



**TRADE JUSTICE
MOVEMENT**

**Make world trade work
for people and the planet**

Patriarchy and Profit:

A feminist analysis of
the global trade system

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Introduction

In December 2017, 118 World Trade Organisation (WTO) members supported a Joint Declaration on Trade and Women's Economic Empowerment at the WTO Ministerial Conference in Buenos Aires. This is the first WTO declaration to focus on gender.¹ Some countries have also begun to include gender chapters in their bilateral trade agreements² and there is a renewed dialogue on how trade rules can support women entrepreneurs and stimulate inclusive growth.³ These moves have been paralleled by an increased recognition that trade policy has implications for gender equality.

International action to address the gendered impacts of trade policy is both urgent and welcome. The initiatives outlined above suggest a recognition that trade rules and agreements need to play a part in addressing the economic disadvantages that women continue to face worldwide. However there is a wide gap between the rhetoric about trade, inclusive growth and women's economic empowerment and genuine action to develop a trade policy that is compatible with a transition towards an economy that benefits women and men equally.

The current political situation in the UK raises both risks and opportunities. The decision to leave the European Union means that the UK government will regain competence for trade policy for the first time in more than forty years and will be required to negotiate new trade arrangements with partner countries. This provides a unique opportunity for the UK to incorporate a feminist analysis into its approach. The government has supported the WTO's Joint Declaration and has a partnership with the International Trade Centre to establish the 'SheTrades Commonwealth'⁴ initiative, which indicates an understanding of the gendered dynamics of trade and potentially offers a basis for further action.⁵ At the same time, these initiatives have been developed in the context of strong support for the very free trade rules that have been proven to exacerbate existing gender biases within the economy.^{6,7}

If the UK government is to develop a genuinely gender-responsive trade policy it must move beyond the symbolism of WTO declarations and support for entrepreneurs. Instead, it must bring a feminist analysis to the entirety of its trade policy so that the provisions of trade and investment agreements are designed to support gender equality goals. This should include:

- 1. Making trade rules subordinate to and designed to support national and international commitments to achieving gender justice.**
- 2. Undertaking full gender impact assessments in a timely manner and their findings must have legal weight in the development of mandates, agreements and implementation.**
- 3. Excluding investor-state dispute settlement mechanisms and other special courts for investors from trade and investment agreements.**
- 4. Ensuring trade agreements do not increase women's unpaid domestic and care work burden by guaranteeing that governments are not compelled to liberalise, or prevented from renationalising, public services.**
- 5. Ensuring trade agreements do not undermine small-scale farmers and food sovereignty in the UK and partner countries.**
- 6. Ensuring trade agreements are transparent and democratic.**
- 7. Making a commitment not to re-negotiate the EU Economic Partnership Agreements with developing countries. The UK should instead develop its unilateral preference scheme so that it is supportive of development, regional integration and human rights goals.**

- ¹ World Trade Organisation (2017) *Joint Declaration on Trade and Women's Economic Empowerment*. Available at: https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf accessed 10/08/18
- ² See Chile – Uruguay Free Trade Agreement (2016) available at: http://www.sice.oas.org/trade/CHL_URY/CHL_URY_Text_s.pdf; Canada-Chile Free Trade Agreement (2017) available at: http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng; Canada-Israel Free Trade Agreement (2018) available at: <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/israel/fta-ale/text-texte/13.aspx?lang=eng> accessed 17/09/2018.
- ³ International Trade Centre (2018) *Press Release: UK announces £7m support for ITC's SheTrades Initiative*. Available at: <http://www.intracen.org/news/UK-announces-7m-support-for-ITCs-SheTrades-Initiative/> accessed 17/09/2018.
- ⁴ SheTrades Commonwealth (n.d) - <https://www.shetrades.com/en/projects/shetrades-commonwealth> [website] accessed 17/09/18
- ⁵ Speech delivered by International Trade Secretary Liam Fox at the Commonwealth Business Forum on 16 April 2018. Available at <https://www.gov.uk/government/speeches/global-economic-outlook-trade-growth-and-the-commonwealth> accessed 12/09/18
- ⁶ Speech delivered by International Trade Secretary Liam Fox at the Manchester Town Hall on 29 September 2016. Available at <https://www.gov.uk/government/speeches/liam-foxs-free-trade-speech> accessed 10/08/18
- ⁷ CONCORD and WIDE+ (2018) *Women's Rights and Trade: Time for a Radical Shift*. Available at: <https://concordeurope.org/2018/06/04/paper-gender-trade-2018/> accessed 10/08/18

1. A failure of theory and practice: free trade contributes to deepening gender inequality

i. Free trade: less growth, more inequality

Proponents of free market capitalism argue that free trade stimulates economic growth, which in turn creates jobs, leading to poverty reduction and improvements in living standards.⁸ However there is evidence that paints a different picture. Data from 116 countries in the global North and South demonstrate that between 1960 and 1980, when many countries were using a range of 'protectionist' trade measures, "GDP per capita grew at the rate of 3.1 per cent."⁹ Conversely, between 1980 and 2000, when the neoliberal economic policies of privatisation, deregulation and trade liberalisation were increasingly adopted in the global North, enforced as a condition of IMF and World Bank Structural Adjustment Programs (SAP's) in the global South,¹⁰ and institutionalised through the establishment of the World Trade Organisation in 1995, the rate of growth dropped to 1.4 per cent.¹¹

Even where levels of growth have risen, this has not necessarily benefited poorer communities. After roughly fifty years of independence, many Southern country economies continue to be underpinned by the production of raw materials for export and have struggled to transition towards more value-added production, which is essential for social and economic development.¹² This is often due to a combination of historical factors deriving from former colonial policies, the policy prescriptions imposed by the IMF and World Bank SAP's and the impact of trade rules established by the WTO. The result is that countries in the global South are often locked into an economic model that restricts the development of local industries, undermines the creation of decent employment opportunities, and reduces the revenue necessary for the provision of vital social services. Governments are also restricted in their ability to implement necessary economic reforms, such as investing in infant industries, supporting locally managed small and medium sized enterprises and increasing trade tariffs, which limits their capacity to improve economic conditions.¹³

The recent increased growth across Africa, for example, has not translated into adequate social and development progress.¹⁴ After two decades of "near stagnation,"¹⁵ growth rose to 4.6 % in 2010 and again to more than 5.0 % in 2012; the continent's poverty headcount ratio fell from 55.6% in 2002 to 41% in 2013. However, according to World Bank estimates, population growth means that the number of people living in poverty throughout Africa has in fact risen from 284 million in 1990 to more than 388 million in 2012.¹⁶ Unemployment also remains a significant concern across the region, including for women. In 2018 the female labour force participation and female unemployment rates were 21.9% and 19.5% in Northern Africa and 64.7% and 8.2% in Sub-Saharan Africa.¹⁷ According to the United Nations Economic Commission for Africa, the challenge facing African economies is their continued dependence on low-value production, which limits the impact that economic growth has on social and economic development:

"[Africa's] impressive growth story [since 2000] has not translated into economic diversification, commensurate jobs or faster social development: most African economies still depend heavily on commodity production and exports, with too little value addition and few forward and backward linkages to other sectors of the economy."¹⁸

Exacerbating this is the global phenomenon of rising inequality within and between countries. Global inequality has nearly tripled since 1960 and between 1980 and 2016, income inequality increased in almost all countries in the world.^{19 20} The richest 8 men now hold as much wealth as the poorest fifty percent of the world's population.²¹ Even the International Monetary Fund (IMF) has now acknowledged that "there are aspects of the neoliberal agenda that have not delivered as expected" and that "the costs in terms of increased inequality are prominent [and] increased inequality in turn hurts the level and sustainability of growth."²² Rather than creating prosperity for all, free trade and other neoliberal economic policies are concentrating wealth at the top of the economy.²³

The 2018 World Inequality Report found that the top 10% of earners capture a significant and increasing proportion of the national income in all regions across the world. In 2016, the income share of the top 10% was 37% in Europe, 41% in China, 46% in Russia, 47% in the US and Canada, 54% in Sub-Saharan Africa, 55% in Brazil and India and 61% in the Middle East.²⁴ Since 1980, the share of national income accounted for by the top 10% of earners has risen in nearly all countries.²⁵ However, the rate of this increase has varied across regions, highlighting “important roles that national policies and institutions play in shaping inequality.”²⁶

Neoliberal policies that preference growth without addressing distribution leave women behind, worsening their financial insecurity and institutionalising their economic inequality.²⁷ This means that women are hit twice: existing gender discrimination means they bear the brunt of increasing inequality, whilst gender-blind neoliberal policies exacerbate economic discrimination and prevent necessary reform.

ii. The global trade and investment system

Over the last 60 years the global trade system has increasingly been used to institutionalise free market capitalism by establishing trade rules that lock-in liberalisation, deregulation, and privatisation.²⁸ The 1947 General Agreement on Tariffs and Trade (GATT) was restricted to governing trade in goods and trade liberalisation therefore focused on reducing trade tariffs (taxes paid on imported and exported goods).²⁹ Since then, the scope of trade rules has expanded to cover so-called ‘non-tariff barriers’ to trade, which often include domestic standards and regulation. This was multilateralised when the WTO was established in 1995, in particular in the Agreement on Technical Barriers to Trade (TBT)³⁰ but also in other founding agreements. For example, the General Agreement on Trade in Services (GATS) introduced multilateral rules that opened up service industries to liberalisation³¹ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) established global rules on intellectual property that

extended multinational companies’ rights to protect their copyrights and patents.³²

“The structure of the global system has made it practically impossible for Africa to benefit from globalization or move up the value chain.”³³

UNECA (2013)

Today, trade and investment agreements have a huge impact on almost every sector of the economy from agriculture and energy to health and public services.³⁴ They give significant rights and opportunities to companies and restrict the ability of governments, particularly in the global South, to develop important public policy.³⁵ They can undermine efforts to realise women’s rights, labour rights and other human rights standards, threaten environmental standards, and exacerbate inequality at a local and global level.³⁶ Free trade agreements with Southern countries, such as the EU’s Economic Partnership Agreements, pose a particular risk, often undermining government’s development agendas.

iii. The impacts of trade on women

Across the world, women experience widespread social and economic disadvantage, including higher levels of unemployment, lower pay, greater work insecurity, a disproportionate share of unpaid domestic and care work, and less access to land, credit and social benefits.³⁷ The international trade system plays an important role in maintaining and extending the economic model that creates this situation.

