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Gender-related provisions in regional trade agreements

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World Trade Organization

Economic Research and Statistics Division

GENDER-RELATED PROVISIONS

IN REGIONAL TRADE AGREEMENTS

by

José-Antonio Monteiro¹

Manuscript date: December 2018

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GENDER-RELATED PROVISIONS IN REGIONAL TRADE AGREEMENTS

José-Antonio Monteiro*

Manuscript date: December 2018

ABSTRACT: Regional Trade agreements (RTAs) are sometimes viewed as laboratories in which new types of provisions are negotiated to address recent trade-related issues and challenges. A detailed analysis of 556 RTAs, including 292 agreements currently in force and notified to the WTO (as of November 2018), shows that although the inclusion of gender-related provisions in RTAs is not a recent phenomenon, a limited but increasing number of RTAs, namely 74 agreements, refer explicitly to gender-related issues. These gender-related provisions are highly heterogeneous and differ in terms of location in the RTA, language, scope and commitments. Most gender-related provisions are found in a single or couple of RTAs and couched in best endeavour language. In the last three years, a limited number of RTAs have expanded significantly the scope of gender-related provisions by establishing a dedicated article or chapter on trade and gender.

KEYWORDS: Regional Trade Agreements, Gender, Women.

JEL CLASSIFICATIONS: F13, F15

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1 INTRODUCTION

Part of the debate about trade and sustainable development lies in how to ensure trade liberalization is inclusive, including by creating equal opportunities for women. While the agreements of the World Trade Organization (WTO) do not include any specific provisions referring explicitly to gender, different trade-related gender issues have recently been discussed in the WTO. At the 2017 WTO Ministerial Conference, 118 WTO members and observer countries endorsed the Joint Declaration on Trade and Women's economic empowerment. The document calls for collaboration to make trade and development policies more gender responsive, including by sharing experiences relating to policies and programmes aimed at encouraging women's participation in domestic and international trade. In parallel to the discussions of trade and gender taking place in the WTO and other regional and international forums, a limited but increasing number of regional trade agreements (RTAs) have established different provisions making explicit reference to gender.

While a couple of recent studies discuss gender-related provisions found in selected RTAs (Bensalem, 2017; Frohmann, 2017), the literature does not provide a comprehensive and detailed typology of all existing gender-related provisions in RTAs. This paper aims at filling this gap by identifying both commonalities and differences in addressing explicitly the issue of gender in RTAs.

A detailed analysis of 556 RTAs, including 292 agreements currently in force and notified to the WTO (as of November 2018), identified 75 agreements with at least one provision mentioning explicitly gender or women. This figure increases to 243 agreements, when provisions referring implicitly to gender issues, such as human rights, social dimension of sustainable development and vulnerable groups, are considered. In addition to the increasing number of RTAs with gender-related provisions, the number of detailed gender-related provisions included in RTAs has tended to increase in the last three years.

Like other provisions addressing cross-cutting issues, such as the environment and small and medium-sized enterprises (SMEs), gender-related provisions are highly heterogeneous. They differ considerably not only in terms of structure and location in the RTA, but also in terms of language, scope and commitments. Many of these gender-related provisions are only found in a single or couple of RTAs. A limited number of agreements incorporate specific provisions in dedicated articles or even chapters on gender. Most gender-related provisions are couched in best endeavour language. Cooperation on gender and gender-related issues, including labour, health and social policy, remains the most common type of gender-related provisions in RTAs.

The remainder of the paper is structured as follows. Section 2 presents the methodology used to identify gender-related provisions in RTAs. Section 3 provides an overview of the evolution and trends of gender-related provisions in RTAs. The structure and location of gender-related provisions in RTAs is presented in section 4, while section 5 discusses in detail the typology of gender-related provisions. Finally, section 6 concludes.

2 METHODOLOGY

According to the United Nations (UN) Entity for Gender Equality and the Empowerment of Women, the concept of gender refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women (...). Given its broad socio-cultural context, there is no single approach to define what constitutes a "gender-related" provisions in RTAs.

Unless specified otherwise, gender-related provisions are defined as any provisions mentioning explicitly women and gender-related issues. The following keywords were used to identify gender-related provisions: Beijing Declaration (Platform for Action); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); female; gender; girl/boy; male; maternity; mother; pregnancy/pregnant; sex; and woman/women.¹

¹ The French and Spanish translations of these keywords have also been used.

In order to capture the cross-cutting nature of gender issues, additional keywords were also used to identify other provisions referring potentially and implicitly to gender-related issues by mentioning concepts such as human rights, vulnerable groups and the social dimension of sustainable development, including labour discrimination, fair trade and corporate social responsibility.² More generally, other provisions in RTAs can potentially be relevant to gender-related issues, even though these provisions do not make explicit reference to gender.

The present systematic analysis of provisions addressing explicitly gender-related issues covers 573 RTAs (see Annex 1).³ Out of these 556 RTAs, 292 agreements are currently in force and have been notified to the WTO between 1957 and November 2018.⁴ 199 other RTAs have been notified to the WTO but are no longer in force. Besides notified RTAs, the analysis covers some RTAs that have entered into force but have not been notified. Similarly, the analysis includes newly signed RTAs that have not yet entered into force and/or not been notified, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Other RTAs analysed include signed but not ratified text, such as the European Union-Viet Nam and United States-Mexico-Canada (USMCA) RTAs. Unless specified otherwise, accessions to an existing RTA are excluded from the analysis. Conversely, amended and modernised version of existing RTAs are included and analysed separately, such as the amended Singapore-Australia RTA.

The main text of the RTAs, but also side documents, such as protocols, annexes, communication letters and other documents associated with the RTAs at the time of their negotiation and signature have been reviewed.⁵ As discussed below, a few years after the entry into force of some RTAs, the parties have adopted specific agreements, directives or resolutions on gender or established gender-related institutions. While these types of post-RTAs documents will be considered in the analysis, a detailed comparative analysis of these side documents falls outside the scope of the study.

Although expressing gender-related qualitative information into comparable quantitative information is challenging, different criteria can be used to classify gender-related provisions. Provisions in RTAs can be analysed through their structure (e.g. specific article or chapter ...), location in the agreement (e.g. main text or side agreement ...), language, and enforceability (through the RTA's dispute settlement). The combination of these criteria makes it possible to carry out an exhaustive bottom-up analysis of the different types of gender-related provisions and determine their number and depth in each RTA.

Gender-related provisions can take different forms. The term gender can be mentioned in the RTA's preamble or in an article covering various issues, including gender. Similarly, a chapter covering various issues can include a specific article dedicated to gender. Conversely, a specific chapter can be integrated in the RTA with different articles addressing exclusively gender. Next to the main text of the RTA, gender-related provisions can also be found in annexes or side agreements negotiated in parallel to the RTA.

The type of language of gender-related provisions is also likely to differ across RTAs. Difference in wording often reflects the provisions' level of detail. Gender-related provisions can be aspirational and recognize or reaffirm specific statements. Other provisions can be couched in best endeavour language and exhort or recommend the parties to take specific steps. Alternatively, provisions can establish firmer substantive commitments by creating specific obligations and/or rights. While formulating a provision in firmer language can give an indication of the stronger nature of the commitment, the location of the provision in the agreement is also relevant to determine whether the provision is covered or not by the RTA's dispute settlement procedures. However, a comparative analysis of the language of gender-related provisions of RTAs does not make it possible to assess their actual level of implementation, which is likely to be specific to each RTA.

² The following additional keywords were used to identify (potential) implicit gender-related provisions: corporate social responsibility; disadvantaged (groups); ethical trade; fair trade; human rights; labor/labour discrimination; minority (group); vulnerable (group). A detailed analysis of these implicit gender-related provisions is however outside the scope of this study.

³ Although not reviewed here, gender-related provisions are also found in a number of non-preferential trade agreements, such as the cooperation agreements negotiated by the European Union with Armenia, India, Kazakhstan and Sri Lanka. Similarly, regional trade initiatives, such as the Asia-Pacific Economic Cooperation Forum (APEC) have developed their own agenda to promote gender equality.

⁴ The WTO's RTA database (<http://rtais.wto.org>) reports detailed information on all the RTAs notified to the GATT/WTO. The figure of 292 notified and in force RTAs excludes notified enlargements of existing RTAs.

⁵ The schedules of tariff commitments are excluded from the analysis.

3 OVERVIEW AND TRENDS OF GENDER-RELATED PROVISIONS

The inclusion of provisions referring explicitly to gender is not a recent phenomenon. The very first gender-related article was found in the 1957 Treaty of Rome establishing the European Economic Community (EEC) requiring each member state to guarantee the application of the principle of equal pay for women and men. More than 25 years later, the 1983 Treaty establishing the Economic Community of Central African States (ECCAS) was the first RTA signed by developing countries to include a gender-related provision. The provision found in the article on cooperation in social affairs committed its member states to develop collective research by appropriate policies aimed at improving the economic, social and cultural status of women in urban and rural areas and increasing their integration in development activities.⁶ Nine years later, the first gender-related provisions referring to the general principle of equality between women and men were found in the 1992 Maastricht Treaty on the European Union (EU). The same year, the North American Free Trade Agreement (NAFTA) established in its labour cooperation agreement a couple of provisions referring in more detail to gender-related labour principles, namely the elimination of employment discrimination based on sex and equal pay for women and men. As suggested by these four RTAs, and confirmed in greater detail below, gender-related provisions address various issues and remain highly heterogeneous.

3.1 Evolution of gender related provisions

Over the years, the number of RTAs with explicit gender-related provisions has increased slowly but relatively steadily, as highlighted in Figure 1. As of November 2018, 74 RTAs representing 13% of all the RTAs analysed, include at least one provision explicitly referring to gender or gender-related issues.⁷ Of this 74 RTAs, 53 (72%) were negotiated between developed and developing countries (North-South RTAs), 13 (17%) between developing countries (South-South RTAs) and only eight (11%) between developed countries (North-North RTAs).⁸ In total, 60 RTAs with gender-related provisions have been notified to the WTO and are currently in force.

Gender being a cross-cutting issue, many more RTAs, namely 243 agreements, include provisions referring potentially and implicitly to gender-related issues, such as the protection of human rights, the social dimension of sustainable development and the protection of vulnerable groups. The inclusion of implicit and explicit gender-related provisions is not mutually exclusive, as highlighted in Figure 2. In fact, most RTAs with explicit gender-related provisions include at least one implicit gender-related provision.

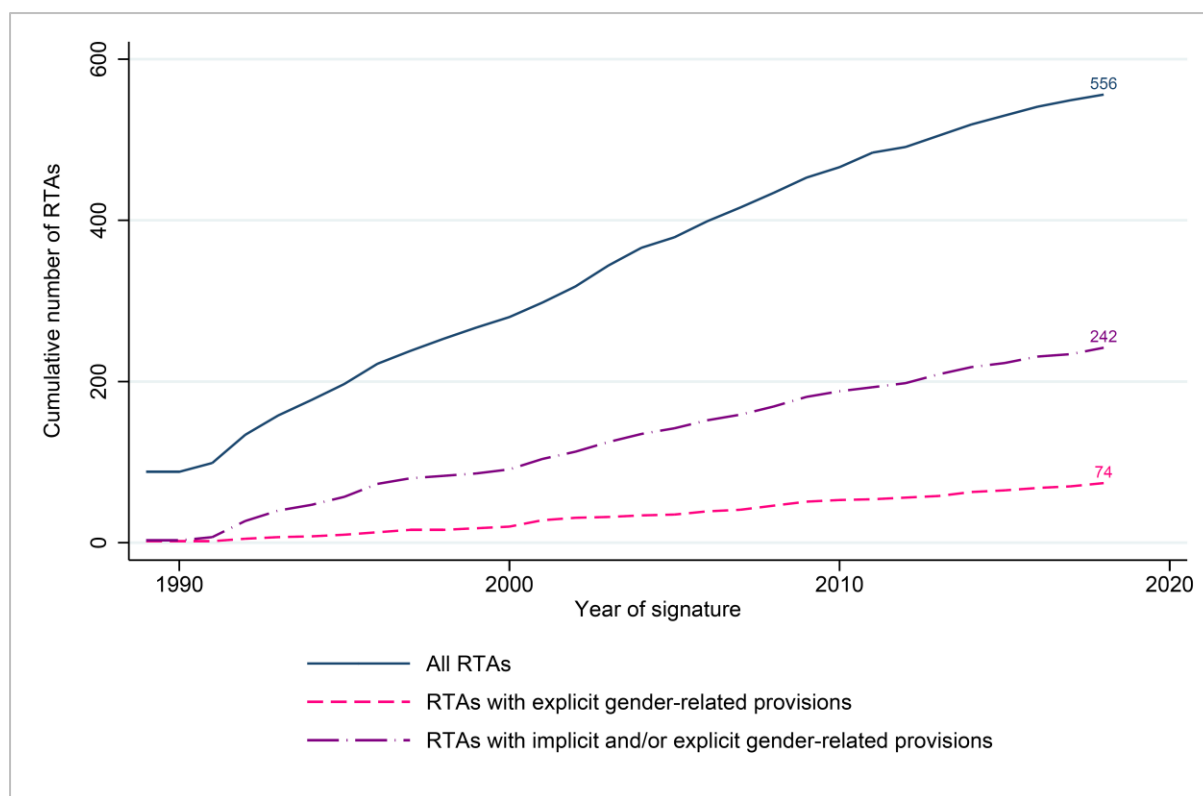
Human rights are the most common issue covered by implicit gender-related provisions found in 172 RTAs. Human rights are multifaceted and include the right to equal treatment and non-discrimination on the basis of sex. While some RTAs refer to human rights or basic human liberties, some of these agreements and others refer also to international agreements or instruments addressing human rights, such as the Universal Declaration of Human Rights; the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe; the European Convention on Human Rights; the Charter of the Fundamental Rights of the European Union; the African Charter on Human and People's Rights; the American Convention on Human Rights; the Cairo Declaration on Human Rights in Islam and the Vienna Conference on Human Rights. Other international and regional instruments referring to human rights, among other things, and mentioned in RTAs include the UN Charter; the International Covenant on Economic, Social and Cultural Rights; the UN Declaration on the Right of Indigenous People; the Istanbul Declaration on Human Settlements; the Rome Declaration on World Food Security; the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe (OSCE) and the CSCE Bonn Conference on Economic Cooperation.

⁶ The French version of ECCAS also includes a gender-related provision in the chapter on cooperation in education, training and culture, where the term "people" was translated by "men and women".

⁷ This number also includes RTAs that are no longer in force and RTAs that have been superseded, such as the Treaty of Rome, or could be superseded, such as NAFTA. However, this number excludes the Central American Common Market (CACM), Southern Common Market (MERCOSUR), West African Economic and Monetary Union (WAEMU), and the Pacific Alliance, whose respective RTA does not include any gender-related provisions. The parties to these RTAs have subsequently adopted gender-related resolutions or decisions. RTA

⁸ Unless otherwise noted, high income countries are defined as developed countries, while middle- and low-income countries are defined as developing countries according to the World Bank's country classification.

Figure 1: Evolution of RTAs with gender-related provisions



Source: Author's calculations.

Note: Implicit gender-related provisions refer to provisions addressing human rights, vulnerable groups and the social dimension of sustainable development, including labour discrimination, fair trade and corporate social responsibility without any explicit reference to gender.

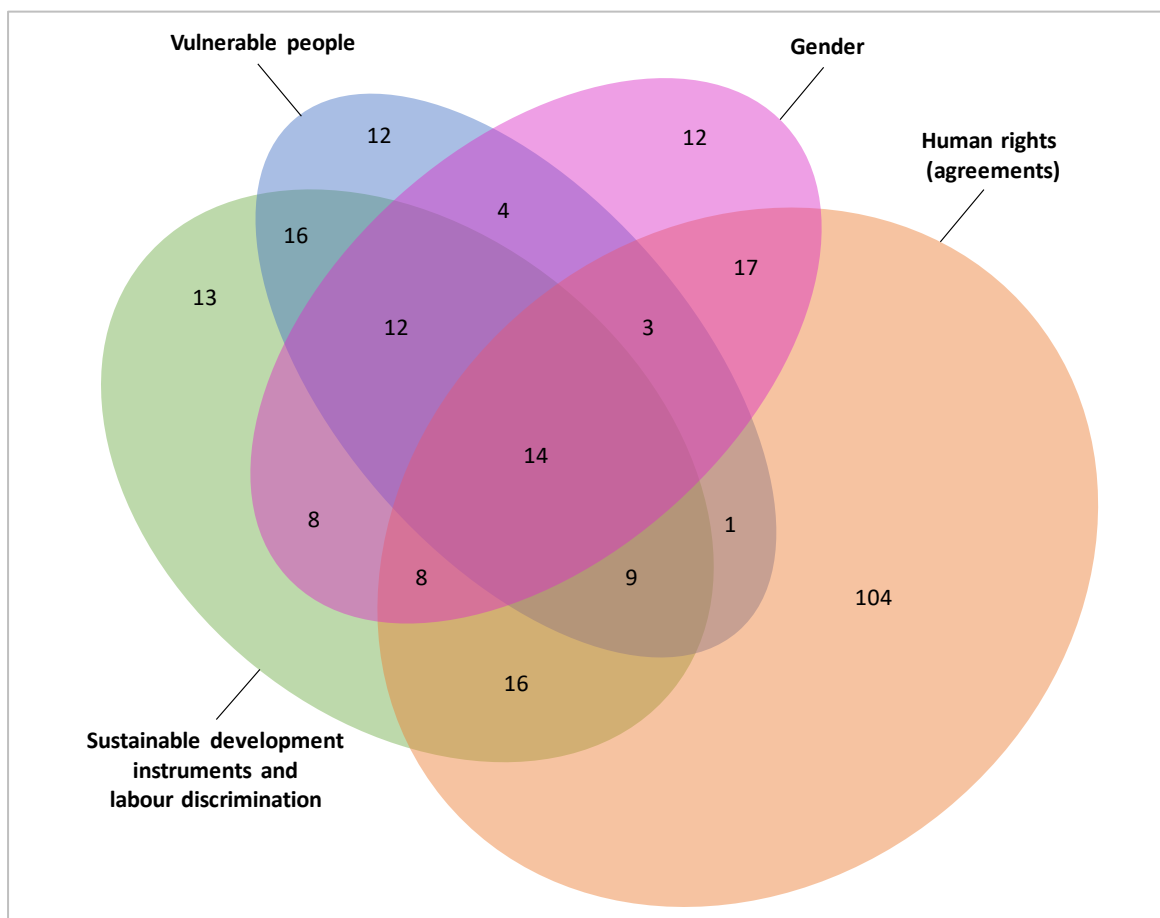
An increasing number of RTAs, namely 34 agreements, include provisions referring to different international instruments related to sustainable development that reaffirm, among other things, gender equality and women's participation, such as the Rio Declaration on Environment and Development; the Agenda 21: Programme of Action for Sustainable Development; the Copenhagen Declaration on Social Development; the Johannesburg Plan of Implementation on Sustainable Development, the outcome document of the Rio+20 UN Conference on Sustainable Development of 2012 (The Future We Want); the Monterrey Consensus of the UN International Conference on Financing for Development; the Millennium Development Goals; and the 2030 Agenda for Sustainable Development.⁹ A few RTAs also refer to certain multilateral environmental agreements that include a gender-related dimension, such as the Paris Agreement under the UN Framework Convention on Climate Change.

