

Introduction

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1.1 INTRODUCTORY REMARKS

With the narrowing space between international trade and domestic policy, the topic of women's empowerment¹ is increasingly becoming part of mainstream discussions in global governance circles. Indeed, renewed attention is now being paid to how international trade policies may impact gender equality.² Recently, multiple studies have demonstrated that trade policy is not gender-neutral.³ Trade policies create both 'losers' and 'winners', as they benefit some and leave others behind.⁴ The distributional outcomes of trade can vary between women and men, since they play different roles in society,

- ¹ In this book, we use the term "women's empowerment" to refer to the process of increasing women's access to control over the strategic life choices that affect them and access to the opportunities that allow them fully to realize their capacities. Women's empowerment as an economic, political and sociocultural process challenges the system of sexual stratification that has resulted in women's subordination and marginalization in order to improve women's quality of life'. See Yin-Zu Chen and Hiromi Tanaka, 'Women's Empowerment' in Alex C. Michalos (ed.) *Encyclopaedia of Quality of Life and Well-Being Research* (Springer 2014).
- ² Gender equality denotes 'women having the same opportunities in life as men, including access to resources, opportunities and the ability to participate in the public sphere'. See Markéta von Hagen, 'Trade and Gender – Exploring a Reciprocal Relationship: Approaches to Mitigate and Measure Gender-Related Trade Impacts' (2014) *Deutsche Gesellschaft für Internationale Zusammenarbeit* <www.oecd.org/dac/gender-development/GIZ_Trade%20and%20Gender_Exploring%20a%20reciprocal%20relationship.pdf> accessed 8 May 2022.
- ³ WTO, 'Women and Trade: The Role of Trade in Promoting Gender Equality' (July 2020) <www.wto.org/english/res_e/publications_e/women_trade_pub2807_e.htm> accessed 8 May 2022; OECD, 'Trade and Gender: A Framework of Analysis' (2012) OECD Trade Policy Papers <www.oecd.org/publications/trade-and-gender-6db59d80-en.htm> accessed 8 May 2022.
- ⁴ Anthea Roberts and Nicolas Lamp, *Six Faces of Globalization: Who Wins, Who Loses, and Why It Matters* (Harvard University Press 2022).

markets, and the economy, and they enjoy different opportunities.⁵ Hence, if trade policies are designed without taking into account their impact on gender powers and opportunities, these policies can magnify the existing gender gaps.⁶

Various international organizations, think tanks and countries are now turning their focus to developing a better understanding of the trade and gender nexus and how gender can be integrated into trade policies. In 2017, 118 members and observers of the World Trade Organization (WTO) agreed to a joint declaration enhancing women's empowerment in international trade.⁷ This was a landmark initiative by WTO members in which they acknowledged the high degree of interconnectedness between trade and gender, and the need to have inclusive trade policies that are geared toward women's empowerment. An informal group on trade and gender was subsequently established at the WTO in 2020 to increase advocacy on women's issues and their participation in global trade.⁸ These developments are aligned with and complement the other international legal instruments, such as the 1979 United Nations (UN) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).⁹

These recent developments reaffirm the intention and willingness of the WTO, as the largest trade organization, to engage in making trade more

⁵ Marzia Fontana and Cristina Paciello, 'Gender Dimensions of Agricultural and Rural Employment: Differentiated Pathways out of Poverty' (FAO, IFAD and ILO 2010) <www.ilo.org/employment/Whatwedo/Publications/WCMS_150558/lang-en/index.htm> accessed 8 May 2022; Marzia Fontana, 'Gender Justice in Trade Policy – The Gender Effects of Economic Partnership Agreements' (*One World Action*, 2009) <<https://oneworldaction.org.uk/GendJustTrad.pdf>> accessed 8 May 2022.

⁶ Gender refers to 'the social attributes and opportunities associated with being male and female and the relationships between women and men, and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes'. See UN Women, 'Concepts and Definitions' <www.un.org/womenwatch/osagi/conceptsanddefinitions.htm> accessed 8 May 2022.

⁷ By 2020, 127 WTO members had signed the Buenos Aires Declaration, 'Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment' 2017. For more details on WTO initiatives, see Anoush der Boghossian, 'Gender-Responsive WTO: Trade Rules and Policies Work for Women' (Chapter 2 in this book); Mia Mikic, 'Advances in Feminizing WTO' (Chapter 3 in this book). For discussions on why the WTO may not be a suitable forum to address gender equality, see Judit Fabian, 'Global Economic Governance and Women: Why Is the WTO a Difficult Case for Women's Representation' (Chapter 4 in this book).

⁸ WTO, 'Informal Working Group on Trade and Gender' <www.wto.org/english/tratop_e/womenandtrade_e/iwg_trade_gender_e.htm> accessed 8 May 2022.

⁹ Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by United Nations General Assembly, Resolution 34/180 (18 December 1979).

inclusive. And for many, it is a development that is already too late in coming. To date, the WTO rulebook remains gender-blind, in the sense that it does not contain a single explicit provision that relates to gender equality.¹⁰ Moreover, scholars have observed that the WTO makes a difficult case for the representation of women and their interests, as its multilateral framework is perhaps not ready to take on this additional issue over and above the ‘legacy’ and traditional issues lingering on the negotiation waiting list (such as agriculture, fisheries and services).¹¹ Even among the newer issues being debated for inclusion – such as digital trade, e-commerce, labour and intellectual property – gender-related issues still face some resistance. This demonstrates that, despite the many strides that have been made to advance gender issues at the multilateral level, questions remain about the suitability of the WTO as a forum to lead the *démarche* on gender and international trade.

