



Women Empowerment in International Economic Law: The EU Approach

ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA

RE-GLOBE

REFORMING THE GLOBAL ECONOMIC GOVERNANCE:
THE EU FOR SDGS IN INTERNATIONAL ECONOMIC LAW

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**Women Empowerment in International
Economic Law: The EU Approach**

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Introductory Remarks and Discussant
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Equality between men and women in EU Treaties

Treaty of Rome (1957) « *men and women shall receive equal pay for equal work*»

Treaty of Lisbon (2009)

Article 2, TEU «*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, (...) in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and **equality between women and men** prevail*»



Equality between men and women in EU Treaties

Article 3, TEU

(...)

*« 5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, **the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child**, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. »*

Article 8, TFEU « In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, **between men and women.** »



Equality between men and women in EU Treaties

Article 21, TEU - GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

1. The Union's action on the international **scene shall be guided by the principles which have inspired its own creation**, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

(...)

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;



Equality between men and women in EU Treaties

Article 21, TEU

d) **foster the sustainable economic, social and environmental development of developing countries**, with the primary aim of eradicating poverty;

Article 207 (1), TFEU

1. The **common commercial policy** shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy **shall be conducted in the context of the principles and objectives of the Union's external action.**



The EU Gender Equality Strategy 2020-2025:

The Gender Equality Strategy 2020-2025 identifies **women's economic empowerment** as a key field of external action. It states that the EU will promote **gender equality** in and through its trade policy, by gathering sex-disaggregated data to ensure that trade agreements address gender aspects and promoting gender equality through **engagement in the World Trade Organization (WTO)**.



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According to the Commission 'Gender' shall mean the **socially constructed roles, behaviours, activities and attributes** that a given society considers appropriate for women and men.



Women Empowerment

According to *Gender Equality Glossary* of the *UN Women Training Centre* «the empowerment of women and girls concerns their **gaining power and control over their own lives**. It involves awareness-raising, building self-confidence, expansion of choices, increased access to and control over resources and actions to transform the structures and institutions which reinforce and perpetuate gender discrimination and inequality. This implies that to be empowered they must not only have equal capabilities (such as education and health) and equal access to resources and opportunities (such as land and employment), but **they must also have the agency to use these rights, capabilities, resources and opportunities to make strategic choices and decisions** (such as is provided through leadership opportunities and participation in political institutions)» Available at: <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=search&hook=women+empowerment&fullsearch=1>



Multilateral Instruments Addressing Gender Equality

- 1975 to 1985: designated the *United Nations Decade for Women*;
- 1979: The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which entered into force on Sept. 3, 1981;
- 1995: The Beijing Declaration and Platform for Action;
- 1999: CEDAW's Optional Protocol, which *entered into force* Dec. 22, 2000.
- 2015: the UNGA adopted the 2030 Agenda and established at Sustainable Development Goal n.5 to *achieve gender equality and empower all women and girls*.





SDG n.5

5.a Undertake reforms to **give women equal rights to economic resources**, as well as **access to ownership and control over land and other forms of property, financial services, inheritance and natural resources**, in accordance with national laws:

5.b **Enhance the use of enabling technology**, in particular information and communications technology, to promote the empowerment of women

5.c **Adopt and strengthen sound policies** and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels



WTO Buenos Aires Declaration (2017)

On the occasion of the 11a WTO Ministerial Conference held in Buenos Aires in December 2017 was issued the *Joint Declaration on Trade and Women's Economic Empowerment* addressing the need to: promote female entrepreneurship and trade; identify barriers that limit women's participation in trade; promote financial inclusion as well as the access to trade financing and financial assistance for women traders; **enhance women entrepreneurs' participation in public procurement markets**; include women-led businesses, in particular Micro, Small and Medium-sized Enterprises (MSMEs) in value chains; address the impact of trade facilitation in providing equal access and opportunities for women entrepreneurs and inventory of information sources, their complementarity and the identification of data gaps.



