



GENDER MAINSTREAMING IN FREE TRADE AGREEMENTS: A REGIONAL ANALYSIS AND GOOD PRACTICE EXAMPLES

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LIST OF ABBREVIATIONS

AA	Association Agreement
AfCFTA	African Continental Free Trade Agreement
ANZCERTA	Australia New Zealand Closer Economic Agreement
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CAEMC/CEMAC	EU- Central African Economic and Monetary Community
CCFTA	Canada-Chile Free Trade Agreement
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CETA	Comprehensive Economic and Trade Agreement
CIFTA	Canada-Israel Free Trade Agreement
COMESA	Common Market for Eastern and Southern Africa
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	Corporate Social Responsibility
DDA	Doha Development Agenda
DG	Director General
EAC	East African Community
ECOWAS	Economic Community of West African States
EEC	European Economic Community
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GBA+	Gender-based Analysis Plus
GIA	Gender Impact Assessment
GTGA	Global Trade and Gender Arrangement
ILO	International Labour Organisation
IMF	International Monetary Fund
INTA	Committee on International Trade
ISDS	Investor-State Dispute Settlement
ISO	International Organization for Standardization
ITC	International Trade Centre
ITC	Information and Communication Technology
IWGTG	Informal Working Group on Trade and Gender
MERCOSUR	Southern Common Market (MERCOSUR for its Spanish initials)
MNE	Multinational Enterprise
MSME	Micro, Small and Medium Enterprise
NASA	National Aeronautics and Space Administration
OECD	Organisation for Economic Co-operation and Development
PPE	Personal Protective Equipment
QR	Quantitative Restrictions
RTA	Regional Trade Agreement
SADC	Southern African Development Community

SIA	Sustainability Impact Assessment
SME	Small and Medium Enterprise
SPA	Strategic Partnership Agreement
STEM	Science, Technology, Engineering and Mathematics
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Commission on Trade and Development
UNDP	United Nations Development Program
UNECE	United Nations Economic Commission for Europe
UNFSS	United Nations Forum on Sustainability Standards
US	United States
USMCA	United States-Mexico-Canada Trade Agreement
VSS	Voluntary Sustainability Standards
WTO	World Trade Organisation

PREFACE

COVID-19 has played havoc with the global economy, and with it, international trade. Amidst it all, something else has been happening that we need to take account of, i.e., the increasing gender divide. COVID-19 is magnifying the impact of the pre-existing barriers that women face, with massive loss of jobs and business opportunities, reduced access to education as it goes online, and an increase in household responsibilities and domestic violence against women. So, what policy options are available to minimise this harm? There are two complementary options to mitigate the challenge: a bottom-up and a top-down approach. Using a bottom-up approach, countries can seek to mitigate damage at the national level, through national policies and interventions (and giving space for the articulation of local level demands). A “top-down approach” makes use of international policy levers to incentivise political and economic actors to redress the damage. This study focuses on the latter, “top-down” approach, focussing on international trade policy which effects economic structures and consumer and producer opportunities, incentivises firms to adapt their operations, and opens up funding avenues to build capacity and human capital. We examine how trade agreements can accommodate gender-related concerns and promote a more inclusive approach to trade. The study describes how gender equality related concerns are mainstreamed in existing trade agreements signed by countries in North and South America, the European Union, Africa and Asia Pacific. This regional analysis feeds into ten recommendations to guide gender mainstreaming efforts in future trade negotiations.

EXECUTIVE SUMMARY

One should never let a crisis go to waste

The multi-faceted crisis of the global health pandemic presents an opportunity to explore how trade policies, including the pursuit of free trade agreements (FTAs)¹, can contribute to women's empowerment in the context of economic recovery in the post-COVID-19 world.

Some existing FTAs seek to enhance women's empowerment through the inclusion of gender-specific provisions of various kinds. This study presents a regional survey of these provisions and raises proposals for further advancement of gender-related issues in trade agreements.

Gender mainstreaming in existing trade agreements

In recent years, multiple countries have included gender equality considerations in their trade agreements, albeit with varying scope, format and coverage. This study is a review of trade agreements, with the following key findings:

- ✓ Currently, of all free trade agreements in force, more than 20% have an explicit provision relating to gender equality.
- ✓ Different regions employ different approaches to gender mainstreaming, in terms of the language of gender-related provisions, the location of these provisions within the text of the agreements, the nature, content and coverage of the provisions.
- ✓ 38% of trade agreements signed by North American countries have included at least 1 gender-explicit provision. For South American countries, this number is 20%, it is 32% in the case of Africa, and 14% for countries in Asia Pacific. As many as 78% of the EU's agreements contain at least 1 gender-explicit provision².
- ✓ In most agreements, gender-related provisions are drafted as non-binding, although a handful of countries have drafted such provisions with legally-binding expressions.
- ✓ The topic areas covered by gender-related provisions vary from one region to the other, ranging from an economic- and market-oriented focus, to education and training, the representation of women in decision-making roles, women's employment status, female entrepreneurship and so on, to purely social and healthcare concerns.
- ✓ The location of gender provisions in different agreements varies. They can be found in the agreement's preamble, stand-alone chapters, side agreements, specific provisions, cross-cutting provisions or chapters, protocols, declarations, arrangements or even annexes.
- ✓ Gender-explicit provisions have appeared in various forms. These include, but are not limited to, general statements of intent, affirmations to take action, reaffirmations to other international instruments, undertakings and objectives, and reservations and waivers.

¹ The term 'Free Trade Agreement' or 'FTA' in this paper is used to refer to all international trade agreements (except the WTO multilateral agreements) and may include regional trade agreements, plurilateral agreements, bilateral agreements, economic partnership agreements, association agreements, strategic partnership agreements, and such others.

² This count is based on agreements notified at the WTO.

Recommendations for mainstreaming gender in trade agreements

The paper puts forward ten recommendations to trade policymakers/negotiators on mainstreaming gender equality related concerns into RTAs, itemising practices that have been gaining ground in recent years. These are:

1. Negotiate a standalone trade and gender chapter.
2. Include commitments on enhancing women's access to international markets.
3. Frontload gender commitments in the agreement's preamble and/or general objectives clause.
4. Increase representation of women in international trade policy bodies.
5. Cooperate on enhancing women's access to STEM education and digital learning.
6. Cooperate on enhancing women's access to health services, medical insurance, maternity, and other employment benefits.
7. Employ existing public morality exceptions to justify support measures.
8. Create institutions and mobilize funds to ensure implementation of gender-related commitments.
9. Include commitments on the creation of gender-responsive standards or revisions of existing standards with a gender lens.
10. Engage private stakeholders via gender-specific voluntary sustainability standards.

1 INTRODUCTION

The COVID-19 pandemic is magnifying the impact of the pre-existing barriers that women face, bringing about massive loss of jobs and business opportunities, reduced access to education as it goes online, increase in household responsibilities and domestic violence against women. Recent studies have shown how limited gains made in respect of gender equality are now at serious risk of being rolled back.³ Countries have two different approaches to counter this challenge: a bottom-up and a top-down approach. Using a bottom-up approach, countries can directly try to change national laws, culture, and social norms at the domestic level and intervene to support household livelihoods, taking gender dynamics and gendered impacts into account. Alternatively (or as a complement), they can use international law to create incentives to bring about change. Use of international trade law and policies can form part of the “top-down” approach, as they can contribute to the empowerment of women.

What is women’s empowerment⁴? Women’s empowerment can be viewed as the process of correcting gender inequality in a society that rests on systemic imbalances in power by gender and serves that hold women and girls in subordinate positions in all spheres of their lives.⁵ Empowerment is an instrument for changing women’s status. It is a ‘socio-political concept that involves cognitive, psychological, economic and political dimensions’. Empowerment in the cognitive dimension involves women’s understanding of the factors causing their subordination and their ability to make choices that may go against cultural or social expectations. The psychological dimension entails strengthening of women’s belief in their ability to improve their social and economic condition. The political dimension includes the ability to understand and appreciate one’s situation and mobilize resources for social change.⁶ Last but not least, the economic dimension includes women’s ability to operate in the money economy in their own right, and to have access to opportunities that can increase their economic independence.

Multiple interventions are required to further women’s economic empowerment, and international trade policy is one area in which action can be taken. The WTO’s Joint Declaration on Trade and Women’s Economic Empowerment is a step in this direction. The Declaration, signed in December 2017 at Buenos Aires by almost seventy percent of WTO membership⁷, 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’.⁸ The Declaration is explicitly aligned with and complements the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979⁹ and Goal 5

³Bahri (2020), World Bank and WTO (2020).

⁴ This and other basic gender terms and concepts (e.g. mainstreaming) are very well established; despite some subsequent refinements in the academic literature, they are essentially unchanged from the early days of contemporary public policy debate on gender inequality.

⁵ UNFPA (2008)

⁶ Stromquist (1988)

⁷ By 2020, 127 WTO member countries had signed the Buenos Aires Declaration.

⁸ ‘Buenos Aires Joint Declaration on Trade and Women’s Economic Empowerment’ 2017 [hereinafter referred to as ‘Declaration 2017’].

⁹ 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).

of the Sustainable Development Goals in the United Nations 2030 Agenda for Sustainable Development¹⁰.

The 2017 Declaration is a promising development, as it marks a concrete starting point for future deliberations and discussions on how trade can accommodate concerns relating to women's economic empowerment and gender equality.¹¹ The Declaration is an anchoring commitment agreed upon in a multilateral setting and includes a work plan with themes related to trade and the economic empowerment of women: "promotion of female entrepreneurship and trade; identification of barriers that limit women's participation in trade; promotion of financial inclusion as well as the access to trade financing and financial assistance for women traders; enhancement of women entrepreneurs' participation in public procurement markets; inclusion of women-led businesses, in particular MSMEs, in value chains; impact of trade facilitation in providing equal access and opportunities for women entrepreneurs; and the inventory of information sources, their complementarity and the identification of data gaps" (Declaration 2017).

Symbolically, it is quite empowering. Yet, we cannot ignore its limitations as it contains no action plan or proposed measures for members to form inclusive trade policies, or guidance for members on how to incorporate the promises made into their domestic legal systems.¹² Moreover, there is generally a greater unease among WTO membership towards the inclusion of gender issues in the multilateral trading agenda as compared to the inclusion of other new generation issues such as environment, digital trade, e-commerce, and intellectual property.¹³ Nevertheless, recent trends show promise in terms of the role that Free Trade Agreements (FTAs) can play in this respect.¹⁴

Since 2016, there has been an upsurge of FTAs that are carving out space for gender equality concerns. A new generation of trade agreements is increasingly incorporating provisions and chapters on trade and gender. Even though most of these agreements are not very significant in terms of trade flows, these trends show that FTAs can act as laboratories in which to experiment with the complex amalgamation of trade and gender concerns. In this race towards making trade more inclusive, FTAs have proven to be fast running¹⁵. They have pushed for an inclusive trade agenda aiming to distribute trade benefits in a gender-just manner. In recent years, more and more countries have included gender considerations in their trade agreements, albeit with very different scope, format and coverage.

Some FTAs have a whole chapter with a number of provisions on trade and gender, but no compulsory and enforceable obligations. Some FTAs have a single gender-explicit provision, but that single provision creates a legally-binding obligation. Some countries have sought to work on these concerns via cooperative actions including exchange of best practices and organisation of capacity-building workshops; others have reserved the right to regulate particular professions that

¹⁰ 2030 UN Agenda for Sustainable Development, Goal 5.

¹¹ According to UN Women, gender is a socio-cultural concept defined as 'the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men'. See Bensalem (2017)].

¹² Bahri (2019).

¹³ LeClerq (2020).

¹⁴ The expression 'Free trade agreements' or 'FTA' in this paper is used to refer to all international trade agreements (except the WTO multilateral agreements) and may include regional trade agreements, plurilateral agreements, bilateral agreements, economic partnership agreements, association agreements, strategic partnership agreements, and such others.

¹⁵ This laboratory effect is easier to experiment with in trade arrangements which are not very relevant to parties in commercial terms. A significant exception to this is the USMCA, where trade between the countries is very significant and concerns prevail about the lowering of standards as a source of unfair competitive advantage.

most directly impact women or services related to nutrition or childcare for instance. In some agreements, all we find are general statements wherein parties acknowledge the importance of the role of women in trade and commerce. In other agreements, we find affirming and reaffirming provisions, wherein parties commit to engaging in concrete actions or reaffirm their commitments made under other international instruments. Moreover, several agreements are completely silent or merely make a single mention of expressions relating to gender equality, and others mention gender-explicit expressions more than 40 times in their main text (as in the case of Canada – Chile FTA).

In most agreements, gender-related provisions are non-binding, drafted with non-mandatory verbs and “soft” permissive grammatical constructions; but a handful of countries have drafted such provisions with legally-binding expressions. Gender-related provisions are considered as enforceable when they fall within the ambit of an agreement’s dispute settlement mechanism or are not explicitly excluded from the dispute settlement mechanism as is the case with gender-related provisions in some agreements such as in the Canada-Chile Agreement [see Article N bis-06: Non-application of Dispute Resolution]. Most of the gender-related provisions are found in chapters on cooperation, which mostly are excluded from the agreement’s dispute settlement mechanism’s scope. Gender-related provisions are considered as legally-binding when they are drafted with mandatory verbs (such as “shall”, “must”) and their implementation is compulsory in nature. As previously mentioned, most gender provisions are drafted with hortatory language and their implementation is not compulsory.

The topics addressed in gender provisions also vary from one region to the other, as some regions have included provisions on social and healthcare concerns of women, and others have covered purely economic- and market-oriented interests. The location of gender provisions in different agreements is also diverse, as they are included in agreements’ preambles, objectives and principles clauses, stand-alone chapters, side agreements, specific provisions, cross-cutting provisions or chapters, protocols, arrangements or even annexes.¹⁶

These observations show that gender-related provisions are heterogeneous¹⁷; yet it is possible to observe some similarities between gender-related provisions in agreements signed by countries in particular regions. These differences and similarities call for a regional analysis to guide and inspire future trade negotiations. This regional analysis can help us identify various best practice examples and recommendations in this respect, and these examples and recommendations can help define future gender mainstreaming strategies.

For the purpose of this study, the author has assessed all trade agreements that are currently in force and notified to WTO (as of 15 June 2021), independent of the relative importance of trade flows between parties. Agreements or economic integration mechanisms not yet notified to WTO or not yet in force are excluded from this study. However, selected trade agreements that are not yet notified or not yet in force are considered to a limited extent if they contain gender-related best practice provisions that can add new or support existing findings presented in this study.

¹⁶ Monteiro (2021).

¹⁷ Ibid, at pg 2.

2 GENDER MAINSTREAMING IN TRADE AGREEMENTS: A BIRD'S-EYE VIEW OF DIVERGING TRENDS

What is gender mainstreaming? And how does it help? Gender mainstreaming has been defined as ‘the (re)organization, improvement, development, and evaluation of policy processes so that gender equality perspective is incorporated in all policies at all levels at all stages, by the actors normally involved in policy-making’.¹⁸ Gender mainstreaming is a means to achieve gender equality. Gender mainstreaming in FTAs means the inclusion of gender concerns in the drafting and implementation of FTAs. This is a process by which parties seek to include the gender perspective in trade liberalization efforts and policies. The process of mainstreaming affirms a country’s commitment, understanding and political will to reduce gender inequalities through trade policies and agreements. The process also aims to maximize the positive impact and minimize the negative impact of trade agreements on women’s empowerment goals.

Promotion of gender equality and women’s empowerment¹⁹ are gradually emerging as a policy in trade agreements. Currently, of all FTAs in force, more than 20% have an explicit gender-related provision.²⁰ Those provisions which use terms directly related to ‘gender’, ‘women’, ‘female’, ‘maternity’ or a similar expression in the provision in an explicit manner are considered as ‘gender-explicit provisions’ in this study. ‘Gender-implicit provisions’ are those provisions which address the issues of gender in an indirect and implicit manner through areas such as, but not limited to, human rights, vulnerable groups focus, labour discrimination, corporate social responsibility, intellectual property rights and SMEs.

