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C R I T



CTIL STUDY & WTO  
CHAIRS PROGRAMME  
BACKGROUND PAPER ON

**GENDER MAINSTREAMING  
IN PREFERENTIAL TRADE  
AGREEMENTS: AN  
EXAMINATION OF THE  
EVOLUTION OF GENDER  
DYNAMICS IN  
INTERNATIONAL TRADE**

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## **ABOUT THE CENTRE FOR TRADE AND INVESTMENT LAW**

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## ABSTRACT

Preferential Trade Agreements (PTAs) have evolved from being primarily concerned with trade issues to addressing non-trade issues. Apart from focusing on issues like trade in goods, services, and intellectual property-related issues, modern PTAs, especially north-south PTAs, also focus on non-trade issues like labour, environment, gender, and anti-corruption. Earlier, gender issues were generally addressed as part of other chapters. Now, PTAs contain a standalone chapter that solely focuses on gender issues. The nature of obligations concerning gender-related issues is generally in the form of cooperation and dialogues. Barring the Canada-Israel Free Trade Agreement, gender chapters across PTAs mostly remain outside the scope of the dispute settlement mechanism established under the trade agreements. The inclusion of gender issues in PTAs is aimed at furthering the objective of inclusive trade as well as meeting the targets of the United Nations Sustainable Development Goal (UNSDGs) on Gender Equality. Against this background, this Working Paper undertakes a cross-country analysis of how gender issues are addressed at the WTO and in bilateral or regional trade negotiations. In particular, the Working Paper explores, *first*, the concept of gender mainstreaming in international trade; and *second*, provides an evaluation of how gender dynamics is played out in PTAs from the perspective of UNSDG 5 – *Gender Equality*. Additionally, the paper also highlights some of the challenges which deserve increased attention in the discourse of trade and gender in international trade.

## LIST OF ABBREVIATIONS

Abbreviated Form	Full Form
CARIFORUM	Caribbean Forum
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CETA	Comprehensive Economic and Trade Agreement
Chile-Thailand FTA	Free Trade Agreement Between Chile and Thailand
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EAC	Treaty for the Establishment of the East African Community
EC-Central African Party Interim Agreement	Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part
ECOSOC	The Economic and Social Council
EPA	Economic Partnership Agreement
EU	European Union
EU-Algeria Association Agreement	Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part
EU-Israel Association Agreement	Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part
EU- Lebanon Agreement	Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part
EU- SA TDCA	European Union – South Africa Trade Development and Cooperation Agreement
EU-Albania Stabilization and Association Agreement	Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part
EU-Armenia Comprehensive and Enhanced Partnership Agreement	Comprehensive and enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part
EU-Canada CETA	Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part
EU-CARIFORUM FTA	Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part
EU-Central America FTA	Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

EU-Chile FTA	Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part
EU-ESA iEPA	European Union – Eastern and Southern Africa States Interim Economic Partnership Agreement
EU-Georgia Association Agreement	Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part
EU-Jordan Association Agreement	Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part
EU-Kosovo Stabilisation and Association Agreement	Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part
EU-Macedonia Stabilisation and Association Agreement	Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part
EU-Moldova Association Agreement	Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part
EU-Montenegro Stabilization and Association Agreement	Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part
EU-Morocco Association Agreement	Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part
EU-Palestine Interim Association Agreement	Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part
EU-SA TDCA	Trade, Development and Cooperation Agreement (TDCA) with South Africa
EU-Serbia Stabilisation and Association Agreement	Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part
EU-Ukraine Association Agreement	Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part
EU-United Mexican States Economic Partnership, Political Coordination and Cooperation Agreement.	Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part
FTA(s)	Free Trade Agreement
GATS	General Agreement on Trade in Services
GBA	Gender-based Analysis

GSP	Generalised System of Preference
ILO	International Labor Organization
IVF	In-Vitro Fertilization
Korea-Turkey FTA	Framework Agreement Establishing a Free Trade Area between the Republic of Turkey and the Republic of Korea
OCT	Overseas Countries and Territories
OECD	Organisation for Economic Co-operation and Development
Peru-China FTA	Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru
Peru-Australia FTA	Peru-Australia Free Trade Agreement
PTA(s)	Preferential Trade Agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SDG	Sustainable Development Goals
SDG(s)	Sustainable Development Goal/s
SME(s)	Small and medium-sized enterprises
TCA	Trade and Cooperation Agreement
Turkey-Chile FTA	Free Trade Agreement between the Republic of Turkey and the Republic of Chile
UK	United Kingdom
UK-ESA EPA	United Kingdom – Eastern and Southern Africa States Economic Partnership Agreement
UK-Kenya EPA	UK-Kenya Economic Partnership Agreement
UK-SACUM	United Kingdom – South African Customs Union (SACU) and Mozambique
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States/United States of America
USMCA	United States–Mexico–Canada Agreement
WHO	World Health Organization
WTO	World Trade Organization

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## I. INTRODUCTION

Modern trade agreements are fast evolving and their scope is no longer limited to traditional market access concerns but has extended to key, yet contentious, non-trade issues such as gender, labour, and environment. At the multilateral level, while WTO Members are yet to achieve broad-based consensus on these issues, it is important to note that various initiatives are being undertaken at the WTO. At the 11<sup>th</sup> WTO Ministerial Conference in Buenos Aires, certain WTO Members issued a joint statement concerning trade and gender pursuant to which a work plan on trade and gender was initiated on the four following pillars, *namely*, (i) gender-responsive policy making; (ii) gender lens applied to WTO; (iii) research and analytical work; and (iv) Aid for Trade.<sup>1</sup> Similarly, through the draft Declaration of MSMEs, certain WTO Members have declared that the work of the Informal Working Group on MSMEs shall focus on issues of core significance to MSMEs and shall identify actions that could be taken to promote MSME participation in international trade, including fostering the exchange of good practices on how best to take into account MSME needs in domestic rulemaking.<sup>2</sup> Although these non-trade issues are still pressing for recognition at the WTO, they have made their way into PTAs where PTA partners are undertaking various types of commitments on such issues. Resultantly, PTAs have become the best alternative to address these non-issues.

‘Gender’ has various socio-economic connotations. According to the WHO, ‘gender’ indicates the “characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other.”<sup>3</sup> In this context, a related term ‘gender analysis’ refers to the gathering of information with respect to gender differences, and conducting an examination of such information in order to assess and remedy gender-based inequities.<sup>4</sup> The importance of ‘gender analysis’ lies in the fact that before gender mainstreaming, it is important to identify the notion of gender and the problems associated with it.<sup>5</sup> The notion of ‘gender analysis’ is important in the following ways:

1. Recognizing the difference between men and women in light of the unequal distribution of resources, opportunities, constraints and power;
2. Securing that the differences in the needs of men and women are identified and then address these differences during policy-making stages;
3. Acknowledging policies have different implications depending upon the gender which they aim to serve; and
4. Ensuring informed gender responsive and effective interventions.

Alongside ‘gender analysis’, ‘gender mainstreaming’ too plays an important role. Various international organizations (as well as international instruments) have defined ‘gender mainstreaming’ which will be examined in depth in Chapter II of this Working Paper. However, the idea of gender mainstreaming rests in the fact that it aims to integrate gender perspectives in the preparation, design, implementation, monitoring, and evaluation of policies to promote gender equality and consequently combat discrimination.<sup>6</sup>

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<sup>1</sup> *Statement on inclusive trade and gender equality from the co-chairs of the Informal Working Group on Trade and Gender*, Twelfth WTO Ministerial Conference, WT/MIN(22)/7 (12 June 2022).

<sup>2</sup> *Final Draft Declaration on Micro, Small And Medium-Sized Enterprises (MSMEs)*, WT/MIN(21)/1 27 October 2021.

<sup>3</sup> *Gender*, World Health Organization, [https://www.who.int/europe/health-topics/gender#tab=tab\\_1](https://www.who.int/europe/health-topics/gender#tab=tab_1).

<sup>4</sup> *What is gender analysis?*, European Institute for Gender Equality, <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-analysis>.

<sup>5</sup> *Ibid.*

<sup>6</sup> *What is gender mainstreaming*, European Institute of Gender Equality, <https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>.

A recent Report by the WTO/World Bank stresses the importance of gender mainstreaming and notes that trade leads to an increase in women's wages which in turn reduces economic inequality. It has been observed that when developing countries double their manufacturing exports, women's share of total manufacturing wages increases by 5.8%.<sup>7</sup> Consequentially, in order to ensure that international trade agreements contribute to creating equitable opportunities with the aim of inclusive trade, the concerns of men and women must be 'mainstreamed' in designing the scope and content of the PTAs. Ultimately, the idea is to ensure that gender-related barriers and discriminations that block access to trade and commerce must be addressed in modern international economic relations, at the bilateral or multilateral level.

Against this background, the Working Paper explores two main components, *first*, the idea of gender mainstreaming in international trade; and *second*, the evaluation of gender dynamics as played out in PTAs from the lens of UN SDG 5 – *Gender Equality*. At this juncture, it is vital to note that the scope of this Working Paper is limited to selected PTAs. The Working Paper is divided into the following segments: **Part I** provides a background to the concept of trade and gender and how gender mainstreaming is relevant to international trade, in light of the key international developments on trade and gender. **Part II** identifies the gender obligations in African, European, Asian and North American PTAs. The authors have undertaken a cross-country analysis in identifying key differences in the nature of obligations undertaken by the countries. Further, **Part III** analyses the dynamics in gender-based provisions across the PTAs and how they incorporate the various targets set out in UN SDG 5. Finally, the Working Paper provides the author's concluding observations on the study.

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<sup>7</sup> *Women and Trade: The Role of Trade in Promoting Gender Equality* 4 (World Trade Organization – World Bank Report, 2020), [https://www.wto.org/english/res\\_e/booksp\\_e/women\\_trade\\_pub2807\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/women_trade_pub2807_e.pdf).

## II. DEVELOPMENT OF GENDER ISSUES IN INTERNATIONAL DISCOURSE

‘Gender mainstreaming’ is a process ensuring that gender equality forms an integral part of all policies, programmes and actions. This concept was first introduced at the 1985 Nairobi World Conference on Women.<sup>8</sup> Various efforts have been made at various international forums to define ‘gender streaming’. For instance, the ECOSOC,<sup>9</sup> Council of Europe,<sup>10</sup> and ILO<sup>11</sup> have addressed gender mainstreaming in the following manner:

1. *1985 Nairobi World Conference on Women*: An approach to policy-making that takes into account both women’s and men’s interests and concerns.<sup>12</sup>
2. *ECOSOC*: The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.<sup>13</sup>
3. *Council for Europe*: The (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors involved in policy-making.<sup>14</sup>

Based on the above broad understanding, it is evident that the ultimate idea of ‘gender mainstreaming’ is to promote ‘gender equality’ across all areas of social and economic development.

‘Gender mainstreaming’ is not a phenomenon which has gained attention only in recent times. It has been part of policymaking at various international forums. The penetration of gender mainstreaming into the setting of the international development framework can be understood by tracing the various initiatives on this front. To begin with, the Preamble of the UN Charter of 1945 specifically mentions equality between men and women.<sup>15</sup> Further, the obligation to ensure

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<sup>8</sup> *What is Gender Mainstreaming*, Council for Europe, <https://www.coe.int/en/web/genderequality/what-is-gender-mainstreaming>.

<sup>9</sup> The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

<sup>10</sup> The (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making.

<sup>11</sup> The concept of bringing gender issues into the mainstream of society was clearly established as a global strategy for promoting gender equality in the Platform for Action adopted at the United Nations Fourth World Conference on Women, held in Beijing (China) in 1995. It highlighted the necessity to ensure that gender equality is a primary goal in all area(s) of social and economic development.

