15

Gender Equality in Trade Agreements

The Old, the New, and the Future

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15.1 INTRODUCTION

Over the past few decades, countries have increasingly negotiated and adopted gender provisions in preferential trade agreements (PTAs). While the first gender provision was included in the Treaty of Rome establishing the European Economic Community in 1957 (Ghailani 2013), the trend of integrating gender provisions in PTAs kicked off in Africa in the 1980s with the establishment of regional economic communities (Laperle-Forget 2022). The 'gender champions' of PTAs are now largely concentrated in Africa, Europe, Latin America, and North America. Yet, the most recent trends suggest their expansion worldwide (Lechner 2019) as even countries that still question the link between trade and gender in the World Trade Organization (WTO) have gone ahead and have now entered into PTA negotiations that include provisions and chapters on gender issues.[1] This marks a turning point in PTA negotiations which will very likely influence future WTO discussions on gender and women's economic empowerment.

But what is the advantage of introducing gender provisions in PTAs, and why do countries negotiate such commitments? In fact, governments increasingly recognise women's specific and determinant roles in the economy and their fundamental contribution to sustainable growth (der Boghossian 2023a). At the WTO 12th Ministerial Conference (MC12), the 164 Members of the WTO multilaterally and by consensus recognised the importance of women's economic empowerment and the work of the WTO in this field (WTO 2022b).

In addition, governments' concerns about gender equality are addressed in their national trade policies, not only as part of the objectives, but also as targeted measures to support women in trade and in the economy. Governments often adopt policies facilitating women's access to the workforce and jobs in export-oriented

[1] Authors' informal exchanges with trade negotiators, 2022.

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sectors by creating women-favouring employment incentives for the private sector. Also, more and more, governments are adopting measures to foster female entrepreneurship (der Boghossian and Bahri 2023). While trade policies foster women's access to economic opportunities as part of a win–win partnership between governments and their female population, countries also consider that social issues, such as lack of mobility, unequal access to healthcare, or gender-based violence, are creating obstacles for women to take full advantage of opportunities created by trade policies, and these can be seen as new types of trade barriers. Therefore, some governments embed social issues in their trade policies or accompany them with socially oriented policies. Looking closely at trade policies and discussions at the WTO, some research shows that it is increasingly recognised that without social advancements, women's economic empowerment cannot be achieved, and without women's empowerment, economic efficiency and productivity cannot be developed fully (der Boghossian 2023a and 2023b).

Through PTAs, governments aim at establishing agreed tariff reductions for an easier access to parties' markets or at creating a set of harmonised rules to limit or eliminate technical barriers to trade, thereby creating legal commitments in these fields for governments that negotiate and adopt them.

As of 2022, about one-third of PTAs notified to the WTO contain commitments on gender equality, ranging from general non-discrimination objectives based on sex to targeted commitments such as access to training, employment, or finance (WTO 2022a). Governments also pursue these commitments in specific areas such as procurement, health, or services and focus on female workers and leaders, as well as women entrepreneurs and exporters (Bahri 2021a).

The range of gender commitments in existing PTAs is, therefore, wide and often goes beyond strictly defined trade issues.[2] This is not surprising, considering that the term 'gender' refers to the social roles, responsibilities, behaviours, and identities associated with men and women in society at large. These are constructed based on social, cultural, and historical factors. Therefore, provisions that address gender issues are bound to touch upon multiple wide-ranging issues. Owing to this reason, gender provisions in PTAs not only focus on levelling the trade playing field for women and eliminating the barriers they face in trade, but also addressing the ones existing in the economy and in the society at large. For this purpose, there is an intrinsic need to also integrate gender issues in trade policies even though they are not directly linked to economic growth.

Despite the fact that PTAs have the potential to effectively promote gender equality, as countries assume various commitments in their legal provisions, they lack essential elements for the implementation of promises that members assume

[2] As recognised by the Aid for Trade Task Force Recommendations in 2006 (WT/AFT/1), gender issues are cross-cutting, https://docsonline.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/AFT/1.pdf&Open=True.

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within these policy instruments. They also overlook some issues that are essential for women's economic empowerment and directly deal with the problems women face in accessing opportunities offered by trade. These elements are identified and analysed in this chapter and form the basis for prompting future design elements in PTAs related to gender.

In its first section, this chapter reviews how gender provisions are integrated in the existing PTAs. In particular, it will categorise these provisions in three generations evolving from binding provisions to including new gender-related issues. In the second section, the chapter looks at the commonalities between these gender provisions across regions, specifically outlining that some provisions focus on economic gains for women, while others target merely social issues. Going further, in the third section, this chapter establishes that gender provisions fall under both WTO-plus and WTO-extra commitment categories. It also explores how PTAs and gender provisions foster the implementation of other international commitments taken by governments in other instruments, notably the Convention on the Elimination of Discrimination against Women (CEDAW). In the fourth section, the chapter reviews what gender issues are not included in PTAs so far. It also looks at the reasons why they should be included and how they can be integrated in PTAs. This section also explores how some implementation and enforcement processes are missing from the gender provisions in existing PTAs, such as impact assessments, and it also analyses how transparency can be a powerful implementation process involving new actors, such as national parliaments, and establishing a link with the 2006 WTO Transparency Mechanism on Regional Trade Agreements (RTAs). On the basis of this analysis, the fifth section of the chapter defines a new model and roadmap for the concrete implementation of gender provisions contained in PTAs.

In conclusion, the chapter shows how strong implementation processes can support gender equality across the policy board.

15.2 GENDER PROVISIONS IN PTAS: A STATE OF PLAY

Over the past 65 years, gender provisions have evolved, revealing different trends across periods and regions. Looking at different phases in time, specific trends can be observed that help define and categorise gender equality provisions in three generations.

15.2.1 *Three Generations of Gender Provisions from 1957 to 2022*

The first generation of gender provisions is defined by the binding factor of the provisions. This set of initial provisions addressing gender issues in explicit terms[3]

[3] Gender provisions are the ones that include an explicit mention of gender, sex, women, girls, or related terminology, including the international instruments promoting women's rights,

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was couched in binding language, and they provided for precise obligations on gender equality. For example, the very first gender provision in the Treaty of Rome formulates a binding and precise obligation for state parties to ensure and implement the principle of equal pay for men and women workers (Article 119). Similarly, twenty-six years later, the Treaty for the Establishment of the Economic Community of Central African States (ECCAS) also provided for a specific obligation for Member States to develop research and policies aimed at 'improving the economic, social and cultural status of women in urban and rural areas and increasing their integration in development activities' (Article 60). Other regional economic integration agreements concluded in the 1990s have also provided such binding language for gender equality, including the Treaty of the Southern African Development Community (SADC).

