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Gender Mainstreaming in Trade Agreements: ‘A Potemkin Façade’?

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Forthcoming (September 2023) in WTO Book *Making Trade Work for Women: Key Learnings from the World Trade Congress on Gender.*

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Katrin Kuhlmann and Amrita Bahri*

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Abstract

The distributional outcomes of trade agreements have historically been uneven, creating both “losers” as well as “winners” and benefitting certain stakeholders while leaving others without benefits or even with negative repercussions. In particular, distributional outcomes can vary between women and men, since they play different roles in society, markets, and economies, and they enjoy different opportunities as well. At times, and sometimes by their very nature, trade agreements can restrict opportunities for women and further increase the gender divide. But in recent years, there has been a drastic upsurge in the number of countries that are incorporating commitments on gender equality in their trade agreements.

Currently, of all free trade agreements in force, around one-third have at least one explicit provision relating to gender equality. Yet almost no trade agreement so far contemplates how gender-related commitments could be implemented or enforced, and no trade agreement approaches gender on a holistic level that can meaningfully address distributional issues. Most legal provisions incorporated in trade agreements so far have been drafted in the spirit of best endeavor cooperation and are often blamed for being mere “Cinderella” provisions. In order to reverse the distributional inequities, a more comprehensive approach based on women’s roles and economic realities is needed, as is further research on what would improve distribution of opportunities for women. With more and more countries considering gender mainstreaming, this raises an important question: Is “gender mainstreaming” in trade agreements used as a “Potemkin Facade” to hide larger distributional issues? This paper will not fully answer this question, but it will expand upon possibilities and offer reflections to spark debate and discussions on this concern.

Keywords: Gender Equality, Trade Agreements, Mainstreaming, Distributional Impact

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I. Women and Trade: Setting the Stage

It is finally becoming a norm to link gender with trade (Bahri, 2021a; Kuhlmann, 2022; Crenshaw Williams, 1989; Korinek, Moïsé and Tange, 2021), with gender provisions appearing in an increasing number of regional trade agreements (RTAs). This signals a movement away from viewing trade as “gender neutral”, (WTO, 2020; Korinek, Moïsé, and Tange, 2021) dispelling a decades-long claim that both women and men stand to gain equally from trade. As a significant watershed moment in this shift, in 2017, WTO Member States agreed to the Buenos Aires Joint Declaration on Trade and Women’s Economic Empowerment (Buenos Aires Declaration), with 127 signatories to date. Incorporating gender equality and women’s economic empowerment into trade agreements aligns trade instruments with the broader women’s equality movement (Bahri, 2021b; UN Women, 2001; von Hagen, 2014; Bahri, 2022), and it also forges a closer link between trade and human rights (Aaronson and Chauffour 2011), in furtherance of the United Nations Sustainable Development Goals (SDGs). For purposes of this paper, “gender equality” will be used to refer to the equality of rights, responsibilities, and opportunities and equal consideration of the “interests, needs, and priorities of women and men” (UN Women). Women’s empowerment refers to the process of increasing women’s access and control over strategic life choices and opportunities in the economically, politically, and socio-culturally (Chen and Tanaka, 2014).

Incorporation of gender concerns in trade agreements is in keeping with a larger trend to integrate human rights and social issues, sometimes referred to as “trade and” issues, into trade agreements, although much of the progress in this respect has been more aspirational than binding. In 2011, the WTO estimated that 75 percent of RTAs include some provisions on human rights (Aaronson and Chauffour, 2011). There has overall been an increase in incorporation of labour rights in trade agreements, and incorporation of environmental matters in RTAs is on the rise as well.

However, despite the advancements and lofty goals of trade agreements, which are discussed in detail below, longstanding distributional issues remain (Engel et al., 2021). In particular, trade’s distributional outcomes can vary between women and men, who face different opportunities and challenges and hold very different roles in society, markets, and economies (Fontana and Paciello, 2010; Fontana, 2009). Women tend to be disproportionately affected by the negative effects of trade liberalization and face greater barriers when engaging in economic activity. Some of this is due to gender bias in education and training, along with inequality in wages and distribution of resources and unequal access to productive inputs such as credit, land, and technology (ITC, 2020; ITC, 2015). Because of the changing dynamics of employment caused by trade, women’s jobs and livelihoods can be put at risk, especially when industries that predominantly employ women are disrupted due to trade liberalization (Bahri, 2021a).
In particular, women face a number of challenges due to the more uncertain and precarious nature of their work, the lack of social safety nets, and women’s role in unpaid and informal work (Kuhlmann, 2021; UNCTAD, 2020). These include barriers that directly impede women’s access to productive resources (such as capital, property ownership or employment markets), which negatively impact women’s economic and social independence (Duflo, 2012). The barriers that women face also include legal hurdles to inheritance, contractual ability, and property (World Bank Group, 2019). Although digital trade has given rise to new opportunities for women, they are also particularly affected by the digital divide (OECD, 2018; African Union and UNDP, 2020), which, when combined with legal issues, impacts women’s ability to leverage new opportunities offered by digital trade or e-commerce.

Women also face a number of regulatory barriers (or “regulatory gateways”; Kuhlmann, 2021), that limit their participation in markets. These include domestic rules and regulations that fall within the category of non-tariff measures (NTMs) such as standards, sanitary and phytosanitary (SPS) measures, and border measures, many of which are not gender-responsive (Kuhlmann, 2021). In terms of border measures, women traders face procedural challenges and safety issues at the border (Apiko, Woolfrey and Byiers, 2020), despite the advances made by the WTO Trade Facilitation Agreement, pressed for simplification of measures and encouraged digitalization of border procedures in order to reduce waiting time. Women traders also often lack information on cross-border regulations and procedures (Fundira, 2018), putting them at a disadvantage and subjecting them to costly and sometimes dangerous delays at border crossings.

Distributional effects also tend to be common in sectors such as agriculture, where a shift towards export-led trade can affect women who retain responsibility for growing food to feed their families (Kuhlmann, 2021; Bayat and Luke, 2020). Women play many roles in the agricultural sector, including as primary producers of food and primary providers for their households and also as traders and processors of agricultural products, creating strong links between agricultural trade and human rights, food security, health, livelihoods, and the SDGs (McGill, 2005; Kuhlmann, 2017; Brown et al., 1995; Kuhlmann, 2021; Bayat and Luke, 2020). Here, trade’s distributional impacts can result from shifts in production away from local or family consumption which tends to involve women to a greater degree, to more export-led growth which tends to focus on more capital-intensive, cash-based sectors and crops.

