

## **Gender and Regionalisation in North America: From NAFTA to USMCA and Beyond?<sup>1</sup>**

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The terrain of regional integration in North America has proved to be tough ground for promoting progressive policy agendas, including feminist objectives. The shape of the North American Free Trade Agreement (NAFTA), the first regional agreement in a wave of “new regionalism(s)” that was launched in the late 1980s, was dominated by the ascendancy of neoliberal philosophy, the interests of large multinational corporations, and the aspirations of the regional hegemon, the United States, which was determined to use this agreement to promote its own political and economic objectives regionally and globally. Debates over NAFTA also sparked the emergence of a powerful “anti-globalization” movement that brought together diverse social actors that contested various aspects of the agreement, including trade unions, environmental movements, anti-poverty activists, farmers, faith-based NGOs, and women’s organizations, in an unprecedented trilateral coalition (see Foster in Smith). Some of the most trenchant critiques of globalization and regionalization have come from feminist activists and scholars who have argued that the liberalization of trade, investment and production relations has had a disproportionate impact on women, particularly racialized women. These critiques emerged during the debate on NAFTA, when cross-border alliances among feminist organizations were forged between Canadian, US and Mexican women. Unlike the criticisms coming from the environmental and labour movements, however, which resulted in the addition of the two side accords, feminist concerns were not addressed in the final NAFTA agreement (apart from limited language around gender discrimination in the workplace in the labour side accord).

The US-Mexico-Canada Agreement (USMCA)<sup>2</sup>, which entered into force in 2019, was a victory of sorts for the politics of “business as usual” in the context of the wildly unpredictable, toxic and misogynist Trump administration, which had threatened to tear up the preceding North American Free Trade Agreement (NAFTA). To some, USMCA, represented merely NAFTA 2.0, with minor changes in such areas as rules of origin, and “modernization” of some elements that drew upon more recent negotiations in the context of the Trans Pacific Partnership, which all three NAFTA members had been part of until

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<sup>2</sup> Also known officially in Canada as CUSMA (Canada-United States-Mexico Agreement) and in Mexico as T-MEC (Tratado México-Estados Unidos-Canadá).

Trump's decision to withdraw. However I argue here that there were substantial revisions of the NAFTA agreement that merit close examination, particularly in the labour chapter.

In response to widespread critiques of globalization and domestic inequalities, the Canadian government of Justin Trudeau committed itself to a feminist foreign policy and "progressive trade agenda" (now known as "inclusive approach to international trade") which contained a commitment to address the gender inequities of trade agreements. The influential trade minister during the USMCA negotiations, Chrystia Freeland, promised to include gender and Indigenous chapters in a renegotiated NAFTA. These demands were dropped, however during the process of negotiating the USMCA. Nevertheless, the first complaint brought forward under the new labour chapter in March 2021 relates to the rights of Mexican migrant women workers in the United States. This event seems surprising since the labour chapter was pushed by unions and U.S. Democratic party officials as a way of countering exploitation of Mexican workers and the consequent movement of jobs from the U.S. and Canada to Mexico. The potential of the labour chapter for addressing the exploitation of either women or migrants had received little public attention up to this point.

In the light of these events, this paper examines debates about the gendered impacts of regionalization and trade agreements, in the specific context of North America. I present an overview of the evolution of discussion of gender in the politics of trade negotiations and implementation in the North American context, from NAFTA to USMCA. I draw both upon theories of regionalization and feminist theories of gender and trade to help explain both regressive and potentially progressive potential of trade agreements. In the first section of the paper, I review literature on theories of regionalism, and point at the gender blind nature of much of this debate. I then discuss recent literature on trade and gender that, I believe, can help point the way toward more inclusive regional agreements. The next section discusses debates around gender and trade that accompanied the NAFTA agreement, and the failure of that agreement to address gender inequities in the region. In the third section I discuss the gender debates that occurred in the USMCA negotiations, as well as the prospects for the labour chapter to address some of these concerns

### **Of Gender-Blindness, Regional Integration and Trade<sup>3</sup>**

There is a substantial literature on regionalism and regionalization that is largely derived from the European context. Over the years, however, new approaches have emerged that

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<sup>3</sup> Part of this section is taken from Laura Macdonald, "I was all set to terminate": New Regionalism theory, the Trump Presidency and North American Integration," in Eric Herschberg and Tom Long, eds., *North America: Stagnation, Decline or Renewal*, under review.

respond to the impact of more recent regional blocs that have arisen in the non-European setting. Theoretical approaches to regional integration differ over the nature of regionalism and regionalization, the origins of these phenomena, the causal dynamics that drive regional integration or de-integration, and the economic, social, political, and cultural impacts of regionalization. Little of this discussion has addressed the gendered dimensions of regionalization, however, although there have been some case studies of how gender plays out in different settings.