In parallel, many RTAs, namely 86 agreements, include provisions focusing specifically on the social dimension of sustainable development, which encompasses the prohibition of discrimination against workers on grounds of, sex, among other things.¹⁰ These implicit gender-related provisions often refer to labour discrimination, basic labour rights or international agreements or instruments, such as the International Labour Organization (ILO) Convention No. 111 on Employment and Occupation Discrimination; the ILO Convention No. 182 on the Worst Forms of Child Labour; the ILO 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up; the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work; the ILO 2008 Declaration on Social Justice for a Fair Globalization; the ILO Decent Work Agenda; or the ILO Global Jobs Pact. Gender equality in the workplace is also one of the principles encompassed in the concept of corporate social responsibility, and fair and ethical trade schemes covered in a limited but increasing number of RTAs.

⁹ This number only includes provisions referring exclusively to international instruments related to sustainable development that include gender-related language. See Monteiro (2016) for a discussion on provisions related to the environment and sustainable development in RTAs.

¹⁰ See Raess and Sari (2018) for a discussion on labour provisions in RTAs.

Figure 2: Overview of RTAs with implicit and explicit gender-related provisions



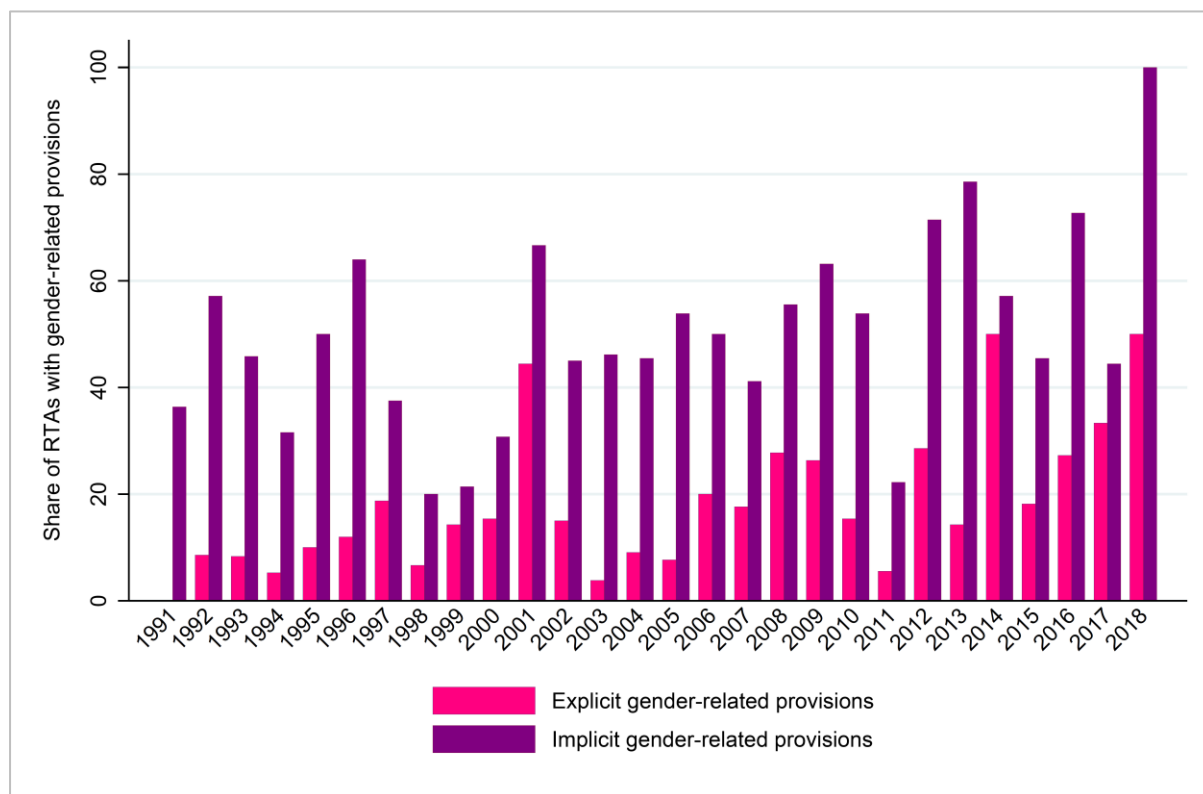
Source: Author's calculations.

Note: This figure excludes RTAs with only gender-related provisions in post-RTA documents. Proportions not respected.

Another type of implicit gender-related provisions, mentioned in 71 RTAs, refers to socially or economically vulnerable, disadvantaged or minority groups, whose women have historically been part of. As discussed in detail below, the reservation for non-conforming measures according rights or preferences to socially or economically disadvantaged minorities and scheduled in relation to the chapters on cross-border trade in services and investment is the most common type of provisions on marginalised and vulnerable groups in RTAs.

In addition to the increasing number of RTAs with gender-related provisions, and as depicted in Figure 3, the share of RTAs incorporating gender-related provisions has been oscillating but trending upward to the point where gender-related provisions are included in more than 35 per cent of all the RTAs signed in the last 5 years (2014-2018). This trend is in line with the growing discussions on women's participation in international trade in the policy agenda of many regional and multilateral forums and organizations. In parallel with the upward trend in the number of RTAs with gender-related provisions, the evolution of the number of specific gender-related provisions included in those RTAs can be further characterized by two waves, as shown in Figure 4.

Figure 3: Percentage of RTAs with implicit and explicit gender-related provisions



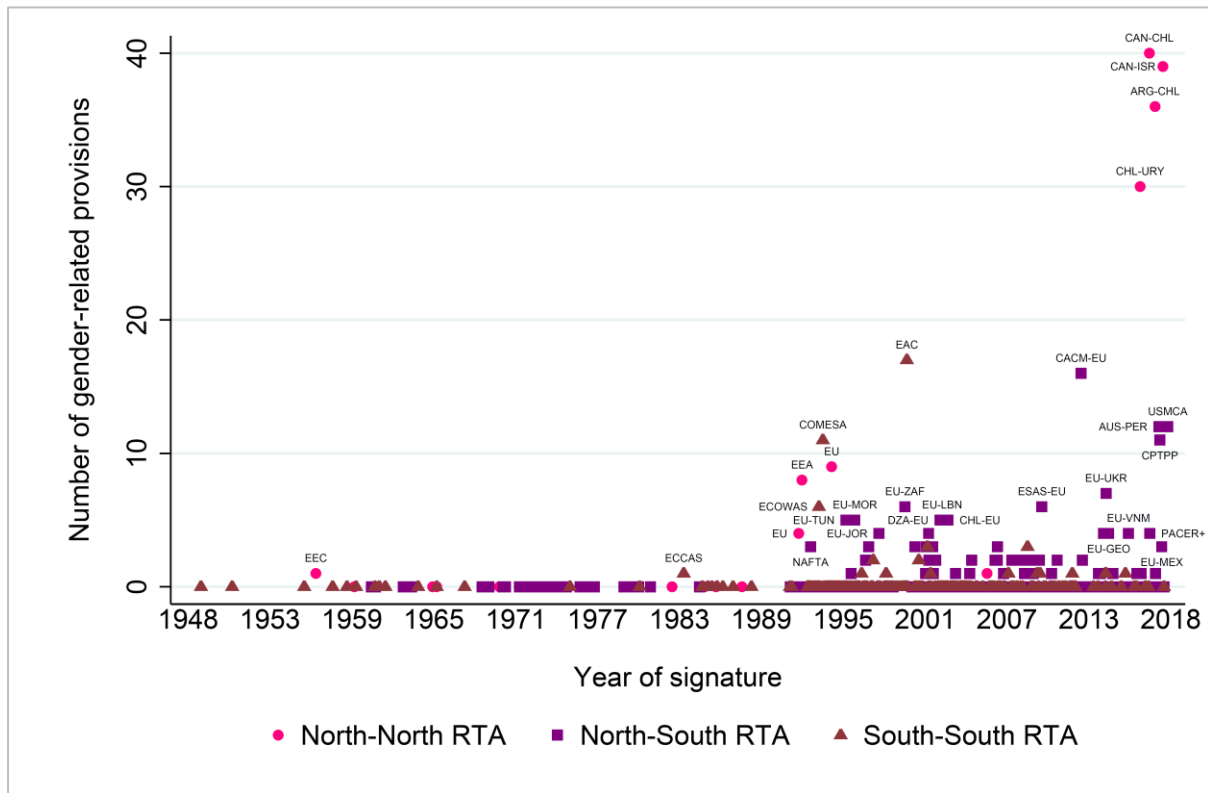
Source: Author's calculations.

Note: The total number of RTAs with gender-related provision per year is the sum of RTAs incorporating gender-related provisions that entered into force that year. Figures are not cumulative. Implicit gender-related provisions refer to provisions addressing human rights, vulnerable groups and the social dimension of sustainable development, including labour discrimination, fair trade and corporate social responsibility without any explicit reference to gender.

Prior to the 1990s, only a couple of RTAs included gender-related provisions, including EEC and ECCAS. Between 1991 and 2001, the number of RTAs with gender-related provisions increased significantly, reaching a peak in 2001. During that period, the number of specific gender-related provisions included in a given RTA remained limited. One of the few exceptions was the Treaty of the Economic Community of West African States (ECOWAS) signed in 1993 and the first RTA negotiated by developing countries with an article dedicated to "women and development". This article laid out several commitments, including the adoption of all measures necessary to identify and assess all constraints that inhibit women from maximizing their contribution to regional development efforts. Other exceptions included the Treaties establishing the Common Market for Eastern and Southern Africa (COMESA) in 1993 and the East African Community (EAC) in 1999, which for the first time established, respectively, a chapter on "women in development and business" and on the "role of women in socio-economic development". The chapter in both RTAs specified detailed commitments to promote women's empowerment, integration and participation, including through appropriate legislation and other measures.¹¹ The EAC treaty further established gender equality as a fundamental principle and required the EAC legislative assembly to represent gender as much as it is feasible.

¹¹ As discussed in section 4, the parties to COMESA and EAC have subsequently established several other gender-related commitments, including COMESA Gender Policy and EAC Gender Equality and Development Bill.

Figure 4: Evolution of the number of gender-related provisions in RTAs



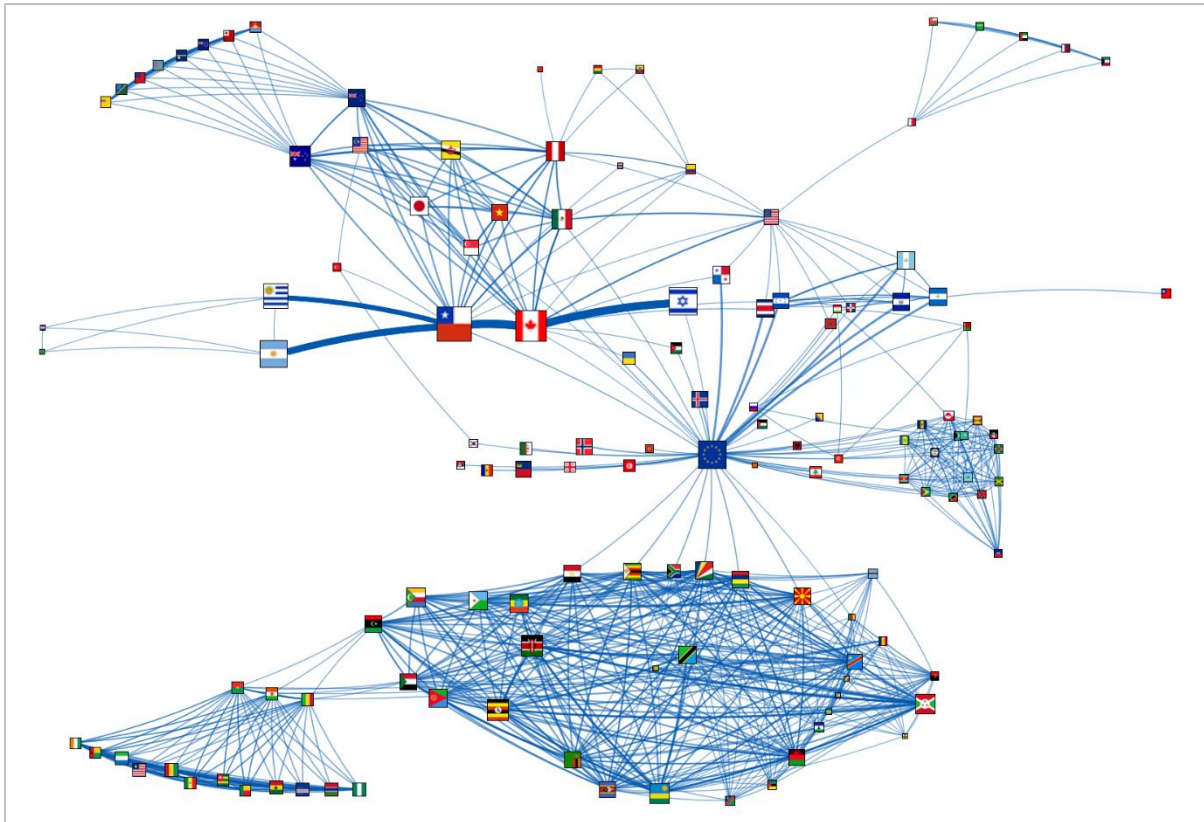
Source: Author's calculations.

Note: Original and amended RTAs are analysed separately.

Between 2002 and 2015, the signing of RTAs with gender-related provisions increased slightly, but the average number of specific gender-related provisions in RTAs decreased relatively and remained limited. One of the few exceptions was the RTA between the European Union and Central America, which established several gender-related cooperation provisions, some of them found in a dedicated article on gender. The agreement further laid down a couple of gender-related provisions on labour standards, including the ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

Since 2016, the number and share of RTAs with gender-related provisions has increased significantly, as did the average number of gender-related provisions. The RTAs to which Chile is a party with Argentina and Uruguay and the amended RTAs negotiated by Canada with Chile and Israel include the most detailed and comprehensive gender-related provisions to date, as highlighted in Figure 5. Most of these gender-related provisions are found in a chapter dedicated to trade and gender covering issues ranging from domestic policies and international agreements to cooperation activities and institutional arrangements, including the establishment of a trade and gender committee and consultations procedures. Other gender-related provisions can be found in the preamble, the chapters on investment, labour, and cooperation, or the labour cooperation agreement in some of these RTAs.

Figure 5: Universe of RTAs with gender-related provisions



Source: Author's calculations.