Nevertheless, recent trends have shown a promising role for regional trade agreements (RTAs) – regional, bilateral, free or preferential – in advancing gender equality. A new generation of free trade agreements (FTAs) is increasingly incorporating provisions and chapters on trade and gender equality.¹² In addition, explicit gender-related provisions are finding their way into bilateral investment treaties (BITs) and non-reciprocal preferential trade access schemes.¹³ Currently, of all trade agreements in force, more than 20 per cent have an explicit gender-related provision.¹⁴ Even though we are yet to see concrete evidence of benefits that gender mainstreaming in trade agreements can have, more and more countries are embracing this approach.¹⁵

¹⁰ Der Boghossian (Chapter 2 in this book). The author rebuts this claim.

¹¹ See Fabian (Chapter 4 in this book).

¹² For details, see Katrin Kuhlmann, ‘Gender Approaches in Regional Trade Agreements and a Possible Gender Protocol under the African Continental Free Trade Area: A Comparative Assessment’ (Chapter 10 in this book); Tonni Brodber and Jan Yves Remy, ‘Leave No Woman Behind: Towards a More Holistic Gender and Trade Policy in CARICOM’ (Chapter 11 in this book); Javiera Cáracas Bustamante and Felipe Muñoz Navia, ‘South America’s Leadership in Gender Mainstreaming in Trade Agreements’ (Chapter 12 in this book).

¹³ For details, see Renata Amaral and Lillyana Sophia Daza Jaller, ‘Mainstreaming Gender in Investment Treaties and Its Prevailing Trends: The Actions of MNEs in the Americas’ (Chapter 9 in this book).

¹⁴ José-Antonio Monteiro, ‘The Evolution of Gender-Related Provisions in Regional Trade Agreements’ (2021) WTO Staff Working Paper ERSD-2021-8 <www.wto.org/english/res_e/reser_e/ersd202108_e.htm> accessed 8 May 2022; Amrita Bahri, ‘Mainstreaming Gender in Free Trade Agreements’ (ITC, 2020) <<https://intracen.org/resources/publications/mainstreaming-gender-in-free-trade-agreements>> accessed 8 May 2022.

¹⁵ For details, see Cáracas Bustamante and Muñoz Navia (Chapter 12 in this book); Amrita Bahri, ‘Gender Mainstreaming in Trade Agreements: Best Practice Examples and Challenges in the Asia Pacific’ (Chapter 13 in this book); Marie-France Paquet and Georgina Wainwright-Kemdirim, ‘Crafting Canada’s Gender-Responsive Trade Policy’ (Chapter 14 in this book).

While this represents some progress, almost no FTA so far contemplates how gender-related commitments can be implemented or enforced. Most legal provisions included in trade agreements so far have been drafted in the spirit of best-endeavour cooperation. Our review of the current FTAs with gender-related provisions illustrates some diversity. Some FTAs have included a whole chapter with a number of provisions on trade and gender, but no enforceable and binding legal obligations. In fact, in most agreements, gender-related provisions are drafted with non-mandatory verbs and ‘soft’ permissive grammatical constructions. On the other hand, a handful of countries have drafted such provisions with legally binding expressions. Other FTAs have just one gender-explicit provision, but that provision creates a legally binding obligation. Moreover, whereas several agreements are completely silent or merely make a single mention of expressions relating to gender equality, others include more than forty gender-explicit expressions in the main body of text. The topics addressed in gender-related provisions also vary from one region to another, as some regions have included provisions on social and healthcare concerns of women, and others have covered purely economic and market-oriented interests.¹⁶

There is also a significant variation in the level of understanding, readiness and appetite among countries to discuss and negotiate gender-related concerns in the trade policy context. On one hand, various countries, especially some in the North and South Americas, are leading gender-mainstreaming efforts.¹⁷ On the other hand, many countries – particularly those in the Asia-Pacific and the Caribbean – are yet to take their very first step in this regard.¹⁸ Moreover, the onset and prolonged setback of the COVID-19 pandemic have also altered countries’ willingness to work on gender equality concerns, particularly within the context of their trade policy agenda. At the same time, this health pandemic could roll back the limited gains made over the past few decades in respect of women’s empowerment as it has put women employees, entrepreneurs and consumers at the frontline of disproportionate pandemic-inflicted losses.¹⁹

¹⁶ Bahri, ‘Mainstreaming Gender in Free Trade Agreements’.

¹⁷ For details, *see* Kuhlmann (Chapter 10 in this book); Brodber and Remy (Chapter 11 in this book); Cárcas Bustamante and Muñoz Navia (Chapter 12 in this book); Bahri (Chapter 13 in this book); Paquet and Wainwright-Kemdirim (Chapter 14 in this book).

¹⁸ Bahri, ‘Mainstreaming Gender in Free Trade Agreements’.