Women also tend to face particularly challenging regulatory hurdles in the agricultural sector, including compliance with standards and SPS measures, which can require significant investment, economies of scale, and technical capacity (Kuhlmann, 2022; Acharya et al., 2019; Henson, 2018). Women’s limited access to agricultural inputs (including seeds, technology, and extension services) has a regulatory dimension as well and impacts the ability to transition into
higher value-added production and ultimately benefit from trade opportunities (FAO, 2015; UNCTAD, 2019; STDF, 2015).

Distributional challenges are not limited to trade in goods, as they also include discriminatory practices in services sectors, where women tend to be heavily involved (Kuhlmann 2021; Acharya et al., 2019). Women are also disproportionately involved in the informal sector (UN Women, 2021), which, while sometimes more flexible, may offer little security and room for advancement (McGill, 2005). Within the informal sector, migrant women face some of the most significant challenges, as the COVID-19 pandemic has underscored (UNCTAD, 2020; Fitzpatrick and Kelly, 1998).

Women also face considerable challenges accessing affordable finance and credit, which often acts as a factor limiting women’s engagement in and trade (for example, lack of finance could keep women involved in the production of low value-added, unprocessed agriculture instead of processed products with a higher premium in regional and international markets) as well as in opportunities for specialization, growth, and entrepreneurship (Kuhlmann, 2022; Acharya et al., 2019; Kuhlmann, 2017, McGill, 2005). Information and Communication Technology (ICT) and digital financial services, including online payments services, can provide new opportunities for women entrepreneurs and traders (UNCTAD, 2017), provided, of course, that the digital divide can be bridged. Digital inclusion and trade opportunities relate directly to the SDGs, namely SDG 5 and Target 5.5 “Enhance the use of enabling technology, in particular ICT, to promote empowerment of women.” (Kuhlmann, 2021).

Further, limitations on women’s ownership of land impact women’s access to credit and economic opportunity. Collateral requirements tend to favor land-based collateral, and, in doing so, they disadvantage women due to restrictions on women’s land ownership and unfavourable inheritance rights (Kuhlmann, 2021). Unequal inheritance rights limit women’s access to start-up capital and productive assets. Limited rights to assets, when combined with strict conditions for obtaining finance, high interest rates (ICTSD, 2018), and lack of tailored financial services products for women, imply that women wishing to start a business may not have any collateral to access credit needed to start or expand a business. Lack of collateral and lack of a track record reflecting credit worthiness erect formidable barriers for women to access finance. Inadequate physical and reputational collateral explains why most businesses owned by women are concentrated in less capital-intensive sectors.

These observations show how distributional effects of trade, as well as trade policy instruments, can impact vulnerable groups and historically disadvantaged communities, including women. For example, a recent World Bank study notes that South African trade reforms generated diversification and growth in exports but that these gains from trade were disproportionate and not experienced as fully by historically disadvantaged communities.
(Engel et al., 2021). Hence, if not carefully crafted and accompanied by better “bottom-up” measures at the national level, “top-down” trade agreement provisions can act to limit opportunities for women and further increase the gender divide rather than promoting gender inclusion and expanding women’s potential to benefit from trade in practice (Bahri, 2021b; Kuhlmann, 2022). However, when approached with a gender lens and through tailored gender-mainstreaming strategies, trade agreements may have the potential to generate more economic opportunities and result in reduced barriers for women (Bahri, 2021; Hyder and Behrman, 2012; Klugman and Gamberoni, 2012). Two things in particular support this claim. First, existing and future trade agreements between countries can increase trade flows and hence lead to more business and employment opportunities for all, including women (Bahri, 2020). Second, through regional or bilateral trade agreements, countries can encourage their trading partners to reduce barriers that women face. Using the lure of enhanced market access and freer trade, countries can use trade agreements to incentivize changes in other countries; these domestic changes can be aimed at bringing down the barriers that women face as employees, entrepreneurs, or consumers (Bahri, 2020).

This paper will explore gender mainstreaming approaches under RTAs to date, critically assessing what has been done in terms of distributional impacts and levelling the playing field between women and men. In doing so, the paper will reference two frameworks developed by the authors. One is Amrita Bahri’s Gender Responsiveness Scale (Bahri, 2019), which textually assesses RTA provisions in light of how well they mainstream gender equity considerations, and the other is Katrin Kuhlmann’s Inclusive Trade and Development Index (Kuhlmann, 2022), which contextually assesses RTA provisions based on qualitative top-down factors (differentiation, sustainability, and flexibility) and bottom-up factors (equity, inclusion, reduction of regulatory barriers/gateways, and implementation) that provide an opportunity to integrate the distributional questions discussed above. The following sections will discuss current RTA approaches and their contributions and shortcomings before turning to how these approaches could be applied more holistically to gender mainstreaming in RTAs.

II. Current RTA Provisions: A Comparative Approach

The WTO’s recently launched database on gender provisions in RTAs highlights 300 provisions across about 100 agreements that focus on women’s interests or gender equality. This means that almost one-third of RTAs currently in force and notified to the WTO contain gender-related provisions (WTO Gender Database, 2022). Broken down by region, of the trade agreements notified to the WTO, 78 percent of Europe’s RTAs contain at least one gender-specific provision; in comparison, this figure is 38 percent for North America, 20 percent for South America, 32 percent for Africa, and 14 percent for RTAs in the Asia Pacific region (Bahri, 2021b). These five regions – Europe, North America, South America, Africa, and Asia Pacific – will be used for comparison. A look at the individual countries shows that Chile, Canada, and the EU have been
leaders in including gender provisions in RTAs (Bahri, 2021b). However, while many countries have applied a gender lens to their trade agreements, many others have yet to do so. Moreover, some such as the United States, have taken a partial approach, with a predominant focus on gender-focused labour rights obligations.

Although incorporation of gender in trade agreements is a relatively new trend, there is some historical precedent, linking gender to trade instruments in Europe and Africa. One of the first references to the inter-relationship between gender and commerce can be found in the 1958 Treaty on the Functioning of the European Union (‘TFEU’) which contains a binding commitment on equal pay for equal work for women and men (Bahri, 2022). Now, Europe’s trade agreements address gender in the broader context of sustainable development, social development, and social cohesion, which encompasses labour, education, health, human rights, and environment. African trade agreements also have a history of incorporating gender-sensitive provisions that date back to the 1980s (Gammage and Momodu, 2020). Examples include African Regional Economic Communities (RECs) such as the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC), Economic Community of West African States (ECOWAS), and Economic Community of Central African States (ECCAS). More recently, South American RTAs have advanced the field further through incorporation of separate gender chapters.

