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# Gender and trade

*Briefing from the UK Women's Budget Group on the impact on women of international trade and investment agreements*

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## Gender impacts of trade and investment agreements

*Briefing from the UK Women's Budget Group written by Adrienne Roberts and Silke Trommer, University of Manchester and, Erin Hannah, King's University College.<sup>1</sup>*

### Key Points:

- The UK Government has committed to formulating a post-Brexit trade policy that will 'uphold gender equality'. This briefing sets out some of the ways in which this commitment can be made a reality.
- Trade policy affects people in their multiple roles as consumers, producers, workers, users of public services, and providers of unpaid care work. The impacts of trade policy are gendered as a result of the different position of women and men in these areas of activity.
- Changing trade policy can have both positive and negative impacts. The negative impacts are felt most acutely by women and other vulnerable populations.
- Gender chapters in Free Trade Agreements (FTAs) have the potential to mitigate some negative effects of trade policy change, but existing chapters are limited, in part, because they contain few legally binding commitments, are rarely legally enforceable and do not produce legal effects across the entire agreement.
- Much of the focus of existing gender-sensitive trade initiatives is on supporting women's entrepreneurship, particularly in the Global South, through training and skills transfer. Empowering women through entrepreneurship requires a consideration of the working conditions and domestic obligations of entrepreneurs, ensuring that this is not conflated with unpaid and precarious work that increase the double burden on women.
- Providing effective gender-based impact assessment and monitoring is key to ensuring that trade policy, including international trade agreements, produce no gendered harm and that unintended negative consequences can be remedied.
- Inclusive policies require inclusive policymaking. Involving women's groups, civil society organisations and stakeholders in the formulation, implementation and monitoring of trade policy will help to provide policymakers the information required to make gender-sensitive policy choices.

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<sup>1</sup> The authors' names are listed by affiliation and they wrote the report as equal partners.



## Introduction

In a modern economy where “90 per cent of everything”<sup>2</sup> that we use and consume has been internationally traded, the effects of domestic trade policies and international trade agreements are felt by everyone in society. But the gains and losses of changing trading arrangements can be different for different groups in society. Negative effects are felt most acutely by vulnerable and precarious populations including women and minority racial and ethnic groups because of their weaker economic positions.

As the UK leaves the European Union (EU) it will simultaneously experience increased trade barriers with the EU and potentially increased trade liberalisation with other countries with which it may agree Free Trade Agreements (FTAs) (see Box 1). Previous research by the Women’s Budget Group (WBG) has shown the negative impact that Brexit will have on women as workers, consumers and users of public services.<sup>3</sup> Similarly, international research into the impact of trade liberalisation has shown that women are most heavily impacted in their multiple and overlapping roles as workers, producers, consumers, and carers.<sup>4</sup> Much more research is needed on the potential impacts of increased barriers to trade with the EU combined with increased liberalisation with those countries outside the EU.

UK Government Ministers have made commitments to post-Brexit trade agreements that “support greater participation by women and underrepresented groups in the economy” and uphold gender equality.<sup>5</sup> The purpose of this brief is to outline key issues that must be considered if these commitments are to be turned into reality and the UK is to positively contribute to a more gender equitable global trading system.

This briefing initially outlines the gendered impacts of free trade agreements (FTA) before summarising the advantages and drawbacks of using gender chapters in FTAs to secure gender

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<sup>2</sup> George, Rose (2013) *90 Percent of Everything: Inside Shipping, the Invisible Industry That Puts Clothes on Your Back, Gas in Your Car, and Food on Your Plate*, New York: Henry Holt.

<sup>3</sup> WBG and Fawcett (2018), “The Economic Impact of Brexit on Women”, <https://wbg.org.uk/analysis/new-report-exploring-the-economic-impact-of-brexit-on-women/>

<sup>4</sup> Elson, Diane, Caren Grown, and Irene van Staveren (2007) “Introduction – Why a feminist economics of trade?”, in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.) *The Feminist Economics of Trade*, London: Routledge, 1-10.

<sup>5</sup> <https://www.gov.uk/government/speeches/global-economic-outlook-trade-growth-and-the-commonwealth>  
<https://www.gov.uk/government/news/action-on-trade-and-inclusivity-to-benefit-all-commonwealth-citizens>

equality as well as the move to support women's entrepreneurship in FTAs. It then gives recommendations as to other methods of trading towards gender equality including guidance on impact assessments and the importance of inclusive design and implementation. The briefing therefore serves as an evaluation and a guide for how future post-Brexit FTAs can empower women in the UK and around the world.

### **Box 1: Trade Liberalisation and FTAs**

Trade liberalisation refers to the removal or reduction of barriers to the flow of goods and services across borders. A difference exists between removing barriers applied at the border (such as tariffs), and barriers applied behind the border, so called Non-Tariff Barriers (NTBs) which are domestic rules and regulations that do not necessarily target trade directly but have implications for trade flows, such as production standards.

Free Trade Agreements (FTAs) are reciprocal trade agreements between two or more countries that are aimed at reducing tariffs and NTBs to the flow of goods and services across borders and at setting international regulatory frameworks for domestic rules and regulations affecting cross-border trade. FTAs may be bilateral, such as the Canada-South Korea FTA, or plurilateral, such as the Comprehensive and Progressive Transpacific Partnership Agreement (CPTPP) between 11 parties.