¹⁹ Titan Alon, Matthias Doepke, Jane Olmstead-Rumsey and Michèle Tertilt, ‘The Impact of COVID-19 on Gender Equality’ (2020) NBER Working Paper No. 26947 <www.nber.org/papers/w26947> accessed 8 May 2022; UNFPA, ‘COVID-19: A Gender Lens’, Technical Brief

Against this backdrop, it becomes pertinent to study the interlinkages between trade policies and gender equality in a scholastic manner. Heeding this call and the ‘gap’ in the literature, the editors of this book – the Chairs of the WTO Programme from Mexico, Chile and Barbados – have come together to coordinate and interrogate the intersection between trade policy and gender equality. The research presented in this book addresses – and seeks to answer – a number of extant questions that have been raised by trade policymakers, negotiators, researchers and practitioners that, to date, remain unanswered: What role should the WTO play in facilitating or building an inclusive trade environment that works for the benefit of all, including women? Should gender-responsive provisions be included in trade policy instruments? Do such instruments really assist in reducing the barriers that women face, such as lack of access to finance and food security, digital divide, gender-blind standards of goods and services and pandemic-inflicted challenges? How are countries incorporating such provisions in their agreements, in what forms and with what scope? What makes an agreement gender-responsive, and how can countries increase the gender-responsiveness of their trade agreements? What are the associated risks and problems with taking on board gender-related commitments in trade agreements? What tools and methodologies do countries have for testing the potential of trade agreements in this respect? What options are available to developing and Least Developed Countries (LDCs) to increase their negotiating capacity and understanding of trade and gender issues? And finally, what role can investment treaties play in this respect as foreign investment can be an important lever for both women’s empowerment and economic growth?

1.2 TRADE AND GENDER: CONCEPTUAL UNDERPINNINGS

There are two different yet complementary approaches to promoting policies that increase women’s empowerment: bottom-up and top-down. The bottom-up approach calls for efforts to alter national laws, procedures and institutions, culture and social norms at the domestic level to reduce barriers that impede women’s empowerment. The top-down approach calls for employing international law to incentivize changes at the domestic level. Using the top-down approach, multilateral as well as bilateral trade policies can be employed to reduce the barriers to women’s empowerment as they could trigger changes in

Protecting Sexual and Reproductive Health and Rights, and Promoting Gender Equality’ (March 2020) <www.unfpa.org/resources/covid-19-gender-lens> accessed 8 May 2022.

domestic laws and policies, societal setup and in the workplace and economic sectors.

The focus on the nexus between international trade and sustainable development predates the establishment of the WTO. One of the first acknowledgements of the interrelationship between gender and commerce can be traced back to the Treaty on the Functioning of the European Union (TFEU).²⁰ In 1995, the WTO's Marrakesh Agreement enshrined the objective of sustainable development in its very preamble.²¹ A quarter-century later, the discussion in policy circles has evolved dramatically, and the term 'sustainable development' has become far better understood and accepted as a concept that relates to trade interests. The Addis Ababa Agenda of Action²² builds a clear network between international trade and gender. It reads as follows: 'Recognizing the critical role of women as producers and traders, we will address their specific challenges in order to facilitate women's equal and active participation in domestic, regional and international trade.'²³ The UN General Assembly has called upon the WTO, the World Bank Group (WBG) and other international and regional bodies to support government initiatives and develop complementary programmes to help countries achieve full implementation of the Beijing Declaration and Platform for Action to protect women's rights.²⁴ The 2030 Agenda for Sustainable Development recognizes international trade as an engine for inclusive and sustainable economic growth, and an important means to achieve the UN's 2030 Sustainable Development Goals (SDG). Goal 5 explicitly sets out to achieve gender equality and empowerment of all women and girls.²⁵

Various studies have shown that trade impacts women and men differently and that the specific nature of that impact is highly dependent on the structure and the development of each country, industry and/or sector. While trade

²⁰ Art. 157, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

²¹ Preamble, WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 UNTS 154, 33 ILM 1144 (WTO Agreement).

²² UN, 'Third International Conference on Financing for Development (FfD3)' (13–16 July 2015) <www.un.org/esa/ffd/ffd3/conference.html> accessed 8 May 2022.

²³ UNGA, 'Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)', A/Res/69/313 (2015), para. 90.

²⁴ UN Women, 'On the 25th Anniversary of Landmark Beijing Declaration on Women's Rights, UN Women Calls for Accelerating Its Unfinished Business' (4 September 2020) <www.unwomen.org/en/news/stories/2020/9/press-release-25th-anniversary-of-the-beijing-declaration-on-womens-rights> accessed 8 May 2022.

²⁵ UNGA, 'Transforming Our World: The 2030 Agenda for Sustainable Development', A/RES/70/1 (21 October 2015) <www.refworld.org/docid/57b6e3e4.html> accessed 8 May 2022.

liberalization and agreements can have a negative impact on women, trade policies can equally benefit women as employees, entrepreneurs and consumers and hence can strengthen women's empowerment. The factors that mediate and influence the effect include resource endowments, labour market institutions, systems of property rights and other socio-economic characteristics.²⁶

Possible differential impacts on men and women resulting from trade openness and trade agreements can further exacerbate existing gender inequalities.²⁷ Women tend to be more affected by the negative effects of trade liberalization and face more barriers than men when it comes to taking advantage of the opportunities offered by trade. This is mainly because of gender biases in education and training, wage inequalities and gender inequalities in the distribution of resources, as well as unequal access to productive inputs such as credit, land and technology.²⁸

