

The gender dynamics of trade and investment and the post-2015 development agenda: A developing-country perspective

by Ranja Sengupta

In an increasingly globalised world, the impact of trade and investment liberalisation is an important area of policy focus. In the current context, the gender impact of trade policy must be paid serious attention especially as it is increasingly evident that trade policy is not “gender-neutral”. This is because women’s economic and social positions are weaker, their rights are not well defined and a harshly competitive system hurts the weakest the most. The impact on women is partly general¹ and partly gender-specific, determined by the way they are integrated into specific sectors.

The nature of international trade itself is undergoing continuous changes, with autonomous liberalisation undertaken by countries, multilateral commitments at the World Trade Organisation (WTO), as well as rapid advances in bilateral free trade agreements (FTAs), regional trade agree-

ments (RTAs) and bilateral investment treaties (BITs)/bilateral investment promotion and protection agreements (BIPAs). Globally 575 FTAs or RTAs were notified to the WTO (until July 31, 2013), of which 379 are in force. There are 3,196 international investment agreements including 2,857 BITs/BIPAs in force globally (UNCTAD *World Investment Report 2013*). With the growing coverage of trade agreements spanning agriculture, industry, services, intellectual property rights, investment, government procurement and other areas, the interactions between provisions in the sector/area-specific liberalisation policies create complicated and multilayered impacts. All these have a two-way interaction with women’s access to critical physical, financial and human resources and access to basic services, with significant implications for their empowerment, livelihoods, health, socioeconomic status and well-being. In many cases, the impact process is so complex that the gendered nature of it is apparent only after a deeper analysis.

¹ The impact on poor rural women may be partly determined, for example, by the way all poorer farmers are affected.

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Address: 131, Jalan Macalister, 10400 Penang, MALAYSIA
E-mail: twnet@po.jaring.my **Website:** www.twn.my

Tel: 60-4-2266728/2266159 **Fax:** 60-4-2264505

An area of increasing concern with development analysts, non-governmental organisations (NGOs) and academics is that the trade and gender issues are not properly raised and debated in the public sphere, and do not feature prominently in development discussions. In particular, this discussion is of great significance for the post-2015 development agenda. It is obvious that issues such as poverty, inequality, gender empowerment, women's education and health cannot be addressed effectively unless structural issues are addressed. It is more important in the current context, as a meaningful global agenda must address global-level policy issues which impact gender relations down to the grassroots. Goal 8 of the Millennium Development Goals (MDGs) ("Develop a global partnership for development") was weak in terms of implementation and accountability, and the current Goal 12 proposed in the Report of the High-Level Panel on the Post-2015 Development Agenda (HLP Report) ("Create a global enabling environment and catalyse long-term finance") also has several shortcomings, including being gender-insensitive. To address the gender impacts of international trade and investment requires an interweaving of several areas such as access to health and education, to resources and to food with gender-sensitive international policies. The post-2015 development agenda must therefore deal with these complex multilayered relationships if it is to deliver on gender equality and women's empowerment. This paper attempts to enunciate some of the gender-related impacts of international trade and investment mainly in the context of developing countries.

Gender inequalities and vulnerability

Gender discrimination is historically given in most countries, in resource ownership and control; access to finance; access to jobs and incomes; knowledge, education and skills; access to health-care; social relations and in several other areas. In fact it is not a developing-country phenomenon alone, though it may be more prominent in less developed societies. In some regions, such as South Asia, Africa and the Middle East, we see a prominent manifestation of gender inequalities.

It is well documented that women also face more poverty, including time poverty. Female-headed households have often shown higher poverty

rates.² Working poverty is also high, as revealed by country-specific data which shows a higher rate for women. For example, in India 86.4% of working women are poor compared to 81.45% of men (at less than \$2 a day) and 36.1% of working women are poor compared to 30% of men (at less than \$1 a day).

Given these inequalities, women are sometimes more vulnerable to the adverse impacts of macro and external sector policies which do not take them into account. At the same time, they may be less able to make use of the benefits that may accrue to specific sectors or economic groups. Women are also more vulnerable to shocks such as climate change, economic crisis, etc. These factors then can actually exacerbate the given inequalities and can create unforeseen situations which are much more difficult to deal with.