Today, FTAs have expanded well beyond managing barriers to trade at the border to shaping national social and regulatory policies including: labour, environment, human health, food safety, and development policies. The scope of international trade rules now includes goods, trade in services, trade-related intellectual property rights (IPRs), government procurement, micro, small and medium-sized enterprises (MSMEs), and e-commerce. Many FTAs also have chapters on investor protections that allow corporations to bring complaints against states. This is referred to as investor-state-dispute-settlement (ISDS).

## The Effects of Trade are Multifaceted

Despite debates about Brexit being largely silent about the gendered effects of trade policy, trade interacts with gender relations in complex ways. Applying a gender lens to trade policy reveals that even though policies appear neutral in the sense that they target neither women nor men, they may have negative, gender-differential impacts. This is because trade impacts people in their multiple roles as workers, producers, consumers (of goods as well as services), providers of unpaid care work, and more. Gender norms in society mean that women are still responsible for the majority of unpaid care work which often has consequences for their engagement in the labour market. Women – particularly BME and disabled women - are overrepresented in precarious labour including part time work (73%), temporary work (53%) and zero hour contracts (53.6%) as well as being more vulnerable to cuts in public services or social security<sup>6</sup>. This often leaves them more vulnerable to the impacts of trade regulation and/or macro-economic policy.

Trade also has differential impacts depending on the context in different countries. For instance, in those countries that specialise in production for export, the expansion of trade may lead to employment gains for women. This occurred in many Asian countries in the 1990s and in Mexico after the signing of the North American Free Trade Agreement (NAFTA) in 1994. However, trade-related employment gains are less well documented in countries where production for agriculture dominates (such as in Sub-Saharan Africa) or in resource-rich countries (such as many Middle Eastern countries).<sup>7</sup> Trade may also affect people differently depending on their class, racial, ethnic, citizenship status, not least because these shape employment patterns.<sup>8</sup>

Trade policy is most likely to produce negative impacts on women - and on particular groups of women including BME and disabled women - when it fails to consider how gender and intersecting relations of inequality operate in different parts of the economy. This includes paid employment, consumption, the provisioning of public services, and care work. Women may also be differentially

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<sup>6</sup> WBG (2019) *Intersecting inequalities: the impact of austerity on BME women* <https://wbg.org.uk/analysis/intersecting-inequalities/>

<sup>7</sup> Williams, Mariama (2007) "Gender Issues in the Multilateral Trading System", in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çagatay (eds.) *The Feminist Economics of Trade*, London: Routledge, 277-291; Fontana, Marzia with Cristina Paciello (2010) *Gender Dimensions of Agricultural and Rural Employment: Differentiated Pathways out of Poverty*, Rome: FAO, IFAD and ILO.

<sup>8</sup> Although research on race and trade is scarce, it is clear that when trade policy affects particular sectors of the economy, if these sectors are dominated by workers of a particular racial or ethnic group, by migrant workers, etc., these are the groups that will be most affected, for better or for worse. Research on the US, for example, shows in the 1970s and 80s, black men were the most vulnerable to trade-related employment displacements in the service sector while white women were the most likely to work in service sectors with the potential to benefit from trade. Armah, Bartholomew (1994) "Impact of Trade on Service Sector Employment: Implications for Women and Minorities", *Journal of Contemporary Economic Policy* 12(1), 67-78.

impacted by rules on intellectual property rights and investment, policies governing procurement, and more (see Boxes 2 and 3).

### ***Paid work***

Studies conducted over the past several decades have shown that the liberalisation of trade often results in an increase in women's labour force participation, particularly in those countries that specialise in production for export. This may help improve women's economic empowerment, but it may also lead to an intensification of particular types of employment that make it difficult for workers to access their rights, such as employment in Export Processing Zones (EPZs).<sup>9</sup> Countries that specialise in goods for export may also have wide gender wage gaps as the payment of low wages in feminised sectors of the economy is one way that countries are able to compete in a global economy. A link between increased competitiveness from international trade and wage discrimination has been documented in countries such as Taiwan, Korea, India and Mexico.<sup>10</sup> A study of 92 developed and developing countries finds that overall, "gender wage inequality is positively associated with comparative advantage in labour-intensive goods", which means that countries with a larger gender wage gap actually export more of their goods.<sup>11</sup>

At the same time, when countries are highly dependent on exports (and imports needed to produce goods and services), the sudden erection of barriers to trade will impact these sectors of the economy. WBG has projected that if a 'hard' Brexit which removes the UK from the Single Market and Customs Union raises barriers to trade with the EU, this will negatively impact the mining and quarrying sector, as well as financial services, both of which are dominated by men and heavily reliant on revenues from exports. The manufacturing sector will also likely see job losses, the gender dimensions of which depend on the industry: the motor vehicle sector employs 80% men while textiles, leather and related goods employ 55% women. An increase in the cost of imports from the EU may also create new opportunities for businesses in the UK, but these will

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<sup>9</sup> Barrientos, Stephanie (2007) "Gender, Codes of Conduct, and Labour Standards in Global Production Systems", in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.) *The Feminist Economics of Trade*, London: Routledge, 243.

