

Two Dimensional Hard-Soft Law Theory and the Advancement of Women's and LGBTQ+ Rights Through Free Trade Agreements

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Abstract

What should free trade agreements (FTAs) say about gender, sexual orientation, and gender identity? No longer is “nothing” the only answer. The Comprehensive and Progressive Agreement for a Trans Pacific Partnership (CPTPP) and the United States-Mexico-Canada Agreement (USMCA) now discuss the rights of women and Lesbian, Gay, Bisexual, Transgender, Questioning, and Other (LGBTQ+) persons. They do so in Articles 23.4 and 23.9, respectively. But, these provisions are soft law.

These Articles ought to be strengthened to advance women’s and LGBTQ+ rights. That is, we argue gender, sexual orientation, and gender identity should be effectively addressed through hard law legal structures using hard law language that incorporates empirical insights.

Keywords: free trade agreements, FTA, gender, sexual orientation, Comprehensive and Progressive Agreement for a Trans Pacific Partnership, CPTPP, United States-Mexico-Canada Agreement, USMCA, women, LGBTQ

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