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**WOMEN'S EMPOWERMENT  
THROUGH INTERNATIONAL TRADE:  
CURRENT CHALLENGES AND PERSPECTIVES**

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# ARTICOLI

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## WOMEN'S EMPOWERMENT THROUGH INTERNATIONAL TRADE: CURRENT CHALLENGES AND PERSPECTIVES\*

*"Women have always been the strong ones of the World".*

Gabrielle Chanel (1883-1971)

**Summary:** **I.** *Work not Only Ennobles Women but can set Them Free* - **II.** *Gender Equality for Who?* - **III.** *Multilateral Instruments for Gender Equality and Women's Empowerment* - **1.** *The UN Initiatives* - **2.** *The WTO's Awakening for Women's Empowerment* - **IV.** *Gender Provisions in Free Trade Agreements* - **1.** *Enforceability of gender provisions in FTAs: a Pandora's box* - **V.** *Conclusion.*

### **I. Work not Only Ennobles Women but can set Them Free**

For millennia the strength of women has been constrained, as they were deprived of their fundamental right to self-determination. In ancient Rome, all free Roman women - not enslaved - were under one of the following three types of legal authority: *patria potestas* ("paternal power")<sup>1</sup>, *manus* (subordination to a husband's legal power), or *tutela* ("guardianship"). Even today in some cultures women enjoy less freedom than women used to have in Ancient Rome, as in some countries they are deprived of basic fundamental rights, impaired to study and to work, and completely

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<sup>1</sup> GRUBBS, JUDITH EVANS. *Women and the Law in the Roman Empire: A sourcebook on Marriage, Divorce and Widowhood*. Routledge, 2002.

subordinated to the authority of a man. On the other hand, across with the liberal ideas that opened the doors to modern Democracy, a social revolution has gradually taken place also in the field of women's rights.

From the Industrial Revolution, lower class women began to work outside the home for economic necessity. However, there was a biased view that women from the middle class or above should never lower themselves to go to work - work only ennobled men, but no women<sup>2</sup>. Taking for granted the behaviour of the average mammals in the evolution of the species, according to which *females were more likely to provide parental care than were males*<sup>3</sup>, men used to work outside the home and be the breadwinners of the family, and women were expected to take care of the children and develop unpaid domestic tasks. In 1893, the French sociologist Émile Durkheim, in his doctoral thesis *De la Division du Travail Social*<sup>4</sup>, recognised that the sexual differences between men and women had given rise to the conjugal solidarity<sup>5</sup>, on the basis of which men and women specialised their activities for the good of the family. The conjugal solidarity enabled the evolution of the division of social labor through organic solidarity that ultimately allowed the development of modern diversified societies. However, the established model of conjugal solidarity proved to be a cage around many women who did not want to limit their existence to domestic affairs<sup>6</sup>, but were willing to study, develop activities outside home and participate actively in the society. Indeed, Mary Wollstonecraft<sup>7</sup> (1759-1797),

<sup>2</sup> The proverb "work ennobles man" has been commonly attributed to the Scientist Charles Darwin.

<sup>3</sup> "Classic theory suggests that females are more likely to provide parental care than are males, as they invest disproportionately more in gametes or zygotes (Trivers 1972), which decreases residual reproductive value and makes it beneficial for them to invest more heavily into current versus future reproduction (Sargent and Gross 1985; Coleman and Gross 1991; Gross 2005)". KLUG HOPE, ET AL. "The Origin of Parental Care in Relation to Male and Female Life History. Ecology and Evolution, vol. 3, no. 4, 2013 pp. 779-791. doi: 10.1002/ece3.493. Epub 2013 Feb 20. PMID: 23610624; PMCID: PMC3631394.

<sup>4</sup> DURKHEIM, EMILE. *De La Division Du Travail Social*. 2002. Web.

<sup>5</sup> "Indeed, the man and the woman isolated from each other are only different parts of the same concrete whole which they reform by uniting. In other words, it is the division of labor sexual which is the source of conjugal solidarity, and that is why psychologists have rightly remarked that the separation of the sexes had been a capital event in the evolution of feelings; it is that it has made possible perhaps the strongest of all disinterested inclinations. There is more. The division of sexual labor is susceptible of more or less; it can either relate only to the sexual organs and a few secondary characteristics which depend on them, or else, on the contrary, extend to all the organic and social functions. But we can see in history that it has developed in exactly the same direction and in the same manner as conjugal solidarity." DURKHEIM, EMILE. *De La Division Du Travail Social*. 2002. Web, Livre I, part II, p. 62 (free translation from the original French version by the author).

<sup>6</sup> "Durkheim accepted the 'male breadwinner' stereotype thus generating a female 'dependency' model of family and inter-personal relationships." POWELL, JASON L. in *Feminism*. Nova Science Publishers, Inc., 2013, p. 09.

<sup>7</sup> WOLLSTONECRAFT, MARY. *Vindication of the Rights of Women with Strictures on Political and Moral Subjects*. The Floating Press, 2010.

considered the mother of earliest feminism, while not denying the importance of women in domestic affairs, claimed that *only when woman and man are equally free, and woman and man are equally dutiful in exercise of their responsibilities to family and state, can there be true freedom*<sup>8</sup>.

A revolution in roles of man and women in the division of social labour would come after the Second World War, as the conflict demanded that millions of men went to the battlefield to fight and die, calling women to leave their traditional domestic roles to assume job positions traditionally occupied by men. From then onwards, the position of women in society would never be the same. In fact, the call for women to work was meant to be temporary, and they were expected to return to their domestic roles when the war ended. Some women agreed with that, even though they had already acquired new skills and more confidence. Women who chose to stay in the labour market were usually demoted to lower positions, situation that fuelled the claim for equal rights and equal opportunities in the workplace, as they wanted to develop an economic activity to become masters of their own destiny. In the late 1960s and 1970s the feminist movement gained strength, demanding equality in the workplace as well as women's self-determination over their bodies and their lives<sup>9</sup>. For the sake of democracy, several trends have been developed within the feminist movement, such as the liberal, cultural and theories, comprising progressive and conservative tendencies, ranging from a more Marxist-materialist vision of the world to theories that value individualist, transcendental and traditional values. Apart from their divergences over some critical matters as abortion<sup>10</sup> and gender identity<sup>11</sup>, they both share the objective to reach women's self-determination through economic, social and political empowerment.

<sup>8</sup> Mary Wollstonecraft paraphrased by POWELL, JASON L. in *Feminism*. Nova Science Publishers, Inc., 2013, p. 07.

<sup>9</sup> Women's claim for self-determination implied they should have the power to decide their role in the family, in society, their political and economic choices, their professional, sexual and marital choices, and whether or not to become mothers.

<sup>10</sup> In relation to the right to unconditioned abortion there is no unanimity whether the matter is limited to women's right of choice over their body, of whether it also comprises the recognition of the right of the unborn to life, which has caused hard divergent opinions and interpretations among women and over Constitutional Courts around the World. On 24 June 2022 the US Supreme Court decided that: "The Constitution does not confer a right to abortion; Roe and Casey are overruled; and the authority to regulate abortion is returned to the people and their elected representatives". Available at: [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf). Accessed 20.02.2023.

<sup>11</sup> "Gender identity refers to a person's innate, deeply felt internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth". UN Women Training Center eLearning Campus. *Gender Equality Glossary*. Available at: <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder=&fullsearch=0&page=-1>. Accessed 20.02.2023.

In politics, although women are still far from having the majority of public mandates, they have conquered leading decision-making positions. Just to mention few ones, Sirimavo Bandaranaike became the world's first female Prime Minister elected on 21 July 1960 in Sri Lanka, then the Dominion of Ceylon. In India, Indira Gandhi served as Prime Minister from 1966 to 1977 and from 1980 until 1984. In UK, Margaret Thatcher, the unforgettable "Iron Lady" was the longest continuously British Prime Minister (from 1979 to 1990) since 1827. In 1988, Benazir Bhutto was elected the first female of a Muslim majority country, Pakistan. In Germany, Angela Merkel was the first woman to hold the German Chancellor office from 2005 to 2021. More recently within the G7, Kamala Harris became the first woman to occupy the post of vice-president of the USA and Giorgia Meloni was elected the first women to be the Prime Minister of Italy. These are just few examples of empowered women that despite their divergent political positions and motherhood choices, reached leading political positions. Although the progress in women's participation in politics, according to the *UN Women*, gender equality in the highest positions of power will not be reached before 130 years<sup>12</sup>.

Women have also reached high offices in important companies and leading economic positions. According to the Global Gender Gap Index 2022<sup>13</sup> women's share of senior and leadership roles has steadily increased globally over the past five years (2017-2022). In 2022, global gender parity in senior and leadership roles will reach its highest gender parity score ever. (42.7%)<sup>14</sup>, but their representation in top business position is still far behind men. According to the World Economic Forum, although the gender gap in education attainment is barely closed<sup>15</sup>, the gender gap in

<sup>12</sup> UN WOMEN. Facts and figures: *Women's leadership and political participation*. Available at: [https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures#\\_Executive\\_positions](https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures#_Executive_positions). Accessed 20.02.2023.

<sup>13</sup> The Global Gender Gap Index was first introduced by the World Economic Forum in 2006 to benchmark progress towards gender parity and compare countries' gender gaps across four dimensions: economic opportunities, education, health and political leadership. The WORLD ECONOMIC FORUM. *Global Gender GAP Report 2022*, July 2022. Available at: <https://www.weforum.org/reports/global-gender-gap-report-2022/>. Accessed 15.02.2023.

<sup>14</sup> "There is significant variation across industries in the rates of hiring women into leadership. On average, more women were hired into leadership in industries where women were already highly represented. Similarly, more men were hired into leadership positions in industries over-represented by men. Among the industries that hired the highest share of women into leadership positions in 2021 are Non-governmental and Membership Organizations (54%), Education (49%), Government and Public Sector (46%), Personal Services and Well-being (46%), Healthcare and Care Services (46%), and Media and Communications (46%)" Idem, *Gender gaps in Leadership*, p. 36.

<sup>15</sup> Ibid, p. 12. "On average, high-income and middle-income economies have an Educational Attainment parity score of 99%, compared to 95% of lower-middle income and 81% of low-income economies".

economic participation and opportunities remains wide, revealing that even highly educated women do not have the same opportunities as men in the labour market. The data also reveals that higher-income economies have a lower levels of gender gaps, with North America leading all regions, followed closely by Europe<sup>16</sup>. In fact, men still hold most of the world's economic power, especially in high corporate positions, top-paid offices and high-tech companies<sup>17</sup>. The biggest tech giants that rule the world today - Microsoft, Alphabet, Amazon, Meta and Apple - belong to men, despite the seemingly feminine acronym "MAAMA". Furthermore, male dominance of economic power is evident among the 2,668 billionaires on *2022 Forbes List*, where only 327 are women and 226 inherited their wealth from men<sup>18</sup>.

Actually, the vast majority of women, at least in Western liberal democracies, although formally enjoy the same fundamental freedoms and rights guaranteed to men, being able to work and to participate in the political process, as voters or candidates, they have not yet achieved the *de facto* freedom that only economic independence can provide. Indeed, economic independence is an essential condition of self-determination for all human beings. As the Universal Declaration of Human Rights states - "*all human beings are born free and equal in dignity and rights*"<sup>19</sup>, but their power of self-determination is directly dependent on their economic autonomy. If a person is dependent on another person or on an institution, such as the state in order to survive, he or she cannot be truly free. However, it is undeniable that the possibility of achieving economic independence has been much more difficult for women than for men. In addition to the disproportionate burden of unpaid domestic work on women, they are also the most prejudiced in labour relations and face more difficulties as entrepreneurs. This hampers their economic autonomy and their ability to take up

<sup>16</sup> "North America leads all regions, having closed 76.9% of its gender gap. It is closely followed by Europe, which has closed 76.6% of its gap. In third place is Latin America and the Caribbean, having bridged 72.6% of its gender gap. Central Asia, along with East Asia and the Pacific, are towards the middle, at 69.1% and 69%, respectively, progress towards parity. In sixth spot, Sub-Saharan Africa stands at 67.9%. Further down in the ranking and trailing over four percentage points behind Sub-Saharan Africa, is the Middle East and North Africa, which has closed 63.4% of its gender gap. Lastly, South Asia reports the lowest performance, having closed 62.4% of its gender gap in 2022". Ibid, p. 06.

<sup>17</sup> POWELL, JASON L. *Feminism*. Nova Science Publishers, Inc., 2013, p. 03.

<sup>18</sup> FORBES. "The Top Richest Women in 2022". Available at: <https://www.forbes.com/sites/rachelsandler/2022/04/05/the-top-richest-women-in-the-world-2022/?sh=67f4c765446a>. Accessed 15.02.2023.

<sup>19</sup> Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

positions of leadership in society<sup>20</sup>. According to the International Labor Organization (ILO)<sup>21</sup>, women remain under-represented in high-paying jobs and the gender pay gap has changed little in recent years. Moreover, the consequences of the COVID-19 crisis have fallen more heavily on women<sup>22</sup>, widening the gender pay gap in employment, particularly in low- and middle-income countries<sup>23</sup>. As a result of the underpayment, women are also deprived of savings that could be turned into investments and that could support their entrepreneurial activities.

Furthermore, women have faced discrimination and inequality as employees, self-employed workers and entrepreneurs in a society that is culturally, economically and politically dominated by men. This inequality has been the subject of several social movements demanding that women be granted the same civil, political and economic rights as men. In fact, equality between men and women is a necessary condition for achieving women's empowerment, a concept based on a socio-political ideal aimed at realising women's full potential and freedom of choice both inside and outside home. However, women's empowerment only can be achieved *when advancement in the conditions of women is accompanied by their ability to influence the direction of social change gained through equal opportunities in economic, social and political spheres of life*<sup>24</sup>. From an economic point of view, the aim of women's empowerment is not and should not be to create a kind of competition between the sexes, nor to close "gender gaps" achieving a perfect mathematical proportionality between men and women in all professions and economic activities. But to But to effectively guarantee the means for women to have the same opportunities as men to develop their personal and individual skills as they wish, being able to bake the cake of economic power with men in a cooperative

<sup>20</sup> "Money is power. As noted by Virginia Woolf, economic independence is a necessary condition of self-determination. Yet economic power is precisely what most women lack. And this condition is essentially insured in virtually all economic systems today, which reflect an organization of family and work that perpetuates the economic disadvantage and consequent subordination of women". SMITH, PATRICIA. Four Themes in Feminist Legal Theory: Difference, Dominance, Domesticity, and Denial. in EDMUNDSON, WILLIAM A., AND MARTIN P. GOLDING. *The Blackwell Guide to the Philosophy of Law and Legal Theory*. Blackwell, 2005, p. 98.