In 1993, the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) was concluded with Chapter 24 on Women in Development and Business, the first chapter on trade and gender that was ever included in a PTA. This chapter recognises women's contribution to socio-economic development and provides for a set of binding obligations and actions to close gender gaps. Based on this chapter, parties committed to eliminating discriminatory laws, regulations, and customs against women, and those that prevent them from owning land or accessing credit. The COMESA Treaty also promotes the 'effective integration and participation of women at all levels of development especially at the decision-making levels' and for 'special programmes for women in small and medium-size enterprises' (Articles 154 and 155). These specific obligations have been similarly included in the Treaty establishing the East Africa Community (EAC) in 1999 (Articles 121 and 122). None of the mentioned provisions are excluded from the PTA's dispute settlement mechanism. During this period, PTAs did not treat gender equality obligations differently from any other provisions with regard to their enforcement potential.

Also, the first generation of gender provisions were mostly, if not only, included in the PTAs described above. In fact, these regional agreements go beyond reducing trade barriers between state parties. For example, many include environmental objectives. On average, in the 1990s, about seventy-six agreements included such objectives (OECD 2023). Similarly, these agreements included social and gender equality objectives. In particular, in the 1983 ECCAS, state parties committed to 'develop collective research by appropriate policies aimed at improving the economic, social and cultural status of women in urban and rural areas and increasing their integration in development activities'.[4] In 1992, the Maastricht Treaty of the

such as the CEDAW, the Beijing Declaration and Platform for Action for the Rights of Women and Girls, the Buenos Aires Declaration on Trade and Women's Economic Empowerment, or the UN Sustainable Development Goal 5 on gender equality.

[4] Article 60 (Social Affairs).

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European Union (EU) included a provision recognising 'equality between men and women with regard to labour market opportunities and treatment at work'.[5] EU Member States also committed to 'ensure equality between men and women with regard to labour market opportunities and treatment at work'.[6] The Treaty also encourages state parties to adopt measures providing advantages for women to ease their access to vocational activity or to address disadvantages in their professional careers. Similarly, during the same period, state parties of the North American Free Trade Agreement (NAFTA) addressed employment discrimination and equal pay between men and women (Monteiro 2021). The second generation of gender provisions merely addresses gender issues with a few references in PTAs and contains relatively low commitments reconciling gender equality with trade liberalisation. These gender provisions were included in PTAs around 1995 with agreements between the EU and developing countries. Between 1995 and 2002, eight PTAs with provisions addressing women's access to education and family-related issues were concluded. While only European and African countries have concluded the first generation of gender provisions,[7] the practice spread across the globe with the second generation. This is the 'propagation era', when the number of PTAs with gender provisions progressively increased, and new PTAs with gender provisions were concluded in the Middle East, North America, Latin America, the Caribbean, and Asia (WTO 2022a). With a few exceptions, the binding level of second-generation gender provisions has generally decreased compared to the first one. This period can also be described as the 'era of mitigated commitments'. Instead of binding provisions with precise obligations, the vast majority of the second-generation provisions address gender issues as part of cooperation activities and information-sharing or only include one reference to gender issues without addressing women's specific needs or interests.

In addition, the obligation to cooperate is often diluted with the inclusion of an indicative list of potential cooperation activities, thus leaving at the discretion of the parties which actions to take to address gender issues (as can be seen in the Chile–Viet Nam Free Trade Agreement (FTA) (Articles 9.3 and 9.4)). Also, gender considerations are often addressed along with several other issues in a list of potential areas of cooperation, thus depriving gender equality commitments of any tangible importance that they otherwise might have if they are frontloaded in an agreement (as can be seen in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (Article 375)).

[5] Article 2.1.
[6] Article 6.1.
[7] At the time of the first generation of gender provisions, only a few PTAs were concluded. The Regional Trade Agreements Database (World Trade Organisation 2022) maps forty-five RTAs in force in 1995; see also https://rtais.wto.org/UI/charts.aspx.

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Interestingly, the first gender provision to be explicitly excluded from the dispute settlement chapter was concluded under Article 16.5 of the Dominican Republic–Central America–United States FTA (CAFTA-DR).[8] From this agreement onwards, the number of gender provisions that cannot be adjudicated or enforced through the agreements' dispute resolution mechanism has gradually increased.

However, the year 2016 has marked a turning point. The conclusion of the Chile–Uruguay FTA ushered in the third and current generation of gender provisions. In this agreement, gender issues are addressed in a more comprehensive manner through multiple provisions and chapters, including a standalone chapter on trade and gender. This contrasts with the previous practice of merely considering gender issues in PTAs. Among others, this PTA addresses in eight provisions various gender issues related to women's participation in the labour force, female entrepreneurship, women's access to education, health, and productive resources (Articles 11.9, 13.2, 13.3, 14.1, 14.2, 14.3, 14.4, and 14.5).

The Chile–Uruguay FTA served as a model for the negotiations of gender provisions and chapters in subsequent trade agreements. Not only have similar gender issues been addressed in recent PTAs, but the structure of the chapter on trade and gender in the Chile–Uruguay FTA has also been duplicated in eleven other subsequent trade agreements.[9]

Also, similar institutional arrangements and enforcement mechanisms applicable to gender provisions are provided in these PTAs. These FTAs, just like the

[8] Article 16.5 provides for cooperation on gender issues and the elimination of discrimination in the workplace. Article 16.6 explicitly excludes Chapter 16 on labour from the application of the dispute settlement mechanism provided in the agreement.

[9] Since the conclusion of the Acuerdo de Libre Comercio entre la República de Chile y la República Oriental del Uruguay (Chile–Uruguay) (signed 4 October 2016, enforced 13 December 2018), the chapters on trade and gender included in subsequent PTAs have followed a similar structure: they include general provisions stating the common objectives, a provision recalling international women's rights instruments, provisions listing area and activities for cooperation, and provisions on institutional arrangements. Preferential trade agreements with similar gender chapters or sections are: Acuerdo Comercial entre la República Argentina y la República de Chile (Chile–Argentina) (signed 2 November 2017, enforced 1 June 2019), Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile (Canada–Chile) (signed 5 June 2017, enforced 5 February 2019), Canada–Israel Free Trade Agreement (signed 1 June 2018, enforced 1 September 2019), Free Trade Agreement between the Republic of Chile and the Federative Republic of Brazil (Chile–Brazil) (signed 21 November 2018, enforced 25 January 2022), Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership (UK–Japan) (signed 7 October, enforced 1 January 2020), Chile–Ecuador Acuerdo de Complementación Económica No. 75 (signed 13 August 2020, enforced 16 May 2022), Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (UK–Iceland, Liechtenstein, and Norway) (signed 8 July 2021), Acuerdo de Libre Comercio Chile–Paraguay (Chile–Paraguay) (signed 1 December 2021), Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia (UK–Australia) (signed 16 December 2021), and Pacific Alliance–Singapore FTA (signed 22 January 2022).

