

Making Global Trade More Gender-Inclusive

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The benefits of global trade are numerous and well-documented, but trade channels can still be made more inclusive for women entrepreneurs and wage workers. Incorporating pre-ratification conditions into the trade agreement negotiation process to remove legal barriers against women's equal participation in the economy (and therefore equal advantages from trade), as well as instituting follow-up enforcement mechanisms, can help to ensure trade benefits women and men more equally going forward.

Increasing women's participation in global trade, as both business owners and wage workers, can improve outcomes for women, their families, and their countries. When women earn a competitive income, they spend 90 percent of it on health, food, and education, which means that increasing women's access to income can contribute to breaking intergenerational cycles of poverty (ITC, 2015). Yet only about one third of full-time formal sector workers employed in firms worldwide that are part of the World Bank's enterprise surveys are women.^[1] Women's wage employment within exporting companies is particularly low. An ITC survey found that in almost half of exporting companies, fewer than 20 percent of employees are female. In three-quarters of these companies, women's employment is below 50 percent (ITC, 2015). Women's workforce participation is (not surprisingly) concentrated in traditionally-female sectors like textiles (64 percent) and clothing (50 percent), where there is higher demand for low-cost, flexible labor.

Across the world, less than one in five of the companies in the enterprise survey have a woman in charge of management. Many women-owned businesses remain in the informal sector, where access to capital, market information, and networks is sparse. Because women tend to own smaller businesses and often lack the resources to expand, they are disadvantaged in scaling up to a level that allows them to participate in global trade channels (ITC, 2015). Businesses located in the informal sector face higher trade costs as well as difficulty conforming to imposed health standards and quality control regulations (ITC, 2015).^[2]

One factor behind lower female participation in business and trade as both workers and employers is that 79 countries worldwide restrict the type of jobs women can do on the grounds of their sex alone, including 15 countries that have 8 or more such restrictions. Fifteen countries have laws on the books saying husbands may prevent their wives from accepting jobs. Countries that impose work-hour or industry restrictions have lower female labor force participation rates (45 percent compared with 60 percent with no restrictions).^[3] And the restrictions stand in contravention of the global norms laid down in Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment...

A second factor that might reduce the impact of trade provisions covering issues including labor rights that could protect women workers is weak civil society capacity to bring complaints under those trade agreements. Elliot and Freeman (2003) examine cases of workers' complaints brought under a US trade preference program (the Generalized System of Preferences), and find relatively higher success rates when human rights groups are involved in the petition, "perhaps suggesting that they bring greater legitimacy to the demands for improved workers' rights" (Elliot and Freeman, 2003). Reports from the European Commission on the EU's own enhanced Generalized System of Preferences (GSP+) suggest the same: "As with all GSP+ monitoring, civil society plays a crucial role. International and local organizations have provided a great deal of information on the practical effects of the GSP+, including beneficiaries of [human rights, labor, climate change and governance] conventions" (European Commission, 2016).

Countries that are open to the use of trade tools to reduce global gender discrimination might try three different approaches: improving the legal environment facing women workers as part of bilateral trade negotiations, using sanctions to discipline countries that legally discriminate against women's participation in particular sectors and supporting local women's rights groups to use protections under trade agreements to further the equality agenda.

Countries seeking to enter into bilateral trade agreements can negotiate pre-ratification reforms and treaty language related to women's rights.

The United States' trade agreements with Morocco, Oman, Bahrain, Chile, and Guatemala have used negotiations to push pre-ratification conditions around labor laws. Oman, for example, had a law that placed severe restrictions on labor organizing within the country—and needed to reform the law as a condition for completing a preferential trade agreement (PTA) with the US (Chauffour and Maur, 2011). A similar tool could be used to reform laws restricting women's rights to work and/or run a business.

In addition, treaty language can address gender inequality. Some existing US bilateral trade agreements include language around gender issues. The Peru Free Trade Agreement includes a labor cooperation and capacity-building mechanism which includes "development of programs on gender issues, including the elimination of discrimination in respect of employment and occupation."^[4] Future agreements could be more specific about the particular discriminatory barriers to be addressed, and supporting legislation could specifically fund mechanisms to help address those discriminatory issues as well as lay down timelines and review mechanisms.

