

# Power by Proxy

## *Explaining Innovation and Imitation in the RCEP*

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### Abstract

Fifteen countries recently signed the Regional Comprehensive Economic Partnership (RCEP) and formed the world's largest trade bloc between some of the globe's largest and fastest-growing economies. Employing a text-as-data analysis, this article systematically compares the text of the RCEP to the previous agreements of its members to determine the sources of language in the RCEP and investigate why particular treaty text is replicated more frequently relative to others. The results indicate that language derived from the multiparty and multicontinental trade agreements of the United States, a state not involved in the RCEP negotiations, accounted for a disproportionate share of the finalized text. These findings highlight the temporal dimension of power asymmetries as well as the importance of treaty design itself in the diffusion of regulatory norms and suggest that specific trade agreements serve as reference points for subsequent agreements.

### Keywords

Regional Comprehensive Economic Partnership (RCEP) – megaregional – trade – treaty language – text-as-data – power – diffusion

## 1 Introduction

The Regional Comprehensive Economic Partnership (RCEP) agreement was signed on 15 November 2020 following nine years and thirty-one rounds of negotiations between the ten members of the Association of Southeast Asian Nations (ASEAN) and Australia, China, Japan, New Zealand, and the Republic of Korea. The direct economic significance of the RCEP cannot be overstated—it will govern and integrate roughly 30 percent of global gross domestic product (GDP) and 2.3 billion people. It has been projected to raise global incomes by \$186 billion by 2030 and add 0.2 percent permanently to the GDP of its members.<sup>1</sup> Over and above its economic impacts, the RCEP has, as the world's largest “megaregional” trade agreement, the potential to influence the shape of global trade rules. Given the economic and political significance of the RCEP, this raises the question of which state or states played an outsized role in the development of the agreement's rules.

The design of trade agreements is characterized by extensive “copying and pasting” from previous trade agreements.<sup>2</sup> For example, text from the North American Free Trade Agreement (NAFTA) substantially influenced the design of United States' agreements, those of its partners, as well as countries unconnected to the United States by a trade agreement.<sup>3</sup> However, not all treaty language is created equally with some treaty text being subject to more copying than that of others. For example, the text of the Trans-Pacific Partnership (TPP) was overwhelmingly drawn from prior US agreements.<sup>4, 5</sup>

Designing new rules is a key mechanism for states to advance their interests in the international trade regime.<sup>6</sup> The RCEP has simultaneously been framed as an innovative ASEAN-driven deal that helps to clean up the “noodle bowl” of preferential trade agreements (PTAs) across South and East Asia and Oceania,<sup>7</sup> as well as a China-led agreement that cements China's position as the most important economic and political actor in the region.<sup>8</sup> The RCEP was also negotiated in parallel with the US-led CP(TPP)—the CP(TPP) nego-

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1 Petri and Plummer 2020.

2 Allee and Elsig 2019.

3 Alschner, Seiermann, and Skougarevskiy 2017.

4 The TPP was rebranded as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) when the United States withdrew from the TPP in January 2017. For the purposes of this article, these agreements are collectively referred to as the CP(TPP).

5 Allee and Lugg 2016.

6 Sell 2010; Hirschman 1981.

7 Elms and Nguyen 2019; Fukunaga 2015.

8 Lee 2016.

tiations included a number of RCEP members—which raises the possibility that the United States indirectly influenced the design of the agreement.

This article employs a text-as-data approach to systematically identify the sources of language in the RCEP which, to date, has yet to be analysed in this manner. By comparing the previous PTAs of the RCEP's signatories, as well as the United States and India, to the RCEP it is possible to identify which countries played an outsized role in the development of the agreement's text. Investigating the determinants of diffusion outcomes, rather than the process of diffusion per se, contributes to the literatures on international intuitions, trade agreement design, and diffusion.

First, the results speak to the common argument that powerful states shape international institutions to further their interests.<sup>9</sup> In contrast to the expectation that the outcome of the RCEP reflects the relative bargaining power of its members, specific previous Chinese, Indian, and Japanese language was largely absent from the RCEP. Critically, the United States, a country not party to the RCEP, exerted a tangible influence over its design. US-style language made its way into the RCEP via countries that were party to US-led agreements—predominantly those countries that were party to the CP(TPP) negotiations—which highlights the temporal influence of power on treaty design. This also supports the notion that powerful states can take advantage of power asymmetries to develop reference treaties that become benchmarks for other states in subsequent negotiations.<sup>10</sup> Second, this article contributes to the literatures on trade agreement design and diffusion. While power asymmetries condition the initial development of reference treaty text, treaty design elements also influence diffusion outcomes.<sup>11</sup> Out of all US agreements, the CP(TPP) was the most replicated in RCEP. This suggests that intercontinental and multiparty agreements make for more effective pollinators of treaty text than their bilateral counterparts.

This article proceeds as follows. First, I provide a brief overview of the RCEP and its evolution over time. Next, I outline the article's theoretically informed expectations. After that, I discuss the ways in which prior PTAs were compared with the RCEP and the data employed in the research. Then, I discuss the determinants of copying and pasting in the RCEP. Finally, I provide conclusions.

