

Making trade work for gender equality

With Agenda 2030, governments have pledged to advance gender equality and empower women and girls. At the same time, they have committed to strengthening international trade and using it as a means to finance the Sustainable Development Goals (SDGs) in a way that is consistent with existing commitments, including those on women's rights, and that respects each country's right to implement policies for sustainable development.¹

Trade has the potential to advance gender equality and realise women's rights by expanding decent work opportunities for women and contributing to sustainable and equitable economic development. However, in many cases this potential has not been fulfilled; trade, and the agreements that establish its rules, have impacted negatively on the lives of many women. In this briefing, we discuss these concerns and conclude with recommendations on how to develop trade agreements that promote gender equality.

1. Introduction

For decades now, international trade rules have aimed to liberalise trade. This is done by, among other things, reducing tariffs (the taxes paid on categories of goods that are imported or exported), giving market access to foreign services providers, establishing rules on intellectual property, making guarantees for investment protection and creating preferential arrangements for the world's poorest countries.² Trade liberalisation purports to remove barriers to trade by reducing regulation. In practice, liberalisation favours powerful players such as multinational enterprises and highly skilled professionals who tend to absorb the market share of less competitive actors—usually small farmers, small enterprises and low-skilled workers.

Trade agreements that lock in liberalisation have attracted criticism from social movements, NGOs, human rights experts and women's rights advocates around the world, highlighting their adverse impact on women as workers, producers and consumers.³ Most recently, public criticism has highlighted the regressive potential of high-profile trade agreements like the Trans-Pacific Partnership (TPP) and Trans-Atlantic Trade and Investment Partnership (TTIP) on social and economic inequalities.⁴

Box 1: The GATT, the WTO and free trade

For the past 60 years, the rules of trade between countries have been governed first by the General Agreement on Tariffs and Trade (GATT) and then by the World Trade Organisation (WTO), which currently has 164 member countries. Both the WTO and GATT have aimed to considerably reduce tariffs. Recently, negotiations at the WTO have stalled, and there has been an exponential increase in the number of bilateral and multilateral trade and investment agreements concluded outside of the auspices of the WTO.

Trade liberalisation has been central to these agreements, including free trade agreements (FTAs) and bilateral investment treaties (BITs), which have become increasingly common over the last two decades, such that almost every WTO member country is now also a party to at least one FTA.⁵

In this briefing we examine the implications of current trade policy for gender equality. We look at the impact of trade agreements on the ability of governments to allocate resources to gender equality, on labour standards and the ability of women to compete in liberalised markets, and on the accessibility of essential public goods and services. We suggest that trade policy can enhance women's livelihoods and strengthen gender equality when it is implemented within a supportive regulatory framework—but this is not currently the case. In conclusion, we recommend ways to ensure that trade policy is consistent with governments' existing commitments to fulfil women's rights and promote sustainable development. Specifically, we make the following recommendations:

Recommendations

Governments should:

1. Build capacity on gender equality and trade within governments.
2. Ensure trade agreements are consistent with and promote international human rights agreements and obligations as well as Agenda 2030.
3. Conduct gender and human rights impact assessments and take the findings of those assessments into account.
4. Make trade negotiations transparent and participatory.

2. The impact of trade and trade agreements on gender equality and women's rights

2.1 Trade rules can reduce government resources for gender equality

Government spending is vital to achieving gender equality, whether in the provision of services and programmes including healthcare and education, or in the development of infrastructure that reduces women's unpaid care and domestic work. Trade liberalisation, however, has resulted in significant reductions in government revenue in developing countries due to the loss of income from trade taxes, including tariffs.⁶ In turn, these diminishing revenues lead to cuts in government expenditure on public goods and services. This is especially likely in developing countries, which tend to rely more heavily on trade taxes as a source for revenue and have a weaker capacity to replace lost income through the collection of other taxes.⁷ For example, the UN Conference on Trade and Development (UNCTAD) reports that in sub-Saharan Africa, trade taxes account on average for 25 per cent of government revenue.⁸ A 2011 study by UNCTAD also confirmed that, if Cabo Verde were to liberalise its tariffs in line with a trade agreement it was negotiating at that time with the European Union, it would lead to a 16 per cent drop in overall government revenue.⁹

Efforts to recover this lost revenue have frequently taken the form of indirect taxes, such as a value-added tax (VAT), which have a greater impact on women.¹⁰ VATs are generally regressive, disproportionately affecting poor households that spend a higher share of their income on basic goods, but there is also evidence that women tend to spend more than men on buying staple goods – food, clothes and medicines – on which indirect taxes are commonly levied.¹¹