Gender provisions in RTAs can be compared based on several common elements. These include the location of gender provisions; the language of gender provisions, including whether they are of a binding or non-binding nature; and the content of gender provisions, which can be broken down into aspirational and affirmative provisions. The context of gender provisions, which includes women’s needs, roles, and circumstances, is also worth considering in its own right, as context often speaks more closely to distributional issues. These factors are compared in greater detail below.

**A. Location of Gender Provisions in RTAs**

The most common frame through which gender provisions are currently assessed is their location in RTAs. Location varies considerably across RTAs (Table 1), and regions, and it matters in terms of agreement commitment and implementation (Bahri, 2022). Gender-related provisions can appear in agreement preambles and objectives (AfCFTA, CPTPP); annexes; non-specific articles on related issues such as labour, agriculture, and intellectual property; specific articles on gender; side agreements, which are often focused on related issues such as labour (e.g., Canada-Colombia and Canada-Costa Rica FTAs); and even stand-alone gender chapters in RTAs or separate Protocols (e.g., Canada-Panama, Canada-Chile, Canada-Israel) (Kuhlmann, 2022; Monteiro, 2021; Bahri, 2019). The placement of gender and trade provisions has been comprehensively assessed, and it informs how gender is viewed in the larger context
of a trade agreement and impacts the degree and depth of commitments (Kuhlmann, 2022). Table 2 below, from Monteiro 2021, summarizes main placement categories and the number of RTAs that include relevant provisions.

Table 1: Placement of Gender-Related Provisions (Monteiro 2021)

<table>
<thead>
<tr>
<th>Structure of gender-related provisions</th>
<th>Number of RTAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Main text of the RTA:</td>
<td></td>
</tr>
<tr>
<td>- Preamble</td>
<td>76</td>
</tr>
<tr>
<td>- Non-specific article(s) on gender</td>
<td>12</td>
</tr>
<tr>
<td>- Specific article on gender</td>
<td>64</td>
</tr>
<tr>
<td>- Specific chapter on gender</td>
<td>10</td>
</tr>
<tr>
<td>- Annex(es)</td>
<td>9</td>
</tr>
<tr>
<td>2. Side document(s) to the RTA:</td>
<td></td>
</tr>
<tr>
<td>- Side letters</td>
<td>12</td>
</tr>
<tr>
<td>- Joint statement(s)</td>
<td>1</td>
</tr>
<tr>
<td>- Protocol(s)</td>
<td>2</td>
</tr>
<tr>
<td>- Labour cooperation agreement</td>
<td>8</td>
</tr>
<tr>
<td>- Declaration(s)/recommendation(s)</td>
<td>4</td>
</tr>
<tr>
<td>- Decision(s)/resolution(s)/directive(s)</td>
<td>6</td>
</tr>
<tr>
<td>- Agreement(s)/Protocol(s)</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Author’s calculations based on the mapping of gender-related provisions in RTAs.
Note: The GTGA is excluded from the analysis.

Latin America (particularly Chile) has taken the lead on employing a more comprehensive approach with the incorporation of standalone gender chapters (Canada-Chile, Chile-Argentina, Chile-Brazil, Chile-Uruguay), which tend to incorporate a number of provisions, including cooperation, legal standards, affirmations, and reaffirmations (Bahri, 2021b). A few other countries, namely Canada and Israel, have adopted a similar chapter-focused approach. Gender chapters so far cover parties’ acknowledgment of women’s role in international trade, commitments to cooperate on reducing barriers to trade, procedures and institutions for implementing commitments, and reaffirmations of commitments to international treaties and conventions, such as CEDAW and ILO Conventions (such as in the US-Republic of Korea, Canada-Israel, Canada-Chile) (Bahri, 2021b). To date, only a handful of countries have signed RTAs with standalone gender chapters: Chile, Canada, Uruguay, Argentina, Israel, Brazil, Ecuador, Japan, and the UK. In the near future, more countries are expected to follow this trend. Chile, for example, is negotiating a gender chapter with Paraguay, and, together, with Colombia, Mexico and Peru, it is considering the inclusion of a gender chapter in the Agreement between the Pacific Alliance and Associates (Canada, New Zealand and Singapore).25
Other countries and regional bodies have negotiated supplementary or independent instruments that integrate gender equality and trade concerns, such as separate protocols (SADC, 2008), recommendations (Canada-EU 2020) or standalone agreements (Global Trade and Gender Arrangement (GFTA, 2020) (Bahri, 2021b). The SADC Protocol on Gender and Development (SADC Gender Protocol), for examples focuses on (i) integration of gender perspective into all sectors of regional integration; (ii) promoting women’s representation and participation in all political and decision making positions in SADC, (iii) elimination of gender-based violence, and (iv) eradication of poverty and promotion of women’s economic empowerment in the SADC region (Bahri, 2021b).

A separate gender protocol (Protocol on Women and Youth in Trade) is also under negotiation under the African Continental Free Trade Area (AfCFTA) Agreement. It is important to note that in some cases, such as SADC and the AfCFTA, a protocol approach is consistent with the nature of the trade instrument (Kuhlmann and Agutu, 2020), so does not necessarily imply a lesser commitment than incorporation of a gender chapter in the main agreement text. However, it is important to note that inclusion of such concerns in supplementary agreements cannot take the place of frontloading such concerns in the agreement’s main text “strictly speaking”, and the supplementary instruments subsequently negotiated and agreed to by the parties are generally required to stay within the scope defined by the main agreement. Hence, a protocol could be a welcome addition if it is used to extend the scope of an agreement’s provisions on gender equality where it can identify precise activities in which members can engage to address a list of targeted barriers.

Recently, Chile and New Zealand negotiated the first-ever freestanding international cooperation agreement on trade and gender, the GTGA, which was signed in August 2020. The parties to the GTGA make an explicit commitment to avoid discrimination on the basis of sex in connection with licensing and certification in the services sector and seek to work together at international forums (such as the Asia-Pacific Economic Cooperation (APEC), the Organisation for Economic Co-operation and Development (OECD) and the WTO, including through exchange of best practices relating to women’s empowerment under the Trade Policy Review Mechanism (TPRM). They also commit not to promote trade or investment opportunities by weakening or reducing the protection provided for gender equality under domestic law, using a legal construct increasingly common in the labour and environmental areas.