WTO Buenos Aires Declaration (2017)

The signatories of the Buenos Aires Declaration agreed to collaborate:

- on making trade and development policies more gender-responsive, including by sharing experiences relating to policies and programmes aimed at encouraging women's participation in trade. by sharing best practices for conducting gender-based analysis of trade policies and for monitoring their effects.
- by sharing ways of collecting gender data and analysing gender-focused statistics related to trade.
- by working together in the WTO to remove barriers for women's economic empowerment and increase their participation in trade
- by ensuring that Aid for Trade supports efforts to analyse, design and implement more gender-responsive trade policies.



Outcome from the Buenos Aires Declaration

- Informal Working Group on Trade and Gender (established in 2020);
- WTO Gender Research Hub (2021), which serves as a knowledge-gathering platform where the latest research is shared;
- WTO Database on gender provisions in RTAs (2021);
- Trade&Gender 360° Strategy (2022), which is a capacity-building programme on trade and gender for government officials and women entrepreneurs;
- WTO BRIDGE (2022), a training programme aimed at bridging the knowledge gap for women entrepreneurs regarding trade rules;
- 1st WTO Congress on Trade and Gender (2022);
- 1st WTO Trade and Gender Summit (2023);
- The WTO and the ITC launches at the MC 13th the Women Exporters in the Digital Economy (WEIDE) Fund to help women-led businesses and women entrepreneurs in developing economies and least-developed countries adopt digital technologies and expand the online presence of their enterprises.



The impacts of globalization in gender equality:

“What impact has globalisation had on gender equality? (...) not everyone is benefiting from globalisation. Women, for whom existing constraints are most binding, are often left behind. **While the forces unleashed by globalisation have lifted some of the barriers to greater gender equality, public action is needed to lift these further.** In particular, public policy needs to address gender gaps in endowments [financing], agency [business], and access to economic opportunities.”

World Bank, 2011, 'Globalization's Impact on Gender Equality: What's happened and what's needed', in World Development Report 2012: Gender Equality, World Bank, Washington DC, ch. 6