9 Drezner 2007; Gruber 2000; Gruber 2001; Krasner 1991.

10 Allee and Elsig 2019; Alschner and Skougarevskiy 2016.

11 Morin et al. 2019.

## 2 A Synopsis of the RCEP

The origins of the RCEP lie in a series of existing agreements between ASEAN members and their neighbors. In 1997, the leaders of ASEAN, China, Japan, and South Korea met on the sidelines of the Second ASEAN Informal Summit to discuss the possibility of using ASEAN as a vehicle for strengthening East Asian economic and security integration and, thus, the ASEAN+3 project was born.<sup>12</sup> This process laid the foundations for free trade agreements (FTAs) between ASEAN and China (2005), ASEAN and Korea (2007), and ASEAN and Japan (2008). While these agreements were being implemented, ASEAN concluded agreements with India (2009) and Australia and New Zealand (2010). Throughout 2012 ASEAN+6 countries (Australia, China, India, Japan, South Korea, and New Zealand) engaged in discussions over the RCEP's objectives before the negotiations were formally launched in November.

There are currently two primary strands of argument when it comes to China's role within the RCEP. One line emphasizes the RCEP's origins in the regional integration efforts of a number of different countries, rather than that of China alone, and the role of ASEAN as a central coordinating actor and provider of norms.<sup>13</sup> A variant of this argument emphasizes how ASEAN members used the RCEP to enhance their own position within the regional economic system—rather than let it be determined by one of the regional economic powers such as China, the United States, or Japan.<sup>14</sup> As Deborah Elms and Minh Nguyen note, “ASEAN has been in the driver's seat for the negotiation processes.”<sup>15</sup> The alternative argument stresses the influence of Chinese economic gravity in RCEP negotiations,<sup>16</sup> diminished ASEAN centrality in terms of trade linkages, as ASEAN partners signed agreements with one another, and limited agenda setting and norm creation ability.<sup>17</sup>

Although there are competing narratives about which countries held the reins in the RCEP negotiations, played an outsized role in the selection of specific language in the treaty text, and advanced their particular visions of twenty-first-century trade, there has not been a systematic analysis of the entire agreement. This assessment employs an impartial and underutilized methodological approach to evaluate the sources of language within the RCEP. This

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12 ASEAN 2017.

13 Fukunaga 2015; Wilson 2015; Ye 2015.

14 Das 2012.

15 Elms and Nguyen 2019, 11.

16 Lee 2016.

17 Mueller 2019.

approach is particularly useful in gauging the treaty text that is replicated, which facilitates the determination of reference treaties in the design of trade agreements.

### 3 Propositions

The language from trade agreements, and other international treaties, such as bilateral investment treaties, is often copy-pasted or reused from preceding agreements. For example, key sections of NAFTA have made their way into at least fifty other trade agreements.<sup>18</sup> This finding is not specific to NAFTA—Todd Allee and Manfred Elsig conclude that “most PTAs copy a sizeable majority of their content word for word from an earlier agreement. At least 100 PTAs take 80 percent or more of their content directly from a single existing treaty.”<sup>19</sup> Todd Allee and Andrew Lugg, using a text-as-data approach that inspired this article, show that the text of the CP(TPP) was overwhelmingly drawn from earlier US agreements.<sup>20</sup> For example, more than 50 percent of the language in CP(TPP) was copied word-for-word from the US-Bahrain FTA. Importantly, highly contentious chapters, such as investment (88 percent) and intellectual property rights (52 percent), were taken largely from US PTAs.

There are a variety of explanations for the copying and pasting phenomena in international economic agreements. These include the efficiency gains resulting from reusing “off the shelf” text,<sup>21</sup> bureaucratic inertia and a tendency to maintain the status quo,<sup>22</sup> and the personal investment in and recycling of particular text by diplomats.<sup>23</sup> Additionally, negotiating states consider they can (and already do) comply with existing treaty language and so there is less risk of agreeing to language that is either incompatible with the existing domestic regulatory regime and requires changes to the domestic regulatory regime, or is inconsistent with another treaty, requiring even more complex implementation or change to the domestic regulatory regime to make it possible to comply with both treaties simultaneously. There is therefore a tendency toward cohesion in states’ international obligations that extends beyond simple efficiency in the negotiation process or bureaucratic inertia or personal

18 Alschner, Seiermann, and Skougarevskiy 2017.

19 Allee and Elsig 2019, 603.

20 Allee and Lugg 2016.

21 Allee and Elsig 2019.

22 Puig 2014; Mansfield and Milner 2012.

23 Elsig and Milewicz 2017.

investment. These explanations provide insight into why copying and pasting occurs in international economic agreements—to a degree that would not be tolerated in an undergraduate course—and lead to the expectation that one should see substantial evidence of path dependence in the RCEP.<sup>24</sup> However, what is of real interest is why the text of some countries is copied and not that of others.