Despite recent progress in the realisation of women’s rights, structural discrimination in the economy persists. This is due to gendered divisions of labour, which result in women undertaking a greater proportion of unpaid care and domestic work. This disadvantages women because capitalist economies recognise and give value to paid work, incorporating paid employment into measurements of gross domestic product (GDP) and taking this employment in account in its economic policy.³⁸ In contrast, unpaid care and domestic work is overlooked in economic measurements and is rarely addressed in economic policy, meaning that women’s contribution to the economy is neither recognised nor valued.³⁹ Women’s economic

disadvantage is compounded by the fact that social benefits and credit are often tied to participation in the formal economy. This restricts women's access to social benefits and credit, undermining their economic independence and financial security.⁴⁰ Further, women's work it is still often viewed as a 'secondary' income to that of the 'male breadwinner.' This justifies ongoing discrimination against women in the labour force, including persistent gender-pay gaps and the concentration of women in lower waged sectors and insecure employment.⁴¹

Governments and international institutions have undertaken little analysis of the impact that trade rules and agreements have on women and their experiences as producers, workers, consumers and the primary providers of unpaid care. Instead, they rely on a set of assumptions that are increasingly proving to be unfounded, namely that more trade agreements will lead to increased trade, which will in turn stimulate economic growth and create jobs, that women will be able to access these jobs and that they will be sufficiently well-paid and stable to improve their financial independence.⁴²

In reality, far from facilitating women's economic security, poorly designed and gender-blind rules can actually worsen their situation. Although women are not a homogenous group and are impacted by trade policy in different ways depending on a range of socio-economic factors, there is strong evidence that free trade policies can have significant negative impacts for women irrespective of their context.⁴³ Trade rules can exacerbate gender biases within the economy and have a particular impact on women where they lead to a reduction in funding for the provision of social services and initiatives to address gender discrimination or deter governments from putting policies in place to do so.

“Gender inequalities and trade interact. Trade reforms are likely to have gender-differentiated effects because of women’s and men’s different access to, and control over resources and their different roles in both the market economy and the household. In turn, gender inequality may limit the gains from trade, for instance through its impact on the process of innovation.”⁴⁴

Marzia Fontana, gender and trade expert ⁴⁵

iv. Trade with the global South – pushing the wrong model for women?

The Everything But Arms (EBA) and Generalised System of Preferences (GSP) schemes are unilateral preference schemes implemented by the EU to support economic growth in countries in the global South. Under these schemes the EU has committed to remove or reduce tariffs on products being imported by Southern countries, providing preferential access to developed country markets and supporting Southern country competitiveness in the export market. Under the EBA arrangements Least Developing Countries benefit from duty free exports into the EU on all goods other than arms and ammunition. Under GSP arrangements the EU reduces or eliminates tariffs on goods exported to the EU from non-LDC developing countries.

In June 2017, the UK announced its intention to replicate existing EU trade arrangements with countries in the global South after leaving the EU, including reproducing the Everything But Arms (EBA) and Generalised Scheme of Preferences schemes,⁴⁶ and ‘transferring across’ the EPAs.⁴⁷ The decision to replicate the EU EBA and GSP schemes is welcome, although there are steps that the UK could take to extend these schemes so as to provide the best possible development outcomes for countries in the global South.⁴⁸ The decision to renegotiate the EPAs is more problematic.⁴⁹ The EPAs are regional free trade agreements that the EU has signed or is negotiating with African, Caribbean and Pacific partners. After 15 years of negotiations, many countries, particularly across Africa, continue to resist these agreements, arguing that they are incompatible with their development objectives and will have negative impacts on social and economic development.⁵⁰ The agreements have been criticised for:

- Requiring high levels of liberalisation that would open up markets to competition with EU goods. Without protections, nascent industries are unable to compete with EU goods and the transition to value-added production is restricted, which can reinforce Southern countries’ dependency on commodity exports.⁵¹

- Undermining regional integration by establishing regional groupings that split existing custom unions or regional alignments or by imposing different trade arrangements on countries in the same region;⁵²
- Fostering tensions between LDCs that receive tariff free access to the EU market through the EBA arrangements and will not benefit from signing an EPA, and non-LDC countries that will lose preferential access to the EU market if they do not sign an EPA;⁵³ and
- Expanding the privatisation agenda by including a rendezvous clause that commits Southern countries to continue negotiating on controversial areas that were not included in the original agreement, including the liberalisation of investment and services - this goes beyond current WTO commitments and has the potential to significantly reduce Southern countries' policy space and development capacity.⁵⁴

Feminist analysis of the EPAs suggests that the agreements would have particularly negative consequences for women. To date, gender impact assessments have not been undertaken and little consideration has been taken of the impact of trade liberalisation on women as workers, producers and unpaid carers.⁵⁵ Further, evidence suggests that the EPAs could result in a significant loss of revenue for Southern governments. One estimate suggests that that West Africa could lose €32.2 billion in customs revenue over a 15 year period⁵⁶ as a result of the EPA.⁵⁷ This could impact on the ability of governments in the global South to fund public services, with significant knock-on effects for women including a risk that unpaid domestic and care responsibilities will increase at the same time as access to vital public services is reduced.⁵⁸ The agreements could also worsen agricultural dumping by EU countries, undermining local farmers, particularly small-scale women farmers, and undermining food security and sovereignty across the continent.⁵⁹

“There have been no gender impact assessments for the [Economic Partnership Agreements (EPAs)] and these agreements were not negotiated based on informed analysis about their repercussions. Trade agreements, like all economic policy, are judged on whether they promote gender equality, whether they are gender responsive, and whether they promote socially transformative views of gender. For instance, the impact of EPAs on the unpaid work of women should be taken into consideration but it is not. Also, gender responsive export promotion policies are currently not embedded in EPAs. There is certainly a gap in such analysis regarding EPAs and therefore, there is no guarantee that EPAs would promote gender parity or, at the very least, avoid harming women.”⁶⁰

Outcomes document from the Trade Union Conference on Economic Partnership Agreements – Africa/EU, 9-10 October 2017, Lomé, Togo.

⁸ Margaret Thatcher Freedom Lecture delivered by International Trade Secretary Liam Fox on 25 July 2018 at the Heritage Foundation think tank, Washington. Available at: <https://www.gov.uk/government/speeches/the-case-for-free-trade> accessed 17/09/2018.

⁹ Chang, H (2002) *Kicking away the ladder: Development strategy in historical perspective*. Anthem Press, London. p. 128.

¹⁰ Nelson, J (2016) The study of women and gender in economics, in Beneria, L., Berik, G and Floro, M (ed) *Gender, Development and Globalisation*, 2nd edition, Routledge, New York. pp, 77-78.

¹¹ Op. Cit. Chang, H (2002) p. 128.

¹² United Nations Economic Commission for Africa (2013) *Making the Most of Africa's Commodities: Industrializing for Growth, Jobs and Economic Transformation*. Addis Ababa, Ethiopia. P. 8-9. Available at: <https://www.uneca.org/publications/economic-report-africa-2013> accessed 03/08/18.

¹³ Ibid. p. 8; p. 76.

¹⁴ Ibid. p. 6.

¹⁵ Ibid. p. 6.

¹⁶ Beegle, K et al (2016) *Poverty in a Rising Africa, Africa Poverty Report*, World Bank, Washington DC. p .4. Available at: <https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Poverty%20in%20a%20Rising%20Africa%20Overview.pdf> Accessed 18/09/2019

¹⁷ ILO (2018) *World employment social outlook: Trends for women 2018*, p. 7. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_619577.pdf. Accessed 18/09/18.

¹⁸ Op. Cit. United Nations Economic Commission for Africa (2013). p. 6.