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Chile–Uruguay FTA, also establish a technical body in charge of coordinating cooperation efforts and reviewing the implementation of the gender provisions, while all chapters on trade and gender in third-generation PTAs are explicitly excluded from the dispute settlement chapter – except for Chapter 13 in the Canada–Israel FTA.[10]

In third-generation PTAs, a new variety of gender issues is addressed, and new types of gender provisions are formulated. For example, recent PTAs address women's leadership and education in male-dominated sectors or the conciliation of professional and family responsibilities, as well as unpaid care work and sexual harassment in the workplace. These issues were not addressed in previous PTAs. Also, recent PTAs include provisions on public awareness of gender equality and equity laws, policies, and good practices. Additionally, they contain commitments on the parties' right to establish, modify, and monitor compliance with their gender laws and policies in accordance with their priorities. Some post-Brexit PTAs concluded by the United Kingdom (UK) also include novel gender provisions (Bahri, 2021b). For example, PTAs concluded with Japan, Australia, and New Zealand formulate one of the few trade rules on gender found in PTAs in the chapter on domestic services regulations, where parties are prohibited from adopting or maintaining qualification and certification measures and requirements that are discriminatory against women.[11] Interestingly, the UK–New Zealand FTA is also the first PTA to include a provision stipulating 'that it is inappropriate to waive, or otherwise derogate from, their gender equality laws to encourage trade or investment' (Article 25.3). This type of provision is usually found in environment and labour chapters and was not used for gender equality standards before.

15.2.2 *Gender Provisions in PTAs: Different Priorities across the Globe*

In addition to the different trends in gender equality provisions over time, topics addressed in gender-related provisions also vary from one region to the other. Some regions have included provisions on social and healthcare concerns of women, and others have grounded these provisions in purely economic and market-oriented interests. For example, the North American countries have treated gender-related

[10] The text of the agreement provides that parties can bring a dispute arising on a matter related to the chapter on trade and gender under the dispute settlement chapter, provided that both parties consent (Article 13.6).

[11] A few gender provisions in PTAs formulate trade or investment rules, as most provide for cooperation or laws or policies to promote gender equality at the domestic level. Another example of a rule is provided in the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (EU–Canada) (signed 30 October 2016, entry into force 21 September 2017), Article 8.10, in which non-discrimination on the basis of gender is included in the fair and equitable treatment of investors.

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concerns from an economic and market access perspective[12] and negotiated provisions that mainly relate to labour standards, women's access to productive resources, markets, technology, and skill development, as seen in the United States–Mexico–Canada Agreement (USMCA, Articles 23 and 25). In this sense, they have essentially focused on women employees or entrepreneurs. The EU's approach is geared towards the inclusion of provisions that deal with gender equality, non-discrimination, labour standards, education and skill development, health and safety, and maternal care.[13] Hence, most of the agreements negotiated by the EU have explored women in their three different roles: as employees, social actors, and mothers.

Another contrast can be seen in the areas that countries in the Asia-Pacific region have explored in their trade agreements. Many of the inclusions are drafted as right-to-regulate provisions, wherein countries reserve the policy space to regulate specific areas that may impact women's health and maternal concerns, such as healthcare, child nutrition, childcare, and women's personal safety.[14] These inclusions depict that the countries in this region have mostly looked at women as mothers and caretakers, but not as employees or as business stakeholders, as depicted in the gender-explicit provisions accommodated in their trade agreements.

On the other end, South America's approach is similar to that of North America, but some agreements in this region include gender concerns with topics similar to those in the Asia-Pacific region as the provisions negotiated with Asia-Pacific countries focus exclusively and solely on health, childcare, and other maternity concerns.[15]

Lastly, the gender-explicit provisions found in agreements signed between African countries seek to integrate women into the region's development process by enhancing women's access to resources, promoting female entrepreneurship, and increasing women's representation and participation in political and decision-making positions.[16] In this sense, these countries have sought to employ their agreements

[12] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (signed 8 March 2018, effective 30 December 2018), Chapter 23: Development, Article 23(4); USMCA (signed 30 November 2018, effective 1 July 2020), Chapter 25: Small and Medium Sized Enterprises, Article 25(2).

[13] Agreement establishing an Association between the EU and its Member States on the one hand and the Central America on the other (EU–Central American Association Agreement) (signed 29 June 2012, enforced 2013), Articles 13, 32, 41, and 47; Stabilisation and Association Agreement between the European Communities and their Member States of the one part and the Republic of Albania of the other part (EU–Albania Stabilisation and Association Agreement) (signed 12 June 2006, entry into force (G) 1 December 2006, (S) 1 April 2009), Article 99.

[14] Australia–New Zealand Closer Economic Agreement (ANZCERTA) (Australia–New Zealand) (adopted 28 March 1983, entry into force (S) 1 January 1989), Annex II; Chile–South Korea Free Trade Agreement (adopted 21 July 2018), Article 10(2).

[15] Free Trade Agreement between the Republic of Korea and the Republic of Chile (signed 15 February 2003, enforced 1 April 2004), Article 10.2

[16] Economic Community of West African States (ECOWAS) (signed in 24 July 1993, enforced 23 August 1995), Articles 3, 63; COMESA (signed 5 November 1993, enforced 8 December 1994), Articles 154, 155.

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to improve the conditions of women not only as social or cultural actors or contributors to economic development, but also as entrepreneurs, politicians, and decision-makers.

15.3 GENDER PROVISIONS: WTO-PLUS OR WTO-EXTRA?

Depending on their scope, some gender provisions fall under the 'WTO-plus' commitment category while others can be considered as 'WTO-extra' commitments. In addition, gender provisions are also closely linked with international commitments on gender equality beyond the WTO objectives.

15.3.1 *Gender Equality in WTO-plus and WTO-extra Commitment Categories*

15.3.1.1 Gender Equality in WTO-plus Provisions

Some gender commitments agreed by governments in PTAs come under the current mandate of the WTO, but they go beyond those adopted at the multilateral level. They can be categorised as WTO-plus commitments (Horn et al. 2010). Gender provisions intersect with topics considered in the WTO mandate, such as agriculture, fisheries, government procurement, and digital trade (Horn et al. 2010).[17] However, they go further than WTO agreements, which do not include explicit language on gender or women's economic empowerment and are therefore gender blind. Consequently, given their nature, these provisions automatically go beyond the WTO agreements and mandates.

