



Asia-Pacific
Economic Cooperation

Gender and Trade Agreements

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Is Trade “Gender Neutral”?

- International trade has often been referenced as ‘**gender neutral**’. However, more recent research points out that **gender disparities** exist in the design and implementation of trade rules, with impacts on distribution of benefits and earnings.
- COVID-19 exacerbated this, and the global gender gap is estimated to last for at least another 100 years, calling for approaches to address gender more comprehensively in the short term.
- In 2017, WTO Member States and observers signed the **Declaration on Trade and Women’s Economic Empowerment** on the Occasion of the WTO Ministerial Conference in Buenos Aires (Buenos Aires Declaration), marking a turning point at the multilateral level.
- Regionally, gender approaches **date back** to the Treaty of Rome and a number of African RTAs; gender approaches became more common recently, including dedicated gender chapters beginning with the 2016 Chile-Uruguay FTA.
- **Contextual and textual analysis point to opportunity to rethink and reshape** the current system (Kuhlmann and Bahri 2023) in order to design rules that allow women to increase their participation in – and benefit from – global trade.

WTO and Gender

- WTO work stems from **2017 Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment (WTO)**
 - 118 WTO Members and Observers have endorsed the Joint Declaration, calling for gender responsive trade policy.
 - Aligned with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and goal 5 of SDGs
- Establishment of **Informal Working Group on Trade and Gender**.
- Creation of **Gender and Trade Focal Point**
- Establishment of **WTO Gender Research Hub**, which includes a database of existing gender provisions in RTAs.
- First **World Trade Congress on Gender** in December 2022.
- 2021 **Joint Statement on Services Domestic Regulation**, which is first WTO instrument with a gender provision.
 - Ensure that measures relating to the authorization for domestic supply of services do not discriminate between men and women.
 - Temporary special measures that are aimed at accelerating gender equality.



