

Can Trade Agreements Accommodate Gender Equality?

October 2021

Dr. Amrita Bahri
Co-Chair Professor, WTO Chair Program (Mexico);
Associate Professor of Law, ITAM University;
Trade and Gender Consultant, International Trade Centre
@bahri_amrita

Contents

Problem? – Existing Barriers, and how COVID-19 is Magnifying the Impact of Barriers

Solution? - Trade Agreements can Help: Best Practice Examples

Approach? - Measuring Gender-Responsiveness in FTAs using ITC's Maturity Toolkit

Next Steps? - Preparing Trade Policies to Reboot Inclusive Economy

COVID-19 Magnifying the Impact of Barriers

The Problem

Key Barriers

Access to education (STEM and digital learning)

Access to markets, technology, finance and other productive resources

Time poverty, domestic violence and culturally-prescribed stereotypes

Business and employment restrictions; bans and prohibitions

Unfair working conditions and employment discrimination

Disproportionate tariff and non tariff barriers for trade in goods and services

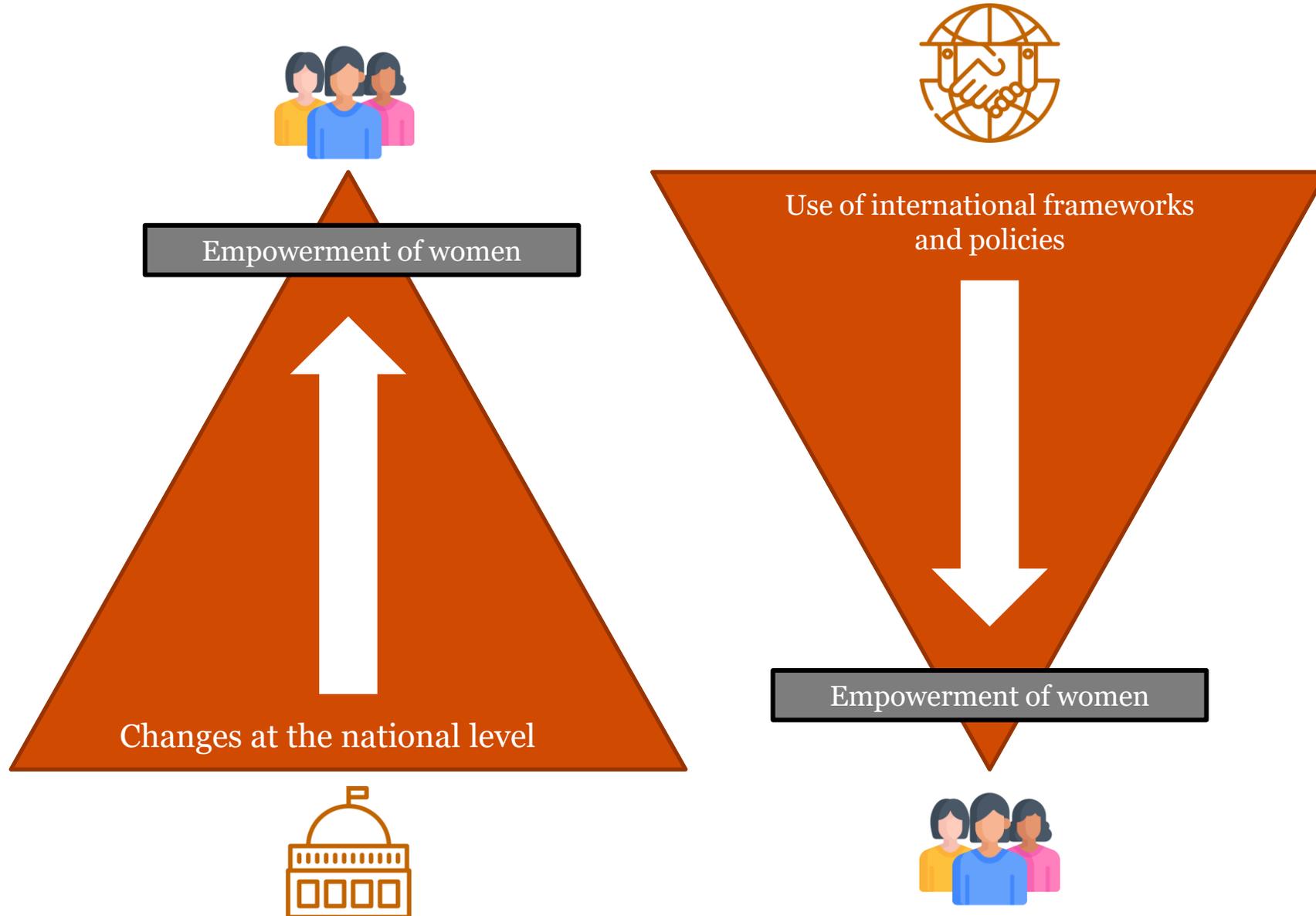
**COVID-19
exacerbating these
barriers**

COVID-19-Inflicted Challenges

- 1 Loss of jobs for 30% of women in service industries (proximity-demanding, low paid and temporary jobs)
- 2 740 million women in informal economy, either exposed to contagion risk or face imminent loss of jobs
- 3 Women own close to 10 million of the world's SMEs; SMEs scaling down or facing closures
- 4 Spiralling household responsibilities and domestic violence
- 5 Reduced access to education, owing to lack of digital affordability and know-how
- 6 Restricted access to health facilities, including maternity care and abortive services

For more details, see [Bahri, Women at the frontline of COVID-19](#)

Two Approaches: Bottom up or Top down

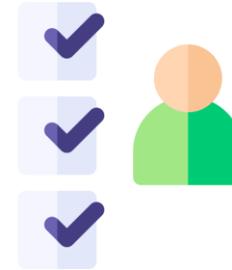


Why negotiating instruments work?