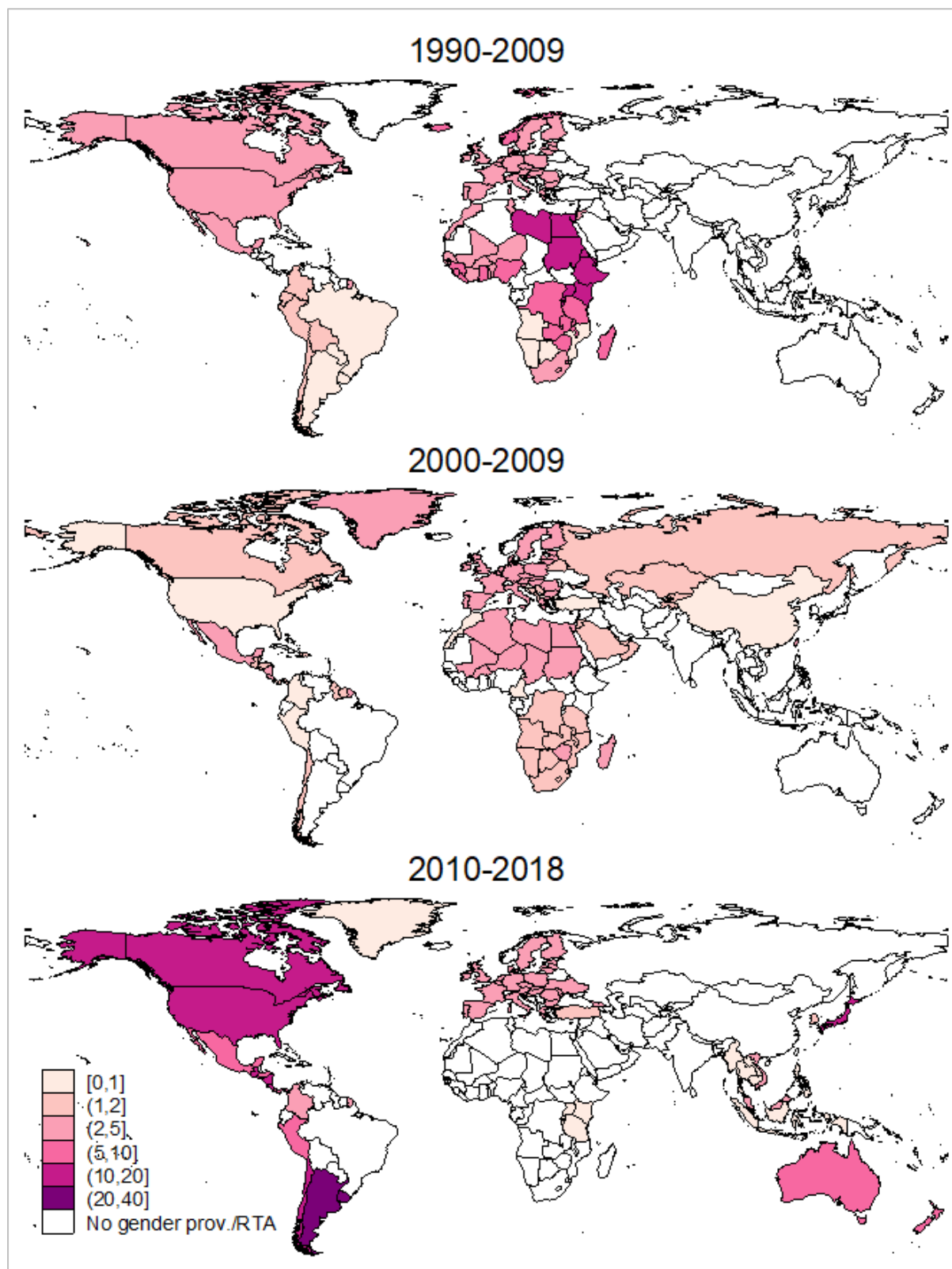
Note: The size of each node represents the average number of gender-related provisions by country. The width of each edge measures the number of gender-related provisions in the respective RTA.

3.2 Dynamic nature of gender-related provisions

As hinted above, the inclusion of gender-related provisions in RTAs often follows a dynamic pattern. While some countries have continued to negotiate a relatively limited number of gender-related provisions in their RTAs, other countries, such as Canada and Chile, have opted to include more comprehensive gender-related provisions in their most recent agreements. Conversely, other countries, that have in the past incorporated several gender-related provisions in some of their RTAs, have later decided either to limit the number of gender-related provisions or not to pursue this approach. As a result, the relationship between the number of signed RTAs with gender-related provisions and the average number of gender-related provisions is non-linear (see Annex 2). In particular, the average number of gender-related provisions tends to initially increase with the number of RTAs with gender-related provisions but then tends to decrease beyond five agreements.

The evolution of the number of gender-related provisions in the process of amending or revising existing RTAs also follows different patterns. While the number of gender-related provisions included in some RTAs, such as the EAC treaty, has remained relatively constant, other agreements have increased their number of gender-related provisions with each revision. For instance, the number of gender-related in the RTA between Canada and Chile increased from two provisions (found in the 1996 side labour cooperation agreement) to 40 provisions in 2017 (found in the amended investment chapter, new gender chapter and existing side labour agreement). Similarly, the Southern African Development Community (SADC) treaty amended the language and expanded the number of gender-related provisions with each revision. Conversely, in some RTAs, such as the RTA between the European Union and Overseas Countries and Territories, the number of gender-provisions decreased slightly with each revision.

Figure 6: Average number of gender-related provisions in RTAs by country



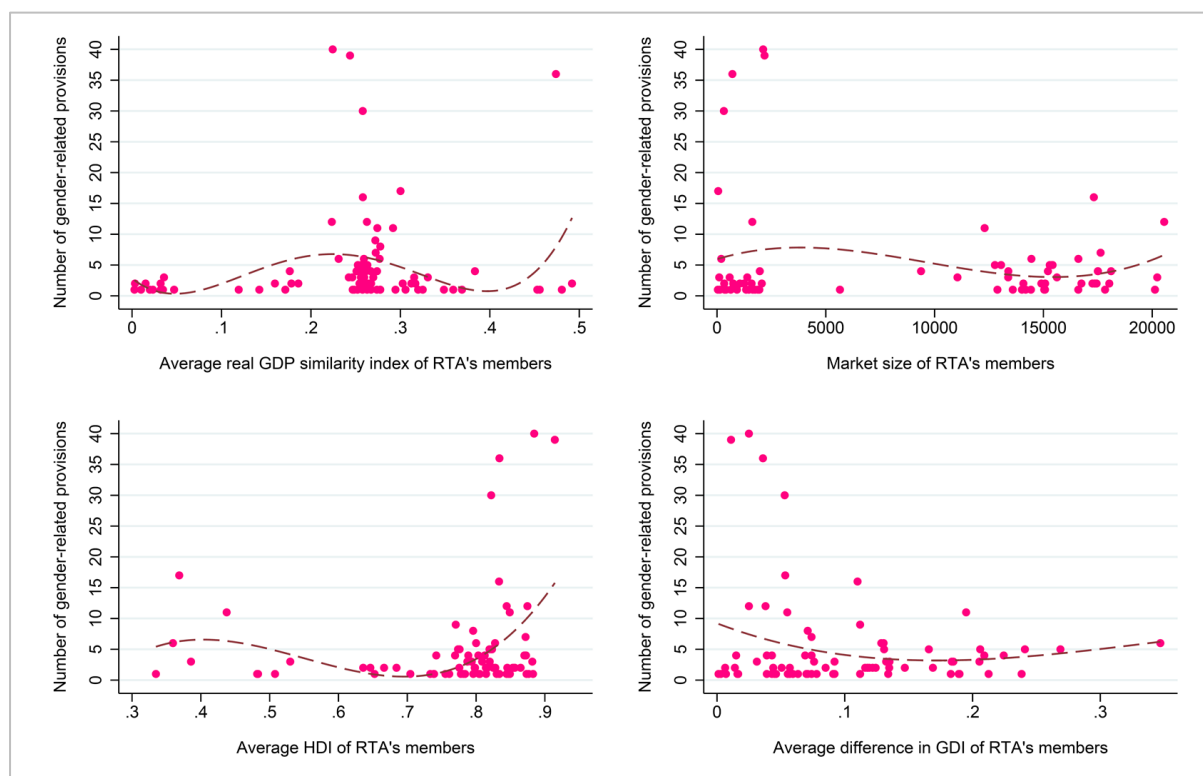
Source: Author's calculations.

As highlighted in Figure 6, the inclusion of comprehensive gender-related provisions is a relatively recent phenomenon. The highest average number of gender-related provisions is found in recent RTAs negotiated by Argentina, Australia, Canada, Chile, Israel, Japan, New Zealand, the United States and Uruguay. By contrast, the average number of gender-related provisions has slightly decreased in the RTAs signed by some Central Asian, Latin American and African countries. A few other countries, such as India, Pakistan and Switzerland, have not negotiated gender-related provisions in their respective RTAs.

As suggested above, the decision to include gender-related provisions not only changes over time, but also depends on the countries that take part in the negotiations. The relationship between the number of gender-related provisions and the development level of the parties to the RTA is highly non-linear, as highlighted in Figure 7. In particular, the number of gender-related provisions tends to be relatively higher in RTAs negotiated by parties experiencing different but not too distant levels of economic development. Conversely, parties to RTAs with extremely large differences in economic development tend to negotiate a limited number of gender-related provisions. The number of gender-related provisions tends also to be relatively greater in RTAs with a relatively limited market size. However, many other RTAs follow different patterns, highlighting important idiosyncratic features.

In addition, gender-related provisions tend to be much more comprehensive in RTAs negotiated by countries experiencing a relatively high level of human development in terms of life expectancy, education and per capita income, measured by the Human Development Index. Yet, a few countries having achieved a more limited level of human development have also negotiated a relatively high number of gender-related provisions in some of their RTAs, highlighting once again important idiosyncratic trends. The number of gender-related provisions tends also to be greater when the parties to the RTA face relatively similar levels of gender development, measured by the Gender Development Index, suggesting that the inclusion of a large number of gender-related provisions in a RTA does not necessarily aim at ensuring a level playing field between the parties.

Figure 7: Relationship between gender-related provisions and development level



Sources: World Development Indicators (2018); UN Human Development Report (2018); Author's calculations.

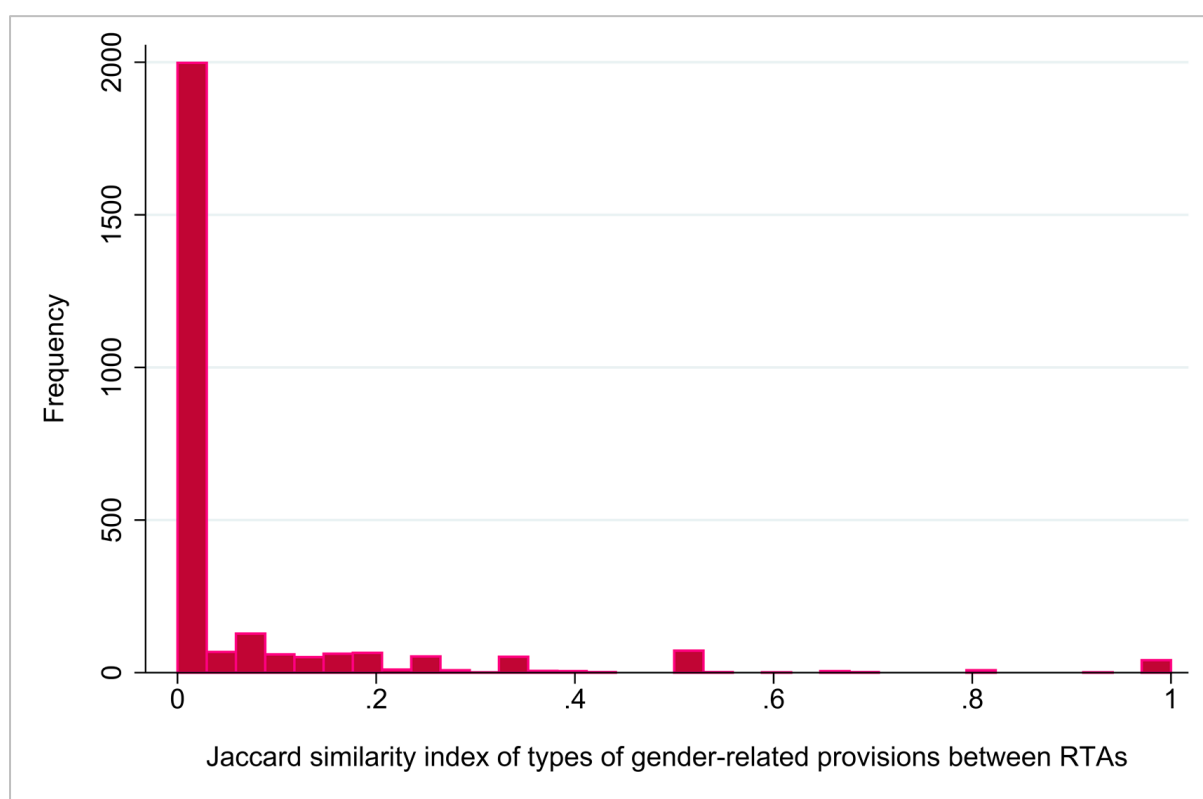
Note: The similarity GDP index between countries i and j is defined as $1 - [GDP_i / (GDP_i + GDP_j)]^2 - [GDP_j / (GDP_i + GDP_j)]^2$ and ranges from 0 (dissimilar) to 0.5 (similar) (see Helpman, 1987). The market size is measured by the sum of the parties' real GDP (in US\$ millions). The Human Development Index (HDI) ranks countries' performance on life expectancy, education, and per capita income. Similarly, the Gender Development Index (GDI) ranks countries' performance in terms of gender-gaps in life expectancy, education, and per capita income.

3.3 Heterogeneity of gender-related provisions

As noted above, gender-related provisions in RTAs have evolved significantly and differently over the years, including in agreements negotiated by the same country. One way to grasp the heterogeneity of the types of gender-related provisions in different RTAs is through the Jaccard index, which compares and determines for each possible pair of RTAs how many type(s) of gender-related provisions are common. The closer the index is to one (zero), the more (less) both RTAs include the same type(s) of gender-related provisions.

Even though the level of similarity between RTAs is higher for some pairs of RTAs, it tends to be much lower for most pairs of RTAs, as highlighted in Figure 8. Almost 88 per cent of all pairs of RTAs share very few, if any at all, similar types of gender-related provisions. Indeed, the level of similarity tends to increase with the number of common types of gender-related provisions but this positive relationship tends to slow down beyond seven common gender-related provisions, as depicted in Annex 3. However, many pairs of RTAs do not follow this pattern, highlighting important idiosyncratic trends.

Figure 8: Similarity index of types of gender-related provisions



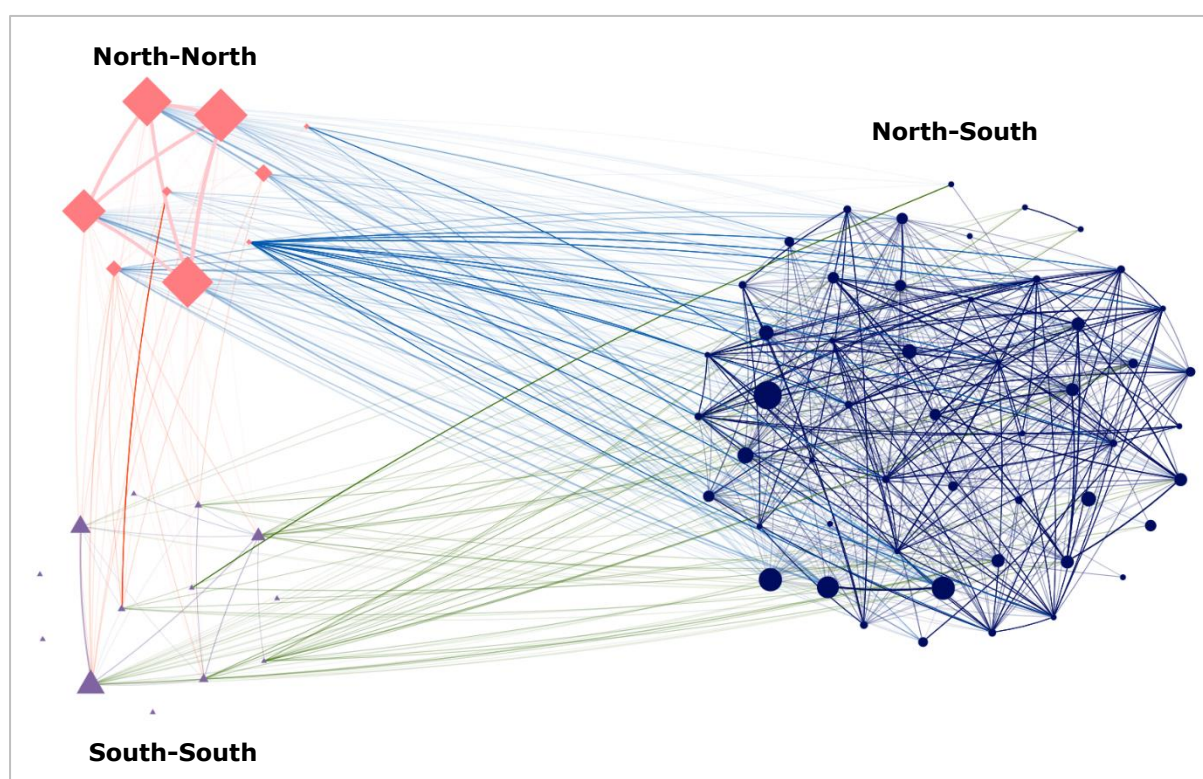
Source: Authors' calculations.

Note: Histogram of the Jaccard index of 2,701 pairs of RTAs. The closer the Jaccard index is to one (zero), the more (less) both RTAs include the same type(s) of gender-related provisions.

Despite the important heterogeneity in terms of language that characterizes most gender-related provisions, most RTAs with gender-related provisions share at least one main type of provisions with another agreement, often in the form of cooperation provisions. The universe of all RTAs with gender-related provisions is represented in Figure 9, where each symbol (i.e. square, diamond, and triangle) represents a RTA, where the size of the symbol (vertex) represents the number of gender-related provisions, while the width and opacity of the edges connecting the RTAs reflect, respectively, the number of common gender-related provisions and their level of similarity, measured by the Jaccard index. In other words, the larger and opaquer the edge connecting two RTAs, the larger and more similar gender-related provisions in those two RTAs.

Overall, the average number of common types of gender-related provisions between RTAs is low, with just one common type of provisions. As discussed above, the most common type of gender-related provisions relates to cooperation. The number of common types of gender-related provisions has, however, increased relatively in the last two years. This relative increase is mainly due to the four RTAs with a trade and gender chapter negotiated by Canada with Chile and Israel and by Chile with Argentina and Uruguay (represented by the rose diamonds in Figure 9). In particular, the amended RTAs to which Canada is a party with Chile and Israel share the highest number of common types of provisions (namely 31 common types of gender-related provisions), followed by the RTAs to which Chile is a party with Argentina and Canada (29 common types of provisions) and with Argentina and Uruguay (27 common types of provisions). More generally, North-North RTAs tend to share more common types of gender-related provisions than North-South and South-South RTAs. Similarly, South-South RTAs tend to share more similarities with North-North RTAs than North-South RTAs, suggesting that the converge of the types of gender-related provisions included in RTAs remains very limited.

Figure 9: Similarity of gender-related provisions in RTAs



Source: Author's calculations.

Note: The size of the shape associated with each RTA represents the number of gender-related provisions. The width of each edge measures the number of similar types of gender-related provisions between two RTAs, while the opacity of each edge captures the level of similarity (measured by the Jaccard index).