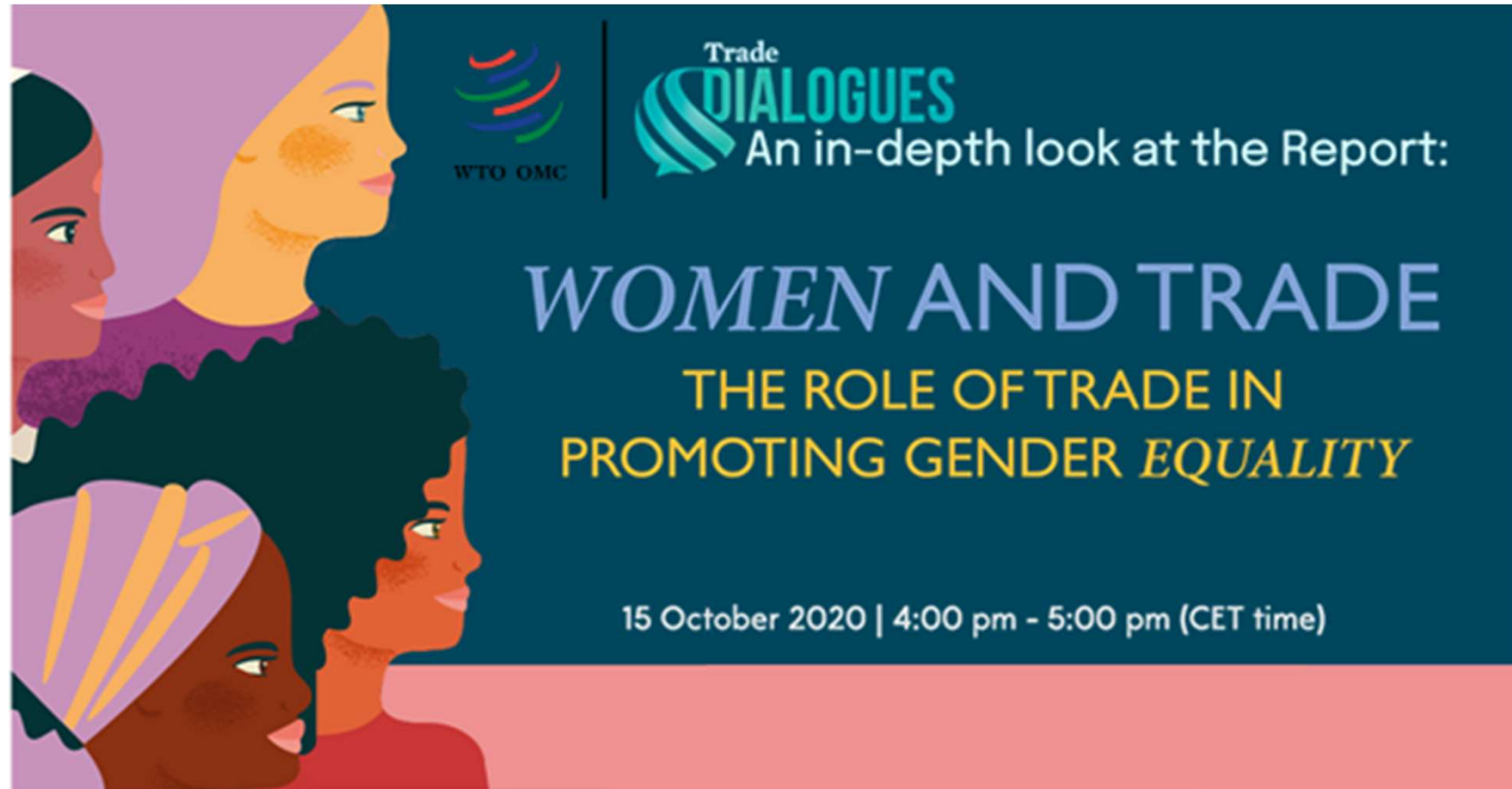
Principal barriers faced by women

Although overall free trade have contributed to gender equality, women still face many barriers to their participation in trade and commerce.

These barriers include regulatory and cultural biases, maternity obstacles, employment restrictions, lack of access to capital and productive resources, skills mismatch and inadequate market information and business networks.



Women and Trade Report (2020)



WTO OMC

Trade
DIALOGUES
An in-depth look at the Report:

WOMEN AND TRADE
THE ROLE OF TRADE IN
PROMOTING GENDER *EQUALITY*

15 October 2020 | 4:00 pm - 5:00 pm (CET time)



Women and Trade Report (2020):

Businesses involved in international trade employ more women. In developing countries, women make up 33 percent of the workforce in firms that engage in trade, compared with just 24 percent in non-exporting firms.

Trade also creates better jobs for women. Workers in both developed and emerging economies are almost 50 percent more likely to be employed in formal jobs if they work in sectors that trade more or that are more integrated into global value chains.

Countries that are more open to trade, as measured by the ratio of trade to gross domestic product, have higher levels of gender equality.



Women and Trade Report (2020):

Women tend to face disproportionately higher barriers to trade compared to men. In addition to discrimination, women face greater barriers to finance, higher costs of doing business, and more limited access to information and markets.

Because women hold a disproportionate share of lower-skill jobs, they can be particularly vulnerable to trade related shocks that directly expose female dominated industries to foreign competition or layoffs resulting from the introduction of new technologies. Women agricultural workers are especially vulnerable to imports because women are more likely to be engaged in less-productive, subsistence farming.



Women and Trade Report (2020): Women are more vulnerable in time of crisis

Due to mandatory lockdowns ordered by many governments during the pandemic:

- Sectors such as tourism and hospitality—in which women are particularly active as employers or employees—have been hit hard;
- A large number of women, could not telework, especially women working in sectors like light manufacturing or retail that require face-to-face interactions;
- Women faced much higher burden of childcare, because of school closure.



Tariff Barriers that most Affect Women

Tariffs on textiles, which are subject to higher tariffs than similar manufactured goods, strike a double blow against women as both the biggest consumers and the most frequent workers in the sector.