1 Diplomatic reasons



Ease of negotiating with certain countries (i.e., Canada)



The inclusion of gender provisions is a precondition to negotiate with others (i.e., EU)

2 Substantive reasons



The Business Case: Gender Equality benefits the economy

The Business Case: Gender Equality Benefits Economy

GDP GROWTH BY 2025 WITH GENDER PARITY IN THE WORKFORCE
ALL REGIONS

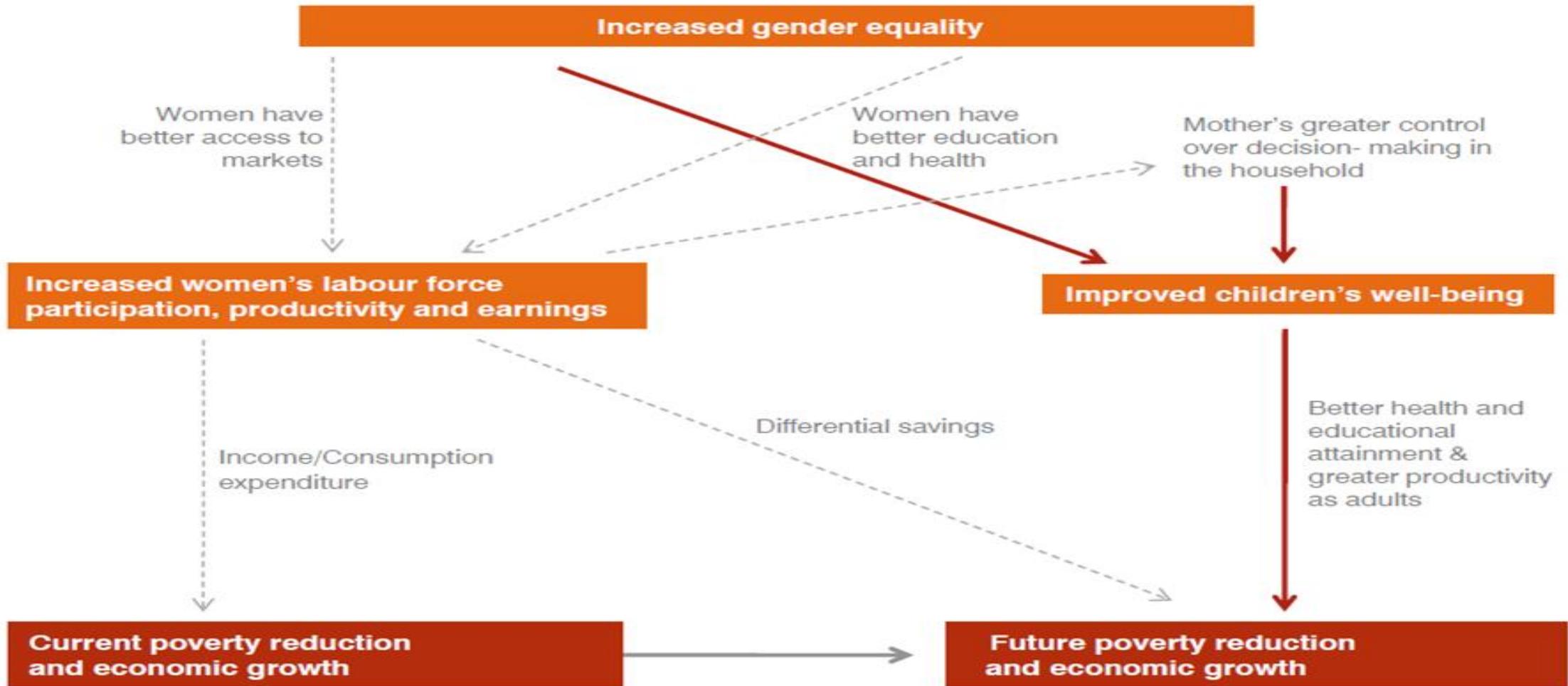


Source: McKinsey Global Institute

Gender and trade: A bi-directional relationship



Gender Justice and Economic Growth



How advancing women's equality can add \$12 trillion to global growth



If every country matched the progress toward gender parity of its fastest-improving neighbor, global GDP could increase by up to \$12 trillion in 2025.

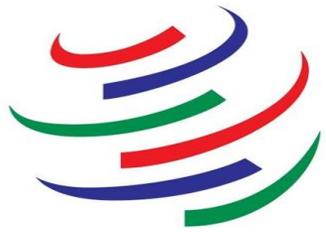
Incremental 2025 global GDP
over business-as-usual scenario,¹ %

Incremental GDP,
\$ trillion

India	16%	0.7
Latin America	14%	1.1
China	12%	2.5
Sub-Saharan Africa	12%	0.3
North America and Oceania	11%	3.1
World	11%	11.8
Middle East and North Africa	11%	0.6
South Asia (excl. India)	11%	0.1
Western Europe	9%	2.1
Eastern Europe and Central Asia	9%	0.4
East and Southeast Asia (excl. China)	8%	0.9

¹Sample = 95 countries.

International Instruments Acknowledge this Relation....

