

WOMEN'S RIGHTS AND TRADE

Time for a radical shift



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TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
INTRODUCTION	4
1. Women's right to decent work	5
2. Women's livelihoods being put at risk	7
3. Reduction of available resources for gender-responsive public services and risk of privatisation	9
4. The interests of private companies and investors are being prioritised over ensuring countries can meet their commitments on women's rights and wider gender-just policies	11
5. Boosting growth is the main objective of the EU trade policy	12
CONCLUSION	13

EXECUTIVE SUMMARY



Women's demonstration in Montevideo
Photo by WIDE+

Today, European decision-makers widely acknowledge that the EU trade policy is not gender-neutral, and that this needs to be addressed. A concrete policy measure that receives a lot of attention is the integration of specific provisions – such as a dedicated chapter – on trade and gender in trade agreements. CONCORD welcomes this greater attention to the interactions between trade and women's rights and would like to contribute to ongoing debates with this submission.

We highlight the limitations of what a separate gender chapter or provision can achieve, especially if it is not enforceable, and suggest considering the possibility to include gender equality and women's rights in the existing sustainable development chapters of trade agreements, that should become enforceable. We also believe that a gender provision in trade agreement will not suffice to harness the potential of our trade and investment policy to contribute to women's rights and gender equality: We call for a fundamental shift towards a EU trade policy that gives as much importance to human rights and environmental standards than to economic indicators - especially the questionable indicator of GDP growth. This implies that other measures within Trade and Investment Agreements, such as investment arrangements, need to be re-adjusted to make sure they respect and promote women's rights.

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INTRODUCTION

The right to development, proclaimed by the United Nations General Assembly 30 year ago, was intended to contribute to reshaping international economic relations. States committed to creating international and national conditions favourable to the realisation of the right to development and a fair distribution of the benefits of development. In fact, the opposite happened: Trade and investment liberalisation have been pursued without adequate regulation, and this has largely contributed to **rising socio-economic inequality, and to perpetuate and even exacerbate gender inequality.**

It is becoming increasingly recognised by experts and policy makers that trade rules, as well as the way trade deals are negotiated, have an impact on women's economic rights and well-being. This is undermining global commitments to achieve gender equality and fulfil women's human rights. Universally prevailing gender inequalities and patriarchy mean that women and girls particularly endure negative impacts. But the case for ensuring trade policies address gender inequality and serve sustainable development is becoming increasingly recognised by EU decision makers - but so far only with policies that are voluntary additions to the core trading rules.

At global level, a joint declaration on trade and women's economic empowerment was agreed at the WTO Ministerial Meeting in Buenos Aires in December 2017. It notes that improving women's access to opportunities and removing barriers to their participation in national and international economies contributes to sustainable economic development. This declaration highlights the growing recognition of the role of trade in promoting women's economic empowerment. However, it crucially missed to address the adverse impacts of WTO rules and free trade agreements on women's rights and their role in deepening inequality and exploitation, particularly in developing countries. That is why more than 160 women's rights and other associations have rejected this declaration.¹

At European level, the Gender Action Plan (GAP 2016-2020) is the EU policy commitment on women and development, which the EU has to carry out through its development and external policy. Access to decent work for women of all ages is one of the objectives, and examples of activities include analysing impacts of international trade on gender equality in connection with trade negotiations. However, the GAP has been criticised

for not addressing in specific terms the link between trade and gender.² The European Parliament has also been looking at trade and gender shedding the light on this issue and calling for stronger EU action.³

The EU has agreed to promote the inclusion of a chapter or articles about gender equality in the negotiations for the modernised Association agreement that includes trade with Chile as a pilot, which witnesses a greater attention to the interactions between trade and gender. CONCORD welcomes a gender chapter or provisions in trade agreements, which would fit very well in a Sustainable Development Chapter (for those future agreements that will include this). However, we believe this should not be the only or main measure: gender equality and women's rights should also be **mainstreamed in the whole agreement, including its investment provisions.** It is indeed vital that this increasing recognition of the link between trade and women's rights **turns into meaningful action and gender-just trade deals.**

Agenda 2030 is underpinned by the "leaving no one behind" principle, and this requires a focus on the most marginalised women and those facing intersecting discriminations based on class and work status, ensuring that their voices are heard and acted upon within decision-making processes.⁴ The UN Sustainable Development Goals explicitly call for countries to work to reach gender equality, including by addressing unpaid care (SDG5), achieve decent work (SDG8), build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation (SDG9) and reduce inequalities (SDG10). Achieving a fair, just global trading system will be vital in meeting those goals and the full implementation of international women rights standards, including the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

We highlight below a number of ways in which the current EU approach to trade impacts negatively upon women and girls. These overlapping areas of critical concern include 1) women's right to decent work; 2) women's livelihoods; 3) gender-responsive public services and women's unpaid care work; 4) policy space for developing countries to implement policies that promote women's rights – in line with their international human rights obligations; and 5) we question the use of GDP growth as the compass for the EU trade policy.

