to the values that the activists espouse. Therefore, the first symbolic regulation hypothesis is that the stronger the public interest-oriented demands for HR-PTAs it faces, the more likely the EU is to commit to an HR-PTA (Hypothesis S1).

Finally, as we know, it is the creation rather than enforcement of symbolic regulation that regulatory legislators primarily use to appease domestic advocates. Therefore, in many cases we should not expect symbolic regulation to need to be fully enforced, as this costly regulatory activity is not essential to its core conciliatory purpose. However, when non-enforcement undermines the ability of HR-PTAs to achieve this purpose, symbolic regulation may be used in the ways it is advertised. The second symbolic regulation hypothesis, Hypothesis S2, is that the EU will only enforce its HR-PTAs when not doing so impedes their appeasing purpose.

4.2 Trade Policy in the EU

Within the EU, legislative and policymaking competences are divided into three categories: EU exclusive competence, shared competence, and member state competence. Trade policy is primarily an EU competence. Authority over trade negotiations, which in EU terminology fall under "common commercial policy," has been delegated to the EU since the 1957 Treaty of Rome. This competence is outlined in Article 133 of the Treaty of Rome (formerly 113), the founding document of the EU.[3] The EU is therefore the main player in the trade policy of its current 28 members.

Today, PTAs are the bedrock of the EU's external trade policy (Young 2012,

[3]Art. 133, establishes that in questions of "common commercial policy," which encapsulates external trade policy, the Commission negotiates on behalf of member states with third countries.

422); yet, in the EU's case, deciding what constitutes a "PTA" is not straightforward. Before 2006, when the EU opened its trade agreement negotiations with Korea, the EU had only included trade chapters and individual articles in broader political cooperation agreements with Third Parties rather than in typical stand-alone trade agreements.[4] This means that early EU association and cooperation agreements, such as the 1996 EU-Morocco Euro-Mediterranean Agreement, are best understood as "agreements that cover trade" rather "trade agreements" in the conventional sense. The EU's agreements that cover trade include:

- **Euro-Mediterranean Association Agreements.** These agreements were signed with the EU's southern and eastern neighbours from 1998-2005, replacing the earlier Cooperation Agreements signed in the 1970s.
- **Europe Agreements Establishing an Association.** These include the EU's no-longer active agreements with Poland and Hungary that were signed in 1994 and its agreement with Slovenia in 1999.
- **Stabilisation and Association Agreements.** Examples include the EU's 2001 agreements with the Former Yugoslav Republic of Macedonia and Croatia.

As these agreements include extensive trade chapters, they are considered to be PTAs for the purposes of this research.

How are EU PTAs negotiated? The same procedure is followed regardless of whether the PTA is an agreement covering trade or a conventional trade agreement. Negotiating PTAs in the EU involves many actors. The Commission——the executive body of the EU–takes the lead role in trade negotiations, and undertakes the main drafting and negotiation activities, reporting to the Council. This makes the

[4]The EU refers to its stand-alone trade agreements as "free trade agreements" (FTAs).

Commission the primary regulatory legislator on EU PTAs. In more detail, to begin trade talks, the Directorate General for Trade (DG Trade) at the Commission first makes a recommendation to negotiate a PTA with a Third Party to the Council, which in turn authorises the Commission to formally open the negotiations. During the process, the Commission reports to the Council's Trade Policy Committee (formerly the Article 133 Committee).[5] Until the Treaty of Lisbon entered into force 2009, it was solely the Council that needed to ratify the finalised treaty as long as it did not cover an area that was a member state competence. Any agreement with provisions falling under member states' responsibility, such as human rights—i.e. a "mixed agreement"—needs to be ratified by each member state according to their national ratification procedures. All HR-PTAs are mixed agreements and thus need to be agreed on by each EU Member State.

The entering into force of the Treaty of Lisbon in 2009 enlarged the role of the EP, the elected legislative institution of the EU, in trade negotiations by giving it "co-decision" powers with the Council. This means that all EU trade agreements, in addition to being approved by the Council and member states, must now be ratified—though not negotiated—by the EP. In terms of institutional players, while negotiated and drafted by the Commission, the most recent EU PTAs can therefore be seen as the outcome of a compromise between Member State governments, elected EU-level parliamentarians, and trade partners.

4.3 The EU's HR-PTA Network

Today, the EU is a central proponent of HR-PTAs, having signed more HR-PTAs than any other actor, despite some of its trade partners perceiving HR-PTAs to be

[5]The Committee is made up of senior trade officials from each member state.

"offensive"[6] and to "have nothing to do with trade."[7] The EU was the first actor to link trade with human rights and has pursued the incorporation of human and/or labour rights provisions in the majority of its PTAs since the early 1990s. From 1989 to 2009, the EU signed or had in force 9 bilateral PTAs and 31 HR-PTAs as illustrated in Figure 4.1,[8] which depicts the EU's ego network. With some trade partners, such as Jordan, the EU replaced earlier PTAs with HR-PTAs when the original agreements were re-visited.

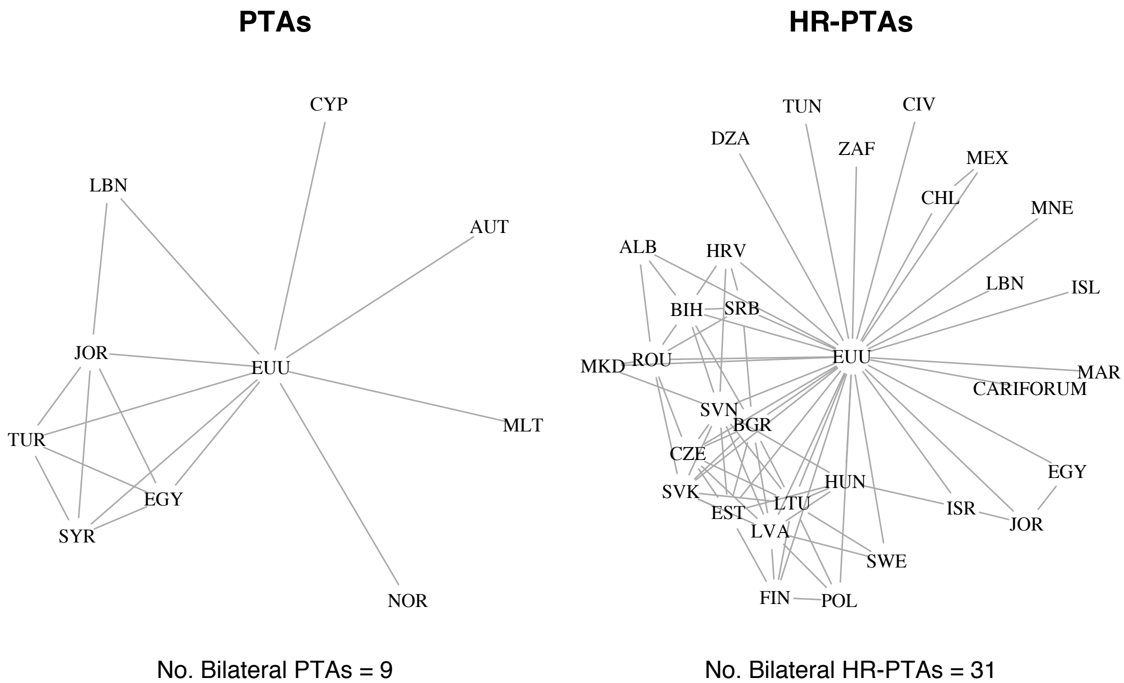

Figure 4.1: EU Commitment to Bilateral PTAs and HR-PTAs, 1989-2009

The proportion of the EU's trade agreements that are HR-PTAs has increased over time. As Figure 4.2 illustrates, while the EU had signed roughly equal numbers

[6]Interview with EU Commission Official No. 4, April 2016. A notable exception is Argentina, which reportedly insisted on a human rights clause in its 1990 trade and economic cooperation Framework Agreement with the EU in order to secure recognition as a democracy (Fierro 2003, 215).
[7]Interview with EU Commission Official No. 2, April 2016.
[8]States with no PTAs or HR-PTAs (i.e. isolates) have been removed to make the graphs more readily interpretable.

of PTAs and HR-PTAs in 1989, the balance between the two types of trade agreements shifted dramatically in favour of HR-PTAs by 1999. This pattern continued to 2009 when the EU had 17 bilateral HR-PTA either signed or in force and only two bilateral PTAs—one with Turkey and one with Syria.

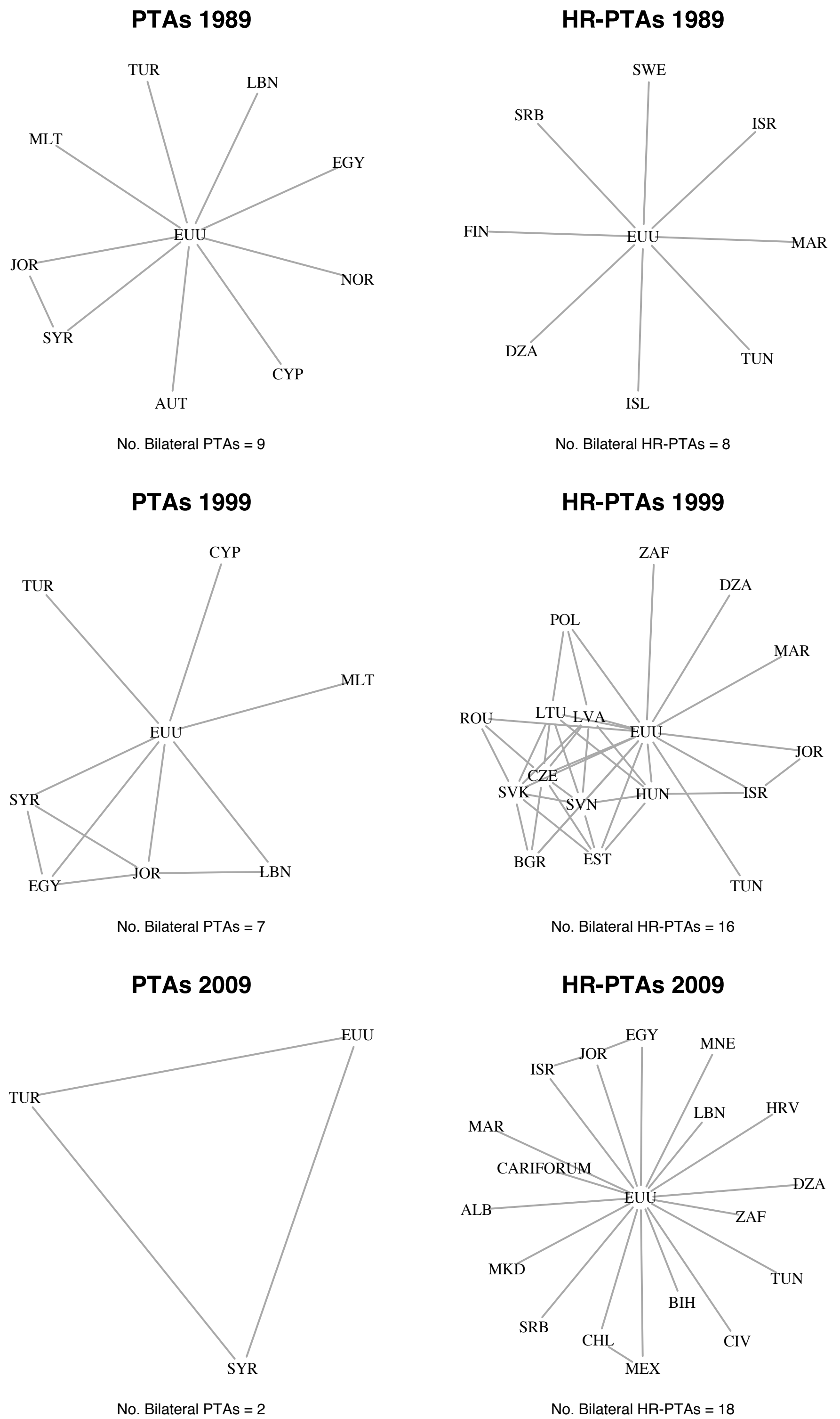

Figure 4.2: EU Commitment to Bilateral PTAs and HR-PTAs Over Time

Despite the EU's demonstrated commitment to HR-PTAs over the past two decades, as illustrated by its HR-PTA activities in Figure 4.2, the EU was not always a proponent of HR-PTAs. For many years, it was "reluctant to tackle the issue of human rights promotion" within or outside its trade policy (King 2011, 78). The issue of human rights was not mentioned in the Treaty of Rome, and thus human rights were not from the start *de jure* an EU competence. Moreover, during the Cold War years, the Community did not seek to expand its responsibilities to cover the area of human rights. Instead, it sought to portray itself as a benign, neutral partner in the design of its agreements—an alternative option for developing countries to the strongly political agreements offered by the superpowers (King 1997, 54). Including human rights in its treaties with developing countries would have jeopardised this image. These factors made it initially impossible or at the very least undesirable for the EU to incorporate human rights provisions in its unilateral preference schemes, to conclude reciprocal HR-PTAs, or for that matter to create any form of clear human rights policy to oversee it external relations.

How then did the EU become a central actor in the global HR-PTA network? The next section explores the historical trajectory of the EU's HR-PTAs.

The EU's First Linkage Attempt

The EU first explored the human rights-trade linkage under its Lomé framework, a unilateral preference scheme. When the Community signed the first Lomé Convention in 1975 with 46 African, Caribbean, and Pacific (ACP) states, the EU "rejected any notion that the Convention could be used as an instrument for interference in *domestic* affairs"—a category to which human rights belonged (54–55, Emphasis added). In fact, just a few years prior, the EU had gone further in stating that the unilateral preference scheme covering aid and trade would not place *any* limits on the signatories' internal or external sovereignty (European Communities 1973, 6–7, Emphasis added). However, the EU would later reverse its position on the human rights-trade linkage in subsequent iterations of the Lomé Convention.

In the 1970s the deteriorating human rights situation in Uganda, a signatory of the Lomé Convention, put the EU's commitment to non-interference in its trade partner's domestic affairs to the test. Thousands of Ugandan citizens were murdered under Idi Amin's repressive regime, which lasted from 1971 to 1979. The provision of development aid and of automatic export stabilization (STABEX) payments were two of the EU's obligations to Uganda under the Lomé Convention. Despite the widespread human rights violations in the country, according to the EU's understanding at the time, the repressive nature of the Ugandan regime did not formally affect these treaty commitments. Claude Cheysson, EU Commissioner for Development expressed this clearly in March 1977 when he stated that "the [Lomé] Convention does not provide for any measures which we could take at the present time against Uganda."[9] The Lomé I after all did not explicitly include any provisions that could be used to suspend the EU's treaty commitments to Uganda on the grounds of human rights violations.[10]

In a few short months, the EU changed its policy of remaining neutral in the area of human rights. On June 21, 1977, the EU issued a formal response, referred to as the "Uganda Guidelines." The statement reads as follows:

> The Council deplores the consistent denial of basic human rights to the people of Uganda. The Council agrees to take steps *within* the framework of its relationship with Uganda under the Lomé Convention to ensure that any assistance given by the Community to Uganda does not in any way have as its effect a reinforcement or prolongation of the denial of basic human rights to its people. (European Communities 1977a, 77-78, Emphasis added)

However, any action taken within the Lomé I framework would necessarily be minimal as Cheysson's 1977 comment cited above makes clear.

[9] [1977-1978] OJ Supp 214/71, original unavailable, cited in (Bartels 2005b, 9)

[10] Under Article 92 however, the entire agreement could be suspended with a six month notice period in respect of each ACP state.

By 1978, it became apparent that the EU faced internal discord amongst member states with respect to linking aid benefits with human rights outcomes. France, for example, took a hard stance against such a linkage during the negotiations for the second Lomé Convention (Westlake 1978). Britain in contrast publicly pressured the EU to insert a human rights clause into the next iteration of the Lomé Convention (Dale 1978). The eventual result was that during the negotiations for the Lomé II Convention in 1978, the EU attempted to include references to Articles 3 and 5 of the Universal Declaration of Human Rights UDHR in the main text of the new agreement.

The ACP states strongly opposed the proposed linkage. Uganda declared "it would set a dangerous and uncalled for precedent to refer to human rights in an economic convention" (Centre Europeen Luxembourg 1978, 28). As a whole, the ACP countries' position was that they "would not accept any provisions which could be interpreted as compromising the sovereign right of a state to conduct its own affairs as it judged appropriate" (32). More importantly for the passing of the legislation through the EU, several EU Member States including Belgium, France, and Germany stood in opposition of a main text human rights clause, preferring a non-binding reference to human rights in the preamble of the treaty (Bartels 2005b, 12; Fierro 2003, 49-50). In the end, the final version of the Convention had no references to human rights at all.

Only seven years later, with the signing of the Lomé III Convention in 1984, did the EU finally incorporate human rights provisions in an agreement overseeing trade. The reference only appeared however, in the preamble of the treaty and was not part of the main text. In fact, as one author puts it, the text of the Third Lomé Convention "studiously avoids the term 'human rights'," instead preferring the more neutral concept of "human dignity" (Kamminga 1989, 31). Five years later, in 1989, the EU and its trade partners signed the fourth Lomé Convention. Article 5 of the Lomé IV dedicated 518 words towards outlining the Parties' human rights obligations under the Convention. Article 5(1) begins by outlining that: "Cooperation shall be directed towards development centred on man, the main protagonist and beneficiary of development, which thus entails respect for and promotion of all human rights." Article 5(2) states that "the Parties reiterate their deep attachment to human dignity and human rights." Through the incorporation of these clauses, the EU became the first actor to include a specific human rights clause in the main text of an agreement overseeing trade.[11]

The EU's HR-PTAs

In 1991, just two years after the fourth Lomé Convention was signed, the EU Council proudly declared in a non-binding resolution that "respecting, promoting and safeguarding human rights" was to be "one of the cornerstones of European cooperation as well as of relations between the Community and its member States and other countries" (European Council 1991, 25). The Council also announced that through its policy of incorporating human rights clauses into its international agreements covering trade "the Community and Member States *actively* promote human rights" (27, Emphasis added). According to its rhetoric, the EU's years of detachment to human rights issues were clearly over, even in its reciprocal treaties.

Yet, in the early 1990s when partner countries were unwilling to accept the clauses, the EU backed off. In 1991, just prior to accepting labour rights clauses in its NAFTA negotiations with the US and Canada, Mexico refused to accept a human rights in its framework agreement with the EU. Despite the Mexican government's poor human rights record,[12] which at the time included documented cases of rural violence, torture, and widespread impunity for human rights violators

[11] As Chapter 5 discusses, by the late 1980s, the US GSP programme also conditioned preferential access to labour rights outcomes. This policy however was enacted through domestic legislation rather than through an international treaty.

[12] Both Amnesty International and Human Rights Watch published critical reports of Mexico's human rights record in 1991. See: Amnesty International (1991) and HRW (1991).

(Fraser 1997), the EU did not insist on a human rights clause with Mexico. The inconsistent inclusion of a human rights clause left open the door for potential accusations of double standards in terms of the EU only insisting on human rights clauses with certain countries.

The human rights clauses in EU HR-PTAs took their modern form with the introduction of what is called the "essential elements" clause,[13] outlined in a 1995 Communication from the Commission (European Commission 1995). The clause includes both human rights and democracy provisions. Each EU agreement covering trade from 1995 onwards was to include the clause. And the clause goes further than Article 5 of the Lomé IV. According to Bartels, the essential elements clause "is sufficiently robust and flexible to enable the EU to ensure that it can withdraw from any commitment that would imperil its obligation to respect human rights and democratic principles in its external relations" (Bartels 2013, 311). The essential elements clause is the main provision that gives the EU's HR-PTAs teeth. On paper at least, it enables the Parties to regard serious human rights violations as a "material breach" of their HR-PTA, and sufficient grounds for whole or partial suspension of the agreement (European Commission 1995, 8).

The model essential elements clause (with the EU's suggested possible adaptations) reads as follows:

> Respect for the democratic principles and fundamental human rights established by [the Universal Declaration of Human Rights]/[the Helsinki Final Act and the Charter of Paris for a New Europe] inspires the domestic and external policies of the Community and of [the country or group of countries concerned] and constitutes an essential element of this agreement (13).

By 2006, when the EU published its "Global Europe" trade strategy, shifting

[13] By referencing the term "essential element," the clause is compatible with the suspension procedure outlined in Article 60 of the Vienna Convention on the Law of Treaties under which violations of essential elements represent a "material breach" of the treaty.

its focus from multilateralism to bilateral stand-alone FTAs (European Commission 2006), the essential elements clause's role in this new generation of FTAs needed to be worked out. Thus, the next milestone in the evolution of the EU's approach to HR-PTAs came with the introduction of what is often called the "2009 Common Approach," a restricted Committee of the Permanent Representatives' (COREPER) note that outlines the EU's bilateral trade diplomacy strategy.[14] The Common Approach was established at the request of Member States (Okano-Heijmans 2014, 16) and adopted unanimously.[15] It provides a "blanket mandate" for how the EU is to approach human rights in its trade agreements.

Under the Common Approach, human rights clauses are not to be included in EU FTAs, but rather be placed in a political side agreement.[16] For example, it is the "Canada-European Union Strategic Partnership Agreement"—a political side agreement, rather than the Canada EU Free Trade Agreement (CETA) that includes the EU's essential elements clause.[17] Thus far, the only EU FTA (i.e. stand-alone free trade agreement), that includes the essential elements clause in its main text is its 2012 FTA with Colombia and Peru.

While the Common Approach's recommendation of human rights clauses in a side agreement rather than the main treaty text may not reduce the human rights obligations on Parties, it has been subject to critique as it "appears to give the EU—at the instruction of its member states—a *carte blanche* to make exceptions when it deems necessary" (16). Moreover, if the political side agreement expires before the PTA, the essential elements clause will no longer be applicable to the trade treaty. Thus, the 2009 Common Approach can in some ways be seen as a

[14]See Okano-Heijmans (2014, 16).

[15]Interview with EU Commission Official No. 4, April 2016.

[16]Interview with EU Commission Official No. 4, April 2016.

[17]In practice, human rights clauses in political side agreement are linked with PTAs using what is referred to as a "passerelle clause" and have the same legal effect as if they were in the main agreement. Only in special cases where there is no political side agreement, does the trade agreement include the clause (Interview with EU Commission Official No. 4, April 2016).

weakening of the EU's obligation to include human rights clauses in all its PTAs.

In seeming contrast to the private guidelines outlined in the Common Approach, in the publicly available "EU Strategic Framework and Action Plan on Human Rights and Democracy," of June 25, 2012, the Council recommended the strengthening of EU HR-PTAs. The document proclaimed that "The EU will promote human rights in all areas of its external action without exception. In particular, it will integrate the promotion of human rights into trade" (Council of the European Union 2012, 2). It further included the goal: "Make trade work in a way that helps human rights" as the 11th outcome in its list of Coherent Policy Objectives (11). The largest departure from previous practice however is the Framework's goal to:

> Insert human rights in Impact Assessment [*sic*], as and when it is carried out for legislative and non-legislative proposals, implementing measures and trade agreements that have significant economic, social and environmental impacts, or define future policies. (6).

Previous EU policy did not require human rights impact assessments to be undertaken, making the 2012 Action Plan a significant departure from earlier practices.

Labour rights in EU HR-PTAs

While the EU's trade-human rights linkage first took root in the Lomé Conventions, references to labour rights-related issues initially began to appear in the EU's reciprocal PTAs. The Commission had entertained the idea of making unilateral preferential advantages to developing countries "subject to compliance with certain basic international standards (set by the International Labour Organization) for working conditions," (Commission of the European Communities 1978, 2) at the start of the negotiations for the Lomé II, but this idea was not acted on by the

Council (European Communities 1980, 2-3).[18]

In terms of explicit labour rights references, early EU reciprocal agreements, such as the 1972 agreement between the EU, Switzerland and Liechtenstein, and the 1975 agreement between the EU and Israel, already contained provisions covering the improvement of employment conditions. Several EU reciprocal agreements from around that time onwards, including the EU's 1976 agreement with Tunisia, incorporated provisions covering the non-discrimination based on nationality as regards to working conditions. The EU's 1999 agreement with South Africa went further. Its preamble referenced the promotion of relevant ILO conventions, and in Article 86, the Parties established a dialogue on social cooperation agreeing to:

> recognize the responsibility to guarantee basic social rights, which specifically aim at the freedom of association of workers, the right to collective bargaining, the abolition of forced labour, the elimination of discrimination in respect of employment and occupation and the effective abolition of child labour. The pertinent standards of the ILO shall be the point of reference for the development of these rights.

The 2002 EU-Chile Agreement also references relevant ILO conventions (Art. 44). However the Euro-Mediterranean Agreement between the EU and Lebanon signed that same year makes no reference to ILO conventions, signifying that the EU has more flexibility in negotiating the labour rights provisions in its PTAs than it has when negotiating the inclusion of its essential elements clause. These early commitments also notably do not explicitly mention the prevention of the degradation of labour rights standards, which later EU HR-PTAs would address.

Starting with the 2008 EU-Cariforum Economic Partnership Agreement (EPA), labour rights commitments have generally appeared in a Trade and Sustainable Development chapter, which incorporates a "softer and more collaborative" dispute set-

[18] A reference to the safety of workers in the context of improving the state of health in ACP states was however made in Article 124 of the Lomé III.

tlement mechanism than the essential elements clause.[19] Disputes on labour rights issues from the EU-Cariforum agreement onward can be referred to government consultations and as a last measure, to a panel of experts who can issue a non-binding advisory report. In other words, no trade or economic sanctions can be taken under these provisions.

On their own, labour rights commitments in the new generation of EU HR-PTAs come in two forms. The first type is minimum standards based on multilateral agreements. Any references to ILO core labour standards do not create any substantively new obligations as these are already binding on ILO member states. Moreover, EU HR-PTAs can generally come into force even if all Member States have not ratified all eight ILO core conventions (European Parliament 2016, 24) although as Article 13.4 of the EU-Korea Agreement and Article 23.3 of the CETA suggest, they should "make continued and sustained *efforts*"[20] towards doing so.

The second type of labour obligations found in new EU HR-PTAs require parties to not reduce their current levels of labour rights protection to encourage trade or investment.[21] An example of the non-lowering clause is found in the EU-Korea Agreement:

> A Party shall not weaken or reduce the environmental or labour protections afforded in its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties. (Art. 13.7(2), Emphasis added).

The non-lowering clause does not necessarily prevent Parties from reducing their domestic labour rights protections, unless it can be shown that this outcome was the result of a measure intended to affect trade or investment. Referring specifi-

[19] Interview with EU Commission Official No. 2, April 2016.
[20] Emphasis added.
[21] See Bartels (2013, 306-307), for more details.

cally to the EU-Cariforum agreement, Bartels affirms that it is conceivable that parties could reduce their labour rights protections (i.e. for non-trade or non-investment related reasons) without violating their commitments under the essential elements clause (Bartels 2013, 308). At the end of the day however, there are no binding enforcement measures that can be taken in response to violations of the labour rights commitments in the sustainable development chapters of EU HR-PTAs even if the measures were taken to impact trade and investment outcomes.