In 2016, Chile signed with Uruguay the very first trade agreement with a standalone chapter on trade and gender, followed by two more agreements with similar chapters, with Argentina in 2017 and Brazil in 2018. In 2018, the European Parliament passed a resolution to include gender equality considerations in all future EU trade agreements²¹ and the European Commission subsequently endorsed this approach²² In the same year, the Parties to the Comprehensive Economic and Trade Agreement (CETA) adopted the CETA Trade and Gender Recommendation, wherein the Parties recognise the importance of making trade policies more gender-responsive and commit to work

¹⁸ This is the definition proposed by an expert group convened by the Council of Europe (1998).

¹⁹ As defined within the UN Gender Equality Glossary, gender “refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context”. Gender equality “refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women’s issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development” (UN Women, Gender Equality Glossary).

²⁰ Author’s own calculations.

²¹ ‘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

²² European Commission (2020).

on encouraging women's participation in the economy and international trade through various cooperation activities.²³

In 2019, two modernised FTAs (Canada-Chile and Canada-Israel) came into force with dedicated chapters on women's empowerment.²⁴ In 2020, two other agreements were signed with such chapters (Chile-Ecuador and United Kingdom-Japan).²⁵ In the same year, Canada, Chile, and New Zealand signed the Global Trade and Gender Arrangement. Through this Arrangement, the Parties seek to share best practices and promote gender equality, including in international organizations such as the World Trade Organization.²⁶ Multiple reports and studies have assessed the benefits of these developments and proposed ways to frontload gender equality concerns within trade policy.²⁷

There are different modalities to mainstream gender considerations in trade agreements. The following map provides a bird's-eye view of differences (and at times similarities) observed from one region to the other.²⁸

²³ CETA Trade and Gender Recommendation, <https://trade.ec.europa.eu/doclib/html/158945.htm>

²⁴ Modernized Canada-Chile Free Trade Agreement (CCFTA) (enforced, 5 February 2019); Modernized Canada-Israel Free Trade Agreement (CIFTA) (enforced, 1 September 2019).

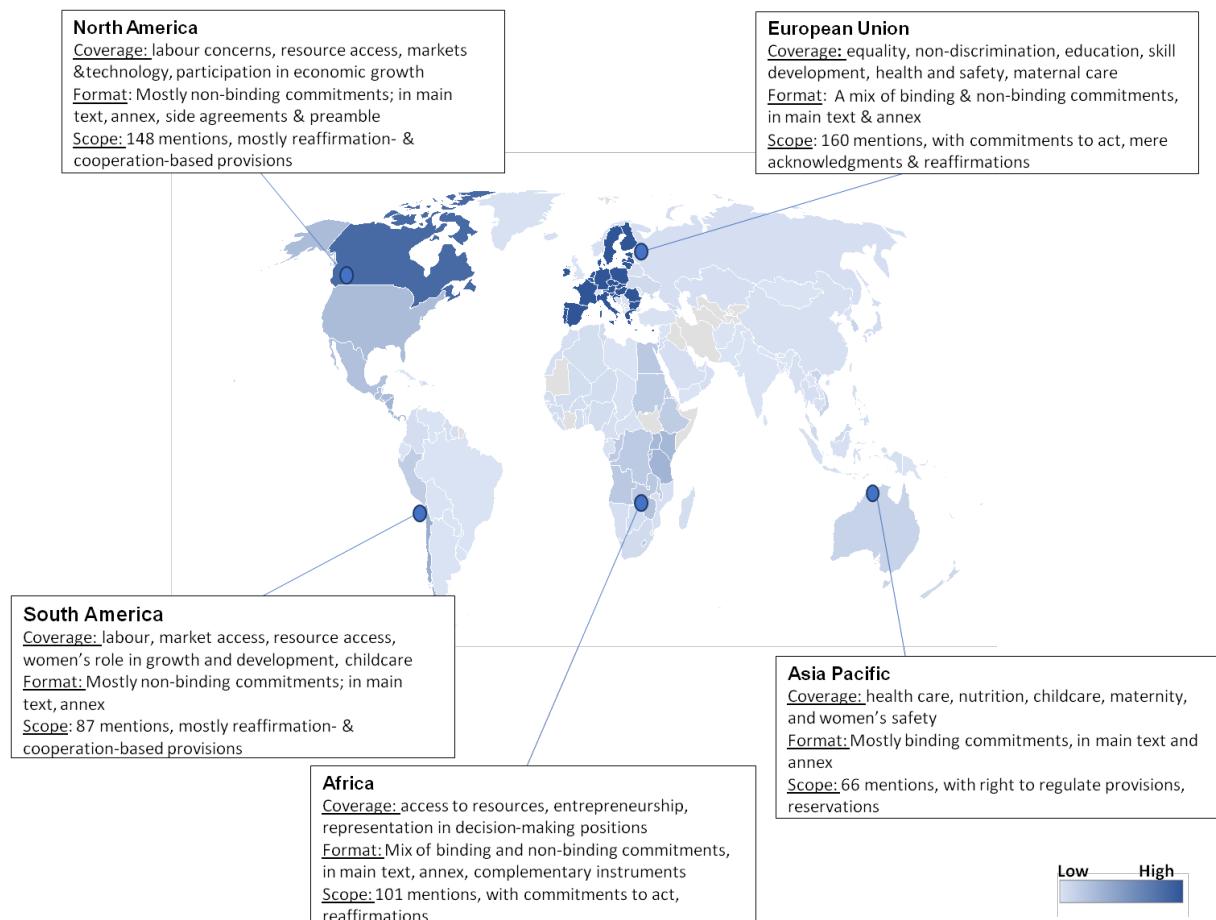
²⁵ Chapter 18, Chile - Ecuador Acuerdo de Complementación Económica (not yet enforced; signed 13 August 2020); Chapter 21, UK/Japan: Agreement for a Comprehensive Economic Partnership (enforced, 31 December 2020).

²⁶ Global Trade and Gender Arrangement, <https://www.canada.ca/en/global-affairs/news/2020/08/minister-ang-signs-new-global-trade-and-gender-arrangement-with-chile-and-new-zealand.html>

²⁷ See, for example, OECD (2021) Frohmann (2017), ITC (2020) ITC.

²⁸ Only FTAs with explicit gender provisions were considered for the purpose of this illustration. Only agreements in force (at the time of this writing on 15 June 2021) and notified to WTO are taken into account for this assessment. Source: WTO RTA Database, rtais.wto.org/UI/PublicMaintainRTAHome.aspx

Figure 1: Gender Mainstreaming in Trade Agreements: A Bird's-Eye View of Trends in the EU, North & South America, Africa and Asia Pacific



Notes:

*The colour code reflects the aggregation of the number of times gender-explicit words are used in all WTO notified FTAs signed by each country. The darker it is, the higher the frequency of gender-explicit words included in FTAs.

** Only FTAs with gender explicit provisions were considered for the illustration. Some FTAs are included in the assessment of more than one country, depending upon the countries that are party to those agreements.

*** Gender-explicit words used for listing products or entities are not included in this assessment.

**** Only trade agreements notified to WTO and currently in force (as of 15 June 2021) are included in this assessment.

The illustration identifies the countries that have led the inclusion of gender-explicit commitments in their trade agreements. The content of gender provisions is much more relevant than the number of times gender-related words are mentioned in a specific agreement, and a look at the number of times gender-explicit words are mentioned does not reveal the scope of commitments. However, the number of words included in an agreement can provide an initial indication of whether a given trade agreement includes gender concerns and the extent to which these concerns are included. The underlying assumption is that the higher the usage of gender-explicit words, the higher is the number of legal provisions focussed on gender concerns in a given agreement. The countries that lead this count are Canada, Chile and the EU. With 133 and 57 mentions of gender concerns, Canada and Chile respectively are amongst the frontrunners as they have included an impressive number of gender-explicit expressions in their recently signed trade agreements. Several African countries follow this trail as they have signed some agreements (such as East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA) with more than 20 gender-explicit expressions included in each of them. A total of 160 gender-explicit words can be

found in agreements signed by the EU, though most of these mentions are found in non-trade sections of its association or integration agreements.²⁹

The following subsections assess the differences (and similarities) observed in the gender mainstreaming modalities in existing trade agreements. This analysis is divided in three different categories: topic coverage, format and scope.

“Topic Coverage” refers to the subjects (topics or themes) covered by the provisions, i.e., the gender barriers manifest in different forums that they seek to address and, by extension, the type of empowerment they seek to promote. “Format” refers to the location and language of these provisions. “Scope” refers to the number and nature of gender provisions, (affirmations³⁰, reaffirmations³¹, general statements of intent and understanding³², reservations³³ or legal standards³⁴).

2.1 Topic coverage

Differences can be observed in how the topics covered by gender provisions change from one region to the other. For instance, in the case of North America, the trade agreements signed by Canada, United States (US) and Mexico treat gender-related concerns from the economic perspective, in terms primarily of market access and outcomes, and these concerns address the eventual lowering of standards as a source of unfair competitive advantage. These provisions focus on some labour standards, women’s access to productive resources, markets and technology, skill development and participation in economic growth.

The EU’s mainstreaming approach includes these issues but is oriented towards a wider range of concerns, to do with gender equality, non-discrimination, labour standards, education and skill development, health and safety, and maternal care, with a significant focus on cooperation. Another contrast can be seen in the areas covered by countries in Asia Pacific. Many of the inclusions in this region address right to regulate provisions, wherein countries reserve policy space to regulate specific areas that may impact women’s health and maternal concerns, such as healthcare, nutrition, childcare and women’s personal safety.

South America’s approach mostly resembles that of North America (without the underlying concern about lax standards as a source of unfair competitive advantage), but some agreements in this region include gender considerations with topics similar to those in Asia Pacific. Gender-related provisions negotiated by countries in that region focus on labour concerns, market and resource access, and women’s role in growth and development; the agreements that South American countries have signed with Asian and Central American countries, however, also include childcare. Finally, the gender-explicit provisions found in FTAs signed by African countries seek

²⁹ Note that these are conservative estimates, as only the agreements notified to the WTO are included in this survey. These numbers will increase if agreements not (yet) notified to WTO are considered as well.

³⁰ Affirmation is an expression of will or intention to support a particular action, idea, ideal, policy, ideology or opinion. A party’s will, support or intention may be expressed through statements or provisions in international legal documents, conventions, treaties or declarations.

³¹ The reiteration of a previously stated affirmation where parties may express their will, support or intention.

³² Expression of will or intention is an explicit and clear statement of willingness or demonstration of intent.

³³ Reservations refer to exceptions or non-conforming measures to a party’s obligation in a treaty.

³⁴ Minimum standards often establish a common ground that harmonize the parties’ domestic legislation.

primarily to integrate women into the region's development process by enhancing women's access to resources, promoting female entrepreneurship and increasing women's representation and participation in political and decision-making positions.

2.2 Format

The location of gender-explicit provisions in the text varies from one agreement to the other. Several agreements include these provisions in their main text; others put them in a side agreement, an annex, or a protocol. The agreements that accommodate these provisions in their main text place these provisions in the preamble, objectives or general principles clause, or in different chapters of their operative sections (such as chapters on labour, investment, SMEs, social and cultural development, and sustainable development). Some countries have also negotiated dedicated trade and gender chapters for inclusion in the agreement's main text. Countries in North and South America are pioneers in this trend. These chapters comprise acknowledgments of women's role in international trade, commitments to cooperate on reducing economic barriers for women, procedures and institutions to implement these commitments, and reaffirmation of joint commitments under international conventions and declarations.

The EU has employed a different approach in respect of format, as it has frequently included gender-explicit provisions in its chapters or provisions which focus on trade and sustainable development or on the social, cultural and education sections of its 'Association Agreements' or 'Integration Agreements'. Most recently, the EU has negotiated side instruments alongside or subsequent to the negotiation of main agreements. One such example is the CETA Trade and Gender Recommendation, which is a supplementary document containing recommendations on gender mainstreaming that Canada and the EU have adopted after signature and enforcement of their Comprehensive Economic and Trade Agreement (CETA).³⁵ Some African countries have employed a similar approach, as they have negotiated protocols and declarations wherein parties have assumed commitments on making international trade work for the benefit of women's empowerment.³⁶

As to the language, gender provisions in trade agreements are drafted in different ways. Some use best-endeavour expressions, e.g., in relation to cooperation activities³⁷; others are drafted in mandatory language³⁸. Mostly, the gender provisions are drafted using non-mandatory verbs and "soft" permissive grammatical constructions.³⁹ This trend has somewhat become a rule in this respect. However, several countries, as for example South Korea and New Zealand, have negotiated agreements with legally-binding "right to regulate" provisions regarding, for example, social services and employment standards. In such provisions, parties reserve the right to ensure

³⁵ CETA Trade and Gender Recommendation: EU-Canada Work Plan 2020-2021', www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/CETA_work_plan-AECG_plan_travail-2020-2021.aspx?lang=eng

³⁶ SADC Protocol on Gender and Development (2008) and Declaration on Gender & Development (1997), <https://www.sadc.int/issues/gender/>

³⁷ For example, Canada-Israel Article 13.3 reads: 'Parties shall encourage the involvement of their respective government institutions, businesses, labour unions, education and research organizations, other non-governmental organizations, and their representatives, as appropriate, in the cooperation activities decided upon by the Parties.'

³⁸ For example, USMCA's Article 23.9 reads: 'each Party shall implement policies that it considers appropriate to protect workers against employment discrimination on the basis of sex...'

³⁹ Bhala and Wood (2019).

that trade liberalization under a given FTA will not limit their policy space to regulate for, for example, the provision of social services (such as childcare) in their respective jurisdictions. Childcare is a prerequisite for many women to have continuous engagement in employment but could (in principle and absent any general ‘public interest’ criterion) be categorised as discriminatory (in favour of women workers). Many agreements negotiated under a negative list approach include such a social services reservation but do not allude specifically to women or children.

2.3 Scope

There are marked differences across regions when it comes to the number of times agreements use gender-explicit expressions in the main text or in side instruments.⁴⁰ As shown in Figure 1, the region leading this count is the EU, closely followed by North America.

Within the 46 agreements currently enforced by the EU, as many as 36 include at least one gender-explicit expression. The aggregate number of gender-related terms included in these 36 agreements is 160. In North America, Canada, the US and Mexico have signed 47 agreements that are currently in force. Within these, 18 agreements include at least one gender-explicit mention. These 18 agreements include as many as 148 gender-explicit expressions in total. The pioneer of the gender mainstreaming approach is Canada, where agreements account for over 70% of these explicit mentions. Asia Pacific has the lowest score in this respect, with 66 gender-explicit mentions.⁴¹

The gender-explicit provisions are drafted in different forms. In the agreements signed by the EU, most of these mentions are found in provisions relating to trade and sustainable development, the agreement’s general objectives and principles, binding reservations, sections on social, cultural and education-related cooperation, and reaffirmations of other international instruments. In contrast, agreements negotiated by North and South American countries have mostly drafted their gender-explicit provisions in the forms of commitments relating to cooperation activities, reaffirmation of international instruments concerning women’s rights, and statements in the agreements’ preamble (USMCA is an exception in this respect as it incorporates several binding and enforceable labour standards which address women’s rights). In addition, some countries include provisions on corporate social responsibility, i.e., voluntary standards relating to gender equality that enterprises operating within their territory or subject to their jurisdiction are encouraged to follow. Peru has, in several instances, negotiated reservations to regulate various social services including childcare.

In agreements negotiated by African countries, these mentions are found in provisions styled as general objectives and principles, general undertakings, provisions establishing or clarifying the components of regional institutions, and capacity building and cooperation provisions. Finally, the most commonly employed provisions in Asia Pacific are those wherein countries reserve policy space to adopt or maintain regulations with respect to social services including childcare, maternity benefits, healthcare, and women's safety.

⁴⁰ The explicit expressions included in this assessment are: women, girl, woman, girls, maternity, gender, childcare, sex, mother [in English]; mujer, mujeres, género, niñas, niños, sexo, equidad, maternidad, paternidad, parental, maternal, igualdad, atención infantil [in Spanish].

⁴¹ Note that these are conservative estimates, as only the agreements notified to the WTO are included in this survey. These numbers will increase if agreements not notified to WTO are considered.