The gender dimension of international trade and investment

In the context of a larger-than-life influence of trade and investment globally, it is pertinent to ask whether trade and investment policies improve gender disparities or worsen them. We need to know exactly where and how they impact women's lives. The current trade paradigm is supposed to increase growth, decrease inequalities in the long run and ensure full employment for all countries (especially so that developing countries can "catch up") but this has been much discounted from the current evidence. Trade need not necessarily lead to growth and can increase inequalities especially in the short run, especially across sectors, income, gender and social groups. In addition, economic growth, even if it did result from trade, does not always lead to gender equality, as seen in South Asia.

There are clear linkages through which policies of international trade and investment, whether autonomously driven or arising from specific commitments in international agreements, can affect gender dynamics. These may be categorised into the following areas:

- Work sphere affecting employment and incomes, terms of employment, work conditions

² Cagatay (1998).

- Access to resources (land, water, credit, technology)
- Access to basic services (e.g., health, education)
- Home situation affecting care work, unpaid work, within household inequality/empowerment
- Migration including both domestic and international and of both men and women
- Women as consumers
- Affecting the policy space for gender-friendly policies and social policies.

In addition, several other areas may be affected in complicated ways, some of which we may not have even begun to understand.

A sector-wise look: Agriculture

Agriculture supports a large number of the world population, especially in developing countries. Women are particularly dependent on the primary sector and are engaged in crop cultivation and animal husbandry, which engage 44.4% of women workers in developing countries. Agriculture is a natural mainstay for women in developing countries because it can be combined easily with work at home, and requires less skill and financial resources. Women are willing to be in the informal economy and earn the zero or low wages that this sector offers. Most importantly, women take the final responsibility to put food on the table for the family and staying close to food sources comes as a natural option. As producers and sellers of food, they also produce for home consumption and so livelihoods in this context also imply a direct access to food. However, they still do not have much control over productive resources such as land, credit and water, and their decision-making powers are also limited. The agriculture sector also houses the largest number of poor and women among the poor.

Under the WTO, agricultural trade was opened up under the Agreement on Agriculture (AoA) which involved providing market access to WTO member states by capping (binding) import duties, laying down uniformly applicable (to all WTO members) standards and processes, and reducing or eliminating trade-distorting export and domestic subsidies which are given mainly by the developed countries. Interestingly the last has seen

very little progress and developed countries such as the United States and the European Union have continued to give subsidies under various guises, threatening access for small farmers in developing countries, many of whom are women. At the same time, subsidies which could be given by developing-country members are mostly banned under the WTO rules, making it impossible for governments (especially in large countries) even to support food subsidies for poor consumers and price support for small farmers.

The AoA has been criticised for being gender-insensitive and several gender-related concerns have been raised by analysts. A criterion of “gender-sensitive products” to protect products with high engagement of women from import competition has been suggested by gender analysts but has not gained much ground yet. Moreover, trade liberalisation has not been able to control speculation (further boosted by the crisis in financial markets) and concentration in global food markets; the resultant volatility in international prices has been hurting both poor farmers and consumers, and has threatened food security across developing countries.

With the advent of bilateral or regional free trade agreements, liberalisation has been deepened and widened at the same time. Under FTAs, import duties on most agricultural products are reduced to zero as opposed to simply binding duties as under the WTO. Some developed countries ask that export measures, left largely uncontrolled by the WTO, be eliminated. Interestingly, under FTAs, one area that cannot be touched is developed-country subsidies, which are supposed to be negotiated multilaterally. These threaten the market for women farmers and workers. While women do work in export-based agricultural sectors such as plantation products and processed food products, the growth is still limited and, in any case, such work takes women away from basic food cultivation.

In addition, developed countries often demand, in other areas covered by FTAs, provisions which go beyond the level of commitments under the WTO. In the area of intellectual property rights (IPRs), patenting of lifeforms and high levels of intellectual property protection of seeds (through UPOV 1991) and pesticides (through data exclusivity) are

brought in (see sections on intellectual property rights below for more details). Strong investment chapters under such FTAs can give foreign investors widespread access to land and natural resources. Foreign direct investment (FDI) also leads to mechanisation in traditional agriculture, which may be good for productivity increases but has a gender impact as such mechanisation takes away women's jobs in low-skilled labour-intensive segments. Service delivery mechanisms such as retail, credit and extension services may also be impacted.