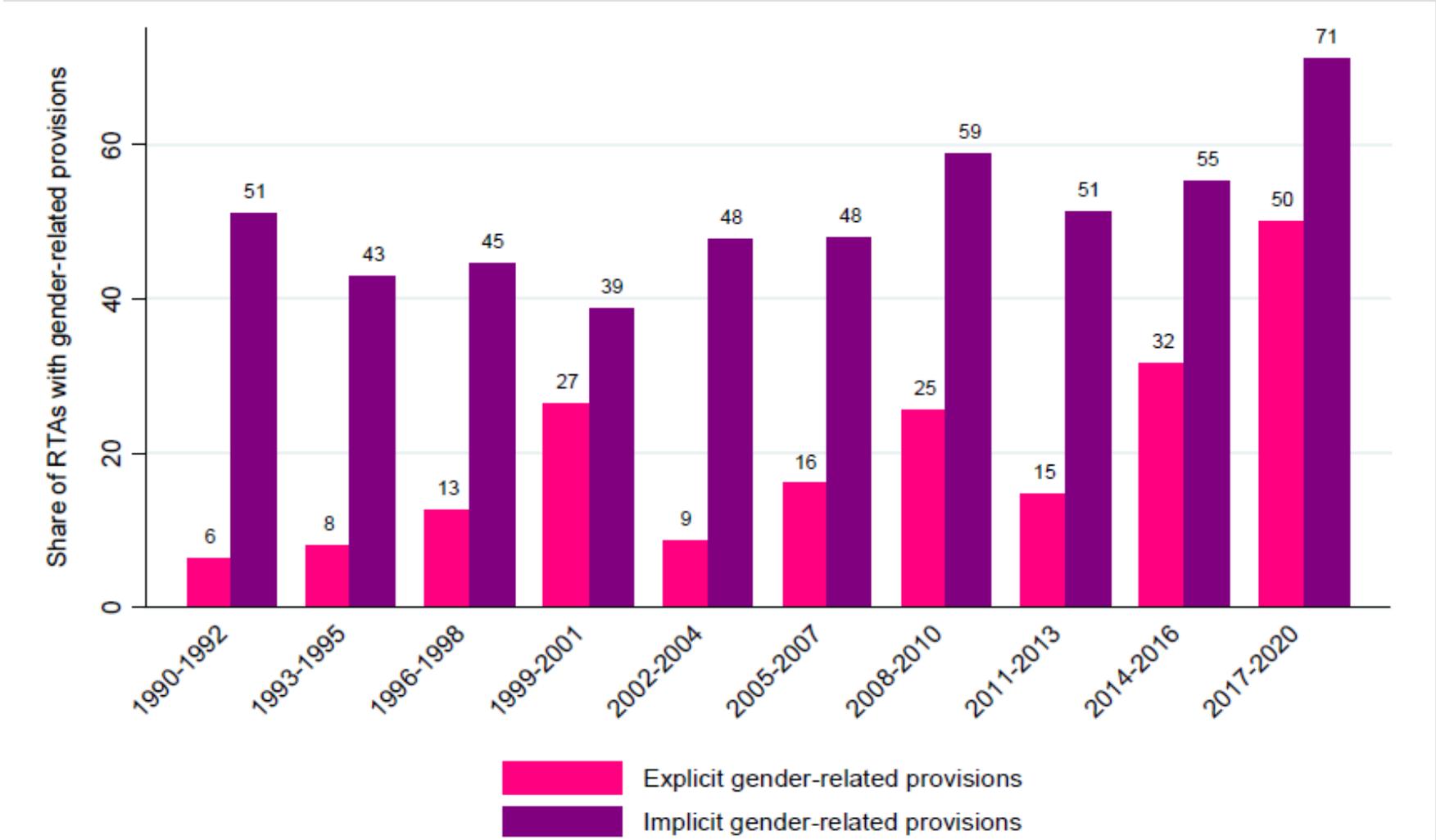


WORLD TRADE
ORGANIZATION



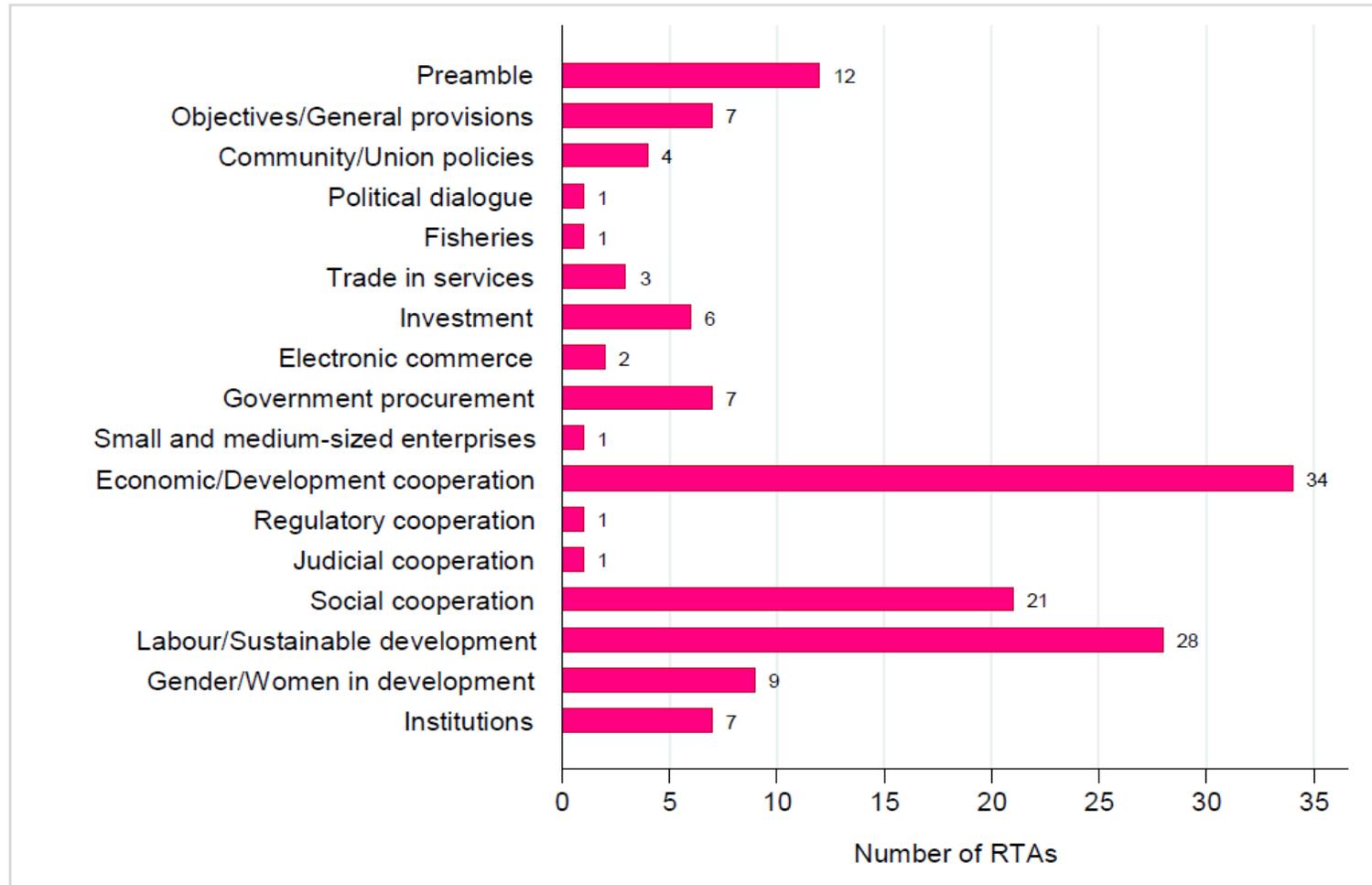
Beijing
+25

Figure 3: A growing share of RTAs include explicit gender-related provisions



Source:
[WTO Economic Research and Stats Division 2018](#)