- ¹⁹ World Inequality Lab (2017) *World Inequality Report 2018*. p. 10. Available at: <https://wir2018.wid.world/> accessed 03/08/18
- ²⁰ Hickel, J (2017) Is global inequality getting better or worse? A critique of the World Bank's convergence narrative, *Third World Quarterly*, 38 (10). p. 2217.
- ²¹ Oxfam (2017) *An Economy for the 99%: It's time to build a human economy that benefits everyone, not just the privileged few*. p. 2. Available at: <https://policy-practice.oxfam.org.uk/publications/an-economy-for-the-99-its-time-to-build-a-human-economy-that-benefits-everyone-620170> accessed 10/08/18
- ²² Ostry, J. D., Loungani, P., and Furceri, D (2016) 'Neoliberalism: Oversold?', *Finance & Development*. P. 39. Available at: <http://www.imf.org/external/pubs/ft/fandd/2016/06/ostry.htm> accessed 10/08/18
- ²³ Oxfam (2017) *An economy that works for women: Achieving women's economic empowerment in an increasingly unequal world*. p. 2. Available at: <https://www.oxfam.org/en/research/economy-works-women>
- ²⁴ Alvaredo, F., Chancel, L., Piketty, T., Saez, E., Zucman, G., (2017) *World Inequality Report 2018*. Creative Commons: World Inequality Lab, p.9. Available at: <https://wir2018.wid.world/files/download/wir2018-full-report-english.pdf> accessed 17/09/18
- ²⁵ Ibid. p. 10.
- ²⁶ Ibid. p. 9.
- ²⁷ World Economic Forum (2017) *The Global Gender Gap Report 2017*. P viii. Available at: <https://www.weforum.org/reports/the-global-gender-gap-report-2017> accessed 18/08/18
- ²⁸ Ibid. p. 3.
- ²⁹ World Trade Organisation (1947) *General Agreement on Tariffs and Trade*. Available at: https://www.wto.org/english/docs_e/legal_e/gatt47.pdf accessed 31/07/18
- ³⁰ World Trade Organisation (1995) *Agreement on Technical Barriers to Trade*. Available at: https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm accessed 31/07/18
- ³¹ World Trade Organisation (1995) *General Agreement on Trade in Services*. Available at: https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm accessed 31/07/18
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- ³³ Op. Cit. United Nations Economic Commission for Africa (2013) p. 8.
- ³⁴ World Trade Organisation (2015) *The WTO at Twenty: Challenges and achievements* Geneva: World Trade Organisation, p.34
- ³⁵ UNCTAD (2008) *Policy Space: What, for what, and where?* Geneva: UNCTAD
- ³⁶ Op. Cit. CONCORD and WIDE+ (2018) p.4
- ³⁷ United Nations (2015) *The World's Women 2015: Trends and Statistics*. Available at https://unstats.un.org/unsd/gender/downloads/worldswomen2015_report.pdf accessed 18/08/18
- ³⁸ Folbre, N (2015) *Valuing non-market work, UNDP Human Development Report Office*. Available at: http://hdr.undp.org/sites/default/files/folbre_hdr_2015_final_0.pdf Accessed 18/09/18
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- ⁴⁰ Ibid. p. 1355.
- ⁴¹ Elson, D and Cagatay, N (2000) 'The Social Content of Macroeconomic Policies', *World Development*, Vol. 28 (7) p. 1355.
- ⁴² WTO (2017) *Gender aware trade policy: A springboard for women's economic empowerment*. Available at: https://www.wto.org/english/tratop_e/devel_e/a4t_e/gr17_e/genderbrochuregr17_e.pdf accessed 30/08/18
- ⁴³ Campbell, M (2016) *CEDAW and Women's Intersecting Identities: A Pioneering Approach to Intersectional Discrimination*, Working paper Vol. 2, No. 3, Oxford Human Rights Hub, Oxford University. p. 3.
- ⁴⁴ Fontana, M. (2009) *Gender Justice in Trade Policy: The gender effects of Economic Partnership Agreements*. London: One World Action. p. 2.
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- ⁴⁶ For more information on the impact of market access arrangements provided by the UK see UK Government (2017) Government pledges to help improve access to UK markets for world's poorest countries post-Brexit. Available at: <https://www.gov.uk/government/news/government-pledges-to-help-improve-access-to-uk-markets-for-worlds-poorest-countries-post-brexit>. Accessed 18/09/18.
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- ⁴⁸ Trade Justice Movement (2018) *Submission to the International Trade Committee inquiry on trade and the Commonwealth: developing countries*. Available at: <https://www.tjm.org.uk/resources/briefings/submission-to-the-international-trade-committee-inquiry-on-trade-and-the-commonwealth-developing-countries>. Accessed 19/08/19.
- ⁴⁹ Ibid.
- ⁵⁰ Further Africa (2016) *Why African states are refusing to sign on to EU trade deals*. Available at: <https://furtherafrica.com/2016/11/10/why-african-states-are-refusing-to-sign-on-to-eu-trade-deals/>. Accessed 18/09/18.
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- ⁵² Ibid.
- ⁵³ Ibid.
- ⁵⁴ SEATINI Uganda (n.d) *An analysis of the rendezvous clause in the EAC-EU-EPA: Implications on Uganda's and EAC's economy and on people's livelihoods*. Available at: <http://www.rosalux.co.tz/wp-content/uploads/2016/03/SEATINIs-assessment-report-of-the-EPA-Rendezvous-clause-2015.pdf>. Accessed 19/09/18.
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- ⁵⁶ Losses would be from the fifth year after entry into force until the 20th year.
- ⁵⁷ Berthelot, J (2017) *West Africa's losses of customs duties with and without the Economic Partnership Agreement (EPA) with the EU*. p. 7. Available at: <https://www.sol-asso.fr/wp-content/uploads/2017/01/West-Africas-losses-of-customs-duties-with-and-without-the-EPA-SOL-February-7-2017.pdf>. Accessed 19/09/18.
- ⁵⁸ Op. Cit. European Union (2016) p. 32.
- ⁵⁹ Op. Cit. ITUC-CSI (2017).
- ⁶⁰ Ibid.

2. International trade and the corporate agenda: Exploiting women and exacerbating gender biases in the economy

i. Trade liberalisation, corporate power and the exploitation of women workers

Across the global South, trade liberalisation has been instrumental in facilitating the rise of export-oriented manufacturing sectors in which women represent the majority of workers. These sectors are often used to exemplify the benefits of open trade for women: it is argued that increased job opportunities lead to greater financial independence for women and therefore to reduced poverty.

Bangladesh's garment industry is often referenced as an example of this trade-based empowerment, with the World Bank suggesting that the industry has been fundamental in "economically uplifting a large cohort of poor and vulnerable women,"⁶¹ with knock on effects resulting in women having more "decision making power at home, voice in the social sphere and self-esteem."⁶²

However, the evidence suggests that the incorporation of women workers into the global value chain of multinational companies has had mixed results at best. On average, women represent 68% of those employed in the garment industry and 45-46% of those working in the textiles and footwear industries.⁶³ Export-oriented sectors suffer from persistent gender discrimination and women are concentrated in low-skilled, labour intensive and temporary or insecure employment.⁶⁴ Working conditions are notoriously exploitative, collective bargaining and union rights are suppressed, employment often does not include sick leave, maternity leave or pension provisions, and informal and home-based work is widespread.⁶⁵ One study of the working conditions in clothing industries across ten Asian countries found that the average working week was 71 hours, and 66% of women worked more than six days in a row.⁶⁶ While in some contexts wages can be higher than in equivalent domestic industries, they remain low in export industries and are often below minimum wage levels.⁶⁷ Research also shows that even in manufacturing sectors that are female dominated the transition to higher-skilled, higher-waged positions is likely to lead to a defeminisation of labour.⁶⁸

"Prevailing wages in 2011 for garment workers in China, Vietnam, and Indonesia provided 36 percent, 22 percent, and 29 percent of a living wage, respectively. But in Bangladesh, home to the world's fastest-growing export-apparel industry, prevailing wages gave workers only 14 percent of a living wage."⁶⁹

Trade policies have contributed to the rise in export-oriented manufacturing in the global South. From 1974 until the end of the Uruguay round of negotiations in 1994, trade in textiles and clothing was governed by the Multifibre Arrangement (MFA). The MFA "established quota-constrained trade based on country-specific bilateral product category allocations. These product quotas allocated shares of market access, along with the ability to buy, trade or carry over quota among countries and from year to year."⁷⁰ The MFA expanded clothing production, with developing countries brought into the production process by companies seeking access to "high-income country markets while avoiding quotas."⁷¹ The result was a "rapid expansion of low-wage employment in export platforms, border zones, special economic zones and green-field factories,"⁷² with production largely shifting from the USA, Europe and Japan to the newly industrialised countries in Asia: Hong Kong, Taiwan and South Korea.⁷³

The MFA was gradually replaced between 1995 and 2004 by the Agreement on Textiles and Clothing (ATC), which governed the phase out and removal of quotas. The removal of the quota system led companies to shift their focus to production flexibility, leading to a decline in the price of clothing imports and a downward squeeze on wages in clothing factories worldwide.⁷⁴ The transition to the ATC was paralleled by the development of bilateral and regional trade agreements, including the North American Free Trade Agreement (NAFTA), and unilateral preference schemes such as the GSP that have impacted on the structure of clothing and textile production and trade.

These trade arrangements have been touted as being beneficial to developing countries. For example the NAFTA agreement removed tariffs on textiles and clothing imports in the USA and Canada, leading to a significant rise in production in Mexico.⁷⁵ Similarly, EU unilateral preference schemes remain important for Southern countries exporting to the EU market. For example, Bangladesh and Cambodia benefit from the removal of import tariffs under the EU EBA and GSP schemes respectively, which have facilitated the development of their garment industries.⁷⁶

“As production has fragmented, low-value activities have become less and less profitable. In the early 1980s, producing countries received about half of the total income from the sale of coffee. Today, 90 percent of the income goes to the country where a multinational’s headquarters is located or buyers are based. The price of low-technology products that developing countries tend to specialise in – like garments, footwear, furniture and toys – has dropped by approximately 40 percent, relative to US consumer prices, between 1986 and 2006. Part of this price drop reflects lower costs of trade and transport, but part of it reflects the competition among suppliers to provide goods at lower and lower prices. In low-technology manufacturing, the easiest way to reduce costs is to reduce wages.”⁷⁷

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While trade arrangements have supported some Southern countries to develop export industries, the primary beneficiaries of these rules have been companies in the EU and USA, which have been able to “export their textiles to be sewn into garments using lower-wage workers,”⁷⁸ and then re-import the garments without incurring high tariff fees.⁷⁹ The inclusion of complicated rules of origin⁸⁰ within both FTAs and unilateral preference schemes have “promoted specific regional divisions of labour where low-cost regional producers in countries proximate to major markets are responsible for labour-intensive production steps as mere assemblers, whereas more capital-intensive and higher value production is confined to the countries of the North.”⁸¹

In 2017, Global exports in the textile and apparel industry were valued at \$296.1bn and \$454.5bn respectively.⁸² Multinational companies profit most from these exports: because they no longer own factories and instead work through networks of sub-contractors, companies have the flexibility to quickly move production in order to access the lowest production costs as well as the best trade arrangements.⁸³ The result is that female workers receive little of the value they create: “in the average supply chain of Australian garment retailers, just 4% of the price of a piece of clothing is estimated to make it back to the pockets of workers.”⁸⁴ In contrast, profits for US firms have risen even when the price of a product drops. US companies increased their “profits as a proportion of value created in the US from approximately 24 percent in 1986 to approximately 32 percent in 2006” in spite of a 40% drop in the prices of garments, footwear, furniture and toys.⁸⁵

Evidence suggests that women are being targeted as workers in export sectors because existing workforce discrimination means that they tend to accept lower wages than their male counterparts, and have less bargaining power and alternative employment opportunities, making them less likely to challenge exploitative working conditions.⁸⁶ For Southern governments, whose economies have been oriented towards the attraction of foreign direct investment and production for the global market,⁸⁷ enforcing labour rights standards could reduce competitiveness, particularly when they believe that cheap labour is their ‘comparative advantage’ in the global market.⁸⁸ The result is that women workers in different countries are in effect pitted against each other in a race to the bottom on wages and conditions.⁸⁹

A 2013 study of wage trends in the global apparel sector by the Centre for American Progress found that “in 5 of the top 10 apparel-exporting countries to the United States – Bangladesh, Mexico, Honduras, Cambodia, and El Salvador – wages for garment workers declined in real terms between 2001 and 2011 by an average of 14.6 percent on a per country basis.”⁹⁰ In the remaining 4 countries addressed in the study⁹¹ – China, India, Indonesia, and Vietnam – real wages grew, but China is the only country where “workers [are] on track to close the gap between their prevailing wages and a living wage within the current decade.”⁹²

ii. EU & US GSP: driving manufacturing in Cambodia

In the mid-1990s Cambodia was granted preferential treatment under both EU and US 'Generalised System of Preference' (GSP) schemes. As a result, between 1994 and 1999, Cambodia's garment exports grew by more than 100 per cent, from US\$495 million to US\$1,102 million. At the time, most Cambodian exports went to the US. However in the following decade, there was more diversification in destination countries, with 42 percent going to the EU, 33 percent to the US and the rest to Canada and Japan.⁹³

