

POLICY BRIEF

Gender equality and trade: coordinating compliance between regimes

International trade agreements, widely viewed as a tool to promote economic growth, can also be a double-edged sword. While trade treaties generate economic winners and have the potential to greatly enhance the incomes of those on the lower end of the economic scale, they also create losers — and a disproportionate number are women, 70 per cent of the world's poor.

When trade arrangements further marginalize women, who typically work in at-risk economic sectors or are less able to change jobs to adapt to new economic realities, everyone loses. It is only when everyone can participate actively in the economy that long lasting gains are possible. In simple terms, when more women are in the workforce, poverty is reduced. More broadly, taking human rights into account in trade agreements can in the long run benefit more people and produce more sustainable growth.

The World Trade Organization (WTO) estimates that nearly 400 preferential trade agreements have been negotiated since the world's leading trading nations established its predecessor, the General Agreement on Tariffs and Trade (GATT), in 1948. No matter that global trade talks have stalled; around the world, a rush of bilateral and regional trade negotiations has filled the void.

The accelerated pace at which bilateral and regional trade agreements have been negotiated in recent years as well as their sometimes broader coverage highlight a glaring gap in global governance: trade rules too often clash with international human rights obligations, including gender equality rights. Not only do such inconsistencies challenge the advancement of human rights, they also undermine the global welfare benefits that many trade agreements seek to bring about. The challenge for policy makers and governments is to make global trade rules and international human rights obligations more mutually reinforcing.

To examine the intersection between trade and gender equality rights, The North-South Institute, in collaboration with the University of British Columbia's Asia Pacific Dispute Resolution Project and the University of Ottawa's Human Rights Research and Education Centre and School of International Development and Global Studies, has organized the conference Coordinating Compliance between Gender

A garment factory in Southeast Asia.

Key points

- Trade rules can conflict with international human rights obligations, including gender equality rights.
- The governance gap between trade rules and human rights obligations must be closed to maximize the global welfare benefits of trade.
- Policy makers and governments must act to ensure that trade and human rights regimes are complementary and coherent. This could begin at the trade negotiating table.



The North-South Institute
L'Institut Nord-Sud

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Equality Rights and Trade. The focus of the one-day event is to identify ways in which governments and donor agencies can better comply with human rights obligations, particularly gender equality rights, in their trade commitments.

Specifically, the conference aims to explore issues raised by the intersection of two multilateral regimes: the GATT and WTO trade rules with human rights obligations as elaborated in UN and International Labour Organization (ILO) agreements, in particular the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Trade liberalization and poverty reduction

A focus on the equal rights and gender dimensions of trade liberalization allows for a broader view of poverty reduction and sustainable economic growth. Currently, the WTO and related international financial organizations such as the International Monetary Fund, the World Bank and the OECD view poverty as strictly an economic development issue. In contrast, international human rights bodies consider the root of poverty to be much more complex than a lack of income. They attribute it to inadequate and/or inequitable access to food, water, health, shelter, education, decent work and personal security — basic rights that are guaranteed under several international conventions (see last page).

When governments disagree on the interpretation of trade rules, the WTO and other trade agreements provide dispute resolution mechanisms to deliver legally binding solutions. However, these dispute settlement mechanisms are narrowly defined and not concerned with international commitments to reduce poverty and gender inequality. In other words, a trade dispute rarely provides an effective forum to address governments’ sometimes conflicting trade and human rights obligations.

Trade and human rights

The proposed 1948 Charter for the International Trade Organization that never came into being nevertheless included significant human rights language. For example, its Article 7 would have required signatories to “recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade



Malaysian woman weaving songket.

and, accordingly, each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.” Neither the GATT, which emerged as the de facto trade organization after the charter effort failed, nor its 1995 successor, the WTO, said much about human rights. These trade bodies instead focused on relations between states rather than on the economic conditions of the people impacted by trade.

Still, WTO members recognized in the preamble of their agreement establishing the organization that “relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income . . .”

A basic doctrine of the WTO trading system today is the principle of “national treatment”, whereby member states may not discriminate against imported goods or services in order to protect or promote local goods or services. However, in exceptional circumstances, trading nations have acted in concert to restrict trade. One prominent case was the UN-sanctioned trade boycott of apartheid South Africa in the name of human rights. But such an approach makes the support of human rights an exception to accepted trade rules rather than an integral part of a trading regime.

Furthermore, treating human rights as an exception does not provide much guidance for trade negotiators on how to reconcile conflicting norms and interests. At the same time, there is a growing recognition that the commitments governments make in trade agreements can impact or constrain their ability to meet legal obligations to respect, protect, promote and fulfill human rights and gender equality.

