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SCHOLARONE MANUSCRIPTS

Gender Equality in Trade Agreements: The Illusion of Inclusion by Imitation

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Abstract: This study offers a new approach to assessing gender-related provisions in trade agreements by questioning the much self-applauded efforts by governments on adding such provisions in their agreements. The findings, using the case study of trade and gender provisions, will re-shape how we think about the processes of international trade cooperation and whether they can support the goals of economic inclusion. This paper presents compelling evidence about how the provisions on gender equality or women's empowerment in the existing trade agreements are produced primarily through copying and pasting across trade agreements, and that the language that has been copied and pasted is predominantly created by and for a segment of the developed world.

Keywords: Gender, Women's Empowerment, Trade Agreements, Women, Copy and Paste, Template, Inclusion

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I. Introduction

Provisions addressing gender equality[1] and women's economic empowerment have become a standard feature of modern trade agreements, reflecting a global shift towards a more inclusive trade policy, and many scholars and policymakers have applauded these inclusions.[2] However,

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[1] Gender as such is a broad term; it includes women as well as men and traditional as well as non-traditional genders. The terms "gender" and "gender mainstreaming" have mostly been used in trade agreements and policies without any attempts to define them or clarify their scope; however, it is possible to infer from a systemic assessment of the provisions containing these terms that they have mostly been used to only refer to the interests of women who identify themselves as cis-gender women, thereby excluding – intentionally or unintentionally - the concerns relating to men as well as non-cis-gender women and men. In this article, in line with the current discourse and scholarship on this topic, "gender" or "gender equality" are used to refer to concerns or issues relating to women - cis-gender and non-cis-gender.

[2] For relevant scholarship, see Raj Bhala and Cody N Wood, 'Two Dimensional Hard-Soft Law Theory and the Advancement of Women's and LGBTQ+ Rights through Free Trade Agreements' (2019) 47 *Georgia Journal of International and Comparative Law 2*; Jane Korinek, *Trade and Gender: Issues and Interactions* (OECD Working Paper No 24, 2005) 7–8 <http://www.oecd.org/dataoecd/38/50/35770606.pdf> accessed 7 August 2025. For contrary views or a critique, see Desirée LeClercq, 'The Disparate Treatment of Rights in Trade' (2021) 90(1) *Fordham Law Review* 1 (the author notes that this appetite depends largely on whether the non-trade concerns are related to trade and whether they impact production or trade costs).

many of these provisions rely extensively on language borrowed from earlier agreements, suggesting a process of policy diffusion rather than a well-coordinated policy effort.[3] Moreover, a relatively small set of major capital exporting and developed economies have often been able to diffuse their preferred gender language and content as they have negotiated such provisions with a predetermined template used in their previous trade negotiations.[4] This raises important questions about what may be lost when gender provisions are carried across agreements without adaptation to domestic constraints or the barriers women face in economies that are at different developmental stages.

The template-based approach is widely used across treaty making, and trade agreements are no exception.[5] Studies have found that at least 100 free trade agreements (FTAs)[6] take 80 percent or more of their content - word for word - from other existing agreements, with many copying 95% or more of text from earlier treaties.[7] Allee and Elsig systematically compared several hundred agreements, finding that most FTAs copy verbatim a majority of their content from existing agreements.[8] This finding sits in stark paradox to the fact that each country has different negotiating inputs and capacity which should lead to variations in the negotiated outcomes.[9] However, that has not been the case in respect of the existing trade agreements.

Findings also reveal that copying-pasting is prevalent in two distinct scenarios: when low-capacity governments turn to an existing template, and when powerful States desire to spread

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[3] Todd Allee and Manfred Elsig, 'Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements' (2019) 63 *International Studies Quarterly* 603.

[4] The draft templates used by the United States, for instance, are available for downloads here: Office of Financial Management, Template - Treaties and International Agreements <https://www.commerce.gov/ofm/files/template-treaties-and-international-agreements> accessed 3 January 2025. Leonardo Baccini, Andreas Dür and Yoram Z Haftel, 'Imitation and Innovation in International Governance: The Diffusion of Trade Agreement Design' in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (Cambridge University Press 2015) 167–94.

[5] Alschner Wolfgang, Julia Seiermann and Dimitri Skougarevskiy, 'Texts of Trade Agreements (ToTA): A Structured Corpus for the Text-As-Data Analysis of Preferential Trade Agreements' (2018) 15 *Journal of Empirical Legal Studies* 648.

[6] The term FTA as used in this article encompasses several different types of arrangements. These include free trade agreements ("FTAs") such as the United States–Mexico–Canada Agreement ("USMCA"), in which member countries have agreed to reduce or eliminate trade barriers among themselves, or customs unions ("CU"), such as the European Union ("EU"), which is a deeper form of economic integration arrangement in which member states also maintain common tariffs and trade policies with respect to the rest of the world. It can also include interim arrangements that can lead to either an FTA or CU. FTAs can be bilateral, plurilateral, regional or mega-regional, and they can be drafted purely as trade agreements, or as economic partnership agreements, association agreements, strategic partnership agreements, and such others.

[7] Allee and Elsig (n 3), 603, 613.

[8] ibid; also see Wolfgang Alschner, Julia Seiermann and Dimitri Skougarevskiy, 'Text-As-Data Analysis of Preferential Trade Agreements: Mapping the PTA Landscape' (2017) 5 *UNCTAD Research Paper* UNCTAD Research (UNCTAD/SER.RP/2017/5).

[9] Brigid Starkey, Mark A Boyer and Jonathan Wilkenfeld, *Negotiating a Complex World: An Introduction to International Negotiation* (2nd edn, Rowman & Littlefield 2005).

their preferred set of rules globally.[10] Hence, both developed (with significant negotiation capacity) and developing countries (with limited negotiation capacity) copy and paste quite extensively. In practice, high-capacity actors may deploy templates to diffuse preferred language, while lower-capacity actors may rely on them to economize on drafting and legal review. Replication is therefore treated in this paper as an outcome that can reflect power asymmetries and capacity constraints, rather than a single underlying motive. Countries with the experience of negotiating such provisions and chapters tend to have a much more clearly-formulated vision of what they need to add in an agreement. Moreover, they also have a much greater likelihood of having a past agreement or explicit template on trade and gender chapters or provisions to draw from, and a greater bargaining leverage to add their preferred language as compared to their developing country partners.[11]

Copying provisions offers several benefits, as it can drive change by encouraging imitation on unfamiliar issues[12]and reduce negotiation costs since such provisions have lower compliance costs for countries that may already have negotiated them elsewhere.[13] It may also enable incremental strengthening of language overtime, as parties occasionally harden or extend previously soft formulations rather than inventing entirely new language.[14] Moreover, it is much easier to arrive to an agreeable document from an existing document than to write an entirely new one. Even if parties disagree on the appropriate language of a pre-existing document, it still is easier to work from – and modify – a fully formulated document than to start from scratch and create a new document.[15] This is particularly relevant for the inclusion of gender provisions in trade agreements, which continues to face resistance in many countries.

Countries also tend to develop certain templates of agreements and provisions for the sake of familiarity.[16] The psychological phenomenon of "familiarity heuristic" scenario suggests that recall of past information shapes perceptions of future likelihood. Familiarity with previously negotiated language can shape negotiators' choices, particularly in cross cutting areas like trade

[10] Allee and Elsig (n 3), 603; Julia Seiermann, 'Only Words? How Power in Trade Agreement Texts Affects International Trade Flows' (UNCTAD Research Paper 26, 2018) <https://unctad.org/system/files/official-document/ser-rp-2018d8_en.pdf> accessed 3 January 2025.

[11] Amrita Bahri and Renata Amaral, 'Gender Equality Provisions in Trade and Investment Agreements: Are They Widening the Negotiation Capacity Gap?' (2024) 23 *World Trade Review* 47, 71.

[12] Frank Dobbin, Beth Simmons and Geoffrey Garrett, 'The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?' (2007) 33 *Annual Review of Sociology* 449, 472.

[13] ibid.

[14] Interview with trade negotiators from three developing countries [details withheld, in file with author].

[15] Interview with trade negotiator [details withheld, in file with author].

[16] Lisa Lechner, 'The Domestic Battle over the Design of Non-trade Issues in Preferential Trade Agreements' (2016) 23 *Review of International Political Economy* 840, 871.

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and gender, where delegations may prefer vetted language to avoid interpretive and political uncertainty.[17]

This paper shows that the approach of copying-pasting is particularly evident when we examine the content and scope of provisions in trade agreements that explicitly address women or more broadly relate to gender concerns as most of these provisions or even entire chapters are copied in their entirety from the pre-existing treaties.[18] The findings also show that even though a number of trade agreements have included commitments relating to gender equality, the countries that have negotiated these agreements have copied and pasted large amounts of text from the pre-existing agreements. The language that has been copied and pasted is predominantly created by and for the developed world with a few notable exceptions. This realization, or finding, motivates two linked questions: (i) whether different capacities of negotiation and diffusion dynamics can explain the persistence of template-based gender language, and (ii) what normative risks arise when replication becomes the dominant mode of including commitments relating to women in trade policy instruments, especially if they are not designed with an explicit effort to address the barriers that women face. The latter question is particularly concerning as the practice of copying-pasting seems to have caused disconnect between the problems that women face and the policy solutions that are being included as gender provisions in trade agreements. The discussions and evidence presented in this paper will recast our understanding on whether trade agreements can accommodate gender-related interests, how such provisions are included in trade negotiation agenda, what might be the factors behind such repetitive inclusions, and what prevents countries from adopting more innovative equality standards.

The discussion on boilerplate language in gender provisions should not be understood as implying that standardization is inherently undesirable. Standardized treaty drafting, as previously stated, can promote predictability, facilitate negotiations, and ensure that issues such as gender equality remain visible within trade policy. The concern raised in this article is narrower, which is, that the extensive textual replication in this field may reduce opportunities to tailor treaty commitments to the distinct barriers that women face in different countries that may have very distinct institutional, economic and social circumstances. Moreover, this study does not challenge the heterogeneity of FTAs, as shown in multiple quantitative empirical studies[19]; this paper shows that the content of trade agreements on gender concerns are

[17] Russell Korobkin and Chris Guthrie, 'Heuristics: Heuristics and Biases at the Bargaining Table' (2004) 87 *Marquette Law Review* 795, 807.

[18] For disability related provisions, see Amrita Bahri, 'Trade Agreements and Disability Inclusion: Demystifying the Disconnect between Barriers and Policy Solutions' (United Kingdom Foreign, Commonwealth and Development Office and Cowater International Inc., 2024); Karolina Milewicz, 'Beyond Trade: The Expanding Scope of the Non-trade Agenda in Trade Agreements' (2018) 62 *Journal of Conflict Resolution* 743, 773.

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frequently replicated through verbatim or near verbatim reuse of language from the previously negotiated trade agreements. However, this is not to say that all such provisions are a copy-paste; some are different and innovative, but the vast majority of provisions bear a striking resemblance in terms of their content, scope, language and even expressions used.

In this paper, Section II discusses copy-pasting as a drafting mechanism, drawing briefly on standard-form contracts and bilateral investment treaties to explain how boilerplate approach may operate in practice. Section III then situates these replication dynamics within trade negotiations, showing how preferred templates travel across agreements even without a formal "model draft" culture. Section IV sets out the paper's conceptual framework on policy diffusion, clarifying how coercion, learning, competition, and legitimacy dynamics may help explain the spread of treaty language particularly relating to gender provisions without predetermining whether such diffusion is desirable. Section V presents concrete evidence on the use of boilerplate approach in the drafting of trade and gender provisions, by identifying clusters of repeated gender provisions. The final section concludes with reflections on when replication can support incremental strengthening, where it appears to constrain context-sensitive design, and what this implies for future trade and gender discourse.

Research Methodology

The methodological approach adopted in this study is qualitative content analysis combined with comparative textual analysis. This approach is particularly suited for examining legal and policy documents such as international trade agreements, where the wording, structure, and context of provisions carry interpretive and normative weight.[20] The study assumes that the language of trade agreements both reflects and shapes policy priorities, including on gender issues, enabling analysis of the presence, form, and framing of gender-related provisions across texts.

As of the date of this writing, the World Trade Organization's Regional Trade Agreements (RTA) database lists a total of 375 trade agreements currently in force.[21] The author conducted a comprehensive review of these agreements to identify provisions that reference gender or women. Both explicit mentions (e.g., clauses directly referring to gender equality, women's

[19] Zhiyuan Wang, 'Designing Competition Clauses in Preferential Trade Agreements' (2023) 22 *World Trade Review* 657, 679; Anu Bradford and Tim Büthe, 'Competition Policy and Free Trade: Antitrust Provisions in PTAs', in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (Cambridge University Press 2015), 246-274.

[20] GA Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9 *Qualitative Research Journal* 27

[21] WTO Regional Trade Agreements Database, <https://rtais.wto.org/UI/PublicAllRTAList.aspx> accessed 10 September 2025

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economic empowerment, or gender-sensitive measures) and implicit mentions (e.g., language on social inclusion, equality of opportunity, or labor standards that may have gendered implications) were considered.[22] Agreements were categorized according to whether they contained: explicit gender provisions, implicit gender references, or no discernible gender-related content wherein no evidence—explicit or implied of gender-related content was considered or integrated into texts. This approach allowed for both quantitative summarization (number and proportion of agreements with gender provisions) and qualitative analysis (nature and framing of gender-related content).

The methodology employed in this study is similar to the one used by those investigating plagiarism manually, in which the investigators search for perfectly-matching strings of text that would indicate "copy-pasting" from some other documents. The author started by browsing through the text of a given FTA to identify the provisions relating to gender or women with the help of a number of search words. After identifying the relevant provisions, the author read and assessed the nature, scope and language used to draft them, and compared them to the other relevant provisions added across different trade agreements. To identify relevant provisions, a keyword search was conducted using terms including, but not limited to, "gender," "women," "equality," "non-discrimination," "female," "inclusive," and "empowerment." These searches were conducted using PDF readers and full-text editors, supplemented with manual reading to ensure that contextually relevant expressions were not overlooked.

Text analysis was used to analyze the language of provisions that are explicitly related to gender or women. Text analysis is an increasingly common method in the social sciences and is particularly well suited to the study of international agreements which employ deliberate wording and allow scope for legal interpretation.[23] Provisions identified were textually analyzed based on the nature, scope, and language used. Comparative text analysis was employed to identify similarities between provisions across different agreements. To identify similarities between identical texts of provisions in different agreements, the author primarily looked for either literal word-to-word matching, or sequences of five or more words in a given provision that contains an explicit gender expression. Moreover, many provisions were identified that were somehow paraphrased with minor tweaks in terms of nouns and verbs. Another approach

[22] Explicit provisions are those that are drafted with women or gender related language and use the following terms: *mujer, mujeres, género, niñas - niños, sexo, equidad, maternidad, paternidad , paternal, maternal, igualdad, Atencion infantil* [in Spanish]; women, girl, woman, girls, maternity, gender, childcare, sex and mother [in English]. Only those explicit provisions are included in this study that includes text that offers commitment, vision, or actions to challenge gender inequalities and empower women through international trade. Implicit provisions are those that do not contain women specific language but nevertheless seek to benefit women. Some examples may include provisions on morals, human rights, social welfare, labour rights, poverty, corporate social responsibility, inclusive development and others.

[23] Mark S Manger and Clint Peinhardt, 'Learning and Diffusion in International Investment Agreements' (2013) 43 *International Interactions* 679.

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used was the "bag-of-words", which disregards text order and is often deployed inductively. A "bag-of-words" approach was used to identify recurring terms across agreements, with all results verified through manual reading of the full provisions. These methods helped identify common clauses and paraphrased adaptations of gender language across different trade agreements.

Once relevant provisions were identified, a manual qualitative assessment was conducted to evaluate several features of the provisions including the nature (declarative, cooperative, or binding), scope (narrow, general, or comprehensive), positioning or location (within preambles, labor chapters, or standalone provisions or chapters), and language strength (use of mandatory terms like "shall" vs. aspirational terms like "encourage" or "endeavor"). This stage of the analysis allowed the author to categorize the function and legal weight of gender provisions and understand their normative implications.

Following this assessment of the identified provisions, the author selected five different inclusions (as shown in Table 1) that were found to be most recurring in multiple trade agreements. A total of 78 FTAs were found to contain explicit gender-related provisions. The analysis focused on the qualitative nature of the language used, rather than statistical testing or quantitative inference. While no specialized text analysis software was employed for this study, tools such as Adobe Acrobat and Microsoft Excel were used to perform keyword searches, compare phrase frequencies, and structure data for categorization and review.

Limitations of this methodology include potential omission of deeply implicit gender-related language not captured by the keyword search and the interpretive nature of qualitative assessment. The analysis focused exclusively on the textual content of agreements and did not examine their implementation, enforcement mechanisms, or outcomes. Implicit gender references that did not contain identifiable keywords may have been underrepresented despite manual review efforts. Moreover, the qualitative nature of the analysis means findings are interpretive rather than statistical.

II. Copy-Pasting as a Drafting Mechanism: Functions, Benefits, and Limitations

As a drafting mechanism, copy-pasting serves multiple functions in legal texts and international agreements. It reduces transaction costs by economizing on time, expertise, and legal review, promotes consistency and legal certainty across instruments, and facilitates the diffusion of preferred norms and institutional models.[24] It also helps parties converge on text that has already been accepted in prior bargaining contexts.[25] At the same time, reliance on replicated language may potentially limit adaptation to context-specific objectives and conditions.[26] These

[24] Allee and Elsig (see note 3) 605-607.
[25] Interview with trade negotiators [details withheld and on record with author]

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functions also explain why boilerplate language can facilitate diffusion of norms across trade agreements. When a formulation is repeatedly reused, it becomes a coordination device, lowering the bargaining and legal review burden for future treaties.[27] Yet these advantages can vary by policy area, and the latter sections examine why their payoffs may be uneven when the copied language is expected to address context-specific social barriers, such as those implicated in gender-related trade provisions.

