

## **The impact of trade, investment and tax regimes on women**

7<sup>th</sup> UN Forum on Business and Human Rights<sup>1</sup>

Macro-economic policies – when not aligned with human rights standards – can further exacerbate the vulnerability of certain groups such as women, migrants, Indigenous People, rural peasants, the poor and elderly, who already face multiple forms of discrimination.<sup>2</sup> There is mounting evidence that the liberalization of trade and investment, as well as corporate taxation policies, can deepen pre-existing gender inequalities and have a detrimental impact on women’s lives, health, economic participation, social security, decent work, and standard of living.

The first section of this document highlights some of the channels through which trade and investment agreements (TIAs) and tax policies can discriminate against women in their roles as producers, consumers, and as users of essential public services. The second section highlights several gender-sensitive policy responses with the potential to bring such regimes in alignment with human rights law principles and standards.

### **I. CHALLENGES**

#### Trade & investment liberalization agreements

The liberalization of trade and investment can provide economic opportunities to some groups. However, it can also have adverse distributional impacts for those at the bottom of the economic ladder, who are often women, informal traders or small-scale agricultural producers. For example, the liberalization of agricultural trade has been associated with the gradual displacement of subsistence agriculture and expansion of export crops in southern countries. This has proven particularly detrimental to female small-scale farming with limited access to and command of productive assets, such as land, seeds, fertilisers, mechanical tools, and credit services.<sup>3</sup> The enforcement of intellectual property protections through TIAs can induce changes in the relative prices of goods with gendered effects.<sup>4</sup> For example, a raise in the prices of patent protected drugs, such as ARV, can detrimentally impact young women and adolescent girls affected by HIV&AIDS, including in their roles as carers.<sup>5</sup> TIAs are associated with the elimination of tariffs and/or exorbitant arbitration costs triggered by investor-state disputes. Such costs can strip governments of important revenues that could have been spent on essential services such as public education, health, and care services.<sup>6</sup> Where women continue to have the primary responsibility for child rearing and domestic care, the reduced availability of such services is likely to exacerbate their double burden.

#### Corporate taxation policies

When businesses avoid or even evade tax, public services go under-funded and consumption taxes are often increased, both of which disproportionately burden women. Regular reports document how the world’s

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<sup>1</sup> This is a background document for the roundtable “Developing a gender lens to business and human rights” at the 2018 Business and Human Rights Forum developed jointly by the Columbia Center on Sustainable Investment, the Danish Institute for Human Rights, Oxfam and OHCHR.

<sup>2</sup> UN Office of the High Commissioner for Human Rights, *UN Experts Voice Concern Over Adverse Impact of Free Trade and Investment Agreements on Human Rights*, 2015:

<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>

<sup>3</sup> UN Human Rights Council, *Report of the Special Rapporteur on the Right to Food*, A/HRC/31/51, 2016, para. 43:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/293/26/PDF/G1529326.pdf?OpenElement>

<sup>4</sup> Gehl Sampath Padmashree, *Gender and the Agreement on Trade-Related Aspects of Intellectual Property Rights: Exploring some Interlinkages*, 2004, Article 27(3)(b): <http://oro.open.ac.uk/11411/>

<sup>5</sup> According to UN Women, 51 per cent of all HIV&AIDS affected persons are women, and 60 per cent of all youth affected by HIV&AIDS are young women and adolescent girls. UN Women, *Facts and Figures: HIV and AIDS*, 2018: <http://www.unwomen.org/en/what-we-do/hiv-and-aids/facts-and-figures>

<sup>6</sup> Public Services International, *Free Trade or Women’s Rights*, 2018: <http://www.world-psi.org/en/free-trade-or-womens-rights>

most profitable global companies from the world's wealthiest countries pay little to no tax, with public authorities unable or unwilling to stop the abuse. Recent Oxfam findings shows how pharmaceutical corporations systematically stash their profits in overseas tax havens, appearing to deprive rich and poor countries alike of billions of dollars that is urgently needed to meet the health needs of women and girls around the world.<sup>7</sup> In parallel, these same companies continue to vastly overcharge for their medicines and deny access to essential medicines to millions while lobbying governments to write regulations in their favor. As a result, women and girls concentrated in poverty suffer as result of under-funded healthcare services, more expensive medicines, and further disenfranchisement from participating in public policy decisions.

## **II: POTENTIAL SOLUTIONS AND GOOD PRACTICES**

### Gender-responsive policies

#### Trade & investment agreements

**Ex-ante human rights and gender assessments.** Ex-ante gendered assessment of TIAs can identify potential adverse impacts on women and enable the design of appropriate flanking measures.<sup>8</sup> They should rely on the meaningful consultations of rights-holders, use of sex-disaggregated data and monitoring of human rights impacts. For example, the HRIA of the African Continental Free Trade Agreement (CFTA) identified that women constitute the majority of informal cross-border traders and are particularly susceptible to hostility by border officials, gender discrimination and violence and proposed appropriate mitigation measures.<sup>9</sup> The same HRIA proposed gender-relevant monitoring indicators to ensure that the CFTA meets specific human rights targets.<sup>10</sup>