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For example, WTO agreements permit national governments to establish free trade zones where foreign investors may be exempted from national labour standards. While this has meant increased employment for women in some countries, studies have identified gender-related barriers in these zones including discrimination in hiring, wages, benefits, career development, as well as occupational health and safety concerns and a failure to accommodate women’s needs with respect to pregnancy, maternity leave or childcare.¹

Some new bilateral trade agreements include labour chapters in which the parties make legally binding commitments to observe ILO core labour standards. However, despite proclaiming non-discrimination principles, these standards lack teeth in addressing gender equality rights or women’s workplace rights in areas such as protection from sexual harassment and physical abuse. In addition, they provide insufficient mechanisms to tackle the broader employment implications of trade liberalization (including women’s increasing employment in the informal economy) on women’s rights to livelihoods.

In trade agreements, “rights holders” are corporations, but it is their governments that face economic sanctions under the WTO Dispute Settlement Process. When trade rights conflict with human rights, trade usually prevails. For instance, again using a South African example, the country’s post-apartheid constitution guarantees every citizen access to healthcare services. However, a prior commitment by the country’s then apartheid-era government to open health services to commercial providers under the 1995 General Agreement on Trade in Services, has effectively restricted health care to those who can afford to pay for private services. In this way, trade obligations may make it harder for the government to fulfill its constitutional obligations to progressively improve access to healthcare.²

Conflicts between trade agreement provisions and people’s rights to a livelihood, health care and food have also been identified. For example, exports of cheap chicken parts from some developed countries have undercut poor local chicken producers

in developing countries who are mainly women, putting them out of work. In Ghana, Honduras and Indonesia, small-scale rice producers have been squeezed out by surges in rice imports from subsidized producers in the United States, Vietnam and Thailand.³

Human rights observers, civil society organizations and researchers have identified other areas of conflict. For example, under the 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, governments are required to protect the intellectual property rights of corporations, including over medicinal and aromatic plants. In this way, governance of rights to knowledge resources, traditionally managed by rural and indigenous populations, are now subject to multilateral and regional trade agreements. In contrast, other multilateral agreements such as the 1993 Convention on Biological Diversity, acknowledge the different and complementary roles of men and women governing access to, knowledge and use of traditional medicines.

Trade rules and gender equality rights

Under international human rights law, governments have duties to respect, protect, promote, and fulfill human rights. “Rights holders,” in this regime, are women and men. The widely accepted Universal Declaration of Human Rights along with the international Covenants on Political and Civil Rights and on Economic, Social and Cultural Rights provide support for these principles in their recognition of the equal rights of women and men.

CEDAW further defines and elaborates on the general guarantees of non-discrimination in those conventions from a gender perspective.⁴ The basic CEDAW principles underpinning gender equality rights are the prohibition of discrimination against women and the active promotion of equality between the sexes. As signatories to CEDAW, governments are obliged to ensure that their legal systems prohibit direct or indirect discrimination against women. (Indirect discrimination may occur when laws, policies or programs are based on seemingly gender-neutral criteria that in reality have a detrimental impact on women.⁵)

Both trade and human rights regimes are dynamic. In each, signatories commit to make improvements over

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time, as capacities and resources permit. Trade policy makers need to carefully examine the relationship of trade agreements to a range of other rights, and the best time to consider these competing rights is at the negotiation stage.

There are some indications that this balancing act is beginning to happen. For example, recent Canadian bilateral free trade agreements include enforceable commitments to uphold core labour standards. The WTO-sponsored Aid for Trade initiative is beginning to demonstrate a growing awareness of the gender implications of trade deals. This initiative is aimed at helping developing countries participate on a more equal footing in international trade by building their capacity to export. In October 2010, the WTO's program to promote and monitor Aid for Trade examined the implications of trade-related development assistance for women for the first time in its five-year history.

These examples are positive, though still inadequate, signs that there is a need to implement concrete trade-related measures to address gender inequalities. The conference Coordinating Compliance between Gender Equality Rights and Trade will consider other ways that barriers can be broken or overcome.

One issue to be considered involves boosting awareness at the trade negotiation stage. Negotiators must have the capacity to assess the gender impacts of proposed agreements. The conference may also consider raising some pointed questions. For existing trade agreements and, more importantly, international trade regimes, are there review procedures to ensure that they adhere to equal rights principles? Are there adequate monitoring mechanisms in place to track the impact of agreements on women and other marginalized groups? What kind of evaluation mechanisms should the Aid for Trade initiative consider to ensure that both women's and men's trade interests are equally addressed?