The scholarship that most directly informs this perspective is the one on contracts, particularly relating to standard-form-contracts.[28] Standard-form-contracts are widely used in domestic law and their drafting relies heavily on the boilerplate language.[29] The extensive literature on international politics, particularly relating to investment treaties, has also acknowledged the use of the boilerplate approach through model treaties in the negotiation and drafting of investment policy instruments.[30] Model treaties contain precise language and formulations that are well-vetted by negotiators and policymakers over a number of years and decades. Model bilateral investment treaties (BITs) – which lay out the proposing State's preferred text, are widely viewed as a starting template for negotiations. Many governments have drafted their own versions of BITs, known as "Model BITs", with the obvious intention that they will be able to push in these templates as the basis for future negotiations with their investment partners.[31]

Research clearly reveals that developed countries are much more likely to design model BITs, which they then use to negotiate other BITs.[32] Empirical research suggests substantial concordance between negotiated BITs and the model text of larger treaty partners, and that concordance can be higher when bargaining asymmetry is large.[33] In the field of international investment, the boilerplate approach is so common that the practice of negotiated BIT text being taken verbatim from the powerful country's model treaty is in fact seen as a well-

[26] Aayushi Singh, 'Deconstructing Treaty Parallelism and Overlap: The infamous "Achilles Heel"' (*Cambridge International Law Journal*, 3 May 2021) <https://cilj.co.uk/2021/05/03/deconstructing-treaty-parallelism-and-overlap-the-infamous-achilles-heel/> accessed 15 January 2025.

[27] Interview with trade negotiators [details withheld and on record with author]

[28] Giuseppe Dari-Mattiacci and Florencia Marotta-Wurgler, 'Learning in Standard-Form Contracts: Theory and Evidence' (2022) 14 *Journal of Legal Analysis* 244, 314.

[29] Mitu Gulati and Robert E Scott, The Three and a Half Minute Transaction: Boilerplate and the Limits of Contract Design (Columbia Law and Economics Working Paper No 407, University of Chicago Press 2012) <https://ssrn.com/abstract=1937900> accessed 15 January 2025.

[30] Alschner Wolfgang and Dimitri Skougarevskiy, 'Mapping the Universe of International Investment Agreements' (2016) 19 *Journal of International Economic Law* 561, 588.

[31] Tarald Berge and Øyvind Stiansen, 'Negotiating BITs with Models: The Power of Expertise' (*SSRN Electronic Journal*, 2016) <https://doi.org/10.2139/ssrn.2851454> accessed 15 January 2025.

[32] Todd Allee and Andrew Lugg, 'Do BITs Reflect the Interests of Powerful States?' (2016 Annual Meeting of the International Studies Association, Atlanta, Georgia, 16-20 March 2016) <https://www.researchgate.net/publication/305318612_Do_BITs_Reflect_the_Interests_of_Powerful_States> accessed 15 January 2025.

[33] ibid.

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established practice. Nevertheless, this trend has faced backlash, and developing countries have criticized the BITs' negotiating processes for largely serving the interests of capital-exporting States and their corporations.[34] This experience illustrates an important limitation of template-based diffusion: where power asymmetries are strong, extensive reliance on model text can intensify concerns about one-sided drafting and limited accommodation of the other party's regulatory priorities and concerns.[35]

There is also strong evidence that these model BITs are a reflection of governments' investment preferences, and for this reason, their aim is to use them as much as possible in the negotiating process. During Congressional debates over BIT ratification, in fact, the United States (US) often trumpets how similar the negotiated BIT being considered is to the US model and especially when a US model BIT is entirely adopted by another State.[36] Alvarez has described this dynamic as a "cookie-cutter" approach, in which model text functions less as a joint drafting mechanism and more as a vehicle for imposing preferred terms.[37]

The central claim of this paper is not that copy-pasting is inherently problematic, but that its value depends on the functions the replicated provisions are expected to perform. In commercial contracts and investment treaties, textual reuse often advances predictability, drafting efficiency, and the diffusion of legally vetted formulations. This paper argues, however, that these advantages translate less readily to the inclusion of gender-related provisions in trade agreements, where the effectiveness of commitments is highly contingent on context-specific barriers, institutional capacity, and the distributional profile of women's participation in different economies and sectors.

III. When Language Travels: Replication in Trade Agreements

In trade negotiations, unlike negotiation of investment treaties, there is no explicitly accepted practice or culture of approaching negotiations with a model draft[38]; nevertheless, some countries in trade negotiations have often approached the tables with their preferred

[34] Uche Ewelikwa Ofodile, 'Africa-China Bilateral Investment Treaties: A Critique' (2013) 35 *Michigan Journal of International Law* 131, 147-211.

[35] Affif Havas Oegroseno, 'Indonesia's Bilateral Investment Treaties: Modernising for the 21st Century' (RSIS Commentary No 140, 15 July 2014), <https://www.academia.edu/113519588/Indonesias_bilateral_investment_treaties_modernising_for_the_21st_century> accessed 11 August 2025.

[36] Lauge Poulsen and Michael Waibel, 'Boilerplate in International Economic Law' (2021) 115 *AJIL Unbound* 253, 257.

[37] Asha Kaushal, 'Revisiting History: How the Past Matters for the Present Backlash Against the Foreign Investment Regime' (2009) 50 *Harvard International Law Journ*al 491, 512, 534.

[38] However, some recent scholarships have attempted to propose template language for trade agreements that are focused on inclusive and sustainable development, with model provisions and their possible implications or benefits. See, for example, Katrin Kuhlmann, *Handbook on Provisions and Options for Trade in Times of Crisis and Pandemic* (United Nations Publication 2021)

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templates for entire agreements, chapters, provisions or sections. Even without a formal "model draft" culture, repeat negotiations have created practical pathways for template reuse, as parties have routinely drawn on their prior FTA texts when drafting new chapters, provisions, or institutional clauses. As a result, some trade players have succeeded in having their preferred templates being adopted in various trade and economic partnership agreements by reusing their "house style" drafting or transplantation of clauses or entire chapters that have already cleared domestic review.[39]

Leading negotiating powers, such as the US and European Union (EU), are the most prominent users of this boilerplate approach as they copy and paste provisions from their previous trade agreements heavily into their other agreements. Studies show that when such powerful nations come to a negotiating table, they have a clear idea of what they expect to gain from this exercise and that they are likely to also arrive to the tables with their preferred templates which they expect their partner (especially when the partner is a country with comparatively smaller market size, lesser negotiating clout and limited negotiating experience) to accept as such.[40] Where bargaining or capacity asymmetries exist, template reuse may also be reinforced by time constraints, drafting resources, and the practical convenience of negotiating from text that has been used elsewhere. A study, for example, found two US agreements, one with Peru and the other with Colombia, to share as high as 90% of the same text.[41] Similarities as high as 95% were found in the agreements negotiated by the EU as well as European Free Trade Association (EFTA) members.[42] Another compelling example is that of the drafting of Trans-Pacific Partnership (TPP), wherein the past language found in the US agreements was the most pre-eminent in the draft of TPP mainly in the areas that were of greatest importance to the US political and economic interests, especially financial services, general services, investment, and labour.[43] These examples are used here to illustrate the existence of high textual overlap in trade policy instruments and the role of the repeat-players in producing it.

Repeated bilateral and regional negotiations can create opportunities that enable template diffusion, and such negotiations can also be used as tools to shift trade cooperation away from the deadlocked WTO to a venue where big players can more effectively and with lesser hurdles write and re-write trade rules for the future in ways that serve their own interests. This strategic shift may also help explain the growing trend of incorporating trade and gender

[39] Todd Allee, Manfred Elsig and Andrew Lugg, 'Is the European Union Trade Deal with Canada New or Recycled? A Text-as-data Approach' (2017) 8 *Global Policy* 246, 252.
[40] Zartman IW and Rubin JZ (eds), *Power and Negotiation* (University of Michigan Press 2000)
[41] Allee and Elsig (n 3), 603.
[42] ibid.
[43] Todd Allee and Andrew Lugg, 'Who Wrote the Rules for the Trans-Pacific Partnership?' (2016) 3 *Research & Politics* 1

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provisions, as powerful actors are using alternative negotiating platforms to shape the gender-related emerging norms and agendas on their own terms.

The use of the boilerplate approach, particularly in the negotiation and drafting of gender provisions for their inclusion in trade agreements, takes us to at least two realizations: First, gender and trade discourse within the trade policy agenda is largely being shaped by the developed-country priorities and narratives. Second, as the following section will illustrate, some countries that have included gender-related commitments in trade agreements appear to have done so without tailoring provisions to address specific, context-dependent barriers faced by women in their economies.

Template-based inclusion without domestic adaptation points to the broader phenomenon of policy diffusion, where ideas and legal formulations travel across jurisdictions. As gender provisions are adopted and adapted—or sometimes simply reproduced—by multiple countries, patterns of language and norms spread globally, shaping the design of subsequent agreements. The following section uses the lens of diffusion theory to explain these dynamics from different perspectives and explores how they help us understand the spread and adaptation of gender-related commitments in trade agreements.

IV. Applying Diffusion Theory to Gender Provisions in Trade Agreements

Social scientists have long examined policy diffusion—the spread of policy ideas and legal language across jurisdictions. This section draws on diffusion theory to explain how gender-related language travels across trade agreements, without taking a normative position on its desirability. Diffusion may occur through mechanisms such as coercion, learning, competition, legitimacy or norm-setting.[44]

Coercion theorists trace diffusion to powerful countries threatening sanctions or offering benefits for policy acceptance. Coercion may operate through physical force, economic manipulation, or information monopolization.[45] In trade policy context, coercion is best understood as bargaining leverage that makes acceptance of prefabricated text more likely, particularly when market access, preferences, or cooperation are perceived as contingent on having an agreement.

Economic coercion typically would involve shifts in incentives that make a partner more willing to accept proposed language, including situations where access to a large market, negotiating bandwidth, or reputational costs shape what a weaker party is willing to contest in drafting.

[44] Johanna Kuhlmann, Delia González de Reufels, Klaus Schlichte and Frank Nullmeier 'How Social Policy Travels: A Refined Model of Diffusion' (2020) 20 *Global Social Policy* 80, 96; G. John Ikenberry and Charles A. Kupchan, 'Socialization and Hegemonic Power'(1990) 44 *International Organization* 283, 315.

[45] David Marsh and Jason Sharman, 'Policy Diffusion and Policy Transfer' (2009) 30(3) *Policy Studies* 269.

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The preferences of the US government, the EU, and other leading States and how their preferred policies and language have made their way into multilateral as well as regional and bilateral trade agreements could be seen as examples of this form of coercion as they show how powerful stakeholders can shape policies of countries reliant on those entities for trade, foreign direct investment, aid, or other benefits such as grants. A more recent example of economic coercion is how the US is using its economic pressure primarily through its large consumer market, tariffs and trade threats to influence the behavior of other countries into making favorable trade or other policy changes.

Another form of coercion can be exercised through hegemonic ideas, wherein without exerting physical or economic power, dominant States can influence others through ideational channels that are advocated as rational and successful.[46] Powerful countries with their research infrastructure, the critical intellectual mass they have, and their well-developed connections between the policy world and various research sources and powers, are unduly influential in the framing of policy discussions. This ideational channel matters for gender language in trade agreements as "best practice" formulations increase uptake without explicit pressure.

Constructivists argue that policy norms are largely set by expert epistemic communities and international organizations, who have defined economic progress and human rights for decades. Early constructivists have observed that the diffusion of educational and human rights policies in the world have happened from the developed to the developing world, showing that most countries have changed policies not when they were developmentally ready but when they were influenced by global norms of the developed world.[47] In this view, States may adopt certain text to align with prevailing international norms and to signal membership in a community of "responsible" treaty makers, even when domestic implementation capacity is uneven.

Wotipka and Ramirez find that developing countries with persistent gender inequality were more likely to ratify women's rights conventions during major rights conferences, alongside their adoption by developed-country peers.[48] This example suggests that bounded rationality and limited informational capacity may lead policymakers in developing countries to emulate countries perceived as economically successful. This can translate into drafting dynamics where proposed gender language is accepted because it is legible, already "vetted," and administratively easy to adopt, particularly where negotiating capacity or gender trade analytics are limited. This dynamic helps explain why a handful of developed countries, as shown in the subsequent section with concrete examples, have been able to set the tone and language for

[46] Ikenberry and Kupchan (n 44), 283, 315.
[47] Dobbin, Simmons and Garrett (n 12), 472.
[48] Mana Nakagawa and Christine Wotipka, 'The Worldwide Incorporation of Women and Women's Rights Discourse in Social Science Textbooks, 1970–2008' (2016) 60 *Comparative Education Review* 501, 529.

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gender-related provisions in trade agreements as their models have been perceived as best practices. This pattern is particularly evident in the negotiation of gender provisions in trade agreements involving developing countries, where limited technical expertise, lack of institutional capacity, and insufficient access to gender-disaggregated data can undermine the ability to develop context-specific proposals.

Competition-oriented accounts of policy diffusion suggest that States may adopt commitments they might not otherwise prioritize in order to remain attractive for investment and market access in an increasingly competitive global economy. [49] When countries with significant market size and strategic influence incorporate inclusion-related commitments into their trade agreements—even where such provisions are primarily signaling-oriented—they can create incentives for partners to follow suit, particularly as "modern" agreement templates increasingly feature social and inclusion chapters. The recently concluded India–UK Comprehensive Economic and Trade Agreement illustrates this dynamic.[50] The Agreement integrates gender-related considerations across multiple chapters and includes a dedicated chapter on gender equality, marking a notable change in India's trade policy practice.[51] As a key instrument for securing market access and deepening trade ties with a major export destination, such inclusions in the agreement reflects how competitive pressures and evolving negotiating templates can shape the adoption of gender language in trade agreements, reinforcing the broader patterns of competition and coercion.

Some explanation of imitation practices being employed in the negotiation of gender-related provisions can also be found in the learning theory, which suggests that some countries, beyond economic and competitive goals, are keen to learn from their own experiences and, as well, from the policy experiments and experiences of their peers.[52] Learning occurs when there is new evidence that changes our beliefs or understanding over a certain subject. In this attempt, some countries may accept the global norms set by countries that have done well in the global economy. A number of trade agreements serve as an example to this theory, wherein countries have added commitments on sharing their experiences and knowledge with each other on enhancing women's empowerment through trade. However, despite advancements and lofty goals, longstanding distributional issues remain unaddressed in the current inclusion of women-related provisions as they have not been negotiated in light of the

[49] Cintia Quiliconi, 'Competitive Diffusion of Trade Agreements in Latin America' (2014) 16 *International Studies Review* 240, 251.

[50] Comprehensive Economic and Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and India (signed, 24 July 2025) [CETA].

[51] See chapters 12, 14, 15, 19, 20, 22 and 23, CETA. Also see Prachi Agarwal, 'How the UK-India Trade Deal Shapes Women's Economic Empowerment' (ODI Global, 25 July 2025) <https://odi.org/en/insights/how-the-uk-india-trade-deal-shapes-womens-economic-empowerment/> accessed 7 August 2025

[52] Dobbin, Simmons and Garrett (n 12), 474.

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domestic needs and circumstances of countries on a case by case basis.[53] The shallow inclusion of gender provisions in existing trade agreements, as shown in the subsequent section, demonstrates that diffusion through learning mechanism is not effective when policymakers simply adapt to the policy shifts of others, unless their beliefs and approach about cause and effect change.

One may wonder why developed countries seek to influence the social structures of other countries through the inclusion of gender provisions in their trade agreements. Economists have argued that such efforts may seek to discourage moral hazard problems that can contribute to broader systemic instability.[54] Other explanations point to strategic trade interests, including the retention of policy tools that may influence the comparative advantages enjoyed by trading partners in particular sectors.[55] A further explanation lies in the domestic political economy of trade policymaking. As support for trade liberalization has become increasingly contested in many developed economies, governments have increasingly sought to bolster the domestic legitimacy of trade agreements by demonstrating that trade policy can also advance broader social objectives alongside economic ones.[56] In this context, provisions relating to gender equality and other social concerns may serve not only as mechanisms for encouraging policy change in partner countries but also as signals to domestic constituencies that trade agreements can also advance social values.

Moreover, countries prefer setting global norms or imposing their own policy preference on others to also have the first-mover advantages and create a visible symbolic image of themselves in comparison with or in competition with other competing States.[57] It matters who writes the rules of the trade. Dictating new rules is an important way for States to exercise influence on the global stage. Given the continued gridlock in the WTO trade negotiations, and abandonment of multilateralism by the US and some of its trade allies, preferential trade

[53] Jakob Engel, Deeksha Kokas, Gladys Lopez-Acevedo and Maryla Maliszewska, 'The Distributional Impacts of Trade: Empirical Innovations, Analytical Tools, and Policy Responses' (The World Bank, 2021) <https://documents1.worldbank.org/curated/en/976331621501704900/pdf/The-Distributional-Impacts-of-Trade-Empirical-Innovations-Analytical-Tools-and-Policy-Responses.pdf> accessed 29 October 2023.

[54] Robert Owen, Alfred Ntoko, Ding Zhang and June Dong, 'Public Policy and Diffusion of Innovation' (2002) 60 Social Indicators Research 179, 190.

[55] Frederic S Mishkin, 'International experiences with different monetary policy regimes',(1999) 43 *Journal of Monetary Economics* 579, 605; Amrita Bahri, 'Can Trade Agreements Empower Women?' in *Trade Agreements and Women: Transcending Barriers*, (Oxford University Press 2025) ch 5, 93.

[56] Evgeny Postnikov and Ida Bastiaens, 'Social protectionist bias: The domestic politics of North–South trade agreements' 22(2) The British Journal of Politics and International Relations (2020) [wherein authors have argued that 'Northern governments have their hands tied by domestic constituents demanding social standards as a key protectionist instrument'.]

[57] Diane Stone, Osmany Porto de Oliveira, Leslie A Pal, 'Transnational Policy Transfer: The Circulation of Ideas, Power and Development Models' (2020) 39 *Policy and Society* 1, 18; also see, Marvin B Lieberman and David B Montgomery, 'First-Mover Advantages' (1988) 9 *Strategic Management Journal* 41, 58.