There is a well-developed literature that argues that economically powerful states shape international institutions to further their interests.<sup>25</sup> In the trade domain, powerful states tend to copy and paste from their previous agreements as they have a clear conceptualization of how global trade governance should be structured.<sup>26</sup> Powerful states may have the same tendency to prefer existing language as other states, but they also have the economic clout to insist that their partners accept their language rather than needing to find compromises. For example, in the CP(TPP) negotiations, the United States was the most materially dominant country, had already agreed to a trade template with the next most economically significant country (Japan), and successfully crafted an agreement that was largely based on prior US trade agreements.<sup>27</sup> Following the logic of a direct power-based explanation, one might expect that language from the prior agreements of the most powerful economies party to the RCEP negotiations would feature prominently in the final text of the agreement. More specifically, the ability of China, Japan, and India to leverage their market size in the negotiations might lead to the expectation that a substantial amount of language from their prior agreements should have been copied into the RCEP.

However, the development of treaty text does not occur in a vacuum and is conditioned by prior agreements between members, partners, or third parties.<sup>28</sup> In particular, powerful states can establish a model or benchmark for trade agreement design that becomes a reference point for other states.<sup>29</sup> For example, it is generally recognized that design elements rooted in NAFTA have proliferated throughout the network of trade agreements.<sup>30</sup> In the case of direct asymmetric negotiations, a weaker state may adopt benchmark text because they have limited ability to resist the demands for the inclusion of

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24 Victor and Cohen 2005; North 1990; Baccini, Dür, and Haftel 2015.

25 Gilpin 2002; Gruber 2000; Drezner 2007.

26 Allee and Elsig 2019.

27 Allee and Lugg 2016.

28 Manger, Pickup, and Snijders 2012; Milewicz et al. 2018.

29 Allee and Elsig 2019; Alschner, Seiermann, and Skougarevskiy 2017; Alschner and Skougarevskiy 2016.

30 Baccini, Dür, and Haftel 2015; Berger 2013.

treaty language by a more powerful state.<sup>31</sup> States that are not engaged in current negotiations with a powerful state may still adopt benchmark treaty text to facilitate negotiations with that state at some point in the future.<sup>32</sup> In the context of the RCEP, this leads to the expectation that countries with existing agreements with the United States—and already subject to the leverage that US trade negotiators deploy—will employ US-style language in their negotiating templates. Additionally, it is expected that countries without agreements with the United States may either utilize or acquiesce to the use of US-style language to facilitate future bilateral negotiations with the United States or multiparty accessions negotiations in US-led agreements.

While differences in negotiating power and first mover advantages are certainly important in the diffusion of treaty text, it is important to consider treaty design and the geography of membership as partial determinants of diffusion and replication. The architectural makeup of a trade agreement—that is, whether it is bilateral or multiparty—may influence the diffusion of treaty text. From a network perspective, multiparty agreements generate “network closure”<sup>33</sup>—a high degree of interconnections—between parties that may facilitate the diffusion of treaty language. Diffusion of treaty text via bilateral agreements certainly occurs; however, it is inefficient relative to multiparty agreements. For example, it is reasonable to assume that it was cheaper for the United States to use the CP(TPP) to set about establishing new global rules rather than employ a series of bilateral agreements with each of the eleven CP(TPP) members.

Four mainstream theoretical explanations of policy diffusion—competition, emulation, learning, and imitation—assume that states take their external environment into account when participating in international agreements.<sup>34</sup> Related to this, the network literature suggests that intercontinental agreements facilitate diffusion.<sup>35</sup> A simple relational mechanism may underpin this finding—states copy their neighbors (i.e. states from the same region).<sup>36</sup> Therefore, an intercontinental agreement has a greater chance of disseminating treaty language relative to a regional agreement as it involves states from multiple regions who, in turn, are emulated by their neighbors. When

31 Aggarwal 2013; Barnett and Duvall 2005.

32 Morin et al. 2019.

33 *Network closure* is a term used in network science, which denotes the tendency of actors to seek relationships with actors to whom they are indirectly tied.

34 Simmons and Elkins 2004; Elkins and Simmons 2005; Elkins, Guzman, and Simmons 2006.

35 Hollway and Koskinen 2016.

36 Dobbin, Simmons, and Garrett 2007; Sikkink 1993.

power dynamics, architectural design, and the geography of membership are taken together, this leads to the expectation that the United States' multiparty intercontinental agreement—the CP(TPP)—was likely to be replicated relative to its own bilateral or regional agreements.

#### 4 Methodology and Data

To ascertain the sources of language in the RCEP, I compared text found in the PTAs of RCEP members and the United States and India. Building on similar studies,<sup>37</sup> I assumed that, in general, countries' prior PTAs reveal their trade preferences. The United States was included for obvious reasons—I needed to test the extent to which US language had permeated RCEP. India was included as it had been party to the RCEP negotiations until 2019, and, as the third-largest single economy in the region, its inclusion was necessary to determine the influence of proximate power in the development of RCEP's text.