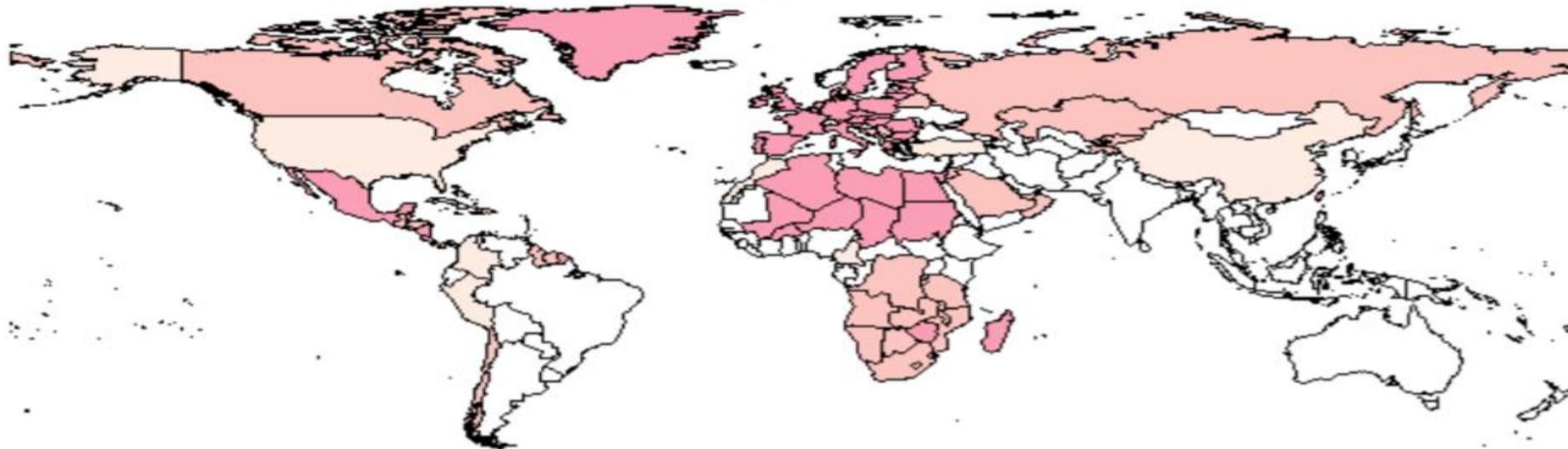
They are found in different disciplines



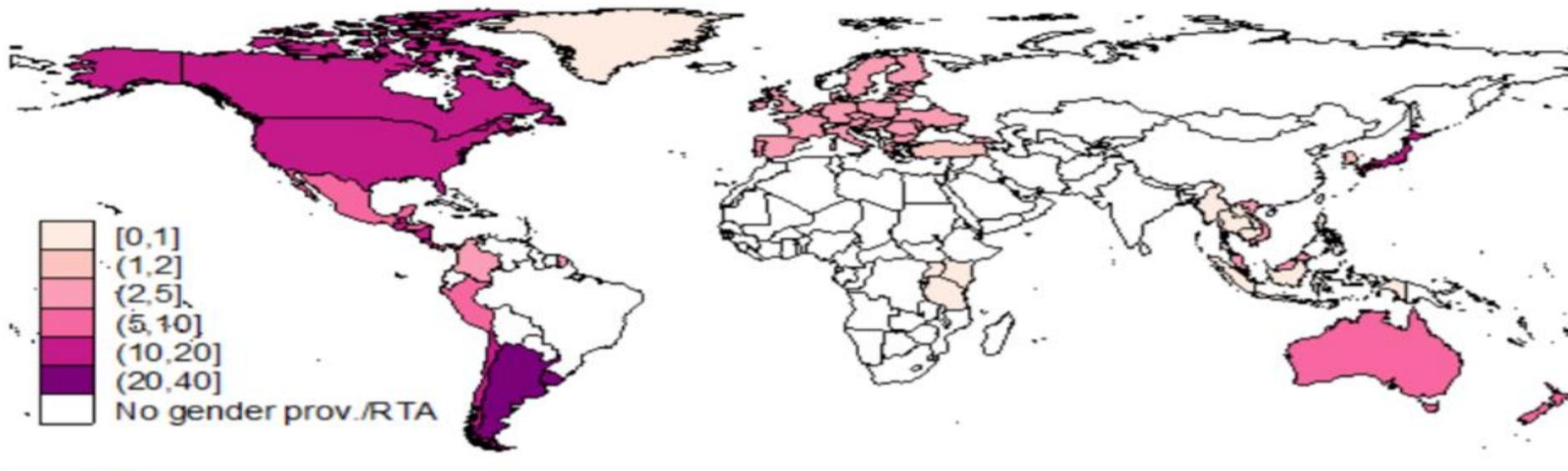
Source:
[WTO Economic
Research and Stats
Division 2018](#)

Average Number of Gender-related Provisions in RTAs by country

2000-2009



2010-2018



1. What is happening here?
2. Why is it happening?
3. What could be the hesitations?

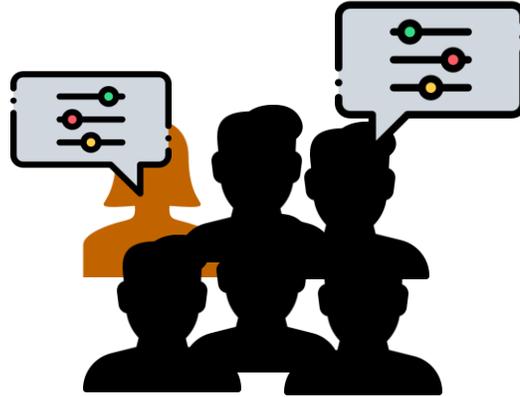
Source: Author's calculations.