¹ <https://wideplus.org/2017/12/14/wide-together-with-more-than-160-civil-society-associations-called-on-governments-to-reject-the-wto-declaration-on-womens-economic-empowerment/>

² [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603256/EPRS_STU\(2017\)603256_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603256/EPRS_STU(2017)603256_EN.pdf)

³ [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2016\)571388](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2016)571388)
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/549058/EXPO_IDA\(2015\)549058_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/549058/EXPO_IDA(2015)549058_EN.pdf) and resolution of March 2018
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0066&language=EN&ring=A8-2018-0023>

⁴ UN Women, *Macroeconomic policy and women's economic empowerment, Discussion Paper, September 2017*, <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/discussion-paper-macroeconomic-policy-and-womens-economic-empowerment-en.pdf?la=en&vs=4119>

1. WOMEN'S RIGHT TO DECENT WORK



Woman in a local market, Indonesia

Insufficiently regulated trade and investment liberalisation has favoured over the last thirty years the emergence of global value chains that are built on the use of a cheap and unorganised labour workforce in the Global South. Trade agreements have allowed greater mobility of international investment, allowing companies to move to countries offering lower labour costs, including when faced with worker demands for higher wages or improved conditions. Large TNCs face serious challenges ensuring they detect, prevent and respond to rights abuses throughout their complex web-like supply chains, in line with UN Guiding Principles on Business and Human Rights (UNGPs).⁵ In addition, the pressure on companies to provide a return to shareholders and the fact that competitiveness can be based on workers' exploitation hamper efforts towards sustainable and human rights compliant practices.

While trade and investment liberalisation has helped to create many jobs in the Global South in export sectors such as garments, textiles, shoes and agriculture, these jobs are low skilled and low paid, characterised by poor working conditions

and limited rights to unionise. UNCTAD has been showing that lead firms, usually based in wealthy countries including many EU member states, retain most of the value and wealth created in supply chains. Developing countries are stuck at the bottom of the value chain and often compete against each other for investment by keeping wages low and relaxing labour regulation. Women from developing countries are among the most vulnerable to exploitation in global supply chains.

"Many governments pursue macroeconomic policies that promote a growth strategy that relies in part on gender wage gaps and gender-based occupational segregation to boost competitiveness as women are disproportionately employed in labour-intensive, export-oriented activities".⁶ Export-oriented firms frequently rely on the subordinate social position of women relative to men in order to continue providing lower wages and poorer working conditions as a form of competitive advantage.⁷ Globally, women represent an average of 68 percent of the garment workforce, and in some countries women can constitute as much as 90 percent of the employees in garment, textile, leather and footwear

⁵ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ UN Women, *Macroeconomic policy and women's economic empowerment*, Discussion Paper, September 2017, <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/discussion-paper-macroeconomic-policy-and-womens-economic-empowerment-en.pdf?la=en&vs=4119>

⁷ Gender and Development Network, *Making trade work for gender equality*, July 2017, <http://gadnetwork.org/gadn-news/2017/7/4/new-gadn-briefing-making-trade-work-for-gender-equality>

industries.⁸ Women in paid work earn 10–30 percent less than men on average for work of equal value.⁹ \$9 trn is the amount women in developing countries would earn each year if their pay and access to work were equal to men's.¹⁰

In countries such as Bangladesh, Cambodia and Vietnam, gender discrimination sees women crowded into menial roles within the export manufacturing sector. Contracts are insecure or non-existent. They do not earn enough to support themselves and their families, and are often denied key social protections, such as paid maternity and sick leave, as well as a pension. They are also often subject to sexual harassment and abuse and lack the power to demand a workplace free from exploitation. Opportunities for training and advancement are limited and do little to address entrenched patterns of gendered occupational segregation. Women's unpaid care burden often means they lack the time to participate even when training is available.¹¹ Meanwhile, rights to unionise and engage in collective bargaining to improve conditions are being eroded in many countries, including within specially created Export-Processing Zones.¹² Women reportedly constitute the majority of workers in EPZs.

WHAT SHOULD THE EU DO?

- Include binding investor obligations with respect to gender, human rights, labour and the environment in its investment chapters and treaties.
- Adopt a mandatory gender-responsive human rights due diligence regulatory framework at EU level, backed with adequate monitoring and enforcement mechanisms in order to complement and build on the rising number of voluntary initiatives. Legislative initiatives by Member States should also be encouraged.

