



## Women's Rights, the World Trade Organization and International Trade Policy

The trade policies of national governments and the activities of the World Trade Organization ("WTO") have important ramifications for economic and social development throughout the world. This primer describes the WTO and the relationship between trade policies and gender, and concludes with an agenda for action.

### What is the WTO?

The WTO is an international organization based in Geneva that was established in 1995. It was formed to oversee the series of trade agreements that had emerged from the "Uruguay Round" of negotiations on an international trade agreement called the *General Agreement on Trade and Tariffs* ("GATT") and to implement a dispute settlement process regarding members' rights and obligations under these agreements. As of January 2002, 144 countries are WTO members. Government representatives of these countries steer the activities of the organization.<sup>1</sup>

Officially the WTO is a member-driven 'one-country one-vote organization'. In practice, however, there is a long-standing custom of decision-making "by consensus" and **rich countries exert disproportionate influence within the organization**. While some of the world's least developed countries are not even represented in Geneva and have minimal capacity to participate in negotiating sessions, the richer countries have large staffs of trade specialists, lawyers and expert negotiating teams. Moreover, powerful transnational corporations have been successful in swaying trade policy to suit their interests.

### Why the push for international trade liberalization?

Mainstream economic theory teaches that international trade is beneficial to all countries and their citizens. This belief is based on the idea of "**comparative advantage**" — each country should focus on what it does best and trade for other products in order to reach the most efficient allocation of resources in the global economy and the highest levels of output and growth in all countries. It is assumed that trade leads to growth which in turn promotes national development and reduces poverty. While it is recognized that trade produces both "winners" and "losers" in every economy, the theory is that the "losers" can be compensated from the net gains. The evidence, however, does not support these simplistic assumptions. Furthermore, the "comparative advantage" of some countries is their low wages, poor environmental regulations and lax labour standards. **Comparative advantage based on the exploitation of women and the environment is incompatible with a human rights and human development approach, irrespective of the perceived economic benefit or efficiency for the country.**



The stated objective of the WTO is “to help trade flow smoothly, freely, fairly and predictably.” The original *GATT* was limited to facilitating trade in goods by eliminating so-called ‘trade barriers’ (e.g. quotas, tariffs) and articulating the basic principles of free trade (i.e. non-discrimination, fiscal and regulatory independence of states)<sup>2</sup>. The scope and power of the organization, however, has greatly increased. **Today, the WTO’s reach includes issues of service provision, intellectual property, health and safety standards, and a vast array of products.** It is now the primary actor in international trade, administering multilateral agreements, hosting negotiating sessions, handling disputes, monitoring national trade policies, and providing technical assistance and training for developing countries.

With good reason, the WTO has been described as “the institutional face of globalization” and has been the focus of many so-called “anti-globalization” protests in recent years. The organization’s structure has been **non-transparent, unaccountable, non-participatory, undemocratic, and imperialistic**, and trade liberalization has become an ever-expanding end in itself. Furthermore, the WTO’s contribution to human rights protection and sustainable development is questionable.

### Why is gender analysis important?

Case studies reveal that women’s time, labour, sexuality and health are at times exploited in the pursuit of gains from trade in various countries. In fact, some governments overtly appeal to sexism to increase their country’s trade revenues, for example, by using low wages of women as a basis to compete internationally in export industries or through campaigns to encourage married women to do home-based work. Furthermore, men and women experience poverty differently and women do not have equal access to and control over

resources, do not enjoy equal protection of human rights, and have distinct roles in terms of production and reproduction. For these reasons, women and men may benefit from or be harmed by trade policies in different ways. They may also respond differently to the economic incentives set up by the governments’ chosen strategies. Trade policy, however, tends to be **gender-blind and silent about gender-specific repercussions.**

Consider the following examples:

