

Women at the Frontline of COVID-19: Can Gender Mainstreaming in Free Trade Agreements Help?

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Abstract

Health pandemics affect women and men differently, and they can make the existing gender inequalities much worse. COVID-19 is one such pandemic, which can have substantial gendered implications both during and in the post-pandemic world. Its economic and social consequences could deepen the existing gender inequalities and roll back the limited gains made in respect of women empowerment in the past few decades. The impending global recession, multiple trade restrictions, economic lockdown and social distancing measures can expose vulnerabilities in social, political and economic systems which in turn could have a profound impact on women's participation in trade and commerce. The article outlines five main reasons that explain why this health pandemic has put women employees, entrepreneurs and consumers at the frontline of the struggle. It then explores how free trade agreements can contribute in repairing the harm in the post-pandemic world. In doing so, the author sheds light on various ways in which the existing trade agreements embrace gender equality considerations and how they can be better prepared to help minimize the pandemic-inflicted economic loss to women.

Keywords: COVID-19, Women, Economic Empowerment, International Trade, Free Trade Agreements, Gender Mainstreaming

Introduction:

The unprecedented pandemic of COVID-19 has strained and overstretched the health systems worldwide, including in the most advanced economies of the world.¹ It has upended the global economy, and with it the international trade, creating enormous shocks to supply and demand. As a response to this pandemic, countries have increased trade restrictions and closed down

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¹ Bojan Pancevski, 'Growing Coronavirus Epidemic Is Straining Europe's Health-Care System' (*The Wall Street Journal*, 8 March 2020) <<https://www.wsj.com/articles/growing-coronavirus-epidemic-is-straining-europes-health-care-system-11583670904>> accessed 15 April 2020

their borders, and this has cut the supply chain, i.e., “the fuel line to the engine”² of international trade. The WTO economists predict that COVID-19 can cause a bigger collapse of global trade than what we had seen during the 2008-2009 economic crises.³ The economic contagion has grown as fast as this health pandemic itself. Amidst all this, something else is happening that we need to take an account of.

COVID-19 has put women employees, women entrepreneurs and women consumers at the frontline of this struggle.⁴ ‘Across every sphere, from health to the economy, security to social protection, the impacts of COVID-19 are exacerbated for women and girls simply by virtue of their sex.’⁵ This paper sheds light on the key reasons that explain why women, working women in particular, are placed at the frontline of this struggle. This article is not attempting to show how or why more working women than working men (in absolute numbers) can get affected due to this pandemic; this may not be the case as much more men than women are involved in the economies and hence men may be impacted more in absolute terms. Moreover, we need sex-disaggregated data on the economic impact of COVID-19 to better understand its gendered impact. The paper seeks to underline how this pandemic could roll-back the limited gains made in respect of women empowerment over the past few decades. The post-pandemic world will require multiple interventions at domestic and international levels to repair this harm. International trade law and policies can form an important part of this recovery, as they can trigger changes at the domestic levels.⁶ This crisis presents a unique opportunity to build back the economy in an inclusive manner and explore how trade policies can contribute in this respect through existing and future free trade agreements (FTAs).

² ‘Trade forecast press conference: Remarks by DG Roberto Azevedo’ (*World Trade Organization*, 8 April 2020), 11 <https://www.wto.org/english/news_e/spra_e/spra303_e.htm> accessed 15 April 2020

³ ‘Trade set to plunge as COVID-19 pandemic upends global economy’ (*World Trade Organization*, 8 April 2020) <https://www.wto.org/english/news_e/pres20_e/pr855_e.htm> accessed 15 May 2020; Irena Asmundson, Thomas Dorsey, Armine Khachatryan, Iona Niculcea, and Mika Saito, ‘Trade finance in the 2008–2009 financial crisis: evidence from IMF and BAFT-IFSA surveys of banks’ in Jean-Pierre Chauffour and Mariem Malouche (eds.), *Trade Finance During the Great Trade Collapse* (World Bank 2011); Rudolfs Bems, Robert C Johnson and Kei-Mu Yi, ‘The Great Trade Collapse’ (2013) 5(1) *Annual Review of Economics* 375

⁴ Titan Alon, Matthias Doepke, Jane Olmstead-Rumsey, and Michèle Tertilt, ‘The Impact of COVID-19 on Gender Equality’ (2020) NBER Working Paper No. 26947; ‘COVID-19: A Gender Lens, Technical Brief Protecting Sexual and Reproductive Health and Rights, and Promoting Gender Equality’ (*UNFPA*, March 2020) <<https://www.unfpa.org/resources/covid-19-gender-lens>> accessed 15 May 2020

⁵ Policy Brief: The Impact of COVID-19 on Women (United Nations, 9 April 2020)

⁶ WTO agreements and how they accommodate gender equality concerns discussed in Rohini Acharya, Olga Falgueras Alamo, Salma Mohamed Thabit Al-Battashi, Anoush der Boghossian, Naghm Ghei, Tania Parcerro Herrera, Lee Ann Jackson, Ulla Kask, Claudia Locatelli, Gabrielle Marceau, Ioana-Virginia Motoc, Anna Caroline Müller, Nora Neufeld, Simon Padilla, Josefita Pardo de León, Stella Perantakou, Nadezhda Sporysheva, Christiane Wolff, ‘Trade and Women—Opportunities for Women in the Framework of the World Trade Organization’ (2019) 22(3) *Journal of International Economic Law* 323, 327

Free trade agreements (FTAs) can play an instrumental role in reducing gender gap.⁷ Two reasons in particular support this claim. *First*, the existing and future trade agreements between countries can increase trade flows and hence lead to more business and employment opportunities and a better standard of life for all including women. *Second*, through regional or bilateral trade accords, countries can encourage their trade partners to create laws and procedures that may encourage women's participation in trade and commerce. As will be discussed in Section III, more and more countries are employing this "top-down" approach to deal with gender inequality as they are increasingly including gender considerations in their trade agreements. This paper sheds light on different types of gender-responsive provisions found in existing FTAs that can play a part in reducing gender inequality. It will also present some discussion on how future FTAs can take a step further in this respect, so they are able to better respond to the pandemic-inflicted-disruptions to inclusive growth. These discussions will provide an understanding of how FTAs can help women participate in the economy and the elements that existing FTAs lack in this respect.

I. COVID-19 puts Women at the Frontline: Five Possible Reasons

Reason 1: Loss of employment for women in service sectors

Trade in services seems to be most directly affected by this pandemic due to its very special nature. The loss of services (in the form of cancellation of sports events, travel plans, other recreational services) is permanent as, unlike goods, there are no inventories of services and services cannot be stored or restocked for future consumption.⁸ Hence, the impact of this pandemic on trade in services is much harsher than its impact on trade in goods.

Globally, almost 30% of women workforce is employed in service-based industries.⁹ Women are mostly employed in labor-intensive services that require physical proximity between providers and consumers. In this pandemic where social distancing has become a global norm, service industries such as tourism, finance and education are set to suffer a significant loss of revenue.¹⁰ Women workers employed in these sectors stand at an economically vulnerable position. Moreover, women are overrepresented in low-paid, part-time, and temporary

⁷ The expression "free trade agreements" or FTA" in this paper is used to refer to different regional or bilateral agreements that may be free or preferential or in the form of economic partnerships.