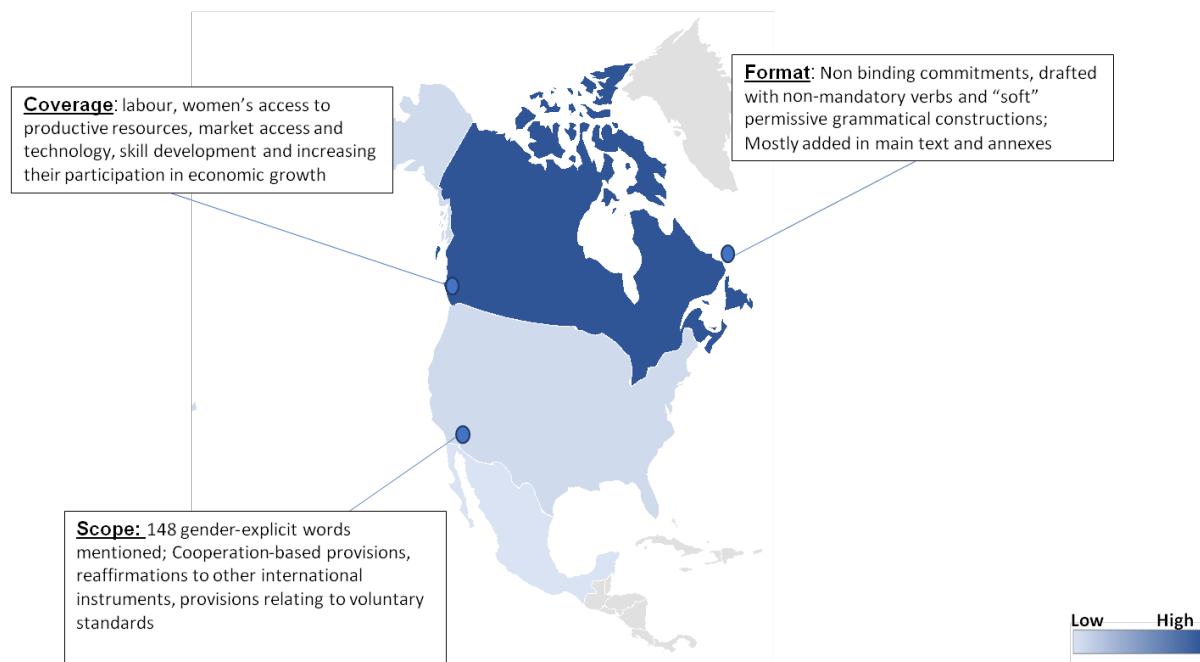
3 REGIONAL ANALYSIS: NORTH AMERICA, SOUTH AMERICA, THE EU, AFRICA, AND ASIA PACIFIC

This section engages in an assessment of how 5 regions (Africa, Asia Pacific, the EU, South America and North America) have included gender-related concerns in their existing trade agreements. The section zooms into the topic coverage, format and scope of gender-related provisions in the 5 selected regions. North and South American are grouped into one subsection, reflecting the similarities observed in their gender mainstreaming approach. Each of the four subsections discusses the topic coverage, format and scope of the respective region's gender mainstreaming approach in bilateral, regional or mega-regional agreements they have negotiated with other trade partners.

3.1 North and South America's Approach to Gender Mainstreaming in Trade Agreements

The coverage and format of gender-related inclusions in FTAs signed by countries in South and North America are similar; hence the assessment of these regions is presented together in this subsection. Some differences in the scope of their respective provisions are described. The countries constituting the North American region for the purposes of this discussion are the United States, Mexico and Canada. In total, these three countries have 47 FTAs notified to the WTO that are currently in force. Out of these, 18 FTAs have gender-explicit provisions. This means that almost 38% of its agreements have some level of gender responsiveness. The following illustration presents the most prominent features of the gender mainstreaming approach employed in North America.

Figure 2: Gender Mainstreaming: The North American Approach



Notes:

*The colour code reflects the aggregation of the number of times gender-explicit words are used in all existing FTAs signed by each country. The darker it is, the higher the frequency of gender-explicit words included in FTAs signed by that country.

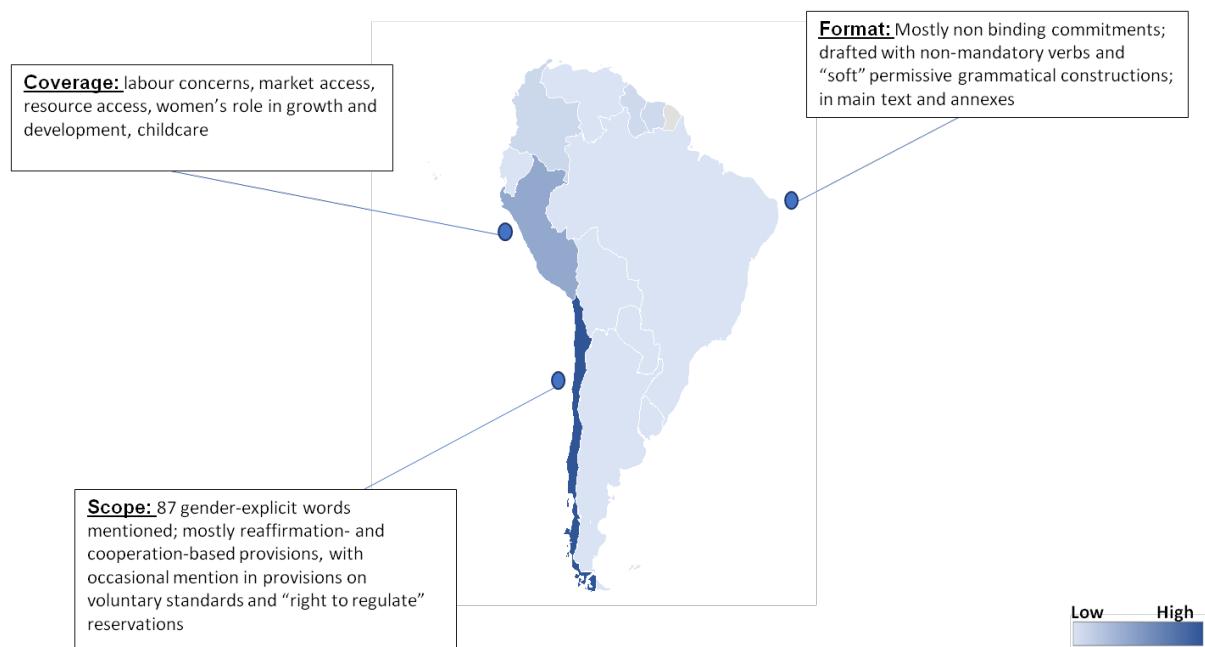
** Only FTAs with explicit gender provisions were considered for the illustration. Some FTAs are included in the assessment of more than one country, depending upon the countries that are party to those agreements.

*** Gender-explicit words used for listing products or entities are not included in this assessment.

**** Only trade agreements notified to WTO and currently in force (as of 15 June 2021) are included in this assessment.

The countries included in the South American region for the purposes of this assessment are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela. In total, these countries have 69 FTAs notified to the WTO and currently in force. Out of these, 14 FTAs have gender-explicit provisions. This means that almost 20% of its agreements have some level of gender responsiveness. The following illustration presents the most salient features of gender mainstreaming approach in South America.

Figure 3: Gender Mainstreaming: The South American Approach



Notes:

*The colour code reflects the aggregation of the number of times gender-explicit words are used in all existing FTAs signed by each country. The darker it is, the higher the frequency of gender-explicit words included in FTAs signed by that country.

** Only FTAs with explicit gender provisions were considered for the illustration. Some FTAs are included in the assessment of more than one country, depending upon the countries that are party to those agreements.

*** Gender-explicit words used for listing products or entities are not included in this assessment.

**** Only trade agreements notified to WTO and currently in force (as of 15 June 2021) are included in this assessment.

3.1.1 Topics Covered

The trade agreements signed by North and South American countries treat gender-related concerns primarily from an economic and market access perspective. The provisions cover areas relating to labour concerns, women's access to productive resources, markets and technology, skill development and increasing their participation in economic growth. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) can serve as an example. It includes a chapter on development, wherein parties underscore the importance of women's empowerment

and their contribution to economic growth and development. The parties consider undertaking cooperative activities aimed at enhancing the ability of women, including workers and business owners, to fully access and benefit from the opportunities created by this Agreement.⁴² The parties also seek to enhance women's access to markets, technology and financing; develop women's leadership networks; and identify best practices related to workplace flexibility.

Another example is the United States-Mexico-Canada Agreement (USMCA), whereby parties commit to work on enhancing trade and investment opportunities for small businesses including those owned by women.⁴³ However, in addition to focusing on market access, parties also commit to cooperate on various labour market topics which reveal concerns about the eventual lowering of standards as a source of unfair competitive advantage insofar as they lower labour costs specifically and by extension the total cost of production.⁴⁴ One of these is the elimination of discrimination on the basis of sex in respect of employment, occupation, and wages. The other aspects are the consideration of gender issues related to occupational safety, health and other workplace practices, the prevention of occupational injuries and illnesses, and the prevention of gender-based workplace violence and harassment. This agreement is a milestone in the treatment of enforceable gender issues included in the labour chapter; the provisions are made enforceable through the new Facility-Specific Rapid Response Labour Mechanism ("Rapid Response Mechanism") that will allow the United States, Mexico and Canada to directly take actions against facilities with labour standards failures.

The modernised Canada-Israel and Canada-Chile trade accords also present interesting developments. They are very similar in content and scope. Both agreements have a stand-alone chapter on trade and gender.⁴⁵ Both list cooperation activities that envision women not only as employees or labourers, but also as entrepreneurs, leaders, decision-makers and scientists.⁴⁶ The activities focus on improving educational or skills development opportunities that can translate to high-paid job opportunities for women (such as science, technology, engineering and mathematics (STEM) and information and communication technology (ICT)). In addition, they create institutional mechanisms to implement gender-related commitments.⁴⁷ However, most of these cooperative commitments are drafted in best endeavour language, and hence, like the provisions of the CPTPP, are not binding on the parties.

Countries in South America which have engaged in gender provisions in trade agreements have mostly used a cooperative approach (also shared by Canada in its bilateral agreements), while in North America, the USMCA has put in place stronger and enforceable gender commitments. A few of the agreements that South American countries have signed with Asian countries also include commitments regarding childcare. For example, Article 10.2 of the Chile - South Korea FTA contains a right to regulate childcare services. A similar reservation can be found in the Peru – South Korea FTA.

⁴² Article 23.4

⁴³ Article 25.2

⁴⁴ Article 23.12

⁴⁵ Canada-Israel, Chapter 13; Canada-Chile, Chapter N-bis.

⁴⁶ Canada-Israel, Article 13.3; Canada-Chile, Article N bis-03.

⁴⁷ Canada-Israel, Article 13.4; Canada-Chile, Article N bis-04.

3.1.2 Format

With very few exceptions, most of the gender-related concerns included in the regions' existing agreements are drafted with non-mandatory verbs and "soft" grammatical constructions. In terms of their location, gender-related provisions mostly appear in the agreements' main text. Only occasionally, they are added in a side agreement or an annex. A best practice example that emerges from these regions is the addition of a stand-alone trade and gender chapter. So far, out of nine countries that have signed FTAs with stand-alone chapters on trade and gender (i.e., Chile, Canada, Uruguay, Argentina, Brazil, Ecuador, Japan, the UK and Israel), six are from North and South America.⁴⁸ Chile has taken a lead and has included a stand-alone chapter on gender and trade in multiple FTAs (i.e., with Uruguay, Canada, Argentina, Brazil and Ecuador). Chile is also negotiating a gender chapter with Paraguay, and together with Colombia, Mexico and Peru, it is considering the inclusion of a gender chapter in the Agreement between the Pacific Alliance and Associates (Canada, New Zealand and Singapore).⁴⁹

An interesting recent development in this respect is the amended Chile - Ecuador trade agreement, which contains a new, dedicated chapter on trade and gender.⁵⁰ This chapter is quite comprehensive; as in other gender chapters negotiated by Chile, it includes various affirmations, cooperation-based commitments and reaffirmations. However, it is the first of its kind in that the parties to the agreement have created a detailed and dedicated bilateral consultation procedure to solve differences that may arise from the provisions included in this chapter. It is also the very first agreement that requires its parties to set up a national consultative committee that is responsible for gathering views from the public (including representatives from women's organizations and business entities) on matters covered in the stand-alone gender chapter.

The EU and Chile are negotiating a gender chapter for a modernized EU-Chile Association Agreement, wherein both countries have tabled their own draft chapter. If the EU's proposed draft is included in the agreement, it will probably be one of the most comprehensive chapters on trade and gender negotiated so far.⁵¹ Its scope is vast. Parties in this chapter reaffirm their commitment to gender-specific international conventions. As a substantive obligation, they commit not to promote trade or investment opportunities by weakening or reducing the protection provided in domestic law and regulation relating to gender equality. They also commit to progressively eliminate discrimination against women in employment; they seek to work on various cooperation activities to enhance capacity and conditions of women not merely as employees but also as business leaders; parties identify specific activities to work on connecting more women to the formal economy that includes work to increase women's access to digital skills and online tools, decent quality jobs through trade, safety and health at work, flexible work conditions, affordable childcare, preparing girls for STEM careers, and joint collection of sex disaggregated data. The text also contains a detailed bilateral consultation procedure to solve differences that may arise from the provisions included in this chapter.

Another recent development is the negotiation of a stand-alone, cross regional arrangement on trade and gender. Canada, Chile and New Zealand have negotiated the first-ever freestanding international cooperation agreement on trade and gender, the Global Trade and Gender Arrangement (GTGA), signed in August 2020. This adds additional dimensions to the nature of gender-related provisions in the existing trade agreements. In this Arrangement, parties also commit not to promote trade or investment opportunities by weakening or reducing the protection

⁴⁸ This count includes several FTAs not yet notified to WTO (as of 21 June 2021).

⁴⁹ Interview with trade negotiator [details withheld, on record with author].

⁵⁰ Chapter 18, Chile - Ecuador Acuerdo de Complementación Económica (not yet enforced; signed 13 August 2020).

⁵¹ EU's proposed draft can be accessed here: http://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156962.pdf

provided in domestic law and regulation relating to gender equality⁵². Parties include an explicit commitment to avoid discrimination on the basis of sex in connection with licensing and certification in the services sector. They seek to work together at international forums (such as the Asia-Pacific Economic Cooperation (APEC), the Organisation for Economic Co-operation and Development (OECD) and the WTO) to collaborate on gender issues. The Arrangement also calls on the parties to exchange their best practice experiences relating to women's empowerment and trade policies through their national reports prepared for the WTO's trade policy review mechanism and is open to accession by other countries.

3.1.3 Scope

North American countries have incorporated close to 148 gender-explicit words in the trade agreements they have signed so far. Most of these instances come from the agreements Canada has negotiated with countries beyond North America, as its agreements alone account for more than 70% of these mentions.

The countries in these regions have shown an increasing trend to negotiate such provisions in the form of cooperation-based best endeavour commitments. The parties in such provisions identify a list of activities that parties seek to work on, though the implementation of these activities and resources are defined by the parties once the agreement is enforced. The USMCA is unique, however, as it includes binding commitments on labour standards and a special reservation to protect market access of indigenous women engaged in cross border trade in services. A cultural reservation is made in the form of a concession to preserve culture, languages, knowledge, traditions, and identity with a special focus on the integration of women and promotion of gender equality.⁵³

Countries in these regions have reaffirmed in their trade agreements their commitments under international instruments, including the United Nations 2030 Agenda and Sustainable Development Goals, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, the Universal Declaration of Human Rights⁵⁴, the International Covenant on Civil and Political Rights⁵⁵, the International Covenant on Economic, Social, and Cultural Rights⁵⁶, the Beijing Declaration and Platform for Action⁵⁷, as well as the ILO conventions that refer to women's labour rights and the ILO Declaration on Fundamental Principles and Rights at Work.

⁵² The GTGA actually uses a language similar to the EU gender chapter proposed to Chile.

⁵³ Annex 15-E, USMCA.