4 STRUCTURE AND LOCATION OF GENDER-RELATED PROVISIONS

The heterogeneity characterising most gender-related provisions is also reflected in their structure and location in RTAs, as reported in Table 1. The choice of the structure of gender-related provisions varies significantly among RTAs, even among agreements negotiated by the same party. It ranges from preamble language and non-specific article to specific article and chapter on gender. Some gender-related provisions are also found in annexes as well as side documents. The inclusion of gender-related provisions with different structures is, however, not mutually exclusive, as depicted in Figure 10.

For a few RTAs, namely 7 agreements, the first reference to gender or women is found in the preamble. The preamble of a RTA can provide insights on the parties' intention as well as the objectives that led to the signature of the agreement. The gender-related issues covered in the preamble differ between some RTAs, ranging from gender equality and gender mainstreaming in international trade to references to international instruments related to gender. For instance, the preamble to the Interim Economic Partnership Agreement between the European Union and the Eastern and Southern Africa States (ESAS) reaffirms that advancing the development agenda requires the full implementation of agreed commitments made at different UN Conferences, including the Fourth World Conference on Women in Beijing.

While a limited but increasing number of RTAs incorporate a specific article or chapter on gender, the most common structure of gender-related provisions, found in 60 RTAs, consists of an article referring to an issue or a broad range of issues that mentions gender as a particular case. For instance, several non-specific provisions on gender, found in the chapter on labour, sustainable development or cooperation, list gender, among other themes, as a (potential) cooperation area.

Table 1: Main structures of gender-related provisions

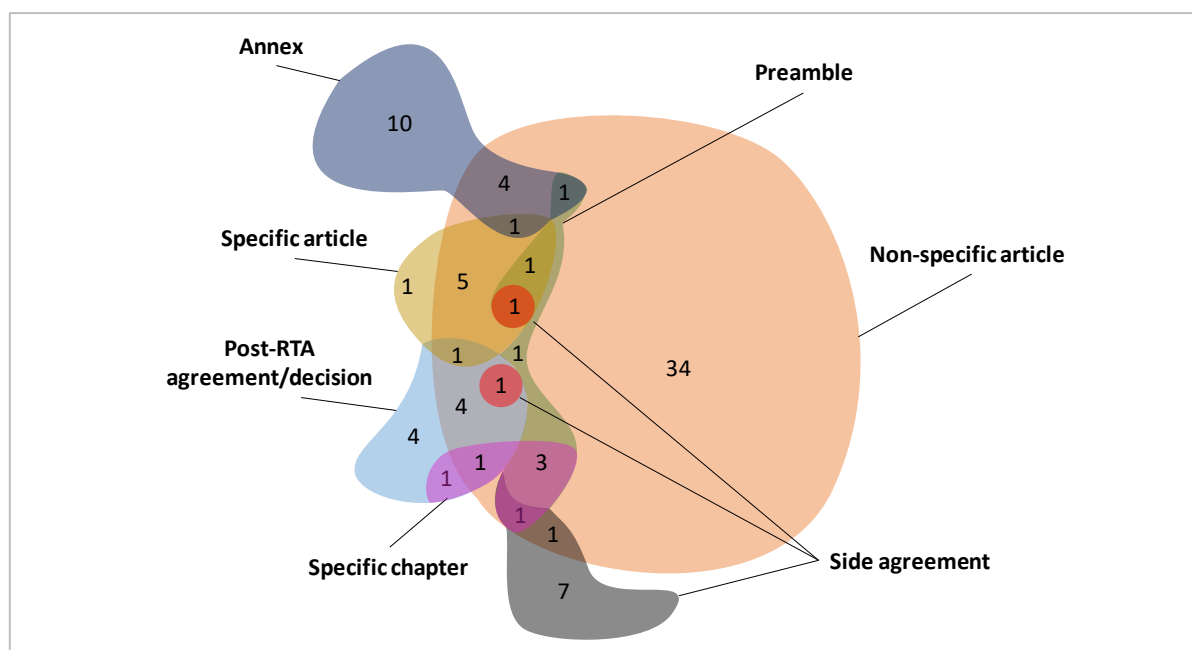
Structure of gender-related provisions	Number of RTAs
1. Main text of the RTA:	69
- Preamble	7
- Non-specific article(s) on gender	60
- Specific article on gender	10
- Specific chapter on gender	6
- Annex(es)	16
2. Side document(s) to the RTA:	11
- Joint statement(s)	1
- Protocol(s)	1
- Labour cooperation agreement	9
3. Post-RTA agreements/decisions on gender:	12
- Declaration(s)	3
- Decision(s)/resolution(s)/directive(s)	6
- Agreement(s)	3

Source: Author's calculations.

Although the inclusion of a specific article on gender is not a recent development, a limited but increasing number of RTAs, namely 10 RTAs, have adopted this approach. These specific articles on gender are found in different chapters, ranging from community policy in social affairs and human resources to labour, cooperation and development. For instance, the European Union's Lisbon Treaty includes an article on the principle of equal pays for male and female workers in the chapter on social provisions. Several cooperation provisions on gender are included in an article on gender in the chapters on "social cooperation" and "social development and social cohesion" of the RTAs to which the European Union is a party with Chile and Central America, respectively. Similarly, CPTPP as well as the RTA between Australia and Peru have established an article on "women and economic growth" in their respective chapter on development. More recently, USMCA includes an article dedicated to "sex-based discrimination in the workplace" in the chapter on labour.

The inclusion of a chapter dedicated to gender in RTAs is also not new but less common. A very limited number of RTAs have established a specific chapter on "women and development" in the case of COMESA and EAC or more recently on "trade and gender" in the case of the amended RTAs to which Canada is a party with Chile and Israel and the RTAs negotiated by Chile with Argentina and Uruguay. Provisions found in a chapter dedicated to gender tend to be more detailed and comprehensive. As explained above, the most recent chapters on gender cover various issues, including domestic gender-related policies, international agreements, cooperation and institutional arrangements.

Figure 10: Structure of gender-related provisions in RTAs



Source: Author's calculations.
Note: Proportions not respected.

Gender-related provisions are also found in the annex of 16 RTAs. For instance, the annex to the government procurement chapter of several RTAs to which the United States is a party include a provision specifying that the government procurement chapter does not apply to preferences or restrictions associated with programs promoting businesses owned by women, among others.¹²

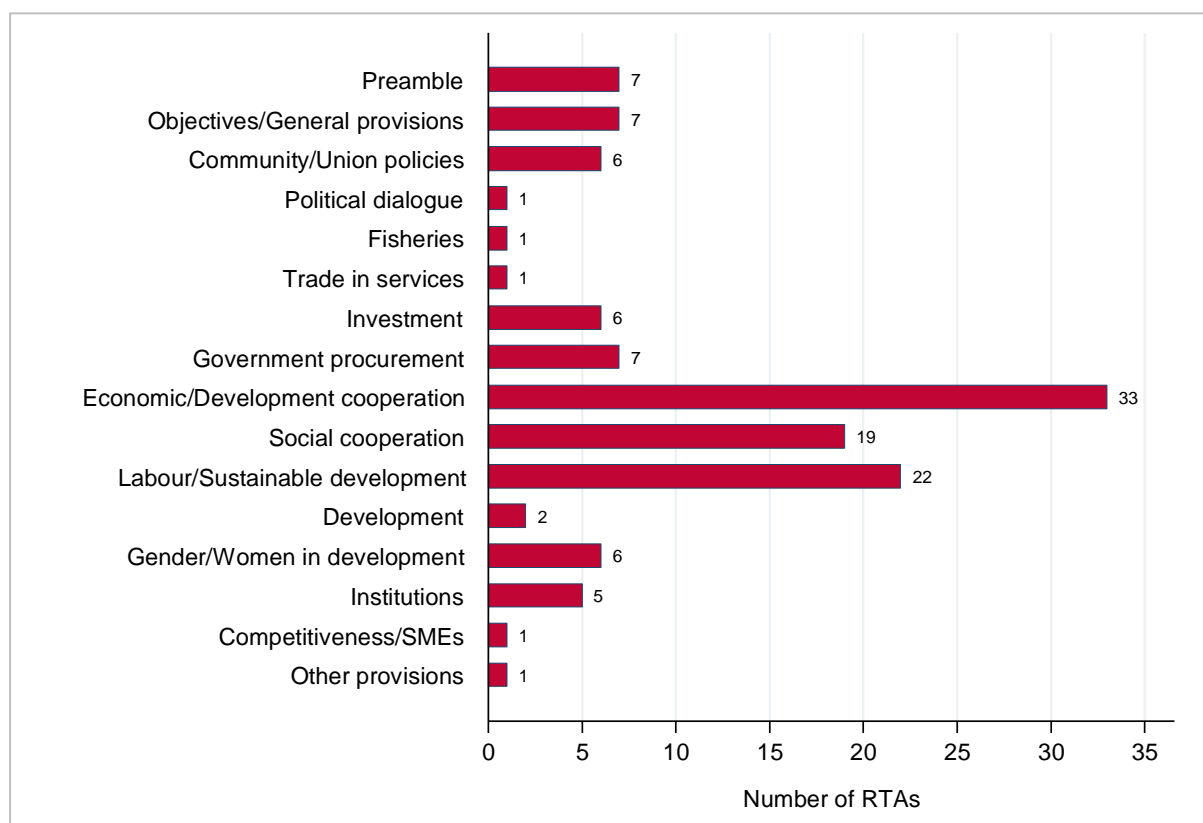
Besides the main text of the RTA and its annexes, several gender-related provisions are also found in side agreements negotiated in parallel. For instance, the Agreement on the European Economic Area (EEA) include several protocols, including one on the EEA financial mechanism requiring, among other things, the application of the principle of gender equality in all implementation phases. Similarly, several RTAs to which Canada is a party include several gender-related provisions in their respective labour cooperation agreements. For instance, the labour cooperation agreement between Canada and Jordan commits the parties to ensure their labour law and practices embody and provide protection for the elimination of discrimination in respect of employment and occupation, including equal pay for women and men.

In addition to the side documents adopted at the time of the RTA's signature, the parties to several RTAs, typically establishing a customs union, have, a few years after the entry into force of the agreement, adopted specific declaration, directives, resolutions or agreements on gender or established gender-related institutions. The parties to the Southern Common Market (MERCOSUR) have issued a number of recommendations, resolutions and decisions on gender-related issues, including the creation of a Specialized Meeting of Women, MERCOSUR gender equality policy guidelines and recommendations and resolutions on international trafficking and domestic violence. Decisions or agreements have also been subsequently adopted by the Andean Community (e.g. Andean Council for High-Level Authorities for Women and Equal Opportunities); the Central American Common Market (CACM) (e.g. resolution on gender, integration and development); Caribbean Community (CARICOM) (e.g. gender and development program); COMESA (e.g. gender policy); EAC (e.g. Gender Equality and Development Bill); ECOWAS (e.g. resolution relating to gender promotion); the European Union (e.g. directives on anti-discrimination and gender equality); the Pacific Alliance (e.g. joint declaration establishing technical group on gender); and SADC (e.g. Gender and Development Protocol).

¹² Provisions listing gender-related public institutions, such as the Ministry of Women and Vulnerable Population, as central government entities covered by the government procurement chapter are excluded from the analysis.

As highlighted above, gender-related provisions not only take different structures, but can also be found in various parts of the RTAs. As shown in Figure 11, provisions mentioning explicitly gender are mainly located in chapters on economic or social cooperation. The distinction between economic cooperation and social cooperation is not always made as explicit. Similarly, gender-related provisions on employment and social matters can be found in an increasing number of chapters on social cooperation or chapters on labour or sustainable development.

Figure 11: Location of gender-related provisions in RTAs



Source: Author's calculations.

Note: This figure only considers gender-related provisions found in the preamble and main text of RTAs. For analytical purposes, certain chapter titles have been harmonised.

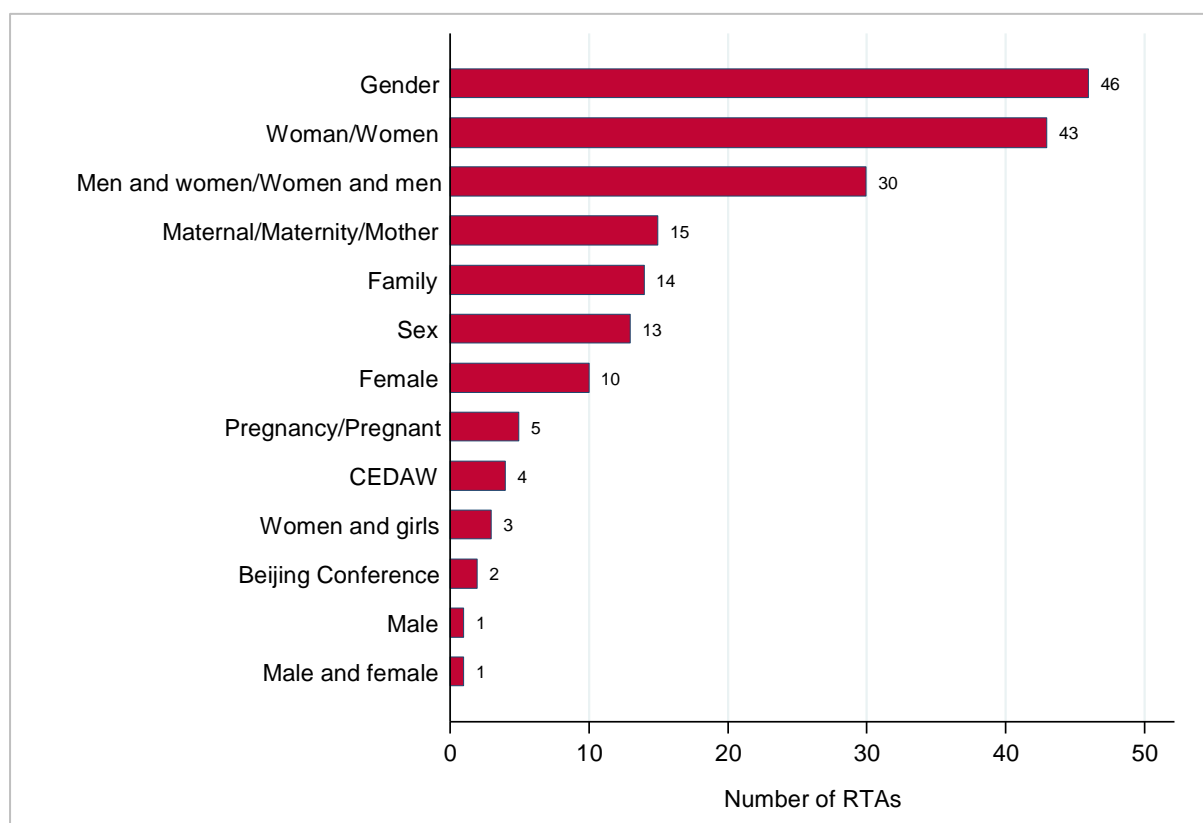
The remaining chapters with gender-related provisions are not only included in a limited number of RTAs but most of these gender-related provisions are particular to a single or couple of RTAs. For instance, a couple of investment chapters refer to gender equality in their article on fair and equitable treatment of investment and investors, while a couple of other investment chapters mention gender in their article promoting social corporate responsibility. Similarly, USMCA includes two provisions related to SMEs owned by women in both chapters on competitiveness and SMEs. Overall, and as discussed in greater detail in the next section, a different location in the RTA often implies a different type of gender-related provisions.

5 SCOPE OF GENDER-RELATED PROVISIONS

Provisions in RTAs are known to be heterogeneous across agreements, and gender-related provisions are no exception. The scope, language, structure and location of gender-related provisions vary significantly among RTAs, even in most agreements negotiated by the same country. Two RTAs can incorporate a provision referring to the same issue, but take a different structure (e.g. non-specific provision or specific provision), be found in a different part of the RTA (e.g. chapter on labour or cooperation) and formulated differently (e.g. hortatory or firmer language). This heterogeneity makes the task of identifying commonalities and differences particularly difficult.

More than 230 different gender-related provisions have been identified, many of which are specific to a single or couple of RTAs. This large number of gender-related provisions is partly explained by the terminology used to define gender-related issues. As shown in Figure 12, the scope of most gender-related provisions refers to "gender". However, this is a relatively recent phenomenon, even though the use of the term "gender" is not new. Up until 2014, most RTAs with gender-related provisions referred explicitly to "women" or "men and women", as highlighted in Annex 4. The scope of other gender-related provisions, found in more limited number of RTAs, covers specifically "motherhood", "family", "sex" and "pregnancy".