<https://www.youtube.com/watch?v=6R1nRyBPJ74>



New disciplines on good regulatory practice for services trade enter into force

The entry into force of new disciplines on services domestic regulation, announced at the 13th Ministerial Conference (MC13) in Abu Dhabi on 27 February, is expected to lower trade costs by over USD 125 billion worldwide. The announcement was made at an event attended by Director-General Ngozi Okonjo-Iweala, MC13 Chair Thani bin Ahmed Al Zayoudi and participating members in the Joint Initiative on Services Domestic Regulation, represented by Costa Rica's Foreign Trade Minister, Manuel Tovar, and the European Commission's Vice-President Valdis Dombrovskis.



Does the WTO provide for mechanisms to benefit women in international trade?

The Buenos Aires Declaration identifies two existing WTO instruments that can be used to make trade more inclusive: The Aid for Trade Initiative and the Trade Policy Review (TPR) Mechanism.

Aid for trade: Bilateral donors and beneficiaries have gradually and increasingly integrated gender into their Aid for Trade objectives. The 2019 Monitoring and Evaluation Exercise reveals that women's economic empowerment is a priority for donors and beneficiaries. Today, 84% of donors' strategies and 85% of beneficiaries of national or regional development strategies seek to promote women's economic empowerment.

TRP: Since 2015, the trade policies of 111 WTO Members have been subject to multilateral review through the TPRM. During this period, **70% of the WTO Members under review have integrated women's empowerment into their national or regional trade strategy**, mostly to enhance women's participation in the workforce. Some Members have explicitly acknowledged that closing the gender gap is especially important because of its correlation with per capita income, growth, development, and poverty reduction.



Does WTO provide for mechanisms to benefit women in international trade?

GATT 1994 article XX, “a” and “b”, and GATS Article XIV, “a”:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;

The term public morals has been interpreted by the Appellate Body to denote ‘standards of right and wrong conduct maintained by or on behalf of a community or nation’ (WTO Appellate Body Report, United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/AB/R, adopted 20 April 2005, para 296).

Hence, the protection of women’s rights as a broader part of human rights norms and principles codified in international legal instruments recognized by WTO Members squarely falls within this definition.

However, these exceptions have never been invoked by WTO members to benefit women.



Does WTO provide for mechanisms to benefit women in international trade?

Tariff preferences under the Enabling Clause: Tariff preferences in favour of imports from developing countries are also allowed under the Enabling Clause and the Appellate Body has made clear that such preferences can be conditioned on compliance with development related criteria (and women-related considerations are obviously development related) so long as similarly situated countries are treated similarly in the application of such development conditions.

The EU General Scheme of Preferences plus (GSP+) have included the CEDAW among the human rights convention, and the ILO Conventions n. 100 and 111 (Equal Remuneration and non-Discrimination on Employment and Occupation, respectively) as a condition to remove import duties.



Does WTO provide for mechanisms to benefit women in international trade?

TBT Agreement: The relevant areas under the TBT Agreement identified as conducive to women empowerment and gender equality are those that encourage **transparency of, and access to, information on technical regulations, standards, and conformity assessment procedures** and measures designed to **give women businesses privileged access to markets through certain technical regulation or international standards requirements.**

In 2021 the **International Organization for Standardization (ISO)** set out the definition of **women entrepreneurship** (IWA 34:2021), such as women-owned business and women-led business.



Does WTO provide for mechanisms to benefit women in international trade?