<sup>12</sup> *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women : Equality, Development and Peace*, Nairobi, 15-26 July 1985, A/CONF.116/28/Rev.1 (1986).

<sup>13</sup> Gender Mainstreaming, Extract from Report of the Economic and Social Council for 1997 (A/52/3, 18 September 1997).

<sup>14</sup> *What is Gender Mainstreaming?*, Council for Europe, <https://www.coe.int/en/web/genderequality/what-is-gender-mainstreaming>.

<sup>15</sup> United Nations, Charter of the United Nations, 1945, 1 UNTS XVI, *Preamble* (hereinafter “UN Charter”).

equality between both genders to participate in its principal and subsidiary organs of the UN is reflected in Article 8 of the UN Charter.<sup>16</sup>

Interestingly, the General Assembly in its 1972 Resolution 3010 (XXVII) proclaimed 1975 as the International Women's Year, to be devoted to boosting actions to promote equality between men and women, and ensure the complete integration of women towards development and enhance their participation in deepening global peace.<sup>17</sup> Further, the General Assembly, by virtue of its Resolution 3520 (XXX), endorsed the *World Plan for Action for the Implementation of the Objectives of the International Women's Year*, which was adopted in Mexico at the *World Conference of the International Women's Year* in 1975.<sup>18</sup> In this resolution, the General Assembly proclaimed the period of 1976-1985 as the *United Nations Decade for Women: Equality, Development and Peace*.<sup>19</sup> Furthermore, the General Assembly in its Resolution 33/185, agreed upon the sub-theme *Employment, Health and Education* for the *World Conference of the United Nations Decade for Women: Equality, Development and Peace*, held in Copenhagen, to examine the progress achieved during the first half of the decade.<sup>20</sup> In the year 1980, the Copenhagen World Conference adopted the *Programme for Action for the Second Half of the United Nations Decade for Equality, Development and Peace*.<sup>21</sup> It highlighted some of the then-existing obstacles and international consensus on the plausible measures to be implemented for the betterment of women.<sup>22</sup> In the same year, *vide* General Assembly Resolution 35/56, the International Development Strategy for the Third United Nations Development Decade was adopted which reaffirmed the recommendation of the Copenhagen World Conference; emphasizing the significance of the participation of women in the development process, as both agents and beneficiaries.<sup>23</sup>

Subsequently, the CEDAW was enacted which prioritizes equality between men and women.<sup>24</sup> It is often described as the International Bill of Rights of Women<sup>25</sup> and includes explicit gender-friendly commitments on discrimination (Article 1),<sup>26</sup> gender stereotyping (Article 5),<sup>27</sup> prostitution (Article 6),<sup>28</sup> education (Article 10),<sup>29</sup> family life (Article 16),<sup>30</sup> and so on.

Further, the *World Conference to Review and Appraise the Achievements of the UN Decade for Women, Nairobi*, 1985, which spearheaded the notion of 'gender mainstreaming' led to the *Nairobi Forward*

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<sup>16</sup> *Ibid*, Article 8. The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

<sup>17</sup> 27<sup>th</sup> Session of the United Nations General Assembly, International Women's Year A/RES/3010(XXVII) (1972).

<sup>18</sup> 30<sup>th</sup> Session of the United Nations General Assembly, Outcome of the World Conference of the International Women's Year A/RES/3520(XXX)(1975).

<sup>19</sup> *Ibid*.

<sup>20</sup> 33<sup>rd</sup> Session of the United Nations General Assembly, Preparations for the World Conference of the United Nations Decade for Women: Equality, Development and Peace, including the adoption of the subtheme "Employment, Health and Education" A/RES/33/185 (1979). The Conference specifically dealt with the sub – theme 'Employment, Health and Education' and primarily recommended that action – oriented plans should be elaborated for including women in development processes. Also, it stated that both men and women should be placed on an equal footing.

<sup>21</sup> *supra* note 12.

<sup>22</sup> Resolution adopted by the General Assembly 35/136, World Conference on the United Nations Decade for Women A/RES/35/136 (1980).

<sup>23</sup> 35<sup>th</sup> Session of United Nations General Assembly, International Development Strategy for the 3<sup>rd</sup> United Nations Development Decade A/RES/35/56 (1980).

<sup>24</sup> Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1981 U.N.T.S I-20378.

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*, Article 1.

<sup>27</sup> *Ibid*, Article 5.

<sup>28</sup> *Ibid*, Article 6.

<sup>29</sup> *Ibid*, Article 10.

<sup>30</sup> *Ibid*, Article 16.

*Looking Strategies for the Advancement of Women*.<sup>31</sup> These strategies “not only suggest measures for overcoming obstacles that are fundamental and operational, but also identify those that are emerging”.<sup>32</sup> Moreover, they are “intended to serve as guidelines for a process of continuous adaptation to diverse and changing national situations at speeds and nodes determined by overall national priorities, within which the integration of women in development should rank high.”<sup>33</sup> In other words, these strategies specifically target vulnerable groups among women to enhance their inclusive development.

Another noteworthy development in this context is the *1995 Beijing Declaration and Platform for Action* which acts as a “visionary agenda for the empowerment of women”.<sup>34</sup> Amongst several other objectives, it provides for equality, development and peace of all women; and, ensures complete implementation of human rights of women and of the girl child. It also seeks to achieve full and complete implementation of the *Nairobi Forward Looking Strategies for the Advancement of Women*.<sup>35</sup> Primarily, the Platform for Action covers 12 areas of concern, which include the following: (1) women and the environment; (2) violence against women; (3) the girl child; (4) women and the economy; (5) institutional mechanisms; (6) women and armed conflict; (7) human rights of women; (8) education and training of women; (9) women and poverty; (10) women in power and decision-making; (11) women and health; and, (12) women and the media.<sup>36</sup>

In short, the various developments highlighted above prove that gender mainstreaming has made major strides in international settings. In continuation, a related aspect which further needs to be evaluated is whether gender mainstreaming results in gender equality. It could be safely argued that the definitions formulated by the major international organizations (referred to in the earlier paragraphs) specifically affirm the same. For instance, the definition by ECOSOC states “...the ultimate goal is to achieve gender equality”; and similarly, COE makes a reference that “... a gender equality perspective is incorporated in all policies...” Finally, the ILO too uses the language “for promoting gender equality” in its definition of gender mainstreaming. These references to gender equality lead to a reasonable interpretation that gender mainstreaming is the way to achieve gender equality.

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<sup>31</sup> *supra* note 12.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Beijing Declaration and Platform for Action\* The Fourth World Conference on Women (15 September 1995).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

### III. GENDER MAINSTREAMING AT THE WORLD TRADE ORGANIZATION

Considering the unique challenges posed by the COVID-19 pandemic to women, the issue of gender mainstreaming seeks a special focus. The service sector employs 30% of women employees. As a result of COVID-19, women were the major victims especially those involved in the tourism and hospitality sectors.<sup>37</sup> Further, women in informal sectors were also drastically affected due to continuing lockdowns.<sup>38</sup> The pandemic has forced small industries to shut-down their operations. The pandemic has also enhanced digital disparities between men and women.<sup>39</sup>

Discussions on ‘gender mainstreaming’ were by and large missing in the context of international trade.<sup>40</sup> There are no specific provisions concerning trade and gender at the multilateral level at the WTO.<sup>41</sup> It was only in 2016 that initiatives concerning trade and gender emerged at the WTO.<sup>42</sup> Therefore, to place things in perspective, the year 2016 could be labelled as a year when trade and gender developments gained particular attention at the WTO.<sup>43</sup> It is to be noted that the first WTO Action Plan on Trade and Gender 2017-2019 (extended to 2020) was launched in 2017.<sup>44</sup>

- a. *Action Plan on Trade and Gender*: The first Action Plan (2017-2019 – extended to 2020) was launched by the WTO, in October 2017. The focus of this was to “lay foundations of a new work programme on trade and gender in the WTO, building work and projects from the ground up”.<sup>45</sup>

The Action Plan on Trade and Gender (2017-2019) had the following objectives:<sup>46</sup>

1. Educating and raising awareness and visibility on links between trade and gender.
2. Supporting and facilitating the actions taken by the WTO Members in furtherance of trade and gender.
3. Gathering and analysing data on the impact of trade measures on gender.
4. Provide training and information tools for government officials in charge of policy-making, for women traders and entrepreneurs and for WTO Secretariat staff.

The second WTO Action Plan on Trade and Gender 2021-2026 is a 5-year Action plan and focuses on 7 Key Objectives and 17 Action points.<sup>47</sup>

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<sup>37</sup> *Women in informal economy* (UN Women) <https://www.unwomen.org/en/news/in-focus/csw61/women-ininformal-economy>.

<sup>38</sup> OECD Working Party on SMEs and Entrepreneurship, 'SME Policy Responses' (OECD, 2020) [https://read.oecd-ilibrary.org/view/?ref=119\\_119680-di6h3qgi4x&ttitle=Covid-19\\_SME\\_Policy\\_Responses](https://read.oecd-ilibrary.org/view/?ref=119_119680-di6h3qgi4x&ttitle=Covid-19_SME_Policy_Responses).

<sup>39</sup> Phumzile Mlambo-Ngcuka & Anne-Birgitte Albrechtsen, *We cannot allow COVID-19 to reinforce the digital gender divide* (UN Women, May 6, 2020), <https://www.unwomen.org/en/news/stories/2020/5/op-ed-edphumzile-covid-19-and-the-digital-gender-divide>.

<sup>40</sup> J Faus, *This is how coronavirus could affect the travel and tourism industry* (World Economic Forum, March 2020), <https://www.weforum.org/agenda/2020/03/world-travel-coronavirus-covid19-jobs-pandemic-tourismaviation/>.

<sup>41</sup> José-Antonio Monteiro, *Gender – Related Provisions in Regional Trade Agreements 2* (World Trade Organization Economic Research and Statistics Division, Working Paper ERSD-2018-15, 2018).

<sup>42</sup> *Women and Trade*, MC12 Briefing Note, World Trade Organization, [https://www.wto.org/english/thewto\\_e/minist\\_e/mc12\\_e/briefing\\_notes\\_e/bfwomen\\_and\\_trade\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwomen_and_trade_e.htm).

<sup>43</sup> WTO Action Plan on Trade and Gender 2021-2026 (2021) [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/action\\_plan\\_21-26.pdf](https://www.wto.org/english/tratop_e/womenandtrade_e/action_plan_21-26.pdf).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> WTO Action Plan on Trade and Gender 2017-2019 (1 October 2017) [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/action\\_plan\\_17-19.pdf](https://www.wto.org/english/tratop_e/womenandtrade_e/action_plan_17-19.pdf), p. 2.

<sup>47</sup> WTO Action Plan on Trade and Gender 2021-2026 (2021) [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/action\\_plan\\_21-26.pdf](https://www.wto.org/english/tratop_e/womenandtrade_e/action_plan_21-26.pdf), 1, 6 – 14.