For reasons of space, I will not go into great depth on the historical theoretical debates on regionalism, but will provide a brief summary, and then indicate how these theories might be reconsidered and adapted to incorporate gender considerations. I will then discuss the feminist theories on gender and trade in order to give a sense of the relevant debates that have emerged, and how feminist theorists have pushed for new approaches to trade policy.

The most dominant approach to understanding regionalism for many years was the neo-functional approach, associated with Ernst Haas. Influenced by the European context, Haas defined political regional integration as “...the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new center, whose institutions possess or demand jurisdiction over pre-existing national states. The end result is a new political community, superimposed over the pre-existing ones” (1958: 16, cited in Dosenrode, 2015: 3). Neo-functionalists thus focused on the importance of supranational institutions as the *sine qua non* of integration processes, and argued that elite actors, including interest groups, functionaries, parties and international organizations engaged in bargaining processes to advance the general welfare and the provision of public goods through engineering policy “spillover” and brokering further levels of supranational cooperation to address common problems. This process becomes self-reinforcing and automatic through the operations of various feedback mechanisms, including “spillover,” in which actors recognize the need for supranational institutions and rules to be extended in response to the unintended consequences of earlier forms of cooperation (Hooghe and Marks, 2019: 1114-1115)

Another influential theoretical approach to understanding regional integration is liberal intergovernmentalism, first developed by Andrew Moravcsik (1993). This approach differs from neo-functionalism in focusing more on the role of nation-states and interstate negotiation. Moravcsik argued that it is states that make the decision to move toward or away from higher levels of regional integration as a result of a rational cost-benefit analysis. This analysis is, however, informed by domestic political processes in which different societal groups (mostly firms) compete for influence, form national and transnational coalitions, and promote new policy interests in line with those interests and coalitions.

Whatever their differences, these early approaches both came out of the context of European regional politics, they agreed on the importance of developing shared supranational political institutions as the defining feature of regionalism, and also agreed on liberal assumptions related to the rationality of states and other actors. They were also both

completely gender blind, ignoring the way in which changing forms of political authority and economic governance might be shaped by, and affect, gender relations, whether it be in a positive or negative direction. These approaches ignore the private realm of the household, the unequal division of care labour and informal forms of power relations that may shape economic and political outcomes. In recent years, the EU has attempted to “mainstream” gender in some of its policy areas, yet Elaine Weiner and Heather MacRae note that effort often resembles the labour of Sisyphus, as in several policy areas, “gender mainstreaming makes no progress; gender mainstreaming rolls back out of policy, or alternatively, never rolls in at all” (Weiner and MacRae, 2014, 2-3).<sup>4</sup>

Over time, especially after a wave of new regional agreements emerged in other parts of the world, new forms of thinking about regionalization developed that were less Eurocentric and better responded to these new regional agreements, many of which were dominated by neoliberal approaches absent at the dawn of the European integration project (not that the EU has not been influenced in recent years by neoliberalism). In contrast to the positivist and rationalist approach adopted by scholars of the “old regionalism,” Björn Hettne, one of the founders of this approach, insists, for example, that regions are socially constructed and politically contested (2005:544). Authors associated with this school adopt a broader understanding of the phenomenon, distinguishing between “regionalism,” which refers to formal policies and institutions, and “regionalization,” which can include a broad array of actors and transnational phenomena (Söderbaum, 2009: 479).

In this approach, then, institutions may form a part of regionalism, but they are not synonymous with it, and regionalism is embedded in broader political, economic, cultural and other processes of regionalization which shape it. Civil society may, moreover, play equally important roles as states in these processes, often through adopting contentious politics rather than the insider and elite-driven politics envisioned by mainstream regionalism theory.