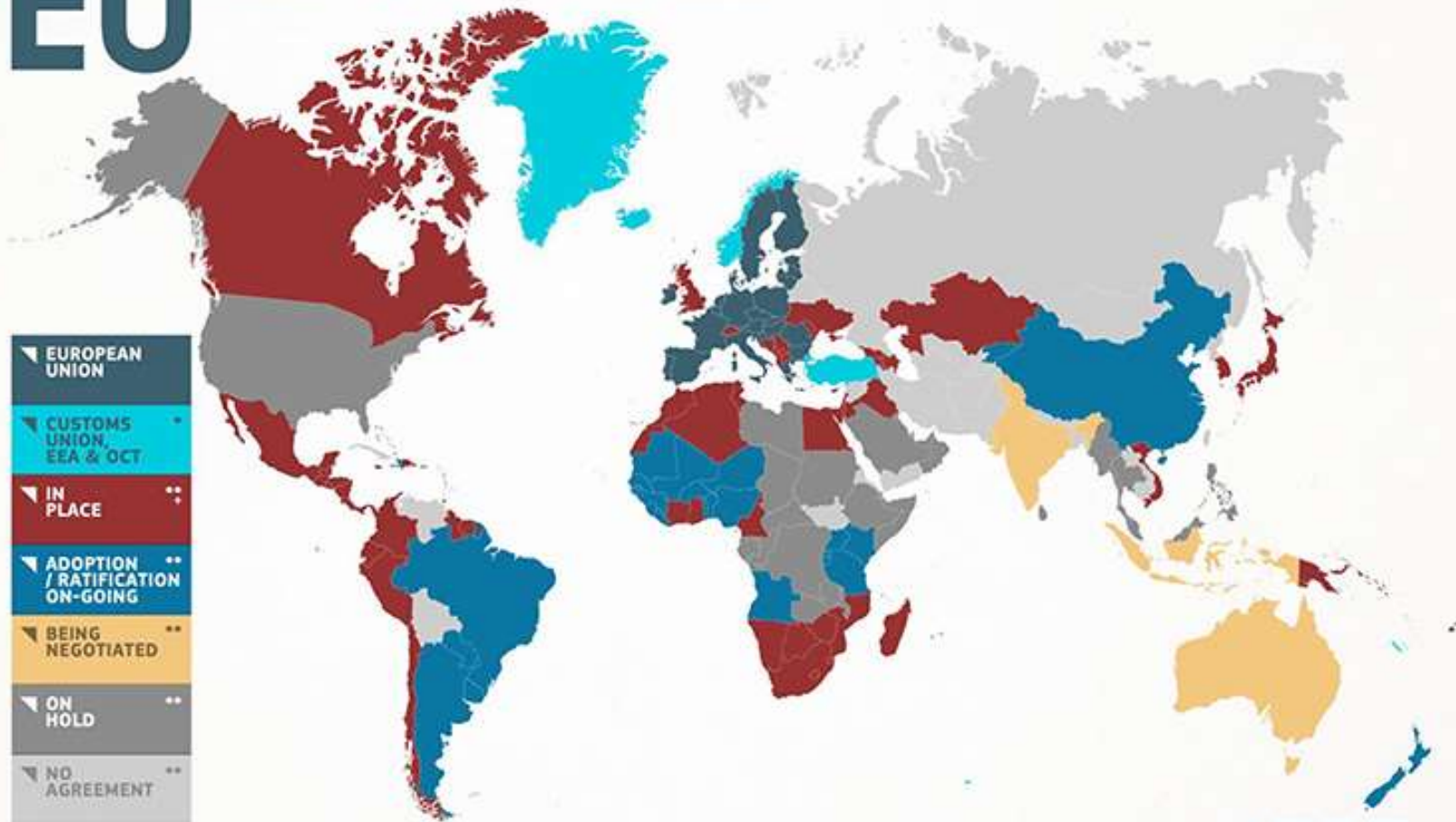
3.1 women-owned business (3.10) that is more than **50 % owned by one or more women, whose management (3.5) and control (3.7) lie with one or more women**, where a woman is a signatory of the business's legal documents and financial accounts, and which is operated independently from businesses that are not owned by women.

3.2 women-led business (3.10) that is at least **25 % owned by one or more women, whose management (3.5) and control (3.7) lie with one or more women**, which has at least one third of the board of directors comprised of women, where a board exists, where a woman is a signatory of the business's legal documents and financial accounts, and which is operated independently from businesses that are neither led nor owned by women.



EU trade agreements 2023

Updated 01/02/2023



* European Economic Area (EEA) / Overseas Countries and Territories (OCT)
** Free Trade Agreement (FTA), Deep and Comprehensive Free Trade Agreement (DCFTA), Investment Agreement, Enhanced Partnership and Cooperation Agreement (EPCA), Partnership and Co-operation Agreement with preferential element (PCA)
= The updated agreements with Tunisia, and Eastern and Southern Africa are currently being updated; the updated agreements with Mexico and Chile are under ratification. The DCFTA with Georgia does not apply in South Ossetia and Abkhazia.