**Proactively address gender inequalities.** States should identify opportunities to empower women in the negotiation of TIAs. If effectively regulated, digital trade could open new channels for women's economic participation and lower traditional barriers to gainful economic activities.<sup>11</sup> In some recent trade agreements, gender issues have been addressed in specific chapters. For example, the Canada-Chile Free Trade Agreement (FTA) includes a trade and gender chapter that, amongst other things, reaffirms parties' commitment to implementing their obligations under the Convention on the Elimination of Discrimination against Women and establishes enhanced cooperation around capacity-building activities that seek to improve capacity and conditions for women.<sup>12</sup> While this is a step in the right direction, these chapters could do more to reaffirm substantive standards, strengthen extraterritorial obligations, and include measures to

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<sup>7</sup> Oxfam, *Prescription for Poverty. Drug companies as tax dodgers, price gougers, and influence peddlers*, 2018: <https://www.oxfam.org/en/research/prescription-poverty>

<sup>8</sup> For a methodological approach on how to conduct assessments of trade agreements, see for example:

UN Conference on Trade and Development, *Trade and Gender Tool Box*, 2017:

<http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1877>. On HRIAs of trade and investment

agreements more generally, see: UNGA, Report of the Special Rapporteur on the Right to Food, Olivier De Schutter, Addendum: Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, UN Doc A/HRC/19/59/Add.5 (19 December 2011)

[https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf)

<sup>9</sup> OHCHR, Economic Commission for Africa and Friedrich-Ebert-Stiftung, *Report of the Continental Free Trade Area in Africa- A Human Rights Perspective*, 2017, p.65: [http://www.fes-globalization.org/geneva/documents/2017/2017\\_07\\_CFTA\\_HRIA\\_Publication.pdf](http://www.fes-globalization.org/geneva/documents/2017/2017_07_CFTA_HRIA_Publication.pdf)

<sup>10</sup> Ibid, p. 152.

<sup>11</sup> OHCHR, Economic Commission for Africa and Friedrich-Ebert-Stiftung, *Conference Report, Digital trade in Africa: implications for inclusion and human rights*, 31 May- 1 June 2018, Addis Ababa, Ethiopia.

<sup>12</sup> Canada-Chile FTA, Appendix II, Chapter N-bis (Trade and Gender) (amendment signed 2017, not yet in force) Chapter N-bis entered into force), [http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017\\_Amend\\_Modif-App2-Chap-N.aspx?lang=eng](http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng). The original Canada-Chile FTA was signed in 1996 and entered into force in 1997.

address women's economic empowerment more broadly.<sup>13</sup> Beyond gender chapters, TIAs must not inhibit the adoption of measures that could have a positive impact on women's rights. Prohibitions on performance requirements, for example, can undermine the imposition of conditions on inward foreign direct investment, e.g. requirement of local employment, technology transfer, and transfer of skills and knowledge. If well-designed and implemented, such conditions can benefit women in host countries.<sup>14</sup>

### Corporate taxation

**Independent and periodic assessments of women's rights impacts of the corporate tax system.** The UN Committee on the Elimination of Discrimination against Women (CEDAW), for instance, has already called on Switzerland to conduct impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality.<sup>15</sup>

**Full tax transparency.** States should require all large multinational companies to adhere to a standard of comprehensive tax transparency, including by mandating public country-by-country financial reporting for all large multinational companies, and establishing a centralized public registry of beneficial ownership information for all companies.

**Corporate responsibility.** Companies should publicly disclose, on an annual and country-by-country basis, relevant financial data, encourage governments to mandate such disclosure, and rally other companies to be transparent.<sup>16</sup> Companies should act responsibly on tax by, for example, publicly committing to pay taxes on profits according to where value is created within the normal course of commercial activity, and publicly committing to not artificially shifting profits to low-tax jurisdictions.<sup>17</sup>

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<sup>13</sup> Simonetta Zarrilli, 'The gender chapters in trade agreements: A true revolution?' ICTSD Blog (14 November 2017) <https://www.ictsd.org/opinion/the-gender-chapters-in-trade-agreements-a-true-revolution>; UNCTAD, *The New Way of Addressing Gender Issues in Trade Agreements: Is It A True Revolution?* UNCTAD Policy Brief No. 53 (October 2017)

<sup>14</sup> Ranja Senjupta, *The Gender Dynamics of Trade and Investment and the Post-2015 Development Agenda: A Developing-Country Perspective*, Third World Network (September 2013): <https://www.twn.my/title2/unsd/2013/unsd130903/gender-related%20impacts%20of%20int%27l%20trade%20and%20investment.pdf>

<sup>15</sup> CEDAW, *Concluding observations on the combined fourth and fifth periodic reports of Switzerland*, 2016, para. 41 (a): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/99/PDF/N1640299.pdf?OpenElement>

<sup>16</sup> [Vodafone](#), for instance, has stepped up by publically disclosing its tax payments around the world in a country-by-country basis, and the B-Team encouraged several of its companies to develop an important new set of [Responsible Tax Principles](#).

<sup>17</sup> Other responsible tax practices can be found in Oxfam's *Getting to Good: Towards Responsible Corporate Tax Behavior*, which provides guidance for companies and investors seeking to place sustainable development at the heart of responsible tax management, <https://www.oxfam.org/en/research/getting-good-towards-responsible-corporate-tax-behavior>