<sup>10</sup> Berik Günseli, Yana Rodgers and Joseph E. Zveglích (2004) "[International Trade and Gender Wage Discrimination: Evidence from East Asia](#)", *Review of Development Economics* 8(2), 237- 254; Menon, Nidhiya and Yana Rodgers (2008) "[International Trade and the Gender Wage Gap: New Evidence from India's Manufacturing Sector](#)", *World Development* 37(5), 965–981; Sauvé, Philip and Hosny Zoabi (2014) "[International Trade, the Gender Wage Gap and Female Labor Force Participation](#)", *Journal of Development Economics* 111(C), 17-33.

<sup>11</sup> Busse, Matthias and Christian Spielmann (2006) "[Gender Inequality and Trade](#)", *Review of International Economics* 14(3), 362–379, pg. 362. The theory of 'comparative advantage' assumes that global welfare increases if countries specialise in the production of the product, they can produce at a lower relative marginal cost than other countries.

disproportionately benefit men who are more likely than women (especially BME women) to have the resources needed to respond to these opportunities.<sup>12</sup>

### **Consumption**

Trade liberalisation is generally thought to benefit consumers where cheaper imports increase purchasing power. The full impact of trade liberalisation on consumption patterns is however dependent on country-specific socio-economic characteristics, some of which are rooted in (gendered) social norms. The link between trade liberalisation and food security/food safety is particularly controversial.<sup>13</sup> Some studies have shown how trade liberalisation may lead to increases in the cost of food imports, which disproportionately affects the poorest households and women who tend to have less access to and control over income while also being the primary persons responsible for food purchase and preparation.<sup>14</sup> NAFTA, for example, led to an increase in the price of tortillas and other locally produced staples in Mexico.<sup>15</sup> Here, as in other countries, social norms assign women the responsibility for coping with these changes. Overall, import liberalisation makes day-to-day provisioning for households - through both purchasing and producing - more vulnerable to the fluctuations of international markets. The impact of trade liberalisation on consumption needs to be assessed on a sector-by-sector basis taking into account the wider gendered and other social norms that shape consumption patterns, including the projected impacts of the agreement on employment and wages.

### **Public services**

Women (as well as certain racial and minority ethnic groups) are overrepresented among those who use public services often due to their disproportionate responsibility for care work. In the UK and elsewhere, women also make up the majority of workers in sectors such as health, social work and education.<sup>16</sup> This means that when trade agreements require public services to be privatised and/or opened to global competition - an aim that underpins agreements such as the Trade in Services Agreement (TiSA) - these groups are disproportionately affected as consumers and

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<sup>12</sup> Women's Budget Group, Fawcett Society, #FaceHerFuture (2018) [Exploring the Economic Impact of Brexit on Women](#), pg. 7.

<sup>13</sup> Clapp, Jennifer (2015) [Food Security and International Trade: Unpacking Disputed Narratives](#), Food and Agricultural Organization of the United Nations Background Paper, Rome: FAO.

<sup>14</sup> Siddiqui, Rizwana (2009) "[Modeling Gender Effects of Pakistan's Trade Liberalization](#)", *Feminist Economics* 15(3), 287-321; Women's Budget Group, Fawcett Society, #FaceHerFuture (2018) [Exploring the Economic Impact of Brexit on Women](#).

<sup>15</sup> Fontana, Marzia (2016) [Gender Equality in Trade Agreements](#), Study Commissioned by the Policy Department for Citizen's Rights and Constitutional Affairs, Brussels: European Union.

<sup>16</sup> WBG (2018), [Women and Education](#) and WBG (2108) [Health and Gender](#)

workers.<sup>17</sup> Research on the General Agreement on Trade in Services (GATS), suggests that the liberalisation of health services can affect gender equality by changing the quality, geographic coverage and cost of different services and technologies. On the one hand, there is potential for new trade arrangements to improve access to services, including services that are critical to women's health (especially reproductive health). On the other hand, if systems of cross-subsidy or the capacity of governments to invest in healthcare are undermined through its marketisation or privatisation, this can increase the cost to users and make it more difficult for the least well off members of society to access services.<sup>18</sup> At the same time, any loss of government revenue that comes from changes to trade arrangements more broadly (such as through a reduction of tariffs) may have a knock-on effect on those who are most reliant on public services, as these are often the first things to be scaled back in the name of government cut-backs.<sup>19</sup>

### **Care work**

If the gendered nature of public service usage and the provisioning of paid and unpaid care is not taken into account, trade policy also risks decreasing the amount of care work performed overall. When new trading arrangements succeed in drawing women into the formal labour force, there is a need for additional resources - either from the state or from families - to make up for the potential reduction of care work that was previously performed by women. Economic modelling shows that where countries with an abundance of low-skilled labour experience an increase in trade-related employment gains for women, this will be accompanied by a 0.4 percent decline in time spent on care work and an even greater reduction in women's leisure time.<sup>20</sup> Unless governments dedicate additional resources to support the provisioning of public services in the health and care sectors, there may be a decline in levels of care overall, with poor households experiencing the greatest losses.

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<sup>17</sup> Williams, Mariama (2007) "Gender Issues in the Multilateral Trading System", in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.) [The Feminist Economics of Trade](#), London: Routledge, 277-291.