- Continue and step up efforts to use existing Free Trade Agreements (cf their Domestic Advisory Groups in particular) to address women's rights. This includes the ratification, in case this is not done of Convention No. 189 on Domestic Workers and No. 156 on Workers with Family Responsibilities¹³, and other core ILO conventions. The DAGs should also include women's rights associations.
- Also continue and step up efforts to use other instruments such as the Bangladesh Sustainability Compact) to encourage partner countries governments to improve compliance with international and national labour and environmental standards¹⁴
- Contribute proactively and constructively to the process for the elaboration of a binding UN treaty on business and human rights.¹⁵
- Assist the formation of trade unions, ensure they are part of EU dialogues with the private sector, and systematically integrate the right to freedom of association and collective bargaining in the dialogue with partner countries
- Through Aid for Trade, build the capacity of national labour ministries and inspectorates and support in-country ILO programmes aimed at improving working conditions. More generally, Aid for Trade and other sources of EU development cooperation should assertively support the removal of structural barriers preventing women from benefitting equally from trade, in line with the EU Gender Action Plan.

⁸ International Labour Organization, *Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries*, 2014, https://www.bsr.org/reports/BSR_Empowering_Female_Workers_in_the_Apparel_Industry.pdf. ILO puts the current figure for Cambodia at 87%: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_541288.pdf

⁹ World Bank, http://www.worldbank.org/content/dam/Worldbank/document/Gender/GenderAtWork_web.pdf

¹⁰ ActionAid, *Close the gap! The cost of inequality in women's work*, https://www.actionaid.org.uk/sites/default/files/publications/womens_rights_on-line_version_2.1.pdf

¹¹ Written evidence submitted by ActionAid UK to the International Trade Select Committee's Inquiry into "Trade and the Commonwealth: developing countries", February 2018, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-trade-committee/trade-and-the-commonwealth-developing-countries/written/78404.pdf>

¹² Otobe, N. (2015) *Export-led development, employment and gender in the era of globalization*. ILO Employment Policy Department, *Employment Working Paper No. 197*. Pp. 11. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_452341.pdf

¹³ This ILO convention calls for government measures to ensure workers with family responsibilities can participate in the labour market, through developing and promoting community services, public or private, such as child-care and family services and facilities as well as adequate social security systems.

¹⁴ <https://cleanclothes.org/news/2017/05/17/eu-should-use-review-to-push-for-workers-rights-and-freedom-of-association-in-bangladesh>
<https://cleanclothes.org/resources/publications/european-union-and-the-bangladesh-garment-industry-the-case-for-a-trade-investigation>

¹⁵ <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOonTNC.aspx>; <https://www.business-humanrights.org/en/binding-treaty>
On the gender perspective to binding treaty:
<https://www.awid.org/news-and-analysis/gender-perspective-un-binding-treaty-transnational-corporations>

2. WOMEN'S LIVELIHOODS BEING PUT AT RISK

Trade deals can put existing livelihoods at risk. The majority of women in poor communities work in the informal sector, often making a living by producing and selling local agricultural products. According to UN Women, 95% of women in South Asia and 89% of women in Sub-Saharan Africa are in informal employment as a percentage of total employment, in jobs such as vendors, traders or subsistence farmers. Ill-designed trade and investment liberalisation puts informal workers and small-scale food producers in competition with multinational companies. When markets are flooded with cheap imports of similar goods, women farmers and traders find it difficult to compete.

Women are playing a very important role in agriculture, especially in the Global South. Women make up almost half (43 %) of the labour force in agriculture globally, according to a 2011 FAO study.¹⁶ But in Sub-Saharan Africa and South Asia, small scale female farmers make up half or more of the agricultural production, rising to 70 % in some countries.¹⁷ There is a general trend of a feminization of agriculture so these percentages will have increased in recent years. Women are also a very necessary source of knowledge managers on seeds diversity, traditional agriculture, medicinal plants, food preparation and family care. At the same time, women are discriminated in access to land, credit, extension services, inheritance rights, etc. Women can also face displacement from their land without adequate consultation or compensation (often marginalised in both), last in line for new employment opportunities, when governments open it up to large-scale foreign investments, such as agriculture, mining or infrastructure development. This also poses a food security risk given that many women produce both for their families' consumption as well as for generating an income. It is crucial to take those elements into account in EU policy making and to ensure that the EU trade policy does not further exacerbate those inequalities.