Figure 12: Gender-related terminology in RTAs



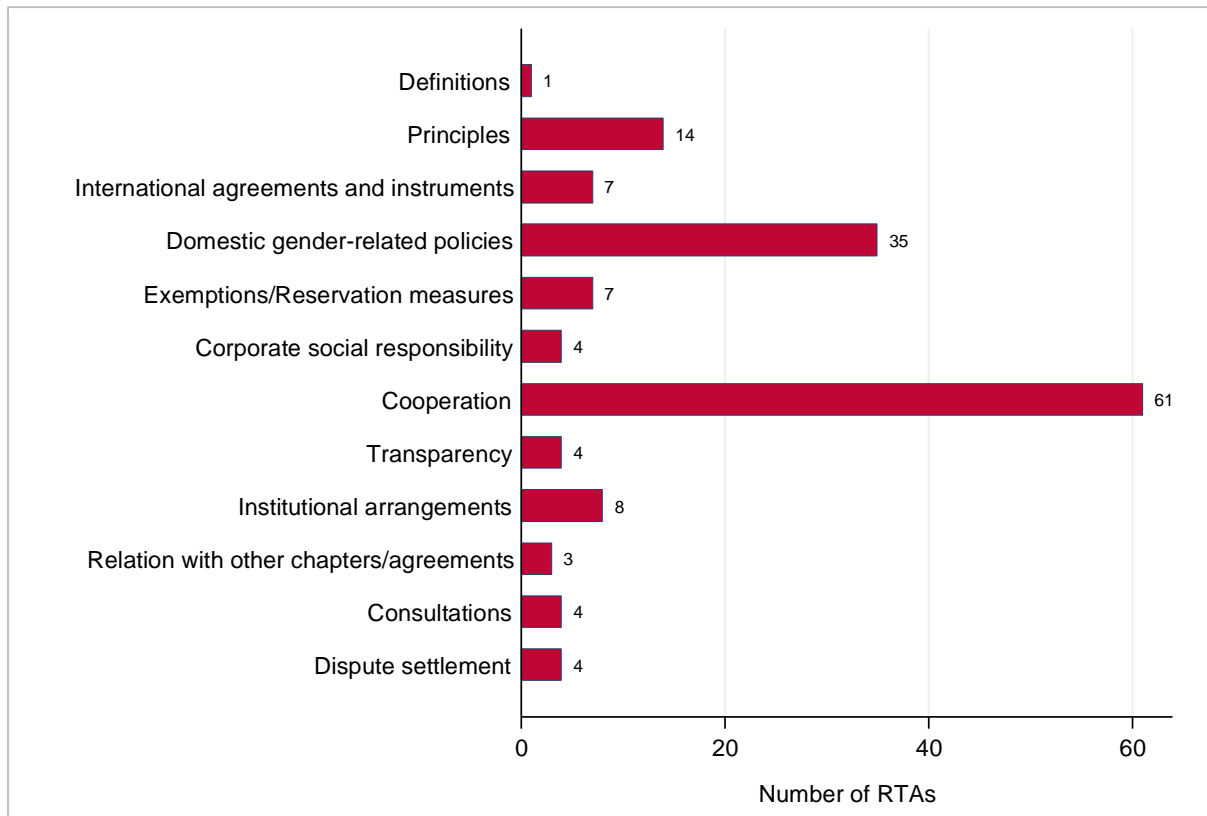
Source: Author's calculations.

Note: Total number of RTAs with at least one gender-related provision referring to the respective terminology. CEDAW and Beijing Conference refer to the Convention on the Elimination of all forms of Discrimination Against Women, and the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women, respectively.

Besides differences in terminology, most of the heterogeneity characterising gender-related provisions stems from the language used as well as the issues covered by these provisions. As highlighted in Figure 13, twelve broad types of provisions related to gender and gender-related issues have been identified. These provisions range from references to gender-related principles and international agreements to specific commitments on domestic gender-related policy, corporate social responsibility and cooperation activities. In addition, a number of gender-related provisions, typically found in a chapter dedicated to trade and gender, establish institutional arrangements as well as consultation procedures.¹³ While some of these types of provisions are found in an increasing number of RTAs, other types are only included in a single or couple of, often recent, RTAs.

¹³ Although not reviewed here, some RTAs include provisions on temporary entry for business persons committing the parties to grant, upon application, the right of temporary entry to the accompanying spouse or dependents of a business person that is granted temporary entry or an extension of temporary stay.

Figure 13: Main broad types of gender-related provisions in RTAs



Source: Author's calculations.

Note: Total number of RTAs with at least one gender-related provision falling in the respective category.

The most common type of gender-related provisions, included in 61 RTAs (82 per cent of all RTAs with gender-related provisions), identifies gender and gender-related issues as a cooperation area. Cooperation provisions on gender are mainly found in the chapters on economic and social cooperation, but are also found in other chapters, such as development, gender, labour and sustainable development. While some provisions only list gender as a cooperation area, other provisions specify the precise areas and forms of cooperation. Similarly, while some RTAs identify gender as part of a non-exhaustive list of potential cooperation areas, other RTAs establish firmer cooperation commitments.

The second most common type of gender-related provisions, included in 35 RTAs (47 per cent of all RTAs), establish specific commitments on domestic gender-related policies. This type of provisions ranges from the right to regulate gender issues to the commitment to adopt, harmonize and effectively implement domestic policies and programmes on gender. While some of these provisions refer to gender-related policies in general, other provisions specifically address the gender dimension of education, labour and social policies.

The remaining types of gender-related provisions are only incorporated in a limited number of RTAs. Some provisions establish or refer to gender-related principles, such as gender equality. Other provisions refer to specific international agreements or international instruments related to gender, such as the UN CEDAW and the Beijing Declaration and Platform for Action on gender equality and women's rights. Some provisions specify that domestic programmes aimed at supporting women, including women-owned firms, are not covered by the obligations set forth in the chapter on government procurement or services. A few other provisions promote transparency and public awareness of domestic gender-related laws and policies. Similarly, a few provisions establish commitments to promote corporate social responsibility, which encompasses, among other things, gender equality in the workplace.

A limited number of RTAs establish institutional arrangements related to gender, such as the establishment of committee, to discuss and oversee the implementation of the agreement's commitments related to gender. Most chapters dedicated to gender also establish specific consultation procedures to address any issue arising under that chapter. These consultation procedures are further complemented by another type of provisions specifying whether the gender chapter is covered or not by the dispute settlement procedures established under the RTAs. Most gender chapters are excluded from the RTA's dispute settlement chapter.

Overall, gender-related provisions remain particularly heterogeneous in terms of structure, language and scope, often specific to a single or couple of RTAs. Many of the provisions found in the chapter dedicated to gender are specific to that chapter. The next sub-sections review in more detail each of the main broad types of gender-related provisions identified in RTAs.

5.1 Definitions

As explained above, there is no unique definition of the concept of "gender-related" provisions. Only one RTA provides an explicit definition of gender.¹⁴ The EAC treaty specifies in the chapter on interpretation that "gender" means the role of women and men in society. A similar but relatively more detailed definition is found in the Protocol on Gender and Development established under SADC and the EAC Gender Equality and Development Bill, where "gender" is defined as the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls and boys.¹⁵ The Protocol on the Establishment of the EAC Common Market further defines "vulnerable group" as groups of persons marginalised on grounds of stigmatised illness, gender, ethnicity, disability or age.

5.2 Gender-related principles

While the vast majority of RTAs with gender-related provisions do not provide an explicit definition of gender, a limited number of RTAs, namely 15 agreements, implicitly define the scope of the gender-related issues addressed in their respective RTAs by establishing and/or referring to different principles related to gender. Some of these provisions are located in the preamble to the RTA, while other are found in different chapters or side agreements. With a few exceptions, most provisions on gender-related principles are specific to a single or couple of RTAs.

Several provisions on gender-related principles refer to gender equality. For instance, the preamble to CPTPP reaffirms the importance of gender equality. Similarly, the preamble to the Agreement on EEA note the importance of the development of the social dimension, including equal treatment of men and women, in the EEA. The Maastricht Treaty of the European Union also stipulates that the values of respect for human dignity, freedom, democracy, equality, the rule of law and human rights, in which the European Union is founded, are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Other provisions on gender-related principles are slightly more specific. The amended RTAs to which Canada is a party with Chile and Israel and the RTAs negotiated by Chile with Argentina and Uruguay reaffirm the importance of promoting gender equality policies and practices, and building the capacity, including in non-government sectors, in order to promote equal rights, treatment and opportunity between men and women and the elimination of all forms of discrimination against women. A complementary provision, found in these and other RTAs, further acknowledges or recognises that improving women's access to opportunities and removing constraints in their countries enhances their participation in national and international economies, and contributes to fostering sustainable economic development. Similarly, the EAC treaty recognise that women make a significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective economic and social development programmes without their full participation.

¹⁴ Although not reviewed in this subsection, many labour chapters provide a definition of labour laws or labour principles, which sometimes refers explicitly to the elimination of employment discrimination on sex grounds and equal pay for women and men.

¹⁵ As explained in section 2, a detailed analysis of post-RTAs decisions and agreements is outside the scope of this paper.

In that context, another complementary provision, found only in the RTAs negotiated by Canada with Chile and Israel and by Chile with Argentina and Uruguay, acknowledges or recognizes the importance of incorporating a gender perspective in the promotion of inclusive economic growth, as well as the instrumental role that gender policies can play in achieving greater sustainable socioeconomic development. The preamble to the RTAs to which Chile is a party with Argentina and Uruguay further recalls the parties' decision to promote the incorporation of the gender perspective in international trade.

Most other provisions on gender-related principles refer to the labour market. The RTAs negotiated by Canada with Chile and Israel and the RTA between Chile and Argentina acknowledge that women's enhanced participation in the labour market and their economic independence and access to, and ownership of, economic resources contribute to sustainable economic growth. Other provisions address gender equality in the labour market. For instance, USMCA recognises the goal of eliminating sex-based discrimination in employment and occupation, and supports the goal of promoting equality of women in the workplace.

5.3 International agreements and instruments on gender

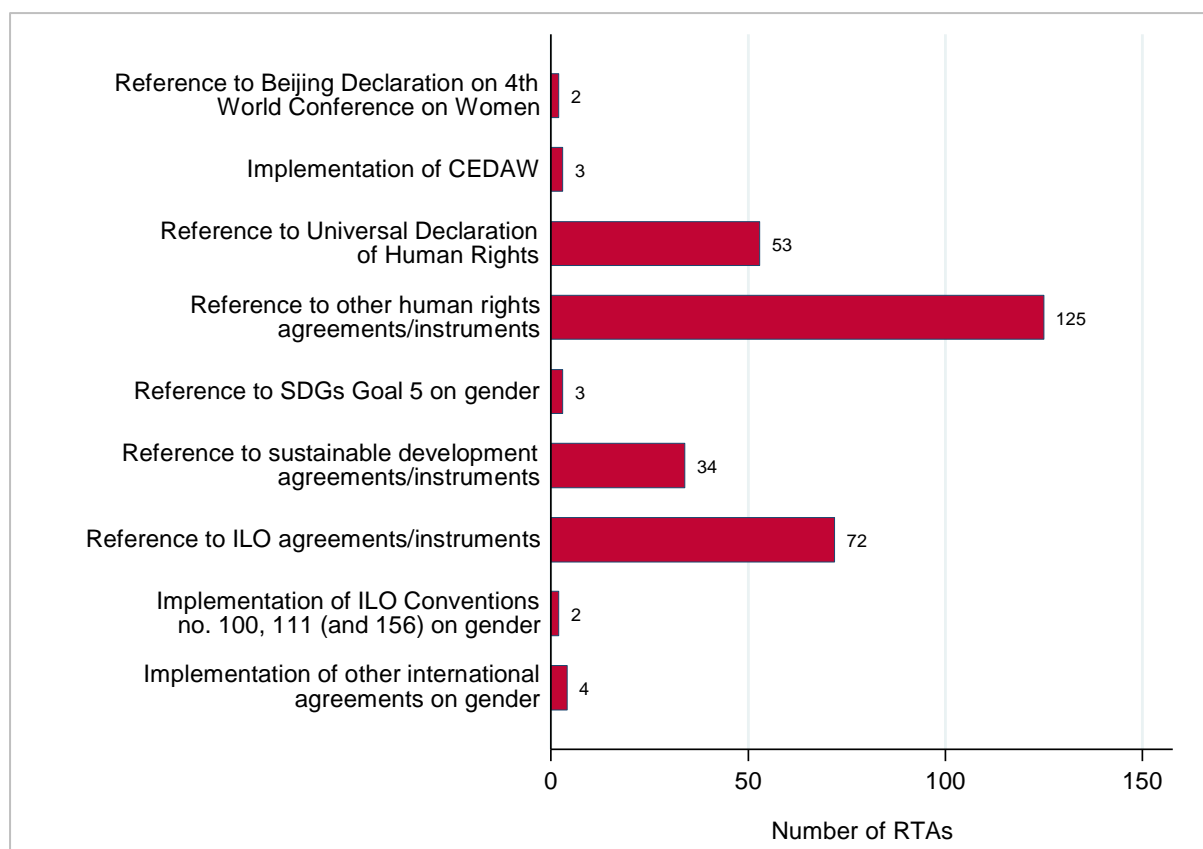
Over the years, international agreements have emerged as an important means for countries to tackle social and sustainability problems, particularly those regional or global in scope. A limited number of RTAs, namely eight agreements, include provisions making explicit reference to international agreements and instruments dedicated to gender-related issues. Most of these provisions are found in recent gender chapters. As discussed in section 3, a much larger number of provisions refer to other international agreements or instruments addressing issues, such as human rights, sustainable development and labour discrimination, that also encompass a gender dimension, as highlighted in Figure 14.

The amended RTAs to which Canada is a party with Chile and Israel and the RTAs negotiated by Chile with Argentina and Uruguay reaffirm the parties' commitment to implement effectively, or intention to continue their efforts to implement, their obligations under international agreements addressing gender equality or women's rights to which they are a party.

Only a couple of RTAs refer specifically to the UN CEDAW. The amended RTAs to which Canada is a party with Chile and Israel reaffirm the parties' commitment to effectively implement the obligations under CEDAW. The RTA between Canada and Israel further notes the general recommendations made under the CEDAW committee. The RTA between the European Union and Central America specifies that cooperation on gender aim at ensuring, improving and expanding the equal participation and opportunities for men and women in view of the effective implementation of CEDAW. CEDAW is often described as an international bill of rights for women. In that context, and more generally, a larger number of RTAs include, often in the preamble, provisions referring to international agreements and instruments on human rights, which encompass the principle of equality and non-discrimination, such as the Universal Declaration of Human Rights, the African Charter on Human and People's Rights and the Vienna Conference on Human Rights.

Similarly, only a couple of RTAs refer to the Sustainable Development Goals (SDGs) of the UN 2030 Agenda for Sustainable Development. The amended RTAs to which Canada is a party with Chile and Israel recall Goal 5 of the SDGs to achieve gender equality and empower all women and girls. Worded slightly differently, the RTA between Argentina and Chile reaffirm the parties' commitment to the UN 2030 Agenda for Sustainable Development, in particular Goal 5 of the SDGs. A few other RTAs refer to the SDGs, without making any explicit reference to gender. For instance, the RTA between the European Union and Japan recognise the importance of promoting the development of international trade in a way that contributes to sustainable development, for the welfare of present and future generations, taking into consideration the 2030 Agenda for Sustainable Development, among others. More generally, an increasing number of RTAs include provisions referring to different international instruments related to sustainable development that reaffirm gender equality and women's participation, such as the Rio Declaration on Environment and Development.

Figure 14: Gender-related international agreements and instruments



Source: Author's calculations.

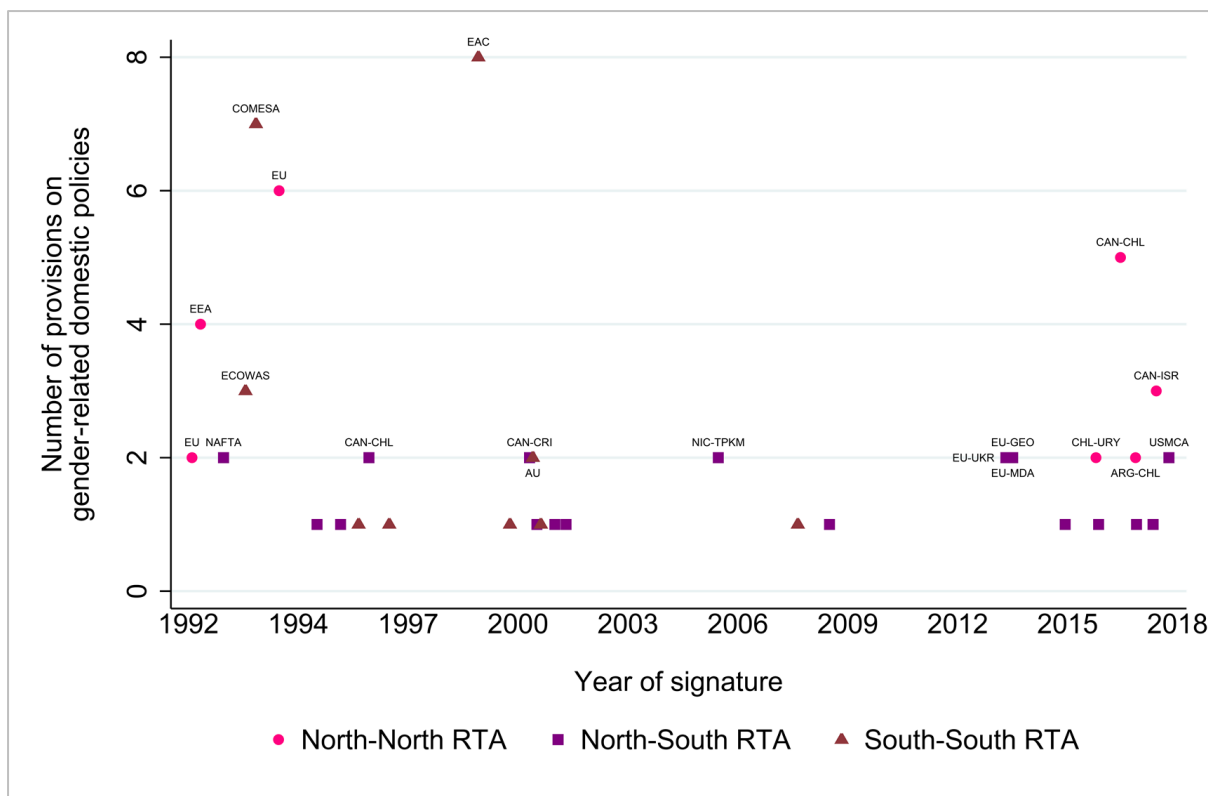
Note: Other human rights agreements and instruments include the European Convention on Human Rights and the UN Charter, among others. Sustainable development agreements and instruments include the Rio Declaration on Environment and Development and the 2030 Agenda for Sustainable Development, among others. ILO agreements and instruments include the ILO Convention No. 182 on the Worst Forms of Child Labour and the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up. See section 3.1 for the complete list.