Trade agreements can disrupt economic sectors where women are mostly involved as employees or entrepreneurs, thereby depriving them of employment and business opportunities.²⁹ They can increase gender wage gaps and create poorer working conditions for women in developing countries. Pressure generated by trade liberalization can lead to volatile employment, rising need for flexible workers, poor working conditions, low wages and unemployment in certain sectors.³⁰ Empirical data has also shown that the overall gender wage gap remains large in countries where there has been a rapid growth in exports that rely on female labour.³¹ Due to trade liberalization, female workers and producers are more likely to contribute to the unskilled labour force in export-oriented industries and remain concentrated in low-skilled activities, with little chance to access high-value-added jobs that remain

²⁶ Marzia Fontana, 'The Gender Effects of Trade Liberalisation in Developing Countries: A Review of Literature' (Institute of Development Studies 2009) <www.ids.ac.uk/publications/the-gender-effects-of-trade-liberalization-in-developing-countries-a-review-of-the-literature/> accessed 8 May 2022.

²⁷ For details, see der Boghossian (Chapter 2 in this book).

²⁸ UNCTAD, 'Mainstreaming Gender in Trade Policy, Note by the UNCTAD Secretariat', TD/B/C.I/EM.2/2/Rev.1 (2009) <www.unctad.org/en/docs/ciem2d2_en.pdf> accessed 8 May 2022.

²⁹ Karen Melanson, 'An Examination of the Gendered Effects of Trade Liberalisation' (2005) 2 (1) *Policy Perspectives* 10–17. Melanson explains how trade liberalization can lead to decrease in care work.

³⁰ Remco Oostendorp, 'Globalization and the Gender Wage Gap' (2009) 23(1) *World Bank Economic Review* 141–161

³¹ For the case of North America, see Philip Sauvé and Hosny Zoabi, 'International Trade, the Gender Wage Gap and Female Labor Force Participation' (2014) 111(C) *Journal of Development Economics* 17–33.

male-dominated. This phenomenon, also known as the ‘feminization of labour’ refers to both an increase in female employment (typically in labour-intensive, low-value-added, low-wage activities) and a worsening of their working conditions and wages.³²

Studies have shown that over the past decade, the number of women working in export-dependent firms has visibly increased; yet there are still fewer women working in export-dependent jobs than men.³³ Moreover, women generally work in sectors that are less engaged in trade.³⁴ Increasing their engagement in trade can therefore help women work better and for more competitive salaries.³⁵ Moreover, evidence shows that trade can help women move from the informal into the formal economy, offering better working conditions and access to various benefits.³⁶ In sectors with high levels of exports, women workers are more likely to be formally employed in a job with better benefits, training and security. World Bank and WTO studies have shown that women workers are less likely to work informally if they work in sectors that trade more or are more integrated into global value chains.³⁷ Hence, foreign trade can increase women’s wages, as firms that export pay more and offer better working conditions than the firms that do not export.

Trade is also an agent of diversity: diversity of markets, clients, products and services. Therefore, presence in the international markets can help women entrepreneurs to use trade as an engine for business expansion and as a tool to

³² Guy Standing, ‘Global Feminization through Flexible Labour (1989) 17(7) *World Development* 1077–1095; Guy Standing, ‘Global Feminization through Flexible Labour: A Theme Revisited’ (1999) 27(3) *World Development* 583–602.

³³ Jayati Ghosh, ‘Globalization, Export-Oriented Employment for Women and Social Policy: A Case Study of India’ (2002) 30(11) *Social Scientist* 17–60.

³⁴ Across all OECD countries, women are much less likely than men to work in manufacturing, a highly traded sector. On average, only 30 per cent of the manufacturing workforce is made up of women. See OECD, ‘Trade and Gender: A Framework of Analysis’ (March 2021) 11–12 <www.oecd.org/publications/trade-and-gender-6db59d80-en.htm> accessed 8 May 2022.

³⁵ Many studies have found that an exporter wage premium exists – that exporters pay higher wages than non-exporters. See, for instance, Esther Ann Bøler, Beata Javorcik and Karen Helene Ulltveit-Moe, ‘Working across Time Zones: Exporters and the Gender Wage Gap’ (2018) 111(C) *Journal of International Economics* 122–133; Zornitsa Kutlina-Dimitrova, José M. Rueda-Cantuche, Antonio F. Amores and Victoria Román, ‘How Important Are EU Exports for Jobs in the EU?’ (EU Chief Economist Note November 2018) <https://ideas.repec.org/p/tris/dgtcen/2018_004.html> accessed 8 May 2022.

³⁶ Informal workers are defined as workers who neither benefit from a social security scheme nor have a working contract.

³⁷ World Bank and WTO, ‘Women and Trade: The Role of Trade in Promoting Gender Equality’ (30 July 2020) <<https://openknowledge.worldbank.org/handle/10986/34140>> accessed 8 May 2022.

mitigate the impact of occasional economic downturns.³⁸ Moreover, existing and future trade agreements between countries can increase trade flows and hence lead to more business opportunities for all, including women.³⁹ Trade liberalization fosters international competition and market access opportunities, and it increases the need to increase the business size and upgrade technologically.⁴⁰ Trade liberalization has led to the introduction of new technologies that can benefit women-owned businesses.