Box 1: NAFTA and women in Mexican agriculture³

- US-subsidised corn and beans entered Mexico after the entry into force of the North American Free Trade Agreement (NAFTA)
- Devastated Mexican agriculture, 1.3 million jobs lost, mainly of small and subsistence farmers
- Women farmers are mostly small farmers: 70.8% of women farmers cultivated plots less than 2 hectares
- Poverty levels increased by 50% in female-headed households
- Wage per hour fell from 10.3 pesos in 1991 to 1.3 pesos in 2003 (at 1994 constant pesos), gender wage disparity increased

It is clear that full liberalisation of the agriculture sector through multiple mechanisms will reduce protection for women farmers and workers in developing countries. In addition, the prospects of putting in place protective mechanisms such as sensitive products (using a gender criterion) and special safeguard mechanisms are being increasingly restricted. Women will also be hurt more as investment, services and public procurement are liberalised. Their dependence on the resources threatened under these agreements is higher and their ability to shift out of agriculture is limited. Their role as food providers gets severely undermined not only by losses in production and livelihoods, but also from threats to natural resources, markets and technologies which are important for direct access to food as well as instruments for sustaining production and sales. Gender sensitivity

³ Speildoch (2004).

ties need to be taken into account in all aspects of trade agreements, while combined with gender-friendly development policies.

A sector-wise look: Industry

Trade liberalisation has also taken place across industrial sectors across the developing world, following either autonomous, WTO-promoted or FTA-pushed frameworks. The WTO has pushed member states to cut import duties according to a "Swiss formula", and has increasingly linked duty cuts to the special and differential treatment developing countries can receive. Similar to agriculture, the industrial sector has witnessed under FTAs deeper cuts on applied duties. Moreover, further liberalisation, by pushing for zero duties in specific sectors (sectorals) and not permitting full exclusion of any sector (anti-concentration clause), is being promoted through both the frameworks. The North-South FTAs also often talk about labour and environment standards.

There has been a significant increase in women's employment in export-based industrial sectors in some parts of the developing world, especially visible in Asia, specifically in textiles and garments, leather, food processing and marine products. The export-led growth in these sectors has often been ascribed to women. This has arguably led to a process that has been linked to women's empowerment.

However, while acknowledging the positives of such job opportunities, the literature also points to significant concerns. The first issue is of sustainability. Seguino and Grown,⁴ among others, have shown that semi-industrialised economies that emphasise export manufacturing have experienced a rise in the female share of employment, but only in their early phases of industrialisation; this effect tends to reverse over the course of industrial development.

Second, along with gains in some industries, most of which are of low value, there has been simultaneous loss in uncompetitive sectors across Africa, Asia and Latin America leading to job and income losses. In addition, small suppliers have in particular been often hit (for example, in the textiles and apparels sector in Cambodia). Small

⁴ Seguino and Grown (2006).

and medium-sized enterprises (SMEs) find it more difficult to survive under strong competition as they often face discrepancies in access to credit, technology, infrastructure etc. This has a gender dimension as SMEs are owned by and employ more women worldwide.

Box 2: Women and employment in Africa – some cases⁵

- In Nigeria, Tunisia, Morocco, Ghana and Senegal there was a decline in women's employment in manufacturing, especially in textiles.
- In Madagascar, there was an increase in women's employment in textiles.
- 85% of women had never earned before. But in spite of comparable education, women were confined to unskilled jobs with low wages, as well as temporary jobs. Unskilled wages were stagnant and there was an increase in the gender wage gap.

Third and of critical importance, while women have been hired, it has been on adverse terms. The work is mainly informal, with increased casualisation all over the developing world. Employment has been volatile with higher rates of reallocation. Significant wage disparities and job segregation persist or even increase, and labour-saving FDI especially in labour-intensive segments has meant that women are often the first to be laid off. Working conditions have been kept adverse, with minimum investment in providing better work conditions. Often no leave is given to female employees, sometimes no toilet break, and workers often inhale material with severe adverse impacts on health (as is the case in the production of textiles, garments, tobacco and chemicals). So while women have been ascribed the credit for the gain in exports, it is because they have been exploited and have been used as necessary adjusters in a situation of volatile trade. Such conditions are not a fallout but a natural driver of this kind of competitiveness, with women used as pawns in this game of competition. Such conditions are being perpetuated as they are key to developing countries continuing to gain from trade. Simulta-

⁵ UNCTAD (2009).

neously there has been an increase in unpaid work and self-employment.