In addition to the commitment to the UN 2030 Agenda for Sustainable Development, the RTA between Argentina and Chile confirms the parties' intention to continue their efforts to implement ILO Conventions No. 100 on Equal Remuneration, No. 111 on Discrimination (Employment and Occupation) and No. 156 on Workers with Family Responsibilities. The RTA between the European Union and Central America reaffirm also the parties' commitment to effectively implement in their laws and practice the ILO Conventions No. 100 and No. 111, among other ILO conventions. Relatively similar provisions are found in several other RTAs but do not make an explicit reference to gender. In fact, an increasing number of RTAs include provisions referring to international agreements and instruments referring to labour discrimination without specifically mentioning or focusing on gender.

5.4 Domestic gender-related policies

Gender mainstreaming, as defined by the Platform for Action adopted at the Fourth World Conference on Women, is often considered as a relevant strategy for promoting gender equality by ensuring that gender perspectives are reflected in all social, economic and political activities, including policy development and legislation. In that context, a limited but increasing number of RTAs have included provisions explicitly addressing domestic gender-related policies, as depicted in Figure 15. Like other types of gender-related provisions, the nature and scope of these provisions differ significantly across RTAs.

Figure 15: Evolution of RTAs with provisions on gender-related domestic policies



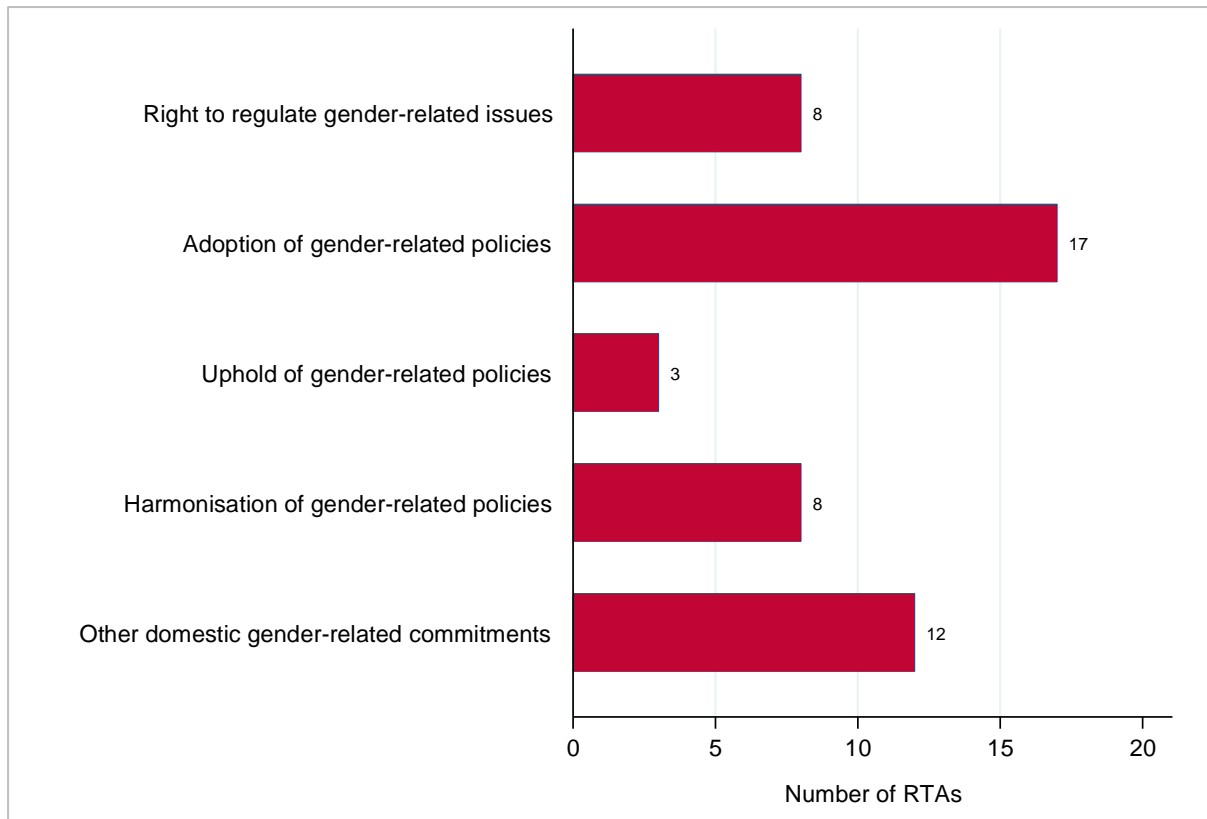
Source: Author's calculations.

While some provisions recognize the parties' right to address gender-related issues, other provisions call on or require the adoption and effective implementation of gender-related policies, as highlighted in Figure 16. A few other provisions also refer to the harmonization of gender-related policies. Some provisions cover gender-related provisions in general, while others specifically address gender-related labour, education or social policies.

The right to regulate gender-related issues is explicitly mentioned in a limited number of RTAs. The RTAs to which Chile is a party with Argentina and Uruguay stipulate that the parties reserve the right to establish, modify and supervise compliance with their respective gender policies in accordance with their priorities. Other provisions on the right to regulate refer exclusively to gender-related labour policies. For instance, the RTA between Chinese Taipei and Nicaragua recognizes the parties' right to establish their own domestic labour standards, and to adopt or modify accordingly their labour laws, including on the elimination of employment discrimination on sex grounds and equal pay for women and men. As discussed in section 3.1, this type of labour provisions without any explicit reference to gender is found in many other RTAs.

A limited but increasing number of RTAs include provisions calling the parties to adopt gender-related policies. The EAC treaty commits the parties to take measures to eliminate prejudices against women and promote the equality of the female gender with that of the male gender in every respect. The parties are further committed to abolish legislation and discourage customs that are discriminatory against women. Relatively similar commitments are found in the treaty of COMESA. Both COMESA and EAC treaties also commit the parties to initiate changes in educational and training strategies to enable women to improve their technical and industrial employment levels through the acquisition of transferable skills. Similarly, the treaty of ECOWAS requires the parties to take all measures necessary to provide a framework within which the constraints inhibiting women from maximizing their contribution to regional development efforts will be addressed and to incorporate women's concerns and needs into the normal operations of the society. More recently, the amended RTAs to which Canada is a party with Chile and Israel affirm the parties' commitment to adopt gender equality laws, regulations, policies and best practices.

Figure 16: Gender-related domestic policies



Source: Author's calculations.

Note: Total number of RTAs with at least one gender-related provision falling in the respective category.

Other provisions related to the adoption of gender-related policies concern labour policies. For instance, USMCA requires the implementation of policies protecting workers against employment discrimination on the basis of sex, including with regard to pregnancy, sexual harassment, sexual orientation, gender identity, and caregiving responsibilities. Worded differently, the labour cooperation agreement associated with the RTA between Canada and Costa Rica requires the parties to ensure their labour law and practices embody and provide protection for the elimination of discrimination in respect of employment and occupation, including equal pay for women and men. Similar provisions but without any explicit reference to gender are found in a larger number RTAs.

A more recent provision, found only in the RTAs to which Chile is a party with Argentina, Canada and Uruguay, refers to the uphold of gender-related provisions. In particular, the parties reaffirm their commitments to maintain and effectively implement their gender equality laws, regulations, policies and best practices. The RTAs negotiated by Chile with Argentina and Uruguay extends this commitment to gender equity regulations, policies and good practices. Relatively similar labour provisions but without any explicit reference to gender are also found in several RTAs.

Harmonization of gender-related policies is a type of gender-related provisions incorporated in a limited number of RTAs. The EAC treaty requires the parties to coordinate and harmonise their social policies relating to the promotion of equal opportunities and gender equality. Similarly, the African Economic Community treaty commits the parties to formulate, harmonize, coordinate and establish appropriate policies and mechanisms for the full development of the African woman through the improvement of her economic, social and cultural conditions. A couple of RTAs to which the European Union is a party, including with Georgia, Norway, the Republic of Moldova and Ukraine, include provisions committing the non-EU parties to gradually approximate their legislation regarding the equal treatment of men and women in employment and occupation and the equal treatment of men and women in access to and supply goods and services, among others.

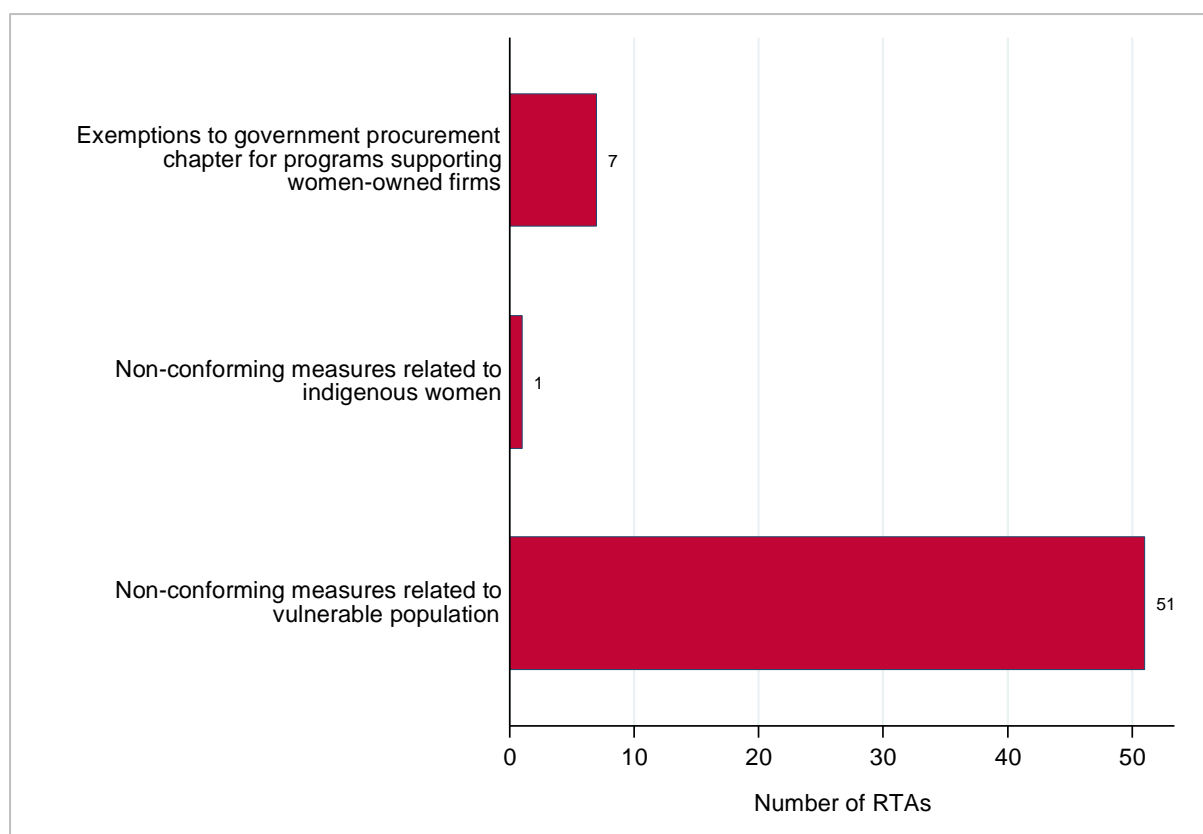
Other provisions, many of which specific to a single or couple of RTAs, refer to commitments broadly related to domestic gender-related policies. The RTAs to which the EU is a party with Canada, Mexico

and Viet Nam specify that a targeted discriminatory measure based on manifestly wrongful grounds, such as gender, breaches the obligation of fair and equitable treatment and full protection and security to the other party's investments and investors. Both COMESA and EAC treaties establish other commitments to enhance women's participation in the economy, including through special programmes for women in SMEs. Other commitments relate to gender-related labour and social policies. The RTAs negotiated by the European Union with Algeria, Morocco and Tunisia stipulate that non-EU workers and any members of their families living with them shall enjoy, in the field of social security, including maternity benefits, treatment free from any discrimination based on nationality relative to nationals of the parties in which they are employed. More generally, a couple of provisions found in relatively recent RTAs, reaffirms the parties' commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all, in particular women.

5.5 Exemptions and reservation measures

A limited number of RTAs include exemptions and reservation measures referring explicitly to gender, as highlighted in Figure 17. The RTAs to which the United States is a party with Chile, Colombia, Central America and the Dominican Republic, Morocco, Panama and Peru are the only agreements to explicitly specify in the annex to the government procurement chapter that the latter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas, or businesses owned by minorities, disabled veterans, or women.

Figure 17: Gender-related exemptions and reservation measures



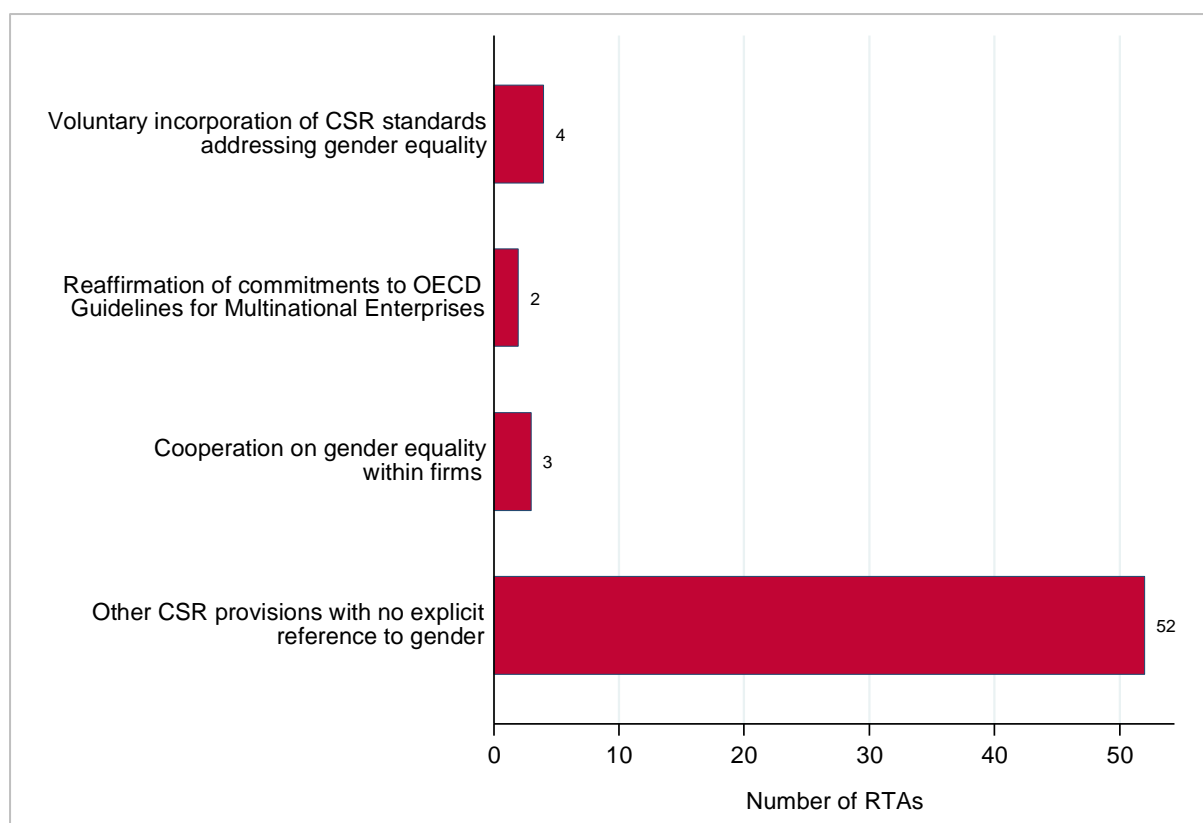
Source: Author's calculations.

As explained previously, many RTAs include in their annexes to the chapters on cross-border trade in services and investment reservations for non-conforming measures on socially or economically vulnerable, disadvantaged or minority groups. Although women have historically been part of marginalised and vulnerable groups, most of these reservation measures do not make an explicit reference to gender. The only exception is found in USMCA, in which Mexico's cultural exceptions stipulate that concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective of promoting, developing and preserving languages, culture, knowledge, traditions, identity and their internal rules that, under principles of gender equality, enable the integration of indigenous women in the accomplishment of the purposes for which the concession is granted.

5.6 Corporate social responsibility

Corporate social responsibility (CSR) is a management policy whereby firms integrate environmental and social dimensions in their business operations and interactions with their stakeholders. Although the inclusion of provisions promoting corporate social responsibility in RTAs is not a recent phenomenon, only four recent RTAs include a couple of provisions related to corporate social responsibility that make an explicit reference to gender equality, as highlighted in Figure 18. The language of these gender-related provisions, found in the chapters on investment, gender and other provisions, differ between RTAs.

Figure 18: Gender-related corporate social responsibility



Source: Author's calculations.

The RTA between Argentina and Chile and USMCA reaffirm the importance of encouraging enterprises operating within the parties' territory or subject to their jurisdiction to voluntarily incorporate into their internal policies internationally recognized standards, guidelines, and principles of corporate social responsibility, which address or may address areas such as gender equality. Worded differently, the RTAs to which Chile is a party with Argentina and Canada reaffirm the parties' commitment to internationally recognized standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by the parties, addressing issues such as gender equality. In addition, both RTAs stipulate that the parties should encourage enterprises operating within their territory or subject to their jurisdiction to voluntarily incorporate these standards, guidelines and principles into their business practices and internal policies.

The amended RTAs to which Canada is a party with Chile and Israel further reaffirm the parties' commitments to the OECD Guidelines for Multinational Enterprises, and the requirement under the OECD Guidelines to establish a National Contact Point. The OECD Guidelines provide multilaterally agreed non-binding principles and standards for responsible business conduct, including the principle of non-discrimination of workers on the basis of sex. These two agreements along with the RTA between Argentina and Chile also list developing better practices to promote gender equality within enterprises as a potential cooperation area.