Frontloading gender commitments in an agreement’s preamble or general objectives also helps to mainstream the gender perspective. Although neither an agreement’s preamble nor general objectives are legally binding, nor do they contain any precise or concrete commitments, they help set the tone for the agreement, since international agreements are subject to interpretation in light of their preamble and general objectives. A recent example is the preamble of the African Continental Free Trade Agreement (AfCFTA), which amongst other

issues recognizes the importance of gender equality “for the development of international trade and economic cooperation”. Another example is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which notes that the parties assert “the importance of promoting (...) gender equality...” in the agreement’s preamble. “Gender equality” is stated as a value to which parties commit, among others, including environmental protection, labour rights, sustainable development, and indigenous rights.

The preamble is a vital part of any international instrument or agreement, as it can be instrumental in determining the intentions of the negotiators or drafters of the agreement at the time it was concluded. In disputes arising out of a given agreement, decision-makers can consider the wording used in the preamble to identify the parties’ objectives and intentions underlying the agreement. Hence, inclusion of gender-related concerns in agreement preambles implies that the agreement’s provisions must be read and implemented to reconcile gender equality concerns with international trade.

Finally, the number of times gender-related terms appear in an agreement can be considered a factor in gender-mainstreaming trends, sometimes independent from location of these terms and provisions. However, the content (and context) is much more relevant than the number of times gender-related terms arise, as these speak much more directly to the scope of provisions and the commitments embedded therein (Bahri, 2021b). Nevertheless, the number of provisions does signal some level of commitment among the parties, as a greater number of more explicit words generally implies a higher number of relevant commitments in the agreement; not surprisingly, Chile, Canada, and the EU are in the lead with respect to the number of gender-related provisions overall, with some African nations in close second (Bahri, 2021b).

**B. Language of Gender Provisions**

Another lens through which gender provisions can be assessed is their language. While the trend to include gender is promising, many provisions are drafted in the form of general acknowledgements of gender equality (Bahri, 2021b), with use of non-mandatory verbs and ‘soft’ permissive grammatical constructions (Bahla and Wood, 2019; Aaronson and Chauffour, 2011). This is common across other social provisions in RTAs, with the exception of labour provisions in multiple trade agreements.

It is important to consider that provisions with a higher level of commitment are more likely to be successfully implemented (Laperle-Forget, 2021). Binding language (such as “shall” or “must”) can also be important for smaller enterprises and vulnerable communities (Kuhlmann, 2022), which may need the legal clarity to enforce their interests under an agreement.
Across gender provisions in RTAs, most do not contain any language on implementation or enforcement, with the exception of provisions in the Israel-Canada FTA, many of Chile’s FTA’s, and the SADC Gender Protocol; however, more careful examination of these provisions highlights some important gaps. For example, the language in the Israel-Canada FTA provides that the jurisdiction of agreement’s dispute settlement will apply to its chapter on trade and gender only on an “opt-in” basis, requiring the parties’ consent and effectively undermining its enforceability (Bahri, 2021b). A number of RTAs, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Canada-Chile Agreement, include language explicitly excluding gender-related provisions from the application of dispute settlement (Bahri, 2021b). With the exception of labor rights, other human rights provisions in RTAs are largely not enforceable, relying instead on dialogue and coordination among the parties (Aaronson and Chauffour, 2011).

When combined with placement, language points to commitment of the Parties and the degree to which individuals and communities can rely upon the rights and obligations referenced in the agreement. Generally speaking, preambular language tends to be less binding, while language in the body of an agreement signals a greater commitment. A comprehensive chapter on gender may also indicate that the parties share a greater commitment to empowering women through trade policies, but this is often not the case (Bahri, 2021b). In some agreements, even singular provisions can be more binding in nature than entire chapters or protocols. One example is the EU-Montenegro Agreement, which requires that Montenegro provide for better working conditions and equal opportunity for women under its domestic law.

In some agreements, mainly the most recent ones, we find countries drafting such provisions with language which neither amounts to binding commitments nor mere best endeavor promises. In such cases, countries use a combination of binding and non-binding expressions, such as the use of “shall” before or after “cooperate” or “may” or “consider” combined with “endeavour” or “prioritize”. These combinations of soft and hard expressions keep the provisions non-binding in nature, but they may still have a stronger symbolic force. One example is USMCA Article 25.2, which states that ‘each Party shall seek to increase trade and investment opportunities’ through a number of cooperation activities listed in the same provision.

**C. Content of Gender Provisions**

While location and especially language are important, assessing the content of gender provisions requires a deeper approach. Many gender provisions are distinctly different in their role and function, and they often create very different types of obligations. Here we are
assessing two categories of provisions, aspirational and affirmative. Aspirational content encompasses descriptive language stressing the importance of addressing gender issues and tends to be of a less concrete nature as they do not lead to specific commitments. Affirmative content encompasses functional provisions that create some sort of commitments that require parties to take a positive action, such as incorporation of other international agreements or cooperation provisions. Across both of these dimensions, context should be considered, as it relates to the roles that women hold economically and socially, such as employees and mothers, and it ties content to distributional impact.

**Aspirational Content**

Aspirational provisions that highlight women or gender or recognize the importance of women’s economic empowerment are among the most common in RTAs and tend to appear in agreement preambles or objectives clauses, making them among the least binding and most ambiguous in terms of substantive commitments. These are not positive commitments that require parties to take an action in the traditional sense, but they can be important for signalling the intent of the negotiators or drafters (Bahri, 2021b). Based on Bahri’s Gender Responsiveness Scale, agreements or provisions containing aspirational content tend to be the least gender-responsive (categorised as Level I), and they serve mainly to acknowledge principles and priorities and build awareness (Bahri, 2019).

As a relatively recent example, the AfCFTA’s Preamble places gender among other priorities, “Recognising the importance of international security, democracy, human rights, gender equality, and the rule of law, for the development of international trade and economic cooperation”; gender equality is mentioned again in the AfCFTA’s General Objectives (Article 3 (e) under the General Objectives contains the objective to “promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties”). Here, the link in the AfCFTA Preamble between gender and “the development of international trade and economic cooperation,” implies that the agreement as a whole should be interpreted in this context (Laperle-Forget, 2021). Considering the language used here, even though the AfCFTA’s General Objectives contain a non-binding mention of gender equality, the inclusion of the language “promote and attain” (emphasis added), suggests a higher level of commitment than other general gender references (Kuhlmann, 2022; Laperle-Forget, 2021).

