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Gender-Inclusive Governance for e-Commerce, Digital Trade, and Trade in Services

A Look at Domestic Regulation

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ABSTRACT

The chapter builds on the author's article titled 'Gender-Inclusive Governance for E-Commerce', which broke new ground by examining electronic commerce (e-commerce) from a gender perspective, and the proposal for a provision on gender equality in services domestic regulation (services DR). Since then, both the provision and the policy landscape have developed. The provision was included in the negotiations on services DR that concluded on 2 December 2021 among the sixty-seven World Trade Organization (WTO) members participating in the Joint Statement Initiative (JSI) on Services Domestic Regulation. The chapter aims to meet the moment with a restatement of the framework that the article proposed, using original and new analysis by including the concluded text. The chapter generates new knowledge that is actionable for policymakers and stakeholders by responding to three questions: What is gender-inclusive governance? What is the relationship between gender divides, e-commerce, digital trade, and trade in services? What policy interventions are necessary, and why, to meet the moment? The goal is to discuss ways to attain gender-inclusive governance for trade policy at this unique time for implementing changes that are fit for the digital age. The

^{*} The main body of the book chapter is a version of the author's article. See Amalie Giødesen Thystrup, 'Gender-Inclusive Governance for E-Commerce' (2020) 21(4) *Journal of World Trade and Investment* 595–629. The goal of this chapter is to direct the proposed framework to not solely e-commerce but also to digital trade and services trade. Thereby, the chapter adds another layer – that of the four modes of services supply and the relationship between gender, e-commerce, digital trade, and services trade. Furthermore, it unpacks and updates the article's analysis of the provision on gender equality proposed as part of the WPDR and later the JSI's disciplines on services domestic regulation. The chapter leaves out RTA experiences and other agendas included in the article to save space and to support the focus on the WTO agenda. Needless to say, all errors are entirely my own. Contact <amaliethystrup@gmail.com>

chapter argues that multi-level dedicated gender-inclusive governance can contribute to closing the gender gap.

6.1 INTRODUCTION: POLICYMAKING FOR TRADE AND GENDER

Following the 11th Ministerial Conference (MC11), World Trade Organization (WTO) debates among members have concentrated around four substantive agendas: investment facilitation; micro, small, and medium-sized enterprises (MSMEs); services DR pursuant to Article VI:4 of the General Agreement on Trade in Services; and e-commerce. The four agendas produced joint initiatives announced on 13 December 2017 during the final day of the MC11.¹ Among the four JSIs, negotiations between ultimately sixty-seven WTO members on services DR successfully concluded on 2 December 2021.²

The WTO discussions on the interplay between the cross-cutting agenda for gender equality anchored in the Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017 (the Buenos Aires Declaration on Women and Trade) and the four Ministerial Statements picked up steam post-MC11.³ These efforts see the WTO hosting a series of

¹ The joint initiatives for E-Commerce, MSMEs, and investment facilitation were launched at MC11, on 13 December 2017. See WTO, 'Joint Statement on Electronic Commerce, Ministerial Conference Eleventh Session Buenos Aires, 10–13 December 2017', WT/MIN(17)/60 (13 December 2017); WTO, 'Joint Ministerial Statement on Investment Facilitation for Development, Ministerial Conference Eleventh Session Buenos Aires, 10–13 December 2017', WT/MIN(17)/59 (13 December 2017); and WTO, 'Joint Ministerial Statement – Declaration on the Establishment of a WTO Informal Work Programme for MSMEs', WT/MIN(17)/58 (13 December 2017). See also WTO, 'New Initiatives on Electronic Commerce, Investment Facilitation and MSMEs' (13 December 2017) <www.wto.org/english/news_e/news17_e/minis_13dec17_e.htm> accessed 8 May 2022. Proponents of DR had hoped for a DR outcome at the MC11, based on a consolidated text that included a provision on gender equality, but *in lieu* a Joint Ministerial Statement on services DR with more signatories was signed. See WTO, 'Joint Ministerial Statement on Services Domestic Regulation, Ministerial Conference Eleventh Session Buenos Aires, 10–13 December 2017', WT/MIN(17)/61 (13 December 2017).

² WTO, 'Negotiations on Services Domestic Regulation Conclude Successfully in Geneva' (2 December 2017) <www.wto.org/english/news_e/news21_e/jssdr_02dec21_e.htm> accessed 8 May 2022. See also WTO, Declaration on the Conclusion of Negotiations on Services Domestic Regulation, WT/L/1129 (2 December 2021).

³ WTO, 'Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017' (2017) <www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf> accessed 8 May

discussions sparked by the declaration on a range of specific topics to share best practices and national experiences with a view to unlocking trade benefits for women.⁴ Open to all members, the Informal Working Group on Trade and Gender meets at the WTO to further the discussion.⁵

New and enhanced disciplines on services DR, including a provision on gender equality, were projected to deliver outcomes at the MC12 in June 2022, initially scheduled to be held in Geneva from 30 November until 3 December 2021. Participants in the negotiations on DR concluded text-based discussions at their meeting on 27 September 2021. Signatories to the initiative proceeded to circulate national schedules of specific commitment pursuant to the General Agreement on Trade in Services (GATS).⁶

These efforts were to pave the way for the conclusion of the negotiations by MC12 in 2021.⁷ Despite the postponement of MC12,⁸ negotiators persisted and reached an agreement on services DR among the JSI's sixty-seven WTO members on 2 December 2021 (JSI 2021).⁹ As a plurilateral agreement within the WTO, the JSI's disciplines will be applied on a most-favoured nation (MFN) basis, and the members that are signatories will inscribe any commitments into their schedules under GATS as additional commitments.¹⁰ This means that it will benefit the full WTO membership, and not solely the sixty-seven signatories.¹¹ The JSI 2021 includes a provision on gender equality

2022. See also Rohini Acharya, Olga Falgueras Alamo, Salma Mohamed Thabit Al-Battashi, Anoush der Boghossian, Naghm Ghei, Tania Parcero Herrera, Lee Ann Jackson, Ulla Kask, Claudia Locatelli, Gabrielle Marceau, Ioana-Virginia Motoc, Anna Caroline Müller, Nora Neufeld, Simon Padilla, Josefita Pardo de León, Stella Perantakou, Nadezhda Sporysheva, and Christiane Wolff, 'Trade and Women – Opportunities for Women in the Framework of the World Trade Organization' (2019) 22(3) *Journal of International Economic Law* 323–354.

⁴ WTO, 'DG Azevêdo: Global Cooperation on Digital Economy Vital to Unlock Trade Benefits for Women (WTO *Speeches* 1 July 2019) <www.wto.org/english/news_e/spra_e/spra268_e.htm> accessed 8 May 2022.

⁵ WTO, 'Informal Working Group on Trade and Gender' (2017) <www.wto.org/english/tratop_e/womenandtrade_e/iwg_trade_gender_e.htm> accessed 15 September 2022.

⁶ WTO, 'Joint Initiative on Services Domestic Regulation – Schedules of specific commitments', INF/SDR/3/Rev.1 (2 December 2021).

⁷ WTO, 'Participants in Domestic Regulation Talks Conclude Text Negotiations, on Track for MC12 Deal' (27 September 2021) <www.wto.org/english/news_e/news21_e/serv_27sep21_e.htm#_YVN1fj23jHo.linkedin> accessed 8 May 2022.

⁸ WTO, 'General Council Decides to Postpone MC12 Indefinitely' (26 November 2021) <www.wto.org/english/news_e/news21_e/mc12_26nov21_e.htm> accessed 8 May 2022.

⁹ WTO, 'Negotiations on Services Domestic Regulation Conclude Successfully in Geneva' (n 2).

¹⁰ Ibid.

¹¹ A full account of different types of plurilateral agreements, and their implications, are given in Amalie Giødesen Thystrup, *Governing Trade in Services – Transforming Rulemaking and Trade Integration* (2017) PhD thesis, University of Copenhagen.

where a member adopts or maintains measures relating to the authorization for the supply of a service.

As a plurilateral agreement, the conclusion of JSI 2021 does not form part of the ‘Geneva Package’ of negotiated multilateral outcomes that MC12 secured when it was successfully concluded on 17 June 2022.¹² However, the three co-chairs of the Informal Working Group on Trade and Gender issued a statement at MC12 highlighting the achievements of WTO members’ joint work and reaffirming their commitment to advancing gender equality in trade.¹³

The chapter will organize discussions of the effects of trade on gender gaps around the four modes of supply of services in GATS Article I:2 (a–d), to reflect the crucial avenues for economic participation in the economy that are at stake. After this short introduction of the trade and gender agenda, Section 6.2 outlines the economic structures driving the gender gap and specifically the gender digital divide. The chapter then turns to examining the relationship between gender, e-commerce, digital trade, and services trade in Section 6.3. Next, Section 6.4 restates a framework for gender-inclusive governance for trade and examines policy prescriptions for bridging the gender digital divide. Section 6.5 examines policy interventions in digital trade. Section 6.6 looks at policy interventions in services trade based on a close reading of the provision on gender equality introduced in DR to unlock its legal-political implications. Section 6.7 concludes.

6.2 THE GENDER GAP IN TRADE

According to the World Economic Forum’s (WEF) definition, the gender gap is the difference between women and men as reflected in social, political, intellectual, cultural, or economic attainments or attitudes.¹⁴ The chapter subscribes to the understanding that the gender gap encompasses the structural differences women face in terms of (i) the gendered composition of the labour force, (ii) women’s primary responsibility for reproductive work, and

¹² See WTO, ‘Twelfth WTO Ministerial Conference, including the MC12 outcome document’, WT/MIN(22)/24 (22 June 2022).