In agriculture, some gender provisions in a trade agreement encourage data collection of women engaged in the agriculture sector.[18] They also promote cooperation activities and support the development of adequate policies to support the economic development of rural women in trade and investment and their inclusion in the economy.[19] Some also explicitly recognise the role of women in agriculture and how they contribute to economic development or how rural transformation is

[17] A new agreement was multilaterally adopted on fisheries subsidies at the 12th WTO Ministerial Conference: Agreement on Fisheries Subsidies, Ministerial Decision of 17 June 2022, WT/MIN(22)/33 and WT/L/1144. About public procurement, although a plurilateral agreement was adopted, it comes under the WTO mandate and has been identified as a WTO-plus commitment. Similarly, while WTO Members have established a joint initiative on e-commerce, leading to the negotiation of a plurilateral agreement on e-commerce, it is also part of the WTO multilateral agenda (WT/L/274 and WT/MIN(22)/32).

[18] Pacific Agreement on Closer Economic Relation Plus (PACER PLUS) (signed 14 June 2017, enforced 13 December 2020), attachment B.

[19] For example, ECCAS (signed 18 October 1983, enforced 18 December 1984), Article 77 (of the revised treaty); Chile–Paraguay FTA, Article 13.15.

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ineffective without the full participation of women.[20] Other provisions promote the application of good practices in agriculture supported by a 'gender approach in development policies and strategies'[21] and address gender biases that influence the nature of farming systems.[22]

On fisheries, some PTAs promote building women's capacity in the sector and target women traders engaged in fishing and future fisherwomen.[23]

Similarly, in digital trade, most gender provisions focus on building women's digital skills and fostering their access to digital tools and technology.[24] Additionally, in a few PTAs, governments commit to collecting and developing data on the barriers women face in digital trade to inform their policies and monitor women's participation in digital trade.[25]

Some gender provisions also aim at facilitating and increasing women's participation in public procurement markets, either through cooperation[26] or preferential treatment.[27] Interestingly, one provision links women's digital skills enhancement and their access to digital tools and technology to improve their participation in government procurement markets.

15.3.1.2 Gender Equality in 'WTO-extra' Commitments

Some gender provisions address issues that are external to the strict and explicit WTO mandate and are thus considered to be 'WTO-extra' (WTO-X) commitments (Horn et al. 2010). Under this group, two types of provisions can be considered. The

[20] COMESA, Articles 154 and 155; EAC (signed 30 November 1999, enforced 7 July 2000), Article 122.

[21] Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru (signed 28 April 2009, enforced 1 March 2010), Article 164.

[22] Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States of the other part (signed September 2016), Article 83; UK–Kenya Economic Partnership Agreement (signed 8 December 2020), Article 83.

[23] For example, UK–Kenya, Article 89; Agreement Establishing An Economic Partnership Agreement between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland (signed 31 January 2019, enforced 1 January 2021), Article 34; Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (signed August 2009, enforced 14 May 2012), Article 35.

[24] For example, Chile–Brazil FTA, Article 10.15.

[25] For example, UK–New Zealand, Article 15.20.

[26] For example, UK–New Zealand Articles 16.22 and 25.5; Chile–Paraguay, Article 13.5; UK–Australia, Articles 16.22 and 24.1.

[27] The United States (US) has included a reservation clause to the chapter on public procurement to allow a preferential treatment to women-owned businesses. For example, Free Trade Agreement between Peru and the United States of America (US–Peru) (signed 12 April 2006, enforced 1 February 2009); Free Trade Agreement between the United States and Morocco (signed 15 June 2004, enforced 1 January 2006), Annex 9-A-1.

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first one includes provisions that are not trade issues by nature but are nonetheless directly related to trade. For example, several gender provisions focus on facilitating women's access to financing, capital, credit, and financial assistance and building their financial literacy and skills.[28] Interestingly, one provision addresses women's access to capital and credit through the development of their digital skills and access to digital tools and technology.[29] These issues, although not considered as trade issues, directly affect women's ability to participate in trade.

The second group includes those provisions that are not trade issues by nature and are not related to trade, but rather focus on women's roles and place in society. For example, provisions focusing on female leadership and women's participation in decision-making do not fall under the WTO mandate and are not directly or indirectly related to trade. Such provisions support or promote women's high-level positions in society and their contribution to decision-making in business or in the public sphere. In particular, some agreements include commitments to develop female leadership through training and experience sharing, foster female leadership networks in business and trade, and promote and facilitate equal participation of men and women in decision-making positions and in positions of authority.[30] Other commitments also aim at fostering women's leadership in technology, science, and innovation, where women are greatly underrepresented (OECD 2017).[31] The question is why countries have gone ahead to include such provisions in trade agreements if they are not directly impacting women's access to opportunities created by trade. In fact, evidence shows that when women lead companies, companies are more efficient, and therefore even these issues can be considered as ones that are indirectly related to trade interests (International Labour Organization 2019). Similarly, governments run by women can be more efficient, as demonstrated during the COVID-19 pandemic. Such countries were, in fact, better prepared and faced a lower death rate level due to COVID-19 because female political leaders had invested more in their countries' universal healthcare (Abras et al. 2021). Therefore, fostering female leadership could result in better policymaking, both in the public and private sectors.

15.3.2 *Gender Provisions Aligned with CEDAW*

In 1979, the United Nations adopted the CEDAW.[32] Currently, 189 state parties have ratified or acceded to CEDAW, and of these, 14 per cent have not signed any PTAs with gender provisions. Also, only 7.5 per cent have negotiated and adopted gender provisions in their PTAs. The Convention on the Elimination of Discrimination against Women is one of the most important and compelling

[28] For example, COMESA, Articles 154 and 155; EAC, Articles 121 and 122; UK–New Zealand, Article 25.5; Chile–Argentina, Article 15.3.

[29] UK–New Zealand, Article 15.20.

[30] For example, UK–Japan, Article 21.2; Chile–Uruguay, Article 14.3; CPTPP, Article 23.4.

[31] For example, Chile–Argentina, Article 15.3; Canada–Israel, Article 13.3; UK–Australia, Article 24.2.

[32] See text of the Convention, www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women, accessed on 6 October 2022.

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international treaties addressing women's rights, gender equality, and gender-based discrimination. It goes beyond setting general objectives regarding gender equality and women's protection against discrimination. It outlines a set of specific commitments to address issues related to gender equality or discrimination against women in a targeted manner. Countries that ratified or acceded to the Convention are bound by these provisions. Additionally, CEDAW is often used by governments as a legal basis to pursue their development objectives. For example, Switzerland stated that CEDAW provides a legal basis for its Swiss Agency for Development and Cooperation (SDC) to elaborate 'partnership and policy dialogue with its partner countries on bilateral and multilateral level' (SDC 2017). All the articles contained in CEDAW are covered by gender provisions in PTAs, as outlined in Table 15.1 below.[33] Therefore, gender provisions directly support the implementation of the Convention and are aligned with its objectives and principles.