Last but not least, trade agreements promote the International Union for the Protection of New Varieties of Plants (UPOV) Convention, which enshrines intellectual property rights on seeds. The majority of peasants and smallholders, particularly women, rely on peasant seed systems to access diverse local seed varieties, land races and native germplasm that is adapted to their local environment and cultures. Intellectual property

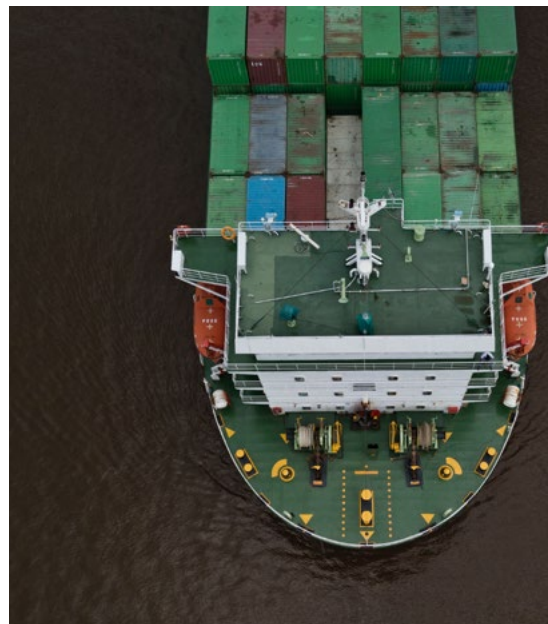


Photo by Ali Yahya on Unsplash

rights on seeds, however, marginalize traditional and indigenous seed systems and transfer monopoly ownership to commercial interests, undermining women's key role as seed savers and overriding farmers' rights to save, use, exchange and sell farm-saved seed.¹⁸

The EU could avoid those negative impacts on women's livelihoods by assessing them at an early stage and by adapting accordingly the provisions of the agreement at the negotiation stage. But that is not happening. In fact, the 26 sustainability impact assessments (SIAs) that had been completed as of June 2017 in the European Commission did not include any specific statistics on Trade and Gender. Similarly, monitoring the impact of such agreements on women's empowerment and gender equality during implementation, has also been neglected.¹⁹

The Beijing Declaration and Platform for Action urges governments to ensure that trade agreements will not adversely impact women's new and traditional economic activities (para 165 (k)) and to monitor trade policies for negative impacts and restructure these policies where women's rights are undermined.²⁰

16 <http://www.fao.org/docrep/013/i2050e/i2050e.pdf>, FAO "The state of food and agriculture: Women in agriculture, closing the gender gap in development", 2012

17 UNDP "Gender, climate change and food security", 2016

18 Monsalve Suarez S et al, *Seeds and Agricultural Biodiversity: The Neglected Backbone of the Right to Food and Nutrition*, in *Right to Food and Nutrition Watch, Keeping Seeds in Peoples' Hands*, 2016/Issue 08, 2016, FIAN: Heidelberg, Germany, http://www.righttofoodandnutrition.org/files/R_t_F_a_N_Watch_2016_ENG_WEB.pdf

19 Ex-Post Evaluation Unit of the European Parliament, *EU Gender Action Plan 2016 – 2020 at year one, October 2017*, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603256/EPRS_STU\(2017\)603256_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603256/EPRS_STU(2017)603256_EN.pdf)

20 *The Beijing Declaration and Platform for Action (1995): Para 165 (k) and Para 165 (p)*. Available at: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

THE EPA AND SEED RIGHTS IN GHANA

In Ghana, the EU has used the Economic Partnership Agreement to push for Ghana to sign on to the 1991 International Convention for the Protection of New Plant Varieties (UPOV) convention, by adding a clause that within 5 years of signing the Interim EPA (signed in 2016) Ghana should ratify this Convention. The UPOV Convention threatens the preservation of traditional seeds used by small scale farmers, forcing them into dependency pattern with big commercial seeds suppliers like Monsanto. Civil society organisations, including peasant and women's rights associations, raised concerns about the Plant Breeders Bill now tabled in the Ghanaian Parliament.²¹

THE EU-VIETNAM FREE TRADE AGREEMENT

The very light EU Sustainability Impact Assessment (SIA) about the EU-Vietnam Free Trade Agreement (FTA) mentions women a couple of times without in-depth assessment of the specific negative human rights impacts on them. It says however that production will shift from diversified industries into the clothing and leather industry, with « mass produced lower value-added products ». The SIA also points to expected negative impacts in the agriculture sector: "given the high share of agricultural employment in Vietnam - the impact of the FTA may be quite significant. Lower prices and lower output will translate into lower real income for Vietnamese producers." The Impact Assessment concludes, without any evidence, that in spite of those negative impacts on the most vulnerable sectors of the Vietnamese society, it is a good deal for Vietnam.²⁵

WHAT SHOULD THE EU DO?