Use of new technology (such as blockchain-based applications) and online platforms to engage in e-commerce can provide to women's businesses a relatively easy and inexpensive way of allowing small businesses to enter foreign markets and of expanding their businesses. However, technology can also become the 'Achilles' heel' of the trade digitalization era as it can widen the digital divide between women and men. According to the International Institute of Rural Reconstruction, digitalization represents a challenge hardly overcome, especially for rural women in various regions, including in Africa.⁴¹ There is therefore a need to enhance women's access and participation in digital learning, infrastructure, financing and trade. The growing trend of digital trade and e-commerce needs to be accompanied by supporting policies and training for women as the gendered digital divide continues to persist and even thrive in the current pandemic-triggered conditions.

At the household level, trade liberalization can impact women as consumers. By lowering prices of goods women generally purchase and thereby increasing their real incomes, trade can impact women consumers in lower-income quintiles.⁴² Hence, trade liberalizing reforms can impact consumers by lowering prices and providing access to a wider variety of goods and services.⁴³ This is in line with the conventional wisdom, which suggests that trade lowers prices through greater competition and trade liberalization lowers

³⁸ ILO, 'Women and Men in the Informal Economy: A Statistical Picture' (2018) <www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_626831.pdf> accessed 8 May 2022.

³⁹ For details, see der Boghossian (Chapter 2 in this book).

⁴⁰ UNCTAD, 'Mainstreaming Gender in Trade Policy', TD/B/C.I/EM.2/2/Rev.1 (19 March 2019).

⁴¹ IIRR, 'Building Back Best: Strengthening Rural Women's Resilience Amid the COVID-19 Pandemic' (March 2021) <<https://iirr.org/building-back-best-strengthening-rural-womens-resilience-amid-the-covid-19-pandemic/>> accessed 8 May 2022.

⁴² OECD, 'Trade and Gender: A Framework of Analysis' (March 2021) 22 <www.oecd.org/publications/trade-and-gender-6db59d80-en.htm#:~:text=A%20framework%20is%20proposed%20for,country%20support%20women's%20economic%20empowerment> accessed 8 May 2022.

⁴³ C. Broda and D. E. Weinstein, 'Globalization and the Gains from Variety' (2006) 121(2) *Quarterly Journal of Economics* 541–485.

barriers to trade (including non-tariff and tariff barriers), which then further lowers prices of goods for final consumers. However, studies have shown that tariff and non-tariff barriers are generally higher on most essential goods such as food staples, clothing and footwear.⁴⁴

Trade liberalization can also have a negative impact on women as consumers and carers, as it leads to reduced import tariffs and government revenues. The reduction in import tariffs can negatively impact a government's revenue in the short term, forcing that government to reduce or withdraw the provision of social services that are otherwise subsidized or financed by that country's government. In some cases, this might lead to the privatization of certain social services that are relevant for women, increasing the cost of such social services and hence making them less affordable. This challenge has worsened during the pandemic, mainly for developing countries with resource constraints and limited fiscal space, as the pandemic-triggered needs have further limited governments' ability to make budgetary allocations to support schemes. On the other hand, it is also possible to argue that increased trade and associated growth can generate increased tax revenues for countries. If that happens, government budgets can be reinvested in sectors that predominantly benefit women and bring about large fiscal multipliers, such as in education, healthcare or social protection.

This discussion shows how trade policies need to be developed within the context of relations between and within economies, groups and genders. Incorporating the gender perspective into trade policies can therefore lead to designing and implementing policies that maximize opportunities, facilitate the integration of women into more dynamic economic sectors, mitigate gender disparities, and enable women's empowerment and well-being. Creating explicit linkages between trade policy and larger goals like gender equality and women's economic empowerment may help trade become a vehicle for long-term inclusive development. Effective regulation of international trade and full, effective participation of women can advance economic growth, sustainable development and women's economic empowerment. Yet, because trade is not gender-neutral, it is important for trade policymakers to engage in the negotiation and implementation of trade agreements with a gendered lens. The sheer interplay between trade and gender equality calls for the application of a gender lens to trade policies

⁴⁴ Alan V. Deardorff and Robert M. Stern, 'Measurement of Non-Tariff Barriers' (1997) OECD Working Paper No. 179 <www.oecd-ilibrary.org/docserver/568705648470.pdf?expires=1655752963&id=id&accname=guest&checksum=E8E491E03C3B460002DACE6A08B4D75B> accessed 8 May 2022.

and instruments.⁴⁵ But what does it mean to apply such a lens to mainstream gender in a trade policy context?