In contrast with the European experience of regionalization which was motivated largely by the imperative to achieve peace through prosaic forms of cooperation, and which incorporated various forms of market protection, in the earliest years the new regions like North America were dominated by neoliberal objectives, and the main actors were often multinational corporations, not states. Trade agreements are therefore the centerpiece of these agreements, and the importance of supranational institutions is often downplayed, as in the NAFTA. Despite the lack of ambition related to institution-construction, these neoliberalized regions had profound implications for states, markets, and civil society (Marchand, Bøås and Shaw 1999: 902). Analysts associated with this “new regionalism(s) approach” identified the importance of the relationship between the region and

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<sup>4</sup> Gender mainstreaming was adopted as a strategy for promoting global gender equality as part of the 1995 Beijing Platform for Action. True (2003: 369) defines mainstreaming as “efforts to scrutinize and reinvent processes of policy formulation and implementation across all issue areas and at all levels from a gender-differentiated perspective, to address and rectify persistent and emerging disparities between men and women”.

globalization, while earlier European approaches focused more on endogenous factors in region-construction.

In many ways, the new regionalism approach appears more appropriate for integration of gender analysis, given its emphasis non-parsimonious, interdisciplinary and multi-causal mode of analysis, the importance of civil society, the complexity and social construction of regions, its rejection of Eurocentric assumptions, and its recognition of the impact of neoliberalism and the ways in which regions may reinforce forms of exclusion and inequality. Nevertheless, the literature that follows this approach is also largely gender-blind and while gender may be mentioned in lists of factors involved in the new regionalism, gender relations are rarely the focus of analysis.<sup>5</sup> One early notable exception was an article by Marianne Marchand (1994:65) which asked about the implications of regionalism for women already living on the margins of the global political economy (specifically for women working in Mexico's *maquiladoras*), and about the implications of regionalism for feminist theorizing on development. She criticizes the masculinist assumptions embedded in discussions of regionalism, whether from a neoliberal or a critical Marxist perspective, and calls for a feminist rethinking of regionalism based on a gender and development (GAD) approach:

This regrounding of regionalism would allow us to remove its specific masculinist traits of economism, dichotomised hierarchies, and concentration *cum* homogenisation. Instead we could start to think of regionalism as a truly relational concept which emphasises horizontal (empathetic) cooperation" in a wide variety of areas. Such interpretation would create the necessary discursive and political space in which to avoid new regionalism becoming a mechanism which reinforces patriarchy. Possibly, it could entail a cobweb-model of regionalism/integration which emphasises cooperation in multiple areas, heterogeneity, respect for difference and a more inclusionary approach (Marchand 1994: 74).

A 2006 book, *Women, Democracy, and Globalization in North America; a Comparative Study*, adopted a comparative political economy approach to studying feminist struggles in the three countries of North America. As the introduction of that book states, a comparative analysis of the effects of economic liberalization on women in Canada, the United States and Mexico, helps us understand how globalization shapes democratic practices in diverse political settings. The book reveals the uneven impacts of neoliberal policies across and within nations, and the substantive gaps that persist between feminist ideals and the current social, political and economic practices in the region. Icaza (2012) examined the practices of Mexican women's citizenship struggles in the context of North American integration, and argued their strategies and practices contributed to "an open-ended questioning of regions and regionalism, exposing those entities as cultural and imperial constructs that produce and reproduce particular ways of understanding the world, and in which certain experiences

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<sup>5</sup> See, for example, one of the authoritative compilations of new regionalism theory, Shaw, Grant and Cornelissen (2011), in which gender does not appear in the index or as a major topic in any of the articles in the collection (including my own on North America).

are actively produced as irrelevant by the International Political Economy and International Relations academic communities” (2012: 309). Critical comparative and international political economy and decolonial feminist perspectives thus open up space for consideration of gender considerations. As Jill Steans (1999:114) maintains, feminist critiques of existing global political economy (GPE) scholarship draw attention to the public-private divisions that are rendered invisible in dominant approaches to GPE. Drawing on Youngs, she argues that these feminist critiques thus make visible the “deep social relations of power” that shape political and economic outcomes.

Despite these important exceptions, the ways in which feminist analysis might contribute to the understanding of broader phenomena of regionalization have received scant attention in the academic literature. I argue here that integrating some of the insights from the expanding literature on trade and gender can provide an important contribution to opening up this discussion on gender and regionalism, particularly in the North American context where a trade agreement has played such a central role in the (re)construction of the region. Contributions to theorizing on gender and trade help illuminate those deep social relations of power that underlie the process of regionalization.