- Significantly improve the Impact Assessments carried out before the opening of a trade negotiation, as per the Better Regulation Toolbox, to ensure they analyse the specific impacts on women, using qualitative information to complement available quantitative data.
- In addition, integrate in Sustainability Impact Assessments carried out in parallel with major bilateral and plurilateral trade negotiations a participatory human rights impact assessment of trade deals with a gender lens.²² This should include a focus on consultations with women's rights organisations and women from marginalised groups. The United Nations Conference on Trade and Development (UNCTAD) has developed a toolkit²³ to perform gender-aware ex-ante evaluations of trade policies. It is important to distinguish between impacts of export expansion and import displacement on different sectors, as well as between different employment statuses held by women (waged work, self-employment, formal and informal women workers, rural and urban, unpaid care work). It is also important to look at women through an intersected analysis, meaning looking at women intersecting with other stratifications like migrant women, black women, LGBTQI women, etc.²⁴
- Such impact assessments should help adapting the provisions of the agreement to mitigate negative impact and harness positive impact; they should also be used to identify how to make a better use of aid, including EU Aid for Trade, to address obstacles to women's economic rights and for them to equally benefit from trade.
- Contribute to the creation of decent jobs in the manufacturing and service sectors while not sacrificing existing livelihoods in agriculture and informal economy.
- Making proactive efforts to protect women from negative impacts from investments. Special attention must be paid to the impacts of trade agreements on the lives of rural women and the fulfilment of their rights, as commanded by the CEDAW Committee²⁶, as well as on informal workers.
- Not encourage further intellectual property rights on seeds, through the promotion of UPOV convention in trade agreements
- Provide budget support and technical assistance to assist partner countries in building gender-responsive public services (healthcare, education, water, public transportation, etc)
- Support within the WTO the recognition of the multi-functionality of agriculture, as well as the elimination of all export subsidies in their various forms.²⁷

²¹ <https://newint.org/blog/2014/10/20/plant-breeders-bill-ghana>

²² In 2015, DG Trade adopted Guidelines on the analysis of human rights impacts in impact assessments for trade - related policy initiatives, see http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf

²³ UNCTAD (2017) Trade and Gender Toolbox. http://unctad.org/en/PublicationsLibrary/ditc2017d1_en.pdf

²⁴ WIDE+ Gender and Trade Working Group Transforming EU Trade Policy to protect women's rights, 2017, https://wideplusnetwork.files.wordpress.com/2017/06/eu_trade_gender_policy_wide_final.pdf

²⁵ http://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151230.pdf

²⁶ CEDAW Committee, General recommendation No. 34 (2016) on the rights of rural women, March 2016.

²⁷ https://concordeurope.org/wp-content/uploads/2016/07/CONCORD_EFSG_answer_CAP_consultation_25_jan_2011_FINAL.pdf?7c2b17&7c2b17

3. REDUCTION OF AVAILABLE RESOURCES FOR GENDER-RESPONSIVE PUBLIC SERVICES AND RISK OF PRIVATISATION



Woman crafting various trinkets from leather and wood
Credit: Photo by Clem Onojeghwo on Unsplash

Trade deals impact on governments' ability to provide the public services that are vital to reduce and redistribute unpaid care work and play an equalising role in society. Unconditional access to quality gender-responsive public services and infrastructure is vital for the fulfilment of women's and girls' rights, especially women from the poorest communities. Across the globe, women undertake between two and ten times as much unpaid care than men²⁸, such as caring for children, the sick and the elderly, preparing food, sourcing water and fuel, as well as other forms of domestic work. Women's time-burden of care is a major barrier to decent work, education and training opportunities, as well as women's political participation. It prevents them from enjoying the benefits of trade and investments on an equal basis with men. Where public services are missing, cut, inadequate or inaccessible, women are expected to fill the gaps. The provision of early childcare and early education, healthcare, electricity, public transport and water and sanitation are a vital means for redistributing women's care work between households and the state. Developing country governments also urgently need resources to effectively prevent and respond to the endemic levels of violence endured by women and girls. Health services, women's shelters, psychosocial support, improvements in street

lighting and public transport, gender-responsive policing and access to justice, are critical to prevent and respond to violence against women and girls (VAWG), but remain significantly underfunded. While the EU trade policy cannot solve all those problems, CONCORD believes that a gender-just trade policy should directly support, and not hinder, the provision of public services for women and girls.²⁹

Firstly, trade deals can require governments **to cut trade tariffs and corporate taxes**, which reduces the amount of domestic resources available to governments to provide public services. For many developing countries, trade tariffs represent a particularly important source of revenue and accounts for some 25% of government income in sub-Saharan Africa.³⁰ Efforts to cover this lost revenue have frequently taken the form of indirect taxes, such as value-added tax (VAT), which have a greater impact on women. VATs are generally regressive, disproportionately affecting poor households that spend a higher share of their income on basic goods, but there is also evidence that women tend to spend more than men on buying staple goods - food, clothes and medicines – on which indirect taxes are commonly levied.³¹