The expansion of the garment sector in Cambodia has led to an increase in women's participation in the workforce: they now constitute 87% of garment sector workers.⁹⁴ The WTO and World Bank have praised the garment industry for empowering women, stating that "women in the garment sector receive a positive premium on wages compared with other sectors, contributing to their economic empowerment."⁹⁵ Yet reports of labour exploitation have tainted the sector since its development in the mid-1990s. A 2012 report into labour conditions in Cambodian clothing factories by the ILO found that "regular wages are inadequate to support a family, and workers must work overtime in order to increase their revenues. The changes in contract practices have negative impacts on employment security with short-term contracts replacing unlimited duration contracts. This leaves women in a very difficult position, particularly when they become pregnant and have a child, and women with young children are often forced out of the workplace."⁹⁶ Workers also complained of workplace harassment, 54% had experienced harassment, including "shouting, insulting [and] cursing"⁹⁷, and 21% had experienced sexual harassment.⁹⁸ The persistence of exploitative working conditions undermines claims that the garment sector facilitates women's empowerment and highlights the need for further reform to ensure that women's labour rights are upheld in global value chains.

iii. Why industrial policy matters for women

Evidence suggests that economic growth is only effective in reducing poverty when it is underpinned by a sound industrial policy and the development of decent and dignified employment.⁹⁹ Wealthy countries now argue that free trade is essential to growth and prosperity, arguing that it was trade liberalisation and open markets that underpinned their economic success. However, in reality, most industrialised countries, including the UK and the USA, used a range of policy tools to protect their manufacturing industries as their economies developed.¹⁰⁰ In the UK this included a mixture of "protectionism, subsidies [and] distribution of monopoly rights, with protections in place well into the 20th century."¹⁰¹ The USA boasted one of the "highest average tariff rates on manufacturing imports" between 1916 and the end of World War II.¹⁰²

Japan and the newly industrialised East Asian countries like South Korea and Taiwan implemented many of the same policies as they developed from the 1960s, in stark contrast to the prevailing neoliberal policy prescriptions.^{103 104} The East Asian economic miracle, as it is now known, did not come as a result of free trade but from carefully designed industrial policy, implemented with the support of a mixture of policy tools including tariffs, quotas and subsidies.¹⁰⁵ These were paralleled by restrictions on FDI¹⁰⁶ and in South Korea strong capital controls to prevent capital flight.¹⁰⁷ These policies enabled countries to protect nascent industries from competition from more advanced economies, diversify their economic activity and transition from low to high value-added production. The result being that Japan, South Korea and Taiwan are now amongst the world's wealthiest countries.

At the same time, having the policy space to develop a successful industrial policy is not sufficient to ensure that women benefit from economic growth. Gender discrimination in the economy persists even where countries have made use of the policy tools outlined above. For example, the UK's gender pay gap was 9.1% in 2017¹⁰⁸ and at 37.2% South Korea has the highest gender pay gap in the OECD.¹⁰⁹

To be effective in addressing gender inequality, governments must also retain the policy space to implement gender-responsive industrial strategies. This means ensuring that gender and other social

inequalities are taken into consideration when developing economic policies¹¹⁰ and having the ability to promote the development of decent employment opportunities for both women and men. It also means being able to ensure the provision of quality public services. Further, gender-responsive industrial policies must be paralleled by government-wide action to redress broader gender imbalances within the economy. This includes initiatives that reduce and redistribute unpaid domestic and care work, including through the provision of care services and maternity/paternity leave; the provision of universal social protection so that women have access to social protection irrespective of their participation in the labour market; and the establishment of a gender-responsive tax regime to facilitate the redistribution of wealth.¹¹¹

The history of successful industrial policy demonstrates that countries must retain a range of policy tools to achieve their development goals and a growing body of evidence shows the importance of governments being able to retain the policy space to shape their industrial strategies to support gender equality. For example, the use of export tariffs can be an important source of revenue for governments to fund public services; subsidies can help support infant industries which may provide alternative employment for women; local content requirements can ensure that locally-based businesses (which are more likely to be run by women) can benefit from inward investment. Other tools such as the use of technical standards, and licensing and qualification requirements can help to strengthen domestic markets, support regional trade and enable the transition to value-added production.¹¹² Yet many of these tools are restricted or banned under global trade and investment rules.

“Unless proactively designed as gender just, labour markets and industrial development strategies replicate societal discrimination, trapping women into precarious, low-skilled and low-paid jobs often in informal economic sectors.”¹¹³

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iv. Trade and agriculture rules – undermining women farmers and food sovereignty

Agriculture has been one of the most controversial issues at the WTO. Countries in the global South have consistently resisted the imposition of rules that have devastating consequences for farmers and agricultural labourers, reducing food security and putting the livelihoods of countless small-scale farmers at risk.¹¹⁴ Women have always played a central role in traditional agricultural production, and they make up 43% of agricultural labourers in a sector that is increasingly feminising.^{115 116} One of the biggest issues with trade and agriculture rules is that they are blind to this reality. Trade rules are focused on bringing agricultural products into the global market rather than addressing the challenges facing women farmers, including, for example, the need to improve women’s control over agricultural production and increase their access to land, credit and local markets. In many cases, trade rules have worsened rather than improved the situation for female farmers.

Agriculture at the World Trade Organisation

The 1995 WTO Agreement on Agriculture (AoA) brought all agricultural products into the multilateral trade system. Under the three pillars of the AoA, countries were required to liberalise agricultural production. Market access rules required countries to convert “all non-tariff import restrictions (such as quotas, embargoes, variable import levies, minimum import prices, and non-tariff measures maintained by state enterprises) into tariff barriers”¹¹⁷ (a process called ‘tarification’) and then to commit to reduce these ‘import tariffs’ on all products. Export competition rules made it mandatory for countries to reduce the value and volume of export subsidies.¹¹⁸ Domestic support rules outlined which domestic support programs were allowed under the AoA and which supports had to be reduced. Three types of supports are recognised: amber box supports are those deemed to be trade distorting and are subject to the highest restrictions; blue box supports are considered to be less trade-distorting and are subject to fewer restrictions;

and green box supports are considered not to be trade-distorting and are not subject to restrictions.¹¹⁹

The AoA purportedly aims to reduce trade-distorting government supports, yet countries in the global South argue that the agreement has had a disproportionate impact on poorer countries. Flexibilities in the AoA that enable countries to move support programs between boxes has meant that wealthy countries continue to implement trade-distorting domestic support programs. Between 1996 and 2012 the US increased its overall 'trade-distorting' domestic support from approximately US \$7 billion to US \$12.14 billion. However, "non 'trade-distorting' subsidies rose considerably more from US \$51.83 billion to US \$127.44 billion."¹²⁰ In the EU, "trade distorting' subsidies have declined from €71.85 billion to €10.84 billion between 1995–96 and 2011–12, yet non 'trade-distorting' subsidies provided in the same period have risen from €18.78 billion to €70.98 billion."¹²¹ In contrast, countries in the global South, that did not have large domestic support programs before the development of the AoA, have been prevented from protecting domestic industries.¹²²

"The combination of opening up domestic markets and the imports of subsidised food [has] had a huge and negative impact on domestic producers – it reduced food security and rural employment, and reduced world prices creating difficulties for developing countries to sell both on domestic markets as well as on export markets."¹²³

The South Centre

Women are hit the hardest by these kind of trade and agriculture rules because their concentration in subsistence and small-scale farming and lack of access to land and credit means that they are unable to compete with large-scale production for the export market.¹²⁴ As small-scale farmers, women are also more oriented to local markets, meaning that they are more impacted by subsidised European

and American agricultural imports that undercut their products on the domestic market.¹²⁵ Further, trade and agriculture rules that prevent governments from intervening in global markets to ensure food security is maintained, such as through public stockholding of basic food, further undermine food security, with existing gender discrimination meaning that women are most at risk.¹²⁶

"Women peasants have been devastated by free trade policies that open up agricultural markets to foreign investment. Trade liberalization worsens corporate land-grabs that deprive women of their land and livelihood resulting to widespread hunger that destroys communities and deepens women's misery."¹²⁷

Zenaida Soriano, AMIHAN National Alliance of Peasant Women APWLD

Management of agricultural production is increasingly being concentrated in the hands of a few multinational companies, undermining local food production and worsening food security. "In 2008, it was estimated that, globally, 45 per cent of coffee processing was carried out by the four largest companies in the industry and 80 per cent of tea markets were controlled by only three companies. In 2012, it was estimated that four transnational corporations controlled 90 per cent of the global grain trade."¹²⁸ This has led, in turn, to an increase in corporate investment in land as multinational companies seek to secure ever more land for agricultural exports.¹²⁹ As a result, small-scale farmers have been stripped of their land or forced to move to less fertile land, limiting their productive capacity and putting their livelihoods even further at risk.¹³⁰ This has had particularly negative impacts for women because they are more likely to have insecure land tenure and have less access to credit and support programmes. When women producers are unable to compete in the agricultural market they are often pushed into the cash-crop or informal sector, where they tend to be concentrated in low-skilled, low-wage positions, frequently on a seasonal or temporary basis. These positions are often subject to exploitative work conditions, including exposure to harassment or dangerous levels of pesticides, and workers often have few options for redress or access to compensation.¹³¹

Since 2000, transnational land deals have enabled companies to acquire or lease land to the equivalent of 7.7 times the size of Sri Lanka, primarily in the global south.¹³²

v. Trade in services rules - increasing women's unpaid domestic and care work burden

The management and regulation of social services has historically been decided at the domestic level. However, the 1995 GATS agreement multilateralised rules that guarantee market access for multinational companies to privatised national service sectors and limit governments' ability to give preference to local providers, to introduce new regulations or to renationalise services.¹³³ Subsequent negotiations at the WTO, bilateral investment treaties and trade agreements, such as the Comprehensive Economic and Trade Agreement (CETA – the EU-Canada trade deal) and the prospective plurilateral Trade in Services Agreement (TISA) deal have sought to extend trade in services rules in order to increase multinational companies' access to services markets even further.^{134 135} The GATS agreement follows a 'positive list' system, whereby signatory countries agreed to lock in existing privatisation in specific industries listed in their commitments. Modern trade agreements like CETA use a 'negative list' system, which means all sectors are automatically covered under the agreement unless a government specifically excludes them.