<sup>18</sup> Williams, Mariama (2007) "Gender Issues in the Multilateral Trading System", in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.) [The Feminist Economics of Trade](#), London: Routledge, 277-291.

<sup>19</sup> Elson, Diane, Caren Grown and Nilüfer Çağatay (eds) (2007) "Mainstream, heterodox and feminist trade theory", in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.) [The Feminist Economics of Trade](#), London: Routledge, 33-52.

<sup>20</sup> Fontana, Marzia (2007) "Modelling the Effects of Trade on Women, at Work and at Home: Comparative Perspectives", in van Staveren, Irene, Diane Elson, Caren Grown and Nilüfer Çağatay (eds.) [The Feminist Economics of Trade](#), London: Routledge, 117-140, pgs 128-9.

## Box 2: International Property Rights (IPRs) and Investment Treaties

Today's FTAs go far beyond managing trade at the border. As with all aspects of trade agreements, Intellectual Property Rights (IPRs) and investment protection have gendered impacts.

IPRs provide exclusive use and commercialisation rights for certain products, product characteristics or production/commercialisation methods to the IPR holder. While the international legal regime for IPR gives governments leeway in deciding the scope and durability of patent protection, these have become increasingly uniform and weighted in favour of holders of IPRs since the creation of the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement in 1995. These have been further strengthened in many recent FTAs, raising concerns from the public health community in particular: for example, IPR rules in pharmaceuticals have contributed to price hikes and curtailed access to medicines in poor countries or among poor populations in rich countries.<sup>21</sup> This is a gender issue because women are disproportionately represented among the poor, both globally and within the UK.

Under investor-to-state dispute settlement provisions (ISDS), foreign investors can bring states to commercial arbitration in cases where policy measures put the investor's expected profits at risk. The practice originated in Bilateral Investment Treaties (BITs) but, over the past decade, has become common across all BITs and FTAs. Investment protection clauses and ISDS can produce a chilling effect on the government's ability to regulate areas ranging from public health and consumer laws to environmental and social protection.<sup>22</sup> By providing investors a channel for private legal recourse, they further strengthen the commitments made under the trade chapters of an agreement and protect the rights of foreign investors above those of other groups, including women.

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<sup>21</sup> Baker, Brook (2016) "[Transpacific Partnership Provisions on Intellectual Property, Transparency and Investment Chapters Threaten Access to Medicines in the US and elsewhere](#)", PLOS Medicine; Friel, Sharon, Libby Hattersley and Ruth Townsend (2014) "[Trade Policy and Public Health](#)", Annual Review of Public Health 36: 325-344.

<sup>22</sup> United Nations High Commission for Human Rights (2015) "[UN experts voice concern over adverse impact of free trade and investment agreements on human rights](#)", Geneva: OHCHR.

Investment protection clauses in a future post-Brexit trade agreement may make it costly for the UK government to bring privatised aspects of essential service delivery back under government control, leading to the gendered outcomes noted above. This also undermines the possibilities for democratic decision-making as future governments would be prevented from making changes that could have important distributional effects. Investment protection may also help to fuel corporate tax avoidance.<sup>23</sup> This has gendered outcomes because tax revenue is often redistributed from those at the top of the socio-economic hierarchy to those at the bottom (i.e. in the form of public services).

Gender discrimination against a foreign investor is explicitly listed in many existing investment protection clauses as an objectionable state practice that provides grounds for an investor to move towards arbitration. This could be seen as a welcome inclusion that offers the potential to challenge countries where discrimination against women and other groups is rife. Yet, it begs the question of where this leaves positive discrimination policies that favour the most vulnerable. Requirements to eliminate discrimination on racial grounds in investment protection clauses have for example been used to challenge South Africa's black empowerment and affirmative action policies.<sup>24</sup> The same arguments could presumably be used to challenge policies that aim to positively discriminate in favour of women.

## Incorporating Gender into Free Trade Agreements (FTAs)

In recent years there have been moves in the UK and elsewhere to develop gender-sensitive trade policy. One strategy currently being pursued is the inclusion of gender chapters in FTAs. Dedicated gender chapters in FTAs are generally aimed at advancing the goal of gender equality and increasing the participation of women in trade. They do so by explicitly re-affirming the importance of incorporating a gender perspective in international trade and commit parties to the FTA to redressing trade-related gender discrimination.<sup>25</sup>

<sup>23</sup> Christensen, John (2016) "[TTIP threatens ability to enforce fair taxes on corporations](#)", London: Tax Justice Network.

<sup>24</sup> Hannah, Erin, Adrienne Roberts and Silke Trommer (2018) "[Gender-sensitive trade: Buzzword or basic principle of post-Brexit trade policy](#)", SPERI Blog, Sheffield: Sheffield Political Economy Research Institute.

<sup>25</sup> See for example the "[Canadian Approach](#)" to gender in FTAs.