Finally, it should be highlighted that in the EU's view, the essential elements clause implicitly covers core labour standards (European Commission 2016a, 12), meaning that in theory at least, all EU agreements containing the clause offer some labour rights protection. One EU Commission official warns however, "it would be to go too far to consider that the human rights clause would cover all the ILO conventions."[22]

4.4 The EU's HR-PTAs in Practice

The main operative enforcement clause found in EU HR-PTAs is a "non-execution" clause. This clause generally accompanies the essential elements clause and explicitly gives the EU the option to take "appropriate measures" in response to violations of EU HR-PTAs. This implementation clause is often formulated as follows, although its exact wording varies slightly from treaty to treaty:

> If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

[22]Interview with EU Commission Official No. 2, April 2016.

> In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests (European Commission 1995, 13).

"Appropriate measures" that may be unilaterally taken in response to serious human rights' violations include: the postponement of a Joint Committee meeting, the suspension of high-level bilateral contacts, a trade embargo, and the suspension of cooperation (17). In practice, the human rights clause is enforced by means of a Council Decision to take appropriate measures, which follows a proposal by the Commission to this effect. Essential elements clauses that contain non-execution clauses can also be used to suspend "not only of the agreement containing the clause, but also other agreements between the parties" (Bartels 2013, 303), giving them the potential to have far-reaching consequences.

While the essential elements clause creates the right of unilateral enforcement in trade agreements, modern sustainable development chapters, under which labour rights are explicitly covered, do not provide this right. Thus, a violation of a party's labour rights commitments is not sufficient grounds for terminating the HR-PTA. Moreover, normal dispute settlement procedures do not apply to the labour rights clauses in EU sustainable development chapters. If a violation of a labour rights obligation occurs, a set of non-binding recommendations from a Group of Experts is generally the final recourse.

Unlike HR-PTAs that follow the NAFTA/NAALC model, EU HR-PTAs do not formally provide civil society organizations with the unilateral right to petition the EU to review cases pertaining to alleged violations. The enforcement of EU HR-PTAs therefore depends fully on the political will of the EU to pursue appropriate measures. Yet, in no case related to human rights has the EU invoked the hard enforcement measures its HR-PTAs contain. In fact, the EU seems to be actively distancing itself from the possibility of enforcing its essential elements clause in some of its reciprocal relations. In its recent FTA with Singapore, the EU and Singapore drafted a side letter to the political cooperation agreement (in which the essential elements clause is located) that announces: "at the time of signature, neither party are aware, based on objectively available information, of any of each other's domestic laws, or their application, which could lead to the invocation of the non-execution mechanism" (UK Parliament 2014).

However, the EU has suspended one *PTA* on the basis of human rights violations. In 2011, the EU partially suspended its 1977 Cooperation Agreement with Syria, effective

> until the Syrian authorities put an end to the systematic violations of human rights and can again be considered as being in compliance with general international law and the principles which form the basis of the Cooperation Agreement. (Council of the European Union 2011b).

Notably, the Agreement with Syria was not an HR-PTA. It did not contain the essential elements clause and was suspended on the basis of its preambular reference to the principles of the United Nations Charter, with which it argued Syria's actions were not in accordance. Importantly, this example suggests that when a state has sufficient political will to use its trade agreements as a coercive force, specific HR-PTAs may not be necessary.

While the hard enforcement measures contained with EU HR-PTAs have yet to be deployed, the EU's HR-PTAs often provide a framework for softer forms of cooperation, such as the creation of human rights dialogues or the expansion of existing human rights dialogue frameworks to address trade-related matters.[23] As of 2015, the EU conducted treaty-based or independent human rights dialogues with over 40 states (EU 2015). Civil society may also be given the opportunity to voice

[23] The EU and Colombia for example had a human rights dialogue that preceded the signature of their trade agreement which was subsequently expanded to cover trade-related human rights matters (EEAS 2012, 1).

human rights concerns through dialogues established under EU HR-PTAs. The EU Association Agreement with Chile (signed 2002) for example provides a framework for civil society dialogues which may cover human rights.

Finally, it is important to highlight that the EU's human rights clause has been used as the basis for the application of targeted sanctions on a handful of occasions in the EU's *unilateral* trade schemes: for example in 2002 with Zimbabwe (Council of the European Union 2002), and in 2011 with Guinea-Bissau (Council of the European Union 2011a).[24] These actions however have not yet been echoed in the EU's reciprocal HR-PTAs, which this research project focuses on.

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The first part of this chapter has outlined the historical trajectory of the EU's HR-PTAs and detailed how these agreements can be and are used in practice. Using the theoretical framework developed in Chapter 2, the next section aims to explain why the EU commits to HR-PTAs.

4.5 Explanatory Analysis

This section applies the public interest, private interest, and symbolic theory explanations to the EU's HR-PTAs. As the EU's HR-PTA trajectory began in one of its unilateral preference schemes, the analysis first turns its attention to how well the three theories of regulation can explain this initial linkage. However, as this research project focuses on the human rights-trade linkage in reciprocal agreements, the majority of this section is dedicated to explaining why the EU commits to HR-PTAs.

[24] For a more complete list see: European Parliament (2015).

The Human Rights-Trade Linkage under the Lomé Conventions

As the discussion has outlined, the EU initially exhibited reluctance to link its unilateral trade preferences to human rights outcomes. Why then did the EU include human rights provisions in later iterations of its Lomé Conventions? Was the EU's goal to create strong public interest-oriented human rights obligations? Did special interest groups from private industry advocate for these human rights provisions? Or, did EU regulatory legislators push for the human-rights trade linkage in these conventions to address demands from public interest-oriented groups?

According to the public interest theory of regulation, benevolent EU regulatory legislators are the most likely source of this change. However, in response to repressive actions in Uganda in the 1970s, a clear case for a public interest intervention, other than the Council's assertion that it deplored the human rights situation in the country, the EU did little in response. In fact, Elena Fierro contends that, on the part of the EU, "There was no intention whatsoever of suspending the [Lomé I] agreement" (Fierro 2003, 44), which would be in violation of the legal principle of *pacta sunt servanda*.[25] The EU also did not give notice of withdrawal from the agreement under Article 92, which would allow it to revoke the Lomé I after giving six months notice, conveying that it was reluctant to take such a strong measure in response to repressive behaviour. When the Lomé II was signed, the EU did not demand that its trade partners accept a human rights clause, instead agreeing to the agreement without one. This indicates that for the EU at the time, securing the agreement was more important than securing a human rights clause. According to one source, when the ACP states stressed that any such clause would have to be reciprocal, and be able to be used against the EU itself, the rights clause was "quietly dropped" from the negotiations (Overseas Development Institute 1980). That

[25] *Pacta sunt servanda* is an international legal principle that obliges states to keep their international treaty commitments.

the EU waited until its fourth Lomé Convention to create a main text human rights clause, suggests that the EU may have changed its attitude towards the human rights-trade linkage at this point for other reasons. While not enough to discredit the public interest explanation, these actions suggest that on its own, it may not be sufficient to explain the EU's later shift in policy towards accepting the human rights trade linkage.

Turning to the private interest explanation, it is important to note that the first Lomé Agreement was a predominantly unilateral treaty giving Ugandan exporters preferential access to the EU market, rather than *vice versa*. It is therefore unlikely that private interest groups pressured the EU to address the human rights situation in Uganda through the treaty for their own profit. Despite this, business interests did spark some uproar in the British House of Commons, however, for a different reason altogether. In 1972, Amin nationalized British companies (Noyes 1972) infuriating affected business owners. Despite this outburst of business attention in the early 1970s, there is little indication that the EU issued the Uganda Guidelines in 1977 in order to secure the business interests of British companies.

The symbolic theory of regulation suggests that first the EU's issuance of the Uganda Guidelines and its subsequent unilateral linkage attempts were a political gesture. The non-binding Guidelines themselves are a clear example of political rhetoric and domestic pressure to react to the atrocities was certainly present. When news of the Ugandan regime's human rights violations reached European audiences,[26] they applied strong political pressure on EU officials to "respond to the charge that through its assistance it was in fact helping to perpetuate the repression" (Kamminga 1989, 29). The European Parliament also passed a resolution expressing its profound concern at "the renewed outbreak and escalation of vio-

[26]For example, in a 1978 report, Amnesty International spread news of the human rights violations occurring in Uganda to its supporters and governments (Amnesty International 1978).

lations of human rights throughout the world" (European Parliament 1978, 81). One MEP addressed a written question to the Council of Ministers asking how the "European Communities can reconcile its decision to grant aid to the Uganda government with that government's policy of systematically violating human rights on a large scale?"(European Communities 1977b, 1).

Public interest in the linkage between trade and human rights embodied by the Uganda Guidelines did not disappear from EU trade policy. A few months later, speaking about the inclusion of human rights provisions in the proposed Lomé II Convention, the EU Commissioner for Development, Claude Cheysson, emphasized the continued importance of addressing public opinion in the new negotiations. Cheysson explained that the ACP countries needed to "understand the importance of these [human rights] matters to the European public, whose support is vital to the continuation and enhancement of the cooperation policy" (Commission of the European Communities 1978, 1). In December 1978, a European Parliament report reiterated this sentiment in stating that human rights provisions were necessary to include in the new Convention "in order not to lose the support of public opinion" (Broeksz 1978, 6). In more detail, the 1978 EP report stressed that:

> The Community will be able to go on granting development aid only if its political leaders have the support of public opinion. Whereas the general public can today be informed with great ease by modern communications media of the need for development aid, it will quickly turn against the granting of such aid if a few seconds later the same news media announce that, in a country to which a considerable amount has just been sent as development aid, a large number of people have been executed without trial. ... [E]very violation of the rule of law has an immediate effect on the western countries' attitudes to development aid. For this reason alone some reference to human rights in the new agreement is necessary, desirable and in the interests of both the Member States and the ACP countries. (18).

Thus, as the EU itself clarified, it was out of a necessity to respond to public opinion within the Community, that the EU forged ahead and attempted to insert human rights clauses into its subsequent Lomé Agreements. Cheysson echoed these sentiments, and at the time was quoted in Financial Times as saying "some reference should be made in the new convention to the violation of human rights because the emotional public reaction which such incidents created in Europe could rob the EEC of popular support for its aid programmes" (Jonquieres 1978). Media reports asserted that the EU was however, "reluctant to press the issue too hard" (Jonquieres 1978). These factors strongly suggest that the EU desired the clause as a symbolic piece of regulation.

The 1978 EP report also emphasizes the tension felt by EU regulatory legislators between political necessity and economic realities. The report cautioned that the second Lomé Convention was "first and foremost an economic pact and ... its aim cannot be to force upon the recipient countries certain political or moral standards by means of economic reprisals" (Broeksz 1978, 17). The main purpose of the Lomé II was to promote trade and economic development; the incorporation of human rights provisions, while not opposed by the EU itself, was most importantly a necessary selling feature. As such, the EU did not have a clear line on how the provisions would actually work if included in the new Convention. Cheysson had noted earlier that year that in practice, including human rights provisions in the Lomé II was a complex matter and the EU did not yet have a formula for using the provisions in the face of violations (Commission of the European Communities 1978, 2). The EU's position on this became clearer during the Third Annual Meeting of the ACP-EEC Consultative Assembly in September 1978. At the meeting, the EU emphasised that it "had no interest in interfering in the internal affairs of ACP members" (Centre Europeen Luxembourg 1978, 12).

Finally, the Lomé IV human rights-trade linkage provides an illustrative example. Vice President of the Commission, Lorenzo Natali in a speech at the EEC-ACP Joint Assembly, optimistically described the Lomé IV approach as an example of the EU "continuing actively to promote human rights" (European Commission 1988).

Yet, according to one scholar, the "elaborated and lengthy wording" of Article 5, which included human rights language, conveys its "authentic political meaning" (Fierro 2003, 66). In that light, Article 5 has also been described as "rhetorical" (38), and of "little operative value" (Bartels 2013, 298). While appearing to represent the Parties' strong commitments to human rights, the clause did not explicitly establish human rights as an essential element underlying cooperation between the EU and the ACP states, meaning that a violation of Article 5 may not be sufficient grounds for suspending or terminating the Convention (Amao 2011, 236).[27] The Commission acknowledged this limitation in 1995, stating that Article 5 does "not provide a clear legal basis to suspend or denounce" the Lomé IV Convention in the case of serious human rights violations (European Commission 1995, 8). Therefore, the clause can, as Fierro (2003) suggests, be understood as a largely political exercise, the result of a decade of internal discussion within the EU, public pressure, and strong lobbying from the EP, all of which the EU could not ignore.

The Lomé case illuminates that the EU first linked trade and human rights "reluctantly, and in small steps" (Fierro 2003, 45), consistently emphasizing its respect for its trade partners' internal sovereignty. The EU's hesitancy in linking trade with human rights, coupled with the public pressure it faced to address the issue, makes it difficult to make the case that the EU primarily committed to the clause as a type of public interest regulation, desired as a tool to actively improve domestic human rights outcomes in other states. Moreover, there is little evidence that the Lomé human rights linkages were the result of industry lobbying—in fact they did not protect domestic industry in the EU since the agreements were unilateral. For these reasons the provisions are unlikely to be a form of private interest regulation.

The available evidence instead suggests that the human rights clauses found

[27] Some scholars have argued however that in reality violations of the human rights obligations contained in the Convention could be sufficient grounds for its termination. See: Korte (1990, 294) and Arts (2000, 196).

in the Lomé Conventions were ultimately a political response to domestic pressure from EU citizens and the EP, tempered by the EU's commitment to elevate the economic aspects of the treaties. This desire to respond to advocates' pressure but an unwillingness to fully concede to their demands and interrupt economic relations, is consistent with the underlying assumptions of the symbolic theory of regulation. The next section explores if this interpretation holds for the case of the EU's reciprocal HR-PTAs.

The Public Interest Theory

Recall, that if HR-PTAs are a form of public interest regulation, then we can expect the EU to sign them out of a benevolent desire to alleviate any potential negative human or labour rights effects associated with its trade agreements. In fact, the EU has advertised that its trade policy "recognize[s] that trade and investment should not be promoted at the expense of labour rights," (De Gucht 2014) and that it views trade as a tool for reaching "key global objectives like better protection of human rights, labour rights and the environment" (Malmström 2015, 3). These public affirmations suggest that the EU commits to HR-PTAs in order to achieve improved human and labour rights outcomes. However, explaining the EU's HR-PTA commitments necessarily involves going beyond visible examples of public rhetoric to focus on behaviour and observable outcomes. With this focus, I find only limited support for the public interest theory explanation of EU HR-PTAs.

Hypothesis P1

Hypothesis P1 suggests that the EU will sign HR-PTAs with partner states that exhibit repressive practices. In practice, since 1995, the EU's essential elements clause has largely been a blanket measure applied to every PTA. By including human rights clauses in almost all its trade agreements, or at the very least in a political side agreement, the EU ensures that partner states with repressive practices are covered by these clauses. This behaviour is consistent with the public interest theory explanation. However there are a few early exceptions. As the 1991 Mexico case illustrates, prior to 1995, the EU did not include human rights clauses in all of its agreements with states with poor human rights practices. This outcome is at odds with the predictions of the public interest theory of regulation.

Looking at the institutional actors responsible for trade within the EU, it is clear that the EU Commission and the Council, which jointly sit in the driver's seat for HR-PTAs, have often been reluctant to link trade with human and labour rights outcomes. One Commission official explains that if anything, in the context of trade, "the human rights angle is a bit of an annex"[28]—trade takes precedence. The same official asserts, "well of course, nobody would deny that human rights are important."[29] The official clarifies, "the closer you are to the business, the less you are inclined to talk about human rights."[30] And it is those that sit close to business who are primarily responsible for trade negotiations. King explains that in the EU, the "diplomats responsible for political or trade relations with third countries may continue to view human rights issues with some trepidation" (King 2011, 83). The economic consequences of allowing human rights concerns to have the upper seat in trade relations are potentially immense. As HR-PTAs are reciprocal agreements, the invocation of the EU's essential elements clause cannot only interrupt the trade relations of any state violating its own human rights commitments, but also of the country enforcing the regulation.

The case of the Commission refusing to prepare an HRIA during its FTA negotiations with Vietnam, provides a concrete example of the EU's reluctance to allow human rights concerns to interfere with trade negotiations. The introduction

[28]Interview with EU Commission Official No. 2, April 2016.
[29]Interview with EU Commission Official No. 2, April 2016.
[30]Interview with EU Commission Official No. 2, April 2016.

of human rights impact assessments (HRIAs) for proposed trade agreements was listed as an ongoing Commission goal in the 2012 Strategic Framework. Yet, when negotiations on a free trade agreement with Vietnam were launched on the day after the Framework document was published, no HRIA was performed. This, while at odds with the Framework's goal, was in line with Karel de Gucht, the EU Trade Commissioner's, 2010 statement that the EU-Vietnam trade "negotiations will not take Vietnam's observance of human rights into consideration" (Radio Netherlands Worldwide 2010). In reaction, in April 2014, the EP published a resolution urging the Commission to undertake a HRIA (European Parliament 2014). The EU Commissioner for Trade responded that the Commission did not "envisage carrying out a specific human rights impact assessment for the EU-Vietnam FTA" (FIDH 2014).

In response, in August 2014, two NGOs, the *International Federation for Human Rights* (FIDH) and its member organization the *Vietnam Committee on Human Rights* (VCHR) took an unprecedented step. The two organizations filed a complaint with the EU Ombudsman, calling on the Commission to prepare an HRIA before negotiations were concluded with Vietnam (FIDH 2014). And they were successful. In a draft recommendation, the Ombudsman suggested in March 2015 that "the Commission's failure to carry out a specific human rights impact assessment in relation to Vietnam, constitutes maladministration" and that an assessment should be carried out as soon as possible (European Ombudsman 2015). Yet, the Commission did not comply with this recommendation. In a final report, the Ombudsman critically concluded on the 26 February 2016 that:

> The Commission failed to provide valid reasons for its refusal to carry out a prior human rights impact assessment for the EU Free Trade Agreement with Vietnam when negotiations on that agreement were still ongoing. This constitutes maladministration. (European Ombudsman 2016a, Emphasis removed).

The Ombudsman later remarked at the Parliament's Human Rights Subcommittee on Human Rights that: "respect for human rights cannot be made subject to considerations of convenience" (European Ombudsman 2016b), suggesting that at the time, the Commission found conducting HRIA's to be "inconvenient." This example does not conform to the predictions of the public interest theory of regulation, which would expect benevolent regulatory legislators to desire HRIA's and HR-PTAs to address repressive behaviour.

While the EU has signed HR-PTAs exclusively since 1995, the EU's early selective incorporation of human rights clauses into its trade agreements, coupled with its demonstrated reluctance to broaden the human rights activities surrounding its HR-PTAs, suggests that there is only mixed support for Hypothesis P1.

Hypothesis P2

According to Hypothesis P2, if the EU signs its HR-PTAs for altruistic reasons, we should expect it to actively enforce its HR-PTAs. It is pertinent to first ask, are the EU's HR-PTAs enforceable? Under its essential elements clause, at least on paper, the EU has the necessary legal tools to suspend its HR-PTAs in response to human or core labour rights violations. However legal tools do not always translate into policy tools that get used. In the words of one EU Commission official, "it's one thing what's in the law or the clause; it's another thing ... how this is applied."[31] A diplomatic source in Brussels explains: "We can theoretically suspend the agreements," however, it is at the suspension stage "where real politics comes into play."[32]

In practice, the EU has lacked the political will to enforce its HR-PTAs and in no case has it invoked the hard enforcement measures these agreements contain. In 1997, speaking about its proposed framework agreement with Australia, Commission officials reported "it would be inconceivable for the EU to use it to break off

[31]Interview with EU Commission Official No. 2, April 2016.
[32]Interview with Diplomatic Source No. 1, April 2016

relations in the event of human rights abuses" (EIS 1997). Something major needs to happen "like [a] coup d'état or some mass atrocities to actually trigger [the] suspension of an agreement and even then, you know you need a lot of political will to actually make it happen."[33] MEP Ana Maria Gomes laments that the "the implementation of the human rights clause has until now been contingent on geo-political and geo-economic considerations" (European Parliament 2006). This view is echoed by Benita Ferrero-Waldner, member of the Commission who notes: "the frequency of imposition clearly depends less on the wording of the human rights clause than on the political will of the Member States, as well as of the other states" (European Parliament 2006). MEP María Elena Valenciano Martínez-Orozco concludes: "the clause is often used as an alibi or rhetorical example, without having any real consequences" (European Parliament 2006).

The EU's reluctance to deploy the enforcement measures contained within its HR-PTAs does not align well with the predictions of Hypothesis P2.

The Private Interest Theory

If EU HR-PTAs are a form of private interest regulation, then the expectation is that the EU signs these agreements at the behest of private industry groups that want the EU to protect domestic producers from foreign competition, thereby "levelling-the-playing-field." The analysis finds little evidence that this is the case.

Hypothesis C1

Hypothesis C1 suggests that the EU should be expected to sign HR-PTAs when it faces strong demands from private interest groups to do so. In practice, the Commission has noted that in the private sector, the interest groups that have engaged in consultations with the EU have actually expressed the opposite sentiment. They

[33]Interview with EU Commission Official No. 1, April 2016.)

have suggested that "trade agreements were not the best vehicle through which to advance human rights causes" (European Commission 2011). More generally, business groups, such as the European Services network, have strongly opposed trade-labour linkages, which they deem may lead to protectionist behaviour (Burgoon 2009, 647)—strongly suggesting that these groups overall do not desire HR-PTAs as protectionist measures.

It would be unfair to say that no support for protectionist HR-PTA policies exists within the EU; yet, Eurobarometer survey data from 1996, while dated, suggest that where it exists, this support is eclipsed by public support for fair trade linkage policies, such as HR-PTAs (Burgoon 2009). The cleavage is especially apparent in the Nordic States, with 71 percent of Swedish respondents supporting fair trade and only 34 percent support more general protectionist measures, and 67 percent of Danish respondents supporting fair trade with 33 percent supporting general protectionist policies.

Taking a different approach, if the EU committed to its HR-PTAs as a protectionist measure, the relevant clauses may be advertised as a feature that promotes the "competitiveness" of domestic businesses and to secure the livelihoods of domestic workers. However, a recent study finds that this logic is wholly absent from EU discourse, which instead favours promoting HR-PTAs as a feature that is in line with sustainable development and human rights agendas (Van Den Putte and Orbie 2015).

That the human rights clauses in EU PTAs were not the result of special interest group lobbying on behalf of domestic businesses and are not framed as protectionist measures, makes them especially unlikely to be a form of private interest regulation. The evidence presented provides little support for Hypothesis C1.

Hypothesis C2

As Chapter 2 outlines, regulation can also be assessed by looking at how it has been deployed in practice. Hypothesis C2 suggests that the private interest-related goals of HR-PTAs are best achieved through the (at least) attempted enforcement of the human and labour rights provisions in the agreements. This should be especially true in cases where the EU and its trade partners have competitive economies. The logic is that domestic industries will not clearly be protected when HR-PTAs are not actively enforced.

However, as noted in the discussion above, the implementation and enforcement record of EU HR-PTAs is not long. The EU has never used its essential elements clause as the basis to suspend any of its reciprocal HR-PTAs on the grounds of human or labour rights violations. For this reason, Bartels explains: “the practice of the EU falls far short in virtually all respects of what is legally possible under these clauses” (Bartels 2013, 305). MEP Simon Coveney has concluded, “in many cases human rights clauses in EU agreements with third countries have not been worth the paper they were written on” (European Parliament 2006).

The EU’s general hesitancy to enforce the human rights commitments outlined in its HR-PTAs suggests that the clauses in question are not included in these agreements primarily to level-the-playing-field between domestic and foreign producers, as the private interest theory would argue. Another explanation is needed.

The Symbolic Theory of Regulation

The third theory of regulation applicable to the task at hand is the symbolic theory of regulation. As Chapter 2 argues, symbolic regulation is primarily created to appease domestic audiences, such as NGOs, rather than to regulate a particular area. In the EU, three domestic audiences are especially relevant to the discussion: the EP (while internal to the EU, until the treaty of Lisbon, it was largely external to trade policy), European citizens, and European NGOs. In line with the expectations of the symbolic theory explanation, the analysis finds that EU HR-PTAs respond to the demands of these actors.

Hypothesis S1

According to Hypothesis S1, we should expect the EU to sign HR-PTAs when it experiences strong demands from public interest groups and other public interest-oriented audiences to do so.

In practice, as Tobias King notes: "[T]here is sustained and vociferous external pressure on the EU institutions from European civil society and the European Parliament to pursue a more vigorous human rights policy" (King 2011, 83). The EP channels public sentiments in the EU, and in reflecting public opinion has been at the forefront of pushing for the incorporation of human and labour rights standards in EU PTAs (European Parliament 2016, 18). As Fierro puts it: "European public opinion would not approve of the EP's performance unless it took human rights concerns into account" (Fierro 2003, 60). The result is that the EP "sees its role very much as a guardian of human rights and is very strong in advocacy"[34] and "the [human rights] clause has taken a hold on the imagination of the European Parliament"(Bartels 2005b, 40).

As such, in addition to its efforts related to securing human rights in the Lomé Conventions, documented above, already in 1986, the EP urged the EU "to negotiate agreements with its trading partners in such a way as to encourage compliance with certain international standards relating to working conditions" (European Communities 1987, 11-15). In 1994, it published a report that suggested "international trade should be a special means of introducing social innovation that would permit greater respect for workers' rights" (European Parliament 1994, 4). In a stronger statement,

[34]Interview with EU Commission Official No. 1, April 2016.

in 2004, two MEPs attempted to force the Commission to produce bi-annual reports on the implementation of the human rights clause in EU PTAs with its Mediterranean partners by "threatening to place in reserve half of all appropriations under a number of budget lines" (Bartels 2005b, 40). While this proposal did not make it into the final budget resolution, as Bartels (2005b, 40) notes, this type of crisis may re-appear in the future as awareness of these clauses grows. In 2006, the EP published what is referred to as the Agnoletto Report, in which it provided critical views on the practical use of the human rights clause. The Report emphasized the need for effective and transparent monitoring and implementation guidelines (Committee on Foreign Affairs 2006). These gestures and reports from the Parliament have not gone unnoticed. According to one Commission Official, peer pressure from the Parliament has strongly influenced the EU's approach to HR-PTAs.[35]

Outside the EP, the EU has also expressed its need to take into account the general public opinion of Europeans in its HR-PTAs. For example in 1996, the EU issued a press release stating that:

> there is still a perception among sectors of the European public that the European Union (EU) is not doing enough to bring working practices worldwide up to internationally agreed standards. If these concerns are ignored, the perception will be—wrongly—that trade liberalisation is the problem and not the solution. (European Commission 1996).