⁵⁴ Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/180, (Dec. 10, 1948) [hereinafter UDHR] (points to the importance of equal rights of men and women, women's right to marry, and equal rights as to its dissolution).

⁵⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), art. 3, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/16316 (Dec. 16, 1966) (mentions women's right to equality).

⁵⁶ International Covenant on Economic, Social and Cultural Rights, arts. 3, 7, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) (mentions women's right to equality and women's right to a fair wage).

⁵⁷ United Nations, & World Conference on Women (1996), The Beijing Declaration and the Platform for Action: Fourth World Conference on Women, Beijing, China, 4-15 September 1995. New York: Dept. of Public Information, United Nations (contain a progressive blueprint for advancing women's empowerment).

3.1.4 Other reflections

In this discussion, Canada and Chile emerge as the frontrunners in the Americas. Gender equality is a priority in Canada's trade policymaking and trade negotiations. In the early years, this objective was implemented by inclusion of language regarding the elimination of employment discrimination in labour cooperation agreements and labour chapters in FTAs. More recently, Canada has sought to mainstream gender considerations throughout its FTAs. This is based on a commitment made in Canada's 2018 Federal Budget that FTAs would be subject to gender-based analysis, using Canada's analysis tool called Gender-based Analysis Plus (GBA+).⁵⁸ On 5 June 2017, Canada became the first G20 country to include a trade and gender chapter in an FTA, in the modernised Canada–Chile FTA. Since then, it has mainstreamed gender in FTAs with the EU, Israel and the CPTPP, and is negotiating with Mercosur. Canada's political will and expertise in mainstreaming gender equality considerations are key drivers of the trend to include gender provisions in trade agreements. The Chilean example also testifies to the power of political will and experience at the national level, in that gender became an explicit component of Chile's trade policy during Michelle Bachelet's second administration from 2014–2018, during which time Chile became the first country to negotiate a trade agreement (with Uruguay) with a dedicated trade and gender chapter.⁵⁹

The South American political appetite for these concerns can further be exemplified by the regional developments that facilitated various integration mechanisms. The Pacific Alliance (an integration mechanism which includes Chile, Colombia, Mexico and Peru) is one such example, wherein parties in the 10th Presidential Summit in 2015 created a technical group on gender to ensure that gender became a cross-cutting issue in the region's agenda. At the 15th Pacific Alliance Summit held in 2020 in Santiago, the four countries signed a Presidential Declaration on Gender Equality. Through this Declaration, the parties agreed to a roadmap to promote the economic empowerment of women in the Pacific Alliance and strengthen protection of women's rights.⁶⁰ Other efforts have been employed within the framework of other regional integration mechanisms such as MERCOSUR, the Andean Community, and the Central American Common Market.⁶¹

3.2 The European Union's Approach: Gender Mainstreaming in Trade Agreements

The European Union (EU) is party to 46 FTAs of which 36 have gender-explicit provisions. This means that almost 78% of its agreements have some level of gender responsiveness⁶².

Most of these agreements, strictly speaking, are broader than trade agreements. They are drafted

⁵⁸ Employment and Social Development Canada 2018–2019 Departmental plan - Supplementary information - Annex 1.7: ‘Gender-Based Analysis’ (GBA+), www.canada.ca/en/employment-social-development/corporate/reports/departmental-plan/2018-2019/gender-based-analysis.html.

⁵⁹ Lopez et al n.d. Bachelet's administration is widely known for its works and accomplishments relating to gender issues (Stevenson 2012).

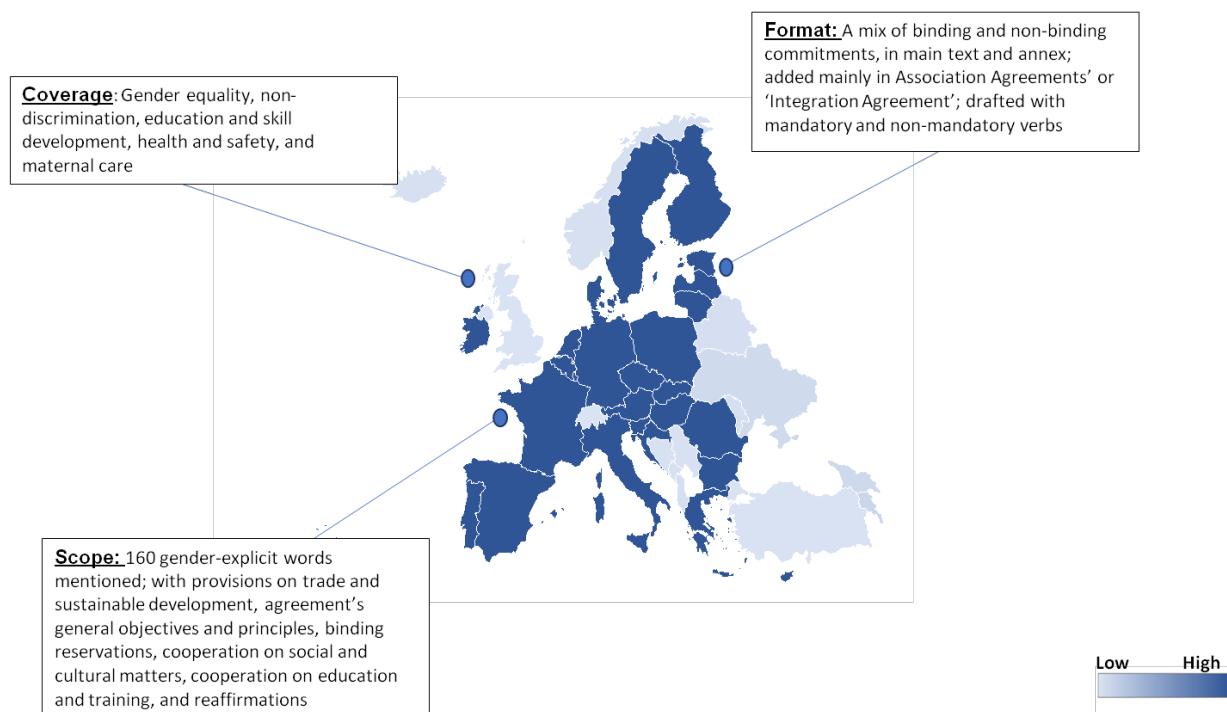
⁶⁰ With Declaration on Gender Equality and the Digital Market of the bloc concludes the Pacific Alliance Summit' (Alianza del Pacífico, 11 December 2020), <https://alianzapacifico.net/en/with-declaration-on-gender-equality-and-the-digital-market-of-the-bloc-concludes-the-pacific-alliance-summit/>

⁶¹ For details, Frohmann (2017).

⁶² Gender commitments as contained in the European Union's own internal arrangements are not considered in this assessment. However, the “first gender-related provision was found in the 1957 Treaty of Rome establishing the European Economic Community (EEC) requiring each member state to guarantee the application of the principle of equal pay for women and men” (Monteiro 2021). Another trade integration mechanism in Europe is the European Free Trade Associations (EFTA), which includes a Gender Equality Policy.

as ‘Association Agreements’ (AAs), Economic Partnership Agreements (EPAs) or Strategic Partnership Agreements (SPAs). EPAs are trade and development agreements that contain economic arrangements, leading to a free trade area and economic integration. However, AAs and SPAs include economic as well as non-economic arrangements. AAs establish association between parties and include three pillars: Political Dialogue, Cooperation and International Trade. These pillars may include provisions and cooperation on immigration, education and training, social cooperation, political dialogue, environment, poverty, as well as gender. SPAs promote international cooperation in a range of areas including the economy, politics, security, and environmental issues. In AAs and SPAs negotiated by the EU, gender issues have generally featured in non-economic or non-trade sections as they are frequently included in political dialogue, cooperation, and social or education related issues. Gender-relevant provisions mentioned in this section may be located in a Sustainable Development chapter within the trade pillar of these agreements, and only recently the EU negotiators have engaged on gender issues within the trade policy context in the modernization of the agreement with Chile.

Figure 4: Gender Mainstreaming: The EU's Approach



Notes:

*The colour code reflects the aggregation of the number of times gender-explicit words are used in all existing FTAs signed by the European Union. The darker it is, the higher the frequency of gender-explicit words included in the FTAs.

** Only agreements with explicit gender provisions were considered for the illustration. Some agreements are included in the assessment more than once, depending upon the countries that are party to those agreements.

*** Gender-explicit words used for listing products or entities are not included in this assessment.

**** Only EU trade agreements with third parties notified to WTO and currently in force (as of 15 June 2021) are included in this assessment.

3.2.1 Topics Covered

The EU's agreements focus on trade-related social and labour standards, as well as sustainable development, and mostly include gender issues within these categories. Concerns relate in particular to employment non-discrimination, health, physical safety and education. Cooperation to improve standards is a significant component of the agreements.

The EU–Central America agreement (European Union Central American Association Agreement 2012) can be used as an example to illustrate this approach. The parties seek to hold political dialogues about social issues including gender equality.⁶³ They are also concerned with and seek to enhance women's safety, as it includes a commitment to protect the lives of women against anti-personnel mines.⁶⁴ Article 41 on Social Cohesion includes a commitment to combat xenophobia and discrimination on the grounds of sex (amongst other grounds). Article 47 is a stand-alone provision on gender, and it contains multiple cooperation-styled commitments to work on women's equal participation in economic, social and cultural life, integration of a gender perspective in public policies, development strategies and policy actions. It also seeks to equate women's and men's access to services and resources such as education, health, vocational training, and political decision-making and gives particular attention to programs that address violence against women. Article 44 is another best practice provision which focuses on women's health, seeking to improve maternal health and to address priority areas such as sexual and reproductive health and the prevention of sexually transmitted diseases and unwanted pregnancies. Finally, the parties in this agreement agree to reserve a right to enforce any measure for the protection of social security, health, education and childcare. This reservation provides language drafted with binding expressions.

Some of the agreements negotiated by the EU have incorporated gender provisions that relate to the protection of labour standards. In the EU–Albania Stabilisation and Association Agreement for example, the parties seek to cooperate on ensuring the adjustment of the Albanian legislation concerning work conditions and equal opportunities for women. This provision seems to be a minimum legal standard, but the inclusion of the expression “seek to cooperate” liberates the parties from any such legal obligation to cooperate and makes it look like a best endeavour provision.⁶⁵

Other agreements include gender concerns with a special focus on education and family planning. In the EU–Egypt Association Agreement parties seek to enhance women's access to higher education and training.⁶⁶ Yet, the article does not identify whether this education and training would focus on traditional and low-paid skills or whether they would extend to fields such as STEM and ICT which might result in higher paid and attractive employment. This agreement, together with the EU–Jordan Association Agreement, is unique in the sense that the parties seek to align Jordanian and Egyptian laws and policies with the objective of gender equality through effective use of education and the media. The parties seek to develop family planning policies which can benefit women, as lack of family planning regulations can be a barrier to their autonomy and participation in trade and commerce.⁶⁷ Inclusion of this aspect of women's empowerment makes this provision different from other gender-related provisions (except for a few others in the Middle East with similar provisions).

⁶³ Article 13

⁶⁴ Article 32

⁶⁵ Article 99

⁶⁶ Article 42

⁶⁷ Article 82

3.2.2 Format

Compared to other regions, the EU has employed a distinct approach in respect of the “format”, as it has included gender-explicit provisions in chapters or provisions on trade and sustainable development. For example, Chapter 9 of the EU - Armenia Comprehensive and Enhanced Partnership Agreement is entitled Trade and Sustainable Development wherein parties seek to cooperate on activities to enhance sustainable development. The chapter includes reaffirmations to existing international conventions pertaining to sustainable development such as the ILO Declaration on Social Justice for a Fair Globalization of 2008 and the UN 2030 Agenda for Sustainable Development entitled ‘Transforming Our World: the 2030 Agenda for Sustainable Development’. The EU – Georgia Association Agreement also has a standalone chapter on trade and sustainable development.⁶⁸ Parties to this agreement seek cooperation on various aspects including labour, environment, human resource development, gender equality, and conservation of exhaustible resources such as forests and fisheries.

The EU - Korea Free Trade Agreement contains gender-explicit provisions in two sections. One is Chapter 13 entitled Trade and Sustainable Development, and the second is included in Annex 13 on Trade and Sustainable Development.⁶⁹ The chapter contains commitments on productive employment and decent work for all, including men, women and youth. It also includes commitments on effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour and elimination of discrimination in respect of employment and occupation. The Annex focuses on corporate social responsibility and accountability, environmental protection, climate change and energy efficiency, cooperation on trade-related aspects of biodiversity and sustainable fishing practices. Gender equality is mentioned as one of the possible areas of cooperation between the parties.

In some other agreements, gender-explicit provisions are found in supplementary instruments and not in the main text. These instruments can provide a second opportunity for including sustainability issues within the agreement for parties that have not done so during the negotiation of the main trade text. So far, these supplementary instruments have taken the shape of protocols, recommendations, declarations or even stand-alone arrangements. An example is the Recommendation on Trade and Gender that the CETA Joint Committee adopted after having signed the agreement. CETA itself only includes a single gender explicit provision that prohibits sex-based discrimination against foreign investors.⁷⁰ Hence, the text in itself mainstreams gender equality by protecting women’s non-discriminatory access to investment opportunities. Though this is the only gender-related commitment found in the entire text of the agreement, the parties have subsequently adopted a stand-alone recommendation on trade and gender.

Through that Recommendation, the parties have gone beyond the text of the agreement, inasmuch they created a work plan to gather and analyse gender-disaggregated data, carry out the agreement's gender impact assessment, add a gender lens to the implementation of the agreement, conduct webinars on trade and gender, and report regularly on these activities. The CETA Joint Committee which issued the Recommendation is the agreement's top institutional authority. This kind of development allows parties to work together on activities that may bring about positive outcomes

⁶⁸ Chapter 13

⁶⁹ Annex 13

⁷⁰ Article 8.10

for women at the domestic level.⁷¹ In particular, recommendations focused on collection of data and the commissioning of research to better understand the gender and trade nexus and gendered impact of trade agreements can inform trade policymaking and negotiations in the future.

3.2.3 Scope

Compared to the other 4 regions, the EU has the highest percentage of agreements currently in force that include gender-related expressions. The ones with the highest gender-related mentions are EU - Central America (with 29 mentions), EU- Armenia (with 10 mentions), and EU - Georgia (with 9 mentions). The EU - Ukraine and EU -Tunisia follow with 8 mentions each. Most of these provisions are drafted as best endeavour cooperation provisions on trade and sustainable development or social, cultural, educational and training matters. In addition, in other agreements, these provisions find their way in general objectives clauses which state the general objectives and principles that guide the interpretation of the entire agreement.

Some agreements also contain reaffirmations to international instruments (such as the ILO Declaration on Social Justice for a Fair Globalization of 2008, the UN 2030 Agenda for Sustainable Development) and to EU directives. The EU Directives incorporated by reference in such agreements include the following: Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC); Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

3.2.4 Other reflections

Political will at the highest level can lead to the frontloading of gender equality concerns in national and international discussions. The EU's political willingness to add a sustainability lens to trade agreements can be traced back to the Treaty on the Functioning of the European Union ("TFEU").⁷² Another development reflecting political will is the EU's commitment to carry out Sustainability Impact Assessments (SIA) of all negotiated trade agreements.⁷³ Since 1999, the European Commission has carried out these assessments during the negotiations; the findings from such assessments feed into the work of the negotiators as the negotiations evolve. Efforts have been made to ensure that these assessments include analysis of the impact on women and other

⁷¹ "Recommendation" normally is an international instrument of a less formal kind and they serve as guidelines to help member States formulate their policy at a national level. They are legal instruments which are usually not legally - binding but practice accords them great moral force as representing the political will of Adherents. [Compendium of OECD Legal Instruments, <https://legalinstruments.oecd.org/en/>]

⁷² Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) (2016 OJ C202/1), art. 157.

⁷³ They were first developed by the European Commission's Directorate-General for Trade (DG Trade) in 1999 for the World Trade Organization Doha Development Agenda (DDA) negotiations. They assess the economic, social, environmental and now human rights impacts of trade agreements in the EU, the partner country and in developing countries. [European Commission, *Handbook for Trade Sustainability Impact Assessment* (2nd edition, 2016) Pg 22].

vulnerable groups such as children, people with disabilities, ethnic minorities, indigenous peoples, and unskilled workers. Current SIAs include 4 main impact areas: human rights, labour, social issues and the environment. Impact on women is usually included in the section on social issues.