The DESTA dataset<sup>38</sup> was used to locate all PTAs signed by RCEP participants prior to the conclusion of the RCEP. I conducted an additional survey of all RCEP members' current PTAs and included those that were not present in the DESTA dataset. Luckily, all of these agreements are English language texts, so translation issues did not arise. Notably, I included ASEAN's previous constituting agreements and the more recent agreements they negotiated alongside the RCEP; this is relevant to assess the degree to which ASEAN-preferred language influenced the RCEP. I converted all agreements, most of which are available in PDF format, into .txt to eliminate format-related idiosyncrasies. All agreement-specific information—such as location of signature, names of signing ministers, and annexes that did not contain substantive information—was removed to improve accuracy and reduce the possibility of biasing results.<sup>39</sup>

I utilized a methodology that is comparable to approaches employed in the detection of plagiarism to measure the degree to which prior FTAs influenced the RCEP's language. It should be noted that this method is best suited to determining what language made it into an agreement rather than what language was purposefully excluded. This approach searches for evidence of “copy-pasting” between trade agreements using Louis Bloomfield's WCopyfind

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37 Allee and Elsig 2019; Allee and Lugg 2016.

38 Dür, Baccini, and Elsig 2014.

39 Allee, Elsig, and Lugg 2017a.

software.<sup>40</sup> More specifically, I adopted the approach commonly employed in the trade literature which, at a minimum, requires six consecutive words to generate a match.<sup>41</sup> This approach ensures that word order is maintained—something that the frequentist methods of computational textual analysis can neglect—which is critical in capturing the copy-pasting effect. The software was programmed to skip non-words and ignore all inner punctuation, outer punctuation, numbers, and capitalization.

In total, I compared the finalized texts of 111 agreements, including the RCEP, alongside 20 commonly occurring chapters in modern PTAs. Analyzing the RCEP in toto as well as by chapter allows for an identification of the sources of language and the degree of innovation in the most politically and economically important issue areas.

The nature of international trade agreements has undergone a dramatic shift in the past twenty-five years. The content of agreements has deepened while their scope has expanded dramatically. Most World Trade Organization (WTO) era agreements include provisions in areas such as services, investment, and intellectual property—elements that were generally not present in pre-WTO agreements.<sup>42</sup> For this reason, agreements prior to 1990 were excluded from this study unless they had undergone substantial updating. For example, the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) was included, although it was signed in 1983, because a number of modernizing protocols and annexes have been added to the agreement such as the protocol on investment (2013) and annex to the protocol on services trade (2015).

## 5 Results

To determine the extent of heterogeneity between the PTAs of RCEP signatories, I performed a pairwise comparison of all their preexisting PTAs and, in addition, I compared the preexisting PTAs of the United States and India (Figure 1). Agreements were double-sorted by country and time. Agreements with a high degree of overlap are represented by dark red cells while those with a low degree of overlap are represented by light yellow cells. The dark red diagonal represents the degree of overlap between an agreement and itself (a complete match).

40 Bloomfield 2015.

41 Allee and Lugg 2016; Allee, Elsig, and Lugg 2017a; Elsig and Klotz 2018; Allee and Elsig 2019.

42 Dür, Baccini, and Elsig 2014.



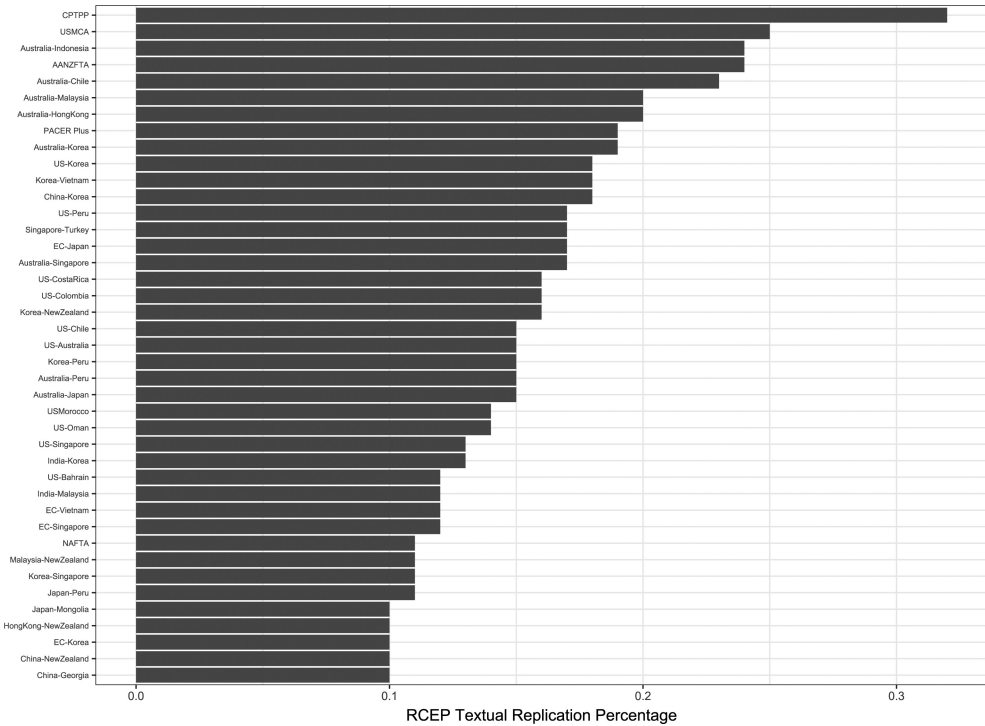


FIGURE 2 Overlap between preexisting agreements and the Regional Comprehensive Economic Partnership

Lugg.<sup>43</sup> In contrast, India’s PTAs were generally not consistent. Therefore, it is possible to conclude that, in general, the preexisting agreements of RCEP members were dissimilar, although some members brought language that was common to their preexisting agreements into the negotiations.