SDG5 Gender Equality

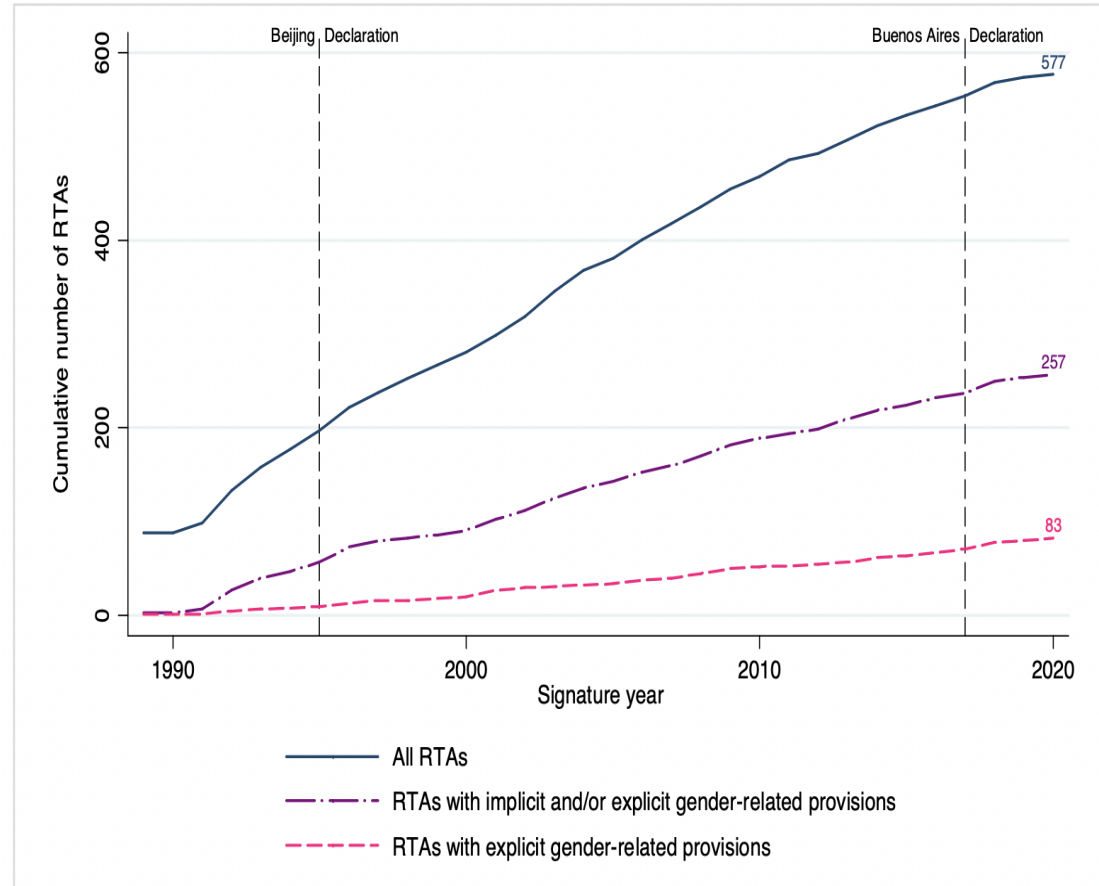
Goals, Targets, and Indicators

- Goal 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws
- Indicators:
 - 5.a.1 Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure
 - 5.a.2 Proportion of [economies] where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control



Gender Provisions in RTAs

- Gender provisions in RTAs on the rise – WTO estimates that 1/3 of RTAs now have some sort of gender provision.
- Gender provisions in RTAs can take **various forms**, including: (i) **non-discrimination provisions**; (ii) **reaffirmation of Parties' gender related commitments made under other agreements**; (iii) **commitments to undertake cooperative activities for women**; (iv) **establishment of gender committees to act as a focal point to facilitate exchange of information and cooperation**; and (v) **commitments of the parties relating to the resolution of possible disputes, however rare** (Kuhlmann et al., UN 2023).



José-Antonio Monteiro, *The Evolution of Gender-Related Provisions in Regional Trade Agreement*, WTO, 2021.



Location & Language (Kuhlmann 2023; Kuhlmann & Bahri 2023)

- **Location** relates to agreement commitment and implementation but is not determinative
- Gender provisions can appear in preambles and objectives, annexes, non-specific articles on related issues (labour, agriculture, IP) but also in specific articles on gender, side agreements or stand-alone chapters.
- **Language**, when combined with location (placement), indicates commitment of the parties and the degree to which individuals and communities can rely upon the rights and obligations referenced in the agreement.
- Provisions with a higher level of commitment are more likely to be successfully implemented and provide a higher level of clarity for small enterprises and vulnerable communities.
- Across gender provisions in RTAs, most do not contain any language on implementation or enforcement.
- In recent agreements, some parties use a combination of binding and non-binding expressions like 'shall' before or after 'consider' combined with 'endeavor' → still non-binding but stronger symbolic force.