These agreements have the effect of locking in privatisation and putting pressure on governments to expand privatisation and liberalisation. This is problematic because the privatisation of public services, including essential social services such as healthcare, education, water and energy, is often accompanied by the introduction of or an increase in service fees. Private companies also tend to target more lucrative sectors of the market, hollowing out provision so that services for poorer and more isolated communities become unsustainable.¹³⁶ The overall impact is to reduce access to vital social services for poorer communities and to deter governments from reversing privatisation measures because of the threat of trade retaliation from partner countries.

Women are most impacted by these rules because they tend to be more reliant on public services and are less able to afford fees, which means that they bear the brunt of any increased costs caused by the privatisation of public services.¹³⁷ Persisting gender hierarchies within the family also mean that it is more likely that women and girls' access to services such as education or health care will be removed if it becomes too expensive.¹³⁸ Women are also most likely to fill the gap left by the reduced availability of services by undertaking increasing amounts of unpaid domestic and care work, for example caring for children or elderly relatives, or travelling long distances to access water. Women already carry out 1-3 hours more domestic work and 2-10 times more care work per day than men worldwide.¹³⁹ The increase in women's domestic labour and care responsibilities has significant knock-on effects, reducing their ability to access education or paid employment and reinforcing gender inequalities.¹⁴⁰

vi. Intellectual property rules – privatising public knowledge and worsening health outcomes

The incorporation of Intellectual property (IP) rules into the global trade regime through the development of the TRIPS agreement in the 1990s represents one of the more overt examples of trade rules that extend the power of multinational companies. It has had particular implications for women in terms of the viability of small-scale agriculture and access to medicines.

“3. Members may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.”¹⁴¹

TRIPS Article 27.3: Patentable Subject Matter

Farmers have traditionally collected seeds from their crops for the following year's production and women often play a significant role in this process.¹⁴² However, trade rules outlined in the TRIPS agreement can prevent this from happening. Article 27.3(b) of TRIPS mandates that "all nations must provide intellectual property titles over plant varieties, either through patents or through an 'effective *sui generis* system'."¹⁴³ This effectively privatises traditional knowledge, enabling corporations to profit from it¹⁴⁴ and threatening "the centuries old practice of saving, using, exchanging and selling farm-saved seed."¹⁴⁵ This in particular makes it extremely difficult for women farmers, who have less access to the credit required to purchase commercial seeds, to maintain a sustainable livelihood.^{146 147}

"Ever since the establishment of the World Trade Organisation, and almost without exception, all countries of the world have passed laws giving corporations ownership over life forms. Whether through patents or so-called plant breeders' rights or plant variety protection laws, it is now possible to privatise micro-organisms, genes, cells, plants, seeds and animals."¹⁴⁸

La Via Campesina and Grain

IP rules are also significant in the production of medicines. They extend the length of copyrights and patents and when contained in trade agreements, restrict the development of affordable generic medicines. This increases the cost of medicines and can worsen health outcomes for everyone, but women are particularly impacted due to their disproportionate risk of poverty, their experience of gender-based violence and their specific reproductive health needs, which increase their vulnerability to illness.¹⁴⁹ TRIPS flexibilities place some restrictions on IP rules, which has been used by developing and least developing countries to enable them to continue to access affordable medicine.¹⁵⁰ However, subsequent bilateral and plurilateral trade agreements have sought to extend IP provisions and restrict flexibilities by including new 'TRIPS Plus' provisions. These provisions limit the use of compulsory licensing, which is when "a government allows someone else to produce a patented product or process without the consent of

the patent owner."¹⁵¹ They can also extend the length of copyrights and patents and introduce stricter enforcement mechanisms.¹⁵² For example, "research patent term extensions in Thailand alone could create additional costs of US\$ 822.1 million over 5 years or more than US\$ 6 billion over 20 years, significantly reducing the affordability of medicines within the country."¹⁵³

⁶¹ World Bank (2017) *In Bangladesh, Empowering and Employing Women in the Garments Sector*. Available at: <http://www.worldbank.org/en/news/feature/2017/02/07/in-bangladesh-empowering-and-employing-women-in-the-garments-sector>. Accessed 18/09/18.

⁶² Ibid.

⁶³ ILO (2014) *Wages and working hours in the textiles, clothing, leather and footwear industries*. p. 12 [Paragraph 27] Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf accessed 30/08/18

⁶⁴ Seguino, S and Grown, C (2006) Gender equity and globalization: Macroeconomic policy for developing countries, *Journal of International Development* Vol. 18, pp. 1084-1086.

⁶⁵ For example see Focus on the Global South (2017) *SEZs and Value Extraction from the Mekong: A Case Study on the Control and Exploitation of Land and Labour in Cambodia and Myanmar's Special Economic Zones*. pp 20-21. Available at: https://focusweb.org/system/files/sezs_and_value_extraction_in_the_mekong_english.pdf; War on Want (2011) *Stitched Up: Women workers in the Bangladeshi garment sector*. Available at: <https://waronwant.org/resources/stitched> both accessed 30/08/18; Barrientos, S (2007) Gender, codes of conduct, and labour standards in global production systems, in Van Staveren, I., Elson, D., Grown, C and Çağatay, N (ed), *The Feminist Economics of Trade*, Routledge, New York, p. 245.

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⁶⁹ Ibid. p. 3.

⁷⁰ Pickles, J., Plank, L., Staritz, C and Glasmeier, A (2015) Trade policy and regionalisms in global clothing production networks, *Cambridge Journal of Regions, Economy and Society*, Vol. 8, p. 390.

⁷¹ Ibid. pp. 390-391.

⁷² Ibid. pp. 390-391.

⁷³ Pickles, J (2012) *Economic and social upgrading in apparel value chains: public governance and trade policy*. p. 17. Available at: <http://www.capturingthegains.org/pdf/ctg-wp-2012-13.pdf>. Accessed 20/09/18.

⁷⁴ Op. Cit. Pickles, J., Plank, L., Staritz, C and Glasmeier, A (2015) p. 391.

⁷⁵ Kessler, J (1999) The North American Free Trade Agreement, Emerging Apparel Production Networks and Industrial Upgrading: The Southern California/Mexico Connection, *Review of International Political Economy*, Vol. 6 (4), p. 577.

⁷⁶ Op. Cit. Pickles, J (2012) p. 44.

- ⁷⁷ Ibid. p. 23.
- ⁷⁸ Blanchard, E (2007) 'Foreign Direct Investment, Endogenous Tariffs, and Preferential Trade Agreements', *The B.E. Journal of Economic Analysis & Policy*, 7(1), p. 2. Ibid. p 56.
- ⁷⁹ Ibid. p 56.
- ⁸⁰ "Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports." see World Trade Organisation (n.d) *Technical Information on Rules of Origin*. Available at: https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm. Accessed 19/09/18.
- ⁸¹ Ibid. p. 295.
- ⁸² Lu, S (2018) *WTO Reports World Textile and Apparel Trade in 2017*. Available at: <https://shenglufashion.com/2018/08/16/wto-reports-world-textile-and-apparel-trade-in-2017/>. Accessed 18/09/18.
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- ¹¹⁹ Actionaid (n.d) *The WTO Agreement on Agriculture*. p. 3. Available at: https://www.actionaid.org.uk/sites/default/files/doc_lib/51_1_agreement_agriculture.pdf. Accessed 18/09/18.
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- ¹²¹ Ibid. p. 46.
- ¹²² South Centre (2017) *The WTO's agriculture domestic supports negotiations*. p. 12. Available at: https://www.southcentre.int/wp-content/uploads/2017/01/AN_TDP_2017_1_The-WTO%E2%80%99s-Agriculture-Domestic-Supports-Negotiations_EN.pdf. Accessed 18/09/18.
- ¹²³ Op. Cit. South Centre (2017) p. 5.
- ¹²⁴ Via Campesina (2018) *Food Sovereignty Now: A guide to food sovereignty*. p. 192. Available at: <https://viacampesina.org/en/food-sovereignty-now-depth-guide/>. Accessed 06/07/18
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- ¹²⁸ UNCTAD secretariat (2016) *Agricultural commodity value chains: The effects of market concentration on farmers and producing countries – the case of cocoa*. Available at: http://unctad.org/meetings/en/SessionalDocuments/tdb63d2_en.pdf. Accessed 18/09/18.
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- ¹³⁹ UN Women (2017) *Facts and Figures: Economic Empowerment*. Available at: <http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures> accessed 30/06/18
- ¹⁴⁰ Gender and Development Network (2017) *Making trade work for gender equality*. Available at: <https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/595bc0383e00be98e37ea3dd/1499185211883/GADN+Making+trade+work+for+gender+equality+July+2017.pdf> accessed 30/06/18
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- ¹⁴³ Grain (2000) For a full review of TRIPS 27.3(b): *An update on where developing countries stand with the push to patent life at WTO*, available at: <https://www.grain.org/article/entries/39-for-a-full-review-of-trips-27-3-b> Accessed 18/09/2018
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- ¹⁴⁶ Op. Cit. La Via Campesina (2001).
- ¹⁴⁷ Ibid.
- ¹⁴⁸ La Via Campesina and Grain (2015) *Seed Laws that Criminalise farmers: Resistance and Fightback*. p. 4. Available at: <https://www.grain.org/article/entries/5142-seed-laws-that-criminalise-farmers-resistance-and-fightback> accessed 30/06/18
- ¹⁴⁹ Third World Network (2011) *Trade, Intellectual Property Rights (IPRs) and Gender Issues in India*, Trade and Gender Briefs No. 3. Available at: http://www.twn.my/title2/women/2011/a.economic/HBF-TWN/Trade_and_Gender_Brief_India_TWN-HBF_Vol_III_IPRs.pdf. Accessed 30/06/18.
- ¹⁵⁰ Article 66.1 of TRIPS states that "In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65." The transition period has subsequently been extended until 2021. For more information see: https://www.wto.org/English/Docs/E/legal_e/27-trips_08_e.htm. Accessed 19/09/18; The *Doha Declaration on the TRIPS agreement and public health* allows member countries to use provisions in the TRIPS agreement to protect public health, including the use of compulsory licenses and the parallel importation of patented products. For more information on the benefits of TRIPS flexibilities for health see http://www.who.int/medicines/areas/policy/doha_declaration/en/. Accessed 19/09/18.
- ¹⁵¹ The World Trade Organisation (2018) Fact sheet: trips and pharmaceutical patents. Available at: https://www.wto.org/english/tratop_e/trips_e/factsheet_pharm02_e.htm#compulsorylicensing Accessed 18/09/2018
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3. Trade versus democracy: trade and investment agreements restricting gender-responsive reform

i. Trade liberalisation – eroding fiscal sovereignty and reducing funding for gender justice