The North American region emerged at a moment when conservative and neoliberal governments were in place in all three countries of the region. The Canada-United States Free Trade Agreement (CUSFTA) had entered into force in 1989, and Mexico asked the U.S. to sign a similar bilateral deal, but ultimately a trilateral agreement emerged. The agreement was dominated by neoliberal and neoclassical economic assumptions, but also incorporated the commercial interests of the strongest party in the agreement, the United States. The mainstream economic and trade policy analysis on which the agreement is based implicitly assumes that trade is gender neutral and that therefore no policies that explicitly address gender discrimination are required within the field of trade policy.<sup>6</sup> In contrast with the CUSFTA, however, the NAFTA did include side agreements on labour and environment, but because these were not incorporated into the main text of the agreement, they did not have enforcement mechanisms.

The implications of the NAFTA were most profound for Mexico’s political economy, since Canada and the United States had already entered into a similar agreement a few years earlier. Neoclassical economic studies imply that trade liberalization in developing countries should be particularly beneficial to women, since they are more likely to be located in unskilled jobs than men. According to the neoclassical argument, trade liberalization will place pressures on industries and firms that discriminate against women workers, thus increasing their costs that women will benefit from trade liberalization since it will place pressure on firms to abandon prejudices against women which maintain wages artificially

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<sup>6</sup> In an interview with Özlem Altan-Olcay, a senior official in an intergovernmental organization who had been an activist involved in raising issues on gender and trade recounted an incident that occurred when she was invited as part of a group of feminist NGOs to meet with WTO officials over a decade ago: “We had a little briefing paper that we presented. They listened; they were very polite, and then they said, ‘We think you should be talking to the World Bank...because trade is neutral. Trade is technical,’” (Altan-Olcay, 2020: 1279).

high (see Elson, Grown, and Çagatay 2007, 35-38). The logical implication is that there is no need to incorporate specific measures to address the impact on women or other marginalized groups, since the rising tide raises all boats.

Substantial evidence from feminist and heterodox economists challenges this type of assumption. For example, numerous studies have shown the persistence of gender gaps in wages in manufacturing sectors in semi-industrialized countries that have increasingly been integrated into world markets (Seguino 2000; Osterreich 2007). A United Nations Conference on Trade and Development (UNCTAD) report (2017, xi) notes that increasing women's labour force participation without demand-side policies and structures to absorb the new labour force participants "worsens gender segregation in labour markets and encourages the crowding of women into low-value-added, informal service sector activities". For example, Lilia Domínguez-Villalobos and Flor Brown-Grossman (2010, 55) argue that in the case of Mexico, increased trade after the implementation of NAFTA did not translate into increased gender equality.

There are numerous examples of the mixed but often negative impacts of trade liberalization on women. Trade liberalization affects various sectors and aspects of the economy, including health care and public services, workers' rights, food and agriculture systems, environmental protection and small business. The negative impacts on these sectors disproportionately affect women and other marginalized groups. The trade policy-induced changes to employment, taxation, public services and consumption have pronounced effects on women, who already face barriers. These changes may impact the gender-based distribution of paid work and unpaid work within households. The centrality of women's labour in the maquila industry, which expanded dramatically after NAFTA was implemented, draws attention to the importance of women's labour rights in Mexico, since women make up the main labour force in factories dominated by so-called protection contracts, and are poorly represented by male-dominated Mexican unions.

Although neoliberal policies have to some extent contributed to the increase of women's participation in the paid labour force, they have also led to the prevalence of low-wage and precarious jobs, the internationalization of reproductive and care work, the intensification of women's workloads (e.g. "the double shift") and the feminization of poverty. Cuts to public services such as education, health care and childcare have a disproportionate impact on women, who tend to be more dependent on public services.

The rollback of public services also adds to the workload for many women, who traditionally are responsible for much of this service provision (Spielfoch 2007). It is important to note that these policies have a more pronounced impact on the most vulnerable women - women of colour, Indigenous women, (im)migrant women, and women with disabilities. Trade liberalization may disrupt sectors and markets where women are active, thus jeopardizing their employment and pushing them into unregulated and poorly-compensated jobs in the informal sector (UN Women Watch 2010; González 2017). Furthermore, the impact of the rise in women's labour force participation often associated with increased trade may reduce

women's time (whether for domestic/care work or for leisure) and their health (Fontana 2007). Increased global competition as a result of trade liberalization may put pressure on women employees and women-run enterprises to make upgrades despite their barriers to access to credit, technical knowledge and marketing networks (UN Women Watch 2010).