⁸ 'Trade set to plunge as COVID-19 pandemic upends global economy' (*World Trade Organization*, 8 April 2020), <https://www.wto.org/english/news_e/pres20_e/pr855_e.htm> accessed 21 April 2020

⁹ 'The Industry Gender Gap' (*World Economic Forum*, January 2016), 5 <http://www3.weforum.org/docs/WEF_FOJ_Executive_Summary_GenderGap.pdf> accessed, 21 April 2020

¹⁰ J Faus, 'This is how coronavirus could affect the travel and tourism industry' (*World Economic Forum*, March 2020) <<https://www.weforum.org/agenda/2020/03/world-travel-coronavirus-covid19-jobs-pandemic-tourism-aviation/>> accessed 21 April 2020; 'COVID-19 Educational Disruption and Response' (*UNESCO*, 2020) <<https://en.unesco.org/covid19/educationresponse>> accessed 21 April 2020

employment, often without job protection, maternity benefits, health benefits or pensions commensurate with their working life.¹¹ In any industry that is hit hard by the pandemic, women are more likely to feel the impact as compared to men who tend to have higher representation at senior, well-paid and permanent roles (often with stronger job protection and employment benefits) than women.¹²

Reason 2: Loss of income for female workforce in informal sectors

Recent studies show that two billion people in the world work in the informal sector, majority being in emerging and developing countries. This means that more than 61 per cent of the world's employed population makes their living from the informal economy. If we only look at the world's informal employment in emerging and developing countries, the number goes up to 93 percent.¹³ Out of two billion workers in the informal employment worldwide, over 740 million are women. In South Asia, over 80 percent of women in non-agricultural jobs are in informal employment. This number is over 74 percent in Sub-Saharan Africa and 54 percent in Latin America and the Caribbean.¹⁴ Women in this sector, which is often referred to as a "grey economy", frequently work without decent salaries, protection from labor laws, insurance or health cover, maternity benefits or paid sick leave.¹⁵ With the "Stay at Home" orders and social distancing norms, petty services traders, street-vendors, seasonal workers and industrial outworkers will be left out of their already poorly-paid employments.¹⁶

Reason 3: Small and Medium-sized Enterprises may struggle to survive

¹¹ L Shields, J Hall, & A Mamun, 'The 'gender gap' in authorship in nursing literature' (2011) 104(11) Journal of the Royal Society of Medicine, 457; T Baum, 'International perspectives on women and work in hotels, catering and tourism' (*International Labour Organization*, 2013), 39-40 <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_209867.pdf> accessed 21 March 2020

¹² Günseli Berik, 'Mature Export-Led Growth and Gender Wage Inequality in Taiwan', in Irene Van Staveren, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.), *The Feminist Economics of Trade* (Routledge 2007), 141

¹³ 'Women and men in the informal economy: A statistical picture' (*International Labor Office, Third Edition*, 30 April 2018) <https://www.ilo.org/global/publications/books/WCMS_626831/lang--en/index.htm> accessed 21 April 2020

¹⁴ *Progress of the World's Women 2015-2016: Transforming economies, realizing rights* (UN Women, 2015), Chapter 2, at 71

¹⁵ Martha Alter Chen, 'Women in the Informal Sector: A Global Picture, the Global Movement' (2001) 21(1) SAIS Review, 71

¹⁶ 'Women in informal economy' (*UN Women*) <<https://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy>> accessed 21 April 2020

In the current era of globalization and trade liberalization, small and medium-sized enterprises (SMEs)¹⁷ play an instrumental role in the economy. SMEs account for almost 50 percent of the global gross domestic product (GDP) and over 70 percent of the employment worldwide.¹⁸ SMEs drive economic growth, but they tend to be vulnerable to changes in the economy or markets forces beyond their control, such as a health pandemic which can alter the market dynamics and supply chain for a considerable period of time.¹⁹ They may not have the capacity and resources to survive a global economic meltdown or a recession as compared to large multinational companies.²⁰ This would especially be the case with SMEs that are engaged in export and import of goods as well as services, mainly because of the disruptions in service economies and temporary export restrictions imposed on multiple products including drugs²¹, medical equipments²², agricultural products²³ and cereals²⁴. These export restrictions could alter the consumption patterns, disrupt supply chains and hence change the very nature of multiple industries worldwide.²⁵

¹⁷ 'Small and medium-sized enterprises (SMEs) are non-subsidiary, independent firms which employ fewer than a given number of employees. This number varies across countries. The most frequent upper limit designating an SME is 250 employees, as in the European Union. However, some countries set the limit at 200 employees, while the United States considers SMEs to include firms with fewer than 500 employees.' *OECD SME and Entrepreneurship Outlook: 2005* (OECD Paris 2005), 17

¹⁸ OECD and WTO, *Aid For Trade at a Glance 2017: Promoting Trade, Inclusiveness and Connectivity for Sustainable Development*, (OECD, WTO, 2017), ch 8, 220

¹⁹ OECD Working Party on SMEs and Entrepreneurship, 'SME Policy Responses' (OECD, 2020) <https://read.oecd-ilibrary.org/view/?ref=119_119680-di6h3qgi4x&title=Covid-19_SME_Policy_Responses> accessed 21 April 2020 [Empirical research finds that due to COVID-19, more than half of SMEs now already face severe losses in revenues, with many having only a few months' reserves to withstand the crisis]

²⁰ See for example, Gert Wehinger, 'SMEs and the credit crunch: Current financing difficulties, policy measures and a review of literature' (2013) 2 *OECD Journal: Financial Market Trends*, 115; Ali Asgary, Ali Ihsan Ozdemir & Hale Özyürek, 'Small and Medium Enterprises and Global Risks: Evidence from Manufacturing SMEs in Turkey' (2020) 11(1) *International Journal of Disaster Risk Science*, 59.

²¹ Colombia, Temporary export ban on certain personal protective equipment [WTO document G/MA/QR/N/COL/1, 2 April 2020]; India, Amendments introduced to the export policy of Active Pharmaceutical Ingredients (APIs) and formulations made from these APIs [Notification No. 50/2015-2020, Ministry of Commerce and Industry - Department of Commerce, Directorate General of Foreign Trade (3 March 2020)]

²² Australia, Temporary restrictions on the non-commercial export of personal protective equipment and sanitizer products [Australian Government, Department of Home Affairs]

²³ China, Temporary decrease of import tariffs on certain products, e.g. medical supplies, raw materials, agricultural products, meat [The General Office of the Ministry of Commerce issued the Circular on actively expanding imports to combat against novel coronavirus epidemic (6 February 2020)]; Indonesia, Temporary elimination of import certification requirements on imports of onions and garlic [Permanent Delegation of Indonesia to the WTO (1 April 2020) and Ministry of Trade Regulation No. 27]

²⁴ Honduras, Temporary export ban on certain dried leguminous vegetables [Presidencia de la República, Sala de Prensa]

²⁵ Simon Evenett, 'Tackling COVID-19 Together: The Trade Policy Dimension', (*Global Trade Alert*, 23 March 2020), <<https://www.globaltradealert.org/reports/51>> accessed 1 June 2020 [A case study on medical ventilators shows that this pandemic has led to zero-sum behavior towards foreign trade.]

Women own close to 10 million of the world's SMEs.²⁶ This means that more than thirty percent of SMEs in the world are owned by women entrepreneurs. In the state of lockdown, it is a hard reality that many SMEs will have to close or scale down their operations. SMEs dealing with trade in services, in particular those working in tourism, retail, education, hospitality and finance, could suffer a gigantic jolt.²⁷ Moreover, women who are employed by SMEs might also be uprooted from the economy as a result of this pandemic. Globally, approximately 50 percent of working women are employed in service-based SMEs.²⁸ This number goes as high as 85 percent if we look at female employment in service sectors in advanced economies.²⁹ Hence, loss of employment for women in SMEs could be quite significant.