<sup>21</sup> ILO, Global Wage Report 2022-23, November 2022. Available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_862569.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_862569.pdf). Last Access 27.01.2023.

<sup>22</sup> According to the *WEF Gender Gap Report 2022*, as crises aggravates gender parity does not recover, and it is expected to take another 132 years to close the global gender gap. World Economic Forum. *Global Gender Gap Report, 2022*. July, 2022. Available at: <https://www.weforum.org/reports/global-gender-gap-report-2022/>.

<sup>23</sup> Global Wage Report 2022-23. The impact of inflation and COVID-19 on wages and purchasing power, p. 119.

<sup>24</sup> DHARAMKAR, KARTHIK. *Textbook on Gender and Women Empowerment*. Astral International Pvt Ltd, 2021, p. 100.



way, enjoying their fair share. To this end, substantive equality<sup>25</sup> between men and men is a *conditio sine qua non*.

## II. Gender Equality for Who?

Before entering into the legal framework of international instruments designed to promote material equality between men and women, which ultimately enables women's empowerment, it is necessary, for methodological purposes, to understand and define the legal subjects to whom the current legal instruments refer, since during women's wrestling for equality, emerged the concept of gender<sup>26</sup>. For this purpose, its necessary to understand the differences constructed over the concepts of "sex" and "gender"<sup>27</sup>, since the current legal instruments that advocate women's rights call for 'gender' equality rather than 'sex' equality.

Sex is a concept based on a physical and biological reality - *we are born male or female, it is men who impregnate and women who conceive, give birth and breastfeed the human baby*<sup>28</sup>. Hence sex refers to biological differences between males and females expressed through gonads, sexual organs, chromosomes, and hormones. On the other hand, gender is a social construction based on behavioural patterns and social, cultural, psychological attitudes having sex as a substrate. According to the *UN Gender Equality Glossary*: "*gender refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and*

<sup>25</sup> *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, edited by MARSHA A. FREEMAN, ET AL. Oxford University Press, Incorporated, 2012. *ProQuest Ebook Central*, p. 166.

<sup>26</sup> John Money (1921-2006) is considered the first theorist to introduce the term gender: "*Its first appearance in print was in the paper (Money, 1955) on "Hermaphroditism, gender and precocity in hyperadrenocorticism," published in the subsequently discontinued Bulletin of the Johns Hopkins hospital. In this paper the word gender made its first appearance in English as a human attribute, but it was not simply a synonym of sex. With specific reference to the genital birth defect of hermaphroditism, it signified the overall degree of masculinity and/or femininity that is privately experienced and publicly manifested in infancy, childhood and adulthood, and that usually though not invariably correlates with the anatomy of the organs or procreation.*" MONEY, JOHN. *Gendermaps: Social Constructionism, Feminism and Sexosophical History*. Bloomsbury Academic Collections. Gender Studies. 2020, p. 17/18. See TERRY, GOLDIE. *The Man who Invented Gender: Engaging the Ideas of John Money*. UBC Press, 2014.

<sup>27</sup> See Council of Europe, *Sex and Gender*. Available at: <https://www.coe.int/en/web/gender-matters/sex-and-gender#20>. Last Access 25.02.2023.

<sup>28</sup> SAXENA, KANCHAN. "Women's Portrait Through Gender Lenses". In RODRIGUEZ, EUNICE, AND BARBARA WEJNERT. *Enabling Gender Equality: Future Generations of the Global World*. Bingley, Emerald Group Publishing Limited. Vol. 00023, 2015, p. 31.

women<sup>29</sup>”, and so it varies from society to society and from time to time in a continuous process of socialization.

The protection of women in the early feminist movement and first international instruments to set the principle of non-discrimination was ultimately linked to the concept of sex<sup>30</sup>, as the females, due to their biological functions<sup>31</sup>, and therefore physical, hormonal and psychological conditions, used to be limited to domestic tasks and non-dangerous activities in a patriarchal model of society<sup>32</sup>: “*Although the biological differences between men and women cannot be denied, women are as efficient as men in all the spheres of life except muscle power. They are not born by nature inferior to men in reason, intellect, talent or in any other respect. In fact, they are made weak by religious, cultural, socio-economic and other conditions prevailing in the patriarchal society throughout the globe.*”<sup>33</sup>.

Accordingly, the first international instruments containing rules of non-discrimination between human beings employed the term “sex”, as is written in Art. 1 (3) of the UN Charter<sup>34</sup> when stating “*in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*” and in Article 2 of the Universal Declaration of Human Rights (UDHR): “*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*”<sup>35</sup>.

The deconstruction of the identification of human beings by sex, and the separation of sex and gender began gradually from the 1960s<sup>36</sup>, supported by

<sup>29</sup> UN WOMEN TRAINING CENTER ELEARNING CAMPUS. *Gender Equality Glossary*. Available at: <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder=&fullsearch=0&page=-1>. Accessed 20.02.2023.

<sup>30</sup> Biological studies show that sex is a fact of human biology; we are born male or female, it is men who impregnate and women who conceive, give birth and breastfeed the human baby. On this biological difference, we construct an edifice of social attitudes and assumptions, behaviours and activities these are our gender roles and identities.

<sup>31</sup> “*Throughout history, in all stages and types of culture, women have been oppressed due to their biological functions. (Firestone 1988: 74-75)*” POWELL, JASON L. *Feminism*. Nova Science Publishers, Inc., 2013, p. 16.

<sup>32</sup> Patriarchy has been defined by radical feminism as the model in which men as a social group exploit, dominate and oppress women as a social group. Idem, p. 13.

<sup>33</sup> SAXENA, KANCHAN. “Women’s Portrait Through Gender Lens”. In RODRIGUEZ, EUNICE, AND BARBARA WEJNERT. *Enabling Gender Equality: Future Generations of the Global World*. Bingley, Emerald Group Publishing Limited. Vol. 00023, 2015, p. 29.

<sup>34</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119.

<sup>35</sup> United Nations General Assembly. The Universal Declaration of Human Rights (United Nations [UN]) UN Doc A/RES/217 (III) A, UN Doc A/810, 71, GAOR 3<sup>rd</sup> Session Part 1, 71, Article 2.

<sup>36</sup> “Gender was sex neutered and purified so as to be devoid of lust. With the neutering of sex, there is no procreation. In this way the significance of childbearing in women’s lives was

radical and Marxist feminists<sup>37</sup> who ultimately understood the natural family formed by the opposite sexes as the *patriarchy's chief institution*<sup>38</sup> and the origin of capitalist oppression<sup>39</sup>. The development of the social concept of *gender* followed this path, claiming to emancipate women from any form of oppression, and calling for sexual liberalisation<sup>40</sup>, a claim that would be borrowed by the gay's right movement<sup>41</sup>. Especially after the 90s, the *gender ideology*<sup>42</sup> was incorporated by the UN and its agencies in the interpretation of the former principle of non-sexual discrimination present in the UN Charter and the UDHR.

As we will see in the next topic, the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*<sup>43</sup> – also known as the *Women's Bill of Rights* – did not define “women”, neither whether a sexual/biological or gender perspective should be applied for the interpretation of the Convention. Within the years, the CEDAW's Committee

circumvented in the rhetoric of the feminist movement.” MONEY, JOHN. *Gendermaps: Social Constructionism, Feminism and Sexosophical History*. Bloomsbury Academic Collections. Gender Studies. 2020, p. 73.

<sup>37</sup> “When Simone de Beauvoir claims, “one is not born, but, rather, becomes a woman,” she is appropriating and reinterpreting this doctrine of constituting acts from the phenomenological tradition. In this sense, gender is in no way a stable identity or locus of agency from which various acts proceed; rather, it is an identity tenuously constituted in time – an identity instituted through a stylized repetition of acts. Further, gender is instituted through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and enactments of various kinds constitute the illusion of an abiding gendered self”. BUTLER, JUDITH. *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*. *Theatre Journal*, vol. 40, no. 4, 1988, pp. 519-31. *JSTOR*, p. 519.

<sup>38</sup> MILLET, KATE. *Sexual Politics*. University of Illinois Press, 1969, p. 33.

<sup>39</sup> ENGELS, FRIEDRICH. *The Origin of the Family, Private Property, and the State*. Electric Book Co., 2001.

<sup>40</sup> “A sexual revolution would require an end of traditional sexual inhibitions and taboos, particularly those that most threaten patriarchal monogamous marriage: homosexuality, illegitimacy, and adolescent, premarital and extramarital sexuality. The negative aura with which sexual activities have generally been surrounded would necessarily be eliminated, together with the double standard and prostitution. The goal of revolution would be a permissive single standard of sexual freedom” Kate Millet cited by John Money in MONEY, JOHN. *Gendermaps: Social Constructionism, Feminism and Sexosophical History*. Bloomsbury Academic Collections. Gender Studies. 2020, p. 74.

<sup>41</sup> *Idem*, p. 73.

<sup>42</sup> According to the UN Gender Equality Glossary “Gender identity refers to a person's innate, deeply felt internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth. It includes both the personal sense of the body, which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means, and other expressions of gender, including dress, speech, and mannerisms.” In UN WOMEN TRAINING CENTER ELEARNING CAMPUS. *Gender Equality Glossary*. Available at: <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder=&fullsearch=0&page=-1>. Accessed 20.03.2023.

<sup>43</sup> Convention on the Elimination of all Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

(which attributions will be depicted below) through the General Recommendations n. 28 issued in 2010 and endowed with authoritative force, clarified that the Convention covers a *gender-based* approach: *Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women*<sup>44</sup>.

Later, in its *Concluding Observations* in response to State Reports<sup>45</sup>, the Committee explicitly considered within the female gender “cis gendered women”, transsexual women (born biological men that identify themselves as women) and intersex people (a person born with a combination of male and female biological traits who identify themselves with the female gender). Based on the legal instruments that frame the international protection of women’s rights, this article considers women within the binary classification of genders, considering women as part of the feminine one. Although not the subject of this paper, it is still not sufficiently clear whether the protection of women under the *gender lens*, which is conceptually a social fact in constant evolution, actually promotes justice under the Aristotelian principle of equality<sup>46</sup>, according to which like cases should be treated alike and different cases should be treated differently. Nor is it possible to predict the impact that the possible adoption of the new social construction based on a non-binary gender classification would have on biological women’s historical struggle for equality and empowerment.

<sup>44</sup> Committee through the General Recommendation No. 28 on the Core Obligations of States Parties under Article 2, pp. 05, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010).

<sup>45</sup> Committee Concluding observations on the combined seventh and eighth periodic reports of Germany, pp. 45-46, U.N. Doc. CEDAW/C/DEU/CO/7- 8 (Mar. 9, 2017); Committee Concluding observations on the eighth periodic report of New Zealand, pp 23(a), 25(a), U.N. Doc. CEDAW/C/NZL/CO/8 (July 20, 2018). See MUDGWAY, CASSANDRA. "The Elimination of "Patriarchy" under the Convention on the Elimination of All Forms of Discrimination against Women." *Berkeley Journal of Gender, Law & Justice*, 36, 2021, pp. 79-114. HeinOnline.

<sup>46</sup> “(...) if they are not equal, they will not have what is equal” in Aristotle, and Lesley Brown. *The Nicomachean Ethics*. OUP Oxford, 2009, V.3, p. 84/85. See more about the principle of equality in Westen, Peter. “The Formal Principle of Equality”. *Speaking of Equality*, Princeton University Press, 2014, p. 185.

### III. Multilateral Instruments for Gender Equality and Women's Empowerment

#### 1. *The UN Initiatives*

The United Nations since its creation in 1945<sup>47</sup> through the UN Charter set out among its goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women”. Article 1 of the Charter also established the principle of non-discrimination *inter alia* based on sex “in promoting and encouraging respect for human rights and for fundamental freedoms for without distinction as to race, sex, language, or religion”<sup>48</sup>, which was reiterated in its Articles 13 (mandate of the General Assembly) and 55 (promotion of universal human rights)<sup>49</sup>. The UN Charter became the first multilateral instrument to advocate for equality between the sexes, which was followed by Universal Declaration of Human Rights in 1948<sup>50</sup>.

Henceforth the United Nations has developed a paramount role prohibiting sex discrimination (negative approach) in the promotion of human rights, as was later enshrined in Articles 2(2) and 3 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>51</sup> and in Articles 2(1), 3 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)<sup>52</sup> which guarantee equality before the law and the prohibition of discrimination, including on the basis of sex.

Still in 1946 the UN established a body to monitor the situation of women and women's rights - the *Commission on the Status of Women*

<sup>47</sup> Actually, the concern with the promotion of women's rights was already present in the agenda of the League of Nations but no progress was possible with the outbreak of the 2<sup>nd</sup> World War. Read more at CHINKIN, CHRISTINE. *Women, Rights of, International Protection*, Max Planck Encyclopaedia of International Law; RUDOLF, BEATE., ET AL. *The UN Convention on the Elimination of All Forms of Discrimination against Women a Commentary*. Oxford University Press, 2012, p. 123-124.

<sup>48</sup> Charter of the United Nations [hereinafter UN Charter] (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119, Article 1.3.

<sup>49</sup> UNITED NATIONS. *Women's Rights Are Human Rights*. United Nations Publications, 2014.

<sup>50</sup> Article 2 Universal Declaration of Human Rights: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” *The Universal Declaration of Human Rights*. G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). [hereinafter UDHR].

<sup>51</sup> International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

<sup>52</sup> International Covenant on Civil and Political Rights G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

(CSW) - which worked on the drafting of the *Declaration on the Elimination of Discrimination against Women* (DEDAW)<sup>53</sup>, adopted in 1967 and modelled on the structure of the UDHR<sup>54</sup>. Although the Declaration was considered *soft law*<sup>55</sup> and therefore not a legally binding treaty, it was endowed with considerable authoritative force, paving the way for the negotiation of an international treaty dedicated to women's rights. In 1975 Mexico City hosted the World Conference on the International Women's Year, when was adopted the World Plan of Action and declared 1975-1985 the *United Nations Decade for Women*<sup>56</sup>. As a result of the DEDAW and the World Plan of Action, the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW)<sup>57</sup> was adopted on 18 December 1979, binding on its contracting parties<sup>58</sup>.