2.2 Women producers and workers bear the brunt of trade liberalisation

Women workers in the export sector

Part of governments' rationale for increasing international trade has been higher wages and better conditions for workers in the export sector. In reality, export-oriented firms frequently rely on the subordinate social position of women relative to men in order to continue providing lower wages and poorer working conditions as a form of competitive advantage.¹² In developing countries, women often comprise a majority of the workers in export sectors, such as garment and textile manufacturing and non-traditional agricultural exports—jobs that provide not only low wages but also poor working conditions.¹³ As the former UN Special Rapporteur on the right to food noted, the overrepresentation of women in the “periphery” of the workforce in export-oriented industries is not because women prefer flexible working arrangements; rather, “it is because women are easier to exploit and have fewer options than men.”¹⁴

By making use of FTAs, multinational corporations have increasingly looked to outsource production. Governments competing for these production contracts and foreign investment have set up export processing zones (EPZs) offering incentives such as weak labour protections and tax breaks.¹⁵ Women constitute the majority of workers in EPZs.¹⁶ Proponents of EPZs argue that these jobs offer women better wages and benefits than any available alternatives, but the evidence to support such claims is mixed at best. While EPZ jobs would appear to provide better earnings for women in Bangladesh, cases elsewhere provide contrary evidence, with one study finding that workers in Mexican and Central American EPZs earn less than the industrial sector minimum wage.¹⁷ Moreover, employers in these zones have been known to segregate women into unskilled positions that do not provide opportunities for training and promotion, as well as deliberately suppressing union rights.¹⁸

There is now evidence that as countries move into manufacturing higher value-added goods, with potentially higher wages, a process of “defeminisation” of employment occurs, whereby female labour force participation rates decline.¹⁹ For example, in Taiwan and the Republic of Korea in the 1980s and 1990s, women’s share of employment in skill-intensive manufacturing actually decreased as both countries expanded in that area.²⁰

What is more, current trade agreements have enabled greater mobility of international investment, which allows companies to move to countries offering lower labour costs when faced with worker demands for higher wages or improved conditions.²¹ Employment gains caused by an expansion of export-oriented industry in developing countries, however temporary, have also come at the expense of women workers in developed countries whose jobs have moved elsewhere.²² From the mid-1970s to the mid-1990s, women workers in the Global North were disproportionately affected by job losses in industries competing with cheap manufacturing imports from developing countries.²³

When it comes to avoiding the pitfalls of trade liberalisation, trade unions have played an important role in protecting labour rights in export-oriented industries and reducing the gender wage gap.²⁴ It is therefore particularly important that the right to unionise is protected across the supply chain, including in EPZs and labour-intensive sectors. For example, in the Bangladeshi garment industry, organising and protest by women workers has led to a doubling of their wage and the provision of subsidised food to factory workers.²⁵ Conversely, the persistence of a significant gender wage gap in Malaysia’s manufacturing sector has been attributed to the prohibition against organising for women’s rights in foreign-owned, export-oriented enterprises.²⁶

Women-led small and medium enterprises

Enterprises that are owned and operated by women make important contributions to employment and income-generation for women.²⁷ That said, women-led small and medium enterprises (SMEs) also face the greatest constraints in competing with cheap imported goods when trade is liberalised. Women entrepreneurs experience barriers in accessing loans, technical and business training, market information, and business

networks, while also balancing paid work with heavy burdens of unpaid care work at home. As a result, women-owned enterprises tend to be less profitable than those run by men.²⁸

To counter these constraints, governments sometimes give preference to small, locally run enterprises, including those that are women-led, in their public procurement policy. For example, the government of Kenya reserves 30 per cent of its contracts for women, youth and persons with disabilities.²⁹ However, many trade agreements prohibit preferential treatment of local SMEs on the basis that it discriminates against foreign businesses. In fact, the European Commission has explicitly identified the liberalisation of public procurement, as “an area of significant potential for EU exporters.”³⁰

Women in agriculture

As agricultural markets are liberalised, women farmers—who mostly engage in subsistence-oriented, small-scale production—also face greater risk than men of losing their livelihoods.³¹ Like the women who run SMEs, they confront obstacles in accessing the resources and training needed to be fully productive. Restrictive laws and cultural norms also undermine the right of women to own or inherit land, which in turn limits their access to credit.³² Women are therefore less able to compete when cheap food imports depress the price of their agricultural produce.³³

Further, there is evidence that even when a crop has traditionally been produced by women, the move to producing it for export leads men to take over production and/or marketing, resulting in more income and employment opportunities for men than women.³⁴ Both men and women small farmers face significant challenges when trying to compete in international markets and comply with complicated regulations, such as sanitary and phytosanitary standards, but women small farmers are again at a particular disadvantage here because discrimination in education and training means that they are more likely to lack the necessary technical expertise to meet various product and process standards.