28 OECD Development Centre (2014) *Unpaid care work: The missing link in the analysis of gender gaps in labour outcomes*. Available at: https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf

29 Written evidence submitted by ActionAid UK to the International Trade Select Committee's Inquiry into "Trade and the Commonwealth: developing countries", February 2018, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-trade-committee/trade-and-the-commonwealth-developing-countries/written/78404.pdf>

30 <http://www.un.org/esa/ffd/wp-content/uploads/2014/12/10Dec14-UNCTAD-input.pdf> p.2

31 Gender and Development Network, *Making trade work for gender equality*, July 2017, <http://gadnetwork.org/gadn-news/2017/7/4/new-gadn-briefing-making-trade-work-for-gender-equality>

Secondly, trade deals can lead to **increased privatisation of public services**, with the breadth of services covered in recent trade agreements expanding, such as the Trans-Pacific Partnership Agreement (TPP) and the Trade in Services Agreement (TiSA).³² The liberalisation of trade in services commits governments to deregulate and open up their services sectors to private investors, including in the critical areas of health and education. Privatisation of these services very often sees the introduction of user fees, and poor quality or even a complete lack of provision to the poorest communities, from which insufficient profits can be drawn.³³ For example, studies from Ghana, Swaziland and DRC, Kenya and Uganda found that fewer women accessed health services after the introduction of user fees, particularly women from the poorest communities.³⁴ Intellectual property rights provisions have been used in trade agreements to protect the interests of large pharmaceutical companies and restrict the production of cheap generic medicines. Affordable essential medicines are particularly important for women, not only because of women's particular health requirements — for example, related to reproduction — but also because women and girls' disproportionate experiences of poverty, gender-based violence and harmful traditional practices make them particularly vulnerable to ill health and less able to afford expensive medicines. While the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) recognises the need for some "flexibilities" to allow developing countries to ensure better access to medicines, no such exceptions have been included in the most recent trade agreements, which further strengthen intellectual property rights.³⁵

Investment agreements or investment chapters in EU free trade agreements incentivize European direct investments in partner countries. The fragmentation of global value chains encouraged by Free trade agreements offers an opportunity for large companies to do **aggressive tax planning and profit shifting, and to avoid tax** — to the detriment of developing countries' domestic resources mobilization. ActionAid has shown that the dramatic increase in foreign direct investments in low income countries from 1990 to 2010 has not translated in an increase of corporate tax revenue.³⁶ The commitment in Trade for All to address aggressive corporate profit shifting and tax avoidance that exploit the fragmentation of value chains is very welcome, but has not concretised yet.

³² For example, under the TPP, all services will be liberalised unless specified, whereas under WTO rules, only services that were to be liberalised are listed.

³³ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571388/IPOL_STU\(2016\)571388_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571388/IPOL_STU(2016)571388_EN.pdf)

³⁴ <http://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2802%2900083-6>

³⁵ Gender and Development Network, *Making trade work for gender equality*, July 2017, <http://gadnetwork.org/gadn-news/2017/7/4/new-gadn-briefing-making-trade-work-for-gender-equality>; on IPR provisions in CETA, see <https://corporateeurope.org/international-trade/2016/09/new-study-analyses-eu-canada-trade-deal-ceta>, page 48

³⁶ ActionAid, *Levelling Up: Ensuring a fairer share of corporate tax for developing countries*, 2015, <http://www.actionaid.org/publications/levelling-ensuring-fairer-share-corporate-tax-developing-countries>

³⁷ ActionAid, *Stitching A Better Future: Is Vietnam's Boom In Garment Manufacturing Good for Women?*, November 2017, <http://www.actionaid.org/vietnam/publications/stitching-better-future-vietnams-boom-garment-manufacturing-good-women>

³⁸ European Parliament resolution of 13 March 2018 on gender equality in EU trade agreements, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0066&language=EN&ring=A8-2018-0023>

VIETNAM'S TAX REVENUES FROM THE GARMENT AND TEXTILE SECTOR

Vietnam's corporate income tax revenues from the garment and textile sector represents around 0.1 per cent of Vietnam's tax revenues (based on 2012 data). This partly reflects the effect of tax incentives to attract investments, but is also due to the fact that low-value activities generate relatively small profit margins in Vietnam compared to the much higher profits of global companies based in rich countries. Further tariff reductions resulting from the FTA with the EU may worsen the situation.³⁷ The EU-Vietnam FTA will indeed eliminate over 99% of customs duties on goods, it will also open up Vietnamese services markets to EU companies and strengthen protection of EU investments in the country. 65% of EU exports to Vietnam will be coming in duty free from day one, including machinery, small motorcycles and textile. The remaining trade — with the exception of a few products — will be liberalised after 10 years.