Gender mainstreaming is defined as ‘the (re)organization, improvement, development, and evaluation of policy processes so that a gender equality perspective is incorporated in all policies at all levels at all stages, by the actors normally involved in policy-making’.⁴⁶ Gender mainstreaming in trade policies and agreements requires the application of a gender lens in the negotiation and formulation of trade policies; applying a gender lens entails the inclusion of gender-related concerns in the drafting and implementation of trade policies and agreements. The process of mainstreaming affirms a country’s understanding, awareness or political will to reduce gender inequality through trade policies and agreements. The term ‘gender responsiveness’ is also used extensively in this book. It refers to a process that assesses how sensitive, informed or committed the provisions of a trade agreement are to issues relating to gender equality. In other words, the manner and extent to which an agreement mainstreams gender-equality considerations define how responsive that agreement is to gender-equality concerns.⁴⁷

1.3 AIM AND STRUCTURE

This book examines how economic policies – primarily trade, and to some extent investment – might be adapted to address women’s interests more effectively. It offers descriptive accounts and analyses on whether trade (and investment) agreements can further women’s empowerment, how such instruments might be negotiated with a gender lens, what different options countries have to mainstream gender-equality concerns in their future trade agreements, what the mainstreaming experiences in different regions have been so far, and the constraints faced in doing the same. More specifically, this book enables its readers to gain knowledge and insights on the issues covered and in particular the following:

⁴⁵ This discussion is inspired by UNCTAD’s course on trade and gender linkages: the gender impact of technological upgrading in agriculture; WTO, ‘Gender Aware Trade Policy: A Springboard for Women’s Economic Empowerment’ 4 <www.wto.org/english/news_e/news17_e/dgra_21jun17_e.pdf> accessed 8 May 2022.

⁴⁶ Mieke Verloo, ‘Reflections on the Concept and Practice of the Council of Europe Approach to Gender Mainstreaming and Gender Equality’ (2005) 12(3) *Social Politics: International Studies in Gender, State & Society* 344–365.

⁴⁷ These definitions initially proposed by the author in Amrita Bahri, ‘Measuring the Gender-Responsiveness of Free Trade Agreements: Using a Self-Evaluation Maturity Framework’ (2019) 14(11/12) *Global Trade and Customs Journal* 517–527. For details, see Kuhlmann (Chapter 10 in this book).

- an objective discussion on the role and potential of the WTO's multilateral trading system to create an inclusive trade environment, whether the WTO is gender-blind or gender-responsive as an organization, and reasons why it might present a difficult case for the representation of women and their interests in the global economic governance framework;⁴⁸
- a deep understanding of the relationship between trade, investment and gender, with a focus on the role of women in the economy, and how gender-responsive and gender-inclusive trade and investment agreements can be instrumental for international cooperation and trade liberalization that can be made to work for everyone including women;⁴⁹
- an overview of how substantive areas of trade policy can be put into the service of advancing inclusive trade, as various chapters examine areas including women and trade in services, digital trade, gender gap in standardization, access to resources such as finance, and inclusive regulation of food security and agriculture;⁵⁰
- regional analysis of trade negotiations and concluded trade agreements in different regions including North and South America, the Caribbean, Asia-Pacific and Africa, including an overview of the strengths of their gender mainstreaming approaches and the hurdles and obstacles to trade negotiations and trade policy with respect to these regions;⁵¹
- reflections on emerging and significant issues that are expected to change the landscape of trade negotiations and consideration of gender interests in future policy-making, such as regulations on e-commerce and domestic regulation of services (including in the form of joint statement initiatives and declarations), the increasing need for women's representation in trade negotiations, the continuing impact of the pandemic and

⁴⁸ For details, *see* der Boghossian (Chapter 2 in this book); Mikic (Chapter 3 in this book); Fabian (Chapter 4 in this book).

⁴⁹ For details, *see* Simonetta Zarrilli, 'Women in the LDCs: How to Build Forward Differently for Them' (Chapter 5 in this book); Amaral and Daza Jaller (Chapter 9 in this book).

⁵⁰ For details, *see* Zarrilli (Chapter 5 in this book); Amalie Giødesen Thystrup, 'Gender-Inclusive Governance for e-Commerce, Digital Trade and Trade in Services: A Look at Domestic Regulation' (Chapter 6 in this book); Gabrielle White and Michelle Parkouda, 'The Importance of Gender-Responsive Standards for Trade Policy' (Chapter 8 in this book).

⁵¹ For details, *see* Kuhlmann (Chapter 10 in this book); Brodber and Remy (Chapter 11 in this book); Cáracas Bustamante and Muñoz Navia (Chapter 12 in this book); Bahri (Chapter 13 in this book); Paquet and Wainwright-Kemdirim (Chapter 14 in this book).

the strategies being employed to deal with this impact, and the participation of LDCs in the creation of trade policies with a gender lens.⁵²

To achieve the above-stated objectives, the book is divided into three parts.

The first part is titled ‘The WTO and Gender Equality’ and focuses on how the WTO could naturally lead this process, given its expertise in global rulemaking on trade issues and the institutional role that it can play in advancing the trade and gender agenda. It not only looks at the WTO as a trade policy setter, but zooms in on the WTO as an international organization. The chapters included in this part offer supporting arguments and critiques on whether the WTO can play a role in making trade policies work for women. The authors in these chapters offer reflections on how the WTO may advance gender equality, and also explore why the organization might still not be the appropriate arena for furthering the agenda of gender equality in the context of trade policies.

Chapter 2 by Anoush der Boghossian discusses how the WTO has evolved from a gender-blind organization to first a gender-aware and then a gender-responsive organization; in doing so, the chapter looks at its various mandates, agreements and objectives. Preparing a case for how trade policies can help, the chapter attempts to link human rights and women’s economic empowerment with trade law to illustrate how the current WTO agreements can support gender equality and hence be the drivers of inclusive economic growth.