- b. *Aid for Trade*: The WTO's initiative on Aid for Trade targets developing and least-developed countries in enhancing their role in international trade.<sup>48</sup> One of the clear mandates of this initiative is to conduct work on gender.<sup>49</sup> The 2006 Aid for Trade Task Force Report observed that "Aid for Trade should be rendered in a coherent manner taking full account, *inter alia*, of the gender perspective and of the overall goal of sustainable development".<sup>50</sup>

In the 2017 Global Aid for Trade Review, it was noted that sectors such as fisheries, agriculture, and tourism were of immense importance that involve the active participation of women. Further, it was observed that it is important to recognize women's role and potential as entrepreneurs, and domestic policies must facilitate access to finance by women. Gender equality is not only key to reducing poverty, but also important to foster sustainable growth.<sup>51</sup>

- c. *Trade Policies*: According to the Economics Research and Statistics Division of the WTO, around 70 per cent of the WTO Members have integrated women's empowerment into their national and regional strategies.<sup>52</sup> In particular, they focus on financial and non-financial incentives, agriculture and fishery, and government procurement.<sup>53</sup> For instance, in the case of financial and non-financial incentives to the private sector and women-owned MSMEs, it was observed that 30% of members have focused their trade policies in support of women-owned/led companies.<sup>54</sup> Similarly, for agriculture and fishery, 15.5 % of members under review have included policies in relation to agriculture and fisheries in support of women's empowerment.<sup>55</sup> Finally, 9% of members under review have included policies in relation to government procurement in support of women's empowerment.<sup>56</sup> Also, since 2018, as part of their Trade Policy Review, 48% WTO Members have incorporated information on their gender-responsive trade policies, out of 37 reviews conducted between 2018 and 2020.<sup>57</sup>
- d. *Technical Assistance and Training Plan*: In November 2019, the Biennial Technical Assistance and Training Plan 2018-19 affirmed gender integration in the WTO training programmes.<sup>58</sup> The Plan is succeeded by the Biennial Technical Assistance and Training Plan 2020-21.<sup>59</sup>
- e. *Data collection*: During the period of 2019 – 2020, the WTO conducted regional surveys in East Africa, South Asia and Latin America, to assess constraints encountered by women entrepreneurs at the time of exporting goods and services as well as to evaluate their knowledge gaps on trade rules.<sup>60</sup> The BRIDGE programme of the WTO aims to achieve

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<sup>48</sup> *Aid for Trade*, [https://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/aid4trade\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm).

<sup>49</sup> *Women and Trade*, [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/womenandtrade\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/womenandtrade_e.htm).

<sup>50</sup> Recommendations of the Task Force on Aid For Trade, Aid for Trade Task Force, World Trade Organization WT/AFT/1 (27 July 2006).

<sup>51</sup> *Empowering women through Aid for Trade*, World Trade Organization, [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/empoweringwomen\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/empoweringwomen_e.htm).

<sup>52</sup> Anoush der Boghossian, *Trade Policies Supporting Women's Economic Empowerment: Trends in WTO Members*, (World Trade Organization Economic Research and Statistics Division, Working Paper ERSD-2019-07, 2019).

<sup>53</sup> *Ibid*, 1.

<sup>54</sup> *Ibid*.

<sup>55</sup> *Ibid*.

<sup>56</sup> *Ibid*.

<sup>57</sup> *supra* note 47.

<sup>58</sup> World Trade Organization, *Biennial Technical Assistance and Training Plan 2018-19* WT/COMTD/W/227 (2017).

<sup>59</sup> World Trade Organization, *Biennial Technical Assistance and Training Plan 2020-21*, WT/COMTD/W/248 (2019).

<sup>60</sup> *supra* note 48.

this end. The purpose of the programme is to identify the hindrance which prevents women from entering the market force.<sup>61</sup> It acts as a capacity-building programme for women entrepreneurs.<sup>62</sup>

- f. *Trade & Gender 360° Strategy*: It acts as a capacity-building programme on trade and gender for both women entrepreneurs as well as government officials. Some of the objectives of the course include providing a new perspective on how trade can impact women's economic empowerment; explanation on why trade rules are not gender neutral in nature; deliver solutions regarding the integration of gender into trade policies, based on members' practices; assisting government officials in their work on trade and gender; and so on, to name a few.<sup>63</sup>
- g. *WTO Informal Working Group on Trade and Gender*: The Working Group was established on 23 September 2020.<sup>64</sup> It acts towards promoting and enhancing the participation of women in international trade and formulating gender-friendly policies.<sup>65</sup> On 26 February 2021, the Working Group adopted a Work Plan to enable them to advance their activities and to aim towards the WTO's 12th Ministerial Conference.<sup>66</sup> On 14 February 2023, WTO members have initiated discussions on Work Plan that will serve as a basis for reaching an outcome on trade and gender at the 13th Ministerial Conference.<sup>67</sup>
- h. *WTO Gender Research Hub*: It was launched by the WTO Secretariat in May 2021.<sup>68</sup> It plays the role of a “knowledge-gathering platform” and is a research centre in the area of trade and gender.<sup>69</sup>
- i. *Creation of database on gender equality provisions in regional trade agreements*: Recently, the WTO has launched a database which provides for the provisions concerning gender equality in Regional Trade Agreements. Currently, more than 100 FTAs contain gender provisions dealing with gender. These provisions are concerned with type of gender issue that is being addressed, the implementation instruments, and the enforcement mechanism.<sup>70</sup>

Importantly, the WTO and World Bank Group in their 2020 report titled ‘Women and Trade’ made three important observations.<sup>71</sup> *First*, the positive impact of trade on gender equality, amongst other factors, is based on governments' political will and commitment to sustain gender diversity and equality in the economy.<sup>72</sup> *Second*, even though aggregate benefits from trade remain positive, in the absence of relevant adjustment policies, localized costs could negatively affect certain women depending on the specific skills and roles played in the economy.<sup>73</sup> *Third*, women

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<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> World Trade Organization, *Interim Report Following the Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment* WT/L/1095/Rev.1 (2020).

<sup>65</sup> *Ibid.*

<sup>66</sup> *supra* note 62.

<sup>67</sup> World Trade Organization, *Trade and Gender Informal Working Group co-chairs present draft work plan for 2023* (14 February 2023), [https://www.wto.org/english/news\\_e/news23\\_e/women\\_15feb23\\_e.htm](https://www.wto.org/english/news_e/news23_e/women_15feb23_e.htm).

<sup>68</sup> WTO Gender Research Hub, World Trade Organization, [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/gender\\_research\\_hub\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/gender_research_hub_e.htm) (last visited Apr 11, 2022).

<sup>69</sup> *Ibid.*

<sup>70</sup> Database on gender provisions in RTAs, World Trade Organization, [https://www.wto.org/english/tratop\\_e/womenandtrade\\_e/gender\\_responsive\\_trade\\_agreement\\_db\\_e.htm](https://www.wto.org/english/tratop_e/womenandtrade_e/gender_responsive_trade_agreement_db_e.htm).

<sup>71</sup> *supra* note 7.

<sup>72</sup> *Ibid.*, 10.

<sup>73</sup> *Ibid.*



continue to face barriers, including policy and legal obstacles, gender-biased socio-cultural norms, etc., which prevent them from utilizing greater opportunities in trade.<sup>74</sup>

Based on these initiatives at the WTO, it is clear that international trade instruments can play an important role by providing various opportunities for female employment and economic development.

With strict reference to gender-based obligations in PTAs, its diversity in form and content has been reflected by José-Antonio Monteiro in his working paper. *Monteiro* rightly observes that “[g]ender-related provisions can take different forms. The term gender can be mentioned in the RTA’s preamble or in an article covering various issues, including gender. Similarly, a chapter covering various issues can include a specific article dedicated to gender. Conversely, a specific chapter can be integrated in the RTA with different articles addressing exclusively gender. Next to the main text of the RTA, gender-related provisions can also be found in annexes or side agreements negotiated in parallel to the RTA. The type of language of gender-related provisions is also likely to differ across RTAs. Difference in wording often reflects the provisions’ level of detail...”.<sup>75</sup> Similarly, in a recently conducted extensive study on mainstreaming gender considerations in PTAs, Bahri of ITAM provides five policy recommendations for the existing and future PTAs to be better equipped to encourage women empowerment towards achieving faster and inclusive economic growth in the post-COVID world. The recommendations include the following:<sup>76</sup>

1. Craft a Gender-Explicit Exception
2. Cooperate on (or Commit to) Enhancing Women’s Access to Education
3. Cooperate on (or Commit to) Enhancing Women’s Access to Health
4. Include Minimum Legal Standards
5. Create Institutions, Procedures and Financing Channels to Ensure Implementation

PTAs can play a crucial role by encouraging the countries, through trade obligations, to undertake commitments to create laws and regulations to reduce barriers that create impediments to women’s access to trade and investment. Commitments pursuant to the PTAs bind the countries to a certain level to maintain certain minimum employment conditions for women.<sup>77</sup> Additionally, the inclusion of the provision concerning gender in the PTAs has the possibility of the issue concerning ‘gender’ to be discussed at the multilateral level at the WTO.

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<sup>74</sup> *Ibid*, 11.

<sup>75</sup> José-Antonio Monteiro, *Gender – Related Provisions in Regional Trade Agreements* 3 (World Trade Organization Economic Research and Statistics Division, Working Paper ERS-2018-15, 2018).

<sup>76</sup> Dr. Amrita Bahri, *Mainstreaming Gender Considerations in Free Trade Agreements: “Building Back Better” in Post-COVID-19 World* 2 (2020), <https://www.unescap.org/sites/default/files/92%20Final-Amrita%20Bahri-Mexico.pdf>.

<sup>77</sup> *Ibid*, 7.

#### IV. GENDER OBLIGATIONS *VIS-À-VIS* THE STRUCTURAL FRAMEWORK OF PREFERENTIAL TRADE AGREEMENTS

As compared to the other non-trade concerns covered in the PTAs such as environment, SMEs, labour, and anti-corruption, the provisions concerning ‘gender’ are quite disparate. Apart from the differences in the scope, nature of commitments, language, etc, the gender-related provisions in the PTAs also vary in terms of the structure and location of the provisions within the PTA. As compared to the chapters like environment and SMEs, very few PTAs contain a specific chapter dedicated to gender. Further, the majority of the gender-related provisions are overwhelmingly seen in the PTAs between the global north and global south. PTAs are now creating an important level playing field for women and, therefore, ensure that the benefit of trade is distributed equally between men and women.<sup>78</sup> Further, in the context of international trade, trade agreements do not only focus on gender but also on different groups of men and women, who face more problems due to differences in ethnicity, religion, education level, and migration status.

As noted by the European Commission, the gender provision in a trade agreement focus mainly on three effects *viz.* (i) employment effect that focuses on men and women in the context of employment; (ii) consumption effect that focuses on men and women as a consumer; and (iii) public provision effect that focuses whether men and women are able to reap the benefits of public service in the position of citizen and taxpayer.<sup>79</sup> A detailed analysis of these effects is as follows:

1. *Employment Effect*: The impact of the trade liberalization as a result of PTA is that the exporting sector is likely to expand resulting in employment opportunities in those sectors, whereas the import-dependent sector is likely to shrink resulting in lack of employment.
2. *Consumption Effect*: Trade liberalization also leads to changes in the price of goods and services and thereby resulting in changes in the real income thereby reducing the ability of the consumers to have access to such goods. Women, being primarily assigned to look after household, are severely affected due to such changes in the price of goods and services.
3. *Public Provision Effect*: Reduced tariff as a result of trade liberalization decreases the revenue of the state, leading to difficulties in rolling out gender-oriented welfare policies.

The subsequent sections provide comprehensive overview of the gender-provisions in the PTAs.

##### A. AFRICAN PREFERENTIAL TRADE AGREEMENTS

Considering the enormous amount of natural resources available in the African continent, PTAs with African countries can play a crucial role in the diversification of African economies through the creation of employment, and alleviation of poverty.<sup>80</sup> Due to the constraints faced by African women, their contribution to trade is quite low, especially due to the non-tariff barriers that push women into the informal sectors of employment. Consequentially, women find it difficult to have access to financing which affects the ability of their businesses to grow.<sup>81</sup>

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<sup>78</sup> K. Higgins, *Gender Dimensions of Trade Facilitation and Logistics: A Guidance Note* (World Bank) 5-7 (2012); J. True, “Trading-in gender equality: Gendered meanings in EU trade policy” in E. Lombardo, P. Meier and M. Verloo (Eds.), *The Discursive Politics of Gender Equality* 122 (2009).