- *Women’s unpaid work:* Trade liberalization policies have pulled many women into the formal labour force and also affect the cost and availability of food, medicines, household goods, and social services. Each of these impacts can increase the demands on women’s unpaid labour — women may have less time available for reproductive work but simultaneously face greater demands to provide services. Unfortunately, studies show that men are not picking up the slack.
- *Women’s conditions of employment:* Women are increasingly at risk of working in highly exploitative and dangerous conditions because trade liberalization tends to increase their employment in the industrial sector, in commercial agriculture and in export processing zones, which are characterized by low rates of pay and sub-standard conditions. Globalization has also fueled informal employment arrangements and subcontracting in female-dominated industries (such as food and garment production), threatening the security, status and rights of workers.
- *Gender inequality constrains productivity:* Gender-based inequalities (especially in education, health and training) hinder women’s abilities to take advantage of new opportunities created by trade liberalization such as skilled employment and entrepreneurial opportunities. This in turn con-

strains the “output response” to the economic incentives created by trade promotion policies and constrains the export capacity of the whole economy.<sup>3</sup>

Gender analysis reveals that the relationship between trade and gender relations is complex and ambiguous. **The question we need to ask is not whether trade liberalization is good or bad for women as a group, but how trade policy can contribute to the achievement of human rights for everyone and promote sustainable development in all societies.** Gender analysis demonstrates how pushing forward with more of the same “one-size-fits-all”, gender-blind trade liberalization policies — which do not consider local social factors and human needs — will not remedy inequalities in the economy or eradicate poverty. The challenge is to implement policies that will.

### The laws that bind

The rules of the international trading system (including the trading rules, conflict resolution mechanisms, etc.) currently reflect the power of rich countries and transnational corporations. These vested interests are apparent at two different stages: a) the making of the rules, and b) the implementation, enforcement and interpretation of the rules. The rules are contained in a set of agreements which have been elaborated in successive rounds of very political, intense and often biased negotiations between state representatives. This set of agreements includes the *GATT*, the *Agreement on Agriculture*, the *Agreement on Technical Barriers to Trade* (“TBT”), the *General Agreement on Trade in Services* (“GATS”), the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (“TRIPS”), among others.<sup>4</sup>

Untempered trade liberalization not only runs the risk of further marginalizing women from key activities in the national economy but may itself engender significant violations of women’s social and economic rights.

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Establishing the rules is only the first stage of the game however; the implementation, enforcement and interpretation of the rules is another matter altogether. While the agreements that make up the WTO system are the product of political negotiations, they become public international law once they are adopted. As international law they are enforceable, binding on states, and subject to the rules of international legal interpretation (as opposed to U.N. conference documents for example, which are aspirational but do not have the force of law behind them). In other words, **international trade rules “have teeth”.**

This is at least in part because **through the advent of the WTO, the international trade system was transformed from a political/diplomatic regime to a highly legalistic one.** When a country is not following the rules, another country can bring a case against them in a court-like setting known as a dispute settlement panel. The panel makes a judgement as to whether the country is violating the law, and if so, orders them to comply with the law or face

sanctions. This is not a negotiation; it is a litigation-based enforcement system. The judgements can be appealed to the Appellate Body (sort of like a “supreme court of international trade”).<sup>5</sup>

So for example, while the *Convention on the Elimination of All Forms of Discrimination Against Women* (“CEDAW”) states that countries must grant women equal nationality rights with men (Article 9), many countries do not and there are few consequences for their defiance. In contrast, when a WTO member country does not meet the standards for the protection of patents mandated



by the *TRIPS* agreement, or imposes a tax that makes locally-produced products cheaper than foreign ones (prohibited by *GATT* Article 3), the countries who are harmed can bring a case against the defiant country and punish the offender for their breach.

The legal stature of these rules also means that if circumstances change or a government realizes that the provisions are not “a good deal” for their country, they can not simply back out of their commitments or negotiate different provisions. And unlike some other legal regimes (e.g. human rights treaties including *CEDAW*), **states must accept the entire package of WTO rules or none at all**. This is a major problem for developing and less powerful countries since they are less able to influence the formulation of the rules in the first place.