These feminist insights into the failure of trade and globalization to improve outcomes for women, particularly racialized women, have, in recent years, begun to influence trade policy in the post-Washington consensus era. The failures of neoliberal policies to achieve sustained growth, economic benefits for the poorest and most marginalized members of society, or political stability, have led to widespread efforts on the part of states, regional organizations and international organizations to achieve more "inclusive" economic models, including some attention to the gender implications of such policies. These shifts in global discourses and practices also reflect, however, decades of feminist organizing in opposition to neoliberal trade and investment policies.<sup>7</sup> Williams (2015), writing from an activist/academic perspective, argues that women have had the greatest impact on economic issues in the arena of the World Trade Organization (WTO), but that activism has been increasingly directed to regional trade agreements such as agreements between the EU and the African, Caribbean and Pacific states, and various US bilateral agreements with Asian and Latin American states (Williams 2015: 454).

Most notable among the new official efforts to promote gender mainstreaming in trade agreements is perhaps the Buenos Aires Declaration on Women and Trade adopted at the eleventh WTO ministerial conference in December 2017 with support from 118 WTO members and observers. The declaration acknowledges "the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in achieving sustainable socioeconomic development"; and, "that inclusive trade policies can contribute to advancing gender equality and women's economic empowerment, which has a positive impact on economic growth and helps to reduce poverty" (WTO 2017). Similarly, in March 2018, the vast majority of EU members approved a motion in the EU Parliament called "Gender in EU Trade Agreements." The motion states that in future trade agreements there will be a gender equality chapter, women's rights will be included, and the economic independence of women will be supported (Larouche-Maltais and MacLaren 2019, 3-4). Other regional agreements like Mercosur and ECOWAS are incorporating gender considerations, sometimes under pressure from the European Union. This tendency has been more common, though, in regional agreements like these that incorporate social concerns, than in the NAFTA-style neoliberal model of regionalism.

Feminists have cast doubt, however, on the extent to which these official policies really represent a significant shift away from neoliberal policies and incorporate the perspectives of women's organizations and other subaltern social forces. 200 women's rights organizations and allies signed a statement denouncing the WTO Buenos Aires Declaration,

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<sup>7</sup> See, for example, Williams 2015.



and calling on governments not to sign it. The statement claimed that the “declaration fails to address the adverse impact of WTO rules and instead appears to be designed to mask the failures of the WTO and its role in deepening inequality and exploitation.” Furthermore:

The declaration takes a very narrow approach to assessing the gendered impacts of trade. Even if the benefits the WTO bestows on the richest 1% of the world’s population were evenly split between men and women, the majority of the world’s women would not benefit. Increasing access to credit and cross border trade for a few women will not benefit women’s human rights overall. The declaration is a ‘pink herring’, an attempt to obscure the harm WTO provisions have on women while ensuring the WTO can bring in ‘new issues’, likely to deepen inequality (Available at: <https://craadoi-mada.com/wp-content/uploads/2018/02/Statement-on-WTO.pdf>).

Hannah, Roberts and Trommer argue that many of the contemporary efforts to mainstream gender in existing trade architectures, such as separate gender chapters in regional or other multilateral trade agreements, the WTO Declaration, efforts to promote women’s entrepreneurship, and Gender Based Analysis (GBA) of trade policies fall seriously short because they fail to acknowledge the importance of social reproduction in the economy or to consult with women’s organizations in devising new strategies. As we will see in the case of North America, these criticisms ring true for the evolving politics of gender and trade in this region.

### **North American Regionalism, Gender and Trade**

Unlike many other world regions which establish different forms of regional institutions aimed at a wide variety of forms of cooperation, including education, health, conflict prevention, migration governance and others, the North American region is largely bereft of institutions and singularly focused on promoting economic integration. The new regionalism approach’s inclusion of economic factors such as the role of multinational corporations in promoting regionalization, and the impact of broader forces of globalization on the region is therefore extremely relevant. This approach also helps identify informal processes of regionalization that are occurring, despite the absence of formal institutions of governance, including migration, environmental contamination, money flows, arms sales, and various forms of cross-border cooperation and (limited) convergence in ideas and norms. In contrast with more optimistic forms of regionalist theory, the approach also highlights the inequitable and asymmetrical character of power relations in the region, and the predominance of corporate actors in processes of decision-making. Nonetheless, to date this approach has failed to incorporate attention to inequitable gender relations and the way in which regional integration may intensify or mitigate that inequality.