Some regional trade institutions, such as the Economic Community of West African States (ECOWAS) and the East African Community (EAC) included gender specific chapters in their association agreements in the 1990s, although these chapters were focused specifically on “women and development”. While just under 100 FTAs contain gender-related provisions,<sup>26</sup> there are currently 6 FTAs with specific gender chapters, and 1 with proposed text: the Chile-Canada FTA, the Chile-Argentina FTA, the Uruguay-Chile FTA, the Canada-Israel FTA, and the EU-Chile FTA.<sup>27</sup> The existing gender chapters in FTAs are aimed at leveraging trade for gender equality but they are quite limited in both their scope and impact.

### **1. All gender chapters explicitly acknowledge the gendered impacts of international trade**

For example, the EU’s proposed text in its negotiations with Chile acknowledges that “trade liberalisation may affect men and women in different ways as workers, producers, traders or consumers”. Others recognise the importance of strengthening “women’s enhanced participation in the labour market and their economic independence and access to, and ownership of economic resources” (Canada-Chile Art N bis-01.5), while Argentina-Chile adds access to “decent work” to this list (Art. 15.1.4).

### **2. All gender chapters in FTAs are stand-alone**

All areas of trade policy potentially have gendered impacts. This means that gender concerns need to be taken into consideration in the design, negotiation, assessment and monitoring of all chapters of the agreement. Yet none of the existing gender chapters apply to other chapters or clauses pertaining to trade in goods, trade in services, trade-related IPRs, investment protection, government procurement, micro, small and medium-sized enterprises (MSMEs), and e-commerce.

#### **Box 3: Gender and Government Procurement**

Government procurement is an important dimension of international trade, constituting between 10-15% of the GDP of developed countries and upwards of 30-40% of developing countries’ GDP.

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<sup>26</sup> Monteiro, José-Antonio (2018) Gender-related Provisions in Regional Trade Agreements, Staff Working Paper ERSD-2018-15, Geneva: World Trade Organization.

<sup>27</sup> The first two FTAs are in force, the second two have been signed but are not yet in force, and the last one is a proposal drafted by the EU.

Women-owned SMEs supply only a tiny proportion of this market.<sup>28</sup> While some trade agreements include carve outs or exemptions that allow governments to give preferential treatment to small and minority owned businesses, they generally do not include explicit reference to women-owned or women-run businesses. Some agreements, such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA), do not include carve-outs for small and minority businesses and may make it difficult for governments to engage in forms of positive discrimination.<sup>29</sup>

According to the United Nations (UN), a gender-responsive procurement policy involves both preferential treatment for women-owned businesses as well as policies that develop the capacity of these businesses to compete and succeed as suppliers.<sup>30</sup>

### ***3. All gender chapters in FTAs prioritise economic growth over gender equality***

All of the chapters subordinate gender equality to an overarching goal of economic growth, inclusive economic growth, and/or sustainable development. None conceive of gender equality as an end in itself. Art 15.1.1 of the Argentina-Chile FTA provides the most progressive definition of inclusive growth in a gender chapter as “aim[ing] to distribute the benefits among the entire population, via the more equitable participation of men and women in trade, industry and the world of work”. The Argentina-Chile wording is more progressive than the wording used in other chapters that call for women’s equitable participation “in trade, industry, and labour markets”, as it recognises that work may take place outside of formally regulated labour markets.

### ***4. Gender chapters reference international agreements, but none are legally binding***

The chapters collectively reiterate a number of important international agreements including: the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Sustainable Development Goals, several International Labour Organisation (ILO) Conventions, the United Nations Universal Declaration of Human Rights, the Beijing Declaration and Platform for

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<sup>28</sup> Kirton, Raymond Mark (2013), [“Gender, Trade and Public Procurement Policy”](#), The Commonwealth Secretariat, pg. 10. Gender-disaggregated on public procurement contracts is scarce but some have estimated that women-owned businesses may only supply 1% of the market globally.

<sup>29</sup> Crocker, Katrina, Felix Moser-Boehm and Laura Rowe (2018), [“Trade and Gender in Public Procurement”](#), Kingston: TradeLab. CETA does permit set asides for Aboriginal businesses, though this does not appear in the EU’s schedule.

<sup>30</sup> Chin, Keric (2017), [“The Power of Procurement: How to Source from Women-Owned Businesses”](#), Geneva: UN Women, pg. xv..

Action, the OECD Guidelines on Multinational Enterprises, and the WTO Joint Declaration on Trade and Women's Economic Empowerment.

While this is welcome, these commitments are made on a non-legally binding basis. There are also no mandatory mechanisms that allow for assessing whether the agreements are in conflict or working at cross-purposes with any of these international commitments. This is a major weakness as various commitments, such as those made to supporting gender equality in the Beijing Declaration, may conflict with non-discrimination clauses in trade agreements. Another example is CEDAW's requirement for states to achieve both formal and substantive equality. CEDAW declares that legal frameworks must not be discriminatory but also that policies must not be discriminatory in their effects.<sup>31</sup> If it were enforced, this could have significant impacts for how trade policy is formulated.

#### ***5. All gender chapters include legal obligations to cooperate and consult with stakeholders***

Existing gender chapters create two sets of legal obligations, namely to carry out cooperation activities and to set up a Gender and Trade Committee. With the exception of the EU proposed text, all chapters acknowledge that government institutions, business associations, trade unions, educational and research institutions, and other civil society representatives may be consulted in the course of cooperation. All Gender and Trade Committees are mandated to facilitate exchange of information, discuss joint proposals and any matters relating to the interpretation, operation and application of the gender chapters. However the wording of these chapters is generally not strong enough to compel parties to engage in meaningful consultations with stakeholders. The Committees are also focused on the implementation of activities rather than monitoring progress<sup>32</sup>.