The CEDAW is known as the "Women's Bill of Rights"<sup>59</sup> and has sparked a revolution in the promotion of women's rights due to its remarkably progressive approach. Indeed, the preamble to the CEDAW recognises that "a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women." According to the CEDAW, State's parties shall work to change social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes

<sup>53</sup> UNGA Res 2263 (XXII) (7 November 1967) [hereinafter DEDAW].

<sup>54</sup> CHINKIN, CHRISTINE, ET AL. *The UN Convention on the Elimination of All Forms of Discrimination against Women a Commentary*. Oxford University Press, 2012, p. 05, p. 151.

<sup>55</sup> See TANZI, ATTILA. *Introduzione Al Diritto Internazionale Contemporaneo*. Wolters Kluwer, Cedam, 2021, p. 163. THÜRER, DANIEL. *Soft Law*. Max Planck Encyclopedias of International Law [MPIL] Module: Max Planck Encyclopedia of Public International Law [MPEPIL] Article last updated: March 2009; GENNEBY, JOHAN, Linköpings Universitet, Ekonomiska institutionen. *Hard Decisions, Soft Laws Exploring the Authority and the Political Impact of Soft Law in International Law*, 2003; ABBOTT, KENNETH W., AND DUNCAN SNIDAL. "Hard and Soft Law in International Governance." *International Organization*, vol. 54, no. 3, 2000, pp. 421–456; BOYLE, ALAN. "Soft Law" in *The Oxford Handbook of International Environmental Law*, 2nd ed, Oxford Handbooks, 2021.

<sup>56</sup> UNITED NATIONS. *Women's Rights Are Human Rights*. United Nations Publications, 2014, p. 11.

<sup>57</sup> Convention on the Elimination of all Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

<sup>58</sup> Up to date, 189 states have ratified the Convention. However, approximately one-third of the ratifications has reservations, predominantly in Muslim countries. Although the US was one the first signatories of the Convention in 1979, the Senate has still not ratified it. The six States that haven't even signed the CEDAW are the Holy See, Iran, Niue, Somalia, Sudan and Tonga. Available at <https://www.ohchr.org/en/treaty-bodies/cedaw/cedaw-your-daily-life#:~:text=Adopted%20by%20the%20United%20Nations,currently%20has%20189%20states%20parties.>

<sup>59</sup> CHINKIN, CHRISTINE, ET AL. *The UN Convention on the Elimination of All Forms of Discrimination against Women a Commentary*. Oxford University Press, 2012, p. 141.

or on stereotyped roles for men and women" (Article 5) envisaging full equality between men and women in all areas: economic, social, cultural, civil and political.

To pursue this goal the Convention adopted negative and positive measures. The first ones prohibit any form of discrimination against women, and the second guarantee positive rights, including the adoption of temporary special measures that benefit women, aimed at accelerating a *de facto* equality with men. The Convention emphasises that this preferential treatment should not be regarded as discriminatory and should cease when the objectives of equality of opportunity and treatment have been achieved (Article 4). In addition to possible temporary measures, the Convention ensures to women workers permanent rights, such as maternity leave and the prohibition of dismissal on the grounds of pregnancy (Article 11.2).

The rights enshrined in the CEDAW to promote women's empowerment are those that allow women to participate in economic activities on an equal footing with men. These are the right to education (article 10) with equal conditions for career vocational guidance, access to studies and opportunities, and the right to work (article 11), which is considered inalienable. The right to work comprises the right to the same employment opportunities, the right to free choice of profession and employment, the right to equal remuneration, the right to social security, and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. Article 18 required States Parties to submit periodic Reports on their progress in implementing the provisions of the Convention domestically, at least every four years<sup>60</sup>. To this end, the CEDAW established a Committee formed by twenty-three experts of high moral standing and competence in the field covered by the Convention to examine the State Reports and to issue General Recommendations (Article 21).

Since then, all UN declarations and resolutions have included women's rights in the human rights and sustainable development agendas, as we see in 20<sup>th</sup> Principle of the 1992 *Rio Declaration on Environment and Development*<sup>61</sup>, Chapter 24 of the *Agenda 21*<sup>62</sup>, in the 1993 *Vienna Decla-*

<sup>60</sup> CEDAW Article 18.1. *States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect: (a) Within one year after the entry into force for the State concerned; (b) Thereafter at least every four years and further whenever the Committee so requests. 2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.*

<sup>61</sup> "Principle 20 Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development." UN Conference on Environment and Development 'Rio Declaration on Environment and Development' (14 June 1992) UN Doc A/CONF. 151/26/Rev 1 vol I, 3.

*ration on Human Rights*<sup>63</sup>, and *The Beijing Declaration and Platform for Action*<sup>64</sup>, adopted by the Fourth World Conference on Women which set out a plan of action to promote *Women's empowerment* on the basis of equality in all spheres of society, including participation in the decision-making process and access to power in order to achieve equality, development and peace<sup>65</sup>. Among the actions addressed was the need for an optional protocol to the CEDAW, which could provide for a right of petition for women who have suffered violations of the rights enshrined in the Convention. This was because the CEDAW, although legally binding on States parties, did not provide for the possibility of hearing individual or inter-State complaints of non-compliance with the Convention, nor did it provide for the possibility of conducting inquiries to investigate possible grave and systematic violations of the Convention by States parties. Henceforth the CSW and the Committee worked to develop a mechanism to monitor the implementation of the CEDAW, consisting of a State reporting procedure, an individual communications procedure, and an inquiry procedure<sup>66</sup>.

On 6 October 1999 at the 54<sup>th</sup> Session of the UNGA an Optional Protocol<sup>67</sup> to the CEDAW (OP-CEDAW) was adopted considerably upgrading the competence of the CEDAW's Committee. In addition to receiving State reports on the implementation of the Convention, the Committee became competent to receive individual communications from women or on behalf of women claiming to be victims of a violation of any of the rights set out in the Convention<sup>68</sup>. Moreover, the Committee was also entrusted with the important task of initiating inquiry procedures in cases of

<sup>62</sup> UN Conference on Environment and Development 'Agenda 21' (14 June 1992) UN Doc A/CONF.151/26/Rev 1 vol I, 9.

<sup>63</sup> UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993, pp. 40. Available at: <https://www.ohchr.org/sites/default/files/vienna.pdf>.

<sup>64</sup> Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, Sales No. E.96.IV.13. Annex I and II [hereinafter *Beijing Declaration and Platform for Action*] Available at: <https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

<sup>65</sup> *Idem*, Annex I, pp. 13.

<sup>66</sup> HELLUM, ANNE AND IKDAH, INGUNN, *Committee on the Elimination of Discrimination Against Women (CEDAW)*, Max Planck Encyclopedias of International Law [MPIL] Module: Max Planck Encyclopedia of International Procedural Law [MPEiPro] pp. 09-65.

<sup>67</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), *entered into force* Dec. 22, 2000. [hereinafter OP-CEDAW].

<sup>68</sup> The Committee performs its attributions issuing Concluding Observations, General Recommendations and Inquiry Reports.



grave and systematic violations of women's rights<sup>69</sup>. A remarkable point with regards to the individual communications is their subsidiary quality, which means that they are only admissible when *all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief*<sup>70</sup>. For example, in cases where national judicial systems unreasonably delay the granting of remedies or are ineffective in implementing the CEDAW<sup>71</sup>. On the occasion of the *Human Rights Day 2020*<sup>72</sup>, the OP-CEDAW had been ratified by 114 States, which, if found by the Committee responsible for non-compliance with the provisions of CEDAW, are required to take specific measures, adopt policies and legislation to effectively implement the Convention and, where appropriate, provide reparation to victims who have suffered damages. In addition to the crucial role played by the CEDAW's Committee, the UN continues to lead positive initiatives around the world to ensure that women have the same opportunities and conditions for development as men. To reinforce the UN's mission with gender equality, in July 2010 the United Nations General Assembly established the *UN Women - the United Nations Entity for Gender Equality and the Empowerment of Women*<sup>73</sup>— an UN entity that reunited in a single body the Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), the Division for Advancement of Women (DAW), the United Nations Development Fund for Women (UNIFEM) and the International Research and Training Institute for the Advancement of Women (INSTRAW)<sup>74</sup>. The *UN Women* mission is to promote gender equality and the empowerment of women by bringing together the UN system, governments, civil society and women's and youth organisations, the private sector and a wide range of other relevant actors<sup>75</sup>.

<sup>69</sup> OP-CEDAW, Article 8.

<sup>70</sup> Article 4 (1) OP-CEDAW.

<sup>71</sup> See *Case Karen Vertido v. The Philippines* / Communication no. 18/2008: UN Doc CEDAW/C/46/D/18/2008 (22 September 2010); *Elisabeth de Blok et al. v. The Netherlands* / Communication No. 36/2012: UN Doc CEDAW/C/57/D/36/2012 (17 February 2014).

<sup>72</sup> Twenty years from the entry into force of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW): *A universal instrument for upholding the rights of women and girls and for their effective access to justice*. Available at: <https://www.ohchr.org/en/statements/2020/12/20-years-entry-force-optional-protocol-convention-elimination-all-forms>.

<sup>73</sup> UN Women: The United Nations Entity for Gender Equality and the Women Empowerment. Available at: <https://www.un.org/youthenvoy/2013/07/un-women-the-united-nations-entity-for-gender-equality-and-th-empowerment-of-women/>.

<sup>74</sup> CHINKIN, CHRISTINE, ET AL. *The UN Convention on the Elimination of All Forms of Discrimination against Women a Commentary*. Oxford University Press, 2012, p. 140.

<sup>75</sup> Executive Board of the United Nations Entity for Gender Equality and the Empowerment of Women. *United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) Strategic Plan 2022–2025*. UNW/2021/6.

In 2015, the UN General Assembly adopted the resolution “*Transforming our world: 2030 Agenda for Sustainable Development*” (UN 2030 Agenda)<sup>76</sup> which set out 17 goals and 169 other specific targets to be met in order to achieve global sustainable development in all its dimensions: social, economic and environmental. The Resolution established at goal 5 to *achieve gender equality and empower all women and girls*, issue that had already been highlighted in the occasion of the *United Nations Millennium Declaration* in 2000, when Member States reaffirmed their commitment “to promote gender equality and the empowerment of women, as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.”<sup>77</sup> The UN’s 2030 Agenda goes further, setting concrete targets to ensure “women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life”. Besides stating the promotion of women’s economic empowerment, target “5.a” addresses the means to this end, by “undertak[ing] 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.” Despite not being an international treaty, the UN 2030 Agenda for the SDGs has a significant transformative impact<sup>78</sup>, as it has been incorporated into legally relevant instruments, such as in the provisions and objectives of free trade agreements (FTAs).

Indeed, FTAs have emerged as a key instrument to promote women's economic empowerment, as trade is the wheel of the economy that drives the production and exchange of goods and services. Through trade more jobs are created, and more women can develop economic activities that raise their standards of living, contributing to society’s welfare. Through trade, women are able to participate in global value chains, not only to attain economic independence, but also to reach high-paid and leading positions,

<sup>76</sup> United Nations General Assembly Resolution of 25 September 2015, *Transforming Our World: the 2030 Agenda for Sustainable Development*, A/RES/70/1. [hereinafter UN SDGs 2030 Agenda].

<sup>77</sup> United Nations Millennium Declaration, UN General Assembly Resolution, A/RES/55/2, 18 September 2000, paragraph 6.

<sup>78</sup> See PETERSMANN, ERNST-ULRICH, *Transforming World Trade and Investment Law for Sustainable Development*, online edn, Oxford Academic, 2022; HUCK, WINFRIED AND CLAUDIA KURKIN, *The UN Sustainable Development Goals (SDGs) in the Transnational Multilevel System*, *Heidelberg Journal of International Law (HJIL) / Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)*, Vol. 2, 2018, pp. 375-424; BEVERELLI, COSIMO, ET AL. *International Trade, Investment, and the Sustainable Development Goals: World Trade Forum. 2020*; TANZI, ATTILA MASSIMILIANO, ET AL. *La transizione ecologica nel commercio internazionale. Tra aspetti di riforma procedurali, istituzionali e diritto sostanziale*. Alma Mater Studiorum Università di Bologna - Dipartimento di Scienze Giuridiche, 2022.

becoming owners of properties and businesses, and actively contributing to the development of the local and global economy.

## 2. *The WTO's Awakening for Women's Empowerment*

In the 2<sup>nd</sup> decade of the 21st century, the World Trade Organization (WTO), stage of the multilateral system that succeeded GATT 1947<sup>79</sup> turning globalization into a reality through trade liberalization, finally realized how the promotion of women's empowerment is fundamental to foster prosperity and sustainability in the global economy. As a matter of fact, the Marrakesh Agreement<sup>80</sup> that created the WTO in 1995 is a gender-neutral Treaty devised with the ultimate objective of *raising people's standards of living (...) while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development*<sup>81</sup> in a free market economy. However, the Marrakesh Agreement did not consider that trade liberalization would have different impacts on men and women. Notwithstanding the general exceptions provided for in the General Agreement on Tariffs and Trade 1994 (GATT 1994)<sup>82</sup> and for the General Agreement on Trade in Services (GATS)<sup>83</sup> the protection of women's rights to overcome possible social, cultural and economic inequalities indirectly supported by free trade has never been challenged as a matter of public morality (GATT Article XX, "a") nor under the social clause (GATT Article XX "b"), nor under the GATS general exceptions (Article XIV), bearing in mind that any discriminatory measure in favour of women must be objectively proven to be "necessary" to achieve the legitimate objective pursued<sup>84</sup>.

<sup>79</sup> GATT 1947 was the legal instrument responsible for underpinning multilateralism and providing for trade liberalization after the Second World War. It enjoyed double nature. Firstly, of an international agreement that set out the rules for conducting international trade on goods; secondly as a *de facto* international organization that enabled the execution of that agreement. GATT 1947 functioned as a '*de facto*' international organization for more than 50 years, until the creation of WTO through the Marrakesh Treaty in 1995, promoting a forum of multilateral negotiations and framing a rules-based system to International Economic Law.