The first cut at examining the content of the RCEP focuses on the textual overlap between the RCEP and the preexisting agreements of RCEP signatories and the United States and India (Figure 2). The first notable feature is the textual overlap between the CP(TPP) and the RCEP (roughly 31 percent). The United States was the country most successful in inserting its language into the CP(TPP)—for example, the US–Bahrain agreement accounted for more than 50 percent of the language found in CP(TPP).<sup>44</sup>

The extent of textual overlap between the RCEP text and those of preexisting PTAs of RCEP members was relatively limited. The overlap between

43 Allee and Lugg 2016.

44 Allee and Lugg 2016.

TABLE 1 Textual similarity example<sup>a</sup>

| CP(TPP) (2018)   | RCEP (2020)   |
|--|---|
| No Party shall preclude the possibility that the protection <i>or recognition</i> of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected <i>or recognised</i> term has ceased meeting the conditions upon which the protection <i>or recognition</i> was originally granted in that Party. | No Party shall preclude the possibility that the protection of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected term has ceased meeting the conditions upon which the protection was originally granted in that Party. |

a CP(TPP), Comprehensive and Progressive Agreement for Trans-Pacific Partnership; RCEP, Regional Comprehensive Economic Partnership. Dissimilar text is highlighted in italics.

the RCEP and the top five agreements, excluding the CP(TPP) and the United States–Mexico–Canada (USMCA), ranged from 20 to 24 percent. The average overlap between the RCEP and previous PTAs was less than 10 percent. The relatively low overlap between individual PTAs and the RCEP indicates that the RCEP is not a derivative agreement, although language from the United States features prominently. It should be noted that it is unlikely that the USMCA informed the RCEP given that no RCEP members were party to that agreement. Rather, it is probable that the CP(TPP), whose negotiations had started a decade earlier than USMCA, informed the USMCA (close to 40 percent of the language from CP(TPP) was replicated in USMCA)—which explains the overlap between USMCA and the RCEP. There was limited overlap, less than 15 percent, between NAFTA (the predecessor to USMCA) and CP(TPP).

Table 1, drawn from the intellectual property rights chapters of the RCEP and CP(TPP), illustrates the substantive significance of high levels of similarity—that is, similarity that goes beyond the copying of boilerplate elements. Dissimilar text is highlighted in italics. This also demonstrates how the software used identifies identical phrases with six or more words.

Examining the country-by-country results paints a more nuanced picture of the sources of the RCEP's language. I calculated the following average replication percentage—the degree to which two treaties overlap—between the agreements of RCEP signatories plus the United States and India: all previous agreements, agreements from the past decade, agreements from the past five years, and agreements from the past three years (Table 2).

TABLE 2 Prior preferential trade agreement overlap with the Regional Comprehensive Economic Partnership (replication %)

| Country       | Average:<br>all<br>previous<br>agreements | Average:<br>agreements<br>from the past<br>10 years | Average:<br>agreements<br>from the past<br>5 years | Average:<br>agreements<br>from the past<br>3 years |
|---------------|---|---|--|--|
| United States | 15  | 24  | 26   | 28   |
| New Zealand   | 13  | 19  | 21   | 24   |
| Japan         | 10  | 15  | 19   | 24   |
| Brunei        | 14  | 24  | 24   | 24   |
| Malaysia      | 13  | 18  | 19   | 24   |
| Australia     | 16  | 20  | 20   | 21   |
| South Korea   | 13  | 14  | 17   | 18   |
| Singapore     | 12  | 17  | 17   | 17   |
| Cambodia      | 14  | 20  | 16   | 16   |
| Indonesia     | 12  | 20  | 16   | 16   |
| Laos          | 14  | 20  | 16   | 16   |
| Myanmar       | 14  | 20  | 16   | 16   |
| Philippines   | 12  | 14  | 9  | 16   |
| Thailand      | 11  | 16  | 20   | 16   |
| Vietnam       | 13  | 16  | 17   | 14   |
| China         | 7   | 10  | 15   | 12   |
| India         | 5   | 9   | –  | –  |
| Overall       | 12  | 17  | 18   | 19   |

The average of all previous agreements shows that Australia's agreements had the most overlap with the RCEP (16.4 percent), followed by the United States (15.2 percent). However, these results include agreements that had little to no overlap with the RCEP and may not reflect Australia's or the United States' current trade preferences. Examining PTAs from the past five years and three years provides a more specific means for gauging the current preferences of states and the influence of their prior PTAs on the RCEP's text. These results show that the prior PTAs of the United States, Japan, Brunei, Malaysia, Australia, and New Zealand had the most overlap with the RCEP. The US results were driven largely by the CP(TPP) and USMCA, while Brunei, Malaysia, and New Zealand's overlap was driven by their participation in CP(TPP) and AANZFTA. Australia's overlap with the RCEP was driven by CP(TPP),

AANZFTA, and its agreement with Indonesia. Japan's results were driven by its participation in CP(TPP). The common denominator across all of these countries is their participation in the CP(TPP).