5.7 Cooperation

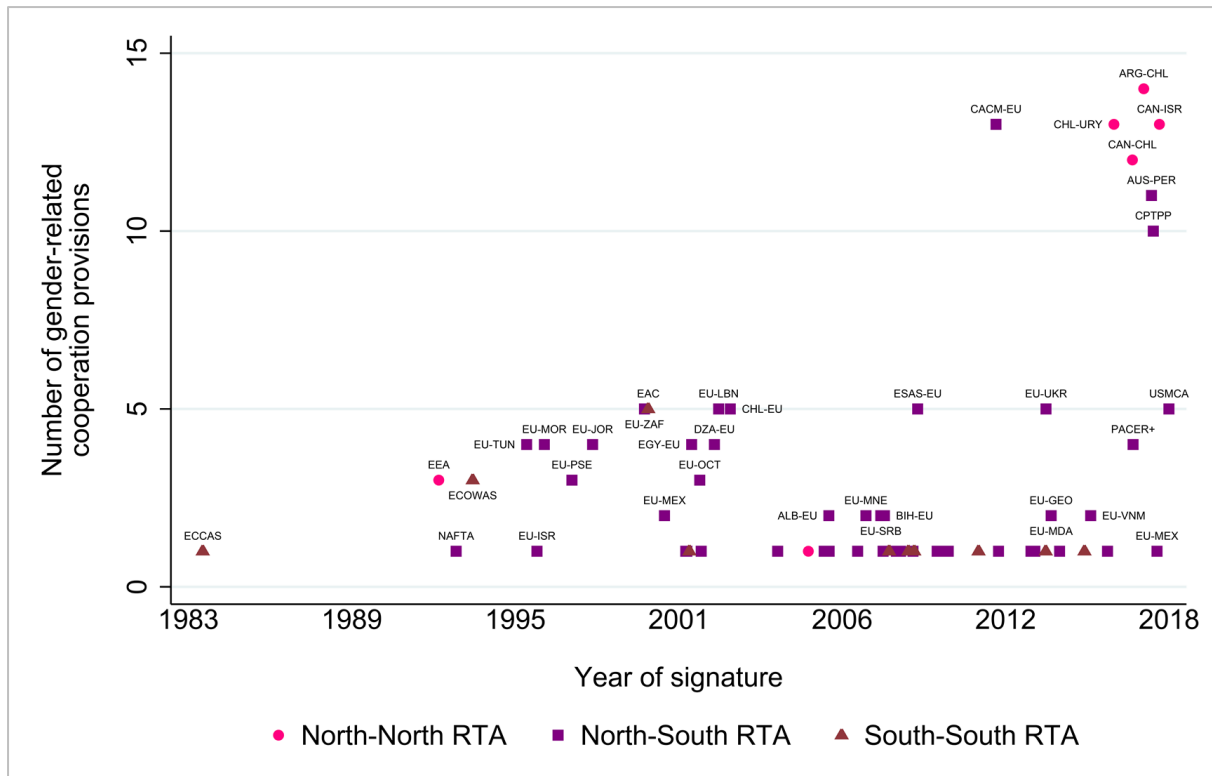
As shown by the network analysis in section 3.2, most RTAs with gender-related provisions share at least one main type of provisions with each other, which often consists in gender-related cooperation provisions. Indeed, cooperation provisions represent the most common gender-related provisions. 61 RTAs include at least one provision on cooperation referring to gender or gender-related issues.

Although the inclusion of gender-related cooperation provisions in RTAs is not a recent phenomenon, only relatively recent RTAs include comprehensive and detailed gender-related cooperation provisions, as highlighted in Figure 19. In particular, the most detailed gender-related cooperation provisions are found in agreements with an article or chapter on gender, such as the amended RTAs to which Canada is a party with Chile and Israel, CPTPP and the RTA between the European Union and Central America. In many of these agreements, the gender-related cooperation provisions are also included in other chapters. For instance, the RTA between Chile and Uruguay has established various cooperation provisions on gender in the chapters on gender, labour and cooperation. Other RTAs with several gender-related cooperation provisions include many agreements to which the European Union is party as well as USCMA and the Pacific Agreement on Closer Economic Relations Plus (PACER+).

Cooperation provisions are not only the most common type of gender-related provisions, but also the most heterogeneous type of gender-related provisions across agreements. Part of this high heterogeneity stems from the scope of these cooperation provisions, as highlighted in Figure 20. While some provisions establish cooperation principles, other provisions identify gender as a cooperation area or specify the different cooperation forms on gender. Overall, gender-related cooperation provisions tend to be worded in best-endeavour terms.

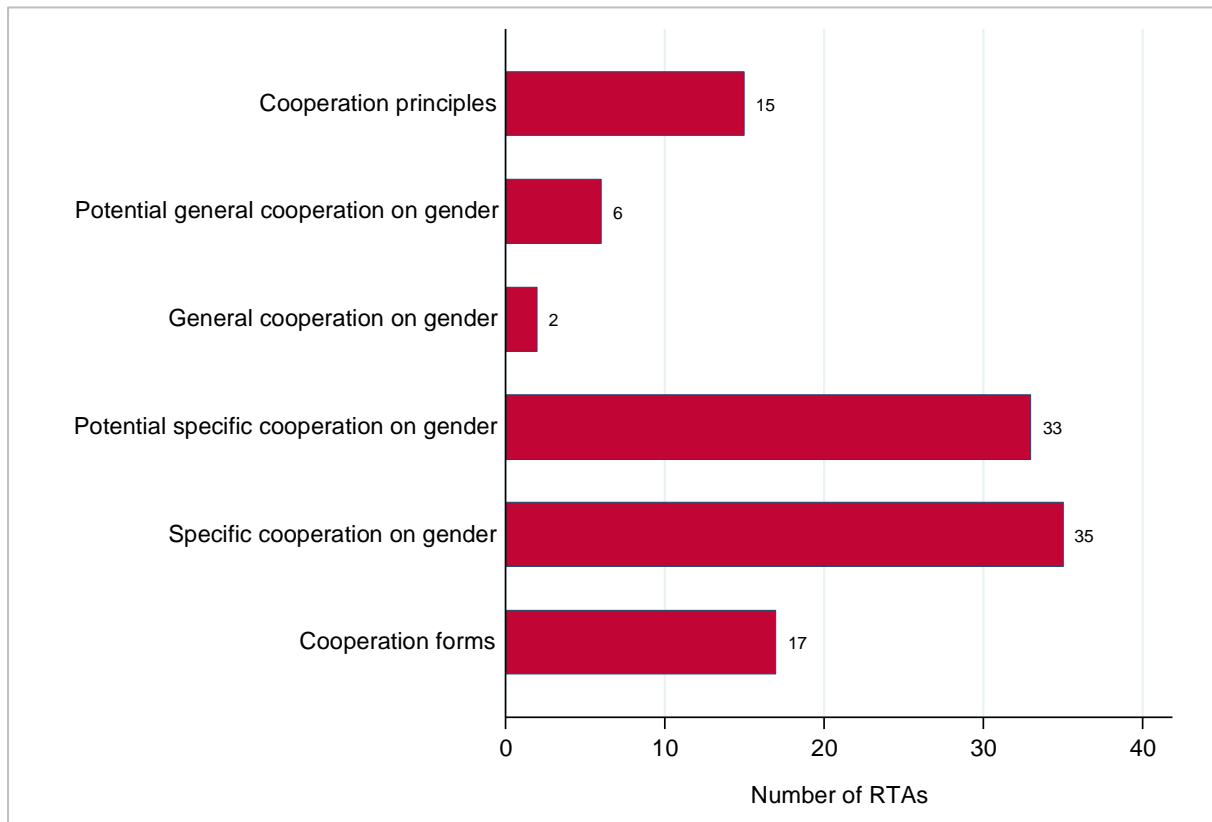
A limited number of RTAs include cooperation provisions establishing a number of principles related to gender, which tend to differ across agreements. One of the most common cooperation principles related to gender consists in integrating the gender perspective into all the relevant fields of cooperation. For instance, the RTA between the European Union and Central America requires cooperation between the parties to take into account cross-cutting issues such as gender. In some RTAs, such as EEA, the gender perspective refers specifically to gender equality. Worded differently, the RTA between the European Union and the Overseas Countries and Territories explicitly prohibits sex-based discrimination in the listed cooperation areas.

Figure 19: Evolution of RTAs with provisions on gender-related cooperation



Source: Author's calculations.

Figure 20: Types of gender-related cooperation



Source: Author's calculations.

Note: Total number of RTAs with at least one gender-related provision falling in the respective category.

Other principles related to cooperation on gender are found in a couple of RTAs. Some RTAs, such as CPTPP, acknowledge the benefit of sharing the parties' experiences in designing and implementing programs to encourage women's participation in national and international economies. More recently, some of the RTAs with a gender chapter points out that the establishment of priorities in cooperation activities is decided jointly by the parties based on their mutual interests and subject to available resources. Some of these RTAs further invite the parties to interact with their respective government institutions, businesses, labour unions, education organizations, and other non-governmental organizations to identify the topics of cooperation activities. More generally, some of these agreements and other RTAs requires the participation of relevant stakeholders, including women, in the implementation of cooperation activities on gender.

Some provisions identify gender as a general cooperation area, often as part of a non-exhaustive list of potential cooperation areas, without providing any additional details or defining any actions. For instance, the RTA to which Chile is a party with Thailand and Turkey list gender issues as a potential field of cooperation and capacity building. Similarly, the cooperation and capacity building activities undertaken under the RTA between Australia and Peru and CPTPP may include, but are not necessarily limited to, gender equality.

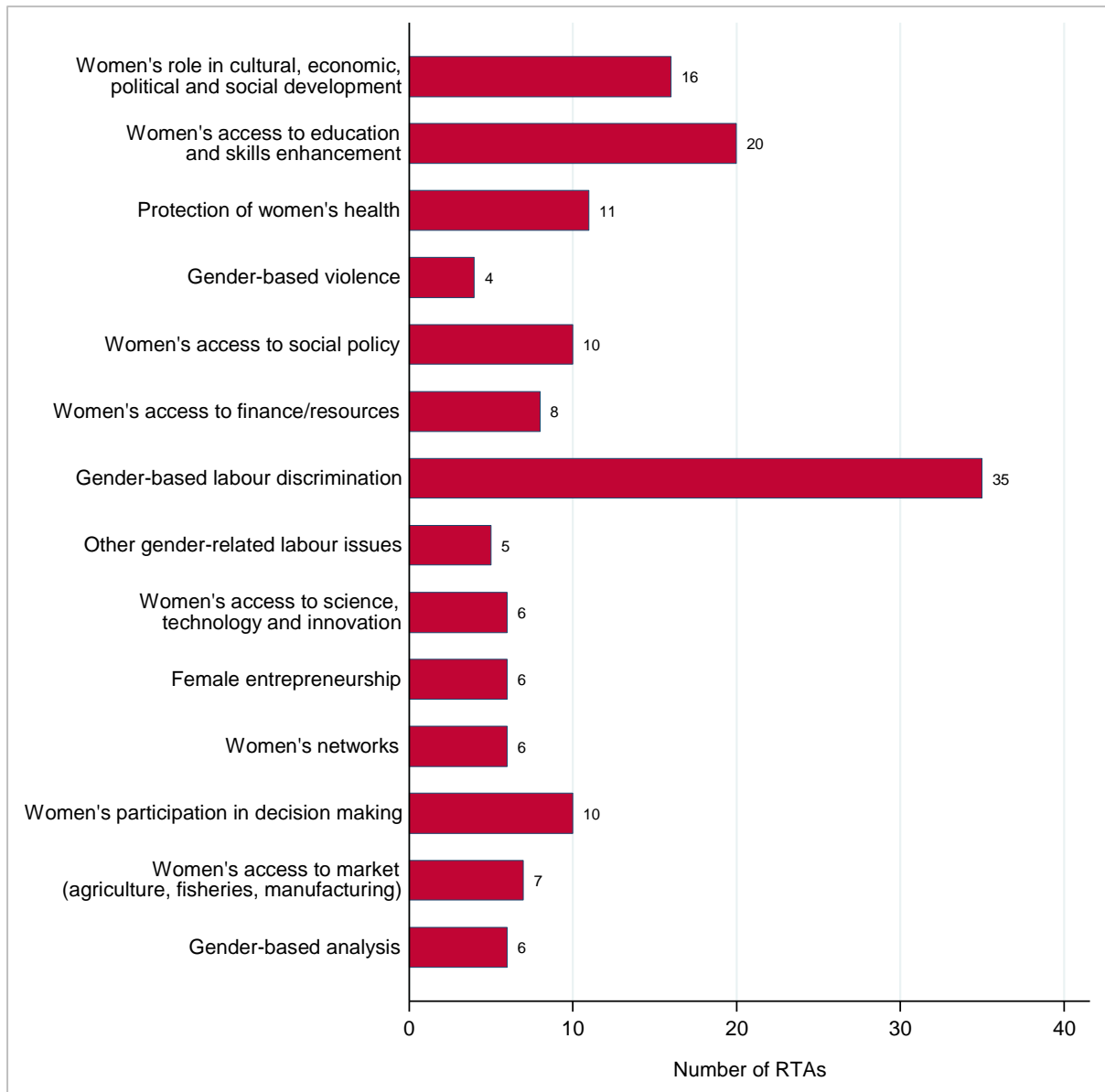
The remaining types of cooperation provisions are more specific and mentions explicitly the gender-related cooperation area. As shown in Figure 21, a broad range of issues, often interrelated, are explicitly addressed in an increasing number of gender-related provisions. Promoting the role of women in economic, political and social development is one of the most covered issues in gender-related cooperation provisions. Many other cooperation provisions complement this objective by promoting women's access to education, finance, social protection, care policies and programs, health services, family planning, and media. The protection of sexual and reproductive health and rights of women and the fight against gender-based violence are also the object of cooperation in some RTAs.

The most common gender-related cooperation area addressed in RTAs refers to employment issues, ranging from the elimination of employment and occupation discrimination, including through the adjustment of relevant legislation, to the promotion of gender equality. In that context, some provisions refer to cooperation in trade related aspects of the ILO Decent Work Agenda. Other covered gender-related labour issues include promoting women's participation in the labour market, health and safety work, and workplace flexibility.

Other issues, mostly addressed in recent RTAs, include promoting women's access to science, technology and innovation, female entrepreneurship, women's networks as well as women's equal participation in decision-making positions. While some cooperation provisions on improving women's access to market focus on women in general, others specifically refer to women operating in a specific sector, such as agriculture, fisheries or textiles, or in the context of SMEs. A few recent RTAs have also identified promoting gender-based analysis, including through sharing methods and procedures for the collection of sex-disaggregated data, as an important cooperation area.

While most gender-related cooperation provisions do not explicitly mention the associated cooperation forms, a few provisions do. These provisions list dialogue and sharing experiences and best practices as possible cooperation forms. Other relatively less common cooperation forms listed in RTAs include information exchange, knowledge exchange, training, internships, visits and professionals exchange, as well as organization of workshops and seminars.

Figure 21: Gender-related cooperation areas



Source: Author's calculations.

Note: Total number of RTAs with at least one gender-related provision falling in the respective category.

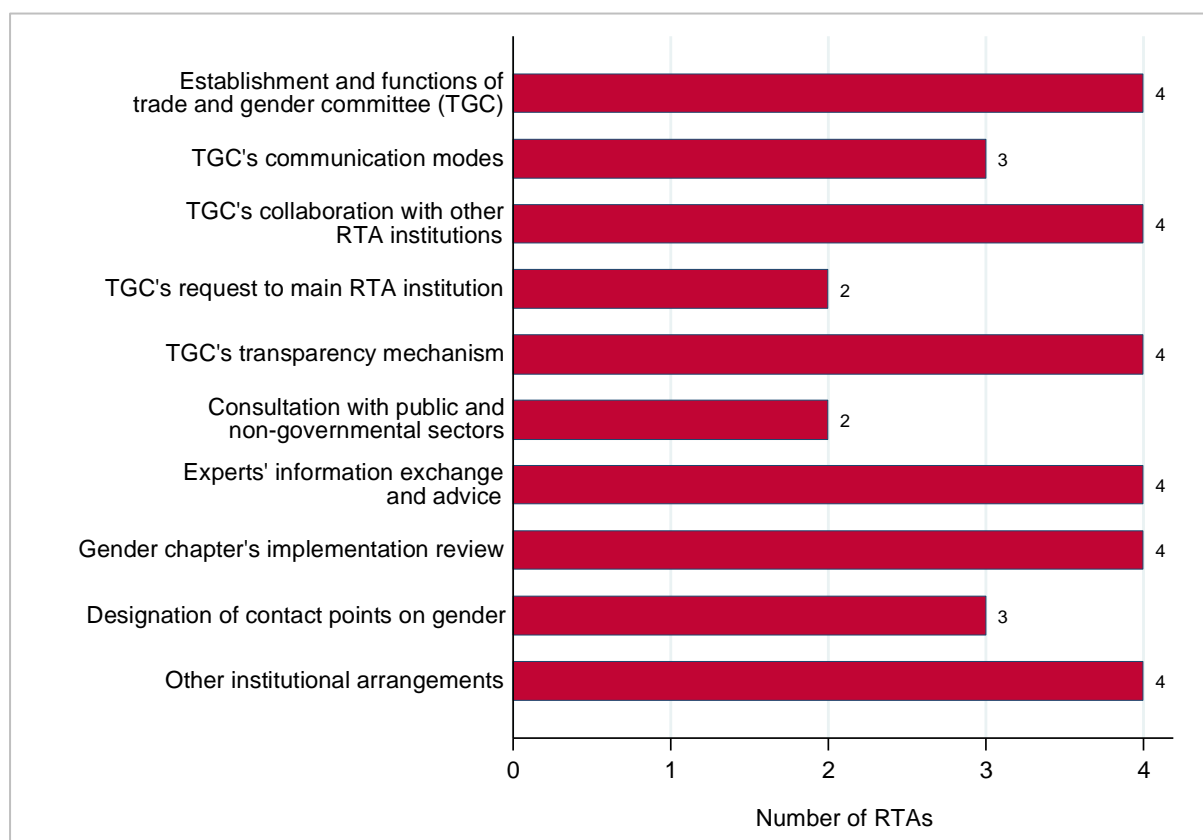
5.8 Transparency

Transparency is often viewed as one of the key principles defining sustainable development governance. Although the principle of transparency refers mainly to access to information, it is also sometimes linked to education and public awareness. Only the amended RTAs to which Canada is a party with Chile and Israel and the RTAs negotiated by Chile with Argentina and Uruguay include a provision committing the parties to domestically promote public knowledge of their respective gender equality laws, regulations, policies and practices. The RTA between Chile and Uruguay refer not only to gender equality but also gender equity regulations, policies and practices. Given its cross-cutting nature, transparency commitments are also found in the context of the institutional arrangements established under these four RTAs, as discussed below.