<sup>80</sup> WTO, Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867, UNTS 154. [hereinafter Marrakesh Agreement].

<sup>81</sup> Preamble of the Marrakesh Agreement.

<sup>82</sup> General Agreement on Tariffs and Trade 1994, Art. XX, Apr. 15, 1994 [hereinafter GATT 1994], Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Annex 1A, 1867 UNTS 187.

<sup>83</sup> General Agreement on Trade in Services, Art. XIV, Apr. 15, 1994, WTO Agreement, supra, Annex 1B, 1869 UNTS 183 [hereinafter GATS].

BARTELS, LORAND. "The chapeau of the General Exception in the WTO GATT and GATS agreements: a Reconstruction." *American Journal of International Law*, vol. 109, no. 1, 2015, pp. 95-126.

Following the adoption of the UN's 2030 Agenda for the SDGs in 2015, the WTO's awareness of women's rights would begin to change, shedding light on the role of trade in promoting women's empowerment and the benefits that empowered women can bring to the global economy and to sustainable development<sup>85</sup>. By June 2017 the WTO published its first *Gender Aware Trade Policy*<sup>86</sup> strictly connected with the 5<sup>th</sup> UN Sustainable Development Goal (SDG), recognising the need to better integrate women into the international trading system. According to the WTO, giving an equal economic chance to women is not only economically important to them, but to all the society, gearing a positive "snowball effect" for sustainable development. As the former WTO Director General Roberto Azevedo stated in that occasion: "*investing in women - and empowering women to invest in themselves - is a risk-free venture. What society gives them, they give back ten times over*"<sup>87</sup>. Indeed, empowering women through education, employment, entrepreneurship, trade opportunities, and leadership positions enlarges the pool of labour and talents available to the economy, contributing to boost productivity and innovation<sup>88</sup>.

Following the Gender Aware Trade Policy, at the WTO Ministerial Conference held in Buenos Aires in December 2017 was issued the Joint Declaration on Trade and Women's Economic Empowerment<sup>89</sup>. In the hereinafter called *WTO Buenos Aires Declaration* the following issues were addressed: the promotion of female entrepreneurship and trade; the identification of barriers that limit women's participation in trade; the promotion of financial inclusion as well as the access to trade financing and financial assistance for women traders; the enhancement of women entrepreneurs' participation in public procurement markets; the inclusion of women-led businesses, in particular Micro, Small and Medium-sized Enterprises (MSMEs)

<sup>85</sup> The concept of sustainable development was first formulated at the World Summit for Social Development (WSSD), held in March 1995 in Copenhagen, known as the "Copenhagen Declaration". It established sustainable development as a triadic concept involving economic development, social development and environmental protection: *We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people*. Copenhagen Declaration on Social Development - A/CONF.166/9 Chapter I, Annex I – UN, par. 6.

<sup>86</sup> WTO Gender Aware Trade Policy, 2017. Available at [https://www.wto.org/english/news\\_e/news17\\_e/dgra\\_21jun17\\_e.pdf](https://www.wto.org/english/news_e/news17_e/dgra_21jun17_e.pdf).

<sup>87</sup> Idem.

<sup>88</sup> ISO IWA 34:2021 Women's entrepreneurship – Key definitions and general criteria. 03.2021.

<sup>89</sup> WTO Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017. [hereinafter *WTO Buenos Aires Declaration*]. Available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/genderdeclarationmc11\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf).

in value chains; the impact of trade facilitation in providing equal access and opportunities for women entrepreneurs; the inventory of information sources, their complementarity and the identification of data gaps. The *WTO Buenos Aires Declaration* has been recognized by 127 WTO members<sup>90</sup>, representing a watershed in the multilateral system, by recognising for the first time the limitations and barriers faced by women in international trade and addressing mechanisms to increase women's economic empowerment. Although the Declaration is considered "soft law" and therefore not legally binding, it has had a significant positive impact on gender trade policy. In addition, while no further multilateral instrument under the WTO has been adopted to define common regulatory standards, it is worth mentioning the successful standardisation achieved by the International Organisation for Standardisation (ISO) on the definition of women entrepreneurship in 2021 (IWA 34:2021)<sup>91</sup>, which set out common definitions such as women-owned and women-led businesses, that can be used, for example, to include procurement policies and trade rules in FTAs to benefit women's enterprises. Among the many outcomes of the *WTO Buenos Aires Declaration*<sup>92</sup> was the review of the *Aid for Trade* programme for developing countries<sup>93</sup> with a focus on policies that promote women's empowerment. Within the WTO gender policy was established *The Informal Working Group on Trade and*

<sup>90</sup> Currently, 127 WTO members and observers have endorsed the Buenos Aires Declaration. They are: Afghanistan, Albania, Andorra, Angola, Argentina, Australia, Bahamas, Barbados, Belarus, Benin, Botswana, Brazil, Burundi, Cambodia, Canada, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Eswatini, Ethiopia, European Union member states (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden), Fiji, Gabon, Gambia, Georgia, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, Iceland, Indonesia, Israel, Jamaica, Japan, Kazakhstan, Kenya, Korea (Republic of), Kyrgyzstan, Lao People's Republic, Mexico, Moldova, Mongolia, Montenegro, Myanmar, Namibia, New Zealand, Niger, Nigeria, North Macedonia, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Russia, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Senegal, Serbia, Sierra Leone, Somalia, Sudan, Switzerland, Chinese Taipei, Tajikistan, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Vanuatu, Viet Nam and Zambia. Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/buenos\\_aires\\_declaration\\_e.htm#:~:text=In%20December%202017%2C%20in%20the,in%20entering%20the%20global%20marketplace](https://www.wto.org/english/tratop_e/womenandtrade_e/buenos_aires_declaration_e.htm#:~:text=In%20December%202017%2C%20in%20the,in%20entering%20the%20global%20marketplace).

<sup>91</sup> ISO/TMB, Technical Management Board - IWA 34:2021, Women's entrepreneurship – Key definitions and general criteria. Available at: <https://www.iso.org/standard/79585.html>. Last Access 25.02.2023.

<sup>92</sup> Interim Report Following the Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment, 25 September 2020, WT/L/1095/Rev.1.

<sup>93</sup> The Aid for Trade initiative was launched at the Hong Kong Ministerial Conference in December 2005 to support developing country Members to build supply-side capacity and trade-related infrastructure to engage in international trade, WT/AFT/1. More at: [https://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/aid4trade\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm). Last Access 20.02.2023.

*Gender*<sup>94</sup> bringing together WTO members and observers seeking to intensify efforts to increase women's participation in global trade<sup>95</sup>. The task to analyse and review gender related provisions in FTAs was significantly improved with the creation of a WTO specific database to track gender provisions in RTAs<sup>96</sup>. The database allows for quantitative and qualitative analysis of gender-related provisions in RTAs<sup>97</sup>. The Organisation for Economic Co-operation and Development (OECD) also set up a platform - the Development Assistance Committee (DAC) gender equality policy marker<sup>98</sup> - which complements WTO initiatives by tracking and analysing development finance in support of gender equality and women's empowerment. According to the *Report on Trade and Gender-Related Provisions in Regional Trade Agreements*<sup>99</sup>, by September 2022, out of 353 in force RTAs notified to the WTO, 101 included at least one explicit reference to gender issues.

The WTO *Women and Trade*<sup>100</sup> is also supported by the WTO Secretariat, which has worked to incorporate gender issues into its *2021-2026 Action Plan on Trade and Gender*<sup>101</sup> - from gender awareness to gender responsiveness, and by the *WTO Gender Research Hub*<sup>102</sup>, a platform idealized to

<sup>94</sup> The Informal Working Group is based on four pillars: experience sharing; exchanging views on how to apply a "gender lens" to the work of the WTO; reviewing gender-related reports produced by the Secretariat; and contributing to make the initiative *Aid for Trade* benefit women. See *WTO Action Plan on Trade and Gender 2021-2026*. Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/action\\_plan\\_21-26.pdf](https://www.wto.org/english/tratop_e/womenandtrade_e/action_plan_21-26.pdf). Last Access 20.02.2023.

<sup>95</sup> Interim Report Following the Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment, 25 September 2020, WT/L/1095/Rev.1.

<sup>96</sup> WTO Database on Gender Provisions in RTAs. Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/gender\\_responsive\\_trade\\_agreement\\_db\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm). Last Access 25.02.2023.

<sup>97</sup> WTO Informal Working Group on Trade and Gender. Trade and Gender-Related Provisions in Regional Trade Agreements, INF/TGE/COM/19 September 2022. Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/gender\\_responsive\\_trade\\_agreement\\_db\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm). Last Access 20.02.2023.

<sup>98</sup> OECD DAC Gender Equality Policy Marker available at: <https://www.oecd.org/dac/gender-development/dac-gender-equality-marker.htm#:~:text=The%20DAC%20gender%20equality%20policy,policy%20commitments%20and%20financial%20commitments>. Last Access 25.02.2023.

<sup>99</sup> WTO Informal Working Group on Trade and Gender. Trade and Gender-Related Provisions in Regional Trade Agreements, INF/TGE/COM/19 September 2022. Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/gender\\_responsive\\_trade\\_agreement\\_db\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm) Available at: [https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TGE/COM\\_4.pdf&Open=True](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TGE/COM_4.pdf&Open=True).

<sup>100</sup> More about the WTO Women and Trade initiatives at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/womenandtrade\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/womenandtrade_e.htm).

<sup>101</sup> WTO Action Plan on Trade and Gender 2021-2026, published on 31.01.2021 Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/action\\_plan\\_21-26.pdf](https://www.wto.org/english/tratop_e/womenandtrade_e/action_plan_21-26.pdf). Last access 25.02.2023.

<sup>102</sup> WTO launches Gender Research Hub to promote cooperation on trade and gender issues, 31.05.2021. Available at: [https://www.wto.org/english/news\\_e/news21\\_e/iwgtg\\_31may21\\_e.htm](https://www.wto.org/english/news_e/news21_e/iwgtg_31may21_e.htm). Last access 25.02.2023.

promote dialogue between researchers and by the *Informal Working Group on Trade and Gender*<sup>103</sup>. One concrete project developed under this plan of action is the *WTO Bridge Programme* dedicated to strengthening women entrepreneurs trade capacity offering courses to women and providing support by reinforcing coordination and collaboration between businesswomen associations at national, regional and international levels. Another major victory for women's empowerment within the WTO was the appointment of Dr Okonjo-Iweala as the first woman to be elected as Director-General of the WTO in 2021<sup>104</sup>.

Among other trade policies for women's empowerment it is worth mentioning the *She Trades*<sup>105</sup> initiative carried out by the International Trade Centre (ITC), an agency of the WTO and the United Nations. The program, funded by public and private stakeholders, including the European Union, the UK and Japan, provides for a *multi-stakeholder and multidimensional approach to accelerate global progress in achieving women's economic empowerment*. The *She Trades* has contributed to increase women's participation in business, as well the development of their own businesses in international trade, facilitating their access to finance and export opportunities. Through its three pillars (skill capacity, connecting network and fundraising) the programme provides women with guidance and direction, opening up a sea of opportunities, by offering free e-learning courses and workshops to help women improve their business skills, and by connecting them with potential buyers, investors, suppliers and business support organisations, expanding their network in international markets. Moreover, through the *She Trades Invest*, potential women entrepreneurs are connected with available investors to fund their projects. From the *She Trades Initiative*, the UK developed the *She Trades Commonwealth Program*<sup>106</sup> and similar programs have been spread around the globe in the same framework, as the National Strategy of Women Entrepreneurship in Brazil called "*Brazil for Women*" ("*Brasil para Elas*" in Portuguese)<sup>107</sup>, and the program "*Investing in Woman*" in Asia, launched by the Australian Government<sup>108</sup>.

<sup>103</sup> Informal Working Group on Trade and Gender was established on 23 September 2020. WT/L/1095/Rev.1.

<sup>104</sup> *History is made: Ngozi Okonjo-Iweala chosen as Director General (15.02.2021)*. Available at: [https://www.wto.org/english/news\\_e/news21\\_e/dgno\\_15feb21\\_e.htm](https://www.wto.org/english/news_e/news21_e/dgno_15feb21_e.htm) Last access 25.02.2023.

<sup>105</sup> *She Trades* official website at: <https://www.shetrades.com/>. Last access 25.02.2023.

<sup>106</sup> The program is funded by the UK Department for International Development and implemented by the International Trade Center (ITC). Available at: <https://shetradescommonwealth.converve.io/>. Last access 25.02.2023.

<sup>107</sup> The program launched on March 8, 2022 by Bolsonaro's Government created the National Strategy of Women Entrepreneurship - Brazil for Women - and the Female Entrepreneur-

During the preparation for the 12th Ministerial Conference (12MC), the “Friends of Gender” group proposed the text for the *Joint Ministerial Declaration on the Advancement of Gender Equality and Women’s Economic Empowerment in Trade*<sup>109</sup>. As a positive outcome, in December 2022, the WTO held its first-ever *World Trade Congress on Gender*<sup>110</sup> under the theme “*Gender Equality for Sustainable Trade and Recovery*”, exploring how gender equality can be a driver of sustainable trade and how trade can support women in times of crisis. The Congress highlighted the research work of trade and gender experts, showcased new research initiatives and promoted innovative thinking on trade and gender. During the

ship Committee were instituted. The strategy was developed to promote women’s financial independence through entrepreneurship and to promote equal opportunities for men and women, with a focus on individual vocation. Among the main objectives are the promotion of a favorable environment for the development of female entrepreneurship as a tool for economic and individual freedom; promote access to information regarding public policies, instruments and services that support the female entrepreneurship agenda; expand the offer of credit by mobilizing public and private resources for investment and financing of women’s entrepreneurship; promote the development and financial sustainability of businesses through entrepreneurial education focusing on the needs of women entrepreneurs, dissemination of support networks for female entrepreneurship, and strengthening the ecosystem of innovative entrepreneurship and socio-environmental impact. The initiative is one of the most complete in the World, comprising measures to debureaucratize the environment for women entrepreneurship and with practical solutions to overcome visible and invisible barriers. Available at: <https://www.gov.br/empresas-e-negocios/pt-br/empreendedor/brasil-pra-elas>. Last Access 20.01.2023.