Woman cutting rice.



The WTO could be the natural place to lead this process, given its expertise in global rulemaking on trade issues. Regardless of the source of leadership, however, closing the global governance gap requires recognition that the aims of trade rules and human rights obligations can be complementary instead of conflicting, reinforcing instead of incoherent. In fact, taking action to address the differing impacts of global trade on women and men could improve trade's potential to reduce poverty and inequality – the very aims that many international trade agreements hope to realize. 🌐

- 1 See "Employment and Social Policy with Respect to Export Processing Zones," ILO Geneva, March 2003. Available at www.ilo.org/public/english/standards/relm/gb/docs/gb286/pdf/esp-3.pdf.
- 2 See *Trade in Health-Care Related Services in the Global Economy: The Perspectives of South Africa and Canada* by Zandile Gabela. 2009. PhD thesis available at <http://gradworks.umi.com/MR/56/MR56372.html>.
- 3 See "The World Food Crisis and the Right to Adequate Food," by Michael Windfuhr in Mark Gibney and Sigrun Skogly, eds., *Universal Human Rights and Extraterritorial Obligations*. University of Pennsylvania Press, 2010.
- 4 See "Convention on the Elimination of All Forms of Discrimination Against Women." Available at www.un.org/womenwatch/daw/cedaw.
- 5 See general recommendation No. 25 to the CEDAW, available at www.un.org/womenwatch/daw/cedaw/recommendations/index.html.

Trade rules and gender equality rights: overlapping regimes

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

The basic principle of the Convention is to guarantee equal outcomes, not just equal opportunities, for women and men. Under CEDAW, all state parties must “respect, protect, promote and fulfill” women’s rights. They must also ensure that private organizations, enterprises and individuals do the same. UN members agreed in the Beijing Platform for Action (1995) to “seek to ensure their trade agreements do not have an adverse impact on women’s new and traditional economic activities.” Trade mechanisms, however, are not structured to address conflicts between trade rules and gender equality rights. What follows is a partial list of international agreements that affect both trade and gender equality rights.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

This covenant proclaims the “equal right of men and women to the enjoyment of all economic, social and cultural rights” such as “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.” The ICESCR states that international donor states should ensure the policies and decisions of multilateral organizations, including the World Trade Organization (WTO), the International Monetary Fund and the World Bank, conform with the covenant. There are potential conflicts, however, between the rights to an adequate standard of living, to food, and to the highest standard of health on the one hand, and trade agreements including the Agreement on Agriculture, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the General Agreement on Trade in Services (GATS). The UN Special Rapporteur on the Right to Health recommends that governments conduct right-to-health impact assessments if they engage in trade liberalization that affects this area.

Convention on Biological Diversity (CBD), 1992

This convention recognizes “the need for the full participation of women at all levels of policy making and implementation for biological diversity conservation.” In many nations, women and men have

distinct and inter-related roles and responsibilities for natural resources and traditional knowledge, including medicine, but this is not reflected in world trade rules or processes. WTO trade ministers agreed in 2001 to find ways to interpret and implement trade agreements, notably TRIPS, in ways that are more supportive of the right to health, but progress has been slow. The mandates of WTO and CBD are also somewhat conflicting: the WTO addresses private investors’ rights, while the CBD provides for the sharing of benefits arising from resources.

International Labour Organization (ILO) Conventions

In the 1998 Declaration on Fundamental Principles and Rights at Work, all ILO members reaffirmed their commitment to respect and promote core labour standards, which aim to eliminate all forms of forced or compulsory labour, effectively abolish child labour, eliminate gender discrimination in employment and occupation, and ensure freedom of association and the right to collective bargaining. While bilateral trade agreements increasingly include commitments to observe core labour standards, the standards themselves say little about gender-specific workplace concerns such as sexual harassment and the increase in employment vulnerability for women that can result from trade agreements (e.g., the resulting job losses in the garment sector that accompanied the phase out of the WTO’s Agreement on Textiles and Clothing).

UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 2003

Poverty, unemployment, and underemployment in developing countries are increasingly fuelling temporary labour migration from poor to less poor countries. This convention addresses the low wages, poor working conditions, sexism, lack of job protection and security for these migrants, approximately half of whom are women.

While the WTO’s General Agreement on Trade in Services (GATS) facilitates the movement of some categories of professionals (mainly in male-dominated professions such as engineering and architecture and for business executives) across borders, it does not include mechanisms to govern and protect the movement of less-skilled workers, such as domestics, where women predominate. ☪



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