<sup>79</sup> *Ibid.*, 18.

<sup>80</sup> Paul Brenton, Elisa Gamberoni & Catherine Sear, *Women and Trade in Africa: Realizing the Potential* 1 (World Bank, 2013).

<sup>81</sup> *Ibid.*

The trade agreements of African countries include commitments on gender only at a minimal level. At the outset, it is important to note that this analysis is only limited to select African PTAs. Only the following trade agreements involving this region include explicit provisions on gender, namely: (i) SADC, (ii) UK-SACUM EPA; (iii) EAC; (iv) UK-Kenya EPA, (v) EU-ESA iEPA; (vi) UK-ESA EPA and (vi) EU- SA TDCA.

The EU-ESA iEPA and UK-ESA EPA cover gender-related provisions by including (i) cooperation for the promotion of gender equity in fisheries by developing the capacity of women engaged in fisheries;<sup>82</sup> these agreements also include provisions on cooperation on ‘gender mainstreaming’ specifically in the chapter on *Economic and Development Cooperation*.<sup>83</sup> Further, EU-SA TDCA contains a gender-related provision in the preamble of the TDCA which refers to the values and principles set out in the Fourth World Conference on Women held in Beijing in 1995.<sup>84</sup> Furthermore, the EU-SA TDCA provides for the (i) promotion of cooperation to improve the economic empowerment of women;<sup>85</sup> (iii) dialogue, *inter alia*, on violence against women;<sup>86</sup> (iv) cooperation between SMEs in a manner to promote gender equality;<sup>87</sup> and (v) cooperation to promote gender dimension of development.<sup>88</sup> Similarly, the UK-Kenya EPA covers cooperation on gender biases in the rural development section under the Chapter on *Agriculture*,<sup>89</sup> and *Cooperation* to promote gender equity in the fisheries sector.<sup>90</sup>

With respect to the EAC, it is important to note that “gender” means the role of women and men in society.<sup>91</sup> The objective of the EAC is gender mainstreaming and enhancement of the role of women in social, cultural, political, economic and technological development.<sup>92</sup> Further, ‘gender equality’ is one of the fundamental principles of the EAC.<sup>93</sup> Further, ‘gender balance’ must be taken into consideration during the appointment of the staff and composition of institutions of the EAC.<sup>94</sup> Further, one of the unique features of the EAC is that it contains a specific chapter on *Enhancing the role of women in socio-economic development* which deals with the following aspects:<sup>95</sup>

1. *The Role of Women in socio-economic Development: Article 121*<sup>96</sup>

The partner states undertake the commitment to roll out measures:

- i. To further women empowerment and effective integration of women at all levels of socio-economic development.
- ii. To abolish laws and customs that are discriminatory towards women.

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<sup>82</sup> EU-ESA iEPA, Article 35(g); UK-ESA EPA, Article 31.

<sup>83</sup> EU-ESA iEPA, Article 38(2)(h); UK-ESA EPA, Article 37.

<sup>84</sup> EU-SA TDCA, *Preamble*. This conference focused on women empowerment and removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.

<sup>85</sup> EU-SA TDCA, Article 50.

<sup>86</sup> EU-SA TDCA, Article 86.

<sup>87</sup> EU-SA TDCA, Article 54.

<sup>88</sup> EU-SA TDCA, Article 66.

<sup>89</sup> UK-Kenya EPA, Article 83.

<sup>90</sup> UK-Kenya EPA, Article 89.

<sup>91</sup> EAC, Article 1.

<sup>92</sup> EAC, Article 5(3)(e).

<sup>93</sup> EAC, Article 6(d).

<sup>94</sup> EAC, Article 9(5).

<sup>95</sup> See generally, EAC, Chapter 22.

<sup>96</sup> EAC, Article 121

- iii. To further educational awareness in order to change negative attitudes towards women.
- iv. Creation and adoption of technologies to ensure employment stability and professional progress of women.
- v. Measures aiming to eliminate prejudices against women and promote gender equality.

## 2. *Role of women in business*

Pursuant to this, the partner state undertakes the following:<sup>97</sup>

- i. Increase women's participation in business at the policy formulation and implementation level.
- ii. Promote special programmes for women in small, medium and large-scale enterprises.
- iii. Eliminate laws hindering women's access to the credit facility.
- iv. Educational and training strategies for women.
- v. Recognize and support associations of women to promote the effective participation of women in trade and development.

The objective of SACUM states that the situation of women shall be taken into account in political, economic and social areas.<sup>98</sup> Similarly, 'gender mainstreaming' is also the primary objective of the SADC.<sup>99</sup>

Based on the examination of the above PTAs, it is evident that African PTAs do not contain hard obligations or comprehensive commitments with respect to gender-related issues. In the PTAs analysed, gender-related obligations are enshrined in the objective or cooperation-related provisions of the PTAs. However, it is only the EAC Treaty that contains comprehensive commitments related to gender by requiring States to lay down laws pertaining to gender equality and undertake activities to promote gender equality.

## **B. ASIAN PREFERENTIAL TRADE AGREEMENTS**

There are very few PTAs in Asian countries that contain gender-related provisions in the PTA. For instance, Chile's PTAs with various Asian countries like Thailand,<sup>100</sup> and Vietnam,<sup>101</sup> provide for cooperation on trade-related gender issues. Further, CPTPP to which Asian countries like Brunei, Japan, Malaysia, Singapore and Vietnam are a party also contain gender-related provisions in the following manner:

- 1. In the *Labour* chapter, the parties seek cooperation for the promotion of equality of, elimination of discrimination against, and the employment interests of women.
- 2. In the chapter on *Cooperation and Capacity Building*, areas of cooperation and capacity building include gender equality.<sup>102</sup>
- 3. The chapter on *Development* contains a specific provision on 'Women and Economic Growth'. This provision recognizes the importance of women's participation in economic development. Further, it requires the parties to undertake cooperative activities aimed at

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<sup>97</sup> EAC, Article 122.

<sup>98</sup> SACUM, Annex VII, Article 1.

<sup>99</sup> SADC Treaty, Article 5.

<sup>100</sup> Chile-Thailand FTA, Article 11.3.

<sup>101</sup> Chile-Vietnam FTA, Article 9.3.

<sup>102</sup> CPTPP, Article 21.2(2).

enhancing the ability of women, including workers and business owners, to fully access and benefit from the opportunities created by this Agreement.<sup>103</sup>

Agreements such as the CPTPP, Korea – Turkey FTA, Peru – China FTA and Chile – Thailand FTA are some of the major agreements which incorporate any provisions in this context, with the CPTPP being the most comprehensive. For instance, CPTPP, in its chapter 19 on *Labour*,<sup>104</sup> chapter 21 on *Cooperation and Capacity Building*,<sup>105</sup> and chapter 23 on *Development*<sup>106</sup> provide for measures to seek gender equality and inclusiveness.

In the case of Korea – Turkey Framework Agreement,<sup>107</sup> and Chile – Thailand FTA,<sup>108</sup> it is noteworthy that there are obligations on cooperation and/or cooperation activities in the context of gender. Similarly, in relation to the PTAs entered into by China, only the China – Peru FTA incorporates gender obligations.

Similar to African PTA gender-oriented provisions in the Asian PTAs also do not contain hard obligations, and majorly are in the form of cooperation.

### C. AUSTRALIAN PREFERENTIAL TRADE AGREEMENTS

Amongst all the trade agreements entered by countries in the Pacific region, only the Peru-Australia FTA indicates the existence of such provisions. Article 20.2 of the Peru – Australia FTA which deals with cooperation and capacity building refers to the “protection of vulnerable groups, including women, children, people with disabilities and indigenous people”, and gender equality<sup>109</sup> while Article 22.4 specifically deals with ‘women and economic growth’ which is similar to Article 23.4 of CPTPP.<sup>110</sup>

Further, the Australia-UK FTA contains a specific chapter on ‘Trade and Gender Equality’ which primarily contains provisions to deal with (i) cooperation activities; and (ii) dialogue. Further, one of the areas of cooperation under the *Cooperation* chapter is ‘trade and gender equality’. The cooperation is undertaken through the exchange of information, experience and evidence. The gender-related areas of cooperation, to name a few, are:<sup>111</sup>

- i. Programmes and initiatives to improve women’s access to markets, technology and finance.
- ii. Equal opportunities for women in the workplace.
- iii. Development and strengthening of women’s leadership, and business networks.
- iv. Improving access of women’s and girls’ leadership opportunities.
- v. Collaborations to promote women’s participation in supply chains.

### D. EUROPEAN PREFERENTIAL TRADE AGREEMENTS

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<sup>103</sup> CPTPP, Article 23.4.

<sup>104</sup> CPTPP, Article 19.10(6)(n)(ii).

<sup>105</sup> CPTPP, Article 21.2 (2)(b).

<sup>106</sup> CPTPP, Article 23.4.

<sup>107</sup> Turkey-Korea FTA, Articles 5.4(2), 5.10(2)(k).

<sup>108</sup> Chile-Thailand FTA, Article 11.3(j).

<sup>109</sup> Peru-Australia FTA, Article 20.2(2)(2).

<sup>110</sup> Peru-Australia FTA, Article 22.4.

<sup>111</sup> UK-Australia FTA, Article 24.2(3).

In February, 2021, the EU unveiled its updated trade policy on international trade.<sup>112</sup> The policy highlights the EU's ambition to ensure gender equality implications of trade policy and further ensure gender awareness in trade policy.<sup>113</sup> The initial EU PTAs contained general provisions on human rights highlighting that the trade agreement should not have any negative impact on human rights. However, the modern EU's PTAs contain a specific chapter on Trade and Sustainable development that requires the PTA parties to comply with international labour standards, which, inter alia, also cover obligations concerning equal remuneration and non-discrimination.<sup>114</sup> Further, the GSP which has played a crucial role in international trade by providing unilateral trade preferences to ensure poverty reduction and development has been modified by the EU through the introduction of the GSP+. Pursuant to GSP+, the beneficiaries can take benefit from trade preferences only on the implementation of core human rights, labour, governance, and other sustainable development conventions.<sup>115</sup>

Around two-thirds of the EU's PTAs contain gender-explicit provisions.<sup>116</sup> To begin with, it is important to note that the Treaty on the Functioning of the European Union provides for equal pay for equal work for men and women under the section on social policy.<sup>117</sup> Similarly, the Agreement on European Economic Area contains provisions on (i) equal pay for men and women for equal work,<sup>118</sup> (ii) equal treatment for men and women<sup>119</sup>

Gender-related provisions are also enshrined in the EU's Mediterranean agreements with various countries. *First*, the EU-Mediterranean-Algeria Association Agreement contains gender-related provisions in the form of cooperation (i) by carrying out programs to promote the role of women in the economic and social development process,<sup>120</sup> and (ii) access to education for women.<sup>121</sup> *Second*, the EU-Mediterranean-Israel Association Agreement reflects on gender issues through dialogue on matters of social interest which include gender.<sup>122</sup> *Third*, the EU-Mediterranean-Tunisia Association Agreement as well as the EU-Mediterranean-Morocco Association Agreement covers gender issues through cooperation (i) to promote the role of women in the economic and social development process,<sup>123</sup> and (ii) access to education for women.<sup>124</sup> *Fourth*, the EU-Mediterranean-Palestine Liberation Organization Interim Association Agreement contain provisions on cooperation to promote the equality of women and balanced participation in the decision-making process in the economic and social sphere.<sup>125</sup> *Fifth*, the EU-Mediterranean-Jordan Association Agreement contains a provision for cooperation to promote the role of women in social and economic development.<sup>126</sup>

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<sup>112</sup> *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy* (Communication from the Commission to the European Parliament, The European Economic and Social Committee and the Committee of the Regions, COM(2021) 66 final, 18 February 2021).