Reason 4: Women entrepreneurs may require longer times to reactivate their businesses

Women entrepreneurs may require longer times to reactivate their businesses due to several reasons.³⁰ One of the reasons that could impede the process of reactivating women-owned businesses is their lack of access to productive resources such as assets and capital. Approximately 50 percent of women in the world do not have bank accounts or access to other financial services.³¹ In the rural areas of low income countries, only about 20 percent of bank account holders are women.³² Women without bank accounts have no credit history. Also, women generally have less access to assets such as land or other property due to multiple reasons including men-favoring inheritance laws in many countries.³³ Lack of credit history and

²⁶ Usman Ahmed, Thorsten Beck, Christine McDaniel, and Simon Schropp, 'Filling the Gap: How Technology Enables Access to Finance for Small- and Medium-Sized Enterprises' (2015) 10 (3–4) *Innovations: Technology, Governance, Globalization*, 35, 42

²⁷ Asgary et al (see note 20) 73 [the authors explain how natural disasters and global recessions can impact SMEs, with a special focus on SMEs in Turkey.]

²⁸ 'Global Employment Trends 2014: The risk of a jobless recovery' (*International Labour Organization*, 21 January 2014) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf> accessed 12 February 2020

²⁹ 'Global Employment Trends for Women 2012' (*International Labour Organization*, 11 December 2012) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_195447.pdf> accessed 12 February 2020

³⁰ 'In Liberia, mobile banking to help Ebola-affected women traders' (*UN Women*, 14 November 2014), <<https://www.unwomen.org/en/news/stories/2014/11/in-liberia-mobile-banking-to-help-ebola-affected-women-traders>> 12 February 2020 [shows how Ebola virus disrupted the economic empowerment gains made in affected countries, and that women took much longer time than men to return to their economic security and livelihoods post Ebola crisis.]

³¹ UN Women, 'Innovation for Gender Equality' (*UN Women*, 2019) 5 <<http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/innovation-for-gender-equality-en.pdf?la=en&vs=733>> accessed 21 April 2020

³² L Farre, 'The Role of Men in the Economic and Social Development of Women: Implications for Gender Equality' (2012) 28 (1) *The World Bank Research Observer*, 22, 23

³³ Bina Agarwal, 'Gender and Command over Property: A Critical Gap in Economic Analysis and Policy in South Asia' (1994) 22 (10) *World Development*, 1455, 1471

assets would mean that women entrepreneurs could face significant difficulties in securing credit for reviving their businesses post pandemic.

Another reason that could slow down the process of recovery for women might be the decrease in access to family planning services such as abortions.³⁴ Difficulty and fear in approaching medical services for having an abortion or accessing contraceptives could cause untimely and unwanted pregnancy to many women professionals, which in turn could increase their time constraints.³⁵ Lack of access to medical services could also lead to an increase in the numbers of maternal mortality and sexually-transmitted diseases.³⁶ Moreover, women may be disconnected further from the economy due to increased household responsibilities and domestic violence during the great lockdown.

Reason 5: Increase in Household Responsibilities and Violence against Women

Women professionals tend to take a bigger chunk of domestic responsibilities as compared to men even during their working hours.³⁷ Lockdown implies that children across the world are at home, which would mean an increase in child-care work for women and higher time-poverty for them.³⁸ Time-poverty is one of the barriers that impede women's participation in economies, as it implies for them lack of time to receive education, skill development, vocational training, employment prospects, and business opportunities.³⁹ Moreover, most of this household work is largely invisible and unpaid.⁴⁰ This puts women a step farther from being economically empowered.

Moreover, for some women, staying at homes could also mean being locked down with their physically abusive family members.⁴¹ France has reported a spike of 30 percent in domestic

³⁴ Amber Peterman, Alina Potts, Megan O'Donnell, Kelly Thompson, Niyati Shah, Sabine Oertelt-Prigione, and Nicoele van Gelder, 'Pandemics and Violence Against Women and Children' (*Center for Global Development, Working Paper 528*, April 2020) <<https://www.cgdev.org/sites/default/files/pandemics-and-violence-against-women-and-girls.pdf>> accessed 22 April 2020

³⁵ COVID-19: A Gender Lens, Technical Brief (see note 4)

³⁶ 'Out-of-Pocket Spending for Contraceptives in Latin America' (UNFPA, March 2020)

³⁷ Matthias Doepke and Fabian Kindermann, 'Bargaining over Babies: Theory, Evidence, and Policy Implications' (2019) 109(9) *American Economic Review*, 3264 (the authors observe that women provide the majority of childcare even if both spouses are working)

³⁸ Alon et al (see note 4)

³⁹ Maria Floro, 'Economic Restructuring, Gender and the Allocation of Time' (1995) 23(11) *World Development*, 1913 (notes that trade liberalization can reduce the cost of products and services to help women save time.)

⁴⁰ Discussion on gross distribution of unpaid care work between men and women discussed in ECLAC, 'Repository of information on time use in Latin America and the Caribbean' (UN, October 2019), <https://oig.cepal.org/sites/default/files/2019-10_repositorio_uso_del_tiempo_eng.pdf> accessed 21 April 2020

⁴¹ MP Fernandez-Kelly and S Sassen, 'Recasting Women in the Global Economy: Internationalization and Changing Definitions of Gender', in Christine E Bose and Edna Acosta-45 Belen (eds.), *Women in the Latin American Development Process* (Temple University Press 1995)

violence cases against women during the lockdown.⁴² In the United Kingdom, calls to the national abuse hotline have increased by 65 percent during the lockdown.⁴³ A similar spike in the numbers of domestic abuse cases is noticed in other countries including China, Spain and India.⁴⁴ This shows how global this problem is, and these reports do not even take into account the actual numbers as many instances of domestic violence remain unreported.⁴⁵ Domestic violence can lead to loss of lives for some; for the survivors, it could cause physical injuries, anxiety and distress. Women can be psychologically-scarred due to increased domestic violence and household responsibilities; this could jeopardize their confidence or psychological set-up to succeed or progress in their professional endeavors.

Due to the aforementioned reasons, this pandemic might reverse the gains we have made in respect of women's economic empowerment.⁴⁶ International trade can serve as a tool to minimize this damage, as it can create more economic opportunities for women. It can also be used to deconstruct or minimize the formidable barriers (in the form of domestic laws, policies, practices and perceptions) that impede women's participation in the economies.⁴⁷ As discussed in the following section, international trade instruments can play an instrumental role in guiding countries on conducting trade in a manner that can lead to equal benefits and opportunities for women and men.