¹³ WTO, ‘Trade and Gender Co-chairs Affirm Commitment to Gender Equality in Trade at MC12’ (12 June 2022) <www.wto.org/english/news_e/news22_e/iwgtg_13jun22_e.htm> accessed 15 September 2022.

¹⁴ Briony Harris, ‘What Is the Gender Gap (and Why Is It Getting Wider)?’ (World Economic Forum 1 November 2017) <www.weforum.org/agenda/2017/11/the-gender-gap-actually-got-worse-in-2017> accessed 8 May 2022.

(iii) women's differential access to and control over resources relative to men.¹⁵

Research in the last decade has begun to produce evidence that the assumption that trade reforms will benefit men and women equally does not always hold. Because of the different roles that women and men have in society, trade policy does not automatically generate gender-neutral results.¹⁶ Simply put, trade rules are not gender-neutral.¹⁷ Gender-based inequality in turn impacts trade patterns and trade outcomes because it influences the patterns of resource allocation and competitive advantages of countries.¹⁸ The impact of trade on women and men differs because they tend to operate in different sectors and have differentiated access to resources.¹⁹

Women are impacted in various and overlapping roles as producers, employees, business owners, managers, and consumers. In turn, these factors shape different supply responses, vulnerabilities to economic change, and, more broadly, abilities to seize export opportunities and absorb adjustment costs.²⁰ With women as workers, but also as entrepreneurs and business owners, concentrating in less export-oriented sectors such as services, trade liberalization does not extend the same benefits of competition and broader supply that drive down prices.²¹

The International Trade Centre (ITC) finds that the gender gap in trade is largely due to the concentration of women's employment in less export-oriented sectors, notably in services sectors.²² The Organisation for

¹⁵ Penny Bamber and Cornelia Staritz, 'The Gender Dimensions of Global Value Chains' (2016) ICTSD Policy Paper 3 <www.tralac.org/images/docs/10585/the-gender-dimensions-of-global-value-chains-ictsd-september-2016.pdf> accessed 8 May 2022.

¹⁶ Nadia Rocha, 'Linkages between Trade and Gender' (7 December 2018) <www.wto.org/english/tratop_e/womenandtrade_e/session_1_a_nadia_trade_and_gender_geneva_dec_2018_nr_short_version.pdf> accessed 20 September 2022. See also the key report World Bank and WTO, 'Women and Trade: The Role of Trade in Promoting Gender Equality' (2020) <www.wto.org/english/res_e/booksp_e/women_trade_pub2807_e.pdf> accessed 20 September 2022.

¹⁷ The finding is supported by ITC, 'From Europe to the World: Understanding Challenges for European Businesswomen' (2019) 3; Alicia Frohmann, 'Gender Equality and Trade Policy' (2017) WTI Working Paper No. 24/2017 <www.wti.org/media/filer_public/8b/a8/8ba88d03-1a2b-4311-af6a-629d9997c54c/working_paper_no_24_2017_frohmann.pdf> accessed 8 May 2022.

¹⁸ Bamber and Staritz, 'The Gender Dimensions of Global Value Chains' (n 15) 7.

¹⁹ ITC, 'From Europe to the World' (n 17) 3.

²⁰ Ibid.

²¹ Ibid 17–18.

²² Ibid.

Economic Co-operation and Development (OECD) arrives at the same conclusion.²³

It is not that services are less ‘tradeable’ than goods, though services sectors are associated with being less export-oriented than those for goods. In fact, whenever a good is exported and crosses borders, the supply of a service is involved, whether it is at the early stages of design, transportation, or delivery. Thus, GATS Article I:2 (a–d) defines trade in services as the supply of a service from the territory of one member into the territory of any other member (cross-border), in the territory of one member to the service consumer of any other member (consumption abroad), by a service supplier of one member, through commercial presence in the territory of any other member (commercial presence), or by a service supplier of one member through the presence of natural persons of a member in the territory of any other member (mode 4). Moreover, services are integral to global value chains (GVCs), to the effect that services generate trade in value added.

Contemporary research reflects that services are not as often or as easily supplied along the four modes of supply, and instead such services may be supplied domestically and without the service, the worker, or the business crossing any borders to new markets. Thereby, the supply of services would also avoid the regulatory barriers to trade that, generally speaking, are pronounced in services trade.²⁴ This is why GATS Article VI on DR imposes disciplines on domestic regulations in committed services sectors to discipline domestic regulations that are neither discriminatory nor quantitative in nature, where domestic regulations could nonetheless have trade-restricting effects on services.

A main reason why women tend to concentrate in services is that several of the sectors are gendered. The mining, oil, and gas sectors are examples of sectors with a low ratio of women among its labour force,²⁵ while high concentrations of women workers are observed in sectors such as education and healthcare.²⁶ Generally speaking, traditional healthcare cannot be

²³ Jane Korinek, Evdokia Moisé, and Jakob Tange, ‘Trade and Gender: A Framework of Analysis’ (2021) OECD Trade Policy Papers No. 246, 3–4, 11–16, 27ff. <<https://doi.org/10.1787/6db59d80-en>> accessed 8 May 2022.

²⁴ See Marc Bacchetta, Valerie Cerra, Roberta Piermartini, and Maarten Smeets, ‘Trade and Inclusive Growth’ (2021) IMF Working Papers WP/21/74, 35.

²⁵ See Nick Johnstone and Marta Silva, ‘Gender Diversity in Energy: What We Know and What We Don’t Know’ (IEA 6 March 2020) <www.iea.org/commentaries/gender-diversity-in-energy-what-we-know-and-what-we-dont-know> accessed 8 May 2022. It includes a breakdown of data in energy sectors across sub-sectors.

²⁶ Bacchetta et al., ‘Trade and Inclusive Growth’ (n 24) 13–14.

supplied at a distance cross-border, and supplying healthcare to consumers abroad requires authorization, while travelling to a different country as a healthcare provider would often require a permit or a visa. Thus, the benefits of trade liberalization would not extend to those sectors and consequently double down on the concentrations of women supplying such services. Data shows that firms that export pay higher wages.²⁷ More so, arguably it is to the detriment of women workers specifically if the benefits associated with trade do not extend to them.

However, trade does create jobs for women in export-oriented sectors, and those jobs also serve to bring more household resources under women's control, which in turn leads to greater investments in the health and education of future generations. However, differences in wages earned by men and women persist in all countries.²⁸

Women's primary responsibility for reproductive work implies a time constraint on participating in trade as women carry most of the burden of child rearing and domestic work, which decreases flexibility.²⁹ The third structural difference women face pertains to access to and control over resources.³⁰ A woman may, for example, run the household but not control any capital, or work in agriculture but not hold property rights. Other examples would include lack of recognition before the law preventing a woman from opening a bank account in her own name, or impaired access to education, knowledge, finance, or other means of value that are prerequisites to economic participation.³¹

Against this backdrop, it is submitted that the existing patterns of trade to a large extent perpetuate structural challenges facing women in the economy at large: (i) Women face greater disadvantages in responding to new economic incentives because of gender differences in access to productive resources, including land, credit, education, skills, infrastructure, utilities, and services. (ii) Women tend to concentrate in fewer sectors, and face gendered job segregation. (iii) Time constraints dampen women's response to potential

²⁷ Ibid 18.

²⁸ Jane Korinek, 'Trade and Gender: Issues and Interactions' (2005) OECD Trade Policy Working Paper No. 24 <<https://doi.org/10.1787/826133710302>> accessed 8 May 2022. The OECD defines the gender wage gap as the difference between median earnings of men and women relative to median earnings of men and finds that women earn 13 per cent less than men on average across the OECD. See OECD, 'Gender Wage Gap (Indicator)' <<https://data.oecd.org/earnwage/gender-wage-gap.htm>> accessed 5 April 2022.

²⁹ Bamber and Staritz, 'The Gender Dimensions of Global Value Chains' (n 15).

³⁰ Ibid.

³¹ See World Bank, 'Women, Business and the Law' (2018) <<https://openknowledge.worldbank.org/handle/10986/29498>> accessed 8 May 2022.

opportunities in new economic activities, and poor infrastructure and poor services heighten these challenges for women in developing countries.³²

Gender-based differential access to or constraints on labour, time, and resources create a gap. We speak of a ‘gender gap’ to reflect how the structural differences produce *de jure* and *de facto* discrimination, and because the conditions for the gender gap are based on sex, but on gender more broadly. These structural differences can produce discrimination against more groups of individuals, reflected in a wider concept of gender equality that is sensitive to sex, status, and socio-economic norms. Thus, the gender gap is a multidimensional concept.

Structural challenges produce gender inequality in the economy that interacts in complex ways with socio-economic components such as origins and status, and with the divides in trade and the economy at large that are broadly accepted as determinants of export capabilities, in particular firm size, level of development, and level of digitalization. The gender gap, conceptually centred around labour, time, and resource constraints, interacts with such divides to the effect that the divide can deepen and the gender gap can widen by implication. Cross-cutting divides to that effect would include the trade finance gap, the divide between MSMEs and larger entities, divides between levels of development among countries, and the digital divide. The implication may be understood as the multiplicity of the gender gap.³³

6.2.1 *The Gender Digital Divide*

Remy defines the gender digital gap as ‘the gender differences in resources and capabilities to access and effectively utilise information and communications technology (ICT) within and between countries, regions, sectors and socio-economic groups’.³⁴ Based on the literature, Remy identifies the following root causes for the gender digital divide: (i) women’s limited access to the internet and digital technologies; (ii) low technological literacy rates among women; and (iii) limited visibility of women in decision-making roles within the tech industry.³⁵ Women are fairly well represented across industries but, as with other gendered sectors, that is not the case in technical jobs, or in technological courses, and the issue here is one of gender stereotyping and

³² Bamber and Staritz, ‘The Gender Dimensions of Global Value Chains’ (n 15) 6, cf. 9, table 1.