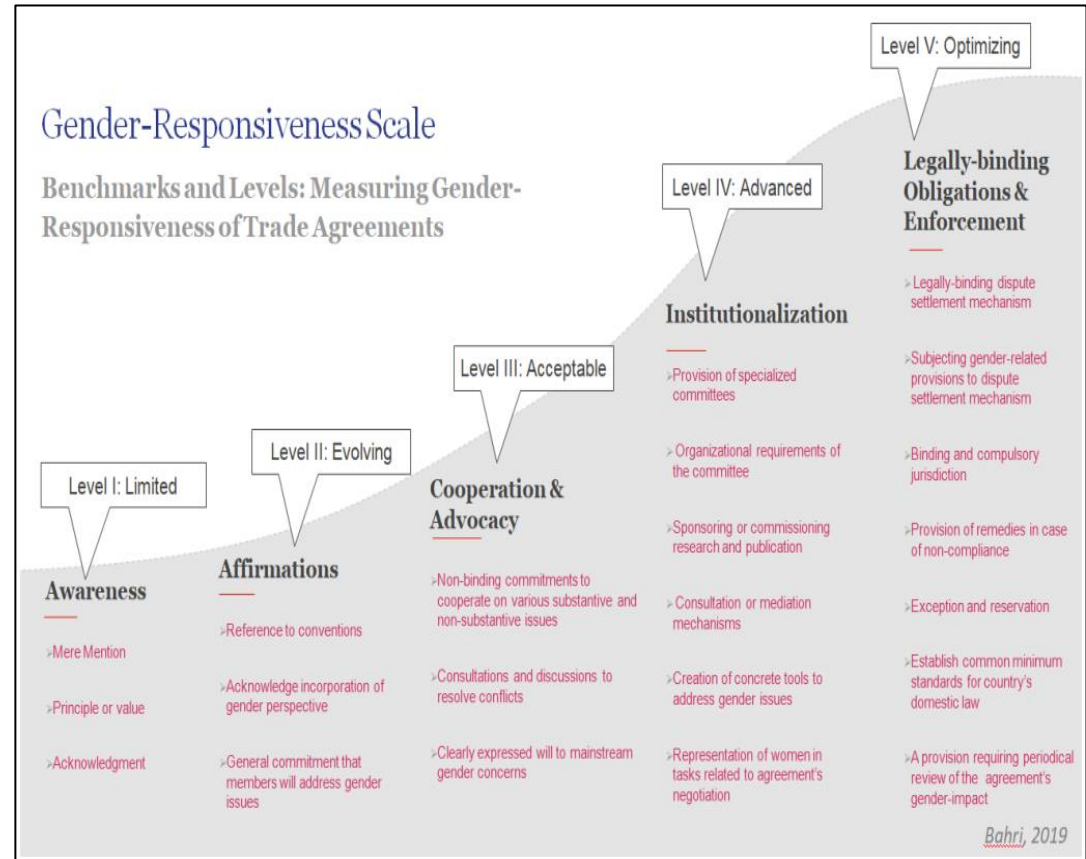
Content (Kuhlmann 2023; Kuhlmann & Bahri 2023)

- **Content** of gender provisions requires a deeper approach → two categories of provisions: affirmative and aspirational
- Aspirational content encompasses descriptive language stressing the importance of addressing gender issues and tends to be of a less concrete nature as it does not lead to specific commitments.
- Affirmative content encompasses functional provisions that create some sort of commitments requiring parties to take positive action, such as incorporation of other international agreements or cooperation provisions.
- Affirmative provisions included in agreements to date are inherently difficult to implement, due to their broad and sometimes vague nature and the lack of contextual integration beyond aspirational provisions → not tailored to address pressing distributional issues faced by women in particular economies and industries
- Other challenges
 - Lack of definitions of key terms, such as ‘women’s empowerment’ or ‘gender equality’
 - Binding commitments viewed as ‘legal inflation’ or protectionism



Gender Responsiveness

- One index for considering different RTA options in terms of gender responsiveness is Dr. Amrita Bahri's Gender-Responsiveness Scale.
- Gender-Responsiveness Scale: **TEXTUALLY** assesses RTA provisions in light of how well they mainstream gender equity considerations
- APEC economies have included gender commitments in some RTAs, e.g., CPTPP, EU-Viet Nam FTA, EU-Republic of Korea FTA, etc.
- Another approach is to **CONTEXTUALLY** evaluate RTAs based on whether they respond to women's needs (Kuhlmann 2023).



Amrita Bahri, *Measuring the Gender Responsiveness of Free Trade Agreements: Using a Self-Evaluation Maturity Framework*, 14 J. GLOB. TRADE & CUST

Trade Agreements & Gender: Good Practice Examples (Bahri, 2019)

- **Canada-Israel & Canada-Chile**: CSR, Access to STEM and ICT education, digital skills, Promote women entrepreneurship
- **EU-Central America**: political dialogue, protect lives of women in conflict and violence, access to maternity and health services
- **European Economic Area**: equal pay for equal work; eliminate employment discrimination
- **EU-Canada**: Prohibit sex-based discrimination against foreign investors (binding)
- **EU-Lebanon** (also w/ Jordan/Egypt/Morocco): family planning, mother and child protection programs
- **Eurasian Economic Union**: Mandatory health insurance for migrant pregnant women and mothers from employers; and for women involved in high risk jobs
- **AfCFTA**: gender in preamble, financing commitments, export-capacity of women-owned SMEs
- **East African Community**: gender balance in legislative assembly
- **COMESA**: Participation in decisions, eliminate border regulations and discrimination, awareness programs to change negative stereotypes, eliminate laws hindering access to credit and productive capacity
- **CAFTA-DR**: Exemption for crafts women; government procurement schemes
- **CPTPP**: Access to markets, technology and finance, workplace flexibility, abolish discriminatory legislation and customs
- **USMCA**: Reservation for indigenous women (services), protection of women employees



What is Missing?