Box 3: The garment sector in Bangladesh⁶

- Domestic liberalisation and the growth of the garments industry has led to an increase in unskilled women's employment in the garment sector
- 46% contribution to family incomes by female employment, leading to empowerment within households
- Women's share in employment 90%, wage disparity 50%
- Women are limited to low-skilled segments, whereas wages have grown more in skilled jobs
- Hazardous conditions of work, unhealthy impacts, sometimes not even toilet breaks are allowed
- Decrease in time for housework, leisure, education
- 40% of female workers do not receive medical treatment (33% for men)
- Only 35% of female workers got leave when asked (60% for men)

In sum, in sectors which do well, women gain jobs but the gains are less than proportionate compared to gains for men.⁷ Where sectors lose, women lose disproportionately and are the first ones to be fired. Women are used as a wedge to adjust to trade volatility, and under this logic they must necessarily not be given any rights. The gender wage gap increases growth in countries at low levels of growth. The skill and resource gap is only part of the explanation, social relations constitute the other major part as women have limited rights and men are seen as legitimate job holders. It is a positive that women get employment, but a lot more needs to be done to address disparities from both equity and efficiency points of view.

Given this context, it is not surprising that women lose disproportionately more in times of crisis. Women's jobs in export-based sectors go faster (for example, during the East Asian crisis, women lost

⁶ Raihan et al. (2010); Van Staveren et al. (2007); Paul-Majumder and Begum (2000).

⁷ UNCTAD (2008).

seven times the jobs of men in South Korea) and even when jobs are not cut, wages are cut further and the wage cut is higher for women.⁸ Unpaid work also increases in times of crisis, together with significant worsening of conditions of work.

Another contentious issue is labour standards (LS) in North-South FTAs, which have been resisted by developing countries on grounds that these actually constitute non-tariff barriers for developing countries. LS can arguably help women, but can be tricky under bilateral trade agreements as several critical issues crop up. Will jobs go to another country that does not upgrade LS? Another question is whether developing countries become uncompetitive while supplying to developed-country partners which want these standards. The overall impact on employment is therefore unclear.

The policy issues are complex in this context. It is important to remember that in many cases women have gained, yet gains are maximised where the government and NGOs have intervened in policy, for example, in the cases of Kenyan women workers in flower horticulture and Burkina Faso's women workers in the shea sector. It is also important to remember that policy can backfire and the opposite impact can occur. In the case of South Korea, a policy to address wage disparity led to older women workers being fired. In addition, policy space may be eroded by FTA/investment agreement provisions on investment protection (for example, any labour law that reduces profits of investors may be targeted), thereby limiting countries' capacities to intervene (see section on investment below).

Finally, it is undeniable that to protect women workers, there is a need for a comprehensive trade, macroeconomic and social policy package. A social security package is an important ingredient of this, and must be seen not only as a welfare measure but also as a boost for domestic demand.

A sector-wise look: Services

Global trade in services has witnessed significant growth over the past two decades and several developing countries such as India, China and the Philippines are now important players in the

world market. However, their competitiveness is often limited to a few sub-sectors and developed countries are the ones that dominate services trade globally.

The service sector and trade in services is actually one of the most critical drivers of gender relations in the world today. While a growing service sector can be a source of jobs which sometimes can be specifically suited to women's needs, the sector must allow access to critical services such as health, education, water, energy and credit that are essential for basic human well-being as well as for people's economic and social development. There has been a clear gender-differentiated impact, given women's critical need for but limited access to such services in developing countries. The impacts vis-a-vis employment and access to services reinforce each other and can help perpetuate or break a cycle of gender disparities.

The service sector and access issues also have important relevance for women's care work. Clearly, in the presence of affordable and well-distributed services in water, healthcare, education, etc. which are generally publicly provided, the burden on women to supplement these services with their care work is much less. Whenever there has been contraction of such services, whether under a crisis or under structural adjustment programmes or due to other reasons, the burden of care work has increased.

Trade in services takes place through four modes, each with its own gender dimension.

Mode 1 refers to cross-border supply of services (for example, in sectors like information technology (IT)). While this can offer significant opportunities to women, as in India, there are gender-specific concerns as well. Because the jobs created in the IT sector are skilled, the number of jobs is extremely limited even in India where they account for less than 3% of urban women's jobs and have no presence in rural areas. This sector is known for its adverse working hours for women, wage differences and job segregation where women cannot enter high-level jobs. For example, in India's IT sector women account for 40-50% of the workforce in business process outsourcing but only 25% for the higher-value-added software

⁸ Hirway and Prabhu (2009).

segments.⁹ In addition, 70% of women workers feel work hours are unfavourable for women (especially when it comes to EU- and US-based clients), and 94% of married women felt a negative effect on children's education.