³³ Thystrup, ‘Gender-Inclusive Governance for E-Commerce’ (n *) 597 ff, including figure 1.

³⁴ Jan Yves Remy, ‘Closing the Digital Gender Divide through Trade Rules’ (CIGI 9 October 2019) <www.cigionline.org/articles/closing-digital-gender-divide-through-trade-rules/> accessed 8 May 2022.

³⁵ Ibid.

also its impact on education selection.³⁶ This structural problem produces the conditions for a gender digital divide.

The gender digital divide reflects the multidimensional nature of the gender gap and its multiplicity – indeed, the gender digital divide is a prime example of how the gender gap interacts with other divides, and to what effect. It is submitted that impaired access to information technology (IT) infrastructure and IT skills compounds or exacerbates the gender gap into a gender digital gap. Consequently, the gender digital divide produces disadvantages in seizing technology-driven opportunities because of gender discrimination combined with low access to infrastructure, finance, and IT skills. Indeed, access to these resources are imperative for seizing export opportunities in e-commerce, and arguably in digital trade too, as access to IT skills and IT infrastructure are prerequisites for participation.

6.3 THE RELATIONSHIP BETWEEN GENDER, E-COMMERCE, DIGITAL TRADE, AND TRADE IN SERVICES

One avenue for increasing gender-inclusive participation in the trading system is through e-commerce. The sector performs extremely well and has a number of advantages over traditional commerce, which was rocked by lockdowns prompted by the global pandemic that adversely affected women's economic fortunes in particular.³⁷ During this time, e-commerce saw the reverse trend, with demand soaring and supply following suit to the extent that the sector generated massive revenues for online shopping giants in particular, despite supply chains experiencing delays in delivery.³⁸

A joint paper between the United Nations Conference on Trade and Development (UNCTAD), the WTO, and the World Bank draws on empirical analyses to provide greater clarity to the interplay between women, trade, and ICT in the face of increasing digitalization. The study analyses how

³⁶ Penny Bamber, 'Gender and Global Value Chains' (WTO 7 December 2018) <www.wto.org/english/tratop_e/womenandtrade_e/session_2_a_paper_4_penny_bamber.pdf> accessed 8 May 2022.

³⁷ UN Women, 'COVID-19 and Its Economic Toll on Women: The Story behind the Numbers' (16 September 2020) <www.unwomen.org/en/news/stories/2020/9/feature-covid-19-economic-impacts-on-women> accessed 8 May 2022.

³⁸ OECD, 'E-Commerce in the Time of COVID-19' (7 October 2020) <www.oecd.org/coronavirus/policy-responses/e-commerce-in-the-time-of-covid-19-3a2b78e8/> accessed 8 May 2022.

technological developments such as e-commerce platforms and other digital solutions enable and can enhance women's participation in trade.³⁹

Research has also produced recommendations on policy prescriptions for how e-commerce can incorporate gender equality to meet SDG 5 by acting on the goal's explicit reference to using technology to deliver gender equality. This research presents a framework for understanding the multiplicity of gender gaps in e-commerce and provides an analysis of key regulatory and policy challenges women face in e-commerce, before advancing a multi-level approach to incorporating gender-inclusive e-commerce regulation into trade policy.⁴⁰

Services play an increasingly important role in job creation, economic output, and in trade in countries at all development levels.⁴¹ Moreover, the supply of services is ubiquitous to e-commerce. Trade in services is also at the heart of digital trade, which has emerged as a reference point for policy practice dedicated to online trade, almost by definition involving the supply of a service under one of the modes of supply. In the European Commission's taxonomy, and as reflected in the EU's trade policy communication, 'An Open, Sustainable and Assertive Trade Policy' from 2021, digital trade refers to commerce enabled by electronic means, including by telecommunications and/or ICT services. Digital trade covers trade in both goods and services, and it affects all sectors of the economy.⁴²

Yet regardless of the policy practices devoted to the subject, trade in services remains severely understudied from a gender perspective. While a body of mainly empirical research on gender and trade in services linkages in a development context is emerging,⁴³ more research is needed.

³⁹ Marie Sicat, Ankai Xu, Ermira Mehetaj, Michael Ferrantino, and Vicky Chemutai, 'Leveraging New Technologies in Closing the Gender Gaps' (2020) World Bank Working Paper No. 8 <<https://openknowledge.worldbank.org/handle/10986/33165>> accessed 8 May 2022.

⁴⁰ Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *).

⁴¹ World Bank and WTO, 'Women and Trade' (n 16) 7.

⁴² European Commission, 'Digital Trade' <<https://ec.europa.eu/trade/policy/accessing-markets/goods-and-services/digital-trade/>> accessed 8 May 2022.

⁴³ Enrico Nano, Gaurav Nayyar, Stela Rubínová, and Victor Stolzenburg, 'The Impact of Services Liberalization on Education: Evidence From India' (2021) WTO Staff Working Paper ERS2021-10 <www.wto.org/english/res_e/reser_e/ersd202110_e.pdf> accessed 20 September 2022; Gavin van der Nest, 'Women in Services Trade: An Update of Participation and Ownership Data for Sub-Saharan Africa' (2021) tralac Trade Brief No. US21TB01/2021 <www.tralac.org/publications/article/15143-women-in-services-trade-an-update-of-participation-and-ownership-data-for-sub-saharan-africa.html> accessed 20 September 2022

Moreover, e-commerce, digital trade, and trade in services might separately or in combination feed into GVCs. Bamber and Staritz reassess the idea of feminization of GVCs of trade by focusing on the implications of countries moving into higher GVC sectors, namely in technology. Here, a need for much more evidence-based research is identified but a picture emerges of a reality that is not benefiting women, with lower female participation in high-tech sectors. The picture even suggests defeminization of GVCs. When examining the cases of the Dominican Republic and Costa Rica, Bamber and Staritz find that the female intensity in the medical devices sector was higher from the outset and held steady as firms in the sector upgraded into more sophisticated products where women found quality jobs, permanent contracts, benefits, and relatively high wages. In contrast, a study on mining-related GVCs finds that the growing recourse to digital technologies has yet to translate into increased levels of female participation.⁴⁴

This backdrop suggests that making the connection between gender, e-commerce, digital trade, and trade in services, and applying lessons learned, can advance the research agenda and provide value to policy-making.

6.3.1 *The Key Policy Challenges of Market Access, Resources, and Regulatory Aspects for Gender-Inclusive Trade*

The following section will show how key policy challenges for gender equality across the multiplicity of the gender gap in trade at large and in e-commerce, digital trade, and services trade specifically include market access, access to resources, and a regulatory aspect.

6.3.1.1 Market Access

Suominen's study of current patterns for e-commerce controls for firm size, and finds, for one, that the gender gap is not unique to e-commerce as it is a structural feature of the economy. By implication, there are no significant

⁴⁴ Bamber and Staritz, 'The Gender Dimensions of Global Value Chains' (n 15) 3; data-driven evidence from firm-level data in Danny Hamrick and Penny Bamber, 'Pakistan in the Medical Device Global Value Chain' (Duke Global Value Chains Center 2019) <<https://gvcc.duke.edu/wp-content/uploads/PakistanMedicalDeviceGVC.pdf>> accessed 8 May 2022; Karina Fernandez-Stark, Vivian Couto, and Penny Bamber, 'Industry 4.0 in Developing Countries: The Mine of the Future and the Role of Women?' (2019) World Bank Group Background Paper for the WBG-WTO Global Report on Trade and Gender 2019 <<https://documents1.worldbank.org/curated/pt/824061568089601224/Industry-4-0-in-Developing-Countries-The-Mine-of-the-Future-and-the-Role-of-Women.pdf>> accessed 8 May 2022.

differences between male and female participation rates in e-commerce relative to the wider economy. The study also finds that regardless of whether firms were run by men or women, smaller firms are uniformly less likely to export and are more hampered in e-commerce than large firms, as is the case with cross-border trade at large.⁴⁵ The impact is in the correlation – as per the findings highlighted earlier, women as workers and as suppliers tend to concentrate where the gender gap as a structural feature of the economy is felt and in those smaller firms that are uniformly less likely to export.

E-commerce offers MSMEs and small and medium-sized enterprises (SMEs) several advantages in regard to export and market access. Such advantages include lower transaction costs, access to larger or new markets, secure payment options, and, arguably, faster productivity and output growth. Thus, women in particular could stand to benefit from e-commerce because it allows them to connect directly with buyers, thereby circumventing *de jure* or *de facto* discriminatory local business or legal practices. Furthermore, evidence suggests that women increase sales volume and profits when selling to destinations further from their home country rather than over a single border.⁴⁶

Online work and ICT-enabled services exports can be particularly empowering for women expected to stay at home, and where women lack the professional networks and resources relative to men.⁴⁷ However, getting to the stage of export, and tapping into the cross-border trade that improves conditions, is more difficult for women. First, because they may receive a lower price in product markets, as shown in a study about eBay.⁴⁸ Secondly, women exporters face more trade obstacles than men do, with 74 per cent of women-owned firms reporting challenging non-tariff measures (NTMs) compared to 54 per cent of businesses owned by men.⁴⁹

Digitalization can help make it possible for women to trade cross-border to reap the benefits suggested earlier, and with the benefit of anonymizing the exporter's gender online. Anonymizing gender online improves the conditions

⁴⁵ Kati Suominen, 'Women-Led Firms on the Web: What Are Their Regulatory Challenges – and What Are Solutions?' (2018) ICTSD Working Paper, 3, 16 <www.nexttradegrouplc.com/_files/ugd/478c1a_ed3fb14c1a9b465eadd6076404d6da01.pdf> accessed 8 May 2022.