#### ***6. Only one gender chapter is subject to dispute settlement***

Many FTAs have mechanisms for state-to-state or investor-to-state dispute settlement that lay out the processes through which disagreements over adherence to the terms of the agreement will be resolved. This is not generally the case for gender chapters and Canada-Israel is the only FTA that subjects the gender chapter to the agreement's dispute settlement procedure. However, the FTA

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<sup>31</sup> For more on the relationship between macroeconomic policy and human and women's rights, see Balakrishnan, Radhika and Diane Elson (2011) [Economic Policy and Human Rights: Holding Governments to Account](#), London: Zed Books.

<sup>32</sup> Noble, Rachel (2018), ["From Rhetoric to Rights: Towards Gender-Just Trade"](#), London: ActionAid UK.

also stipulates that in the case of conflict between the gender chapter and the labour chapter, the provisions of the labour chapter shall prevail. This suggests that any issues concerning women workers are to be adjudicated under the labour chapter, rather than under the gender chapter (unlike issues concerning women entrepreneurs or women consumers). No other existing FTA gender chapters are binding or enforceable on parties.<sup>33</sup>

While the inclusion of gender chapters into trade agreements may be a progressive step towards greater gender equality, those that have been developed to date are limited in terms of what they will be able to achieve. It is unclear that they will be able to address the gender effects that they each allude to in their preambular sections.

## Women's Empowerment in and Beyond Entrepreneurship

In addition to gender chapters, public and private bodies are also seeking to improve gender equality through non-legally binding best endeavour initiatives. These include the World Trade Organization's (WTO) 'Joint Declaration on Trade and Women's Economic Empowerment'. Official Development Assistance (ODA) - concessional government aid designed to promote the economic development and welfare of developing countries - is increasingly aimed at women's' economic empowerment. Indeed, Aid for Trade initiatives that are often part of ODA are now explicitly mandated for gender equality.<sup>34</sup> Significant resources have also been dedicated to various micro-interventions in support of women who participate in cross-border trade - especially to female entrepreneurs. These interventions often aim to help women grow their enterprises through the provisioning of loans and/or financial literacy education, and to develop the knowledge and skills necessary to successfully engage in trade.

A survey of existing gender and trade initiatives shows that the support for women's entrepreneurship through micro-interventions (by public actors as well as private corporations and civil society actors) is being used much more than any other type of policy intervention.<sup>35</sup> The focus on supporting women-owned SMEs is welcome as these are important sources of employment and

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<sup>33</sup> For discussion see Larouche-Maltais, Alexandre and Barbara MacLaren (2019) [Making Gender Responsive Free Trade Agreements](#), Ottawa: Conference Board of Canada.

<sup>34</sup> See for example, WTO and OECD (2019), Aid for Trade at a Glance 2019: [Supporting Economic Diversification and Empowerment](#).

<sup>35</sup> Hannah, Erin, Adrienne Roberts and Silke Trommer (2018), ["Gendering Global Trade Governance through Canada-UK Trade Relations"](#), Knowledge Synthesis Grant: Final Report.

income generation. They are also among those businesses most threatened when trade liberalisation leads to an increase in cheap imports.<sup>36</sup>

However, the near exclusive focus on supporting women's entrepreneurship through micro-interventions is not enough to counter the adverse impacts of trade policy. There is also an urgent need for policies that mitigate the effects of trade policy on employment (outside of entrepreneurship), consumption, the provisioning of public services, and care work outlined above. Yet, these types of policies are generally not being considered in trade policymaking, even where this has an explicit gender focus. Nor have we seen any FTAs that explicitly carve out policy space for governments to protect women or other groups from harm resulting from IPR and investor protections.

A second concern relates to the quality of employment experienced by entrepreneurs. While entrepreneurship may be a desirable form of employment for some, it is also sometimes the only option available for women, particularly in the Global South, who are more likely than men to be driven towards entrepreneurship by necessity than choice. That is, they are more likely to choose entrepreneurship because of their poverty, a lack of labour market opportunities, discriminatory property and inheritance laws, and social norms that limit their mobility and assign them primary responsibility for care work.<sup>37</sup> It is important to ensure that entrepreneurship promotion does not simply reproduce forms of unpaid labour and precarious employment.

### **Minimum Standards for Gender-Based Impact Assessment and Monitoring**

In addition to gender chapters and wider efforts to support women's entrepreneurship, assessing and monitoring the gendered impacts of trade policy are necessary to identify and mitigate the potential adverse impacts of trade policy. They can be useful in order to identify how trade policy can be combined with appropriate social policy so that it works to reduce gender inequality. To achieve these ends, gender-based impact assessment and monitoring techniques need to reflect a number of basic principles:

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<sup>36</sup> See also Gender & Development Network, "[Making Trade Work for Gender Equality](#)", July 2017, pp 4-5.