Source:
WTO Economic Research
and Stats Division 2018

What impedes gender mainstreaming? The Hesitations and Impediments



1. Fears of Protectionism and cultural imperialism



2. Underrepresentation of women in policy-making roles



3. Lack of political will



4. Cost of compliance, and probability of compliance



5. Absence of expertise and paucity of gender disaggregated data



6. Lack of understanding and awareness

Approach: Measuring Gender-Responsiveness of FTAs: ITC's Maturity Toolkit

Category	Definition	Dimensions	
 <p>Awareness</p>	This category reflects parties' awareness and the importance they assign to the incorporation of gender concerns in the given free trade agreement (FTA).	1. Frequency of Relevant Provisions	2. Location of Relevant Provisions
		3. Affirmations and Reaffirmations	
 <p>Affirmative Action</p>	This category reflects whether parties to the given FTA consider or commit to any affirmative action to incorporate gender concerns.	4. Cooperation Activities	5. Institutional Arrangement
		6. Procedural Arrangements	7. Review and Funding
 <p>Enforcement</p>	This category reflects whether parties to the given FTA consider or commit to the robust enforcement of gender-components included in the FTA.	8. Settlement of Disputes	9. Waivers, Reservations & Exceptions
		10. Minimum Legal Standards	
<p>Limited</p> <p>FTA at this level is either completely or close to being gender-blind or gender-neutral in nature as it fails to mainstream gender concerns.</p>	<p>Evolving</p> <p>FTA at this level employs some best practices for mainstreaming gender concerns, but it has a significant scope for further improvement.</p>	<p>Advanced</p> <p>FTA at this level achieves the highest level of maturity in the way it mainstreams gender concerns, and there is no or only a negligible scope for further improvement.</p>	

Framework's application on USMCA



PREAMBLE

SEEK to facilitate **women's and men's equal access** to and ability to benefit from the opportunities created by this Agreement and to support the conditions for women's full participation in domestic, regional, and international trade and investment;

CHAPTER 13: GOVERNMENT PROCUREMENT

Article 13.3: Exceptions

Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination (...) nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

- A) necessary to protect **public morals**, order, or safety;
- B) necessary to protect **human**, animal, or plant life or health;

CHAPTER 14: INVESTMENT

Article 14.17: Corporate Social Responsibility

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and **principles of corporate social responsibility** that have been endorsed or are supported by that Party, which may include the OECD Guidelines for Multinational Enterprises. These standards, guidelines, and principles may address areas such as labor, environment, **gender equality**, human rights (...)

Framework's application on USMCA



CHAPTER 23: LABOR

Article 23.9: Discrimination in the Workplace

The Parties recognize the goal of eliminating discrimination in employment and occupation, and support the goal of promoting **equality of women** in the workplace. Accordingly, each Party shall implement policies that it considers appropriate to protect workers against employment **discrimination on the basis of sex** (...)

CHAPTER 23: LABOR

Article 23.12: Cooperation

The Parties recognize the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve **labor standards**, and to further advance common commitments regarding labor matters, including the principles and rights stated in the **ILO Declaration on Rights at Work**.

ANNEX I – MEXICO – 13

Investment and Cross-Border Trade in Services

Concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective to promote, develop, and preserve their language, culture, knowledge, tradition, identity and internal rules that, under principles of **gender equality**, allow the integration of **indigenous women** in the accomplishment of the purposes for which the concession is granted.

Framework's application on USMCA

EVALUATED AREA	CONCLUSIONS DERIVED FROM THE FRAMEWORK'S APPLICATION	SCORE
I. Frequency of relevant provisions	There is: (i) an explicit mention of gender-related terms, or (ii) an acknowledgement of the role of women in trade, commerce or economy in general.	100 %
	Any of these terms is mentioned 10 or more times in the entire agreement including side instruments, footnotes and/or annexes.	
II. Location of relevant positions	There is an explicit mention of gender-specific concerns in the given FTA's preamble, which shows a commitment by members to address gender inequality and/or promote women's economic empowerment.	100 %
	50 percent or more of gender-explicit provisions are mentioned in the operative section (that includes the main text, annexes, side agreement, protocols, and post FTA decisions).	
III. Affirmations and Reaffirmations	There are one or more provisions which contain members' commitments to incorporate gender perspective into their economic growth and development, policies, programs, decision-making, policy-making or practices at the national level.	75 %
	There are explicit references to one or more international instruments that incorporate or include gender objectives, but neither of these instruments are exclusively focused on gender objectives (such as CEDAW or 2017 Buenos Aires Declaration or ILO Conventions 100 or 111).	
IV. Cooperation Activities	The agreement has provisions that: (i) provide a list of cooperation activities directly related to women empowerment and inclusive trade, <i>and</i> (ii) these activities envisage women not merely as an employee or labor but also as an entrepreneur, leader, decision-maker, scientist, engineer and/or other high-paid professional.	75 %
	(i) The cooperation activities contain specific commitments from members to work on enhancing or encouraging women's access to education or skill development, <i>and</i> (ii) these commitments are either made without outlining the type and nature of education and skill development <i>or</i> they only focus on traditional education and skill development opportunities (such as farming, fisheries, textiles, teaching, nursing, handloom, and so on) .	
V. Institutional Arrangements	The main or side agreement establishes a committee or any other institution to monitor the implementation or operation of provisions that include gender concerns among other areas.	75 %
	The agreement outlines: (i) binding role and functions, <i>and</i> (ii) meeting frequencies of the committee or any other institution.	

Framework's application on USMCA

EVALUATED AREA	CONCLUSIONS DERIVED FROM THE FRAMEWORK'S APPLICATION	SCORE
VI. Procedural Arrangements	The agreement creates or identifies procedural tools to address gender commitments such as action plan, frameworks, dialogues, information exchange, exchange of best practices and experiences, programs or legislations	50 % (Possible area of improvement)
VII. Review and funding	There is no demonstrated awareness or commitment to encourage or collaborate on study, research or publication relating to gender and trade There is an expression or statement of will to: (i) review the implementation of gender provisions, <i>or</i> (ii) assess the gender impact of agreement, <i>but</i> (iii) the agreement does not provide for members' commitment or any institution or procedure to carry out the same	25 % (Significant area of improvement)
	There is no provision on financing gender-related plans, processes, institutions, activities or other related commitments.	
VIII. Settlement of disputes	(i) There is a consultation or discussion mechanism for conflicts arising generally out of the agreement including conflicts arising out of gender-related provisions, <i>and</i> (ii) gender provisions are not excluded from such consultation or discussion mechanisms There is a binding but not compulsory, <i>or</i> non-binding but compulsory dispute settlement mechanism for conflicts arising out of majority of gender provisions	75 %
IX. Waivers, reservations and exceptions	The agreement establishes a general public morals or human rights exception or merely incorporates general exceptions mentioned in GATT Article XX	
	(i) The agreement confers a right on the parties to invoke an identifiable reservation or waiver explicitly favoring women or explicitly referring to gender concerns, <i>and</i> (ii) it allows parties to negotiate additional reservations or waivers in the future	100 %
X. Minimum legal standards	The agreement establishes minimum legal standards explicitly related to gender for the countries' respective domestic law with no use of permissive language in such provision(s) (i) There is a provision which affirms the importance of corporate social responsibility explicitly related to gender, <i>and</i> (ii) it encourages its industries and enterprises (subject to its jurisdictions) to incorporate standards of corporate social responsibility explicitly related to gender into their internal policies and practices	75 %