⁴⁶ Sicut et al., 'Leveraging New Technologies in Closing the Gender Gap' (n 39).

⁴⁷ Suominen, 'Women-Led Firms on the Web' (n 45) 8, citing World Bank, 'World Development Report 2016: Digital Dividends' (2016) <www.worldbank.org/en/publication/wdr2016> accessed 8 May 2022.

⁴⁸ Tamar Kricheli-Katz and Tali Regev, 'How Many Cents on the Dollar? Women and Men in Product Markets' (2016) 2(2) *ScienceAdvances* 2.

⁴⁹ ITC, 'SME Competitiveness Outlook 2016: Meeting the Standard for Trade' (2016).

for gender equality because it removes immediate bias in exporting, which carries real economic value in terms of market access and could carry the full price.⁵⁰

However, this is not a given, and the picture of improved market access granted by anonymization of gender is more complex. Online suppliers may lose some of the benefit of gender being anonymized online since a licence is required to access the market. Even when the seller's gender is anonymous, women may receive a lower price than men would collect for the same good or service because of limited business networks, for example.

Moreover, in policy terms, anonymization is insufficient for market access when the goal is more profound change that reflects the structural aspect of gender-inclusive trade policy-making.⁵¹ This is because anonymization does not remedy underlying issues such as limited access to financing or the persistent structural differences women face. Thus, it is submitted that the approach may not serve to consolidate a gender-inclusive trade policy.

6.3.1.2 Access to Resources

In line with the thinking underpinning anonymizing gender online,⁵² a joint paper by UNCTAD, WTO, and the World Bank on the interplay between women, trade, and ICT in the face of increasing digitalization finds, inter alia, that digital solutions may reduce face-to-face interactions, which in turn improves the participation of women entrepreneurs in trade networks traditionally dominated by men. The analysis highlights payment technologies as means to ease provision of financial services for women in e-commerce.⁵³

Evidence shows that it is more difficult for women to access financing than it is for men because of gender biases among investors and lenders.⁵⁴ ITC research shows that the trade finance gap that women entrepreneurs in

⁵⁰ Kricheli-Katz and Regev, 'How Many Cents on the Dollar?' (n 48). The authors found that on average, women sellers received about 80 cents for every dollar a man received when selling the identical new product and 97 cents when selling the same used product.

⁵¹ See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *).

⁵² See *ibid.*

⁵³ Sicat et al., 'Leveraging New Technologies in Closing the Gender Gap' (n 39).

⁵⁴ Suominen, 'Women-Led Firms on the Web' (n 45) cites the following examples: Alberto F. Alesina, Francesca Lotti, and Paulo Emilio Mistrulli, 'Do Women Pay More for Credit? Evidence from Italy' (2013) 11 *Journal of the European Economic Association* 45; Giorgio Calciagnini, Germana Giombini, and Elisa Lenti, 'Gender Differences in Bank Loan Access: An Empirical Analysis' (2014) 1 *Italian Economic Journal* 193; Sarah K. Harkness, 'Discrimination in Lending Markets: Status and the Intersections of Gender and Race' (2016) 79 *Social Psychology Quarterly* 81.

emerging markets face is around USD 260–320 billion per year.⁵⁵ Here, e-commerce is instrumental for women because digital trade would, in theory, be less costly, and therefore require less financing because participation takes place without the physical attributes of a store. Yet participation in e-commerce and digital trade alike would still require some financial infrastructure, such as e-payment systems and access to a bank account.⁵⁶ This could be lost where women suffer under a finance gap and a digital gender divide because IT infrastructure, such as broadband, and IT skills are a prerequisite for engaging in online exports.

To reflect the reality that an estimated 1 billion people in the developing world have broadband but not a debit or credit card, Sicat and others argue that an enabling environment for e-commerce should include access to broadband but also to payment mechanisms.⁵⁷

Limited access to business networks is a key factor in women-owned or women-led SMEs facing specific challenges to grow or access market opportunities, and another key factor is that larger firms lack knowledge of women-owned or women-led SMEs in the market.⁵⁸ Access to resources such as business networks and to larger firms is another pathway to helping these SMEs tap into larger firms' supply chains, which in turn can help overcome how scale is a determinant of a firm's ability to export and unlock the benefits of participating in trade, and trade in value-added. For trade in services, such supply of services could take the form of any of the modes of supply, and it would be imperative to extend the benefits of trade in services to more sectors,

⁵⁵ ITC, 'SME Competitiveness Outlook 2016' (n 49); For a recent report, see OECD, 'Trade Finance for SMEs in the Digital Era' (2021) OECD SME and Entrepreneurship Papers No. 24 <www.oecd.org/cfe/smes/Trade%20ofinance%20for%20SMEs%20in%20the%20digital%20era.pdf> accessed 8 May 2022. The report quotes Kijin Kim, Steven Beck, Mara Claire Tayag, and M. Concepcion Latoja, 'Trade Finance Gaps, Growth, and Jobs Survey' (2019) ADB Briefs <www.adb.org/publications/2019-trade-finance-gaps-jobs-survey> accessed 8 May 2022. It finds that the global trade finance gap was estimated to be USD 1.5 trillion in 2018, difficulties in measuring this gap notwithstanding.

⁵⁶ For exploration of blockchain's potential for bypassing discriminatory practices or overcoming other constraints such as a lack of ID to enable women to engage in the financial and business transaction needed to participate in trade, see Amrita Bahri, 'Blockchaining International Trade: A Way Forward for Women's Economic Empowerment?' in Maarten Smeets et al. (eds) *Adapting to the Digital Trade Era: Challenges and Opportunities* (2020) WTO Chairs Programme <www.wto.org/english/res_e/booksp_e/adtera_e.pdf> accessed 20 September 2022.

⁵⁷ Sicat et al., 'Leveraging New Technologies in Closing the Gender Gap' (n 43).

⁵⁸ See Sheng Fang, Heba Shamseldin, and L. Colin Xu, 'Foreign Direct Investment and Female Entrepreneurship' (2019) World Bank Policy Research Working Paper No. WPS 9083 <<http://documents.worldbank.org/curated/en/404861576511949229/Foreign-Direct-Investment-and-Female-Entrepreneurship>> accessed 20 September 2022.

including those where women tend to concentrate, and to improving female participation in GVCs.⁵⁹

The flexibility of online work can bridge the structural differences women face in terms of primary responsibility for reproductive work. Assuming online work requires fewer resources than opening a physical shop, e-commerce and digital trade can bridge women's differential access to resources, from networks to finance. Furthermore, servicification has a potential to diversify economies, and ICT is a major component to this end. However, it presupposes education and ICT skills.

Indeed, the International Telecommunications Union reports that the proportion of women using the internet is 12 per cent lower than the proportion of men, and this gender gap widens to around 33 per cent in least-developed countries. Research also shows that in Africa, over 40 per cent of women are not able to effectively engage with digital tools for personal and professional activities.⁶⁰ Thus, women affected by a lack of access to education or the existence of a digital divide would not readily be able to take full advantage of the opportunities associated with e-commerce and digital trade. Yet, globally, reports estimate that enabling internet access for 150 million women would contribute an estimated USD 13–18 billion to the annual Gross Domestic Product (GDP) of 144 developing countries.⁶¹

6.3.1.3 Regulatory Challenges

In trade in services, barriers to trade are mostly of a regulatory nature that can be time and resource consuming to overcome, for example obtaining a licence or complying with domestic regulations, such as licensing requirements, qualifications, and technical standards.⁶² Thus, on the regulatory side, gender needs to be recognized before the law to ensure access to resources, anchored in enforceable rights. For example, without legal protection, women could risk being denied access to the financial infrastructure needed for

⁵⁹ See Bamber and Staritz, 'The Gender Dimensions of Global Value Chains' (n 15).

⁶⁰ WTO, 'DG Azevêdo: Global Cooperation on Digital Economy Vital to Unlock Trade Benefits for Women, Speeches – DG Azevêdo (1 July 2019), <www.wto.org/english/news_e/spra_e/spra268_e.htm> accessed 8 May 2022.

⁶¹ Ibid.

⁶² For recent evidence, see Sebastian Benz, Janos Ferencz, and Hildegunn K. Nordås, 'Regulatory Barriers to Trade In Services: A New Database and Composite Indices' (2020) 43 *World Economy* 2860–2879. It is well established, see for example Thystrup, *Governing Trade in Services* (n 11).

participating in trade, such as opening a bank account or cashing cheques, or they could be denied authorization to supply a given service.

This is where disciplines on DR come into the picture. The goal of developing new enhanced disciplines pursuant to GATS Article VI:4 is to address difficulties which may be faced by services suppliers in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other members. In a regime that tolerates discrimination or fails to intervene in gender inequality, women could, for example, experience not being able to obtain licences such as a permit to operate as a professional service supplier. Furthermore, women would not be able to avail themselves of regulatory frameworks that support trade.

The policies and regulations that shape the digital economy also critically shape the economic prospects of women who use it or seek to partake in it, and can have an outsized impact on women. An enabling environment with internet connection and IT systems, e-commerce logistics, online payments, skilled workforces, and an accommodating regulatory environment, are required for firms to engage in cross-border e-commerce.⁶³

In sum, it is proposed that the three key policy challenges of market access, resources, and regulatory aspects for gender-inclusive trade are interconnected, which may in effect reinforce their effect on differential access and gendered constraints to participation in e-commerce, digital trade, and services trade. The following framework for gender-inclusive governance can be devised to shape the necessary policy interventions.