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agreements have become an alternative way for States to advance their trade cooperation with willing partners beyond their WTO commitments.

These observations explain how a number of motivations can drive policy diffusion in trade agreements. . These dynamics often contribute to diffusion by normalizing certain textual formulations as "expected" components of contemporary agreements. This could be the case with gender provisions because the intersection between trade policies and gender remains an underdeveloped field of work and so countries can be the first ones to set standards on including new forms of gender-related commitments in trade agreements by proposing different ways to do so. This could also help countries facilitate their dialogue or negotiation on increasing market access with other countries that may otherwise not be like-minded but are pioneers or champions of certain issues such as gender equality.

While diffusion theory helps explain why and how gender-related provisions spread across trade agreements, it may not fully explain why these provisions often take strikingly similar institutional and textual forms. This can perhaps be explained with the process of "institutional isomorphism", developed by DiMaggio and Powell, which explains convergence through coercive, normative, and mimetic pressures.[58] In the context of trade agreements, the repeated use of nearly identical gender provisions reflects a form of mimetic isomorphism, where negotiators emulate existing templates to reduce uncertainty, legitimize their texts, and align with prevailing international norms. This helps explain why the same gender-related language is replicated across multiple agreements once a recognized template exists.

Replication can either (i) reinforce existing standards efficiently or (ii) lock in generic language that is not adapted to the distributional features the provision purports to address. Particularly among developed countries with extensive negotiation experience, this pattern reveals a preference for efficient replication over innovation, which may inadvertently limit the potential for gender provisions to be tailored to diverse regional contexts.[59] Consequently, while institutional isomorphism facilitates the diffusion of gender language across trade agreements, it may also constrain the substantive evolution of gender mainstreaming in trade policy by promoting uniformity at the expense of contextual relevance.

Replication and innovation are not opposite strategies in treaty drafting. Replication can enable incremental strengthening through recombination, but the empirical record in the dataset (shown in the subsequent section) shows that, for many gender clusters, diffusion frequently

[58] Walter W Powell and Paul J DiMaggio (eds), *The New Institutionalism in Organizational Analysis* (University of Chicago Press 1991)

[59] Manjiao Chi & Zhiyuan Yin, 'Trade-Gender Alignment of International Trade Agreements: Insufficiencies and Improvements' (2024) LSE Research Online Documents on Economics 125392 (This paper analyzes the alignment between trade agreements and gender equality, possibly providing observations on how mimetic isomorphism leads to the replication of gender provisions without substantial adaptation to local contexts.)

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occurs through re-use of the same recognitions and reaffirmations with limited movement towards a context-specific design. The following section examines the text of gender-related provisions to identify the extent of verbatim and near-verbatim reuse, and to assess when replicated language appears well matched, or poorly matched, to the objectives it may be expected to advance. This assessment provides examples of potential mismatch between women's economic barriers and the content of replicated provisions, which may reflect how the current provisions are not directly addressing the problems that women face in international trade.[60]

V. The Evidence of Copy and Paste: Some Practice Examples with Many Replicating Examples of Gender Provisions

This section maps patterns of textual reuse in gender-related provisions, showing that much of the language in earlier trade agreements draws on established international labour standards, while more recent agreements incorporate gender-related commitments that extend beyond labour concerns to address a broader range of women-related interests. Beyond documenting textual similarities, the analysis in this section also shows how different mechanisms of policy diffusion discussed in the previous section play a role in the diffusion of gender language in trade agreements. The analysis therefore considers not only whether gender provisions diffuse, but also what the nature of that diffusion may reveal about the underlying drivers.

Many trade agreements, whether bilateral or regional, use similar language when addressing issues relating to gender equality. Terms such as "promoting gender equality," "empowering women," or "ensuring equal opportunities" are commonly used in such provisions, but they often remain vaguely defined or not defined at all. Such vague use of gender-related expressions in trade agreements — such as "acknowledging women's roles" in the economy or the need to "mainstream gender issues" — is often symbolic rather than structural. In multiple agreements, these recurring formulations cluster around a small number of standard sentence structures and verbs (for example, "recognise," "reaffirm," "promote," "endeavour"), which are then re-used with only minor substitutions across agreements.

Table 1, with the help of five practice examples, shows with concrete evidence that gender-explicit provisions in trade agreements appear to paraphrase or replicate commitments made in prior trade agreements, highlighting standardization trends in trade and gender language. Moreover, it clearly shows that the templates that are used for drafting gender-related provisions are extensively designed by the developed world, spearheaded by the EU, the United Kingdom, Canada and the US. The five sample clusters in Table 1 also illustrate an analytical

[60] Katrin Kuhlmann and Amrita Bahri, 'Gender Mainstreaming in Trade Agreements: "A Potemkin Façade"?' in *Making Trade Work for Women: Key Findings from the 2022 World Trade Congress on Gender* (World Trade Organization 2023) 235 <https://doi.org/10.30875/9789287042712> accessed 12 May 2024.

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split: Sample 1 is predominantly rooted in international labour standards, samples 4 and 5 are social-policy rooted formulations that have travelled from long-standing regional or association frameworks; while samples 2 and 3 illustrate newer trade-and-gender specific drafting moves that have spread through repeated re-use in modern FTAs.

Table 1: Five Sample Provisions with Frequent Repetitions

Sample Provisions	FTAs with such repetitions	# of FTAs
Sample 1		
"The Parties have established the following indicative list of areas for cooperative activities..." *"...gender: gender issues, including the elimination of discrimination in respect of employment and occupation"* *or* *"...equal pay for women and men"*	Canada-Peru (annex 1 - art 9); Canada-Ukraine (annex 13-A); Canada-Honduras (annex 1); Canada-Panama (annex 1); Canada-Colombia (annex 1); United States - Dominican Republic - Central America (annex 16.5); United States - Bahrain (annex 15-A); United States - Colombia (annex 17.6); United States - Panama (annex 16.6); United States - Peru (annex 17-6); USMCA (article 23.12); Canada-Israel (art 12.9 and 13.1); Canada-Jordan (annex 1); Canada-Chile (art N bis-01); Canada-Costa Rica (annex 1); EU-Central America (art 47); EU-Korea (article 13.4); EU- Ukraine (article 291); EU-Vietnam (art 13.4); Nicaragua-Chinese Taipei (annex 18.05); EEA Agreement (art 69); UK-New Zealand (art 23.8); UK- EEA (art 13.18)	23
Sample 2		
"The Parties recognize that enhancing opportunities in their territories for women, including workers and business owners, to participate in the domestic and global economy..." *or* *"...to fully access and benefit from the opportunities created under this Agreement..."* *or* *"...to promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people...."*	Canada-Ukraine (annex 13-A); Canada-Honduras (annex 1); Canada-Israel (Preamble; art 13.3); Canada-Chile (art N bis-03); EU-Central America (art 286); EU-Korea (art 13.4); EU- Ukraine (art 291); EU-Vietnam (art 13.4); Peru - Australia (art 22.4); CPTPP (art 23.4); UK-Japan (Preamble; art 21.1; 23.3); UK-Australia (art 24.1); UK-New Zealand (Preamble; art 25.2; 25.5); USMCA (Preamble); Pacific Alliance - Singapore (Preamble; art 17.2); Korea-Turkey (art 5.4); CARIFORUM-EU (art 191); CARIFORUM-UK (art 191); UK-Ukraine (art 277); UK-Korea (art 13.4)	20
Sample 3		
"The Parties reaffirm the importance of	Canada-Israel (art 13.1); Canada-Chile (art G-14	15

...those internationally recognized standards, guidelines, and principles of corporate social responsibility... which may include the OECD Guidelines for Multinational Enterprises. These standards may address areas such as labor, environment, gender equality..." *or* *"...Parties also reaffirm commitments to the OECD Guidelines for Multinational Enterprises..." or "corporate social responsibility"*	bis); Canada - Colombia (annex 1); United States - Peru (art 14.17); USMCA (art 14.17); EU - Moldova (art 375); EU - Korea (annex 13); EU - Armenia (art 284); EU - Vietnam (art 13.14); EU and the EU Atomic Energy Community - Georgia (art 348); EU-Central America (art 41); CPTPP (Preamble); UK-Georgia (art 231); UK-Moldova (art 342); Canada - Peru (annex 1)	
Sample 4		
"Priority will be afforded to the following projects:" "… promoting the role of women in the economic and social development..." *or* *"....promotion of the role of women in social and economic development, particularly through education and the media...."*	European Union-Morocco (art 71); European Union-Egypt (art 65); European Union-Tunisia (art 71); European Union-Lebanon (art 65); European Union-Algeria (art 74); Canada-Chile (art N bis-01); European Union-Jordan (art 82); EU – Palestinian authority (art 45); Chile-Ecuador (art 18.4); East African Community (art 121); Common Market for Eastern and Southern Africa (COMESA) (art 154); EU – Albania (art 99 and 100); EU – Montenegro (art 101 and 102); EU - Chile (art 45)	14
Sample 5		
"...the following shall be priority measures:" *"bolstering [...] family planning and mother and child protection programmes..."*	EU-Egypt (art 65); EU-Jordan (art 82); EU-Morocco (art 71); EU-Tunisia (art 71); EU-Lebanon (art 65); EU-Algeria (art 74); EU – Palestinian authority (art 45); EU-Ukraine (art 427)	8

**The analysis identifies gender-related provisions by detecting repetitions that are either verbatim (word-for-word) or include minor paraphrasing.*

***An exact match is defined as the replication of five or more consecutive words to qualify as a direct repetition.*

****To capture minimal paraphrasing attempts—cases where the wording is altered but the core content is preserved—the matching criterion was relaxed to identify matches of 3 to 4 words within the same sentence either used consecutively or with a slightly different sequence.*

*****To ensure robustness, each identified provision was reviewed in its full context, including the surrounding text, to confirm thematic alignment.*

******An individual trade agreement may appear multiple times in the analysis if it contains several distinct provisions related to women's issues.*

*******The dataset includes trade agreements that are currently in force and officially notified to the World Trade Organization (WTO) as of March 1, 2025. Agreements under negotiation or those not notified to the WTO are excluded to maintain a consistent and authoritative dataset.*

As shown in Table 1, the prevalence of verbatim or minimally altered clauses suggests that certain formulations around women empowerment and gender equality are becoming normative within the legal architecture of trade agreements. This indicates a growing recognition among trade negotiators of the importance of integrating gender considerations into trade frameworks, potentially reflecting international commitments and shared normative values. However, the need to relax matching criteria to capture minor paraphrasing also points to a strategic effort by some parties to customize language, possibly to reflect domestic priorities or negotiate flexibility while maintaining the core principles of gender equality.

These examples from the existing trade agreements - together with the identified provisions in a number of agreements that repeat the same language and content either word for word or with minor variations - show with concrete evidence that many existing provisions on gender concerns in trade agreements are taken from previously negotiated agreements.[61] Moreover, as seen in Table 1, developed countries with vast experience of trade negotiations seem to have been the key users of the cookie-cutter approach in respect of negotiating such gender provisions.

In total, there are 53 FTAs where the five repeated inclusions are found. Out of these 53 agreements, the EU, the United Kingdom, Canada, or the US is one of the negotiating parties in 46 cases. Hence, across the five sample clusters, developed countries account for approximately 87 per cent of the FTAs in which these recurring provisions appear, suggesting that a handful of high-income economies play a significant role in shaping and circulating standardized gender language in trade agreements. Moreover, with only three exceptions, all of the agreements in the sample involve at least one developed country as a negotiating party, underscoring the importance of North-led negotiating hubs in the diffusion of these provisions. At the same time, the presence of replicated gender language in agreements concluded exclusively between developing countries—such as those within the EAC and COMESA, as well as the Chile–Ecuador FTA—indicates that replication is not confined to North–South or North-led agreements. In particular, Chile's repeated inclusion of gender-related provisions across its trade agreements positions it as an influential diffusion node, illustrating how certain middle-

[61] World Trade Organization (WTO), 'The Evolution of Gender-Related Provisions in Regional Trade Agreements' (2021) WTO Working Paper No. 2021/08 (this working paper discusses the increasing inclusion of gender-related provisions in Regional Trade Agreements (RTAs), highlighting the trend towards standardization and replication of gender clauses across agreements.)

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income countries can also act as norm carriers and actively shape the spread of gender language.[62]

In Sample Provision 1, the term "gender" is employed with notable ambiguity. This inclusion is found in twenty-three trade agreements, almost verbatim or with negligible paraphrasing.[63] With just one exception, all such agreements are negotiated by Canada, the EU, the UK or the US. The use of the term "gender" in trade agreements is often vague, which can create the impression that it refers solely to empowering women. However, by definition, "gender" applies to all genders, including men and gender-diverse individuals. This ambiguity can result in misinterpretations, where provisions intended to promote women's economic empowerment are either diluted by overgeneralization or misunderstood as being overly narrow. Moreover, with the existing trade agreements including such expressions without any attempt to define them or restrict their scope[64], lack of clarity and their wide scope can provoke fears of protectionism, particularly in relation to the principle of comparative advantage—the idea that countries should specialize in producing goods and services they can generate most efficiently.[65] If gender provisions are perceived as mechanisms to prioritize or

[62] Chile-Ecuador Free Trade Agreement (Enforced, 16 May 2022); East African Community (EAC) Treaty (enforced, 7 July 2000); Common Market for Eastern and Southern Africa (COMESA) Treaty (Enforced, 8 December 1994); Alicia Frohmann, 'Gender Equality and Trade Policy' (SECO Working Paper No 24/2017, World Trade Institute, University of Bern 2017) 5 (noting that the 2016 Chile Uruguay FTA was the first bilateral trade agreement to include a standalone chapter on gender and trade); World Trade Organization, 'Trade Policy Review Body, Trade Policy Review: Chile, Report by the Government' WT/TPR/G/451 (16 October 2023) para 2.101 (describing Chile's "pioneering efforts" to integrate gender and trade chapters across its FTAs, including with partners in the Global South, thereby positioning Chile as an active norm carrier rather than a passive recipient of Northern templates).

[63] Annex 1, Canada-Peru Agreement on Labour Cooperation (enforced, 1 August 2009); Annex 13-A, Canada–Ukraine Free Trade Agreement (enforced, 1 July 2024); Annex 1, Agreement on Labour Cooperation Between Canada and the Republic of Honduras (enforced, 1 October 2014); Annex 1, Canada-Panama Agreement on Labour Cooperation (enforced, 1 April 2013); Annex 1, Canada-Colombia Agreement on Labour Cooperation (enforced, 15 August 2011); Annex 16.5, United States-Dominican Republic–Central America Free Trade Agreement (US-CAFTA-DR) (enforced, 1 March 2006); Annex 15-A, United States–Bahrain Free Trade Agreement (enforced, 1 August 2006); Annex 17.6, United States–Colombia Trade Promotion Agreement (enforced, 15 May 2012); Article 23.12, United States–Mexico–Canada Agreement (USMCA) (enforced, 1 July 2020); Article 12.9, Canada–Israel Free Trade Agreement (enforced, 1 January 1997); Annex 16.6, Panama-United States Trade Promotion Agreement (enforced, 31 October 2012); Annex 17-6, U.S.-Peru Trade Promotion Agreement (enforced, 12 April 2006); Annex 1, The Canada-Jordan Free Trade Agreement (enforced, 1 October 2012); Art N bis-01, Modernized Canada-Chile Free Trade Agreement (enforced, 5 February 2019); Annex 1, Canada-Costa Rica Free Trade Agreement (enforced, 1 November 2002); Art 47, EU-Central America Association Agreement (enforced, 1 May 2024); Article 13.4, EU-Korea Free Trade Agreement (enforced, 13 December 2015); Article 291, European Union–Ukraine Association Agreement (enforced 1 September 2017); Art 13.4, EU-Vietnam Free Trade Agreement (enforced, 1 August 2020); Annex 18.05, Taipei, China and Nicaragua Free Trade Agreement (enforced, 1 January 2008; Art 69, European Economic Area (EEA) Agreement (enforced, 1 January 1994); Art 23.8, The New Zealand-UK free trade agreement (enforced, 31 May 2023); Art 13.18, Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (Enforced, 1 February 2023)

[64] Except for the East African Community (EAC), which offers a basic definition of 'gender', trade agreements generally lack explicit definitions for 'gender equality' and 'women empowerment'. [EAC, Article 1(1)].

shield certain domestic industries under the guise of promoting gender equality (for example, by offering subsidies, quotas, or trade preferences to women-owned businesses), trading partners may view them as non-tariff barriers that distort competition.[66] This perception can increase the existing skepticism about the real intent behind such clauses and raise concerns that they may be used to gain unfair economic advantages rather than to genuinely promote inclusive development. As a result, countries may become hesitant to endorse or adopt gender-related provisions in trade agreements, fearing they could compromise market efficiency or open the door to disguised protectionist measures.[67]

Sample 1 relies on established international labour rights—such as non-discrimination in employment and occupation and equal pay for women and men. Normative pressures may explain this pattern, as we see a growing acceptance of particular formulations as internationally recognized and put forward by international organizations. In such formulations, gender is typically framed in pre-existing labour standards rather than developing new, trade-specific content. Moreover, in this sample, "gender" appears as a cooperation label without any treaty specific definition or operational criteria, and its meaning is effectively left to be inferred from surrounding labour and social policy language that is often replicated across agreements through template drafting. This problem of lack of definitions or vaguely defined terms leading to ambiguity and potential misuse is not new in trade law.[68] In many WTO disputes, panels and the Appellate Body have had to carefully interpret many exceptions to strike a balance between allowing legitimate policy space and preventing abuse that undermines the rules-based trading system.[69] Yet, the vagueness embedded in the use of such expressions has meant ongoing uncertainty, with parties sometimes exploiting these exceptions to justify trade barriers under the cover of broadly defined terms. Similarly, the vague use of "gender" in trade agreements

[65] Roberto Bissio, 'Is "Gender" a Trojan Horse to Introduce New Issues at WTO?' (Third World Network, 11 December 2017) <https://twnetwork.org/wto/%E2%80%9Cgender%E2%80%9D-trojan-horse-introduce-new-issues-wto> accessed 12 November 2021

[66] Ke Gu & Andrey Stoyanov, 'Female Labor Supply and International Trade', (2022) MPRA Paper 111778, <https://ideas.repec.org/p/pra/mprapa/111778.html#:~:text=Other%20things%20equal%2C%20regions%20with%20higher%20female,labor%20force%20gender%20composition%20for%20industry's%20productivity> accessed 11 August 2025 [authors explain how female labor force in countries can become sources of comparative advantage in trade]

[67] UNCTAD, 'Looking at the trade and gender nexus from a development perspective: A brief overview' (2022, UNCTAD/DITC/2021/2)

[68] Pelin Serpin, 'The Public Morals Exception After The WTO Seal Products Dispute: Has The Exception Swallowed the Rules?', (2016) (1) *Columbia Business Law Review* 219 [Author observes how this protectionist tool can undermine the progress made towards trade liberalization and agreements over the past few decades. Also see Daria Boklan and Amrita Bahri, 'The First WTO's Ruling on National Security Exception: Balancing Interests or Opening Pandora's Box?' (2020) 19 *World Trade Review* 123.