<sup>113</sup> *Ibid*, 20.

<sup>114</sup> *Gender Equality and Trade*, European Parliament, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/633163/EPRS\\_ATA\(2019\)633163\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/633163/EPRS_ATA(2019)633163_EN.pdf).

<sup>115</sup> *About GSP*, GSP Hub, <https://gsphub.eu/about-gsp/gsp-plus>.

<sup>116</sup> Elise Steiner, *European Union's Gender-Explicit Provisions in Free-Trade Agreements and Gender Equality: An intersectional feminist approach to international law* (LIU-TEMA G/GSIC1-A—21/012-SE) 17 (2021).

<sup>117</sup> TEU, Article 157.

<sup>118</sup> Agreement on European Economic Area, Article 69.

<sup>119</sup> *Ibid*, Preamble, Article 70.

<sup>120</sup> EU-Algeria Association Agreement, Article 74; EU-Lebanon Agreement, Article 65.

<sup>121</sup> EU-Algeria Association Agreement, Article 78.

<sup>122</sup> EU-Israel Association Agreement, Title VIII, art. 63(1).

<sup>123</sup> EU-Tunisia Association Agreement, Article 71; EU-Morocco Association Agreement, Article 71.

<sup>124</sup> EU-Tunisia Association Agreement, Article 46; EU-Morocco Association Agreement, Article 46; EU-Palestine Interim Association Agreement, Article 58.

<sup>125</sup> EU-Palestine Interim Association Agreement, Article 45.

<sup>126</sup> EU-Jordan Association Agreement, Article 42 and 65.

The EU-United Mexican States Partnership, Political Coordination and Cooperation Agreement provides for cooperation through (i) dialogue on, *inter alia*, women on low income;<sup>127</sup> and (ii) developing the role of women, particularly in the production process.<sup>128</sup> Similarly, other EU's PTAs also reflect on gender issues through dialogue or cooperation.<sup>129</sup> EU-Albania FTA and EU-Montenegro FTA contain provisions on social cooperation,<sup>130</sup> and education and training.<sup>131</sup> Interestingly, the EU-Chile FTA contains a provision specifically related to cooperation on gender. Article 45 of the EU-Chile FTA requires the parties to cooperate to (i) extend the equitable participation of men and women in all sectors of political, economic, social and cultural life; (ii) ease women's access to all necessary resources for the full exercise of their fundamental rights; (iii) ensure gender-related issues to be taken into account in all areas of cooperation; and (iv) promote adoption of positive measures in favour of women.<sup>132</sup>

The EU-Bosnia and Herzegovina Stabilization Agreement contains a provision on anti-discrimination on the grounds of gender while providing education.<sup>133</sup> The EU-CARIFORUM FTA enshrines gender-related obligations by specifying non-discrimination with respect to employment. It specifically contains a provision for a monitoring mechanism which requires that parties to monitor continuously the operation of the PTA through their respective participative processes and institutions to ensure that the implementation of the agreement benefits men and women.<sup>134</sup> Annex I-Capacity building and modernisation of the economies of Central Africa under the EPA of EC-Central Africa Party Economic Partnership Agreement contains a unique provision on the utilization of EPA funds for the development of entrepreneurship among women.<sup>135</sup>

The EU – Central America FTA is the trade agreement with the most elaborate and comprehensive provisions on gender. For instance, Article 13 identifies gender equality as one of the common goals and common areas for establishing a political dialogue between the parties;<sup>136</sup> and gender equality has been stated as an objective of the cooperation<sup>137</sup> and it also states that cooperation shall take into account cross-cutting issues including gender.<sup>138</sup> Further, Article 32 discusses 'Conflict Prevention and Resolution' and states that the parties shall cooperate in efforts “..developed to help children, women and elderly people”.<sup>139</sup> Similarly, provisions also provide for strategies and other policies to combat xenophobia and discrimination based on several grounds

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<sup>127</sup> EU-United Mexican States Economic Partnership, Political Coordination and Cooperation Agreement, Article 36.

<sup>128</sup> *Ibid*, Article 37.

<sup>129</sup> EU-SA TDCA, Articles 50, 54, 66, and 86. It is important to note that the Preamble of this Agreement underlines the importance of Fourth World Conference on Women held in Beijing in 1995; See also EU-Macedonia Stabilisation and Association Agreement, Article 90; EU-Ukraine Association Agreement, Articles 419 and 420; EU-Kosovo Stabilisation and Association Agreement, Article 106; EU-Armenia Comprehensive and Enhanced Partnership Agreement, Article 85.

<sup>130</sup> EU-Albania Stabilization and Association Agreement, Article 99; EU-Montenegro Stabilization and Association Agreement, Article 101; EU-Serbia Stabilisation and Association Agreement, Article 101.

<sup>131</sup> *Ibid*, Article 100; *Ibid*, Article 102. (Montenegro); *Ibid*, art. 102 (Serbia).

<sup>132</sup> EU-Chile FTA, Articles 44 and 45.

<sup>133</sup> EU-Bosnia and Herzegovina, Article 100.

<sup>134</sup> EU-CARIFORUM FTA, Article 5.

<sup>135</sup> EC-Central African Party Interim Agreement, Annex I.

<sup>136</sup> EU-Central America FTA, Title II, Article 13 (2).

<sup>137</sup> *Ibid*, Part III, Article 24(2)(b).

<sup>138</sup> *Ibid*, Article 25(e).

<sup>139</sup> *Ibid*, Article 32(2).

including gender;<sup>140</sup> employment and social protection;<sup>141</sup> education and training;<sup>142</sup> public health;<sup>143</sup> and protection of human rights of vulnerable groups including women.<sup>144</sup>

Another key provision of the EU – Central America FTA is Article 47 which deals exclusively with ‘gender’. Its incorporation in particular ensures equal participation of men and women “in all sectors of political, economic, social and cultural life”.<sup>145</sup> The provision titled ‘gender’ primarily safeguards women against discrimination and ensures their integration in all fields of development.<sup>146</sup> Finally, Article 286 deals with multiple labour standards and agreements and states that the parties will promote development policies which shall benefit women, amongst other groups.<sup>147</sup>

The EU – Moldova Association Agreement provides for cooperation in the furtherance of employment and equal opportunities for both men and women,<sup>148</sup> and trade and sustainable development.<sup>149</sup> Similarly, the EU – Georgia FTA also contains gender issues in trade and sustainable development through working together on gender-related issues,<sup>150</sup> and dialogue and cooperation.<sup>151</sup>

The EU – Canada CETA contains a unique provision on gender issues through the provision on fair and equitable treatment according to which a Party is prohibited from targeted discrimination on various grounds including gender.<sup>152</sup>

A similar pattern can also be seen in the PTAs concluded by the UK. In the case of the UK, only a few PTAs incorporate gender-based obligations. These include the UK's PTAs with Georgia, Japan, Moldova, Ukraine, and most recently, with Australia and New Zealand.

In the UK – Georgia Strategic Partnership and Cooperation Agreement, the obligations refer to trade and sustainable development in the context of labour rights;<sup>153</sup> employment, social policy and equal opportunities;<sup>154</sup> and cooperation.<sup>155</sup> However, in the case of the UK – Japan FTA, there are some provisions to safeguard the interests of women. For instance, the Preamble itself provides for the enhancement of women’s access to opportunities created by the PTA, on par with men in the domestic and global economy.<sup>156</sup> Also, the licencing requirements and qualification procedures for technical standards clearly emphasize that such measures should not discriminate between men and women.<sup>157</sup> Further, there is a separate chapter on Trade and Women’s Economic Empowerment,<sup>158</sup> which comprises commitments such as providing equal treatment to women in

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<sup>140</sup> *Ibid*, Article 41(2)(h).

<sup>141</sup> *Ibid*, Title III, Article 42(1)(f).

<sup>142</sup> *Ibid*, Article 43(1)(h).

<sup>143</sup> *Ibid*, Article 44(2).

<sup>144</sup> *Ibid*, Article 46(2).

<sup>145</sup> *Ibid*, Article 47(1).

<sup>146</sup> *Ibid*, Article 47.

<sup>147</sup> *Ibid*, Article 286 (1); EU-Korea FTA, Article 13.4.

<sup>148</sup> EU-Moldova Association Agreement, Article 31.

<sup>149</sup> *Ibid*, Article 375.

<sup>150</sup> EU-Georgia Association Agreement, Article 239(h); EU-Vietnam FTA, Article 13.14.

<sup>151</sup> EU-Georgia Association Agreement, Articles 348 and 349; EU-Singapore FTA, Article 12.4

<sup>152</sup> EU-Canada CETA, Article 8.10.

<sup>153</sup> UK-Georgia Strategic Partnership and Cooperation Agreement, Article 231(h).

<sup>154</sup> *Ibid*, Article 322.

<sup>155</sup> *Ibid*, Article 323.

<sup>156</sup> UK-Japan CEPA, Preamble.

<sup>157</sup> *Ibid*, Article 8.30 (2).

<sup>158</sup> *Ibid*, Chapter 21.



the field of international trade;<sup>159</sup> cooperation activities;<sup>160</sup> establishment of a Working Group on Trade and Women's Economic Empowerment;<sup>161</sup> and non – application of dispute settlement in the Chapter.<sup>162</sup>

Yet again, other PTAs of UK with gender obligations include the UK – Moldova Strategic Partnership, Trade and Cooperation Agreement on gender equality,<sup>163</sup> cooperation,<sup>164</sup> and trade and sustainable development with specific reference to labour;<sup>165</sup> and the UK – Ukraine Political, Free Trade and Strategic Partnership Agreement, similarly focuses on gender equality,<sup>166</sup> and cooperation.<sup>167</sup>

It may be highlighted that the recent agreements of the UK with Australia and New Zealand include substantive provisions on trade and gender. For instance, chapter 24 of the UK – Australia FTA specifically incorporates obligations on trade and gender equality.<sup>168</sup> It includes provisions such as objectives,<sup>169</sup> trade and gender equality cooperation activities,<sup>170</sup> establishment of a dialogue on trade and gender equality,<sup>171</sup> and non – application of dispute settlement.<sup>172</sup> Similarly, the UK – New Zealand FTA also incorporates a specific chapter on trade and gender.<sup>173</sup> The key provisions of the chapter include objectives;<sup>174</sup> general commitments;<sup>175</sup> international instruments;<sup>176</sup> cooperation;<sup>177</sup> establishment of an inclusive sub-committee;<sup>178</sup> contact points;<sup>179</sup> and non-application of dispute settlement.<sup>180</sup>

It may be noted that, unlike EU PTAs, recent UK PTAs contains a standalone chapter on trade and gender.

#### **E. AMERICAN PREFERENTIAL TRADE AGREEMENTS**

The PTAs entered into by the US provide only a minor reference to obligations on gender. The CAFTA-DR FTA and the US – Bahrain FTA, include a provision on gender in their annex to the chapter on labour requiring the parties to cooperate on gender issues including the elimination of discrimination in employment.<sup>181</sup> It may be noted that a similar provision is incorporated in the

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<sup>159</sup> *Ibid*, Article 21.1.

<sup>160</sup> *Ibid*, Article 21.2.

<sup>161</sup> *Ibid*, Article 21.3.

<sup>162</sup> *Ibid*, Article 21.4.