The gendered impact of the North American Free Trade Agreement has been particularly clear in Mexico, where that country’s entry into the regional agreement resulted in the rapid expansion of women’s precarious employment in the maquila sector in low-wage jobs with few benefits and little protection from exploitation. [I’m going to add more detail here]

Despite the gender-blindness of official institutions of regional integration in North America, attention to the linkages between gender and trade did increase over time. Among the three member states, Canada has been the clear leader in advocating for incorporation of gender concerns into trade policy. This policy direction has intensified under the current Liberal government, which has adopted a Feminist International Assistance Policy, is developing a feminist foreign policy document, and has committed itself to an “inclusive” trade policy, including the mainstreaming of gender concerns. The Mexican government of Andrés Manuel López Obrador has recently espoused a feminist foreign policy, but it is much more limited than its Canadian or Swedish equivalents, does not include trade policy, and has been widely denounced by Mexican feminists in the light of widespread gender-based violence and apparent contempt on the part of the president for feminist movements. The Trump administration represented backward movement for feminist demands in many domains and it is too early to characterize the foreign policy of the Biden administration, but Lyric Thompson from the Coalition for a Feminist Foreign Policy in the United States points out that the appointment of a woman at the head of the Office of the United States Trade Representative (USTR), as well as Biden’s backing of a Nigerian woman as head of the World Trade Organization (WTO), “this could be a long overdue beginning of leadership for gender equality in global trade” (Thompson 2021).

Attention to gender issues in Canadian trade policy or in North American regionalism broadly defined is not entirely new, however, but has a long history that dates back to the negotiation of the CUSFTA in the mid-1980s. The National Action Committee on the Status of Women (NAC), the dominant English-Canadian women’s movement in the 1980s, pioneered analysis of the gendered implications of trade agreements, and brought this analysis into the coalition formed to oppose the CUSFTA, the Action Canada Network (CAN). Opposition to CUSFTA did not spread to the United States because of the lack of interest or concern about trade with Canada among US-based social movements. In the 1990s, however, the prospect with a trade agreement including Mexico galvanized a response in the United States and among independent trade unions and other social movements in Mexico, which led to the formation of trinational coalitions opposed to the NAFTA. The NAC pushed for incorporation of gender analysis into the work of these coalitions, with little success, given the marginality of the Mexican women’s movement, and the lack of interest in macroeconomic issues within the dominant actors in the U.S. women’s movement (including the National Organization of Women), as well as the lack of interest in feminist concerns among trade unions and other social movement actors that predominated in the US and Mexican coalitions (see Macdonald 2005 and Liebowitz 2002 for a more detailed discussion of these issues).

As debates over trade shifted south, with the Free Trade Area of the Americas (FTAA), and were globalized, with opposition to the formation of the WTO, feminist analysis and mobilization around trade issues began to grow and incorporate more actors from the Global South. However, in the North American context, feminist critiques and mobilization had no impact on the main NAFTA agreement, and were incorporated into the labour side accord only in a weak reference to the inclusion of “elimination of workplace discrimination” and “equal pay for men and women” among the eleven labour principles included in the

Annex to the North American Agreement on Labour Cooperation (NAALC). The NAALC lacked the capacity to sanction non-compliance, and rested on the requirement that each state enforce its own labour laws, rather than establishing common higher standards, and thus was an unpromising site for promoting labour rights in general, or the rights of women and gender-diverse people specifically.

Notwithstanding the lack of openings within the NAFTA and other bilateral and regional trade agreements modeled on the NAFTA for promoting feminist objectives, states and international organizations also began to incorporate gender concerns in a limited fashion the 1990s. The Canadian state in fact played a leading role in pushing for incorporation of gender-based analysis into global trade policies in the 1990s. These efforts were not just state initiatives but reflected the pressure from an active and critical Canadian women's movement. This, combined with the Liberal government of Jean Chrétien's commitment to gender mainstreaming after the Beijing conference, led to Canada playing an active role in other multilateral organizations in pushing for mainstreaming (Leblond and Fabian 2017; Gabriel and Macdonald 2005, 82). Most of this momentum within the Canadian state was lost during the decade-long rule of the Conservative government under Stephen Harper (2006-2015), which embraced neoliberalism, promoted gender-blind trade agreements in the Americas along the lines of NAFTA, and was opposed gender analysis or gender mainstreaming.