6.4 MULTI-LEVEL FRAMEWORK FOR SECURING INCREMENTAL CHANGE FOR A COMPREHENSIVE SHIFT TOWARDS GENDER-INCLUSIVE E-COMMERCE AND TRADE POLICY

It is the central proposition of this chapter that policy intervention can counter the gender-based constraints that impede participation of women in trade. The vehicle proposed for securing incremental change for a comprehensive shift towards gender-inclusive trade policy is a multi-level framework.

Efforts to promote gender equality for economic growth from participation in trade suggest that engaging the domestic policy level is imperative for implementation. This means focusing on implementing domestic reforms, such as those identified by the World Bank.⁶⁴ In line with this thinking, a

⁶³ Suominen, 'Women-Led Firms on the Web' (n 45).

⁶⁴ World Bank, 'Women, Business and the Law' (n 32).

'bottom-up approach' consists of engaging the domestic policy level. Domestic reform then feeds into Regional Trade Agreements (RTAs), and in turn is informed by advancements in RTAs.

Research has mapped gender-related provisions across RTAs, showing a diversity in approaches that suggests much experience to draw from.⁶⁵ Regional trade policy instruments that have embraced provisions on gender equality include, *inter alia*, the FTA between Chile and Canada, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the African Comprehensive Free Trade Agreement (AfCFTA).⁶⁶ Regional experiences with drafting, scoping, and implementing gender-related provisions and chapters, and their interplay with other disciplines, could improve gender-inclusive governance at large, and inform WTO negotiating modalities. Namely, the experience of including chapters and provisions on gender equality in RTAs would inform policy interventions in the multilateral rules-based system, on a multilateral level, or in a plurilateral setting. The plurilateral setting encompasses the JSIs, and the JSI on services DR specifically includes a provision on gender equality.

The second component to the bottom-up approach involves policy interventions in specific issues. For e-commerce and digital trade, the bottom-up approach would direct policy intervention towards the regulatory space of an enabling environment for e-commerce as the key regulatory and policy challenges facing women can be addressed in this regulatory space to overcome

⁶⁵ See Amrita Bahri, 'Gender Mainstreaming in Free Trade Agreements: A Regional Analysis and Good Practice Examples' (2022) Gender, Social Inclusion and Trade Knowledge Product Series <www.genderandtrade.com/_files/ugd/86d8f7_ea7e603922c54ff7a9e1f81e594a5d9f.pdf> accessed 20 September 2022; Anoush der Boghossian, 'Trade Policies Supporting Women's Economic Empowerment: Trends in WTO Members' (2019) WTO Staff Working Paper ERSD-2019-07 <www.wto.org/english/res_e/reser_e/ersd201907_e.pdf> accessed 8 May 2022; José-Antonio Monteiro, 'Gender-related provisions in Regional Trade Agreements' (2018) WTO Staff Working Paper ERSD-2018-15 <www.wto.org/english/res_e/reser_e/ersd201815_e.pdf> accessed 8 May 2022.

⁶⁶ Canada–Chile Free Trade Agreement (enforced since July 1997); Comprehensive and Progressive Agreement for Trans-Pacific Partnership (enforced since 30 December 2018); Agreement Establishing the African Continental Free Trade Area (enforced since 30 May 2019). For research on African RTAs specifically, see Lolita Laperle-Forget, 'Gender Provisions in African Trade Agreements: What Commitments Are There For Reconciling Gender Equality and Trade?' (2022) Tralac Working Paper No. G21WP11/2021 <www.tralac.org/publications/article/15567-gender-provisions-in-african-trade-agreements-what-commitments-are-there-for-reconciling-gender-equality-and-trade.html> accessed 20 September 2022; Nadira Bayat, 'Advancing Gender-Equitable Outcomes in African Continental Free Trade Area (AfCFTA) Implementation' (2021), UNCTAD White Paper <www.uneca.org/sites/default/files/keymessageanddocuments/22May_Final_WhitePaper_Advancing_gender_equitable_outcomes.pdf> accessed 20 September 2022.

key challenges. The JSI on services DR encompasses policy intervention in the form of a specific provision targeting any gender-based discrimination in the authorizations for the supply of services. Specific issues and specific provisions would then lend themselves to implementing gender-inclusivity and improvement of women's participation in other issue areas and other disciplines by way of example and of policy practice. Furthermore, the modalities would be shaped to capture the multiplicity of the gender gap.

Supporting gender mainstreaming is key to a 'top-down approach' to gender-inclusive trade policy. Gender mainstreaming can engage all WTO initiatives, including the JSIs, to bring about gender-inclusive economic growth in the spirit of the SDGs and in fulfilment of the aspirations of the Buenos Aires Declaration. Such an incremental approach could help ensure implementation of gender-inclusive governance across the WTO *acquis* and anchor gender equality in the rules-based system. Building on the JSI on services DR and its landmark provision on gender equality, and the traction the trade and gender agenda had at MC12, would contribute to consolidating the agenda and exercise policy pressure on the multilateral trading system top-down as well as on the domestic level and upwards. These efforts could build on experience from RTAs incorporating gender equality in different ways.

On an institutional level, continuous strengthening of the coordination between the WTO, RTAs, UNCTAD, the World Bank, the ITC, and the OECD on modalities for supporting the necessary multi-level coordination holds promises for advancing gender-inclusive trade policy-making. Continuous efforts to mainstream gender in trade policy are crucial for sustaining the momentum for gender equality in the WTO.

Furthermore, reading gender equality into the rules-based system could help deliver an incrementally more gender-inclusive trading system across the WTO *acquis*. It would also require dedicating time, resources, and political will to continuing discussions on trade and gender in the WTO. The prospect of an outcome at the MC12 seems particularly promising to this end.

Bringing the market access component of the key policy challenges for gender-inclusivity in trade to the forefront when designing and implementing gender-inclusive programmes can support accessing markets, expand and strengthen market participation, while ensuring sustained gender-inclusion. This is operationalized by employing the multi-level framework of combining a bottom-up approach centred around domestic regulations and reform, and a top-down approach revolving around commitments and policy support.

Expanding in services and digital trade requires improving conditions for participating in all modes of supply. The reverse scenario could produce the unfortunate side effect that existing patterns of limited employment and the

gendered composition of labour and education are reproduced at the expense of support for women branching into digital products and services via e-commerce and digital trade.

The multiplicity of the gender gap is not fully captured across trade policy instruments – for an on point example, see the JSI outcome on DR. If committing to such a framing, it is important not to lose sight of the broader gender equality issue and its multiplicity, and to safeguard against any gender-preclusive effects.⁶⁷ Furthermore, policymakers could prepare the ground for expanding the platform to address how gender is one part of a larger socio-economic issue of *de jure* and *de facto* discrimination based on gender, sex, sexual orientation, class, race, and origins.⁶⁸

Finally, to support a comprehensive shift towards gender equality, it is strongly recommended to continue the effort to collect more data on all aspects of e-commerce, digital trade, trade in services, and trade at large to support policy-making and implementation of gender-inclusive governance.⁶⁹ Collecting data on implementation and the effect of the concluded disciplines on DR, including the provision on gender equality, would lend itself to an uptake in data and support policy-making.

6.5 POLICY INTERVENTION TO BRIDGE THE GENDER DIGITAL DIVIDE

The WTO does not yet offer a comprehensive multilateral response to the digitalization that drives digital trade and e-commerce. However, MC11 saw much more policy attention directed to e-commerce as seventy-one members launched the Joint Statement Initiative on Electronic Commerce (JSI on e-commerce)⁷⁰ to initiate exploratory work towards future WTO negotiations on trade-related aspects of e-commerce.⁷¹

If coupled with the trade and gender agenda, the JSI on e-commerce would be in line with the thinking behind the multi-level framework's bottom-up

⁶⁷ See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *) 623.

⁶⁸ See *ibid.*

⁶⁹ For a turning point on the collection of data, see the WTO's Database on gender provisions in RTAs, launched on 28 July 2022 during the Aid for Trade Global review, <www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm> accessed 20 September 2022.

⁷⁰ WTO, 'Joint Statement on Electronic Commerce', WT/MIN(17)/60 (13 December 2017).

⁷¹ ICTSD, 'Updating the Multilateral Rule Book on E-Commerce. WTO: Paths Forward' (2018) International Centre for Trade and Sustainable Development Policy Brief – March 2018 <www.tralac.org/component/ckk/?task=download&file=app_att_01&id=13518> accessed 8 May 2022.

policy intervention in specific issues, and its top-down approach to securing incremental change towards gender-inclusive e-commerce and trade policy. Furthermore, it is the central argument that applying the framework to the modalities shaping e-commerce rules could help secure gender-inclusive e-commerce governance. Recalling the structural differences women face in terms of labour, time, and resources,⁷² e-commerce provides flexibility in structuring participation in trade, new markets for employment, and pathways to control over online resources that may be cheaper than traditional business. This suggests a tangible potential for incorporating gender equality into e-commerce rules to form gender-inclusive e-commerce governance. However, it will take effort and policy commitment to overcome the gender digital divide and other aspects of the gender gap given gender-based constraints and differential access to prerequisite resources. In the absence of policy intervention, an acceleration of digitalization could deepen the gender digital divide, which in turn could reverse the status quo for participation in e-commerce and digital trade and lead to backsliding.