Trade tariffs remain an important source of income for many countries in the global South and the reduction or elimination of tariffs can significantly reduce government revenue. In 2011 trade taxes accounted for, on average, 13% of revenue in Least Developed Countries compared to less than 1% of revenue for high-income countries.^{154 155} Because of this, trade liberalisation hits poorer countries hardest, particularly where other tax infrastructure is weak and where the reduction in trade taxes is accompanied by downward pressure on corporate tax rates and widespread corporate tax avoidance.¹⁵⁶ ¹⁵⁷ Decreasing income from trade taxes limits the ability of governments to provide public services that are vital for women, including health, education, and water and sanitation.¹⁵⁸ The convergence of budget reductions and existing gender discrimination within government institutions can also lead to funding cuts for initiatives that facilitate gender equality such as policy interventions focused on reducing or alleviating women's care responsibilities, increasing women's access to decent employment and addressing gendered exploitation in the workplace including wage gaps and sexual harassment.¹⁵⁹

Fiscal impacts of the EU's proposed EPA with the East African Community (EAC)

Estimates put the tariff revenue loss of the proposed Economic Partnership Agreement (EPA) between the EU and the EAC (Burundi, Kenya, Rwanda, Tanzania, and Uganda) at "\$251 million a year by the end of the EPA's implementation period. Cumulative tariff revenue losses would amount to USD 2.9 billion in the first 25 years of the EPA's life."¹⁶⁰

Beyond the impact on import tariffs, the influence of trade policy on governments' domestic tax policy is also increasing. Many trade and investment agreements include carve-out clauses that exclude taxation from the scope of the agreement in order to protect governments' fiscal sovereignty.^{161 162} Nevertheless, trade and investment deals are increasingly being used by companies to reduce their tax bills and prevent domestic tax reform.¹⁶³ Several US Agri-businesses, including Cargill, sued Mexico after it introduced a tax on the sale of soft drink containing high-fructose corn syrup in 2002. The investors won the case and Mexico was required to pay US \$77.30 million in damages.¹⁶⁴ UK company Tullow Oil sued Uganda in 2012 over a \$400m capital gains tax bill. Tullow argued that a government minister had granted the company an exemption from the taxes. However, the Ugandan courts ruled that this could only be approved by Parliament. Tullow withdrew the ISDS case in 2015, but this was only after its tax bill was reduced to \$250m."¹⁶⁵

The loss of income from trade tariffs, as well as the increasing encroachment of the global trade regime on fiscal sovereignty, can push governments to replace their trade and corporate taxes with regressive taxation measures. For instance, consumption taxes such as Value Added Tax (VAT) now account for up to two-thirds of government revenue in Southern countries. These taxes are levied on the consumption of goods and services across the board and do not take account of the differences in employment, wages, caring responsibilities and access to land and credit that result from gender and class discrimination. Regressive taxes hit poor communities the hardest as they spend a greater proportion of their income on basic goods. Women spend more on basic goods than men, meaning that they face the double discrimination of paying more VAT as well as having more insecure and lower waged employment.¹⁶⁶ The increasing preference given to VAT and other indirect taxes over corporate and trade taxes also means that a disproportionate burden falls on the poor to cover the costs of public services and infrastructure.

ii. Investor rights and protections: eroding governments' right to regulate

The investment protection regime emerged alongside the multilateral trading system, with rules designed to protect international investors in 'risky environments.' These rules are outlined in international Investment Agreements, mainly Bilateral Investment Treaties (BITs). There are 2369 BITs in force globally.¹⁶⁷ The UK has 105, most of which are with countries in the global South. Increasingly, investment protection rules are also being incorporated into trade agreements.

In common with other BITs, UK treaties include provisions such as fair and equitable treatment clauses that require governments to treat investors 'fairly' and not upset their 'legitimate expectations.' These provisions may at first glance appear innocuous, however fair and equitable treatment clauses "have permitted investors to bring disputes against a wide range of government activities from changes in tariff charges in public utilities to withdrawal of tax exemptions and changes to the regulation of chemicals."¹⁶⁸ Indirect expropriation clauses "provide for compensation where a regulatory measure is considered to harm, affect or interfere with an investment. This can cover a wide range of government actions and measures, ranging from taxation to environmental regulation."¹⁶⁹

The majority of BITs, as well as trade agreements like the CETA and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) include investor-state dispute settlement (ISDS) mechanisms that give investors the power to sue governments in private tribunals over actions that threaten their profits.¹⁷⁰ ISDS decisions on cases can directly rule against policies put in place by governments, but the inclusion of ISDS clauses in trade agreements can also lead to 'regulatory chill' as government's either wait for claims to be decided before making policy decisions that are in the best interests of their populations, or simply choose not to make these policy decisions at all.¹⁷¹

ISDS – Challenging South African affirmative action legislation

In 2007 Italian and Luxembourg investors used ISDS provisions to sue the South African government for its Black Economic Empowerment Act that addressed ongoing economic discrimination against black South Africans as a result of apartheid. Investors successfully challenged the government's mining legislation, which mandated that a percentage of investor shares be transferred to black investors, and caused a reversal of the legislation.¹⁷² This challenge to one form of equality legislation could provide a model for a challenge to gender equality measures.

To date ISDS mechanisms have not been used to challenge initiatives that directly address gender discrimination. However, it has been used to undermine other social and environmental policy that is essential for the realisation of gender equality, including policy on issues such as minimum wage, public health measures, water and electricity pricing and environmental protections.¹⁷³ Between 1998-2013, non-OECD countries have faced an incredible \$415 billion in ISDS claims against them.^{174 175}

¹⁶⁴ The World Bank (2018) *Taxes on international trade*. Available at: https://data.worldbank.org/indicator/GC.TAX.INTT.RV.ZS?locations=XL&year_low_desc=false

¹⁶⁵ World Bank (n.d) *Taxes on International Trade (% of revenue)* [webpage] available at https://data.worldbank.org/indicator/GC.TAX.INTT.RV.ZS?locations=XD&year_low_desc=false accessed 30/06/18

¹⁶⁶ Oxfam (2016) *Tax Battles: The dangerous global Race to the Bottom on Corporate Tax*. Available at: <https://www.oxfam.org/sites/www.oxfam.org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf> accessed 30/06/18

¹⁶⁷ For more information on corporate tax avoidance see <https://www.taxjustice.net/> accessed 30/06/18

¹⁶⁸ Cage, J. and Gadenne, L., (2016) *Tax Revenues, Development, and the Fiscal Cost of Trade Liberalization, 1792-2006*, Warwick Economics Research Papers. p. 21. Available at: https://warwick.ac.uk/fac/soc/economics/research/workingpapers/2016/twerp_1132_gadenne.pdf accessed 30/06/18

¹⁶⁹ European Women's Lobby (2012) *The price of austerity – The impact on women's rights and gender equality in Europe*, pp. 13-14. Available at: <https://www.womenlobby.org/The-Price-of-Austerity-The-Impact-on-Women-s-Rights-and-Gender-Equality-in> accessed 30/06/18

¹⁷⁰ Mkapa, B (2016) *Why the EPA is not beneficial to Tanzania*. Available at: <https://www.southcentre.int/question/why-the-epa-is-not-beneficial-to-tanzania/> accessed 30/06/18

- ¹⁶¹ Carve-out clauses can be incorporated into trade agreements to explicitly exclude certain policy areas from the scope of the agreement being made. In addition to taxation carve-out clauses some trade agreements include carve-out clauses for policy issues such as the provision of public services.
- ¹⁶² Global Justice Now (2016) *Taxes on Trial: How trade deals threaten tax Justice*. Available at: <http://www.globaljustice.org.uk/sites/default/files/files/resources/taxes-on-trial-how-trade-deals-threaten-tax-justice-global-justice-now.pdf>. Accessed 07/07/18.
- ¹⁶³ *Cargill v. Mexico*, ICSID Case No. ARB(AF)/05/2 (2005). Available at: <http://investmentpolicyhub.unctad.org/ISDS/Details/204>. Accessed 19/09/18.
- ¹⁶⁴ Ibid.
- ¹⁶⁵ Op. Cit. Global Justice Now (2016) p. 2.
- ¹⁶⁶ Buenaventura, M and Miranda, C (2017) *The gender dimensions of the IMF's key fiscal policy advice on resource mobilisation in developing countries*. Available at: <http://www.brettonwoodsproject.org/2017/04/imf-gender-equality/>. Accessed 07/07/18.
- ¹⁶⁷ UNCTAD (2013) Investment Policy Hub. Available at: <http://investmentpolicyhub.unctad.org/IIA>. Accessed 28/06/18.
- ¹⁶⁸ Trade Justice Movement (2015) *Worried about your BITs? The case for reviewing UK investment protection provisions*. p. 9. Available at: <https://www.tjm.org.uk/resources/reports/worried-about-uk-bits-analysis-of-uk-bilateral-investment-treaties>. Accessed 28/06/18.
- ¹⁶⁹ Ibid. p. 10.
- ¹⁷⁰ Ibid. p. 10.
- ¹⁷¹ Traidcraft (2015) *International Investment Agreements Under Scrutiny: Bilateral Investment Treaties, EU Investment Policy and International Development*. Available at: https://www.tni.org/files/download/iias_report_feb_2015.pdf. Accessed 28/06/18.
- ¹⁷² Piero Foresti, Laura de Carli and Others v. The Republic of South Africa, ICSID Case No. ARB(AF)/07/01 (2007). Available at: <https://www.italaw.com/cases/446>. Accessed 28/06/18.
- ¹⁷³ UNCTAD (2013) *Investment Dispute Settlement Navigator*. Available at: <http://investmentpolicyhub.unctad.org/ISDS/FilterByAmounts> Accessed 28/06/18
- ¹⁷⁴ Ibid.
- ¹⁷⁵ Op.Cit. Trade Justice Movement (2015)