Calculating USMCA's Gender Responsiveness

Gender-responsiveness Model

Dimension	Status
I. Frequency of relevant provisions	100.00%
II. Location of relevant positions	100.00%
III. Affirmations and Reaffirmations	75.00%
IV. Cooperation Activities	75.00%
V. Institutional Arrangements	75.00%
VI. Procedural Arrangements	50.00%
VII. Review and funding	25.00%
VIII. Settlement of disputes	75.00%
IX. Waivers, reservations and exceptions	75.00%
X. Minimum legal standards	100.00%
Overall Score	75.00%



>=33.33% >=66.66% >=100%

Overall score: **75.00%**



Limited

FTA at this level is either completely or close to being gender-blind or gender-neutral in nature as it fails to mainstream gender concerns.

Evolving

FTA at this level employs some best practices for mainstreaming gender concerns, but it has a significant scope for further improvement.

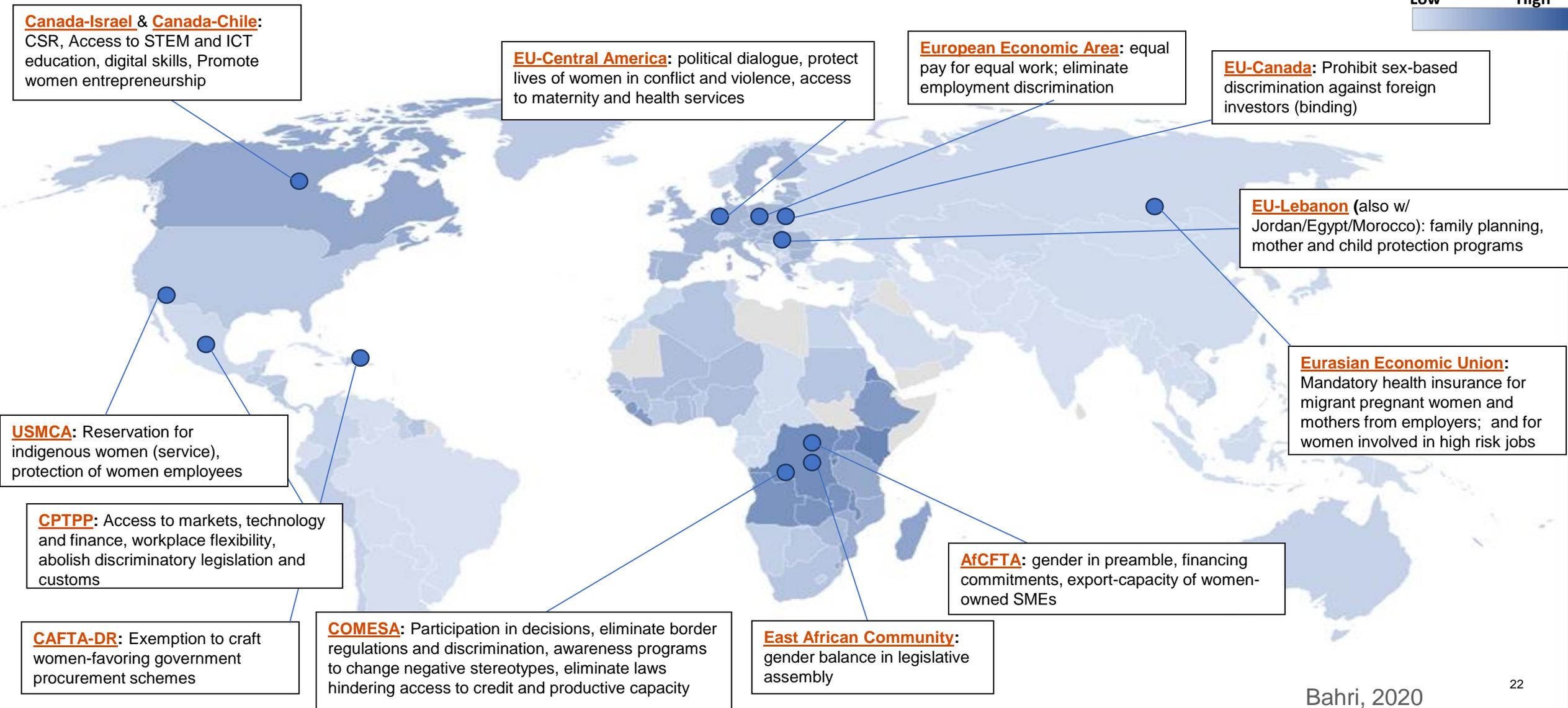
Advanced

FTA at this level achieves the highest level of maturity in the way it mainstreams gender concerns, and there is no or only a negligible scope for further improvement.