- **South Korea** [2011 (provisionally), 2015 (fully)]
- **CETA** [2017 (provisionally)]
- **Japan** [2019]
- **Singapore** [2019]
- **Vietnam** [2020]
- **United Kingdom** [since 2021]

EU-South Korea Art. 13.4.2 “recognising full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation and to promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, **women** and young people.”

Annex 13: (...) **cooperation on trade-related aspects of the ILO Decent Work Agenda**, including on the interlinkages between trade and full and productive employment, labour market adjustment, core labour standards, labour statistics, human resources development and life-long learning, social protection and social inclusion, social dialogue and **gender equality**.”



European Parliament resolution of 13 March 2018 on gender equality in EU trade agreements (2017/2015(INI))

“26. Calls on the Commission and the Council to promote, in trade agreements, the commitment to adopt, maintain and implement gender equality laws, regulations and policies effectively, **including the necessary active measures to promote gender equality and women empowerment at all levels;**

27. Welcomes the commitment by the Commission to ensure that the trade negotiations to modernise the current EU-Chile Association Agreement will include, for the first time in the EU, a specific chapter on gender and trade; stresses the need to be informed of the content of this chapter; **calls on the Commission and the Council to promote and support the inclusion of a specific gender chapter in EU trade and investment agreements, building on existing examples such as the Chile-Uruguay and the Chile-Canada FTAs,** and to ensure that it specifically foresees the commitment to promote gender equality and women empowerment; (...)”



The European Parliament has asked for gender mainstreaming in EU trade agreements to be reinforced, calling for gender issues to be taken into account throughout the texts and during negotiations. Parliament is particularly keen for all trade agreements to include dedicated chapters on gender equality and women's empowerment, with binding and enforceable gender provisions and provisions for proper monitoring and compliance. It has also called for comprehensive ex-ante and ex-post gender analysis of potential and actual impacts, and for gender-balanced representation and gender expertise on trade negotiating teams and the bodies established to advise on, monitor and assess the implementation of trade agreements.



A paradigm shift in gender provisions in EU FTAs and IIAs

EU-New Zealand FTA (negotiations concluded in June 2022)

EU-Chile FTA (negotiations concluded in December 2022)

EU-Kenia FTA (negotiations concluded in June 2023)

EU-Angola Sustainable Investment Facilitation Agreement (SIFA)
(negotiations concluded in December 2022)



EU-New Zealand (negotiations concluded in June 2022)

Specific article on *Trade and Gender Equality* (19.4) inside the TSD Chapter that includes:

- General provisions recognizing the need to advance the 5th SDG and WTO Buenos Aires Declaration.
- International Commitments with the CEDAW and “the ILO Conventions related to gender equality and the elimination of discrimination in respect of employment and occupation.”
- Cooperation Activities on trade-related aspects of gender equality including activities for women workers, businesswomen and entrepreneurs: promotion of women's participation, leadership and education, as STEMs and e-commerce; Promotion of financial inclusion, financial literacy and access to trade finance and education.
- Right to regulate on gender equality (19.4.5)
- TSD Committee - entitled to monitor the implementation of the TSD Chapter.
- TSD chapter subject to the main DSM, but excluded from the possibility of temporary measures in the event of non-compliance with the Panel's report.



EU-Chile (negotiations concluded in December 2022)

- Specific stand-alone chapter on *Trade and Gender Equality* (Chapter 27)
- General provisions reaffirming commitments with the 5th SDG, WTO Buenos Aires Declaration and Beijing Declaration and Platform of Action.
- International Commitments with the CEDAW and “the ILO Conventions related to gender equality and the elimination of discrimination in respect of employment and occupation.”
- specific clause to not weaken or reduce the protection granted under their respective laws aimed at ensuring gender equality or equal opportunities for women and men in order to encourage trade or investment. (“the parties shall not”)



EU-Chile (negotiations concluded in December 2022)

Cooperation Activities on trade-related aspects of gender equality including activities for women mothers, workers, businesswomen and entrepreneurs: promotion of women's participation, leadership and education, as STEAMs and e-commerce; Promotion of financial inclusion, financial literacy and access to trade finance and education (more extensive list when compared with the EU-New Zealand).