<sup>108</sup> The program “Investing in Women” supports the countries of the South (Philippines, Indonesia, Vietnam and Myanmar) in developing a specific program (2016-23) focused on influencing business practices for workplace gender equality, tackling adverse social norms, and using blended finance instruments to move capital with a gender lens. The program Investing in Women is anticipated to be up to AUD80 million in value, initially for four years. It is expected to enter into force in the beginning in mid-2023, working primarily with the private sector, but also with policy makers, to support countries in the region to position women at the centre of economic recovery and accelerate opportunities to advance their economic empowerment. Available at: <https://investinginwomen.asia/>. Last Access 20.01.2023.

<sup>109</sup> “*Building* on the work done by the IWG on Trade and Gender, and the information gathered and shared by the WTO Secretariat and other international organizations, we, the Ministers and Heads of Delegations, agree to: 1. Continue to review, develop and improve national and/or regional collection of gender-disaggregated data that is comparable to the extent possible and analysis on trade and gender, to provide the basis for informed gender-responsive policies; 2. Utilize research initiatives to inform trade policy instruments and programmes to support women’s economic empowerment and increase their participation and leadership in international trade to promote gender equality; 3. Explore and analyse a gender perspective and women’s economic empowerment issues in the work of the WTO; and 4. Promote and highlight the collaboration on trade and gender between international and regional organizations, and our respective development and other relevant authorities with the aim of mainstreaming a gender equality perspective into Aid for Trade.” Joint Ministerial Declaration on the Advancement of Gender Equality and Women’s Economic Empowerment within Trade. WT/MIN(21)/4. Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=278631,278632,278621&CurrentCatalogueIdIndex=1&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=False](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=278631,278632,278621&CurrentCatalogueIdIndex=1&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=False). Last Access 25.02.2023.

<sup>110</sup> WTO World Trade Congress on Gender documents and videos available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/women\\_05122022\\_e/women\\_05122022\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/women_05122022_e/women_05122022_e.htm). Last Access 25.02.2023.



*World Trade Congress on Gender* it was recognized that FTAs are building blocks for larger, more integrated markets, able to create more opportunities and efficiency in global value chains. A key issue discussed during the Congress was the structure and responsiveness of gender provisions in FTAs, i.e. whether they are sufficient to close gender gaps and actively promote women's economic empowerment through binding rules subject to enforcement mechanisms.

#### IV. Gender Provisions in Free Trade Agreements

From the *WTO Buenos Aires Declaration* and the *UN 2030 Agenda* for the SDGs, there has been a move away from considering trade "gender neutral"<sup>111</sup> by acknowledging the uneven distributional impacts of trade in disadvantage to women<sup>112</sup>, reason why the inclusion of specific and positive gender-related provisions in FTAs is deemed essential to maximise positive impacts of trade on women. As FTAs constitutes international agreements under the Vienna Convention on the Law of Treaties (VCLT)<sup>113</sup>, and are considered "hard law"<sup>114</sup> in setting out rights and obligations to the contracting States, through them concrete measures can be taken to benefit women who have traditionally suffered labour rights violations, wage discrimination and faced greater risks when trading across borders, such as bearing higher export costs and being excluded from distribution networks.

However, current gender provisions in RTAs are very heterogeneous, with significant differences in scope, coverage, format and language, re-

<sup>111</sup> Up to the moment, it is relevant to highlight that given the broad socio-cultural context in which "gender" as a social fact is included, there is no single approach to define what constitutes a "gender-related" provisions in RTAs. MONTEIRO, JOSÉ ANTONIO. 'The Evolution of Gender-Related Provisions in Regional Trade Agreements', (2018) World Trade Organization Staff Working Paper ERSD-2021-8. Available at: [https://www.wto.org/english/res\\_e/reser\\_e/ersd202108\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd202108_e.pdf). Last Access 25.02.2023.

<sup>112</sup> See the collected data gathered by the World Bank's Gender Disaggregated Labor Database Available at: <https://datatopics.worldbank.org/gdld/#:~:text=The%20Gender%20Disaggregated%20Labor%20Database,collection%20and%20other%20public%20resources>. Accessed 20.01.2023.

<sup>113</sup> Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, UNTS, 1980, Vol. 1155.

<sup>114</sup> Treaties are the main source of International Economic Law, as they are the legal instrument that enables the assumption of rights and obligations by sovereign States. See LOWENFELD, ANDREAS. *International Economic Law*, Oxford: Oxford University Press, 2002; DISTEFANO, GIOVANNI. *Fundamentals of Public International Law*. Brill, 2019; CASSESE, ANTONIO. *International Law*. 2. ed., Oxford University Press, 2005; TANZI, ATTILA. *Introduzione Al Diritto Internazionale Contemporaneo*. 6. ed. rivista e aggiornata. ed., Wolters Kluwer Cedam, 2022.

sulting in different levels of gender responsiveness<sup>115</sup>. According to a recent study convened by the *Gender Social Inclusion and Trade* (GST) and undertaken by Amrita Bahri<sup>116</sup> to analyse how gender provisions are mainstreamed in the existing trade agreements<sup>117</sup>, it was verified that the highest level of gender explicit provisions<sup>118</sup> in FTAs belongs to the EU<sup>119</sup>, covering 78% of its agreements. In the second place are North American countries with 38%, followed by African countries with 32%. In fourth place are South American Countries with 20%, followed by the Asia Pacific countries with only 14% of explicit gender-related provisions<sup>120</sup>. Of all the countries analysed, Canada was considered the leader, with over 70% of explicit gender references in its FTAs<sup>121</sup>.

The subject areas covered by gender-related provisions in FTAs also vary across regions, as does the way and position in which gender provisions appear in the text (in the preamble, among the objectives, spread along the text in different chapters, in stand-alone chapters, in side-agreements, protocols, or in in a sort of combination of them all). Among the recommendations addressed by the mentioned study is the negotiation of stand-alone trade and gender chapters<sup>122</sup>. In addition, it was noted that most gen-

<sup>115</sup> Available at: [https://www.genderandtrade.com/\\_files/ugd/86d8f7\\_ea7e603922c54ff7a9e1f81e594a5d9f.pdf](https://www.genderandtrade.com/_files/ugd/86d8f7_ea7e603922c54ff7a9e1f81e594a5d9f.pdf).

<sup>116</sup> BAHRI, AMRITA. "Gender Mainstreaming in Free Trade Agreements: A Regional Analysis and Good Practice Examples", Gender, Social Inclusion and Trade Knowledge Product Series, 2021.

<sup>117</sup> According to the study, it was assessed all trade agreements that were currently in force and notified to WTO (as of 15 June 2021), independent of the relative importance of trade flows between parties. Agreements or economic integration mechanisms that had not yet notified to WTO or not yet in force were excluded from the study. *Idem*.

<sup>118</sup> Gender provisions in the mentioned study refer to terms directly related to 'gender', 'women', 'female', 'maternity' or a similar expression in the provision in an explicit manner. *Ibid*.

<sup>119</sup> By the way, the very first gender-related article was established in 1957 with the Treaty of Rome which established the European Economic Community (EEC) requiring each member state to guarantee the application of the principle of equal pay for women and men.

<sup>120</sup> BAHRI, AMRITA. "Gender Mainstreaming in Free Trade Agreements: A Regional Analysis and Good Practice Examples", Gender, Social Inclusion and Trade Knowledge Product Series, 2021.

<sup>121</sup> *Idem*, p. 17.

<sup>122</sup> "The paper puts forward ten recommendations to trade policymakers/negotiators on mainstreaming gender equality related concerns into RTAs, itemising practices that have been gaining ground in recent years. These are: 1. Negotiate a standalone trade and gender chapter. 2. Include commitments on enhancing women's access to international markets. 3. Front-load gender commitments in the agreement's preamble and/or general objectives clause. 4. Increase representation of women in international trade policy bodies. 5. Cooperate on enhancing women's access to STEM education and digital learning. 6. Cooperate on enhancing women's access to health services, medical insurance, maternity, and other employment benefits. 7. Employ existing public morality exceptions to justify support measures. 8. Create institutions and mobilize funds to ensure implementation of gender-related commitments. 9. Include commitments on the creation of gender-responsive standards or revisions of existing

der-related provisions are drafted without legally binding expressions such as "must" or "shall", without imposing any legal obligation to implement or enforce them, i.e. with a purely "promotional" approach. The study also highlighted the possibility of enforcing gender provisions by submitting them to some form of dispute settlement mechanism, which is not covered by most of the FTAs currently in force. The most advanced gender provisions can be found in the last generation of FTAs concluded by Canada, Chile and the EU. In fact, Chile was a pioneer not only in including explicit gender provisions in a FTA, but also in drafting a stand-alone gender chapter when it signed an FTA with Uruguay on 4 October 2016<sup>123</sup>, and so before the 2017 *WTO Buenos Aires Declaration*. The gender-related provisions in the aforementioned FTA had a notable "promotional" approach, encouraging a number of cooperative actions to be undertaken by the parties. Although the gender provisions within the agreement did not impose obligations on the States parties, nor did they establish a dispute settlement mechanism to resolve conflicts under gender-related provisions, the FTA was considered a frontrunner in the promotion women's empowerment.

Canada is recognised as a global leader in promoting women's rights and gender equality, not only domestically but also beyond its borders, being women's empowerment a priority in its foreign policy<sup>124</sup>. In 2017, Canada launched its first ever *Feminist International Assistance Policy*<sup>125</sup> envisaging to contribute to global efforts to eradicate poverty by empowering women and addressing inequalities. In pursuit of this goal, the Government of Canada in partnership with the *UN Women* was the first funder of the innovative *empowerwomen.org*<sup>126</sup> platform, which connects people around the world to take action for women's economic rights and opportunities and gives voice to women as decision makers and leaders. In the context of FTAs, Canada has drafted innovative *Trade and Gender* stand-alone chapters, such as in the modernised versions of the FTAs with Chile and Israel. The *Trade and Gender* in the modernised

*standards with a gender lens. 10. Engage private stakeholders via gender-specific voluntary sustainability standards.*" Ibid.

<sup>123</sup> Chile-Uruguay Trade Agreement. Signed on 04 October 2016, entered into force on 13.12.2018. Text of the Agreement Available at: [http://www.sice.oas.org/Trade/CHL\\_URY/CHL\\_URY\\_index\\_PDF\\_s.asp](http://www.sice.oas.org/Trade/CHL_URY/CHL_URY_index_PDF_s.asp).

<sup>124</sup> UN Women and Canada. Available at: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Partnerships/Donor%20Countries/Partners-for-change-Canada-en.pdf>.

<sup>125</sup> Idem.

<sup>126</sup> Available at: <https://www.empowerwomen.org/en/who-we-are/about-us> Last Access 27.02.2023.

FTA between Canada and Chile<sup>127</sup> was the first among G20 countries, which was followed by the subsequent FTA concluded with Israel<sup>128</sup>. In both agreements, the parties reaffirmed their commitment to the effective implementation of the CEDAW and the achievement of the UN's SDGs. The agreement also sets out detailed actions to be undertaken by the parties in cooperation (Article 13.3), assuming the commitment to improve women's access to education and skills development in areas that can lead to well-paid job opportunities. Moreover, there is a commitment to include women in activities not merely as employees or labourers, but also as entrepreneurs, leaders, decision makers and scientists. Accordingly, the Parties shall encourage their industries and enterprises to incorporate corporate social responsibility explicitly related to gender. However, as we will see in the next section, the Canada-Chile and Canada-Israel FTAs differ in the submission of the gender-related provisions to a binding dispute settlement mechanism.

Apart from the fact that Canada is a member of the USMCA, which replaced the North American Free Trade Agreement (NAFTA) between the United States, Mexico and Canada and entered into force on 1 July 2020<sup>129</sup>, there is no stand-alone chapter or high number of gender explicit provisions in the North American FTA. However, there are relevant provisions throughout the labour chapter on the protection of fair competition, which in extension protects women's rights, such as the prohibition of gender and wage discrimination in the work-place, requiring the parties (*"each party shall"*) to implement considered appropriate measures to protect workers against employment discrimination on the basis of sex, pregnancy, sexual orientation, gender identity, and care-giving responsibilities, providing also for job protected leave for birth or adoption of a child and care of family members. Among the cooperative practices that shall be undertaken by the parties is the *"promotion of labor practices that integrate and retain women in the job market, and building the capacity and skills of women workers, including on workplace challenges and in collec-*

<sup>127</sup> The Canada-Chile Free Trade Agreement entered into force on July 5, 1997. The modernized Canada-Chile Free Trade Agreement (CCFTA) entered into force on February 5, 2019. Text of the Agreement available at: [http://www.sice.oas.org/trade/chican\\_e/CAN\\_CHL\\_Index\\_2019\\_e.asp](http://www.sice.oas.org/trade/chican_e/CAN_CHL_Index_2019_e.asp). Last Access 20.02.2023.

<sup>128</sup> Protocol Amending the Free Trade Agreement Between the Government of Canada and the Government of the State of Israel [hereinafter Canada-Israel FTA], signed on 28.05.2018, in force since 01 September 2019. Available at: [http://www.sice.oas.org/trade/can-isr/CAN\\_ISR\\_2018\\_index\\_e.asp](http://www.sice.oas.org/trade/can-isr/CAN_ISR_2018_index_e.asp). Last Access 25.02.2023.

<sup>129</sup> Agreement between the United States of America, the United Mexican States, and Canada 7/1/20 [hereinafter USMCA]. Text available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>. Last Access 25.02.2023.

*tive bargaining*.”<sup>130</sup>. According to the USMCA, eventual lowering of standards is considered practice of unfair competition, since it lowers labour costs and consequently the total cost of production<sup>131</sup>. Under the “Competition” chapter is established the Competition Commission entitled to enhance the competitiveness of the North American economy, including recommendations aimed at enhancing the participation of SMEs, and enterprises owned by under-represented groups including women, indigenous peoples, youth, and minorities<sup>132</sup>. Although the few gender provisions, the existent ones in the Labor chapter are significant and the USMCA allows its enforcement through the *Facility-Specific Rapid Response Labour Mechanism*”<sup>133</sup>, which allows the parties to take direct unilateral actions in the event of violations of labour standards.