Finally, the legal nature of the trading system is important because some of the most complex WTO agreements have important provisions that are subject to differing interpretations. While the words on the paper may be clear, how to apply them in real-life scenarios can be more difficult. In a dispute settlement proceeding, the “judges” interpret the rules based on the arguments put forward by the participants in the proceedings and principles of legal interpretation (much like in national constitutional litigation). Hypothetically, they may decide whether clothing produced under sweatshop conditions and sweatshop-free clothing must be treated as the same products, whether a pesticide ban is necessary for the protection of public health, or whether providing drugs necessary for the treatment of a pandemic at a low cost is “a circumstance of extreme emergency”.

## How to do gender analysis of economic policies?

- Examine what is happening to men and women separately in order to compare changes in their status and responses to the changes. Do not focus exclusively on women and girls.
- Consider other variables such as race and class. Do not oversimplify by focusing exclusively on gender.
- Consider all three spheres of work: reproductive work in the family/household, reproductive work in the community, and productive labour. Consider both consumption and service provision in each sphere.
- Do not focus solely on quantitative measures. Consider issues of empowerment, well-being, cultural integrity/identity, environmental integrity and the quality of reproductive work and nurturing.
- Consider how economic policies impact on prices, the types and quantities of goods available, and the provision of services, and consider how each of these impacts on household incomes and quality of life.
- Explore how gender relations and poverty impact on economic policy implementation and effectiveness. Explore why the expected positive benefits of trade liberalization do not materialize.
- Choose appropriate indicators in empirical work, including human rights-based indicators and indicators related to everyday life. Obtain accurate sex-aggregated data which accurately reflects how resources are allocated between men and women.
- Consider economic policies in their broader context, not in isolation, and highlight constraints imposed by women's socially constructed roles.

**Legal imagination, not hard economics, determines these cases.** While the answers to these questions may seem inconsequential, they can have huge impacts on the actions governments take and hence on the lives of women.

### What are the implications of this legal model?

On the one hand, legal enforcement removes flexibility and the possibility of adopting trade policies that coincide with national development strategies. The mere threat of legal action may be sufficient to force a government to change their policies. The dispute settlement process also limits participation and transparency because only governments can act as complainants and defendants in the proceedings. Furthermore, effective participation in a dispute proceeding is very costly and requires specialized training. Finally, the legal forum focuses very narrowly on specific rules and facts, ignoring the broader context and full range of values and factors relevant to justice and development. **Gender issues, for example, are usually not “legally relevant”.**

### A strategic opening?

On the other hand, as opposed to negotiations and ‘behind closed doors’ deals, the judicial setting at least formally places the parties on an equally footing and allows them to present their positions in front of formally impartial decision-makers. The judicial setting also provides an opportunity to develop the law and interpret provisions in ways that further a social justice agenda. In deciding whether a state is acting in a manner consistent with the rules, the panelists look at the relevant provisions and must decide what they mean in light of modern day values, the overarching objectives of the agreement (which often include environmental protection and human development), and the entire body of principles that constitute international

law. **Given the intensified advocacy around the WTO by women’s groups, we should consider the potential of legal interpretation and dispute settlement proceedings to steer existing WTO rules in a pro-poor, pro-equality direction.**

### The Post-Doha Agenda

The Ministerial Conference is the WTO’s top decision-making body; it meets at least once every two years. Country representatives come together to negotiate new agreements and market access commitments, clarify existing agreements and set the organization’s agenda. The most recent Ministerial was in **Doha, Qatar, in November 2001**. The official outcomes were a 10-page Ministerial Declaration plus a declaration on intellectual property and public health (focusing on pharmaceutical patents, including HIV/AIDS medications) and a decision on “implementation” (i.e. the concerns of developing countries).<sup>7</sup> The mandate coming out of the meeting is several years of intense and complex negotiations with an ambitious deadline of January 2005 for a new set of agreements. Despite the official “development” focus of the conference, the outcomes **fall far short of any development objective and were achieved by undemocratic, manipulative and biased processes.**