Context (Kuhlmann 2023; Kuhlmann & Bahri 2023)

- Equally, if not more important than other filters, including language, location of provisions, and content (including nature of obligations)
- Many current agreements largely focus on women in their roles as mothers or employees or as cultural or social actors, with less focus on their roles as entrepreneurs or decision-makers.
- Regional differences in approach
 - *North American and European trade agreements do tend to view women in a more economic and market-oriented context*
 - *Other regions' RTAs, such as those in Asia Pacific, focus more on the social dimension and reference health care, maternity services, and the elimination of violence and discrimination based on sex*
 - *African RTAs focus on women's access to resources, promoting female entrepreneurship, and enhancing women's representation in political and decision-making positions*



Inclusive Legal & Regulatory Approach Trade & Gender (Kuhlmann 2023)

Differentiation for Vulnerable Parties (Special & Differential Treatment (S&DT))	<ul style="list-style-type: none"> • RTA provisions on S&DT related to goods and services (e.g., AfCFTA S&DT provisions) could incorporate a gender context. • Globally, the LDC Services Waiver, could be used to provide preferential market access for services in “sectors employing predominantly women” (Acharya et al. 2019) • Use of permissible subsidies to provide treatment for “assistance to disadvantaged groups, such as women and ethnic minorities” (Acharya et al. 2019)
Flexibility in Design and Application of Rules	<ul style="list-style-type: none"> • “Review and revise” provisions in RTAs, such as the AfCFTA ‘rendez-vous clause,’ which allow for agreements to be adapted as circumstances change. • Consultation provisions focused on vulnerable groups and women could inform use of flexibility to reassess and build out commitments subject to circumstances and needs.

Inclusive Legal & Regulatory Approach Trade & Gender (Kuhlmann 2023)

Sustainable Development	<ul style="list-style-type: none"> • Sustainable development provisions could be tailored to gender priorities. • Green Box measures could be assessed, consistent with the WTO Agreement on Agriculture (AoA), based on how to address women's needs women's needs, particularly in the context of climate and food security, and could be part of a more comprehensive approach on food security through RTAs.
Equity	<ul style="list-style-type: none"> • Minimum legal standards on women's access to land, non-discrimination, equal pay for equal work, inheritance, and other areas of law related to women's role in the economy could enhance equity through RTAs and domestic law. • In addition to non-discrimination, building on the WTO Joint Initiative on Services Domestic Regulation, provisions could be incorporated into services schedules to guarantee gender-responsive financial services. • Provisions could be added on migration and anti-trafficking, digital inclusion, and gender-responsive standards.

Inclusive Legal & Regulatory Approach Trade & Gender (Kuhlmann 2023)

Transparency/Engagement/Inclusiveness	<ul style="list-style-type: none"> Engagement provisions could be incorporated and linked with 'review and revise' RTA provisions to provide an avenue for addressing women's needs on an ongoing basis, coupling engagement with 'responsiveness'. Transparency provisions could be tailored to women's needs, drawing upon good practices and lessons learned (e.g., designated contact points or enquiry points and formal and informal dialogue structures).
Reduction of Legal & Regulatory Gateways	<ul style="list-style-type: none"> Regulatory hurdles facing women could be more systematically addressed, with a focus on regulatory design and implementation to enhance women's engagement in the market (e.g., focus on processes and procedures in trade facilitation, standards, sanitary and phytosanitary measures, streamlined business registration processes, etc.).
Implementation & Impact	<ul style="list-style-type: none"> Provisions could be integrated requiring gender assessment and gender impact review, along with focused engagement on implementation that actively involves women affected by trade rules.

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