A chapter-by-chapter analysis gives more nuanced insights into the sources of copying and pasting in RCEP (Figure 3 A-C) I compared seventeen of the most substantively important chapters in the RCEP to the prior PTAs of RCEP members plus the United States and India. These chapters include investment, intellectual property rights, services, goods, competition, trade remedies, dispute settlement, government procurement, e-commerce, movement of natural persons (MNP), rules of origin (RoO), technical barriers to trade (TBT), sanitary and phytosanitary (SPS) measures, small- and medium-sized enterprises (SMEs), cooperation, customs, and institutional arrangements. The comparison between specific chapters in the RCEP and prior agreements was used to generate replication percentages.

The issue areas of most economic and political importance—trade in goods and services, intellectual property, investment, e-commerce, trade remedies, and dispute settlement—showed a comparatively higher degree of overlap with past agreements than less-established issue areas. Text is particularly innovative in the areas of small- and medium-sized enterprises, cooperation, and institutional arrangements. This makes intuitive sense, as these are chapters for which preexisting language is rarer than in more established issue areas or which are tailored to the specific agreements and parties. In other words, states party to the negotiations did not have readily available templates to draw on. However, it is important to note that while the degree of imitation and innovation varies across chapters, most chapters were characterised by innovation rather than imitation.

That said, and echoing the previous results, US language from prior agreements was disproportionately represented across the RCEP's chapters. Chinese- or Indian-inspired language was not present to any significant extent across any of the chapters while Japanese language was dominant in a single technical chapter (standards and technical regulations). This chapter displayed a relatively high degree of innovation (less than 30 percent of the chapter was drawn from previous agreements), which suggests that Japanese influence in its design was limited at best. It should be noted that it is possible that China, Japan, and India played an important role in determining what was not included in the RCEP. That said, the overall findings highlight the importance of less proximate sources of power as drivers of diffusion outcomes.

Language sourced from the US-led CP(TPP) was predominant in the intellectual property rights chapter (46 percent), trade in goods chapter (38

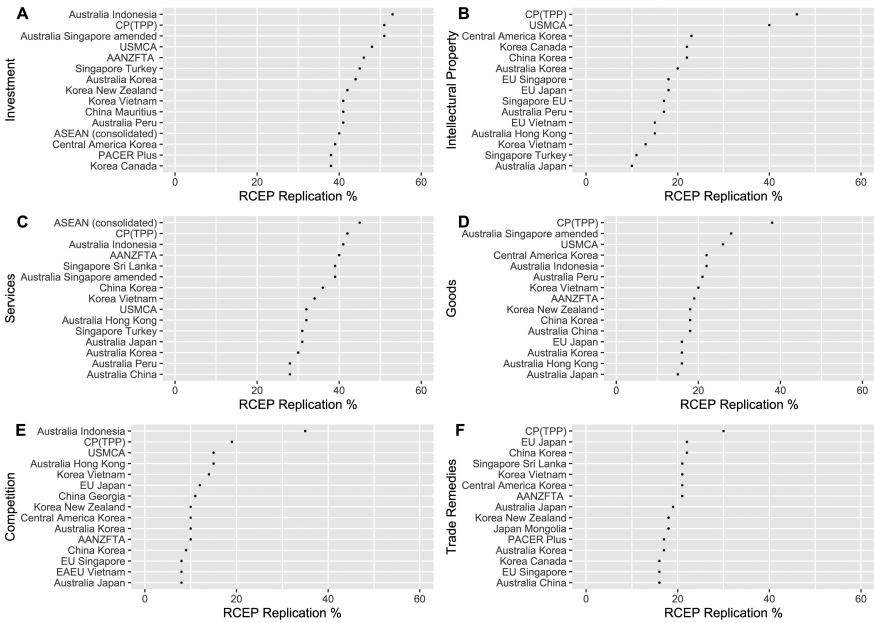


FIGURE 3.A Sources of Regional Comprehensive Economic Partnership text by chapter (A-F)

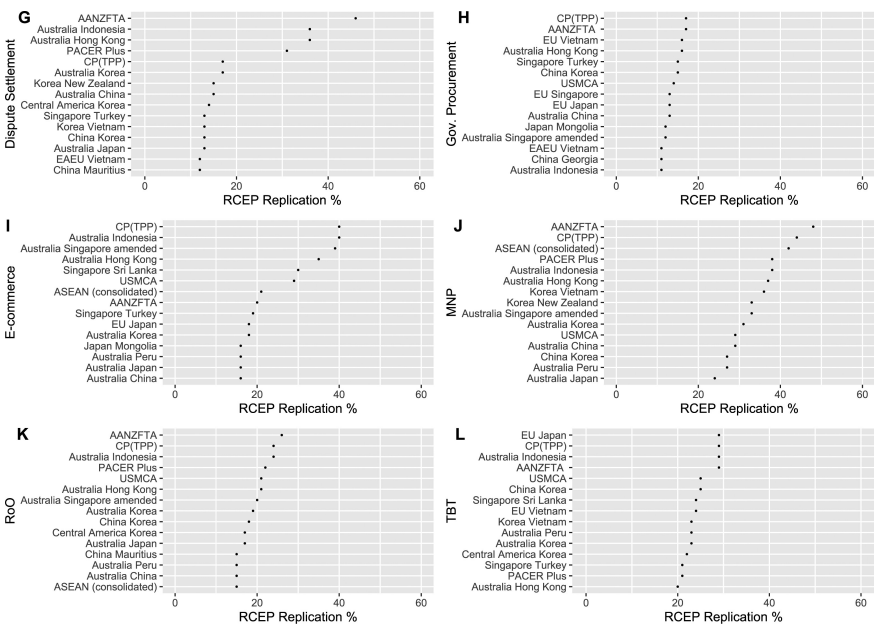


FIGURE 3.B Sources of Regional Comprehensive Economic Partnership text by chapter (G-L)