2.3. Trade in services agreements can deepen women's poverty and unpaid care burdens

In addition to the sale of goods, trade agreements also cover the provision of services, or intangibles, from insurance to transport to healthcare. The rising liberalisation of trade in services helps to facilitate the privatisation of essential social services such as healthcare, education, water and sanitation by, for example, increasing the cost to governments of creating or expanding service provision—which, in turn, paves the way for commercialisation of those same public services.³⁵

Experience of privatised provision of public services suggests that commercial providers frequently introduce or increase user fees that deter or prevent poorer consumers from accessing those services, particularly women.³⁶ Further, private providers have been known to “cherry pick” the most profitable communities as customers and neglect service for others. For example, an Indonesian court recently

annulled water privatisation contracts after the price of water increased four-fold and coverage deteriorated especially badly in low-income areas.³⁷ When public services are cut, traditional gender roles mean that women are left to fill the gaps in provision by, for example, fetching water and fuel and providing care for children, the elderly and ill family members.³⁸ As women's burden of unpaid care work in the household increases, they are further precluded from seeking employment and education or exercising a range of other rights, thereby entrenching cycles of poverty.

Currently, 23 member governments of the WTO are negotiating a new trade agreement—the Trade in Services Agreement (TISA)—that would cover two-thirds of global trade in services, opening up an unprecedented range of services to foreign competition.³⁹ TISA would go beyond the existing WTO rules on trade in services, called the General Agreement on Trade in Services (GATS), which give governments more space to choose which services are to be liberalised and which are to be publicly provided or regulated. GATS operates a “positive list” system, in which countries specify which services they wish to liberalise, while TISA proposes to use a “negative list” system, whereby all services are liberalised unless specifically excluded by the country in question.¹

2.4 Tighter intellectual property rights hamper women's access to affordable medicines

Intellectual property rights provisions have been used in trade agreements to protect the interests of large pharmaceutical companies and restrict the production of cheap generic medicines.⁴⁰ Affordable essential medicines are particularly important for women, not only because of women's particular health requirements—for example, related to reproduction—but also because women and girls' disproportionate experiences of poverty, gender-based violence and harmful traditional practices make them particularly vulnerable to ill health and less able to afford expensive medicines.

While the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) recognises the need for some “flexibilities” to allow developing countries to ensure better access to medicines, no such exceptions have been included in the new generation of trade agreements. Agreements such as TTIP seek to strengthen intellectual property rights, including by extending the length of time for which medical patents are valid.⁴¹ This would empower pharmaceutical companies to keep affordable generic medicines off the market for many years.

2.5 Protection of investor interests can threaten gender equality

An increasing number of trade agreements include chapters on investment that set out extensive protections for the interests of foreign investors. These provisions have attracted significant criticism from UN human rights experts and others because of their

¹ The draft text of TISA would require the liberalisation of services in “essentially all modes and sectors” and would require governments to adopt a “negative list” approach to national treatment. This means that national treatment obligations automatically apply to all measures and sectors unless explicitly excluded. Moreover, the Agreement threatens to bind future governments through so-called “standstill” and “ratchet” provisions, which prohibit reversion to state-based provision of public services.

potential to curtail the ability of governments to advance policy that protects and realises human rights and gender equality.⁴² In short, they restrict governments' freedom to enact domestic policies if those policies might reduce the anticipated profit of foreign investors.

Among the most controversial aspects of these protections is the investor-state dispute settlement (ISDS) system. ISDS provisions in trade agreements enable investors to bring a claim in a private international tribunal against a government for breach of a provision of the agreement or treaty. Essentially, investors can challenge government policies if they consider them to be detrimental to their interests—including policies that have been introduced to protect human rights or promote equitable development. Moreover, investors are empowered to sue governments even if they merely *anticipate* reductions in profit from their investments due to planned government regulation or licensing.⁴³

Already, ISDS claims have been brought to challenge South African legislation to redress historical discrimination, Egypt's proposed increase in the minimum wage and El Salvador's refusal of a mining permit on the grounds that it would undermine the right to water.⁴⁴ Measures to promote women's rights and gender equality could be similarly threatened, such as affirmative action laws or laws to close gender wage gaps.⁴⁵ It is also worth noting that there are no equivalent sanctions for foreign companies that violate the human rights of local workers or deepen poverty through their business practices.