Aspirational provisions need not be limited to agreement preambles and objectives, however. The Development Chapter of the CPTPP (Chapter 23) includes aspirational provisions on women and economic growth (Article 23:4(1) CPTPP), which “recognise that enhancing opportunities in their territories for women, including workers and business owners, to participate in the domestic and global economy contributes to economic development.” This language precedes a non-mandatory cooperation clause “shall consider undertaking
cooperative activities”, which is focused on a number of activities, including training, advice, and exchange of information (Article 23:4(2) CPTPP).

**Affirmative Content**

Current gender provisions also encompass affirmative content that goes beyond mere symbolic or aspiration-based provisions, as they create some sort of obligation, even though many of these remain non-binding. Affirmative content generally includes: (i) affirmations of recognition and adherence to other international agreements on gender, such as CEDAW\(^40\); (ii) provisions outlining cooperation on gender issues; (iii) institutional provisions including the establishment of committees for cooperation and exchange of information; (iv) establishment of core human rights commitments, such as those to eliminate discrimination against women, in line with CEDAW and International Labour Organization (ILO) Conventions; (v) exceptions, waivers and reservations; (vi) minimum legal standards and voluntary standards (such as corporate social responsibility); and (vii) dispute resolution mechanisms (ITC, 2020; Kuhlmann et al., 2020).\(^41\) As noted, the latter often consist of soft committee-based provisions to amicably resolve differences (even though there is very limited precedent for a shift away from soft dispute resolution, namely the provisions in the Canada-Israel FTA, these are still not very binding in nature).

Reaffirmations that recognize other international agreements on gender and other related areas, such as CEDAW and ILO Conventions, are particularly common in RTAs. Examples include the 2008 SADC Protocol on Gender and Development, and the Canada-Israel and Canada-Chile FTAs. While reaffirming statements can be an important way of recognizing other legal instruments, they tend to serve to reinforce prior commitments rather than create new obligations. These commitments are seen as having a slightly higher level of responsiveness than mere aspirational provisions (categorized as Level II) under Bahri’s Gender Responsiveness Scale.

Provisions on cooperation are also very common, although they tend to be best endeavour provisions that do not directly affect the rights of RTA parties. These provisions can focus on a number of things, including enhancing women’s access to education, skill development, digital training, health services, and productive resources to increasing representation of women in decision-making and policy roles (Bahri, 2019).\(^42\) Alone, cooperation provisions qualify as acceptable (Level III) under Bahri’s Gender Responsiveness Scale. Some of these provisions do establish institutional mechanisms to foster cooperation, such as the creation of new committees and working groups, which would qualify them as advanced commitments (Level IV) in Bahri’s Gender Responsiveness Scale.
Institutional provisions can also engage existing institutions. For example, Article 13.3 of the Canada-Israel FTA notes that: ‘Parties shall encourage the involvement of their respective government institutions, businesses, labour unions, education and research organizations, other non-governmental organizations, and their representatives, as appropriate, in the cooperation activities decided upon by the Parties’. At the moment, cooperation provisions appear to be the trend in gender provisions in RTAs, regardless of the distributional issues they are meant to address.

Some RTAs also incorporate core human rights commitments, most commonly the commitment to eliminate discrimination against women, particularly in the workplace. These go beyond references to other treaties and conventions to incorporate binding rights into RTAs. Examples include commitments in the SADC Gender Protocol on gender-based violence and human trafficking, which are actually quite binding in language (‘shall’ “enact and enforce legislation”) and nature.43

RTAs can also include gender-specific reservations, waivers, or legal standards. These may include the right to subsidize social services, such as childcare, or favourable government procurement schemes (e.g., in the U.S.-Central America-Dominican Republic Agreement (CAFTA-DR)). In a number of cases, however, these reservations and standards are quite narrowly applied. Several RTAs incorporate right to regulate provisions in the context of investment, but these do not appear to be more general exceptions that relate to application of trade rules.44 Others, such as the USMCA,45 incorporate reservations in services schedules, but they are applied to specific sectors (here, broadcasting services), without broader horizontal commitments.

Finally, affirmative provisions also include dispute settlement provisions. If legally binding, these would qualify as the highest level in Bahri’s Gender Responsiveness Scale (Level V: Optimizing). The trend, however, is to either exempt gender provisions from dispute settlement, include provisions without establishing a channel for implementation or enforcement, or locate these provisions in the cooperative parts of the agreement that are drafted in the spirit of cooperation.46 There is, thus, often no penalty for non-compliance or way in which to ensure that gender provisions are implemented in practice. Some exceptions do appear, however, such as the SADC Gender Protocol, which refers disputes to the SADC Tribunal following attempts at amicable resolution.47

As Section IV will argue, the nature of the affirmative provisions included in agreements so far to date are also inherently difficult to implement, due to their broad and sometimes vague nature and the lack of contextual integration beyond aspirational provisions, meaning that affirmative provisions are not tailored to address pressing distributional issues faced by women in particular economies and industries, as called for under Kuhlmann’s Inclusive Trade
and Development Index. This disconnect between women’s roles and challenges and current RTA provisions is quite significant, and the current inclusions are often disconnected from the realities of women as per their country’s or industry’s individual conditions and needs (Kuhlmann, 2021).

Other challenges can also be considered in this context. One is that some contextual aspects, such as definitions of ‘women’s empowerment’ or ‘gender equality’ have not been adequately defined (Bahri, 2021b). Another challenge is that countries sometimes view more binding commitments as “legal inflation”, which more advanced economies can use to impose their values and norms or “level the playing field” through protectionism (Aaronson and Chauffour, 2011; van Hees, 2004). These concerns were voiced in connection with the WTO Joint Declaration on Women and Trade, which some countries feared would allow for the protection of domestic industries through gender standards (Bahri, 2021b).

**D. Gender Provisions in Context**

While it is helpful to assess gender provisions based on their location, language, and content, which will be discussed in detail below, context is equally, if not more, important. The contextual nature of RTA provisions shows some important regional differences, with North American and European trade agreements tending to view women in a primarily economic and market-oriented context, and other regions taking more of a social approach. For example, the Eurasian Economic Union Agreement (EAEU) and the EU-Central America FTA focus on economic barriers that women face, such as access to employment and access to information, along with the need for trade-related capacity-building programmes (Bahri, 2021b), while in the Canada-Israel FTA, women’s roles extend beyond their role as employees to include positions as entrepreneurs, leaders, decision-makers and scientists. Other regions’ RTAs, such as those in Asia Pacific focus more on the social dimension and reference health care, maternity services, and the elimination of violence and discrimination based on sex (Hasham et al., 2022). Further, in Africa, RTAs focus on women’s access to resources, promoting female entrepreneurship, and enhancing women’s representation in political and decision-making positions (Bahri, 2021b).