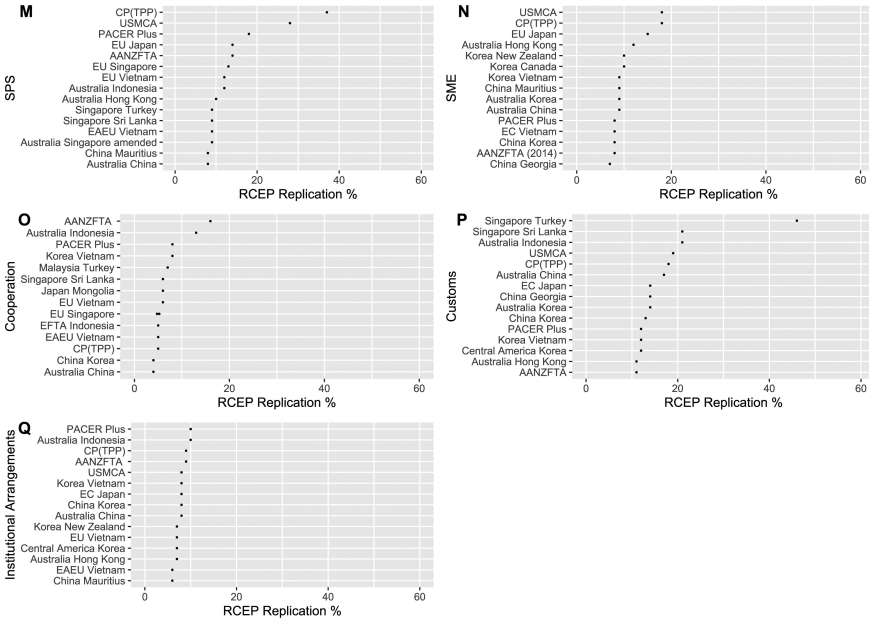


FIGURE 3.C Sources of Regional Comprehensive Economic Partnership text by chapter (M-Q)

percent), sanitary and phytosanitary (SPS) chapter (37 percent), and trade remedies chapter (30 percent). There was also a high degree of overlap between the CP(TPP) and the services chapter although the ASEAN consolidated text accounted for the largest share of replicated language. The CP(TPP), alongside the Australia-Indonesia bilateral agreement, accounted for 40 percent of the language found in the e-commerce chapter. Australian language featured particularly prominently in the investment (53 percent) and competition chapters (35 percent).

However, this point is colored by the fact that there was considerable overlap between Australia-Indonesia and earlier US agreements; the CP(TPP), USMCA, and US-Korea (28 percent) accounted for 41 percent, 33 percent, and 28 percent of Australia-Indonesia respectively. This suggests that Australia-Indonesia, which influenced substantively important chapters in the RCEP, was itself influenced by prior US agreements. This is clearly seen when examining the textual overlap in the investment chapter in more detail. Table 3 highlights the high degree of substantive similarity between CP(TPP), Australia-Indonesia, and the RCEP. Italics denotes differences between the CP(TPP) and Australia-Indonesia, while boldface denotes differences between Australia-Indonesia and the RCEP.

TABLE 3 Illustrative example of textural overlap across investment chapters

| CP(TPP) (2018) <sup>a</sup>   | Australia-Indonesia (2020)   | RCEP (2020)  |
|---|--|--|
| a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws that relate to: | a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws <i>and regulations</i> relating to: | a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to: |
| (a) bankruptcy, insolvency or the protection of the rights of creditors;  | (a) bankruptcy, insolvency or the protection of the rights of creditors;   | (a) bankruptcy, insolvency, or the protection of the rights of creditors <b>including employees</b> ;  |
| (b) issuing, trading or dealing in securities, futures, options or derivatives;   | (b) issuing, trading, or dealing in securities, futures, options or derivatives;   | (b) issuing, trading, or dealing in securities, futures, options, or derivatives;  |
| (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;                | (c) criminal or penal offences <i>and the recovery of the proceeds of crime</i> ;  | (c) criminal or penal offences and the recovery of the proceeds of crime;  |
| (d) criminal or penal offences; or  | (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;                         | (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;                   |
| (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.   | (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;  | (e) ensuring compliance with <b>awards or</b> orders or judgments in judicial or administrative proceedings;   |

a CP(TPP), Comprehensive and Progressive Agreement for Trans-Pacific Partnership; RCEP, Regional Comprehensive Economic Partnership. Italics denotes differences between the CP(TPP) and Australia-Indonesia, while boldface denotes differences between Australia-Indonesia and the RCEP.