II. Can International Trade Law Accommodate Women Empowerment?

The pandemic has forced governments to take unprecedented measures to protect human health and lives. Some of these measures have caused an unavoidable decline in trade of goods and services, leading to painful suffering for the global economy. The increasing protectionism and nationalism seems to be reversing the trend of economic globalization. In these testing

⁴² See Infographic: The Shadow Pandemic - Violence Against Women and Girls and COVID-19 (UN Women, 6 April 2020) <<https://www.unwomen.org/en/digital-library/multimedia/2020/4/infographic-covid19-violence-against-women-and-girls>> accessed 26 April 2020

⁴³ Megha Mohan, 'Coronavirus: I'm in lockdown with my abuser' (*BBC News*, 31 March 2020) <<https://www.bbc.com/news/world-52063755>> accessed 25 April 2020

⁴⁴ Amanda Taub, 'A New Covid-19 Crisis: Domestic Abuse Rises Worldwide' (*New York Times*, 6 April 2020) <<https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html?smid=fb-nytimes&smtyp=cur>> accessed 21 April 2020

⁴⁵ 'COVID-19: A Gender Lens, Technical Brief (see note 4); Andrea Monje, Vivian Roza, and Nidia Hidalgo, 'Violence Against Women (VAW) In The Context of Covid-19: Lessons and Tools for Latin America and the Caribbean' (IDB, March 2020), <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1043693673-42>> accessed 27 April 2020

⁴⁶ On the other hand, it could also benefit women in certain ways (for example it could lead to increased father's childcare responsibility with fathers working increasingly at homes, increased flexibility in workplace arrangements, and increased jobs and business opportunities in health sector). For details, see Alon et al (see note 4), 21-22

⁴⁷ For a detailed discussions on these domestic barriers, see International Trade Centre (2015), 'Unlocking Markets for Women to Trade' (ITC, Geneva)

times, international trade is emerging as a “necessary evil”. Some scholars in the past have shed light on its “evil” effects because in addition to the rapid transmission of virus to different countries partly aggravated due to globalization, trade has fostered interdependence among countries even for essential products such as food items, drugs, medical equipments and clothing.⁴⁸ This interdependence becomes an acute problem when countries increase their restrictions on trade as a response to crisis-like situations such as a health pandemic. Does this mean that countries post-pandemic might not remain as open to trade as they were before the pandemic in order to be more self-sufficient? The answer seems to be a “no”, as although trade flows might reduce for a period of time, trade is “necessary” because no country - powerful, developed, or developing - has resources to produce everything it needs.⁴⁹ Nevertheless, countries might want to revisit the way and the extent to which they trade and how this trade might be regulated in the future.

This crisis presents a unique opportunity for countries to explore how trade policies can contribute in “building back better”⁵⁰ and in an inclusive manner in the post-COVID-19 world. Inclusive growth is the cornerstone for sustainable development.⁵¹ Foreign trade needs to be sustainable to ensure that countries can harmonize trade liberalization with their important national interests. It needs to be inclusive so as to better include and benefit marginalized players. A recent study has found that if women play an equal role in labor markets to that of men, the global Gross Domestic Product will increase by 26 percent in 2025.⁵² These numbers may not hold in the post-COVID-19 world; but they certainly make inclusive trade a compelling business case for the post-pandemic economic recovery.

⁴⁸ David Elliott and Kim Burnett, *The Relationship between food security policy measures and WTO trade rules*, (Quaker United Nations Office, Geneva, 2015) [discusses how liberalization of trade and WTO rules do not guarantee food security interests]; Contradictory arguments in Alan Matthews, 'Trade rules, food security and the multilateral trade negotiations', (2014) 41(3) *European Review of Agricultural Economics*, 511, 551 [argues that an open and predictable trading system plays an essential role in promoting global food security]

⁴⁹ 'Azevêdo sees sharp fall in trade, calls for global solutions to COVID-19 crisis' (*World Trade Organization*, 25 March 2020) <https://www.wto.org/english/news_e/news20_e/dgra_25mar20_e.htm> accessed 22 April 2020

⁵⁰ The expression is taken from the call for 'Policy Hackathon on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and other Trade Agreements', organized jointly by UN and WTO <<https://www.unescap.org/events/policy-hackathon-model-provisions-trade-times-crisis-and-pandemic-regional-and-other-trade>> accessed 1 July 2020

⁵¹ A Alesina and D Rodrick, 'Distributive Politics and Economic Growth', (1994) 109(2) *The Quarterly Journal of Economics*, 465; Ricardo Hausmann, Laura D Tyson, Saadia Zahidi, *The Global Gender Gap Report* (*World Economic Forum*, 2010) <http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf> accessed 14 August 2019

⁵² Jonathan Woetzel, Anu Madgavkar, Kweilin Elingrud, Eric Labaye, Sandrine Devillard, Eric Kutcher, James Manyika, Richard Dobbs, and Mekala Krishnan, 'The Power of Parity: How Advancing Women's Equality can Add \$12 Trillion' (*McKinsey Global Institute*, September 2015) <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Employment%20and%20Growth/How%20advancing%20womens%20equality%20can%20add%2012%20trillion%20to%20global%20growth/MGI%20Power%20of%20parity_Full%20report_September%202015.ashx> accessed 17 March 2019

Encouraging women participation in trade and commerce has a two-fold benefit. On one hand, increased participation of female workforce can lead to faster economic recovery for the world; on the other hand, it could help minimize the extent of economic and social harm women might have suffered during this pandemic. Multiple interventions are required to undo the harm, and international trade could arguably be one of the required and effective interventions in this respect. Women's economic empowerment and international trade share an intricate and complex relationship as the former could be enhanced through an effective regulation of the latter.⁵³ This is not a new realization.

One of the first acknowledgments of the inter-relationship between gender and commerce can be traced back to the Treaty on the Functioning of the European Union (TFEU).⁵⁴ Moreover, the Addis Ababa Agenda of Action⁵⁵ and the UN's 2030 Agenda for Sustainable Development⁵⁶ recognize foreign trade as an important instrument to reach development objectives including gender equality. The Addis Ababa Agenda of Action builds a clear nexus between international trade and gender. It reads as follows: 'Recognizing the critical role of women as producers and traders, we will address their specific challenges in order to facilitate women's equal and active participation in domestic, regional and international trade.'⁵⁷ The Sustainable Development Goals also directly address the need to achieve full and effective participation of women for furthering economic growth and sustainable development.⁵⁸ The most recent multilateral instrument that reinforces this view is the WTO's Joint Declaration on Trade and Women's Economic Empowerment. The Declaration, signed in December 2017 at Buenos Aires by almost seventy percent of the WTO membership, reaffirms that 'international trade and investment are engines of economic growth for both developing and developed countries, and that improving women's access to opportunities and removing barriers to their participation in national and international economies contributes to sustainable economic development'.⁵⁹ The following section explores this relationship further, as it provides a discussion on how free trade

⁵³ Anna Hutchens, 'Empowering Women through Fair Trade? Lessons from Asia' (2010) 31(3) *Third World Quarterly*, 449

⁵⁴ Article 157, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1

⁵⁵ 'Third International Conference on Financing for Development (FfD3)' (*United Nations*, 13-16 July 2015) <<https://www.un.org/esa/ffd/ffd3/conference.html>>

⁵⁶ 2030 Agenda for Sustainable Development, United Nations (Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1)

⁵⁷ Para 90, Addis Ababa Action Agenda

⁵⁸ Goal 5, 2030 Agenda for Sustainable Development

⁵⁹ 'Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment' (WTO Ministerial Conference, 12 December 2017) [hereinafter referred to as 'Declaration 2017']

agreements can enhance women empowerment and hence help with rebooting the economy in an inclusive manner in the post-pandemic world.⁶⁰

III. Gender Mainstreaming in Free Trade Agreements: Existing Best Practice Examples and the Road Ahead

Free trade agreements (FTAs) can play an important role in reducing gender inequality. Through FTAs, countries can encourage their trade partners to create laws and procedures that can eliminate or reduce the barriers that impede women's participation in trade.⁶¹ This can be seen as a "top-down" approach to deal with gender inequality at the domestic levels.⁶² Certain countries (such as Canada) are emerging champions of this approach, as they have offered their market access to other countries through negotiating some of the world's most gender-responsive trade agreements so far.⁶³