Mode 2 refers to consumption abroad (for example, in sectors like tourism). These sectors have offered women considerable job opportunities though issues such as sex tourism and medical tourism have been of concern. The rapid development of medical tourism in several developing countries such as Thailand, Jordan and India has created job opportunities for women health professionals, but issues such as surrogacy which such tourism has tended to promote have often worked against women's health and psychological well-being. Regulation of these activities has also become increasingly difficult, often because of FDI-related issues (see section on investment below).

Box 4: Banking liberalisation in India and credit access for women¹⁰

- Foreign banks: 27.8% of activity in derivatives, stocks etc., 7.9% to credit
- Proportion of women account holders 23.8% but disbursement lowest compared to all others (only 7.9%)
- Comparatively, regional rural banks (RRBs) do much better: 25.5% of accounts, 19.6% of credit to women
- Foreign banks avoid risk and concentrate in metros (81.4% of branches) and in urban areas (17.9% of branches)
- Urban lending to women is only 24.4% of total lending to women and 21.1% of women borrowers
- Foreign banks' lending to the agriculture sector is 0.01% (of their total credit, 2008) and to SMEs 1.2% (of total credit, 2007)

Mode 3 refers to commercial presence (focused on investment in service sectors). While the WTO's General Agreement on Trade in Services (GATS) has been limited by a voluntary offer system, pressure to open up Mode 3 is now increasingly exerted through FTAs, especially North-South ones. While FDI can ostensibly generate access

where services are underdeveloped, there are several challenges to consider. FDI in services can threaten access to critical services such as water, banking, healthcare and education by chasing out public investment, raising user fees and limiting business to "safe" urban areas without including rural areas. There is also evidence of FDI threatening jobs in gender-sensitive informal sectors such as retail and waste. In addition, there are serious regulatory issues which are discussed below.

Mode 4 or the "movement of professionals" is of great interest to women care workers. Currently the global arena has seen a significant increase in migration of nurses and women care workers. Most developing countries have a significant interest in this as migrant remittances form an important chunk of their incomes. This also is meant to balance the anomaly in encouraging the free movement of goods but not of labour.

Mode 4 could in theory help women workers like nurses and caregivers by ensuring more jobs, incomes and better protection. However, the framework under which this has evolved under the WTO and FTAs is very limited. First, Mode 4 is limited to *temporary* movement, often linked to commercial presence as a prerequisite. Second, it is limited to *skilled professionals only* and women domestic workers are not often considered skilled. As a result, the most that Mode 4 has seen in recent times is some very limited advancement in jobs for nurses (e.g., under the India-Japan FTA) but nothing for care workers is on the cards. Third, there are strict barriers in most countries (economic needs test, language test, pre-employment requirements, confinement to sector, and an absence of wage parity) which women migrants often find more difficult to meet. Fourth, most migrant workers have limited rights, work in the informal sectors and face exploitation both domestically and abroad (e.g., China's *dagongmei* and Mexican women workers in the US) but Mode 4 is unable to address this aspect. There has also been criticism that Mode 4 has resulted in encouraging sex tourism.

While encouraging Mode 4 could have some benefits for women in developing countries, critics have also argued that there is a cost to the country of sending workers out. For example, when health workers go abroad, there can be an adverse impact

⁹ Sengupta and Sharma (2009).

¹⁰ Sengupta et al. (2011), No. 2.

on the availability of health professionals and health services within a country. Women and the poor will likely suffer disproportionately from a constraint on quality health services. So Mode 4 must be promoted to be expansive and effective while keeping domestic needs in mind.

Intellectual property rights and access to medicines

The WTO established the TRIPS regime under its Agreement on Trade-Related Aspects of Intellectual Property Rights in 1995 and member countries have gradually enacted or amended their patent and other intellectual property (IP) laws in accordance with it. The increasing recognition of strong IP rights has already increased the costs of many patented drugs. It has also threatened the cheap supply of medicines from the generic drug industry based in several countries such as India, China, Thailand, Brazil and South Africa. In developing countries, often with severely unequal health indicators and access, this threat to access to medicines is of critical concern.