Trade Agreements can Help: Best Practice Examples

The Solution

Low High

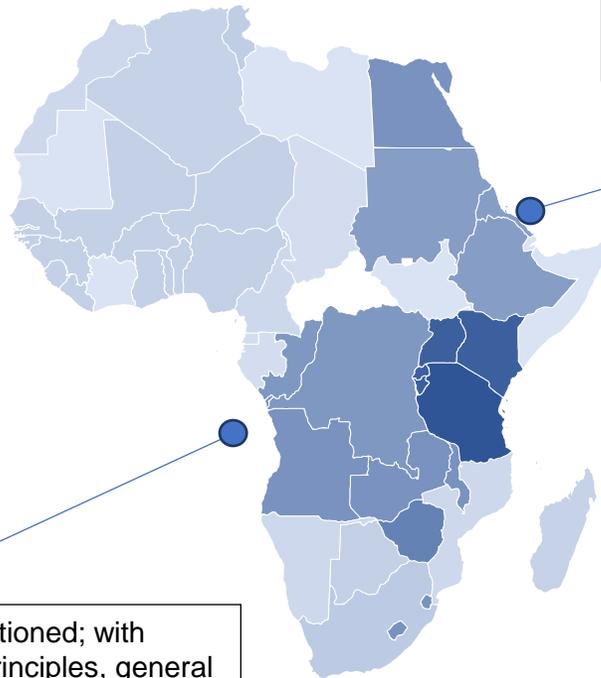


Africa

Coverage: integration of women into the region's development process by enhancing women's access to resources, female entrepreneurship and women's representation in political and decision-making positions.

Format: A mix of binding and non-binding commitments, drafted with a combination of mandatory and non-mandatory verbs; in main text, annex, complementary instruments

Scope: 101 gender-explicit words mentioned; with provisions on general objectives and principles, general undertakings, provisions establishing regional institutions, capacity building and cooperation based provisions, and provisions on women and development

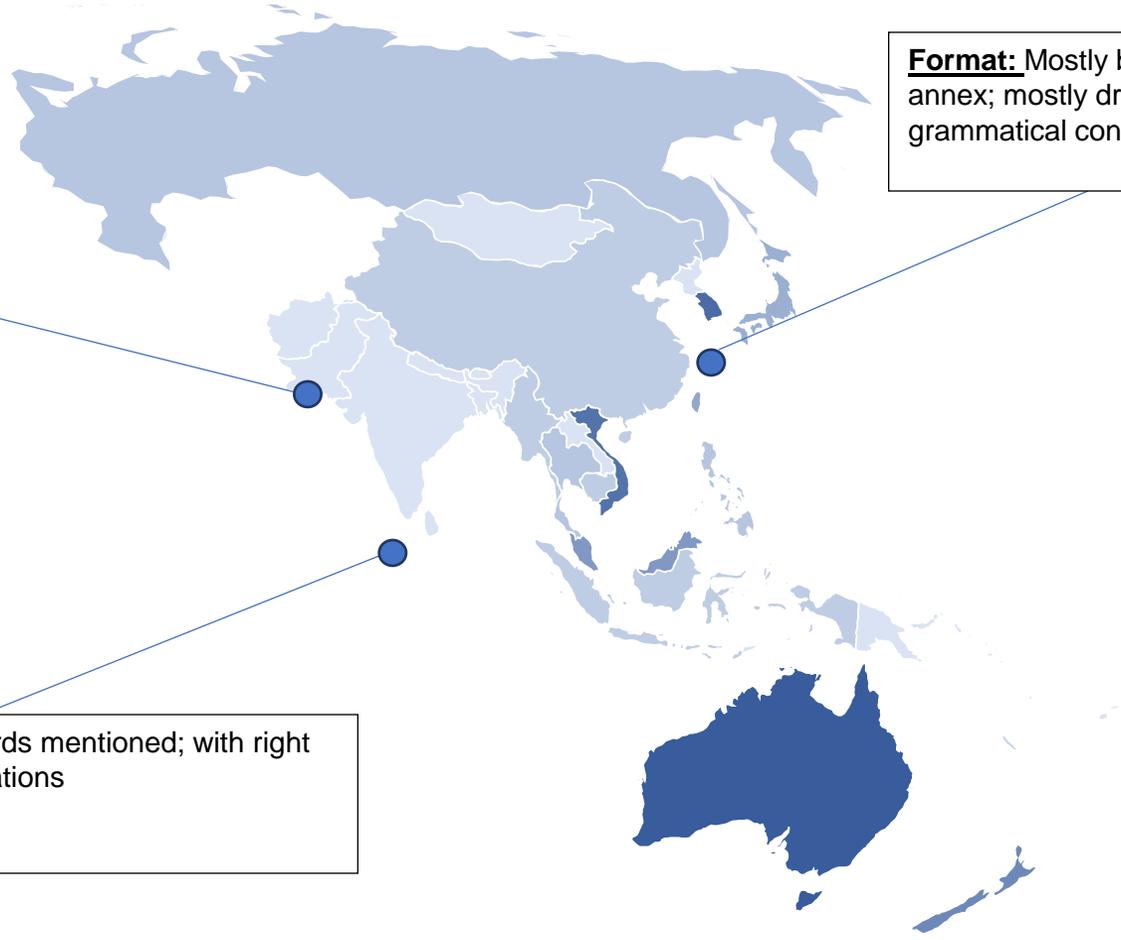


Asia Pacific

Coverage: women's health and maternal concerns, such as health care, nutrition, childcare and women's safety

Format: Mostly binding commitments, in main text and annex; mostly drafted with mandatory verbs and "hard" grammatical constructions

Scope: 66 gender-explicit words mentioned; with right to regulate provisions, reservations