4. Recent developments in trade and gender: One step forward...?

i. WTO Joint Declaration on Trade and Women's Economic Empowerment

The Joint Declaration on Trade and Women's Economic Empowerment¹⁷⁶ was signed by 118 member countries at the WTO's 2017 Ministerial Conference. It asserts that trade agreements are "engines of economic growth"¹⁷⁷ and the implementation of "inclusive trade policies"¹⁷⁸ can improve gender equality and women's economic empowerment and contribute to poverty reduction. The Declaration calls for members to share best practice on the collection of gender-disaggregated data and gendered analyses of trade policy, to identify and remove the barriers to women's participation in trade, and to direct aid for trade towards achieving more gender-responsive trade. Members also committed to a series of seminars addressing issues that they identify as impacting on women's ability to participate in trade, including financial inclusion, public procurement, trade facilitation, the promotion of female entrepreneurs, and the inclusion of female-led businesses in value chains.¹⁷⁹

Governments have hailed the Declaration as a turning point in the international approach to gender and trade. The Declaration is certainly long overdue: the gendered-impacts of free trade policy have been widely identified and critiqued by feminist economists and activists over the last two decades, with consistent calls for policy reform.¹⁸⁰ There is also no doubt that measures such as the collection of gender-disaggregated data and improvements in gender analysis are important for the development of evidenced-based and gender-responsive trade policy. However, Governments "should already be collecting gender-disaggregated data and doing gender-impact analysis of all their policies – trade included – as they are required to do so under applicable international law, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, or under Sustainable Development Goal 5."¹⁸¹

More importantly, there is little evidence that feminist critiques have genuinely been taken into account when developing the Declaration.¹⁸² As discussed earlier in this report, the links between free trade, economic growth, gender equality, and poverty reduction remain highly contested.^{183 184} Despite this, the Declaration is underpinned by the assumption that free trade stimulates economic growth and that it can therefore be a tool for gender equality. There is no real engagement with the substance of trade policy, such as the kinds of issues outlined above, and no commitments to concrete action to address the trade rules that drive gender unequal outcomes.¹⁸⁵

The failure to critically engage with free trade rules stands in stark contrast to the proposed seminars on issues such as public procurement, financial inclusion and women's participation in value chains. The Declaration fails to include a gendered-analysis of these issues and no evidence has been provided as to how progressing these issues will lead to improvements in gender equality. Southern countries themselves have resisted the inclusion of these issues, many of which are known as the 'Singapore issues', within WTO negotiations, arguing that they serve only the interest of developed countries,¹⁸⁶ and would push further liberalisation and restrict Southern countries' policy space.¹⁸⁷ This raises questions as to whose agenda the Declaration is really designed to serve – with many feminist organisations arguing that it is a trojan horse that attempts to progress controversial negotiations under the guise of gender equality.¹⁸⁸

If governments are serious about redressing the impact that trade policy has on women they must move beyond conversations about data collection and gender-impact assessments, to genuinely engage with the evidence and implement reform of the content of trade agreements.

“Women were the first to show how WTO was institutionalised capitalist patriarchy on a world scale. We will not allow “women” to be used as a trojan horse to expand and extend a system that is destroying the lives and livelihoods of women and children, peasants and workers, and the planet.”

Vandana Shiva¹⁸⁹

The 2030 Agenda for Sustainable Development urged States “to refrain from promulgating and applying any unilateral economic, financial or trade measure not in accordance with international law and the Charter of the UN that impede the full achievement of economic and social development, particularly in developing countries.”

ii. Gender chapters in Free Trade Agreements

Governments are increasingly considering adding gender chapters to Free Trade Agreements (FTAs) and they are already included in the Chile-Uruguay, Canada-Chile and Canada-Israel FTAs. Gender chapters are generally structured to recognise, often in introductory text, relevant international agreements such as the 2030 Agenda for Sustainable Development and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).¹⁹¹ They identify areas of cooperation between partners, including the promotion of female entrepreneurship and knowledge sharing on gender-based analysis and data collection.¹⁹² However, the chapters do not provide any detail on how these activities will be implemented and no clear targets are set for what will be achieved. Further, the gender chapters are stand-alone chapters and there are few linkages with the provisions outlined within the other chapters of the agreement, this means that a gendered analysis remains absent from the agreements' core provisions. The result is that inclusion of a gender chapter does not necessarily bring a feminist analysis to the FTA as a whole: gender is reduced to an 'add-on' and the substance of the FTAs remains unchanged.

The experience of labour and sustainable development chapters in US and EU agreements demonstrates that separate chapters are not effective in preventing negative consequences.¹⁹³ For example, the 2011 EU-South Korea FTA was the first EU trade agreement to include a trade and sustainable development chapter. In the chapter, partners agreed to respect core labour standards and committed to the progressive ratification and implementation of ILO conventions. In spite of the labour rights commitments, labour rights violations have continued in South Korea, including a case in 2015 when “ten of thousands demonstrating on the streets of Seoul were met with excessive police violence, leading to mass arrests and casualties, as well as a further crackdown on unions and police raids on union offices.”¹⁹⁴ Nonetheless, a 5-year review of the implementation of the FTA by the European Commission in 2016 did not address these labour violations, instead concluding that the FTA “worked very well.”¹⁹⁵

“Rather than an afterthought, the objectives of labour, environmental protection and sustainable development need to be made the guiding principles of such agreements. Only this will ensure that these objectives determine the overall architecture, content and outcomes of an FTA. In practice, this means looking carefully at everything else in the agreement, not simply adding sections to it.”¹⁹⁶

PowerShift

The challenge with social chapters, such as gender, labour and sustainable development chapters, is that they are non-binding instruments and have little influence on the rest of the deal, particularly as compared with the binding and enforceable rules relating to investment protection. These chapters often include a 'soft-law' commitment to implement relevant international law and to work jointly to achieve social progress but the trade rules that can undermine progress in these areas remain unchallenged. Even when gender chapters are subject to dispute resolution mechanisms, as is the case for the Canada-Israel FTA, the failure to include quantifiable targets detailing how the FTA will contribute to improvements in women's rights or

gender equality means that there are no standards for a dispute resolution mechanism to uphold.¹⁹⁷ The chapters, therefore, fail to provide a framework for identifying and mitigating the negative impacts of FTAs and merely give a veneer of legitimacy to a gender-blind approach to trade policy.

Moving beyond the entrepreneurship myth

International action on trade and gender has been accompanied by a renewed focus on female entrepreneurship as a poverty reduction strategy. In 2015-16 6% of the female working-age population in Europe and Central Asia were classed as 'entrepreneurs', whilst the figure for Sub-Saharan Africa is 26%.¹⁹⁸ Because entrepreneurs make up only a small percentage of the female workforce, strategies that focus on improving female entrepreneurs' access to export markets and reducing barriers for female traders will only provide benefits for a limited proportion of the world's women. The evidence also suggests that there is a strong correlation between high rates of female entrepreneurship and the lack of alternative forms of decent employment.¹⁹⁹ The risk is that in an increasingly insecure global economy, a focus on 'female entrepreneurship' can actually mask women's economic insecurity, with women engaged in highly insecure informal work reconstituted as entrepreneurs, without any real change in their social or economic conditions.²⁰⁰

¹⁸² APWLD (2017) Press Release: 164 Women's Rights Groups call on Governments to Reject the WTO Declaration on "Women's Economic Empowerment", Available at: <http://apwld.org/press-release-164-womens-rights-groups-call-on-governments-to-reject-the-wto-declaration-on-womens-economic-empowerment/>. Accessed 28/06/18.

¹⁸³ Op. Cit. Chang, H (2002) p. 128.

¹⁸⁴ Op. Cit. World Economic Forum (2017) p. viii.

¹⁸⁵ APWLD (2017) Press Release: 164 Women's Rights Groups call on Governments to Reject the WTO Declaration on "Women's Economic Empowerment", Available at: <http://apwld.org/press-release-164-womens-rights-groups-call-on-governments-to-reject-the-wto-declaration-on-womens-economic-empowerment/>. Accessed 28/06/18.

¹⁸⁶ ICTSD (2003) *The Singapore Issues: Investment, Competition Policy, Transparency in Government Procurement and Trade Facilitation*. Available at: <https://www.ictsd.org/sites/default/files/downloads/2008/06/doha6-singaporeissues.pdf> Accessed 28/06/18

¹⁸⁷ Sengupta, R (2018) *Addressing Gender and Trade Issues in Trade Agreements: Creating more problems than solutions?* Available at: <https://dawnnet.org/publication/addressing-gender-and-trade-issues-in-trade-agreements-creating-more-problems-than-solutions/> Accessed 18/09/18.

¹⁸⁸ Op. Cit. APWLD (2017); See also: Rajagopal, B (2018).

¹⁸⁹ Ibid.

¹⁹⁰ United Nations (2015) *The 2030 Agenda for Sustainable Development, A/RES/70/1*, [paragraph 30]. Accessed 28/06/18

¹⁹¹ Convention on the Elimination of all Forms of Discrimination Against Women. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> Accessed 28/06/18

¹⁹² Op. Cit. Canada-Chile Free Trade Agreement.

¹⁹³ Smith, A and Campling, L (2017) *Anchoring Labour Rights More Effectively in EU Trade Agreements*. <https://www.qmul.ac.uk/media/news/items/hss/199018.html> Accessed 28/06/18

¹⁹⁴ Ibid. pp. 1-2.

¹⁹⁵ European Commission (2016) *Report from the Commission to the European Parliament and the Council: Annual Report on the implementation of the EU-Korea Free Trade Agreement*. p 12. Available at: <http://trade.ec.europa.eu/doclib/html/154699.htm>. Accessed 19/09/18.

¹⁹⁶ Op. Cit. PowerShift (2017) p. 6.

¹⁹⁷ Canada-Israel Free Trade Agreement. Available at: <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/israel/fta-ale/text-texte/13.aspx?lang=eng> Accessed 28/06/18

¹⁹⁸ Global Entrepreneurship Monitor (2017) *Women's Entrepreneurship 2016/2017 Report*. p. 18. Available: <http://gemconsortium.org/report/49860> Accessed 28/06/18

¹⁹⁹ Ibid, pp. 19-20.