Access to medicine and healthcare has a clear gender component. Women already face lower access to healthcare and medicines. High maternal mortality in Africa and South Asia and high undernourishment among women and children in Africa and Asia validate these concerns, as does the increase in incidence of HIV/AIDS among women with lower access to treatment and suffering discrimination. As costs go up, women are often forced to forego treatment, as is clear in the case of HIV-infected couples. The rise in the cost of fertility-related treatment has also been a specific trend. Prices of treatments for breast cancer have also increased prohibitively. For example, trastuzumab, a key medicine for breast cancer, has been patented in India and is available at the price of Rs. 124,000 per month per person where the treatment must continue for 52 weeks. Women in developing countries both practise traditional medicine and use traditional medicines extensively, an area which can also be impacted by IPRs.

Under TRIPS, governments were supposed to provide stricter protection of IP, which has increased medicine prices worldwide as well as affected access to medicines in cases of critical diseases. However, innovation (the stated objective of stronger IPRs), especially in the treatment of

neglected diseases, has not been forthcoming. Still, the TRIPS framework does offer some flexibility such as provisions for compulsory licensing, parallel imports of medicines, *sui generis* protection for plants and animals, protection of traditional knowledge, etc.

However, under FTAs, especially North-South FTAs, developed regions and countries such as the EU and US often ask developing partners to make IPR commitments beyond the TRIPS Agreement. As a result, the global IPR system may become even stronger. In addition, several flexibilities such as compulsory licensing offered by TRIPS are being continuously challenged, further aggravating the situation. The FTAs often include provisions such as data exclusivity (DE),¹¹ patent term extension, patent linkage (linking of the patent with marketing rights) and IPR enforcement (including border measures that allow countries to seize critical medicine supplies in transit for alleged IPR violation), among others. In Jordan, DE provisions under an FTA with the US resulted in medicine prices being 200-600% higher compared to those in neighbouring Egypt, where DE was not in operation.¹²

Intellectual property rights, traditional knowledge and biodiversity¹³

Women are preservers of seeds, of traditional systems of cultivation and of biodiversity as they depend more on these traditional systems and also help to nurture their diversity. These are under threat from the current IPR system. Even the way traditional knowledge is currently being “protected” by the mainstream approach actually either takes access away from communities or lures them into the IPR system in the name of rights, reward or recognition. The IPR system is inadequate to deal with people’s knowledge systems, which neither privatised the knowledge nor

11 Under DE, national regulators cannot refer to trial data submitted by the original medicine manufacturer to grant marketing rights to a generic producer for a certain period of time. So generic producers will now have to submit their own data and repeat clinical trials if they want to enter the market.

12 Oxfam (2007).

13 This section draws on Shalini Bhutani (2011), “IPRs, Biodiversity and Traditional Knowledge”, at Workshop for the Media on “International Trade and Gender Dynamics in India”, organized by CLRA, Centad, TWN and HBF, 10 August 2012, New Delhi.

were based on individual inventorship. For most local groups and women, their knowhow of the living world is intellectual heritage and not intellectual property. Despite what is said globally and nationally about patents, plant variety protection, geographical indications, etc., merely accommodating women within them does not deliver real justice to them. For example, the relation of India's Biological Diversity Act with these IPR laws has to be critically viewed, as this conservation law is also fast becoming a venue to approve IPR applications on India's biological resources and related knowledge.

Investment, investment agreements and policy space

The sections above highlight how FDI can pose specific gender concerns in developing countries. However, there are two important areas of concern related to FDI focused on the specific mechanisms through which FDI enters a country. These revolve around the terms and conditions of bringing in FDI, which could be through investment protection agreements, trade and investment agreements, or through autonomous routes.

The first concern relates to the fact that conditions imposed on FDI, referred to as performance requirements, are getting increasingly diluted globally, either through the governments' autonomous policies or through investment chapters in FTAs. For example, in India the conditions imposed on allowing FDI into multi-brand retail (a recently announced and very controversial policy shift) are already getting diluted. Many governments have also increasingly removed conditions related to mandatory technology transfer, very important for domestic growth and also for creating opportunities in SMEs where many women work as entrepreneurs and employees.