FTAs create different outcomes and opportunities for women and men.⁶⁴ Some argue that trade agreements can exacerbate existing gender inequalities.⁶⁵ It can put livelihoods and employment of women at risk.⁶⁶ Trade liberalization can disrupt economic sectors where women are most active, thereby depriving them of employment and business opportunities.⁶⁷ It can increase gender wage gaps and create poorer working conditions for women in

⁶⁰ Domestic laws and policies also have an important role to play in this respect; however this discussion remains outside the scope of this paper. For more information on programs and policies countries have initiated as a response to COVID-19, see Policy Brief: The Impact of COVID-19 on Women (United Nations, 9 April 2020), 7-8

⁶¹ Amrita Bahri, 'Measuring the Gender-Responsiveness of Free Trade Agreements: Using a Self-Evaluation Maturity Framework' (2019), 14 (11) *Global Trade & Customs Journal*, 517

⁶² "Top-down" approach in this respect could be seen as an approach that uses international trade instruments to trigger changes at the domestic levels.

⁶³ See Bahri (note 61)

⁶⁴ Adrian Wood, 'North-South Trade and Female Labour in Manufacturing: An Asymmetry' (1991) 27(2) *Journal of Development Studies*, 168; Robert Baldwin, 'Trade Policies in Developed Countries', in Ronald Jones and Peter Kenen (eds.) *Handbook of International Economics* (North-Holland 1984 Volume 1), 571

⁶⁵ James Levinsohn, 'Employment Responses to International Liberalization in Chile' (1999) 47 (2) *Journal of International Economics*, 321; Marzia Fontana, 'Gender Justice in Trade Policy – The Gender Effects of Economic Partnership Agreements' (*One World Action*, 2009)

⁶⁶ Elisa Gamberoni and José Guilherme Reis, 'Gender-Informing Aid for Trade: Entry Points and Initial Lessons Learned from the World Bank' (*The World Bank*, July 2011), 62; Sheba Tejani and William Milberg, 'Global Defeminization? Industrial Upgrading, Occupational Segmentation and Manufacturing Employment in Middle-Income Countries' (*Schwartz Center for Economic Policy Analysis Working Paper*, 2010); Marzia Fontana, and Cristina Paciello, *Gender Dimensions of Agricultural and Rural Employment: Differentiated Pathways out of Poverty* (FAO, IFAD and ILO, 2010)

⁶⁷ Fontana, 'Gender Justice in Trade Policy' (see note 65); Karen Melanson, 'An Examination of the Gendered Effects of Trade Liberalisation' (2005) 2(1) *Policy Perspectives*, 10-17 (explains how trade liberalization can lead to decrease in care work)

developing countries.⁶⁸ Scholarship on the other hand observes that trade agreements can translate into more job opportunities and better business connections for enhanced market access for women.⁶⁹ Mainstream economics' literature notes that there is a positive correlation between the increase in production for exports in developing countries and the increase in levels of female employment in various sectors including manufacturing.⁷⁰ These observations show that the scholarship is divided on how trade agreements can impact gender equality; moreover, we need sex disaggregated data to understand the impact the existing agreements have had on men and women in different sectors of different countries and regions.⁷¹ However, in the meantime, it is crucial to promote gender mainstreaming in trade agreements to ensure that these agreements do not perpetuate gender inequalities as they are put back to operation in the post-COVID-19 world. Mainstreaming gender in FTAs entails the inclusion of gender equality considerations in the drafting and implementation of FTAs. The process of gender mainstreaming affirms a party's commitment, understanding and political will to reduce gender inequality through trade policies and instruments. The process also aims to maximize the positive impact and minimize the negative impact of trade agreements on women's empowerment.

In the recent years, we have witnessed a sharp increase in the number of FTAs mainstreaming gender considerations.⁷² Gender equality is gradually emerging as a policy norm in trade agreements. Out of 292 FTAs currently in force, almost 75 have at least one gender-explicit provision.⁷³ The last 3 years have been phenomenal in this respect. In 2019, 2 FTAs were

⁶⁸ Remco Oostendorp, 'Globalization and the Gender Wage Gap' (2009) 23(1) World Bank Economic Review, 141–161; for the case of North America, see Sauv , Philip and Hosny Zoabi, 'International Trade, the Gender Wage Gap and Female Labor Force Participation' (2014) 111(C) Journal of Development Economics, 17

⁶⁹ For example, following the implementation of NAFTA, women in Mexico experienced increased wage rate, work autonomy and professional capacity through enhanced infrastructure and skill development. [Jeni Klugman and Elisa Gamberoni, 'Gender and Trade: A Fresh Look at the Evidence' (*International Trade Forum Magazine*, 1 July 2012) <<http://www.tradeforum.org/Gender-and-trade-A-fresh-look-at-the-evidence>> accessed 20 April 2020]. Increased employment for women in Pakistan discussed in Asma Hyder and Jere R Behrman, 'International Trade Openness and Gender Gaps in Pakistani Labor Force Participation Rates over 57 Years' (2012) 17(3) Journal of the Asia Pacific Economy, 367. Contrary evidence discussed in Cirila Quintero-Ram rez, 'The North American Free Trade Agreement and Women' (2002) (4)2 International Feminist Journal of Politics, 240

⁷⁰ Adrian Wood, 'North-South Trade and Female Labour in Manufacturing: An Asymmetry' (1991) 27(2) Journal of Development Studies, 168; Ramola Ramtohul, 'Trade Liberalisation and the Feminisation of Poverty: The Mauritian Scenario' (2008) 22(78) Agenda: Empowering Women for Gender Equity, 55; E Elina VILLUP, 'The EU's Trade Policy: from gender-blind to gender-sensitive?' (*Directorate for External Policies, European Parliament*, July 2015)

⁷¹ 'Making Trade Agreements Work For Gender Equality - Data and Statistics' (UNCTAD, Policy Brief No. 81) <<https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2795>> accessed 1 July 2020

⁷² Jose-Antonio Monteiro, 'Gender-Related Provisions in regional Trade Agreements', (*WTO Economic Research and Statistics Division*, 18 December 2018) <https://www.wto.org/english/res_e/reser_e/ersd201815_e.pdf>

⁷³ WTO RTA database (2019), <https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx> accessed, 22 April 2020

enforced with a dedicated chapter on gender.⁷⁴ The European Parliament in 2018 passed a resolution to include gender equality consideration in all future EU trade agreements.⁷⁵ By doing this, the EU committed itself to ensuring that trade-related aspects of gender will be adequately addressed in its future trade agreements.⁷⁶ One thing is clear now: neither international trade nor gender equality is a zero-sum game. Everyone benefits from making trade fair and inclusive.