Table 2 below summarizes the six different women’s roles, divided by regions that have employed such context and a corresponding practice examples.

**Table 2: Women’s Role by Region (adapted from Bahri)**

<table>
<thead>
<tr>
<th>Women’s Role</th>
<th>Region and Representative RTAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women as Representatives and Decision-Makers and Social</td>
<td>East and South Africa (e.g., COMESA, EAC Agreement)</td>
</tr>
<tr>
<td>Sectors</td>
<td>Areas</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Women as Mothers</td>
<td>Asia Pacific, Middle East, North Africa (ANZCERTA, Peru – South Korea and South Korea – Central America)</td>
</tr>
<tr>
<td>Women as Employees</td>
<td>Europe (EU trade agreements with Korea, Ukraine and Vietnam) and North America (Canada-Jordan)</td>
</tr>
<tr>
<td>Women as Business Owners</td>
<td>Europe (EU – South Africa FTA), South and North America (Chile-Israel; Chile-Canada)</td>
</tr>
<tr>
<td>Women Role in Growth and Development</td>
<td>East Africa (e.g., COMESA) and South America (Chile-Uruguay)</td>
</tr>
</tbody>
</table>

As shown in the table above, the context employed in each agreement is quite diverse, yet most of the current agreements largely focus on women in their roles as mothers or employees or cultural actors or social actors, and not on their roles as entrepreneurs or decision-makers. This shows a disconnect from the distributional impacts of trade liberalization, as even though trade has increased employment or health facilities, it has not necessarily improved the employment conditions or business opportunities for women. Ideally, location, language, and content of gender provisions should relate to women’s roles economically and socially, as well as priorities for expanding opportunities for women. However, these contextual aspects are weakly integrated into current RTAs, as they either appear in aspirational provisions that have less impact on their actual implementation or as best endeavour cooperation provisions which are not at all enforceable in nature. This dichotomy leads us to assess whether the current inclusions of such gender provisions is merely an attempt to construct a “Potemkin Façade” or whether it is a “Cornerstone Work” that can provide a basis to ensure that trade agreements in the future work for women.

**III. Potemkin Façade or Cornerstone?**

As per the Merriam Webster Dictionary, Potemkin façades is defined as 'an impressive façade or show designed to hide an undesirable fact or condition’. This expression is taken from a story of the 18th century Russian military leader and lover of Empress Catherine the Great, Gregory Potemkin, whose name has come to define any kind of initiative taken for the purposes of deceiving others. According to legend, when the Empress Catherine II visited Crimea in 1787, he ordered the creation of fake villages all along her route to disguise or hide the area’s dilapidated state. With painted and well decorated façades erected,
thousands of peasants were used to manage the stage to fool the Empress into thinking that the area was faring better than it actually was. Critics henceforth coined the notion of the “Potemkin village”, a term which would remain relevant to this day, and used to describe works or initiatives that are taken specifically to provide a misleading impression, usually with a specific propaganda behind it. It is in this same sense that this term is used in this chapter, as the key issue authors are seeking to assess is whether the inclusion of gender provisions in existing trade agreements is merely window-dressing attempt to hide the negative impacts of trade liberalization on women.

As can be seen in the previous sections, trade agreements so far have covered a wide range of concerns, ranging from increasing women’s access to resources, markets, health services, and education; improving labour standards and business conditions for women traders; to women’s protection against sex-based violence and their empowerment as mothers and social or cultural actors. These interests are vital, and they are at the forefront of the protection of basic human rights. Yet, countries so far have assumed all these commitments (with very few exceptions) on a voluntary and permissive basis, as they are drafted with permissive grammatical constructions and use of soft verbs (such as ‘may’, ‘could’, ‘consider’, ‘endeavor’, ‘promote’, ‘encourage’ or ‘cooperate’) (Bhala and Wood, 2019). Moreover, countries often carve these provisions out of the scope of their agreements’ dispute settlement mechanisms, which ensures that non-compliance with such provisions does not attract repercussions of any kind.

This shows that countries so far have undertaken these commitments in a rather modest and non-binding manner, and they have left the implementation of these activities to their available resources and willingness. The reasons are clear. Countries are not yet ready to undertake these commitments as binding and enforceable (Bahri, 2021a). Hence, the gender mainstreaming approach so far has been based on the spirit of cooperation, wherein parties seek to use cooperation as a route to start this dialogue with others. However, more recently, some countries (such as those in North America and East Africa) are assessing the possibility of taking a step further in negotiating commitments with binding force (Bahri, 2021a). The others, however, are not there yet, as they consider binding commitments as simply not the most suitable route to discuss gender concerns in the context of their trade policy agenda.

A negotiator from a developing country explains this hesitation in the following words: 'If we do not know what we are negotiating, and which provision will be harmful for us, negotiating these provisions with a binding character could be a huge risk for us, as we do not know how they are going to be used by our developed country partners.' This observation shows that, when it comes to the inclusion of gender provisions in trade agreements, developing countries can be wary of the intentions of the developed world.
Some countries can oppose engagement on gender and other sustainability issues mainly because they link it to their past experiences with the WTO, where, in the words of a trade negotiator, ‘they were taken for a ride on some such progressive issues by the developed world’. These statements show a clear trust deficit when it comes to discussions on gender equality, and countries’ efforts to impose binding standards on others may be perceived as a Trojan horse attempt by some, as these provisions may have the capacity to derail developing nation’s hitherto achieved progress.

These observations reflect a preference of some countries towards the inclusion of gender issues through a route of cooperation, as that is often seen as a viable starting point. The value of aspirational provisions cannot be underrated, as these provisions can still change the normative environment of trade negotiations and can act as a starting point in negotiating gender-related commitments for countries with a less developed appetite or understanding on these matters. Voluntary provisions, therefore, provide a “safe abode” for countries with hesitations and challenges. Yet, there are clear advantages of binding and enforceable provisions.

Binding and enforceable provisions can bolster a country’s level of commitment towards the implementation of the provisions they undertake in their agreements. In particular, for countries with low level of political appetite to deal with such matters through international policy instruments, these provisions in their binding form could act as a “top-down” trigger for their public officials to ponder various domestic solutions they could invoke to implement the trade agreements they have signed. These provisions could persuade governments to amend their domestic laws and procedures that create regulatory hurdles for women in trade, responding to Kuhlmann’s “Regulatory Gateways” dimension. These provisions, especially in the form of minimum legal standards and other commitments to adapt laws, can especially help countries bring about domestic legal and procedural changes, as governments will have to change domestic legislation and frameworks as per the commitments they undertake in these agreements as they ratify and implement these agreements.