The second concern stems from the rapid growth of bilateral investment treaties and bilateral investment promotion and protection agreements, which give investors very strong protection and legal rights. While this is seen by many as necessary for attracting FDI, others argue that this has severely limited the policy space of governments to regulate in the national interest. Under BITs/BIPAs, foreign investors have the right to sue national governments in secret arbitration cases in international tribunals if they perceive any

violation of their investment. Several public interest regulations by governments across the world have been challenged. For example, the tobacco company Philip Morris has sued a number of governments including Australia and Uruguay for trying to bring about plain packaging on cigarette packs. Such actions are already acting as a severe policy deterrent and have the potential to freeze future regulation in a way that may adversely affect women's rights and space. For instance, it may become difficult for governments to put in place future regulations in areas which impact women significantly and where regulation is currently still weak, such as surrogacy laws and medical tourism.

Another critical area that can be affected by BITs and BIPAs is natural resources, which women traditionally use and depend on. The majority of the known outstanding investor-state dispute cases under the US' FTAs and BITs (totalling \$11 billion in claims) relate to natural resource policies. Nearly half of the 129 cases pending before the World Bank's investment dispute facility relate to natural resources. *Burlington Resources vs. Ecuador*, pending, reveals conflicts between government duties to protect human and indigenous rights, on the one hand, and obligations to protect foreign investors, on the other. Public health and environment regulations, areas on which women and children are critically dependent, are also being challenged globally. For example, in the case of *Renco vs. Peru*, lead poisoning of 162 La Oroyan children led to the Peruvian government taking measures against the company but Renco sued Peru for \$800 million under the US-Peru FTA.

Policy options

There is an increasing loss of policy space from various directions for governments to enact policies to meet social needs. For example, one might consider the loss of tariff revenue that can lead to lower spending on social sectors, or the loss of access to essential services for weaker sections of the population. Governments are also losing the space to protect natural resources and keep control in the hands of communities, among other relevant policy measures to promote women's interests and their development.

From an overview of issues, it is also evident that while goods trade has its own challenges, trade's

movement beyond goods may not always be beneficial to women, and gender insensitivity is often more intrinsic in these issues. There is therefore a need for higher regulation and monitoring of these areas for gender impacts. There is a need to focus government policies to address disparities (in resources, skills, etc.) and protect sectors and workers until these are addressed. There is a dire need to address labour concerns, in particular the casualisation of work. There is also the need for social protection measures with gender-specific focus. Finally it is of critical importance to assess what kind of development parameters we need in place before we can go in for liberalisation that affects specific groups in very particular ways. There are certain policy options that can be pursued at national or global levels in order to take these concerns into account:

- **Changes in trade and investment policy:** At national and global levels, monitor gender impacts and take protective measures where the impacts are expected to be harmful; do not compromise governments' policy space to regulate in the interests of vulnerable sectors; strengthen and implement countries' extraterritorial obligations; identify and protect gender-sensitive products; ease processes (waiving of licensing and other fees), create research-and-development resources for women entrepreneurs, credit and marketing facilities, etc.
- **Changes in domestic macroeconomic policies:** Create public employment; effect gender mainstreaming of macroeconomic policy design; implement preferential policies across sectors; plan investment in creating infrastructure; facilitate access to technology and ensure access to common natural resources.
- **Changes in labour and social policies:** Update labour laws and labour standards including wage uniformity policy; implement regulations on working conditions, social security law for unorganised workers, maternity benefits, public facilities for creches and schools for women workers' children; invest in nutrition, health and education. These will also help boost demand and expand the domestic market.
- **Need for deeper introspection for protection of women:** Implement policies focused on changing social mindsets through education, awareness building, etc.
- **Develop women's political empowerment and decision-making content in all forms**

of policymaking, especially external sector policies.

Recommendations related to international trade and investment issues for a post-2015 development agenda

Based on the analyses above, some recommendations are provided below. The list is ambitious but the issues of international policy go to the heart of gender relations and impact multiple aspects of people's lives. Some indicators are cross-cutting and may appear more than once. The recommendations devote significant attention to the global policy framework but include national- and local-level interventions as well. The list is indicative and certainly not exhaustive.