Chapter 3 by Mia Mikic takes account of the advances made so far in feminizing the WTO, and how the new problems and uncertainties brought by the prolonged pandemic may make it difficult to navigate the long-awaited reforms and actions. In doing so, the chapter assesses the degree to which the ongoing negotiations of trade rules on joint statement initiatives – on investment facilitation, e-commerce, services domestic regulation and Micro, Small and Medium-Sized Enterprises (MSMEs) have taken a gender lens. The chapter also provides reflections on the need to increase women’s representation in decision-making and trade policy positions and the dire need to break the glass ceilings that women in trade generally face.

Chapter 4 by Judit Fabian suggests why the WTO may not be the right place to explore gender solutions and the constraints that organization has in respect of furthering the agenda of gender equality. The main purpose of the

⁵² For details, see Zarrilli (Chapter 5 in this book); Thystrup (Chapter 6 in this book); Maria Sokolova and Matthew Wilson, ‘Setting Up the Table Right: Women’s Representation Meets Women’s Inclusion in Trade Negotiations’ (Chapter 7 in this book).

chapter is to analyse why the WTO has proven such a great challenge for the representation of women and women's interests, with the author offering six supporting reasons that relate to politics, diplomacy, international law and the nature of the WTO's rulebook.

The second part is titled 'Current Issues in Gender Equality and Trade Policies' and covers current and emerging issues related to trade and gender, in substantive terms as well as in terms of the negotiation process. Ranging from cross-cutting gender provisions and chapters to specific topics such as e-commerce and gender-responsive standards, this part highlights where the current debates and possibilities for gender-inclusive trade agreements are located. It offers a lot of food for thought on various emerging and little-researched areas relating to trade, investment and women, such as women and e-commerce, negotiation capacity and least-developed countries, gender-responsive standards, multinational enterprises and their interaction with foreign investment and women, and what some investment treaties have to offer in respect of gender mainstreaming.

Chapter 5 by Simonetta Zarrilli provides an assessment of what women need, the barriers they face especially in a post-pandemic environment, and what has been provided to them in the LDCs so far. To do so, it discusses why women in LDCs face higher obstacles that hamper their capacity to fully benefit from international trade, and how these barriers are magnified by persistent and acute development challenges found in LDCs in the female-intensive sectors of agriculture, in artisanal and small-scale mining, in the Export Processing Zones (EPZ) and in tourism. The author proposes several support measures that would help women benefit more from their participation in these sectors, especially in a pandemic-like situation, and then assesses the measures that have been put in place by the LDCs through rescue packages.

Chapter 6 by Amalie Giødesen Thystrup examines e-commerce from a gender perspective and the provision on gender equality in the WTO Joint Statement Initiative on Services Domestic Regulation. With the Joint Statement Initiatives on Services Domestic Regulation and e-commerce seeking to include provisions on women's empowerment, the policy landscape of this intersection has developed, calling for further research and analysis. The author seeks to create new knowledge that is actionable for policymakers and stakeholders on gender divides in e-commerce, digital trade and trade in services, and what policy interventions are necessary to create multi-level dedicated gender-inclusive governance that is required at this unique time for trade digitization and formulation of new policy instruments.

Chapter 7 by Maria Sokolova and Matthew Wilson looks at women's representation in multilateral trade negotiations within the context of the overall goal of achieving more gender-sensitive outcomes in trade policy. The authors explain how the expansion of the scope and complexity of trade negotiations have created a negotiation capacity gap between developing and developed countries, and how such rising complications have impacted the structure of negotiating teams and the attributes of persons engaged in trade negotiations. This chapter also clarifies that there is a significant distinction between having women participating in trade negotiations and having the interests of women reflected in trade negotiation outcomes, and how they may not necessarily go hand in hand. The authors make a strong case for setting up the future negotiation tables in the right way and increasing women's representation in trade negotiations and policy-making.

Chapter 8 by Gabrielle White and Michelle Parkouda seeks to break the myth that *standards are gender-neutral*. The chapter shows that standards are more effective at protecting men compared to women, an important insight given that standards form the building blocks of how products, processes and services are designed and made to be interoperable. The authors explore the interconnected nature of gender, standards and trade to argue that the lack of gender-responsiveness of standards has a negative impact on the safety and well-being of women. They offer reflections on the importance of improving the gender-responsiveness of standards for creating a more inclusive trade environment and the role that trade policies can play in this respect.

Chapter 9 by Renata Amaral and Lillyana Sophia Daza Jaller adds a much-needed discussion on gender mainstreaming in investment treaties and how inclusion of gender provisions in investment treaties can be a successful strategy on overcoming gender inequality. In doing so, the authors rightly identify the role of multinational enterprises (MNEs) in leading the foreign investment process and the opportunity for MNEs to be the drivers of reducing the existing gender gap. The authors employ a pragmatic approach, as they provide various examples of actions and policies adopted by MNEs in the Americas towards promoting more opportunities for women.

The third part – 'Regional Approaches' – includes country and/or region-specific case studies on different trade and gender mainstreaming approaches. The book provides analysis of the trade negotiation experience and obstacles faced in negotiating trade policies with a gender lens in different regions including North and South America, the Caribbean, Asia-Pacific and Africa. With this regional analysis, readers can gain deep and insider insights into the factors that have led these regions and countries to define their approach in trade negotiations and their motivations behind taking onboard gender

concerns in their trade policies and agreements. It also provides reflections on the trends employed so far in this respect and the constraints that have impeded such gender mainstreaming efforts. The chapters included in this part add a necessary dimension to this discussion, as they present policymakers with a range of options on strategies that have been employed so far, what remains undone in this respect, and the risks future negotiators need to consider if women's interests are not advanced and the challenges to be considered if they are advanced using trade policy instruments.