[69] Appellate Body Report, *United States – Measures affecting the cross-border supply of gambling and betting services*, WTO doc. WT/DS285/AB/R (signed 7 April 2005, adopted 20 April 2005), [hereinafter US–Gambling] [This has left open the fundamental issue of what values or interests qualify as public morals and whether a state can unilaterally define its own public morals].

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may risk becoming a new battleground for interpretive disputes. If such open textured phrasing continues to travel through FTAs via copy paste routines, it can increase the risk that "gender" clauses are invoked opportunistically, contested in interpretation, and ultimately treated with the same suspicion and litigation dynamics that have long surrounded broadly worded trade exceptions.

Another practice example is sample provision 2, and it reaffirms the repeated use of same or essentially similar language. In this sample provision, as can be seen in Table 1, countries have added recognitions in their agreements on enhancing work and business opportunities for women and the benefit of women's role in economic development. This inclusion is found in as many as twenty trade agreements, almost verbatim or with minor paraphrasing or restructuring of sentences.[70] With very few exceptions, most such mentions are found in agreements negotiated by the EU or Canada. While such provisions mark an important step in acknowledging gender issues in trade, they are largely declaratory in nature. The use of the word "recognise" reflects a non-binding approach that lacks any enforceable obligation or concrete commitment. There is no requirement for parties to take affirmative action, adopt specific policies, or allocate resources towards achieving greater women inclusion in trade.

Indeed, the overwhelming majority of gender-related provisions across trade agreements are non-binding and drafted in permissive, aspirational language rather than in mandatory or enforceable terms. Unlike other social and non-market access inclusions in trade agreements that once started as soft provisions and have hardened overtime, such as the gradual tightening of labour standards and environmental obligations and the wider sustainability turn that increasingly also speaks to Indigenous rights, most of the commitments on gender equality have not hardened so far and they remain rooted in the spirit of cooperation.[71]

[70] Annex 13-A, Canada–Ukraine; Annex 1, Canada-Honduras; Preamble, Article 13.3, Canada–Israel; Article N bis-03, Canada-Chile; Article 286, EU-Central America; Article 13.4, EU-Korea; Article 291, EU –Ukraine; Article 13.4, EU-Vietnam; Article 22.4, Peru-Australia Free Trade Agreement (Enforced, 11 February 2020); Article 23.4, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (Enforced, 14 December 2024); Preamble, Article 21.1, Article 23.3, UK-Japan Comprehensive Economic Partnership Agreement (Enforced, 1 January 2021); Article 24.1, UK-Australia Free Trade Agreement (Enforced, 31 May 2023); Preamble, Article 25.2, Article 25.5, UK-New Zealand; Preamble, USMCA; Preamble, Article 17.2, Pacific Alliance-Singapore Free Trade Agreement (Enforced 3 May 2025); Article 5.4, Korea-Turkey Free Trade Agreement (Enforced, 1 August 2018); Article 191, CARIFORUM-EU Economic Partnership Agreement (Enforced, 29 December 2008); Article 191, CARIFORUM-UK Economic Partnership Agreement (Enforced, 1 January 2021); Article 277, UK-Ukraine Strategic Partnership Agreement (Enforced, 1 January 2021); Article 13.4, UK-Korea Free Trade Agreement (Enforced, 1 January 2021)

[71] Lisa Lechner and Gabriele Spilker, 'Taking it Seriously: Commitments to the Environment in South-South Preferential Trade Agreements' (2022) 31 *Environmental Politics* 1058; Gabrielle Marceau, Rebecca Walker and Andreas Oeschger, 'The Evolution of Labour Provisions in Regional Trade Agreements' (2023) 57 *Journal of World Trade* 361; Amrita Bahri, 'Trade Agreements and Disability Inclusion: Looking Beyond Labour and Gender Equality Provisions' in Geraldo Vidigal and Kathleen Claussen (eds*), The Sustainability Revolution in International Trade*

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As can be seen in sample provision 3, countries have also included commitments relating to gender equality in their provisions on voluntary sustainability standards. Such provisions, with minor variations, are found in as many as fifteen trade agreements, almost verbatim or with some paraphrasing or variations in the scope and focus areas identified in the provision.[72] All agreements with these mentions, with no identified exception, are found in agreements wherein the EU, UK, US or Canada is one of the parties. This pattern is consistent with the coercive diffusion mechanism discussed in the previous section, as these examples show how economically stronger negotiating partners have possessed greater bargaining leverage over drafting processes of gender provisions.

Another type of repeated language can be seen in Sample Provision 4, which relates to women's role in development and their access to education and the media. This provision appears in as many as fourteen trade agreements, almost verbatim or with only minor paraphrasing or synonymous expressions.[73] With very few exceptions, these provisions are repeatedly included in agreements where one of the parties is the EU. This cluster illustrates a longer-standing drafting routine rooted in the EU's broader social policy approach, which has persisted through replication across successive trade agreements. Indeed, in many of these agreements, even the numbering and placement of the relevant provisions remain identical or highly similar. The same pattern is evident in Sample Provision 5, where the EU agreements repeatedly include provisions on family planning and maternal health.[74] Although these clauses are framed as promoting gender equality by recognizing that inadequate family planning may

Agreements (OUP 2024). [These authors trace how labour and environment language has tended to evolve from softer cooperation towards hard and enforceable obligations.]

[72] Article 13.1, Canada–Israel; Article G-14 bis, Canada-Chile Free; Annex 1, Canada-Colombia; Article 14.17, United States–Peru; Article 14.17, USMCA; Article 375, European Union–Moldova Association Agreement (Enforced, 1 September 2014); Annex 13, EU-Korea; Article 13.14, EU-Vietnam; Article 348, European Union and the EU Atomic Energy Community–Georgia Association Agreement (Enforced, 1 July 2016); Article 85 and Article 284, European Union and the EU Atomic Energy Community–Armenia Comprehensive and Enhanced Partnership Agreement (Enforced, 1 March 2021); Article 41, EU-Central; Preamble, CPTPP; Article 231, UK-Georgia Strategic Partnership and Cooperation Agreement (Enforced, 1 January 2021); Article 342, UK-Moldova Strategic Partnership, Trade and Cooperation Agreement (Enforced, 1 January 2021); Annex 1, Canada-Peru.

[73] Article 71, European Union-Morocco Association Agreement (Enforced, 1 March 2000); Article 65, European Union-Egypt Association Agreement (Enforced, 1 June 2004); Article 71, European Union-Tunisia Association Agreement (Enforced, 1 March 1998); Article 65, European Union-Lebanon Association Agreement (Enforced, 1 March 2003); Article 74, European Union-Algeria Association Agreement (Enforced, 1 September 2005); Article N bis-01, Canada-Chile; Article 82, European Union-Jordan Association Agreement (Enforced, 1 May 2002); Article 45, European Union–Palestinian Authority Interim Association Agreement (Enforced, 1 July 1997); Article 18.4, Chile-Ecuador); Article 121, EAC (enforced, 7 July 2000); Article 154, COMESA; Article 99 and Article 100, European Union-Albania Stabilisation and Association Agreement (Enforced, 1 April 2009); Article 101 and Article 102, European Union-Montenegro Stabilisation and Association Agreement (Enforced, 1 May 2010); Article 45, Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (enforced, 1 March 2005).

[74] Article 65, EU-Egypt; Article 82, EU-Jordan Association; Article 71, EU-Morocco; Article 71, EU-Tunisia; Article 65, EU-Lebanon; Article 74, EU-Algeria; Article 45, EU-Palestinian Authority; Article 427, EU-Ukraine.

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constrain women's participation in economic life, they appear almost exclusively in agreements concluded with partners in the Middle East and Africa. This selective pattern of replication suggests that standardized drafting modules are transferred across agreements within particular negotiating contexts rather than being systematically tailored to the specific barriers faced by women in each partner country. From a diffusion perspective, these findings provide stronger support for normative diffusion and institutional isomorphism than for policy learning. If learning was the dominant mechanism, one would expect provisions to evolve and become increasingly responsive to country-specific needs as more experience is gained. Instead, the persistence of standardized language across diverse institutional and socioeconomic contexts, with some notable recent developments, suggests that the legitimacy and availability of established templates have often outweighed careful policy adaptation in respect of gender provisions.

VI. Concluding thoughts

Diplomatic interactions – especially ones resulting in trade agreements - involve different stakeholders (political leadership, bureaucrats, foreign diplomats, global civil servants, non-governmental organizations, and private companies) at different levels and venues (bilateral, multilateral, plurilateral, regional and mega-regional negotiations) – all of which suggests that trade agreements and their language should be heterogeneous.[75] This is more so the case with trade and gender provisions, as the conditions of women and the barriers that they face are different from one country or one region to the other, and so their solutions cannot be similar or essentially the same across different agreements signed by different countries and regions. Some overlaps and similarities in trade negotiations are unavoidable for the nature of such negotiations and the main task at hand, which is to liberalize market access; however, the use of the copy-and-paste approach in drafting provisions especially the ones relating to inclusivity issues does not resonate with the nature of problems such provisions are meant to address.

Gender-related concerns, for example domestic violence or harassment against women, are primarily addressed through domestic legal and social frameworks and may be regulated, experienced, and conceptualized differently across countries. Moreover, the problems that women face in an informal economy based in a developing country may be entirely different from the problems that women face in formal economies of developing or developed countries. Hence, predominant use of copy-and-paste strategy for drafting gender provisions in trade agreements shows that many trade negotiations do not consider the realities and problems

[75] Andrew Cooper, Jorge Heine and Ramesh Thakur (eds), *The Oxford Handbook of Modern Diplomacy* (Oxford University Press 2013).

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that women face in specific jurisdictions of the negotiating countries.[76] As a result, policymakers so far have not made substantial alterations in the templates relating to gender issues in trade agreements.

The study has raised important questions about whether extensive reliance on boilerplate language may constrain opportunities for innovation in treaty drafting, an issue that warrants further empirical investigation. While standardized provisions can facilitate the diffusion of gender-related commitments and contribute to greater coherence across trade agreements, their repeated replication may also reduce incentives to reassess whether existing formulations adequately respond to country-specific gender barriers. Such reliance risks reinforcing institutional path dependence, whereby established formulations may become the default reference point for subsequent negotiations. In this sense, this study highlights the need to examine more closely how template-based provisions influence implementation, policy learning, and the long-term evolution of gender-responsive trade policy. More broadly, the findings invite reflection on whether the growing incorporation of gender provisions is being accompanied by equally meaningful progress in designing context-responsive and action-oriented commitments.

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[76] Milewicz (n **Error! Bookmark not defined.**) 773.

Gender Equality in Trade Agreements: The Illusion of Inclusion by Imitation

Amrita Bahri*

Abstract: This study offers a new approach to assessing gender-related provisions in trade agreements by questioning the much self-applauded efforts by governments on adding such provisions in their agreements. The findings, using the case study of trade and gender provisions, will re-shape how we think about the processes of international trade cooperation and whether they can support the goals of economic inclusion. This paper presents compelling evidence about how the provisions on gender equality or women's empowerment in the existing trade agreements are produced primarily through copying and pasting across trade agreements, and that the language that has been copied and pasted is predominantly created by and for a segment of the developed world.

Keywords: Gender, Women's Empowerment, Trade Agreements, Women, Copy and Paste, Template, Inclusion

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I. Introduction

Provisions addressing gender equality[1] and women's economic empowerment have become a standard feature of modern trade agreements, reflecting a global shift towards a more inclusive trade policy, and many scholars and policymakers have applauded these inclusions.[2] However,

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[1] Gender as such is a broad term; it includes women as well as men and traditional as well as non-traditional genders. The terms "gender" and "gender mainstreaming" have mostly been used in trade agreements and policies without any attempts to define them or clarify their scope; however, it is possible to infer from a systemic assessment of the provisions containing these terms that they have mostly been used to only refer to the interests of women who identify themselves as cis-gender women, thereby excluding – intentionally or unintentionally - the concerns relating to men as well as non-cis-gender women and men. In this article, in line with the current discourse and scholarship on this topic, "gender" or "gender equality" are used to refer to concerns or issues relating to women - cis-gender and non-cis-gender.

[2] For relevant scholarship, see Raj Bhala and Cody N Wood, 'Two Dimensional Hard-Soft Law Theory and the Advancement of Women's and LGBTQ+ Rights through Free Trade Agreements' (2019) 47 *Georgia Journal of International and Comparative Law 2*; Jane Korinek, *Trade and Gender: Issues and Interactions* (OECD Working Paper No 24, 2005) 7–8 <http://www.oecd.org/dataoecd/38/50/35770606.pdf> accessed 7 August 2025. For contrary views or a critique, see Desirée LeClercq, 'The Disparate Treatment of Rights in Trade' (2021) 90(1) *Fordham Law Review* 1 (the author notes that this appetite depends largely on whether the non-trade concerns are related to trade and whether they impact production or trade costs).

many of these provisions rely extensively on language borrowed from earlier agreements, suggesting a process of policy diffusion rather than a well-coordinated policy effort.[3] Moreover, a relatively small set of major capital exporting and developed economies have often been able to diffuse their preferred gender language and content as they have negotiated such provisions with a predetermined template used in their previous trade negotiations.[4] This raises important questions about what may be lost when gender provisions are carried across agreements without adaptation to domestic constraints or the barriers women face in economies that are at different developmental stages.

The template-based approach is widely used across treaty making, and trade agreements are no exception.[5] Studies have found that at least 100 free trade agreements (FTAs)[6] take 80 percent or more of their content - word for word - from other existing agreements, with many copying 95% or more of text from earlier treaties.[7] Allee and Elsig systematically compared several hundred agreements, finding that most FTAs copy verbatim a majority of their content from existing agreements.[8] This finding sits in stark paradox to the fact that each country has different negotiating inputs and capacity which should ~~that each country has are very different, and these differences should also~~ lead to variations in the negotiated outcomes.[9] However, that has not been the case in respect of the existing trade agreements.

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[3] Todd Allee and Manfred Elsig, 'Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements' (2019) 63 *International Studies Quarterly* 603.

[4] The draft templates used by the United States, for instance, are available for downloads here: Office of Financial Management, Template - Treaties and International Agreements <https://www.commerce.gov/ofm/files/template-treaties-and-international-agreements> accessed 3 January 2025. Leonardo Baccini, Andreas Dür and Yoram Z Haftel, 'Imitation and Innovation in International Governance: The Diffusion of Trade Agreement Design' in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (Cambridge University Press 2015) 167–94.

[5] Alschner Wolfgang, Julia Seiermann and Dimitri Skougarevskiy, 'Texts of Trade Agreements (ToTA): A Structured Corpus for the Text-As-Data Analysis of Preferential Trade Agreements' (2018) 15 *Journal of Empirical Legal Studies* 648.

[6] The term FTA as used in this article encompasses several different types of arrangements. These include free trade agreements ("FTAs") such as the United States–Mexico–Canada Agreement ("USMCA"), in which member countries have agreed to reduce or eliminate trade barriers among themselves, or customs unions ("CU"), such as the European Union ("EU"), which is a deeper form of economic integration arrangement in which member states also maintain common tariffs and trade policies with respect to the rest of the world. It can also include interim arrangements that can lead to either an FTA or CU. FTAs can be bilateral, plurilateral, regional or mega-regional, and they can be drafted purely as trade agreements, or as economic partnership agreements, association agreements, strategic partnership agreements, and such others.

[7] Allee and Elsig (n 3), 603, 613.

[8] ibid.; also see Wolfgang Alschner, Julia Seiermann and Dimitri Skougarevskiy, 'Text-As-Data Analysis of Preferential Trade Agreements: Mapping the PTA Landscape' (2017) 5 *UNCTAD Research Paper* UNCTAD Research (UNCTAD/SER.RP/2017/5).

[9] Brigid Starkey, Mark A Boyer and Jonathan Wilkenfeld, *Negotiating a Complex World: An Introduction to International Negotiation* (2nd edn, Rowman & Littlefield 2005).

Findings also reveal that copying-pasting is prevalent in two distinct scenarios: when low-capacity governments turn to an existing template, and when powerful States desire to spread their preferred set of rules globally.[10] Hence, both developed (with significant negotiation capacity) and developing countries (with limited negotiation capacity) copy and paste quite extensively. In practice, high-capacity actors may deploy templates to diffuse preferred language, while lower-capacity actors may rely on them to economize on drafting and legal review. Replication is therefore treated in this paper as an outcome that can reflect power asymmetries and capacity constraints, rather than a single underlying motive. Countries with the experience of negotiating such provisions and chapters tend to have a much more clearly-formulated vision of what they need to add in an agreement. Moreover, they also have a much greater likelihood of having a past agreement or explicit template on trade and gender chapters or provisions to draw from, and a greater bargaining leverage to add their preferred language as compared to their developing country partners.[11]

Copying provisions offers several benefits, as it ~~: it~~ can drive change by encouraging imitation on unfamiliar issues~~.~~[12] and reduce ~~It also reduces~~ negotiation costs since such provisions have lower compliance costs for countries that may already have negotiated them elsewhere.[13] It may also enable incremental strengthening of language overtime, as parties occasionally harden or extend previously soft formulations rather than inventing entirely new language.[14] Moreover, it is much easier to arrive to an agreeable document from an existing document than to write an entirely new one. Even if parties disagree on the appropriate language of a pre-existing document, it still is easier to work from – and modify – a fully formulated document than to start from scratch and create a new document.[15] ~~–~~ This is particularly relevant for the inclusion of gender provisions in trade agreements, which continues to face resistance in many countries.