TABLE 15.1 *Gender provisions in PTAs implicitly support the implementation of the Convention*

Types of gender provisions in PTAs	Corresponding Articles in CEDAW
Gender inequality issues	Preamble, Article 1, Article 2, Article 3, Article 4, Article 5
Women's participation in economic and development activities • Women's participation in the workforce • Women's participation in business • Women's access to productive resources	Preamble, Article 10.a, Article 11, Article 13, Article 14.2.d, Article 14.2.e
Social issues and the role of women in social life • Women's access to education • Women's safety • Family-related issues • Social inclusion and vulnerability • Women's access to health and food security	Article 5.b, Article 6, Article 9, Article 10, Article 11.1.e, Article 11.1.f, Article 11.2, Article 12, Article 13.a, Article 13.c, Article 14, Article 16
Representation of women in decision-making roles and leadership and representation of women in politics	Article 5, Article 7b, Article 7.c, Articles 8
Role of women in cultural life and protection of cultural rights	Article 10.g, Article 13.c

Source: Authors' analysis based on WTO 2022 (Table 1).[34]

[33] The Convention on the Elimination of Discrimination against Women includes 30 Articles overall, classified in six parts. The provisions specifically related to gender discrimination issues are outlined in the Convention from Articles 1 to 16. Articles 17 to 30 focus on the enforcement and implementation mechanism. For the purpose of this chapter, Table 1 does not go beyond Article 16.

[34] INF/TGE/COM/4.

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Moreover, 10 per cent of trade agreements that include gender provisions explicitly refer to this Convention. State parties of most of these agreements reaffirm or recall their commitments under CEDAW. Interestingly, one PTA makes an explicit link between the achievements of the gender equality goals of the trade agreement and the effective implementation of CEDAW.[35] Therefore, trade agreements can serve as an instrument for effective gender equality, not just in trade but across the policy spectrum.

15.4 GENDER PROVISIONS IN THE NEXT DECADE: HOW TO MOVE FORWARD?

As mentioned above, gender provisions have significantly evolved over time. However, one can observe several gaps in existing gender provisions to effectively support gender equality and women's participation in trade, either through the depth or rather shallowness of issues addressed in PTAs or through the lack of proper enforcement and transparency mechanisms.

15.4.1 *New Topics for Future Trade Negotiations*

Gender-related provisions vary from one region to the other, but a majority of them have focused so far on education and training,[36] representation of women in decision-making roles,[37] women's employment,[38] labour standards,[39] equality and

[35] European Union–Central American Association Agreement, Article 47.1.

[36] Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part (signed 22 April 2002, enforced 1 September 2005), Article 78; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part (signed 25 June 2001, enforced 1 June 2004), Article 42.

[37] Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (signed 18 November, enforced 1 March 2003), Article 45; Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (signed 27 June 2014, enforced 23 April 2014), Article 420; Agreement for the Establishment of the Preferential Trade Area for Eastern and Southern Africa (signed December 1981, enforced 30 September 1982), Article 154.

[38] USMCA, Article 23.12; Canada–Jordan Free Trade Agreement (signed 28 June 2009, enforced 01 October 2012), Article 1.

[39] Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (EU–Korea, Republic of) (signed 16 September 2010, enforced 1 July 2011), Article 13.4; Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (signed 30 June 2019, enforced 1 August 2020), Article 13.4.

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non-discrimination,[40] physical safety,[41] protection of maternity,[42] healthcare concerns,[43] and entrepreneurial capacity.[44] Yet, many crucial areas remain unexplored in current trade agreements, which, if included, can have the potential to enhance women's empowerment even further in international trade. Three such areas can be considered, as they can further improve the potential of trade agreements to help women overcome the barriers they currently face.

15.4.1.1 Going beyond Traditional Promises of Enhancing Access to Finance

Various countries in existing trade agreements committed to and recognised the need to enhance women's access to finance or financial inclusion,[45] but most of these agreements so far have not gone into the 'how' part, that is, 'how' countries can enhance women's access to finance. This depends on many factors, including access to basic financial services, trade finance instruments, affordable credit, and acceptable collaterals. Hence, what remains to be seen so far are concrete commitments and plans on how countries can put such provisions into action.

In particular, in future trade agreements, countries can agree on setting up strategies, developing better financial inclusion policies, and appropriate legislation to regulate these issues. Countries can also appoint a committee that may identify procedures to improve women businesses' access to finance and to financial and non-financial services, including through innovative mechanisms, as these mechanisms

[40] Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR) (signed 5 August 2004, enforced 1 March 2007), Annex 16.5; United States–Colombia Trade Promotion Agreement (signed 22 November, enforced 15 May 2012), Annex 17.6; United States–Peru Free Trade Agreement (signed 1 February 2009), Annex 17.6; Free Trade Agreement between Canada and the Republic of Peru (Canada–Peru) (signed 29 May 2008, enforced 1 August 2009), Annex I; Canada–Ukraine Free Trade Agreement (signed 11 July 2016, enforced 1 August 2017), Annex 13-A; Treaty Establishing the European Community (signed in 1957, enforced in 1958), Article 3; Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and The Republic of South Africa, of the other part (signed 11 October 1999, enforced 1 May 2004 2004), Article 86.

[41] Free Trade Agreement between Australia and the Republic of Peru (Australia–Peru) (signed 12 February 2018, enforced 11 February 2020), Article 20.2; Free Trade Agreement between the European Union and the Republic of Singapore (signed 15 October 2018, enforced in 2019), Appendix 8-B-1.

[42] Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (signed 17 July 1995, enforced 1 March 1998), Article 65; Free Trade Agreement between New Zealand and the Republic of Korea (signed 23 March 2015, enforced 20 December 2015), Annex II.

[43] Free Trade Agreement between the Government of Malaysia and the Government of the Republic of Turkey (signed 17 April 2014, enforced 1 August 2015), Article 9.13; USMCA, Article 23.12

[44] EU–Canada, Article 8.10.

[45] For example, Australia–Peru, Article 22.4; Chile–Uruguay, Article 14.3

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can, in particular, provide affordable credit to women entrepreneurs running small formal and informal businesses. Moreover, when countries assume commitments in relation to financial access, it is important for them to acknowledge that both public and private stakeholders play an important role in supporting private sectors' access to finance. Hence, to put such commitments into action, it is important for countries to develop transparent and predictable frameworks for collaborating with private stakeholders through public–private partnerships (PPP) or blended finance mechanisms (OECD n.d).