The resolutions adopted by the European Parliament on mainstreaming gender, creation of a gender mainstreaming team in the Parliament's International Trade Committee, commissioning of work on trade and gender mainstreaming and dedicated parliamentary debates on gender-responsive trade negotiations are a result of the emerging political willingness and stakeholder engagement to establish inclusive and sustainable trade policies. Moreover, the Trade and Gender chapter which is under ongoing negotiations to be added to the EU – Chile Association Agreement shows how these advancements in the EU have had a visible impact on its trade negotiation priorities.⁷⁴

In 2018, a resolution which would allow gender equality to be taken into account in trade agreements was adopted by 512 votes in favour and 107 against by the European Parliament.⁷⁵ A year later, a resolution about mainstreaming gender in policy instruments was adopted by 492 in favour and 126 in opposition.⁷⁶ This massive support by Members of European Parliament in favour of empowering women reflects stakeholders' engagement and the institution's responsiveness towards gender equality and the use of their policy instruments to further it. These examples show that strong political will is the key to using trade agreements for women's empowerment. In addition, they also confirm that another important trigger is the policymakers' understanding and expertise on the gendered impacts of trade in general and the gender equality implications of particular substantive issues which are part of the entire package. Participation of women experts and negotiators, as well as increased capacity and expertise to negotiate agreements with a gender lens are other important drivers of trade policy design.⁷⁷

⁷⁴ EU Proposal, Draft provisions on Trade and Gender Equality in the context of the Modernisation of the EU-Chile Association Agreement, <https://trade.ec.europa.eu/doclib/html/156962.htm>

⁷⁵ European Parliament resolution of 13 March 2018 on gender equality in EU trade agreements (2017/2015(INI)), https://www.europarl.europa.eu/doceo/document/TA-8-2018-0066_EN.html

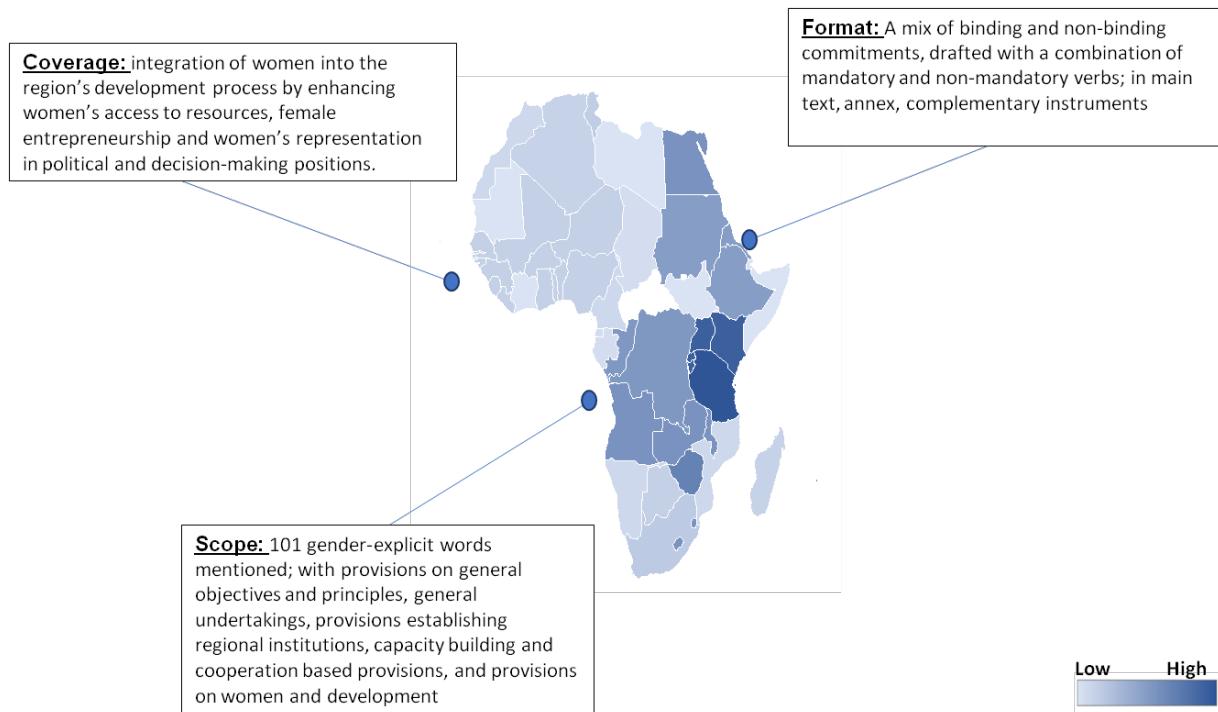
⁷⁶ European Parliament resolution of 15 January 2019 on gender mainstreaming in the European Parliament (2018/2162(INI)), https://www.europarl.europa.eu/doceo/document/TA-8-2019-0010_EN.html

⁷⁷ The Committee on International Trade (INTA) now has more gender and trade experts focusing on negotiating trade agreements with a gender lens than ever before. [Interview with a trade negotiator (details withheld, on file with author)].

3.3 Africa's Approach: Gender Mainstreaming in Trade Agreements⁷⁸

There are 54 countries considered in the African region.⁷⁹ In total, these countries have 46 FTAs currently in force. Within these, 15 FTAs have gender-explicit provisions. This means that almost 32% of its agreements have some level of gender responsiveness.

Figure 5: Gender Mainstreaming: The African Approach



Notes:

*The colour code reflects the aggregation of the number of times gender-explicit words are used in all existing FTAs signed by each country. The darker it is, the higher the frequency of gender-explicit words included in FTAs signed by that country.

** Only FTAs with explicit gender provisions were considered for the illustration. Some FTAs are included in the assessment of more than one country, depending upon the countries that are party to those agreements.

*** Gender-explicit words used for listing products or entities are not included in this assessment.

**** Trade agreements notified to WTO and currently in force (as of 15 June 2021) are included in this assessment.

3.3.1 Topics Covered

Several trade agreements signed by countries in the African region include commitments relating to gender equality. However, the coverage of these commitments is somewhat different from the ones discussed above. The gender-explicit provisions found in FTAs signed by the African countries seek to integrate women into region's development process in three different ways: (i) by enhancing women's access to the resources they need to participate in trade and development; (ii) by seeking to promote female entrepreneurship to facilitate women's participation in regional and

⁷⁸ The focus of this section of the assessment is on gender-related provisions in regional and subregional integration mechanisms.

⁷⁹ List of countries in Africa, Countries of the World, <https://www.countries-ofthe-world.com/countries-of-africa.html>

global markets; (iii) and by increasing women's representation and participation in political and decision-making positions.

In the Economic Community of West African States (ECOWAS), the parties seek to encourage the flow of trade information among women and youth organizations, and among women businesses and workers.⁸⁰ Trade information is a precondition to empowering small women-owned businesses and maintaining profitable cross-border operations through informed decision-making.⁸¹ Another best practice provision in this agreement is Article 63, wherein parties seek to establish policies and mechanisms for enhancing the economic, social and cultural conditions of women, and take necessary measures to address the constraints women generally face. This commitment demonstrates parties' willingness to incorporate a gender perspective into the region's economic development and into the operations of society.

Another example is the EU- Central African Economic and Monetary Community (CAEMC/CEMAC) & São Tomé and Príncipe agreement, as it contains a number of gender-explicit provisions. In Article 63, parties agree that the legal and regulatory regimes and administrative capacity of the agreement shall be established on several principles. One such principle is data protection, calling for additional safeguards to be in place if gender-sensitive personal data needs to be revealed. This could be seen as a useful provision for women business stakeholders, as protection of data relating to the sex of owners or managers of businesses can help women owners and managers to operate without facing discrimination or harassment that might be directly linked to gender. Annex I, Section B lists the areas of assistance for parties to work on under the EPA Regional Fund, a funding instrument which was created by and for Central Africa. In this list of possible areas of assistance and types of activities, promotion of entrepreneurship among women is listed as one of the activities that members agree to work on with the aim to enhance the diversification and competitiveness of economies and overall regional development.

In the Common Market for Eastern and Southern Africa (COMESA), parties have assumed various commitments relating to gender equality. In this agreement, the parties affirm that 'women make significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective programmes for rural transformation and improvements in the informal sector without the full participation of women.'⁸² Through legislation and other measures, parties pledge to increase women's participation in decision-making, eliminate regulations and customs that are discriminatory against women entrepreneurs and inhibit their access to resources, promote their education and awareness, and adopt technology to support the professional progress of women.⁸³

3.3.2 Format

It is interesting to see that most of the gender-explicit provisions in these agreements are drafted with affirmative and binding expressions. Moreover, some gender-related provisions are included in the ambit of the agreements' dispute settlement mechanisms and are therefore enforceable and legally-binding. This is an interesting and unique best practice example, which differs from gender-

⁸⁰ Article 3

⁸¹ Ruiter et al (2017).

⁸² Article 154

⁸³ Article 154 and 155.

related provisions drafted in best-endeavour language as is mostly the case with FTAs discussed in the previous subsections.

In some agreements, most gender-explicit provisions are found in side-instruments and not in the agreement's main text as such. Two examples worth considering are the Southern African Development Community (SADC) Protocol on Gender and Development (2008) and Declaration on Gender & Development (1997).⁸⁴ In the SADC Treaty, parties identify 'gender mainstreaming in the process of community building' as one of the treaty's objectives.⁸⁵ Yet, the rest of the treaty is silent on how parties might mainstream gender considerations or take steps to include women in community building. The parties have clarified this issue in the SADC Protocol on Gender and Development (2008) and Declaration on Gender & Development (1997). Although these instruments are not mentioned or referenced in the agreement's text, their content contains ambitious plans and concrete commitments.

The political will to mainstream gender equality concerns into the economic integration mechanism dates back to 1997 in SADC. In 1997, Member States signed the Declaration on Gender and Development to promote closer regional cooperation and collective action as a means to foster gender equality. The Declaration reaffirms SADC Member States' commitment to eliminate gender discrimination and mainstream gender issues in Southern Africa. In this Declaration, Member States agree to establish policy and institutional frameworks for advancing gender equality, to set up governmental and non-governmental organizations to monitor gender issues, and to create a Gender Unit within the SADC Secretariat. These measures were established to compel reforms in domestic laws that discriminate against women and are obstacles to their access to productive resources. The Declaration was followed by an Addendum on the Prevention and Eradication of Violence against Women and Children in September 1998. Thereafter, the SADC Council of Ministers in 2007 adopted the SADC Gender Policy.

With the exception of Botswana and Mauritius, SADC countries adopted the SADC Protocol on Gender and Development in August 2008. The main objectives of the Protocol are to provide for the empowerment of women, to eliminate discrimination and to achieve gender equality through the development and implementation of gender responsive legislation, policies and programs. The Protocol also reaffirms the SADC Member States commitments to other international gender equality instruments such as CEDAW, the Beijing Declaration and its Platform of Action. In this Protocol, SADC Member States have identified the following priority areas to accelerate progress for gender equality: (i) integration of gender perspective into all sectors of regional integration; (ii) promoting women's representation and participation in all political and decision-making positions in SADC; (iii) elimination of gender-based violence; (iv) and eradication of poverty and promotion of women's economic empowerment in the SADC region.

3.3.3 Scope

The agreements which contain the largest number of gender-explicit words in this region are: COMESA (Common Market for East and Southern Africa) (with 25 mentions), EAC (East African Community) (with 22 mentions), EU - Tunisia Association Agreement (with 8 mentions) and ECOWAS (Economic Community of West African States) (with 7 mentions). These mentions are found in different kinds of provisions. Some are drafted as general objectives and principles, meant

⁸⁴ SADC Protocol on Gender and Development (2008) and Declaration on Gender & Development (1997), <https://www.sadc.int/issues/gender/>

⁸⁵ Article 5

to guide the interpretation of the entire agreement and all its provisions together with its side instruments or annexes.

Some other provisions are styled as provisions establishing or clarifying the composition of regional institutions, wherein parties commit to ensure a gender balance in these institutions. In addition, several agreements include standalone provisions on women and development, wherein members acknowledge the role of women in the region's growth and development plans and seek cooperation on enhancing women's participation in the region's integration and overall development. The most recent agreement in the region – the AfCFTA (African Continental Free Trade Area) - has included a mention of gender equality in the agreement's preamble, frontloading this concern as one of the agreement's main purposes.

3.3.4 Other reflections

Agreements in this region have accommodated several provisions with binding force and mandatory language. Some of them include gender-explicit minimum legal standards. The African countries that play a pioneering role are: Kenya, Rwanda, Tanzania, Uganda, and Zimbabwe, which have signed some of the most gender-responsive agreements in the region. These findings show that there may not always be a positive correlation between a country's readiness to assume gender equality commitments in its trade policy instruments and its level of development or its rating in international gender equality indexes, such as the UNDP Gender Development Index or the OECD Social Institutions and Gender Index.

These findings also contradict the “cost of compliance” theory. As per this concept, the less a country's practices and policies discourage gender inequality and adhere to universally-accepted gender equality norms, the less likely it is that the country will accept gender-related commitments in their trade policy instruments.⁸⁶ The countries with practices and policies that do not adhere to commonly-accepted norms (such as elimination of discrimination based on sex), and hence are ranked poorly in gender-related indexes, might be less likely to accept trade agreements that come with binding obligations to foster gender equality. Countries may not usually engage in cooperation efforts that require departure from their domestic policies and practices or that require countries to act differently from how they would otherwise act. By extension, while the cost of compliance along with the probability of compliance may both be thought fundamental to a country's decision to join an agreement, the relatively high gender responsiveness of countries in the African region suggests that the proposition has very weak explanatory power in this context.

In fact, many African countries have included gender concerns as a key issue in their region's development. It seems that some policymakers relate growth and development with women's empowerment, and that they are attempting, in various ways, to enhance women's participation in order to advance socio-economic transformation and sustainable growth. In addition, African countries might still be willing to assume such commitments in FTAs, since in committing to gender equality and changing domestic conditions by using international policy instruments, negotiation and ratification of international policy instruments can encourage the emergence of new norms or policies.⁸⁷

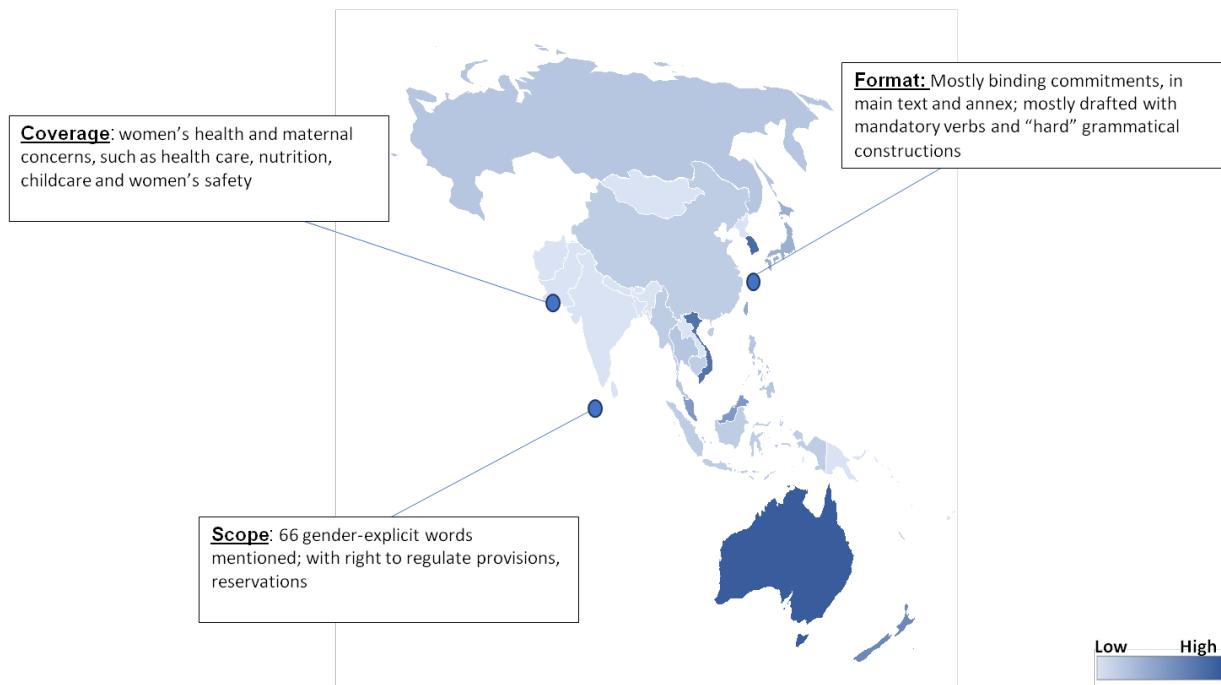
⁸⁶ Hathaway (2003).