In light of Doha, analysts and activists from around the world are articulating an action agenda. Here are some of its components:

- **No new issues:** The WTO’s mandate must be limited to trade issues. It is not the appropriate venue for issues such as labour, the environment, human rights, and competition policy. Other institutions (e.g. the International Labour Organization, the World Intellectual Property Organization and U.N. committees) should be given the resources they need to properly address these other issues.



- ***New systems of governance and accountability:*** The WTO has been secretive, undemocratic and unaccountable for too long. Political will and creativity must be devoted to establishing structures for consultation, dialogue, and stakeholder involvement in decision-making and monitoring. Clear ground rules must be established concerning information sharing, reporting and stakeholder participation. Participation needs to be based on principles of transparency, collaboration, learning, equity and flexibility. Furthermore, governments need to be accountable to their own citizens for their actions at the WTO.
- ***Judicial independence:*** The dispute settlement system needs to have complete independence from the WTO Secretariat, member governments and transnational corporations who may try to inappropriately influence outcomes. Dispute panelists and the Appellate Body must apply the full body of principles of international law and interpret WTO rules consistently with the objectives of equality and sustainable development. In addition, clear and fair procedures for the participation of non-governmental stakeholders, including NGOs, need to be developed.
- ***Human development as the central guiding principle:*** We need to re-think the dominant model of international trade and challenge its underlying values and assumptions. Why not 'co-operation' instead of 'competition' as a basic assumption, for example? Trade policy must be situated within the overall development strategy of a country and each country must have the flexibility and policy autonomy necessary to achieve their development goals. Trade liberalization can no longer be seen as an end in itself. The WTO should be evaluated according to its contribution towards poverty reduction, equality and sustainable human development.
- ***Putting developing countries first:*** Imbalances in the WTO must be redressed and the needs of developing countries should define the WTO's agenda. The negotiating and monitoring capacity of developing countries must be increased and mechanisms must be developed to hold transnational corporations accountable for their actions. Developed countries need to open their markets to the products of developing countries and grant them appropriate exceptions to liberalization commitments. Finally, developed and developing countries need to work together to redistribute opportunities in favour of the poor and women.
- ***Gender analysis:*** We simply don't yet know enough about the relationship between gender and trade policies. We need comprehensive gender analyses of current trade policies, specific WTO agreements, different sectors and the full range of trade-related issues. We need to determine when women stand to win and when they stand to lose from new trading relations and also how different trade-related policies impact on women's empowerment. Researchers and women's rights advocacy groups need to work together to articulate alternative, appropriate policies that guarantee women's rights and contribute to a more just and sustainable world.

## Looking for further information?

### International Gender and Trade Network

<http://www.genderandtrade.net>

1225 Otis Street, NE, Washington, DC 20017

Tel: 202-635-2757 ext. 115 Fax: 202-832-9494

### Third World Network

<http://www.twinside.org.sg/>

228, Macalister Road, 10400,

Penang, Malaysia Tel: 60-4-2266728 Fax: 60-4-2264505

### Nilüfer Çağatay, "Trade, Gender and Poverty",

October 2001, United Nations Development Programme.

[http://www.undp.org/mainundp/propoor/docs/pov\\_tradegenderpoverty\\_doc.pdf](http://www.undp.org/mainundp/propoor/docs/pov_tradegenderpoverty_doc.pdf)

### The World Trade Organization

<http://www.wto.org>

The Association for Women's Rights in Development (AWID) is an international membership organization connecting, informing and mobilizing people and organizations committed to achieving gender equality, sustainable development and women's human rights. A dynamic network of thousands of women and men, AWID members are researchers, academics, students, activists, business people, policy-makers, development practitioners, funders, and more, half of whom are situated in the Global South and Eastern Europe.