<sup>37</sup> Jamali, Dima (2009) "[Constraints and opportunities facing women entrepreneurs in developing countries: A relational perspective](#)", *Gender in Management: An International Journal* 24(4), 232- 251; Vita, Luisa De, Michela Mari and Sara Poggesi (2014) "[Women Entrepreneurs in and from Developing Countries: Evidence from the Literature](#)", *European Management Journal* 32(3), 451- 460.

### ***Principle 1: Assessing the Context***

All parties to an agreement need to undertake a broad survey before beginning gender impact modelling in order to understand how forms of economic participation are shaped by existing gender norms and power relations at multiple sites and scales within the territories entering into the agreement. A scoping exercise also needs to be undertaken that determines the technical capacity (human and financial resources) of each party to the agreement to meaningfully engage in the gender impact assessment exercise. In cases of asymmetrical capacities, strategies outlined under principle 4 should be used.

### ***Principle 2: Gendered Economic Modelling***

The standard economic tool used to predict the impacts of proposed trade policy changes is Computable General Equilibrium (CGE) modelling, which simulates core economic interactions in the economy.<sup>38</sup> Feminist economists have further developed CGE modelling to help determine how trade policy impacts men and women differently in their different roles in society. First, there is a need to capture all transactions between sectors and institutions in the economy, including market-based activity, household based activities such as those involved in care work, and leisure activity. This can be done through what is known as Social Accountability Matrices (SAMs). Once a country-specific gendered-SAM has been generated, CGE modelling can be used to predict the effects of a proposed trade agreement on men and women in their various roles.<sup>39</sup>

While such models allow for the identification of gender trends concealed by many other methods, these models are imperfect. They focus solely on the gendered impacts of reducing tariffs to zero, whereas much liberalisation now consists of removing NTBs (see Box 1) which is much more difficult to model. CGE modelling is also unable to document changes in the quality of employment or impacts on women's ability to control resources within households. They generally only allow for analyses of trade in goods while overlooking a whole host of areas including investment protections, IPRs, procurement and more. CGE modelling also cannot account for the effects of regulatory harmonisation that will result from the implementation of FTAs. Moreover, if these models are to be applied to a future UK-EU trade deal, then they should also involve assessments of increased barriers to trade that will inevitably result from Brexit.

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<sup>38</sup> HM Government (2014) [Computable General Equilibrium \(CGE\) Modelling](#), April 2014.

<sup>39</sup> Fontana, Marzia (2004) ["Modelling the Effects of Trade on Women, at Work and at Home: Comparative Perspectives"](#), *Economie Internationale* 3(99), 49-80.

More comprehensive gender analyses of the impacts of trade require additional modes of inquiry (principle 4), including engagement with women's groups and civil society actors in the areas under investigation.

### ***Principle 3: Assessing the Entire Agreement***

Gendered SAM-based CGE modelling should be applied to multiple parts of trade agreements, including all clauses pertaining to trade in goods, trade in services, trade-related IPRs, investment protection, government procurement, Micro Small and Medium Enterprises (MSMEs), and e-commerce. Models should take into account the ways that class, ethnicity, migration status, location, age, etc., compound gender-based effects of trade. Models should consider women and men in their multiple roles as workers, consumers, users of services and providers of care work. Intra-household bargaining and power dynamics should be integrated into models where this information is available. Where it is not, alternative methods need to be considered to supplement modelling.

Many areas of an FTA may be interlinked such as chapters on investor protection and services liberalisation. For example a future government rolling back some public service liberalisation may face dispute settlement proceedings by FTA partner countries and compensation claims under ISDS provisions by investors at the same time. This could have an unforeseeable potential impact on public finances if the government loses state-to-state and investor-state dispute settlement proceedings and has to adjust policy and pay compensation to investors. This makes clear that the agreement needs to be assessed and monitored in its entirety, including chapter-by-chapter and holistic analysis.

### ***Principle 4: Qualitative Data Collection***

Gender-based impact assessments should function as dynamic frameworks that change in line with different contexts and changes in the availability of data. Indices such as the Sustainable Development Goals Gender Index are moving in the right direction, but adequately assessing the gender impacts of trade requires additional data that is not included in the Index such as that related to: access to social protection floors; secure access to tenure rights to land; food insecurity; women's household decision-making power; decision-making power with regards to sexual

relations, contraceptive use, and reproductive health care; violence against women and girls (at home and in the workplace); and time use (unpaid care and domestic work).<sup>40</sup> In all of these it will be necessary to consider how gender intersects with other structures of inequality based on age, ethnicity, language, religion, disability, class or region. Additional methods are further needed to consider how trade agreements affect domestic standards and regulations in non-trade policy areas including, at a minimum: work and labour, social protection, health, education, basic services.

#### *Principle 5: Gender-Based Monitoring of Trade Policy Commitments*

Trade agreements and policies need to be monitored at regular intervals to ensure their continued appropriateness and to seek remedies and policy reform where necessary. In order for monitoring to be transparent, to enhance accountability and, to produce knowledge that lends itself to policy reform, monitoring ordinarily needs to be conducted by an independent third party. In order for all forms of relevant knowledge to be made available, the independent third party should follow the key principles outlined above.