## 6 Discussion

The lack of language from the major economies party to the negotiations—such as China, India, and Japan—is not entirely congruent with direct power-based explanations of international cooperation.<sup>45</sup> These explanations view instances of international cooperation, including trade agreements, as a mechanism through which powerful states further their economic and security interests. As such, one would expect the dominant economic powers in the region to play an outsized role in influencing the RCEP's legal text. The dearth of Chi-

45 Gruber 2000, 2001; Drezner 2013; Krasner 1991.

nese language in the RCEP, given China's status as the largest economy in the RCEP, is not consistent with a direct and proximate power-based explanation of international cooperation. Similarly, it would be expected that Japan would play an important role in writing the RCEP's rules as the second-largest economy in the RCEP with the ability to draw on a pool of internally consistent PTAs for legal text—something that it did not do to a great degree.

Taken as a whole, the empirical results support the notion that the origins of reference treaty text—that is, whether it is developed by a powerful state or not—matter for its diffusion and supports Todd Allee and Manfred Elsig's supposition that reference treaties generate temporal influence on subsequent treaties.<sup>46</sup> The RCEP was clearly not designed *tabula rasa*, but rather was influenced by the past trade negotiations of RCEP members—particularly those that were party to the CP(TPP) negotiations. That is not to say that power asymmetries and bargaining power do not matter in the design of trade agreements or other international instruments, but rather that the importance of power as a determinant of institutional design is moderated by temporality.

US language was more likely to make its way into the RCEP than Chinese or Japanese language because the United States had already been able to take advantage of power asymmetries in earlier negotiations and set its partners on a particular liberalization pathway. In turn, those partners, particularly Australia, promoted US language in the RCEP. RCEP members without agreements with the United States—such as China, and ASEAN members including Thailand, the Philippines, and Indonesia—may have either consented or supported the use of US-style language to smooth the way for membership into the CP(TPP). China has already formally applied to the CP(TPP)<sup>47</sup> while Thailand, the Philippines, and Indonesia have indicated that they accede to the agreement.<sup>48</sup> The high degree of textural replication in chapters of strategic importance to the United States, such as intellectual property rights, is *prima facie* evidence that RCEP members who were not party to CP(TPP) were aware of the need to ensure that their RCEP commitments would not complicate or prohibit their future membership in CP(TPP). The empirical findings suggest that power-by-proxy and associated path dependence has, to borrow a phrase from Soo Yeon Kim and Mark Manger, resulted in the United States creating a 'hub of governance' in Asia Pacific in which US preferences are promoted not by the United States, but by its partners or third parties.<sup>49</sup>

46 Allee and Elsig 2019.

47 Solís 2021.

48 Hayden and Heine 2022.

49 Kim and Manger 2017.

The results also highlight the importance of the design of reference agreements themselves in diffusion outcomes. Text from the CP(TPP) made its way into the RCEP to a much greater extent than language from the United States' bilateral or regional agreements, including those with RCEP members. This finding is in line with Jean Frédéric Morin et al.'s results, which show that intercontinental agreements spark more diffusion and support the notion that the multiparty intercontinental agreements of powerful states are more likely to serve as reference agreements relative to their bilateral agreement.<sup>50</sup> Ultimately, the multiparty and intercontinental nature of CP(TPP) facilitated what the US State Department had designed it to do—lay the trade rules for the twenty-first century—by efficiently pollinating US-style treaty language into the negotiating templates of its partners and third parties.

## 7 Conclusion

This article analyzed the sources of language in the RCEP to identify some of the determinants of trade agreement imitation. The analysis suggests that the RCEP, on balance, is an innovative agreement that relies more on the development of novel text rather than text derived from previous trade agreements. However, where imitation occurred, it was largely driven by language sourced from prior US agreements—particularly, the CP(TPP). US influence was particularly notable in chapters of economic and political importance to the United States, including investment, intellectual property rights, and e-commerce. This suggests that the characteristics of the progenitors of reference treaties matter for the diffusion of treaty text and serve to highlight how the influence of power asymmetries is mediated by time and space. The results also suggest that institutional characteristics—specifically, whether an agreement is multiparty or intercontinental—matter for explaining why specific agreements are copied relative to others.

These findings contribute to the literatures on trade agreement design and diffusion. By highlighting some of the key determinants of treaty replication and, ultimately, treaty design, this article speaks to the trade agreement design literature. The article also speaks to the policy diffusion literature's explanations of diffusion outcomes.<sup>51</sup> More specifically, the results suggest that coercion is indeed one of the mechanisms associated with diffusion, but that coercive power is tempered by temporality.

<sup>50</sup> Morin et al. 2019.

<sup>51</sup> Dobbin, Simmons, and Garrett 2007; Simmons and Elkins 2004.

These results are not only of theoretical interest. As the largest trade agreement in the world, the RCEP may serve as a prototype, in much the same way that NAFTA did, for future trade agreements. These findings also raise important questions as to whether megaregional trade agreements like the RCEP contribute to multilateral cooperation, inhibit it, or serve as a form of layered governance between like-minded states.<sup>52</sup>

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52 Bhagwati 2008; Faude 2020; Hale, Held, and Young 2013.

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