Under the Justin Trudeau government (2015 – present), however, there has been a determined effort to incorporate GBA+<sup>8</sup> analysis in all elements of Canadian public policy, including trade. A first effort in this direction was the gender chapter in the Canada-Chile Free Trade Agreement (2017), which was copied on the Chile-Uruguay agreement (2016). The Canada-Chile gender chapter recognizes that “improving women's access to opportunities and removing barriers in their countries enhances their participation in national and international economies”. It establishes an agenda of shared learning and cooperation, and a joint committee to oversee progress. It includes commitments to cooperate in such as areas as “encouraging capacity-building and skills enhancement of women at work, in business, and at senior levels in all sectors of society (including on corporate boards), “improving women's access to, and participation and leadership in, science, technology and innovation, including education in science, technology, engineering, mathematics and business; “promoting financial inclusion and education as well as promoting access to financing and financial assistance,” “advancing women's leadership and developing women's networks,” and “promoting female entrepreneurship”. To be fair, further down the list are such measures as “advancing care policies and programs with a gender and shared social responsibility perspective,” “conducting gender-based analysis,” and “sharing methods and procedures for the collection of sex-disaggregated data, the use of indicators, and the analysis of gender-focused statistics related to trade” (Government of

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<sup>8</sup> The “+” in GBA+ refers to the effort to incorporate intersectional analysis into training of public servants and development of public policy under the Trudeau government. (<https://women-gender-equality.canada.ca/en/gender-based-analysis-plus.html>)

Canada 2019). However, the chapter includes no mechanisms for enforcement of any of these commitments and does not attempt to develop shared standards. The Liberal government has raised the idea of a gender chapter as part of its agenda in promoting deals with China, India, and Mercosur, and was included in a modernized trade deal with Israel. Feminists were encouraged by the Canadian government's recognition of the uneven effects of trade deals on men and women, but raised concerns about the largely symbolic nature of a separate gender chapter, as well as the focus in such chapters on promoting women-owned businesses' participation in the benefits of international trade (Macdonald and Ibrahim 2021).

### **The Gender Politics of the USMCA**

The prospects for incorporating gender-sensitive provisions into trade agreements were dim at the start of the USMCA provisions, despite the fact that the Canadian government pledged to push for separate gender and Indigenous chapters. This pledge was met with considerable criticism in Canada from Conservatives who claimed that the Trudeau government was endangering the prospects for the renegotiation of NAFTA based on its given the antipathy of Trump and his administration to feminism and women's movements. The Canadian government evidently viewed these progressive as expendable in the negotiation process, and dropped the demand.

On the other hand, Trump and his senior trade negotiator, Robert Lighthizer, had rejected neoliberalism and were highly critical of the USMCA and other such trade agreements. One of the first acts of the Trump administration was to pull out of negotiations for the TPP. Trump had also forged a fragile relationship with labour leaders, including Richard Trumka, head of the AFL-CIO, representing the blue-collar sector that Trump claimed to represent in his appeals to "America First". Trumka supported the USMCA deal, in part to promote more auto industry jobs moving from Mexico to the United States (the higher rules of origin and the requirement of \$16 an hour wages in the auto sector are designed to ensure this goal) and he was key in pushing ratification of the deal in Congress, particularly among Democrats (Shalal and Shepherdson, 2019). The inclusion of labour demands in the main text of the agreement rather than in a side accord (which had become standard practice in U.S. trade agreements in recent years) as well as the development of a bilateral US-Mexico Rapid Response Mechanism for monitoring and responding to labour violations in Mexican worksites were seen as key wins for the US labour movement. The inclusion of the labour chapter meant that violation the rights included in Chapter 23 by any of the three parties could be punished through the type of trade sanctions that apply to all the other elements of the deal.

While the Canadian government had lost the move to include a gender chapter, the labour ministry negotiators pushed for progressive language in the labour chapter, and the Mexican government evidently supported this approach behind the scenes (Galbraith and Lu 2020, 49 fn18). The US Trade Representative's Office (USTR) may not have had a strong position on these issues and accepted the Canadian approach. As a result, the initial text of the deal that

was released to the public included Article 23.9 on “Sex-based Discrimination in the Workplace”. The article stated that the parties:

recognize the goal of eliminating sex-based discrimination in employment and occupation, and support the goal of promoting equality of women in the workplace. Accordingly, each Party shall implement policies that protect workers against employment discrimination on the basis of sex, including with regard to pregnancy, sexual harassment, sexual orientation, gender identity, and caregiving responsibilities, provide job-protected leave for birth or adoption of a child and care of family members, and protect against wage discrimination.