15.4.1.2 Provisions on Digital Inclusion and E-commerce

In an increasingly digitally enabled society, the significant challenge that remains is the digital inclusion of women. The global pandemic has made it clear that digital access is no longer a luxury but an absolute necessity. The existing trade agreements so far have not been that vocal about the need to enhance women's access to digital technologies and e-commerce opportunities; however, there are very few examples of recently concluded trade agreements where parties have acknowledged this barrier. Although a few FTAs deal with digital inclusion, the Digital Economy Partnership Agreement (DEPA)[46] between Chile, New Zealand, and Singapore (South Korea has just initiated the process of joining) is a leading example as it includes specific language that emphasises digital inclusion for marginalised groups including women. This is an Agreement wherein parties recognise 'the importance of expanding and facilitating digital economy opportunities by removing barriers' and cooperating 'on matters relating to digital inclusion'.[47] Other recent examples that feature similar provisions include CPTPP (Article 23.4) and the UK–Australia FTA (Articles 14.21, 24.1, 24.2, and 24.4).

These recent inclusions are a welcome step, but it is important to note that increasing women's participation in the digital economy and increasing their e-commerce entrepreneurial capacity require bringing together three related aspects, that is, (i) access to digital learning, (ii) access to digital infrastructure, and (iii) access to e-commerce platforms and opportunities (which is fostered by access to finance). In this sense, two problems can be seen with the existing inclusions.

First, the recent PTAs that mention the related concerns mainly focus on the need to enhance women businesses' access to digital learning or infrastructure, and they continue to remain silent on 'how' they might put these promises into action. Second, almost all PTAs in force so far have focused on access to digital learning or infrastructure, mostly leaving out of their scope the third component of increasing their businesses' access to e-commerce platforms and opportunities. As a result, most

[46] Digital Economy Partnership Agreement between Singapore, Chile, and New Zealand (signed 11 June, enforced 7 January 2021).

[47] Ibid., Article 11.1.

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of the existing agreements do not integrate concrete commitments, including the means that countries may employ to enhance women's access to affordable and reliable digital infrastructure, digital financial wallets and e-banking, and e-commerce platforms, which could lead to an overall increase in women's participation in the economy and in trade. The use of digital platforms, for example, may offer women many additional opportunities, including the possibility to overcome challenges related to physical immobility, accessing new markets and knowledge, connecting with potential markets and customers, and enjoying flexible work hours and modes.

15.4.1.3 A Closer and More Explicit Consideration of Voluntary Sustainability Standards

Another innovative and comparatively unexplored way to integrate a gender equality discussion within the trade policy context is to include in trade agreements provisions on voluntary sustainability standards (VSS) (UNFSS 2012).[48] These are guidelines that encourage businesses to respect and accommodate within their operations different non-economic interests such as human rights, animal welfare, labour standards, environmental impacts, and gender equality considerations. Through these standards, countries can encourage or even require multinational enterprises (MNEs) operating within or subject to their jurisdiction to include gender equality concerns within their codes of conduct or in their contracts for the sale of goods and services. These standards can promote internal compliance (within a company with respect to owners and employees) and external compliance (with respect to their suppliers, sub-suppliers, and consumers (Mola and Poncibò 2021).

Voluntary sustainability standards can be used as a tool to articulate and encourage sustainable and inclusive practices in trade transactions and processes (Smith 2020). While most standards so far are not designed to promote gender equality, there is an increasing number of gender-focused VSS that are being developed within the trade policy space. Through the inclusion of corporate social responsibility (CSR) provisions in trade agreements, governments can push companies to include sustainability standards in their business plans and procedures (Smith 2020). This approach seems quite promising, as enterprises are the main players in international trade and the operation of trade agreements in particular. If PTAs can support companies' businesses through enhanced and frictionless market access, they can also encourage or require them to trade in an inclusive and sustainable manner (International Trade Centre 2019). Various agreements, such as the United

[48] Voluntary sustainability standards defined as 'standards specifying requirements that producers, traders, manufacturers, retailers or service providers may be asked to meet, relating to a wide range of sustainability metrics, including respect for basic human rights, worker health and safety, environmental impacts, community relations, land-use planning and others'.

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States–Peru Trade Promotion Agreement (Article 17.6) and the EU–Georgia Association Agreement (Article 348), already contain provisions on CSR; however, these provisions do not explicitly mention gender equality concerns. Very few current agreements include gender-explicit CSR provisions.

One such PTA is the Canada–Israel agreement, wherein the parties seek to encourage their businesses to use CSR to address issues including labour, environment, and gender equality (Article 16.4); a similar provision also exists in the Canada–Chile agreement (Article G-14bis.). These examples show that policymakers can identify opportunities to engage with VSS initiatives as a means to deliver on gender equality commitments while also promoting trade liberalisation measures. Policymakers and trade negotiators should recognise the growing influence of VSS in global trade and the role of government in encouraging businesses to employ such inclusive policies that may help in reducing the barriers women employees currently face.

15.4.2 *Rethinking Enforcement and Implementation Mechanisms for Gender Provisions*

Gender issues are mostly addressed as part of cooperation efforts, often formulated with a mix of binding and permissive language, which narrows the precision of the obligations and their binding nature. This impacts how gender provisions can be enforced and monitored through PTA mechanisms, which are, in practice, very limited for two reasons.

First, the monitoring of gender provisions is deficient in many aspects. Although the vast majority of gender provisions are under the supervision of a monitoring institution, only a few PTAs provide for the establishment of a technical body on trade and gender, which is solely responsible for overseeing the implementation or impact of the gender provisions.[49] This body is usually composed of representatives of parties, and its primary function is to coordinate cooperation rather than conduct in-depth monitoring and evaluation activities on the impact of the provisions.

With the objective to increase the impact of gender provisions on the ground, future PTAs could consider establishing a technical body on trade and gender composed not only of party representatives but also of external stakeholders that can take on the monitoring and review exercise. The UK–New Zealand FTA can serve as an example. Although only composed of party representatives, the Inclusive

[49] The WTO Database on Gender Provisions in Regional Trade Agreements maps 252 gender provisions under the supervision of a monitoring institution (see www.wto.org). Among others, ninety-four are under the supervision of the institution in charge of the whole agreement, fifty under a technical cooperation body, and thirty-six under a technical body on trade and gender (e.g. the Canada–Chile establishes the Trade and Gender Committee (Article N bis-04) and the UK–Japan establishes the Working Group on Trade and Women's Economic Empowerment (Article 21.3)).

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Trade Sub-Committee has the explicit mandate to conduct monitoring activities regarding the implementation of the chapter on trade and gender equality and determine activities to address remaining barriers that exist for women in trade.

During these activities, the Sub-Committee must consult with qualified experts on trade and gender and other stakeholders (Articles 25.6 and 30.8). This is a good example of a monitoring mechanism for gender provisions that can ensure parties' accountability and representation of women's interests in implementation efforts.