Factoring in the domestic aspect is important for participation in e-commerce because 90 per cent of e-commerce is in fact domestic commerce.⁷³ Moreover, it is necessary to overcome the divides to upscale a firm to an operation with the resources to export cross-border. Compatibility between domestic, regional, and multilateral frameworks to advance comprehensive gender-inclusive governance would be instrumental to that end.

Achieving a predictable regulatory environment for e-commerce and digital trade could link with incorporating gender equality into DR because service suppliers engaged in cross-border e-commerce might rely on obtaining licences and authorizations when meeting the requirements, regardless of gender, and the predictability of the regulatory environment would improve in consequence.

Embedding these issues within a framework for e-commerce and digital trade that connects with other trade policy agendas would drive more comprehensive implementation of gender equality into trade policy. The JSI points out that a link exists between MSMEs and e-commerce and that furthering gender equality in this nexus could be particularly beneficial for women's participation and for development. This platform could be used for providing the key access to finance, which also hinges on domestic regulation and reform.

Seeking to embed gender equality even more firmly within the MSME agenda as a development issue and connecting it to e-commerce could be

⁷² See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *), 598.

⁷³ Sicut et al., 'Leveraging New Technologies in Closing the Gender Gaps' (n 39).

anchored within Aid for Trade, where gender-inclusive initiatives can target the obstacles that women face when trading. The rapid development of technology enabling e-commerce and digital trade, while ensuring that it is gender-inclusive, promises more opportunities for women beyond the sectors where most women currently find employment or work, and could be anchored in enabling environments for e-commerce and digital trade at large.

6.5.1 *Gender-Inclusive e-Commerce Governance*

Gender-inclusive e-commerce governance aims to narrow the gender gap by overcoming the digital divide, the finance gap, and how they intersect with scale.⁷⁴ Gender-inclusive e-commerce governance addresses the key regulatory challenges of market access, access to resources, and regulatory aspects to participating in e-commerce.

Domestic policy commitments to gender equality in both the exporting country and the importing country could help leverage and upscale domestic e-commerce into cross-border e-commerce. This would improve market access with positive benefits. First, it could offset some of the vulnerabilities in the economy associated with women being concentrated in fewer sectors, and facing gendered job segregation.⁷⁵ Secondly, evidence suggests that women increase sales volume and profits when selling to destinations further from their home country rather than over a single border.⁷⁶ Access to new markets through exports could help abate some of that vulnerability and overcome the norms or structural features that produce gender discrimination and differential access.

As for access to resources, even where participation in e-commerce on a small scale is less costly or requires less financing, it would still require a backbone of IT infrastructure and financial infrastructure, such as internet access and skills, e-payment systems, and access to a bank account. IT infrastructure and financial infrastructure, including payment mechanisms, are components for an enabling environment that could have a real impact in helping women to overcome the disadvantages they face in responding to new economic incentives because of gender differences in access to resources, such as those needed for participating in e-commerce.

Thus, once again the prospect of economic empowerment from participating in e-commerce is defined by access to the prerequisites for e-commerce,

⁷⁴ See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *) 625 ff.

⁷⁵ See *ibid.*

⁷⁶ See *ibid.*

such as holding a bank account, and to designing rules that establish an enabling environment that helps women respond to new economic incentives, namely access to finance and IT skills. Securing access to IT skills and finance, in particular, could improve gender equality in the digital market, and the chances that e-commerce and digital trade deliver on the promise of inclusive economic growth.

Women's opportunities in new economic activities are dampened by time constraints,⁷⁷ and thus easing regulatory barriers and improving the regulatory environment, which can be time and resource consuming, could have a positive effect on participation at large and, by implication, also on gender-inclusive e-commerce governance. The ongoing JSI on e-commerce encompasses disciplines and provisions on transparency, non-discrimination, ensuring a predictable regulatory environment, and shaping an enabling environment for e-commerce.

It is the central argument that incorporating gender equality into the e-commerce rulebook could result in positive change towards gender-inclusive governance. Transparency improves accountability, and by extension lends itself to gender-inclusive governance,⁷⁸ while non-discrimination is key to levelling the playing field. Achieving a predictable regulatory environment for e-commerce also lends itself to gender-inclusive e-commerce governance. If it were to link with incorporating gender equality into DR, service suppliers engaged in cross-border e-commerce and digital trade would then rely on obtaining licences, regardless of gender, and the predictability of the regulatory environment would improve in consequence. Finally, there are rules to establish an enabling environment, and they could have an outsized effect on operationalizing gender-inclusive e-commerce governance. The multi-level framework's bottom-up approach to specific disciplines advises exploring the potential for gender-inclusive e-commerce to shape the regulatory space for an enabling environment.

6.5.2 *An Enabling Environment for e-Commerce*

Elements of an enabling environment to facilitate online transactions were introduced into discussions at the WTO.⁷⁹ The 2019 European Union proposal for WTO disciplines and commitments relating to electronic

⁷⁷ Ibid.

⁷⁸ See, for instance, OECD, 'Policy Framework for Gender-Sensitive Public Governance', C/ MIN(2021)21 (21 September 2021).

⁷⁹ At the Council for Trade in Services – Special session in TN/S/W/64, May 2017 communication from the European Union. For the April 2018 policy proposal from EU, see European Commission, 'EU Releases Proposal on New WTO Rules for Electronic

commerce, stipulates in Article 1, ‘The EU supports the open, transparent and inclusive character of these negotiations’.⁸⁰

Gender equality could be injected into the proposal’s provisions on an enabling environment in Article 2. A provision obliging members to ensure that there is no discrimination based on gender when issuing licences and authorizations could be incorporated into Article 3.6,⁸¹ drawing on lessons learnt from the changing language in DR.⁸²

Injecting gender equality into the modalities for an enabling environment in e-commerce discussions could be approached by outlining how enjoying rights, having effective redress, protection from discriminatory practices, and transparency form part of such an environment, and by emphasizing international cooperation and coordination with other national and regional bodies to this end. Thereby an enabling environment for e-commerce would be created, with regulatory space conducive to gender equality. Prescriptive measures for adopting and maintaining measures that contribute to closing the gender gaps would be coupled with a gender-inclusive prohibition against discrimination based on gender and embedded within the modalities for e-commerce.

6.6 POLICY INTERVENTION TO BRIDGE THE GENDER GAP IN SERVICES TRADE

With most barriers to trade in services being of a regulatory nature and non-tariff-related, the role of domestic regulation and measures over the border in the country receiving the supply of services by any of the means becomes even more important to services trade. Research by the WTO and OECD suggests that the reduction in trade costs from implementing the new disciplines included in the sixty-seven members’ landmark conclusion of an agreement on services DR of 2 December 2021 could amount to USD 150 billion per annum globally, with particularly important gains for financial, business, communications, and transport services.⁸³

Commerce’ (3 May 2019) <<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2016>> accessed 8 May 2022.

⁸⁰ EU, ‘EU Proposal for WTO Disciplines and Commitments Relating to Electronic Commerce’, INF/ECOM/22 (26 April 2019).

⁸¹ Ibid.

⁸² See Thystrup, ‘Gender-Inclusive Governance for E-Commerce’ (n *) for evidence and discussion.

⁸³ WTO and OECD, ‘Services Domestic Regulation in the WTO: Cutting Red Tape, Slashing Trade Costs, and Facilitating Services Trade’ (November 2021) <www.wto.org/english/news_e/news21_e/jssdr_26nov21_e.pdf> accessed 8 May 2022.

Further to the disciplines in GATS Article VI, the GATS also establishes the mandate for negotiating additional disciplines in GATS Article VI:4.⁸⁴ The provision stipulates that, with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia: (a) based on objective and transparent criteria, such as competence and the ability to supply the service; (b) not more burdensome than necessary to ensure the quality of the service; and (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service. Thus, pursuant to GATS Article VI:4, members agree to further develop rules to ensure that domestic regulations support rather than impede the opening of services markets to trade and investment as a central task for services negotiations.⁸⁵

As the reference paper on services regulation explains,⁸⁶ members would agree to the disciplines on DR with the objective of elaborating upon the provisions of GATS pursuant to Article VI:4. In doing so, members recognize the difficulties which may be faced by service suppliers, particularly those of developing country members, in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other members, and, in particular, the specific difficulties which may be faced by service suppliers from LDCs.

The JSI on services DR is more advanced than the JSI on e-commerce in two ways: first, the JSI on services DR has concluded an agreement, and second, it includes a specific provision on gender equality. These advancements reflect the multi-level framework's bottom-up approach to policy intervention on specific issues, and its top-down approach to securing incremental change towards gender-inclusive e-commerce and trade policy, and indicate a pathway to gender-inclusive governance for services trade.

DR disciplines are for trade in services sectors positioned to address the regulatory component to the key policy challenges of market access and differential access to resources that women face, as DR disciplines regulatory

⁸⁴ Aik Hoe Lim, *WTO Domestic Regulation and Services Trade, Putting Principles into Practice* (Cambridge University Press 2014) 2.

⁸⁵ Aaditya Mattoo and Pierre Sauvé, *Domestic Regulation and Service Trade Liberalization* (World Bank 2003) 1.