Using these commitments, governments can also take other actions to help women reduce the barriers they otherwise face in accessing trade opportunities through work on enhancing women’s access to productive resources such as finance and information and up-scaling their level of education and skill development in areas that can lead to lucrative opportunities. However, in order for this to work, it is important that the content and context of these provisions, in addition to their language and location, directly correspond and respond to the barriers women face in accessing opportunities offered by international trade. At the moment, as seen in the previous sections, there is a deep disconnect between provisions’ content and context and barriers faced.
Another problem with the content of the aspirational as well as affirmative provisions is the difficulty that countries face with their actual domestic implementation. One negotiator observed the following: ‘We should not be forced to implement things that our country is not otherwise prepared to implement. We do not want to talk about enforcement or implementation yet; we want to start with cooperation and exchange of ideas to begin with.’

These observations reflect a strong sentiment that some countries are reluctant to engage in trade and gender discussions, especially when they are made to operate under a constant fear of being sued or facing sanctions. Moreover, another important aspect coming out from these statements is the problem associated with putting such commitments into action. As the previous sections have shown, current gender provisions are often included in trade agreements without any accompanying provisions on how such provisions might be implemented by the respective countries. In this sense, countries draft such provisions often without providing any clarifications or details on which stakeholders or committees might be responsible for monitoring or implementing such provisions, which procedures might be useful for their implementation, how the parties will monitor or review their implementation and impact, and how countries might go about financing their implementation.

Without working out the implementation mechanics, it is difficult to see how such commitments would ever be put to application. To ensure that these provisions do not remain as mere “Cinderella” promises, however, it is important that countries in future trade negotiations give some thought to the creation of dedicated procedures and institutions that can help them put these long lists of commitments into action. RTAs need to spell-out the functions of the institutions, milestones, and objectives they are expected to achieve, along with a timeline by which to achieve these milestones. One of the most important things in this regard is to provide for funding arrangements to finance gender-related activities if these commitments are meant to be put into action. As of today, even the most advanced RTAs in terms of highlighting gender concerns such as the ones signed between Canada and Chile or Canada and Israel, do not clarify precise procedures or identify channels to finance these activities.

One final aspect to consider in assessing whether such provisions are merely facades or can be seen as cornerstones is the level of precision with which they are drafted. As has happened so far, a very high majority of gender provisions are drafted with very little precision and significant vagueness, with frequent use of ambiguous expressions often without any attempt to address their definition or scope. This lack of precision in current approaches reflects a low level of commitment on the part of these countries to make a positive change using trade agreements. Greater precision of provisions would reflect a higher level of commitment, because countries with such provisions would have limited
discretion regarding implementation in an identified area. Nevertheless, the value of aspirational provisions, which are often drafted with vague language, must not be underrated; as previously noted, such provisions can still change the normative environment of trade negotiations. Countries sometimes need some flexibility in assuming commitments that they do not entirely understand (Kuhlmann, 2020), particularly before using trade agreements to protect women, when they do not know how an agreement will affect women in practice. Vaguely worded treaty provisions can create flexibility, by giving countries more room to manoeuvre. However, the vaguer the rules are, the more power countries may have in interpreting them, and, hence in the end, these vague rules may not foster much of the needed flexibility.

IV. Conclusion

As discussed in the previous section, current trade agreements do not adequately address the distributional issues that are central to more inclusive trade, and RTAs rarely focus on how gender-related commitments could be implemented, enforced, or applied. Yet the inclusion of such provisions in trade agreements can incentivize positive changes at the domestic level and help women access economic opportunities if they are ever put into action. Hence, it may be too harsh to consider these provisions completely as façades, as countries have made genuine attempts to not merely acknowledge the problem as it stands but also to deliberate upon the possible solutions to amplify economic opportunities for women in trade. Sometimes these attempts have been merely symbolic, and on other occasions, when countries have gone ahead to assume affirmative commitments, these attempts have been either misdirected (as they do not directly address important distributional issues) or entered into with a low level of ambition or commitment (in the form of vague and/or best endeavor commitments which are completely unenforceable). In line with this assessment, more significant changes could be contemplated in terms of the content, language, and location of future provisions.

Women’s economic empowerment will depend upon crafting and applying commitments in context, including those designed to address the social and economic aspects of women’s work and livelihoods. It will also require the lowering of barriers that affect women’s participation in the economy and impede their access to productive resources, including legal dimensions. All of these aspects speak to whether RTAs adequately incorporate equity and inclusion, particularly in order to address distributional issues and promote women’s economic opportunities, enhanced skills, entrepreneurship, access to finance, and bridging the digital divide, among others.
References


International Trade Centre (ITC). (2015), Unlocking Markets for Women to Trade, Switzerland, ITC. Available at https://www.un-ilibrary.org/content/books/9789210579407/read.


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1 Incorporation of gender in trade agreements can be indicated by inclusion of the terms gender, woman, girl, women, girls, maternity, childcare, sex, mother, etc. (See Bahri, 2021a). It is also important to note that gender should be interpreted broadly to include sex, gender identity, and gender expression, and an understanding of women’s experiences should be both “intersectional” and “multidimensional”. (See Kuhlmann, 2022; Crenshaw Williams, 1989; Gathii, 2020).

2 There are more than 300 provisions across 100 FTA’s that refer explicitly to women’s interests or gender equality. This is over a third of the FTA’s that are currently in force and notified by Members to the WTO (See Bahri, 2021b).

3 A number of terms and concepts can be used to describe a greater role for women in trade; many of these date back to the “early days of contemporary public policy debate on gender inequality” (See Bahri 2021b). “Gender equality” is used here to refer to equality of rights, responsibilities, and opportunities and equal consideration of the “interests, needs, and priorities of women and men” (See UN Women, 2001; von Hagen, 2014; Bahri, 2022).

4 In addition to gender, a number of other human rights appear in trade agreement provisions, including labour rights, privacy rights, political participation, due process, access to information provisions, cultural rights, indigenous rights, and access to affordable medicines (See Aaronson and Chauffour 2011). Several human rights instruments are particularly relevant in the gender context, including the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and Peoples’ Rights Protocol on the Rights of Women in Africa (Maputo Protocol; also referred to as the AU Protocol on Women’s Rights); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2005).