AWID's goal is to cause policy, institutional and individual change that will improve the lives of women and girls everywhere. Since 1982, AWID has been doing this by facilitating ongoing debates on fundamental and provocative issues as well as by building the individual and organizational capacities of those working for women's empowerment and social justice through its International Forums and strategic communications.

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## Footnotes

<sup>1</sup> See generally [http://www.wto.org/english/thewto\\_e/thewto\\_e.htm](http://www.wto.org/english/thewto_e/thewto_e.htm).

<sup>2</sup> For definitions of trade terms, consult one of the many available glossaries or primers, including Oxfam's at <http://www.maketradefair.com/stylesheet.asp?file=08042002112446> and IGTN's at <http://www.genderandtrade.net/EconoLit/Literacy.html> or a textbook such as M. Trebilcock and R. Howse, *The Regulation of International Trade* (1999).

<sup>3</sup> N. Çağatay, *Trade, Gender and Poverty*, United Nations Development Programme: October 2001, p. 26-7. The author notes that although most dimensions of gender inequality (e.g. health, education, skills training, etc.) constrain a country's productivity and economic growth, wage inequalities seem to actually boost economic growth in some industrial sectors faced by international competition. Pursuing gender-based wage differences as a country's competitive advantage is not, however, consistent with a rights-based approach to development nor necessarily a sound long-term economic development strategy.

<sup>4</sup> The full text of these agreements can be found at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

<sup>5</sup> The texts of the decisions and more information on how the dispute settlement process works are on the 'Dispute Settlement' page of the WTO's website: [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm).

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<sup>7</sup> These texts can be found on-line at [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm).

<sup>8</sup> The full texts of these agreements can be found on-line at [http://www.wto.org/English/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/English/docs_e/legal_e/legal_e.htm)

# Gender across the full range of trade issues:

Trade between different countries is regulated by a large number of negotiated agreements, including bilateral agreements between two countries, multilateral agreements between groups of countries (including regional free trade agreements such as NAFTA, Mercosur, CARICOM, etc.) and also a group of agreements that fall under the umbrella of the WTO (most of which were the outcome of the 1986-94 'Uruguay Round' of negotiations)<sup>8</sup>. These agreements are like contracts between the countries that sign them, granting each country certain rights and confining their actions to within certain limits. While these texts are almost without exception silent on gender, **consider the following examples of gender issues in WTO agreements:**

GATS: *The General Agreement on Trade in Services* applies to service providers including banks, telecommunication companies, tour operators, health care providers, energy companies and education providers. This agreement has profound impacts on women who are the majority of workers in the service sector, on access to and availability of public services, and on governments' abilities to regulate the quality of health care and education provided.

TRIPS: The agreement on *Trade-Related Intellectual Property Rights* sets out the rules of how intellectual property rights (including copyrights, trademarks,

product names, industrial designs and "trade secrets") should be protected when international trade is involved. Its ramifications include public health, food security, biodiversity, agriculture and traditional knowledge, all of which have gender-specific impacts.

Agreement on Agriculture: This agreement seeks to promote trade liberalization in the agricultural sector and is therefore of concern with respect to food security and small farms producing food for local consumption as well as to sustainable livelihoods of many female agricultural workers.

SPS and TBT: These two agreements (*Agreement on Sanitary and Phytosanitary Measures* and *Agreement on Technical Barriers to Trade*) aim to promote the harmonization of domestic health and safety standards. Their potential implications for women's health are immense. These agreements should also be of particular concern because they set very high standards for governments that wish to implement precautionary regulations to protect the health of their citizens or the environment and because they greatly expand the scope of governance by the WTO by condemning measures that are not discriminatory but are simply deemed to be *excessive*.



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