The language on sexual orientation and gender identity resulted in a strong backlash among Republican Congresspeople (Panetta and Gardner 2018). A letter was sent signed by 40 lawmakers that states, “A trade agreement is no place for the adoption of social policy....It is especially inappropriate and insulting to our sovereignty to needlessly submit to social policies which the United States Congress has so far explicitly refused to accept.” As a result, the USTR pushed for revision of the original language, with the new language committing each signatory “to “implement policies that it considers appropriate to protect workers against employment discrimination on the basis of sex,...sexual orientation -and] gender identity”. A footnote was also added that stated that the article “requires no additional action on the part of the United States...in order for the United States to being compliance with the obligations set forth in this Article” (Galbraith and Lu, 2019: 45).

Even with these changes, the language on gender in the labour agreement is perhaps the most progressive found in any trade agreement, and, according to Galbraith and Lu, even the watered-down version has “expressive value by recognizing and protecting the existence of LGBTQ identities” (Galbraith and Lu, 2019: 60). Notably, the labour chapter also included protection of migrant rights, an element that had been left out of earlier versions of the chapter, but was included after lobbying from migrants rights organizations.

The inclusion of the article on sex-based discrimination in the workplace, as well as the inclusion of migrants’ rights has led to the first complaint that has been brought forward under Chapter 23 of the USMCA. A group of Mexican women migrants to the United States have alleged – in a petition to Mexican authorities – that by failing to enforce gender discrimination laws in temporary labour programs (like the H-2A visa) the U.S. is violating the terms of Chapter 23. The petition, filed March 23, 2021 by the Centro de Derechos de los Migrantes (CDM), a binational NGO that promotes migrant labour rights, claims that women frequently encounter sexual harassment and gender-based violence and are subject to systemic discrimination in hiring and employment conditions. The issue is similar to complaints filed under the NAALC side accord around migrant workers’ rights in both the United States and Mexico during the last years of NAFTA, which did not result in satisfactory outcomes (see Gabriel and Macdonald 2021).

The Mexican government has so far responded positively and has asked the U.S. government to cooperate on issues related to both the situation of farmworkers and workers in protein processing plants, the industries where the two Mexican petitioners work. The CDM was encouraged by this response as it went beyond the issues raised in the complaint to ask the US government to address harmful health and safety practices affecting all workers, including undocumented workers and men in those industries.<sup>9</sup> Mexico undoubtedly wishes to see the labour chapter used to highlight labour abuses in the United States, particularly against Mexican citizens, and not just to punish Mexico. Two other cases are being brought forward around labour abuses in Mexico under the US-Mexico Rapid Response Mechanism, and these cases do not involve gender. However the labour reform adopted by the Mexican government prior to the USMCA negotiation may also help to empower Mexican women workers, and the United States Department of Labor is also providing funding to strengthen independent and democratic unions and labour relations in Mexico, including some projects that focus specifically on sexual harassment and other forms of sex discrimination. As a result, the USMCA agreement, combined with existing pressures toward identifying and overcoming labour rights abuses in Mexico and a new legal framework, may contribute to improving the conditions of Mexican women workers. The labour chapter framework may be much more effective as a tool for overcoming gender discrimination through trade because of the sanctions attached to it, than a stand-alone gender chapter, which is largely aspirational in nature.

## **Conclusion**

The case of North American regionalism displays the importance of attention to gender issues in the process of regional integration, despite the apparent gender-blindness of the NAFTA agreement. As suggested by the new regionalism approach, North American regional integration is not just about formal institutions and the transfer of authority to supranational organizations, but also the informal processes of regionalization, the restructuring of global and regional value chains, and the incorporation of women's paid and unpaid labour. The literature on gender and trade draws attention to these often overlooked and undervalued aspects of globalization and regional integration, and suggests areas that can be strengthened to promote greater equity. In this process, transnational cooperation among labour unions and women's and feminist organizations as well as migrant rights groups can contribute to the "cobweb" model of regional cooperation that may be able to counteract the exclusionary and hierarchical tendencies in the dominant form of integration. The case that has been brought forward under the USMCA's labour chapter is an exemplar of this alternative model of regionalization.

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<sup>9</sup> See CDM discussion of this complaint here: <https://cdmigrante.org/migrant-worker-women-usmca/>

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