⁸⁶ 'Note by the Chairperson, Joint Initiative on Services Domestic Regulation', INF/SDR/W/1/Rev.2 (18 December 2020) Section I, paragraphs 1 and 2.

measures in order to level the playing field.⁸⁷ The need for recognition before the law, evidence of gender bias adversely affecting women, and many new opportunities for employment outside the existing gendered composition of the labour force make DR all the more important for women's economic participation in the supply of services. Such supply often requires a licence or authorization. Thus, DR disciplines are key to economic participation in services trade, and are well positioned to shape the modalities for gender-inclusive trade in services, also spanning the services components to e-commerce and digital trade, where commitments have been made.⁸⁸

6.6.1 *Negotiating Modalities for Development of Measures on Domestic Regulation pursuant to GATS Article VI:4*

In pursuit of an outcome on DR at MC11, the Friends of DR circulated a communication, dated 7 November 2017, to the members of the Working Party on Domestic Regulation (WPDR).⁸⁹ Among other provisions, under the DR GATS Article VI:4 mandate, the text includes provisions on measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. This section also includes a provision on gender equality originally tabled by Canada. In 2016, Canada had previously included the exact provision in the DR text during negotiations on the Trade in Services Agreement (TiSA).⁹⁰

At the time of MC11, the DR proposal on gender equality for the WPDR read (the 2017 WPDR text):

Gender Equality

6.2 Where a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that such measures do not discriminate against individuals on the basis of gender.

[Footnote: For greater certainty, legitimate differentiation, which means differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto gender equality, shall not be considered discrimination for the purposes of this provision.]

⁸⁷ See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *).

⁸⁸ See *ibid* on scheduling modalities.

⁸⁹ WTO, 'Working Party on Domestic Regulation', JOB/SERV/272/Rev.1 (7 November 2017).

⁹⁰ Thystrup, *Governing Trade in Services* (n 11). Annex 4 traces the changes to DR disciplines from 2016 to 2017. The exercise includes the provision on gender equality on pp. 15–16 of Annex 4.

At MC11, the Friends of DR were not successful in securing an outcome in the shape of multilateral agreement under the built-in mandate. Instead they secured support for the JSI on services DR.⁹¹ The initiative (JSI) operates on a plurilateral basis, and has continued discussions outside the WPDR since MC11.

The JSI's text on gender equality was adjusted to the following stipulation (the 2018 JSI text):⁹²

Development of Measures

If a Member adopts or maintains measures relating to authorisation for the supply of a service, the Member shall ensure that: . . .

[(e) such measures do not discriminate between men and women.

[Footnote: Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.]].

When comparing the 2017 WPDR text with the 2018 JSI text, a change in the structure of the provision is evident, but it also embodies an evident change in wording.

The JSI proceeded to stabilize a text on DR in preparation for a plurilateral outcome coinciding with MC12 with the support of sixty-five members (the 2020 JSI text).⁹³ The provision on gender equality carries on the changes introduced with the JSI 2018 text, when it stipulates:

SECTION II – DISCIPLINES ON SERVICES DOMESTIC REGULATION . . .

Development of Measures

22. If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that: . . .

[: and

(d) such measures do not discriminate between men and women.

[Footnote: Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special

⁹¹ WTO, 'Joint Ministerial Statement on Services Domestic Regulation' (n 1).

⁹² WTO, 'Working Room Document by the Chair', DR4-D/Rev.1 (14 September 2018).

⁹³ WTO, 'Note by the Chairperson, Joint Initiative on Services Domestic Regulation', INF/SDR/W/1/Rev.2 (18 December 2020).

measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.]]

Compared to the 2018 JSI text, what is new to the JSI 2020 text is the inclusion of alternative disciplines on DR for Financial Services. These disciplines include a twin-provision on non-discrimination between men and women:

[SECTION III – ALTERNATIVE DISCIPLINES ON SERVICES
DOMESTIC REGULATION FOR FINANCIAL SERVICES . . .

Development of Measures

19. If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that: . . .

[; and

(d) such measures do not discriminate between men and women.

[Footnote: Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.]]

The change in language from the 2017 WPDR text to the 2018 JSI text encompasses non-discrimination ‘between men and women’, rather than ‘against individuals on the basis of gender’. The change in language carries legal consequences as it effectively changes the scope of the obligation. Both proposals turn on the notion of non-discrimination, likely with the intention in mind to discipline *de jure* discrimination based on gender when applying for authorization, and perhaps with less regard for *de facto* discrimination. The definitions vary, however, and, by implication, so does the scope of those protected individuals under the imperative of ‘shall ensure’. In essence, the 2018 and 2020 JSI texts have been watered down to a binary categorization, compared with the broader term ‘gender’, used in the 2017 WPDR text, which did not make such a pronouncement.

On 27 September 2021, participants in the JSI on Domestic Regulations concluded text negotiations, on track for MC12, and proceeded to circulate national schedules of commitment pursuant to GATS.⁹⁴ Despite the postponement of MC12, on 2 December 2021 negotiators reached an agreement

⁹⁴ WTO, ‘Participants in Domestic Regulation Talks Conclude Text Negotiations, on Track for MC12 Deal’ (n 7).

among the JSI's now sixty-seven WTO members.⁹⁵ Except for the removal of brackets, the final text⁹⁶ is identical to the JSI 2020 text, and so it locks in the binary wording of 'between men and women' that first appeared with the 2018 JSI text, at the expense of the 2017 WPDR text's gender-inclusive language, 'on the basis of gender'.

6.6.2 *Legal–Political Implications of the Domestic Regulation Discipline on Gender Equality*

As a wider concept that reflects the multiplicity of the gender gap, the use of 'gender' does not preclude any gender from the scope of protection against discriminatory domestic measures.⁹⁷ The scope of a provision on gender equality that obliges members to ensure that domestic measures do not discriminate based on gender, should ideally capture the multiplicity of the gender gap and be gender-inclusive to economic participation. Whether a provision such as the one included in the 2017 WPDR text would yield results to that effect would depend on interpretation and implementation. Yet it is a given that such wording of a provision on gender equality lends itself to that end and comes much closer to fulfilling the aspirations of gender-inclusivity as it can also reflect the multidimensional nature of the gender gap and the multiplicity of the gender gap.

Though several policy tools, such as the Buenos Aires Declaration on Women and Trade, turn on the notion of uplifting women's participation in trade, they form part of a larger trade and gender agenda that top-down promotes gender mainstreaming in trade policy. However, the JSI 2021 text employs a binary, biological identification of sex as a man or a woman and locks in a binary wording that contrasts women and men.

Viewed through the lens of the framework for gender-inclusive governance, the concern is, for one, that the binary wording can be employed to exclude or legitimize excluding those that do not identify with it. Secondly, the binary wording does not immediately lend itself to reflect the multiplicity of the gender gap or its multidimensional occurrence.

The revised proposal fails to protect from discrimination those that are deemed outside the scope of 'women', in the sense of the sex. It is problematic

⁹⁵ WTO, 'Negotiations on Services Domestic Regulation Conclude Successfully in Geneva' (n 2).

⁹⁶ WTO, 'Declaration on the Conclusion of Negotiations on Services Domestic Regulation' (n 2). The attached Annex 1, INF/SDR/2, dated 26 November 2021, is the JSI on Services Domestic Regulation's reference paper which includes the disciplines.

⁹⁷ See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *).

to not include every gender in an improvement based on non-discrimination because, while it uplifts women, it leaves those that are not captured by the improvement at the status quo. While it may be a function of the trading landscape that policymakers had to navigate in order to conclude complicated negotiations, such an approach falls short of the aspiration of gender-inclusivity. A deeper concern would be that language effectively precluding some could produce gender-precluding results, even resulting in backsliding for those excluded. The binary wording could even be (mis)used to legitimize or promote an interpretation that excludes LGBTQ+ from protection against discriminatory measures relating to authorization for the supply of services.

Furthermore, the wording seems to rest on the flawed assumption that all men have better access to resources and fewer constraints to participating in the supply of services than women do. Employing 'men' as the comparator for non-discrimination is problematic for operationalizing the provision because individuals who are biologically of the male sex may also be socially vulnerable and face differential access to opportunities in trade because of socio-economic stratification, for example based on origins. In practice, this could undermine the implementation of the provision as stipulated in the 2021 JSI texts, which would also be a disservice to those immediately within its scope.

The footnotes included in both proposals seek to clarify 'discrimination' to ensure the legality of differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by members of temporary special measures aimed at accelerating *de facto* equality between men and women. It is reasonable to assume that the footnote is intended to, for example, safeguard domestic measures involving services authorization that encompass affirmative action. The footnote then establishes criteria that such domestic measures are to meet for the differential treatment not to be considered the kind of discrimination that the provision obliges members to protect against. The criteria of reasonability, objectivity, and legitimacy apply to differential treatment, but not to temporary special measures aimed at accelerating *de facto* equality between men and women.

As for the footnote's first part on differential treatment, an issue may arise if a member who has made commitments under the provision enacts affirmative action directed at men and socio-economic attributes specific to them. If, for example, such a member enacted domestic measures relating to authorization to intervene in the disadvantage of precarious or dangerous employment in the mining sector, which, for the purpose of this experiment, is assumed to be exclusively male, it would be problematic if such a measure could be struck down as incompatible. However, interpretation that looks to the aim of the provision would supposedly ensure the compatibility of such a measure.

As for the footnote's second part, an issue would arise if a special measure aimed at accelerating *de facto* equality between men and women is not of a temporary duration. This issue could be harder to reconcile, firstly, because 'temporary' is left to interpretation and, secondly, because some domestic measures may be designed to correct engrained inequalities, which takes time. Viewed through the lens of the framework for gender-inclusive governance, which specifically emphasizes the importance of domestic reforms and of compatibility, in this sense, and because it reproduces the binary wording, the footnote leaves room for improvement.

Still, by implication of the exclusion from the definition of 'discrimination', the footnote can protect policy tools such as positive discrimination and affirmative action aimed at accelerating *de facto* gender equality from being struck down as incompatible with the DR discipline. In effect, the clarification reads like a policy space reservation that ensures the legality of domestic affirmative programmes that meet the criteria.