3. Developing gender-equitable trade agreements

Having outlined the potentially negative effects of trade and trade agreements on gender equality and women's rights, it is clear that future trade agreements should be based on a substantially better understanding of their gendered impacts. There are several approaches that should be considered by governments and trade negotiators in order to develop more gender-equitable trade agreements.

3.1 Build capacity on gender equality and trade within governments

Ensuring that trade agreements are gender-responsive in the first instance requires internal expertise on the intersection of trade and gender on the part of trade ministries and gender ministries. This is especially important now that all governments have committed to the SDGs, which integrate gender targets across each goal and commit governments to "policy and institutional coherence."⁴⁶ Governments should ensure sufficient capacity—for example, making use of training provided by UNCTAD and others. Women's rights organisations also have a role to play in sensitising government representatives to the gendered nature of trade agreements.

Support for capacity-building on trade within women's rights movements more broadly is also critical for strengthening feminist policy advocacy and encouraging greater engagement of women's rights activists with economic policymaking.⁴⁷

3.2 Ensure trade agreements are consistent with human rights obligations

In negotiating trade agreements, governments should maintain sufficient policy space to adopt policies that protect and promote women's rights in line with their obligations under international human rights law. The Vienna Convention on the Law of Treaties mandates that states must fulfil their human rights treaty obligations in good faith and prohibits them from entering agreements that would undermine their fulfilment of those obligations.⁴⁸ Agreements that empower corporations to sue governments for policies that advance human rights are incompatible with this requirement. In addition, Article 103 of the UN Charter says, "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, the obligations under the present Charter shall prevail."⁴⁹

Further, all member states of the International Labour Organization (ILO) have an obligation to implement, respect and promote ILO conventions, which guarantee the rights of freedom of association and collective bargaining—regardless of whether the individual member state has ratified the conventions.ⁱⁱ Although not legally binding in the same way, under the 2030 Agenda for Sustainable Development, governments have also committed to advancing gender equality, including through the promotion of decent work for all.

3.3 Conduct gender and human rights impact assessments for all trade agreements and take findings into account

There have been consistent calls, from UN trade and human rights experts and activists, for governments to conduct gender and human rights impact assessments before entering into new trade agreements. For example, the UN Special Rapporteur on the right to food has published Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, which require that assessments be conducted before agreements are concluded, with periodic assessments to follow.⁵⁰

UNCTAD is developing a set of tools to perform gender-aware ex ante evaluations of trade policies.⁵¹ The following recommendations should be used as part of a comprehensive gender assessment of trade agreements:

- Distinguish between impacts of export expansion and import displacement on different sectors, such as agricultural, manufacturing and services, as well as between different employment statuses held by women (waged work, self-employment or unpaid care work).

ⁱⁱ The relevant core ILO conventions here are C87 (Freedom of Association and Protection of the Right to Organise Convention) and C98 (Right to Organise and Collective Bargaining Convention).

- Analyse the quality—not just quantity—of jobs created by trade deals. This might mean, amongst other things, whether such jobs lead to a reduction in occupational segregation between men and women by providing opportunities for women in non-traditional sectors or in more skilled positions.⁵²
- Consider the broader implications of trade deals for women as consumers of goods and public services, and the in-country income distribution effects.⁵³
- Evaluate the impact of a proposed trade practice on human rights and gender equality not only *within* a government's national borders but also *beyond* those borders. This is consistent with the extra-territorial human rights obligations of governments, which UN treaty bodies have urged governments to respect in their international trade policies.⁵⁴

Such assessments will require quality sex-disaggregated data and should be participatory, involving representatives of local women's rights organisations and trade unions. The implications of the agreement on gender equality and women's rights should then be taken into account, limiting the scope of trade agreements in some instances and informing the social, economic and industrial policies that are necessary for achieving broader public goals including gender equality.

3.4 Make trade negotiations transparent and participatory

Conducting participatory gender impact assessments requires greater transparency around the negotiation of trade agreements. The ability of women's movements to effectively engage with the content of recent agreements like TTIP, TPP and TISA has been seriously hampered by the secrecy surrounding negotiations and the draft texts themselves. While representatives of powerful industries reportedly had privileged access to the text of the TPP during negotiations, civil society had to rely on leaked drafts to inform its advocacy.⁵⁵ Governments should work to reduce the barriers that civil society organisations face to participating in trade negotiations and accessing full information.⁵⁶ Trade agreements should be subject to parliamentary scrutiny, with drafts released to the public and open consultation processes.