²⁰⁰ WIDE+ (2017) *How to transform EU trade policy to protect women's rights*. p. 7. Available at: <https://wideplusnetwork.files.wordpress.com/2017/06/eu-trade-gender-policy-wide-final.pdf> Accessed 28/06/18

¹⁷⁶ Op. Cit, The World Trade Organisation (2017)

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ See for example UNCTAD (2004) *Trade and Gender: Opportunities for challenges for developing countries*. Available at: http://unctad.org/en/docs/edm20042_en.pdf accessed 18/09/2018; Van Staveren, I., Elson, D., Grown, C and Çağatay, N (2007) *The Feminist Economics of Trade* (edt), Routledge, New York; Third World Network (2013) *The Gender dynamics of trade and investment and the post-2015 development agenda: A developing country perspective*. Available at: <https://www.twn.my/title2/unsd/2013/unsd130903/gender-related%20impacts%20of%20int%27%20trade%20and%20investment.pdf> Accessed 18/09/18; WIDE+ (2017) *How to transform EU trade policy to protect women's rights*, available at: <https://wideplusnetwork.files.wordpress.com/2017/06/eu-trade-gender-policy-wide-final.pdf> accessed 18/09/18.

¹⁸¹ Rajagopal, B (2018) *Women and Trade at the WTO: Pink Herring, Trojan Horse or Historic Advance?* Available at: <https://www.cigionline.org/articles/women-and-trade-wto-pink-herring-trojan-horse-or-historic-advance> Accessed 28/06/18

5. A feminist approach to trade and investment – recommendations

This report has identified the broad impacts that trade rules agreements have on women, including the negative impacts that trade liberalisation can have on female workers in export sectors; the impact that trade and agriculture rules can have on female farmers; how trade and services rules can increase women's unpaid domestic and care work; how trade liberalisation can reduce funding for vital social services; and how ISDS mechanisms can undermine government policy space and restrict the implementation of gender-responsive policy reform.

It is only through reform of the trade rules that undermine women's rights that trade agreements will be compatible with the realisation of gender equality. Neither the WTO declaration nor the inclusion of gender chapters has brought a genuine feminist analysis into the development of trade rules. As such, neither interventions have led to the reform of trade rules that is required to address the myriad ways that the global trade and investment regime impacts women's rights and undermines gender inequality.

A feminist approach to trade and investment policy is necessary to redress the negative impacts of trade and investment rules on women. This will require a radical shift in the way governments approach trade policy. Recent developments in the UK's approaches to gender and trade signal a new awareness of the impacts trade rules can have on women. The government must now translate this into action through genuine policy reform, including by:

1. Making trade rules subordinate to and designed to support national and international commitments to achieving gender justice.

International trade is not, in and of itself, a panacea for the realisation of gender equality. A gender-responsive trade policy is only one element of a country's gender-just economic strategy. Trade policy reform must be accompanied by broad action at the national and international level to redress social and economic discrimination against women. However it is of critical importance that trade deals do not impinge on governments' policy space to implement their commitments on women's rights and

gender equality, particularly given that doing so will require significant reform and new initiatives in many countries. This will require the following actions:

- Trade and investment agreements must be crafted so that they do not prevent governments from implementing specific measures to increase gender equality, including the use of tariffs, quotas, subsidies, TRIPS flexibilities, local content requirements, technical standards and licensing and qualification requirements.
- Trade and investment policy reform must be supportive of the development of a gender-responsive industrial strategy so that trade is designed to strengthen local industries, develop decent employment for women and support social and economic development. Labour law must be explicitly carved out of any trade and investment deal.
- Trade agreements must contain binding language such that if there is a conflict between the provisions of trade and investment agreements and those of gender equality commitments, the latter takes precedence. This is particularly important in the case of disputes arising.
- Specific targets must be included in trade agreements to facilitate ongoing monitoring and evaluation. Evidence that a trade deal is undermining gender equality goals must trigger remedial action.

2. Undertaking full gender impact assessments in a timely manner and their findings must have legal weight in the development of mandates, agreements and implementation.

The government must carry out comprehensive ex ante and ex post gender impact assessments, together with human rights, environmental and sustainable development assessments, in order to identify any negative impacts of trade agreements.²⁰¹ Tools, such as those developed by UNCTAD, already exist to support governments to design gender-aware impact assessments.²⁰²

These assessments must:

- Be carried out as part of scoping work conducted before negotiations begin, alongside negotiations to test the likely impacts of elements of the deal and once a deal is in place to test actual impacts.
- Be published in a timely manner and their findings and recommendations must be acted upon: negative impacts must be mitigated, or when mitigation is not possible, relevant sections of the agreement must be excluded from negotiations or agreements.²⁰³

3. Excluding investor-state dispute settlement mechanisms and other special courts for investors from trade and investment agreements.

Trade and investment agreements must not include investor protection mechanisms such as ISDS and other special courts for investors, which encroach on government's policy space by enabling companies to restrict the development of regulation and standards. These provisions undermine national sovereignty and can prevent governments from developing targeted initiatives and regulation that are necessary to address social and economic discrimination against women and realise gender equality.

Trade and investment agreements must:

- Place human rights obligations on international investors. Provisions could include civil liability in the home and host state, which commits international investors to uphold human rights and environmental law.
- Be accompanied by accessible mechanisms for workers that enable them to access redress in the case of human rights violations.²⁰⁴ Mechanisms must take account of the particular barriers that women face in seeking redress, including financial, cultural and inter-sectional.
- Exclude ISDS. The UK should exclude this mechanism from all future trade negotiations and cancel its historical BITs, many of which are poorly worded and open to broad interpretation.
- Place the onus on companies to undertake due diligence ahead of making any international investment decision and to seek to resolve issues as they arise, potentially through mediation.

- Direct companies to sources of political risk insurance such as private providers or through institutions such as the World Bank's Multilateral Investment Guarantee Agency (MIGA).

4. Ensuring trade agreements do not increase women's unpaid domestic and care work burden by guaranteeing that governments are not compelled to liberalise, or prevented from renationalising, public services.

The provision of comprehensive public services is fundamental to the realisation of gender equality. Trade agreements must:

- Exclude provisions that compel governments, either in the UK or in partner countries, to liberalise public services. Public services should instead be protected through the inclusion of strong carve-out clauses.²⁰⁵
- Allow current or future governments to renationalise public services that have been privatised.
- Exclude clauses which deplete government revenues in a way that threatens public service provision.
- Have an analysis of the gendered impact of the inclusion of any public services as part of the overall impact assessment process.
- Exclude intellectual property provisions that make it harder for poor communities, and especially women, to access affordable medicines.

5. Ensuring trade agreements do not undermine small-scale farmers and food sovereignty in the UK and partner countries.

Food is a sensitive sector for countries North and South: most governments recognise at minimum that it is extremely risky to be in a situation of significant dependence on food imports. Trade deals must therefore:

- Allow governments the flexibility to develop their own food policy, including public stockholding, and for this to be responsive to changing circumstances such as climate change or global price fluctuations.

- Ensure that subsidies in the North do not undermine farmers in the global South and the UK must design its trade policy to ensure that there is no dumping of food.
- Exclude intellectual property rules on seeds from and refrain from pressuring countries to liberalise land markets.

6. Ensuring trade agreements are transparent and democratic.

If women's voices are to be heard in the development of this important economic policy area, the UK government must develop a transparent and democratic procedure for the negotiation and ratification of trade agreements. Without this, it will not be possible to ensure that the other measures are being effectively implemented. Such a procedure must:

- Give Parliament the right to scrutinise, amend and vote on trade agreements.
- Guarantee that women's rights organisations and other civil society groups, including in developing countries, have the right to input into and scrutinise trade policy and trade negotiations.²⁰⁶
- To ensure an informed debate and robust analysis of the likely impacts of trade agreements, ensure timely release of negotiating texts.

7. Making a commitment not to re-negotiate the EU Economic Partnership Agreements with developing countries. The UK should instead develop its unilateral preference scheme so that it is supportive of development, regional integration and human rights goals.

Economic Partnership Agreements have been extremely controversial and after more than 14 years of negotiation they remain heavily contested by partner countries.²⁰⁷ The UK government should not seek to re-negotiate the EPAs. Rather, it should develop its own unilateral preferencing scheme based on modern, objective developmental metrics rather than country classifications that impose arbitrary cut-off points. This would ensure that the UK's trade and development policy provided the best alignment with developing countries development objectives. The preference scheme should:

- Be sensitive to and support the regional integration aims of developing countries, for example by offering the same provisions to countries within a regional grouping.
- Allow countries to identify particular sectors for special treatment, rather than imposing an arbitrary percentage of liberalisation.
- Include provision for the transfer of technology and research to support industrial development, particularly where there could be specific benefits for women.

Conclusion

As the UK develops its independent trade policy over the coming years it has the capacity to rethink its approach to trade and investment policy, and to bring a genuinely feminist approach to its negotiations with partner countries at the bilateral, plurilateral and multilateral level. The UK government could show global leadership by ensuring its trade agreements are compatible with its gender equality obligations, support its gender equality goals, and enable the UK and partner countries to transition to a gender-just economy.

²⁰¹ Harrison, J., (2013) *Human Rights Impact Assessment: Potential and Challenges in the Development Context*. Available at: <https://www2.warwick.ac.uk/fac/soc/law/research/centres/chrp-old/projects/humanrightsimpactassessments/trade/>. Accessed 28/06/18

²⁰² UNCTAD (2016) *Implementing gender-aware ex ante evaluations to maximise the benefits of trade reforms for women*, Policy brief no. 51. Available at: http://unctad.org/en/PublicationsLibrary/presspb2016d7_en.pdf Accessed 28/06/18

²⁰³ Op. Cit. Trade Justice Movement (2017). pp. 5-6.

²⁰⁴ International Institute for Environment and Development (2016) *Rethinking investment treaties to advance human rights*. Available at: <http://pubs.iied.org/pdfs/17376IIED.pdf> Accessed 28/06/18

²⁰⁵ For more information on model carve-out clauses for public services see Krajewski, M (2016) *Model clauses for the exclusion of public services from trade and investment agreements*. Available at: <https://www.epsu.org/article/new-study-model-clauses-exclusion-public-services-trade-and-investment-agreements>. Accessed 28/06/18

²⁰⁶ Trade Justice Movement (2017) *Securing democracy in UK trade policy – Developing a transparent and democratic approach to trade agreements*. Available at: <https://www.tjm.org.uk/resources/reports/securing-democracy> Accessed 28/06/18

²⁰⁷ Hayduk, D. (9 July 2016) 'Tanzania backs out of EAC deal with EU over Brexit' *Daily Nation*. Available at: <https://www.nation.co.ke/news/Tanzania-backs-out-of-EAC-deal-with-EU-over-Brexit/1056-3287032-2bh4taz/index.html>; see also ITUC-Africa (2016) *Statement on EPAs*. Available at: https://www.ituc-africa.org/IMG/pdf/statement_epas.pdf both accessed 28/06/18

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