NGOs (often human rights organisations) and trade unions have also been vocal supporters of linking trade preferences to labour and human rights commitments. The European Trade Union Confederation for example has called on the EU to incorporate in its PTAs "binding commitments by all parties to ratify and fully implement International Labour Organisation standards [emphasis removed]" (European Trade Union Confederation 2012). The Commission reported in 2010

[35]Interview with EU Commission Official No. 1, April 2016.

that at its public consultations: "Many NGOs and some public sector respondents find that basic human rights and sustainable development should be included in a legally valid manner in the EU trade and investment agreements" (European Commission 2010, 9). During these consultations, Trade unions and NGOs also have "underline[d] the importance of a strong sustainable development chapter" (15), emphasizing the need for the monitoring and enforcement of labour rights provisions. The Commission's report on subsequent public consultations in 2011 suggests that NGOs are especially focused on promoting "the issues of fair trade, sustainable development, governance, transparency, labour and the integration of women" (European Commission 2011).

These NGOs have been at least partially effective. In the words of a Commission Official, the sustainable development chapters which cover labour rights in EU PTA: "are considered to be a kind of [way of] addressing concerns by the civil society."[36] *Coopération Internationale pour le Développement et la Solidarité* (CIDSE) attributes the human rights chapters in the EU's trade-related sustainability impact assessments to its lobbying (CIDSE 2017, 2). The EU-Colombia/Peru Road Map on Human, Environmental and Labour Rights was the direct result of trade union lobbying (Altintzis 2013, 28) and European Parliament demands (O'Grady 2015, 1; European Parliament 2012). However, despite the creation of this Road Map, actions taken under the human and labour rights clauses of the Agreement have been limited to sustainable development dialogues and self-reporting at annual Sub-Committee meetings (European Commission 2016b).

Finally, an EU official corroborates that EU HR-PTAs are not "not done as a function of the behaviour of the other countries."[37] The same official explains: "A lot of the things that we have in bilateral [PTAs] are not necessarily just because

[36] Interview with EU Commission Official No. 2, April 2016.
[37] Interview with EU Commission Official No. 4, April 2016.

we want to go after the other side, but really they speak to our own constituencies." HR-PTAs are clear gestures towards domestic audiences.[38] For example, after the 1999 Seattle WTO protests, often referred to as the "Battle of Seattle," another EU Official explains that to keep globalisation running, the EU had "an objective need to do something."[39] The introduction of more extensive labour rights provisions in EU HR-PTAs is one way the EU attempted to address the anti-globalisation protestors' and their EU supporters' concerns.

As the symbolic theory explanation predicts, the evidence suggests that the motivations behind EU HR-PTAs are primarily political and internal, not external. In line with the expectations of Hypothesis S1, public and NGO support for HR-PTAs channelled through the EP have encouraged the EU Commission and Council to address human rights in EU trade agreements. And, in the face of strong domestic pressures, the EU has an incentive to respond in order to retain support for its trade initiatives.

Hypothesis S2

Hypothesis S2 predicts that the EU will primarily use its HR-PTAs when not doing so would impede their political purpose. In this section we therefore evaluate the outcomes associated with the EU's HR-PTAs. As this chapter has already made clear, in practice the EU has shown strong reluctance towards and the lack of political will to use its HR-PTAs to coerce repressive states into changing their behaviour and it has voiced this reluctance. However, as the Syrian case demonstrates, when public attention has been fierce and the EU has had the political will to address an issue, it has used the tools it has available to rescind trade preferences on the basis of human rights violations.

[38] Interview with EU Commission Official No. 4, April 2016.
[39] Interview with EU Commission Official No. 2, April 2016.

Are domestic audiences appeased with this outcome? Information on the monitoring and outcomes of EU HR-PTAs has been scarce. As the EU generally does not actively monitor the compliance of its partners with the human rights clause and only recently has begun to conduct HRIAs in tandem with its trade negotiations, systematic information on this subject is rare and domestic audiences have access to little relevant evidence. The labour rights clauses in EU PTAs are softer, making it more difficult to assess if states live up their obligations under them. For some organizations, the inclusion of human rights clauses in EU PTAs is treated as "important progress," if in need of some improvements.[40] Others are more sceptical and are beginning to use the agreements to fuel accountability politics. As early as 2001, Dick Oosting, director of Amnesty International's EU Office on Algeria warned:

> The time has come to state openly what most insiders already know, that the EU's standard human rights clause in its Association Agreements, is virtually defunct. Far from being an 'essential element', all it does is provide an 'alibi' for both parties, without imposing any real obligations. ("EU-Algeria Accord Human Rights Clause Effectively Dead" 2001)

While the essential elements clauses in EU HR-PTAs are legally binding and thus do pose contractual obligations, Oosting's call to action raises the issue that without clear enforcement, the obligations they create are undermined. One year later, Amnesty International reiterated the need for the EU to enforce its HR-PTAs in calling on the EU and its Mediterranean partners "to live up to their contractual obligations under Article 2 of the Euro-Mediterranean Agreements and transform this human rights clause into an *active* instrument to stop human rights abuses" (Amnesty International 2002, 3, Emphasis added). In the memorandum, Amnesty further decried the public statements made by the EU and its partners concerning

[40] FIDH employee in conversation with author, April 2016.

human rights to be "hollow echoes of human rights rhetoric" (2). Regarding the same agreements, a 2002 joint statement by the Euro-Mediterranean Human Rights Network, Human Rights Watch, the World Organisation Against Torture and the International Federation for Human Rights expresses demanded that the EU use "all available means to implement *effectively* the human rights clause" (Schade-Poulsen et al. 2002, 1, Emphasis added).

More recently, in a 2015 letter to EU Trade Commissioner Cecilia Malmström, the Trades Union Congress on Labour has expressed its opinion that "the trade and sustainable development chapter found in current [EU] agreements has failed to produce meaningful results for workers" (O'Grady 2015, 1). FIDH echoed this sentiment in a letter the same year, suggesting that when it comes to human rights clauses in trade agreements, "commitment should find ways to become reality" (Lahidji 2015, 1).

It is important at this stage to acknowledge that the labour union's that have advocated for EU HR-PTAs may have been motivated by protectionist sentiments rather than public interest-oriented principles, as Chapter 2 outlined. However, the enforcement-related outcomes associated with EU HR-PTAs, which EU organizations are increasingly aware of, make it clear that the agreements are unlikely to be a very successful protectionist policy. With that knowledge in hand, while it is possible that EU labour unions continue to advocate for the agreements to protect their workers, it is more likely that they do so out of their broader commitment to labour rights.

Finally, in the age of mega PTAs, there is increasing public and civil society interest and concern over the social and human rights impact of international trade agreements and calls for transparency. It is unlikely that civil society will remain quiet if the status quo prevails. Amidst this backdrop, the EU's HR-PTAs may become vehicles for public interest-oriented policymaking. In the meantime, the EU's HR-PTAs provide an insurance policy for the EU, providing the necessary legal means by which to cut ties to repressive regimes in extreme cases, even if they generally remain inactive.

4.6 Conclusion

This chapter has provided a detailed account of the EU's path towards making the human and labour rights-trade linkage. Table 4.2 summarizes the chapter's main findings. As it indicates, there is some support for the public interest hypothesis, Hypothesis P1—that the EU concludes HR-PTAs when partner states have poor human rights records. However, this has only consistently been the case since 1995. Moreover, against the predictions of public interest regulation, since their inception, the EU has shown little political will to use its HR-PTAs to combat repression. In addition, there is little evidence that HR-PTAs in the EU were the result of protectionist sentiments as the private interest theory of regulation predicts. EU businesses have generally not lobbied for their creation and the agreements have not been used to level the playing field in practice.

While no case will ever perfectly align with any theory, my findings indicate that the EU's HR-PTAs are best explained by the symbolic theory of regulation. EU HR-PTAs were precipitated by domestic demands to link trade with human and labour rights, and the EU has not displayed sufficient political will to use its HR-PTAs to achieve their seeming purpose—except when politically expedient, as in the Syrian case (though the agreement was not an HR-PTA).

To conclude, as Karel De Gucht, European Commissioner for Trade, has said: "Trade policy does not operate in a vacuum but must—and does—reflect societal concerns" (De Gucht 2010, 5). In order to retain support, the EU needs to respond to domestic demands to address citizens' and NGOs human rights concerns through its trade policy as the human rights road map for Lima and Bogota illustrates. While the democratic deficit of the EU is often lamented, in the area of linking

Table 4.2: EU: Summary of Findings

Theory	Motivation to Regulate	Observable Implications
Public Interest	Benevolence towards repressive states. Political will to address it.	P1: HR-PTAs concluded when EU partner states have poor human rights records. ✓ P2: HR-PTAs (attempted to be) enforced/used to combat repression.
Private Interest (capture)	Protectionist sentiments/desire to "level-the-playing-field" inherited from private interest groups.	C1: HR-PTAs concluded when EU faces strong pressure from private interest groups with protectionist demands. C2: HR-PTAs (attempted to be) enforced/used to target competitors and to accomplish levelled playing field.
Symbolic	Appeasement of HROs and other domestic audiences.	S1: HR-PTAs concluded when EU faces strong pressure from public interest-oriented advocates. ✓ S2: HR-PTAs enforced/used when not doing so impedes their appeasing purpose. ✓

human rights with trade, EU citizens and NGOs have been heard, often with the helping hand of EP. However, due to the EU's reluctance to enforce its HR-PTAs and create clear monitoring mechanisms, these audiences have not always gotten the regulation that they desire. Symbolic regulation is however not without merit; it can lay the groundwork for public interest regulation. Public awareness of EU HR-PTAs and demands for their enforcement make this outcome more likely. De Gucht has suggested that the human rights provisions in EU PTAs: "are not paper tigers—but tough rules" (3). In the future, EU HR-PTAs may very well live up to these bold words.

5 | A Race to the Top? The United States' HR-PTAs

Critics of free trade often warn that globalization will lead to a destructive "race to the bottom" in terms of global labour standards. The US in contrast, has advertised its HR-PTAs as facilitating a "race to the top." In 1993, US President Bill Clinton proudly proclaimed the NAFTA to be "a force for social progress" (Clinton 1993). Clinton argued it was "the first agreement that ever really got any teeth ... in what another country had to do with its own workers and its own labor standards" (Shiver and Miller 1993). Under President George W. Bush, the US continued to extol the virtues of its HR-PTAs, with Ambassador Rob Portman, United State Trade Representative, describing the CAFTA-DR as "light years ahead of NAFTA, [and] far stronger than earlier agreements such as the Jordan FTA" (Portman 2005). President Obama advertised what he called the 2010 US-Korea FTA's "groundbreaking protections for workers' rights" (Obama 2010). In 2015, Obama declared that the TPP represented the "highest-standard, most progressive trade deal in history"(Obama 2015).

While the US is one of the most outspoken defenders of HR-PTAs, the "groundbreaking" protections found in its HR-PTAs have rarely been used in practice. In no case have the fines or trade sanctions outlined in US HR-PTAs been deployed against repressive partner states.[1] As a result, in recent years, the agreements have come under fire for failing to live up to their lofty goals (The Staff of Senator Elizabeth Warren 2015; GAO 2014). If not to use the tools HR-PTAs contain, why does the US commit to HR-PTAs?

To answer this question, this chapter applies the theoretical framework developed in Chapter 2 to the case of the US' HR-PTAs. The emphasis here is placed on uncovering the overarching reasons behind the US' commitment to these agreements and on exploring the theoretical logics developed in this research project in more detail. Thus, while this chapter presents information on the history and outcomes associated with the US' HR-PTAs, it is with the intention of providing necessary context to the analysis, rather than serving as an exhaustive account.[2]

5.1 Three Approaches to the US' HR-PTAs

While the US has signed the second most HR-PTAs of any state, the reasons it has chosen to engage in this form of linkage remain unclear. Are the US' HR-PTAs the result of public interest, private interest, or symbolic motivations? Table 5.1 outlines the key factors associated with each explanation and the expected observable implications as applied to the US case.

The public interest theory of regulation predicts that the US' HR-PTAs are primarily signed for altruistic reasons. They are the result of strong institutional support for broad public welfare-oriented policies. These policies aim to redress any negative human or labour rights impacts of increased free trade. An observable implication of this explanation is that the weaker the human rights practices of its

[1] In contrast, under the US' unilateral trade preference scheme, sanctions have been applied against a number of countries. These include: Romania (1987), Nicaragua (1987), Paraguay (1987), Chile (1987), Burma (1989), Pakistan (1996) and Belarus (2000). See: Compa and Vogt (2000).

[2] For more detailed studies of the history and effects of the US' trade agreements, see: Cameron and Tomlin (2002), Mayer (1998), Charnovitz (1987), and Schott (2004).

Table 5.1: Why Does the US Commit to HR-PTAs?

Theory	Motivation to Regulate	Observable Implications
Public Interest	Benevolence towards repressive states. Political will to address it.	P1: HR-PTAs concluded when US partner states have poor human rights records. P2: HR-PTAs (attempted to be) enforced/used to combat repression.
Private Interest (capture)	Protectionist sentiments/desire to "level-the-playing-field" inherited from private interest groups.	C1: HR-PTAs concluded when US faces strong pressure from private interest groups with protectionist demands. C2: HR-PTAs (attempted to be) enforced/used to target competitors and to accomplish levelled playing field.
Symbolic	Appeasement of HROs and other domestic audiences.	S1: HR-PTAs concluded when US faces strong pressure from public interest-oriented advocates. S2: HR-PTAs enforced/used when not doing so impedes their appeasing purpose.

partner state, the more likely the US should be to commit to an HR-PTA. This corresponds to Hypothesis P1. To assess this first hypothesis, we must therefore first evaluate the US' HR-PTA record. Does the US willingly sign HR-PTAs with repressive partners?

The regulatory outcomes associated with the US' HR-PTAs can also be assessed. This provides an alternative means of establishing the US' support for these agreements. Thus, it is pertinent to ask: "How does the US use its HR-PTAs in practice?" According to the public interest theory of regulation, we should expect that when possible, the US will use its HR-PTAs to combat repression. This corresponds to Hypothesis P2. The US' success in using its HR-PTAs to achieve human and/or labour rights improvements is not our chief concern here. Rather, we assess whether the US has exhibited the political will to use (or attempt to use) its HR-PTAs to achieve these outcomes.

The private interest theory of regulation suggests that private business groups campaign for and succeed in creating HR-PTAs in the US as a strategy to remain competitive against foreign competition and to protect domestic industry. If this is the case, we should expect that the stronger the private interest-oriented demands for HR-PTAs it faces from industry, the more likely the US is to commit to an HR-PTA. This corresponds with Hypothesis C1. In addition, in line with Hypothesis C2, we can also expect that when possible, the US will use its HR-PTAs to accomplish a levelled playing field. This outcome-oriented hypothesis assesses whether the US has exhibited the political will to accomplish the goals set out in its HR-PTAs. As with Hypothesis P2, it does not aim to assess the success of the US' HR-PTAs at meeting their goals, which is a different question.

Finally, according to the symbolic regulation of US HR-PTAs, we should expect that the stronger the public interest-oriented demands for HR-PTAs it faces from HROs, the more likely the US will be to commit to an HR-PTA. This corresponds to Hypothesis S1. Turning to expected outcomes, to reiterate, it is the existence and advertising of symbolic regulation that acts to appease domestic audiences. This means that when we look at the output of symbolic regulation, we should expect that the US' HR-PTAs will only be enforced when not doing so impedes their conciliatory purpose.

5.2 Trade Policy in the US

Trade policy in the US primarily involves two main actors: Congress and the sitting Administration. The American Constitution gives the US Congress primary authority in the area of international trade.[3] No specific responsibilities in this area are outlined for the President. However, as the US President is given sole authority to negotiate international treaties under Article II of the US Constitution, the Congress is not given exclusive competence over international trade agreements. In

[3] U.S. Constitution, Art. 1, sec. 8, cl. 3 reads: "The Congress shall have power ... To regulate commerce with foreign nations, and among the several states."

practice, the US executive negotiates trade agreements subject to Congressional approval of their final terms. This makes the US executive a key regulatory legislator. Congressional approval is also necessary to implement any trade agreement that requires changes to US law. This approval may entail amendments by Members of Congress, possibly altering a negotiated treaty's text.

Since 1974, Congress has generally granted the President what is termed "Trade Promotion Authority" (TPA),[4] which provides expedited Congressional signing procedures—subject to certain caveats. Essentially, during the TPA timeframe, Congress reneges its ability to amend any PTA; it can only vote for or against its implementation. This ensures that the US executive can negotiate with international partners with confidence that Congress will not amend the final agreement. As a result, the majority of US HR-PTAs have been negotiated under TPA.[5]

Importantly, Congress also uses TPA to designate consultation requirements and negotiating objectives for any trade agreement signed under its duration. TPA has been used by the Congress to ensure US trade agreements signed under its authority enshrine a commitment to labour rights. The Congressional practice of including labour rights provision requirements as a condition for TPA makes Congress an important actor in US HR-PTAs. For example, the *Omnibus Trade and Competitiveness Act* (OCTA) of 1988 outlined the promotion of respect for workers' rights as a "principle negotiating objective" (US Congress 1988). NAFTA, which included labour rights provisions, was signed under the OCTA. More recently, the 2002 TPA, which expired in 2007, also listed both labour and environmental provisions as "principle negotiating objectives," in trade, requiring all PTAs signed during this period to oversee labour rights and environmental practices. The 2002 TPA also requires the President to provide "a meaningful labor rights report of the

[4]This procedure was formerly called "fast track authority. The name "TPA" was introduced in the Bipartisan Trade Promotion Authority Act of 2002."

[5]The US Jordan FTA (signed 2000) is a notable exception.

country, or countries, with respect to which the President is negotiating" (US House of Representatives 2002). The 2015 TPA includes similar requirements.

Once ratified, US HR-PTAs are binding on the American states without the independent need for each state to pass implementing legislation. This is because, unlike in Canada—discussed in the next chapter—in the US, labour law is largely a federal responsibility. US federal labour laws prevail over state and local level laws.[6] The US states are therefore less influential actors in the negotiation and enforcement of HR-PTAs than their Canadian counterparts.

At the Department level, the Office of the United States Trade Representative (USTR) holds lead responsibility for negotiating the US' trade agreements, making it an important regulatory legislator, and shares responsibility with the Department of Commerce for monitoring foreign compliance with the agreements. The Trade Representative is the principal advisor to the US President on trade matters. However, when the US signs HR-PTAs, the Department of Labor's (DOL) Office of Trade and Labor Affairs (OTLA), under the Department's Bureau of International Labor Affairs, also plays an important role in their negotiation and monitoring, making them an additional regulatory legislator in this area. The Department of Labor shares co-expertise on the matter. It is the OTLA team that receives and reviews submissions under the US' HR-PTAs.

The US government also holds formal consultation groups that are relevant to its HR-PTAs. The DOL for examples convenes the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (NAC). The NAC is a social dialogue space. Its members include representatives from the public, organized labour, and business. The USTR convenes the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). The LAC is the official space for

[6]Individual states however are often able to go beyond federal standards. For example, the 1938 Fair Labor Standards Act sets a federal minimum wage, but due to state-level minimum wage rules, individual states often have higher minimum wages than the federal requirements stipulate.

consultation with the labour movement and is attended by the labour secretary. It provides the labour movement with the opportunity to offer advice and opinions on negotiating positions in ongoing negotiations and on the implementation of existing trade agreements.

In summary, trade policy in the US involves an array of actors ranging from Congress, to the Administration, the USTR, and the DOL. The Administration and the USTR however are the lead actors in this process, though the agreements they negotiate are subject to Congressional approval. Approval from Congress is often facilitated by TPA. Civil society is formally consulted during the negotiation process and able to voice its opinions.

5.3 The US' HR-PTA Network

The US' modern HR-PTA network links US trade preferences to a series of labour rights obligations contained either in the main text of its trade agreements or in side accords.[7] The US' "labour HR-PTA" network is visualized in Figure 5.1. From 1989 to 2009, as Figure 5.1 illustrates, the US had 12 labour HR-PTAs in force and only two (non HR-)PTAs.[8] From 1992 onwards, all US trade agreements have been HR-PTAs. While the US' ego network is sparser than the EU's, it highlights that the US has signed HR-PTAs with as large a variety of states. US HR-PTAs cover partners in the Middle East, Asia, North America,[9] South America, and the Pacific. How did the US' HR-PTA network evolve?

[7] A US Department of Labor (DOL) official explains that in the US' view: "labour rights are in the sphere of trade. Human rights are broader and not always in this sphere" (Interview with DOL Official No. 2, March 2017.). In keeping with its focus on "trade-related" obligations, broader human rights references have not been incorporated into US HR-PTAs. Minority rights however were mentioned in the 2006 Peru Trade Promotion Agreement (in Annex 2).

[8] Figure 5.1 is restricted to bilateral trade agreements for ease of visualization. This also corresponds to the sample used in the statistical analyses.

[9] As Figure 5.1 only incorporates bilateral trade agreements, NAFTA is excluded.

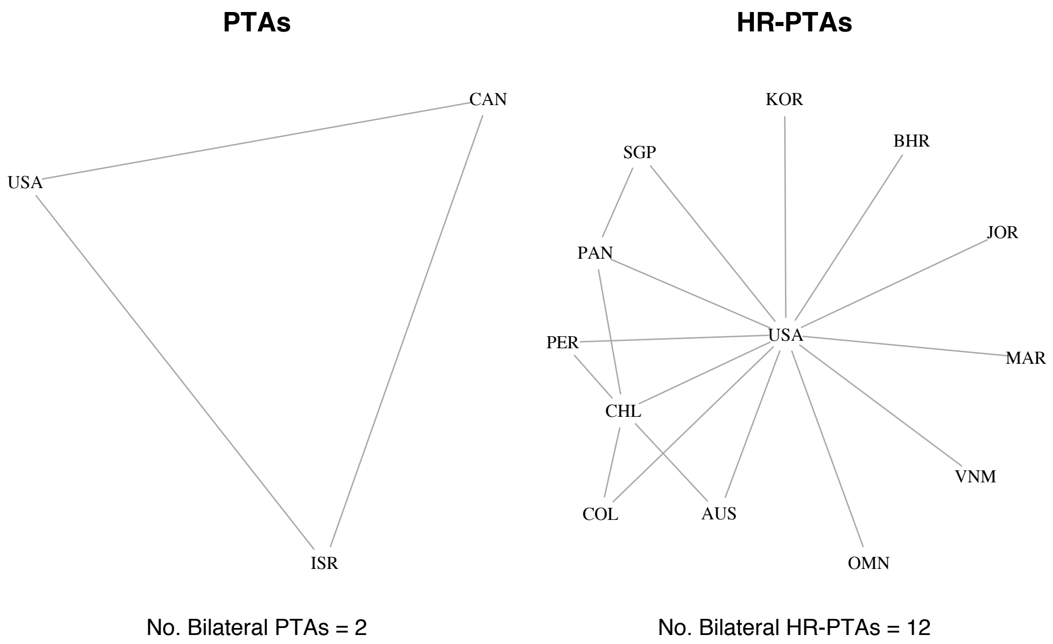

Figure 5.1: US Commitment to Bilateral PTAs and HR-PTAs, 1989-2009

The US has a lengthy history of promoting aspects of the labour rights-trade linkage at home and in the multilateral trade system. In 1890, the US banned imported goods that were produced by convict labour. In 1930, it banned the importation of goods made from forced labour. In the multilateral system, in 1953, the US (unsuccessfully) proposed that a labour rights provision be included in the GATT (Office of the Special Trade Representatives for Trade Negotiations 1964). Later, the US Trade Act of 1974 again directed the President to take action to promote "the adoption of international fair labor standards ... in the GATT" (US House of Representatives 1975). Over a decade later, in 1986, the US raised the question of worker rights at the Preparatory Committee of the GATT prior to the launch of the Uruguay Round, providing draft declaration language:

> Ministers recognize that denial of worker rights can impede attainment of the objectives of the GATT and can lead to trade distortions, thereby increasing pressures for trade-restrictive measures. Accordingly, the negotiations should review the effect of denial of worker rights on contracting parties, and the relationship of worker

> rights to GATT Articles and objectives and related instruments, and consider possible ways of dealing with worker rights issues in the GATT so as to ensure that expanded trade benefits all workers in all countries. (GATT Preparatory Committee 1986, 1).

This proposal was not accepted by committee members and therefore was not included in the GATT's Uruguay Round negotiations.

Like in the European case, outside of the multiliteral system, the US' modern labour rights–trade linkage began in its unilateral trade preference scheme. In 1982, a coalition of human rights, labour rights, and religious activists formed with the intention of making US trade policy conscious of labour standards. The coalition first succeeded in having an amendment made to the US' GSP program.[10] In 1984, when Congress re-authorized the US' GSP program, the new program introduced a new eligibility criterion prohibiting the President from giving GSP preferences to states that had not taken steps to recognize international labour standards (GATT 1984).[11] The USTR was given authority to revoke GSP preferences to states failing to meet these guidelines. No specific reference in the program was made to ILO standards. Yet, before passing into law, the 1984 GSP requirements had been watered down by the Reagan Administration, which "insisted on language to soften the mandatory suspension of rights violators" (Compa and Vogt 2000, 203). In the resulting legislation, states therefore needed only to be "taking steps" towards improving their workers' rights practices. No elaboration was provided on what steps would satisfy this requirement. Despite this, advocates gained a new forum in which they could file complaints and work towards improving labour rights outcomes.

Beyond incorporating exceptions clauses in its interwar period PTAs, the US

[10] See: Compa and Vogt (2000).

[11] Point seven of the US' 1984 GSP renewal notice states: "In all GSP determinations the President will be required to take into accounts inter alia, several discretionary criteria." The final criterion listed is the extent to which the country in question "is affording internationally recognized worker rights to its workers" (GATT 1984, 3).

did not make the labour rights–trade agreement linkage as quickly in its reciprocal bilateral trade agreements as it did in its unilateral trade preference scheme or in the multilateral realm.[12] The US' first post-war trade agreement was with its closest trading partner, Canada. The 1965 Canada-US automotive Products Agreement created a single North American market for cars, trucks, buses, tires, and automotive parts. Yet, the Auto Agreement did not include any labor rights provisions. The US did not sign any further PTAs for another 20 years, instead placing its efforts on promoting multilateral cooperation in trade. Finally, in 1985, the US concluded a (non HR-)PTA with Israel, breaking its PTA moratorium,[13] and in 1988, the US negotiated a new (non HR-)PTA with Canada—the CUSFTA.

In the years following the conclusion of the CUSFTA, the US signed its first reciprocal HR-PTAs. The US' first HR-PTA was the NAFTA, signed in San Antonio, Texas in December 1992. The NAFTA was negotiated under the *Omnibus Trade and Competitiveness Act* (OCTA) of 1988 (US Congress 1988). Following the linkage example set by the 1984 GSP reform, OCTA listed the promotion of respect for workers' rights as one of the principle negotiating objectives of any trade agreements signed under its authority. This stipulation meant that some form of labour rights provision needed to be included in any agreement concluded during that period. However, trade agreements passed under OCTA only needed to "make progress ... in meeting this objective." The original NAFTA text negotiated before the 1992 presidential election therefore included minimal labour rights provisions. These were limited to: (1) a basic reference to the protection of labour rights in the

[12]For example, Article 12 of the US-Canada Trade Agreement of 1935 featured an exception clause relating to prison-made goods and to restrictions made on "moral or humanitarian grounds." In 1950, the US House of Representatives passed a bill suggesting that North-South international trade could "be promoted through agreements ... to establish fair labor standards of wages and working conditions" (Charnovitz 1987). However, the bill was not passed into law.