Other PTAs provide for ensuring a platform for individuals and organisations to share their views with the technical body on issues related to trade and gender and formulate, in binding language, the obligation for parties to provide a similar platform, at the domestic level.[50] These considerations should continue to be addressed in PTAs to allow experts, civil society, and women's associations to share their perspectives and experience to ensure that the state parties' efforts are oriented towards women's needs.

Another deficiency of the existing monitoring mechanisms applicable to gender equality provisions is the lack of accountability of the parties and the power of the institutions to issue recommendations.

On the one hand, except for a few PTAs, state parties do not have an obligation to report on how they have been implementing gender provisions.[51] In addition, in very few PTAs, parties have committed to monitoring the impact of the provisions and the whole agreement on women.[52] These two aspects could be addressed in future PTAs to increase parties' accountability for the implementation of the commitments they undertake on gender.

On the other hand, monitoring institutions are usually not entitled to make specific recommendations to parties on which areas should be addressed for the implementation of the commitments, as well as on how to accelerate the achievement of the objectives stated in gender provisions. Strengthening the role of the institutions and bodies could lead to a greater positive impact of gender provisions on women's economic empowerment by increasing parties' accountability.

Second, the enforcement of gender provisions through PTAs' dispute resolution mechanism is quite limited, although many PTAs do not treat gender provisions differently than the other commitments with regard to dispute resolution mechanisms.[53] However, even though gender provisions in some agreements are not

[50] For example, Chile–Paraguay, Article 13.7; Chile–Ecuador, Article 18.6.

[51] For example, Canada–Chile, Article N bis-04; Brazil–Chile, Article 18.4.

[52] For example, Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (signed 15 July 2008, enforced 30 October 2008), Article 5. Other PTAs provide for gender impact assessment as part of cooperation activities, often in an indicative list of areas for cooperation. For example, European Union–Central American Association Agreement, Article 47; UK–Australia, Article 24.2.

[53] The WTO Database on Gender Provisions in Regional Trade Agreements maps 168 gender provisions that are not explicitly excluded from the dispute settlement chapter.

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explicitly excluded from the agreement's dispute settlement processes, gender provisions are often hardly enforceable given the permissive and low-level precision of their language.

In contrast, some PTAs provide a specific procedure in case of disputes on matters related to specific chapters. Hence, when a dispute arises on a gender obligation located in these specific chapters, parties usually have to engage in consultations before bringing the matter under the dispute settlement chapter.[54] Alternative mechanisms can be provided, such as an expert panel entitled to make non-binding recommendations on how to comply with the provisions.

These alternative procedures often exclude the possibility of suspending trade concessions as temporary remedy measures, thus outlining a hierarchy of remedies.[55] Nonetheless, there are advantages to opting for an expert panel to resolve certain issues, such as the short timeline for having a final decision.[56]

Other PTAs explicitly exclude gender provisions from applying any dispute settlement mechanism provided in the agreements. About one-quarter of the provisions, regardless of the scope of the obligation, cannot be adjudicated under the agreement's dispute settlement chapter. In case of conflict, parties can try to resolve the matter through consultations, dialogue, and cooperation, as seen in the Chile–Argentina FTA (Article 15.5). Rather than excluding trade and gender chapters from the application of dispute settlement chapters, future PTAs could explicitly replicate the mechanism of consultation and a panel of experts. This would increase the parties' accountability, as the panel of experts can closely assess compliance with the provisions and make recommendations accordingly. The responding party will then have to report after a certain period of time on which measures have been taken to implement the relevant provisions.

15.4.3 *Transparency as an Implementation Tool for Gender Equality Commitments*

Transparency guarantees the flow of accurate information, that is available publicly to all and can be assessed or commented on by any authority or the public at large. As such, transparency can help evaluate how provisions are being implemented. It is the cornerstone of any implementation and evaluation process and a key element in the enforceability of gender provisions.

[54] For example, Chapter 23 on Labour of USMCA, Article 23.17.

[55] For example, Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (UK–CARIFORUM) (signed 22 March 2019, enforced 20 October 2021), Articles 191, 212, and 213. The WTO Database on Gender Provisions in Regional Trade Agreements maps thirty-seven gender provisions bound to a specific procedure for dispute resolution.

[56] For example, a panel of experts established under UK–CARIFORUM has 150 days to issue its report after the date of its establishment (Article 209).

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15.4.3.1 Examples of Transparency Practices in Relation to PTAs' Implementation

Some PTAs include the principle of transparency as a general rule of effective implementation[57] and as contributing to the positive impact of trade and development policies. Governments also recognise that transparency is part of their PTAs' good governance package, along with the principles of accountability and gender equality. Lastly, they link transparency as a guiding principle for the PTAs' implementation and as a key objective in supporting the application of the agreement and, therefore, the gender provisions contained in it.

Governments have various ways of conducting transparency processes with the view to better implementing their PTA. For example, Australia has set up a transparency mechanism to communicate its PTAs. In 2018–2019, in addition to publishing its annual report, the Australian Trade and Investment Commission organised twenty-three workshops across the country, reaching more than 1,500 participants with the objective of promoting its PTAs, their economic opportunities, and benefits (Austrade 2018).

Similarly, in Switzerland, the government heavily involves the civil society at large in consultations and information meetings on its PTA implementation and trade negotiations. It also involves academia in the joint organisation of specialised and thematic discussions on trade-related matters. Switzerland also set up, twice a year, a 'Liaison Group WTO/FTA' to disseminate information on PTAs and their implementation and includes representatives from academia and research, the political community, business associations, and non-governmental organisations (NGOs) (SECO n.d).

In 2015, the US created a new role in the United States Trade Representative (USTR), to deal with transparency issues. The Chief Transparency Officer (CTO) is to 'engage with the public, advise the USTR and consult with the Congress on transparency policy, and coordinate transparency in trade negotiations', with the objective of 'improving transparency in the development of U.S. trade policy'. In addition to the CTO, USTR has released a new set of transparency principles to help the involvement of the public at large in the development and implementation of the US trade policy and PTAs (USTR 2021).

15.4.3.2 National Parliaments: The Forgotten Transparency and Implementation Partners

National parliaments can have three roles in fostering the implementation of gender provisions in PTAs. First, national parliaments ratify trade agreements. This is their

[57] Association of the overseas countries and territories with the European Union, Council Decision 2021/1764 (signed and enforced 5 October 2021); European Union–Central American Association Agreement, Article 24; UK–New Zealand (Article 11.11); EAC (Article 6).