3.5 The role of civil society

Governments are not the only bearers of responsibility here, either—civil society must also ensure that gender equality is central to its approach to trade. Organisations monitoring trade agreements should engage with women's rights organisations and adjust their analysis and demands accordingly.

As governments increase their efforts to negotiate North-South and cross-regional trade agreements, particularly in view of stalled discussions in the WTO, it is crucial that women's rights movements around the world work together to build a common analysis and strategy around trade policy. Mobilisation around trade agreements in countries in the Global North should reflect not only domestic concerns but also the negative consequences of trade agreements for women in the Global South, where the impacts for livelihoods and gender equality are often even more profound.

4. Conclusion

Trade, and the agreements that shape trade, are not gender-neutral. The evidence suggests that trade liberalisation exacerbate gender inequality in a variety of ways. Whether as workers in export industries, small farmers or the owners of SMEs, women are more exposed than men to the risks of liberalised trade. Women's subordinate status in society and increased risk of poverty means that they suffer more when trade agreements increase the price of essential medicines, privatise care provision or undermine trade union rights. The ability of governments to redress imbalances and promote gender equality is then restricted when government revenue is depleted by falling tariffs, or when policies to promote human rights are challenged because they threaten investor interests.

There is an alternative. Governments can negotiate trade agreements and agree trade policy that promotes rather than undermines gender equality and women's rights. Trade agreements must be consistent with governments' commitments on human rights and gender equality, including but not limited to Agenda 2030 and the SDGs. Gender and human rights impact assessments for all trade agreements should be carried out before agreements are concluded, with assessments continuing at regular intervals and whose outcomes are used to inform policy. Greater capacity building on the gender-trade nexus is needed, including both gender training for government trade negotiators and trade capacity building within women's ministries and movements. Trade policy must be developed in a transparent and democratic way, allowing for full scrutiny and consultation with civil society, including women's movements.

Finally, civil society and labour organisations advocating on trade must work more closely with women's rights organisations, while women's rights movements from the Global North and South should collaborate in order to build a common analysis around trade policy, taking into account varying concerns and priorities, so that they can hold governments to account for the impact of their trade policies.

¹ See in particular targets 17.10–17.15 and para 10. UNGA. 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 Oct, A/RES/70/1. <http://www.refworld.org/docid/57b6e3e44.html>

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³ See, for example Asia Pacific Forum on Women, Law and Development. 2016. 'Regional comprehensive economic partnership (RCEP): robbing communities to extract profit', 22 Jul. <http://apwld.org/briefer-on-the-rcep-robbing-communities-to-extract-profit/>; see also the work of Trade Justice Movement on trade and investment agreements (<http://www.tjm.org.uk/trade-issues/related-campaign-issues>) and Public Citizen's Global Trade Watch work (<http://www.citizen.org/Page.aspx?pid=3147>); for a detailed gender analysis of EU trade policy, see WIDE+. 2017 (forthcoming). 'Promoting gender equality in and beyond EU trade policy.'

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- ⁵³ For additional recommendations, see European Parliament 2016.
- ⁵⁴ UN CESCR. 2011. *Consideration of reports submitted by states parties under articles 16 and 17 of the covenant: concluding observations of the Committee on Economic, Social and Cultural Rights—Germany*, 12 Jul, E/C.12/DEU/CO/5, para 9.
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- ⁵⁶ Citizens have a right to take part in public affairs and to access relevant information. See, for example, the statement of the UN Independent Expert on the promotion of a democratic and equitable international order, who stated, "I am concerned about the secrecy surrounding negotiations for trade treaties, which have excluded key stakeholder groups from the process, including labour unions, environmental protection groups, food-safety movements and health professionals." UN OHCHR 2015. See also UNGA. 1966. *International covenant on civil and political rights*, 16 Dec, 999 UNTS 171, arts 19 and 125. <http://www.refworld.org/docid/3ae6b3aa0.html>

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The Gender & Development Network (GADN) brings together NGOs, consultants, academics and individuals committed to working on gender, development and women's rights issues. Our vision is of a world where social justice and gender equality prevail and all women and girls are able to realise their rights free from discrimination. Our goal is to ensure that international development policy and practice promotes gender equality and women's and girls' rights.

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