[13]While the preamble to the PTA's Declaration on Services explicitly referenced the "significance of trade in services" to the US' and Israel's economic and social progress, it did not create any concrete labour rights obligations.

preamble to the NAFTA,[14] and (2) main text exceptions clauses related to social security and social welfare.

The final negotiated terms and text of the NAFTA agreement, however, in coinciding with a Presidential election, became a campaign issue. Although the NAFTA was negotiated before the 1992 election, it had not been ratified. This left its terms open to debate.[15] The impact the nascent agreement would have on American jobs became an especially divisive topic and was centrally featured in the debates between Presidential candidates. It was against this background that the third candidate after George H.W. Bush and Bill Clinton, Ross Perot, memorably worried about the "great big sucking sound" that would be made as American jobs were funnelled into Mexico.

Clinton, during his early election campaign, had expressed support for the negotiated version of NAFTA. Yet, as the election drew nearer, the US labour movement and human rights advocates voiced strong opposition towards the agreement. US labour launched a "Say no to this NAFTA" campaign and formed a major coalition: the *Citizen's Trade Campaign*. While some activists desired the agreement to be shelved, others demanded the incorporation of stricter labour rights protections than those found in its negotiated text (Compa 1994, 100). To shore up support from a traditional Democrat base, Clinton therefore promised that if elected, he would negotiate a labour rights side agreement to the NAFTA. However, this position was not accepted by all. US business groups were "unwavering" opponents of the linkage, especially if it meant the creation of a sanction-imposing labour commission (Burgoon 2004, 199). Despite this opposition from business, with the labour movement watching, once Clinton was elected, he turned his attention to

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[14] The reference refers to the Parties resolution to "enhance and enforce basic workers' rights" (NAFTA Preamble).

[15] NAFTA had first been proposed by Mexico in 1990 and its negotiation began in 1991 under President George H.W. Bush; yet, it was signed but not ratified before the 1992 US Presidential election.

the negotiation of a labour side agreement. Negotiations on the North American Agreement on Labor Cooperation (NAALC) began in Washington on March 17, 1993. After six rounds of negotiations, agreement was reached on April 11, 1993.

NAFTA came in force in January of 1994, accompanied by the NAALC. The NAALC was the such first agreement of its kind. Violations of NAALC provisions can lead to fines of up to 20 million USD; however, only member states' enforcement of their own domestic laws were subject to such recourse. Article 2 of the NAALC reads:

> Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

International labour rights standards were not mentioned in Article 2 or elsewhere in the NAALC.

Against a continued backdrop of labour rights activism and demands for the US to develop its HR-PTAs, more recent US HR-PTAs have included main text labour rights regulation that is anchored to international standards. For example, the AFL-CIO worked with the Jordanian labour movement to secure enforceable labour rights provisions in the US-Jordan FTA (signed 2000) (Solidarity Centre 2005, 3). The US-Jordan FTA dedicates around 400 words to ILO labour rights provisions in Article 6 in the main treaty text. The agreement includes provisions that allow all workers' rights to be submitted for dispute settlement, unlike the NAALC, which allows this possibility for only three standards (i.e. child labour, minimum wages, and occupational safety and health). However, the US-Jordan FTA does not allow NGOs to file complaints about labour rights infringements.

Since 2006, the US has gradually built on its HR-PTA template. The clauses remain the subject of fierce debate. For example, congressional debates surrounding the US-Colombia FTA, signed 2006 (but entered into force 2012) centred on violence, labour, and human rights issues in Colombia, putting the human rights elements of the treaty under scrutiny. Despite the negotiated agreement including labour rights clauses, the labour movement, and human rights organizations also urged the US to not sign the agreement due to Colombia's poor human and labour rights record.[16] The Congress refused to ratify the FTA, citing similar concerns. In 2011, the US took an unprecedented step; the US and Colombia published the *Action Plan Related to Labour Rights* to accompany their unratified trade agreement (USTR 2011). One of Colombia's key commitments under the Action Plan was to create a new Labour Ministry. Other commitments included addressing violence against unionists and impunity for the perpetrators of the violence. In response to the 2011 Action Plan, the Colombian government submitted a series of documents to the United States in time to meet the various target dates listed. Colombia made some progress in the required areas prior to the FTA's approval. The US finally ratified its FTA with Colombia in October 2011.

[16] For example see: (HRW 2008b).

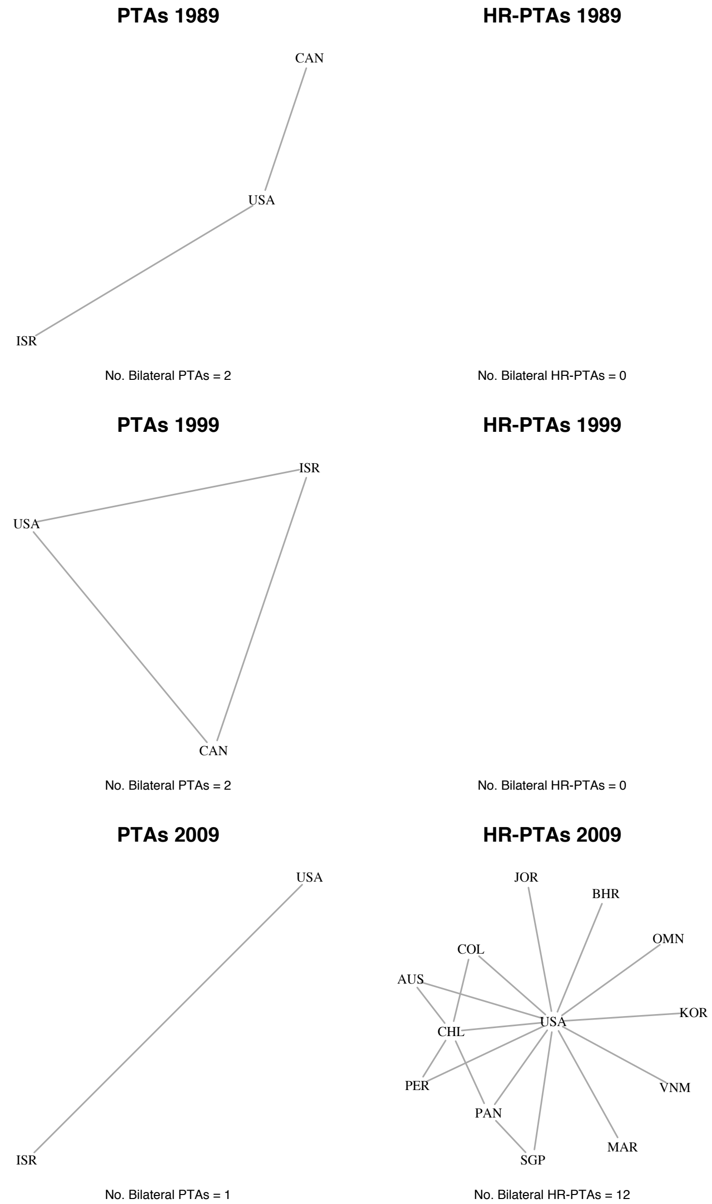

Figure 5.2: US Commitment to Bilateral PTAs and HR-PTAs Over Time

Figure 5.2 summarizes the US' bilateral PTA and HR-PTA commitments from 1989 to 2009.[17] As the NAFTA is a plurilateral agreement, it is excluded. From the NAALC to the US' more recent HR-PTAs, including its agreement with Panama (signed 2007), and its agreement with Korea (signed 2010), the US' HR-PTAs have

[17]More specifically, Figure 5.2 includes all bilateral PTAs and HR-PTAs that remained in force from 1989 to 2009.

evolved significantly. The first agreements focused primarily on the enforcement of domestic labour standards and were expanded to include references to the ILO and its accords. However, the US' HR-PTAs generally remain limited to overseeing the trade-related labour effects of the agreements. For example, Chapter 19 of the US-Korea FTA states:

> To establish a violation of an obligation under Article 19.2.1 [on fundamental labor rights] a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice *in a manner affecting trade or investment between the Parties.*[18]

This stipulation of demonstrating that a violation has impacted trade or investment limits the potential uses of the US' HR-PTAs. The uses of US HR-PTAs are explored in more detail in the following section.

5.4 The US' HR-PTAs in Practice

The enforcement procedures contained within US HR-PTAs vary slightly from agreement to agreement. However, as US HR-PTAs have largely built upon the NAALC template, the enforcement of its HR-PTAs relies predominantly on civil society "submissions" to national administrative offices (NAOs), housed in partner states' ministries of labour.[19] The AFL-CIO has been a leading organization in compiling these submissions, often collaborating with civil society in partner states. Other American civil society organizations that have made use of this mechanism include: the International Labor Rights Education and Research Fund (ILR-ERF), Human Rights Watch, the United Food & Commercial Workers Local 770, the International Trade Union Confederation, the United Steelworkers Union, the

[18] Emphasis added.

[19] Formally, the US NAO could begin its own investigations or consultations without submissions from civil society but this has not occurred in practice. The US GSP programme also allows civil society to file petitions.

Washington Office on Latin America (WOLA), and the United Students Against Sweatshops.

For civil society organizations, the submission process is, according to Cathy Feingold, Director of the International Department of the AFL-CIO, "extensive and time consuming."[20] It involves large amounts of resources to interview witnesses and translate affidavits, to become experts in the labour laws of another country, to send staff for on-site visits, and to craft a legal argument that meets the guidelines of the HR-PTA in question.[21]

Despite the barriers to participation, to date, the US has received 30 public submissions under its HR-PTAs.[22] Each NAO is given the discretion whether to accept or reject a submission. Twenty-two of the submissions have been accepted for review. Of the twenty-two cases, fifteen have been directed towards Mexico and filed under the NAALC. In each NAALC case, complaint procedures went no further than government-to-government consultations. In other words, for violators, submissions usually end in "punishment by consultation." The remaining cases have alleged violations on the part of Canada,[23] Guatemala, Colombia, Bahrain, the Dominican Republic, Honduras, and Peru.

Only one submission has made it to arbitration. The 2011 US arbitration panel against Guatemala under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) was the first of its kind under a US trade agreement. The AFL-CIO and six Guatemalan trade unions originally filed the

[20] Interview with Cathy Feingold, March 2017.

[21] In general, this involves showing a recurring failure to meet labour rights obligations under the treaty, thus multiple cases are generally compiled for each submission.

[22] In addition, eleven submissions to the Mexican National Administrative Office (NAO) have filed complaints against the US. The majority of these cases led to the creation of a report and ministerial consultations or agreements.

[23] Under submission US-199803, issues relating to union formation were brought up concerning employees of a McDonald's restaurant in Quebec City, Quebec. The submitters requested for the case to be dropped after consultations with the Canadian NAO and Government of Quebec, thus the NAO ended its review before the review's completion.

complaint in 2008 on the grounds of Guatemala not effectively enforcing its labor laws, an obligation it had committed uphold to under the CAFTA-DR. In August 2011, the US requested an arbitral panel, which was subsequently suspended on three separate occasions. The arbitration process resumed in September 2014, with the possibility of leading to fines of up to 15 million USD. Yet, in 2017, the panel found that while Guatemala *had* failed to effectively enforce its labour laws, it determined the evidence provided was insufficient to prove a violation of the specific terms of the CAFTA-DR. The panel was not able to conclude that alleged violation occurred "in a manner affecting trade between the parties" (Banks, Posner, and Hernandez 2017). This case highlights the high burden of proof necessary to successfully prosecute a case under a US HR-PTA with the "manner affecting trade" stipulation.

The resource requirements related to accepting submissions and investigating their claims are also challenging for the US NAO, which operates on a small budget. In 2012 for example, in response to submission US 2012-01 under the CAFTA-DR, the US completed a report on Honduras. As part of the investigation, a team member was deployed to Honduras for six months. Contact point consultations were performed and information was gathered on site. The activities involved in this exercise were expensive. As there is generally not a large market for experts on the labour rights of a foreign state, OTLA has a limited supply of experts on whom to rely, and instead has had to train its own lawyers.[24]

*

As the first part of this chapter has shown, the US has signed a number of HR-PTAs since it negotiated the NAFTA in 1992. These agreements have evolved over time to encompass more far-reaching commitments but have been controversial

[24] Interview with DOL Official No. 1, March 2017.

amongst the US' constituents. Post-signature, the US has not deployed the hard enforcement mechanisms its HR-PTAs agreements contain, but has responded to the civil society submissions it has received by producing reports, engaging in Ministerial consultations, and in one case pursuing arbitration. To make sense of these findings, the next section turns to the public interest, private interest, and symbolic theory explanations of HR-PTA formation.

5.5 Explanatory Analysis

Why does the US sign HR-PTAs? Each of the three theories of regulation provides a unique explanation of US HR-PTA commitments.

The Public Interest Theory:

According to the public interest explanation, we should expect the US to commit to HR-PTAs out of an altruistic desire to improve human and labour rights practices across the world. The US has advertised its HR-PTAs using public interest justifications. In a 2015 report titled: "Standing Up for Workers: Promoting Labor Rights through Trade," the USTR announced that it aimed to "make trade work better for workers" (USTR 2015, 4). Along a similar line, Michael Froman, US Trade Representative, has assured that the US uses its trade agreements to "advance ... the adoption of high standards" (Froman 2014). These public declarations suggest that for the US, HR-PTAs are part of a public interest-oriented trade policy. Assessing the US' motivation to regulate labour rights through trade, however, necessarily involves looking beyond these visible examples of public rhetoric to study behaviour and observable outcomes. Focusing on these elements, the evidence presented in this chapter only provides mixed support for the public interest explanation.

Hypothesis P1

To evaluate Hypothesis P1, let us turn to the US' HR-PTA signing record. In line with the public interest explanation, since NAFTA, the US has signed HR-PTAs with all of its trade partners that have poor labour rights records. However, contrary to the expectations of the public interest explanation, subsequent administrations in the US have only included rudimentary labour rights provisions in draft trade agreements with these countries and others until pressured by civil society or Congress to make the provisions stronger or more enforceable. This reluctance to link trade benefits with labour rights outcomes echoes the US' early GSP experience where language pertaining to workers' rights was watered down by the Administration. States needed only to be "taking steps" towards improving their labour rights practices to avoid being suspended from the programme. By leaving the interpretation of this obligation at the discretion of the Administration, enforcement was subject on the political will of the government.

In the reciprocal arena, NAFTA negotiations provide a useful example, as at the time, Mexico exhibited an array of repressive labour rights practices. This made it a prime target for the public interest-oriented HR-PTA civil society demanded. Yet, against the expectations of the public interest explanation, under the Bush administration, NAFTA negotiators resisted the labour-trade linkage, insisting that NAFTA was a *trade* agreement, not a social pact (Compa 1993, 180). The US and Canada therefore only reluctantly signed non-binding memorandums of understanding with Mexico on labour in an attempt to deal with the labour rights issue less formally, rather than tackling it with a treaty. However, John McKennirey, Canada's lead NAALC negotiator, reflects that "Neither one seemed to convince anybody very much of anything."[25] Instead, after Clinton's election, the US would

[25] Interview with John McKennirey, January 2016.

have to go further, eventually negotiating the NAALC—a legally binding treaty.

The US Colombia FTA experience provides another relevant example. Colombia at the time of negotiations with the US, was well-known for its repressive labour rights practices, making it a strong candidate to receive a a public interest-oriented HR-PTA. Yet, according to the LAC, for the US, the labour chapter of the agreement "was not a focus during the two years of intense negotiations" (LAC 2006, 6). In 2006, the LAC produced a report on the draft agreement. In the report, the LAC highlighted that the draft labour chapter sported a "complete lack of effective measures" despite the backdrop of:

> well-documented violations of trade union rights in Colombia, up to and including the torture and murder of trade unionists by state actors or paramilitary groups that enjoy, at the very least, the tacit support of the military (3).

Only the obligation for member states to enforce their own labour laws was subject to dispute settlement, leaving other obligations in the labour chapter without recourse to formal enforcement. In addition, any fines paid for labour disputes would be paid to a joint commission, that would in turn return the fine to that same state to improve its labour rights enforcement. Thus, as the report highlights, the fine could not function as a strong deterrent (8).

Finally, the addition of a clause requiring violations of labour rights to affect trade or investment in order to be sanctionable stands in stark contrast to the predictions of the public interest theory explanation. This stipulation strongly limits the applicability of the US' HR-PTAs by imposing a burden of proof requirement that is difficult to meet in practice and which reduces the likelihood any public submissions will lead to successful arbitration.

While the US has consistently formed HR-PTAs, its demonstrated reluctance to commit to strong, enforceable agreements does not clearly align with the expectations of Hypothesis P1. Thus, Hypothesis H1 is only partially supported by the evidence.

Hypothesis P2

Turning to Hypothesis P2, the public interest explanation of US HR-PTAs also expects the US to actively use the enforcement mechanisms contained within its HR-PTAs in order to best ensure they bring about their seeming goals. Here the evidence is clearer; I find little support for Hypothesis P2.

First, as the discussion outlines, the US however has not brought forward any cases under its HR-PTAs that have not been based on civil society submissions. None of these submissions has led to the imposition of fines or sanctions. While it is possible, it is unlikely that the US' trade partners have never violated any of their HR-PTA obligations. This indicates that the US is reluctant to use its HR-PTAs for their ostensible purpose.

Second, the enforcement of US HR-PTAs "begins and rests most directly with the administration" (US 2007, H6646). This allocation of power is perhaps the largest barrier to enforcement in practice as it makes enforcement subject to the support of the sitting US administration and its foreign policy priorities. And, subsequent US administrations have proven reluctant to exercise this power, leading to a clear de-prioritization of formal enforcement measures that stands in contrast to the expectations of the public interest theory explanation. As Human Rights Watch summarizes:

> The tendency to de-prioritize enforcement—an often unpleasant, acrimonious process—evidenced in the commercial setting has been further exacerbated in the labor rights context by the unwillingness of the United States and its trading partners to strain diplomatic relations over workers' rights concerns. Historically, non-labor-related considerations—geopolitical, strategic, and others—have taken priority even in the face of egregious abuses. (HRW 2008a)

While the US' reluctance to enforce its HR-PTAs is largely implicit in its enforcement-related behaviour, in US-Jordan FTA negotiations, the US administration made it explicit that at least in that case, it did not have the appetite to formally enforce the agreement's labour chapter. Writing to Jordan's Ambassador to the US, In a letter dated 23 July 2001, USTR Robert Zoellick stated:

> In particular, my Government would not expect or intend to apply the Agreement's dispute settlement enforcement procedures to secure its rights under the Agreement in a manner that results in blocking trade. In light of the wide range of our bilateral ties and the spirit of collaboration that characterizes our relations, my Government considers that appropriate measures for resolving any differences that may arise regarding the Agreement would be bilateral consultations and other procedures, particularly alternative mechanisms, that will help to secure compliance without recourse to traditional trade sanctions. (US 2001).

Jordan responded with an identically worded letter. As invoking arbitration under the labour rights chapter could lead to "blocking trade," the letter formally signalled the US' unwillingness to use its HR-PTA for that purpose.

Finally, it is telling to note that the NAALC Secretariat, responsible for administering the implementation of the labour side agreement to the NAFTA, developing technical assistance programs, and undertaking relevant research, "temporarily" closed its office in 2010. It has not since been re-opened. As of March, 2018, the domain for its website could be purchased for $2,499 USD, suggesting its closure is permanent. While the NAALC Secretariat is not essential to the enforcement of the NAALC, its closure signals a de-prioritization in the US and amongst member states of ensuring the agreement meets its objectives.

Taken together, these outcomes provide little support for Hypothesis P2, that the US actively uses its HR-PTAs to achieve human or labour rights improvements. With only partial support being found for Hypothesis P1, and no support for Hypothesis P2, it is relevant to assess other explanations. We therefore turn next to the private interest explanation of HR-PTAs.

The Private Interest Theory:

Unlike the public interest explanation, the private interest theory suggests that the US commits to its HR-PTAs in order to protect private interests. As this reasoning has occasionally been invoked by US leaders, there is at a minimum surface-level support for this explanation. Under the Obama Administration for example, the US advertised the TPP[26] as an agreement that:

> levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. (USTR 2016, 1).

This public address aligns well with the private interest theory explanation. However, as Hypotheses C1 and C2 suggest, it is essential to go beyond visible rhetoric and uncover the aims and involvement of American private interest groups in US HR-PTAs, as well as the outcomes associated with the agreements, to determine whether they are best explained by the private interest theory. With attention to these factors, my analysis finds little support for the private interest explanation of HR-PTAs.

Hypothesis C1

Hypothesis C1 predicts that private interest groups within the US have been primary proponents of and instigators behind the US' HR-PTAs. However the historical evidence suggests that from the beginning, business has not been overly involved in the US HR-PTA process—though not always by choice.[27] Business sector groups

[26] This agreement has since been renamed the "CTPP" and no longer includes the US.

[27] During NAFTA labour side agreement negotiations the US business sector expressed "intense frustration" over being overlooked in consultations (Cameron and Tomlin 2002, 196).

that were engaged in lobbying around NAALC were largely in opposition to the agreement. They argued that the labour-trade linkage "might subject U.S. companies to scrutiny or criticism, particularly rights of association, organizing, bargaining and the right to strike" (Compa 1994, 100). They preferred no linkage. During NAFTA negotiations, the US Chamber of Commerce for example announced:

> We do not believe the FTA should be made a catch-all for every economic and non-economic issue between our two countries .... [L]abor conditions, while important in our overall bilateral relationship are already being addressed through mechanisms more appropriate than would be the FTA negotiations.[28]

Contrary to the expectations of Hypothesis C1, in the view of business groups, NAFTA was not an appropriate venue for labour rights linkage. This position is consistent with US business' view of the US GSP programme's labour rights linkage. In 1994, the US-ASEAN Council for Business and Technology, which represented Mobil, Texaco, Chevron, General Electric, and others, lobbied the USTR to end its labour rights review of Indonesia, indicating its opposition to the trade-labour linkage.[29]

Looking at a more recent HR-PTA, the US-Colombia agreement, a similar pattern emerges. First US business advisory committee reports are telling: in most, there is no mention at all of the labour-related aspects of the agreement.[30] An exception is the report from the Industry Trade Advisory Committee on Non-Ferrous Metals and Building Materials for Trade Policy Matters, which outlines the committee's preference for labour provisions to be in a side agreement rather than to appear in the treaty's main text (ITAC-9 2006, 3). Second, the Advisory Committee for Trade Policy and Negotiations (ACTPN), expressed that it felt the US Colom-

[28] Cited in MacArthur (2001, 141)
[29] See: Compa and Vogt (2000, 226).
[30] See for example the 2006 Agricultural Policy Advisory Committee report on the US-Colombia FTA (Agricultural Policy Advisory Committee for Trade 2006) and the report of the Industry Trade Advisory Committee on Energy and Energy Services (ITAC 6 2006).

bia FTA draft included "strong assurances that the provisions cannot be used as a means of disguised protectionism," indicating that for the private organizations represented,[31] the agreement was not viewed as a protectionist endeavour.

In other contexts, US business groups have generally not supported the labour rights-trade linkage and especially not if enforceable. According to Congresswoman Betty Sutton, representatives from multinationals have been known to boast that the labour side agreement to the Peru, Colombia, Panama and South Korea FTAs are not enforceable in practice (US 2007, H6646). This is the opposite reaction to the one expected by Hypothesis C1.

As with any case, a few exceptions exist. For example, according to the Levi Strauss & Co. website, the company:

> was the first and only major multinational company to publicly advocate for linkage of trade and labor, incorporating key workplace standards and worker rights provisions within the context of trade agreements. And we continue to do so whenever and wherever we can—through congressional testimony, meetings with senior government officials, trade negotiations and multi-stakeholder initiatives (Levi Strauss & Co 2018).

While this excerpt confirms Levi Strauss & Co's engagement on the topic it also corroborates the claim that business groups and companies within the US has not been the primary supporters of the US' HR-PTAs.

We can also indirectly evaluate if US' HR-PTA motivations align the with private interest explanation by looking at if the US has been more likely to sign HR-PTAs in situations conducive to protectionist interventions from private interest groups. For example, the weaker the human rights and labour practices of its partner states relative to its own practices, the more likely the US should be to sign HR-

[31] In 2006, organizations sitting on the ACTPN included: Intel Corporation, the National Association of Manufacturers, Pacific Plastics and Engineering, SC Johnson and Son, Inc., the Small Business Exporters Association, Dell Computer Corporation, and the National Cattlemen's Beef Association.

PTAs in order to protect domestic producers and exporters. However, as detailed above, the US has consistently signed HR-PTAs over traditional PTAs, regardless of the domestic human and labour rights practices of its partner states.

Similarly, the US should be more likely to sign HR-PTAs with trade partners that have competitive rather than complementary economies. If a US trade partner has a complementary economy to the US,' then even if it exhibits relatively weaker human or labour rights practices, this is unlikely to affect domestic producers and other export-oriented businesses within the US. Yet, the US has often signed HR-PTAs with states with relatively weaker human rights practices that are not clear export competitors. Returning to the example of the US-Colombia FTA, it is important to note that in 2006, when the agreement was signed, Colombia was not a major destination of US exports and was not in the top list of US importers. In addition the two countries had largely complementary rather than competitive economies.[32] Thus, the level of threat Colombia could pose as a trade competitor and its related ability to incite protectionist policies in the US was limited.

Overall, the direct and indirect evidence discussed provides little support for Hypothesis C1. We now turn our attention to Hypothesis C2 and the outcomes associated with the US' HR-PTAs.

Hypothesis C2

According to Hypothesis C2, we should expect the US, where possible, to use its HR-PTAs to support domestic business and industry. A protectionist motivation should become apparent if the US selectively enforces its HR-PTAs to target trade partners with competitive economies. However, in practice, there is little evidence to that effect. To date, formal enforcement activities under US HR-PTAs have only

[32] In 2006, the US' top exports were aircraft, monolithic integrated circuits, and petroleum oils (WITS 2018b); whereas, with the exception of petroleum, Colombia's top exports were coal, coffee, and Ferro-nickel (WITS 2018a).

led as far as arbitration in one case against a state that was not a direct export competitor: Guatemala.[33] This outcome does not align with the expectations of Hypothesis C2.

In more detail, even when cases have been brought forward by civil society to the US NAO, against the expectations of the private interest explanation, the US administration has not always been receptive. According to Nolan Garcia (2011a, 104, emphasis added):

> When the AFL–CIO Paper, Allied-Industrial, Chemical and Energy union (PACE) filed a labor rights petition against a Mexican assembly factory whose parent company was based in Ludlow, Kentucky, NAO staff members were asked to write memorandums on why the case should *not* be accepted to credibly reject it.

Had the US desired to use its HR-PTA for protectionist purposes, it is unlikely NAO officials would have been pressured to reject a case. Overall, the outcomes discussed in this section suggest that in practice, there is little support for Hypothesis C2, that the US uses its HR-PTAs for protectionist purposes.