More and more countries are including gender considerations in their trade agreements, albeit in very different ways. Some FTAs have a whole chapter on gender, but no legal obligations.⁷⁷ Some FTAs have a single provision, but that single provision creates a strong legal obligation related to gender equality or non-discrimination based on sex.⁷⁸ Several agreements include these provisions in their main text⁷⁹; others load them in a side agreement or an annex or a protocol.⁸⁰ In some agreements, all we find are general statements where parties acknowledge the importance of inclusive trade and the role of women in trade and commerce.⁸¹ In other agreements, we find reaffirming provisions, wherein parties reaffirm their commitments made under other international instruments such as Convention on the Elimination of All Forms of

⁷⁴ Modernized Canada-Chile Free Trade Agreement (CCFTA) (enforced, 5 February 2019); Modernized Canada-Israel Free Trade Agreement (CIFTA) (enforced, 1 September 2019)

⁷⁵ 'Gender equality in EU trade agreements' (European Parliament, 13 March 2018, 2017/2015(INI)), <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0066_EN.html> accessed 8 April 2020

⁷⁶ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: Gender Equality Strategy 2020-2025' (EC, 5 March 2020)

⁷⁷ Modernized Canada-Chile Free Trade Agreement (CCFTA) (enforced, 5 February 2019) and Modernized Canada-Israel Free Trade Agreement (CIFTA) (enforced, 1 September 2019) [Both include standalone chapters on gender.]; The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (enforced, 30 December 2018) [It does not have a stand-alone chapter on gender; the provisions on gender are mainly included in the chapter on development.]

⁷⁸ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (enforced, 01 May 2010), Article 101 [It obliges Montenegro to adjust its domestic legislation to provide for working conditions and equal opportunities for women and men.]

⁷⁹ The Agreement between the European Free Trade Agreement States and the Hashemite Kingdom of Jordan (enforced, 01 May, 2002) & the North American Free Trade Agreement (enforced, 01 January 1994) [Gender-explicit provisions in these agreements are found in the main text of the agreement, under the cooperation and development sections.]

⁸⁰ The Canada – Panama Free Trade Agreement (enforced, 01 April 2002) [It establishes a provision on gender equality in the side agreement, i.e., the Agreement on Labor Cooperation, Appendix 1].

⁸¹ The Canada – Honduras Free Trade Agreement (enforced, 01 October 2014) [It only contains a general statement on the importance of gender equality within Annex 1; it is a cooperation activity mentioned in best endeavor language.]

Discrimination against Women (CEDAW)⁸² or International Labor Organization conventions.⁸³ However, one is thing common: almost in every agreement, implementing gender-related commitments is left to the parties' willingness and available resources.⁸⁴

At one end of the spectrum, we have agreements that merely show the parties' awareness in this respect as they acknowledge the importance of gender concerns as a social value amongst other non-economic concerns. For example, Article 9.3 of Chile-Vietnam FTA mentions gender equality as one of the issues for cooperation and capacity-building.⁸⁵ A relatively more gender-responsive agreement is the COTONOU Agreement, which explicitly acknowledges the importance of gender equality for economic development of the region.⁸⁶ The Chile-Uruguay and Chile-Canada agreements take a step further. In addition to acknowledging the importance of gender issues for economic development and international trade, they provide a list of cooperation activities and institutional mechanisms that can enable parties to carry out trade in a gender-sensitive manner.⁸⁷ At the other end of the spectrum, we have the Canada-Israel FTA which is perhaps the most advanced FTA in this respect.

In Canada-Israel FTA, parties make explicit affirmations to work on gender issues and reaffirmations to implement the commitment they have undertaken under other international instruments such as the CEDAW. What makes this agreement unique in this respect is the possibility parties have to enforce these commitments, as it is perhaps the only FTA which explicitly subjects gender-related provisions to the agreement's dispute settlement mechanism with a binding (but not compulsory) jurisdiction.⁸⁸ The parties in this FTA commit themselves to various activities directly related to women empowerment, and these activities envisage women not merely as an employee or labor but also as an entrepreneur, leader, decision-maker and scientist.⁸⁹ The cooperation activities also focus on enhancing education or skill

⁸² Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by United Nations General Assembly (resolution 34/180) (New York, 18 December 1979)

⁸³ The Free Trade Agreement between the United States of America and the Republic of Korea (enforced, 15 March 2012) [Parties reaffirm their commitments to ILO Conventions.]; CCFTA [Parties reaffirm their commitments to CEDAW.]

⁸⁴ CCFTA [It includes multiple cooperation activities focused on enhancing women's access to trade as employees, employers and consumers.]

⁸⁵ Article 9.3, Chile-Vietnam FTA

⁸⁶ Article 31 of the Agreement underscores the importance of adopting women-favoring measures and contemplates for its members 'a gender sensitive approach at all levels of development cooperation, including macroeconomic policies, strategies and operations.'

⁸⁷ See CIFTA Article 13.3 and 13.4 and CCFTA Article N *bis*-03 and N *bis*-04

⁸⁸ Article 13.6 [It provides a dispute settlement mechanism for gender provisions with binding but not compulsory jurisdiction].

⁸⁹ Article 13.3

development opportunities in the fields that can translate to high-paid job opportunities for women (such as STEM and ICT focused education). In this respect, this FTA is more of an exception, as most FTAs that make a mention of education or skill development opportunities for women limit these opportunities to fields that have traditionally been reserved for women (such as farming, handicraft, textile and fisheries).

As discussed earlier, the pandemic has made women more time-poor as it has drowned them in increased household responsibilities, taking them further away from the possibility of availing educational opportunities they might have otherwise availed. The physically locked-down academic institutions have worsened this situation particularly for those women that have no or insufficient technological abilities to seek online education due to the existing digital gap between men and women.⁹⁰ Hence, improving women's access to education is a crucial commitment that policymakers may consider to better prepare their agreements to work for women in the post-COVID-19 world. Efforts directed at women's access to education should also include increasing their access to technology and internet, which is crucial to reconnect women back to the economy and help them reap the benefits of trade digitization.

Another remarkable development in this respect is the recent African Continental Free Trade Agreement (AfCFTA).⁹¹ In its Preamble, the agreement recognizes the importance of gender equality for international trade and development. Including gender equality considerations in the preamble is an effective way of mainstreaming gender perspective in trade agreements, as it can be instrumental in determining the intentions of the negotiators or drafters of the agreement at the time when it was concluded. Article 3 of the agreement outlines gender equality as one of the general objectives of the agreement, frontloading gender concerns even further in the agreement. In Article 27, Parties commit to mobilizing resources to improve the export-capacity of women entrepreneurs and women-owned SMEs. This provision is a best practice example, as identifying or mobilizing funds for gender-related commitments is fundamental for their implementation. Identification of funding options alongside these commitments can bring such promises a step closer to their implementation. In the absence of finance made available for this purpose, the resource-constrained pandemic-hit countries may not have sufficient resources to invest in the women-favoring promises they might have made in trade instruments.

⁹⁰ International Trade Centre (2015), 'Unlocking Markets for Women to Trade' (ITC, Geneva)

⁹¹ African Continental Free Trade Agreement (enforced, 30 May 2019)

The EU-Central America⁹² is another accord that provides a best practice example for future trade negotiations for two reasons. First, it gives particular attention to initiating programs that could address violence against women. This is a unique provision, not found commonly in other agreements. With increased cases of violence against women during the pandemic, policymakers in future trade negotiations could trigger their trade partners' commitment to work on this issue. Second, the parties in this agreement commit to improving women's maternal health, and address other health priority areas such as sexual and reproductive health and the care for and prevention of sexually transmitted diseases and unwanted pregnancies.⁹³ Insufficient protection of health requirements such as maternity needs, child-care and prevention of unwanted pregnancy have been an impediment to women empowerment even before the onset of this pandemic.⁹⁴ The pandemic has exacerbated these pre-existing concerns, as medical services worldwide are now focused on tackling the virus-inflicted patients and patients with non-urgent issues are reluctant or even fearful to approach the medical establishments.⁹⁵ This can lead to complications in birth and higher rates of unwanted pregnancy. Hence, COVID-19 has reduced women's access to crucial health services. To top it all, women that work in informal sectors mainly in developing countries are putting their lives at risk as they still have to venture out in search for their livelihood. A focus on access to health services is therefore crucial in the future trade negotiations to undo the repercussions this pandemic might have on women's access to health services.