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main function with regard to PTAs. They arrive in the process almost at the end of the value chain. Often negotiators increase their communication and 'lobbying' towards parliaments after the agreement is finalised and approved between parties. With the exception of some WTO Members, such as the EU or the US, where parliaments participate in shaping the negotiation agenda, most of them are not involved in this process. But the role of parliaments is not limited to ratification. They also have the key responsibility of scrutinising governments' actions. Through this role, they can question governments specifically about how they are implementing gender provisions that are contained in PTAs. This is where transparency principles can play an important role and be used by parliaments to monitor the implementation of the PTA.

Second, as the legislative arm of the country, national parliaments can encourage governments to include gender provisions that are not yet the focus of current PTAs, as seen in Section 15.5 of this chapter.

Third, national parliaments could link to regional legislative assemblies, which are one of the PTAs' governing bodies. For example, the Treaty for the Establishment of the East African Community (EAC) created the East African Legislative Assembly (Article 9), where members are appointed by national parliaments. The Treaty also establishes an obligation for the Assembly to liaise with national parliaments to become involved in the implementation of the PTA (Article 49).

15.4.3.3 Links with the WTO's New Transparency Mechanism on RTAs

The WTO has established a notification process to circulate information on PTAs and evaluate them through the RTA Committee, which is responsible for carrying out 'the examination of agreements' and reviewing their impact on the multilateral trading system (WT/L/127).[58] Internal WTO reporting mechanisms can be a tool for sharing information on gender provisions among WTO Members and promoting their implementation through advanced transparency.

Articles 1.b and 1.c of the terms of reference of the RTA Committee (WT/L/127) offer room for reporting on specific provisions included in trade agreements both in form and format. These articles give space to the Committee to establish how to report on the operation of agreements and to develop dedicated processes with the objective of improving the analysis of agreements. Therefore, WTO Members are at liberty to proceed with the examination of an agreement as they see fit and could request notifications specifically focusing on gender provisions. Similarly, parties

[58] The General Council instructed this Committee to report back on PTAs to the relevant WTO bodies, including the Council for Trade in Goods, the Council for Trade in Services, and the Committee of Trade and Development, and to provide an annual report to the General Council.

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could notify trade agreements and could communicate on their PTAs in a more targeted manner and therefore focus on gender provisions in their notifications.

This notification process has the potential to strengthen the implementation of gender provisions. Indeed, the RTA Committee is a platform to share information between Members, to present their agreements and to explore provisions in PTAs during committee meetings (in line with the Committee terms of reference). These discussions are contained in official WTO agreements that are, in the majority, available and accessible publicly.

So far, in the WTO RTA Committee, the issue of gender has been outlined in the questions-and-answer sessions when an agreement has been notified and examined and in some of the WTO Secretariat's factual presentation of notified agreements.[59] Gender provisions have not yet been specifically or precisely identified and notified independently from the entire agreement. One could argue that the mandate of the RTA Committee does not provide for the notification of targeted information regarding specific provisions. However, the new WTO RTA transparency mechanism, adopted by the WTO General Council in 2006 (WT/L/671), could serve as a basis for such specific notifications, therefore, enhancing PTAs' implementation through transparency. For example, the new transparency process creates an obligation for state parties to communicate 'any related schedules, annexes and protocols' (Section B, Notification, Article 4). Through this obligation, the gender protocol of the African Continental Free Trade Area (AfCFTA) currently being developed would have to be duly notified to the WTO.

This new mechanism gives the WTO Secretariat, responsible for drafting the factual presentation of notified PTAs, flexibility in using data beyond the information provided by parties, making the presentation more precise and accurate (Article 7.b. and Article 9).

Even if the new RTA mechanism provides an annex outlining which provisions, information, and data parties shall provide, this is just a basis on which Members can expand as they see fit. Therefore, nothing in the WTO RTA Committee terms of reference and the new transparency mechanism prevents the notification of gender provisions in RTA notifications to the WTO.

15.5 THE 'HIT' ROADMAP: A NEW PROCESS FOR CONCRETE IMPLEMENTATION OF GENDER PROVISIONS

The core objective of gender provisions is to change the status quo in favour of women, as they are usually facing higher obstacles than men in accessing economic opportunities, benefiting from trade, and acquiring social rights. Many governments

[59] For example, Factual Presentation Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (Goods and Services), Report by the Secretariat, WT/REG395/1/Rev.1, 8 September 2021.

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have engaged in achieving this goal through PTAs. But the main question remains: are they succeeding in levelling the playing field for women? With regard to gender provisions, the weakness of PTAs resides in their implementation process or the lack thereof. This is reinforced by the fact that PTAs do not identify concrete action points based on the provisions that could be monitored and assessed. The authors are therefore proposing a new roadmap to guide state parties towards their implementation goals. The new instrument, entitled 'HIT', includes three pillars.

The first pillar is 'How' to concretely implement gender provisions. Governments have not outlined specific and concrete action points to achieve their objectives beyond establishing capacity-building programmes. Identifying and defining concrete action points within PTAs are, therefore, the first step towards implementation of gender provisions, because they can be quantifiable and evaluated. For example, based on the overall commitment to make finance more accessible for women, or create special programmes for women entrepreneurs, as seen in PTAs, governments could agree to create a 'women's fund', making it easier for women to apply and receive guaranteed credits or secure quotas for businesswomen in financial schemes dedicated to small businesses. Going further, they could also identify policy instruments to execute these concrete action points, such as aid for trade programmes. Of course, several PTAs have established experience-sharing processes, training, and exchanges in dedicated workshops between parties as tools to implement gender provisions. However, this is clearly not enough, and the lack of transparency about these discussions and their concrete outcomes impairs adequate implementation.

The second pillar is 'Impact': it includes three combined processes: monitoring, evaluation, and enforcement. The monitoring exercise serves as a data collection and mapping tool outlining what measures have been taken based on the 'How' pillar. The evaluation process would explore the effectiveness of the concrete measures taken and assess the importance of changes made by PTAs on the ground. And the enforcement mechanism focuses on dispute resolution, making provisions binding.

The third one is 'Transparency', which is a process supporting the other two pillars. The tenets of this pillar are discussed in the previous subsection.

15.6 CONCLUSIONS

As this chapter depicts, trade agreements are not gender-neutral. Gender provisions go beyond market access and opening, as seen in the sections above. Therefore, the effective implementation of PTAs is even more important for women as they can be a game changer for their economic and social roles, and create economic and social environments that are gender equal and inclusive enough to allow women to fully benefit from trade opportunities offered by PTAs.

Preferential trade agreements can therefore be powerful instruments for achieving gender equality. But they have two main weaknesses that are currently preventing

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them from having a concrete and positive impact on women: the lack of concrete commitments and action points to achieve general and specific goals set up by gender provisions and the lack of dedicated and staged implementation processes. The next generation of gender provisions should address both weaknesses if PTAs are to work for women.

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