The absence of a stand-alone gender chapter is also verified in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)<sup>134</sup>, between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam<sup>135</sup>. Nevertheless, the agreement does include a specific Article (23.4) entitled “*Women and Economic Growth*” within the chapter on development. According to this provision, the parties “shall consider” undertaking cooperative activities aimed at enhancing the ability of women, including workers and business owners, to fully access and benefit from the opportunities created by the Agreement. Moreover, these activities may include providing advice or training on programmes aimed at helping women build their skills and capacity, and enhance their access to markets, technology and financing; developing women’s leadership networks; and identifying best practices related to workplace flexibility.

<sup>130</sup> Cooperation, Article 23.12, “i”, USMCA.

<sup>131</sup> Article 25.2, USMCA.

<sup>132</sup> Article 25.5.”c”, USMCA.

<sup>133</sup> USMCA, Annex 31-a, 1. *The United States and Mexico are agreeing to this annex pursuant to Article 31.5.1 (Good Offices, Conciliation, and Mediation). 2. The purpose of the Facility-Specific Rapid Response Labor Mechanism (the “Mechanism”), including the ability to impose remedies, is to ensure remediation of a Denial of Rights, as defined in Article 31-A.2, for workers at a Covered Facility, not to restrict trade. Furthermore, the Parties have designed this Mechanism to ensure that remedies are lifted immediately once a Denial of Rights is remediated. 3. The Parties shall make every attempt to cooperate and arrive at a mutually acceptable solution with respect to matters that can be raised through the Mechanism. 4. This Annex applies only as between Mexico and the United States.*

<sup>134</sup> Comprehensive and Progressive Agreement for Trans-Pacific Partnership [hereinafter CPTPP], Mar. 8, 2018, Available at [www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-cptpp/](http://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-cptpp/). Last Access 25.02.2023.

<sup>135</sup> See HUERTA-GOLDMAN, JORGE ALBERTO, AND DAVID A. GANTZ. *The Comprehensive and Progressive Trans-Pacific Partnership: Analysis and Commentary*. 2022.

In line with Canada's foreign policy on women's empowerment, in 2020 Canada launched along with Chile and New Zealand an arrangement specifically devoted to trade and gender: the *Global Trade and Gender Arrangement* (GTGA)<sup>136</sup>. The GTGA seeks to promote supportive trade and gender policies that increase women's participation in trade, and it is framed on many of the gender-related provisions found in RTAs, such as the principle of non-regression, according to which the protection provided by gender equality laws and regulations cannot be weakened or reduced in order to promote trade and investment. On October 6, 2021, Mexico signed up to join the GTGA at the OECD Ministerial Meeting, followed by Colombia and Peru in June 2022. Even though it is not legally a trade agreement, it is a sound initiative to "multilateralise" gender trade policy.

On the other side of the Atlantic, the EU through its institutions has been the protagonist in promoting women's empowerment<sup>137</sup>, taken trade as an essential element of the EU *Gender Equality Strategy 2020-2025*. According to the Commission, the main difficulty and the biggest challenge for women entrepreneurs is access to finance. The Commission has therefore explored how to increase women's participation in Europe's venture capital and investment landscape, with the Financial Inclusion Facility alone targeting €100 million for women's access to finance<sup>138</sup>. Some other sound supported by the EU to promote women's empowerment are: The *Women Leadership Programme* and the *EU Prize for Women Innovators*<sup>139</sup> financed by the European Innovation Council (EIC)<sup>140</sup>; the *Women Tech-EU* (which was launched in 2021 to support women-led deep tech start-ups)<sup>141</sup>; and the *Women in Transport*<sup>142</sup>, through which the Commission stimulates the increase of female employment in the transport sector.

<sup>136</sup> *Global Trade and Gender Arrangement* (GTGA). Text Available at: [http://www.sice.oas.org/TPD/GTGA/ITAG\\_GTGA\\_Text\\_e.pdf](http://www.sice.oas.org/TPD/GTGA/ITAG_GTGA_Text_e.pdf).

<sup>137</sup> European Commission. Communication from the Commission to the European Parliament, The Council, the European economic and Social Committee and of the Regions. *A Union of Equality: Gender Equality Strategy 2020-2025*. Brussels, 5.3.2020 Com(2020)152 final. [hereinafter EU Gender Equality Strategy 2020-2025].

<sup>138</sup> Idem, p. 18.

<sup>139</sup> More about the *EU Prize for Women Innovators* at: [https://eic.ec.europa.eu/eic-prizes/eu-prize-women-innovators\\_en#:~:text=The%20EU%20Prize%20for%20Women%20Innovators%20celebrates%20the%20women%20entrepreneurs,for%20women%20and%20girls%20everywhere.](https://eic.ec.europa.eu/eic-prizes/eu-prize-women-innovators_en#:~:text=The%20EU%20Prize%20for%20Women%20Innovators%20celebrates%20the%20women%20entrepreneurs,for%20women%20and%20girls%20everywhere.) Last Access 03.03.2023.

<sup>140</sup> More about the *EU Women in Transport* at: [https://eic.ec.europa.eu/eic-funding-opportunities/business-acceleration-services/eic-women-leadership-programme\\_en](https://eic.ec.europa.eu/eic-funding-opportunities/business-acceleration-services/eic-women-leadership-programme_en) Last Access 03.03.2023. Last Access 03.03.2023.

<sup>141</sup> More about the *Women Tech-EU* at: [https://eisma.ec.europa.eu/programmes/european-innovation-ecosystems/women-techeu\\_en](https://eisma.ec.europa.eu/programmes/european-innovation-ecosystems/women-techeu_en). Last Access 03.03.2023.

<sup>142</sup> More about *Women in Transport* at: [https://transport.ec.europa.eu/transport-themes/social-issues-equality-and-attractiveness-transport-sector/equality/women-transport\\_en](https://transport.ec.europa.eu/transport-themes/social-issues-equality-and-attractiveness-transport-sector/equality/women-transport_en). Last access 03.03.2023.

In the EU's external policies, the Commission reaffirmed its commitment to ensure that 85% of all new programmes contribute to gender equality and women's empowerment by 2025<sup>143</sup>, and its active engagement in the WTO to ensure that gender-related issues are adequately addressed in the EU FTAs. Although the *Comprehensive Economic and Trade Agreement (CETA)*<sup>144</sup> between Canada and the European Union, concluded before the *WTO Buenos Aires Declaration* does not contain specific gender provisions, the *CETA Joint Committee* adopted the Recommendation n. 002/2018 through which the parties are called to “*cooperate to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and fully benefit from the opportunities created by CETA.*”<sup>145</sup>.

Following the EU trade policy, in June 2022 the EU concluded negotiations on a FTA with New Zealand<sup>146</sup>, including for first time in an EU FTA a specific section on *Trade and Gender* within the TSD chapter (Chapter 19), in which the parties recognise the need to promote gender equality and women's economic empowerment and to address a gender perspective in the parties' trade and investment relations. In the modernised trade agreement with Chile<sup>147</sup>, the EU went even further, drafting an exclusive chapter on *Trade and Gender* (Chapter 27) - separated from the TSD chapter - in which the parties recall their commitments under the *UN 2030 Agenda*, the *WTO Buenos Aires Declaration*, the *Beijing Declaration and Platform for Action*, the CEDAW and the International Labour Organisation (ILO) conventions that include binding provisions on gender equality (Article 27.2). According to the above-mentioned FTA, the Parties shall, through joint cooperation, collect sex-disaggregated data to carry out gender analysis and exchange information and best practices on the design, implementation,

<sup>143</sup> European Commission. *EU Gender Action Plan III: An Ambitious Agenda for Gender Equality and Women's Empowerment in EU External Action*. Brussels, 25.11.2020 JOIN(2020) 17 final.

<sup>144</sup> Official Journal of the European Union, *Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA)*, 14 January 2017, L 11/23.

<sup>145</sup> Recommendation 002/2018 of 26 September 2018 of the CETA Joint Committee on Trade and Gender. Available at: [https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157419.pdf](https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157419.pdf). More about the Canada-EU plan for implementing the CETA Trade and Gender Recommendation at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/ceuwp-ptceu.aspx?lang=eng>. Accessed 20.02.2023.

<sup>146</sup> The Commission and New Zealand published the text of the Agreement following the announcement of conclusion of the negotiations on 30 June 2022 (Brussels time) and having completed legal revision. Text of the Agreement available at: [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en). Last access 03.03.2023.

<sup>147</sup> EU-Chile Advanced Framework Agreement. Available at: EU-Chile: Text of the agreement (europa.eu). Last access 25.02.2023.

monitoring, evaluation and strengthening of policies and programmes aimed at increasing women's participation in economic activities. Moreover the parties shall cooperate in the promotion of women's participation, leadership, and education, particularly in areas where they are traditionally underrepresented, such as science, technology, engineering, and mathematics (STEM), as well as innovation, e-commerce and all other trade-related areas. The FTA also addresses the need to promote financial inclusion, financial literacy and women's access to trade finance and education.

Last but not least, is noteworthy to mention sound trade provisions for women's empowerment in the African continent, which still suffers with huge gender gaps and women poverty<sup>148</sup>. In the East African Community (EAC) Treaty<sup>149</sup>, gender mainstreaming is among the treaty endeavours, calling for the enhancement in the role of women in cultural, social, political, economic and technological development<sup>150</sup>. The Treaty also includes a special chapter (Chapter 22) on "*The role of women in socio-economic development*". Under Article 121 the States parties assume the obligation to take all appropriate legislative and other measures *to promote the empowerment and effective integration and participation of women at all levels of socio-economic development especially in decision-making* and promote gender equality in every respect. Article 122 deals with "*The role of women in Business*", recognizing women as a vital to agriculture, industry and trade, calling for the increase of women's participation in business at the policy formulation and implementation levels. Following this strategy, the EAC is developing a regional financial facility for women-owned businesses and will host the East African Development Bank (EADB)<sup>151</sup>.

The Economic Community of West African States Agreement (ECOWAS) revised in 1993<sup>152</sup> includes a specific chapter (Article 63)<sup>153</sup> on

<sup>148</sup> OECD, Regional Report for Africa, 2021. Available at <https://www.oecd.org/dev/sigi-2021-regional-report-for-africa-a6d95d90-en.htm>. Last access 25.02.2023.

<sup>149</sup> Treaty for the Establishment of the East African Community, art. 1 (1999) [hereinafter EAC Treaty]. Available at: [https://www.eacj.org/?page\\_id=33](https://www.eacj.org/?page_id=33). Accessed 25.02.2023.

<sup>150</sup> Article 5(e), EAC Treaty.

<sup>151</sup> More information about the EAC gender policy at: <https://www.eac.int/gender/gender-and-women>. Accessed 25.02.2023.

<sup>152</sup> Revised Treaty of the Economic Community of West African States Treaty (July 24, 1993) [hereinafter ECOWAS Treaty (Revised)]. Available at: <https://ecowas.int/wp-content/uploads/2022/08/Revised-treaty-1.pdf>. Last Access 25.02.2023.

<sup>153</sup> ECOWAS Treaty (Revised), *Article 63 Women and Development 1. Member States undertake to formulate, harmonise, co-ordinate and establish appropriate policies and mechanisms for the enhancement of the economic, social and cultural conditions of women. 2. To this end, Member States shall take all measures necessary to: a) identify and assess all constraints that inhibit women from maximising their contribution to regional development efforts; and b) provide a framework within which the constraints will be addressed and for the incorporation of women's concerns and needs into the normal operations of the society; 3. At*



gender to the formulation, harmonisation, coordination and establishment of appropriate policies and mechanisms for the enhancement of the economic, social and cultural conditions of women. The African Continental Free Trade Area (AfCFTA) the world's largest free trade area bringing together the fifty five countries of the African Union (AU) and eight Regional Economic Communities (RECs), which is in force since 2021, does not contain a specific gender chapter, but gender issues are barely mentioned throughout the text. The preamble recognises gender equality as one of the objectives of the Agreement, as does Article 3: *promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties*<sup>154</sup>.

The lack of gender policies has required the drafting of an additional protocol, the “*AfCFTA Protocol on Women and Youth and Trade*”, which has been supported by groups of scholars<sup>155</sup>, civil society<sup>156</sup> and by the EU, which through a Team and joint Programme tracker has supported the African continental countries to deepen a sustainable economic transformation in their continent<sup>157</sup>.

### 1. *Enforceability of gender provisions in FTAs: a Pandora's box*

The implementation and enforcement of gender-related provisions in FTA has been a crucial issue and subject of intense debate among international economic law scholars and specialists<sup>158</sup>. This is because although

*the Community level. Member States shall: a) stimulate dialogue among themselves on the kinds of projects and programmes aimed at integrating women into the development process; b) establish a mechanism for co-operation with bilateral, multilateral and nongovernmental organisations; and c) promote and develop mechanisms to encourage the exchange of experiences and information between Member States.*

<sup>154</sup> Agreement Establishing the African Continental Free Trade Area art. 3, Mar. 21, 2018, 58 I.L.M. 1028 [hereinafter AfCFTA] Available at: [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf). Accessed 20.02.2023.

<sup>155</sup> See KUHLMANN, KATRIN: Resetting the Rules on Trade and Gender? A Comparative Assessment of Gender Approaches in Regional Trade Agreements in the Context of a Possible Gender Protocol Under the African Continental Free Trade Area. WTO compilation. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4072822](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072822).

<sup>156</sup> See <https://rwanda.unfpa.org/en/news/gender-equality-and-women-empowerment-through-african-continental-free-trade-area>.

<sup>157</sup> Team Europe Initiative and Joint Programme Tracker in Support to the African Continental Free Trade Area available at: <https://europa.eu/capacity4dev/tei-jp-tracker/tei/support-african-continental-free-trade-area>.