5.9 Institutional arrangements

Specific institutional arrangements related to gender have been established in a limited number of RTAs, namely eight agreements, as highlighted in Figure 22.¹⁶ The most detailed provisions on institutional arrangements are found in the most recent RTAs with a chapter on gender, namely the amended RTAs to which Canada is a party with Chile and Israel and the RTAs negotiated by Chile with Argentina and Uruguay.

Figure 22: Gender-related institutional arrangements



Source: Author's calculations.

Under their respective gender chapter, these four RTAs establish a trade and gender committee, or a gender committee in the case of the RTA between Chile and Uruguay, composed of representatives of the parties' government institutions responsible for relevant gender and trade matters. One important function of the four trade and gender committees is to review, within two, three or five years of the first committee meeting, the implementation of their respective gender chapter and report to the RTA's main institutional body. While some other functions, such as exchanging information on cooperation activities, discussing any matter of common interest and considering matters related to the gender chapter's implementation, are foreseen in the four RTAs, others are specific to a single or couple of RTAs. Some of these less common functions include determining and organising cooperation activities; inviting international donor institutions, private sector entities and non-governmental organizations to assist with the development and implementation of cooperation activities; exchanging information and experience on integrating the gender perspective in national policies and on implementing gender equality policies; and discussing matters related to the gender chapter's interpretation.

¹⁶ Some RTAs have established a specific body under the chapter on labour, sustainable development or cooperation chapter, which include in some cases gender-related provisions. These institutional bodies are, however, not specific to gender-related provisions and therefore outside the scope of this paper.

Most of these trade and gender committees are expected to normally meet once a year or as decided by the parties, in person or by any other technological means available, to consider any matter arising under the gender chapter. The only exception is the gender committee established under the RTA between Chile and Uruguay, which is scheduled to meet within one year following the RTA's entry into force and whenever deemed necessary afterwards upon request by one of the parties.

Complementary provisions further specify that the trade and gender committees and their respective parties may exchange information and coordinate activities by email, videoconference or other means of communication. Similarly, the trade and gender committees may work with and encourage other institutional bodies established under their respective RTAs (and side labour cooperation agreements in some cases) to integrate gender-related commitments, considerations and activities into their work. In that context, some of the trade and gender committees have the possibility to request that the main RTA's institutional body refer relevant work to any other institutional bodies established under their respective RTAs.

Some of the trade and gender committees foresee the possibility for each party to consult, through any means deemed adequate, with representatives of its public, private non-governmental sectors on matters related with the gender chapter's implementation. More generally, the meeting procedures of the four trade and gender committees provide the parties with the possibility to invite experts or relevant organizations to the committee meetings to provide information or advice. The parties are also required or invited to report publicly on the activities developed under the gender chapter. Similarly, the parties are required to designate a national contact point or coordinator to facilitate communication between the parties regarding the implementation of the gender chapter.

Other gender-related institutional arrangements are found in a couple of RTAs. For instance, the EAC treaty requires taking into account gender balance in the appointment of staff and composition of the EAC's organs and institutions. Similarly, the COMESA treaty requires the Federation of National Associations of Women in Business to be represented at the consultative committee and be represented at technical committee meetings. More recently, one of the functions of the North American Competitiveness Committee established under USMCA includes providing advice and recommendations aimed at enhancing the participation of SMEs, and enterprises owned by under-represented groups including women.

5.10 Relation of gender chapter with other chapters and side agreements

Only three RTAs with a gender chapter, namely the amended RTAs to which Canada is a party with Chile and Israel and the RTA between Argentina and Chile include a provision referring to other chapters in their respective agreements. In particular, both amended RTAs negotiated by Canada with Chile and Israel stipulates that in the event of any inconsistency between the trade and gender chapter and, respectively, the side labour cooperation agreement or labour chapter, the side labour cooperation agreement or labour chapter shall prevail to the extent of the inconsistency. The RTA between Argentina and Chile also clarifies that the trade and gender chapter shall not be used to impose obligations or commitments with respect to other RTA's chapters

5.11 Consultations

A key feature of many RTAs is the possibility to hold consultations among parties when their views on the agreement's interpretation, implementation and enforcement (by the other party) differ. Depending on their location in the agreement, some gender-related provisions are covered by specific consultation procedures. For instance, some gender-related provisions found in some chapters on labour or sustainable development are covered by the specific consultations procedures established under these chapters. Similarly, the most recent RTAs with a gender chapter, namely the amended RTAs to which Canada is a party with Chile and Israel and the RTAs negotiated by Chile with Argentina and Uruguay stipulate that the parties shall make all possible efforts, through dialogue, consultations and cooperation, to resolve any matter that may arise relating to their respective gender chapter.

5.12 Dispute settlement

While consultations procedures are essential to resolve amicably any dispute that might arise between parties, RTAs often provide for dispute settlement procedures to allow the parties to the agreement to detect, prove and retaliate against violations of the terms of the agreement in a specified framework. Overall, the nature, scope and extent to which gender-related provisions are covered by the RTA's dispute settlement procedures hinge on two main elements: the relevant type of gender-related provisions and their location in the RTA.

Depending on their location, some gender-related provisions can be covered by the same dispute settlement procedures as any other commercial disputes or by dispute settlement procedures established under a specific chapter, such as the chapter on labour or sustainable development. Similarly, gender-related provisions found in side labour cooperation agreements can, depending on the agreement, be covered by specific dispute resolution procedures. Importantly, the dispute settlement procedures may differ between RTAs. Some dispute settlement procedures explicitly rule out the suspension of trade concessions in case of non-compliance. As discussed previously, most gender-related provisions are found in chapters on cooperation, which are often explicitly excluded from the RTA's dispute settlement procedures.

The coverage of the gender chapter under the RTA's dispute settlement procedures differ also across agreements. In the case of the gender chapter found in the RTAs negotiated by Chile with Canada, Argentina and Uruguay, none of the parties shall avail itself of the dispute resolution mechanism provided for in their respective RTAs with respect to any matter arising under the gender chapter. Conversely, the amended RTA between Canada and Israel stipulates that if the parties cannot resolve the matter arising under the gender chapter through dialogue, consultations and cooperation, they may consent to submit the matter to dispute settlement in accordance with the dispute settlement chapter.¹⁷

6 CONCLUSION

Over the years, RTAs have often been dubbed as laboratories in which some countries establish new types of provisions in order to address recent trade-related issues and challenges. Provisions mentioning explicitly gender have been incorporated into an increasing number of RTAs. As of 2018, 74 RTAs, of which 60 are notified and in force, have established at least one gender-related provision. The number of detailed gender-related provisions included in a given RTA has also tended to increase in the last three years. The most detailed gender-related provisions are found in a chapter dedicated to trade and gender. However, none of the RTAs with the most comprehensive gender-related provisions are yet in force.

Most gender-related provisions do not follow a specific and unique template, even in most RTAs negotiated by the same country, suggesting that the views on the decision to incorporate gender-related provisions in RTAs and the approach to adopt remain divided among countries. As a result, gender-related provisions are very heterogeneous in terms of structure, location, language and scope. Cooperation provisions on gender are the most common type of gender-related provisions. The remaining types of gender-related provisions, found in a relatively limited number of RTAs, cover various issues ranging from gender-related principles and international agreements to domestic policies, corporate social responsibility, transparency, and institutional arrangements

¹⁷ The dispute settlement chapter of the amended RTA between Canada and Israel further stipulates that except for matters arising under (...) the trade and gender chapter (...), and as otherwise provided in the agreement, the provisions of the dispute settlement chapter apply with respect to the settlement of disputes between the parties regarding the interpretation or application of this Agreement or wherever a party considers that: (a) a measure of the other party is inconsistent with one of its obligations under the agreement; (b) the other party has otherwise failed to carry out one of its obligations under the agreement; or (c) there is nullification or impairment.

Overall, gender-related provisions in RTAs are set in a dynamic context and are likely to keep evolving with new and more comprehensive types of provisions. Several countries, including the European Union, New Zealand and the Pacific Alliance, are currently negotiating the possibility to include a trade and gender chapter in their RTAs, suggesting that the number of RTAs with a chapter dedicated to gender could increase. If the new types of gender-related provisions currently being proposed by the European Union in the context of the modernization of the RTA with Chile¹⁸, are any indications, the language and structure of gender-related provisions in RTAs are also likely to keep evolving and become more comprehensive and specific.

¹⁸ The draft provisions of the chapter on trade and gender equality includes the commitment not to encourage trade or investment by weakening or reducing the protection granted to equality of opportunities for women and men, under their respective laws. Other new types of provisions include specific procedures for establishing a panel of experts in case consultations fail to achieve satisfactory results (see <http://trade.ec.europa.eu/doclib/html/156962.htm>).

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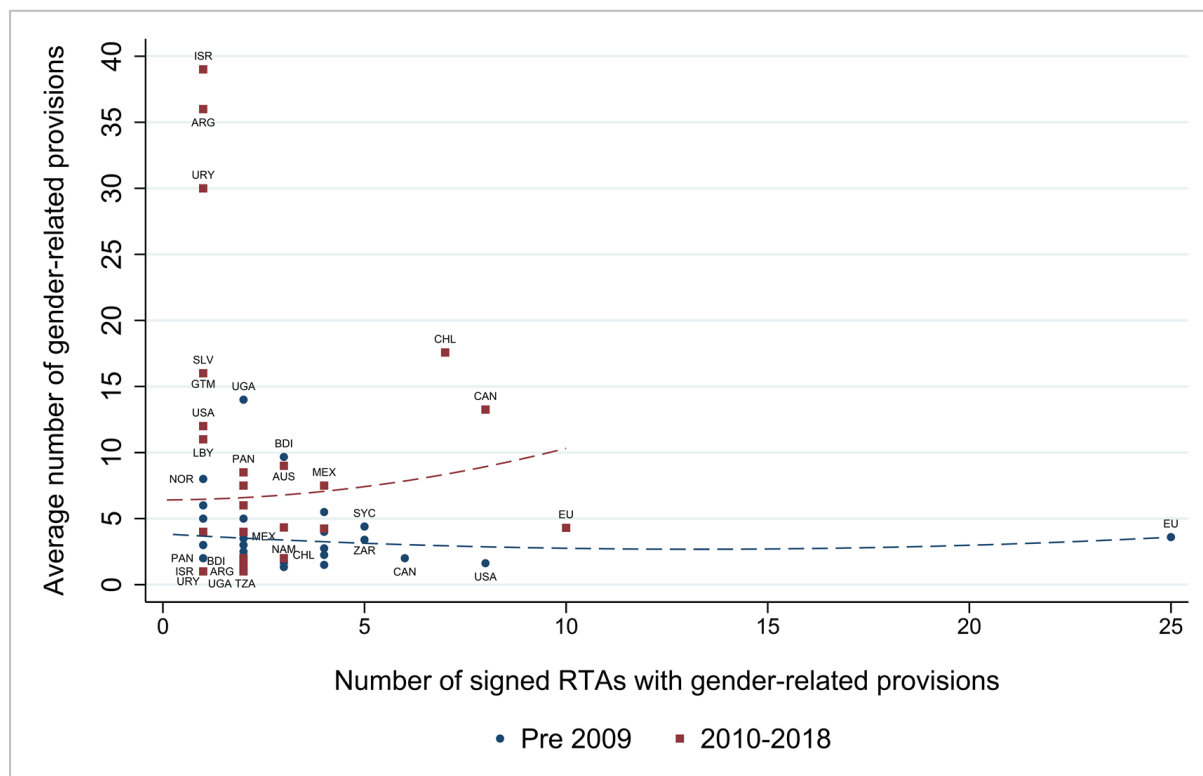
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ANNEXES

Annex 1: List of covered non-notified RTAs

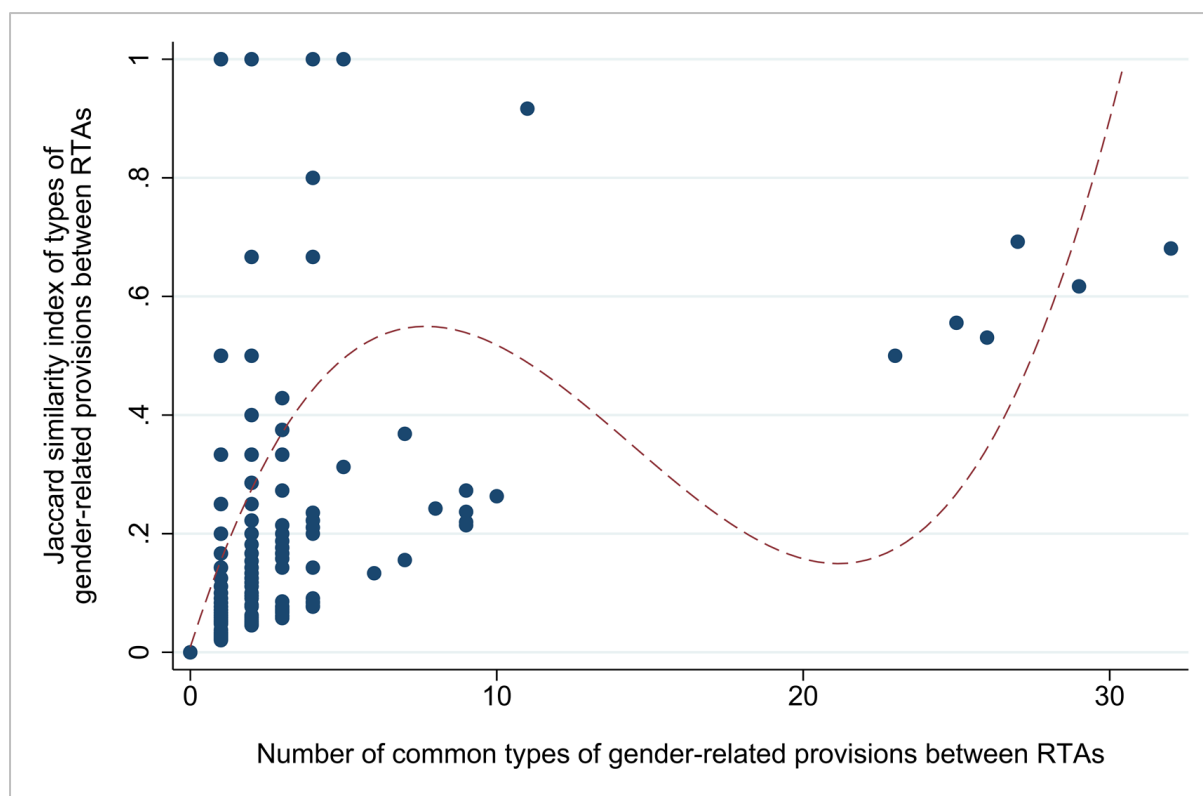
Argentina - Chile	EU - East African Community (EAC)
Argentina - Mexico	EU - Japan
Argentina - Paraguay	EU - Singapore
Argentina - Uruguay Auto	EU - Viet Nam
ASEAN - Hong Kong	EU - West Africa
ASEAN Services	Guatemala - Peru
Australia - Peru	Guatemala - Venezuela
Botswana - Zimbabwe	Honduras - Venezuela
Brazil - Guyana	Hong Kong - Georgia
Brazil - Uruguay	Korea, Republic of - Central America
Brazil -Suriname	Malawi - Botswana
CARICOM - Colombia	MERCOSUR - Bolivia
CARICOM - Costa Rica	MERCOSUR - Colombia
CARICOM - Dominican Republic	MERCOSUR - Israel
Chile - Argentina	MERCOSUR - Peru
Chile - Bolivia	Mexico - Bolivia
Chile - Cuba	Mexico - Brazil
Chile - Ecuador	Mexico - Paraguay
Chile - Uruguay	Nicaragua - Venezuela
Chile - Venezuela	Pacific Agreement on Closer Economic Relations
China - Chinese Taipei	Plus (PACER+)
Colombia - Israel	Pakistan - Iran
Colombia - Panama	Panama - Cuba
Colombia - Venezuela	Panama - Trinidad and Tobago
Comprehensive and Progressive Agreement of	Peru - Brazil
Trans-Pacific Partnership (CPTPP)	Peru - Venezuela
Economic Community of Central African States	Singapore - Sri Lanka
Ecuador - Guatemala	Tunisia - Morocco
EFTA - Ecuador	United States - Mexico - Canada
EFTA - GCC	Venezuela - Costa Rica

Annex 2: Dynamic relationship between the number of RTAs and average number of gender-related provisions



Source: Author's calculations.

Annex 3: Evolution of similarity index of types of gender-related provisions



Source: Authors' calculations.

Note: The closer the Jaccard index is to one (zero), the more (less) both RTAs include the same type(s) of gender-related provisions.

Annex 4: Evolution of gender-related terminology in RTAs



Source: Authors' calculations.