⁸⁷ Finnemore (1996).

3.4 Asia Pacific's Approach: Gender Mainstreaming in Trade Agreements

This section deals with trade agreements of the Asia Pacific region.⁸⁸ In total, the 66 countries that belong to the Asia Pacific region have currently a total of 152 trade agreements notified to WTO and in force. Within these, 22 agreements have gender-explicit provisions; that is, only about 14% of its agreements have some level of gender-consideration⁸⁹.

Figure 6: Gender Mainstreaming: The Asia Pacific's Approach



Notes:

*The colour code reflects the aggregation of the number of times gender-explicit words are used in all existing FTAs signed by each country. The darker it is, the higher the frequency of gender-explicit words included in FTAs signed by that country.

** Only FTAs with explicit gender provisions were considered for the illustration. Some FTAs are included in the assessment of more than one country, depending upon the countries that are party to those agreements.

*** Gender-explicit words used for listing products or entities are not included in this assessment.

**** Only trade agreements notified to WTO and currently in force (as of 15 June 2021) are included in this assessment.

⁸⁸ Asia-Pacific Countries, World Population Review, <https://worldpopulationreview.com/en/country-rankings/apac-countries>.

⁸⁹ The focus of this section is on bilateral trade agreements notified to the WTO and does not address gender issues in regional or transregional integration mechanisms such as the Asia Pacific Economic Cooperation (APEC) forum, nor within the Association of Southeast Asian Nations (ASEAN) or the Comprehensive and Progressive Trans Pacific Partnership (CPTPP).

3.4.1 Topics Covered

The FTAs' gender provisions in this region mostly relate to women's personal welfare concerns. Access to affordable childcare facilities, and other maternity benefits, protection of healthcare interests, and physical safety are considered some of the effective enablers for empowering women. The Australia New Zealand Closer Economic Agreement (ANZCERTA), for example, contains a reservation wherein New Zealand reserves the right to regulate certain social services including childcare.⁹⁰ Childcare challenges pose a significant barrier to work, especially for mothers, who disproportionately take on unpaid responsibilities when they cannot find affordable childcare.⁹¹ Provision of affordable childcare facilities is therefore vital, as their lack limits women's employment opportunities and educational aspirations.

Another example is the ASEAN-South Korea FTA, which focuses on women's physical safety. Singapore (an ASEAN member state) reserves the right to regulate certain types of social services including statutory supervision services related to the provision of accommodation for women and girls detained in a place of safety under Section 160 of the Singapore's Women's Charter (CPC 93312).⁹² Section 160 stipulates 4 cases in which the Director General (DG) may order detention or commitment of woman or girl: (a) where a lawful guardian has requested the DG to detain her in a place of safety or to commit her to the care of a fit individual; (b) or if the DG feels that she is in need of protection and whose lawful guardian cannot be found; (c) or if DG believes that she has been ill-treated and is in need of protection; (d) or whom the DG considers to be in a moral danger. This provision can be construed as both favourable and unfavourable for women and girls. It can be seen as a favourable provision insofar as it seeks to protect physical safety of women and girls. However, if the DG can order detention or commitment if a woman or a girl is considered to be in moral danger this allows for a lot of discretion and may hinder women's freedom of movement. The concept of "morality" is very subjective and may change or evolve from place to place and with the passage of time.

3.4.2 Format

Several countries in the Asia Pacific region have signed FTAs with legally-binding reservations. South Korea and New Zealand lead this approach, as they have negotiated several agreements with a binding "right to regulate" provision. In Article 10.2 of the Chile-South Korea Free Trade Agreement, the parties reserve a right to regulate provision of services or performance of functions in respect of childcare. In the New Zealand - South Korea Free Trade Agreement parties reserve the right to regulate certain health and social services that relate to female professionals and women's health interests. In Annex II on Services and Investment, the parties reserve the right to adopt or maintain any measure with respect to maternity deliveries and related services, including services provided by midwives, and with respect to childcare. In the Korea – Singapore Free Trade Agreement Chapter 9 on cross-border trade in services does not apply to subsidies or grants (including government-supported loans, guarantees and insurance) or social services provided in conjunction with childcare (Article 9.2). Also, in Chapter 10 on investment, parties reserve the right to regulate foreign investment in respect of childcare services (Article 10.2). As mentioned above, many services chapters of agreements negotiated under a negative list approach include such a social services reservation but do not specify a gender component.

⁹⁰ Annex II.

⁹¹ Parker (2015).

⁹² Section 160, Singapore's Women's Charter (CPC 93312), <https://sso.agc.gov.sg/Act/WC1961?ProvIds=P1I-#pr2->

The parties in the Hong Kong, China-New Zealand FTA reserve the right to regulate certain services that relate to female professionals and women's health interests. In Annex II and III to Chapter 13 on Services, the parties reserve their right to regulate services provided by nurses, a professional which is significantly dominated by female professionals.⁹³ The reservation also extends to services such as those related to childcare, maternity deliveries, services provided by midwives, services relating to supervision during pregnancy, childbirth and the supervision of the mother after birth.

Though countries in this region have not engaged previously in a standalone chapter on trade and gender in their trade agreements, a recent development needs to be mentioned. Japan and the United Kingdom have signed a Comprehensive Economic Partnership Agreement with a standalone chapter titled "Trade and Women's Economic Empowerment".⁹⁴ This includes declarative statements on the importance of enhancing opportunities for women in the domestic and global economy. It also contains parties' affirmations on cooperation activities aimed at improving the access of women to markets, technology and financing and developing women's leadership and business networks. Parties also commit to work on activities related to the WTO's Joint Declaration on Trade and Women's Economic Empowerment. The parties in this agreement agree to establish a Working Group to oversee and implement the cooperation activities mentioned in the chapter. The agreement's preamble is gender-explicit, and states that the parties seek to 'increase women's access to and ability to benefit from the opportunities created by this Agreement and to support the conditions for women to participate equitably in the domestic and global economy'.⁹⁵ Such provisions in an agreement are unique within this region.

3.4.3 Scope

Only about 14% of trade agreements in this region have some level of gender responsiveness. This identifies Asia Pacific as the region with the least number of gender-explicit mentions.

The countries that lead the gender mainstreaming trend in this region are Australia, New Zealand, Singapore, South Korea and Vietnam, and most recently Japan. The most commonly found provisions are right to regulate reservations. These help to strike a balance between protection of investment or trade liberalization on the one hand and the State's policy space to regulate on issues such as national security, public health, environment, and gender equality, among others.⁹⁶

3.4.4 Other reflections

As noted before, only about 14% of bilateral trade agreements in this region accommodate provisions with gender-explicit expressions. However, the large and comprehensive regional and transregional economic integration mechanisms to which countries in the region are party, such as APEC, ASEAN and the CPTPP, include gender issues to a certain extent. APEC is pioneering in this respect.

⁹³ Duman (2012) 2.

⁹⁴ UK/Japan: Agreement for a Comprehensive Economic Partnership (enforced, 31 December 2020). This agreement is not considered in the calculation of gender explicit words found in agreements in this region, as the agreement is not yet notified to the WTO as of 22 June 2021).

⁹⁵ Preamble, UK-Japan Agreement.

⁹⁶ Gaukrodger (2017).

Two factors that could have hindered the negotiation of bilateral trade agreements with gender provisions in this region are the “cost of compliance” and “fears of cultural imperialism”. These considerations were somehow overridden in the larger regional agreements where market incentives to negotiate are greater.

As in the case of Africa, the cost of compliance to negotiate gender-responsive trade agreements for several countries in this region could be discouragingly high, as most are found to have the widest inequality between women and men across health, education, economy, laws and politics (with few exception of countries that score a high rating such as Japan, Australia and New Zealand) as per Global Gender Gap Reports⁹⁷ or World Bank’s Women, Business and the Law Reports⁹⁸. Hence, negotiating gender-responsive trade agreements may often require a departure from domestic policies for some of these countries, as they may require changes in laws, policies and practices.

A second deterrent may be the fear of cultural imperialism. Trade agreements with commitments on gender equality or interpretation of gender-explicit provisions may seem to allow another country (i.e., a trade partner) to effectively define the moral or cultural values of foreign jurisdictions without regard for their moral norms. Another associated consideration may be the risk of eliminating a country’s competitive advantage (given the low cost of women’s labour) in a particular product or industry.⁹⁹ “Cultural imperialism” could be perceived as a protectionist weapon to take advantage of unequal market power. Countries may use gender provisions to enhance their own competitive advantage by imposing their social or cultural model on countries that have a different set of values and concerns.¹⁰⁰ The fear of cultural imperialism was in fact the main concern several countries voiced when they refrained from signing the WTO 2017 Declaration or joining the recently formed WTO informal group (IWGTG)¹⁰¹ to discuss these matters.¹⁰²

In this connection, one might question how countries in Africa come to have signed trade accords with impressive gender-related commitments; “cultural imperialism” and the risk of “reduced competitive advantage” could be limiting factors for that region too. The explanation seems to be that most of the gender-responsive agreements by countries in Africa are signed as regional integration agreements between countries with similar levels of human development (such as ECOWAS, COMESA, EAC, SADC and AfCFTA). A recent study has shown that parties are more willing to accept gender-related commitments when they are negotiating these provisions with countries that are similarly situated in terms of gender development levels (as measured by the gender development index).¹⁰³ Having trade partners with similar domestic conditions minimizes fears of cultural imperialism.

In this region, Japan is the only country that has signed a trade agreement (i.e., the UK-Japan CEPA) with a stand-alone chapter on trade and gender and a set of best practice provisions that seek to empower women within the trade policy context. Japan and the United Kingdom were

⁹⁷ World Economic Forum, ‘Closing the Gender Gap Accelerators’ (World Economic Forum) <https://www.weforum.org/projects/closing-the-gender-gap-accelerators>

⁹⁸ World Bank Group, ‘Women, business and the law 2021’ (World Bank Group, 2021) <https://wbl.worldbank.org/en/wbl>

⁹⁹ Ibid.

¹⁰⁰ Hughes (2019).

¹⁰¹ Declaration 2017, as well as the IWGTG, was endorsed by 127 member countries of a total of 164.

¹⁰² Bissio (2017) Singh (2017).

¹⁰³ Monteiro (2021).

both willing to negotiate gender-related legal provisions.¹⁰⁴ Hence, another important factor in this regard is whether both trading partners in a particular agreement are willing and able to assume gender commitments within their trade policy context.

4 POLICY RECOMMENDATIONS

This section puts forward a set of recommendations encompassing current best practice round the world in the mainstreaming of gender concerns into trade policy and trade negotiations. The recommendations are not “one-size-fits-all”, and hence some of them may work better for some countries than others. Countries’ level of political will, socio-economic needs, existing domestic laws and available resources may, in combination, determine which recommendations are pursued. Policymakers contemplating the options will also need to take account of evaluations of the constituent elements as they are put into effect in countries with similar circumstances to their own, as such evaluations emerge over time.

A key element within a gender-responsive trade policy is to implement a gender impact assessment (GIA) and allow for evaluations of gender-sensitive provisions in FTAs and an adaptive trade policy making process oriented by GIA findings EU-Chile Association Agreement which includes stakeholder participation.¹⁰⁵

Recommendation 1: Negotiate a Stand-alone Trade and Gender Chapter

One way to mainstream gender considerations is by including a standalone chapter on trade and gender.¹⁰⁶ Such chapters can describe the political relevance of gender issues within their respective agreements, and serve as an umbrella for all kinds of provisions on gender including cooperation activities, legal standards, reservations, affirmations and reaffirmations. So far, only nine countries – Chile, Canada, Uruguay, Argentina, Brazil, Ecuador, Japan, the UK and Israel – have signed FTAs with standalone chapters on trade and gender.¹⁰⁷ All existing agreements with such chapters were negotiated in the last 5 years. Many countries are currently negotiating new trade agreements or attempting to modernize existing ones that include a chapter on trade and gender in the draft text. The EU and Chile are negotiating such a chapter for the EU-Chile Association Agreement, wherein both countries have tabled their own draft text. In addition, Chile is negotiating a gender chapter with Paraguay, and considering the inclusion of a trade and gender chapter as an additional

¹⁰⁴ The UK Government has committed to formulating a post-Brexit trade policy that will uphold gender equality. [More information in 'Gender sensitive trade policy' (UK Policy Briefings, September 2019), <https://wbg.org.uk/analysis/uk-policy-briefings/gender-impacts-of-trade-and-investment-agreements/>; For more information on UK government's commitments to 'gender-responsive trade', see 'Export Strategy: supporting and connecting businesses to grow on the world stage' (GOV.UK Policy Paper, 21 August 2018), <https://www.gov.uk/government/publications/export-strategy-supporting-and-connecting-businesses-to-grow-on-the-world-stage/export-strategy-supporting-and-connecting-businesses-to-grow-on-the-world-stage>

¹⁰⁵ Two important tools that can be used in this respect are: UNCTAD Trade and Gender Tool Box, <https://unctad.org/webflyer/unctad-trade-and-gender-tool-box> and Gender-based Analysis Plus (GBA+), <https://women-gender-equality.canada.ca/en/gender-based-analysis-plus.html>

¹⁰⁶ Bachhi and Eveline (2010) and Hankivsky (2005).

¹⁰⁷ Similar chapter were included in COMESA and EAC, but those chapters are focused on women and development in non-trade policy context and hence are not considered as standalone trade and gender chapters as such.

protocol to the Pacific Alliance Agreement. These developments show that this trend is here to stay.

This approach provides more visibility to gender concerns and allows parties more room for exploration and capacity-building. Such chapters raise the profile of gender-related concerns in trade discourse and provide more visibility to these concerns in trade policy instruments. Giving higher visibility to the “problems” gender-related commitments may solve could be useful to trade negotiators and policymakers and give them incentive to gain awareness in this respect. It also helps negotiators justify the time and resources they can spend on bilaterally negotiating these commitments with their counterparts. Moreover, with a whole chapter to work on, the experts can engage in bilateral negotiations with dedicated counterparts on these issues; and a separate branch of negotiation of this kind gives them legitimacy to mobilize funds for their meetings and activities.

Standalone chapters give parties much more room to include different, concrete commitments and outline precise activities that specialized committees should engage in, as well as precise procedures to carry out these activities. These chapters encourage substantive written exchanges about issues such as: what is the purpose of empowering women? What specific activities should the committees engage in? Can these activities actually further women’s empowerment? How exactly can commitments be implemented and financed? And who will be responsible for their implementation and for monitoring implementation? These chapters can illustrate deeply engrained gender-based social, economic, cultural, and legal barriers and include provisions touching upon the specific barriers that impede women from accessing foreign trade opportunities and thereby stimulate dialogue for their removal.

Recommendation 2: Include Commitments on Enhancement of Women’s Access to International Markets

Many FTAs contain provisions that seek to enhance women-led businesses’ access to international markets. A relevant agreement is the USMCA. Parties in this agreement commit to work on enhancing trade and investment opportunities for SMEs through support for infrastructure, international networking, exchange of best practices and market research, and improvement of SMEs’ access to capital, credit, and trade information.¹⁰⁸ In the United States, 28.7 percent, or 7.8 million, of all businesses in 2007 were owned by women. Globally, approximately 50 percent of working women are employed in service-based SMEs.¹⁰⁹ These numbers show how a gender-responsive provision aimed at enhancing SMEs’ market access could help women both as business stakeholders and as employees. Article 8.10 of the EU-Canada Comprehensive Economic and Trade Agreement contains an obligation that prohibits sex-based discrimination against foreign investors by the parties. This provision encourages women-led businesses to engage in foreign investment without fears or uncertainties of being discriminated against them on the basis of sex.