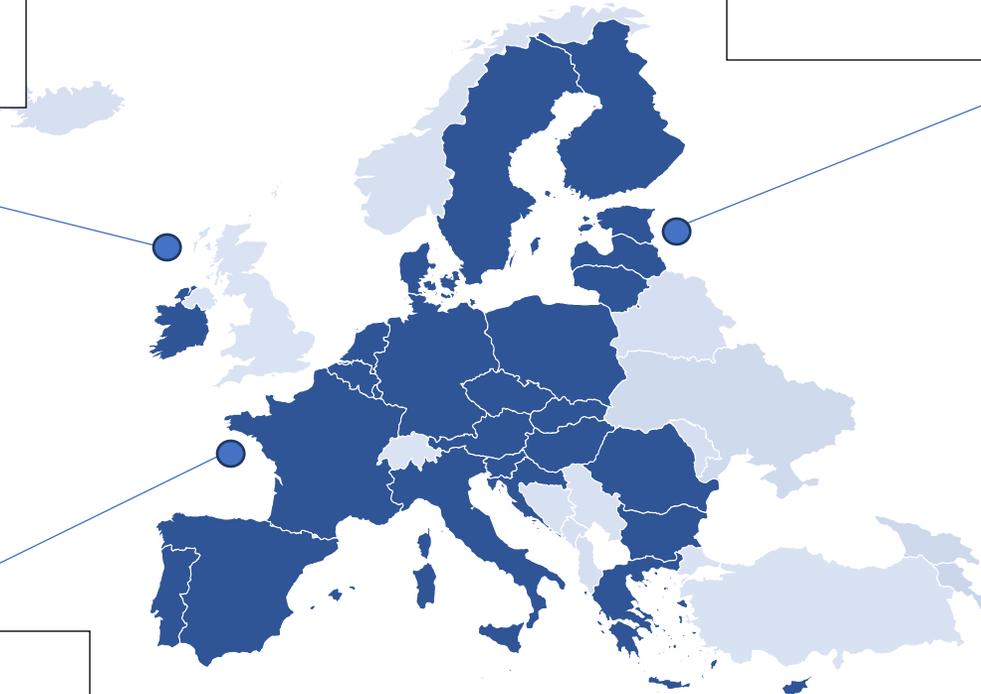


European Union

Coverage: Gender equality, non-discrimination, education and skill development, health and safety, and maternal care

Format: A mix of binding and non-binding commitments, in main text and annex; added mainly in Association Agreements' or 'Integration Agreement'; drafted with mandatory and non-mandatory verbs

Scope: 160 gender-explicit words mentioned; with provisions on trade and sustainable development, agreement's general objectives and principles, binding reservations, cooperation on social and cultural matters, cooperation on education and training, and reaffirmations



North America

Coverage: labour, women's access to productive resources, market access and technology, skill development and increasing their participation in economic growth

Format: Non binding commitments, drafted with non-mandatory verbs and "soft" permissive grammatical constructions;
Mostly added in main text and annexes

Scope: 148 gender-explicit words mentioned;
Cooperation-based provisions, reaffirmations to other international instruments, provisions relating to voluntary standards



South America

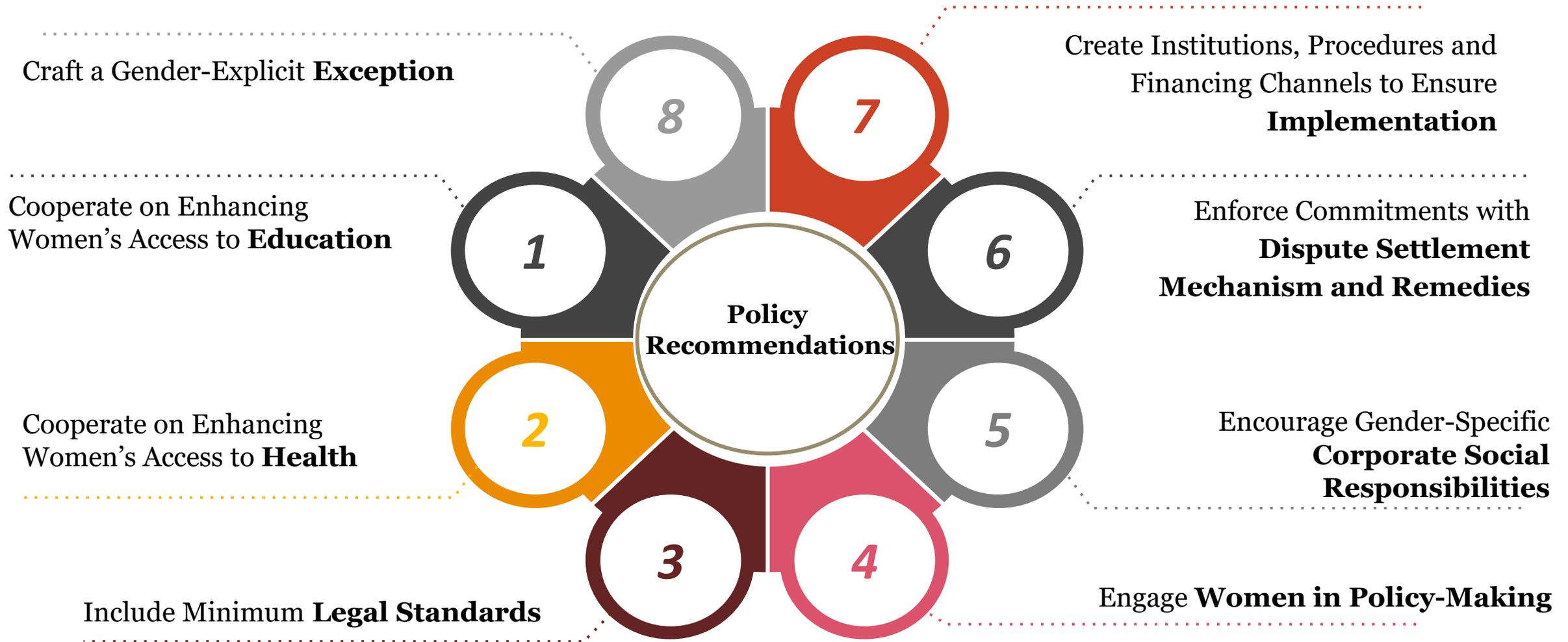
Coverage: labour concerns, market access, resource access, women's role in growth and development, childcare

Format: Mostly non binding commitments; drafted with non-mandatory verbs and "soft" permissive grammatical constructions; in main text and annexes

Scope: 87 gender-explicit words mentioned; mostly reaffirmation- and cooperation-based provisions, with occasional mention in provisions on voluntary standards and "right to regulate" reservations



What Next? Preparing FTAs to Reboot Inclusive Economy post-COVID-19



Three big questions:

- 1 | Many new FTAs (such as USMCA) contain highly enforceable labor commitments. If this can be negotiated, why countries are still reluctant to include enforceable gender-related commitments such as equal pay for equal work?
- 2 | If we can have exceptions to protect public morals, or animal health or life, or even plant health or life in almost 100% of existing FTAs, why can't we negotiate an exception to reduce gender inequality?
- 3 | Even if gender provisions are not made enforceable, wouldn't they remain a distant reality if parties do not craft procedures and institutions or mobilize funds to put these commitments to action?

Thank you

MAINSTREAMING GENDER IN FREE TRADE AGREEMENTS



International
Trade
Centre

| SheTrades



SUPPORTED BY:

UKaid
Department for
International Trade