Countries also tend to develop certain templates of agreements and provisions for the sake of familiarity.[16] The psychological phenomenon of "familiarity heuristic" scenario suggests that recall of past information shapes perceptions of future likelihood. Familiarity with previously

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[10] Allee and Elsig (n 3), 603; Julia Seiermann, 'Only Words? How Power in Trade Agreement Texts Affects International Trade Flows' (UNCTAD Research Paper 26, 2018) <https://unctad.org/system/files/official-document/ser-rp-2018d8_en.pdf> accessed 3 January 2025.

[11] Amrita Bahri and Renata Amaral, 'Gender Equality Provisions in Trade and Investment Agreements: Are They Widening the Negotiation Capacity Gap?' (2024) 23 *World Trade Review* 47, 71.

[12] Frank Dobbin, Beth Simmons and Geoffrey Garrett, 'The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?' (2007) 33 *Annual Review of Sociology* 449, 472.

[13] ibid.

[14] Interview with trade negotiators from three developing countries [details withheld, in file with author].

[15] Interview with trade negotiator [details withheld, in file with author].

[16] Lisa Lechner, 'The Domestic Battle o~~O~~ver the Design of Non-trade Issues in Preferential Trade Agreements' (2016) 23 *Review of International Political Economy* 840, 871.

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negotiated language can shape negotiators' choices, particularly in cross cutting areas like trade and gender, where delegations may prefer vetted language to avoid interpretive and political uncertainty.[17] ~~However, using a different template can motivate a government to add issues they have traditionally not included in their trade agreements or within the scope of their trade policy agenda.[18]~~

~~This paper shows that the approach of copying-pasting is particularly evident when we examine the content and scope of provisions in trade agreements that explicitly address women or more broadly relate to gender concerns as most of these provisions or even entire chapters are copied in their entirety from the pre-existing treaties. The repetition and copying practices, which occurs in the case of gender-related provisions, as well as provisions related to other social concerns such as indigenous communities or disability inclusion, can obstruct inclusion of more ambitious commitments that can effectively help marginalized groups overcome their barriers.[19]~~

This paper shows that the approach of copying-pasting is particularly evident when we examine the content and scope of provisions in trade agreements that explicitly address women or more broadly relate to gender concerns as most of these provisions or even entire chapters are copied in their entirety from the pre-existing treaties.[20] The findings also ~~in this paper~~ show that even though a number of trade agreements have included commitments relating to gender equality, the countries that have negotiated these agreements have ~~not painstakingly crafted such commitments line-by-line and word-by-word; instead, they have~~ copied and pasted large amounts of text from the pre-existing agreements. ~~and that T~~the language that has been copied and pasted is predominantly created by and for the developed world with a few notable exceptions. This realization, or finding, motivates two linked questions: (i) whether different capacities of negotiation and diffusion dynamics can explain the persistence of template-based gender language, and (ii) what normative risks arise when replication becomes the dominant mode of including commitments relating to women in trade policy instruments, especially if they are not designed with an explicit effort to address the barriers that women face. The latter

[17] Russell Korobkin and Chris Guthrie, 'Heuristics: Heuristics and Biases at the Bargaining Table' (2004) 87 *Marquette Law Review* 795, 807.

~~[18] Karolina Milewicz, 'Beyond Trade: The Expanding Scope of the Non-trade Agenda in Trade Agreements' (2018) 62 *Journal of Conflict Resolution* 743, 773.~~

~~[19] For disability related provisions, see Amrita Bahri, 'Trade Agreements and Disability Inclusion: Demystifying the Disconnect between Barriers and Policy Solutions' (United Kingdom Foreign, Commonwealth and Development Office and Cowater International Inc., 2024); Karolina Milewicz, 'Beyond Trade: The Expanding Scope of the Non-trade Agenda in Trade Agreements' (2018) 62 *Journal of Conflict Resolution* 743, 773..~~

[20] For disability related provisions, see Amrita Bahri, 'Trade Agreements and Disability Inclusion: Demystifying the Disconnect between Barriers and Policy Solutions' (United Kingdom Foreign, Commonwealth and Development Office and Cowater International Inc., 2024); Karolina Milewicz, 'Beyond Trade: The Expanding Scope of the Non-trade Agenda in Trade Agreements' (2018) 62 *Journal of Conflict Resolution* 743, 773.

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question is particularly concerning as the practice of copying-pasting seems to have caused disconnect between the problems that women face and the policy solutions that are being included as gender provisions in trade agreements. The discussions and evidence presented in this paper will ~~essentially~~ recast our understanding on whether trade agreements can accommodate gender-related interests, how such provisions are included in trade negotiation agenda, what might be the factors behind such repetitive inclusions, and what prevents countries from adopting more innovative equality standards.

The discussion on boilerplate language in gender provisions should not be understood as implying that standardization is inherently undesirable. Standardized treaty drafting, as previously stated, can promote predictability, facilitate negotiations, and ensure that issues such as gender equality remain visible within trade policy. The concern raised in this article is narrower, which is, that the extensive textual replication in this field may reduce opportunities to tailor treaty commitments to the distinct barriers that women face in different countries that may have very distinct institutional, economic and social circumstances. Moreover, ~~T~~this study does not challenge the heterogeneity of FTAs, as shown in multiple quantitative empirical studies[21]; this paper shows that the content of trade agreements on gender concerns are ~~not merely similar or overlapping but~~ frequently replicated through verbatim or near verbatim reuse of language from the previously negotiated trade agreements. However, this is not to say that all such provisions are a copy-paste; some are different and innovative, but the vast majority ~~a heavy number~~ of provisions bear a striking resemblance in terms of their content, scope, language and even expressions used.

In this paper, Section II discusses copy-pasting as a drafting mechanism, drawing briefly on standard-form contracts and bilateral investment treaties to explain how boilerplate approach may operate in practice. Section III then situates these replication dynamics within trade negotiations, showing how preferred templates travel across agreements even without a formal "model draft" culture. Section IV sets out the paper's conceptual framework on policy diffusion, clarifying how coercion, learning, competition, and legitimacy dynamics may help explain the spread of treaty language particularly relating to gender provisions without predetermining whether such diffusion is desirable. Section V presents concrete evidence on the use of boilerplate approach in the drafting of trade and gender provisions, by identifying clusters of repeated gender provisions. The final section concludes with reflections on when replication can support incremental strengthening, where it appears to constrain context-

[21] Zhiyuan Wang, 'Designing Competition Clauses in Preferential Trade Agreements' (2023) 22 *World Trade Review* 657, 679; Anu Bradford and Tim Büthe, 'Competition Policy and Free Trade: Antitrust Provisions in PTAs', in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (Cambridge University Press 2015), 246-274.

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sensitive design, and what this implies for future trade and gender discourse. ~~provisions in trade agreements.~~

Research Methodology

The methodological approach adopted in this study is qualitative content analysis combined with comparative textual analysis. This approach is particularly suited for examining legal and policy documents such as international trade agreements, where the wording, structure, and context of provisions carry interpretive and normative weight.[22] The study assumes that the language of trade agreements both reflects and shapes policy priorities, including on gender issues, enabling analysis of the presence, form, and framing of gender-related provisions across texts.

As of the date of this writing, the World Trade Organization's Regional Trade Agreements (RTA) database lists a total of 375 trade agreements currently in force.[23] The author conducted a comprehensive review of these agreements to identify provisions that reference gender or women. Both explicit mentions (e.g., clauses directly referring to gender equality, women's economic empowerment, or gender-sensitive measures) and implicit mentions (e.g., language on social inclusion, equality of opportunity, or labor standards that may have gendered implications) were considered.[24] Agreements were categorized according to whether they contained: explicit gender provisions, implicit gender references, or no discernible gender-related content wherein no evidence—explicit or implied of gender-related content was considered or integrated into texts. This approach allowed for both quantitative summarization (number and proportion of agreements with gender provisions) and qualitative analysis (nature and framing of gender-related content).

The methodology employed in this study is similar to the one used by those investigating plagiarism manually, in which the investigators search for perfectly-matching strings of text that would indicate "copy-pasting" from some other documents. The author started by browsing

[22] GA Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9 *Qualitative Research Journal* 27

[23] WTO Regional Trade Agreements Database, <https://rtais.wto.org/UI/PublicAllRTAList.aspx> accessed 10 September 2025

[24] Explicit provisions are those that are drafted with women or gender related language and use the following terms: *mujer, mujeres, género, niñas - niños, sexo, equidad, maternidad, paternidad , paternal, maternal, igualdad, Atencion infantil* [in Spanish]; women, girl, woman, girls, maternity, gender, childcare, sex and mother [in English]. Only those explicit provisions are included in this study that includes text that offers commitment, vision, or actions to challenge gender inequalities and empower women through international trade. Implicit provisions are those that do not contain women specific language but nevertheless seek to benefit women. Some examples may include provisions on morals, human rights, social welfare, labour rights, poverty, corporate social responsibility, inclusive development and others.

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through the text of a given FTA to identify the provisions relating to gender or women with the help of a number of search words. After identifying the relevant provisions, the author read and assessed the nature, scope and language used to draft them, and compared them to the other relevant provisions added across different trade agreements. To identify relevant provisions, a keyword search was conducted using terms including, but not limited to, "gender," "women," "equality," "non-discrimination," "female," "inclusive," and "empowerment." These searches were conducted using PDF readers and full-text editors, supplemented with manual reading to ensure that contextually relevant expressions were not overlooked.

Text analysis was used to analyze the ~~text~~ language of provisions that are explicitly related to gender or women. Text analysis is an increasingly common method in the social sciences and is particularly well suited to the study of international agreements which employ deliberate wording and allow scope for legal interpretation.[25] Provisions identified were textually analyzed based on the nature, scope, and language used. Comparative text analysis was employed to identify similarities between provisions across different agreements. To identify similarities between identical texts of provisions in different agreements, the author primarily looked for either literal word-to-word matching, or sequences of five or more words in a given provision that contains an explicit gender expression. Moreover, many provisions were identified that were somehow paraphrased with minor tweaks in terms of nouns and verbs. Another approach used was the "bag-of-words", which disregards text order and is often deployed inductively. A "bag-of-words" approach was used to identify recurring terms across agreements, with all results verified through manual reading of the full provisions. These methods helped identify common clauses and paraphrased adaptations of gender language across different trade agreements.

Once relevant provisions were identified, a manual qualitative assessment was conducted to evaluate several features of the provisions including the nature (declarative, cooperative, or binding), scope (narrow, general, or comprehensive), positioning or location (within preambles, labor chapters, or standalone provisions or chapters), and language strength (use of mandatory terms like "shall" vs. aspirational terms like "encourage" or "endeavor"). This stage of the analysis allowed the author to categorize the function and legal weight of gender provisions and understand their normative implications.

Following this assessment of the identified provisions, the author selected five different inclusions (as shown in Table 1) that were found to be most recurring in multiple trade agreements. A total of 78 FTAs were found to contain explicit gender-related provisions. The analysis focused on the qualitative nature of the language used, rather than statistical testing or

[25] Mark S Manger and Clint Peinhardt, 'Learning and Diffusion in International Investment Agreements' (2013) 43 *International Interactions* 679.

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quantitative inference. While no specialized text analysis software was employed for this study, tools such as Adobe Acrobat and Microsoft Excel were used to perform keyword searches, compare phrase frequencies, and structure data for categorization and review.

Limitations of this methodology include potential omission of deeply implicit gender-related language not captured by the keyword search and the interpretive nature of qualitative assessment. The analysis focused exclusively on the textual content of agreements and did not examine their implementation, enforcement mechanisms, or outcomes. Implicit gender references that did not contain identifiable keywords may have been underrepresented despite manual review efforts. Moreover, the qualitative nature of the analysis means findings are interpretive rather than statistical.

~~In this paper, Section II discusses copy-pasting as a drafting mechanism, drawing briefly on standard-form contracts and bilateral investment treaties to explain how boilerplate approach may operate in practice. Section III then situates these replication dynamics within trade negotiations, showing how preferred templates travel across agreements even without a formal "model draft" culture. Section IV sets out the paper's conceptual framework on diffusion, clarifying how coercion, learning, competition, and legitimacy dynamics help explain the spread of treaty language particularly relating to gender provisions without predetermining whether such diffusion is desirable. Section V presents concrete evidence on the use of boilerplate approach in the drafting of trade and gender provisions, by identifying clusters of repeated gender provisions. The final section concludes with reflections on when replication can support incremental strengthening, where it appears to constrain context-sensitive design, and what this implies for future gender provisions in trade agreements.~~

II. Copy-Pasting as a Drafting Mechanism: Functions, Benefits, and Limitations

As a drafting mechanism, copy-pasting serves multiple functions in legal texts and international agreements. It reduces transaction costs by economizing on time, expertise, and legal review, promotes consistency and legal certainty across instruments, and facilitates the diffusion of preferred norms and institutional models.[26] It also helps parties converge on text that has already been accepted in prior bargaining contexts.[27] At the same time, reliance on replicated language may potentially limit adaptation to context-specific objectives and conditions.[28] These functions also explain why boilerplate language can facilitate diffusion of norms across trade agreements. When a formulation is repeatedly reused, it becomes a coordination device,

[26] Allee and Elsig (see note 3) 605-607.

[27] Interview with trade negotiators [details withheld and on record with author]

[28] Aayushi Singh, 'Deconstructing Treaty Parallelism and Overlap: The infamous "Achilles Heel"' (*Cambridge International Law Journal*, 3 May 2021) <https://cilj.co.uk/2021/05/03/deconstructing-treaty-parallelism-and-overlap-the-infamous-achilles-heel/> accessed 15 January 2025.

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lowering the bargaining and legal review burden for future treaties.[29] Yet these advantages can vary by policy area, and the latter sections examine why their payoffs may be uneven when the copied language is expected to address context-specific social barriers, such as those implicated in gender-related trade provisions.

~~The scholarship that most directly informs this perspective is the one on contracts, particularly relating to standard-form-contracts.[30] Standard-form-contracts are widely used in domestic law and their drafting relies heavily on standard or boilerplate language from an existing document.[31] Use of boilerplate approach in standard contracts has many observed benefits, including time efficiency, familiarity, and reduced conflict and complexity. In this setting, repeated language can also improve predictability, because parties and courts develop interpretive expectations around familiar formulations.~~

The scholarship that most directly informs this perspective is the one on contracts, particularly relating to standard-form-contracts.[32] Standard-form-contracts are widely used in domestic law and their drafting relies heavily on the boilerplate language.[33] The extensive literature on international politics, particularly relating to investment treaties, has also acknowledged the use of the boilerplate approach through model treaties in the negotiation and drafting of investment policy instruments.[34] Model treaties contain precise language and formulations that are well-vetted by negotiators and policymakers over a number of years and decades. Model bilateral investment treaties (BITs) – which lay out the proposing State's preferred text, are widely viewed as a starting template for negotiations. Many governments have drafted their own versions of BITs, known as "Model BITs", with the obvious intention that they will be able to push in these templates as the basis for future negotiations with their investment partners.[35]

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[29] Interview with trade negotiators [details withheld and on record with author]

~~[30] Giuseppe Dari-Mattiacci and Florencia Marotta-Wurgler, 'Learning in Standard-Form Contracts: Theory and Evidence' (2022) 14 *Journal of Legal Analysis* 244, 314.~~

~~[31] Mitu Gulati and Robert E Scott, The Three and a Half Minute Transaction: Boilerplate and the Limits of Contract Design (Columbia Law and Economics Working Paper No 407, University of Chicago Press 2012) <https://ssrn.com/abstract=1937900> accessed 15 January 2025.~~

[32] Giuseppe Dari-Mattiacci and Florencia Marotta-Wurgler, 'Learning in Standard-Form Contracts: Theory and Evidence' (2022) 14 *Journal of Legal Analysis* 244, 314.

[33] Mitu Gulati and Robert E Scott, The Three and a Half Minute Transaction: Boilerplate and the Limits of Contract Design (Columbia Law and Economics Working Paper No 407, University of Chicago Press 2012) <https://ssrn.com/abstract=1937900> accessed 15 January 2025.

[34] Alschner Wolfgang and Dimitri Skougarevskiy, 'Mapping the Universe of International Investment Agreements' (2016) 19 *Journal of International Economic Law* 561, 588.

[35] Tarald Berge and Øyvind Stiansen, 'Negotiating BITs with Models: The Power of Expertise' (*SSRN Electronic Journal*, 2016) <https://doi.org/10.2139/ssrn.2851454> accessed 15 January 2025.

Research clearly reveals that developed countries are much more likely to design model BITs, which they then use to negotiate other BITs.[36] Empirical research suggests substantial concordance between negotiated BITs and the model text of larger treaty partners, and that concordance can be higher when bargaining asymmetry is large.[37] In ~~Hence, in~~ the field of international investment, the boilerplate approach is so common that the practice of negotiated BIT text being taken verbatim from the powerful country's model treaty is in fact seen as a well-established practice. Nevertheless, this ~~practice~~ trend has faced backlash, and developing countries have criticized the BITs' negotiating processes for largely serving the interests of capital-exporting States and their corporations.[38] This experience illustrates an important limitation of template-based diffusion: where power asymmetries are strong, extensive reliance on model text can intensify concerns about one-sided drafting and limited accommodation of the other party's regulatory priorities and concerns.[39]

There is also strong evidence that these model BITs are a reflection of governments' investment preferences, and for this reason, their aim is to use them as much as possible in the negotiating process. During Congressional debates over BIT ratification, in fact, the United States (US) often trumpets how similar the negotiated BIT being considered is to the US model and especially when ~~their~~ a US model BIT~~s are~~ is entirely adopted by another State~~in the new ones in totality~~.[40] Alvarez has described this dynamic as a "cookie-cutter" approach, in which model text ~~can~~ function~~s~~ less as a joint drafting mechanism and more as a vehicle for imposing preferred terms.[41]

The central claim of this paper is not that copy-pasting is inherently problematic, but that its value depends on the functions the replicated provisions are expected to perform. In commercial contracts and investment treaties, textual reuse often advances predictability, drafting efficiency, and the diffusion of legally vetted formulations. This paper argues, however, that these advantages translate less readily to the inclusion of gender-related provisions in

[36] Todd Allee and Andrew Lugg, 'Do BITs Reflect the Interests of Powerful States?' (2016 Annual Meeting of the International Studies Association, Atlanta, Georgia, 16-20 March 2016) <https://www.researchgate.net/publication/305318612_Do_BITs_Reflect_the_Interests_of_Powerful_States> accessed 15 January 2025.