The discussion brings to light a number of ways in which the existing FTAs can help connect more women to the economy in the post-COVID-19 world. The cooperation-based provisions in Canada-Israel for example have shown how countries can encourage their trade partners to create laws and procedures that can reduce barriers that women face such as lack of access to finance, business opportunities and technology.⁹⁶ Discussion on EU-Central America has shown how parties can endeavor to increase women's access to health services and reduce or

⁹² Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (enforced, 01 August 2013)

⁹³ Art 44

⁹⁴ Caren Grown, Elissa Braunstein, Anju Malhotra (eds), *Trading Women's Health and Rights?: Trade Liberalization and Reproductive Health in Developing Economies* (Zed Books, 2006), at 35

⁹⁵ Peter Beech, 'The COVID-19 pandemic could have huge knock-on effects on women's health, says the UN' (World Economic Forum, 2 April 2020), <<https://www.weforum.org/agenda/2020/04/covid-19-coronavirus-pandemic-hit-women-harder-than-men/>> accessed 1 July 2020; 'ECA policy brief spotlights women's wellbeing and health care systems amidst COVID-19 Pandemic' (UN Africa Renewal, 13 April 2020), <https://www.un.org/africarenewal/news/coronavirus/eca-policy-brief-spotlights-women%E2%80%99s-wellbeing-and-health-care-systems-amidst-covid-19-pandemic>

⁹⁶ Some examples of these provisions in the agreement are the following: 'access to, and ownership of, economic resources' (Art 13.1); 'promoting financial inclusion for women, including financial training, access to finance, and financial assistance' (Art 13.3(b)); 'promoting female entrepreneurship and women's participation in international trade' (Art 13.3(f)). For details, see Chapter 13, Canada-Israel FTA.

eliminate violence against women.⁹⁷ Canada-Chile is a leading example where parties have shown how FTAs can include commitments on increasing women's access to education and skill development.⁹⁸ Parties in this agreement also seek to create encouraging conditions for women entrepreneurs; such a commitment if put to action might help women revive their businesses post pandemic, for example by pushing for the creation of business networks and improved infrastructure in relevant sectors and industries.⁹⁹

The discussion shows that a number of agreements mainstream gender considerations in their own unique ways; however almost no FTA so far contemplates how gender-related commitments could be implemented, financed, or enforced. For the implementation of gender-related commitments, countries in their future FTAs need to create dedicated procedures and institutions that can put their long list of commitments into action. FTAs need to spell-out the functions of the institutions, milestones and objectives they are expected to achieve, and a timeline by which to achieve these milestones. The most important in this regard is to provide for funding arrangements to finance gender-related activities if we genuinely intend these commitments to be put into action. As of today, even the most advanced FTAs in gender concerns such as the ones signed between Canada and Chile or Canada and Israel do not clarify precise procedures or identify channels to finance these activities. Moreover, almost all FTAs have explicitly and unambiguously excluded gender-related provisions and chapters from the application of their dispute settlement machineries.

In the absence of applicable dispute settlement procedures, enforcement of gender-related commitments remains a distant reality. This implies that a country's failure to comply with these obligations or commitments or affirmations has no direct consequence. The only exception is the Canada-Israel FTA that provides (for the very first time) a binding dispute settlement procedure that is applicable to its chapter on trade and gender.¹⁰⁰ Unfortunately, this also seems to be a cosmetic attempt to provide for an enforcement mechanism as the parties have subjected the binding jurisdiction of this mechanism to their consent, making its jurisdiction non-compulsory in nature.¹⁰¹ Future trade agreements should consider going a step further by subjecting gender provisions to binding and compulsory dispute settlement provisions. Parties could subject gender provisions either to the agreement's dispute settlement chapter or create a specialized mechanism to enforce gender-related commitments. This recommendation should be considered with a word of caution. While gender-related

⁹⁷ Article 47(4), EU-Central America FTA

⁹⁸ Article N bis-03(b), Canada-Chile FTA

⁹⁹ Ibid, Articles N bis-03(d), (e), (g)

¹⁰⁰ CIFTA, Chapter 19

¹⁰¹ Ibid, Article 13.6

provisions need to be enforceable, their enforcement often requires deep societal changes and long-term cooperation between different stakeholders. Ensuring enforcement through dispute settlement provisions may be a top-down approach to trigger societal changes; however, the long-term solution to the problem of gender inequality lies in changing the domestic laws, cultures, beliefs and stereotypes in a given community.¹⁰²

Another way to drastically increase the gender-responsiveness of FTAs is by negotiating a gender-specific exception. Countries have in the past included or incorporated by reference the GATT-like exceptions in their FTAs for the protection of public morals, human health or animal life or environment.¹⁰³ In the same manner, a new exception for gender can be designed and employed by FTAs in the future.¹⁰⁴ No such exception exists to date in FTAs. Countries may hesitate to employ such an exception as it could enable other countries to enact new rules and regulations which could pose as a barrier to trade. It could also enable countries to violate the provisions of the given FTA under the justification of gender exception. This hesitation is understandable, but it is not justifiable. If countries can allow FTA-inconsistent practices and laws to operate if they are important to protect their public morals, or animal health or life, or even plant health or life, how can countries oppose an exception that can reduce gender inequality and include humankind's half population in the journey towards economic growth and development? Are gender considerations and removal of barriers women face any less important than the conservation of exhaustible natural resources (such as sea-turtles) or protection of public morals (including religious beliefs)? The answer seems to be a categorical "no".

A gender exception could allow a party to pursue an otherwise FTA-inconsistent measure if it is necessary to protect or empower female entrepreneurs or employees. In this uncertain environment, more governments than ever may be looking to extend various support measures mainly to those industries that are most severely hit by the pandemic. The proposed exception can allow countries to provide such favorable support for domestic industries that particularly impact women employees and entrepreneurs in the form of state-aid, government bail-outs, loans or subsidies. For a temporary period of time post this pandemic, countries may also consider crafting women-favoring government procurement measures. According to the International Trade Centre, only one percent of the global government procurement market is currently offered to women-owned businesses.¹⁰⁵ Adoption of gender-responsive government

¹⁰² 'Mainstreaming Gender in Free Trade Agreements' (International Trade Centre, May 2020)

¹⁰³ USMCA, Article 32.1

¹⁰⁴ Proposal mentioned in 'Making Gender-Responsive Trade Agreements' (note 104), at iv

¹⁰⁵ Arancha Gonzalez, 'Public Procurement, a Tool to Boost Women's Economic Empowerment', Speech delivered by ITC Executive Director Arancha González at Scuola di Politiche, Milano 10 November 2017, <http://www.intracen.org/news/Public-Procurement-a-Tool-to-Boost-Womens-Economic-Empowerment/>

procurement initiatives may help in increasing the participation of women-owned enterprises in the bidding process, which in turn could help in reviving the women-owned SMEs that might have had to scale down or face closures during the pandemic.¹⁰⁶ In addition, countries may consider mandating or encouraging several industries to employ supplier diversity programs.¹⁰⁷ Through these programs, they can obligate or somehow incentivize their multinational companies to make a percentage amount of their purchases from marginalized vendors such as women entrepreneurs. These are a few examples to show how a gender exception may allow countries to take a measure that might otherwise entail inconsistency with other obligations of an agreement.