The Symbolic Theory of Regulation:

The symbolic regulation explanation of the US' HR-PTAs suggests that these agreements are a conciliatory rather than a regulatory tool. HR-PTAs according to this explanation are a response designed to placate domestic advocates (Hypothesis S1) and are only expected to be enforced when politically necessary (Hypothesis S2). While in general no case perfectly aligns with any one theory, the analysis reveals the strongest support for the symbolic theory explanation.

[33] When the US requested an arbitral panel in 2011 on the Guatemala case brought under the CAFTA-DR, Guatemala's top exports were: unroasted coffee, silver ores, raw cane sugar, and bananas (WITS 2018c). The US' top exports were: petroleum oils, gold, and monolithic integrated circuits (WITS 2018d).

Hypothesis S1

As Hypothesis S1 expects, the US has received strong pressure from civil society to form HR-PTAs. Domestic advocacy around the trade-labour linkage first was influential in achieving reforms to the US' unilateral GSP programme (Compa and Vogt 2000), but reached critical mass in the lead up to NAFTA. By spring 1991, trade negotiations were dominated by labour and environmental concerns. Civil society came together to form a number of coalitions including the *Mobilization on Development, Trade, Labor and the Environment*.[34] These groups put forward the first congressional briefing on labour issues in trade in 1991. Activists from the Sierra Club, the Fair Trade Campaign, the International Labor Rights Education and Research Fund also came together to produce a "Citizens' Analysis" of the agreement, addressing the labour rights and human rights aspects of the agreement in an accessible manner (Audley et al. 1992). During the campaign for NAFTA, the AFL-CIO was perhaps the foremost supporter of NAFTA becoming an HR-PTA. It appeared at 25 NAFTA hearings in the Congress, followed by 14 appearances for the United Autoworkers Union (Burgoon 2004, supra note 4). Rather than demanding protectionism, alongside many other unions and NGOS, it demanded linkage.

The US administration was unable to ignore these demands for a combination of reasons. First, linkage support had filtered upwards into Democratic National Committee trade policy and Congress.[35] Second, as the discussion highlighted, the NAFTA was signed in a Presidential election year giving it added political importance to vote-seeking candidates. The result was that the labour-trade linkage became one of the main concerns for regulatory legislators within the US. Accord-

[34]Participating organizations included: Greenpeace, the International Labor Education and Research Fund, the United Auto Workers, the AFL–CIO, the Natural Resources Defense Council, the Family Farm Coalition, and an additional 62 advocacy organizations (Nolan Garcia 2011a, 94).

[35]Since their initial success in achieving GSP reform, human and labour rights groups learned to find a "legislative champion" in Congress. See: Compa and Vogt (2000, 202–203).

ing to Hermann von Bertrab, the coordinator of the Mexican NAFTA negotiating team's Washington office, from his viewpoint "environmental and labor issues were the *main* concern around which the opposition clustered" (Von Bertrab 1997, 73, Emphasis added). Negotiations of the side agreement became crucial to the passage of the agreement, so important that they "threatened at times to upend the entire accord" (Nolan Garcia 2011a, 95). The US therefore created the NAALC.

In line with the symbolic theory explanation, for the US the NAALC according to McKennirey, lead Canadian negotiator of the NAALC, "was about making the NAFTA acceptable, it was about selling the NAFTA."[36] He emphasizes that it was not about selling the NAFTA to Canadian or Mexican audiences, but rather to American labour advocates. This interpretation of the labour aspects being a critical selling feature of the NAALC is not unique. According to Hufbauer and Schott (2005, 131), "the NAALC was designed as a political mechanism to ensure US ratification of NAFTA." Cameron and Tomlin (2002, 188) explains that the Mexicans knew that "the accords were dictated by domestic political necessities in the United States and that the Democrats, in particular, wanted to appease labor unions and environmentalists opposed to NAFTA." Von Bertab describes the NAALC as a "political sideshow"(Von Bertrab 1997, 91) and one that was necessary to ensure the ratification of the main text of NAFTA.

The NAFTA labour-trade linkage experience clearly aligns with the expectations of Hypothesis 1. The NAALC was signed in response to domestic advocacy efforts and was an attempt to solve a political rather than a regulatory problem. As advocacy around the US' HR-PTAs has not disappeared, HR-PTAs have not been a one time policy for the US. Speaking on the subject, a DOL official acknowledges that the labour movement has been at the forefront of the US' trade-labour link-

[36]Interview with John McKennirey, January 2016.

age.[37] The AFL-CIO for example, has campaigned for over 25 years on the subject, joined by other labour organizations and HROs. In recent years, human rights advocates based in the US have been highly engaged in prominent debates around the TPP about the human and labour rights impacts of the agreement.[38] Yet, it is telling that despite the interest of labor-oriented civil society in the US' HR-PTAs, while the US has fifteen "Industry Trade Advisory Committees" (ITACs), and six "Agricultural Technical Advisory Committees for Trade" (ATACs), there is only one committee dedicated to labor, the "Labor Advisory Committee" (LAC).

Overall, this evidence reveals strong support for the predictions associated with Hypothesis S1. The US' HR-PTAs have been part of a policy responding to public demands to address labour rights concerns through its trade agreements.

Hypothesis S2

Hypothesis S2, as with Hypotheses P2 and C2, relates to the outcomes associated with the US' HR-PTAs, suggesting that if the agreements are symbolic in nature, the US is unlikely to have the political will use them except where necessary to serve their conciliatory purpose. The historical evidence supports this hypothesis.

Beginning with the NAFTA case, during the first few years of the NAALC, the Clinton Administration was still in power and the former Vice President of the AFL-CIO was the Assistant Secretary. This meant that during that time, "the Americans took a very proactive, aggressive approach towards using this side deal."[39] While none of the NAALC's early cases led to the endgame of fines or sanctions, they showed that the agreement was being used at a time where attention remained fixed on its outcomes. The NAALC process however has never led to fines or sanctions. This outcome was not unexpected according to Cameron and Tomlin (2002,

[37]Interview with DOL Official No. 2, March 2017

[38]See: Amnesty (2012) and HRW (2016).

[39]Interview with John McKennirey, January 2016.

200) who note that at the time of negotiations, the Mexican team was "satisfied that although the [NAALC] deal permitted trade sanctions, the process was so convoluted that [it was] unlikely to ever matter." McKennirey reinforces that "it would probably take generations to get to the fine."[40]

In order for the US' HR-PTAs to be enforced, political will is key. And political will to enforce the agreements without strong demand to do so has been lacking. The NAALC for example has been derided by the LAC as ineffective "given the *lack of political will* to see it work." (LAC 2006, 4, Emphasis added). The only case that has gone to arbitration under a US HR-PTA was based on a visible submission under the CAFTA-DR filed by the AFL-CIO and six Guatemalan trade unions in 2008. Arbitration only began six years after the initial complaint was filed, alleging Guatemala failed to live up to its labour rights obligations under the CAFTA-DR. In 2009, the US administration declined to convene formal ministerial consultations after the NAO issued its report. Instead, it gave the Guatemalan government a six month time frame in which to address the issues raised. The Guatemalan government did not comply, yet was given multiple extensions, suggesting that the US administration did not have the appetite to pursue the issue further. It was only in 2010 that the USTR announced it would pursue labour consultations, which too would fail to deliver changes. The US administration agreed to an additional extension of time during which it negotiated a "labour enforcement plan." Only when the plan proved unsuccessful, did the US finally pursue arbitration in 2014. After significant delays, the final report was published in 2017, nine years after the case was initially submitted.

The US' reluctance to use its HR-PTA for their ostensible purpose, except as a very last resort, conforms to the predictions of the symbolic regulation explanation as outlined in Hypothesis S2. This combined with the support found for Hypothesis

[40]Interview with John McKennirey, January 2016.

S1 suggests that the US' HR-PTAs primarily fulfil a conciliatory role. Importantly, this finding does not mean that none of the actors involved in HR-PTA creation desire or have desired the agreements for altruistic or protectionist-oriented reasons. Instead it highlights that in general, for those in power, political reasons have been the primary driver behind these agreements. Î At this stage it is important to ask, "have the US' HR-PTAs appeased regulatory advocates that have campaigned for them"? While these groups showed initial enthusiasm to use the public submission process under the NAALC, as cases have dragged on and not led to formal enforcement actions, many have become disenchanted with how the agreements have been used in practice. Few remain fooled by the lofty promises that the US publicly associates with its HR-PTAs.[41] Human Rights Watch, for example, noted in 2008 that it feared the US would "continue a strategy that purports to protect such workers' rights but fails to do so in practice" (HRW 2008a, 3). Cathy Feingold of the AFL-CIO emphasizes that often, however, HR-PTAs are one of the only tools that civil society can use to challenge governments on their poor labour practices.[42] This suggests that for some US organizations, HR-PTAs are viewed as better than nothing.

Finally, as organized labour has been a primary proponent of US HR-PTAs, it is important to briefly discuss the motivations behind their demands. As in the EU, US HR-PTAs have not been used to their full effect, suggesting that lobbying for HR-PTAs to channel benefits to their members is unlikely to be a successful strategy for US labour unions. This makes it less likely that labour unions advocate for HR-PTAs for protectionist reasons. In addition, it is noteworthy that US labour unions have pressed the US to include labour rights commitments in all of its HR-PTAs, not only those with partners with competitive export profiles. While not

[41] See for example: HRW (2001) and Waters (2017).
[42] Interview with Cathy Feingold, March 2017

definitive evidence, these factors suggest that labour unions advocate for HR-PTAs as a means of promoting the rights of all workers.

5.6 Conclusions

This chapter has provided a detailed analysis of the US' HR-PTAs. A summary of its findings is presented in Table 5.2. The analysis found partial support for the public interest explanation of the US' HR-PTAs. While subsequent US Administrations have signed HR-PTAs with trade partners that have exhibited repressive practices, they have done so largely at the insistence of Congress and under strong pressure from civil society. The US has also displayed reluctance to strengthen its HR-PTAs under negotiation and to enforce its existing HR-PTAs. In no cases have the hard enforcement measures contained within US HR-PTAs been invoked. This outcome does not align with the expectations of the public interest theory of regulation as it makes it less certain that the agreements will have an impact on labour rights—their ostensible purpose.

In contrast, the private interest explanation of the US' HR-PTAs is not well supported by this chapter's analysis. I found little evidence that private interest groups within the US have been the primary advocates of HR-PTAs. Furthermore, the US has not actively used its HR-PTAs to protect its domestic producers and other export industries. All enforcement activities that have occurred under US HR-PTAs have been initiated at the behest of civil society rather than the US government.

The US' HR-PTA experience most closely aligns with the predictions of the symbolic theory of regulation. US HR-PTAs began and continue to respond to domestic advocacy on the issue of labour rights. As the symbolic theory of regulation expects, the US has largely focused its attention on signing rather than enforcing its HR-PTAs. In only one case have public submissions under US HR-PTAs led to

Table 5.2: US: Summary of Findings

Theory	**Motivation to Regulate**	**Observable Implications**
Public Interest	Benevolence towards repressive states. Political will to address it.	P1: HR-PTAs concluded when US partner states have poor human rights records. ✓ P2: HR-PTAs (attempted to be) enforced/used to combat repression.
Private Interest (capture)	Protectionist sentiments/desire to "level-the-playing-field" inherited from private interest groups.	C1: HR-PTAs concluded when US faces strong pressure from private interest groups with protectionist demands. C2: HR-PTAs (attempted to be) enforced/used to target competitors and to accomplish levelled playing field.
Symbolic	Appeasement of HROs and other domestic audiences.	S1: HR-PTAs concluded when US faces strong pressure from public interest-oriented advocates. ✓ S2: HR-PTAs enforced/used when not doing so impedes their appeasing purpose. ✓

arbitration, and then only after a lengthy and drawn out process.

While the US' HR-PTAs may not directly be facilitating a "race to the top" as advertised, the agreements have provided necessary policy space to address labour rights through other channels. For example, as of 2014, the US had spent $275 million USD in labour-related technical assistance to HR-PTA partner states—though some of this amount was not related to the trade agreements (GAO 2014, 15). The US has also used its HR-PTAs to facilitate dialogue on labour rights issues. A DOL official explains that informal consultations and everyday interactions are the core way engagement occurs under US HR-PTAs, and the area that sees the greatest progress.[43] Through informal interactions such as sending visitors to partner states, the official suggests that US HR-PTAs have facilitated a transfer of knowledge. For another DOL official, the greatest success of the US' HR-PTAs

[43] Interview with DOL Official No. 1, March 2017.

is that people are talking about it.[44] According to Cathy Feingold, Director of the AFL-CIO's International Department, HR-PTAs "shine a light" on important issues. This suggests that the US' HR-PTAs have still served a valuable role.

[44]Interview with DOL Official No. 2, March 2017.

6 | ‘Trade is not a hockey game’: Canada’s HR-PTAs[1]

Canadian Prime Minister, Justin Trudeau made this quintessentially Canadian comment during NAFTA (re)-negotiations in early 2018 (Trudeau 2018). For Trudeau, unlike hockey, trade is not a zero sum game, with winners necessarily generating losers. In his view, Canada, the US, and Mexico all stand to gain from a revamp of NAFTA’s progressive elements, especially its labour rights provisions. As one newspaper headline advertises, Canada today is pushing for the inclusion of “strong, progressive labour standards in NAFTA” (Bryden and Smith 2017). While this statement makes it clear that Canada is the demandeur behind this updated HR-PTA, Canada however, has not always been a proponent of the trade-human and labour rights linkage.

During negotiations for the original NAFTA agreement in the early 1990s, it was at the request of the US, not Canada, that labour rights regulation became a central negotiating concern. Canada and Mexico agreed to sign the North American Agreement on Labor Cooperation NAALC only with reluctance, stipulating two main conditions for their involvement: 1) that there would be no changes to the main NAFTA text, and 2) and no changes to the agreement’s implementation date.[2] In addition, Canada did not desire for the side agreement to have teeth. According

[1]Trudeau (2018).
[2]Interview with Canadian Official No. 1, January 2016.

to Canada's lead NAALC negotiator, the Canadian Government "staked its claim to no teeth."[3] Accordingly, Canada argued vehemently against the inclusion of trade sanctions in the NAALC—and won. In the end, labour-related trade sanctions would only apply to the US and Mexico.[4] Canada in 1993 had not yet become an HR-PTA advocate and Canada's next PTA, signed with Israel in 1996, did not include labour rights provisions.

Yet, according to one senior trade negotiator, over time "Canada became a convert to the whole idea"[5] and today is one of the main demandeurs of human and labour rights provisions in its PTAs. What led Canada from being pressured to sign NAFTA's labour side agreement in 1993 to becoming a proponent of HR-PTAs in its own right? Why does Canada commit to HR-PTAs?

Using the theoretical framework developed in Chapter 2, this Chapter explores three explanations to this question derived from each of the theories of regulation. In doing so, this chapter helps to us to evaluate if and how the theoretical logics developed in this research project apply to the Canadian context. Finally, the Canadian case helps us to better understand how the motivations behind state commitment to HR-PTAs change and develop over time. As with the previous case study chapters, the historical background provided on Canadian trade policy is included to provide necessary context to the analysis that follows.[6]

6.1 Three Approaches to Canada's HR-PTAs

Canada's HR-PTAs will be assessed according to the framework developed in Chapter 2. The key motivators and implications are summarized in Table 6.1.

Like in the previous case study chapters, the three theories of regulation provide

[3]Interview with John McKennirey, January 2016.
[4]In Canada, a complaining party must seek enforcement in the relevant Canadian court.
[5]Interview with Canadian Official No.2, January 2016.
[6]For more detailed discussions of Canadian trade policy, see: Hart (2002) and Kukucha (2003).

Table 6.1: Why Does Canada Commit to HR-PTAs?

Theory	**Motivation to Regulate**	**Observable Implications**
Public Interest	Benevolence towards repressive states. Political will to address it.	P1: HR-PTAs concluded when Canada's partner states have poor human rights records. P2: HR-PTAs (attempted to be) enforced/used to combat repression.
Private Interest (capture)	Protectionist sentiments/desire to "level-the-playing-field" inherited from private interest groups.	C1: HR-PTAs concluded when Canada faces strong pressure from private interest groups with protectionist demands. C2: HR-PTAs (attempted to be) enforced/used to target competitors and to accomplish levelled playing field.
Symbolic	Appeasement of HROs and other domestic audiences.	S1: HR-PTAs concluded when Canada faces strong pressure from public interest-oriented advocates. S2: HR-PTAs enforced/used when not doing so impedes their appeasing purpose.

distinct explanations as to why Canada commits to HR-PTAs. The public interest theory views HR-PTAs as the product of altruistic regulatory legislators desiring to help improve the human rights practices of their partner states. Thus, if Canada signs its HR-PTAs for reasons that align with the public interest theory of regulation, we can expect it to be more likely to commit to the agreements the weaker the human rights practices of its partner state (Hypothesis P1). To evaluate this input-oriented hypothesis, we must assess Canada's HR-PTA record. Are Canada's HR-PTAs signed with repressive states? We can also analyse Canada's HR-PTAs by looking at their outcomes, i.e. how they are used in practice. According to the public interest theory of regulation, we should expect that when possible: Canada will its HR-PTAs to combat repression (Hypothesis P2). Importantly, Canada's success in using its HR-PTAs to achieve human and/or labour rights improvements is not our chief concern with Hypothesis P2. Rather, Hypothesis P2 assesses whether Canada has exhibited political will to use (or attempt to use) its HR-PTAs to achieve these outcomes.

The second theoretical explanation is provided by the private interest theory. The private interest theory views HR-PTAs as protectionist agreements created by and for private interest groups, such as businesses and industry organizations. An observable implication is that if Canada signs its HR-PTAs for private interest reasons, we should expect that strong demands from these groups are associated with Canada signing its HR-PTAs (Hypothesis C1). As Hypothesis C2 suggests, if Canada commits to HR-PTAs as a form of capture regulation, we can also expect that Canada will use its HR-PTAs to accomplish a levelled playing field. Hypothesis C2 is an outcome-oriented hypothesis which assesses whether Canada has exhibited the political will to accomplish the goals set out in its HR-PTAs.

Finally, as we know, the symbolic theory explanation argues that HR-PTAs are created by popularity-seeking regulatory legislators desiring to appease regulatory advocates. Thus, we should expect Canada to sign its HR-PTAs when it receives strong public interest-oriented demands to do so, that it is unable to ignore. It is the existence and advertising of symbolic regulation that act to appease public interest groups. This means that when we look at the outcomes associated with Canada's HR-PTAs, we should expect that the agreements will only be enforced when not doing so impedes their appeasing purpose.

6.2 Trade Policy in Canada

On the 7th of April 2017, Canada signed a landmark free trade agreement. Yet, despite the agreement being officially touted as a step towards "freeing the beer," amongst trade partners (Government of Canada 2017a), few outside the country were aware of it. This is perhaps because the trade partners in question were the provincial and territorial governments *of Canada*. In contrast to Canada's demonstrated commitment to international free trade through its growing network of PTAs, due to the historic division of powers within the country, free trade up until

2017 was only a myth at the inter-provincial level. The Canadian Free Trade Agreement (CFTA) marked an attempt to reduce internal barriers to trade, investment, and worker mobility—although notably has yet to enable the free trade of alcoholic beverages across provincial borders.[7] The very existence of the CFTA attests to the extreme decentralization of power in Canada, which has important implications for how Canada's PTAs and HR-PTAs are negotiated, ratified, and work in practice.

Canadian trade agreements cover areas that fall under federal and provincial jurisdiction. The federal executive has the sole responsibility to negotiate PTAs and HR-PTAs, along with other all other international treaties, even when these treaties cover areas of provincial competence. More specifically, PTA negotiation falls under the portfolio of the Minister of Foreign Affairs with negotiators generally supplied by Global Affairs Canada.[8] The Canadian provinces, while lacking a formal role in PTA negotiations, are often informally consulted and are occasionally invited to negotiations. However, when aspects of the agreements fall under provincial jurisdiction, the Canadian federal government cannot compel the provinces to implement those features, despite the federal government being legally bound to uphold all obligations contained within any PTA or HR-PTA Canada signs.[9]

Canadian treaties must be ratified by the Canadian Parliament and when their content overlaps with provincial jurisdiction, must also be implemented into provin-

[7]The Canadian Free Trade Agreement (CFTA) is not the only intra-Canadian trade agreement. The Agreement on Internal Trade (signed 1995, expired 2017), the Trade, Investment and Labour Mobility Agreement (signed 2006), and the New West Partnership Trade Agreement (signed 2010) also regulate internal trade amongst some provinces.

[8]When Canada signs a new labour HR-PTA, negotiation of the labour chapter or side agreement includes members of the Labour Program in Human Resources and Development Canada, rather than negotiators exclusively drawn from Global Affairs Canada, which oversees trade negotiations as a whole.

[9]The division of federal-provincial competence in international treaties can be expensive for the Canadian federal government. In 2015, Canada was successfully sued under Chapter 11 of the NAFTA for denying permission to a Delaware-based company to open a quarry in the province of Nova Scotia. Canada was fined $500 million (CAD). However, Nova Scotia has argued that it is not liable to pay the fine as there is no agreement with the federal government that obliges it to pay damages under the trade agreement.

cial legislation to have full effect.[10] This is comparable to the case of the EU, where the EU Commission negotiates trade agreements on behalf of member states even in areas that fall under member state jurisdiction, although it cannot compel member states to ratify the final agreements in order to give them full effect.

Labour rights regulation is largely a provincial responsibility in Canada. Across the country, 14 distinct sets of labour law have been enacted.[11] The result is that when Canada signs an HR-PTA, any labour rights regulation contained within the agreement is only fully enforceable in the provinces that sign it or incorporate it into their own law and in the areas where the federal government has jurisdiction. In the absence of provincial buy-in, Canada's labour HR-PTAs only cover the approximately fourteen percent of the Canadian population employed by the federal government (Statistics Canada 2018; Government of Canada 2017c).[12]

In practice, Canada's Director General of International and Intergovernmental Labour Affairs has described getting the provinces on board with Canada's HR-PTAs as "difficult" (Government of Canada 2006). NAFTA's labour side agreement for example was only signed by Alberta (signed 1995), Manitoba (signed 1997), Quebec (signed 1996), and Prince Edward Island (signed 1998). Ontario, the manufacturing heartland of Canada, did not sign the agreement. Subsequent labour chapters and labour side agreements have fared worse. While Annex 4 of the Canada-Costa Rica Agreement on Labour Cooperation (signed 2001), a side agreement to its FTA with Costa Rica, declares that "Canada shall use its best efforts to make this Agreement applicable to as many of its provinces as possible" (Govern-

[10]It is standard practice for Canada to include a "federal clause" in its international treaties, to inform partners that the federal government may experience difficulty enforcing parts of the agreement that fall under provincial jurisdiction and to attempt limit its liability in these areas (Dupras 1993).

[11]The Canadian federal government oversees labour rights with respect to: federal employees, crown corporations, broadcasting, and the three Territories (Yukon, the North West territories, and Nunavut).

[12]This estimate is based on 2017 data.

ment of Canada 2001), to date, available information suggests that the agreement has only been signed by Quebec (signed 2004).

Human rights regulation is a joint responsibility between the Canadian federal and provincial governments. Federal government services, as well as chartered banks, fall under federal jurisdiction. Employers, service providers, and a few other regulated businesses and agencies, such as universities and hospitals, fall under provincial jurisdiction. It is likely that any enforcement activities related to human rights provisions under Canada's HR-PTAs would need to be individually assessed to ascertain whether or not they fell under provincial rather than federal jurisdiction. As an exception, the Canadian provinces are fully bound by Canada's PTA with the EU, the CETA, as the EU conditioned its support for the agreement on the provinces all making necessary amendments to their statutes, regulations, and policies to bring them into line (Government of Canada 2017b, 2).[13]

The above discussion demonstrates that for Canada, HR-PTAs are not straightforward to negotiate, implement, or enforce. Despite these challenges, by 2009, Canada had signed six HR-PTAs that included labour rights or human rights provisions, explored in the following section.

6.3 Canada's HR-PTA Network

For a young country, Canada has a long history as a member of free trade arrangements. From 1897, Canada granted special preferences to British and Empire goods.[14] Canada later became part of an imperial preference scheme arranged at the Imperial Economic Conference of 1932. By the end of the conference, Newfoundland and India were the only parts of the British Empire that Canada did not have

[13]The European Union insisted on the inclusion of the provinces in the CETA as a requirement for launching negotiations. (Paquin 2017, 10).

[14]Germany, Belgium, France, and Spain were covered by this scheme until 1898 through British preference schemes.

bilateral agreements with (Taylor 1948). In addition Canada signed a number of early trade agreements with its southern neighbour. In 1854, Canada and the US signed a reciprocity treaty with the aim of mutually reducing tariffs on imported goods.[15] The Canada-US Trade Agreement of 1935 was a narrower attempt to reduce barriers to trade between Canada and the US than its predecessor, though it was extended in 1938. As these arrangements testify, Canada's trade policy has relied on PTAs of various forms for over a century.

Despite these early activities, Canada's history of linking trade with human rights only goes back to the NAFTA agreement, signed 1993.[16] Yet, post NAFTA, Canada did not include labour or human rights provisions in its 1996 trade agreement with Israel. Canada's next HR-PTA was instead with Chile in 1997, signed under the expectation that Chile would soon accede to NAFTA and its labour side agreement, the NAALC. While Chile would never join NAFTA,[17] Canada persisted in signing labour HR-PTAs with its subsequent trade partners and eventually in incorporating more general human rights provisions into its trade agreements.

Canada's HR-PTA ego network is illustrated in Figure 6.1. Of the PTAs that Canada had in force in 1989, the first was signed with Australia in 1960, the second with New Zealand in 1981, the third with the US in 1988, and the fourth with Israel in 1996. The bilateral HR-PTAs shown in Figure 6.1 are more recent and all were signed from 1997 onwards.[18]

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[15] The US subsequently withdrew from the treaty on 17 March 1866.

[16] Unlike the EU and US, Canada did not first make the human and labour rights-trade linkage through its unilateral GSP scheme (i.e. Canada's General Preferential Tariff (GPT) programme). Canada's GPT programme does not condition benefits on human or labour rights conditions in recipient states.

[17] US President Clinton did not have fast track authority after 1994, preventing the US from admitting Chile into NAFTA.

[18] Note that for visualization purposes, Figure 6.1 only depicts bilateral trade agreements. For this reason, NAFTA is not included.