1. Framework

- **Interweave gender dimensions in all goals**, especially under global partnership for development (MDG Goal 8) or under "Create a global enabling environment and catalyse long-term finance" (Goal 12 of the HLP Report). Simultaneously **interweave international components under the gender-related goals** (e.g., Goal 2 of the HLP Report) but also in other goals, for example, in goals related to **employment** (Goal 8 of the HLP Report), **food security and nutrition** (Goal 5 of the HLP Report).
- **Address global framework and structural issues** as intrinsic to the attainment of all goals
- Try to **influence policymaking at all levels**: national/state, trade policy/domestic policy, other
- Use indicators that lend themselves to **more disaggregated analyses**
- **Promote gender-specific impact analyses and research** on trade and investment policies

2. Specific issues

- **Acknowledge and address the link between international issues and gender relations**
 - **Strengthen MDG Goal 8, make it accountable and undertake meaningful reform of global trade, finance, investment and IPR rules** (and associated technology transfer arrangements) so that the policy space of national governments to monitor and regulate such arrange-

- ments in the public interest, e.g. protecting public health, environment, natural resources, and in the interest of gender and social justice is protected
- Apply the **Maastricht Principles on Extraterritorial Obligations of States** in the area of economic, social and cultural rights in the application of trade and investment agreements
 - Ensure **means of implementation (MOI)** with every gender-related goal and target (as well as with other goals)
 - Allow **conditions (performance requirements) to be imposed on FDI**, whether autonomously or through international agreements, so that it serves the interests of the host country, especially a developing country: FDI should mandatorily create jobs, transfer technology and transmit skills and practices from which the recipient population can benefit. Conditions can also be imposed to address the issues of inequalities that may stem from the natural operation of FDI (e.g., not going to rural areas).
 - **Women's work in sectors linked to international trade and investment**
 - Strengthen or add **targets and indicators on wage inequality, job segregation, informalisation/casualisation of work and job benefits**, including maternity benefits in export-based sectors
 - Ensure **access to productive resources** (physical, financial and human) such as land, water, credit, infrastructure, skills and technology for women by making public investment in these areas, if needed
 - Enact policies including external sector policies to **protect and promote women's entrepreneurship** especially in SMEs with access to credit, infrastructure, technology and market access on fair terms
 - **Recognise care work** as critical to the survival of the economy and society, and promote means to ease the burden of care work (e.g., by providing public services/sourcing of health-care, education, energy, water)
 - Provide **strong social protection/security safety net** addressing the needs of vulnerable and marginalised groups and provision of public services
 - **Women's access to resources and critical services**
 - Promote women's equitable **access to and control over resources** regarding the use of land, property, water, ocean, forests and other forms of natural resources
 - Ensure women's **access to agriculture and food** sources, including access to seeds, to cultivate, to gather from common resources
 - Ensure women's **access to knowledge**, including traditional knowledge, intellectual and cultural property and therefore to develop national/local IPR strategies in keeping with the needs of specific groups
 - Ensure that trade and investment policies do not impede women's **access to basic services** including **quality education** and skill development opportunities; **healthcare** including access to medicines; women's sexual and reproductive healthcare including safe abortion and maternity care, treatment of sexually transmitted infections and HIV/AIDS prevention and treatment; safe and accessible **drinking water**; and sustainable and affordable **energy** sources
 - Ensure external sector policies and global rules do not encroach on **governments' policy space to support large-scale public programmes** to ensure basic human sustenance and well-being, such as food, health, education etc., especially of vulnerable groups
 - Actively **penalize harmful FDI** in activities that affect the health of people and women, and the environment. Specific areas could be mining, nuclear energy and chemicals.¹⁴
 - **Strengthen the institutional framework**
 - Include **economic and democratic governance of international policies** at global, national and, if needed, local levels, and address gender-specific concerns within this framework. This includes strengthening transparency, accountability and review mechanisms at national levels (such as local government review, parliamentary processes, independent review commission etc.), as well as global levels (UN bodies, international financial institutions etc.).
 - **Involve participation of civil society organisations (CSOs)**, in particular, women's groups, in trade and investment policymaking and in the process of reviews
 - **Design indicators** such that policies that aim

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to achieve them do not have retrograde impacts.

Ranja Sengupta is a senior researcher with the Third World Network based in New Delhi, India. She has worked extensively on issues of agriculture, poverty and inequality, international trade and investment and impact on gender dynamics, SMEs, employment and development in general. This paper was originally written for and as part of the Women's Major Group compilation document *Gender Equality, Women's Rights and Women's Priorities: Recommendations for the Proposed Sustainable Development Goals (SDGs) and the Post-2015 Development Agenda* (September 2013).

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