WHAT SHOULD THE EU DO?

- Exclude certain sectors, such as water, health and education, from European trade and investment negotiations, as demanded by the European Parliament³⁸
- Ensure greater transparency in tax payments by multinational companies to end tax avoidance: Multinationals should be required to report basic information and data for each country where they have operations. Obligations in the extractives and banking sectors should be expanded to all sectors through the introduction of a public country-by-country reporting (CBCR) requirement with no exceptions.
- Ensure its trade and investment deals do not reduce the fiscal space of partner countries to invest in women's economic empowerment
- In the framework of the EU development cooperation, apply a gender analysis to budget planning; also apply a gender analysis in programming and technical assistance to developing countries, covering both how public income is raised and spent; support partner countries in gathering gender differentiated data.

4. THE INTERESTS OF PRIVATE COMPANIES AND INVESTORS ARE BEING PRIORITISED OVER ENSURING COUNTRIES CAN MEET THEIR COMMITMENTS ON WOMEN'S RIGHTS AND WIDER GENDER-JUST POLICIES

Trade deals can dramatically curtail the space and resources for developing countries to implement policies for the public good, including those aimed at promoting gender equality and protecting the rights of women and girls.

The diversification of economies is widely recognised as key to promoting economic progress for all, increased productivity and decent work. However, restrictive measures in trade deals can hamper developing countries' ability to pursue an industrial strategy which could help create more and better jobs for women. Trade deals can prevent governments from protecting specific industries and sectors, measures which could help enable developing countries to move away from production of low value goods and into higher value-added sectors. By receiving government help to upgrade to higher value-added activities, domestic firms could unlock higher profits, which would allow them to pay better wages and generate more taxes for the state. Governments sometimes give preference to small, locally run enterprises, including those that are women-led, in their public procurement policy. However, many trade agreements prohibit such preferential treatment for domestic firms, considered as discriminatory towards foreign investors.³⁹ This is for example the case of the modernization of the Global Agreement between the EU and Mexico.

Recent trade deals include clauses for Investor-State Dispute Settlement (ISDS) mechanisms, which allow companies to sue governments in secretive tribunals if they believe a regulation may reduce their profit margins or affect their operations. Most ISDS cases are brought under the problematic clause of "fair and equitable treatment" which requires governments to treat investors fairly and not upset their "legitimate expectations". ISDS has already been used by companies to tackle workers' rights.⁴⁰ Measures to promote women's rights and gender equality could be similarly threatened, such as affirmative action laws or laws to close gender wage gaps.⁴¹

WHAT SHOULD THE EU DO?

- Suppress investors' right to unilaterally sue governments for loss of profits outside the ordinary court system, and ensure governments' measures to protect women's rights cannot be challenged by investors. Ensure that investor state dispute settlement provisions are not included in free trade agreements that the EU makes with counterparties who clearly have existing suitable publicly available dispute settlement mechanisms under normal judicial system, be they ISDS or the updated model called ICS (Investment Court System, as in CETA). The recently proposed Multilateral Investment Court (MIC) is not satisfactory either in many ways.⁴²
- Include binding obligations for investors to respect human rights, including women and labour rights, and the environment, with effective remedies for victims. Include provisions for investors to participate in knowledge transfer programmes for the benefit of local firms' development and to support training for local workers, with a focus on women, to facilitate their entry into higher-skilled jobs
- Exclude from trade deals provisions restricting the ability of governments to regulate in the public interest, including establish entry and operational requirements on foreign direct investments, or protecting and support particular sectors (including small scale farmers) to ensure the diversification of partner countries' economies.
- In order to ensure the EU trade policy enhances women's livelihoods and strengthens gender equality, design trade negotiations in a way that is transparent, participatory and accountable to women – both in Europe and in the partner country.⁴³

³⁹ ActionAid, *What a Way to Make A Living?*, 2016,

https://www.actionaid.org.uk/sites/default/files/publications/what_a_way_to_make_a_living_.pdf

⁴⁰ ActionAid, *An alternative FDI Framework for More and Better Jobs in Developing Countries*, December 2017,

https://www.actionaid.org.uk/sites/default/files/publications/an_alternative_fdi_framework.pdf

⁴¹ Gender and Development Network, *Making trade work for gender equality*, July 2017,

<http://gadnetwork.org/gadn-news/2017/7/4/new-gadn-briefing-making-trade-work-for-gender-equality>

⁴² For more about the MIC, see http://foeeurope.org/sites/default/files/eu-us_trade_deal/2017/mic_10_reasons_factsheet_full_v6.pdf

<http://www.s2bnetwork.org/wp-content/uploads/2017/02/S2b-ISDS-at-a-dangerous-crossroads.pdf>

⁴³ This would be in line with the recent commitment in the UN Committee on the Status of Women to "ensure that the perspectives of all rural women and girls are taken into account, and that women, and girls as appropriate, fully and equally participate in the design, implementation, follow-up and evaluation of policies and activities that affect their livelihoods, well-being and resilience.", Commission on the Status of Women Sixty-second session, March 2018.