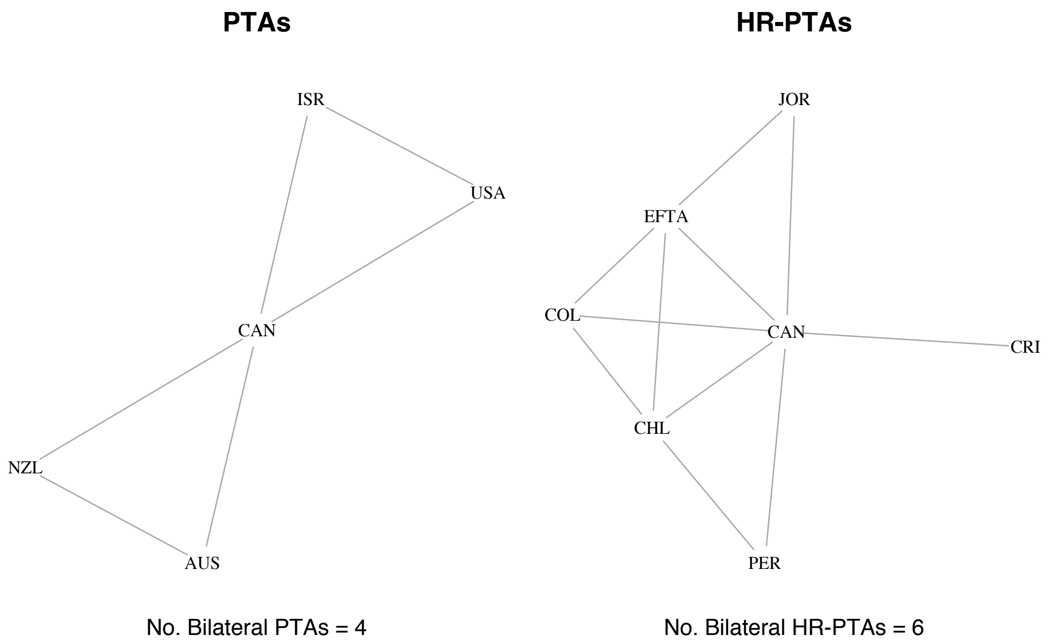

Figure 6.1: Canada's Commitment to Bilateral PTAs and HR-PTAs, 1989-2009

The labour provisions found in Canada's HR-PTAs follow a similar model to that used by the US, though like all HR-PTAs, have evolved over time. Canada's labour HR-PTAs take on two general forms: labour side agreements and labour rights chapters, although labour rights references are also common in the preambles of Canada's trade agreements. The commonly used side agreement format is a relic of NAFTA negotiations, where detailed labour rights provisions were placed on the agenda only after the agreement's main text had already been drafted. Regardless of the placement of the labour rights provisions in Canada's labour HR-PTAs, the content follows a lineage from one HR-PTA to the next.

Canada's earliest labour HR-PTAs, such as the Canada-Chile FTA (signed 1997) and the Canada Costa Rica FTA (signed 2001), used the labour side agreement format inherited from the NAFTA, and built on provisions found in the NAALC. Canada's later HR-PTAs, such as the Canada-Korea FTA (signed 2014) and the CETA (signed 2015) include labour rights chapters in the main text of the agreements themselves. The Canada-EFTA FTA (signed 2008) is an exception in that it only includes references to labour rights in its preamble.

Turning to their specific content, Canada's first labour HR-PTAs emphasized violations of *domestic labour laws*, and did not focus on recognized international labour standards. For example Article 3, paragraph one of the Canada-Chile Agreement on Labour Cooperation (CCALC) outlines that:

> Each Party shall promote compliance with and effectively enforce *its* labour law through appropriate government action. (Emphasis added).

More recent agreements, such as the Labour Cooperation Agreement between Canada and Peru (signed 2008), reference international labour standards. However, consistent with the US's recent HR-PTAs, enforcement is limited to cases where it can be demonstrated that violations of ILO standards occurred *in order to encourage trade or investment*—creating strong requirements for states to produce evidence to that effect. Article 2 of the Canada-Peru agreement reads:

> A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws in a manner that weakens or reduces adherence to the internationally recognized labour principles and rights referred to in Article 1 to encourage trade or investment.

Canada also signs broader human rights-oriented HR-PTAs. Most human rights provisions contained within Canadian HR-PTAs appear only in the preamble to the main text of the agreements. The 2008 Canada-EFTA FTA for example includes a reference to the Universal Declaration of Human Rights in its preamble. The Canada-Colombia FTA (CCOFTA) preamble makes reference to the "promotion and protection of human rights and fundamental freedoms as proclaimed in the Universal Declaration of Human Rights." The CETA and CCOFTA are also accompanied by human rights-related side agreements. Under the CCOFTA's human rights side agreement, member states are required to file an annual human rights report outlining the human rights impact of the trade agreement. These reporting requirements are the first of their kind in any trade agreement. The human rights provisions of CETA are found in the Strategic Partnership Agreement, a political side agreement linked to the CETA. In recent years, Canada, along with the EU, has also looked into including impact assessments in its human rights HR-PTAs;[19] however, it is not yet clear what form these will take.

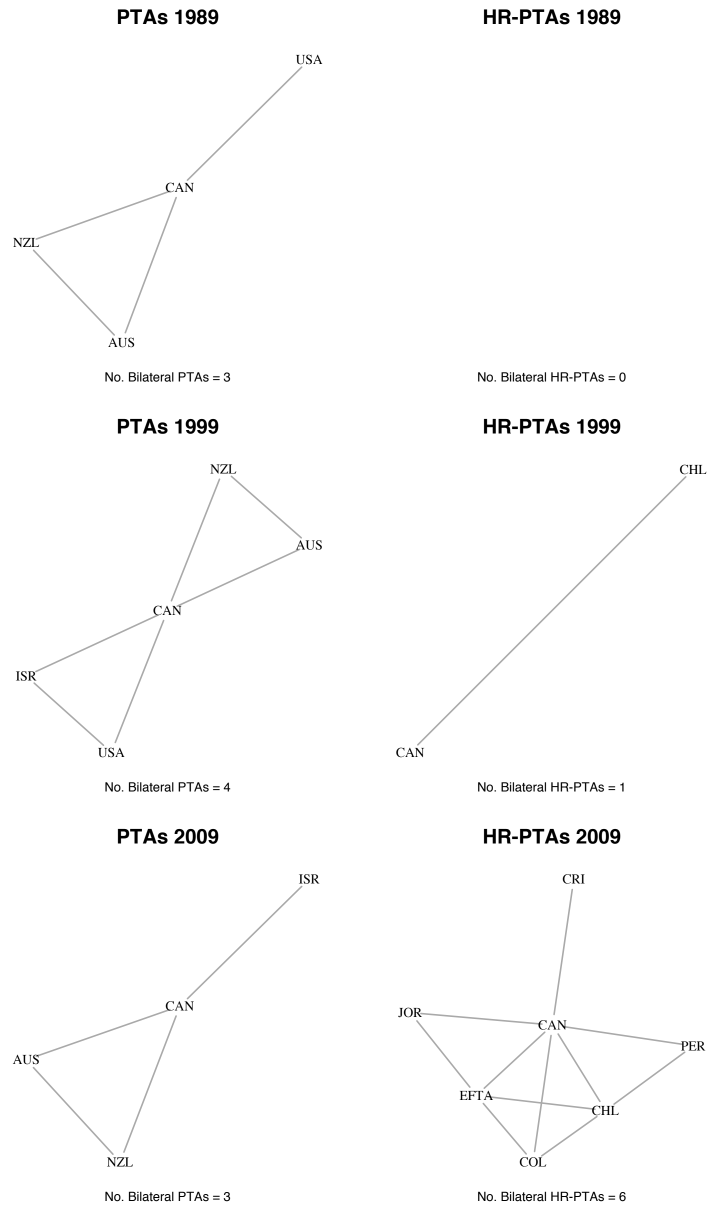

Figure 6.2: Canada's Commitment to Bilateral PTAs and HR-PTAs Over Time

[19]Interview with Canadian Official No. 2, January 2016.

Figure 6.2 presents an overview of Canada's PTA and HR-PTA networks over time. It highlights that Canada from being an HR-PTA recipient in 1993 when NAFTA was signed, has increasingly committed to HR-PTAs over traditional PTAs. By 2009, Canada had six HR-PTAs in force and each trade agreement it has signed since then has been an HR-PTAs. The next section provides an overview of how Canada uses its HR-PTAs.

6.4 Canada's HR-PTAs in Practice

Canada's HR-PTAs include similar enforcement mechanisms to their US counterparts. While Canada's labour HR-PTAs formally allow member states to raise a labour rights-related issue with another member state,[20] in general complaints under Canada's HR-PTAs are submitted as "public communications" compiled by a civil society organization or coalitions of organizations. When public communications are accepted by the relevant body, such as the NAALC national administrative office, they may lead to ministerial consultations, a review panel, or eventually fines—depending on the alleged violation. The civil society complainants themselves are not able to advance their submission to a review panel—this must be done by a state signatory. Proposed penalties for violations of labour rights obligations vary from agreement to agreement, with the NAALC imposing a fine limit of $20 million USD, the Canada-Chile Agreement on Labour Cooperation (CCALC) capping fines at $10 million USD, and the Canada-Colombia labour side agreement allowing fines of up to $15 million USD.

Different areas of domestic labour law are not given equal recourse to these forms of dispute settlement. Under the NAALC for example, cases involving child labour, minimum wage disputes, and health and safety violations receive the great-

[20]This route has not yet been used in practice.

est protection, with access to fines and trade sanctions in the case of failure to meet obligations. Technical labour standards, such as forced labour, workers' compensation, and minimum employment standards, only have access to consultation and to expert evaluation as a final recourse. Other labour standards, including the right to strike and collective bargaining protection are exempt from all but consultations at the ministerial level.

As with US HR-PTAs, the compilation and submission of public communications under Canada's labour HR-PTAs is resource-intensive. Complainants require expertise in the labour laws of partner countries, language skills, resources to cover flights, etc. These factors limit the number of submissions made. Importantly, if no complaints are submitted from civil society organizations, there is generally no requirement for Canada to investigate if the labour-related obligations contained within its HR-PTAs are being upheld.

Only seven public communications have been submitted to the Canadian national administrative offices under Canada's HR-PTAs, five of which have been accepted for review and two of which have been declined.[21] Two public communications have also been issued with allegations against Canada to the US NAALC National Administrative Office, one of which was declined for review and the other withdrawn by the submitter. Canadian civil society, each case together with NGOs based in trade partner states, has been involved in all Canadian public communication submissions. The organizations that have taken part in this process include: the United Steelworkers of America (Canadian National Office), the Canadian Association of Labor Lawyers (CALL), and the Canadian Labour Congress (CLC).

All Canadian HR-PTA submissions have occurred under the NAALC, with the exception of the most recent complaint (CAN2016-01), which was filed under the labour side agreement to the CCOFTA. All Canadian NAALC submissions

[21] CAN1999-1 and CAN2005-1 were both declined for review.

have been against Mexico, and the CCOFTA-related submission was filed against Colombia. Three reports have been issued in response to these allegations and two sets of ministerial consultations have occurred.[22] Submission CAN2016-01 under the CCOFTA side agreement led to the issuance of a report. In no cases have complaints led to fines or sanctions.

In addition to the labour-related public communications, since the entry into force of the *Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia*, each year a human rights report has been tabled outlining the human rights implications of the Canada-Colombia FTA. No further formal monitoring mechanisms are in place under Canadian HR-PTAs.

*

The first part of this chapter has shown that Canada, while reluctant to sign its first HR-PTA, has since committed to a series of these agreements. Canada's HR-PTAs have evolved over time, broadening their scope from domestic labour laws to covering international labour and human rights standards. Post-signature, all enforcement activities surrounding Canadian HR-PTAs have been the result of public submissions or mandatory reporting requirements, in the case of the CCOFTA human rights side agreement. Canada has not unilaterally pursued enforcement activities. In no case have enforcement activities related to Canada's HR-PTAs led to hard measures such as fines or sanctions. What can explain these findings? The next section applies the three theories of regulation to Canada's HR-PTAs.

[22] The first Ministerial Consultations were based on the CAN1998-1 NAALC submission against Mexico, accepted for review in 1998. The second Ministerial Consultations were based on the CAN2003-1 NAALC submission against Mexico, accepted for review in 2004.

6.5 Explanatory Analysis

In a 2016 presentation for the Standing Senate Committee on Foreign Affairs and International Trade, a Canadian official described three reasons why Canada signs HR-PTAs:

1. "To support good governance and rule of law internationally"

2. "To build on Canada's commitment to fundamental human rights, in particular the International Labour Organization (ILO)'s 1998 Declaration on Fundamental Principles and Rights at Work"

3. "To reinforce Canada's competitive position to ensure Canadian workers and employers are not disadvantaged in international trade and investment" (Employment and Social Development Canada 2016, 3).

While the first two statements convey a public interest-oriented goal, the final statement is better aligned with the private interest theory explanation of regulation. This indicates that a joint explanation of Canadian HR-PTAs may be most accurate. However, these quotations only highlight one official interpretation of Canada's HR-PTAs. When we look more closely at Canada's HR-PTAs how do these theories stack up? And does the symbolic theory explanation apply to Canada's HR-PTAs?

The Public Interest Theory:

Recall that according to the public interest theory of regulation, we should expect Canada to commit to its HR-PTAs as a means of addressing repressive practices, whether at home or abroad. In accordance with the public interest explanation, one senior Canadian official suggests, "there always has been a genuine desire to negotiate these [HR-PTAs] as a way of ... advancing internationally—and for the benefit of Canadians—better labour practices abroad."[23] Recent public statements support this view. In 2017, during debate in the House of Commons over the CETA Implementation Act, the Canadian Minister of International Trade assured that "CETA cements the paramount right of democratic governments to regulate in the interests of citizens ... on labour standards" (House of Commons Canada 2017). Analysing the motivations behind Canada's HR-PTAs however, necessarily involves looking beyond these visible statements and focusing on observable behaviour and outcomes.

Focusing on these features, this chapter finds mixed support for the public interest theory explanation of Canada's HR-PTAs. While Canada has signed HR-PTAs with its trade partners with the poorest human and labour rights practices, it had been slow to enforce the agreements despite documented human and labour rights issues. The latter outcome aligns poorly with the expectations of the public interest theory.

Hypothesis P1

Hypothesis P1 suggests that Canada will sign its HR-PTAs when its trade partners exhibit repressive practices. As Canada has signed HR-PTAs with all of its trade partners, including repressive states, from 1996, there is surface level support for this hypothesis. However, contrary to the expectations associated with the public interest theory explanation, which assumes regulatory legislators are altruistically motivated, Canada has exhibited reluctance to deepen its HR-PTAs to ensure that they are effective.

For example, according to the public interest theory, in 2007 Colombia was a prime candidate for a human rights intervention through the vehicle of the Canada-Colombia FTA. During negotiations, the Central American nation was one of the

[23]Interview with Canadian Official No. 2, January 2016.

worst human rights violators in Latin America. CIRI, which compiles human rights data, gave it a dismal score of zero out of two in terms of workers' rights and a one out of eight in terms of physical integrity rights (Cingranelli, Richards, and Clay 2014). Yet, in 2007, Canadian Prime Minister, Stephen Harper, stated at a news conference that he would never say to Columbia, with whom Canada was then negotiating a trade deal: "Fix all your social, political and human-rights problems and only then will we engage in trade relations with you" as "That's a ridiculous position" (A. Freeman 2007, A1). Canada therefore resisted NGO efforts to perform an *ex ante* human rights impact assessment (Canadian Council for International Co-operation 2009, 2). While this response does not convey that Canada's HR-PTA with Colombia was not intended as an *ex post* human rights tool, it suggests that Canada was reluctant to enhance its HR-PTA.

Canada soon thereafter resisted attempts to link trade with annual human and labour rights reporting requirements in the Canada-Jordan FTA (signed 2009) (House of Commons Canada 2012)—again at odds with the predictions of the public interest theory. According to Gerald Keddy, Parliamentary Secretary to the Minister of International Trade:

> The reality is that the International Labour Organization will monitor the situation in Jordan. The International Labour Organization is the venue, not the Canadian government, to go to if there is any suspected abuse of the labour agreement. It is not the place of the Government of Canada to be the police officer or the judge and the jury on everything that goes on in Jordan (House of Commons Canada 2012).

This statement indicates a reluctance within the Canadian government to sign HR-PTAs. In the end, the Canada-Jordan agreement did not include annual human or labour rights reports.

Canada, like the US, has also limited enforcement measures that can be taken under its most recent HR-PTAs to actions that affect trade. This stipulation stands in contrast to the expectations of the public interest theory explanation as it reduces the likelihood of these agreements being used.

If Canada signed its HR-PTAs out of public interest-oriented motivations, we can also logically expect it to not show reluctance to include human or labour rights provisions in its trade agreements with rights-respecting states as they would do no harm. Yet, despite having signed HR-PTAs for over two decades at the time, Canada strongly resisted the inclusion of the EU's essential elements clause, a provision containing human rights obligations, in the political side agreement to the CETA. During CETA negotiations, according to EU diplomats, Canada "balk[ed] at the inclusion of language in a final text that would speak to the importance of affirming human rights" (Blanchfield 2014). Canada feared the suspension of the trade agreement on the basis of the possession of weapons of mass destruction or due to a violation of human rights. The finalization of the side agreement was one of the last issues agreed upon; although, as the EU includes the clause in all of its HR-PTAs Canada had little choice in the matter.

In summary, Hypothesis H1 is only partially supported by the evidence. While Canada has exhibited some behaviour that aligns with the public interest explanation, its demonstrated reluctance to broaden and deepen its HR-PTAs is not well-aligned with the theory's predictions.

Hypothesis P2

Turning to the outcome side of Canada's HR-PTAs, the public interest theory of regulation suggests that Canada should be willing to use its HR-PTAs to achieve their ostensible purpose. While there are many reasons why a country may not succeed in this endeavour, it should be possible to assess whether Canada has demonstrated the political will to see through on its commitments. In practice, Canada has displayed strong reluctance to use its HR-PTAs to achieve their proclaimed goals. For example, Canada has not proposed any submissions under its labour HR-PTAs and Canada's HR-PTAs have yet to lead to arbitration or sanctions of any kind as a result of civil society submissions. According to one official, in terms of using the hard measures contained in the agreements, there is simply a "lack of political appetite to go to that level" more generally within the Canadian government.[24] The Canadian labour movement echoes this view, suggesting a lack of political will is the source of Canada's HR-PTAs not being used to their full extent (Standing Committee on International Trade 2009, 8). These views are at odds with the predictions of the public interest theory of regulation.

The annual human rights reports filed by Canada under the human rights side agreement to its HR-PTA with Colombia shed additional light on how Canada uses its HR-PTAs in practice. The first report received strong critique that contrary to the stipulations in the agreement "There are no baseline measurements, no studies and no evidence at all that the Conservative government did anything to assess the impact of the trade agreement on human rights in Colombia" (National Union of Public and General Employees 2012). Eventually a parliamentary hearing was summoned on the matter.

The 2013 annual human rights report on the Canada-Colombia FTA received no less criticism. News articles strongly condemned the report, with one article labelling it as an "exercise in evasion" (Clark 2013). The headline of another article on the report reads: "Government report on human rights abuses in Colombia a 'sham"' (The Canadian Press 2014). Amnesty International also deemed the report to be deeply concerning as it only made the public call for submission available on a website for nine days before the report deadline, leaving civil society organizations insufficient time to provide feedback (Amnesty International Canada 2013). Furthermore, Amnesty notes that it received no replies from the Canadian Government or Canadian Embassy in Colombia to requests for information about the National Indigenous Organization of Colombia and other HROs giving input into

[24]Interview with Canadian Official No. 2, January 2016.

the report (Amnesty International Canada 2013). These outcomes do not align with the expectations of the public interest theory.

It is important to note that Canada may not have exhibited motivation to use its HR-PTAs to their full extent due to resource constraints. One senior official explains that while Canada invests in negotiating its labour chapters and side agreements, which is resource intensive in terms of travel and translation costs, once they are created, "the administration ... of the agreements, has traditionally been less resource-intensive, simply because not a whole lot was done,"[25] rather than because nothing could be done.

Overall, these outcomes provide little support for Hypothesis P2, that Canada actively uses its HR-PTAs to achieve human or labour rights improvements. Taken together with the public interest theory findings presented above, it is clear that a joint public-private interest explanation is not sufficient to explain why Canada commits to HR-PTAs. Next, we turn to the private interest theory explanation.

The Private Interest Theory:

Are Canada's HR-PTAs instead the result of capture by private interest groups? Does Canada sign its HR-PTAs to protect domestic groups by levelling the playing field? This section applies the private interest theory explanation to Canada's HR-PTAs.

Hypothesis C1

According to Hypothesis C1, Canada signs its HR-PTAs as its regulatory legislators have been captured by private interest groups and desire to protect their interests. In the case of HR-PTAs, Hypothesis C1 aligns with the protectionist explanation of these agreements. Some evidence points in this direction. John McKennirey, the

[25]Interview with Canadian Official No. 2, January 2016.

Canadian negotiator of the NAFTA labour side agreement, describes the idea of a trade-labour linkage in terms that compatible with the capture theory of regulation. He suggests that: “the whole idea is protect the interests of one trading partner (presumably the one with the higher wages/standards) from being undercut by the other in a downward movement towards lower standards” (McKennirey 2009, 2). In addition, the Assistant Deputy Minister of the Labour Program, the government office responsible for Canada’s HR-PTAs has suggested: “the Canadian government believes that it is not fair to have Canadian employers and workers competing internationally with countries that don’t respect fundamental principles of child labour, abolishing forced labour and so on. So it’s a question of fair competition” (Standing Senate Committee on Foreign Affairs and International Trade 2016a, 48). However, this fair competition rationale on its own does not assess the idea of capture regulation in its entirety, in which private interest groups regulate *through the government*, though on their own behalf. To do so we must look at Canadian private interest groups and their relationship to HR-PTAs.

In Canada, private sector interests have less influence over trade policy than they do in the US. The International Trade Advisory Committee and the Sector Advisory Groups on Trade do not have authority to evaluate and comment on Canada’s international trade agreements (Kukucha 2003, 75). Thus, it is difficult for Canadian private interest groups to engage in trade policymaking with the same ease they experience in other countries. In practice, most Canadian business groups have remained largely silent on the merits of Canada’s HR-PTAs.

A few Canadian private interest groups have expressed their support for the idea that economic development promotes human rights improvements. The Business Council of Canada for example, a non-partisan organization, which represents 150 member companies, has only rarely mentioned the human rights-trade linkage. In a 1996 speech, its President describes globalization as being positive for human rights but does not advocate for or against HR-PTAs specifically (Business Council on National Issues 1996, 2). The Business Council's position was consistent in a 2008 article, in which it suggested a positive link between free trade in Colombia and human and labour rights improvements (Business Council on National Issues 2008).

Other private interest groups have been opposed to Canada's HR-PTAs altogether. According to Matthew Wilson of Canadian Manufacturers and Exporters, Canada's largest trade and industry association, regulatory standards for labour should not be imposed on other countries (Standing Senate Committee on Foreign Affairs and International Trade 2016b, 64). In the ongoing NAFTA renegotiations, Canadian Manufacturers and Exporters have advocated for a unified regulatory approach to labour standards *outside* of NAFTA rather than within the agreement (Canadian Manufacturers and Exporters 2018). Overall, this discussion shows that while generally supportive of free trade and of strong human rights practices, private interest groups in Canada have not been the primary advocates of HR-PTAs.

We can also indirectly assess whether Canada signs its HR-PTAs in situations that are conducive to protectionist motivations. The case of the Canada Colombia FTA, is again an illustrative example. In 2008, when the CCOFTA was signed, Canada and Colombia exhibited strongly asymmetric human and labour rights practices, a situation conducive to protectionist sentiments. However, as Canada and Colombia have largely complementary rather than competitive economies,[26] it is unlikely that these differentials have affected production to a large extent. Moreover, in 2008, products from Colombia only made up 15 percent of Canada's trade portfolio, including imports and exports (Parliament of Canada 2013). These factors make it unlikely that Canada included labour and human rights provisions in

[26] At the time the CCOFTA was signed, Colombia largest exports to Canada were coffee, bananas, cut flowers, and sugar (Standing Committee on International Trade 2008, 16-17) and Canada's largest exports to Colombia were cars, paper, wheat, and pulses (Government of Canada 2010b). With the exception of sugar, these are all products that Canadian industry does not produce or does not produce in great quantities.

its agreement with Colombia for protectionist reasons.

Overall, these findings provide little support for Hypothesis C1. Private interest groups and protectionist desires do not appear to be the primary motivator behind Canada's HR-PTA commitments.

Hypothesis C2

According to Hypothesis C2, we also expect Canada to use its HR-PTAs in a way that is consistent with protecting domestic business and industry. Yet, as the discussion above relating to the public interest theory of regulation attests, Canada has shown reluctance to use its HR-PTAs in practice and never deployed the hard enforcement measures that they contain. This outcome does not benefit the business and industry groups ostensibly "protected" by the agreements. Taken together with the evidence provided relating to Hypothesis C1, my findings indicate that the private explanation of regulation is insufficient to explain why Canada commits to HR-PTAs.

The Symbolic Theory of Regulation:

The symbolic theory of regulation suggests that regulation is created to appease regulatory advocates, rather than for regulatory purposes. Applied to Canada's HR-PTAs, we should expect the agreements to be the result of domestic advocacy to account for human rights and labour rights concerns in trade rather than benevolent gestures or attempts to support domestic industry groups at the expense of the broader good. Canadian rhetoric often aligns with this condition. According to Trudeau, in Canada "progressive trade ... is a practical necessity, without which popular support for a growth agenda cannot be maintained." (Panetta 2017). Foreign Affairs Minister Chrystia Freeland echoes this sentiment in declaring that the inclusion of "progressive elements" in PTAs, such as labour rights regulation, are "important to maintaining popular support for free markets" (CBC News 2017).

The following sections evaluate how the symbolic regulation theory explanation of Canada's HR-PTAs performs in practice. Overall, the analysis reveals the strongest support for the symbolic regulation theory explanation.

Hypothesis S1

Hypothesis S1 suggests that we should expect Canada to sign HR-PTAs when it receives strong public interest demands to do so that it cannot ignore. Thus, to begin, it is relevant to establish the level of domestic HR-PTA advocacy efforts within Canada.

Domestic pressure within Canada to sign HR-PTAs was initially weak at the time NAFTA was signed.[27] HR-PTAs were not yet on their agenda. However, within a few years, Canadian NGOs began to apply some pressure on the Canadian government to address the labour rights implications of trade. In 2001 for example, during negotiations for the ill-fated Free Trade Agreement of the Americas, labour groups descended on Quebec City to protest the agreement, with many demanding that any FTA take into account labour rights concerns. In 2003, Canadian NGOs urged Canada to take into account workers' rights in any trade agreement with Central America, with specific recommendations (Canadian Council for International Co-operation 2003).

Advocacy around trade and human rights became especially fierce in the lead up to the Canada-Colombia trade agreement (CCOFTA) being signed. Canadian civil society organizations campaigned for months to have a human rights element affixed to the CCOFTA, lobbying opposition MPs, providing expert analysis of the

[27] During the initial negotiations for the NAFTA, of the three labour movements involved, the Canadian labour movement was, "the least enthusiastic about the prospects for the labour side agreement" according to Mark Rowlinson, labour lawyer from the Canadian Association of Labour Lawyers (Interview with Mark Rowlinson, March 2016).

agreement itself, providing testimony to the Canadian Parliament, and more including: “developing and distributing popular materials, [running] speaking tours of Colombians, media outreach, education, and mobilization” (Katz and Sreenivasan 2014). While each group had a slightly different focus, Kathy Price of Amnesty International Canada sums up the coalition’s sentiments in saying: “all of us were concerned about the potential of a free trade agreement to exacerbate or benefit from a very serious human rights crisis in Colombia.”[28] In addition to Amnesty International, these groups included: the Canadian Labour Congress (Canadian Labour Congress 2016), the United Steelworkers’ Union (United Steelworkers 2009), the Canadian Autoworkers Union (Canadian Autoworkers Union 2010), Human Rights Watch, Lawyers Without Borders, and the Canadian Council for International Cooperation (Standing Committee on International Trade 2008, 31) Overall, human and labour rights issues had become “a focal point for opposition from unions and human-rights groups” (Clark 2013).