- Right to regulate. Each Party “shall strive to improve” law and policies on gender equality, DSM of the TSD chapter → Panel of Experts → Recommendations
- TSD Committee - entitled to monitor the implementation of the TSD Chapter.



EU-Kenia (negotiations concluded in June 2023)

Specific article on *Trade and Gender Equality* (Art. 4) inside the TSD Chapter (Annex 5) that includes:

- General provisions recognizing the need to advance the 5th SDG and WTO Buenos Aires Declaration.
- International Commitments with the CEDAW and “the ILO Conventions related to gender equality and the elimination of discrimination in respect of employment and occupation.”
- No detailed cooperation activities: “*designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement.*”
- Right to regulate: “*Each Party shall strive to improve such law and policies, without prejudice to the right of each Party to establish its own scope and levels of protection for equal opportunities for men and women.*”
- TSD chapter fully subject to the main DSM, and so the gender-related provisions are not excluded from the possibility of temporary measures in the event of non-compliance with the Panel's report.



EU-Angola Sustainable Investment Facilitation Agreement (SIFA)

Investment and gender equality

1. The Parties recognise that inclusive investment policies can contribute to advancing women's economic empowerment and gender equality, in line with Sustainable Development Goal 5 of the UN2030 Agenda. They acknowledge the important contribution by women to economic growth through their participation in economic activity, including investment. The Parties underline their intention to implement this Agreement in a manner that promotes and enhances gender equality.
2. The Parties shall work together bilaterally and in relevant fora, as appropriate, to strengthen their cooperation on investment-related aspects of gender equality policies and measures, including activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement.



Core Conventions that shol

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which entered into force on Sept. 3, 1981;

CEDAW's Optional Protocol, which *entered into force* Dec. 22, 2000.

Equal Remuneration Convention (No. 100)

Elimination of Discrimination on Employment and Occupation Convention (No. 111)

Workers with Family Responsibilities Convention (No. 156)

Maternity Protection Convention (No. 183)

Elimination of violence and harassment in the world of work Convention (No. 190)



Enforceability of Gender Provisions in FTAs: a Pandora's Box

Although the increasingly inclusion of gender-related provisions in EU FTAs, there are no standard obligations through prescriptive commands to be fulfilled by the contracting parties and there is no model of dispute settlement mechanism to issue binding decisions in case of non-compliance with gender provisions.



Enforceability of Gender Provisions in FTAs: a Pandora's Box

In summary there are three different approaches: a **cooperative** one, that encourages the parties to solve any dispute arising from the gender provisions through diplomatic means; a **sanction-based** one under which the matter is solved through binding adjudication of a panel of experts or arbitral tribunal; and a **mixed procedure** that firstly attempt to amicably solve the matter through State-to State consultations, and whether consultations fail, the question is submitted to a panel of experts which issues recommendations to be followed by the parties through their *best efforts* but without being backed by any sanction in case of non-compliance.



Current Challenges and Perspectives:

- Standardization of gender-related provisions in FTAs and IIAs;
- Commitment with all fundamental Conventions on Women's Human and Labour Rights;
- Collection of sex-disaggregated data and gender statistics to better address trade barriers faced by women;
- Better participation of civil society and the representation of women in international trade policy bodies, as through the Trade and Gender Committee;
- Consider high tariffs faced by women's consumers;
- Cooperate on enhancing women's access to financing with concrete policies;
- Address specific barriers faced by for women's entrepreneurs, especially SMEs, using ISO Standards;
- Define a model of DSM to solve conflicts arising from gender-related provisions to prevent discriminatory treatment among trading partners;
- Foster enhanced cooperation to effectively promote women's empowerment, boosting trade liberalization for a more inclusive and sustainable international trade **that leaves no women behind.**





“ Women have always been the strong ones of the world ”

- Coco Chanel

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Thank you very much for your attention!
Let's Re-Globe!

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