[37] ibid.

[38] Uche Ewelikwa Ofodile, 'Africa-China Bilateral Investment Treaties: A Critique' (2013) 35 *Michigan Journal of International Law* 131, 147-211.

[39] Affif Havas Oegroseno, 'Indonesia's Bilateral Investment Treaties: Modernising for the 21st Century' (RSIS Commentary No 140, 15 July 2014), <https://www.academia.edu/113519588/Indonesias_bilateral_investment_treaties_modernising_for_the_21st_century> accessed 11 August 2025.

[40] Lauge Poulsen and Michael Waibel, 'Boilerplate in International Economic Law' (2021) 115 *AJIL Unbound* 253, 257.

[41] Asha Kaushal, 'Revisiting History: How the Past Matters for the Present Backlash Against the Foreign Investment Regime' (2009) 50 *Harvard International Law Journ*al 491, 512, 534.

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trade agreements, where the effectiveness of commitments is highly contingent on context-specific barriers, institutional capacity, and the distributional profile of women's participation in different economies and sectors.

III. When Language Travels: Replication in Trade Agreements

In trade negotiations, unlike negotiation of investment treaties, there is no explicitly accepted practice or culture of approaching negotiations with a model draft[42]; nevertheless, some countries in trade negotiations have often approached the tables with their preferred templates for entire agreements, chapters, provisions or sections. Even without a formal "model draft" culture, repeat negotiations have created practical pathways for template reuse, as parties have routinely drawn on their prior FTA texts when drafting new chapters, provisions, or institutional clauses. As a result, some trade players have succeeded in having their preferred templates being adopted in various trade and economic partnership agreements by reusing their "house style" drafting or transplantation of clauses or entire chapters that have already cleared domestic review.[43]

Leading negotiating powers, such as the ~~United States~~US and European Union (EU), ~~as per studies,~~ are the most prominent users of this boilerplate approach as they copy and paste provisions from their previous trade agreements heavily into their other agreements. Studies show that when such powerful nations come to a negotiating table, they have a clear idea of what they expect to gain from this exercise and that they are likely to also arrive to the tables with their preferred templates which they expect their partner (especially when the partner is a country with comparatively smaller market size, lesser negotiating clout and limited negotiating experience) to accept as such.[44] Where bargaining or capacity asymmetries exist, template reuse may also be reinforced by time constraints, drafting resources, and the practical convenience of negotiating from text that has ~~already~~ been used elsewhere. A study, for example, found two ~~United States (US)~~US agreements, one with Peru and the other with Colombia, to share as high as 90% of the same text.[45] Similarities as high as 95% were found in the agreements negotiated by the EU ~~European Union (EU)~~ as well as European Free Trade Association (EFTA) members.[46] Another compelling example is that of the drafting of Trans-Pacific Partnership (TPP), wherein the past language found in the US agreements was the most

[42] However, some recent scholarships have attempted to propose template language for trade agreements that are focused on inclusive and sustainable development, with model provisions and their possible implications or benefits. See, for example, Katrin Kuhlmann, *Handbook on Provisions and Options for Trade in Times of Crisis and Pandemic* (United Nations Publication 2021)

[43] Todd Allee, Manfred Elsig and Andrew Lugg, 'Is the European Union Trade Deal with Canada New or Recycled? A Text-as-data Approach' (2017) 8 *Global Policy* 246, 252.

[44] Zartman IW and Rubin JZ (eds), *Power and Negotiation* (University of Michigan Press 2000)

[45] Allee and Elsig (n 3), 603.

[46] ibid.

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pre-eminent in the draft of TPP mainly in the areas that were of greatest importance to the US political and economic interests, especially financial services, general services, investment, and labour.[47] These examples are used here to illustrate the existence of high textual overlap in trade policy instruments and the role of the repeat-players in producing it.

Repeated bilateral and regional negotiations can create opportunities that enable template diffusion, and such negotiations can also be used as tools to shift trade cooperation away from the deadlocked WTO to a venue where big players can more effectively and with lesser hurdles write and re-write trade rules for the future in ways that serve their own interests. This strategic shift may also help explain the growing trend of incorporating trade and gender provisions, as powerful actors are using alternative negotiating platforms to shape the gender-related emerging norms and agendas on their own terms.

The use of the boilerplate approach, particularly in the negotiation and drafting of gender provisions for their inclusion in trade agreements, takes us to at least two realizations: First, gender and trade discourse within the trade policy agenda ~~has~~ is largely ~~been~~ being shaped by the developed-country priorities and narratives. Second, as the following section will illustrate, some countries that have included gender-related commitments in trade agreements appear to have done so without tailoring provisions to address specific, context-dependent barriers faced by women in their economies.

Template-based inclusion without domestic adaptation ~~explains why gender provisions remain largely aspirational with limited practical implementation and impact. It also~~ points to the broader phenomenon of policy diffusion, where ideas and legal formulations travel across jurisdictions. As gender provisions are adopted and adapted—or sometimes simply reproduced—by multiple countries, patterns of language and norms spread globally, shaping the design of subsequent agreements. The following section uses the lens of diffusion theory to explain these dynamics from different perspectives and explores how they help us understand the spread and adaptation of gender-related commitments in trade agreements.

~~IV.~~ IV. Applying Diffusion Theory to Gender Provisions in Trade Agreements ~~can We Blame It On Global Diffusion Theory?~~

Social scientists have long examined policy diffusion—the spread of policy ideas and legal language across jurisdictions. This section draws on diffusion theory to explain how gender-related language travels across trade agreements, without taking a normative position on its

[47] Todd Allee and Andrew Lugg, 'Who Wrote the Rules for the Trans-Pacific Partnership?' (2016) 3 *Research & Politics* 1

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desirability. Diffusion may occur through mechanisms such as coercion, learning, competition, legitimacy or norm-setting.[48]

Coercion theorists trace diffusion to powerful countries threatening sanctions or offering benefits for policy acceptance. Coercion may operate through physical force, economic manipulation, or information monopolization.[49] In trade policy context, coercion is best understood as bargaining leverage that makes acceptance of prefabricated text more likely, particularly when market access, preferences, or cooperation are perceived as contingent on having an agreement.

Economic coercion typically would involve shifts in incentives that make a partner more willing to accept proposed language, including situations where access to a large market, negotiating bandwidth, or reputational costs shape what a weaker party is willing to contest in drafting. The preferences of the US government, the EU, and other leading States and how their preferred policies and language have made their way into multilateral as well as regional and bilateral trade agreements could be seen as examples of this form of coercion as they show ~~that~~ how powerful stakeholders can shape policies of countries reliant on those entities for trade, foreign direct investment, aid, or other benefits such as grants. A more recent example of economic coercion is how the US is using its economic pressure primarily through its large consumer market, tariffs and trade threats to influence the behavior of other countries into making favorable trade or other policy changes.

Another form of coercion can be exercised through hegemonic ideas, wherein without exerting physical or ~~material or~~ economic power, dominant States can influence others through ideational channels that are advocated as rational and successful.[50] Powerful countries with their research infrastructure, the critical intellectual mass they have, and their well-developed connections between the policy world and various research sources and powers, are unduly influential in the framing of policy discussions. This ideational channel matters for gender language in trade agreements as "~~'~~best practice"~~'~~ formulations increase uptake without explicit pressure.

Constructivists argue that policy norms are largely set by expert epistemic communities and international organizations, who have defined economic progress and human rights for decades. Early constructivists have observed that the diffusion of educational and human rights policies in the world have happened from the developed to the developing world, showing that

[48] Johanna Kuhlmann, Delia González de Reufels, Klaus Schlichte and Frank Nullmeier 'How Social Policy Travels: A Refined Model of Diffusion' (2020) 20 *Global Social Policy* 80, 96; G. John Ikenberry and Charles A. Kupchan, 'Socialization and Hegemonic Power'(1990) 44 *International Organization* 283, 315.
[49] David Marsh and Jason Sharman, 'Policy Diffusion and Policy Transfer' (2009) 30(3) *Policy Studies* 269.
[50] Ikenberry and Kupchan (n 48), 283, 315.

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most countries have changed policies not when they were developmentally ready but when they were influenced by global norms of the developed world.[51] In this view, States may adopt certain text to align with prevailing international norms and to signal membership in a community of "responsible" treaty makers, even when domestic implementation capacity is uneven.

Wotipka and Ramirez find that developing countries with persistent gender inequality were more likely to ratify women's rights conventions during major rights conferences ~~and as participation in NGOs and IOs increased~~, alongside their adoption ~~among~~ by developed-country peers.[52] This example suggests that bounded rationality and limited informational capacity may lead policymakers in developing countries to emulate countries perceived as economically successful. This can translate into drafting dynamics where proposed gender language is accepted because it is legible, already "vetted," and administratively easy to adopt, particularly where negotiating capacity or gender trade analytics are limited. This dynamic helps explain why a handful of developed countries, as shown in the subsequent section with concrete examples, have been able to set the tone and language for gender-related provisions in trade agreements as their models have been perceived as best practices. This pattern is particularly evident in the negotiation of gender provisions in trade agreements involving developing countries, where limited technical expertise, lack of institutional capacity, and insufficient access to gender-disaggregated data can undermine the ability to develop context-specific proposals.

Competition-oriented accounts of policy diffusion suggest that States may adopt commitments they might not otherwise prioritize in order to remain attractive for investment and market access in an increasingly competitive global economy. [53] When countries with significant market size and strategic influence incorporate inclusion-related commitments into their trade agreements—even where such provisions are primarily signaling-oriented—they can create incentives for partners to follow suit, particularly as "modern" agreement templates increasingly feature social and inclusion chapters. The recently concluded India–UK Comprehensive Economic and Trade Agreement illustrates this dynamic.[54] The A~~a~~greement integrates gender-related considerations across multiple chapters and includes a dedicated chapter on gender equality, marking a notable change in India's trade policy practice.[55] As a key

[51] Dobbin, Simmons and Garrett (n 12), 472.

[52] Mana Nakagawa and Christine Wotipka, 'The Worldwide Incorporation of Women and Women's Rights Discourse in Social Science Textbooks, 1970–2008' (2016) 60 *Comparative Education Review* 501, 529.

[53] Cintia Quiliconi, 'Competitive Diffusion of Trade Agreements in Latin America' (2014) 16 *International Studies Review* 240, 251.

[54] Comprehensive Economic and Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and India (signed, 24 July 2025) [CETA].

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instrument for securing market access and deepening trade ties with a major export destination, such inclusions in the agreement reflects how competitive pressures and evolving negotiating templates can shape the adoption of gender language in trade agreements, reinforcing the broader patterns of competition and coercion.

Some explanation of imitation practices being employed in the negotiation of gender-related provisions can also be found in the learning theory, which suggests that some countries, beyond economic and competitive goals, are keen to learn from their own experiences and, as well, from the policy experiments and experiences of their peers.[56] Learning occurs when there is new evidence that changes our beliefs or understanding over a certain subject. In this attempt, some countries may accept the global norms set by countries that have done well in the global economy. A number of trade agreements serve as an example to this theory, wherein countries have added commitments on sharing their experiences and knowledge with each other on ~~improving~~ enhancing women's empowerment through trade ~~and the intersection between trade and gender issues~~. However, despite advancements and lofty goals, longstanding distributional issues remain unaddressed in the current inclusion of women-related provisions as they have not been ~~adapted or~~ negotiated in light of the domestic needs and circumstances of countries on a case by case basis.[57] The shallow inclusion of gender provisions in existing trade agreements, as shown in the subsequent section, ~~shows~~ demonstrates that diffusion through learning mechanism is not effective when policymakers simply adapt to the policy shifts of others, unless their beliefs and approach about cause and effect change.

One may wonder why developed countries seek to influence the social structures of other countries through the inclusion of gender provisions in their trade agreements. Economists have argued that such efforts may seek to discourage moral hazard problems that can contribute to broader systemic instability.[58] Other explanations point to strategic trade interests, including the retention of policy tools that may influence the comparative advantages enjoyed by trading partners in particular sectors.[59] A further explanation lies in the domestic

[55] See chapters 12, 14, 15, 19, 20, 22 and 23, CETA. Also see Prachi Agarwal, 'How the UK-India Trade Deal Shapes Women's Economic Empowerment' (ODI Global, 25 July 2025) <https://odi.org/en/insights/how-the-uk-india-trade-deal-shapes-womens-economic-empowerment/> accessed 7 August 2025

[56] Dobbin, Simmons and Garrett (n 12), 474.

[57] Jakob Engel, Deeksha Kokas, Gladys Lopez-Acevedo and Maryla Maliszewska, 'The Distributional Impacts of Trade: Empirical Innovations, Analytical Tools, and Policy Responses' (The World Bank, 2021) <https://documents1.worldbank.org/curated/en/976331621501704900/pdf/The-Distributional-Impacts-of-Trade-Empirical-Innovations-Analytical-Tools-and-Policy-Responses.pdf> accessed 29 October 2023.

[58] Robert Owen, Alfred Ntoko, Ding Zhang and June Dong, 'Public Policy and Diffusion of Innovation' (2002) 60 Social Indicators Research 179, 190.

[59] Frederic S Mishkin, 'International experiences with different monetary policy regimes',(1999) 43 *Journal of Monetary Economics* 579, 605; Amrita Bahri, 'Can Trade Agreements Empower Women?' in *Trade Agreements and Women: Transcending Barriers*, (Oxford University Press 2025) ch 5, 93.

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political economy of trade policymaking. As support for trade liberalization has become increasingly contested in many developed economies, governments have increasingly sought to bolster the domestic legitimacy of trade agreements by demonstrating that trade policy can also advance broader social objectives alongside economic ones.[60] In this context, provisions relating to gender equality and other social concerns may serve not only as mechanisms for encouraging policy change in partner countries but also as signals to domestic constituencies that trade agreements can also advance social values.

~~One may wonder why developed countries should bother about changing the social set-up of other countries through the inclusion of gender provisions in their agreements with others. Economists have argued that countries through such attempts can seek to discourage moral hazard problems that can lead to system-wide financial instability.[61] Other reasons could also be related to the intentions of retaining tools of protectionism in their own hands to be able to manipulate with the comparative advantage that their trade partners may have in certain fields of goods and services.[62]~~

Moreover, countries ~~enjoy~~ prefer setting global norms or imposing their own policy preference on others to also have the ~~enjoy the~~ first-mover advantages and create a visible symbolic image of themselves ~~in a certain respect~~ in comparison with or in competition with other competing States.[63] It matters who writes the rules of the trade. Dictating new rules is an important way for States to exercise influence on the global stage. Given the continued gridlock in the WTO trade negotiations, and abandonment of multilateralism by the ~~United States~~US and some of its trade allies, preferential trade agreements have become an alternative way for States to advance their trade cooperation with willing partners beyond their WTO commitments.

These observations explain how a number of motivations can drive policy diffusion in trade agreements. ~~how multiple motives can coexist, such as gaining leverage, norm-setting, sharing experience, market competition, and establishing legitimacy, and diffusion theory explains how such motives can translate into repeated gender language across agreements~~. These dynamics ~~can~~ often contribute to diffusion by normalizing certain textual formulations as "expected"

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[60] Evgeny Postnikov and Ida Bastiaens, 'Social protectionist bias: The domestic politics of North–South trade agreements' 22(2) The British Journal of Politics and International Relations (2020) [wherein authors have argued that 'Northern governments have their hands tied by domestic constituents demanding social standards as a key protectionist instrument'.]

~~[61] Robert Owen, Alfred Ntoko, Ding Zhang and June Dong, 'Public Policy and Diffusion of Innovation' (2002) 60 Social Indicators Research 179, 190.~~

~~[62] Frederic S Mishkin, 'International experiences with different monetary policy regimes',(1999) 43 *Journal of Monetary Economics* 579, 605; Amrita Bahri, 'Can Trade Agreements Empower Women?' in *Trade Agreements and Women: Transcending Barriers*, (Oxford University Press 2025) ch 5, 93.~~

[63] Diane Stone, Osmany Porto de Oliveira, Leslie A Pal, 'Transnational Policy Transfer: The Circulation of Ideas, Power and Development Models' (2020) 39 *Policy and Society* 1, 18; also see, Marvin B Lieberman and David B Montgomery, 'First-Mover Advantages' (1988) 9 *Strategic Management Journal* 41, 58.

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components of contemporary agreements. This could be the case with gender provisions because the intersection between trade policies and gender remains an underdeveloped field of work and so countries can be the first ones to set standards on including new forms of gender-related commitments in trade agreements by proposing different ways to do so. This could also help countries facilitate their dialogue or negotiation on increasing market access with other countries that may otherwise not be like-minded but are pioneers or champions of certain issues such as gender equality.

While diffusion theory helps explain why and how gender-related provisions spread across trade agreements, it may not fully explain why these provisions often take strikingly similar institutional and textual forms. This can perhaps be explained with the process of "institutional isomorphism", developed by DiMaggio and Powell, which explains convergence through coercive, normative, and mimetic pressures.[64] In the context of trade agreements, the repeated use of nearly identical gender provisions reflects a form of mimetic isomorphism, where negotiators emulate existing templates to reduce uncertainty, legitimize their texts, and align with prevailing international norms. This helps explain why the same gender-related language is replicated across multiple agreements once a recognized template exists.