How has Canada responded to this advocacy? During CCOFTA negotiations, the Canadian Parliament eventually ordered a report on human rights and the environment with respect to the CCOFTA from the Standing Committee on International Trade (Katz and Sreenivasan 2014). Opposition MPs in the then minority government decided they would only vote to ratify the trade agreement if Canada included the annual human rights reports. For this reason, the ruling administration was unable to ignore the human and labour rights concerns of public interest groups. This meant that the government led by the Conservative Party had to make a deal with Liberal opposition members to gain the parliamentary votes necessary to ratify the PTA. Amendments of the bill containing the implementing legislation spurred a record 30 hours of debate in the House of Commons (Katz and Sreenivasan 2014) but the bill was eventually passed. The media published several articles reflective

[28]Interview with Kathy Price, January 2016.

of the situation—one headline read: "PM backs trade talks amidst rights furor" (A. Freeman 2007). The human rights side agreement was "crucial and a catalyst in making the overall [CCOFTA] package happen" (Government of Canada 2010b).

The CCOFTA experience suggests that Canada's HR-PTAs respond to domestic pressures to deal with the human and labour rights implications of trade and the publicity that accompanies them. A Canadian official corroborates this view, suggesting "It's amazing what a newspaper article will do, ... in terms of firing up the machine."[29] The official continues to explain that HR-PTAs provide "a good storyline for the public" affirming that trade is "being done in a socially responsible way."[30] Yet, the official warns that those primarily in charge of trade negotiations also treat the labour aspects of Canada's trade agreements as a "complication" to their negotiation strategy,[31] one which may result in important trade-offs at the bargaining table. In line with this interpretation, another Canadian official refers to the NAALC specifically as a "political courtesy" (Kukucha 2008, 183)

While Canada did not initially experience strong public pressure from public interest groups to sign HR-PTAs, the discussion highlights that over time, the situation dramatically changed. Today, Canadian human rights groups, labour unions, and other civil society organizations are often engaged in campaigns to improve HR-PTAs. In line with the expectations of Hypothesis S1, under this pressure, Canada has continued to commit to HR-PTAs and where necessary, expand their remit.

Hypothesis S2

Hypothesis S2 focuses on the outcomes associated with Canada's HR-PTAs. It predicts that Canada will only use its HR-PTAs when politically expedient. In line with this expectation, McKennirey argues that, "Once the deals are signed, ...

[29]Interview with Canadian Official No. 2, January 2016.
[30]Interview with Canadian Official No. 2, January 2016.
[31]Interview with Canadian Official No. 2, January 2016.

they're generally, pretty much dead letters."[32] For Canada it has proven politically unappealing to unilaterally call out a trade partner on its human or labour rights practices without strong political pressure to do so. Consequently, while the NAALC for example has teeth, "they were teeth in the sense that they were an ultimate measure that was fair. Did anybody ever expect it to get to them—no."[33] And, as already discussed, the hard enforcement measures contained within Canada's HR-PTAs have yet to be deployed.

The produced human rights impact assessments accompanying the CCOFTA provide a relevant example. According to one activist "there are benchmarks for how you conduct a human rights impact assessment. This was a poor imitation."[34] In a parliamentary committee meeting, this view was echoed, with one commentator noting that the report: "doesn't contain one word of analysis on the impact of this agreement on human rights" (Standing Committee on International Trade 2012a)—a legal requirement under the treaty and the treaty's ostensible purpose. The annual human rights reports attached to the CCOFTA also appear to serve an appeasing not a regulatory purpose. Overall, this evidence provides strong support for Hypothesis S2.

In summary, unlike in the other demanding states, for Canada, HR-PTAs have often been viewed as selling features of trade agreements, although not from the beginning. Only in recent years has organized pressure on the Canadian government to conclude HR-PTAs grown in force. Kirsten Hillman, Acting Assistant Deputy Minister of Trade Agreements and Negotiations from Global Affairs Canada, sums it up well. According to her. Canada's trade agreements are not designed to raise or resolve human or labour rights issues as that's "not their primary function" (Standing Senate Committee on Foreign Affairs and International Trade 2016c, 93).

[32]Interview with John McKennirey, January 2016.
[33]Interview with John McKennirey, January 2016.
[34]Interview with Kathy Price, January 2016

Canada has not used its HR-PTAs in practice to meet these goals either. Labour provisions are included in trade agreements as labour is an important issue to Canadians (Standing Senate Committee on Foreign Affairs and International Trade 2016c, 94). For Canada they are a useful means to express its outward commitment to human and labour rights values. For these reasons, Canada's HR-PTA experience largely aligns with the symbolic explanation of regulation.

Are Canada's HR-PTAs appeasing the stakeholders they are directed towards? Many Canadian human and labour rights advocates embraced Canada's first HR-PTAs in the hope that they would lead to concrete human and labour rights improvements. They are no longer so optimistic. By 2008, a House of Commons Report on the Canada Colombia FTA noted that: "a number of witnesses had little faith that a free trade agreement, and its accompanying side agreements on labour ... would be effective in addressing human rights concerns" (Standing Committee on International Trade 2008, 35). The result has been that Canadian civil society organizations from HROs to labour unions are decreasingly motivated to pursue public submissions under Canada's HR-PTAs, though they have remained engaged in advocacy efforts around the negotiation of PTAs.[35]

According to Mark Rowlinson, a labour lawyer involved with several Canadian HR-PTA public submissions, Canada's labour HR-PTAs "have not provided real, enforceable rights for workers" (Standing Committee on International Trade 2012b, 4). Rowlinson characterizes the enforcement mechanism of Canada's HR-PTAs as "weak and ineffective" (Standing Committee on International Trade 2010, 6). A representative from Amnesty International Canada echoes these sentiments stating that Amnesty has learned from the experiences of other organizations that filing

[35]It is important to highlight that while Canadian labour unions could plausibly have pursued HR-PTAs for protectionist reasons, that they are aware their minimal use in practice, and yet continue to advocate for new HR-PTAs, suggests that they are likely to advocate for them for non-protectionist reasons.

submissions is a “waste of energy and resources.” Previous complaints have “led nowhere” giving “no redress for the violations that took place.”[36] She concludes that Canada’s HR-PTAs “have such gaping holes in them, that they don’t serve to protect the rights that they ostensibly were supposed to be guarantees for.”[37]

In order to retain support from Canadian civil society, in the future, Canada’s HR-PTAs will need to go further in their commitments and be used more actively. This may transform them into the public interest-oriented regulation that they appear to be.

6.6 Conclusions

Trade may not be a hockey game; however, like hockey, trade is a spectator sport and in trade, the views of spectators need to be accounted for. Accordingly, as 6.2 indicates, this Chapter primarily finds support for the symbolic regulation explanation of Canada’s HR-PTAs. While Canada has signed HR-PTAs with trade partners that have exhibited repressive practices, as the public interest theory explanation predicts, it has displayed a strong reluctance to do so, at odds with the public interest explanation. Canada also has not experienced strong demands from private interest groups to sign the agreements as the private interest theory of regulation expects. Looking at enforcement outcomes, Canada has not used the strong enforcement measures contained within its HR-PTAs, despite receiving public submissions that allege violations of the obligations the agreements outline. Together, the evidence indicates that Canada has primarily signed it’s HR-PTAs to appease domestic audiences. These findings are summarized in Table 6.2.

Though primarily symbolic in nature, Canada’s HR-PTAs can serve important substantive roles. Since 2006, for example, Canada has used its HR-PTAs as a

[36] Interview with Kathy Price, January 2017.
[37] Interview with Kathy Price, January 2016.

Table 6.2: Canada: Summary of Findings

Theory	**Motivation to Regulate**	**Observable Implications**
Public Interest	Benevolence towards repressive states. Political will to address it.	P1: HR-PTAs concluded when Canada's partner states have poor human rights records. ✓ P2: HR-PTAs (attempted to be) enforced/used to combat repression.
Private Interest (capture)	Protectionist sentiments/desire to "level-the-playing-field" inherited from private interest groups.	C1: HR-PTAs concluded when Canada faces strong pressure from private interest groups with protectionist demands. C2: HR-PTAs (attempted to be) enforced/used to target competitors and to accomplish levelled playing field.
Symbolic	Appeasement of HROs and other domestic audiences.	S1: HR-PTAs concluded when Canada faces strong pressure from public interest-oriented advocates. ✓ S2: HR-PTAs enforced/used when not doing so impedes their appeasing purpose. ✓

tool to fund capacity building projects to improve labour standards in partner countries.[38] This suggests that like in the EU case, Canada's HR-PTAs may serve purposes other than imposing hard labour or human rights standards on trade partners. In addition, Canada's HR-PTAs may facilitate softer forms of cooperation. In the words of Quebec's CETA negotiator, trade "creates an area where people can discuss things like the relationship with the environment, the degree of intervention of governments when it comes to environmental issues, human rights and respect of labour rights" (Standing Senate Committee on Foreign Affairs and International Trade 2016c, 35). He continues, in trade "You're not in a context where you will sanction or use the sanction capacity of a trade agreement because of a human rights violation; but you're in a context where the development of human rights as

[38]For example, according to an Access to Information Request, Canada disbursed over \$550,000 CAD to Colombia between 2009 to 2011 for "labour-related project activities in the areas of labour rights compliance and occupational safety and health" (Government of Canada 2011, 37).

an important issue in the international stage can thrive" (36). However, Canada's HR-PTAs will only achieve their outward goals when the cooperative activities they facilitate generate improvements in Canadian human and labour rights practices and in Canada's partner states.

7 Conclusion

The broadening of international trade agreements to incorporate “non-trade issues,” such as human and labour rights, is one of the most profound changes in global economic regulation in recent decades. PTAs are no longer solely venues for the regulation of tariff levels, import quotas, or other traditional trade matters. They have evolved into broader regulatory vehicles, often extending their reach into the territory of other international regimes. PTAs now oversee areas ranging from scientific cooperation, to immigration, information-sharing, gender equality, and corruption. Most states have signed these extended “trade–*and...*” agreements, making the broadening trade agenda an important subject of inquiry. Yet, PTAs were not initially designed to serve as the “catch–all” treaties they have become.

The rise of the trade–*and...* approach to PTAs contains and exemplifies the puzzles that have inspired this dissertation. Why have states committed to HR-PTAs when other international treaties already regulate human and labour rights practices? How do the intents of the states behind HR-PTAs inform our expectations about how HR-PTAs will be used? While previous research has explored the design and effects of HR-PTAs, this dissertation instead explains the determinants behind HR-PTAs.

This investigation was also guided by a more fundamental theoretical question: “What motivates states to regulate?" Over the past several decades, this question has fuelled a fruitful body of regulatory research. This research has produced two overarching theories: the public interest theory of regulation and the private interest theory of regulation, each applicable to domestic and international regulatory contexts. The public interest theory of regulation argues that states create regulation in order to correct market or social failures; they are motivated to regulate out of benevolence. The private interest theory counters that states regulate in the interest of private interest groups, believing that these groups invariably gain sway over regulatory legislators, capturing the regulatory apparatus. In practice I show that this dichotomy is unsatisfactory; it overlooks regulatory legislators' political need to *appear* accountable towards regulatory advocates and the broader public, in motivating states to regulate. While not the only motivation for regulation, as international political economists have established the centrality of domestic political rationales as a key determinant of PTA formation,[1] it is a necessary feature to assess in any study that aims to explain the broadening trade agenda.

Drawing inspiration from the symbolic politics literature, the first original contribution of this research project is the theoretical account of the conciliatory motivations behind regulation it has provided, i.e. the *symbolic theory of regulation*. The symbolic theory of regulation developed here explains a common mechanism through which regulation is created that is overlooked by the traditional theories of regulation. Unlike its counterparts, the theory of symbolic regulation views regulation as a primarily symbolic tool. Symbolic regulation is motivated by strong, often broad, regulatory demands in areas that lack institutional support rather than by regulatory legislators' desire to secure a particular regulatory outcome. How it works is simple: regulatory legislators provide regulation to affirm or to acknowledge adherence to the values or norms that regulatory advocates and domestic audiences support in order to appease them. While symbolic regulation is most akin to capture regulation—in that it is the product of interest group demands—symbolic regulation is the result of demands from interest groups that are not able or willing to

[1] For example, see: Mansfield and Milner (2012) and Allee and Elsig (2017).

"capture" the regulatory apparatus and thus that lack the same degree of oversight over the regulation provided. These groups are often public interest groups that advocate on behalf of broad domestic or global interests rather than in their own narrow self-interest, though could feasibly be other generally under-resourced groups in the traditional sense.

The public interest organizations and other under-resourced groups central to the symbolic regulation explanation use a variety of mutually reinforcing inside, i.e. direct face-to-face, and outside, i.e. indirect via other channels, strategies to lobby regulatory legislators. These include drafting press releases, hosting rallies and demonstrations, compiling research reports, and finding elected legislative champions amongst amenable members of elected government bodies to forward their causes. As the empirical case study chapters presented in this dissertation emphasized, finding elected legislative champions and general support from elected legislative institutions is a particularly successful strategy for these groups. Elected legislators, even when not acting as regulatory legislators, often possess insider access to them and are by definition responsible to their electorate. In general the efforts of these groups are most likely to be successful when they are bolstered by public buy-in as this adds weight to their positions and potential political costs for not responding to them. However, public interest groups in particular have another asset. They are often possess a "diffuse moral power," underpinned by the nature of their work and by their generally broad bases of support. Using these strategies and their unique form of power, regulatory legislators may be unable or unwilling to ignore these groups, despite not desiring to or being unable to create the regulation that the groups demand. When this occurs, regulatory legislators are likely to attempt to appease advocates with symbolic forms regulation.

Each of the three theories of regulation provides a unique explanation for why the states behind HR-PTAs commit to these agreements. To summarize the main points, *the public interest theory of regulation* treats HR-PTAs as the result of benevolent legislators' desire to intervene in the human and labour rights practices of repressive partner states. This means that we should expect states to willingly commit to HR-PTAs when their trade partners have poor human rights records.

In contrast, *the private interest theory of regulation* suggests that HR-PTAs are the product of protectionist demands. These demands originate from powerful narrow interest groups that desire to secure their business or industry's competitiveness. The observable implication associated with the theory is that states should commit to HR-PTAs when private interest groups direct them to. This outcome is especially logical when trade partners exhibit asymmetric human rights practices, which may affect bottom lines.

The symbolic theory of regulation instead explains HR-PTAs as political gestures designed to appease regulatory advocates that are unable to capture the regulatory apparatus but that states are unable or unwilling to ignore. HR-PTAs are inward-looking treaties rather than outward-looking human or labour rights tools. States should therefore commit to HR-PTAs when they face strong pressure to from human rights organizations, regardless of the human rights practices of partner states.

Guided by the explanations provided by the three regulatory theories, the second original contribution of this work is its empirical investigation into the determinants behind HR-PTAs. To test a series of hypotheses generated from each explanation, I first turned to large-scale data. I helped to create and then employed an extensive new dataset that codes human and labour rights clauses in 415 PTAs from 1989 to 2009 (Milewicz 2014) and compiled new data covering the presence of human rights organizations across states. I then modelled the PTA and HR-PTA networks using longitudinal network analysis in the form of stochastic actor-oriented models (SAOMs). By using this novel method, I was able to properly account for the interdependence of observations that plagues PTA data and which, if left unaddressed. can lead to biased results. My statistical findings indicate that the overarching pattern of HR-PTA formation in the international system is consistent with the expectations of the symbolic theory of regulation. Specifically, the results show that a given state is more likely to sign an HR-PTA, the greater the number of human rights organizations it has, all else being equal. At this aggregate level, no support was found for the public or private interest theory explanations of HR-PTA formation when all explanations were accounted for in one model. However, the analysis also showed that in addition to HRO advocacy, states are more likely to sign HR-PTAs when they have already signed HR-PTAs. This suggests that path dependency and habit also play a role in determining state commitment to HR-PTAs. As domestic audiences are less likely to accept symbols when states inconsistently apply them, this finding is consistent with the symbolic theory of regulation explanation.

The second part of the analysis was dedicated to examining the HR-PTAs of three actors in more detail: the EU, US, and Canada. These actors were chosen as they have been key demandeurs of HR-PTAs over the past two and a half decades. Each case was based on data collected from speeches, official documents, the media, and interviews with stakeholders. Against the expectations of the two traditional theories of regulation, the three case studies provided additional support for the symbolic theory of regulation explanation of HR-PTAs. Each of the three states has faced strong demands from human rights organizations, labour unions, or the broader public—often channelled through representative institutions—to commit to HR-PTAs, which they have been unable to ignore. In contrast, the analyses found little evidence of HR-PTAs being signed in the absence of such demands or that similar demands have arisen from private interest groups.

In addition, as the symbolic theory of regulation predicts, the enforcement measures contained within the HR-PTAs of the EU, US, and Canada have never led to the impositions of fines or sanctions, or to the termination of a trade agreement. This outcome is at odds with the predictions of the public and private interest theories of regulation. Both theories expect HR-PTAs to be enforced in the absence of obstacles, in order to force partner states to improve their human and labour rights practices. These improvements may be motivated for public interest-oriented or protectionist reasons. Yet, without enforcement, human rights gains are uncertain. While there are many reasons regulation may not be used in practice, this evidence paired with the statistical and case study evidence suggests that HR-PTAs are a form of symbolic regulation.

In more detail, my findings suggest that in the EU, HR-PTAs have been primarily driven by broad public and public interest group demands for Brussels to visibly address the human rights implications of its trade agreements. These demands have often been channelled through the European Parliament and are directed towards the European Commission and member states. The EU uses its HR-PTAs to declare its commitment to upholding the human rights norm to internal audiences. The discussion traced the EU's first attempt to link trade benefits with human rights outcomes, which occurred in the 1970s. The linkage attempt was prompted by domestic demands to ensure that the EU's trading relationship and development aid would not aggravate human rights outcomes in Uganda. Later EU HR-PTAs have also faced similar public interest-oriented domestic advocacy efforts. In addition, the actions of EU regulatory advocates have prompted the evolution of the EU's HR-PTAs. In recent years, human rights organizations have played a key role in pressuring the EU to create human rights impact assessments prior to concluding its trade agreements.

The conciliatory nature of the EU's HR-PTAs has influenced how these agreements are used in practice. One Commission official summarizes it well: "When you see the origin of this clause, which was an internal policy, it's probably not so surprising that externally we are then reluctant to use [it]."[2] In no cases have the

[2]Interview with Commission Official 2

hard enforcement measures contained within the EU's HR-PTAs been used. This outcome is consistent with the predictions of the symbolic theory of regulation.

My analysis of the US' HR-PTAs suggests that the US' HR-PTA experience is consistent with the expectations of the symbolic theory of regulation. The US first linked trade with labour rights[3] in the lead-up to the NAFTA, which would create a free trade area between the US, Canada, and Mexico. As NAFTA negotiations wrapped up during a US election, the agreement became a major campaign issue. During that time, a key discussion topic amongst public interest groups, was how to use the agreement to improve labour rights protections and outcomes. The election candidates therefore came under strong political pressure to address the labour rights consequences of the pending agreement. Clinton made the creation of a labour side agreement a campaign promise. In 1993, President Clinton signed the North American Agreement on Labour Cooperation (NAALC) as a political gesture designed to appease labour rights advocates. Labour unions, human rights organizations, and other members of civil society have continued to demand HR-PTAs during each subsequent set of trade negotiations, making HR-PTAs a lasting political issue in the US. Despite this prominence, in line with the expectations of the symbolic theory of regulation, which views HR-PTAs as a political tool, not a regulatory tool, the US has proven reluctant to use its HR-PTAs to achieve their seeming purpose. In no cases have civil society submissions under US HR-PTAs led to fines, sanctions, or other hard measures.

The Canadian case is unique. Canada signed its first HR-PTA—the NAFTA—at the request of the US, not in response to the demands of advocates at home. However, in the years following NAFTA, the analysis outlined how Canadian public interest groups, including labour unions and human rights organizations, have at times exerted strong pressure on the government to sign HR-PTAs. This pressure

[3]The US has yet to make the human rights–trade linkage.

reached its climax during the negotiations of the Canada Colombia FTA in 2008 and as the analysis demonstrated, eventually led to the creation of an annual human rights reporting requirement alongside the FTA. Even when linkage demands are weak, Canada has treated its HR-PTAs as a means of making its trade agreements more attractive to its constituents. My findings indicate that even though Canada has not always felt pressured to sign HR-PTAs from domestic advocates, since NAFTA, it has been motivated to sign the agreements for largely political reasons. The outcomes associated with Canada's HR-PTAs are also consistent with the expectations of the symbolic theory of regulation. In no cases have the hard enforcement measures contained within Canadian HR-PTAs been used, despite Canada receiving numerous civil society submissions alleging violations of the agreements' human rights obligations.

Overall, the combined statistical and case study results of this analysis have shown that while public interest-oriented rationales, and occasionally, protectionist private interest motivations have been present in the states behind HR-PTAs, they are not the primary drivers behind HR-PTAs. HR-PTAs are largely signed for political reasons and function as a form of symbolic regulation.

This research project also has broader implications. First, speaking to the regulatory literature, my findings suggest that explanations focused on the political motivations behind regulation should not be dismissed. Instead, they should play an important role in furthering our understanding of what motivates states to regulate. This is especially relevant in international politics as in a globalized world, regulatory advocates have increasingly focused their demands on transnational issues. This makes understanding and explaining how states respond to this pressure an urgent task. Second, engaging with the IPE literature on PTA formation, my findings reinforce the relevance of domestic politics not only to the creation, but also to the content of trade agreements. International treaties clearly speak to domestic audiences. Third, in line with the growing body of theoretical and empirical

International Relations research on NGOs and trans-national civil society,[4] my findings demonstrate that public interest groups can and do stimulate regulation—even when they are not able to capture the regulatory apparatus in the traditional sense. This reinforces the claim that "the state is far from the only game in town, and may no longer be the most important game in town" (Snidal and Abbott 2009, 87). However, it cautions, that regulation as promised often differs greatly from regulation in practice. Finally, this research has significance to empirical research on treaty commitment and on international cooperation, from the formation of formal military alliances, to the creation of bilateral investment treaties. It highlights an emerging method for dealing with the types of interdependence common in the dyadic data often used in these studies. Statistical network analysis is an effective technique for understanding and modelling the interdependence that often creates challenges for researchers.

In the remainder of this chapter the discussion focuses on new questions and the limits of the investigation, a brief overview of HR-PTAs in other countries, the merits of symbolic regulation, and the future of HR-PTAs.

7.1 Limitations and New Questions

As with any research project, the knowledge produced and the answers provided here generate new questions for future research, while highlighting limitations of the approach taken. For example, understanding HR-PTAs as a form of symbolic regulation stimulates questions concerning the lifespan of the agreements. How is symbolic regulation treated over time? Applied to HR-PTAs, how will agreements already signed be used in the future and how will existing HR-PTAs inform the next generation of agreements? My research on this project has indicated that HR-PTAs

[4]For example, see: Keck and Sikkink (1999), Murdie and Davis (2012), Tallberg et al. (2013), and Keck and Sikkink (2014).

agreements have become more detailed over time and the obligations they contain more precise and better anchored to international standards. The specific drivers behind this deepening of HR-PTAs warrant further attention.

In addition, as this research project has emphasized, the hard enforcement measures contained within HR-PTAs have yet to be used. This raises questions about what mechanisms can best explain the existing statistical evidence of the improvements in human rights practices hard HR-PTAs are associated with, e.g. Hafner-Burton (2005). My analysis suggested other practical channels of cooperation and influence under HR-PTAs that could provide useful starting points for an investigation in this area. However, a detailed study of the topic is required.

While HR-PTAs are increasingly commonplace, this research project also raises questions about why human rights and labour rights provisions are rarely included in other economic treaties. For instance, looking at bilateral investment treaties (BITs), Dumberry and Dumas-Aubin (2012, 359) note that "it is exceptional to find any reference at all to human rights in BITs." BITs generally do not regulate human or labour rights.[5] Yet, like PTAs, BITs are formal binding treaties that could lead to negative human or labour rights implications. An initial response to this question is that BITs generally lack the high degree of visibility of PTAs, which has helped them to avoid the image problem faced by their better known counterparts. Thus, BITs are less often the subject of domestic pressure to address human rights than PTAs. Yet, as the investor-state dispute settlement mechanisms commonly found in BITs have become a subject of great controversy in recent years, BITs may soon be as common in popular discourse as PTAs.

A limitation of the analysis presented here is its homogeneous treatment of

[5] One exception is the 2007 Norwegian Model BIT which reaffirms the parties' "commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including the principles set out in the United Nations Charter and the Universal Declaration of Human Rights." However, the Norwegian Model BIT was shelved in 2009.

public interest groups. The discussion largely treated these actors as having purely altruistic motivations. Popular perceptions aside, it is clear that HROs, NGOs, and other outwardly public interest-oriented actors also pursue self-interested goals (Cooley and Ron 2002; Sell and Prakash 2004; Prakash and Gugerty 2010).[6] For example, these groups face pressure to report successes to their members, have incentives to gain influence with officials and become trusted advisers, and may be engaged in competition over scarce resources with other similar groups. Though outside the scope of this research project, this insight raises questions concerning the gains public interest groups receive when regulatory legislators provide regulation in response to their demands.

In addition, part of the symbolic politics literature is devoted to the study of political communication and the specific rhetoric that is used by officials. In its focus on the creation of regulation, the symbolic theory of regulation presented in this study largely omits this important aspect of symbolic politics. However, that omission does not make the political communication strategies that accompany new regulation unworthy of investigation. As increasingly powerful text analysis tools are developed, a systematic study of political rhetoric in the regulatory context would be a fruitful area of future research.

Finally, by nature, theory generation projects aim to provide broad insights rather than to explain specific intricate details of every case. For that reason, this analysis has key empirical limitations. This dissertation has chiefly focused its attention on the main states behind HR-PTAs rather than on explaining the HR-PTAs of states found in the periphery of the HR-PTA network. As a result of this focus on the demandeurs behind HR-PTAs, the recipients of the agreements have

[6]Dual-role interest groups, such as labour unions, may also pursue self-interested goals in their public interest-oriented activities or have both public and private-interest motivations that inform their activities. For example, on US organized labour's strategic re-framing of workers' rights as human rights, a position that has enabled American labour unions to better fulfil their mandate to their members and their commitment to improving workers rights for all, see Compa (2008).

not received adequate treatment. In acknowledgement of these limitations, the next section discusses the HR-PTA experience of a broader sample of countries. Though not the primary emphasis of this study, the section provides an important first step towards extending the analysis to incorporate further countries, most of which have been on the receiving end of HR-PTAs.