<sup>163</sup> UK-Moldova Strategic Partnership, Trade and Cooperation Agreement, Article 32.

<sup>164</sup> *Ibid*, Article 33(f).

<sup>165</sup> *Ibid*, Article 342.

<sup>166</sup> UK-Ukraine Political, Free Trade and Strategic Partnership Agreement, Article 377.

<sup>167</sup> *Ibid*, Article 378.

<sup>168</sup> UK – Australia FTA, Chapter 24.

<sup>169</sup> *Ibid*, Article 24.1.

<sup>170</sup> *Ibid*, Article 24.2.

<sup>171</sup> *Ibid*, Article 24.3.

<sup>172</sup> *Ibid*, Article 24.4.

<sup>173</sup> UK-New Zealand FTA, Chapter 25.

<sup>174</sup> *Ibid*, Article 25.2.

<sup>175</sup> *Ibid*, Article 25.3.

<sup>176</sup> *Ibid*, Article 25.4.

<sup>177</sup> *Ibid*, Article 25.5.

<sup>178</sup> *Ibid*, Article 25.6.

<sup>179</sup> *Ibid*, Article 25.7.

<sup>180</sup> *Ibid*, Article 25.8.

<sup>181</sup> Dominican Republic - Central America - United States FTA, chapter 16, Annex 16.5 (I); US-Bahrain FTA, Annex 15-A.

US-Panama FTA.<sup>182</sup> Also, a similarly worded provision with specific reference to gender development programs can be found in the US – Colombia FTA<sup>183</sup> and the US – Peru FTA.<sup>184</sup>

Unlike other PTAs that contain detailed provisions as well as chapters on gender issues, US' PTAs do not contain such elaborate provisions on gender issues. However, a direct reference to gender issues is seen in the USMCA. *First*, the preamble of the USMCA seeks to facilitate equal access for men and women to the opportunities created by the PTA. It also seeks to support the conditions for women's full participation in domestic, regional, and international trade and investment.<sup>185</sup> *Second*, the provision on corporate social responsibility in the *Investment* chapter requires the parties to incorporate in their policies guidelines, standards and principles on corporate social responsibility (including those targeting gender issues).<sup>186</sup> *Third*, the labour chapter contains provisions against discrimination in the workplace where the parties are required to implement policies to avoid discrimination at the workplace.<sup>187</sup> *Fourth*, the provision on cooperation in the *Labour* chapter requires the parties to cooperate to address gender-related issues.<sup>188</sup> *Fifth*, the cooperation provision in the SMEs chapter requires the parties to cooperate to promote the participation of SMEs owned by women.<sup>189</sup> *Sixth*, the chapter on *Competitiveness* establishes a Competitiveness Committee to provide advice and recommendations to enhance the competitiveness of the North American economy, including recommendations aimed at enhancing the participation of enterprises owned by under-represented groups including women.<sup>190</sup>

With respect to Canadian PTAs, Canada's PTAs with Peru,<sup>191</sup> Jordan,<sup>192</sup> Colombia,<sup>193</sup> Panama,<sup>194</sup> Honduras,<sup>195</sup> Ukraine,<sup>196</sup> and the CPTPP<sup>197</sup> enshrine gender issues through cooperation in the Labour chapter to eliminate discrimination in employment against women. In contrast to these PTAs, the Canada – Chile FTA, and the Canada – Israel FTA contain a dedicated chapter on gender. The chapter on gender in these PTAs addresses gender issues through the establishment of the Committee on Trade and Gender,<sup>198</sup> and Cooperation.<sup>199</sup>

*First*, the areas of cooperation are as follows:

1. Development of programs of cooperation activities based on their mutual interest.
2. To improve capacity and working conditions for women.
3. To encourage capacity building and skill enhancement of women.
4. Promotion of financial inclusion of women.
5. foster women's representation in decision-making and positions of authority in the public and private sectors.

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<sup>182</sup> US-Panama Trade Promotion Agreement, Chapter 16, Annex 16.6, Paragraph 3(l).

<sup>183</sup> US-Colombia FTA, chapter 17, Annex 17.6.

<sup>184</sup> US-Peru FTA, Chapter 17, Annex 17.6.

<sup>185</sup> USMCA, Preamble.

<sup>186</sup> USMCA, Article 14.7.

<sup>187</sup> USMCA, Article 23.9.

<sup>188</sup> USMCA, Article 23.2.

<sup>189</sup> USMCA, Article 25.2.

<sup>190</sup> USMCA, Article 26.1.

<sup>191</sup> Canada-Peru FTA, Chapter 16, Article 9.

<sup>192</sup> Canada-Jordan FTA, Agreement on Labour Cooperation between Canada and Jordan, Annex 1,

<sup>193</sup> Canada-Colombia FTA, Canada-Colombia Agreement on Labour Cooperation, Annex 1.

<sup>194</sup> Canada-Panama FTA, Canada-Panama Agreement on Labour Cooperation, Article 9.

<sup>195</sup> Canada-Honduras FTA, Canada-Honduras Labour Cooperation Agreement, Annex 1.

<sup>196</sup> Canada-Ukraine FTA, Annex 13-A.

<sup>197</sup> CPTPP, Article 19.10.

<sup>198</sup> Canada-Chile FTA, Article N bis-04; Canada-Israel FTA, Article 13.4.

<sup>199</sup> Canada-Chile FTA, Article N bis-03; Canada-Israel FTA, Article 13.3.

6. Conducting gender-based analysis.
7. Sharing methods and procedures for the collection of sex-disaggregated data, the use of indicators, and the analysis of gender-focused statistics related to trade.

*Second*, the functions of the Committee on Trade and Gender are as follows:

1. Determine, organize and facilitate cooperation activities.
2. Discuss any matter of common interest, including joint proposals to support policies and other initiatives on trade and gender.
3. Consider matters related to the implementation and operation of this Chapter.

Though the Canada-Israel FTA also contains a chapter on gender, it has a unique provision for the dispute settlement mechanism in the PTA. It contains a two-tier dispute settlement mechanism. First, the parties are required to make possible efforts, through dialogue, consultations and cooperation to resolve disputes. If dialogue, consultations and cooperation does not lead to fruitful results, the parties may submit the matter to a dispute settlement mechanism after obtaining consent from the other party.

## V. DYNAMICISM OF GENDER OBLIGATIONS IN PREFERENTIAL TRADE AGREEMENTS: AN EVALUATION FROM THE CONTEXT OF THE UNITED NATIONS SUSTAINABLE DEVELOPMENT GOAL ON GENDER EQUALITY

The UN SDG on Gender Equality is a clarion call for gender equality. SDG 5 which pertains to gender equality, aims to ensure women and girls' empowerment and achieve equality between men and women. As per the recent global statistics provided in the SDG Report 2021, only 25.6 % of women representatives are present in the national parliament; 36.3% of women represent the local government; and only 28.2% could be located in managerial positions.<sup>200</sup> It must be specifically noted that the UN has identified several targets and indicators for SDG 5.<sup>201</sup> Some of the important targets include the elimination of discrimination against women and girls everywhere; ending violence against women and girls; recognition of unpaid care and domestic work, and so on.<sup>202</sup>

The primary question that this Working Paper tries to answer is the linguistic coverage of the targets of SDG 5 by the gender-based provisions as incorporated in the PTAs of the particular continents.<sup>203</sup> The mapping of provisions across the PTAs of the identified jurisdictions reveals the dynamic nature of gender-related commitments of those WTO Members. An evaluation in the context of the location of the provisions as well as their content of them ought to be conducted in the following manner:

1. Identification of the location of the gender-based provisions in PTAs, and,
2. Review of the content of the gender-based provisions in PTAs.

The provisions pertaining to gender could be located at different parts of a PTA which indicates a WTO Member's priority on gender concerns. Generally, gender-related provisions are incorporated in the preamble, or labour-related provisions in the PTA, or SMEs related provisions or provisions on cooperation or dialogue. It is also not uncommon to find dedicated chapters on trade and gender.

*First*, the assessment of the above PTAs shows that gender-related obligations are enshrined in the preamble of USMCA, UK-Japan FTA, and EU-SA TDCA.

*Second*, a significant number of PTAs incorporate their commitments on trade and gender as a specific and substantive provision within the text of certain chapters of the PTA or annexes. The majority of the PTAs contain gender-related provisions generally, instead of targeting any particular sector. However, the UK – Kenya EPA, the EU – ESA EPA, and the UK – ESA EPA focus on gender obligation through cooperation especially targeting women in the fisheries sector. Some of the PTAs like the EU-SA TDCA and USMCA include gender provisions with respect to the SMEs owned by women.

*Third*, only a minuscule number of PTAs like the EAC, the EU – SA TDCA, the Canada-Chile FTA, the Canada – Israel FTA, and the UK – Japan FTA, have an exclusive chapter to reflect gender obligations. The incorporation of gender-related obligations in the form of good-faith cooperation and best endeavour provisions implies that gender issues cannot be enforced through a binding and compulsory dispute settlement mechanism. Thus, a country faces no direct

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<sup>200</sup>GOAL-5, United Nations, Department of Social and Economic Affairs, <https://sdgs.un.org/goals/goal5>.

<sup>201</sup> *Ibid.*

<sup>202</sup> *Ibid.*

<sup>203</sup> This Working Paper restricts itself only on the language of the PTAs provisions in the context of SDG 5, and does not traverse towards the implementation of the goal in wider sense.

consequence for not meeting its obligations or commitments.<sup>204</sup> It is important to note that among the PTAs that contain a gender-specific chapter, only the Canada-Israel FTA subjects the gender chapter to a form of dispute settlement mechanism. To begin with, Article 13.6(1) provides that the parties shall resolve issues arising out of the gender chapter through dialogue, consultations and cooperation.<sup>205</sup> However, if the parties fail to resolve the matter, then they may consent to submit the matter to dispute settlement in accordance with the chapter on dispute settlement.<sup>206</sup> It is important to observe that recourse to dispute settlement is possible only when the other party provides consent.

The EU-CARIFORUM FTA specifically provides for close monitoring to ensure that the objectives of the agreement are realized; while a substantial number of FTAs such as EU – South Africa; USMCA; Peru-China; EU-Central America; UK-New Zealand; to name a few, incorporate an obligation on dialogue/cooperation in matters pertaining to trade and gender. Similarly, the EU's PTAs with Central America, Albania, Egypt, Montenegro, Palestine, and Serbia comprise commitments on education and training; when EU-Central America FTA reflects an obligation on equal participation of men and women across different sectors in an economy. On the other hand, a provision dealing with gender equality, in particular, could be located in PTAs such as EAC, UK – Kenya, EU – EASA, UK – EASA, UK – Japan, to name a few; while EAC, SADC, UK – Kenya, UK – EASA, and EU – EASA includes mainstreaming of gender in the language of their obligations.

It is a major breakthrough that a significant change could be witnessed in the nature of provisions on trade and gender in contemporary FTAs. For instance, CPTPP, USMCA, EU-Canada, EU-Bosnia, and CAFTA-DR are some of the FTAs which comprise commitments towards elimination/prevention of discrimination on the grounds of gender; while EU's PTAs with Moldova, Ukraine, UK and Vietnam specifically states providing employment and equal opportunities to both men and women. Further, EU-Central America deals with public health, and EAC, EU – EASA, and UK – Cameroon FTA state the role of women in business. Furthermore, EAC, UK – Kenya FTA, EU – SA FTA, CPTPP, and EU-Central America FTA, to name a few, refer to women and development/economic growth; while the UK-SACU-Mozambique FTA provides for taking systematic account of the situation of women and gender across diverse areas, such as, political, social and economic. Finally, the EU's PTAs with Singapore, CARIFORUM, Georgia, Moldova, Vietnam, and the UK's FTAs with Georgia as well as Moldova indicate the respective party's commitment to trade and gender under the lens of trade and sustainable development.