5 Gender provisions in trade instruments also advance the SDGs, including Goal 5 on Gender Equality.

6 As of 2016, about 136 countries had negotiated RTAs with at least one labour provision (See Harrison, 2019; ILO, 2017; Martínez-Zarzoso and Oueslati, 2018).

7 “Legal and Regulatory Gateways” are the decision points and hurdles contained within a legal or regulatory process (license, registration, or permit, for example) that “correspond with practical steps that enterprises
and other stakeholders encounter in navigating a particular aspect of the legal and regulatory system.” They also "signify intervention points to make the rules more equitable, inclusive, and efficient.” (Kuhlmann, 2021).

These measures are all linked to WTO disciplines as well (see Acharya et al., 2019).


The WTO SPS Agreement, with which most RTAs align, contains important disciplines and an emphasis on capacity building and Special and Differential Treatment (see Articles 9 and 10 of the WTO SPS Agreement, which are often incorporated into RTAs). Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

Women are increasingly involved in services, ranging from retail and financial services to tourism and hospitality, to health care.

Informal work includes part-time work, home-based work, and other informal sector activity.

“Bottom-up” approaches involve national laws, culture, and social norms at the domestic level and can have a more direct impact on household livelihoods, taking gender dynamics and gendered impacts into account. On the other hand, “top-down” international law and policies can establish State-to-State commitments and treaty provisions that can contribute to the empowerment of women (see Bahri, 2021b; Kuhlmann, 2022).

Gender mainstreaming is a means for achieving gender equality and can be defined as “the (re)organization, improvement, development, and evaluation of policy processes so that a gender equality perspective is incorporated in all policies at all levels and stages, by the actors normally involved in policy-making” (Council of Europe, 1998). In an RTA context, it refers to the process of incorporating gender considerations and concerns into the design of the RTA.

“Gender responsiveness” refers to a process that assesses how sensitive, informed, or committed the provisions of a trade agreement are to issues relating to gender equality, i.e., how an agreement mainstreams gender equality considerations (See Bahri, 2019).

Applying a "gender lens" in the context of trade agreements is a process by which parties seek to include a gender perspective in trade liberalization efforts and policies. Mainstreaming affirms a country’s commitment, understanding and political will to reduce gender inequalities through trade policies and agreements (See Bahri, 2022).

Art. 157 TFEU imposes an obligation on each Member State to ensure that the ‘principle of equal pay for male and female workers for equal work or work of equal value is applied’ in their respective jurisdictions.


See Chile Uruguay Free Trade Agreement (Chile-Uruguay FTA) (2016); Chile-Canada Free Trade Agreement (CCFTA) (2019); Chile-Argentina Free Trade Agreement (Chile-Argentina FTA) (2019); Canada-Israel Free Trade Agreement (CIFTA) (2018); Chile-Ecuador Acuerdo de Complementación Económica (signed 13 August 2020) and UK-Japan Agreement for a Comprehensive Economic Partnership (entered into force 31 December 2020).

See Chile-Uruguay Free Trade Agreement (Chile-Uruguay FTA) (2016) (Chapter 11.9/6 on Labour) and United States, Mexico, Canada Agreement (USMCA) (Article 14.17 on corporate social responsibility, Article 23.9 on sex-based discrimination in the workplace, Article 25.2 on investment and SMEs) (Bahri, 2019).

Interview with trade negotiator, [details withheld, on record with author].


The CETA Trade and Gender Recommendation is a supplementary document adopted after signature and enforcement of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU. It contains recommendations on gender mainstreaming.

SADC Protocol on Gender and Development (2008) and Declaration on Gender & Development (1997).

For example, Article 23.9 of USMCA states that “each Party shall implement policies that it considers appropriate to protect workers against employment discrimination on the basis of sex...”.

Other examples include the Chile-Uruguay Free Trade Agreement (Chile-Uruguay FTA) (2016), which provides for the creation of a gender committee to monitor and implement the envisaged commitments and a commitment of parties to solve issues regarding application and interpretation through consultations and dialogue. The Chile-Canada Free Trade Agreement (CCFTA) (2019) raises the bar higher by providing operation requirements and functions for its trade and gender committee, as well as a mechanism of parties to engage in consultation to resolve disputes. The Chile-Ecuador Free Trade Agreement (2020) defines contact points and responsibilities as well as a dedicated bilateral consultation mechanism to solve differences that may arise from provisions in the trade and gender chapter. This mechanism is based on mutually-acceptable resolution.

Inclusion of such language can also influence the way other provisions are interpreted in accordance with Article 31 of the Vienna Convention.

For example, several RTAs contain gender chapters with no substantial obligations, e.g., Canada-Chile FTA and Canada-Israel FTA (See Bahri, 2021b).

Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (enforced, 01 May 2010), Article 101.

For example, Article 5 of the Treaty for the Establishment of the East African Community (enforced, 7 July 2000) sets out the objectives of the community and includes the parties’ commitment to mainstream gender equality in all its endeavours and enhance the “role of women in cultural, social, political, economic and technological development”.

Inclusion of such language can also influence the way other provisions are interpreted in accordance with Article 31 of the Vienna Convention.

Agreement Establishing the African Continental Free Trade Area (AfCFTA) (2018), Preamble and General Objectives (Article 3 (e)).

For example, the SADC Protocol on Gender and Development, August 2008.

These are taken from several sources previously written by the authors.

For example, affirmations on cooperation activities aimed at improving access of women to markets, technology and financing and developing women’s leadership and business networks under the Japan-UK CEPA.

SADC Gender Protocol, Part Six, Article 20.

For example, Article 10.2 in the Korea-Singapore Free Trade Agreement provides that parties reserve the right to regulate foreign investment in respect of childcare services.

Article 32.6 of USMCA includes a cultural reservation in the context of broadcasting services to preserve culture, languages, knowledge, traditions, and identity, with a special focus on the integration of women and promotion of gender equality.

See Article N bis-06: Non-application of Dispute Resolution of the Canada-Chile Agreement.

SADC Gender Protocol, Article 36.


The authors point out that most gender related commitments in USMCA and CPTPP are aspirational and non-binding, and hence non-enforceable, and are sometimes drafted with vagueness and ambiguity, and so they are susceptible to myriad interpretations.

The study notes how some African countries have assumed binding commitments; however, these commitments have been included without any provision for their enforcement mechanisms.

Interview with a trade negotiator [details withheld, on file with author].

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