<sup>158</sup> This point was also highlighted point in the 1<sup>st</sup> WTO Trade Congress on Gender, held from 05 to 07 December 2022, which many scholars claiming for the inclusion of enforcement mechanisms in gender provisions. Available at: [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/women\\_05122022\\_e/women\\_05122022\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/women_05122022_e/women_05122022_e.htm).

there is an increasingly inclusion of gender-related provisions in FTAs<sup>159</sup>, many of them do not set out legal obligations through prescriptive commands<sup>160</sup> and do not provide for a dispute settlement mechanism competent to issue binding and enforceable decisions<sup>161</sup>. For instance, the dispute settlement mechanism applied to labour and environmental provisions, that in the case of the EU are included in the Trade and Sustainable Development (TSD) chapters<sup>162</sup>, varies considerably. According to a *Comparative Analysis of TSD Provisions for Identification of Best Practices* convened by the European Commission and undertaken by the London School of Economic (LSE)<sup>163</sup>, dispute settlement procedures, when they

<sup>159</sup> See MONTEIRO, JOSÉ-ANTONIO. 'The Evolution of Gender-Related Provisions in Regional Trade Agreements', (2018) World Trade Organization Staff Working Paper ERSD-2021-8, Available at: [https://www.wto.org/english/res\\_e/reser\\_e/ersd201815\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd201815_e.pdf). Last Access 25.02.2023.

<sup>160</sup> It's always important bear in mind that under the international rule of law reigns the principle of voluntarism. Since states are equally sovereigns, apart from *jus cogens* rules which are peremptory, they only can become bound to obligations with their consent, directly through treaties or indirectly through customs. Accordingly, States only can be submitted to an adjudicatory organ with their express consent, as is the case of States under the jurisdiction of the International Court of Justice. In the realm of international trade law, disputes concerning WTO agreements are solved through a rules-based dispute settlement mechanism stated by the DSU which involves a diplomatic phase under State-to-State consultations and adjudication phase performed by *ad hoc* panels composed by three impartial panellists chosen among *well-qualified governmental and/or non-governmental individuals* and by a standing (permanent) Appellate Body to review *only questions of law* adopted by Panel Reports as a 2<sup>nd</sup> instance jurisdiction. In the end of the procedure, it is for the WTO members, meeting as Dispute Settlement Body ('DSB'), to adopt the panels' and Appellate Body's reports -which are nominally just a recommendation to the DSB -rendering them binding if there is no negative consensus rejecting them. About the WTO Dispute Settlement Mechanism: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994) [hereinafter DSU] Article 8(1); SACERDOTI, GIORGIO. *International Trade Disputes*. Max Planck Encyclopaedias [MPIL] of International Law, 11.2019; BARONCINI, ELISA. "The EU Approach to Overcome the WTO Dispute Settlement Vacuum: Article 25 DSU Interim Appeal Arbitration as a Bridge Between Renovation and Innovation." *A Post-WTO International Legal Order*, Springer International Publishing, Cham, 2020, pp. 115-132.

<sup>161</sup> D'ASPROMONT, JEAN. *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules*, Oxford University Press, Incorporated 2011.

<sup>162</sup> "Since 2010, the so-called "Trade and Sustainable Development" (TSD) chapters have become a standard component of its new-generation comprehensive FTAs concluded with developed and developing countries alike. These TSD chapters are presented as a central part of the EU's "value-based" trade policy, where the Union is determined to use trade as a vehicle for promoting "sustainable development worldwide" – that is, not only in third countries but presumably also in the EU". GRACIA MARIN DURAN, Sustainable Development Chapters in EU Free Trade Agreements: Emerging Compliance Issues, Common Market Law Review, vol. 57, no. Issue 4, 2020, pp. 1031-1068; see more at BARBARA COOREMAN AND GEERT VAN CALSTER, *Trade and Sustainable Development Post-Lisbon*, in HAHN, MICHAEL J., AND GUILLAUME VAN DER LOO. *Law and Practice of the Common Commercial Policy the First 10 Years after the Treaty of Lisbon*. Brill/Nijhoff, 2020.

<sup>163</sup> VELUT, JEAN-BAPTISTE ET AL. *Comparative Analysis of TSD Provisions for Identification of Best Practices to Support the TSD Review*. London School of Economic, September 2021. Available at: <https://www.lse.ac.uk/business/consulting/reports/comparative-analysis-of-tds-provisions-for-identification-of-best-practices>.

exist, can include consultations, a panel of experts competent for producing a report and a plan of action (excluded imposition of sanctions in case of non-compliance), and also legal arbitration with the possibility of imposition of trade sanctions. Recourse to arbitration is most prominent in US FTAs, but also exists in the CPTPP's labour and environmental chapters, which were highly influenced by the US model<sup>164</sup>.

The EU, since the conclusion of the EU-South Korea FTA<sup>165</sup>, considered the EU's first "new generation" FTA to include a *Trade and Sustainable Development* (TSD) chapter, adopted what has been considered a "medium" or "balanced" approach regarding the dispute settlement mechanism applicable to the TSD chapter<sup>166</sup>. The procedure begins with intergovernmental consultations<sup>167</sup>, in which the parties shall make every effort to reach a mutually satisfactory resolution of the matter. In case consultations are unsuccessful within 90 days after the delivery of its request, the Parties may require that a panel of experts be convened to examine the matter and issue a report in the form of a recommendation, which the Parties are requested to use their *best efforts* to implement. In case these best efforts demonstrate to be insufficient or there is no effort at all, the agreement does not provide for the possibility of application of sanctions endowed with punitive and deterrent character - such as the suspension of concessions - on the party who failed to comply with the panel report.

The impossibility of imposing trade sanctions in case of non-compliance with the provisions of the TSD chapter has been strongly criticised by the European Parliament, which has called for enforcement mechanisms with the possibility of imposing trade sanctions in case of non-compliance with the panel reports, demonstrating the tendency towards a strict positivist approach<sup>168</sup>. Along with the European Parliament demands, the EU Commission has introduced the possibility of applying trade sanctions to specific provisions of the TSD chapter<sup>169</sup>, in cases of serious viola-

<sup>164</sup> Idem, p. 19/20.

<sup>165</sup> Free Trade Agreement between the European Union and its Member States and the Republic of Korea, signed 6 October 2010, entered into force 13 December 2015 (OJ L 127, 14.5.2011, pp. 6-1343) [hereinafter EU-South Korea FTA] Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AL%3A2011%3A127%3ATOC>. Last Access 25.02.2023.

<sup>166</sup> Article 13.16 of the EU-South Korea FTA expressly states that "*Dispute settlement for any matter arising under this Chapter [TSD], the Parties shall only have recourse to the procedures provided for in Articles 13.14 and 13.15*".

<sup>167</sup> Article 13.14, EU-South Korea FTA.

<sup>168</sup> According to John Austin, considered the father of legal positivism, *command, duty and sanction are inseparably connected terms*, inasmuch legal rules not provided with sanctions are considered *imperfect laws*. AUSTIN, JOHN, AND WILFRID E. RUMBLE. *The Province of Jurisprudence Determined*. 1995, Lecture I, p. 24-32.

<sup>169</sup> Article 26.16 Temporary Remedies (...): "2. For disputes under Chapter 19 (Trade and sustainable development) this Article applies if: (a) a situation set out in point (a), (b) or (c) of

tions of labour standards and environmental actions or omissions that undermine the Paris Agreement<sup>170</sup>, regardless of their impact on trade<sup>171</sup>. The EU New Zealand FTA with negotiations concluded in June 2022<sup>172</sup> (but not yet ratified) is the first FTA to adopt this new approach. Under the text of the EU-New Zealand FTA the possibility to apply trade remedies as suspension of concession in case of non-compliance with the panel reports is limited to specific cases in which is concluded that there was a violation of a core multilateral labour standard or that the defendant committed an action or omission that materially defeats the object and purpose of the Paris Agreement<sup>173</sup>.

In the modernised EU-Chile FTA<sup>174</sup>, with negotiations concluded on 9 December 2022, for the first time the EU included an exclusive chapter on *Trade and Gender Equality* (Chapter 27) stipulating that issues arising from the gender chapter must be solved under the dispute settlement mechanism present on the TSD chapter<sup>175</sup>, which follows the EU's earlier "medium" approach, providing for consultations and adjudication by a panel of experts, excluding the possibility of trade sanctions, which re-

paragraph 1 arises and the final report pursuant to Article 26.12 (Final report) finds a violation of: (i) Article 19.3(3) (Multilateral labour standards and agreements); or (ii) Article 19.6(3) (Trade and climate change), if that panel, in its final report, finds that the Party complained against failed to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement; or (b) a situation set out in point (d) of paragraph 1 arises and the decision of the compliance panel pursuant to Article 26.15 (Compliance review) finds a violation of: (i) Article 19.3(3) (Multilateral labour standards and agreements); or (ii) Article 19.6(3) (Trade and climate change), if the panel, in its decision finds that the Party complained against failed to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement”.

<sup>170</sup> The Paris Agreement is a legally binding international treaty on climate change adopted on 12 December 2015 by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France. It entered into force on 4 November 2016. Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104. Available at: <https://unfccc.int/process-and-meetings/the-paris-agreement#:~:text=What%20is%20the%20Paris%20Agreement%3F&text=The%20Paris%20Agreement%20is%20a,force%20on%204%20November%202016,Last%20Access%2026.03.2023>.

<sup>171</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 22.6.2022 Com(2022)409 final.

<sup>172</sup> The Commission and New Zealand published the text of the Agreement following the announcement of conclusion of the negotiations on 30 June 2022 (Brussels time) and having completed legal revision. Text of the Agreement available at: [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en).

<sup>173</sup> BARONCINI, ELISA. L'approccio al contenzioso internazionale per il libero scambio dell'Unione europea in BARONCINI, ELISA, ET AL. *Enforcement & Law-Making of the EU Trade Policy*. Bologna: Dipartimento di Scienze Giuridiche, 2022, p. 01-40.

<sup>174</sup> EU-Chile Advanced Framework Agreement. Available at: EU-Chile: Text of the agreement (europa.eu) Last access 25.02.2023.

<sup>175</sup> Article 27.6, EU-Chile Advanced Framework Agreement. Available at: EU-Chile: Text of the agreement (europa.eu). Last access 25.02.2023.

veals a lack of uniformity in the dispute settlement mechanisms set out in recent negotiations concluded by the EU. Moreover, in the EU-Chile FTA, the implementation of the panel reports under the TSD chapter, which includes gender-related provisions, must be undertaken through enhanced cooperation with the support of the TSD Sub-Committee monitoring<sup>176</sup>.

Canada has applied a similar approach to the EU, including a specific chapter on *Trade and Gender*, but also without uniformity regarding dispute settlement mechanisms. Both Canada-Chile<sup>177</sup> and Canada-Israel modernised FTAs<sup>178</sup> provide for a vast list of “cooperation activities” “designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and fully benefit from the opportunities created by this agreement”. However, in the modernised FTA with Israel, the Trade and Gender chapter states that if the Parties are unable to resolve disputes through dialogue, consultation and cooperation, they may agree to submit the matter to the dispute settlement mechanism established under Chapter Nineteen (Dispute Settlement). In case the Parties cannot agree on the implementation of the panel report, the complaining party can suspend the concession of benefits (Article 19.13)<sup>179</sup>. On the other hand, the *Trade and Gender* chapter of the Canada-Chile FTA only provides for the possibility of consultations through dialogue and cooperation to resolve any matter that may arise regarding the interpretation and application of the gender chapter, which is expressly excluded from the dispute settlement mechanism set out in the agreement<sup>180</sup>.

<sup>176</sup> Idem. Article 26.22 (16). *If the Panel of Experts finds in the final report that a Party has not conformed with its obligations under this Chapter, the Parties shall discuss appropriate measures to be implemented taking into account the report and recommendations of the Panel of Experts. The responding Party shall inform its ... [domestic civil society mechanism set up under the Agreement] referred to in Article ... of Chapter ... and the other Party of its decisions on any actions or measures to be implemented no later than three months after the report has been made publicly available.*

<sup>177</sup> The Canada-Chile Free Trade Agreement entered into force on July 5, 1997. The modernized Canada-Chile Free Trade Agreement (CCFTA) entered into force on February 5, 2019. Text of the Agreement available at: [http://www.sice.oas.org/trade/chican\\_e/CAN\\_CHL\\_Index\\_2019\\_e.asp](http://www.sice.oas.org/trade/chican_e/CAN_CHL_Index_2019_e.asp). Last Access 20.02.2023.

<sup>178</sup> Protocol Amending the Free Trade Agreement Between the Government of Canada and the Government of the State of Israel [hereinafter Canada-Israel Free Trade Agreement (CIFTA)], signed on 28.05.2018, in force since 01 September 2019. Available at: [http://www.sice.oas.org/trade/can-isr/CAN\\_ISR\\_2018\\_index\\_e.asp](http://www.sice.oas.org/trade/can-isr/CAN_ISR_2018_index_e.asp). Last Access 20.02.2023.

<sup>179</sup> Canada-Israel Free Trade Agreement (CIFTA). Article 19.13: The complaining Party, subject to paragraphs 2 and 4 and following notice to the Coordinator of the other Party, may suspend the application to the other Party of benefits of equivalent effect if: (a) in its final report a panel determines that a measure is inconsistent with the obligations of this Agreement or that there is nullification or impairment within the meaning of Annex 19.2; and (b) the Parties have not been able to reach an agreement on implementation within 30 days, or such other period as the Parties may decide, of receiving the final report.

<sup>180</sup> Canada-Chile modernized FTA Appendix II - Chapter N bis - Trade and Gender - Article N bis-06: Non-application of Dispute Resolution: A Party shall not avail itself of the dis-

Therefore, we can see that even the leaders in gender equality in international trade have not addressed a common trade policy in defining enforcement mechanisms related to gender provisions in their recent FTAs, which provokes uncertainty and can lead to discriminatory treatment between trading partners. Indeed, while some may face retaliation for non-compliance with gender-related provisions, others have at their disposal an enhanced cooperation mechanism to assist them in their implementation. The adoption of a single approach capable of promoting gender equality and women's empowerment without causing protectionism and discrimination within the multilateral system is fundamental to boost trade liberalization with equitable, inclusive and predictable conditions.