The above understanding leads to the next major question of how the targets of SDG-5 are present in the PTAs which have been examined. Based on the examination of the various PTAs, it could be observed that the SDG-5 targets do not find a direct mention with identical language in the PTAs, however the purpose is still achieved. For convenience, the targets of SDG-5 could be grouped under the following main categories to find the corresponding PTAs with suitable provisions:

- A. Elimination of discrimination against women and girls
- B. Elimination of all forms of violence against women and girls
- C. Recognition of unpaid care and domestic work through suitable policies
- D. Promotion of shared responsibility within the household and family
- E. Women's full and effective participation for leadership at all levels of decision-making

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<sup>204</sup> *Mainstreaming Gender in Free Trade Agreements* (World Bank ITC) 19 (2020).

<sup>205</sup> Article 13.6(1), Canada-Israel FTA.

<sup>206</sup> Article 13.6(2), Canada-Israel FTA.

- F. Universal access to sexual and reproductive health as agreed in the Programme for Action of the International Conference on Population and Development and the Beijing Platform for Action
- G. Enhancement of the use of technology to promote the empowerment of women.

The above-mentioned SDGs are addressed in the PTAs in the following ways:

- i. Elimination of discrimination against women:* Most of the PTAs incorporate this aspect in their provisions. For instance, EU-Central America FTA provides for equal participation of women and men across different sectors; while gender equality is specifically included in East African Community; UK-Kenya; EU-EASA; UK-EASA; EU-South Africa; CPTPP; USMCA; Canada-Chile FTA; EU-Central America FTA; EU-Ukraine FTA; UK-Japan FTA; UK-Moldova FTA; UK-Ukraine FTA; UK-Australia FTA; UK-New Zealand FTA. Further, EAC provides for maintaining gender balance in official appointments, and on the other hand, EU-Moldova FTA; EU-Ukraine FTA; and EU – Vietnam FTA include obligations to provide employment and equal opportunities to both men and women.
- ii. Elimination of all forms of violence against women and girls:* This language could be directly located in PTAs such as CPTPP; USMCA; EU-Canada CETA; EU-Bosnia and Herzegovina FTA; UK-Japan EPA; CAFTA-DR FTA; US-Panama FTA; US-Colombia FTA; US-Peru FTA; UK-Australia FTA and UK-New Zealand FTA.
- iii. Recognition of unpaid care and domestic work through suitable policies:* Such a language is not explicitly stated in any of the PTAs which have been examined.
- iv. Promotion of shared responsibility within the household and family:* This language is not directly incorporated in any of the PTAs which have been examined in this study.
- v. Women's full and effective participation for leadership at all levels of decision-making:* EU-Central America FTA, EU-South Africa TDCA and EU-Mediterranean-Palestine Liberation Organization Interim Association Agreement, EU-Ukraine FTA, and UK-Ukraine FTA incorporate a provision on equal participation of men and women in the decision-making process.
- vi. Universal access to sexual and reproductive health as agreed in accordance with the Programme for Action of the International Conference on Population and Development and the Beijing Platform for Action:* While the issue of health is addressed in various PTAs in the form of cooperation and dialogue, only the EU-Central America FTA provides for a commitment on public health.
- vii. Enhancement on the use of technology to promote empowerment of women:* A direct reference to this language is absent from the obligations of the examined PTAs.

Therefore, it becomes evident that the SDG 5 targets are linguistically mirrored in existing PTAs only in a limited manner. A more inclusive coverage of target-specific provisions in PTAs will create better scope for countries to identify the lacunae within the goal and provisions as well as formulate effective implementation mechanisms.

## VI. CONCLUSION

Gender-related obligations are in the form of cooperation and dialogue and are generally worded in a non-binding nature. The inclusion of gender-related chapters in the PTAs is an attempt to elevate such issues as integral components of trade.

It is interesting to observe that international trade agreements have commenced their move towards welcoming gender as an active element in regulating trade relations across the globe. The PTAs' journey from a simple provision on gender to an exclusive chapter on it speaks volumes on the inevitable significance of gender in trade. However, this alone is insufficient to attain complete development from the lens of trade and gender. A detailed evaluation of the various countries' domestic policies and laws which pertain to gender is also essential, which is, however, outside the scope of this Working Paper.

In order to revamp the existing trade-gender discourse, there are however a few challenges which ought to be urgently addressed. These include the following:

- A. *SDG-5 not adequately reflected in PTAs:* As established in the preceding section of this study, the targets of UN SDG-5 are mirrored in the PTAs only at a minimal level. However, PTAs provide for several other obligations, such as mainstreaming of gender, cooperation, trade and sustainable development, etc. which do not have any explicit reference in SDG-5. However, strictly from the perspective of SDG-5, the PTAs ought to modify their commitments so as to portray their compliance with the goal linguistically.
- B. *The notion of 'intersectionality':* The trade agreements do highlight that there should not be any discrimination between men and women in society, for instance, at the workplace. This does not, yet, delve deep into the notion of 'women' in its entirety. For example, in her collection of essays *Women, Race and Class*, Angela Davis observes that during the period of slavery, black women (similar to black men) were treated as chattel; and “..was first a fulltime worker for her owner, and only incidentally a wife, mother and homemaker.”<sup>207</sup> Similarly, Truth always emphasized on the struggle of African women. Notably, in her speech *Ain't I A Woman?*, she expresses her disappointment with racial discrimination.<sup>208</sup> This raises the issue of double subjugation, which in this case, reflects the condition of being subjugated as a woman and as a “black”. For instance, as observed by Deborah Stienstra in the context of Canada's GBA, “in 2011, Canada introduced the 'plus' to GBA acknowledging GBA goes beyond biological (sex) and socio-cultural (gender) differences [to consider]...multiple identity factors that intersect to make us who we are...like race, ethnicity, religion, age, and mental or physical disability”.<sup>209</sup> Further, in this context, she also critiques the 2020 WTO and World Bank Report on Trade and Gender which “..does not discuss women with disabilities, even with its focus on three roles – workers, consumers and decision-makers. The study includes several implicit assumptions, including about who is vulnerable and what that means in a trade context, as well as how productivity shapes women's access to trade, that structure out a discussion of women with

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<sup>207</sup> Angela Y. Davis, *Women, Race and Class* 9 (1983).

<sup>208</sup> Sojourner Truth, “*Ain't I a Woman?*”, Delivered at the 1851 Women's Convention in Akron, Ohio (1851) (“Well, children, where there is so much racket there must be something out of kilter. I think that 'twixt the Negroes of the South and the women at the North, all talking about rights, the white men will be in a fix pretty soon. But what's all this here talking about?... If the first woman God ever made was strong enough to turn the world upside down all alone, these women together ought to be able to turn it back, and get it right side up again! And now they is asking to do it. The men better let them.”)

<sup>209</sup> Deborah Stienstra, *Seeking greater intersectionality in trade: Learning from women with Disabilities*, 1-2 (2022).

*disabilities out.*<sup>210</sup> It is crucial to note that trade agreements fail to identify this aspect of the intersectionality of women in substantive detail.

- C. *Fragmentary interpretation of 'gender' and 'gender mainstreaming'*: Contemporary society restricts all legal connotations of gender to include women alone, as is confirmed by the language of the PTAs. They interchangeably make reference to “women” and “gender”. The scope of “transgender” persons within the purview of ‘gender’ has not been captured in any of these international trade agreements. It must be observed that several countries such as India, Australia and New Zealand, amongst others, have already legally recognized the “third gender”.<sup>211</sup> Therefore, this progress should be pivotal to revamping the existing “binary” norms of gender and reflect the same in PTAs too.

It is a reality that PTAs are undergoing a transition in terms of the inclusion of gender-related commitments. Increasingly gender-based obligations in PTAs indirectly (but substantially) refer to targets under the UN SDG-5. The targets of UN SDG-5 such as the elimination of discrimination against women and girls; labour rights; women’s full and effective participation across all levels of decision-making; health; reforms to give women equal rights to economic resources; and so on, are explicitly embedded in the different PTAs, as is evident from the preceding analysis in this paper. Hence, the PTAs act in the context of trade and gender commitments. However, this fails to provide a complete picture.

It is indeed true that PTAs are constantly evolving to address diverse issues which affect women. Ironically, a fundamental concern, which exclusively pertains to women is sexual and reproductive health, which stands excluded from the scope of PTAs. The specific targets of UN SDG-5 on the sexual and reproductive health of women, such as “eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”, “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation” and “ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences”, are excluded from the ambit of PTAs. A possible reason for such an exclusion could be an inclination towards non-commercialization and non-commodification of issues based on reproduction and sexual rights. In contemporary times, perhaps, we need to re-examine this approach of PTAs.

In this context, this Working Paper, therefore, aims to highlight how the scope of PTAs may be broadened to promote the welfare of two specific vulnerable categories of women to expose the linkage of female reproductive and sexual health to international trade. It specifically focuses on commercial surrogacy and prostitution.

### Commercial Surrogacy

Commercial surrogacy is a controversial phenomenon worldwide. It is often referred to using highly sensitive terminology, such as “wombs for rent”.<sup>212</sup> Commercial surrogacy continues to be opposed by many countries on the grounds of the commodification of women. For example, the European Parliament in its 2015 Annual Report on Human Rights and Democracy in the World condemned surrogacy, arguing that it undermines the dignity of a woman since her body is utilized

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<sup>210</sup> *Ibid*, 4.

<sup>211</sup> Valentine Pasquosoone, *7 Countries Giving Transgender People Fundamental Rights the U.S. Still Won't* MIC, (Sept. 4, 2014).

<sup>212</sup> Mina Chang, *Wombs for Rent: India's Commercial Surrogacy* 31(1) *Harvard International Review* 11, 12 (2009).



as a commodity for financial or any other gain.<sup>213</sup> Other concerns about the shortcomings of commercial surrogacy with specific reference to surrogate mothers include the argument that many women who are in dire financial need turn to surrogacy as a matter of necessity, rather than a matter of choice.<sup>214</sup> Further, such women may also become victims of exploitation and trafficking in the process.<sup>215</sup> Yet another major concern is that commercial surrogacy forces on to the surrogate mother, the complex and difficult ethical issue of whether to gestate a child for someone else.<sup>216</sup> Surrogate mothers in developing countries may experience a lack of informed consent about the true nature of the procedures that they are to undergo.<sup>217</sup> Some surrogate mothers might encounter pre-natal medical complications on account of the intense medical intervention and preparation for surrogacy.<sup>218</sup> In addition to these risks, surrogate mothers often face emotional harms, such as the social stigmatization of being a surrogate along with their separation from families and children.<sup>219</sup> Loss of autonomy and privacy is also a major issue. The daily activities, living schedule, food intake, and medical treatment of the surrogate mothers is surveilled,<sup>220</sup> and often, their communication with their families is controlled, if not suspended.<sup>221</sup>

Domestic bans on commercial surrogacy have instigated cross-border surrogacy, which further adds to the detriment of surrogate mothers. Several countries ban surrogacy entirely, limit it to heterosexual couples, or, restrict it to altruistic surrogacy alone.<sup>222</sup> In such scenarios, prospective parents from those jurisdictions, or who are otherwise unable to avail of surrogacy services themselves on account of the exceptions stated above will then travel to commercial surrogacy-friendly jurisdictions to seek those services.<sup>223</sup> This trend was conspicuous, for instance, in the cases of Thailand, India, Nepal and Cambodia. When Thailand banned commercial surrogacy, India became a new destination for surrogacy.<sup>224</sup> Subsequently, when India banned commercial surrogacy, Nepal began the next destination, and after Nepal's ban, commercial surrogacy services shifted to Cambodia.<sup>225</sup> The increasing demand for surrogacy is thus clearly visible.