The Parties in the EU-Eastern and Southern Africa States Interim EPA seek to encourage the participation of marginal groups (such as women) in the fishing industry through the “promotion of gender equality in fisheries by developing the capacity of women engaged in fisheries”.¹¹⁰ While a market-access-enhancing commitment is a favourable provision insofar as it seeks to foster women’s access to an important industry (i.e., fisheries), it is also important to consider that female

¹⁰⁸ Article 25.2

¹⁰⁹ ILO, ‘*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

¹¹⁰ Article 35

employees in traditional industries (such as fisheries and agriculture) are generally subject to low wages and poor work conditions. Future trade agreements should consider expanding women's access to more modern services sectors such as e-commerce and information technologies.

Policy recommendation 3: Increase Representation of Women in International Trade Policy Bodies

We have recently witnessed great strides in the number of women occupying leadership roles in trade policy bodies. Women are at the head of three major global trade bodies (WTO, ITC and UNCTAD). However, the trend has not manifested to the same degree in the plethora of important subsidiary, and oversight bodies in the international trade field. While the WTO has recently achieved gender parity in its Secretariat administrative staff, the number of women serving at senior positions in the Secretariat, as chairs of WTO governing bodies, panellists, chairs of panels and Appellate Body members has been markedly low historically.¹¹¹ This is not only the case with WTO; similar asymmetries are seen at other international organizations and at regional or bilateral trade negotiation forums.¹¹² Women are significantly underrepresented at various tables where FTAs are discussed and negotiated. One effective way to add a gender lens to future trade negotiations is to appoint more women in negotiating and policy-making roles.¹¹³

Appointment of women to negotiating positions in trade forums may be vital for ensuring that future trade agreements are gender-responsive, as women can add a different perspective to the overall process of negotiations. In addition, the process could become more responsive towards the needs of women negotiators who at the same time may have childcare or other family responsibilities. Moreover, female trade negotiators who reach high levels of responsibility within global trade negotiating forums may have a higher motivation to gain a robust understanding of gender analysis and gender implications in combination with strong technical skills required for the job. They are more likely to bring to the negotiating table positions that lead to gender-equitable trade outcomes. Studies have shown how "women's increased voice and agency in parliaments and national development processes confirm that gender-equitable targeted interventions typically increase with women's greater involvement, leading to transformative change..."¹¹⁴ Finally, having women in leadership roles contributes to changing the narrative of how women are seen in traditional and conservative societies.¹¹⁵

Several existing FTAs contain provisions that seek to enhance women's representation in decision- and policy-making roles. In Article 13.3 of the Canada-Israel FTA, parties commit to fostering women's representation in decision-making and positions of authority in the public and private sectors, including on corporate boards. In the EU-Palestine Interim Association Agreement, Article 45, parties seek to give priority to measures aimed at "the promotion of the equality of women and a balanced participation in the decision-making process in the economic and social sphere". These examples show that through FTAs, countries can encourage their trade partners to promote gender diversity in policy- and decision-making roles not merely in the public sector but also at the corporate boards of private companies. However, future FTAs should be more vocal about increasing women's representation within trade policymaking, agenda-setting and negotiating

¹¹¹ Steger (2018).

¹¹² Maria V. Sokolova, Alisa DiCaprio and Nicole Bivens Collinson, 'Is it time for women leaders in international organizations?' (July 8, 2020), <https://www.tradeexperettes.org/blog/articles/is-it-time-for-women-leaders-in-international-organizations>.

¹¹³ Bandele (2016).

¹¹⁴ Ibid, at 7.

¹¹⁵ Interview with trade negotiator [details withheld, on record with author].

roles. In addition, countries should also assume commitments to increase women's representation on dispute settlement panels, including appointment of women to investor-state dispute settlement (ISDS) panels.

Recommendation 4: Frontload Gender-Related Commitments in the Agreement's Preamble and/or General Objectives Clause

Frontloading gender-related commitments in an agreement's preamble or general objectives also helps to mainstream the gender perspective. Although neither an agreement's preamble nor general objectives are legally binding, they help set the tone for the agreement, since international agreements are subject to interpretation in light of their preamble and general objectives. A recent example is the preamble of the African Continental Free Trade Agreement (AfCFTA), which amongst other issues recognizes the importance of gender equality "for the development of international trade and economic cooperation".¹¹⁶ Another example is CPTPP. The parties in this agreement assert "the importance of promoting (...) gender equality..." in the agreement's preamble.¹¹⁷ "Gender equality" is stated as a value to which parties commit, among others, including environmental protection, labour rights, sustainable development, and indigenous rights.

The preamble is a vital part of any international instrument or agreement, as it can be instrumental in determining the intentions of the negotiators or drafters of the agreement at the time it was concluded.¹¹⁸ In disputes arising out of a given agreement, decision-makers can consider the wording used in the preamble to identify the parties' objectives and intentions underlying the agreement. Hence, inclusion of a gender-related concern in the very preamble implies that its provisions must be read and implemented to reconcile gender equality concerns with international trade.

Similar benefits may be seen with the inclusion of gender commitments in an agreement's "general objectives" clause. Most FTAs in its first few provisions lay down a general clause that spells out the objectives parties seek to achieve through the agreement. Sometimes, parties include a gender-related commitment. In the case of the East African Community Treaty, Article 5 sets out the objectives of the Community, and the parties commit to mainstream gender equality in all its endeavours and enhance the "role of women in cultural, social, political, economic and technological development".¹¹⁹

However, such general clauses do not contain any concrete commitments. They only include broad objectives that can neither be enforced nor implemented unless they are coupled with further inclusion of related commitments in the agreement's text.

Recommendation 5: Cooperate on Enhancing Women's Access to STEM Education and Digital Learning

Improving women's access to education is a best practice provision that policymakers can consider for inclusion in future FTAs. Efforts directed at trade-aligned women's access to education should entail increasing their access to education in the fields of science, technology, engineering, and mathematics (STEM) and digital learning. Many FTAs already include cooperation provisions on

¹¹⁶ The African Continental Free Trade Agreement (AFCFTA), Preamble.

¹¹⁷ Preamble, CPTPP.

¹¹⁸ Article 31 of the Vienna Convention on the Law of Treaties requires that an agreement must be interpreted in light of its context, object and purpose [Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679].

¹¹⁹ Article 5, Treaty for the Establishment of the East African Community (enforced, 7 July 2000).

enhancing women's access to education and skill development. In the EU-Montenegro Association Agreement Article 102 for example, the parties seek cooperation on ensuring equal access to all levels of education and training which is free from discrimination on the grounds of gender. In the EU-Algeria Association Agreement Article 78, parties seek to cooperate by placing a special emphasis on "giving the female population access to education, including technical training, higher education and vocational training". These agreements include commitments on enhancing women's access to education; however, they do not spell out the type of education and skill development opportunities that parties should address.

To enhance women's access to educational opportunities that can translate to well-paid employment, future FTAs should contain provisions that clearly spell-out the kind of education which is needed and encourage women to undertake studies in fields that can prepare them for qualified career opportunities.¹²⁰ The parties should encourage women to undertake studies in STEM fields and skill-based training for professions such as aerospace, rail, information technology, system design, engineering, business services, leadership roles and professional services.¹²¹

Policymakers should also consider provisions on access to technology and digital learning. The onset of a global pandemic has highlighted that digital access is a necessity in most areas of economic activity (communications, finance, information, among others). With every-day lives disrupted by the pandemic, most activities including study and work have become reliant on digital technology. Support for women to develop the necessary technical skills opens up new employment and business opportunities. Improved access to technology also improves women entrepreneurs' access to foreign markets, finance and digital trade opportunities.

Recommendation 6: Cooperate to Enhance Access to Health Services, Medical Insurance and Maternity Benefits

Insufficient provision of health services such as maternity needs, medical insurance coverage, and prevention of unwanted pregnancy have long been an impediment to women's empowerment. This pandemic has exacerbated these concerns, as medical services worldwide became focused on virus-infected patients and in resource-constrained countries funding was reduced or lost for other areas of health provision and in some cases persons with non-urgent health issues were reluctant to seek support.¹²² The issue of access to health services warrants a prominent place in future trade negotiations to help redress the repercussions this pandemic is having on women's health.

Countries in Asia Pacific and the EU have signed several agreements with best practice provisions on health-related concerns. In the EU-Ukraine FTA, the parties place a special focus on healthcare, in particular on maternal and child health and reproductive healthcare services.¹²³ In the Eurasian Economic Union, for example, parties mandate employers to provide compulsory medical

¹²⁰ This best practice can be seen in Modernized Canada-Israel FTA and Modernized Canada-Chile FTA. Also, in Peru – Australia's Article 22.4, parties consider undertaking cooperative activities aimed at helping women build their skills and capacity and enhancing their access to science and technology.

¹²¹ The recently modernized Canada-Israel and Canada-Chile focus on enhancing educational or skill development opportunities in the fields that can translate to high-paid job opportunities for women (such as STEM and ICT focused education) scientist (Canada-Israel, Article 13.3; Canada-Chile, Article N bis-03).

¹²² 'The women who can't get an abortion in lockdown' BBC News (13 July 2020), www.bbc.com/news/world-asia-india-53345975.

¹²³ Article 427 of Ukraine–European Union Association Agreement (Brussels, 21 March 2014).

insurance to pregnant women and mothers among migrant labourers or if they are involved in production and processing of goods that may lead to health risks.¹²⁴

In the Hong Kong, China-New Zealand agreement, the parties reserve the right to regulate certain services that relate to female professionals and women's health interests. Such "right to regulate" provisions ensure that trade agreements do not interfere with the governments' ability to regulate healthcare and that health interests are not damaged by the pursuit of potential economic gains. Hence, these provisions can ensure that if governments take measures to protect and promote women's access to health or maternity services, these measures cannot be subject to a legal challenge through an investor-state dispute settlement (ISDS) or a similar mechanism.

Recommendation 7: Employ Existing Public Morality Exception to Justify Support Measures

It is very common to find exceptions in existing FTAs; they range from the protection of public morals, human health or life to environment or national security.¹²⁵ These exceptions have allowed parties to escape the liability of violating their trade obligations for the protection of legitimate non-trade interests. Countries can consider using exception-like provisions to deploy gender-responsive measures that may otherwise contravene their obligations under trade agreements. These support measures may become crucial or even indispensable during or after the pandemic to help women-owned businesses survive and flourish. Countries can justify these measures under Article XX(a) of General Agreement on Tariffs and Trade (GATT) 1994.¹²⁶ The public morals exception operates as a 'catch-all' exception for measures that may relate to or affect any value that a country may view as a matter of its public morals.¹²⁷ This exception has been used in WTO agreements, as well as in the great majority of FTAs.¹²⁸

Public morals range from views related to religion¹²⁹, human rights¹³⁰, consumption of alcohol¹³¹, drug trafficking and corruption¹³², gambling¹³³, consumer protection¹³⁴ and protection of animals¹³⁵.¹³⁶ Certain moral interests are shared more commonly than others, as opposed to being

¹²⁴ Article 96

¹²⁵ See Article 32.1 of Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (Buenos Aires, 30 November 2018).

¹²⁶ General Agreement on Tariffs and Trade 1994, Apr. 15, 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]. General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter GATS].

¹²⁷ Jarvis (2000).

¹²⁸ Author's calculations; country-wise reports on record with the author.

¹²⁹ Israel restricted importation of non-Kosher meat products. See: WTO Secretariat, 'Report of the WTO Secretariat on the Trade Policy Review of Israel', (WTO Secretariat, 13 Aug 1999) <https://www.wto.org/english/tratop_e/tpr_e/tp476_e.htm> accessed on 28 September 2020.

¹³⁰ The United States restricted importation of products made by indentured child labor. See: Treasury and General Government Appropriations Act of 1998, Pub. L. No. 105-61, § 634, 111. Stat. 1272, 1316 (1997).

¹³¹ Indonesia restricted importation of alcohol for moral reasons. See: WTO Secretariat, 'Report on the Trade Policy Review of Indonesia', (WTO Secretariat, 23 May 2007) https://www.wto.org/english/tratop_e/tpr_e/tp378_e.htm

¹³² See Panel Report, Colombia--Measures Relating to the Importation of Textiles, Apparel and Footwear, para 7.338-39, WTO Doc. WT/DS461/R, circulated on 22 June, 2016.

¹³³ United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/26, circulated on 20 April, 2005.

¹³⁴ Brazil-Certain Measures Concerning Taxation and Charges, WT/DS472/R, circulated on 30 August 2017.

¹³⁵ European Communities- Measures Prohibiting the Importation and Marketing of Seals Product, WT/DS400/AB/R, circulated on 22 May 2015.

¹³⁶ Diebold (2007).

country-specific.¹³⁷ Gender equality is not specifically mentioned in Article XX, but it is recognized as a fundamental moral norm by the majority of WTO members in multiple international conventions and treaties.¹³⁸ Hence, a country could invoke the morality exception in a trade dispute to argue that the imposition of a support measure or a trade restriction to protect women's economic interests amounts to the protection of the country's moral interests. This is an ambitious interpretation of the morality exception, and it could face intense scrutiny.¹³⁹

The COVID-19 outbreak has created unparalleled disruption to global trade and international supply chains. Countries have responded with heavy trade restrictions¹⁴⁰ and a wide array of "inwardly-directed" fiscal and monetary measures¹⁴¹ such as subsidies, state aid, bailouts and favourable industrial policies. These measures are being taken to support certain domestic industries and small businesses.¹⁴² UNDP and UNWomen have compiled a global database of the gender impact of support measures¹⁴³. Some may have an enduring impact on international trade, if they are not compatible with existing trade agreements.¹⁴⁴ Therefore, this may be the right time to stimulate discussion on the possibility of employing the existing morality exception that can allow countries to employ measures that can help minimize harm to women employees and businesses in pandemic-disrupted industries.

Recommendation 8: Create Institutions and Mobilize Funds to Ensure Implementation of Gender-related Provisions

Very few FTAs contemplate how gender-related commitments can be implemented or financed. However, gender commitments in FTAs can be meaningless if they cannot be implemented. In future FTAs, countries need to create dedicated procedures and institutions that can put commitments into action.¹⁴⁵ FTAs need to spell out the functions and objectives of these institutions, the expected goals, and a timeline to achieve these goals.

In some recent FTAs, parties have established implementation procedures. The Canada–Chile and Canada–Israel FTAs have provisions which create a Gender Committee and identify some operational arrangements for the Committee such as its composition, functions and frequency of meetings. Yet, these provisions fall short of clarifying how these functions or activities or committee meetings might be financed. Overcoming this barrier, Canada and Chile, two pioneers of gender mainstreaming, have encouraged the work of the Gender Committee in this respect. The Committee has created a detailed work plan for implementation, with 10 action items. For each action item, parties identify the objectives, implementation plan, expected results and action

¹³⁷ Wu (2008).

¹³⁸ Such as Declaration 2017; CEDAW 1979; and others.

¹³⁹ Whitsitt (2014), and Bhagwati (2002).

¹⁴⁰ For list of measures notified to WTO, see https://www.wto.org/english/tratop_e/covid19_e/notifications_e.htm

¹⁴¹ As per IMF, countries around the world had approved more than \$4.5tn worth of emergency measures [Jonathan Guthrie, 'Get ready for the \$4.5tn takeover' (Financial Times, 24 March 2020), <https://www.ft.com/content/1447d50a-6ded-11ea-89df-41bea055720b>

¹⁴² As relief for small businesses, the US's Paycheck Protection Program dedicates more than \$650bn to business loans, which do not have to be repaid if firms maintain staffing levels and spend the majority on wages within two months. See Patrick Temple-West and Kadhim Shubber, 'SEC targets fuel company in bailout aid investigation' (Financial Times, 19 June 2020), <https://www.ft.com/content/725e9731-4154-407f-b8db-7d9f69fb04a8>.