Chapter 10 by Katrin Kuhlmann presents a comparative assessment of approaches for evaluating and categorizing gender and trade approaches in RTAs. These include a focus on gender-responsiveness and incorporation of international and domestic legal design innovations and options for 'inclusive law and regulation' (with particular examples from African regional and domestic law) in order to use RTAs to address concrete challenges facing women. The chapter shines a light on how gender provisions could be shaped, reframed and better implemented in practice, with particular implications for the African Continental Free Trade Area (AfCFTA) and its gender-focused protocol which is currently in negotiation.

Chapter 11 by Tonni Brodber and Jan Yves Remy provides reflections on the presence (or lack thereof) of a Caribbean feminist agenda in international trade discussions and negotiations, as the authors examine the development of gender equality/feminism in the Caribbean and its intersections with foreign trade. Assessing the Caribbean Community's experience, the chapter provides discussions on the challenges Caribbean policymakers face in mainstreaming gender in trade policies and initiatives, and makes recommendations on how the Caribbean should mainstream gender and approach trade and gender in the future.

Chapter 12 by Javiera Cáracas Bustamante and Felipe Muñoz Navia shows how several countries in South America have pioneered gender mainstreaming in trade agreements. With a review of gender provisions in South American bilateral trade agreements and in the region's integration processes (Pacific Alliance and Mercosur), this chapter demonstrates how South America has advanced gender-sensitive trade policy-making which has now expanded to other regions. The discussions show that in addition to incorporating gender provisions that their developed partners have included in their trade agreements, South American countries have also demonstrated their ability to innovate and design gender-sensible trade regulations with practices that are quite unique to this region.

Chapter 13 by Amrita Bahri turns the focus to the Asia-Pacific region, providing a comprehensive account and assessment of gender-related

provisions included in the existing trade agreements negotiated by countries in the Asia-Pacific. In doing so, the chapter considers the extent to which gender concerns are mainstreamed in these agreements, and examines the reasons that impede such mainstreaming efforts in the region. Interestingly, the chapter finds that most of the agreements negotiated by countries in Asia-Pacific are gender-blind, as they do not contain any gender-related or gender-considerate provisions, and the ones that do contain gender-related provisions do not include commitments relating to women's economic interests or economic empowerment as such provisions mainly relate to their personal welfare concerns.

Chapter 14 by Marie-France Paquet and Georgina Wainwright-Kemdirim presents Canada's experience in applying a gender lens in the negotiation and implementation of trade agreements. The authors of this chapter clarify the importance of understanding the effects of trade on people, and they engage in explaining Canada's new analytical approach. This can help in gathering data on the trade effects, which can guide the crafting of coherent gender-responsive and inclusive trade policies. The chapter examines, using practical examples, how Canada has employed its analytical approach and the observed benefits and limitations of this approach.

1.4 BENEFITS TO READERS

Given the significance of the subject matter in the field, this book is an invaluable source for academics, researchers, students, policymakers and the private sector at this critical time and beyond.

Academics and researchers: This book is a point of reference for scholars and researchers engaged in trade and gender. Researchers studying the impact of gender on trade policy and trade agreements, as well as scholars who are seeking to engage in trade and gender, will find the most topical issues concerning international trade and gender in this book. Moreover, it provides scholars with abundant food for thought on the major challenges in this field and how best to deal with them. This book also provides a great menu of research options and ideas for future research, including doctoral research topics.

Students: A growing number of universities are now offering courses on trade and sustainable development or more broadly on trade and development. These courses have now started to develop a module focused on trade and gender. Moreover, some universities and international organizations are offering standalone courses on trade and gender. The necessity to adopt a gender-sensitive approach in legal education emerges from the highest value

and normative standards of modern international law. Currently, there is no textbook that provides a comprehensive review and assessment of international trade and gender in light of the most modern policy approaches and the most recently concluded and negotiated trade agreements. This book can become a useful teaching and learning resource at universities and organizations that are offering relevant courses.

Trade negotiators and policymakers: This book is beneficial for policymakers who are contemplating and negotiating new trade rules and trade agreements in response to recent developments in trade, investment and gender. With a multitude of trade and investment negotiations ongoing and an increasing demand for attention to non-economic issues on the verge of trade and investment cooperation, this book presents a unique tool for negotiators and policymakers to address the topic of gender. It provides timely contributions and guidance for policymakers to prepare, revise and negotiate new norms to make trade and investment more inclusive. Moreover, the book provides a literary basis for training government officials and trade negotiators across the globe on trade and gender.

Business stakeholders: As businesses begin to consider their corporate social responsibilities, this book is perfectly suited to those making corporate decisions to increase productivity in a sustainable manner and seeking to encourage creative thinking and innovation. The promotion of gender equality in businesses can also have a direct impact on the economic empowerment of women and female entrepreneurship. The findings presented in this book can help businesses gain an understanding of how they can engage in, and contribute to, the formulation of trade policy in their respective countries to ensure that trade works for and benefits everyone, especially women.