## V. Conclusion

As Virginia Woolf once noted, “money is power”, and women like Gabrielle Chanel confirmed this statement by becoming an example of empowered women in a society socially, culturally and economically dominated by men. After the Second World War, the international community's concern about the discrimination and prejudice suffered by women led to the adoption of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) by the UN General Assembly in 1979 and the inclusion of women's rights in the human rights and sustainable development agendas. Under the international trade system, first led by GATT 1947 and from the *Marrakesh Agreement* in 1994 by the WTO, it was not acknowledged how globalization could provoke unequal outcomes for men and women, not raising their standards of living in the same levels<sup>181</sup>. After the adoption of the UNGA Resolution for the SDGs in 2015, the WTO finally woke up to the problem and on the occasion of the WTO Ministerial Conference held in 2017 in Buenos Aires, it was adopted the Joint Declaration on Trade and Women's Economic Empowerment<sup>182</sup>, which has been the headlight for framing gender-provisions in FTAs.

pute resolution mechanism provided for in Chapter N (Institutional Arrangements and Dispute Settlement Procedures) with respect to any matter arising under this Chapter.” Available at: [https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017\\_Amend\\_Modif-App2-Chap-N.aspx?lang=eng&\\_ga=2.117210182.1178787842.1677299188-1617643210.1670057589](https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng&_ga=2.117210182.1178787842.1677299188-1617643210.1670057589). Last Access 25.02.2023.

<sup>181</sup> TRAN-NGUYEN, ANH-NGA, ET AL. *Trade and Gender: Opportunities and Challenges for Developing Countries*. United Nations Publications, 2004, p 329.

<sup>182</sup> WTO Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017. Available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/genderdeclarationmc11\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf).

Although the general exceptions laid down by GATT 1994 article XX, “a” and “b” and GATS Article XIV have never been invoked by any WTO member to protect or promote women’s rights. From the *WTO Buenos Aires Declaration* on, the awareness to gender bias and the promotion of women empowerment became an important flag of the WTO, which has launched Actions Plans and programmes as the *WTO Breach*, the *Informal Working Group on Trade and Gender*, the *WTO Gender Research Hub platform*<sup>183</sup> and even a specific Database to track gender provisions in RTAs. On this path, in the end of 2022, the WTO held its first-ever *World Trade Congress on Gender* to address challenges and discuss best practices in framing gender-related provisions to increase women’s participation in global chains and international trade. During the event, particular attention was dedicated to discuss the structure of gender provisions in FTAs, their content and enforcement mechanisms.

As assessed at the *WTO World Trade Congress on Gender*, gender-related provisions in FTAs are proliferating in a very heterogeneous way. Expanding the scope of gender provisions in stand-alone chapters or within the TSD chapter to reaffirm commitments under CEDAW and its Optional Protocol appears to be an essential measure to ensure non-discrimination of women in local and global value chains, and to enable women to file individual complaints in case of violations of their rights guaranteed by the CEDAW. In addition to the inclusion of the CEDAW Optional Protocol and the reaffirmation of other multilateral instruments such as the *Beijing Plan of Action*, the *UN 2030 Agenda* for the SDGs and the *WTO Buenos Aires Declaration*, another sensitive issue regarding gender-related provisions in FTAs relates to the approach of dispute settlement mechanisms used to promote their implementation.

Currently, dispute settlement mechanisms in FTAs have followed three different approaches: a cooperative one, which encourages the Parties to resolve the disputes amicably, through diplomatic means; a sanction-based one, in which the matter is resolved by a binding decision of a panel of experts or an arbitration tribunal; and mixed procedure whereby an attempt is first made to resolve the dispute amicably through intergovernmental consultations, and whether consultations fail, the matter is referred to a panel of experts competent to issue recommendations according to which the Parties must make their *best efforts* to implement, without the possibility of imposition of sanctions in case of non-compliance with the panel report. The EU also has presented a fourth approach in the EU-New

<sup>183</sup> WTO launches Gender Research Hub to promote cooperation on trade and gender issues, 31.05.2021. Available at: [https://www.wto.org/english/news\\_e/news21\\_e/iwgtg\\_31may21\\_e.htm](https://www.wto.org/english/news_e/news21_e/iwgtg_31may21_e.htm).

Zealand FTA, which only allows for the application of trade sanctions under the TSD chapter in the event of non-compliance with panel reports in respect of violations of core labour standards and the provisions of the Paris Agreement.

More caution is needed in applying a sanction-based approach, which allows for the imposition of economic sanctions, such as the suspension of concessions, in case of non-compliance with labour, environmental and gender-related provisions in FTAs. In fact, a strict positivist approach based on sanctions can lead to a result that is completely opposite to the one expected. The application of economic sanctions can undermine trade liberalisation without effectively contributing to the promotion of the SDGs, included gender equality and women's empowerment, and may lead the "guilty" State to trade with other partners that do not adopt even basic provisions to guarantee sustainable development and women's rights. Therefore, different approaches to the dispute settlement mechanisms and unequal gender trade policies can increase protectionism and provoke discrimination between trading partners, undermining trade liberalisation and exacerbating existing geopolitical tensions, which is a worst-case scenario for a global free market economy.

As a matter of fact, in the midst of the deep crisis multilateral trade system is facing, with the WTO Appellate Body blocked<sup>184</sup> and the increasing rivalry between West and East<sup>185</sup>, the WTO should encourage greater dialogue and cooperation among its members, including on the implementation of women's rights provisions in FTAs. As the conflict between Russia and Ukraine has shown, the imposition of economic sanctions has not only failed to stop the conflict<sup>186</sup>, but has fuelled it and deepened the crisis. Moreover, for those calling for enforcement mechanisms

<sup>184</sup> See United States Trade Representative, Report on the Appellate Body of the World Trade Organization, Washington D.C., February 2020; SACERDOTI, GIORGIO. La crisi dell'Organizzazione mondiale del commercio: ragioni e prospettive, in ATTILA MASSIMILIANO TANZI, LUDOVICA CHIUSI CURZI, GIAN MARIA FARNELLI, ANDREA MENSI (a cura di), *La Transizione Ecologica nel Commercio Internazionale: Tra Aspetti di Riforma Procedurali, Istituzionali e Diritto Sostanziale*, Bologna, 2022, pp. 9-22; SACERDOTI, GIORGIO. The Stalemate Concerning the Appellate Body of the WTO: Any Way Out?, in *Question of International Law*, 2019, pp. 37-59.

<sup>185</sup> KROENIG, MATTHEW. *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*. New York, 2020; online edn, Oxford Academic, 19 Mar. 2020. Available at <https://doi.org/10.1093/oso/9780190080242.003.0013>. Accessed December 2022.

<sup>186</sup> See ZHABENKO, IRYNA. *Economic Sanctions on Russia: Its Effect on the Russia-Ukraine War and the Impact on the Global Economy*, 2022; NGO, VU M., ET AL. "Public Sentiment towards Economic Sanctions in the Russia-Ukraine War." *IDEAS Working Paper Series from RePEc*, 2022, pp. IDEAS Working Paper Series from RePEc, 2022; KUVALIN, D. B., ET AL. "Russian Enterprises in the Spring of 2022: Adapting to the New Wave of Sanctions and Views on the ESG Agenda." *Studies on Russian Economic Development*, vol. 33, no. 6, 2022, pp. 697-706.



for gender-related provisions and TSD chapters, there has not been enough time to assess whether a sanctions-based approach would be more effective in ensuring compliance<sup>187</sup>. In the case of the EU, for example, in the only expert panel report requested under an EU FTA to implement a TSD provision, in the FTA with South-Korea, the collaborative approach revealed to be sufficient to push South Korea to implement the panel of experts' report<sup>188</sup> and ratify the ILO Convention No. 105 on Abolishment of Forced Labour<sup>189</sup>.

In conclusion, WTO members should foster greater dialogue and exchange of best practices to advance women's empowerment in line with a concept of law closer to Hart's theory<sup>190</sup> rather than a strict positivist one

<sup>187</sup> There is not enough evidence to compare the effectiveness of EU TSD in relation to the U.S. and Canadian models which include the possibility of trade sanctions in case of non-compliance, and there are certainly pros and cons to every system. In a public stakeholder consultation launched by the European Commission on the matter in 2017, there was no consensus among European policy makers and stakeholders on the use of sanctions on the TSD chapter. See more at COOREMAN, BARBARA AND GEERT VAN CALSTER, *Trade and Sustainable Development Post-Lisbon*, in HAHN, MICHAEL J., AND GUILLAUME VAN DER LOO. *Law and Practice of the Common Commercial Policy the First 10 Years after the Treaty of Lisbon*. Brill/Nijhoff, 2020, p. 199.

<sup>188</sup> Panel of Experts Proceeding Constituted Under Article 13.15 of the EU-Korea Free Trade Agreement. Available at: tradoc\_159358.pdf (europa.eu). Accessed 12.11.2022.

<sup>189</sup> "Following lack of progress by South Korea in its commitments to "respect and realise in their laws and practices" the fundamental ILO principles and rights at work, notably the freedom of association, and to ratify outstanding ILO Conventions, the EU requested consultations with South Korea in December 2018/109. After this was unsuccessful in achieving progress, the EU took recourse to requesting the establishment of a panel of experts in July 2019, the next step in the DSM process. The panel of experts was established at the end of 2019. A hearing with the panel of experts was due to take place in April 2020 but cancelled due to the COVID-19 pandemic, and was finally held in October 2020. In December 2020, the South Korean government submitted to the National Assembly of Korea (parliament) draft laws allowing for ratification of three of the four outstanding fundamental ILO Conventions as well as reforms on freedom of association. The panel report, published in January 2021, found that South Korea should adjust labour laws to be consistent with the TSD Chapter in the FTA 111. South Korea ratified three fundamental ILO Conventions on 20 April, and they entered into force on 20 April 2021 (No. 29 on Forced Labour, No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on Right to Organise and Collective Bargaining). South Korea also adopted amendments to the Trade Union and Labour Relations Adjustment Act, which entered into force 6 July 2021. At a meeting of the TSD Sub-committee in April 2021, the South Korea authorities explained progress in implementing the recommendations from the panel of experts report and outlined plans for a research project for a path to ratifying the final fundamental ILO Convention (No. 105 on Abolishment of Forced Labour)" LSE, *Comparative Analysis of TSD Provisions for Identification of Best Practices to Support the TSD Review*, September 2021.

<sup>190</sup> The nature of legal obligation, on Hart's account, lies not in sanction, but in the attitude – the "internal aspect" that led public official to follow the rule. He clearly rejected the proposition that law is based on a command backed by coercion or sanction. Even if he agrees that law is an expression of will, coercion no longer constitutes a central feature of any legal system, especially in the realm of international law governed by the will of the States. See D'ASPROMONT, JEAN. *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules*. 2011; BIX H., BRIAN, "Legal Positivism" in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Blackwell Publishing Ltd, 2005, p. 29-49. H.L.A HART, *The concept of Law*, end Edn. OUP, Oxford, 1997.

based on sanctions. Initiatives such as the *WTO World Trade Congress on Gender*, the *She Trades* initiative and the *Global Trade and Gender Arrangement* (GTGA) must be encouraged and supported more every day as they are crucial to advance positive gender policies through enhanced co-operation (and not fear of sanctions) and effectively promote women's empowerment, boosting trade liberalisation for a fairer and more inclusive, sustainable and peaceful World that leaves no women behind.

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#### SINTESI

Recita un antico e celebre proverbio: "Il lavoro nobilita l'uomo". Storicamente nella divisione del lavoro sociale, gli uomini lavoravano fuori casa e le donne si occupavano della famiglia, svolgendo attività domestiche non retribuite. Dalla Rivoluzione industriale e soprattutto dopo la Seconda Guerra Mondiale – che ha richiesto a milioni di uomini di andare in guerra e ha chiamato le donne ad assumere le loro posizioni lavorative – è iniziata una rivoluzione di genere. Da allora le donne si sono inserite nel mercato del lavoro non solo per necessità economiche, ma anche per sviluppare le proprie capacità personali ed acquisire l'indipendenza economica per essere padrone del proprio destino: *il lavoro non solo nobilitava le donne ma poteva renderle libere*. A questo scopo, nel 1979 le Nazioni Unite hanno adottato la Convenzione sull'eliminazione di tutte le forme di discriminazione nei confronti delle donne e, dopo quasi 40 anni, l'Assemblea Generale delle Nazioni Unite (UNGA) ha adottato la Risoluzione «*Trasformare il nostro mondo: l'Agenda 2030 per lo sviluppo sostenibile*» fissando come quinto obiettivo *raggiungere l'uguaglianza di genere ed emancipare le donne e le ragazze*. Poiché la partecipazione delle donne al commercio è una *conditio sine qua non* per l'emancipazione delle donne, nel 2017 l'OMC ha adottato, in occasione della conferenza ministeriale a Buenos Aires, una dichiarazione congiunta sul commercio e potenziamento economico delle donne. Questa triade di strumenti multilaterali ha fornito il substrato per affrontare le disposizioni di genere nella nuova generazione di accordi di libero scambio che si sono diffusi in tutto il mondo in modo molto eterogeneo. Il miglioramento e la possibile uniformazione delle disposizioni relative al genere per rafforzare il potenziamento delle donne attraverso gli accordi di libero scambio è un'altra delle attuali sfide che il multilateralismo sta affrontando per stabilire *standard* globali che difendano i *sustainable development goals* (SDGs) per un commercio internazionale più giusto, inclusivo e sostenibile che non lasci indietro nessuna donna.

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*ABSTRACT*

*The old and famous proverb used to say, “work ennobles man”. Historically in the division of social labour, men used to work outside, and women used to take care of the family, developing non-remunerated domestic tasks. From the Industrial Revolution, and mainly after the Second World War that demanded millions of men to go to the war and called women to assume their job positions, a gender revolution started to happen. From then on women not only for economic necessity wanted to join the labour market, but to develop their personal skills and acquire financial independence to be the masters of their own destiny: work not only ennobled women but could set them free. On this purpose, the UN adopted the Convention on the Elimination of All Forms of Discrimination against Women in 1979, and almost 40 years later, the UN General Assembly Resolution "Transforming our World - the 2030 Agenda for Sustainable Development" set as its fifth goal to achieve gender equality and the empowerment of all women and girls. As women's participation in trade is a condition sine qua non for women's empowerment, in 2017 the WTO issued a Joint Declaration on Trade and Women's Economic Empowerment on the occasion of the WTO Ministerial Conference in Buenos Aires. This triad of multilateral instruments has provided the substrate for addressing gender provisions in the new generation of FTAs, which have proliferated around the world in a very heterogeneous way. Improving and possibly standardising gender provisions to promote women's empowerment through FTAs is another of the current challenges multilateralism is facing to set global standards that promote the sustainable development goals for a fairer, more inclusive and sustainable international trade that leaves no woman behind.*