¹⁴³ UNDP COVID-19 Global Gender Response Tracker at <https://data.undp.org/gendertracker/>

¹⁴⁴ For example, bans or explicit limits on the quantity of a good which may be exported or imported are Quantitative Restrictions (QRs), and hence may be inconsistent with Art XI GATT 1994 as it prohibits such measures.

¹⁴⁵ Bahri (2020).

leads.¹⁴⁶ These action items correspond and mirror the provisions included in the gender chapter. However, no such initiatives have yet been observed in the Canada–Israel FTA. The failure to create a gender committee in this instance could be blamed on various factors, one of which might be the lack of clarification on financing the operations of such a committee.¹⁴⁷ Therefore, in addition to providing for institutions or procedures, it is important that policymakers identify funding options alongside these commitments. In the absence of such provisions, resource-constrained pandemic-hit countries may not have sufficient resources to invest in the gender commitments made in their trade policy instruments.

Recommendation 9: Include Commitments on Creation of Gender Responsive Standards or Revisions of Existing Technical Standards with a Gender Lens

Technical standards are not gender neutral. Research has shown that there is a “default” male perspective built into the drafting of standards, and that the design of products does not take into account both men and women equally. For example, in the case of personal protective equipment (PPE), ‘one size fits all’ design is a fallacy that has put female health workers at risk during the COVID-19 pandemic across the world, as PPEs are usually designed for male bodies.¹⁴⁸ In 2019, the first all-women spacewalk was cancelled by NASA because astronaut Anne McClain realised just before the spacewalk initiation that she was given an ill-fitted suit to do that walk. According to research from 2011, female drivers were more vulnerable than men in motor vehicle crashes because the design of car safety systems had overlooked the specifics of a female body.¹⁴⁹

There is a need to highlight women’s needs in the development and implementation of future standards. FTAs can encourage the creation and adoption of gender-responsive technical standards, supporting ongoing efforts in standards setting bodies to define “gender-responsive” in this context.¹⁵⁰ They can also foster a better understanding and exchange of best practices regarding the development and implementation of gender-responsive standards. Collection of sex disaggregated data should reflect how standards impact men and women differently. Trade partners can also be encouraged to revise existing standards in this light. In addition, countries should also seek a gender balance at the technical committees of international organisations (such as ISO) and at their own national standard-setting agencies.¹⁵¹

Several ISO members have demonstrated their commitment to gender equality by signing the UNECE’s Declaration on Gender Responsive Standards in 2019.¹⁵² In line with this Declaration, ISO has developed a Gender Action Plan¹⁵³ which prepares a roadmap to ensure gender balance in the future development and implementation of standards. ISO members can reaffirm their

¹⁴⁶ Canada-Chile work plan for implementing activities on trade and gender, Government of Canada, https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/gender_work-plan-travail_genres.aspx?lang=eng

¹⁴⁷ Interview with trade negotiator [details withheld, on file with author].

¹⁴⁸ Helen Fidler, ‘PPE: ‘one size fits all’ design is a fallacy that’s putting female health staff at risk’ (4 May 2020, Nursing Standard), <https://rcni.com/nursing-standard/opinion/comment/ppe-one-size-fits-all-design-a-fallacy-thats-putting-female-health-staff-risk-160536>

¹⁴⁹ See for example Bose et al (2011).

¹⁵⁰ So far, there is no universally employed definition of a gender-responsive standard.

¹⁵¹ Interviews with standards experts from international organizations and national authorities [details withheld].

¹⁵² UNECE’s Declaration on Gender Responsive Standards and Standards Development 2019, <https://unece.org/trade/wp6/thermatic-areas/gender-resp-stds-decl>

¹⁵³ ISO Gender Action Plan 2019-2021, <https://www.iso.org/news/ref2512.html>

commitments under UNECE's Declaration and the Gender Action Plan in their future FTAs, in order to support ISO's work in this respect.

Recommendation 10: Engage Private Stakeholders via Gender-Specific Voluntary Sustainability Standards

Another modality to include gender equality in the trade policy debate is to incorporate provisions in trade agreements on voluntary sustainability standards (VSS).¹⁵⁴ These are guidelines that encourage businesses to respect and accommodate within their operations different non-economic interests such as human rights, animal welfare, labour standards, environmental impacts, and gender equality considerations. Through these standards, countries can encourage or even require that multinational enterprises (MNEs) include gender equality concerns within their codes of conduct or in their contracts for sale of goods and services. These standards can promote internal compliance (within a company with respect to owners and employees) and external compliance (with respect to their suppliers, sub-suppliers, and consumers).¹⁵⁵

To pursue the achievement of gender equality through trade regulations and transactions, it is important to engage business stakeholders amongst whom there may be losers as well as winners from more inclusive trade. Businesses benefit from gender equality, and they also affect the achievement of non-economic interests and goals. While most standards are not designed to promote gender equality, an increasing number of gender-focused VSS are being developed. FTAs that support businesses through market liberalization can encourage or require business actors to trade in an inclusive and sustainable manner.¹⁵⁶ Various agreements, such as United States-Peru¹⁵⁷ and EU-Georgia¹⁵⁸ agreements contain provisions on corporate social responsibility (CSR); however, these provisions do not explicitly mention gender equality concerns. Very few agreements include gender-explicit CSR provisions. One such FTA is the Canada-Israel agreement, wherein the parties encourage their businesses to use CSR to address issues related to gender equality.¹⁵⁹

Policymakers and trade negotiators need to acknowledge the growing influence of VSS in global trade and the role of governments in encouraging businesses to employ such inclusive policies that may help to reduce the barriers which women are confronted with. Yet, an obstacle to this approach may be the inadequate incentives and rewards for businesses that employ such VSSs in their operations and codes of conduct, and lack of sanctions for those that behave irresponsibly. This can be overcome to some extent if countries develop trade incentives for gender-inclusive businesses. Such incentives need to be designed in accordance with commitments under multilateral and bilateral trade agreements.

¹⁵⁴ VSS defined as ‘standards specifying requirements that producers, traders, manufacturers, retailers or service providers may be asked to meet, relating to a wide range of sustainability metrics, including respect for basic human rights, worker health and safety, environmental impacts, community relations, land-use planning and others’ (UNFSS 2012).

¹⁵⁵ Mola and Poncibò (2021), and Smith (2020).

¹⁵⁶ ITC (International Trade Centre), ‘From Europe to the World: Understanding Challenges for European Businesswomen’ (2019).

¹⁵⁷ Article 17.6

¹⁵⁸ Article 348

¹⁵⁹ Article 16.4; Similar provision in Canada – Chile FTA, Article G-14 *bis*

5 CONCLUSION

This paper has reviewed the topic coverage, format and scope of free trade agreements signed by countries in different regions. It finds, first, notable variations in the incidence of gender-responsiveness in agreements, as indicated by the inclusion of at least one gender-explicit provision: for South American countries, the share is 20%, for African countries the share is 32%, and in Asia Pacific the share is lowest at 14%. Among trade agreements signed by North American countries, the share is 38%. Among the EU's agreements the share is 78%.

The way in which the provisions are included in the text of the agreements also varies, appearing in the preamble, whether in stand-alone chapters, side agreements, specific agreements, protocols and so on, or in some combination. In most agreements, however, gender-related provisions are non-binding.

Finally, the topic areas covered by gender-related provisions also vary from one region to the other. In the Americas (North and South) the emphasis is on the economic dimension and women's inclusion in economic growth as producers and employees; the EU's FTAs cover economic participation on a non-discriminatory basis, childcare provision, and women's health and safety; African countries' agreements emphasise the need for women's political as well as economic participation; and Asia Pacific regional agreements are mostly limited to women's health and safety and childcare concerns. A set of recommendations is laid out to support the broadest possible gender-responsiveness in FTAs in terms of topic coverage and the most effective drafting approaches towards that end. They could be adopted in the negotiation of future FTAs and in pursuing amendments to existing agreements.

6 REFERENCES

- Ahmed, U., T. Beck, C. McDaniel, and S. Schropp (2015) 'Filling the Gap: How Technology Enables Access to Finance for Small- and Medium-Sized Enterprises' Innovations: Technology, Governance, Globalization, 10 (3-4)
- Bachhi, C. and J. Eveline (eds) (2010) Mainstreaming Politics: Gendering Practices and Feminist Theory, University of Adelaide Press,
- Bahri, A. (20202) 'Women at the Frontline of COVID-19: Can Gender Mainstreaming in Free Trade Agreements Help?', Journal of International Economic Law, 23 (3)
- Bahri, A. (2019) 'Measuring the Gender-Responsiveness of Free Trade Agreements: Using a Self-Evaluation Maturity Framework', Global Trade & Customs Journal, 14 (11)
- Bandele, O. (2016) 'An Equal Seat at the Table: Gendering Trade Negotiations', International Trade Working Paper 2016/14 Commonwealth Secretariat, London
- Bensalem, H. (2017) 'Gender as Included in Bilateral and Multi-Party Trade and Integration Agreements', CUTS International Research Study, <http://www.cutsgeneva.org/pdf/STUDY%20%20Gender%20and%20Trade.pdf>
- Bhagwati, J. (2002) 'Afterword, The Question of Linkage', American Journal of International Law, 133: 96.
- Bhala, R. and C. N. Wood (2019) 'Two Dimensional Hard-Soft Law Theory and the Advancement of Women's and LGBTQ+ Rights Through Free Trade Agreements', Georgia Journal of International and Comparative Law, 47(2): 299
- Bissio, R. (2017) 'Is "gender" a Trojan horse to introduce new issues at WTO?' (Third World Network, 11 December 2017), <https://twnetwork.org/wto/%E2%80%9Cgender%E2%80%9D-trojan-horse-introduce-new-issues-wto>
- Bose, D., M. Segui-Gomez, and J. R. Crandall (2011) 'Vulnerability of Female Drivers Involved in Motor Vehicle Crashes: An Analysis of US Population at Risk', American Journal of Public Health, 101(12)
- European Commission (2016) Handbook for Trade Sustainability Impact Assessment (2nd edition, 2016)
- Council of Europe (1998) 'Gender Mainstreaming. Conceptual framework, methodology and presentation of practices' Strasbourg, s:\equality\eg-s-ms\eeqsmss2.98, at <https://www.unhcr.org/3c160b06a.pdf>
- Diebold, N.F. (2007) 'The Morals and Order Exceptions in WTO Law: Balancing the Toothless Tiger and Undermining Mole', Journal of International Economic Law, 11(1):43
- Duman, N.B. (2012) 'Reflections of Female Domination in the Profession over the Nursing Strength: Turkey Sample', International Journal of Business and Social Science 3(24): 182
- European Commission (2020) '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', 5 March 2020

Finnemore, M. 1996 *National Interests in International Society*, Cornell University Press

Frohmann, A. (2017) 'Gender Equality and Trade Policy' SECO/WTI Academic Cooperation Project Working Paper Series 2017/24 (December), <https://ssrn.com/abstract=3113197>

Gaukrodger, D. (2017) 'The balance between investor protection and the right to regulate in investment treaties: A scoping paper', OECD Working Papers on International Investment (2017/02), <http://dx.doi.org/10.1787/82786801-en>

Hankivsky, O. (2005) 'Gender vs. Diversity Mainstreaming: A Preliminary Examination of the Role and Transformative Potential of Feminist Theory', Canadian Journal of Political Science, 38 (4): 978

Hathaway, O.A. (2003) 'The Cost of Commitment', Stanford Law Review, 55(5): 1821

Hughes, V. (2019) 'Gender Chapters in Trade Agreements: Nice Rhetoric or Sound Policy?', Centre for International Governance Innovation, 9 October 2019)

ILO, (2014) '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

ITC (International Trade Centre) (2020) 'Mainstreaming Gender in Trade Agreements: A New Approach', <https://www.intracen.org/publication/mainstreaming-gender-FTA/>

ITC (International Trade Centre) (2019), 'From Europe to the World: Understanding Challenges for European Businesswomen'

Jarvis, L.M. (2000) Women's Rights and the Public Morals Exception of GATT Article 20, Michigan Journal of International Law, 22(1): 219

Kerras, H. (2020) 'The Impact of the Gender Digital Divide on Sustainable Development: Comparative Analysis between the European Union and the Maghreb', Sustainability 12 (8)

LeClercq, D. (2020) 'The Disparate Treatment of Rights in Trade', Fordham Law Review, Forthcoming (November), <https://ssrn.com/abstract=3722959>

Lopez, D., F. Munoz, and J. Caceres, n.d., 'Gender Inclusion in Chilean Free Trade Agreements', mimeo

Mola, L. and C. Poncibò (2021) 'Trade and UN SDGs 2030: The Interplay between Public International Law and Contract Law', in Amrita Bahri, Weihuan Zhou, Daria Boklan (eds), Rethinking, Repackaging, and Rescuing World Trade Law in the Post-Pandemic Era, Hart Publishing

Monteiro, J-M. (2018) 'Gender-Related Provisions in regional Trade Agreements', WTO Economic Research and Statistics Division, 18 December 2018

Monteiro, J-M. (2021) 'The Evolution of Gender-Related Provisions in Regional Trade Agreements', WTO Economic Research and Statistics Division, Staff Working Paper ERSD-2021-8, 24 February 2021

OECD (2021) 'Trade and gender: A Framework of analysis', OECD Trade Policy Papers (March 26), <https://www.oecd.org/publications/trade-and-gender-6db59d80-en.htm>

Parker, P. (2015) "Women more than men adjust their careers for family life," Pew Research Center, October 1, 2015, <http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/>

Power, T. (2020) 'The gender digital divide and COVID-19: Towards feminist internet regulations in Southern Africa' African Declaration on Internet Rights and Freedoms, 2020 at <https://africaninternetrights.org/>

Ruiter, C., L. Hadley, and Q. Li (2017) 'Impacts of Non-Tariff Barriers for Women Small Scale Cross-Border Traders on the Kenya-Uganda Border', South Africa

Singh, A. (2017) 'Explained: India's refusal to back WTO declaration on gender equality in trade' (*QRIUS*, 15 December), <https://qrius.com/explained-india-refusal-gender-equality-trade/>

Smith, S. (2020). [Advancing Gender Equality through Voluntary Standards for Trade](#). Gender, Social Inclusion and Trade Knowledge Product Series.

Sokolova, M.V., A. DiCaprio and N.B. Collinson (2020) 'Is it time for women leaders in international organizations?' (July 8, 2020), <https://www.tradeexperettes.org/blog/articles/is-it-time-for-women-leaders-in-international-organizations>

Steger, D. (2018) 'Gender Equality in the WTO: The Need for Women Leaders' (April 11, 2018) Centre for International Governance Innovation, <https://www.cigionline.org/articles/gender-equality-wto-need-women-leaders>

Stevenson, L. (2012) "The Bachelet Effect on Gender-Equity Policies" Latin American Perspectives, 39(4): 129

Stromquist, N.P. (1988) 'Women's education in development: from welfare to empowerment', Convergence, 21 (4): 5

UNFPA (2008) 'Gender Inequality and Women's Empowerment Ethiopian Society of Population Studies, In-depth Analysis of the Ethiopia Demographic and Health Survey', Addis Ababa, October 2008

UNICEF (2020) 'Towards an equal future: Reimagining girls' education through STEM', UNICEF (2020), <https://www.unicef.org/media/84046/file/Reimagining-girls-education-through-stem-2020.pdf>

UNESCO (2020) 'Boosting gender equality in science and technology: a challenge for TVET programmes and careers', UNESCO International Centre for Technical and Vocational Education and Training (2020), <https://unesdoc.unesco.org/ark:/48223/pf0000374888>

Whitsitt, E. (2014) 'A Comment on the Public Morals Exception in International Trade and the EC – Seal Products Case: Moral Imperialism and Other Concerns', Cambridge Journal of International and Comparative Law, 3(4): 1376

World Bank and World Trade Organization (2020). Women and Trade: The Role of Trade in Promoting Gender Equality. Washington, DC: World Bank

Wu, M. (2008) 'Free Trade and the Protection of Public Morals: An Analysis of the Newly Emerging Public Morals Clause Doctrine', Yale Journal of International Law, 33(1): 237