Replication can either (i) reinforce existing standards efficiently or (ii) lock in generic language that is not adapted to the distributional features the provision purports to address. Particularly among developed countries with extensive negotiation experience, this pattern reveals a preference for efficient replication over innovation, which may inadvertently limit the potential for gender provisions to be tailored to diverse regional contexts.[65] Consequently, while institutional isomorphism facilitates the diffusion of gender language across trade agreements, it may also constrain the substantive evolution of gender mainstreaming in trade policy by promoting uniformity at the expense of contextual relevance.

Replication and innovation are not opposite strategies in treaty drafting. Replication can enable incremental strengthening through recombination, but the empirical record in the dataset (shown in the subsequent section) shows that, for many gender clusters, diffusion frequently occurs through re-use of the same recognitions and reaffirmations with limited movement towards a context-specific design. ~~Trade agreements are suitable venues for such discussions as they in general have a broad scope and can involve trade-offs between several areas. For this reason, as some recent examples have shown, during trade negotiations, concessions on~~

[64] Walter W Powell and Paul J DiMaggio (eds), *The New Institutionalism in Organizational Analysis* (University of Chicago Press 1991)

[65] Manjiao Chi & Zhiyuan Yin, 'Trade-Gender Alignment of International Trade Agreements: Insufficiencies and Improvements' (2024) LSE Research Online Documents on Economics 125392 (This paper analyzes the alignment between trade agreements and gender equality, possibly providing observations on how mimetic isomorphism leads to the replication of gender provisions without substantial adaptation to local contexts.)

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~~gender equality matters can be obtained in exchange for greater and unfettered market access. However, it remains important to ask whose preferences are diffused, through which channels, and into what agreements—questions the next section addresses empirically.~~

The following section examines the text of gender-related provisions to identify the extent of verbatim and near-verbatim reuse, and to assess when replicated language appears well matched, or poorly matched, to the objectives it may be~~is~~ expected to advance. This assessment provides examples of potential mismatch between women's economic barriers and the content of replicated provisions, which may reflect how the current provisions are not directly addressing the problems that women face in international trade.[66]

V. The Evidence of Copy and Paste: Some Practice Examples with Many Replicating Examples of Gender Provisions

~~The integration of gender provisions in trade agreements has become increasingly prominent in recent years; however, a closer examination of treaty text reveals a strong tendency toward paraphrasing and replication across agreements.~~ This section maps patterns of textual reuse in gender-related provisions, showing that much of the language in earlier trade agreements draws on established international labour standards, while more recent agreements incorporate gender-related commitments that extend beyond labour concerns to address a broader range of women-related interests. ~~—~~Beyond documenting textual similarities, the analysis in this section also shows how different mechanisms of policy diffusion discussed in the previous section play a role in the diffusion of gender language in trade agreements. The analysis therefore considers not only whether gender provisions diffuse, but also what the nature of that diffusion may reveal about the underlying drivers.

Many trade agreements, whether bilateral or regional, use similar language when addressing issues relating to gender equality. Terms such as "promoting gender equality," "empowering women," or "ensuring equal opportunities" are commonly used in such provisions, but they often remain vaguely defined or not defined at all. Such vague use of gender-related expressions in trade agreements — such as "acknowledging women's roles" in the economy or the need to "mainstream gender issues" — is often symbolic rather than structural. In multiple agreements, these recurring formulations cluster around a small number of standard sentence structures and verbs (for example, "recognise," "reaffirm," "promote," "endeavour"), which are then re-used with only minor substitutions across agreements.

[66] Katrin Kuhlmann and Amrita Bahri, 'Gender Mainstreaming in Trade Agreements: "A Potemkin Façade"?' in *Making Trade Work for Women: Key Findings from the 2022 World Trade Congress on Gender* (World Trade Organization 2023) 235 <https://doi.org/10.30875/9789287042712> accessed 12 May 2024.

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Table 1, with the help of five practice examples, shows with concrete evidence that gender-explicit provisions in trade agreements appear to paraphrase or replicate commitments made in prior trade agreements, highlighting standardization trends in trade and gender language. Moreover, it clearly shows that the templates that are used for drafting gender-related provisions are extensively designed by the developed world, spearheaded by the ~~European Union~~EU, the United Kingdom, Canada and the ~~United States~~US. The five sample clusters in Table 1 also illustrate an analytical split: Sample 1 is predominantly rooted in international labour standards, samples 4 and 5 are social-policy rooted formulations that have travelled from long-standing regional or association frameworks; while samples 2 and 3 illustrate newer trade-and-gender specific drafting moves that have spread through repeated re-use in modern FTAs.

Table 1: Five Sample Provisions with Frequent Repetitions

Sample Provisions	FTAs with such repetitions	# of FTAs
Sample 1		
"The Parties have established the following indicative list of areas for cooperative activities..." *"...gender: gender issues, including the elimination of discrimination in respect of employment and occupation"* *or* *"...equal pay for women and men"*	Canada-Peru (annex 1 - art 9); Canada-Ukraine (annex 13-A); Canada-Honduras (annex 1); Canada-Panama (annex 1); Canada-Colombia (annex 1); United States - Dominican Republic - Central America (annex 16.5); United States - Bahrain (annex 15-A); United States - Colombia (annex 17.6); United States - Panama (annex 16.6); United States - Peru (annex 17-6); USMCA (article 23.12); Canada-Israel (art 12.9 and 13.1); Canada-Jordan (annex 1); Canada-Chile (art N bis-01); Canada-Costa Rica (annex 1); EU-Central America (art 47); EU-Korea (article 13.4); EU- Ukraine (article 291); EU-Vietnam (art 13.4); Nicaragua-Chinese Taipei (annex 18.05); EEA Agreement (art 69); UK-New Zealand (art 23.8); UK- EEA (art 13.18)	23
Sample 2		
"The Parties recognize that enhancing opportunities in their territories for women, including workers and business owners, to participate in the domestic and global economy..." *or* *"...to fully access and benefit from the opportunities created under this Agreement..."*	Canada-Ukraine (annex 13-A); Canada-Honduras (annex 1); Canada-Israel (Preamble; art 13.3); Canada-Chile (art N bis-03); EU-Central America (art 286); EU-Korea (art 13.4); EU- Ukraine (art 291); EU-Vietnam (art 13.4); Peru - Australia (art 22.4); CPTPP (art 23.4); UK-Japan (Preamble; art 21.1; 23.3); UK-Australia (art 24.1); UK-New Zealand	20

or *"...to promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people...."*	(Preamble; art 25.2; 25.5); USMCA (Preamble); Pacific Alliance - Singapore (Preamble; art 17.2); Korea-Turkey (art 5.4); CARIFORUM-EU (art 191); CARIFORUM-UK (art 191); UK-Ukraine (art 277); UK-Korea (art 13.4)	
Sample 3		
"The Parties reaffirm the importance of ...those internationally recognized standards, guidelines, and principles of corporate social responsibility... which may include the OECD Guidelines for Multinational Enterprises. These standards may address areas such as labor, environment, gender equality..." *or* *"...Parties also reaffirm commitments to the OECD Guidelines for Multinational Enterprises..." or "corporate social responsibility"*	Canada-Israel (art 13.1); Canada-Chile (art G-14 bis); Canada - Colombia (annex 1); United States - Peru (art 14.17); USMCA (art 14.17); EU - Moldova (art 375); EU - Korea (annex 13); EU - Armenia (art 284); EU - Vietnam (art 13.14); EU and the EU Atomic Energy Community - Georgia (art 348); EU-Central America (art 41); CPTPP (Preamble); UK-Georgia (art 231); UK-Moldova (art 342); Canada - Peru (annex 1)	15
Sample 4		
"Priority will be afforded to the following projects:" "… promoting the role of women in the economic and social development..." *or* *"....promotion of the role of women in social and economic development, particularly through education and the media...."*	European Union-Morocco (art 71); European Union-Egypt (art 65); European Union-Tunisia (art 71); European Union-Lebanon (art 65); European Union-Algeria (art 74); Canada-Chile (art N bis-01); European Union-Jordan (art 82); EU – Palestinian authority (art 45); Chile-Ecuador (art 18.4); East African Community (art 121); Common Market for Eastern and Southern Africa (COMESA) (art 154); EU – Albania (art 99 and 100); EU – Montenegro (art 101 and 102); EU - Chile (art 45)	14
Sample 5		
"...the following shall be priority measures:" *"bolstering [...] family planning and mother and child protection programmes..."*	EU-Egypt (art 65); EU-Jordan (art 82); EU-Morocco (art 71); EU-Tunisia (art 71); EU-Lebanon (art 65); EU-Algeria (art 74); EU – Palestinian authority (art 45); EU-Ukraine (art 427)	8

**The analysis identifies gender-related provisions by detecting repetitions that are either verbatim (word-for-word) or include minor paraphrasing.*

***An exact match is defined as the replication of five or more consecutive words to qualify as a direct repetition.*

****To capture minimal paraphrasing attempts—cases where the wording is altered but the core content is preserved—the matching criterion was relaxed to identify matches of 3 to 4 words within the same sentence either used consecutively or with a slightly different sequence.*
*****To ensure robustness, each identified provision was reviewed in its full context, including the surrounding text, to confirm thematic alignment.*
******An individual trade agreement may appear multiple times in the analysis if it contains several distinct provisions related to women's issues.*
*******The dataset includes trade agreements that are currently in force and officially notified to the World Trade Organization (WTO) as of March 1, 2025. Agreements under negotiation or those not notified to the WTO are excluded to maintain a consistent and authoritative dataset.*

As shown in Table 1, the prevalence of verbatim or minimally altered clauses suggests that certain formulations around women empowerment and gender equality are becoming normative within the legal architecture of trade agreements. This indicates a growing recognition among trade negotiators of the importance of integrating gender considerations into trade frameworks, potentially reflecting international commitments and shared normative values. However, the need to relax matching criteria to capture minor paraphrasing also points to a strategic effort by some parties to customize language, possibly to reflect domestic priorities or negotiate flexibility while maintaining the core principles of gender equality.

These examples from the existing trade agreements - together with the identified provisions in a number of agreements that repeat the same language and content either word for word or with minor variations - show with concrete evidence that many existing provisions on gender concerns in trade agreements are taken from previously negotiated agreements.[67] Moreover, as seen in Table 1, developed countries with vast experience of trade negotiations seem to have been the key users of the cookie-cutter approach in respect of negotiating such ~~most replicated~~ gender provisions.

In total, there are 53 FTAs where the five repeated inclusions are found. Out of these 53 agreements, the ~~European Union~~EU, the United Kingdom, Canada, or the ~~United States~~US is one of the negotiating parties in 46 cases. Hence, across the five sample clusters, developed countries account for approximately 87 per cent of the FTAs in which these recurring provisions appear, suggesting that a handful of high-income economies play a significant role in shaping and circulating standardized gender language in trade agreements. Moreover, with only three exceptions, all of the agreements in the sample involve at least one developed country as a

[67] World Trade Organization (WTO), 'The Evolution of Gender-Related Provisions in Regional Trade Agreements' (2021) WTO Working Paper No. 2021/08 (this working paper discusses the increasing inclusion of gender-related provisions in Regional Trade Agreements (RTAs), highlighting the trend towards standardization and replication of gender clauses across agreements.)

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negotiating party, underscoring the importance of North-led negotiating hubs in the diffusion of these provisions. At the same time, the presence of replicated gender language in agreements concluded exclusively between developing countries—such as those within the EAC and COMESA, as well as the Chile–Ecuador FTA—indicates that replication is not confined to North–South or North-led agreements. In particular, Chile's repeated inclusion of gender-related provisions across its trade agreements positions it as an influential diffusion node, illustrating how certain middle-income countries can also act as norm carriers and actively shape the spread of gender language.[68]

In Sample Provision 1, the term "gender" is employed with notable ambiguity. This inclusion is found in twenty-three trade agreements, almost verbatim or with negligible paraphrasing.[69] With just one exception, all such agreements are negotiated by Canada, the EU, the UK or the US. The use of the term "gender" in trade agreements is often vague, which can create the impression that it refers solely to empowering women. However, by definition, "gender" applies to all genders, including men and gender-diverse individuals. This ambiguity can result in misinterpretations, where provisions intended to promote women's economic empowerment are either diluted by overgeneralization or misunderstood as being overly narrow. Moreover, with the existing trade agreements including such expressions without any

[68] Chile-Ecuador Free Trade Agreement (Enforced, 16 May 2022); East African Community (EAC) Treaty (enforced, 7 July 2000); Common Market for Eastern and Southern Africa (COMESA) Treaty (Enforced, 8 December 1994); Alicia Frohmann, 'Gender Equality and Trade Policy' (SECO Working Paper No 24/2017, World Trade Institute, University of Bern 2017) 5 (noting that the 2016 Chile Uruguay FTA was the first bilateral trade agreement to include a standalone chapter on gender and trade); World Trade Organization, 'Trade Policy Review Body, Trade Policy Review: Chile, Report by the Government' WT/TPR/G/451 (16 October 2023) para 2.101 (describing Chile's "pioneering efforts" to integrate gender and trade chapters across its FTAs, including with partners in the Global South, thereby positioning Chile as an active norm carrier rather than a passive recipient of Northern templates).

[69] Annex 1, Canada-Peru Agreement on Labour Cooperation (enforced, 1 August 2009); Annex 13-A, Canada–Ukraine Free Trade Agreement (enforced, 1 July 2024); Annex 1, Agreement on Labour Cooperation Between Canada and the Republic of Honduras (enforced, 1 October 2014); Annex 1, Canada-Panama Agreement on Labour Cooperation (enforced, 1 April 2013); Annex 1, Canada-Colombia Agreement on Labour Cooperation (enforced, 15 August 2011); Annex 16.5, United States-Dominican Republic–Central America Free Trade Agreement (US-CAFTA-DR) (enforced, 1 March 2006); Annex 15-A, United States–Bahrain Free Trade Agreement (enforced, 1 August 2006); Annex 17.6, United States–Colombia Trade Promotion Agreement (enforced, 15 May 2012); Article 23.12, United States–Mexico–Canada Agreement (USMCA) (enforced, 1 July 2020); Article 12.9, Canada–Israel Free Trade Agreement (enforced, 1 January 1997); Annex 16.6, Panama-United States Trade Promotion Agreement (enforced, 31 October 2012); Annex 17-6, U.S.-Peru Trade Promotion Agreement (enforced, 12 April 2006); Annex 1, The Canada-Jordan Free Trade Agreement (enforced, 1 October 2012); Art N bis-01, Modernized Canada-Chile Free Trade Agreement (enforced, 5 February 2019); Annex 1, Canada-Costa Rica Free Trade Agreement (enforced, 1 November 2002); Art 47, EU-Central America Association Agreement (enforced, 1 May 2024); Article 13.4, EU-Korea Free Trade Agreement (enforced, 13 December 2015); Article 291, European Union–Ukraine Association Agreement (enforced 1 September 2017); Art 13.4, EU-Vietnam Free Trade Agreement (enforced, 1 August 2020); Annex 18.05, Taipei, China and Nicaragua Free Trade Agreement (enforced, 1 January 2008; Art 69, European Economic Area (EEA) Agreement (enforced, 1 January 1994); Art 23.8, The New Zealand-UK free trade agreement (enforced, 31 May 2023); Art 13.18, Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (Enforced, 1 February 2023)

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attempt to define them or restrict their scope[70], lack of clarity and their wide scope can provoke fears of protectionism, particularly in relation to the principle of comparative advantage—the idea that countries should specialize in producing goods and services they can generate most efficiently.[71] If gender provisions are perceived as mechanisms to prioritize or shield certain domestic industries under the guise of promoting gender equality (for example, by offering subsidies, quotas, or trade preferences to women-owned businesses), trading partners may view them as non-tariff barriers that distort competition.[72] This perception can increase the existing skepticism about the real intent behind such clauses and raise concerns that they may be used to gain unfair economic advantages rather than to genuinely promote inclusive development. As a result, countries may become hesitant to endorse or adopt gender-related provisions in trade agreements, fearing they could compromise market efficiency or open the door to disguised protectionist measures.[73]

Sample 1 relies on established international labour rights—such as non-discrimination in employment and occupation and equal pay for women and men~~—to supply substantive meaning, rather than articulating treaty-specific definitions or obligations~~. Normative pressures may explain this pattern, as we see a growing acceptance of particular formulations as internationally recognized and put forward by international organizations. In such formulations, ~~G~~gender ~~here~~ is typically framed in pre-existing labour standards rather than developing new, trade-specific content. Moreover, in this sample, "gender" appears as a cooperation label without any treaty specific definition or operational criteria, and its meaning is effectively left to be inferred from surrounding labour and social policy language that is often replicated across agreements through template drafting. This problem of lack of definitions or vaguely defined terms leading to ambiguity and potential misuse is not new in trade law.[74] In many WTO disputes, panels and the Appellate Body have had to carefully interpret many exceptions to

[70] Except for the East African Community (EAC), which offers a basic definition of 'gender', trade agreements generally lack explicit definitions for 'gender equality' and 'women empowerment'. [EAC, Article 1(1)].

[71] Roberto Bissio, 'Is "Gender" a Trojan Horse to Introduce New Issues at WTO?' (Third World Network, 11 December 2017) <https://twnetwork.org/wto/%E2%80%9Cgender%E2%80%9D-trojan-horse-introduce-new-issues-wto> accessed 12 November 2021

[72] Ke Gu & Andrey Stoyanov, 'Female Labor Supply and International Trade', (2022) MPRA Paper 111778, <https://ideas.repec.org/p/pra/mprapa/111778.html#:~:text=Other%20things%20equal%2C%20regions%20with%20higher%20female,labor%20force%20gender%20composition%20for%20industry's%20productivity> accessed 11 August 2025 [authors explain how female labor force in countries can become sources of comparative advantage in trade]

[73] UNCTAD, 'Looking at the trade and gender nexus from a development perspective: A brief overview' (2022, UNCTAD/DITC/2021/2)

[74] Pelin Serpin, 'The Public Morals Exception After The WTO Seal Products Dispute: Has The Exception Swallowed the Rules?', (2016) (1) *Columbia Business Law Review* 219 [Author observes how this protectionist tool can undermine the progress made towards trade liberalization and agreements over the past few decades. Also see Daria Boklan and Amrita Bahri, 'The First WTO's Ruling on National Security Exception: Balancing Interests or Opening Pandora's Box?' (2020) 19 *World Trade Review* 123.