Alternatively, it may be possible to invoke public morality exception to protect the economic interests of women stakeholders. This seems to be a very ambitious interpretation of GATT Article XX (a), and there is no jurisprudence which supports such an interpretation.¹⁰⁸ However, we can find some support in favor of such an interpretation in the existing jurisprudence. In *US – Gambling*¹⁰⁹, the Panel found that the term “public morality” denotes standards of good and bad conduct on the part of or on behalf of a community or nation, and that the meaning of this concept for Members may vary over time and space, depending on various factors, including prevailing social, cultural, ethical and religious values.¹¹⁰ The Panel also stated that Members should be given certain freedom to define and apply the concepts of “public morality” in their respective territories, in accordance with their own systems and scales of values.¹¹¹ In *EC – Seals*¹¹², the Appellate Body found that the term “to protect”, when used in relation to “public morals” did not require the panel to identify the existence of a risk to EU public moral concerns regarding seal welfare.¹¹³ In light of these interpretations, a country could argue that the protection of women’s business and employment prospects in a particular industry that might

¹⁰⁶ Members may need to assess this proposal’s compatibility with the WTO Agreement on Government Procurement if they are party to this plurilateral agreement.

¹⁰⁷ Supplier diversity programs can allow multinational companies to make a percentage amount of their purchases from marginalized vendors such as women entrepreneurs. For an example of Walmart US and the supplier diversity initiative it has employed, see Deborah Abrams Kaplan, 'Walmart's sourcing from women-owned suppliers drives business' (8 March 2018, Supply Chain Dive), <<https://www.supplychaindive.com/news/sourcing-procurement-women-diverse-business/518624/>> accessed 1 July 2020; For more details, see Walmart website (Supplier Inclusion), <<https://corporate.walmart.com/suppliers/supplier-inclusion>> accessed 1 July 2020

¹⁰⁸ General Agreement on Tariffs and Trade 1994, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994]

¹⁰⁹ Panel Report, United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, p. 5797

¹¹⁰ Panel Report, US – Gambling, para. 6.461

¹¹¹ Ibid

¹¹² Appellate Body Reports, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014, DSR 2014:I, p. 7

¹¹³ Appellate Body Reports, EC—Seal Products, para.5.167, 5.199–.201

have been severely hit by the pandemic is a public moral concern for its nation. The defending country could argue that this concern amidst the pandemic amounts to a clear legitimate objective, provided the “design, architecture, and revealing structure” of the measure reflects a genuine public moral concern in this respect.¹¹⁴

The discussions in this section show that there is a half-opened door in FTAs that countries need to push upon further by finding different ways of implementing or enforcing their gender-related commitments. Moreover, due to the COVID-19-triggered wave of protectionism, the operation of FTAs might be significantly hindered. Lesser exports and imports between Canada and Israel for example would mean that Canada-Israel FTA would result in less business and employment opportunities for both men and women in their respective economies.¹¹⁵ It would also mean that companies may not have the funds to engage in gender-responsive corporate social responsibilities encouraged in this agreement. Also, public authorities may not invest the required resources and time in expanding the promised access to education and skill development and creation of business networks for women in business as countries during and in the post-COVID-19 world would have shifted priorities of saving human lives and their country’s economy. The issue of gender equality could take a back seat in the minds of many policymakers. This intervention seeks to reiterate the role trade policymakers and negotiators can play in rebooting an inclusive economy in the post-COVID-19 world by connecting more women to the global economy.

Conclusion

Populism and nationalism have made themselves obvious during COVID-19 crisis. Wild enthusiasm against international trade, including by pioneers of trade such as the EU Member States and Canada, is unprecedented. Majority of WTO Members have imposed export restrictions. The good news is that all restrictions so far are imposed with an expiration date. However, this expiration date could be revised, depending upon how the pandemic unfolds in the future. On a positive note, the WTO economists have projected that if the pandemic is brought under control relatively soon and the right policies are in place, trade and output could revive to their pre-pandemic trajectory by as early as 2021.¹¹⁶

The fast-approaching economic recession, disruption in international trade, changing supply and demand patterns and the social distancing mode can jeopardize jobs and business opportunities for many. Women are positioned to bear a disproportionate burden of this pandemic, in terms of health, employment, business, consumption and social protection. The

¹¹⁴ Appellate Body Reports, EC—Seal Products, para, 5.302

¹¹⁵ Discussed on page 14

¹¹⁶ WTO Annual Trade Statistics and Outlook Report, 2020 and 2021

limited gains made in the past decades in respect of achieving gender equality are at the risk of being rolled back as the pandemic is deepening the pre-existing inequalities. FTAs may play an important role in minimizing this loss, as they can help restart the economy in the post-COVID-19 world. FTAs can provide the architecture for sustainable and inclusive economic growth.

Through gender mainstreaming, FTAs can help in reducing the formidable barriers that impede women's participation in the economy. They can encourage countries to carry out *ex-post* and *ex-ante* gender impact assessments of trade agreements that they are party to.¹¹⁷ Countries can bind themselves to certain minimum legal standards for improving the employment conditions for women or prohibiting sex-based discrimination. Countries can also endeavor to increase women's access to health services, education and skill development. They can also create encouraging conditions for women businesses to flourish, for example by the creation of business networks and improved infrastructure in relevant sectors and industries. Countries in FTAs could also commit to increasing the representation of women in decision-making and policy-making roles. The base line is: countries can use trade agreements as laboratories where they can experiment with different legal provisions and commitments regarding gender equality.

WTO also has an important role to play. With 164 Members and 24 Observers, WTO can play an instrumental role in preparing a framework for the regulation of inclusive and sustainable trade.¹¹⁸ The WTO can encourage its Members to remove the export restrictions as promptly as possible. This would allow the trade volumes to go up again, having a trickle-down impact on employment, businesses and the overall global economy. The Trade and Gender Focal Point can play a role in encouraging more research in this area and gathering different stakeholders for future discussions on inclusive economic growth. Moreover, the WTO Trade Outlook may also conduct research on the gendered impact of COVID-19, i.e., the extent to which this pandemic might roll-back the progress made in gender equality and the loss of employment and business opportunities to women. In this manner, the WTO could regain relevance as a forum to redesign and reshape economic and trade cooperation during/after the crisis caused by the pandemic.

Before this crisis is over, policymakers and international organizations should work together and prepare action plans for repairing the harm. Governments, international organizations and policymakers need to be aware of the loss it could cause to women as employees, employers

¹¹⁷ Countries can use the UNCTAD's toolbox on trade and gender for conducting these assessments. More details at UNCTAD, 'UNCTAD Trade and Gender Tool Box', (UNCTAD, 2017) <<https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1877>> accessed 8 September 2019

¹¹⁸ World Trade Organization, Members and Observers, <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> accessed 21 April 2020

and consumers. The world economy will suffer even more if women – who account for one half of the world’s working-age population – are further excluded from the economy and hence impeded from contributing to economic growth and economic recovery post-COVID-19 recovery. Women will be the hardest hit by this pandemic; however, they will also form the backbone of the economic recovery in almost every country. Hence, future trade policy response must recognize this and include women at the heart of the COVID-19 response. Placing women at the centre of economies will lead to a more rapid recovery; this recovery will put us back on track to achieve the Sustainable Development Goals.