On careful examination of the domestic regulations of surrogacy across several countries, the divergence of surrogacy norms becomes discernible. This paves the way to classify countries based on the status of surrogacy law in their territories. Accordingly, the countries fall under three main groupings, which are: (1) countries which legally permit commercial surrogacy; (2) countries which

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<sup>213</sup> *Report on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter* (Committee on Foreign Affairs, European Parliament, Report A8-0344/2015, November 2015).

<sup>214</sup> Lori B. Andrews, *Surrogate Motherhood: The Challenge for Feminists* 16(1-2) *Law, Medicine and Healthcare* 72,75 (2021).

<sup>215</sup> John Pascoe, *Sleepwalking through the Minefield: Legal and Ethical Issues in Surrogacy* 30 *Singapore Academy of Law Journal* 455, 461 (2018).

<sup>216</sup> Kim L. Armour, *An Overview of Surrogacy Around the World, Trends, Questions and Ethical Issues* 16(3) *Nurs Womens Health* 231, 234 (2012).

<sup>217</sup> Xinran Cara Tang, *Setting Norms: Protections of Surrogates in International Commercial Surrogacy* 25(1) *Minnesota Journal of International Law* 193, 202 (2016).

<sup>218</sup> James M. Golfarb, "Gestational Carrier: Medical Aspects" in James M. Goldfarb (ed.) *Third Party Reproduction: A Comprehensive Guide* 61, 63-65 (Springer Nature, 2014).

See also, Celia Burrell & Leroy C. Edozien, *Surrogacy in modern obstetric practice* 19(5) *Seminars in Fetal and Neonatal Medicine* 272, 276 (2014).

<sup>219</sup> Susan Imrie & Vasanti Jadva, *The Long-Term Experience of Surrogates: Relationships and Contact with Surrogacy Families in Genetic and Gestational Surrogacy Arrangements* 29(4) *Reproductive Biomedicine Online* 425, 428 (2014).

<sup>220</sup> Amrita Pande, *Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker* 35(4) *Signs Journal of Women and Culture in Society* 969, 982 (2010).

<sup>221</sup> *Ibid.*

<sup>222</sup> June Carbone & Christinia O. Miller, *Surrogacy Professionalism* 31 *Journal of American Academy of Matrimonial Lawyers* 1,4 (2018).

<sup>223</sup> *Ibid.*

<sup>224</sup> Sigrid Vertommen & Camille Barbagallo, *The in/visible wombs of the market: the dialectics of waged and unwaged reproductive labour in the global surrogacy industry* 29(6) *Review of International Political Economy* 1945,1952 (2022).

<sup>225</sup> *Ibid.*

prohibit commercial surrogacy; and finally, (3) countries with an absence of laws or regulations on surrogacy. For example, chapter XXIII of the Law of Georgia on Health Care is a dedicated chapter on family planning.<sup>226</sup> In this chapter, Article 143 specifically deals with IVF and states that IVF could be permitted only on two conditions. The provision clarifies that IVF could be permitted either as a remedy for infertility, if there exists a risk of transmitting a genetic disease from the husband or wife to the child or, where a woman does not have a uterus, the embryo can be obtained through fertilization in the uterus of another woman. Here, the second condition refers to surrogacy. On the other hand, Australia is one of the countries where state-specific laws prohibit commercial surrogacy,<sup>227</sup> while Japan is an example of a country that does not provide any laws on surrogacy.<sup>228</sup>

With specific reference to surrogate mothers, *Cooperman* highlights their vulnerability during international surrogacy.<sup>229</sup> Typically, international surrogacy arrangements involve affluent individuals who utilize the services of financially disadvantaged women to offer surrogacy services.<sup>230</sup> Another concern is the creation of one-sided surrogacy agreements to the disadvantage of the surrogate women.<sup>231</sup> Here, considering the lack of education and inability to comprehend the terms of the surrogacy contract, the possibility of abuse of surrogates cannot be discarded.<sup>232</sup> Financial exploitation is the obvious result. For instance, the year 2009 records indicate that Chinese men brought several women from Myanmar and forced them to work as surrogates, with only 250 USD compensation.<sup>233</sup>

### Prostitution

Another vulnerable category of women who encounter exploitation is prostitutes. Prostitution continues to be a sensitive issue which is excluded from the domain of international trade law. However, commercial prostitution is a reality which is inextricably linked to trade. It is also believed that prostitution is “the world’s oldest profession”.<sup>234</sup> Prostitution can be primarily classified as, forced or involuntary prostitution, or trafficking; and voluntary or consensual prostitution, referred to as ‘sex work’.<sup>235</sup> It can be inferred from a study conducted in Okinawa in Japan that girls are sold into prostitution, primarily, on account of their fathers’ poverty or indebtedness.<sup>236</sup> Lack of education, lack of employment options, and prior exposure to physical and emotional harm also force girls (and women) to turn into prostitutes.<sup>237</sup> With limited alternatives available, females are compelled to consider prostitution as their “profession”.<sup>238</sup> It is

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<sup>226</sup> Law of Georgia on Health Care, <https://www.matsne.gov.ge/ka/document/download/29980/33/en/pdf>.

<sup>227</sup> See Section 41, Australian Capital Territory’s Parentage Act, 2004 for Northern Territory; Sections 6(1) and 8, Surrogacy Act, 2010 of New South Wales; Section 56, Queensland’s Surrogacy Act, 2010; Section 23, South Australia’s Surrogacy Act, 2019; Section 40, Tasmania’s Surrogacy Act, 2012; Section 44(1), Victoria’s Assisted Reproductive Treatment Act, 2008; Sections 6 and 7, Western Australia’s Surrogacy Act, 2008.

<sup>228</sup> Sachi Splauding, *Surrogacy and Japan: A Case for Regulation* (2021) 38 UCLA Pacific Basin Law Journal 61.

<sup>229</sup> Jammie Cooperman, *International Mother of Mystery: Protecting Surrogate Mothers’ Participation in International Commercial Surrogacy Contracts* 48(2) Golden Gate University Law Review 161 (2018).

<sup>230</sup> *Ibid.*, 171.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

<sup>233</sup> Sophia Shephard, *Regulating International Commercial Surrogacy: A Balance of Harms and Benefits* 32 Florida Journal of Law and Public Policy 293 (2021).

<sup>234</sup> Valerie Jenness, *From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem* 37(3) Social Problems 403–420 (1990).

<sup>235</sup> Barbera Havelkova, *Using Gender Equality Analysis to Improve the Well-Being of Prostitutes* 18 Cardozo Journal of Law and Gender 53–86 (2011).

<sup>236</sup> Yehudi A. Cohen, *The Sociology of Commercialized Prostitution in Okinawa* 37(2) Social Forces 160–168 (1958).

<sup>237</sup> Melissa Farley, et. al, *Online Prostitution and Trafficking* 77(3) Albany Law Review (2013).

<sup>238</sup> Kavita Kumar & Gunjan Shah, *Prostitution and Human Rights* (1995).

ironic that these sex workers, despite engaging in this activity out of poverty; receive only a meagre portion of the price negotiated.<sup>239</sup> Additionally, prostitutes are often deprived of basic health-care facilities, for instance, they are highly vulnerable to sexually transmitted diseases.<sup>240</sup> Moreover, it has also been observed that prostituted women's measured level of post-traumatic stress is at par with that of combat veterans or victims of torture or rape survivors.<sup>241</sup> It is also to be noted that the advent of technology has resulted in online prostitution, which provides greater anonymity for traffickers and agencies since it blurs jurisdictional boundaries.<sup>242</sup> The use of social networking sites, message boards, online classified advertising, live and streaming video, dating and sugar daddy websites – all indicate the evolution of the prostitution industry.<sup>243</sup>

From the perspective of the United Nations, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 specifically criminalizes prostitution under Article 1.<sup>244</sup> However, it can be inferred from Articles 3 and 4 of the Convention that the latter grants individual countries the flexibility to decide on their respective laws on prostitution, specifically, on attempt to commit the offence or any preparatory acts towards it,<sup>245</sup> and intentional participation towards prostitution.<sup>246</sup>

#### *Linkage of Commercial Surrogacy and Prostitution with International Trade*

From the legal regime of international trade, cross-border surrogacy can be placed under the specific modes of the GATS. The travel of intended parent(s) to other commercial surrogacy-friendly countries to avail surrogacy services; establishment of surrogacy-clinics in foreign countries;<sup>247</sup> and surrogates being shifted to other countries to offer their services<sup>248</sup> all portray the trade in services aspect of surrogacy. These different modes of supply of cross-border surrogacy can, therefore, be placed under Modes 2, 3 and 4 of supply of services under GATS.

Similar to cross-border surrogacy, prostitution can also be placed under the framework of GATS. Trafficking women for sexual exploitation such as prostitution has become a global business.<sup>249</sup> Moreover, the rapid rise of the involvement of international organized crime in the sex trafficking of women calls for immediate political attention.<sup>250</sup> The 2022 Global Report of the United Nations Office on Drugs and Crime refers to a case where, in 2020, two Sierra Leonean women were convicted of trafficking 70 Sierra Leonean women to Liberia, Cote d'Ivoire and Ghana for the purpose of mixed sexual and labour exploitation.<sup>251</sup> Such trafficking of women can be placed under the ambit of mode 4 of the GATS.

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<sup>239</sup> *Ibid.*

<sup>240</sup> *Ibid.*

<sup>241</sup> Melissa Farley, et. al., *Prostitution and Trafficking in Nine Countries* 2(3-4) *Journal of Trauma Practice* 33-74 (2004).

<sup>242</sup> Farley, *supra* note 237.

<sup>243</sup> *Ibid.*

<sup>244</sup> See generally, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

<sup>245</sup> *Ibid.*, Article 3.

<sup>246</sup> *Ibid.*, Article 4.

<sup>247</sup> See generally, Sensible Surrogacy, <https://www.sensible-surrogacy.com/>.

<sup>248</sup> Katia Neofytou, *Assisted reproduction crime network in Greece highlights need for monitoring surrogacy* (Bio News, 21 October 2019), <https://www.progress.org.uk/assisted-reproduction-crime-network-in-greece-highlights-need-for-monitoring-surrogacy/>.

<sup>249</sup> R.E. Bell, *Sex Trafficking: A Financial Crime Perspective* 9(2) *Journal of Financial Crime* 165-178 (2001).

<sup>250</sup> Michelle R. Adelman, *International Sex Trafficking: Dismantling the Demand* 13 *S. Cal. Rev. L. & Women's Stud.* 387 (2003-2004).

<sup>251</sup> *Global Report on Trafficking in Persons* (United Nations Office on Drugs and Crime, 2022), [https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP\\_2022\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf).

To conclude, it could be seen how female reproductive services can fall under PTAs. With specific reference to surrogate mothers and prostitutes, PTAs can play a dominant role in mitigating their financial exploitation. For instance, countries which legally permit surrogacy and prostitution for commercial purposes can mould their PTAs to ensure the economic welfare of cross-border surrogate mothers and prostitutes. This can be done, for instance, by regulating their compensation and fixing a specific criterion for health insurance facilities. Further, considering the various human rights violations that these groups of women undergo, PTAs can begin to incorporate provisions under their chapters on health, labour, gender, and so on, to harmonize the economic interests and human rights of these categories of women. Undoubtedly, this can lead to a new dimension in the trade and gender discourse within the framework of PTAs.