Countries might impose restrictions on imports demonstrated to have been manufactured under conditions of legally enforced discrimination (gender apartheid).^[5]

Countries should consider the possibility of imposing sanctions on trade partners that fail to conform to international norms on the equal treatment of women in the workplace as specified under the Convention on the Elimination of All Forms of Discrimination against Women. Economies that enforce gender apartheid in particular sectors through laws egregiously discriminatory toward women could face sanctions regarding the products of those sectors. For example, countries might refuse to import ore or minerals from economies where women are legally excluded from work in the mining sector, or metal products from economies that ban women from metalworking. These laws contradict CEDAW language guaranteeing women's "right to the same employment opportunities" and "right to free choice of profession."

Any such sanctions would have to be compliant with existing trade treaties. The General Agreement on Tariffs and Trade lays out what trade policies are legal under World Trade Organization treaty member obligations. Article 20 suggests:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health.

Some commentators have argued that Article 20(a) and/or (b) should be interpreted to permit sanctions seeking to induce compliance with universally recognized human rights norms (Harris and Moon, 2015). The CEDAW language around women's rights in the sphere of employment would qualify as a widely recognized set of human rights norms, suggesting gender apartheid sanctions may not fall foul of treaty obligations.^[6]

Recognizing that little substantive good will come from reforming laws that then go unenforced, it is necessary to empower local institutions (e.g., human rights and women's rights groups, trade unions) that can act as "watch dogs" to ensure proper enforcement of gender-equal provisions in trade agreements.

In addition to establishing oversight mechanisms to enforce the non-discrimination aspects and labor rights provisions within trade agreements, as part of the authorizing legislation for new trade agreements, parliamentary bodies should include funding to help empower organizations and institutions with expertise in labor rights and human rights, particularly those already present within and well-versed in local context, and trade treaty language should guarantee the freedom of labor and human rights groups to carry out their functions.

Efforts tailored to building the capacity of human rights groups and other "watch dog" organizations, particularly those with expertise on gender inequalities within local economies, combined with pre-ratification conditions, treaty language, and import restrictions that aim to lessen legal discrimination against women as entrepreneurs and wage workers, may work as an effective package to increase the benefits of global trade for women.

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Endnotes

[1] World Bank Enterprise Survey, <http://www.enterprisesurveys.org/>.

[2] Non-tariff measures (NTMs) in the form of exporting standards, regulations, and customs procedures often lead to fixed costs for exporters—costs that are not offset by the number of products exported. SMEs tend to be disproportionately affected by trade costs as they make up a larger share of the unit cost of their goods, making them less competitive. According to the International Trade Center, 73.5 percent of women-owned firms reported NTMs as challenging, compared to 53.6 percent of men-owned firms. Streamlining border bureaucracy may lower trade costs considerably without compromising quality standards—for both men and women (ITC, 2015).

[3] www.cgdev.org/blog/increasingwomens-economic-opportunities. See also: <http://www.enterprisesurveys.org/~media/GIAWB/EnterpriseSurveys/Documents/EnterpriseNotes/Gender-32.pdf>. Jordan has highest number of laws favoring men over women in the Enterprise Survey database. Removing gender disparity from all 23 involved laws in that country would be associated with an increase in the share of women workers at the firm level by over 14 percentage points.

[4] https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file73_9496.pdf.

[5] For more explanation around this terminology, see <http://www.cgdev.org/publication/us-law-or-executive-order-combat-gender-apartheid-work-discriminatory-countries>.

[6] Article 21(c) of the GATT suggests nothing in the treaty should be taken “to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security” (WTO, 1994). Any UN Security Council- authorized sanctions are covered by this exception. But in the case of anti-apartheid sanctions, while the Security Council did support sanctions, US sanctions provisions (inter alia) went far further than the UN-authorized provisions and yet were not successfully challenged.

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