HR-PTAs Around the World

HR-PTAs are not only the remit of the EU, US, and Canada. From 1989 to 2009, 69 countries other than the EU, US, and Canada signed HR-PTAs—often at their trade partners' insistence. Most HR-PTA recipients only begrudgingly accept the agreements. Guatemala's former vice minister of the economy, Guillermo Rodriguez, articulated the general HR-PTA recipient position nicely during the lead-up to a potential hemispheric FTA between Central America and the US. Despite the labour rights provisions on the table, Rodriguez stated that Guatemala wanted "to talk about trade, investment and economic growth ... that's it" (Emling 1991, 3A).

For the trade partners of HR-PTA demandeurs, accepting an HR-PTA over a traditional PTA is often the difference between successfully concluding a trade agreement and walking away with nothing. Due to the political necessity of placating domestic human and labour rights advocates, many HR-PTA demandeurs are able to turn away from HR-PTA negotiations that are not successful, giving them added bargaining power. Thus, frequently—and especially when there is an asymmetry of power between trade partners—even reluctant trade partners "accept it at the end."[7]

Jordan provides a typical example. While Jordan generally signs (non HR-)PTAs with its trade partners,[8] it has committed to an HR-PTA with the EU

[7]Interview with Commission Official No. 2, April 2016.

[8]Jordan has signed bilateral (non HR-)PTAs with many trade partners such as: Lebanon (1992), the Palestinian National Authority (1995), Algeria (1997), Morocco (1998), Tunisia (1998), Egypt

(1997), on with the US (2000), and one with Canada (2009). This pattern of only concluding HR-PTAs with known HR-PTA demandeurs suggests that Jordan has been a recipient rather than a proponent of HR-PTAs. Indeed, according to Malkawi (2006, 312), Jordan agreed to the incorporation of labour rights provisions in the US-Jordan agreement "to meet the demands of the U.S. administration." Jordan was presented with a *fait accompli* that it could either accept or reject. Though not a demandeur of HR-PTAs, Jordan finds uses for them. In its 2008 Trade Policy Review at the WTO, Jordan noted that it "places great emphasis on environmental and labour aspects in relation to trade liberalization," citing its HR-PTAs with the US and Canada as examples (WTO 2008, 63).

Like Jordan, Mexico has also been an HR-PTA recipient. From its first HR-PTA negotiated in the early 1990s, the NAFTA, Mexico has only been a participant of the human rights–trade linkage by necessity. During NAFTA negotiations, the Labour Party of Mexico had been in power for over 70 years and Mexico had a robust set of labour laws—if unevenness in their application; yet, did not desire outside intervention in the area of labour rights. According to Canadian negotiator John McKennirey, Mexico "felt it [the NAALC] was intrusive to their domestic politics" with the result that "it was difficult for Mexico to agree on anything."[9] However, in the end Mexico agreed to sign the NAALC. A Mexican negotiator puts the Mexican position on the agreement concisely: "The [NAALC] system is not worth a damn. ... Lots of public discourse, nothing more. This is the result we wanted"(Cameron and Tomlin 2002, 200). Thus, while Jordan has made use of its HR-PTAs in creative ways, Mexico has, where possible, avoided entangling itself with NAALC commitments. According to Nolan Garcia (2011a, 105) "when cases were filed on Mexico at the U.S. NAO during the 2000s, the Mexicans sent

(1999), the United Arab Emirates (2000), Bahrain (2001), Syria (2001), Kuwait (2001), and Sudan (2003).

[9]Interview with John McKennirey, January 2016.

diplomatic cables to the NAO to contend that taking the case would infringe on Mexico's right to determine its own labor laws."

China has also accepted HR-PTAs in cases where its trade partners demand the agreements. The clauses have largely been of a softer nature and not paired with strong enforcement mechanisms. Article 96 of The Free Trade Agreement between Iceland and China (signed 2013) for example affirms that: "The Parties shall enhance their communication and co-operation on labour matters." While not providing clear labour rights obligations, the article highlights that the parties to the agreement view labour rights as a relevant matter to discuss in a PTA context.

The China–New Zealand FTA (signed 2008) goes further. The Agreement is accompanied by a binding labour Memorandum of Understanding. In Article 1, "The Parties reaffirm their obligations as members of the ILO, including their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up." However, enforcement measures are limited to consultations that may lead to a joint meeting of Ministers (Article 4). The labour rights provisions of the Switzerland–China FTA (signed 2013) follow a similar template to the China–New Zealand format and are included in a side agreement on labour and employment cooperation. For example, in Article 2 of the side agreement, "the Parties recall the obligations deriving from the membership of China and Switzerland to the ILO to effectively implement the ILO Conventions which they have ratified." Enforcement activities are described as culminating in a "joint meeting of the Parties, which may include Ministers, for consultation" (Article 4), rather than making non-compliance subject to fines or sanctions.

Exceptions exist; some countries have been unwilling to accept an HR-PTA even if it means going without any form of trade agreement. In 1997, Australia walked away from a framework agreement with the EU on the grounds of its human rights clause, worried the provision could be used against it (Fierro 2003, 300) and believing it should only be for developing countries (294). At the time, the

Australian Ambassador in Brussels vocally objected that in Australia's view:

> No other industrialised country, including the US, Japan, Canada or New Zealand, could accept the inclusion of operative human rights provisions of the type proposed by the [European] Community in a framework co-operation agreement. (Agence Europe 1997).

India too has long refused to sign an HR-PTA with the EU, being strictly opposed to the HR-PTAs (Khandekar 2011). These cases however are outliers. For the most part, partner states have agreed, if reluctantly, to HR-PTAs in order to secure an agreement.

Countries other than the EU, US, and Canada, which were in focus in this study, have been supportive of HR-PTAs. In 1990, *Argentina*, wishing to be accepted as a democracy for political reasons (Fierro 2003, 286), requested the inclusion of a human rights clause in its framework cooperation agreement with the EU (European Communities 1993). New Zealand signed its first legally binding labour HR-PTA in 2005 with Chile, Singapore, and Brunei Darussalam under the Trans-Pacific Strategic Economic Partnership Agreement in the form of a Labour Memorandum of Understanding. In line with the symbolic theory of regulation, New Zealand has advertised the agreement as entailing "a *political commitment* not to weaken or reduce labour laws or standards to gain an unfair trade advantage" (New Zealand Ministry of Foreign Affairs and Trade 2005, 10, emphasis added). The EFTA grouping of states,[10] while not the European leaders in HR-PTA development, have also signed numerous HR-PTAs. EFTA often includes references to the Universal Declaration of Human Rights and relevant ILO conventions in the preambles to its trade agreements and sometimes incorporates main text references to these areas. While EFTA's main text references have developed over time, they generally do not condition trade access on human or labour rights outcomes or

[10]As of 2018, the members of EFTA are: Switzerland, Norway, Liechtenstein and Iceland.

contain clear enforcement mechanisms.

As the HR-PTA network continues to grow, a focus on the strategies and motivations related to these states' HR-PTA commitments is increasingly important.

7.2 The Merits of Symbolic Regulation

While the term "symbolic" often has negative connotations in everyday usage, this research project shows that symbolic regulation serves an important conciliatory function. Using the case of HR-PTAs as an example, even in the absence of political will to enforce the agreements, they are not without purpose. HR-PTAs designate human rights and labour rights as appropriate elements of the trade regime, shine a light on previously hidden issues, create political space for joint transnational activities in these areas, and may form the basis of knowledge transfer.

In more detail, as a by-product of their creation, HR-PTAs set precedents that can be built on. In the HR-PTA context, as Jagdish Bhagwati puts it:

> the strategy followed by labour lobbies has been to get a toe in the door, then another and another. Enforcement of one's own labour laws was in the annexe in Nafta; then it got into the text in FTAs with Jordan and Morocco; then there were demands to raise standards.... (Bhagwati 2007)

As a result of these small steps, human and labour rights today have become accepted elements of trade agreements. Twenty-five years of signing HR-PTAs has made the practice of linking of trade with these issues unquestionable. One US official explains that for the US, "trade and labour are not de-linkable."[11] For many HR-PTA demandeurs, human and labour rights appear to be on the negotiating table for the foreseeable future.

HR-PTAs have also shone a light on practices or areas that were previously

[11] Interview with DOL Official No. 1, March 2017

hidden or absent from public discourse. HROs and labour unions have used the negotiation of HR-PTAs as an opportunity to highlight human and labour rights issues that otherwise did not attract public attention. As Cathy Feingold of the AFL-CIO suggests, through the publicity they garner, filing submissions under US HR-PTAs has in fact "led to changes." Some have been very basic, others "incremental to saving lives."[12] HR-PTAs have also been used to create space for cooperative activities and the transfer of knowledge. While not the primary purpose of the agreements, HR-PTAs have been used to facilitate seminars, workshops, political dialogue opportunities, and other collaborative efforts amongst partner states.

Symbolic regulation can also provide the necessary backdrop for accountability politics. While trade agreements often are most visible to domestic audiences during their negotiation and signing phases, that does not mean public attention never returns to them at the implementation, monitoring, and enforcement stages. In the EU, US, and Canada, human and labour rights provisions have become a recognizable feature of trade agreements, which in turn has led to more attention on these features from the general public and from human and labour rights advocacy organizations. However, increased attention also means increased oversight and as Edelman (1964, 11) reminds, "There is nothing about any symbol that requires it to stand for only one thing." While most HR-PTAs intentionally invoke the language and understandings associated with the rules-based system of the legal realm and the state as a guarantor of the public interest, in recent years, amongst HR-PTA advocates, they have also invoked a set of impressions tied to the weakness of international law. Like much of international law, HR-PTAs generally rely on the political will of states to undertake enforcement activitiess. The result has been for the most part that states, as the case study evidence demonstrated, have proven unwilling to accept the challenge. When symbols are no longer believed, there is

[12]Interview with Cathy Feingold, March 2017.

room for accountability politics and states out of political necessity may be forced to reduce the gap between regulation as promised and regulation as delivered.

7.3 Towards a More General Theory of Symbolic Regulation

This dissertation provided an initial overview of the symbolic theory of regulation. Its observations and findings highlight potential characteristics of areas prone to this form of regulation.

First, symbolic regulation is created by regulatory advocates to be seen. It is a visible concession to the demands of regulatory advocates, even if it is not the form of regulation that they desire. For this reason, we can infer that symbolic regulation is most likely to occur in issue areas that command attention or that awaken controversy, such as trade. As noted earlier, human and labour rights clauses have become commonplace in PTAs but not in their less well-known counterparts, BITs. Second, symbolic regulation should be more likely to occur in areas that are not insulated from public demands. The arms-reach length from elected representative institutions that independent central banks maintain for example makes them unlikely instigators of symbolic regulation.

Third, symbolic regulation can be expected to occur more often in areas where regulatory legislators face competing or incompatible incentives, such as reducing barriers to trade and better protecting human and labour rights. These different goals make it more likely that regulatory legislators will be unable or unwilling to provide the regulation that advocates demand. Finally, symbolic regulation may be most common in areas that are difficult for regulatory advocates to monitor enforcement on. Regulatory legislators relying on the "fooling" strategy are aware that it will only be successful when advocates believe that their demands have been met.

7.4 The Future of HR-PTAs

While the multilateral trading system continues to view human and labour rights as outside of its remit, the linkage between human and labour rights in bilateral trade agreements appears to be irreversible. Through multiple changes of administration in the states behind the agreements, the basic HR-PTA model has adapted and evolved, but overall remained intact. Without making a claim about the desirability of HR-PTAs, a challenge for future leaders will be ensure the continued relevance of the treaties as their past use comes into question. Despite being motivated by political rationales, with sufficient political will, HR-PTAs could become effective tools. However, rules that depend on political will for enforcement will never be the gold standard.

The system of relying on political will to instigate enforcement activities in HR-PTAs is suboptimal. In the EU case, this is especially true as member states, each with differing views and political realities, must agree on appropriate measures to be taken. One EU official describes the bar for enforcing the EU's human rights clauses as virtually impossible to overcome.[13] To surmount these obstacles, automatic monitoring and enforcement mechanisms should be designed and carefully laid out.

In addition it is important to acknowledge that the states behind HR-PTAs possess the greatest leverage over partner states to make improvements in human and labour rights practices *prior* to the signing of HR-PTAs agreements. In fact, Kim (2012) shows that US HR-PTAs have prompted the greatest improvements before they are even signed. This bargaining reality makes an exclusive focus on

[13]EU Official No. 1, April 2016.

ex post enforcement unwise. Moreover, as practice has shown, after HR-PTAs are signed, countries have little motivation to call out their trade partners on human or labour rights abuses when it could mean losing access to markets or creating diplomatic tensions. Thus, in order for HR-PTAs to most effectively impact human rights outcomes, more attention should be focused on *ex ante* initiatives rather than on refining *ex post* enforcement mechanisms.

7.5 Conclusions

Regulation comes in many forms. While this dissertation did not aim to explain all of them, it highlighted the need for an additional theoretical perspective to complement the traditional public and private interest theories of regulation. The symbolic theory of regulation provided here takes steps towards embracing the symbolic political role that regulation often fills. Focusing on the motivation behind the trade–*and* human rights agenda, this study provided a systematic theoretical and empirical account of the determinants of HR-PTAs. It showed that as the symbolic theory of regulation predicts, states commit to HR-PTAs as a political gesture intended to appease regulatory advocates. These origins have informed how states have subsequently used their HR-PTAs. The broader implication of these findings is that symbolism-based explanations may be well suited to play a larger role in future studies of regulatory cooperation.

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A | HR-PTA Coding Information

The coding scheme used for the data is outlined in the NTI codebook from Milewicz (2014). The relevant aspects are outlined below.

The HR-PTA data used in this dissertation is based on four indicators: "NTI preamble labour," "NTI preamble HR," "NTI labour," and "NTI HR." Each indicator is binary in nature and coded "0" when there is no mention of the relevant standards and "1" when the standard is referred to. In more detail, the NTI codebook states that labour standards are coded when references refer to:

> [The] promotion of higher labour standards; enforcement of labour law; consistency of domestic law with the internationally recognized labour rights; fair treatment of workers; social security rights dealing with: sickness, invalidity, old-age, industrial accident, unemployment.

Human rights standards are coded when they mention the "respect of human rights and fundamental freedoms, minority rights; promotion of the equality of women." References to the Universal Declaration of Human Rights and other human rights agreements, treaties, and instruments are also coded.

The first two indicators ("NTI preamble labour" and "NTI preamble HR") only code references to human and labour rights standards that appear in the preamble to the agreement; whereas, the second two indicators ("NTI labour" and "NTI HR") are limited to references that appear in the main treaty text.

A limitation of this coding scheme is that side agreements are not coded directly. However, as references to these agreements appear in the main text of PTAs, they are generally reflected in the coding of the main text clauses.

B | HRO Coding Information

HROs is a count variable of 442 HROs that lists the number of HROs in each country in the dataset in a given year. The HRO variable was coded from the Yearbook of International Organizations (YIO) database (Union of International Associations 2016), using its online search function. The search was conducted on April 20, 2015. The YIO database contains over 68,000 international organizations (IOs) from approximately 300 countries and territories, making it the most comprehensive list of IOs currently available.

To perform the search, the subject term “human rights” was first filled in. IOs labelled as “bilateral intergovernmental organizations,” “intergovernmental organizations,” “conference series,” and “international organization membership” were excluded from the search as were entries labelled “information suspect.” In addition, I searched through the type III category “Trade and Labour Unions.” The queries returned were all manually read.

From these queries, following Milewicz’s NTI codebook, any IOs that mentioned the term “human rights” or “labour/workers’ rights” in its name, aims, activities or anywhere else on the page was included in the final list of HROs. In addition, any IO that mentioned for example, “women’s rights or empowerment,” “gender equality,” or the “International Labour Organization” was also included. For a more complete list of coding criteria, see Milewicz’s NTI codebook decisions on what constitutes human and labour rights (Milewicz 2014).

Additional location information was sought for any IOs that the YIO did not list a main location or headquarters for. In the case additional information was unavailable, the IO was not included in the final list. For HROs in EU member states, the EU was listed as the location.

HROs were listed in a given country for each year between their founding date (as supplied by the YIO) and the date the last information was received from them, unless another end date was listed in its YIO entry.

C | Robustness Checks

Appendix C presents the results of an additional five network models. The results of these analyses are largely consistent with the analyses presented in the main text of this research project and as such help substantiate its main findings.

Table C.1 presents the first additional model. Model 7 uses the CIRI empowerment rights index for the human rights indicators associated with hypotheses P1 and C1 rather than the CIRI physical integrity rights index (Cingranelli, Richards, and Clay 2014) used in the main analyses. The CIRI empowerment rights index ranges from 0 (no respect of these rights) to 14 (full, government respect of these rights) and is constructed from seven indicators measuring foreign and domestic movement, freedom of assembly, workers' rights, electoral self-determination, and freedom of religion. The empowerment rights index includes workers' rights and is more closely related to labour rights HR-PTA obligations than the physical integrity rights index.

Table C.1: Alternative Model Specification: Empowerment Rights

	Model 7	
	Empowerment Rights	
	PTA	HR-PTA
Main Indicators:		
Empowerment Rights (partner)	−0.02 (0.02)	−0.03 (0.02)
Empowerment Rights (asymmetry)	0.02 (0.02)	0.02 (0.02)
Export Similarity	0.27 (0.17)	0.16 (0.17)
HROs (log)	0.06 (0.02)**	0.10 (0.02)***
Controls:		
Imports + Exports (log)	−0.08 (0.06)	−0.18 (0.06)**
Regime	−0.01 (0.02)	0.02 (0.02)
Veto Players	0.23 (0.53)	0.15 (0.47)
Trade Asymmetry	0.11 (0.02)***	0.05 (0.02)*
Distance	−0.01 (0.00)***	−0.00 (0.00)***
Alliance	0.20 (0.13)	0.63 (0.13)***
GDP per capita (log)	0.02 (0.04)	0.39 (0.10)***
Shared Costs	0.09 (0.06)	−0.01 (0.06)
Subsequent Costs	0.82 (0.14)***	0.62 (0.11)***
Start-up Costs	1.65 (0.64)*	3.61 (0.41)***
Cross-Network Activity	−0.50 (0.09)***	0.03 (0.08)
Intercept (Density)	−2.22 (1.10)*	−4.96 (1.42)***
Estimation Iterations	10,376	
Goodness of Fit	0.062	0.095

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

Model 8 in Table C.2 replaces GDP PER CAPITA (LOG) with GDP (LOG) from the Penn World Table (Feenstra, Inklaar, and Timmer 2015).

Table C.2: Alternative Model Specification: GDP (log)

	Model 8	
	GDP (log)	
	PTA	HR-PTA
Main Indicators:		
Human Rights (partner)	0.03 (0.03)	0.04 (0.04)
Human Rights (asymmetry)	0.02 (0.03)	0.02 (0.03)
Export Similarity	0.26 (0.17)	0.14 (0.18)
HROs (log)	$0.05\ (0.02)^{**}$	$0.06\ (0.02)^{***}$
Controls:		
Imports + Exports (log)	-0.10 (0.06)	$-0.30\ (0.10)^{**}$
Regime	$-0.03\ (0.02)^{\cdot}$	-0.00 (0.02)
Veto Players	0.07 (0.53)	0.12 (0.50)
Trade Asymmetry	$0.12\ (0.02)^{***}$	0.03 (0.02)
Distance	$-0.01\ (0.00)^{***}$	$-0.01\ (0.00)^{***}$
Alliance	0.12 (0.13)	$0.57\ (0.12)^{***}$
GDP (log)	0.04 (0.03)	$0.42\ (0.11)^{***}$
Shared Costs	0.09 (0.06)	0.01 (0.06)
Subsequent Costs	$0.87\ (0.13)^{***}$	$0.58\ (0.11)^{***}$
Start-up Costs	$1.57\ (0.61)^{*}$	$4.10\ (0.39)^{***}$
Cross-Network Activity	$-0.52\ (0.10)^{***}$	0.01 (0.07)
Intercept (Density)	$-2.76\ (1.07)^{**}$	$-5.86\ (1.39)^{***}$
Estimation Iterations	10,403	
Goodness of Fit	0.091	0.087

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

Table C.3 presents two additional models. Model 9 uses a reduced sample including only HR-PTAs that have clear labour rights provisions, whereas Model 10 only includes HR-PTAs with clear human rights obligations. Whereas Model 9 uses the empowerment rights index better suited to labour rights for the human rights variables, Model 10, which focuses on human rights provisions only, reverts to the CIRI physical integrity rights index.

Table C.3: Alternative Model Specification: Human Rights and Labour Rights Provisions

	Model 9 Human Rights Only		Model 10 Labour Rights Only	
	PTA	HR-PTA	PTA	HR-PTA
Main Indicators:				
HUMAN RIGHTS (PARTNER)	0.03 (0.03)	−0.01 (0.05)		
HUMAN RIGHTS ASYMMETRY	0.04 (0.03)	−0.01 (0.04)		
EMPOWERMENT RIGHTS (PARTNER)			−0.01 (0.02)	−0.05 (0.03)$^{\cdot}$
EMPOWERMENT RIGHTS (ASYMMETRY)			0.02 (0.02)	0.03 (0.02)
EXPORT SIMILARITY	0.36 (0.17)*	0.20 (0.21)	0.29 (0.16)$^{\cdot}$	0.07 (0.19)
HROs (LOG)	0.07 (0.02)***	0.08 (0.02)***	0.06 (0.02)***	0.11 (0.02)***
Controls:				
IMPORTS + EXPORTS (LOG)	−0.13 (0.06)*	−0.10 (0.04)*	−0.09 (0.05)	−0.18 (0.06)**
REGIME	−0.01 (0.02)	0.03 (0.02)$^{\cdot}$	−0.02 (0.02)	0.03 (0.02)$^{\cdot}$
VETO PLAYERS	−0.01 (0.52)	−0.08 (0.55)	0.28 (0.48)	−0.05 (0.49)
TRADE ASYMMETRY	0.11 (0.02)***	0.02 (0.02)	0.11 (0.02)***	0.04 (0.02)$^{\cdot}$
DISTANCE	−0.01 (0.00)***	−0.01 (0.00)***	−0.01 (0.00)***	−0.00 (0.00)**
ALLIANCE	0.09 (0.12)	0.09 (0.16)	0.22 (0.12)$^{\cdot}$	0.69 (0.14)***
GDP PER CAPITA (LOG)	0.03 (0.04)	0.22 (0.11)*	0.01 (0.04)	0.48 (0.12)***
SHARED COSTS	0.11 (0.06)$^{\cdot}$	−0.13 (0.08)	0.13 (0.06)*	−0.05 (0.08)
SUBSEQUENT COSTS	0.80 (0.13)***	0.83 (0.15)***	0.71 (0.12)***	0.58 (0.11)***
START-UP COSTS	2.02 (0.65)**	2.93 (0.68)***	1.80 (0.59)**	3.56 (0.44)***
CROSS-NETWORK ACTIVITY	−0.76 (0.11)***	0.10 (0.08)	−0.42 (0.09)***	0.10 (0.09)
INTERCEPT (DENSITY)	−1.77 (1.04)$^{\cdot}$	−3.80 (1.82)*	−1.94 (1.05)$^{\cdot}$	−6.10 (1.67)***
Estimation Iterations	4,753		10,376	
Goodness of Fit	0.176	0.849	0.074	0.147

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

Table C.4 presents the final model, Model 11, which reduces the sample of HROs included in HROs (LOG) by excluding labour unions. As some labour unions may plausibly pursue HR-PTAs for protectionist reasons, by excluding them from Model 11, we can test whether their presence affects the main results presented in this dissertation. As Table C.4 demonstrates, the results remain largely unchanged upon the exclusion of labour unions. HROs (LOG) remains positive and statistically significant in the HR-PTA network.

Table C.4: Alternative Model Specification: No Labour Unions

	Model 11 No Labour Unions	
	PTA	HR-PTA
Main Indicators:		
Human Rights (partner)	0.03 (0.03)	-0.05 (0.04)
Human Rights (asymmetry)	0.02 (0.03)	0.03 (0.03)
Export Similarity	0.27 (0.18)	0.16 (0.18)
HROs (log) (without labour unions)	0.06 (0.02)**	0.10 (0.02)***
Controls:		
Imports + Exports (log)	-0.09 (0.06)	-0.19 (0.07)**
Regime	-0.03 (0.02)$^{\cdot}$	0.00 (0.02)
Veto Players	0.08 (0.50)	0.06 (0.49)
Trade Asymmetry	0.12 (0.02)***	0.04 (0.02)*
Distance	-0.01 (0.00)***	-0.01 (0.00)***
Alliance	0.14 (0.12)	0.59 (0.12)***
GDP per capita (log)	0.02 (0.04)	0.44 (0.12)***
Shared Costs	0.09 (0.06)	-0.01 (0.06)
Subsequent Costs	0.85 (0.14)***	0.65 (0.11)***
Start-up Costs	1.61 (0.62)**	3.71 (0.44)***
Cross-Network Activity	-0.51 (0.10)***	0.02 (0.08)
Intercept (Density)	-2.40 (1.14)*	-5.50 (1.61)***
Estimation Iterations	10,376	
Goodness of Fit	0.091	0.087

Note: $^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\cdot}p < 0.1$

D | Interview Information

From January 2016 to March 2017, I conducted 22 interviews with stakeholders from the EU, US, and Canada. Many are quoted directly in this research project. Others were used solely for background information, at the request of the interviewees. Most interviews took place in person, with a few exceptions where this was not feasible. The majority of interviews were audio recorded, except where participants declined. The quotations included in the manuscript are from typed transcripts using the audio files of the interviews, and in a few cases from detailed handwritten notes. In most cases interviewees required anonymity.

I used a semi-structured interview format. I pre-prepared a series of open-ended and more specific questions tailored to each individual and their location, which I then adapted as necessary throughout each interview. Interviews lasted between 30 minutes and one and a half hours and occasionally included two participants.

Interviews were only conducted with: (1) individuals that had actively participated in HR-PTA negotiations, the drafting of HR-PTAs, or HR-PTA enforcement activities, which were mostly high ranked officials, and (2) to civil society members that had campaigned for the agreements, interacted with officials regarding the agreements, or used their enforcement mechanisms. In this way I was able to speak with stakeholders that had a large amount of experience in this area.

Interviewees were identified using two strategies. First, trade negotiators and relevant government officials were identified using government websites, media reports, official documents, and general inquiries with relevant ministries. Civil society representatives were identified in a similar manner. Second, snowball sampling was used. Through the networks of interviewees first contacted, I was able to reach relevant stakeholders that were otherwise not easy to identify. This was particularly useful with government officials. Where possible I interviewed government officials from all Ministries associated with HR-PTAs.[1]

[1] This was only not possible in the US case, where my interviews with officials were limited to Department of Labor (DOL) employees. I did not interview any officials from the US Trade Representative (USTR), as I despite repeated attempts, received no response from these officials to my requests. Despite this limitation, as the DOL, and in some cases civil society members, as well as officials from other countries, work closely with the USTR on HR-PTA matters, I was able to uncover a good deal of information about the USTR's perspective.