This is crucial for two reasons. First, the disciplines of DR are aimed at domestic law and regulations, behind the border, so the legality of domestic measures of this kind need to be secured. Second, the World Bank has collected and analysed data on the effect of domestic laws and regulations on limiting women's economic participation, citing research that calls into question the notion that economic growth alone increases gender equality when rather continuous policy commitments to gender equality are required to achieve the goal.⁹⁸ The report establishes how domestic reform is key to improving conditions for women's participation in economic activities, including cross-border.⁹⁹ Arguably, incompatibility with WTO law of domestic reforms to narrow the gender gap would undermine such efforts. Third, more broadly speaking, ensuring compatibility between domestic, regional, and multilateral frameworks is key to advancing comprehensive gender-inclusive governance.

The same criticisms apply to the reproduction of the binary wording in Section III's alternative disciplines on domestic regulation for financial services. This is where it is advised to counter any adverse effect on women of trade reform and to include safeguard provisions.¹⁰⁰

⁹⁸ World Bank, 'Women, Business and the Law' (n 32). It cites Esther Duflo, 'Women Empowerment and Economic Development' (2012) 50 *Journal of Economic Literature* 1051–1079.

⁹⁹ *Ibid.*

¹⁰⁰ As advised by, inter alia, Mariama Williams, *Gender and Trade: Impacts and Implications for Financial Resources for Gender Equality* (Commonwealth Secretariat 2007).

That being said, the value of the policy intervention that the provision embodies is two-fold. First, the provision on non-discrimination goes to the very heart of access to finance and banking which is a main driver among the key challenges identified with regard to women's differential access to resources.¹⁰¹ Second, the sectoral focus shines an important light on the importance of financial services as they are a prerequisite to any form of trade, across all four modes of supply of services, to e-commerce and to digital trade.¹⁰² Thus, the addition is quite promising for narrowing the gender finance gap.

In sum, the multi-level framework helps show how the provision on gender equality included in the WPDR 2017 text with its gender-inclusive language is preferable over the provision included in the JSI 2021 text that was agreed upon because the WPDR 2017 policy intervention is directed at a deeper level. This would have a positive effect on a wider array of implications of differential access and constraints in services trade, and as it better reflects the multiplicity of gender inequalities. Furthermore, the framework shines a light on how the agreed provision leaves room for improvement in terms of addressing the multidimensional nature of the gender gap, and to what effect *de facto*. While it seems to aim squarely at *de jure* discrimination when applying for an authorization, while *de facto* discrimination is wrapped up in a less-than-ideal footnote.

However, the 2018, 2020, and now the concluded 2021 JSI texts' provision is positioned to build on the significant traction for women's participation in trade at this moment of renewed commitments to the trade and gender agenda at MC12. The platform provided by the JSI 2021 outcome can help application incrementally reflect the many dimensions of and multiplicity of gender gaps and ensure its rooting in gender-inclusivity. Provided that gender-preclusivity does not lead to backsliding, eventually the approach locked in with the 2021 JSI text would yield results incrementally, specifically for women. However, building on this traction and the anchoring in trade regimes, under the multilevel framework the measures could incrementally expand to produce positive effects from participation in trade in line with the aspirations of gender-inclusivity.

The promise of the provision depends on implementation though, and for services DR implementation involves bottom-up implementation

¹⁰¹ See Thystrup, 'Gender-Inclusive Governance for E-Commerce' (n *).

¹⁰² See *ibid*. Also see Sicat et al., 'Leveraging New Technologies in Closing the Gender Gaps' (n 39).

domestically, as well as technical implementation in the GATS schedules of specific commitments given the modalities of the JSIs in general and given the specifics of the JSI on services DR.

6.6.3 *Scheduling Modalities*

What is new in the 2020 JSI text, compared to previous iterations, is the following paragraph 9 on sectoral coverage and scheduling:

SECTION I

Sectoral Coverage and Scheduling Modalities

7. Members shall inscribe the disciplines in Section II in their Schedules as additional commitments under Article XVIII of the Agreement. Members may choose to inscribe the alternative disciplines in Section III for their commitments in financial services.

8. The disciplines inscribed pursuant to paragraph 7 of this Section apply where specific commitments are undertaken. In addition, Members are encouraged to inscribe in their Schedules additional sectors to which the disciplines apply.

9. [Members may exclude the discipline set out in paragraph 22 (d) of Section II and paragraph 19 (d) of Section III from the additional commitments scheduled under paragraph 7 of this Section].

Sectoral coverage and scheduling follow particular modalities. As Section I, paragraph 7 outlines, WTO members shall inscribe the disciplines in Section II in their schedules of commitment as additional commitments under GATS Article XVIII. Members may choose to inscribe the alternative disciplines in Section III for their commitments in financial services.

Except for the removal of brackets, the final text in JSI 2021 is identical to the JSI 2020 text, and so it also locks in paragraph 9's opt-out, which first appeared with the JSI 2020 text.

Paragraph 8 stipulates how the disciplines inscribed pursuant to paragraph 7 apply where specific commitments are undertaken. In addition, members are encouraged to note in their schedules additional sectors to which the disciplines apply. However, in effect paragraph 9 introduces an opt-out by allowing a member to avoid the two provisions on non-discrimination between men and women when scheduling additional commitments pursuant to paragraph 7. This is a very unfortunate development in the text because of several legal-political implications. First, it creates a back door which

undermines the standard-setting effect of the discipline. Second, allowing for an opt-out could be construed as almost legitimizing any discrimination or gender-exclusive effects causing backsliding. Third, it could be an unfortunate precedent that runs counter to the aspirations for incremental change set out in Section 6.6.2. Therefore, the opt-out included in the agreed JSI 2021 text is a hard pill to swallow.

The silver lining is, first, that it can also be used by members implementing domestic reforms who are concerned that affirmative action and special measures to accelerate gender equality that are not outright temporary in nature are protected from being struck down as incompatible. It seems counter-intuitive but perhaps it is to the benefit of such advancements. Second, it also lends itself to those that find the binary wording irreconcilable with domestic policy, or whose gender-inclusive domestic reforms in other ways cannot be reconciled with the binary provision and its implications.

The specific schedules of commitments are integral to scheduling market access, and to operationalizing new rules, such as the provision on gender equality. Time and policy practice will show how members inscribe their additional commitments in accordance with the agreement in their GATS commitments. Hereafter, they will apply on an MFN basis. Time and policy practice will also shed light on how commitments to ensuring non-discrimination between men and women in relation to authorizations for supply of services are implemented in domestic regimes. Once implemented in domestic regimes, generally speaking, such rules would apply to all within their jurisdiction and scope.

Thus, despite its flaws and the opt-out, the provision is set to discipline and generate value for the services sectors covered by it. Furthermore, where commitments are made, it is set to affect the reduction of barriers in services that may have a spill-over effect as those services form part of e-commerce or digital trade. Policy-wise, beyond MC12, it might strengthen the agenda and energize further advancements on gender equality. The developments so far allow for extrapolating important lessons – positive as well as negative ones – that can serve as fuel across the multi-level framework for the advancement of gender-inclusive e-commerce governance.

Indeed, factoring in existing and accelerating gender gaps, including the gender digital divide implicating e-commerce and digital trade, and the risk of producing gender-exclusion is imperative to improving policy practice. Therefore, it is the central argument that it takes multi-level dedicated gender-inclusive governance to make advances in closing the gender gap.

6.7 CONCLUSIONS

Gender-inclusive governance responds to the multiplicity of the gender gap, and how it is a multidimensional concept in the nature of its occurrence, the dynamics of its development, and the manifold ways it interrelates with other divides.

The relationship between gender divides, e-commerce, digital trade, and trade in services can be observed through the lenses of the different modes of supply and in trade patterns. The relationship reflects key policy challenges to participation in that trade – market access, resources, and a regulatory component. Moving towards gender-inclusive governance for e-commerce, digital trade, and trade in services is imperative for sustainable trade policy as digitalization can serve to fuel women's participation in trade, but in the absence of policy interventions, a deepening of the gender digital divide could have negative effects on gender inequalities.

The proposed multi-level framework shows the regulatory space for gender equality in creating an enabling environment for e-commerce and digital trade, and for incorporating gender equality into the new and enhanced regulatory layer of DR disciplines for trade in services.

What policy interventions are necessary, and why, to meet the moment? This chapter proposes a multi-level gender-inclusive framework for comprehensive narrowing of the gender gap in trade. Addressing the global, structural issue of gender inequality with multi-level approaches to the negotiating modalities, coupled with gender-inclusive governance for e-commerce, digital trade, and services trade, can contribute to closing the gender gap. E-commerce and digital trade alone, despite the promise of digitalization, cannot close the gender gap in trade. Services trade is ubiquitous and an extremely important area of trade that gender-inclusive governance could unlock to the benefit of gender equality. Examining trade in services also point squarely to the role of regulatory barriers and their interconnectedness with market access and access to resources. Disciplining DR pursuant to GATS Article VI and new disciplines pursuant to Article VI:4 may address this head-on. The provision on gender equality has been reduced to its detriment but it still shows a way forward and allows for important lessons that can inform gender-inclusive governance for trade when seizing this moment.

Leveraging the multi-level framework, and extrapolating lessons from policy practice, namely the concluded provision on gender equality in the JSI on services DR, could foster gender-inclusive governance. In that regard, the WTO and its JSIs could help deliver on the imperative of SDG 5 to achieve gender equality and turn high stakes into high reward for its members.