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strike a balance between allowing legitimate policy space and preventing abuse that undermines the rules-based trading system.[75] Yet, the vagueness embedded in the use of such expressions has meant ongoing uncertainty, with parties sometimes exploiting these exceptions to justify trade barriers under the cover of broadly defined terms. Similarly, the vague use of "gender" in trade agreements may risk becoming a new battleground for interpretive disputes. If such open textured phrasing continues to travel through FTAs via copy paste routines, it can increase ~~the ambiguity hardens into standard treaty practice, increasing~~ the risk that "gender" clauses are invoked opportunistically, contested in interpretation, and ultimately treated with the same suspicion and litigation dynamics that have long surrounded broadly worded trade exceptions.

Another practice example is sample provision 2, and it reaffirms the repeated use of same or essentially similar language. In this sample provision, as can be seen in Table 1, countries have added recognitions in their agreements on enhancing work and business opportunities for women and the benefit of women's role in economic development. This inclusion is found in as many as twenty trade agreements, almost verbatim or with minor paraphrasing or restructuring of sentences.[76] With very few exceptions, most ~~of~~ such mentions are found in agreements negotiated by the EU or Canada. While such provisions mark an important step in acknowledging gender issues in trade, they are largely declaratory in nature. The use of the word "recognise" reflects a non-binding approach that lacks any enforceable obligation or concrete commitment. There is no requirement for parties to take affirmative action, adopt specific policies, or allocate resources towards achieving greater women inclusion in trade. ~~In effect, these provisions serve more as symbolic gestures rather than operational tools for change.~~

Indeed, the overwhelming majority of gender-related provisions across trade agreements are non-binding and drafted in permissive, aspirational language rather than in mandatory or

[75] Appellate Body Report, *United States – Measures affecting the cross-border supply of gambling and betting services*, WTO doc. WT/DS285/AB/R (signed 7 April 2005, adopted 20 April 2005), [hereinafter US–Gambling] [This has left open the fundamental issue of what values or interests qualify as public morals and whether a state can unilaterally define its own public morals].

[76] Annex 13-A, Canada–Ukraine; Annex 1, Canada-Honduras; Preamble, Article 13.3, Canada–Israel; Article N bis-03, Canada-Chile; Article 286, EU-Central America; Article 13.4, EU-Korea; Article 291, EU –Ukraine; Article 13.4, EU-Vietnam; Article 22.4, Peru-Australia Free Trade Agreement (Enforced, 11 February 2020); Article 23.4, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (Enforced, 14 December 2024); Preamble, Article 21.1, Article 23.3, UK-Japan Comprehensive Economic Partnership Agreement (Enforced, 1 January 2021); Article 24.1, UK-Australia Free Trade Agreement (Enforced, 31 May 2023); Preamble, Article 25.2, Article 25.5, UK-New Zealand; Preamble, USMCA; Preamble, Article 17.2, Pacific Alliance-Singapore Free Trade Agreement (Enforced 3 May 2025); Article 5.4, Korea-Turkey Free Trade Agreement (Enforced, 1 August 2018); Article 191, CARIFORUM-EU Economic Partnership Agreement (Enforced, 29 December 2008); Article 191, CARIFORUM-UK Economic Partnership Agreement (Enforced, 1 January 2021); Article 277, UK-Ukraine Strategic Partnership Agreement (Enforced, 1 January 2021); Article 13.4, UK-Korea Free Trade Agreement (Enforced, 1 January 2021)

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enforceable terms. Unlike other social and non-market access inclusions in trade agreements that once started as soft provisions and have hardened overtime, such as the gradual tightening of labour standards and environmental obligations and the wider sustainability turn that increasingly also speaks to Indigenous rights, most of the commitments on gender equality have not hardened so far and they remain rooted in the spirit of cooperation.[77]

As can be seen in sample provision 3, countries have also included commitments relating to gender equality in their provisions on voluntary sustainability standards. Such provisions, with minor variations, are found in as many as fifteen trade agreements, almost verbatim or with some paraphrasing or variations in the scope and focus areas identified in the provision.[78] All agreements with these mentions, with no identified exception, are found in agreements wherein the EU, UK, US or Canada is one of the parties. This pattern is consistent with the coercive diffusion mechanism discussed in the previous section, as these examples show how economically stronger negotiating partners have possessed greater bargaining leverage over drafting processes of gender provisions. ~~While these provisions are useful as they reflect the need to engage private sector to empower women, gender equality is often bundled with other issues which can dilute the focus on gender. Without dedicated language or emphasis, efforts to advance women's empowerment may get overlooked or de-prioritized.~~

Another type of repeated language can be seen in Sample Provision 4, which relates to women's role in development and their access to education and the media. This provision appears in as many as fourteen trade agreements, almost verbatim or with only minor paraphrasing or synonymous expressions.[79] With very few exceptions, these provisions are

[77] Lisa Lechner and Gabriele Spilker, 'Taking it Seriously: Commitments to the Environment in South-South Preferential Trade Agreements' (2022) 31 *Environmental Politics* 1058; Gabrielle Marceau, Rebecca Walker and Andreas Oeschger, 'The Evolution of Labour Provisions in Regional Trade Agreements' (2023) 57 *Journal of World Trade* 361; Amrita Bahri, 'Trade Agreements and Disability Inclusion: Looking Beyond Labour and Gender Equality Provisions' in Geraldo Vidigal and Kathleen Claussen (eds*), The Sustainability Revolution in International Trade Agreements* (OUP 2024). [These authors trace how labour and environment language has tended to evolve from softer cooperation towards hard and enforceable obligations.]

[78] Article 13.1, Canada–Israel; Article G-14 bis, Canada-Chile Free; Annex 1, Canada-Colombia; Article 14.17, United States–Peru; Article 14.17, USMCA; Article 375, European Union–Moldova Association Agreement (Enforced, 1 September 2014); Annex 13, EU-Korea; Article 13.14, EU-Vietnam; Article 348, European Union and the EU Atomic Energy Community–Georgia Association Agreement (Enforced, 1 July 2016); Article 85 and Article 284, European Union and the EU Atomic Energy Community–Armenia Comprehensive and Enhanced Partnership Agreement (Enforced, 1 March 2021); Article 41, EU-Central; Preamble, CPTPP; Article 231, UK-Georgia Strategic Partnership and Cooperation Agreement (Enforced, 1 January 2021); Article 342, UK-Moldova Strategic Partnership, Trade and Cooperation Agreement (Enforced, 1 January 2021); Annex 1, Canada-Peru.

[79] Article 71, European Union-Morocco Association Agreement (Enforced, 1 March 2000); Article 65, European Union-Egypt Association Agreement (Enforced, 1 June 2004); Article 71, European Union-Tunisia Association Agreement (Enforced, 1 March 1998); Article 65, European Union-Lebanon Association Agreement (Enforced, 1 March 2003); Article 74, European Union-Algeria Association Agreement (Enforced, 1 September 2005); Article N

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repeatedly included in agreements where one of the parties is the EU. This cluster illustrates a longer-standing drafting routine rooted in the EU's broader social policy approach, which has persisted through replication across successive trade agreements. Indeed, in many of these agreements, even the numbering and placement of the relevant provisions remain identical or highly similar. The same pattern is evident in Sample Provision 5, where the EU agreements repeatedly include provisions on family planning and maternal health.[80] Although these clauses are framed as promoting gender equality by recognizing that inadequate family planning may constrain women's participation in economic life, they appear almost exclusively in agreements concluded with partners in the Middle East and Africa. This selective pattern of replication suggests that standardized drafting modules are transferred across agreements within particular negotiating contexts rather than being systematically tailored to the specific barriers faced by women in each partner country. From a diffusion perspective, these findings provide stronger support for normative diffusion and institutional isomorphism than for policy learning. If learning was the dominant mechanism, one would expect provisions to evolve and become increasingly responsive to country-specific needs as more experience is gained. Instead, the persistence of standardized language across diverse institutional and socioeconomic contexts, with some notable recent developments, suggests that the legitimacy and availability of established templates have often outweighed careful policy adaptation in respect of gender provisions.

~~Another language repeated in multiple agreements can be seen in sample provision 4, which relates to women's role in development and their access to education and media. This provision is found in as many as fourteen trade agreements, almost verbatim or some minor paraphrasing or use of synonymous expressions or terminologies.[81] This sample example~~

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bis-01, Canada-Chile; Article 82, European Union-Jordan Association Agreement (Enforced, 1 May 2002); Article 45, European Union–Palestinian Authority Interim Association Agreement (Enforced, 1 July 1997); Article 18.4, Chile-Ecuador); Article 121, EAC (enforced, 7 July 2000); Article 154, COMESA; Article 99 and Article 100, European Union-Albania Stabilisation and Association Agreement (Enforced, 1 April 2009); Article 101 and Article 102, European Union-Montenegro Stabilisation and Association Agreement (Enforced, 1 May 2010); Article 45, Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (enforced, 1 March 2005).

[80] Article 65, EU-Egypt; Article 82, EU-Jordan Association; Article 71, EU-Morocco; Article 71, EU-Tunisia; Article 65, EU-Lebanon; Article 74, EU-Algeria; Article 45, EU-Palestinian Authority; Article 427, EU-Ukraine.

~~[81] Article 71, European Union-Morocco Association Agreement (Enforced, 1 March 2000); Article 65, European Union-Egypt Association Agreement (Enforced, 1 June 2004); Article 71, European Union-Tunisia Association Agreement (Enforced, 1 March 1998); Article 65, European Union-Lebanon Association Agreement (Enforced, 1 March 2003); Article 74, European Union-Algeria Association Agreement (Enforced, 1 September 2005); Article N bis-01, Canada-Chile; Article 82, European Union-Jordan Association Agreement (Enforced, 1 May 2002); Article 45, European Union–Palestinian Authority Interim Association Agreement (Enforced, 1 July 1997); Article 18.4, Chile-Ecuador); Article 121, EAC (enforced, 7 July 2000); Article 154, COMESA; Article 99 and Article 100, European Union-Albania Stabilisation and Association Agreement (Enforced, 1 April 2009); Article 101 and Article 102, European Union-Montenegro Stabilisation and Association Agreement (Enforced, 1 May 2010); Article 45,~~

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contains provisions that are, with very few exceptions, included repeatedly and word-for-word, in the agreements wherein one of the parties is the EU. This cluster illustrates a longer-standing social-policy rooted drafting routine, traditionally included in association agreements, which has persisted through replication in trade agreements. In fact, in such agreements, even the numbering and positioning of identified sample provisions are either same or very similar. Same is the case with sample 5, wherein trade agreements negotiated by the EU have often included provisions on family planning and maternal health.[82] These clauses are framed as efforts to promote gender equality, recognizing that the absence of effective family planning policies can limit women's ability to engage fully in trade and commerce. However, these provisions are only to be found in the EU agreements with its trade partners in the Middle East and Africa. This cluster shows selective diffusion: even within a single negotiating hub, replicated modules are not inserted uniformly across all partners, and their appearance is conditioned by partner-region and the broader cooperation architecture of the agreement.

These observations align closely with the concept of institutional isomorphism from organizational theory, which explains how entities within the same field tend to adopt similar structures and practices over time.[83] In the context of trade agreements, the repeated use of nearly identical gender provisions reflects a form of mimetic isomorphism, where negotiators emulate existing templates to reduce uncertainty, legitimize their texts, and align with prevailing international norms. This helps explain why the same gender-related language replicated across multiple agreements once a recognized template exists. Replication can either (i) reinforce existing standards efficiently or (ii) lock in generic language that is not adapted to the distributional features the provision purports to address. Particularly among developed countries with extensive negotiation experience, this pattern reveals a preference for efficient replication over innovation, which may inadvertently limit the potential for gender provisions to be meaningfully tailored to diverse regional contexts.[84] Consequently, while institutional isomorphism facilitates the diffusion of gender language across trade agreements, it may also constrain the substantive evolution of gender mainstreaming in trade policy by promoting uniformity at the expense of contextual relevance.

Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (enforced, 1 March 2005).

[82] Article 65, EU-Egypt; Article 82, EU-Jordan Association; Article 71, EU-Morocco; Article 71, EU-Tunisia; Article 65, EU-Lebanon; Article 74, EU-Algeria; Article 45, EU-Palestinian Authority; Article 427, EU-Ukraine.

[83] Walter W Powell and Paul J DiMaggio (eds), *The New Institutionalism in Organizational Analysis* (University of Chicago Press 1991)

[84] Manjiao Chi & Zhiyuan Yin, 'Trade-Gender Alignment of International Trade Agreements: Insufficiencies and Improvements' (2024) LSE Research Online Documents on Economics 125392 (This paper analyzes the alignment between trade agreements and gender equality, possibly providing observations on how mimetic isomorphism leads to the replication of gender provisions without substantial adaptation to local contexts.)

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~~This also clarifies why replication and innovation are not opposites. Replication can enable incremental strengthening through recombination (for example, adding reporting elements, expanding cooperation areas, or specifying implementation tasks), but the empirical record in the dataset shows that, for many gender clusters, diffusion frequently occurs through re-use of the same recognitions and reaffirmations with limited movement towards a context-specific design. Hence, such repeated inclusions on women, with no concrete context-specific efforts at providing solutions to the problems women face, may seem like a service of tokenism without serious engagement with gender issues.~~

VI. Concluding thoughts

Diplomatic interactions – especially ones resulting in trade agreements - involve different stakeholders (political leadership, bureaucrats, foreign diplomats, global civil servants, non-governmental organizations, and private companies) at different levels and venues (bilateral, multilateral, plurilateral, regional and mega-regional negotiations) – all of which suggests that trade agreements and their language should be heterogeneous.[85] This is more so the case with trade and gender provisions, as the conditions of women and the barriers that they face are different from one country or one region to the other, and so their solutions cannot be similar or essentially the same across different agreements signed by different countries and regions. Some overlaps and similarities in trade negotiations are unavoidable for the nature of such negotiations and the main task at hand, which is to liberalize market access; however, the use of the copy-and-paste approach in drafting provisions especially the ones relating to inclusivity issues does not resonate with the nature of problems such provisions are meant to address.

Gender-related concerns, for example domestic violence or harassment against women, are primarily addressed through domestic legal and social frameworks and may be regulated, experienced, and conceptualized differently across countries. Moreover, the problems that women face in an informal economy based in a developing country may be entirely different from the problems that women face in formal economies of developing or developed countries. Hence, ~~a~~ predominant use of ~~drafting approach that is based on a mere~~ copy-and-paste strategy for drafting gender provisions in trade agreements shows ~~that~~ that many ~~a times~~ trade negotiations~~, especially the negotiation of gender provisions,~~ do not consider ~~happens in ignorance of~~ the realities and problems that women face in specific jurisdictions of the negotiating countries.[86] As a result, policymakers so far have not made substantial alterations in the templates relating to gender issues in trade agreements.

[85] Andrew Cooper, Jorge Heine and Ramesh Thakur (eds), *The Oxford Handbook of Modern Diplomacy* (Oxford University Press 2013).
[86] Milewicz (n 18) 773.

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~~Even though the understanding on gender concerns has evolved in trade agreements, and there is a growing political willingness to include such concerns within trade policy context, this study has shown that the policymakers have not made any substantial alterations in the templates relating to gender issues. The frequent repetition of template-based provisions within FTAs, especially those addressing concerns of marginalised communities, raises significant doubts about the efficacy of trade policies in championing the causes of those that are traditionally overlooked. Despite advancements in recognizing and articulating women-related considerations within trade policy context, the translation of theoretical acknowledgments or affirmations into actionable commitments and negotiations of barrier-responding policy solutions remains a looming challenge.~~ The study has raised important questions about whether extensive reliance on boilerplate language may constrain opportunities for innovation in treaty drafting, an issue that warrants further empirical investigation. While standardized provisions can facilitate the diffusion of gender-related commitments and contribute to greater coherence across trade agreements, their repeated replication may also reduce incentives to reassess whether existing formulations adequately respond to country-specific gender barriers. Such reliance risks reinforcing institutional path dependence, whereby established formulations may become the default reference point for subsequent negotiations. In this sense, this study highlights the need to examine more closely how template-based provisions influence implementation, policy learning, and the long-term evolution of gender-responsive trade policy. More broadly, the findings invite reflection on whether the growing incorporation of gender provisions is being accompanied by equally meaningful progress in designing context-responsive and action-oriented commitments.

~~The main downside of this "copy and paste" approach in respect of trade and gender negotiations is that it has reduced innovation and made the inclusion of new issues or policy solutions even more difficult. It has also in a way contributed to ensuring that such provisions remain in their own cocoon of best endeavor styled provisions, which also means that gender-related commitments so far have (except in some recent developments) largely remained outside the chapters or provisions that directly deal with market access issues such as investment, services, intellectual property, trade facilitation, trade barriers, digital trade and others. It also reduces the motivation of policymakers to investigate the actual problems that marginalized groups in their jurisdictions face and engage in discussions with them as that would require them to look beyond the templates they are comfortable with.~~

~~Even though the understanding on gender concerns has evolved in trade agreements, and there is a growing political willingness to include such concerns within trade policy context, this study has shown that the policymakers have not made any substantial alterations in the templates~~

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~~relating to gender issues. The frequent repetition of template-based provisions within FTAs, especially those addressing concerns of marginalised communities, raises significant doubts about the efficacy of trade policies in championing the causes of those that are traditionally overlooked. Despite advancements in recognizing and articulating women-related considerations within trade policy context, the translation of theoretical acknowledgments or affirmations into actionable commitments and negotiations of barrier-responding policy solutions remains a looming challenge. The reluctance towards change or trying out new provisions in this respect not only stifles the progression towards a more inclusive trade policy environment, but it also critically undermines the depth and impact of dialogue between public and private sectors. It is against this backdrop that the need for a strategic overhaul emerges, propelling nations towards drafting policies that are reflective of actual challenges faced by women in the multifaceted arena of international trade.~~

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