### **Inclusive Policies Require Inclusive Policymaking**

The scenario laid out above makes clear that businesses involved in international trade are not the only relevant stakeholders in trade policymaking. Involving women's groups, civil society organisations and other stakeholders in the formulation, implementation and monitoring of trade policy will help to provide policymakers the information required to make gender-sensitive policy choices. In this respect, Brexit provides an opportunity for the UK to set new international best practices when it comes to inclusive and democratic trade policymaking practices.

The UK House of Commons International Trade Committee produced a report in December 2018 outlining its policy on transparency and scrutiny.<sup>41</sup> In our view this is a positive starting point for developing a democratic and inclusive post-Brexit trade policymaking process. The report is the outcome of a broad and intensive period of consultation involving a range of stakeholders including government officials, business and civil society actors (including trade justice activists). The report highlights the concerns raised by civil society actors about transparency in trade policymaking.

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<sup>40</sup> SDG Gender Index - Equal Measures <https://www.equalmeasures2030.org/products/sdg-gender-index/>

<sup>41</sup> House of Commons International Trade Committee (2018) [UK Trade Policy Transparency and Scrutiny](#), Sixth Report of Session 2017-2019, HC 1043.

While trade policy is explicitly noted as the domain of the executive in the UK, the important role of parliamentary oversight is highlighted. Indeed, the report states that parliament should have the right to scrutinise trade policy mandates and ratify new trade agreements. It also states that the government should consult the International Trade Committee on the mandate for future trade negotiations throughout the process of negotiation. The report further highlights the important role for business and civil society – especially women’s organisations - in trade policymaking and implementation.

### **Challenges ahead**

There will be challenges associated with introducing more democratic and inclusive forms of trade policymaking and mainstreaming gender into trade policy debates in the UK.

First, it must be emphasised that parliament only has the right of ascent over proposed trade agreements (much like the US Congress when the President has fast track authority), not to make amendments to specific chapters or provisions. Even where the International Trade Committee has scrutinised the mandate, negotiations, and agreement, parliamentary oversight is limited to accepting or rejecting an entire proposed trade agreement.

Second, and more broadly, gender mainstreaming will face challenges in post-Brexit UK trade policymaking. Although engaging women’s organisations and gender advocates is key to inclusive policymaking, funding cuts in many countries have made it difficult for these groups to operate. It can also be difficult to mobilise government officials, civil society and the broader public in support of more gender-equitable trade since trade policy is often seen to be technocratic, complex, and often abstract.<sup>42</sup>

Third, in the trade policy realm, the language used by policymakers and that used by women’s rights and trade justice activists may be fundamentally at odds. This may produce a disjuncture between the meta-level critique of trade policy offered by activists and the need for policymakers

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<sup>42</sup> Macdonald, Laura, Nadia Ibrahim and Scott Sinclair (2018) “[Gender, Trade and Austerity](#)”, The Monitor, Canadian Centre for Policy Alternatives, July-August, 38-39.

to have specific suggestions for how to improve trade policy. If meaningful and productive relationships between UK trade policymakers and civil society actors are to be formed in pursuit of gender equality, then it will be essential to create formal and informal spaces for regular consultation and dialogue, that are both inclusive and free of technical jargon. Such consultation and dialogue should occur during all stages of a trade policy: formulation, implementation, and monitoring and assessment.

## Recommendations

- If the UK wishes to use trade agreements as a way of advancing gender equality, gender chapters need to be robust and enforceable. They should not operate as stand-alone chapters but gender should be mainstreamed throughout the entire agreement. FTAs must also provide governments with sufficient policy space to actively protect women's rights and promote gender equality. They should include carve-outs for promoting gender equality and enshrine a 'do-no-harm' principle by:
  - providing for ex-ante and ex-post assessments of gender-based impacts of services liberalisation and including guarantees for public services provision
  - including safeguards for regulatory and human rights protection in investment chapters
  - allowing explicit carve-outs that give governments the policy space necessary to pursue positive discrimination in favour of those who are most vulnerable
- Initiatives that engage in capacity-building, knowledge exchange and resource transfer should be used to reduce barriers to women's market participation and precarity. However, efforts aimed at promoting women's integration into the labour market as workers and/or owners of SMEs need to be accompanied by efforts to ensure that this is decent work and does not increase women's double burden or undermine well-being.
- Labour rights for all should be enshrined in trade agreements. The European Trade Union Confederation (ETUC) has developed a robust set of recommendations about how to establish and enforce labour rights in future EU FTAs, including the need for all parties to ratify, implement and comply with key International Labour Organization (ILO) conventions and instruments.<sup>43</sup> Women's rights in relation to employment equity should be explicit in these

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<sup>43</sup> European Trade Union Confederation, "[ETUC submission on the Non-paper of the Commission services on Trade and Sustainable Development \(TSD\) chapters in EU Free Trade Agreements \(FTAs\)](#)", Brussels, 11 October 2017.

discussions. This necessitates a consideration of the gendered distribution of social reproductive labour.

- The gendered impacts of trade policy need to be assessed using a range of methods and agreements need to be monitored at regular intervals. Assessment and monitoring should be transparent and conducted by independent third parties.
- Trade policymaking should be inclusive and involve regular consultation and dialogue with all relevant stakeholders, including women's organizations and trade justice activists, throughout the trade policy life cycle.
- Gender equality should be included as an end in itself rather than subsumed under the overarching goal of economic growth.

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