5. BOOSTING GROWTH IS THE MAIN OBJECTIVE OF THE EU TRADE POLICY



Women walking through a market in Luang Prabang, Laos
Photo by Peter Hershey on Unsplash

The European Commission policy paper Trade for All stresses that boosting growth is a major objective of the EU trade policy, both in Europe and in developing countries. GDP growth is in fact the overarching objective of the Juncker Commission because GDP growth is seen by European leaders as the only avenue to create jobs. The same obsession is reflected in the new Aid for Trade strategy. But producing more – which is what GDP growth measures - does not necessarily translate in improved prosperity for all, if does not necessarily generate decent jobs for all, and it can be built on women's exploitation and the destruction of the environment. The link between growth and poverty reduction is not automatic, neither is the link between increase in exports and poverty reduction or increase.⁴⁴ In fact, this obsession with GDP growth is not commanded by the EU Treaties, which only mention growth once (“balanced growth”) immediately followed by references to the importance of the social dimension and the protection of the environment. In addition, this single reference to growth in the EU Treaties concerns the internal market – not the external relations.

Economic policy and planning, and the EU trade and investment policy, should not be based on GDP growth – this is anachronistic and does not pay tribute to women's unpaid care work. Back in 1991 (sic!), the CEDAW Committee had already recommended

to states to measure and value the unremunerated domestic activities of women and to quantify and include them in the gross national product. More recently, UN Women stressed that growth “can actually reinforce gender inequalities by lowering labour costs or transferring the costs of unpaid care and domestic work to women. In addition the benefits of growth may be distributed in such a way as to reinforce the existing patterns of economic power, gender hierarchies in employment and patriarchal norms.”⁴⁵ Under SDG 17, States committed to develop measurements of progress on sustainable development that complement gross domestic product.

WHAT SHOULD THE EU DO?

Stop focusing primarily on GDP growth and trade expansion as the compass for designing its trade, investment and development policies, and focus instead on alternative measures of progress that cover all the inter-related dimensions of sustainable development and reflect an equitable distribution of economic and social progress across societies.

⁴⁴ Independent study commissioned by DEVCO entitled “Assessment of economic benefits generated by the EU Trade Regimes towards developing countries”, commissioned by the Policy and Coherence Unit of the Directorate General for Development Policy and International Cooperation (DEVCO), 2015, https://ec.europa.eu/europeaid/policy-analysis-export-performance-and-poverty-reduction_en

⁴⁵ UN Women, *Progress of the World's Women: 2015-16, Transforming Economies Realising Rights*, p 199, 2015, http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf

CONCLUSION

CONCORD supports the inclusion of a commitment to relevant international women's rights standards (CEDAW and relevant ILO conventions) in the EU Free trade and investment agreements. The possibility to include this in the sustainable development chapters of the EU Free Trade Agreements is an option that the EU should seriously consider. This may contribute to stronger cooperation between parties to the agreements on issues relevant to women, to strengthen capacity building and to give weight to relevant international standards and the need to comply with them. Wherever they sit in the trade and investment agreements, gender equality provisions should be backed with effective enforcement and redress mechanisms.

UNCTAD has pointed to the weaknesses of the gender chapters included in the Chile-Uruguay and Canada-Chile free trade agreements, such as the lack of specific goals, the fact that such provisions do not address the adverse impacts of the agreement themselves on women's economic and social rights, the fact that those chapters do not mandate the harmonisation of gender-related legislation between the parties, or that the dispute-settlement mechanisms do not apply to the gender chapters. Those concerns are also valid for gender provisions to be included in EU Trade agreements.

However, even when gender provisions will be enforceable, this is not a sufficient response to the many challenges related to the impact of trade and investment policies on gender equality and women's rights. CONCORD is therefore recommending in this briefing note many other measures that need to be taken to complement provisions referring to women's rights in the agreements.

CONCORD believes that the EU has an important role to play as a major trading partner and actor in multilateral fora, **to radically shift its approach to trade by giving as much importance to human rights and environmental issues than to economic indicators.** We want a trade policy that does not sacrifice the most vulnerable sectors of society, in and outside Europe, in order to generate GDP growth and expand international trade. This is what Policy coherence for sustainable development and our commitment to Agenda 2030 and the international human rights framework implies more urgently than ever.

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